



FAQs: Temporary Limits on Religious Gatherings

To contain the spread of COVID-19, governors across the country have issued public health executive orders to place restrictions on in-person gatherings. 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 decide to restrict large gatherings for the public good, we must apply these guidelines to comparable secular and religious gatherings equally. COVID-19 doesn't discriminate between religious and secular gatherings—it spreads equally 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 across the country closed houses of worship?

No. In response to the global pandemic, governors across the country have temporarily placed restrictions on gatherings, including temporarily restricting *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 limited 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.” An article in [Scientific American](#) similarly noted that “preventing superspreader events could go a long way toward stopping COVID-19.” Governors across the country, therefore, have temporarily limited or prohibited secular and religious large gatherings, including large community events, sporting events, concerts, and religious services.

Unfortunately, religious gatherings, specifically, have been tied to numerous outbreaks and deaths. Applying the temporary limits to religious gatherings, in addition to secular gatherings, therefore is critical to stopping the spread of the virus.

Are there any actual examples of COVID-19 being connected to events at houses of worship?

Unfortunately, there are many. For example, an October 2020 [event at a church in Charlotte, North Carolina](#) led to at least 209 cases of COVID-19 and the deaths of nine people. In early November 2020, more than 200 cases of COVID-19 were also linked to [services at a church in Fitchburg, Massachusetts](#). And in [Grand Ledge, Michigan, a November 2020 church service](#) has

already led to at least 74 cases of COVID-19 and one death. These are just a few of the recent examples. There have been many thousands of cases of COVID-19 linked to gatherings at houses of worship across the country since the start of the pandemic.

Do governors have the power to temporarily limit or ban large gatherings to protect public health 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](#) twice—have repeatedly rejected arguments that large-gathering limits 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 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 and limits 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 limited in-person religious services, they have also limited 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, many orders do not impose the same kinds of restrictions on supermarkets and pharmacies. Shopping at stores for essential items,

however, poses a much lower risk of infection than attending gatherings because any contact with an infectious person is likely to be less close and much more fleeting at stores.

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

No. On May 23, 2020, 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 U.S. Constitution leaves decisions like this to the states, and the President can’t override the nation’s governors in this area. Unfortunately, this statement 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 or limit large, in-person gatherings; (2) require non-essential businesses to close to the public or limit their operation; and (3) require people to stay home unless they are engaged in essential activities or otherwise limit the activities for which they could leave home. 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, and virtually all states now allow in-person religious services of at least some size.

How can grocery stores, pharmacies, and liquor stores stay fully 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. Shopping is a very different activity, 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 infection under these circumstances.

A number of federal and state courts have recognized this distinction. On May 29, 2020, 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 courts ruled on this issue already?

Yes. More than 100 lawsuits have been filed on this issue nationwide. In the vast majority of the cases that have been decided, courts have rejected demands for religious exemptions to large-gathering bans. The Supreme Court has also weighed in.

In May 2020, the U.S. Supreme Court, in a 5-4 decision, 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.” Then in July, the Supreme Court, in [another 5-4 decision](#), refused to issue another emergency order to block a Nevada state restriction on in-person attendance at religious services.

The Supreme Court is now considering two emergency petitions challenging a recent public health order from the Governor of New York as well as a similar petition filed by a Louisiana church and pastor. The Court could decide these cases in the coming days.

Does the public support these temporary bans?

Yes. [Polling](#) shows that 90% of people think religious services should be restricted amid the pandemic. 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 and religious groups support the temporary bans?

Yes. Many religions, denominations, and faith groups, including the [General Synod of the United Church of Christ](#), 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 or limits. We 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 limiting people from gathering in large groups. AU also has filed approximately 40 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.