

FREEDOM FROM RELIGION *foundation*

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April 17, 2020

The Honorable Jared Polis
Office of the Governor 136
State Capitol
Denver, CO 80203

Re: Protective measures for gatherings must apply to churches

Dear Governor Polis:

We are writing on behalf of the national Freedom From Religion Foundation's 31,000 members, including our Denver and Colorado Springs chapters and more than 900 Colorado members, to ask that you modify Colorado's stay at home order to fully include church and other religious gatherings. FFRF protects the constitutional separation between state and church, and educates about nontheism. We have taken complaints from our members and other citizens in your state about your order's exemption for religious gatherings.

We understand that your current order allows houses of worship to remain open but encourages them to implement electronic platforms to conduct services whenever possible or to conduct smaller (10 or fewer congregants) services. Unfortunately, this exemption does not go far enough and will endanger the health and possibly the lives of Coloradans.

One-third of all COVID cases in one large California county can be traced to church services. The numbers are even bigger elsewhere.¹ Reuters reported: "South Korea announced thousands of coronavirus cases in the space of only a few days in late February. The surge in cases centred mostly around one main cluster from a church in Daegu city."² That article documents the harrowing story of ***one infected person attending two church services and spreading COVID to another 1,200 people*** and that a single "church cluster accounts for at least 60 percent of all cases in South Korea."

¹ Hilda Flores, "One-third of COVID-19 cases in Sac County tied to church gatherings, officials say," [NBC News KCRA](#) (April 1, 2020).

² [Reuters](#), "The Korean clusters: How coronavirus cases exploded in South Korean churches and hospitals," (March 20, 2020).

Even small gatherings can be deadly. This includes gatherings of just 10 people, as permitted in your order. For instance, “Lee County [Alabama] had 105 confirmed cases and three deaths related to the virus. The surrounding counties had a combined total of 119 cases.” According to “officials at East Alabama Medical Center ... church gatherings have been tied to a swell in new cases across the area, explaining that even groups smaller than 10 people can spread the coronavirus.” As those doctors explained, “There were only 10 people at a time in the building, but the infection still spread.”³ Your current safe at home order is not safe enough.

Many Colorado churches have shown great creativity in adapting to online versions of church services, and are, in fact, admirably doing their part to avoid the spread of the coronavirus. But there are undoubtedly small churches or congregations in Colorado that will feel encouraged to meet in person because of the exemption in your order and will, in fact, meet — and that is an unnecessary risk the citizens of your state cannot afford. Religious facilities, entities, groups or gatherings simply are not in a category of providing essential services.

As we wrote to you on March 26, prohibiting religious gatherings is not a ban on worship any more than speed limits are a ban on driving. And this order is only temporary. These policies are guided by clear science: The more people who gather, the more viruses spread. Viruses do not respect boundaries or holy ground, they simply travel from person to person.

States *already* regularly limit worship gatherings that jeopardize public health. For instance, the government prohibits churches from cramming too many people into a building in violation of fire codes and also requires that church buildings comply with necessary building codes. *See, e.g., Christ College, Inc. v. Bd. of Sup’rs, Fairfax Cty.*, 944 F.2d 901 (4th Cir., 1991) (rejecting the argument that “zoning and fire safety policies of the [local government] impinged on [a church’s] first amendment rights to the free exercise of religion.”). The congregants’ right to gather and worship is limited by the government’s need to protect those congregants from being trampled to death and the community from a fire. Preventing large gatherings due to a pandemic is even more crucial.

In agreement is Kelly Shackelford, who runs First Liberty Institute (and has appeared on the opposite side of the courtroom and in the court of public opinion against FFRF on many occasions). He wrote an op-ed for the *Washington Post*, co-authored with R. Albert Mohler, a theologian and president of Southern Baptist Theological Seminary. The headline says it all: “Mandatory social distancing is not

³ Jack Helean, “East Alabama Medical Center says surge in COVID-19 cases likely due to church gatherings,” [ABC 33](#) (April 5, 2020).

a threat to religious liberty. It's essential for humanity." These men believe that "asking houses of worship to briefly suspend large gatherings is neither hostile toward religion nor unreasonable in light of the threat. Rather, this is a time for all of us to exercise prudence over defiance."⁴

The current exemption for limited church and religious functions allows some citizens to risk the lives of other citizens. Preachers seeking exemption from social distancing orders are not simply asking for a right to gather and worship, they are also asking for a right to risk the health and lives of every other member of the community and country. They are risking the lives of responsible Coloradans, immuno-compromised Coloradans, and other people who are, for instance, only risking exposure to get necessary groceries or medicine. These church meetings could risk overburdening the health care system.

Please take the action that is in the best interest of public health. Exempting religious gatherings, even if less than 10 people, will spread the pandemic. Data backs this up. Science tells us so. Please revise Colorado's stay at home order and remove the exemption for religious gatherings.

Very truly,



Annie Laurie Gaylor & Dan Barker

Co-presidents

ALG/DB:cal

⁴ April 3, 2020 op-ed. Available at <https://wapo.st/3dWT6Xv>.