

New COVID-19 Shutdowns May Force SCOTUS Showdown

Those suffering from endless COVID shutdowns may find a spark of hope in the words of Supreme Court Justice Samuel Alito. While the governors of [Minnesota](#), [Michigan](#), [Oregon](#), and other states were preparing new restrictions during the pandemic, [Alito gave a speech](#) to The Federalist Society, calling such lockdowns “previously unimaginable restrictions on individual liberty.”

I’m now going to say something that I hope will not be twisted or misunderstood. But I have spent more than 20 years in Washington, so I’m not overly optimistic. In any event here goes: The pandemic has resulted in previously unimaginable restrictions on individual liberty.

Alito made it clear that he is not “saying anything about the legality of COVID restrictions.” Instead, he’s concerned about constitutional quandaries, including violations of rights that many Americans may not have considered when griping about the lockdowns.

Freedom of religion, freedom of assembly, and freedom of speech violations by panicked government decision makers and what Alito calls “an elite group of appointed experts” have been well documented during the COVID-19 pandemic. But the plight of accused criminals denied their Sixth Amendment rights is an overlooked area which should concern Americans on both the right and left. Alito addressed this in his speech:

All that I’m saying is this, and I think it is an indisputable statement of fact: We have never before seen restrictions as severe, extensive, and prolonged as those experienced for most of 2020. ... Think about access to the courts, or the Constitutional right to a speedy trial. Trials in federal

courts have virtually disappeared in many places. Who could have imagined that?

Over the weekend, one of the nation's leading "appointed experts," Dr. Anthony Fauci, dismissed Americans' concerns over their eroding liberty, with [CNBC reporting](#) his remarks:

I was talking with my U.K. colleagues who are saying the U.K. is similar to where we are now, because each of our countries have that independent spirit. ... I can understand that, but now is the time to do what you're told.

Not only are experts and executives passing laws without the use of the legislature, but they have now decided that there is no longer any need to treat the people they rule over as adults. In the eyes of Fauci and other leaders, Americans concerned about the Constitutional order, the rule of law, or individual liberty are acting like spoiled, whiny children who don't know what's best for them.

This rule by executive fiat during COVID is part of what Alito calls a "sort of Constitutional stress test" which has highlighted "disturbing trends that were already present before the virus struck."

Heading into the holidays, many Americans will be prevented from spending time with their friends and family as the dark depths of winter settle onto America. The time when companionship is most needed and when family is most missed is apparently a ripe time for the shutdowns to resume, followed closely by the joint specters of increased unemployment and rising depression rates.

In Oregon, all social gatherings both inside and outside will be limited to [no more than six people](#) from November 18 through December 2. In Minnesota, restrictions returned to no more than ten people – from no more than three different households – with state Health Commissioner Jan Malcolm urging residents to [skip Thanksgiving gatherings altogether](#). Further

restrictions [remain likely](#) in Gov. Tim Walz's state. In Michigan everyone who can work at home [must do so](#), and Gov. Gretchen Whitmer [stated](#), "Medical experts across the country strongly recommend that we do not host Thanksgiving with people from outside of our own households."

Alito notes that in some cases broad executive emergency powers, such as those used by the aforementioned governors, may be necessary to respond to certain crises. But he also warns that we must not allow such powers to be abused, nor can we allow them to be used at inappropriate times:

All sorts of things can be called an emergency or disaster of major proportions. Simply slapping on that label cannot provide the ground for abrogating our most fundamental rights. And whenever fundamental rights are restricted, the Supreme Court and other courts cannot close their eyes.

Alito, it seems recognizes a truth noted by Frank S. Meyer in his book [*In Defense of Freedom*](#):

There is in power an impulsion to more power, which can only be limited by countermeasures. The state will always tend to move beyond its natural bounds, and the men who hold its power will always attempt to gain more power.

As Americans recover from a combative election and prepare for the holiday season, we would do well to reflect on the blessings of living in a country that has "that independent spirit" which Fauci decries.

We cannot allow it to fade out in the midst of a crisis. If we do, it is unlikely that we shall ever get it back in times of peace and plenty.

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Image Credit:

YouTube-The Federalist Society, " Address by Justice Samuel

Alito [2020 NLC Live] “