

FAQs on Temporary Bans on Large Religious Gatherings

To contain the spread of COVID-19, governors across the country have issued public safety executive orders to limit large, in-person gatherings and to close non-essential businesses. We understand that in these difficult times, many people look to their faith for comfort and guidance and seek solace in religious gatherings. But when health experts and public officials determine that large gatherings must be cancelled for the public good, we must apply these guidelines to secular and religious gatherings equally. COVID-19 doesn't discriminate between religious and secular gatherings – it spreads easily at both, putting the health of entire communities at risk.

In addition, the Constitution doesn't just permit the government to apply the same restrictions on religious gatherings as secular gatherings, it demands it. Such restrictions do not violate religious freedom; they ensure religious freedom is not misused in ways that risk people's lives.

As restrictions are relaxed, state and local governments may continue or reinstate large-gathering limits as necessary to protect public health and manage outbreaks. Below are some answers to commonly asked questions about these public-health orders.

Have governors closed houses of worship?

No. In response to the global pandemic, governors across the country have temporarily limited large gatherings, including *in-person* religious services. Houses of worship have remained open to stream worship services online or over the phone, hold drive-in services in parking lots, and conduct smaller services that adhere to their state's large-gathering limit.

Why have governors temporarily prohibited large religious gatherings?

[According to the CDC](#), "large events and mass gatherings can contribute to the spread of COVID-19 in the United States via travelers who attend these events and introduce the virus to new communities." To stop the spread of COVID-19, therefore, governors across the country have temporarily banned both secular and religious large gatherings, including large community events, sporting events, concerts, and religious services. COVID-19 is just as likely to spread at houses of worship as at other gathering places. In fact, the CDC released a [report](#) detailing how an outbreak of COVID-19 cases began at an Arkansas church and spread to the local community, and multiple other outbreaks have been connected to gatherings at houses of worship and religious services. Applying the temporary bans to religious gatherings, in addition to secular gatherings, therefore is critical to stopping the spread of the virus.

Do governors have the power to temporarily ban large gatherings during a pandemic?

Yes. In a long-standing opinion, the U.S. Supreme Court [explained](#) that "the right to practice religion freely does not include liberty to expose the community . . . to communicable disease."

That is why, in the last few months, courts across the country—including the [U.S. Supreme Court](#)—have repeatedly rejected arguments that large-gathering bans violate the Free Exercise Clause of the First Amendment to the U.S. Constitution if they don't exempt houses of worship. Even U.S. Attorney General William Barr released a [statement](#) explaining that the government can restrict religious gatherings in the same manner as secular gatherings.

Contrary to the claims of some, state constitutions and laws don't prohibit governors from issuing these orders either. Some states have laws and constitutional provisions that require religious exemptions when the government burdens free exercise unless the law is “in furtherance of a compelling governmental interest” and “is the least restrictive means of furthering that compelling governmental interest.” It is indisputable that governors have a compelling interest in protecting public health and stopping the spread of COVID-19. And several courts have held that large-gathering restrictions are the least restrictive means of furthering that interest.

Can the government permit in-person religious gatherings while barring similar secular gatherings?

No. The First Amendment *prohibits* the government from exempting houses of worship from the large-gathering bans for two reasons. First, the Establishment Clause of the First Amendment (the provision that gives us church-state separation) prohibits the government from giving preferential treatment to religious institutions and activities over secular institutions and activities. Second, the Establishment Clause prohibits the government from granting religious exemptions that cause harm to others, including those that put other people's lives at risk. There is no question that exemptions for houses of worship cause significant and unjustified danger to all by undermining efforts to contain the spread of the virus and putting everyone, particularly the elderly and other vulnerable populations, in harm's way.

Can the government permit in-person secular gatherings while barring similar religious gatherings?

No. Just as the First Amendment prohibits the government from favoring religious gatherings, it also prohibits the government from targeting them for disfavored treatment. Some are trying to claim that these orders are targeting religion, but they aren't. When the states have banned in-person religious services, they have also banned similar secular gatherings—large gatherings where people remain in close proximity for extended periods—including concerts, lectures, sporting events, and social events. As explained below, most orders still allow supermarkets and pharmacies to remain open and place different social-distancing requirements on them, but allowing people to shop for essential items is different than allowing them to gather.

Did President Trump overturn the state orders limiting large gatherings at houses of worship?

No. On May 23, Trump said that if the states did not lift their temporary bans on large gatherings immediately, he “will override the governors.” But he doesn't have the power to do that. The Tenth Amendment to the United States Constitution leaves decisions like this to the states, and the President can't override the nation's governors in this area. Unfortunately, this statement

has led to confusion, emboldened people to disobey their state laws, and put people's lives at risk.

Are houses of worship considered “essential”?

Typically the state orders have done three things: (1) bar large, in-person gatherings; (2) require non-essential businesses to close to the public; and (3) require people to stay home unless they are engaged in essential activities. Most states have defined houses of worship as essential businesses, which allowed them to stay open and hold services that comply with their state's large-gathering ban. Some states have more limited definitions of essential businesses that include only those businesses that could not be conducted remotely, such as healthcare, food and grocery stores, emergency services, and infrastructure. Regardless of how houses of worship were classified, no state has prohibited virtual worship services.

How can grocery stores, pharmacies, and liquor stores stay open while in-person religious services are limited?

Attending religious services is very different from shopping at a store, and the risk of contagion is different. Religious services are a communal experience, where large groups of people come together, at the same time and place, for the same purpose, and to talk, sing and interact with each other. Such prolonged contact puts people at [a greater risk](#) of exposing others or being exposed to COVID-19. That is very different from shopping, where people enter the store at different times, move around individually, interact with others only when making a purchase, and leave when finished. There is a much smaller chance of exposure under these circumstances.

A number of federal and state courts have recognized this distinction. On May 29, U.S. Supreme Court Chief Justice John Roberts [wrote](#) that religious services are comparable to “lectures, concerts, movie showings, spectator sports, and theatrical performances, where large groups of people gather in close proximity for extended periods of time,” and that religious services are not similar to “grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods.”

Furthermore, essential businesses such as grocery stores and pharmacies must remain open because people cannot physically survive without access to food and medicine. And often people overlook the public-health risks of closing all liquor stores: Keeping liquor stores open [can help people](#) with alcohol-use disorder avoid withdrawal symptoms and prevent a different health crisis from emerging.

Have the courts ruled on this issue?

Yes. There have been more than 30 cases filed on this issue nationwide, and in the vast majority of these cases, the courts have rejected demands for religious exemptions to large-gathering bans. Recently, the U.S. Supreme Court refused to issue an emergency injunction against a California public-health order. In a concurring opinion, Chief Justice Roberts [explained](#): “Although California's guidelines place restrictions on places of worship, those restrictions appear consistent with the Free Exercise Clause of the First Amendment.” Courts have also upheld the bans under state laws and constitutions, recognizing that governors have

a compelling interest to protect public health and that large gathering bans are the least restrictive way to achieve that goal.

Does the public support these temporary bans?

Yes. [Polling](#) shows that 90% of people think religious services should be restricted right now. That includes 48% of people who think worship services should not be allowed *at all* during the pandemic. Even among Americans who identify with a religion, 45% say in-person services shouldn't be allowed at all. Only 9% believe in-person religious services should be permitted without restrictions.

Do houses of worship support the temporary bans?

Yes. Many faith leaders and religious organizations, including the [National Council of Churches](#) and the [Union for Reform Judaism](#), have said that houses of worship should resume in-person gatherings only when it is safe to do so. Many congregations across the country closed voluntarily in March and have remained closed even as governors have allowed in-person services to resume. In the meantime, they continue to worship, including by streaming services online and holding drive-in services. We applaud the faith leaders who are protecting public health and safety by temporarily halting in-person religious services and finding creative ways to worship remotely instead.

What is Americans United doing about this?

Americans United has monitored executive orders issued by governors across the country to identify religious exemptions to large-gathering bans. We have sent letters to eight states outlining why such exemptions are unconstitutional and urging them to protect public health and religious freedom by including houses of worship in their executive orders preventing people from gathering in large groups. AU also has filed more than 20 amicus briefs in court cases across the country, urging judges not to grant demands for religious exemptions from public-health orders. In denying requests for religious exemptions, several courts have cited AU's analysis of the issue, including one [court](#) that found our brief "timely and useful."