



Restrictions on Religious Freedom During the Coronavirus Crisis

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The spread of the coronavirus is disrupting life in America and around the world in unprecedented ways. All across the United States, governmental authorities are restricting when people can leave their homes and what activities they can engage in when they do.

These restrictions are impacting many areas of life, including our religious exercise and worship, specifically our ability to gather in local church buildings. The following examples of state and local government restrictions are currently impacting religious practice around the country:

- (1) Restrictions on nonessential entities and businesses (which affect the ability of places of worship to continue operating – unless designated “essential”);
- (2) Restrictions on the movement of pastors and clergy as part of the general restrictions on movement (which affect the ability of pastors and clergy to attend to spiritual needs – unless designated “essential”); and
- (3) Restrictions on meetings and gatherings of people (which affect worship services).

Unsurprisingly, many Americans (for whom faith is essential) are grappling with how to adapt to government gathering restrictions – policies which have transformed how many parishioners are spiritually fed during the coronavirus. While many churches are conducting services through live streams, “drive-in” services, and other means, questions remain. Many have questioned whether these restrictions are appropriate, and whether – when applied to religious activity – they are unconstitutional or violate religious freedom protections. How should the faith community think about the government’s guidance in light of the restrictions? How should we think about religious liberty during a national pandemic when the government assumes greater power?

In this Issue Brief, we will discuss these concerns, with a particular focus on the different restrictions affecting religious activity, whether they violate religious liberty, and how churches and houses of worship can move forward and respond to the pandemic.

The Facts: What Restrictions Are in Place?

Federal Restrictions

While the federal government has not set policies explicitly restricting a church’s ability to hold public worship services, it is encouraging people to abide by state and local orders. The Department of Homeland Security (DHS) has issued guidance on who it considers to be an “essential worker” during the coronavirus response and included “clergy for essential support” in its list of community-based

essential workers.¹ According to DHS, clergy are critical to the current crisis and must remain able to operate. This guidance will allow clergy to continue to move around to serve those in spiritual need at this time.

State Restrictions

Most states have put in place broad restrictions in response to the coronavirus, and these policies have impacted the ability of churches to function and religious believers to gather in a variety of ways.

Over 40 states have instituted shelter-in-place orders, which restrict gatherings and designate which individuals and entities are considered essential (and thus able to operate with fewer restrictions on their movement).² The strictness of the order varies by state, but most states will only allow people to leave their homes for “essential” purposes, such as grocery shopping, picking up medical supplies, or socially distanced exercise. These states have also placed restrictions on how many people can gather in one place at the same time, which is usually 10 people.³

Within the context of these restrictions, states have taken different approaches in their treatment of religious gatherings and operations. Some have provided for them to continue to function in some fashion, and other states have considered them nonessential or otherwise have not addressed them at all.

There are several different approaches states are taking to allow houses of worship and their employees to continue operating. Twenty-one states have some type of policy recognizing the essential nature of religious services and personnel:

(1) Twelve states have designated places of worship as essential services. This designation allows houses of worship to remain open, though they must abide by guidelines, such as social distancing (individuals must remain six feet apart).

- Alabama⁴
- Colorado⁵
- Delaware⁶
- Florida⁷
- Indiana⁸
- Mississippi⁹
- New Hampshire¹⁰
- North Carolina¹¹
- Ohio¹²
- South Carolina¹³
- Tennessee¹⁴
- Texas¹⁵

(2) Five states have deemed travel to religious places of worship as essential. This designation allows people to travel to a house of worship, but does not allow services of more than 10 people to be held. For example, an individual would be able to go and pray in a chapel while maintaining social distancing.

- Louisiana¹⁶
- Missouri¹⁷

- New Jersey¹⁸
- North Carolina¹⁹ (also designates places of worship as essential)
- West Virginia²⁰

(3) Three states have categorized clergy and religious employees as essential. This designation, congruent with federal DHS guidance, allows the employees to continue providing in-person spiritual care and operating their houses of worship despite general stay-at-home orders.

- Massachusetts²¹
- Minnesota²²
- New Hampshire²³ (also designates places of worship as essential)

(4) Three states have not designated places of worship as essential but have allowed them to remain open.

- Michigan²⁴
- New York²⁵
- Pennsylvania²⁶

Kansas' governor originally exempted churches from the general stay-at-home order so long as they could engage in social distancing.²⁷ The governor subsequently rescinded this exemption, and despite an attempted legislative veto²⁸ the executive order stands. It is of note (as a non-binding, official statement of policy) that the Attorney General – while strongly encouraging people to voluntarily comply with the gathering ban – found that the executive order rescinding the church exemption violates the Kansas Constitution and state law, and “strongly discourage[d] law enforcement from attempting to enforce the requirements of EO 20-18 as violations of the criminal law.”²⁹

New Mexico had exempted religious services from gathering bans altogether,³⁰ but this exemption was eliminated just before Easter.³¹

Twenty-nine states currently do not have a policy recognizing religious services or employees as essential, or otherwise providing recognition to religious services and employees as part of their coronavirus restrictions.

Local Restrictions

Some local governments have set their own policies during the coronavirus, some of which have failed to recognize religious services or personnel as essential.

Some, such as Louisville, Kentucky, went so far as to restrict Easter services, including “drive-in” services, which would allow people to maintain social distancing and celebrate the holy day.³² A federal district court judge in Louisville issued a temporary restraining order against the enforcement of the restriction. In *On Fire Christian Center v. Fisher*, Judge Justin Walker held that the threats against On Fire Christian Center by Louisville’s Mayor and police force violated the First Amendment.³³ Judge Walker noted that religious conduct was not being treated neutrally by the city; Kentucky was still allowing drive-through liquor stores and restaurants to operate while churches were not free to do the same. Therefore, Judge Walker ruled the city appeared to be targeting religious practices and likely violated the Constitution and state law. In Greenville, Mississippi, the police started issuing tickets for members

of Temple Baptist Church who attended a drive-in church service.³⁴ This church and others are currently engaged in various stages of litigation over these matters.

Tampa, Florida, issued an order that did not designate any religious houses of worship as essential. However, Florida's order did list houses of worship as essential, and was subsequently amended to make clear that the state order superseded any local order.³⁵

Instances and Claims of Governmental Overreach

In some jurisdictions such as Louisville, Kentucky, and Greenville, Mississippi, mayors have prohibited churches from hosting "drive-in" services even though congregants stay in their vehicle for the duration of the service. In Greenville, members of Temple Baptist Church and King James Baptist Bible Church were blocked or subjected to \$500 tickets despite worshipping inside their cars, before backing down.³⁶ In Louisville, a federal judge intervened over Easter weekend after Mayor Greg Fisher issued a directive prohibiting drive-in worship services. In his temporary restraining order against the city, District Judge Justin Walker wrote, "An American mayor criminalized the communal celebration of Easter... The Mayor's decision is stunning. And it is, 'beyond all reason,' unconstitutional."³⁷

Other public officials have expressed policy positions that could be unconstitutional if carried out. For example, New York City Mayor de Blasio threatened to "permanently" shut down churches and synagogues if they did not cease operations.³⁸ What exactly he meant by "permanently" is unclear. Forcing a noncompliant place of worship to close for the duration of the temporary gathering restriction (instead of responding to each meeting attempt) is different from shuttering a place of worship even after the current emergency ends. The current ambiguity in his statement could pave the way for an unconstitutional policy, and certainly lends credibility to fears of government overreach.

At times there have been assertions of state overreach that are unmerited, such as the claim that Governor Northam of Virginia has made it illegal for people to gather for church. It is important to note that Virginia did not target churches with the state's 10-person gathering limit,³⁹ but limited gatherings at theatres, gyms, hair salons, bowling alleys, and other places also. Generally, when such government restrictions are necessary and neutral (not targeted toward religious gatherings), then they do not violate religious liberty – as will now be discussed.

The Law: Can the Government Restrict Religious Practice Right Now?

The ability to gather and practice our faith is a fundamental right, guaranteed by the First Amendment to the Constitution and various other federal and state legal protections. However, even under the most robust standard of First Amendment religious freedom law, there are some limitations to this right. The government can only "substantially burden" or stop church gatherings or other sincere religious practices after (1) showing a compelling interest, and (2) demonstrating that its policy is restricting religious freedom in the narrowest way possible to advance this compelling interest.

The need for drastic measures to protect public health during a growing pandemic generally will provide the government with a compelling interest. And limiting the number of people gathered together is likely the narrowest and least restrictive means of doing so. Furthermore, as *Jacobson v. Massachusetts* reminds us, emergency circumstances like these also alter how rights are protected and may not result in the same demands being placed on the government as in normal times.⁴⁰

Thus, the neutral and generally applicable restrictions on gatherings being put in place nationwide are, in most cases, likely constitutional – even if they have the effect of temporarily limiting religious meetings *along with other types of meetings*.

Under this approach, the government must ensure it does not discriminate against churches or religious activities. In *Employment Div., Dep't of Human Res. v. Smith*, the Supreme Court ruled that neutral and generally applicable laws are constitutional even if they infringe on religious exercise.⁴¹ However, as the Court reiterated in *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, laws are unconstitutional if they are not neutral and if they are targeted towards suppressing religious exercise.⁴² More recently, in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Court affirmed that governments cannot show “hostility” to religion in their decision-making.⁴³

Failure to exempt churches from generally applicable laws may not be unconstitutional. If the state is preventing other gatherings from occurring, such as going to movie theatres and bowling alleys, then churches not being exempt likely does not violate religious freedom law. If the state allows people to have “drive-in” movies but forbids the same activity for church services, it has likely violated the First Amendment.

Yet if the state institutes a general ban and does not specifically target churches, under the *Smith* analysis, it is likely constitutional. However, if people can gather in a church while maintaining social distancing of six feet apart, it may be unconstitutional if they are not permitted to meet.

Thus, to comply with the Constitution, it is imperative that the government does not target and single out religious gatherings or activities for restriction during the coronavirus response.

Does the failure to designate “religious services” or places of worship as essential violate religious freedom?

For the reasons listed above, churches likely do not need to be deemed essential as a general matter. However, it also depends on how broadly states are listing essential services. If a state starts to list a number of entities as essential but not religious entities, it could pose a problem. For example, it would be problematic if a state were listing barbershops and not churches as essential.

Does the failure to permit travel to places of worship violate religious freedom?

Failing to allow people to travel for religious purposes could be unconstitutional. If people remain in their cars, like they do at a “drive-in” worship service, they are at lower risk of catching the virus. This means there is a lower compelling interest for the government to restrict travel for this purpose. Furthermore, if people are allowed to travel in their cars for other purposes but not for religious purposes, it may indicate that the government is not treating religious activities neutrally. It is unconstitutional for the government to target churches and treat religious activities differently than non-religious actions.

Does the failure to designate religious workers as essential violate religious freedom?

Failing to designate religious workers or clergy as essential may not violate religious freedom. However, if clergy are unable to live stream or provide spiritual services to people, it may be unconstitutional.

Does it violate religious freedom to allow churches to remain open but not designate them as essential?

It likely does not violate religious freedom if churches are allowed to remain open even though they are not deemed essential. If people are still able to attend their church and pray, then infringement of religious liberty is unlikely. The designation of essential is likely not legally required when churches are allowed to remain open.

Policy Recommendations: Designate Religious Services and Clergy as “Essential” and Issue Religious Freedom Guidance

Federal Government

- (1) The federal government should recommend a policy of designating places of worship as essential.

While DHS has designated clergy as essential (which is a welcome step), clarity that religious services themselves are essential is still needed. While states may set policy in this regard, they will often look to the recommendations of the federal government. Right now, there is a patchwork of state policies on this question, and guidance from the federal government could help provide clarity.

- (2) To further protect religious liberty, DOJ should publish religious liberty guidance.

The actions of DHS and DOJ in defense of religious liberty during the coronavirus, and the administration more broadly, have been welcome. But guidance like that published by the state of Texas would provide more clarity.

The federal government has addressed the need to protect religious liberty in the context of government restrictions.

The DOJ did intervene in Greenville, Mississippi, where it filed a statement of interest on behalf of Temple Baptist Church in its case against the city.⁴⁴ The city has since dropped the case.⁴⁵

United States Attorney General William Barr publicly made comments highlighting the importance of religious liberty, noting “a free society depends on a vibrant religious life by the people. So any time that’s encroached upon by the government, I’m very, very concerned.”⁴⁶ The Attorney General also noted that these restrictions should not be long-term: “I would hate to see restrictions on religion continue longer than they are strictly necessary.” In addition, Eric Dreiband, the DOJ Assistant Attorney General for Civil Rights, spoke with Tony Perkins on *Washington Watch* about the implications of religious liberty during the pandemic,⁴⁷ and highlighted the need for religious entities to be treated equally as other public places during the pandemic. He observed that the DOJ would investigate if they hear of churches or houses of worship being singled out or treated with animus. Those who are concerned they may have been discriminated against or had their religious liberty violated can contact the DOJ’s Office of Civil Rights.⁴⁸

State Governments

- (1) State governments should designate clergy and places of worship as essential and should supersede local orders.

While all four of the state policy approaches outlined above offer some leeway to religious services and their operations, the ideal approach is a combination of the first and third options – to designate clergy and houses of worship as essential. It allows the most leeway for religious entities to continue to operate consistent with the public health needs of the moment, and allows clergy to provide in-person care to those in need. States should seek to emulate this approach.

In addition, state orders should include a provision providing that state orders supersede local ones – like that contained in Florida’s Executive Order 20-92.⁴⁹ This ensures uniformity across the state and prevents infringement of rights by local authorities acting out of step with the state government.

(2) State governments should publish religious freedom guidance like that issued by Texas.

State guidance is necessary to ensure that state and local governmental authorities do not violate religious liberty at this time.

Texas is one of the few states that has issued religious liberty guidance, noting that this fundamental right must be protected.⁵⁰ The guidance states that under religious liberty law, the government must give special consideration to houses of worship, but still may impose some limitations on them. In the guidance, houses of worship are encouraged by the state to conduct their religious services through remote audio and video services whenever possible. Texas’ guidance is a model that other government authorities should follow, as it can help protect religious liberty during this tenuous time.

Moving Forward: What Can the Church Do?

While these restrictions are difficult for many, they will eventually come to an end. In the meantime, we must ensure authorities are complying with religious freedom law. At the same time, churches should comply with legitimate governmental decrees that do not violate religious liberty.

While almost all pastors nationwide have complied with local stay-at-home orders and the guidance provided by the Centers for Disease Control and Prevention (CDC) and the White House,⁵¹ there have been a few who have defied restrictions on not meeting, choosing instead to hold public services or Bible studies. As a result, some of them have faced legal consequences. For example, in Louisiana, a pastor was arrested and held on misdemeanor charges for violating the state’s order against public meetings.⁵² In Florida, a Tampa pastor was arrested for holding services.⁵³

If there are legitimate violations of religious liberty, they must be addressed. Otherwise, while under the conditions imposed by the coronavirus, churches and houses of worship should determine how they can best adjust to the current circumstances, and help be a part of the solution instead of being a part of the problem.

Many churches across the country have already been adjusting and adapting to serve their congregations and communities in creative ways. For example, many churches are using live-streaming technology, such as Zoom, to hold weekly services and prayer meetings with their members. Some churches, such as Genoa Church⁵⁴ in Westerville, Ohio, and Highview Baptist Church⁵⁵ in Louisville, Kentucky, are holding “drive-in” services. These services allow churches to meet while still maintaining social distance and honoring the government’s ban on public gatherings.

Churches are also looking outward, seeking to serve their communities in tangible ways despite limitations on public meetings. For example, Faith Life Church in New Albany, Ohio, has delivered lunch to nurses and doctors and has provided meals to needy people in the community.⁵⁶ Resurrection Lutheran Church⁵⁷ in Juneau, Alaska, and Canyon Hills Friends Church⁵⁸ in Yorba Linda, California, are running food pantries in their communities. OpenDoor Church⁵⁹ in Burleson, Texas, created a national hotline for people to call in to receive prayer or to submit requests for help with grocery shopping. Other churches are providing free childcare to health care workers and buying groceries for those in need. Still others, like the Church of the Highlands in Birmingham, Alabama, are serving their community by opening a virus testing site in their church's parking lot.⁶⁰

These stories, and many others like them, represent the response of the vast majority of churches to the coronavirus pandemic.⁶¹ For more examples of how churches are serving their communities while abiding by government restrictions (along with additional resources from Family Research Council on churches and the coronavirus), visit our new web page: frc.org/church.

Conclusion

Even amid the most trying of circumstances, the right to freely exercise one's religion must not be improperly infringed or unconstitutionally abridged. These are challenging times for all, but it is also a time to encourage and care for one another and to protect the health and safety of our neighbors, while we work together to overcome the coronavirus.

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¹ "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response," U.S. Department of Homeland Security, March 28, 2020, https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated.pdf.

² Sarah Mervosh, Denise Lu and Vanessa Swales, "See Which States and Cities Have Told Residents to Stay at Home," *The New York Times*, April 7, 2020, accessed April 15, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>.

³ Ibid.

⁴ "Order of the State Health Officer Suspending Certain Public Gatherings Due To Risk of Infection by COVID-19," Office of the Governor - State of Alabama, April 3, 2020, <https://governor.alabama.gov/assets/2020/04/Final-Statewide-Order-4.3.2020.pdf>.

⁵ "COVID-19," Colorado Department of Public Health & Environment, April 2, 2020, <https://drive.google.com/file/d/1KXYTmRQXzIveMNIPCbfmVwVOjoExmCk9/view>. Colorado houses of worship may remain open but must practice social distancing or use electronic platforms.

⁶ "Fourth Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat," State of Delaware, March 22, 2020, <https://governor.delaware.gov/wp->

[content/uploads/sites/24/2020/03/Fourth-Modification-to-State-of-Emergency-03222020.pdf](#). Delaware houses of worship and other places of religious expression or fellowship (subject to the requirements of existing emergency orders, whose requirements are not affected by this Order).

⁷ “Executive Order Number 20-91,” State of Florida, April 1, 2020, https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91.pdf. Florida deemed religious services conducted in churches, synagogues, and houses of worship as essential.

⁸ “Executive Order 20-08,” State of Indiana, March 23, 2020, https://www.in.gov/gov/files/Executive_Order_20-08_Stay_at_Home.pdf. Indiana deemed religious entities as essential, provided they abide by CDC guidelines.

⁹ “Executive Order No. 1463,” State of Mississippi, March 24, 2020, <https://www.msema.org/wp-content/uploads/2020/03/Executive-Order-1463.pdf>. In Mississippi, religious entities are essential but must abide by CDC recommendations.

¹⁰ “EXHIBIT A to Emergency Order #17,” State of New Hampshire, <https://www.governor.nh.gov/news-media/emergency-orders/documents/emergency-order-17.pdf>. New Hampshire considers religion as an essential function, as well as workers at places of worship (essential entities can continue to operate with necessary staff to complete critical and essential functions).

¹¹ “Executive Order No. 121,” State of North Carolina, March 27, 2020, <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>. North Carolina declared religious entities as essential businesses for counseling and pastoral care.

¹² “Director’s Stay At Home Order,” Ohio Department of Health, March 22, 2020, https://content.govdelivery.com/attachments/OHOOD/2020/03/22/file_attachments/1407840/Stay%20Home%20Order.pdf. Ohio lists religious facilities, entities and groups, and religious gatherings (including weddings and funerals) as essential.

¹³ “Executive Order No. 2020-21,” State of South Carolina, April 6, 2020, <https://governor.sc.gov/sites/default/files/Documents/Executive-Orders/2020-04-06%20eFILED%20Executive%20Order%20No.%202020-21%20-%20Stay%20at%20Home%20or%20Work%20Order.pdf>. South Carolina includes “attending religious services conducted in churches, synagogues, or other houses of worship” as an essential activity.

¹⁴ “Executive Order No. 22,” State of Tennessee, March 30, 2020, <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee22.pdf>. In Tennessee, religious activities are defined as essential. This includes personnel, services, rites, and gatherings, provided the health guidelines are followed to the greatest extent practicable.

¹⁵ “Guidance for Houses of Worship During the COVID-19 Crisis,” The Attorney General – Texas, <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/AG%20Guidance%20for%20Houses%20of%20Worship%20During%20the%20COVID-19%20Crisis.pdf>. Texas deems religious services as essential. They are encouraged to conduct their activities through remote audio and video services whenever possible.

¹⁶ Proclamation Number 33 JBE 2020, State of Louisiana, March 22, 2020, <https://gov.louisiana.gov/assets/Proclamations/2020/JBE-33-2020.pdf>. Louisiana essential activity is going to and from an individual’s place of worship.

¹⁷ “Stay At Home Order,” Missouri Department of Health and Senior Services, April 3, 2020, <https://governor.mo.gov/priorities/stay-home-order>. In Missouri, individuals may go to and from a place of worship, provided they adhere to the limitations on social gatherings and social distancing guidelines.

¹⁸ “Executive Order No. 107,” State of New Jersey, March 21, 2020, <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>. In New Jersey, people shall remain home unless leaving home for religious purposes.

¹⁹ “Executive Order No. 121,” State of North Carolina, March 27, 2020, <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>. North Carolina allows travel to and from a place of worship.

²⁰ “Executive Order No. 9-20,” State of West Virginia, March 23, 2020, https://coronavirus-wv.gov/status-cdn.azureedge.net/STAY_AT_HOME_ORDER.pdf. West Virginia deems it essential to be able to go to a place of worship.

²¹ “COVID-19 Essential Services,” Commonwealth of Massachusetts, March 23, 2020, <https://www.mass.gov/doc/covid-19-essential-services/download>. In Massachusetts, workers at places of worship are essential.

²² Emergency Executive Order 20-20, State of Minnesota, March 25, 2020, <https://www.leg.state.mn.us/archive/execorders/20-20.pdf>. In Minnesota, essential workers are classified as “Faith leaders and workers. This category includes officials, workers, and leaders in houses of worship and other places of religious expression or fellowship, wherever their services may be needed. This category also includes workers necessary to plan, record, and distribute online or broadcast content to community members.”

²³ “EXHIBIT A to Emergency Order #17,” State of New Hampshire, <https://www.governor.nh.gov/news-media/emergency-orders/documents/emergency-order-17.pdf>. In New Hampshire, “workers at places of worship” are essential (essential entities can continue to operate with necessary staff to complete critical and essential functions).

²⁴ “Executive Order 2020-11 (COVID-19),” State of Michigan, https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-521890--,00.html. Michigan issued a stay-at-home ban for nonessential activities, exempting places of worship from the penalty for violating the ban.

²⁵ “Governor Cuomo Issues Guidance on Essential Services Under The ‘New York State on PAUSE’ Executive Order,” New York State, March 20, 2020, <https://www.governor.ny.gov/news/governor-cuomo-issues-guidance-essential-services-under-new-york-state-pause-executive-order>. New York houses of worship are not ordered closed; however, worship services must abide by person limit.

²⁶ “Stay at Home Order Guidance,” Commonwealth of Pennsylvania, April 4, 2020, <https://www.governor.pa.gov/wp-content/uploads/2020/04/03.23.20-Stay-At-Home-Order-Guidance.pdf>. Pennsylvania states that “nothing in the policy shall be construed to affect the operations of religious institutions. However, religious leaders are encouraged to find alternatives to in-person gatherings and to avoid endangering their congregants. Individuals should not gather in religious buildings or homes for services or celebrations until the stay at home order is lifted.”

²⁷ “Executive Order No. 20-04,” State of Kansas, March 17, 2020, <https://governor.kansas.gov/wp-content/uploads/2020/03/20-04-Executed.pdf>.

²⁸ “Kansas Supreme Court upholds governor’s order banning gatherings of 10 or more people,” KCTV 5, April 14, 2020, accessed April 16, 2020, https://www.kctv5.com/coronavirus/kansas-supreme-court-upholds-governors-order-banning-gatherings-of-10-or-more-people/article_f6a1879c-7c62-11ea-ae2f-4f0eca54e052.html.

²⁹ “Memorandum,” State of Kansas – Office of the Attorney General, April 8, 2020, https://ag.ks.gov/docs/default-source/documents/addendum-1-to-law-enforcement-duties-and-authorities-memo.pdf?sfvrsn=7a60ac1a_2.

³⁰ “Public Health Order,” New Mexico Department of Health, March 23, 2020, <https://www.governor.state.nm.us/wp-content/uploads/2020/03/COVID-19-DOH-Order-fv.pdf>. New Mexico prohibits “mass gatherings” of more than five people but exempts those congregating in a church, synagogue, mosque, or other place of worship.

³¹ Lucas Peerman, “New Mexico’s mass gathering ban now includes houses of worship amid coronavirus fears,” *Las Cruces Sun-News*, April 11, 2020, accessed April 16, 2020, <https://www.lcsun-news.com/story/news/local/new-mexico/2020/04/11/new-mexico-mass-gathering-ban-coronavirus-churches-easter/2977527001/>.

³² “Mayor Fischer laments ‘painful’ time as drive-thru church services won’t be allowed for Holy Week,” WDRB, April 7, 2020, accessed April 16, 2020, https://www.wdrb.com/news/mayor-fischer-laments-painful-time-as-drive-thru-church-services-wont-be-allowed-for-holy/article_c7913fee-7909-11ea-afac-c77ed4014558.html.

³³ *On Fire Christian Ctr. v. Fischer*, No. 3:20-CV-264-JRW (W.D. Ky. Apr. 11, 2020), <https://www.courtlistener.com/recap/gov.uscourts.kywd.116558/gov.uscourts.kywd.116558.6.0.pdf>.

³⁴ Natasha Anderson, “Mississippi police issue \$500 tickets to drive-in church service attendees,” Fox 8, April 12, 2020, accessed April 16, 2020, <https://fox8.com/news/coronavirus/mississippi-police-issue-500-tickets-to-drive-in-church-service-attendees/>.

³⁵ Chelsea Tatham and Jillian Olsen, “Tampa Bay leaders, Gov. DeSantis at odds over order allowing in-person religious services,” WTSP-TV, April 2, 2020, accessed April 16, 2020, <https://www.wtsp.com/article/news/health/coronavirus/florida-governor-desantis-amends-stay-at-home-order-people-can-go-to-church/67-7326f3f5-e26d-4969-91ed-9b41c7577a1d>.

³⁶ “Mississippi town changes tune on ‘essential’ drive-in church services,” *Washington Times*, April 15, 2020, accessed April 16, 2020, <https://www.washingtontimes.com/news/2020/apr/15/erick-simmons-greenville-mayor-allows-essential-dr/>.

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- ³⁷ *On Fire Christian Ctr. v. Fischer*, No. 3:20-CV-264-JRW (W.D. Ky. Apr. 11, 2020), <https://www.courtlistener.com/recap/gov.uscourts.kywd.116558/gov.uscourts.kywd.116558.6.0.pdf>.
- ³⁸ Kaylee McGhee, “Bill de Blasio’s threat to permanently close churches and synagogues proves he has no idea what he’s doing,” *Washington Examiner*, March 30, 2020, accessed April 16, 2020, <https://www.washingtonexaminer.com/opinion/bill-de-blasios-threat-to-permanently-close-churches-and-synagogues-proves-he-has-no-idea-what-hes-doing>.
- ³⁹ “Executive Order No. 55 (2020),” Commonwealth of Virginia, March 30, 2020, [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf).
- ⁴⁰ *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).
- ⁴¹ *Emp’t Div. v. Smith*, 494 U.S. 872 (1990).
- ⁴² *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993).
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