



With Barrett on Supreme Court, California's church COVID limits are being overturned

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California's churches are on a roll.

After more than a year of legal tussling with state public health officials over restrictions on indoor gatherings, houses of worship — mostly evangelical or Catholic and politically conservative — have been on a winning streak at the nation's highest court.

Their latest victory came late last week when the U.S. Supreme Court's conservative majority put a hold on the state's limits on indoor Bible study and other forms of worship. Most legal battles play out over years, and this was a preliminary decision; the justices reversed an appellate court's decision not to suspend the state's rules while the broader case plays out. But the court's majority went out of its way to note a clear trend.

"This is the fifth time the Court has summarily rejected the Ninth Circuit's analysis of California's COVID restrictions on religious exercise," the opinion reads, referring to the federal appeals court based in California.

Taking the hint, California's Department of Public Health promptly re-inked its regulations, stressing that though "limits on places of worship are not mandatory" any longer, they are still "strongly recommended."

California's COVID-19 restrictions on all walks of life have been challenged in court at least 83 times since the beginning of the pandemic, according to a CalMatters database. Most of these cases have yet to be resolved one way or another, but few have gained much procedural traction. Both state and federal judges have generally given Gov. Gavin Newsom a wide berth to close businesses, restrict celebrations and get-togethers and to pick and choose which activities are deemed "essential" in the name of public health.

But lawsuits over religious freedom have been the notable exception. Since last April, ten churches and faith-based organizations have sued the state. So far, half of them have found a receptive audience at the U.S. Supreme Court.

That trend has slapped new restrictions on the ability of Newsom — and governors across the country — to govern by emergency executive order during the pandemic. It also signals a broader ideological shift in the federal judiciary that could provide a new, sharper check on the state's Democratic lawmakers even after most of us are vaccinated and even if the state fully reopens as planned on June 15.

Some conservative religious groups have taken heart from the new raft of rulings. On Tuesday, a legislative committee heard a bill introduced by state Sen. Brian Jones, a Republican from

Santee, that would require the state to designate houses of worship “essential,” thus exempting them from blanket restrictions during public emergencies — epidemiological or otherwise.

The bill was sponsored by a coalition of conservative Christian organizations such as the California Family Council and Real Impact, a lobbying group affiliated with Calvary Chapel Chino Hills.

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“While I believe the court got these rulings right to make sure that a future governor during a future emergency doesn’t try this again, we need to guarantee the right to practice one’s religion in state law,” Jones said during the lengthy committee hearing in the Senate.

Kat DeBurgh, executive director of the Health Officers Association of California, pushed back, arguing that the bill would strip elected leaders and public health officials of the flexibility they need to keep Californians safe.

“This bill attempts to alter what is a fine balance between individual liberty and public health, and we think it’s dangerous to tilt the balance this far,” she said.

The Democrats sided with DeBurgh’s argument. And unlike the federal judiciary, Democrats control the California Legislature. The bill died, with 2 “ayes” and 7 “no’s.”

A change at the high court

The new legal reality fully set in last November when the nation’s highest court, joined by its newest justice, Amy Coney Barrett, slapped down rules in New York state that curtailed religious gatherings in the name of public health.

California has been getting the New York treatment ever since. In December, the court kicked a case brought by Pasadena’s Harvest Rock Church back down to a lower court, asking the appellate court judges to reconsider the legal dispute in light of the recent New York decision.

In February, the court went a step further, siding with a Chula Vista church in its challenges to the state’s capacity restrictions on houses of worship. The South Bay Pentecostal Church had a particularly fervent ally in Justice Neil Gorsuch, who chided California for “openly impos(ing) more stringent regulations on religious institutions than on many businesses.”

As soon the New York opinion was issued, Harmeet Dhillon, a California Republican operative and a regular challenger of the governor’s policy response to the pandemic said her law office started to be “deluged with requests from new potential plaintiffs.”

”I expect there is going to be no shortage of work for First Amendment lawyers over the next year,” she said at the time.

The Harvest Rock Church in Pasadena is pleading with the nation’s top justices to temporarily suspend California’s COVID-related restrictions on churches — in their words, to “prevent criminalizing constitutionally protected religious exercise” — while its broader legal fight with the state plays out. Indoor worship services, which often include singing, touching and

exchanging of collection plates or other germ-toting objects, can be prime hotspots for viral transmission. Churches in [Sacramento](#), [Los Angeles](#), [Redding](#) and [San Diego](#) have been the epicenter of local outbreaks.

“We may not shelter in place when the Constitution is under attack.”

ASSOCIATE JUSTICE NEIL GORSUCH

Former President Donald Trump upended the court’s ideological balance by choosing Barrett to replace liberal Justice Ruth Bader Ginsberg, who died of pancreatic cancer in September 2020.

That new reality was clear in the ruling that New York State had [violated the First Amendment rights](#) of religious observers by capping attendance at houses of worship to between 10 and 25 people. The nine justices split five to four, with Barrett in the majority.

It was a stark reversal from this past summer, when a five-member majority including Ginsburg took the opposite position, declining to strike down pandemic restrictions in both [California](#) and [Nevada](#).

In balancing the constitutional rights of worshippers and the demands of epidemiologists and elected officials, courts should defer to the experts, Chief Justice John Roberts wrote in May, brushing aside a petition filed by the South Bay United Pentecostal Church in Chula Vista.

Public safety decrees “should not be subject to second-guessing by an ‘unelected federal judiciary,’ which lacks the background, competence, and expertise to assess public health and is not accountable to the people,” he wrote.

That concurrence has been cited [114 times](#) by lower courts “desperate for guidance” as houses of worship file similar lawsuits across the country, said Josh Blackman, a law professor at the South Texas College of Law Houston and a scholar at the libertarian Cato Institute.

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With the Supreme Court’s decision in New York, that opinion by Roberts “overnight became irrelevant,” he said. “The old standard is out.”

Justice Neil Gorsuch, a Trump appointee, made that abundantly clear in his scathing concurrence with the majority in the New York case, in which he accused Roberts of “cutting the Constitution loose” with his South Bay opinion. Gorsuch admonished his fellow justices that they “may not shelter in place when the Constitution is under attack.”

There’s only one logical way to explain the court’s 180-degree pivot, said Erwin Chemerinsky, dean of the UC Berkeley law school. Barrett has Ginsberg’s seat.

“I don’t think that any of the justices would have said that the difference (between the two cases) is based on the factual circumstances,” he said. The Harvest Rock Church and its corresponding network of ministries and Christian university are part of the New Apostolic Reformed

movement, in which worship often includes “the laying on of hands” and “speaking in tongues” — spiritual practices that don’t necessarily translate well to Zoom.

But the church’s lawsuit is also political. Led by Pastor Ché Ahn, who often peppers his sermons with pro-Trump political messaging, the church began publicly flouting the state’s public health decrees earlier last summer. In its filing to the Supreme Court, the church’s legal team included a number of barbs designed to depict Newsom as a hypocrite, including a photo of the governor attending a lobbyist’s birthday party at Napa County’s tony French Laundry restaurant.

In response to these legal challenges, the state has argued that, unlike the regulations promulgated by New York Gov. Andrew Cuomo, California’s rules do not treat religious institutions more strictly than comparable secular gathering places.

“Indoor activities posing similarly high risks of transmission, such as dining in restaurants, exercising in gyms, or socializing in bars, are subject to the same or greater restrictions; while still others, such as attending indoor concerts or professional sporting events, are prohibited altogether,” California Deputy Attorney General Seth Goldstein wrote in the state’s response to the Harvest Rock case.

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CHIEF JUSTICE JOHN ROBERTS

During the height of the pandemic, when the majority of the state’s population found itself under the most restrictive “purple tier,” California’s rules still allowed multiple people to go inside grocery stores, shopping centers and distribution and logistics warehouses.

In her dissenting opinion last week, Justice Elena Kagan sided with California, arguing that the state was obligated to treat religious activities the same as secular ones, depending on the threat each posed to public health.

California need not “treat at-home religious gatherings the same as hardware stores and hair salons,” she wrote. “The law does not require that the State equally treat apples and watermelons.”