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NCLA Alerts Mass. High Court to US Supreme Court Covid-19 Ruling Blocking Similar NY Exec. Order

Dawn Desrosiers, et al. v. Governor Charles D. Baker

Washington, DC (December 1, 2020) – The New Civil Liberties Alliance has filed a Second Supplemental Notice of Pertinent and Significant Authorities on behalf of the Petitioners in the matter of *Desrosiers v. Baker* currently awaiting a decision in the Massachusetts Supreme Judicial Court (SJC). The Notice advised the SJC of the Thanksgiving eve emergency injunction issued in the U.S. Supreme Court case, *Roman Catholic Diocese of Brooklyn v. Cuomo*, blocking New York Governor Andrew Cuomo from imposing strict numerical occupancy limits on places of worship. *Catholic Diocese of Brooklyn* supersedes Supreme Court precedent Gov. Baker previously cited in his defense and Justices of the Massachusetts SJC raised at oral argument.

Massachusetts Governor Charlie Baker imposed a Civil Defense State of Emergency and issued at least 55 COVID-19 executive orders since March that shut down the businesses, churches, and the private school that are suing Baker in the *Desrosiers* case.

The Supreme Court declined to defer to New York Governor Andrew Cuomo’s assessment of the restrictions necessary to protect public health where the restrictions burdened First Amendment rights. The Supreme Court ruled that Governor Cuomo’s executive order was unconstitutional because the order treats places of worship more harshly than secular businesses with respect to occupancy limitations. NCLA is asking the SJC to follow the Supreme Court’s new lead in *Diocese of Brooklyn* by exercising its constitutional prerogative to say what the law is and define the parameters of constitutional authority, without deferring to Gov. Baker’s interpretation.

The Supreme Court’s decision in *Diocese of Brooklyn* supersedes its May, 2020 decision in *South Bay United Pentecostal Church v. Newsome*. By superseding *South Bay*, the decision and its concurring opinions are relevant to at least two issues raised by the Justices and parties in *Desrosiers v. Baker*.

First, the *Diocese of Brooklyn* decision relates to the *Desrosiers* Petitioners’ First Amendment peaceful assembly claims and their claims that Governor Baker’s Civil Defense State of Emergency COVID-19 orders arbitrarily classify Petitioners between and among their businesses, churches, and school. These arbitrary classifications manifest unlawful dispensing with the law, and not suspension of the law as permitted in rare circumstances by the Civil Defense Act. The Supreme Court’s First Amendment analysis employed strict scrutiny because “[g]overnment is not free to disregard the First Amendment in times of crisis.”

Second, at [oral argument](#) and in his briefing, Governor Baker asked the SJC to grant “broad deference” to his interpretation of Massachusetts law and the scope and nature of gubernatorial power. Justice Gorsuch’s concurring opinion flatly rejected such a notion: “[Courts] may not shelter in place when the Constitution is under attack.” Justice Gorsuch explained that Chief Justice Robert’s *South Bay* concurrence “expired according to its own terms,” but regardless, “[e]ven if the Constitution has taken a holiday during this pandemic, it cannot become a sabbatical.”

NCLA released the following statement:

“As we near the tenth month of Governor Baker’s Civil Defense State of Emergency, more and more state and federal courts are declaring gubernatorial decrees unconstitutional. The United States Supreme Court is a welcome addition to that growing list. The Massachusetts Supreme Judicial Court should also recognize that free people don’t socially distance themselves from their civil liberties in times of crisis.”

— **Michael P. DeGrandis, NCLA Senior Litigation Counsel**

For more information visit the case page [here](#).

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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