

FREEDOM FROM RELIGION *foundation*

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April 3, 2020

SENT VIA EMAIL ONLY: GovernorRon.Desantis@eog.myflorida.com

The Honorable Ron DeSantis
State of Florida, The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Re: Protective measures for large gatherings must apply to churches

Dear Governor DeSantis:

I am writing on behalf of the Freedom From Religion Foundation to explain that Safer at Home orders must include, not exempt, church and other religious gatherings. FFRF is a national nonprofit organization with more than 31,000 members across the country, including more than 1,600 in Florida and an active state chapter, the Central Florida Freethought Community. FFRF protects the constitutional separation between state and church, and educates about nontheism.

We sent you a letter explaining that gubernatorial orders banning large gatherings must include worship services on March 26. Executive Order 20-91, which you issued on April 1, fails to meet this legal standard. It exempts “Attending religious services conducted in churches” from these necessary protective measures. §3(A)(i). Executive Order 20-92 specifies that the religious worship exemption “shall supercede” any measure issued by local officials. In other words, this pair of orders forces all localities, regardless of how overwhelmed their medical facilities are or how many people are infected, to allow large gatherings in churches.

The church exemption in your Safer at Home *will* kill Floridians. Data doesn’t lie: “Around one-third of confirmed cases of COVID-19 in Sacramento County [California] have been tied to church gatherings, health officials said.”¹ This exemption is unconstitutional and deadly. It should be rescinded immediately.

First, religious freedom does not require exempting churches from these orders. **Second**, such exemptions themselves unconstitutionally favor churches. **Third**, these exemptions are immoral and deadly.

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

1. There is no legal reason to exempt churches from these orders.

Americans have rights to worship and to assemble, but neither of those rights is unlimited and neither includes the right to risk other peoples' lives. Our First Amendment rights are limited. Freedom of speech does not include defamation or true threats. Political speech—a quintessential example of constitutionally protected speech—is even limited near polling places. Free assembly, and the free exercise of religion, are similarly limited.

Like all states, Florida *already* regularly limits 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.

There is no doubt that states have the authority to take necessary measures to protect public health. It is hard to imagine a clearer need for prohibiting church services and gatherings than a highly infectious global pandemic. More importantly, the Supreme Court and many lower federal courts have repeatedly held that burdening the First Amendment rights to worship and assemble is perfectly permissible to prevent the spread of diseases.

More than 100 years ago, in a 7-2 opinion, the Supreme Court explained that society and other citizens’ interest in stopping the spread of smallpox was greater than one individual’s religious rights. *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11 (1905). The Supreme Court reiterated this again and again. The “Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles” when the regulated conduct “posed some substantial threat to public safety.” *Sherbert v. Verner*, 374 U.S. 398, 403 (1963). *See also, Wisconsin v. Yoder*, 406 U.S. 205, 230 (1972). Put another way, the right to express deeply-held belief does not include the right to risk others’ health and safety. *Cheffer v. Reno*, 55 F.3d 1517, 1522 (11th Cir. 1995) (religious freedom does not include physical force or threats of such force.)

In fact, one federal court recently explained, “society has a compelling interest in fighting the spread of contagious diseases,” to the point of overriding other rights. *Whitlow v. California*, 203 F. Supp. 3d 1079, 1089–90 (S.D. Cal. 2016). The court

went on, “[a]ll courts, state and federal, have so held either explicitly or implicitly for over a century,” and then listed the cases dating back to 1903. *Id.* at 1090.

Prohibiting large gatherings is not a ban on worship any more than speed limits are a ban on driving. And this is only temporary. Churches all over the country are worshipping alone, in small groups or even in large groups online. The short-term ban is simply on the unsafe activity, regardless of purpose. These policies are guided by clear science: The more people that gather, the more viruses spread. Viruses do not respect boundaries or holy ground, they simply travel from person to person.

2. These exemptions unconstitutionally favor churches.

The Supreme Court has said time and again that the “First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Ark.*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15–16 (1947).

Courts have long ruled that the Establishment Clause of the First Amendment bars the government from preferring one religion over another, or religion over non-religion. *Everson*, 330 U.S. at 8 (the First Amendment “requires the state to be a neutral in its relations with groups of religious believers and non-believers”); *see also Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 27–28 (1997) (“government may not favor religious belief over disbelief”) (Blackmun, J., concurring).

The exemption for church services does not uphold First Amendment values, it unnecessarily favors churches and, therefore, violates the First Amendment.

3. Exempting churches from these orders is immoral.

This order is unpatriotic, unconstitutional, and, above all, immoral—because it will kill people. According to health officials, one third of all COVID cases in one large California county can be traced to church services. The numbers are even bigger elsewhere.² 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.”³ That article documents the harrowing story of one infected person attending two church services and spreading COVID to another 1,200 people and that that “Church cluster accounts for at least 60% of all cases in South Korea.”

² Hilda Flores, “One-third of COVID-19 cases in Sac County tied to church gatherings, officials say,” [NBC News KCRA](#) (April 1, 2020).

³ [Reuters](#), “The Korean clusters: How coronavirus cases exploded in South Korean churches and hospitals,” (March 20, 2020).

Clerics 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 Floridians, immuno-compromised Floridians, and other people who are, for instance, only risking exposure to get necessary groceries or medicine. These churches are also overburdening the health care system. Doctors are already working overtime and are already rationing beds and ventilators. Churches that hold services are contemptuously disregarding the efforts of these heroes.

In summary, your order is unconstitutional, immoral, and deadly. If that were not bad enough, the order tramples the Constitution and will kill Floridians, apparently, to support a charlatan. We understand from several news reports that including the exemption and local preemption in the orders was meant to pacify a few loud Christian nationalists lamenting the lawful arrest of Rodney Howard-Browne,⁴ who had violated local rules prohibiting large gatherings.

This pious scoundrel is not just spreading the coronavirus during these services, but also false information. Howard-Browne has claimed that his church is safe for worship because it has 13 machines that would “basically kill every virus in the place.”⁵ That is not true. Howard-Browne preached that people who have enough faith will see their rolls of toilet paper “multiply.”⁶ That is also untrue. You are endangering the lives of more than 21 million Floridians for this pastor.

You now know that exempting churches from these orders will spread the pandemic. Data backs this up. Science tells us so. If you do not rescind these orders, you are as responsible for the deaths as the egomaniacal cleric who insists on holding packed services despite knowing the catastrophic risk to the community.

Revise the Safer at Home order and remove the exemption for religious gatherings.

Sincerely,



Andrew L. Seidel
Attorney, Director of Strategic Response
Freedom From Religion Foundation

⁴ Gloria Gomez, “DeSantis order relaxes rules for churches, freeing megachurch pastor to resume services,” [FOX 13 News](#) Tampa Bay (April 2, 2020).

⁵ Adam Forgie, “Florida megachurch pastor arrested for leading packed services despite stay-at-home order,” [KUTV](#) (March 30, 2020).

⁶ Christina Zhao, Conservative Pastor who refused to close church amid coronavirus pandemic suggests God will help by multiplying toilet rolls,” [Newsweek](#) (March 29, 2020).