

5 reasons why religious services pose high risk of COVID-19 spread

DEC 7, 2020

Tanya Albert Henry

Contributing News Writer

Science leaves no doubt that attending a religious service—even with protective measures in place—is inherently risky during this pandemic that’s being driven by an airborne virus, physicians told the U.S. Supreme Court in an amicus brief in the case of *Roman Catholic Diocese of Brooklyn v. Cuomo*.

A 5–4 Supreme Court majority has declined to incorporate this evidence into its decision to grant an injunction for the religious institutions that argued New York violated citizens’ First Amendment rights guaranteeing religious freedoms when Gov. Andrew Cuomo in October signed an executive order that created the “Cluster Action Initiative.” The initiative restricted religious gatherings in ZIP codes that are seeing spikes in COVID-19 cases.

Justices Stephen Breyer, Elena Kagan, and Sonia Sotomayor, however, cited the AMA’s brief in dissenting from the majority.

“Justices of this court play a deadly game in second-guessing the expert judgment of health officials about the environments in which a contagious virus, now infecting a million Americans each week, spreads most easily,” Sotomayor wrote in her dissent.

In an amicus brief, the AMA and the Medical Society of the State of New York (MSSNY)—as representatives of the Litigation Center of the American Medical Association and the State Medical Societies—told the high court that organized medicine has the “utmost respect” for letting people exercise their religion freely.

But with the COVID-19 pandemic now the greatest public health emergency in a century, governments have to weigh science on one hand and citizens’ basic human needs and civil liberties on the other hand when making difficult choices on how to protect people.

“The AMA and MSSNY will not tell this court how to strike that balance, but they do believe that the science clearly shows that congregating indoors ... endangers public health,” the brief told the court in the case. “The risk profile of a religious service is similar to that of attending an indoor sporting event, going to a bar or eating in a restaurant, all of which are prohibited in New York’s ‘red zones’ and ‘orange zones’” under the Cuomo initiative.

What the science shows

The brief identified five risk factors that determine whether an activity is one where an infectious person is more or less likely to spread COVID-19. The brief explained to the court that religious services include every one of the risk factors as described below.

Enclosed spaces. Clusters of COVID-19 infections are linked mostly to indoor settings. Even if improved ventilation may reduce transmission, there is no scientific consensus on standards for controlling COVID-19’s spread in an indoor environment.

Large groups. On average, larger groups contain more people who are infected and more people who can potentially become infected.

Close proximity to others. The smallest SARS-CoV-2 droplets can remain airborne and travel farther than six feet. The scientific community does not agree upon what is a “safe distance,” but standing near an infectious person is riskier than standing farther away.

Long duration of exposure and staying in one place. The amount of virus a person is exposed to can influence the chance of infection and the severity; consequently, staying in one place for a longer time creates a higher risk of infection.

Loud talking and singing. Loud speech and singing expel significantly more oral fluid droplets than normal talking. The droplets can remain in the air for eight to 14 minutes before evaporating.

Pandemic danger zones

Under the Cuomo initiative, an area is deemed a “red zone” if the seven-day average COVID-19 positivity rate was 3% or higher. Houses of worship in red zones did not have to entirely shut down as bars and indoor dining did. Instead, gatherings at houses of worship were restricted to the lesser of 10 people or 25% of the space’s maximum capacity. Violators faced a \$15,000 fine.

“In sum, the governor’s executive order has singled out religious services for more lenient treatment than similarly risky activities,” the AMA brief stated.

The AMA also filed a brief in the case *Agudath Israel v. Cuomo*. Plaintiffs in both cases asked the court for a temporary restraining order, a preliminary and permanent injunction and declaratory relief. The trial court denied both plaintiffs’ motions. On appeal to the 2nd U.S. Circuit Court of Appeals, the court consolidated the cases and also denied the motions. The plaintiffs appealed to the U.S. Supreme Court, which granted the request for an injunction while the 2nd Circuit deliberates the merits of the case.

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center’s case-selection criteria.