

Can the Government Force Churches to Cancel Services Because of Coronavirus?

In the last 24 hours, states across the nation began banning large group meetings in an effort to curb the spread of the COVID-19. Just today, Colorado Governor Jared Polis directed that all gatherings of more than 250 people should be canceled if social distancing of at least six feet is not possible. According to the Governor's office this is only guidance – not a ban. What exactly does this mean for the church community? Does the government have the authority to cancel church services? Can churches simply ignore the Governor's directive? Will there be legal consequences if they do? This article discusses whether the government has the right to tell churches to cancel services, the legal consequences for churches that decide to hold worship services anyway, and what churches around the world are doing to minimize risk to their congregations while still providing pastoral care during this time of uncertainty.

Government Authority

Legally speaking, states have the authority to use police powers to protect the welfare, health, and safety of their citizens. The parameter of state powers varies based on the state. Generally, it's a combination of state constitutional power and statutory power executed by the Governor via an executive order declaring a disaster emergency.

The declaration of a public disaster allows the state to act quickly when responding to community problems, like COVID-19. Typically, government officials are required to work their way through a complex legal process to prohibit a public gathering. However, when a state of emergency is declared, the process is expedited and the red tape is temporarily removed.

And yet, while the government may have a significant amount of power during disasters, it is still limited by constitutional parameters. State actions that impact constitutional interests, like the First Amendment's right of the people to peaceably assemble, must follow certain rules. The government can limit people from assembling if the restrictions are reasonable, are not content-based, and are "narrowly tailored" to meet legitimate concerns like public safety, while restricting constitutional rights as little as possible.¹ For First Amendment free exercise of religion, the restrictions would either have to be neutral and generally applicable (i.e. not singling out religious organizations) or they would have to meet a very high standard of strict scrutiny. This means the government's interest would have to be compelling and exercised in the least intrusive manner possible. The government could probably not meet this burden unless it treated all gatherings equally.

During the current crisis, many states have recommended or asked organizations to restrict large gatherings voluntarily. A voluntary request made by the state without forcibly requiring

¹ See *Hill v. Colorado*, 530 U.S. 703 (2000).

compliance may demonstrate to a court that the state attempted to use the least restrictive approach to constitutional rights. A ban that limited the size of gatherings but did so equally to all gatherings for serious issues of public safety might also be constitutional. A ban that targeted churches, but not other gatherings would probably not be constitutional.

In crafting these policies, some states have decided not to apply the group limitations to airports, libraries, workplaces, grocery stores, athletic events (without spectators), religious gatherings, weddings, or funerals. Other states have created blanket bans for large groups of people. The public health circumstances, language of the order, and enforcement approach for each state must be analyzed individually to determine whether government action is a neutral and generally applicable approach or an act of discrimination.

So what does this mean practically for churches? If your state has issued an emergency declaration, the state government may now legally have special rights to control the size of gatherings in the name of public safety. As a matter of policy and implementation, if the government directive is a neutral law of general applicability and does not target churches in a discriminatory manner, the state's recommendation or mandate is probably legal.

To Meet or Not to Meet: What are the Legal Consequences?

Assuming the state is legally justified, per its emergency declaration, to restrict the assembly of people, what are the legal consequences for churches who refuse to cancel services? First, it's important to look at the language of the directive. Is the state recommending that churches refrain from meeting or is the state prohibiting it? A recommendation, without the threat of enforcement, is not the same as a ban. A state ban on groups of a certain number carries with it the threat of government force if state law is not followed.

At a press conference on Thursday, New Jersey officials announced a ban on gatherings of more than 250 people. During the Q&A, a reporter asked what the state would do if organizations decided to gather anyway and a state official responded that the state has the right to shut events down.

In a state where gatherings have been banned, churches who decide to meet for services anyway, may find their churches being ordered by a court to cease all gatherings. Failure to follow the directives of a court order could result in a variety of consequences, depending on the language of the court order, including financial penalties, forced closure, stripping state benefits from the organization, or even jail time for church leaders. It could also result in free exercise litigation if the church feels the ban was discriminatory. Before deciding to disobey a ban or a court order, consult with a First Amendment attorney to analyze the law and the situation.

Uncertain Times Call for Church Creativity

The coronavirus is a reminder that we live in a fallen world with sickness, pain, and death. None of us are immune to these realities. Churches are especially equipped by God to provide hope in these moments of uncertainty because of the gospel – the good news. So in the face of voluntary and mandatory restrictions on public gatherings, what might churches want to consider as an alternative?

Around the world, church leaders are getting creative and restructuring church practices to protect their members and continue their ministry.

Many churches have decided to suspend in-person worship services for now. They are opting to provide live-stream worship services to their congregants. Other churches are continuing to offer in-person small group gatherings.

Those churches that are still meeting in person are encouraging church members to keep a distance, ramping up sanitation efforts, providing hand sanitizer, discouraging handshaking, suspending the “greet your neighbor” moment during services, suspending the act of passing an offering plate, and even using thermometers to test congregants’ temperatures before they enter the building.

Some churches have stopped offering Communion. Other churches are requiring ministers to wear plastic gloves while passing out Communion, while still others require the Communion elements to be individually packaged.

Some churches have determined that the children’s ministry is too high risk and have closed children’s Sunday school to prevent the spread of infection among children who could easily be carriers of the virus (though less likely to suffer a serious case).

Other churches have suspended choirs and replaced them with quartets because of the high risk of spreading infection to others through oral secretions while singing in close proximity.

Catholic churches in Rome are closed. All masses, weddings, and funerals have been called off. Some church buildings remain open, but anyone inside the building must follow government mandates that individuals stay at least three feet apart.

Catholic churches that are still meeting in other parts of the world have decided to make changes including suspending the public celebration of Mass, prohibiting drinking from a shared cup of wine during Communion, avoiding the tradition of dipping Communion bread into wine, and even lifting the obligation to attend Mass.

Yesterday, the Church of Jesus Christ of Latter-day Saints made an unprecedented announcement that it is suspending all public church gatherings globally.

Even Mosques in some areas have stopped offering weekly prayer services. Jewish synagogues have discouraged congregants from touching each other.

Conclusion

The state's police powers during declared emergencies can be very comprehensive. The legality of the state's authority to prohibit gatherings depends on the specific public health crisis in that state, the language of the emergency order, and how the law is enforced.

In the face of government recommendations and orders to cancel worship services, there may very well be legal consequences to pay for not heeding state directives and canceling services.

The call of the church to provide pastoral care to its members doesn't change when global pandemics strike. Uncertain times call for church creativity. Churches can rethink and restructure what church looks like to protect their congregations while continuing their ministry work.

For more definitive guidance and state-specific analysis on the legality of state orders to suspend services, churches are encouraged to reach out to experienced legal counsel.

Also, for further helpful reading, see:

"Should Your Church Stop Meeting to Slow COVID-19?" by Daniel Chin

https://www.christianitytoday.com/ct/2020/march-web-only/seattle-churches-stop-meeting-to-slow-covid-19-coronavirus.html?utm_source=ctweekly-html&utm_medium=Newsletter&utm_term=30948069&utm_content=701922595&utm_campaign=email

"7 Lessons from Singapore's Churches for When the Coronavirus Reaches Yours" by Edric Sng

https://www.christianitytoday.com/ct/2020/march-web-only/7-lessons-covid-19-coronavirus-churches-singapore-us-europe.html?utm_source=ctweekly-html&utm_medium=Newsletter&utm_term=30948069&utm_content=701922595&utm_campaign=email

"How the Church Can Respond to the Coronavirus" by Philip Bethancourt

<https://erlc.com/resource-library/articles/how-the-church-can-respond-to-the-coronavirus>