

## Supreme Court Orders California to Permit Indoor Worship Services



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“Let us hold fast the confession of our hope without wavering, for he who promised is faithful; and let us consider how to stir up one another to love and good works, **not neglecting to meet together**, as is the habit of some, but encouraging one another [...].” (Hebrews 10:25, RSV; emphasis added).

The Epistle to the Hebrews admonishes Christians not to neglect coming together for worship. However, in the State of California, the ability to meet together was severely restricted under the provisions of the State’s [Blueprint for a Safer Economy](#) and prior statewide and regional stay-home orders. Under the Blueprint, if a county was in Tier 1 (the so-called “purple tier”), indoor worship services were prohibited, even though hair salons, barbershops, retail stores, shopping malls, and “personal care services” (such as massage therapy studios, tattoo parlors, and piercing shops) were permitted to operate indoors with modifications.

In a welcome 6-3 [decision](#) on Friday, February 5, 2021 in *South Bay United Pentecostal Church v. Newsom*, the United States Supreme Court told the State of California that it can’t neglect the religious liberty guaranteed by the First Amendment to the Constitution by preventing places of worship from meeting indoors, clearing the way for indoor worship services to resume in the State.

In his separate statement accompanying the Court’s order, Justice Gorsuch cited to the Court’s recent decision in *Roman Catholic Diocese of Brooklyn v. Cuomo*, stating, “Recently, this Court made it abundantly clear that edicts like California’s fail strict scrutiny and violate the Constitution. [...] Today’s order should have been needless; the lower courts in these cases should have followed the extensive guidance this Court already gave.”

*Roman Catholic Diocese of Brooklyn* is worth reviewing carefully, as it included a more extensive analysis of the factors that contributed to the Court’s decision in very similar circumstances (which explains Justice Gorsuch’s statement quoted above). In that case, the Court prevented the State of New York from enforcing orders that limited indoor worship to 10 or 25 people, regardless of the size of the place of worship, based on the regional zone in which the place of worship was situated.

It is important to note, however, that neither *South Bay United Pentecostal Church* nor *Roman Catholic Diocese of Brooklyn* stands for the proposition that churches have a constitutional right to ignore generally-applicable safety precautions to prevent the spread of COVID-19. As Justice Gorsuch’s concurrence in *Roman Catholic Diocese of Brooklyn* noted, “[n]o apparent reason exists why people may not gather, subject to identical restrictions, in churches or synagogues, especially when religious institutions have made plain that they stand ready, able, and willing to follow all the safety precautions required of ‘essential’ businesses and perhaps more besides.” In fact, in *South Bay United Pentecostal Church*, the Court declined (at least for now) to prevent California from enforcing a 25% capacity limitation on indoor worship services or a prohibition on singing or chanting during indoor services.

Below are some practical steps that churches and other places of worship in California may consider

taking when restarting indoor worship services to demonstrate that they, like the worshippers in *Roman Catholic Diocese of Brooklyn*, are “ready, able, and willing” to follow safety guidelines established by the State.

### **Practical Suggestions for Indoor Public Worship during the COVID-19 Pandemic**

- 1. Review State Guidance:** On Saturday, February 6, 2021, the State of California released [updated industry guidance](#) for places of worship and cultural ceremonies (the “Updated Guidance”).
  - a. The Updated Guidance still cross-references to the California Department of Public Health’s (“CDPH”) COVID-19 [Industry Guidance for Places of Worship and Providers of Religious Services and Cultural Ceremonies](#) published on July 29, 2020 (the “Earlier Guidance”).
  - b. Both the Updated Guidance and the Earlier Guidance should be carefully reviewed, and state guidelines should be implemented. CDPH also has published a [checklist](#) for places of worship and providers of religious services and cultural ceremonies that may prove helpful.
  - c. Some highlights from the Updated Guidance and Earlier Guidance are summarized below.
- 2. Attendance Capacity:** Under the Updated Guidance, if a county is in the “purple tier” or the “red tier,” indoor worship services are permitted, but capacity is limited to 25% of building capacity (without the 100-person maximum cap that previously applied). If a county is in the “yellow tier,” indoor worship services are permitted at 50% of building capacity.
  - a. Task ushers with counting the number of worshippers as they enter to ensure compliance with attendance capacity guidelines.
  - b. Consider scheduling additional worship services to accommodate attendance by more in-person worshippers.
  - c. Consider whether worship services can take place simultaneously in different buildings on your campus.
  - d. Consider continuing to offer on-line, virtual worship services for individuals who are prevented from attending in person worship due to health or age.
  - e. Depending on the number of worshippers and ability to increase the number of available services, consider whether a reservation system should be implemented.
- 3. No Singing:** No singing can occur (for now, at least).
  - a. Based on the statements from Justice Barrett (joined by Justice Kavanaugh) and Justice Gorsuch (joined by Justices Thomas and Alito), we may not have heard the last from the Court on the question of whether California can prohibit singing or chanting at worship services, so stay tuned.
  - b. However, for now, California’s prohibition on singing or chanting at indoor worship services remains in place.
- 4. Face Coverings:** Face masks must be required.
  - a. Post clear signage reminding worshippers that masks are required. Also, include mask reminders in your church bulletin and on your website/social media accounts.

- b. Have ushers positioned at entrances to remind worshippers of the mask requirement.
- c. Keep a supply of disposable masks on hand for those who forget their own.

**5. Hand Cleaning:** Frequent hand cleaning should be encouraged and facilitated.

- a. Hand sanitizer stations should be added at all entrances.
- b. Ushers should remind worshippers to sanitize when entering and exiting the place of worship.
- c. Churches that distribute communion in the hand also should consider having hand sanitizer stations positioned so that communicants can sanitize before receiving communion.

**6. Physical Distancing:** Physical distancing guidelines should be followed.

- a. If your place of worship has chairs, group chairs to accommodate different family sizes and space these groupings of chairs at least 6 feet apart in each direction.
- b. If your place of worship has pews, consider roping off certain pews (or portions of pews) in order to permit physical distancing.
- c. Keep doors and windows open to the extent possible.

**7. Other Cleaning and Disinfecting Measures:** Enhanced cleaning and disinfecting protocols should be implemented.

- a. If your place of worship will have multiple services on a given day, consider organizing teams of volunteer cleaners who will clean the seats/pews, kneelers, podiums/pulpits, microphones, door handles, and bathrooms between services.
- b. If special religious garments, such as vestments, are worn during the service, consider having separate sets for each person who wears such garments or having them cleaned between services.
- c. Consider utilizing portable HEPA air purifiers that filter viruses and other airborne pathogens.

### Concluding Thoughts

As Justice Gorsuch pithily expressed it in *Roman Catholic Diocese of Brooklyn*, “[e]ven if the Constitution has taken a holiday during the pandemic, it cannot become a sabbatical.” Thank goodness for the Supreme Court’s recent vindication of the rights of people of faith to gather for indoor worship, notwithstanding the continued challenges posed by the COVID-19 pandemic.

Now, if churches and other places of worship take care to reduce the spread of COVID-19 through compliance with the Updated Guidance, the Earlier Guidance, and other best practices, they will be able to demonstrate, to borrow from Justice Gorsuch’s statement in *South Bay United Pentecostal Church*, that the “narrower options” that the State of California “thinks adequate in many secular settings—such as social distancing requirements, masks, cleaning, plexiglass barriers, and the like” *are, in fact, also sufficient* safeguards for people worshipping indoors.