

The Pandemic & Religious Liberty

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The Risks and Regulation of Worship

Religious worship as “super-spreader events”

- Prolonged indoor exposure
- Singing and chanting

States varied in their approach to regulating worship

- Regulations varied across jurisdictions and during the pandemic
- At least 143 judicial decisions were issued by July 1, 2022

Doctrinal Roots and the Early COVID Cases

A 3-legged stool

- *Jacobson v. Massachusetts*
- *Employment Division v. Smith*
- *Church of Lukumi Babalu Aye v. Hialeah*

The early cases

- Deference!

A Changing Legal Landscape

**Roman Catholic
Diocese v. Cuomo (S.
Ct.)**



Nov. 2020

**Fulton v. Philadelphia
(S. Ct.)**



June 2021

Apr. 2021



**Tandem v. Newsom (S.
Ct.)**

Some Questions to Consider:

Whither Deference?



Does Evidence Matter?



Are Exemptions Required?



Is Health a Compelling State Interest?



What Type of Laws are Affected?

Looking Forward:

Religious practices & pandemic measures will often conflict



Conflicts heighten when there is political & social conflict about public health measures



It is risky for governments to regulate worship or deny religious exemptions .



Persuasion and messaging become even more important.