

## The Supreme Court Denies California Church's Request to Avoid Application of Attendance Limitations

On May 29, 2020, Walden Macht & Haran authored an [article](#) in the *New York Law Journal* analyzing the significant impact of COVID-19 on constitutional jurisprudence. One of the issues addressed in the article was how state stay-at-home orders restricting religious services are being challenged under the First Amendment.

Hours after publication, the Supreme Court issued a 5-4 [ruling](#) in one of the cases cited in the article. Specifically, in *South Bay United Pentecostal Church v. Newsom*, the Court, like the Ninth Circuit below, denied the church's request to temporarily enjoin a California executive order limiting attendance at places of worship to 25% of building capacity up to a maximum of 100 people. Chief Justice Roberts, the lone member of the majority to explain his vote, wrote that such an injunction should be granted only if the legal rights were "indisputably clear," and concluded that "[t]he notion that it is 'indisputably clear' that [California's] limitations are unconstitutional seems quite improbable."

He noted that similar or more severe attendance restrictions were placed on "comparable" secular gatherings, such as lectures and movies, and that more lenient treatment was reserved exclusively for "dissimilar" activities, such as operating grocery stores, banks, and laundromats, where people do not typically congregate in large groups or remain in close proximity for long periods. Roberts urged judicial restraint because federal judges "lack[] the background, competence, and expertise to assess public health and [are] not accountable to the people."

In a dissenting opinion joined by Justices Thomas and Gorsuch, Justice Kavanaugh found no compelling justification for distinguishing between religious services and secular activities that were exempt from the attendance restrictions. He reasoned that, without such a justification, the First Amendment requires the same restrictions across the board.

We expect, and will continue to monitor for, additional developments on this and other constitutional issues discussed in the *New York Law Journal* article. Like the Supreme Court's ruling in *South Bay*, most judicial opinions to date regarding coronavirus-related constitutional challenges have involved applications for emergency relief, where the applicable legal standards tend to disfavor judicial intervention. It remains to be seen how courts will rule if and when these challenges proceed through litigation and appeal.

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