

Why Agudath Israel Is Appealing Its Case Against Illogical Lockdowns

OPINION

AVROHOM WEINSTOCK, ESQ.

Why was Agudath Israel the first to file a lawsuit earlier this month to block the more extreme aspects of the governor's executive orders? Injunctions are an extreme form of relief, doubly so when asking a court to second guess a governor's orders during a pandemic. And why is Agudath Israel now appealing to the Second Circuit?

The answer rests in appreciating when and why the Agudah acts. It acts when it needs to, and when its Rabbanim say it ought to, come what may. Sometimes there is a need to get up and say something. And there is much, its Rabbanim and lay leaders feel, that needs to be said now, publicly and on court record.

In no particular order:

The rhetoric and generalizing of "ultra-Orthodox Jews" and "their religion" spreading disease is divisive and dangerous. Such sentiments hold deep historical meaning. And the increasing anti-Semitic attacks in recent years make it more important than ever to exercise sensitivity here.

Religious practices should not be subject to one set of rules in the name of safety, while businesses and what government deems "essential gatherings" are subject to another. In fact, American law affords religious practices the highest standards of protections. Government may not impose its value judgments of which gatherings are essential.

A one-size-fits-all rule of 10 people per house of worship in red zones is illogical. A shul with capacity for 1,000 can allow substantial distancing, and should not be treated the same as a *shtiebel* that can hold 30. Like that sweater you pick up at the bargain aisle, one-size-fits-all is simply a euphemism for one-size-doesn't-fit-most. Government can and must do better.

The impact of lockdowns is immense. Houses of worship are unreasonably limited. Schools are shuttered, and children and parents are suffering. Businesses are losing viability and people are losing their

Case 20-3572, Document 49-2, 10/26/2020, 2960631, Page 1 of 21

20-3572-CV

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AGUDATH ISRAEL OF AMERICA, AGUDATH ISRAEL OF KEW GARDEN
HILLS, AGUDATH ISRAEL OF MADISON, RABBI YISROEL REISMAN, and
STEVEN SAPHIRSTEIN,

Plaintiffs-Appellants,

v.

ANDREW M. CUOMO, in his official capacity as Governor of New York,

Defendant-Appellee.

On appeal from the United States District Court for the Eastern
District of New York, No. 1:20-ev-04834-KAM

**BRIEF AMICUS CURIAE OF THE BECKET FUND FOR
RELIGIOUS LIBERTY AND THE JEWISH COALITION FOR
RELIGIOUS LIBERTY IN SUPPORT OF PLAINTIFFS-
APPELLANTS AND AN INJUNCTION PENDING APPEAL**

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livelihoods. Mental health is fraying.

This does not mean that health crises cannot justify lockdowns. But it does mean that such measures come at a high cost. And if government is imposing unprecedented restrictions upon its populace, especially if narrowly executing them on specific neighborhoods, transparent metrics of when areas enter and leave zones must be clearly articulated. Agudath Israel demanded this in its initial lawsuit, and it was delivered on October 21st, after weeks of lockdowns. It was the emergence of metrics, and the satisfaction of these metrics, that allowed Queens and Far Rockaway to quickly reopen. But the amorphous list of other factors that can influence reopening decisions still undermines true transparency.

Metrics must not just be formulated, but must also be delivered. Zones are not drawn by zip codes or any other recognized area. Daily data at the local level was abruptly

discontinued after the zones were announced. This undercuts transparency and consistency.

A corollary of the need for metrics is the need for equity. When areas with seemingly higher case positivity and death rates are not subject to lockdown, but Jewish areas are, questions that erode confidence will emerge.

Have some Jews, like many Americans, grown weary in their compliance during this 7-month ordeal, and as rates in their communities dropped toward near imperceptibility? Sure. And Agudath Israel, in the name of its highest rabbinical body, the Moetzes Gedolei Hatorah, has called these actions out loudly and repeatedly. Indeed, whether it was distributing 400,000 masks, organizing planning strategies with hundreds of shul Rabbanim, or issuing dozens of detailed guidance documents, the Agudah views encouraging safety while complying with *halachah* as an important mandate

during this challenging time, even if health care and public policy are somewhat afiel of Agudath Israel's traditional roles.

But executive power is not unlimited power. Government cannot imperil the mental health of children and parents, deny religious practices, and squeeze the livelihoods of the many, as some punitive, paternalistic swipe at the few. And if that's not government's intent, let it be held accountable and either prove its claims in court or modify its behavior, as it has begun to do.

The Agudah far prefers working with government, as it did when certain areas in New Jersey experienced an uptick. But there are things that need to be said and battles worth fighting. Not with violence or mask burning, but by exercising the system of checks and balances this nation is built upon.

The court's hearing on the Agudah's motion is set for November 3. Since the Agudah's initial lawsuit, a host of others have followed, many of them utilizing similar arguments. The Agudah is gratified that Torah Umesorah; the Beckett Fund and Jewish Coalition of Religious Liberty; and the Muslim Public Affairs Council, Religious Freedom Institute's Islam and Religious Freedom Action Team, and Asma Uddin have filed amicus briefs in support of Agudath Israel's position. The governor has taken steps to present metrics defining zones of restriction and relaxed restrictions in certain areas.

Agudath Israel believes that adjustments can be made to the executive order so that it is equitable and transparent — such qualities do not work against public health, they bolster it. While the Agudah believes a judge will recognize the fallacies highlighted above, its true hope is that by November 3, the inequitable aspects of the restrictions will continue to be lifted.

After all, the best lawsuit is the one that made its case so well that it is no longer needed.

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Next Tuesday, November 3rd

VOTE!