

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 20-60399

United States Court of Appeals
Fifth Circuit

FILED

May 22, 2020

Lyle W. Cayce
Clerk

FIRST PENTECOSTAL CHURCH OF HOLLY SPRINGS,

Plaintiff - Appellant

v.

CITY OF HOLLY SPRINGS, MISSISSIPPI,

Defendant - Appellee

Appeal from the United States District Court
for the Northern District of Mississippi

Before HIGGINBOTHAM, SOUTHWICK, and WILLETT, Circuit Judges.

PER CURIAM:

Our sole appellate jurisdiction in this case rests upon denial of an injunction implied from the choice by the district court not to rule in an expedited fashion. After briefing, it remains plain that the court is being requested to enjoin a shifting regulatory regime not yet settled as to its regulation and regulatory effect, such as the apparent acceptance by the Church of the Governor's regulations. That settlement is best made by the district court in the first instance. Lest we in error step upon treasured values of religious freedom and personal liberties we stay our hand and return this case to the district court for decision footed upon a record reflecting current conditions.

Accordingly, we recognize that in this fast-shifting landscape of COVID-19 regulations, temporary deferral of a decision may effectively be a permanent denial. In the interim, pending the district court's decision, the City is enjoined from enforcing against the Church the Faith Based Organizations sections of Executive Order 6 and Executive Order 7.

We do this upon the assurances by the Church that it will "satisf[y] the requirements entitling similarly situated businesses and operations to reopen." In this vein, we refer the Church to the Governor's new "Safe Worship Guidelines for In-Person Worship Services," which appear similarly rigorous to the City's requirements for reopening businesses but are tailored to church operations. These guidelines, if implemented in the spirit of the City's orders, may help the Church abide by its safety pledge during this intervening period while the district court considers the injunction request and while the City continues the ongoing process of evaluating and revising its orders related to COVID-19.

IT IS ORDERED that appellant's emergency motion for injunction pending appeal is granted as set out above. To the extent appellant seeks further relief from this court, the motion is denied.

IT IS FURTHER ORDERED that appellant's alternative motion to expedite the appeal is denied as moot.

This case is remanded to the district court.

DON R. WILLETT, Circuit Judge, concurring.

The First Pentecostal Church of Holly Springs was burned to the ground earlier this week. Graffiti spray-painted in the church parking lot sneered, “Bet you Stay home Now YOU HYPOKRITS.”

The City mentions the church burning in its latest brief, but in a manner less commendable than condemnable. One might expect a city to express sympathy or outrage (or both) when a neighborhood house of worship is set ablaze. One would be mistaken. Rather than condemn the crime’s depravity, the City seized advantage, insisting that the Church’s First Amendment claim necessarily went up in smoke when the church did: “the Church was destroyed from an arson fire . . . making the permanent injunction claim moot.”

This argument is shameful.

When the parishioners of First Pentecostal Church leave their homes on Sundays, they are not *going* to church; they *are* the church. The church is not the building. When the New Testament speaks of the church, it never refers to brick-and-mortar places where people gather, but to flesh-and-blood people who gather together.¹ Think people, not steeple.

I concur in the court’s grant of injunctive relief. Singling out houses of worship—and *only* houses of worship, it seems—cannot possibly be squared with the First Amendment. Given the Church’s pledge “to incorporate the public health guidelines applicable to other entities,” why can its members be trusted to adhere to social-distancing in a secular setting (a gym) but not in a sacred one (a church)? Their sanctuary may be destroyed (for now), but when congregants congregate this Sunday, whether indoors in another facility

¹ “Ekklesia,” the Greek word for church, means the gathered ones, an assembly of the faithful. See Ekklesia, *The Oxford Dictionary of Byzantium* (Alexander P. Kazhdan ed., 1991) (“personification of the church”).

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(which has been offered) or outdoors in a parking lot, they will come together knowing that a church is not a building you go to but a family you belong to.