

# Daily Journal

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## 25<sup>TH</sup> ANNUAL CALIFORNIA LAWYER ATTORNEYS OF THE YEAR

### South Bay United Pentecostal Church v. Newsom

CONSTITUTIONAL LAW  
GOVERNMENT, PUBLIC HEALTH

When Gov. Gavin Newsom responded to the pandemic in March 2020 with a stay-at-home order that included an indoor worship ban, some churches took the matter to court. LiMandri and Jonna persisted through a sequence of setbacks before federal judges until the U.S. Supreme Court lifted the ban.

LiMandri and Jonna operated as special counsel for the Thomas More Society, a religious liberty nonprofit that blasted what it called California's "biased shutdown of churches."

Their case against the shutdown contended that Newsom and other state officials "have denigrated churches by downgrading them into a lower category of 'non-essential' activities, along with movie theaters, salons and gyms—ignoring their preferred status in our Bill of Rights," according to a media statement.

"Californians were forced to worship outdoors, in the cold, or from home, while many retail establishments were operating indoors with substantial capacity," Jonna said.

Their path to success wasn't smooth. Even the high court turned LiMandri and Jonna away at first, ruling 5-4 in May 2020 to uphold Newsom's limits on indoor worship services, denying their bid for injunctive relief and writing that courts should generally defer to health officials.

It took an updating of LiMandri

## Shuttering church doors ignites constitutional battle in US courts



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and Jonna's arguments plus a change on the bench for the justices to reverse themselves and rule 6-3 in February 2021 that the state was discriminating against religion by applying stricter standards to places of worship than to retail stores and other businesses during the coronavirus crisis. In the intervening months, Amy Coney Barrett replaced the late Ruth Bader Ginsburg and Chief Justice John Roberts reversed his original position. *South Bay United Pentecostal Church v. Newsom*, 20A136 (S.Ct., op. filed Feb. 5, 2021).

LiMandri, the lead lawyer on the case who argued the matter before the 9th U.S. Circuit Court of Appeals, said, "We never gave up." Indeed, he and his colleagues, including his firm's senior associate, Jeffrey M. Trissell, who drafted the original complaint and the appellate briefs, are still very much involved in the litigation. Jonna lauded Trissell's "tireless dedication" and said he "worked around the clock to help us keep up with and ultimately beat the State of California."



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The February ruling was a rare grant of injunctive relief by the Supreme Court while it continues to consider the team's cert petition and the chance to give the matter a full airing.

The case came to LiMandri from South Bay Pentecostal's senior pastor. The church is in Chula Vista; LiMandri is well-known in Christian legal circles in the region for his work on the long-running litigation over the cross on Mt. Soledad.

"We started in the district court in May," he said of the Pentecostal case's early days. "Judge [Cynthia A.] Bashant ruled against our injunction request and we made an emergency appeal to the 9th Circuit." There, a panel denied the appeal 2-1, over a strong dissent that held that California's refusal to allow indoor religious services likely violates the Free Exercise Clause of the First Amendment.

"Then the Supreme Court ruled 5-4 against us." That was late in May. "So we augmented the record with five expert declarations including one by

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the Stanford professor who signed the Great Barrington Declaration," a statement by three public health authorities that encouraged governments to lift lockdown restrictions on young and healthy people while still protecting the elderly. "We also compared the church restrictions with those that allowed people into large retail stores."

Again, Bashant rejected the renewed motion for an injunction and the circuit, following LiMandri's oral argument, also voted thumbs down, this time 3-0. Undeterred, LiMandri and Jonna went back to the Supreme Court on Dec. 22 with an "urgent motion for injunction pending appeal."

"Even in a pandemic," the motion asserted, "the Constitution cannot be put away and forgotten." This time the lawyers had a new precedent to cite, the high court's November ruling in *Roman Catholic Diocese of Brooklyn v. Cuomo*, which blocked church restrictions in New York.

Their win in February opened churches but allowed capacity limits and a singing and chanting ban. "We knew the state has no right to tell people they can't worship," Jonna said. "This was a major victory for people of faith in California."

— John Roemer

