

Supreme Court Orders Preliminary Injunction in Roman Catholic Diocese of Brooklyn v. Cuomo

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On November 25, 2020, the U.S. Supreme Court ordered a preliminary injunction in *Roman Catholic Diocese of Brooklyn v. Cuomo*, No. 20A87, holding that New York may not enforce 10- or 25-person congregation-size limits on certain Catholic churches and Orthodox synagogues, pending further Supreme Court litigation, because the restrictions likely discriminate against religion in violation of the First Amendment.

In an attempt to slow the spread of COVID-19, the governor of New York has restricted various kinds of gatherings. In areas designated by the governor as “red zones,” “no more than 10 persons may attend each religious service,” but “businesses categorized as ‘essential’ may admit as many people as they wish. And the list of ‘essential’ businesses includes things such as acupuncture facilities, camp grounds, garages, as well as ... all plants manufacturing chemicals and microelectronics and all transportation facilities.” In “orange zones,” attendance at houses of worship is limited to 25 persons,” but “even non-essential businesses may decide for themselves how many persons to admit.”

These regulations affected 26 Catholic churches in the Diocese of Brooklyn, most of which normally seat over 700 people, as well as Agudath Israel synagogue, which can seat up to 400. The churches and synagogue “have admirable safety records” during the pandemic, and there is “no evidence that” they “have contributed to the spread of COVID-19.” They sued, seeking an injunction against the restrictions. The lower courts denied preliminary relief. After the churches and synagogue sought injunctive relief in the Supreme Court, the governor re-designated the relevant areas as a “yellow zone,” which allows the churches and synagogue to “hold services at 50% of their maximum capacity.”

The Supreme Court held that the “orange” and “red zone” restrictions should be enjoined pending further litigation before the Court. The Court stated that “the applicants have made a strong showing” that the governor has discriminated against religion, because the regulations “single out houses of worship for especially harsh treatment.” As a result, the regulations are subject to strict scrutiny under the First Amendment. Applying strict scrutiny, the Court concluded that the regulations likely are not narrowly tailored “to minimize the risk” of spreading the virus, since “there are many other

less restrictive rules that could be adopted” — for instance, “the maximum attendance at a religious service could be tied to the size of the church or synagogue.” The Court also concluded that “the loss of First Amendment freedoms” is irreparable harm as a matter of law.

Finally, the Court concluded that the re-designation of the churches and synagogue to “yellow zone” status did not warrant withholding injunctive relief, “because the applicants remain under a constant threat that the area in question will be reclassified as red or orange.” Since a reclassification “will almost certainly bar individuals from attending services” on weekdays and possibly even the weekend “before judicial relief can be obtained,” the Court concluded that immediate injunctive relief is appropriate.

The Court’s opinion was not signed but was joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett. Justice Gorsuch and Justice Kavanaugh filed separate concurring opinions. Chief Justice Roberts filed a dissent, and Justice Breyer filed a separate dissent, joined by Justices Sotomayor and Kagan. Justice Sotomayor also filed a separate dissent, joined by Justice Kagan.

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