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NCLA Asks Oregon Supreme Court to Prevent Governor's Usurpation of Law-Making Power

Elkhorn Baptist Church, et al. v. Katherine Brown, Governor of the State of Oregon

Washington, DC (June 2, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) today in the Oregon Supreme Court in *Elkhorn Baptist Church, et al. v. Katherine Brown*. A broad coalition of local churches brought the case after being seriously disturbed by Governor Katherine Brown's restrictions on religious gatherings since late March in response to the COVID-19 pandemic. However, NCLA's particular interest lies in calling out the Governor's unconstitutional attempt to seize emergency powers without lawful authorization.

Governor Brown declared the state of emergency on March 8. Since then, she has issued a series of Executive Orders that significantly restrict civil liberties citing Oregon Revised Statute (ORS) 433.441. This emergency-powers statute authorizes the Governor to impose significant restrictions on the activities of private citizens, including on their movements and gatherings. But state law also stipulates that a proclamation of a public health emergency automatically expires in 28 days. And according to the Oregon Constitution's Article X-A, the Governor is required to turn to the Legislative Assembly if she needs additional authority to deal with a public health emergency—such as the COVID-19 pandemic—after 30 days.

Governor Brown has not convened the Oregon Legislative Assembly since declaring the emergency. Her 28-day period of lawfully permitted emergency powers to control people's movements and gatherings in Oregon expired on April 5.

NCLA strongly believes that the Oregon Governor's usurpation of law-making power during the COVID-19 pandemic flagrantly violates separation-of-powers principles. Even if the Governor has good intentions, they cannot justify the severe threat to liberty that is created whenever, as here, the legislative and executive powers are placed in the same hands—and for an indefinite period of time if the Governor has her way.

With that in mind, NCLA urges the Court to uphold the decision of a trial court to grant a preliminary injunction that declared “null and void” Governor Brown's now unconstitutional (post-April 5) restrictions on religious gatherings in Oregon.

NCLA released the following statement:

“In responding to the COVID-19 pandemic, Governors are not permitted to make up the law as they go along. They are required to follow the law as established by the legislature. If the Oregon Governor feels the need to impose drastic measures to respond to a public health emergency, she should seek authority for those measures from the Oregon legislature. Liberty is threatened whenever legislative and executive powers are placed in the same hands.” — **Richard Samp, Senior Litigation Counsel, NCLA**

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. For more information visit us online at NCLAlegal.org.

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