



LEGAL MEMORANDUM

FR: Pacific Justice Institute
TO: Pastors and Church Leaders Throughout Louisiana
DT: March 31, 2020
RE: Governmental Authority to Restrict Church and Other Gatherings in Louisiana

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 directives so church leaders in Louisiana can make wise, legally informed decisions for their congregations.

BACKGROUND

On March 13, 2020, Louisiana Governor John Bel Edwards issued a proclamation order in response to the coronavirus pandemic that temporarily closed public school facilities and prohibited gatherings of 250 or more individuals.¹ On March 16, Governor Edwards reduced the maximum number of individuals at gatherings to 50 or more, prohibited on-site dining at eating establishments, and halted operations at entertainment entities (e.g. bars, casinos, cinemas, and fitness facilities) that could not continue without unacceptable risk to the public.²

Although not initially required to do so, many churches across Louisiana temporarily suspended their regularly scheduled services and activities – including Bible studies, youth group meetings, and choir rehearsals – in order to help stop the spread of coronavirus.

Nonetheless, coronavirus continued to spread significantly,³ and on March 22, Governor Edwards issued a proclamation order announcing a statewide general stay-at-home order.⁴ The proclamation order prohibited gatherings to 10 or more individuals, ordered specific non-

¹ [Proclamation No. JBE 2020-27 - Additional Measures for COVID-19 Public Health Emergency](#) (Mar. 13, 2020) (“This applies only to gatherings in a single space at the same time where individuals will be in close proximity to one another. It does not apply to normal operations at locations like airports, medical facilities, shopping centers or malls, office buildings, factories or manufacturing facilities, or grocery or department stores.”).

² [Proclamation No. JBE 2020-30](#) (Mar. 16, 2020).

³ By March 22, Governor Edwards reported that coronavirus cases had exceeded 800 and were present in approximately half of the state’s parishes. See, Office of the Governor, “[Gov. Edwards Issues Statewide Stay at Home Order to Further Fight the Spread of COVID-19 in Louisiana](#)” (Mar. 22, 2020); Governor’s Office of Homeland Security & Emergency Management, [COVID-19 Louisiana Response](#) (Mar. 22, 2020).

⁴ [Proclamation No. JBE 2020-33](#) (Mar. 22, 2020).

essential businesses to cease operations,⁵ and directed people to leave their homes only for essential activities. Governor Edwards' proclamation order specifically included "[g]oing to and from an individual's place of worship" as an essential activity for which individuals may leave their homes.⁶ The Governor's stay-at-home order remains in effect until April 13, subject to subsequent revocation or extension.⁷

Thus, under Governor Edwards' stay-at-home order, places of worship are not required to close their doors, and individuals may attend services as essential activities. However, places of worship are still subject to the statewide prohibition against gatherings of 10 or more individuals in a single space at the same time.⁸

Individuals or entities found to be in violation of these orders, or any other related regulation, may be subject to a fine of up to \$500, six months in parish jail, or both.⁹ For example, the New Orleans Police Department has reportedly issued an arrest warrant for an individual who refused to halt a funeral repast with over 100 individuals and has advised members of the public to report violations of the ban on gatherings by dialing 3-1-1.¹⁰

Although President Trump has also issued Executive Orders in coordination with the Centers for Disease Control (CDC), these have so far been a less direct factor in the bans of mass gatherings than have state and local orders.¹¹ 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.

⁵ In addition to the entertainment businesses previously ordered to cease operations, Governor Edwards' stay-at-home order included all places of public amusement, all personal care and grooming businesses, and malls without a direct outdoor entrance and exit that provided non-essential services as defined by CISA guidelines. [Proclamation No. JBE 2020-33](#) (Mar. 22, 2020); *see also*, [CISA Memo](#), (Mar. 19, 2020), p.2. The Cybersecurity and Infrastructure Security Agency (CISA) executes the Secretary of Homeland Security's responsibilities as assigned under the Homeland Security Act of 2002 to provide strategic guidance, promote a national unity of effort, and coordinate the overall federal effort to ensure the security and resilience of the Nation's critical infrastructure. Further state-drafted guidelines are also available. *See* [COVID-19 Statewide Stay at Home Order No. 33 JBE 2020: Additional Illustrative Examples of Critical Infrastructure Businesses Consistent with Cyber and Infrastructure Security Agency Guidance](#) (Mar. 22, 2020).

⁶ [Proclamation No. JBE 2020-33](#) § 3(E) (Mar. 22, 2020).

⁷ [Proclamation No. JBE 2020-33](#) §§ 2, 7 (Mar. 22, 2020).

⁸ [Proclamation No. JBE 2020-33](#) § 2 (Mar. 22, 2020).

⁹ [La. R.S. 29:724](#) (E) (These penalties are fixed by statute and cannot be altered by Governor Edwards: "No executive order, proclamation, or regulation shall create or define a crime or fix penalties.").

¹⁰ The Associated Press, "[Hundreds at Louisiana Church Flout COVID-19 Gatherings Ban](#)," *New York Times* (Mar. 28, 2020); Danielle B. Miller, "[NOPD Disbands Large Gathering, Issues Arrest Warrant & Summons in Second District](#)," *NOPD News* (Mar. 29, 2020). The police also reportedly issued a summons for the band leader at the funeral repast.

¹¹ 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.

LEGAL DISCUSSION

Where does the Governor derive the authority to take drastic actions like banning core First Amendment activities including church gatherings? The Louisiana Health Emergency Powers Act, codified in Title 29 of the Louisiana Revised Statutes (LRS),¹² provides that a “state of public health emergency may be declared by executive order or proclamation of the governor, following consultation with the public health authority, if he finds a public health emergency . . . has occurred or the threat thereof is imminent.”¹³ The worldwide coronavirus pandemic is such an emergency. On March 11, Governor Edwards declared a statewide public health emergency in Louisiana due to coronavirus.¹⁴

Upon the declaration of a state of emergency, the Governor has extremely broad powers. This includes the authorization for the Governor to control “ingress and egress to and from a disaster area, the movement of persons with the area, and the occupancy of premises therein.”¹⁵

Does this sweeping authority give state and local officials discretion to override civil liberties? Temporarily, yes. However, the key word here is “temporarily.” The Louisiana Health Emergency Powers Act mandates that “no state of public health emergency may continue for longer than thirty days unless renewed by the governor.”¹⁶ Further, the state of emergency may be terminated at any time by a signed petition by a majority of either house of the legislature, in consultation with the public health authority.¹⁷

Governor Edwards’ statewide stay-at-home order terminates on April 13, unless extended by a subsequent emergency directive.¹⁸ Governor Edwards’ original proclamation of a statewide public health emergency extended for the full 30-day period,¹⁹ and on March 17 the Governor renewed the statewide public health emergency for another 30 days.²⁰ It is therefore highly unlikely that Governor Edwards will terminate the current stay-at-home order, or the statewide public health emergency, prior to April 13.

Based on PJI’s more than 20 years of experience litigating in federal and state courts across the country, 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

¹² [La. R.S. 29:760](#) et seq. (Louisiana Health Emergency Powers Act); *see also*, [La. R.S. 29:721](#) et seq. (Louisiana Disaster Act).

¹³ [La. R.S. 29:766](#) (2)(A); *see also*, [La. R.S. 29:724](#) (B)(1).

¹⁴ [Proclamation No. JBE 2020-25](#) (Mar. 11, 2020). Governor Edwards’ March 11 proclamation of a statewide public health emergency cited the Louisiana Health Emergency Power Act, [La. R.S. 29:760](#), et seq. Subsequent public health-related proclamations by Governor Edwards cite his authority under the Louisiana Disaster Act, [La. R.S. 29:721](#) et seq. *See, e.g.*, [Proclamation No. JBE 2020-33](#) (Mar. 22, 2020).

¹⁵ [La. R.S. 29:766](#) (D)(7). Other authorized “emergency powers” include the authority to commandeer private property, to direct and compel evacuations from specific areas, and to suspend or limit the sale of firearms.

¹⁶ [La. R.S. 29:768](#) (A).

¹⁷ [La. R.S. 29:768](#) (B) (“This petition terminating the public health emergency may establish a period during which no other declaration of public health emergency may be issued. Thereupon, the governor shall issue an executive order or proclamation ending the state of public health or emergency.”).

¹⁸ [Proclamation No. JBE 2020-33](#) (Mar. 22, 2020).

¹⁹ [Proclamation No. JBE 2020-25](#) (Mar. 11, 2020).

²⁰ [Proclamation No. JBE 2020-31](#) (Mar. 17, 2020).

the First Amendment.²¹ This is because Louisiana 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 proclamations, even before they were mandated, 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 admonition 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 Rome to the barns of Puritan England and Chinese house churches 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 Louisiana Health Emergency Powers Act grants Governor Edwards and state authorities very broad, albeit temporary, power during a declared state of emergency. As stated above, defying the Governor's 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

²¹ 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).

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 Louisiana Department of Public Health, Louisiana had over 4,000 confirmed cases and 185 deaths due to coronavirus on March 30.²² 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 Title 29 of the LRS.²³ Bear in mind, too, that elderly persons are especially vulnerable to the coronavirus, and severe-risk of illness is highest among people aged 65 or older.²⁴ PJI 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, statute 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 Edwards 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.

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

²² Louisiana Department of Health, Office of Public Health, "[Louisiana Coronavirus \(COVID-19\) Information](#)" (Mar. 30, 2020).

²³ [La. R.S. 29:724](#) (E).

²⁴ CDC, "[People who are at higher risk for severe illness](#)" (Mar. 22, 2020).

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