



LEGAL MEMORANDUM

FR: Pacific Justice Institute
TO: Pastors and Church Leaders Throughout Florida
DT: April 6, 2020
RE: Governmental Authority to Restrict Church and Other Gatherings in Florida

INTRODUCTION

The unprecedented restrictions on everyday life resulting from COVID-19 (novel coronavirus) have prompted many questions from church leaders as to their legal obligations and responsibilities. Pacific Justice Institute has advised many church leaders navigating this crisis. In this resource, we will provide the legal background for the government directives so church leaders in Florida can make wise, legally informed decisions for their congregations.

BACKGROUND

On March 20, 2020, Florida Gov. Ron DeSantis issued four executive orders in response to the coronavirus pandemic.¹ Governor DeSantis ordered all healthcare practitioners to cease performing elective surgeries,² ordered the closure of gyms and fitness centers,³ and ordered all restaurants and bars to cease service of on-premise food and drink consumption for customers.⁴ These executive orders are statewide and have limited exceptions. Broward County and Palm Beach County received more specific orders from the Governor, including the ordered closure of on-premise service of restaurants and bars, as well as taverns, pubs, night clubs, banquet halls, cocktail lounges, cabarets, breweries, cafeterias, and any other alcohol and/or food service business establishment with seating for more than 10 people.⁵

On March 24, Governor DeSantis issued an executive order directing the State Surgeon General and State Health Officer to issue statewide public health advisories:

- Urging all persons over 65 years of age to stay at home;
- Urging all persons with serious underlying medical conditions to stay at home;
- Urging all persons who can work remotely from home to do so; and
- Advising the public against all social or recreational gatherings of 10 or more people.⁶

¹ Office of the Governor, 2020 Executive Orders.

² Executive Order No. 20-72 (Mar. 20, 2020).

³ Executive Order No. 20-71 § 2 (Mar. 20, 2020).

⁴ Executive Order No. 20-71 § 3 (Mar. 20, 2020).

⁵ Executive Order No. 20-70 (Mar. 20, 2020).

⁶ Executive Order No. 20-83 §§ 1-3 (Mar. 24, 2020).

During the month of March, Governor DeSantis refrained from issuing either a mandatory, statewide stay-at-home order or a mandatory, statewide ban on public gatherings.

On a county level, however, many Florida residents became subject to local and county-specific orders in March that did include shelter-in-place orders and/or bans on public gatherings of various sizes. Municipalities, including the city of Palm Coast,⁷ and multiple counties issued stay-at-home orders and related guidance, including the following:

1. Alachua County;⁸
2. Broward County;⁹
3. Hillsborough County¹⁰
4. Leon County;¹¹
5. Miami-Dade County;¹²
6. Monroe County.¹³
7. Orange County;¹⁴
8. Osceola County;¹⁵
9. Palm Beach County;¹⁶ and
10. Pinellas County.¹⁷

The varying titles of such orders – “shelter-in-place,” “stay-at-home,” and “safer-at-home” – can create confusion across different counties. According to the National League of Cities, generally speaking, a shelter-in-place order is most restrictive; a stay-at-home order is slightly less restrictive; and a safer-at-home order the least restrictive.¹⁸ However, the title of an order is not sufficient to indicate which businesses or movements are restricted, or to what extent. More importantly, some orders are mandatory, while others issue only suggested guidance. The

⁷ Emergency Proclamation of the City of Palm Coast (Mar. 22, 2020). See also, “Palm Coast issues voluntary stay-home order to city residents,” *News 4 JAX* (Mar. 23, 2020).

⁸ Emergency Order No. 2020-09, Stay at Home and Close All Non-Essential Businesses in Alachua County, Florida (Mar. 24, 2020). See also, Sarah Nelson and Payne Ray, “Gainesville and Alachua County order residents to stop avoidable trips from home, more businesses closed, as UF Health starts coronavirus testing in the Villages,” *The Gainesville Sun* (Mar. 23, 2020).

⁹ Broward County Emergency Order 20-03 (Mar. 26, 2020).

¹⁰ Executive Order of the Hillsborough County Emergency Policy Group Safer-at-Home Order in Response to a Countywide Threat from the COVID-19 Virus (Mar. 27, 2020).

¹¹ Amended Proclamation Declaring a Continuing Local State of Emergency in Leon County, Florida Proclamation No. 20-03, COVID-19 (Mar. 25, 2020).

¹² Miami-Dade County Emergency Order 070-20 (Mar. 19, 2020), as amended (Amendment No. 01 (Mar. 19, 2020), Amendment No. 02 (Mar. 21, 2020), and Amendment No. 03 (Mar. 23, 2020)); see also, “Stay-at-home order, curfew to be enacted in Leon County to stop spread of COVID-19,” *WCTV* (Mar. 24, 2020).

¹³ Monroe County announced that it would discuss and provide guidance on “essential” business on April 1, 2020. Monroe County, “COVID-19 (Coronavirus),” (Apr. 1, 2020) (“Monroe County has not yet written an order specifically defining “essential” businesses. It will be discussed today. The new Governor’s order allows county administrators to define “essential,” giving local governments the ability to adapt to their communities.”). On Mar. 30, *supra*, Governor DeSantis ordered Monroe County to follow the Miami-Dade County Emergency Order 070-20 (Mar. 19, 2020).

¹⁴ Orange County, Florida, Emergency Order No. 2020-04 (Mar. 24, 2020).

¹⁵ Emergency Order No. 2, Pertaining to COVID-19 (Mar. 26, 2020).

¹⁶ Order No. 2020-003a - Palm Beach County Directing Stay Home-Stay Safe: Safer at Home Policy - Amendment to Emergency Order Number 3 - Palm Beach County - COVID-19 (Mar. 29, 2020).

¹⁷ Resolution No. 20-20, COVID-19 Safer at Home Order (Mar. 25, 2020).

¹⁸ NLC Staff, “What’s the Difference Between Shelter in Place, Safer at Home, and Stay Home Orders?” (Mar. 30, 2020).

specific nuances of each local directive and county order are beyond the scope of this memorandum. The Centers for Disease Control (CDC), however, notes that these orders are “rapidly evolving,” acknowledges that definitions can vary by county, and directs each individual to local authorities for guidance.¹⁹

As of March 30, over 60 percent of Florida’s identified coronavirus cases were in Miami-Dade County and its neighboring counties of Broward, Palm Beach, and Monroe.²⁰ In order to harmonize the mandates across these four counties of close proximity, Governor DeSantis issued an executive order on March 30 for Miami-Dade County, Broward County, Palm Beach County, and Monroe County.²¹ Each county was ordered to restrict public access to businesses and facilities deemed non-essential pursuant to the guidelines previously established and enforced by Miami-Dade County on March 19 (the Miami-Dade Order).²² The Miami-Dade Order mandated the closure of non-essential businesses to the public, but also included an explicit carve-out for religious services:

This order does not limit the number of persons who may be physically present at any religious service. Persons attending religious services are urged, but are not required, to practice social distancing, such as keeping six feet between persons and limit group size to less than ten people.²³

In these four southern counties, Governor DeSantis has thus expressly exempted religious services from numerical limits on public gatherings; individuals were nonetheless urged to follow social distancing guidelines. The Miami-Dade Order also included an allowance for municipal authorities to impose more restrictive standards on a local basis: “The provisions of this order shall serve as minimum standards. Municipalities may impose more stringent standards within their jurisdictions.”²⁴

Although not required to do so by the Governor, many churches across Florida temporarily suspended their regularly scheduled services and activities in March – including Bible studies, youth group meetings, and choir rehearsals – in order to help stop the spread of coronavirus and to comply with local and county ordinances.

Indeed, throughout March many churches were required to comply with applicable local and county orders, even though they were not subject to a ban on public gatherings at the state-level. Some counties in Florida have banned larger public gatherings and do not exempt religious services from such bans. Hillsborough County, for example, has been in the news because the county sheriff arrested a pastor for holding Sunday services in violation of the county’s ban on

¹⁹ See CDC, “[Prepare for Your Health](#)” (Mar. 17, 2020); CDC, “[Stay Put – Learn How to Shelter in Place](#)” (Sept. 29, 2017).

²⁰ [Executive Order No. 20-89](#) (Mar. 30, 2020).

²¹ [Executive Order No. 20-89](#) (Mar. 30, 2020).

²² [Miami-Dade County Emergency Order 070-20](#) (Mar. 19, 2020), as amended ([Amendment No. 01](#) (Mar. 19, 2020), [Amendment No. 02](#) (Mar. 21, 2020), and [Amendment No. 03](#) (Mar. 23, 2020)); [Executive Order No. 20-89](#) (Mar. 30, 2020).

²³ [Miami-Dade County Emergency Order 070-20](#) § 5 (Mar. 19, 2020).

²⁴ [Miami-Dade County Emergency Order 070-20](#) § 7 (Mar. 19, 2020).

public gatherings of 10 or more individuals; the ban did not have an exception for religious services.²⁵

On April 1, Governor DeSantis issued a statewide stay-at-home order and ban on social gatherings, to go into effect at 12:01 EST on April 3.²⁶ The executive order includes a “safer-at-home” directive requiring all senior citizens and those with significant underlying medical conditions to stay home.²⁷ All persons in Florida are ordered to limit their movements and personal interactions outside of the home to only those necessary to obtain or provide essential services or conduct essential activities.²⁸

Religious services are specifically classified in Governor DeSantis’ statewide order as “essential activities” for which individuals may leave their homes.²⁹ Moreover, religious services are not subject to a statewide limit based on the number of those in attendance. The Governor’s April 1 executive order attaches and incorporates the previous Miami-Dade Order.³⁰ As discussed above, the Miami-Dade Order exempted religious services from bans on gatherings subject to specific numerical limits.³¹ The statewide executive order also exempts religious services from such restrictions. Governor DeSantis’ executive order does institute a ban on social gatherings of more than 10 people in public spaces.³² Consistent with the Miami-Dade Order, however, Governor DeSantis’ April 1 executive order classifies religious services as essential activities; essential activities are not a type of “social gathering” subject to the 10-person limit.³³

The April 1 statewide executive order from Governor DeSantis specifically asserts its authority to supersede any conflicting official action or order issued by local officials in response to coronavirus.³⁴ Governor DeSantis’ executive order thus protects attendance at worship services statewide as an “essential activity;” local authorities cannot prohibit it outright and cannot subject it to prescribed numerical limits.³⁵ Indeed, the day after Governor DeSantis’ statewide

²⁵ David K. Li, “[Florida pastor arrested after holding church services despite coronavirus orders](#),” *NBC News* (Mar. 30, 2020); [Administrator Order No. 20-05, Hillsborough County Administrator Order Updating COVID-19 Limitations for Establishments and Gatherings](#), § 4 (Mar. 20, 2020) (“All public or private gatherings, including community, civic, public leisure, faith-based events, sporting events, concerts and any similar events that bring together more than 10 people in a single room, single space, or any other venue, at the same time are prohibited. This prohibition does not include venues that provide essential goods or services such as grocery stores, hospitals, medical facilities, pharmacies, gas stations, bank/credit unions, shelters, and government agencies and their meetings.”).

²⁶ [Executive Order No. 20-91](#) (Apr. 1, 2020).

²⁷ [Executive Order No. 20-91](#) § 1(A) (Apr. 1, 2020).

²⁸ [Executive Order No. 20-91](#) § 1(B) (Apr. 1, 2020).

²⁹ [Executive Order No. 20-91](#) § 1(A)(i) (Apr. 1, 2020).

³⁰ [Executive Order No. 20-91](#) § 2(B) (Apr. 1, 2020).

³¹ [Miami-Dade County Emergency Order 070-20](#) § 5 (Mar. 19, 2020).

³² [Executive Order No. 20-91](#) § 3(C), (Apr. 1, 2020) (“A social gathering in a public space is not an essential activity. Local jurisdictions shall ensure that groups of people greater than ten are not permitted to congregate in any public space.”).

³³ [Executive Order No. 20-91](#) § 1(A)(i) and § 3(C) (Apr. 1, 2020).

³⁴ [Executive Order No. 20-91](#) § 4 (Apr. 1, 2020).

³⁵ The extent to which Governor DeSantis’ statewide order superseded local orders was originally a source of confusion. Steve Contorno, “[Ron DeSantis quietly signed second executive order targeting local coronavirus restrictions](#),” *Tampa Bay Times* (Apr. 2, 2020) (“DeSantis issued the second order to “provide clarity,” the document says. It did anything but.”). The unamended executive order from Governor DeSantis originally limited the superseding effect of his mandate such that it superseded local orders, “but only to the extent that such action or order allows essential services or essential activities prohibited by this Executive Order.” [Executive Order No. 20-91](#) § 4 [unamended] (Apr. 1, 2020). This § 4 was subsequently amended to read as follows: “This Order shall supersede

executive order, the Hillsborough City Council’s Emergency Policy Group met on April 2 and voted to rescind its prohibition against religious services with ten or more people as a type of banned public gathering.³⁶

Under the Florida Statutes (FS), individuals or entities found to be in violation of these county ordinances may be prosecuted for misdemeanors and subject to a fine of up to \$500, up to 60 days in jail, or both.³⁷ A Hillsborough County pastor was charged with one count each of second-degree misdemeanor unlawful assembly and violation of public health emergency rules.³⁸

Although President Trump has also issued Executive Orders in coordination with the CDC, these have so far been a less direct factor in the bans of mass gatherings than have state and local orders.³⁹ As a practical matter, the bans affecting churches are most likely to be enforced locally, pursuant to state law. State law will thus be the primary focus of this memo.

LEGAL DISCUSSION

Where does the Governor derive the authority to take drastic actions like temporarily banning core First Amendment activities including church gatherings? Chapter 252 of the FS provides that a “state of emergency shall be declared by executive order or proclamation of the Governor if she or he finds an emergency has occurred or that the occurrence or the threat thereof is imminent.”⁴⁰ The worldwide coronavirus pandemic is such an emergency. On March 9, Governor DeSantis declared a statewide public health emergency in Florida due to coronavirus.⁴¹

Upon the declaration of a state of emergency, the Governor has extremely broad powers. The FS authorizes the Governor to “issue executive orders, proclamations, and rules and may amend or rescind them. Such executive orders, proclamations, and rules shall have the force and effect of law.”⁴² The Governor may, in turn, “delegate such powers as she or he may deem prudent.”⁴³ The FS also grants emergency management powers to local authorities to declare a local state of emergency.⁴⁴

Does this sweeping authority give state and local officials discretion to override civil liberties? Temporarily, yes. However, the key word here is “temporarily.” The FS mandates that no state of emergency may continue for longer than 60 days unless renewed by the governor.⁴⁵

any conflicting official action or order issued by local officials in response to COVID-19.” [Executive Order No. 20-92](#), § 1 (Apr. 1, 2020).

³⁶ Hillsborough County Council, [Emergency Policy Group Meeting, Video 04-02-20](#) (April 2, 2020). *See also*, Hillsborough County Council, Emergency Policy Group, [COVID-19 Administrative Orders & Emergency Policy Group Notices](#).

³⁷ [FS § 125.69](#).

³⁸ [Hillsborough County Code of Ordinances and Laws, Art. II, § 22-28](#).

³⁹ On a federal level, emergency declarations are governed by the Stafford Act, 42 U.S.C. § 5121 et seq. There appear to be no cases involving the Stafford Act and the First Amendment.

⁴⁰ [FS § 252.36](#) (2).

⁴¹ [Executive Order No. 20-52](#) (Mar. 9, 2020).

⁴² [FS § 252.36](#) (1)(b).

⁴³ [FS § 252.36](#) (1)(a).

⁴⁴ [FS § 252.38](#) (3)(a).

⁴⁵ [FS § 252.36](#) (2).

Likewise, a state of emergency declared locally is limited to seven days and may be renewed, as necessary, only in seven-day increments.⁴⁶

Governor DeSantis' statewide stay-at-home order is scheduled to terminate on April 30.⁴⁷ Local orders are subject to seven-day limits and renewal in seven-day increments.⁴⁸ As they expire, local orders may not be renewed or may be redrafted to align more closely with the Governor's statewide executive order. It is unlikely that Governor DeSantis will terminate the current stay-at-home order, or the statewide public health emergency, prior to April 30.

Based on PJI's more than 20 years of experience litigating in federal and state courts in multiple states, including Florida, PJI believes it is highly likely a court would defer to government officials in this crisis — at least in the short term — and uphold bans on public religious gatherings notwithstanding the First Amendment.⁴⁹ Florida has a compelling interest in ensuring the health and safety of its citizens, and its actions are not motivated by anti-religious animus. However, the longer the state of emergency lasts, the less likely courts are to view infringements on the right to gather for religious purposes as a temporary emergency measure.

Churches will have a variety of responses to such directives. Beyond the legal issues presented, the guidance and overarching health crisis are spiritual challenges to be wrestled with by pastors and, where applicable, the eldership or other ecclesiastical authority of a church.

Many churches have already complied with the Governor's order and local orders, even before they were mandates, and will continue to do so. In many ways, churches today are better positioned than many other entities to deal with this crisis. Most churches now broadcast their sermons and/or services online, and tithing can also usually be done online. Churches may possibly spread out their services throughout the week and have more services on the weekend in order to reduce the total number of congregants at one time. Home-based groups within churches may be well positioned to take on a greater role in the absence of larger gatherings. In many ways, this would be a return to the church's New Testament roots. This crisis may also present tremendous service opportunities such as delivering groceries to the elderly, becoming better acquainted with neighbors and their needs, sharing resources, and offering prayer for the sick and those in our immediate surroundings.

Some church leaders may feel they cannot in good conscience cancel worship services or exclude people from small-group gatherings in order to achieve prescribed numeric limitations. They may believe that the biblical admonitions not to forsake the assembling together, laying hands on the sick, and similar commands do not yield to bans on mass gatherings or health crises. PJI has not and does not advise any violation of law at a federal, state, or local level. PJI also has not and cannot advise an individual to violate his personal conscience. Throughout history, the church has met secretly – and, when necessary, illegally – from the catacombs of

⁴⁶ [FS § 252.38](#) (3)(a)(5).

⁴⁷ [Executive Order No. 20-91](#) (Apr. 1, 2020).

⁴⁸ [FS § 252.38](#) (3)(a)(5).

⁴⁹ In New Hampshire, a Merrimack County Superior Court judge upheld Gov. Chris Sununu's order to restrict the size of public gatherings to fewer than 50 individuals, because of the COVID-19 pandemic. In so doing, Judge John Kissinger dismissed a lawsuit filed by three religious leaders and activists claiming that the New Hampshire ban violated the state constitution's protection of the right to assembly and the right of free speech under the First Amendment of the U.S. Constitution. Judge Kissinger has not yet issued his written opinion. "[Judge upholds governor's power to ban large gatherings](#)," *New Hampshire Union Leader* (Mar. 20, 2020).

Rome to the barns of Puritan England and Chinese house churches of today. These are sobering decisions that church leaders should not undertake lightly. If a church is hierarchical or has a local body of elders, the decision should be made in consultation with those authorities and not by the pastor alone.

Depending on the specific facts and circumstances, PJI may be willing to defend church leaders who face criminal consequences for following their consciences. Please know, however, that the legal outcome of such a prosecution would be highly uncertain, and it must not be assumed that the First Amendment would provide a partial or complete defense to such prosecutions. The FS grants Governor DeSantis and State authorities very broad, albeit temporary, power during a declared state of emergency. As stated above, defying state and local emergency directives during this declared state of emergency carries inherent legal risks and consequences, including criminal penalties. As with all cases, PJI's defense does not necessarily constitute philosophical, theological, or public policy agreement with a defendant's position.

Churches should also take into account potential civil liability for meeting in defiance of a ban on mass gatherings. According to official state figures provided daily by the Florida Department of Public Health, Florida had over 9,000 confirmed cases and over 140 deaths due to coronavirus as of April 2.⁵⁰ It is far from clear what kind of liability a church might have if it met in violation of the law and members subsequently became sick. The ultimate civil and criminal consequences may well extend beyond those listed under Chapter 252 of the FS.⁵¹ Bear in mind, too, that elderly persons are especially vulnerable to coronavirus, and risk of illness is highest among people aged 65 or older.⁵² PJI thus strongly advises churches to consult their liability insurance carriers to ascertain the scope and limits of their coverage prior to taking such actions.

Aside from government restrictions, church leaders do have the authority to take steps such as directing elderly or high-risk congregants to avoid church gatherings. Many churches are also making hand sanitizer available, discouraging handshakes, and cleaning more often than usual. Churches may also wish to require congregants to wear masks or make masks available to congregants.

CONCLUSION

There is reason to be concerned about governmental overreach during a state of emergency. As noted above, statutes and precedent provide a basis for raising First Amendment arguments during this crisis. At the same time, it seems most likely that a court would uphold almost any shutdown order by Governor DeSantis during the present crisis as it relates to churches, at least in the short term.

PJI staff are taking appropriate precautions, but we are not giving in to fear. PJI remains here to serve the Body of Christ through every crisis. Due to all of the disruptions this crisis is creating in many different areas of our lives, our response times to non-urgent requests may be somewhat delayed as we prioritize the most urgent needs of churches, ministries, and clients.

⁵⁰ Florida Department of Health, Division of Disease Control and Health Protection, "[Current Situation in Florida](#), Updated as of Thu 4/2/2020 06:44 PM ET" (Apr. 2, 2020).

⁵¹ [FS § 125.69](#).

⁵² CDC, "[People who are at higher risk for severe illness](#)" (Mar. 22, 2020).

To learn more about what PJI is accomplishing on behalf of churches and individuals in Florida and across the country, please visit www.PJI.org.

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