

Court halts enforcement of NY worship attendance limits

November 30, 2020

WASHINGTON—In a decision handed down on the eve of Thanksgiving, the U.S. Supreme Court granted New York religious congregations in COVID-19 hotspots temporary relief from an attendance limit placed on worship services.

The Roman Catholic Diocese of Brooklyn and Agudath Israel of America had asked the court to halt enforcement of the restrictions while the religious entities waited for the U.S. Court of Appeals to consider its petition to strike down the executive order by Gov. Andrew W. Cuomo.

The governor's order capped attendance at places of worship at 25 in orange zones and 10 in hard-hit red zones, based on the prevalence of COVID-19 in those areas.

In a 5-4 decision, the Supreme Court granted the injunction. Newly confirmed Justice Amy Coney Barrett joined Justices Neil Gorsuch, Brett Kavanaugh, Samuel Alito and Clarence Thomas in the majority decision.

However, the court's action did not have direct immediate impact on the petitioners from churches and synagogues in Brooklyn and Queens, since those areas are now yellow zones where rules are less restrictive.

'The Constitution cannot be put away and forgotten'

"Stemming the spread of COVID-19 is unquestionably a compelling interest, but it is hard to see how the challenged regulations can be

regarded as ‘narrowly tailored,’” the court stated in its written [decision](#).

“They are far more restrictive than any COVID-related regulations that have previously come before the court, much tighter than those adopted by many other jurisdictions hard-hit by the pandemic, and far more severe than has been shown to be required to prevent the spread of the virus at the applicants’ services.”

The justices acknowledged they are “not public health experts” and said due respect should be granted “the judgment of those with special experience and responsibility in the area.”

“But even in a pandemic, the Constitution cannot be put away and forgotten,” the court wrote. “The restrictions at issue here, by effectively barring many from attending religious services, strike at the very heart of the First Amendment’s guarantee of religious liberty. Before allowing this to occur, we have a duty to conduct a serious examination of the need for such a drastic measure.”

The court noted New York businesses categorized as “essential” remain free to operate without restrictions on the number of people served. Businesses identified as “essential” include acupuncture facilities, garages and manufacturing plants for chemicals and microelectronics, the court’s decision stated.

Baptists offer varied responses to decision

Russell Moore, president of the Southern Baptist Ethics & Religious Liberty Commission, [tweeted](#) Nov. 26 in support of the court's decision.



“I’m thankful the Court weighed in on this case,” Moore tweeted. “Officials must treat churches and houses of worship the same as other similar activities as we all partner together to fight this awful pandemic.”

In contrast, Holly Hollman, general counsel for the [Baptist Joint Committee for Religious Liberty](#), asserted the court failed to consider the difference between the nature of retail services and indoor church services in terms of prolonged exposure to a contagious disease.



Holly Hollman

“From a public health policy perspective, as well as a constitutional perspective, the focus should be on treating similar types of gatherings similarly,” Hollman said. “It is unfortunate that in this case the Supreme Court majority improperly compared religious gatherings to retail services, which do not typically involve people sitting near each other indoors for extended periods of time. That comparison causes confusion for government officials trying to impose reasonable and effective measures to reduce the spread of the virus.

“It also plays into a narrative that the government is unfairly hostile to

religion, when in fact religious gatherings are often treated more favorably than similar gatherings.”

Hollman acknowledged the court’s decision has no impact on the congregations involved in the litigation, because the restrictions in the areas served by those houses of worship already had been lifted.

“Nonetheless, it reveals sharp divisions among the justices that are likely to continue to impact religious liberty law,” she observed.