UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAPITOL HILL BAPTIST CHURCH,
525 A Street NE
Washington, DC 20002

Plaintiff,

v.

MURIEL BOWSER, in her official capacity as Mayor of the District of Columbia,
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

DISTRICT OF COLUMBIA,
c/o Karl A. Racine, Attorney General
400 6th Street, NW
Washington, DC 20001

Defendants.

Civil Action No. 1:20-cv-2710
THE HONORABLE TREVOR MCFADDEN

BRIEF *AMICUS CURIAE* OF THE BECKET FUND FOR RELIGIOUS LIBERTY IN SUPPORT OF PLAINTIFF

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INTRODUCTION

This brief has one simple point: on the current record, RFRA requires an injunction because the overwhelming majority of other U.S. jurisdictions—forty-two states, including Virginia—allow religious worship gatherings to occur outdoors without any statewide capacity restrictions at all. The District's strict limits have turned Church members into modern-day Roger Williamses, banished to another state to practice their faith.[1] Because other jurisdictions have addressed the same interests in a less restrictive way, the District "must, at a minimum, offer persuasive reasons" why it cannot do the same. *Holt v. Hobbs*, 574 U.S. 352, 369 (2015). The District cannot prevail unless it meets this burden, and so far it has not.

The clash between COVID-19 restrictions and religious liberty has produced contentious litigation across the country. That litigation has often proceeded under the First Amendment, and has forced courts to try to identify the best comparator for worship services so as to determine whether restrictions are neutral and generally applicable. Is going to church more like indoor dining? Gambling at a casino? Grocery shopping? Attending a political protest? Courts, including the Supreme Court, have been divided over these questions as they try to determine whether to subject COVID-19 restrictions to strict scrutiny under the First Amendment.

Thankfully, this Court need not wade into that thicket to resolve this motion. That is because Congress has made the Religious Freedom Restoration Act (RFRA) applicable to the District of Columbia, and RFRA requires strict scrutiny here *regardless* of the comparator questions that have divided other courts. RFRA therefore allows this Court to put knottier First Amendment questions to the side and simply determine whether the District of Columbia has carried its burden of proving that a hard-and-fast numerical cap of 100 people on even outdoor, socially-distant, mask-wearing

[1] Seamus Hasson, *The Right to Be Wrong* 34-35 (2d ed. 2012) (describing the exile of Roger Williams, regarded as one of the earliest Baptists in the Americas, from Massachusetts Bay Colony to what would become Rhode Island).

worship, *see* D.C. Mayor's Order 2020-075, is the least restrictive means of serving a compelling interest.

To meet its burden, the District would need to provide evidence to show why its 100-person limit on outdoor religious gatherings is justified even though it is a national outlier. Forty-two states have no statewide capacity restrictions on the kind of outdoor, masked, and distanced religious gatherings at issue here. Indeed, thirty-one states do not limit the size of masked, distanced religious worship *even when it is held indoors*. Even California, where notoriously strict worship restrictions have been imposed, has no statewide size restriction on outdoor religious gatherings. And none of the Maryland or Virginia jurisdictions surrounding the District—from which thousands of residents commute every day—limit outdoor gatherings as severely. Under RFRA, the District must demonstrate why these less restrictive alternatives are not enough. *See Holt*, 574 U.S. at 369. [2] Until it does so—and it hasn't yet—it cannot prevail.

INTEREST OF THE *AMICUS*

Amicus the Becket Fund for Religious Liberty is a non-profit law firm dedicated to protecting the free exercise of all religious traditions. To that end, it has represented agnostics, Buddhists, Christians, Hindus, Jews, Muslims, Santeros, Sikhs, and Zoroastrians, among others, in lawsuits across the country and around the world. Most relevant here, Becket has litigated RFRA and RLUIPA cases in the Supreme Court, including one merits RFRA case last term. *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020); *Zubik v. Burwell,* 136 S. Ct. 1557 (2016); *Holt v. Hobbs*, 574 U.S. 352 (2015); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). Becket offers its RFRA expertise to help guide the Court's

[2] *Holt* was decided under RFRA's companion statute RLUIPA, but for most purposes, the analysis is the same.

analysis.[3]

ARGUMENT

I. Unless the District can meet strict scrutiny, the Court should grant an injunction under RFRA.

RFRA helpfully allows this motion to be resolved by answering a single question: whether the government can produce evidence to carry its heavy burden of satisfying strict scrutiny. This is by design—Congress wrote RFRA to "provide very broad protection for religious liberty," a right which Congress described as "unalienable." *Little Sisters of the Poor*, 140 S. Ct. at 2383. RFRA mandates that a "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless "it demonstrates that application of the burden . . . is in furtherance of a compelling governmental interest; and . . . is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a)-(b). "[T]he term 'demonstrates' means meets the burdens of going forward with the evidence and of persuasion." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 428 (2006) (quoting 42 U.S.C. § 2000bb-2(3)). The District of Columbia, as a federal enclave, must comply with RFRA. 42 U.S.C. § 2000bb-2(2).

A. RFRA's clear standards allow the Court to reach a workable solution in this case.

1. Substantial burden.

The District asserts that its 100-person limit on religious worship, D.C. Mayor's Order 2020-075, does not impose a substantial burden on the Church. It admits that the Church sincerely believes that its congregation should gather as one and that this is a religious exercise. D.C. Opp. at 34. But it points out that other faith communities

[3] *Amicus* has sought leave to file this brief under LCvR 7(o)(1) in a motion filed with this brief. No party's counsel has authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than *Amicus*—contributed money that was intended to fund preparing or submitting the brief. *See* LCvR 7(o)(5).

in the District have adopted other ways of worshiping during the pandemic. D.C. Opp. at 23. And it then suggests that the Church is not burdened because it may still "hold multiple services, host a drive-in service, or broadcast the service online or over the radio."[4] D.C. Opp. at 34.

This will not do. Under RFRA, the "'substantial burden'" inquiry "asks whether the government has substantially burdened religious exercise . . . not whether [the Church] is able to engage in other forms of religious exercise." *Holt*, 574 U.S. at 361-62. "[I]t is not for [the government] to say that [the Church's] religious beliefs" about a particular religious exercise "are mistaken or insubstantial." *Hobby Lobby,* 573 U.S. at 725. Instead, this Court's "'narrow function . . . in this context is to determine' whether the line drawn reflects 'an honest conviction,' and there is no dispute that it does." *Id.* (internal citations omitted). The Church has a sincere conviction that its members should, whenever possible, gather in person on Sundays to worship. The District's 100-person limit on religious worship prevents the Church from engaging in this religious practice and has done so for months. That is a substantial burden under RFRA.

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[4] The District's assertion that holding multiple services is an acceptable alternative is based on an apparent misunderstanding: prior to the pandemic, the Church held three to four different religious gatherings a week for the *same* 1,200 congregants. *See* Capitol Hill Baptist Church, Service Times, https://perma.cc/MDE4-M98S (listing Sunday School, Sunday Morning Service, Sunday Evening Prayer & Praise, and Wednesday Evening Bible Study).

The District's view that the Church is not burdened because it already broadcasts its services over the radio appears to rest on a similar misunderstanding: it cites to a Church bulletin discussing a short-range radio broadcast available to Church members who planned to attend a parking lot church service in Virginia but who wished to stay in their cars. Such low-power, non-licensed transmissions are limited by law to an effective service range of 200 feet. Federal Communications Commission, Low Power Radio – General Information, https://perma.cc/4U3Y-ZE3M. A short-range broadcast to church members parked in nearby cars does not show that the Church's religious objection to broadcasting its services to remote listeners is insincere.

2. Compelling interest.

Once the Church has established a substantial burden, the District must demonstrate, with evidence, that applying its challenged rule to the Church is necessary to further a compelling interest. "RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law '*to the person*'—the particular claimant whose sincere exercise of religion is being substantially burdened." *O Centro*, 546 U.S. at 430-31 (emphasis added). Put differently, even when the government has identified a problem in need of solving, "the curtailment of [First Amendment rights] must be actually necessary to the solution." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 799 (2011). "That is a demanding standard." *Id.* And "because [the government] bears the risk of uncertainty, ambiguous proof will not suffice." *Id.* at 799-800 (internal citations omitted).

Under this standard, the District cannot simply rest on its undoubtedly sincere and generally praiseworthy efforts to stop the deadly spread of COVID-19. Instead it must show that it has a compelling interest in banning the *specific religious practice* here: gathering for religious worship outdoors while maintaining social distance and wearing masks. What it may not do is assert generalized interests in protecting public health to categorically deny all worship-related waiver requests. Compl. at ¶65; *see O Centro*, 546 U.S. at 436 ("The Government's argument echoes the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions.").

Instead of engaging in the individualized analysis that RFRA requires, the District argues that ruling for the Church "would prevent the District from restricting the size of religious gatherings in any way" (D.C. Opp. at 1), that presumably unmasked, indoor "choir practices and religious services" have been associated with COVID-19 outbreaks, and that "*every* in-person meeting carries some risk of spreading COVID-19." *Id.* at 21, 24. It does this while citing analysis conceding that this

summer's mass protests—which were in-person meetings, not limited to 100 participants—did not "ignite . . . outbreaks" of COVID-19. *Id.* at 21 (emphasis added).

This is a classic straw man argument. The District's failure to engage with the Church's actual request, while simultaneously defending its decision to allow protestors to engage in substantially similar activities, is fatal to its claims. "A law does not advance an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited." *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020) (internal quotation marks omitted). That is because "[u]nderinclusiveness raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Brown*, 564 U.S. at 802. The underinclusiveness is particularly stark in this case, since the District has allowed religious people to engage in political protests in groups over 100, but will not allow the *same people* to engage in group outdoor religious worship. D.C. Opp. at 21. The District could introduce evidence (such as infection rates over time and evidence that masked and distant outdoor worship is particularly dangerous) to explain the different treatment, but it has chosen not to do so. As a result, on this record, the District has not shown that it has a compelling interest in applying its 100-person religious worship rule to the Church's request to hold socially-distanced outdoor services with masks.

3. Least restrictive means.

Even if the District could show that it has a compelling interest in applying its 100-person limit to the outdoor, distanced, masked religious services at issue here, it would still have to demonstrate that there is no less-restrictive alternative to its current policy. "The least-restrictive-means standard is exceptionally demanding," *Hobby Lobby*, 573 U.S. at 728, and to meet it, the District must provide evidence, not just argument. *O Centro*, 546 U.S. at 428. It has not done so here. *See, e.g.,* D.C. Opp. at 27 (baldly asserting that "[n]arrower ways to promote public safety would be less

effective in preventing the spread of the virus" and that there is "not evidence" that communal spread will not occur if the Church is allowed to meet).

When "many" other jurisdictions offer a particular religious accommodation, the Government "must, at a minimum, offer persuasive reasons why it believes it must take a different course." *Holt*, 574 U.S. at 369. "If a less restrictive means is available for the Government to achieve its goals, the Government must use it." *Id.* at 365 (cleaned up).

In *Holt*, the Supreme Court held that Arkansas' state prison system could not maintain its no-beard policy, in part because it failed to explain why "the vast majority of States and the Federal Government permit inmates to grow 1/2 -inch beards" but it did not. *Id.* at 368. "That so many other prisons allow inmates to grow beards while ensuring prison safety and security suggests that the Department could satisfy its security concerns through a means less restrictive than denying petitioner the exemption he seeks." *Id.* at 368-69.

So too here. As explained below, the vast majority of states—including Virginia, where thousands of residents commute into the District every day—permit outdoor religious worship with higher limits or none at all. *Infra* at I.B. The District has not made any effort to show, with evidence, why these alternatives are unworkable. The District's failure to address other jurisdictions fails even intermediate scrutiny *(McCullen v. Coakley*, 573 U.S. 464, 490 (2014)), much less the strict scrutiny that applies here. *Holt*, 574 U.S. at 369.

B. Under RFRA, the District must provide evidence for why it cannot follow the less-restrictive approaches adopted by other jurisdictions.

The District has not explained why it must "take a different course" from the dozens of states and cities that have accommodated religious worship more generously. *Holt*, 574, U.S. at 369. So, for example, the District has not addressed why it cannot follow the practice of the 42 states that allow religious worship gatherings to occur

outdoors without any statewide capacity restrictions at all.[6] The majority approach, followed by 31 states, is to not set any numerical caps on religious worship gatherings, regardless of whether they are held indoors or outdoors.[7] An additional 11 states have capacity restrictions on indoor religious worship, but not outdoor worship.[8] Under RFRA, the District must justify its more restrictive approach, or its arguments will fail.

The District has likewise failed to address the examples of Virginia and Maryland, where thousands of residents commute into the District every day. Virginia does not cap religious services at all, regardless of location. Ex. A at 8. Maryland has a statewide cap on *indoor* religious worship (which is limited to 75% of occupancy), but it has not established a similar cap on outdoor religious worship gatherings, which its statewide order does not address. Ex. A at 4. Even the Maryland counties surrounding the District, where gathering restrictions are greater than at the state level, allow considerably larger gatherings than the District.[9]

This should not come as a surprise. Nationwide, outdoor gatherings routinely receive more favorable treatment than indoor gatherings. California, for example, does not impose any size restriction on outdoor religious gatherings—even as it subjects

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[6] *See* Ex. A.

[7] *Id.* (Alabama, Alaska, Arkansas, Arizona, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming).

[8] Ex. A (California, Delaware, Kentucky, Louisiana, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, Vermont).

[9] Many states, including Maryland, allow local governments to establish stricter limits than those that apply statewide. Prince George's County CR-90-2020, Attachment A, § VI(O)(3), https://perma.cc/BWY3-BTQA (outdoor religious worship gatherings limited to 250 people); Montgomery County Executive Order 117-20 § 5(k)(iv), https://perma.cc/ALZ3-G4AA (absent a letter of approval from local government, outdoor religious gatherings limited to 150 people).

indoor religious gatherings to percentage caps that vary by a county's disease severity. Ex. A at 1. Boston, a city with a similar population and greater density than the District, also does not limit the size of outdoor religious worship gatherings.[10] The District, by contrast, has flatly refused to consider treating the Church's proposed outdoor services any differently than services held indoors.

Only a handful of states apply attendance caps to outdoor religious worship at all. Of these, all but one has a size limit that presently exceeds 100 people.[11] Some of these states, like Nevada, allow larger outdoor gatherings if a "local health authority" approves a plan in advance[12]—something the District has categorically refused to do. Compl. at ¶¶ 63-65.

With so many other jurisdictions—including those that border the District—embracing less-restrictive alternatives, the District must provide evidence to show why it must take a different course. *See Hobby Lobby*, 573 U.S. at 730-31 (holding that existence of "an approach" other than the one used by the government showed least restrictive means were available, even if that approach does not "compl[y] with RFRA for purposes of all religious claims"). Unless it does so, it cannot prevail.

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[10] City of Boston, Places of Worship Overview (Updated Sept. 22, 2020), https://perma.cc/V9CL-XAS7.

[11] Ex. A (Colorado: 175 or potentially more; Connecticut: 150, up to 50% capacity as of October 8; Minnesota: 250; Nevada: 250 or potentially more; New York: 50 persons in Phase 4; Oregon: 250; Rhode Island: 250; Washington: 200-400 depending upon county phase, but no limit on drive-in services). While New York's statewide capacity restrictions are worse than the District's, its prior indoor capacity restrictions were enjoined as unconstitutional. *See Soos v. Cuomo*, No. 1:20-cv-651, 2020 WL 3488742 (N.D.N.Y. June 26, 2020). And of course the District cannot survive strict scrutiny simply because it is less restrictive than one state in the country. *See Holt*, 574 U.S. at 368-69.

[12] *See, e.g.*, Ex. A at 5 (Nevada Guidance for Safe Gatherings, https://perma.cc/W8Q4-TLW8).

CONCLUSION

Some COVID-19 church-closure cases have been difficult. But the combination of RFRA's clear rules and the many nearby states pursuing identical interests with far fewer restrictions on religious worship provide an easy path for deciding this case. Either the District provides actual evidence to satisfy strict scrutiny, or the injunction must be granted and the 100-person limit on outdoor, masked, distanced worship cannot be enforced.

Dated: October 6, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: October 6, 2020 /s/ *Mark L. Rienzi*

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms to the requirements of LCvR 5.4 and does not exceed 25 pages, as required by LCvR 7(o)(4).

Dated: October 6, 2020 /s/ *Mark L. Rienzi*

EXHIBIT A

Links to Applicable State Orders and Guidance Documents on Nationwide Gathering Capacity Restrictions

Alabama (no gathering capacity restriction on religious exercise as of October 5, 2020):

https://perma.cc/WS2G-LMM8;

https://perma.cc/85PC-92M5.

Alaska (no gathering capacity restriction on religious exercise as of October 5, 2020):

https://perma.cc/5RLE-JJJZ

Arizona (no gathering capacity restriction on religious exercise as of October 5, 2020):

https://perma.cc/NTP8-G9Q7.

Arkansas (no gathering capacity restriction on religious exercise as of October 5, 2020):

https://perma.cc/65YU-RKQG.

California (outdoor religious gatherings "should be limited naturally through implementation of strict physical distancing measures"):

https://perma.cc/LT3P-RTL9.

Indoor gathering restrictions based on county tier status:

https://perma.cc/D7XG-UH6D.

Colorado (a minimum of 175 people allowed at outdoor religious gatherings):

State instructs houses of worship to work with local authorities on capacity (Colo. Amended Public Health Order 20-35 § II(B)(2)(j)): https://perma.cc/EV8Y-9UKZ.

> While the "outdoor event" guidance is not meant for outdoor worship, there is a square-footage restriction with a cap of 175 people: https://perma.cc/3EQS-X4SP.

Connecticut (150 people allowed for outdoor religious gatherings, will move to 50% space capacity for outdoor gatherings on October 8, 2020):

> https://perma.cc/F4YR-ZAC5.

Delaware (no outdoor gathering capacity restriction on religious exercise as of October 5, 2020):

> 60% capacity limit for indoor religious gatherings: https://perma.cc/SK4D-Y2BG.

Florida (designating "Attending religious services" as an essential activity exempt from restrictions on public gatherings):

> https://perma.cc/4RLA-YQSN.

Georgia (no gathering capacity restriction on religious exercise as of October 5, 2020):

> Current Executive Order contains no worship-specific gathering restrictions: https://perma.cc/9Y3E-LFWQ.
>
> Governor's handout with Executive Order confirms that "in-person services at places of worship is allowed, but services must be held in accordance with strict social distancing protocols." https://perma.cc/DT6N-XA97.

Hawaii (no gathering capacity restriction on religious exercise as of October 5, 2020):

> Current Executive Order: https://perma.cc/HPC5-7L9S.

Idaho (no gathering capacity restriction on religious exercise as of October 5, 2020):

> Idaho guidance on houses of worship: https://perma.cc/5F9H-XC8Y.

Illinois (no outdoor gathering capacity restriction on religious exercise as of October 5, 2020):

> Operative Executive Order (indoor worship should be limited to 10 people): https://perma.cc/9GC3-UXS4.

Indiana (no gathering capacity restrictions on religious exercise as of October 5, 2020):

> "Indoor and outdoor venues of all types may open at full capacity:" https://perma.cc/5RRV-JG85.
>
> Revised guidance for houses of worship: https://perma.cc/8XLB-KGDG.

Iowa (no gathering capacity restrictions on religious exercise as of October 5, 2020):

> Effective guidance for spiritual and religious gatherings: https://perma.cc/B52X-ER8Y.

Kansas (no gathering capacity restrictions on religious exercise as of October 5, 2020):

> "Perform or attend religious or faith-based services or activities" protected from outset: https://perma.cc/NPJ8-C8QM.

Kentucky (no outdoor gathering capacity restrictions on religious exercise as of October 5, 2020):

> Indoor religious gatherings restricted to 50% of "building occupancy capacity." https://perma.cc/AUK3-RNNB.

Louisiana (no outdoor gathering capacity restrictions on religious exercise as of October 5, 2020; indoor religious gatherings have capacity restrictions):

> "Essential activity" is "[g]oing to and from one's place of worship:" https://perma.cc/567D-79CA.
>
> Interpretive memo on outdoor religious worship: https://perma.cc/7JNW-RTYB.

Indoor place of worship guidance: https://perma.cc/JQ8E-DLAT.

Maine (no outdoor gathering capacity restrictions on religious exercise as of October 5, 2020):

Indoor worship restricted to 50 persons or less, while "[o]utdoor services are encouraged" and "require adherence to physical distancing guidelines": https://perma.cc/8BYF-H3TH.

Maryland (indoor religious gatherings limited to 75% of capacity; no capacity restriction on outdoor religious gatherings):

Executive Order: https://perma.cc/Z7JD-YPQY.

Massachusetts (no outdoor gathering capacity restrictions on religious exercise as of October 5, 2020; capacity restrictions in place on indoor religious gatherings):

Gatherings for religious worship exempted from outdoor capacity gathering requirements: https://perma.cc/5W3R-BW82.

Outdoor services "encouraged:" https://perma.cc/4U9X-U2W5.

Michigan (no gathering capacity restrictions on religious exercise as of October 5, 2020):

Michigan Supreme Court ruling invalidating executive orders on COVID-19, from October 2, 2020: https://perma.cc/N88E-TZC8.

Minnesota (250-person capacity for indoor and outdoor religious gatherings):

https://perma.cc/3QAA-2ZKB.

Mississippi (no gathering capacity restrictions on religious exercise as of October 5, 2020; indoor religious gatherings also exempted from capacity restrictions):

Executive Order exempting religious gatherings from outdoor gathering requirement: https://perma.cc/9FVJ-C9LW.

Missouri (no gathering capacity restrictions on religious exercise as of October 5, 2020):

> In-person worship services may be attended, while "streaming services and other opportunities" encouraged: https://perma.cc/2U8U-J5U6.

Montana (no gathering capacity restrictions on religious exercise as of October 5, 2020):

> https://perma.cc/XJ3B-LLDT.

Nebraska (no gathering capacity restrictions on religious exercise as of October 5, 2020):

> https://perma.cc/AU7B-BCLC.

Nevada (religious gatherings are limited to 250 people or 50 percent of fire code capacity, indoor or outdoor, with potential to exceed 250 people at venues with greater than 2,500 total fixed seating capacity):

> https://perma.cc/RN29-VHKU
>
> At venues with greater than 2,500 total fixed seating capacity and upon approval of a local health authority, the 250-person cap can be exceeded: https://perma.cc/59QH-C34L.

New Hampshire (outdoor religious gatherings limited only by "the highest number of attendees for which the social distancing requirements contained in this guidance can be met using the space available for the service." Indoor religious gatherings subject to capacity restrictions):

> https://perma.cc/77UK-WGQZ.

New Jersey ("[o]utdoor religious services are exempt from the limit on outdoor gatherings and can exceed the normal outdoor capacity of 500 people." Indoor religious gatherings subject to capacity restrictions):

> https://perma.cc/WE5B-YCUR.

New Mexico (no outdoor capacity gathering restriction on religious exercise; 40% capacity restraint on religious services within "an enclosed building," while confirming that "'Houses of worship' may hold services and other functions, indoors or outdoors, or provide services through audio visual means"):

https://perma.cc/XA6D-X4K9.

New York (50 people upon entry into Phase 4):

https://perma.cc/DSN5-6NTN.

https://perma.cc/LW4F-52FM.

The 25% occupancy restriction on indoor religious gatherings was enjoined as unconstitutional in *Soos v. Cuomo*, 2020 WL 3488742 (N.D.N.Y. Jun. 26, 2020).

North Carolina (exempting "Worship, religious, and spiritual gatherings" from restrictions on public gatherings):

https://perma.cc/6MJY-WJG3.

North Dakota (no gathering restriction on religious exercise as of October 5, 2020):

https://perma.cc/2FFQ-KDGP.

Ohio (no gathering restriction on religious exercise as of October 5, 2020):

https://perma.cc/4Q97-GMFN.

Oklahoma (no gathering restriction on religious exercise as of October 5, 2020):

https://perma.cc/SC5M-R4W2.

Oregon (100 people for indoor religious gatherings, 250 people outdoor):

https://perma.cc/ZFP5-H52W.

Pennsylvania (exempting "religious gatherings" from restrictions on public gatherings):

https://perma.cc/GCR6-UPUG.

Rhode Island (services limited to lesser of 66% capacity or 125 persons indoors / 250 persons outdoors):

https://perma.cc/L3QZ-9MVS.

South Carolina (designating religious services as essential activities and exempting them from restrictions on public gatherings):

https://perma.cc/35WK-6FX5.

https://perma.cc/3H9P-4KD8.

South Dakota (no gathering capacity restrictions on religious exercise as of October 5, 2020):

https://perma.cc/SS3J-3M8J.

Tennessee (designating religious gatherings as an essential service exempt from restrictions on public gatherings):

https://perma.cc/P78U-7S4G.

> The governor's guidance for houses of worship specifies that it provides only "suggestions" that "are not, and should not be construed as, mandates or requirements."

https://perma.cc/JZW8-UV2V.

Texas (exempting "religious services" from restrictions on public gatherings):

https://perma.cc/X5S7-UDCE.

Utah ("[F]aith groups are able to hold in-person religious services of any size as long as a distance of at least six feet is maintained between household groups."):

https://perma.cc/K3CG-FPAJ.

Vermont (outdoor worship limited only by social-distancing rules; no numerical cap; indoor religious gatherings subject to capacity restrictions):

https://perma.cc/4GRG-5DNC.

Virginia (no gathering capacity restriction on religious exercise as of October 5, 2020):

https://perma.cc/KM2U-RX56.

Washington (no restriction on outdoor limit on drive-in services, other outdoor services capped between 200 and 400, depending on which phase the county is in)

https://perma.cc/B9LX-GFC5.

https://perma.cc/U4UM-J3X6.

West Virginia (designating "religious gatherings" as an essential activity exempt from restrictions on public gatherings):

https://perma.cc/G65A-K78V.

Wisconsin (no gathering restriction on religious exercise as of October 5, 2020):

Wisconsin Supreme Court decision invalidating stay-at-home order from May 13, 2020:

https://perma.cc/ESL3-VD8P.

Wyoming (exempting "Religious or faith based organizations" from restrictions on public gatherings):

https://perma.cc/MNF2-T4QE.