

A High Court Religious Liberty Case Resonates Five Years Later

November 25, 2025 | Akiva Shapiro

Thanksgiving Eve 2020. It's 11:51 pm. I'm in bed, trying to fall asleep, when my phone buzzes. I roll over, open my email, and there it is from the US Supreme Court's emergency applications clerk: "Please see the attached, just issued by the Court in *Roman Catholic Diocese of Brooklyn v. Cuomo*." I open the PDF. Emergency application "granted."

How we got from filing a complaint in October 2020 to a Supreme Court win less than seven weeks later was a testament to seamless teamwork, relentlessly pushing the case forward, and a true emergency that inflicted irreparable harm on our client (the Roman Catholic Diocese of Brooklyn)—and adherents of every faith—with each passing day.

It began in the shadow of the Covid-19 pandemic, when New York Governor Andrew Cuomo issued an executive order creating "red" and "orange" zones throughout New York City limiting attendance at "houses of worship" to 10 people in red zones and 25 in orange zones—even while groceries and offices remained open without fixed caps.

The shutdown order targeted large worship spaces, with some seating upwards of 1,000 people. This despite the diocese's voluntary actions to put in place strict masking, sanitizing, and social distancing rules.

A team that I co-led challenged the order in the US District Court for the Eastern District of New York, asserting a single count for violations of the First Amendment's Free Exercise Clause.

The district court acknowledged that the diocese had "done everything it could be expected to do

and more" on safety protocols and that there had been no Covid-19 outbreak in any of its churches, but declined to enjoin the fixed-capacity rule. The US Court of Appeals for the Second Circuit likewise denied emergency injunctive relief on Nov. 9.

The next morning, we filed our emergency application with the Supreme Court. But as 5 pm came and went on Thanksgiving Eve, after the completion of briefing, I had little hope that we'd receive a ruling before the holiday.

And I was concerned about what the Supreme Court would decide—it had turned away every prior challenge to Covid-19 restrictions, including from churches.

But this case was different, as we argued to the high court: New York's fixed capacity restrictions were much stricter and more inflexible than those imposed in other states; the restrictions were discriminatory, explicitly singling out "houses of worship" by name for restrictions that applied to no others; the pandemic, while still ongoing, had waned significantly and we finally knew how to meaningfully combat its spread; and the diocese had freely imposed the strictest of standards.

It was time for the Supreme Court to step in and put a stop to the rampant overreach by state authorities that "in another time would plainly be found to violate the Constitution," as we told the court.

At nearly midnight, the Supreme Court granted our emergency application, staying enforcement of the attendance caps in a 5–4 per curiam decision,

with Chief Justice John Roberts agreeing with the majority that the fixed caps “may well . . . violate the Free Exercise Clause,” but joining the dissenters for procedural reasons.

The majority found that by “effectively barring many from attending religious services,” the restrictions “strike at the very heart of the First Amendment’s guarantee of religious liberty.” The challenged provisions “single out houses of worship for especially harsh treatment,” while treating favorably many types of secular businesses, subjecting the executive order to strict scrutiny.

And though New York had a compelling interest in combating Covid-19, the fixed attendance caps were not narrowly tailored because “many other less restrictive rules could be adopted” to minimize risk—for example, tying attendance to the size of the building.

More broadly, the Supreme Court announced that “even in a pandemic, the Constitution cannot be put away and forgotten.” Or as Justice Neil Gorsuch put it in his concurrence: “Government is not free to disregard the First Amendment in times of crisis.” Nor may the courts, he wrote, “shelter in place when the Constitution is under attack. Things never go well when we do.”

In the years since, the Supreme Court has continued to protect religious liberties in a series of important cases.

- In *Fulton v. City of Philadelphia*, the Supreme Court unanimously ruled that Philadelphia violated the Free Exercise Clause in refusing to contract with Catholic Social Services for the provision of foster care. The court built on the *Diocese* decision in finding that the law was not neutral and generally applicable because Philadelphia’s contracts allowed for individualized exemptions.

- In *Kennedy v. Bremerton School District*, the Supreme Court held, in a 6–3 decision, that a football coach’s post-game midfield prayers were protected by both the Free Speech and Free Exercise Clauses and that the Establishment Clause, properly understood in light of “original meaning and history,” didn’t require the school district to discipline him.
- Finally, in *Groff v. DeJoy*, the Supreme Court decided unanimously that an employer seeking to deny a religious accommodation must show that the burden of granting it would be substantial in the context of its business.

The *Diocese* decision is now considered a landmark and a turning point. It has been cited over 700 times, including 17 times by the Supreme Court. It demonstrated that the Constitution continues to serve as a bulwark protecting our rights, even—especially—in times of crisis. And that the free exercise of religion isn’t a luxury to be sidelined during an emergency, but an essential thread in our constitutional fabric. The Supreme Court has since continued to affirm the Constitution’s fundamental protections for religious freedom.

With Thanksgiving once again approaching, that’s something for which we can all be thankful.

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