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KOB Interviews Joshua Kastenberg about Constitutional Rights during COVID-19

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Congressional Candidate Alexis Johnson Pleads no Contest for Refusing to Wear Mask in Public

By Brittany Costello
KOB4
September 15, 2020

ALBUQUERQUE, N.M.- Alexis Johnson, who is running for New Mexico's 3rd Congressional District seat, pleaded no contest after receiving a citation for refusing to wear a mask in public.

Johnson, a Republican, made a virtual appearance in court Tuesday to accept the consequences for violating the City of Santa Fe's face mask ordinance.

Johnson was cited while campaigning in the plaza in July. After being asked by officers to put on a mask, she refused and said doing so infringes on her constitutional rights.

UNM law professor Joshua Kastenberg said in a situation where COVID-19 doesn't exist, that argument could possibly stand. Typically, limiting where people can go, do or wear would violate their rights. However, the crisis caused by coronavirus has changed that because of the threat to overall public health

"Now we're requiring people wear something for the protection of society and the courts have found that to be reasonable. If there's a vaccine, and the vaccine works—at least for the substantial majority of the population and the majority of the population has already been given the choice to take the vaccine—I suspect that's the point that the governor's orders will either go away on the actions of the governor or the courts will find an intolerance for those actions," Kastenberg said.

Over the weekend, local churches in Belen protested the governor's orders over limits on in-person capacity for churches, specifically, that their constitutional rights were being violated.

Kastenberg said what is being considered is whether the exercise of that right would cause death or injury to others. If churches or other establishments—even political candidates—refuse to abide by health orders and get someone sick then they could be in even more trouble.

"As long as there is some evidence that the transmission of the disease occurred because somebody or a party or entity violated the governor's orders then the

victims who fall ill and get increased medical bills or die or lose their jobs because they're unable to attend to their work—they can sue in the state courts," the professor said. "That's basic tort law, so I would say that for those who believe their constitutional rights have been violated, and they sincerely believe that—I respect their sincerity, but they do open themselves up to lawsuits from other citizens."

Kastenberg said these fundamental rights are governed by time, place and manner. That means, as time goes by and the data changes, so could the courts decisions. Every New Mexican has the right to bring those issues to the courts.

"The right of the people of New Mexico to seek regress against the government contains the rights to go to the courts, and ever passing day there's new data that arrives. If a party believes, whether it's a church or restaurant owners or a homeowner or someone who drives a car for a living, believes that new conditions have arisen and the governor is being unreasonable, they have the right to appeal to the courts. That's a right that cannot be taken away," he said.

Within the New Mexico Constitution, Kastenberg said there's something called inherent police power, which gives the governor the authority to protect the health and safety of all residents within the state for a period of time.

As for Johnson, she received a 90-day deferral. That means it her citation won't go on her record if she doesn't have another violation during that time.

The fine for not wearing a mask in public in \$50.

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