

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**REV. STEVEN SOOS, REV.
NICHOLAS STAMOS, DANIEL
SCHONBRUN, ELCHANAN PERR,
MAYER MAYERFELD,**

Plaintiffs,

v.

ANDREW M. CUOMO, *Governor of the
State of New York, in his official capacity,*
LETITIA JAMES, *Attorney General of
the State of New York in her official
capacity, and BILL DE BLASIO, *Mayor
of the City of New York, in his official
capacity,**

Defendants.

20-CV-00651
GLS-DJS

**PROPOSED SUPPLEMENTAL BRIEF OF
PROSPECTIVE AMICUS CURIAE
AHUVA KLEINMAN
IN SUPPORT OF PLAINTIFFS**

Ronald D. Coleman
MANDELBAUM SALSBERG, P.C.
1270 Avenue of the Americas, Suite 1808
New York, New York 10020
212-776-1834
rcoleman@lawfirm.ms
Attorneys for Amicus Curiae

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

I. PLAINTIFFS AND PROSPECTIVE AMICUS CURIAE AHUVA KLEINMAN ARE STILL ADVERSELY AFFECTED BY DEPRIVATION OF THEIR CONSTITUTIONAL RIGHTS BY DEFENDANTS’ LIMITATIONS ON CONGREGATE WORSHIP. 1

CONCLUSION 2

PRELIMINARY STATEMENT

Prospective amicus curiae Mrs. Kleinman respectfully submits this proposed supplemental brief, pending the Court's ruling on her motion to be heard in this matter as a friend of the Court, in response to in reply to Defendant Bill DeBlasio's Supplemental Memorandum of Law in Opposition to Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction (the "DeBlasio Supplement").

ARGUMENT

I. PLAINTIFFS AND PROSPECTIVE AMICUS CURIAE AHUVA KLEINMAN ARE STILL ADVERSELY AFFECTED BY DEPRIVATION OF THEIR CONSTITUTIONAL RIGHTS BY DEFENDANTS' LIMITATIONS ON CONGREGATE WORSHIP.

Defendant DeBlasio argues, in the DeBlasio Supplement, that because New York City has moved to Phase II, which permits synagogues to exceed the previous limitation of ten worshippers as long as they remain under the 25% capacity requirement set by the State, "There is no reason to believe that the vast majority of synagogues will not have sufficient capacity to allow a minyan plus some additional people while still under the 25% capacity requirement set by the State... Therefore, as the ten- person gathering limitation on indoor religious services is no longer in effect in the City, and the Phase 2 allowance of 25% capacity should resolve the NYC Plaintiffs' alleged harm, their claim for injunctive relief should be denied." But the DeBlasio Supplement does not tell the whole story.

In fact, current New York State guidelines require six feet of distancing around each person, even during Phase II, which limit is extended to **12 feet** for "singing activity." *See*, "Religious and Funeral Services Summary Guidance" attached hereto as Exhibit A. Since intermittent singing by all congregants is a routine component of Orthodox Jewish prayer, especially on the Sabbath or during a wedding ceremony, the twelve-foot radius is effectively the

real one for all Orthodox Jewish congregations. In light of the population and building density of New York City, under these requirements many synagogues would, contrary to the DeBlasio Supplement, not have sufficient room under these restrictions to allow more than ten people to worship spaced 12 feet apart. Phase II, therefore, provide little or no effective relief either with respect to the state guidelines in general, or with regard to the issues raised in Mrs. Kleinman's the amicus brief in particular.

More specifically, using data generated through a standard social distance calculator such as the one provided by the State of Colorado (<https://covid19.colorado.gov/safer-at-home/social-distancing-calculator-for-indoor-and-outdoor-events>), a synagogue would need approximately 1800 square feet to accommodate a mere eleven people suspected of possible singing under the guideline-imposed distance of 12 feet between individuals, assuming – conservatively – 15% of floor space as occupied by furniture. Consequently, the revised capacity allowance of 25% still imposes significant limits on the number of people who may attend worship services, especially in the very many smaller synagogues, once the social distancing requirement is understood, because of the “singing” restrictions, as 12 feet instead of six.

With respect to the issues raised by Mrs. Kleinman in her original proposed brief, therefore, what amounts essentially to a ban on women and children attending synagogue worship services is effectively still in place except with regard to the largest, and by far least common, synagogue sanctuaries. Her synagogue is actually just under 1800 square feet at 1750 square feet, and usually accommodates approximately 60 males and 10-20 females at Sabbath services. Not only would the “generous” new guidelines keep that ban in place per the above calculation, it cannot even be justified on public health grounds, because New York State has had one of the lowest relative percentages of COVID cases in the nation for weeks now and, along with New York City, allows

a host of activities to occur, indoors and out, without respect to social distancing – activities that, unlike congregate worship, are not entitled to special protection under the First Amendment.

CONCLUSION

For the reasons stated above, Amicus respectfully urge this Court to grant the Temporary Restraining Order requested in the Complaint.

MANDELBAUM SALSBERG, P.C.



Ronald D. Coleman
1270 Avenue of the Americas, Suite 1808
New York, New York 10020
212-776-1834
rcoleman@lawfirm.ms
Attorneys for Amicus Curiae

Dated: June 25, 2020