

# Public Health, Religion and Covid

---

Alan Jotkowitz MD MHA

Professor of Medicine

Director Jakobovits Center for Jewish Medical Ethics

Ben-Gurion University of the Negev

In November 2020 the Roman Catholic Diocese of Brooklyn and the Agudath Israel of America petitioned the United States Supreme Court against the New York State regulations that imposed severe restrictions on attendance at religious services in geographic areas classified as "red" zones (limited to 10 worshipers) and "orange" zones (limited to 25 worshippers). The petitioners maintained that these restrictions violated the Free Expression Clause of the First Amendment of the Constitution and that the New York State directives treat houses of worship more harshly than comparable secular facilities.

In an unsigned opinion, the majority of the Court ( Justices Clarence Thomas, Samuel Alito, Neil Gorsuch, Brett Kavanaugh and Amy Barrett) sided with the applicants and ordered that the State's restrictions on religious services be enjoined.

They based their opinion on three reasons:

# The Majority Opinion

---

- The Justices felt that the restrictions violated "the minimum requirement of neutrality" which maintains that religion cannot be singled out for harsh treatment.
- The Justices felt that the contested regulations would cause "irreparable harm".
- Finally, the majority opinion maintains "it has not been shown that granting the applications will harm the public"

“At a minimum, that Amendment prohibits government officials from treating religious exercises worse than comparable secular activities, .... the Governor has chosen to impose no capacity restrictions on certain businesses he considers “essential.” And it turns out the businesses the Governor considers essential include hardware stores, acupuncturists, and liquor stores. Bicycle repair shops, certain signage companies, accountants, lawyers, and insurance agents are all essential too. So, at least according to the Governor, it may be unsafe to go to church, but it is always fine to pick up another bottle of wine, shop for a new bike, or spend the afternoon exploring your distal points and meridians. Who knew public health would so perfectly align with secular convenience?” Justice Gorsuch

# Dissenting Opinion

(John Roberts, Stephen Breyer, Sonia Sotomayor  
and Elena Kagan)

---

- “We have previously recognized that courts must grant elected officials ‘broad’ discretion when they ‘undertake to act in areas fraught with medical and scientific uncertainties.’
- That is because the ‘Constitution principally entrusts the safety and the health of the people to the politically accountable officials of the States.
- The elected branches of state and national governments can marshal scientific expertise and craft specific policies in response to ‘changing facts on the ground.’ And they can do so more quickly than can courts.

“Members of the scientific and medical communities tell us that the virus is transmitted from person to person through respiratory droplets produced when a person or group of people talk, sing, cough, or breathe near each other. ..thus, according to experts, the risk of transmission is higher when people are in close contact with one another for prolonged periods of time, particularly indoors or in other enclosed spaces. The nature of the epidemic, the spikes, the uncertainties, and the need for quick action, taken together, mean that the State has countervailing arguments based upon health, safety, and administrative considerations that must be balanced against the applicants’ First Amendment challenges.”

“Undeterred, Justice Gorsuch offers up his own examples of secular activities he thinks might pose similar risks as religious gatherings, but which are treated more leniently under New York’s rules (e.g., going to the liquor store or getting a bike repaired). But Justice Gorsuch does not even try to square his examples with the conditions medical experts tell us facilitate the spread of COVID-19: large groups of people gathering, speaking, and singing in close proximity indoors for extended periods of time.”

“ Our Constitution principally entrusts ‘the safety and the health of the people’ to the politically accountable officials of the States ‘to guard and protect ’ Justice Roberts

“Federal courts therefore must afford substantial deference to state and local authorities about how best to balance competing policy considerations during the pandemic. But judicial deference in an emergency or a crisis does not mean wholesale judicial abdication, especially when important questions of religious discrimination, racial discrimination, free speech, or the like are raised.” Justice Kavanaugh

# The Israeli Experience

---

- Secular and Religious Zionist communities tended to follow the instructions of the government regarding lockdowns and school closures (“sanctity of the government”)
- Ultra-Orthodox communities followed their religious leaders instructions as opposed to governmental directives
- Ultra-Orthodox schools were kept opened for the most part and testing guidelines were not followed

# Rabbinic Responses

---

- <https://www.youtube.com/watch?v=vOzJ1F5DbCc>
- <https://www.youtube.com/watch?v=8dCgCgGUCJU>
- <https://www.youtube.com/watch?v=CGtrBvj3wOU>
- <https://www.youtube.com/watch?v=RR-OXpNmp7M>

# Theological Justifications

---

- Supreme value of education
- Daat Torah- the belief that the leading rabbis of the generation have an almost supernatural ability to make the right decisions
- Lack of faith in secular government
- Prayer and Torah study as tools in the fight against the pandemic
- *shomer pitaim Hashem* -God watches over the fools
- Skepticism towards science and technology
- And practical considerations

# America vs. Israel

---

- Justices Decide
  - Within the system
  - Political divide
  - Skepticism
  - Centrality of religion
  - Future concerns?
- Rabbis Decide
  - Outside the system
  - open rebellion against authority
  - Skepticism
  - Centrality of religion
  - Future concerns?