

U.S. Supreme Court Rules on Religious Services Restrictions

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In a 5-4 decision in [Roman Catholic Diocese of Brooklyn, New York v. Cuomo](#), the Supreme Court has prevented New York's governor from enforcing certain restrictions on attendance at religious services due to COVID-19. Until this decision, the Supreme Court had allowed all challenged stay-at-home orders which it reviewed on an emergency basis to remain in effect. The Chief Justice dissented as did Justices Breyer, Sotomayor, and Kagan.

The Roman Catholic Diocese of Brooklyn and Agudath Israel of America sued New York Governor Cuomo claiming his executive order, which restricts attendance at religious services in "orange" zones to 25 people and "red" zones to 10 people, violates the Free Exercise Clause of the First Amendment. An unauthored opinion agreed to temporarily prevent the governor's order from going into effect.

Specifically, the unauthored opinion concluded that the restrictions on attending religious services are not neutral toward religion. So, they must satisfy "strict scrutiny," meaning they must be "narrowly tailored" to serve a "compelling" state interest. They aren't neutral, the Court reasoned, because in "red" zones essential businesses, including acupuncture facilities, campgrounds, and garages, may decide how many people they would like to admit. And in "yellow" zones non-essential businesses may decide how many people they would like to admit. Restrictions on religious services fail strict scrutiny, according to the Court, because "[n]ot only is there no evidence that the [challengers] have contributed

to the spread of COVID–19 but there are many other less restrictive rules that could be adopted to minimize the risk to those attending religious services.”

Chief Justice Roberts wrote a solo dissenting opinion. While he agreed that the restrictions in this case “seem unduly restrictive,” he didn’t think the Court needed to decide at this time whether they likely violate the First Amendment. After the challengers asked the Supreme Court for relief in this case Governor Cuomo “revised the designations of the affected areas,” meaning none of the challengers are currently in “red” or “orange” zones and may now hold services with up to 50% of capacity.

Dissenting Justices Breyer, Sotomayor, and Kagan agreed with the Chief Justice that the Supreme Court should not get involved in this case because the red or orange zone restrictions aren’t currently being imposed on the challengers. If they were again “this Court, if necessary, could then decide the matter in a day or two, perhaps even in a few hours.” They also opined that the “elected branches of state and national governments” are better equipped to make decisions during a pandemic than federal courts because they can “marshal scientific expertise and craft specific policies in response to ‘changing facts on the ground.’”

Justices Sotomayor and Kagan in a separate opinion found no likely First Amendment violation in Governor Cuomo’s restrictions on religious services in “red” and “orange” zones. They noted New York applies “[s]imilar or more severe restrictions . . . to comparable secular gatherings, including lectures, concerts, movie showings, spectator sports, and theatrical performances, where large groups of people gather in close proximity for extended periods of time.” Likewise, New York “treats more leniently only dissimilar activities, such as

operating grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods.”

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