



Barrett Inspires New Religious Challenges To COVID-19 Rules

December 7, 2020

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Justice Amy Coney Barrett has inspired religious discrimination claims tied to the coronavirus pandemic, with an increasing number of religious groups challenging state COVID-19 restrictions on First Amendment grounds since the conservative jurist joined the U.S. Supreme Court.

For the first eight months of the pandemic, the Supreme Court had little tolerance for claims that the public health response to the pandemic was trampling over the First Amendment right to religious exercise, and rejected lawsuits from churches in Nevada and California. Chief Justice John Roberts sided with the liberal justices in agreeing to defer to state health officials trying to contain the coronavirus.

But Justice Barrett's appointment to the court in October, to replace the late liberal Justice Ruth Bader Ginsburg, has given religious groups the conservative Supreme Court majority they need to successfully challenge state limits of church gatherings and other services.

Justice Barrett provided the crucial fifth vote to lift restrictions on the number of people who could attend services at churches and synagogues in Brooklyn, New York, in a decision handed down the night before Thanksgiving. The unsigned per curiam opinion explained that a whole host of secular businesses deemed "essential" by the state did not face the same capacity limits, and that the rules "single out houses of worship for especially harsh treatment."

Justice Barrett did not explain her reasoning, but her vote has changed the court's approach to First Amendment lawsuits challenging pandemic orders.

Last week, for instance, the Supreme Court sided with a California church challenging the Democratic Gov. Gavin Newsom's restrictions on religious gatherings. The court granted the church's request for an injunction against the state and sent the case back down for further district court proceedings in light of its decision in last week's case, Roman Catholic Diocese of Brooklyn v. Cuomo .

There was no written opinion associated with the Supreme Court's order in favor of the California church on Thursday, but the message is clear: Health restrictions targeting religious

groups will face "strict scrutiny" from the court and must be narrowly tailored.

"This is definitely one area where John Roberts's no longer being the median vote can have an impact," said Ilya Shapiro of the [Cato Institute](#). "Roberts has tried to split the difference in COVID by applying prudential doctrines rather than ruling on the merits — he didn't join either the progressives or the conservatives in the Brooklyn Diocese case — but that position is quickly becoming irrelevant to the outcome."

Since Justice Barrett cast the decisive vote in the Brooklyn case, a number of other churches, synagogues and religious schools have asked the Supreme Court to lift coronavirus restrictions for the same reason.

"[I]n Kentucky, one can catch a matinee at the movie theater, tour a distillery, work out at the gym, bet at a gambling parlor, shop, go to work, cheer on the Wildcats or the Cardinals. ... But all of Kentucky's religious schools are shuttered," a Kentucky Christian school said in a challenge to the governor's school closure filed on Dec. 1.

On Friday, a group of 38 Republican U.S. senators filed an amicus brief supporting the challenge, including both of Kentucky's GOP senators. The brief said that governors have "restricted American freedoms in ways previously seen only in dystopian fiction" during the pandemic.

Other pending applications out of the Tenth and Third circuits are asking the court to lift restrictions on houses of worship in Colorado and New Jersey, respectively.

"Litigants are now emboldened to bring more Free Exercise cases, as well as Second Amendment cases, with Justice Barrett as the sixth vote," said Josh Blackman, a South Texas College of Law professor and conservative legal blogger. "And I think at some point, Chief Justice Roberts will tire of being in dissent. He will either pivot to the right, or let President[-elect Joe] Biden replace him."