

June 8, 2020

Re: Oppose HB 2530—Government Must Be Able to Protect Public Health

Dear Representative:

On behalf of the Pennsylvania chapter, members, and supporters of Americans United for Separation of Church and State, I write to express our opposition to HB 2530. This bill would prohibit the Governor and state and local officials from issuing emergency orders that limit in-person religious services, even if doing so is necessary to protect public health and safety. It would single out religious gatherings for preferential treatment, putting public health at risk and violating both the U.S. and Pennsylvania Constitutions.

This Bill Would Prevent Government Officials from Protecting the Public Health

According to the CDC, “large events and mass gatherings can contribute to the spread of COVID-19 in the United States via travelers who attend these events and introduce the virus to new communities.”¹ When asked whether the CDC guidance on mass gatherings applied to houses of worship, Dr. Anthony Fauci, the Director of the National Institute for Allergy and Infectious Diseases, responded: “crowds in church are important...it makes common sense that it involves the church.”² Like any virus, COVID-19 is just as likely to spread at houses of worship as at other gathering places.

Indeed, numerous outbreaks of COVID-19 have been connected to houses of worship. In Pittsburgh, for example, more than a dozen people connected to Eastminster Presbyterian Church, including the pastor, came down with the coronavirus.³ The Church closed their building and moved services online to protect the rest of the congregation.⁴ At least three people died and 37 congregants tested positive after attending a children’s ministry event in Arkansas.⁵ One church revival in Hopkins County, Kentucky, “can be traced directly to about 50 confirmed COVID-19 cases and six deaths.”⁶ And in New Rochelle, New York, 100 people, most of whom were members of the same synagogue, were forced into quarantine after a man who was carrying the virus attended events at the synagogue.⁷

Of course, there are many more examples that demonstrate that large in-person religious services, like other gatherings, can spread COVID-19. That is why, over the last few months, nearly two-thirds of the states temporarily suspended mass gatherings, including those at

¹ Centers for Disease Control and Prevention, Get Your Mass Gatherings or Large Community Events Ready, Interim Guidance for Coronavirus Disease 2019 (COVID-19) (Mar. 15, 2020), <https://bit.ly/2A00Fgx>.

² Jon Cohen, ‘I’m Going to Keep Pushing.’ Anthony Fauci Tries to Make White House Listen to Facts of Pandemic, *Science*, Mar. 22, 2020, <https://bit.ly/3fiPaRB>.

³ Peter Smith, *Church Rebounds From Cluster of COVID Cases*, *Pittsburgh Post-Gazette*, Apr. 20, 2020, <https://bit.ly/36ZLQHj>.

⁴ *Id.*

⁵ Graig Graziosi, *Coronavirus: 91-Year-Old Church Goer Dies After Pastor Hosted Service That Infected 34*, *Independent*, Mar. 26, 2020, available at <https://bit.ly/2W3GiHK>.

⁶ Renee Beasley Jones, *COVID-19 Claims Another Daviess County Resident*, *Messenger-Inquirer*, Apr. 12, 2020, available at <https://bit.ly/2L1kxCl>.

⁷ Joseph Spector & Jon Campbell, *Coronavirus Quarantine Lifted in New Rochelle as N.Y. Changes Statewide Policy*, *Lohud*, Mar. 28, 2020, available at <https://bit.ly/2Wtnl07>.

houses of worship.⁸ Experts believe it is only a matter of time until there is a second wave of COVID-19⁹ or that a different pandemic will hit.¹⁰ State and local officials must be able to issue emergency orders to protect public health under these circumstances. Tying the hands of government officials and forbidding them from limiting in-person religious gatherings regardless of the public health dangers will put lives at risk.

Targeting Religious Services for Preferential Treatment Violates the U.S. and Pennsylvania Constitutions

More than a century of legal precedent from the United States Supreme Court makes clear that the government has the authority to protect the public health even when some people have religious objections to complying.¹¹ As explained by the United States Supreme Court in *Prince v. Massachusetts*: “the right to practice religion freely does not include liberty to expose the community . . . to communicable disease.”¹² That is why, in the last few months, the Supreme Court¹³ and courts in California,¹⁴ Connecticut,¹⁵ Delaware,¹⁶ Illinois,¹⁷ Louisiana,¹⁸ Maine,¹⁹ Maryland,²⁰ New Hampshire,²¹ New Mexico,²² New York,²³ Tennessee,²⁴ Virginia,²⁵ and Washington²⁶ have rejected arguments that mass-gathering orders during this pandemic without exemptions for houses of worship violate the Free Exercise Clause of the U.S. Constitution. The

⁸ See e.g. [Ga. Exec. Order 04.02.20.01](#) (Mar. 23, 2020); [Ill. Exec. Order 2020-10](#) (Mar. 20, 2020); [Ky. Cabinet for Health and Family Services Order](#) (Mar. 19, 2020); [La. Proclamation No. 41 JBE 2020](#) (Apr. 2, 2020); [Me. Exe. Order 14 FY19/20](#) (Mar. 18, 2020); [Md. Exec. Order 20-03-30-01](#) (Mar. 30, 2020); [Mass. COVID-19 Order No. 13](#) (Mar. 23, 2020); [Okla. Exec. Order 2020-13](#) (Apr. 8, 2020).

⁹ Len Strazewski, *Harvard Epidemiologist: Beware COVID-19's Second Wave This Fall*, *Am. Med. Ass'n*, May 8, 2020, <https://bit.ly/3f0tokF>.

¹⁰ Jane Kim & Michelle Williams, *There Will Be Another Pandemic After the Coronavirus—And It's Time to Start Preparing Now*, *Fortune*, Mar. 29, 2020, <https://bit.ly/372Kw6I>.

¹¹ *Jacobson v. Massachusetts*, 197 U.S. 11, 27 (1905) (“Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.”).

¹² 321 U.S. 158, 166-67 (1944).

¹³ *S. Bay United Pentecostal Church v. Newsom*, ___ S. Ct. ___, 590 U.S. ___ (2020).

¹⁴ *South Bay United Pentecostal Church v. Newsom*, ___ F.3d ___, No. 20-55533, 2020 WL 2687079, (9th Cir. May 22, 2020); *Gish v. Newsom*, No. 5:20-cv-755, 2020 WL 1979970, (C.D. Cal. Apr. 23, 2020), *motion for injunction pending appeal denied*, No. 20-55445, ECF No. 21 (9th Cir. May 7, 2020); *Cross Culture Christian Ctr. v. Newsom*, ___ F. Supp. 3d ___, No. 2:20-cv-832, 2020 WL 2121111, (E.D. Cal. May 5, 2020), *appeal dismissed*, No. 20-15977, ECF No. 14 (9th Cir. May 29, 2020); *Abiding Place Ministries v. Wooten*, No. 3:20-cv-683, ECF No. 7 (S.D. Cal. Apr. 10, 2020).

¹⁵ *Our Lady of Sorrows Church v. Mohammad*, No. 3:20-cv-00674, ECF No. 14 (D. Conn. May 18, 2020).

¹⁶ *Bullock v. Carney*, ___ F.3d ___, No. 20-2096, 2020 WL 2819228 (3d Cir. May 30, 2020), *denying motion for injunction pending appeal of* ___ F. Supp. 3d ___, No. 1:20-cv-674, 2020 WL 2813316 (D. Del. May 29, 2020).

¹⁷ *Elim Romanian Pentecostal Church v. Pritzker*, No. 20-1811, 2020 WL 2517093, (7th Cir. May 16, 2020), *injunction pending appeal denied after challenged order expired*, ___ S. Ct. ___, No. 19A1046, 2020 WL 2781671 (U.S. May 29, 2020); *Cassell v. Snyders*, ___ F. Supp. 3d ___, No. 3:20-cv-50153, 2020 WL 2112374, (N.D. Ill. May 3, 2020), *appeal docketed*, No. 20-1757 (7th Cir. May 6, 2020).

¹⁸ *Spell v. Edwards*, ___ F. Supp. 3d ___, No. 3:20-cv-282, 2020 WL 2509078, (M.D. La. May 15, 2020).

¹⁹ *Calvary Chapel of Bangor v. Mills*, ___ F. Supp. 3d ___, No. 1:20-cv-156, 2020 WL 2310913, (D. Me. May 9, 2020), *motion for injunction pending appeal denied*, No. 20-1507 (1st Cir. June 2, 2020).

²⁰ *Antietam Battlefield KOA v. Hogan*, ___ F. Supp. 3d ___, No. 1:20-cv-1130, 2020 WL 2556496, (D. Md. May 20, 2020), *appeal docketed*, No. 20-1579 (May 22, 2020).

²¹ *Binford v. Sununu*, No. 217-2020-CV-00152 (N.H. Super. Ct. Mar. 25, 2020).

²² *Legacy Church v. Kunkel*, ___ F. Supp. 3d ___, No. 1:20-cv-327-JB-SCY, 2020 WL 1905586, (D.N.M. Apr. 17, 2020).

²³ *Nigen v. New York*, No. 1:20-cv-1576, 2020 WL 1950775, (E.D.N.Y. Mar. 29, 2020).

²⁴ *Davis v. Berke*, No. 1:20-cv-98, 2020 WL 1970712, (E.D. Tenn. Apr. 17, 2020).

²⁵ *Tolle v. Northam*, No. 1:20-cv-363, 2020 WL 1955281, (E.D. Va. Apr. 8, 2020), *motion for injunction pending appeal denied*, No. 20-1419, ECF No. 14 (4th Cir. Apr. 28, 2020), *petition for cert. docketed*, No. 19-1283 (U.S. May 12, 2020); *Lighthouse Fellowship Church v. Northam*, ___ F. Supp. 3d ___, No. 2:20-cv-2040, 2020 WL 2110416, (E.D. Va. May 1, 2020), *appeal docketed*, No. 20-1515 (4th Cir. May 4, 2020); *Hughes v. Northam*, No. CL 20-415 (Va. Cir. Ct. Russell Cty. Apr. 14, 2020).

²⁶ *Crowl v. Inslee*, No. 3:20-cv-5352, ECF No. 30 (W.D. Wash. May 8, 2020).

New Hampshire court explained that the impact of these orders on religion “is merely incidental to the neutral regulation and is otherwise reasonable given the limited duration of the order and the public health threat facing the citizens of this State.”²⁷ Even U.S. Attorney General William Barr released a statement explaining that the government can restrict religious gatherings in the same manner as secular gatherings.²⁸

On the contrary, the U.S. and Pennsylvania Constitutions *prohibit* the government from exempting houses of worship from all emergency orders. Under the Establishment Clause of the First Amendment of the U.S. Constitution, the government’s ability to issue religious exemptions is not unlimited: “At some point, accommodation may devolve into an unlawful fostering of religion.”²⁹ To avoid a constitutional violation, a religious exemption “must be measured so that it does not override other significant interests”³⁰ and may not “impose unjustified burdens on other[s].”³¹ In other words, when deciding whether to grant religious exemptions, the government is forbidden from granting a religious exemptions that will harm others.

There is no question that limiting the power of government officials in future emergencies and pandemics could cause a significant and unjustified danger to all. In *Tolle v. Northam*, for example, a Virginia Court recognized the harm that could result from exempting houses of worship from the mass-gathering ban: “Although the Court recognizes plaintiff’s constitutional concerns, those concerns do not outweigh the severe harm defendants would suffer if they could not enforce the Executive Order. Moreover, it is no exaggeration to recognize that the stakes for residents of the Commonwealth are life-or-death.”³²

Furthermore, the bill violates both the U.S. and the Pennsylvania Constitutions by preferring religious gatherings over nonreligious gatherings. The cardinal rule of the Establishment Clause is that governmental entities cannot take any action that “has the purpose or effect of ‘endorsing’ religion.”³³ Instead, “governmental neutrality between religion and religion, and between religion and nonreligion” must be maintained.³⁴ The Pennsylvania Constitution similarly requires that “no preference shall ever be given by law to any religious establishments . . .”³⁵ The exemption in HB 2530 is not neutral: houses of worship are given preferential treatment—it prohibits restrictions on in-person religious gatherings while allowing restrictions on similar secular gatherings.

²⁷ *Binford*, No. 217-2020-CV-00152.

²⁸ U.S. Dept. of Justice, Attorney General William P. Barr Issues Statement on Religious Practice & Social Distancing; Dept. of Justice Files Statement of Interest in Miss. Church Case (Apr. 14, 2020), <https://bit.ly/2YyEVCT>.

²⁹ *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327, 334-5 (1987) (*internal quotation marks omitted*).

³⁰ *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005); *see also Estate of Thornton v. Caldor, Inc.* 472 U.S. 703, 709-10 (1985) (“unyielding weighting” of religious interests of those taking exemption “over all other interest” violates Constitution).

³¹ *Cutter*, 544 U.S. at 726. *See also Texas Monthly, Inc. v. Bullock*, 480 U.S. 1, 18 n.8 (1989) (religious accommodations may not impose “substantial burdens on nonbeneficiaries”); *Jacobson*, 197 U.S. at 26 (“Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others.”).

³² *Tolle v. Northam*, Order, No. 20-CV-363 (E.D. Va. Apr. 8, 2020).

³³ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 305 (2000); *County of Allegheny v. ACLU*, 492 U.S. 573, 592 (1989).

³⁴ *McCreary Cty. v. ACLU of Kentucky*, 545 U.S. 844, 860 (2005) (*quoting Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)).

³⁵ Penn. Const. art. I § 3. *See also Springfield Sch. Dist. v. Dep’t of Educ.*, 397 A.2d 1154, 1170-71 (Pa. 1978) (Art. 1 § 3 is not stricter than the Establishment Clause and should be interpreted in a similar manner).

Conclusion

Representative Clint Owlett said he introduced the bill because churches were confused by conflicting public-health orders. Quelling confusion over emergency orders is a worthy goal. But exempting religious gatherings from all future orders does not achieve that goal. It only serves to place public health at risk.

Many faiths teach that in emergency circumstances, protecting people's lives comes first, and that it is an act of charity, justice, and love to stay home and to worship through alternative means. That is why so many have supported the temporary restrictions on in-person religious gatherings.³⁶ To protect people who attend religious worship services, as well as those who don't, we should encourage these efforts, not exempt houses of worship from the restrictions that apply to all other institutions. Thank you for your consideration on this important matter.

Sincerely,



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³⁶ Gov. Tom Wolf, *Gov. Wolf, Religious Leaders Encourage Alternate Forms of Religious Gatherings*, Apr. 4, 2020, <https://bit.ly/2MuZXuQ>. See also Elana Schor & Emily Swanson, [Poll: Most in US Back Curbing In-person Worship Amid Virus](#), AP, May 8, 2020.