

Supreme Court rejects attendance caps for houses of worship

by [Jessica Gresko](#) in the [December 30, 2020](#) issue



(Photo by Jon Tyson on Unsplash)

On November 26, as coronavirus cases surged again nationwide, the Supreme Court barred New York from enforcing certain limits on attendance at churches and synagogues in areas designated as hard hit by the virus.

The justices split 5-4, with new, conservative justice Amy Coney Barrett in the majority. The court's three liberal justices joined Chief Justice John Roberts in dissent.

The move was a shift for the court. Earlier this year, when Barrett's liberal predecessor, Justice Ruth Bader Ginsburg, was still on the court, the justices divided 5-4 to leave in place pandemic-related capacity restrictions affecting churches in California and Nevada.

The court's action could push New York to reevaluate its restrictions on houses of worship in areas designated as virus hot spots. But the impact of

the court's action is also muted because the Catholic and Orthodox Jewish groups that sued to challenge the restrictions are no longer subject to them.

The Diocese of Brooklyn and Agudath Israel of America have churches and synagogues in areas of Brooklyn and Queens previously designated red and orange zones. In those red and orange zones, the state had capped attendance at houses of worship at ten and 25 people, respectively. But those particular areas are now designated as yellow zones with less restrictive rules neither group challenged.

The justices acted on an emergency basis, temporarily barring New York from enforcing the restrictions against the groups while their lawsuits continue. In an unsigned opinion the court said the restrictions "single out houses of worship for especially harsh treatment."

The opinion noted that in red zones, while a synagogue or church cannot admit more than ten people, businesses deemed essential can remain open without capacity limits. And in orange zones, while synagogues and churches are capped at 25 people, "even non-essential businesses may decide for themselves how many persons to admit."

Roberts, in dissent, wrote that there was "simply no need" for the court's action. "None of the houses of worship identified in the applications is now subject to any fixed numerical restrictions," he said, adding that New York's ten and 25 person caps "do seem unduly restrictive."

"The Governor might reinstate the restrictions. But he also might not. And it is a significant matter to override determinations made by public health officials concerning what is necessary for public safety in the midst of a deadly pandemic," he wrote.

In a statement, Randy Mastro, an attorney for the Diocese of Brooklyn, said, "We are extremely grateful that the Supreme Court has acted so swiftly and decisively to protect one of our most fundamental constitutional rights—the free exercise of religion."

Avi Schick, an attorney for Agudath Israel of America, wrote in an email: “This is an historic victory. This landmark decision will ensure that religious practices and religious institutions will be protected from government edicts that do not treat religion with the respect demanded by the Constitution.”

Two lower courts had sided with New York in allowing the restrictions to remain in place. New York had argued that religious gatherings were being treated less restrictively than secular gatherings that carried the same infection risk, like concerts and theatrical performances. —Associated Press