

FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL ONLY: health@publichealthmdc.com

Janel Heinrich
Director
Public Health Madison & Dane County
210 Martin Luther King Jr. Blvd.
Room 507
Madison, WI 53703

Re: Protective measures for gatherings must apply to churches

Dear Director Heinrich:

We are writing on behalf of the Freedom From Religion Foundation and our Dane County members to ask that Public Health Madison & Dane County modify its safer-at-home order to remove the exemption for church and other religious gatherings. FFRF is a national nonprofit headquartered in Dane County. We have more than 32,000 members and work to protect the constitutional separation between state and church, and educate about nontheism.

On May 13, 2020, the Wisconsin Supreme Court unfortunately overturned Governor Ever's statewide safer-at-home order. Soon after the decision was handed down, Public Health Madison & Dane County made the wise and prudent decision to issue its own safer-at-home order to protect Dane County residents. This new order implements almost the entirety of the statewide order, but puzzlingly re-categorizes churches as "essential" businesses and allows congregations to resume meeting in person. The statewide order had limited religious gatherings to 10 people. This unnecessary and ill-advised broadened exemption will endanger the health and possibly the lives of Dane County residents.

Since the beginning of this pandemic, churches have repeatedly been shown to be hotbeds for spreading COVID-19. One-third of all COVID-19 cases in one large California county were traced to church services. The numbers were 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

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).

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.”

Just this weekend, local health officials in Butte County, California, reported that a person who later learned they were positive for Covid-19 attended a California religious service on Mother's Day, exposing 180 other people to the novel coronavirus.³ Butte County Public Health noted that the church’s decision to open doors despite the governor's order would cost health officials many hours and present a “financial burden” during the COVID-19 response.

Even small gatherings can be deadly. Limiting church gatherings to 25 percent occupancy or 4 people per 1,000 square feet is not nearly enough to stop the spread of disease. “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.”⁴

These numbers make sense. Communal worship is communal. In other words, churches are uniquely susceptible to spreading the disease meaning, that they should not have lesser restrictions, but, if anything, greater restrictions. Everything about attending church in person is designed to flout social distancing and other best practice for not spreading this disease: Passing the collection plate, greeting neighbors with hugs and handshakes, handling the same religious books, sitting in pews, edging along in front of other worshippers to get to one’s seat, singing and reciting prayers loudly, sharing wine and wafers, common pools of water, and more. These aspects are almost unique to churches and are a reason why they should be treated, at the very least, like every other comparable entity. Of course, this doesn’t account for the common elements other businesses must deal with, such as public bathrooms, hundreds of passers-by opening doors, standing in lines to enter and exit, etc.

Many Dane County 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 some churches or

³ Dakin Andone and Artemis Moshtaghian, “A person who was Covid-19 positive attended a church service and exposed 180 people, officials say,” [CNN](#) (May 17, 2020).

⁴ Jack Helean, “East Alabama Medical Center says surge in COVID-19 cases likely due to church gatherings,” [ABC 33](#) (April 5, 2020).

congregations that will feel encouraged to meet in person because of the exemption in Dane County's order and will, in fact, meet — and that is an unnecessary risk that we, the citizens of Dane County, cannot afford. Religious facilities, entities, groups or gatherings simply are not in a category of providing essential services.

Even local church leaders agree that churches should not start holding in-person services at this time. Rev. Kerri Parker, executive director of the Wisconsin Council of Churches, which is a network of Christian churches that brings together about 2,000 congregations and more than one million church members across the state, recently commented on how the Wisconsin Supreme Court's decision should affect churches: "We can't in good conscience recommend, that because of this court decision, churches run out and make plans to reopen."⁵

We understand that this exemption was prompted, in part, by a case before the Supreme Court regarding the treatment of religious entities under stay-at-home orders. **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.

Governments *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., Peace Lutheran Church & Acad. v. Vill. of Sussex*, 246 Wis. 2d 502 (2001)(noting that "any burden the Fire Prevention Code may have on the sincerely held beliefs of the church is outweighed by [Wisconsin's] compelling interest in preserving life and property."). 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 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

⁵ Anthony Dabruzzi, "Despite Legal Challenges, Many Churches Not Ready to Open Yet," [Spectrum News 1](#) (May 17, 2020).

toward religion nor unreasonable in light of the threat. Rather, this is a time for all of us to exercise prudence over defiance.”⁶

Categorizing churches as essential businesses and permitting them to gather in person 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 Dane County residents, immuno-compromised Dane County residents, 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 with the guidelines you have provided, will spread the pandemic. Data backs this up. Science tells us so. Please revise Dane County’s safer-at-home order and remove the exemption for religious gatherings in order to protect the health and safety of all Dane County residents.

Very truly,



Annie Laurie Gaylor & Dan Barker

Co-presidents

ALG/DB:cal

⁶ April 3, 2020 op-ed. Available at <https://wapo.st/3dWT6Xv>.