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U.S. Supreme Court Limits Restrictions for Church Services in California

By Lisa Soronen, Executive Director, State & Local Legal Center (SLLC)

A divided U.S. Supreme Court [struck down](#) California's "Tier 1" total ban on indoor religious services, while allowing a 25% capacity limitation. Most of the state is currently under Tier 1 COVID-19 restrictions. It also allowed California to continue banning singing and chanting during indoor services.

While a number of Justices issued opinions, the Court issued no majority opinion. Chief Justice Roberts' two-paragraph concurring opinion states: "The State has concluded . . . that singing indoors poses a heightened risk of transmitting COVID-19. I see no basis in this record for overriding that aspect of the state public health framework. At the same time, the State's present determination — that the maximum number of adherents who can safely worship in the most cavernous cathedral is zero — appears to reflect not expertise or discretion, but instead insufficient appreciation or consideration of the interests at stake."

Justices Gorsuch and Thomas would have struck down the indoor religious services ban with no limits on capacity or singing. Justice Alito joined Justice Gorsuch's "statement." He would have allowed the indoor capacity limit and signing ban to go into effect in 30 days unless California could show that "nothing short of those measures will reduce the community spread of COVID-19 at indoor religious gatherings to the same extent as do the restrictions the State enforces with respect to other activities it classifies as essential."



Justice Gorsuch explained in his statement that California violated the First Amendment's Free Exercise Clause by failing to tailor restrictions on indoor religious services while allowing most retail operations to "proceed indoors with 25% occupancy, and other businesses to operate at 50% occupancy or more." Justice Gorsuch rejected California's argument that its restrictions were constitutional because religious worship involves "(1) large numbers of people mixing from different households; (2) in close physical proximity; (3) for extended periods; (4) with singing."

Justice Gorsuch pointed out that while worship services may involve a large number of people, so does "wait[ing] in long checkout lines in the businesses the State allows to remain open." While worshippers in California may go outdoors, hairstylists or manicurists aren't forced "do all their business in parking lots and parks." While religious worship may take a long time, "California does not limit its citizens to running in and out of other establishments; no one is barred from lingering in shopping malls, salons, or bus terminals." Finally, regarding indoor singing, according to Justice Gorsuch, "[i]t seems California's powerful entertainment industry has won an exemption."

Justices Barrett and Kavanaugh concurred together but wrote a one-paragraph statement saying they agreed with Justice Gorsuch's statement except for its "contention" regarding singing. According to these Justices, "it remains unclear whether [California's] singing ban applies across the board (and thus constitutes a neutral and generally applicable law) or else favors certain sectors (and thus triggers more searching review)."

Justices Kagan, Breyer, and Sotomayor dissented. They found no discrimination against religion noting that during Tier 1 all indoor public gatherings are banned



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whether secular or religious—at churches, theatres, and lecture halls. Justice Kagan explained that “medical experts . . . testified about why California imposed more severe capacity limits on gathering places like churches and theaters than on other indoor sites.” Then she asks why the Court came its conclusion: “Is it that the Court does not believe the science, or does it think even the best science must give way?” Finally, she asks about future cases: “When are such capacity limits permissible, and when are they not? And is an indoor ban never allowed, or just not in this case? Most important — do the answers to those questions or similar ones turn on record evidence about epidemiology, or on naked judicial instinct?”

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