



LEGAL MEMORANDUM

FR: Pacific Justice Institute
TO: Pastors and Church Leaders
DT: March 25, 2020
RE: Guidance on Church Responses to COVID-19 Restrictions in the District of Columbia

INTRODUCTION

The unprecedented crisis and response to COVID-19 is prompting near-daily changes in the legal landscape and new parameters within which churches must operate. These unprecedented restrictions have prompted many questions from church leaders as to their legal obligations and responsibilities. Pacific Justice Institute has been advising many church leaders navigating this crisis. In order to be as precise as possible under the circumstances, this resource will focus primarily on the law in the District of Columbia. PJI will be preparing similar resources for certain states in the days ahead.

LEGAL DISCUSSION

Although President Trump has issued Executive Orders in coordination with the Centers for Disease Control, these have so far been a less direct factor in the bans of mass gatherings than have state and local orders.¹ As a practical matter, the bans affecting churches are most likely to be enforced locally.

The Mayor of the District of Columbia has authority under the Public Emergencies Act of 1980 to declare a public health emergency. This includes the “outbreak of a communicable disease that threatens or causes damage to life, health, or property.” D.C. Official Code § 7-2301(3). On March 16, 2020, Mayor Muriel Bowser issued Order 2020-051. That Order prohibited “mass gatherings.” A *mass gathering* is defined under the Order as “any event of convening . . . that brings together or is likely to bring together fifty (50) or more persons at the same time in a single room or other single or confined closed space, such as, by way of example and without limitation, an auditorium, theatre, stadium (indoor or outdoor) arena or event center, meeting hall, conference center, large cafeteria, or any other confined indoor or outdoor space.” Note that if the church is small, or can spread services out for gatherings of less than 50 persons, then such would be permissible under Order 2020-051.

There are exceptions to the Order that impact some ministries. In a *prior* order, a mass gathering did not include a private school where students are separated in classrooms of less than 50 persons. But under the *current* Order 2020-051, that exception **has been removed**. Note also that the Order is of limited duration and is currently set to expire on April 24, 2020.

¹ 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.

Churches will have a variety of responses to such restrictions. Beyond the legal issues presented, the directives 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 will comply. In many ways, churches today are better positioned than many other entities to deal with this crisis. Most churches now have online giving options and broadcast their sermons and/or services online.

This crisis could 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 a worship service, or exclude people from a small group gathering in order to achieve prescribed numeric limitations. They may believe that the admonition not to forsake the assembling of ourselves together, laying hands on the sick, and similar commands, do not yield to bans on mass gatherings or health crises.

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. If so, such churches should be aware that failure to comply is subject to a fine of \$1,000. D.C. Official Code § 7-2307.

Depending on the specific facts and circumstances, PJI may be willing to defend church leaders who are fined and jailed for following their consciences. The legal outcome of such a prosecution would be highly uncertain, and it must not be assumed that the First Amendment would provide a complete defense to such prosecutions. Moreover, like all cases involving criminal or civil defense, the actions of the ministry may not necessarily reflect the views of the Pacific Justice Institute.

Civil liability for meeting in defiance of a ban on mass gathering should also be taken into account. A church in the Sacramento area is now under scrutiny for having several of its attendees afflicted with coronavirus. Two members have died. (It is unclear at this point whether the church had any fault or could have prevented this with reasonable precautions.) 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. It is therefore strongly recommended that churches consult their liability insurance carrier to ascertain the scope and limits of their coverage prior to taking such actions. Insurance policies may have conditions excluding coverage for willful criminal acts.

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 the Governor 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. We remain 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 may be somewhat delayed as we prioritize the most urgent needs of churches, ministries, and clients.

In order to help empower churches, PJI will soon make videos available on our website, www.PJI.org, that will (1) train churches how to have church services via Facebook, and (2) show how churches may take advantage of the opportunity to initiate Church Homeschool Co-ops in their churches.

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