



COVID-19

U.S. DEPARTMENT OF JUSTICE FILES IN SUPPORT OF MISSISSIPPI CHURCH; U.S. ATTORNEY GENERAL RELEASES STATEMENT ON RELIGIOUS PRACTICE & SOCIAL DISTANCING

On April 14, 2020, the U.S. Department of Justice filed in support of a Mississippi church that has come under fire for continuing its drive-in services. Additionally, the U.S. attorney general released a statement on religious practice and social distancing. This is a growing concern across the country as governors, health departments, mayors, and city governments are increasingly trying to force churches not to assemble. The U.S. attorney general stated that the “United States Department of Justice will continue to ensure that religious freedom remains protected if any state or local government, in their response to COVID-19, singles out, targets, or discriminates against any house of worship for special restrictions.”

The Department of Justice stated in this brief that *“the Free Exercise Clause guarantees to all Americans the “right to believe and profess whatever religious doctrine [they] desire.” Empl’t Div. v. Smith, 494 U.S. 872, 877 (1990). It also protects their right to act on these beliefs, through gathering for public worship as in this case, or through other acts of religious exercise in their daily lives.”*

The case was made that this church is being unduly singled out when other businesses and organizations are allowed to continue to operate with less restrictive requirements than the church. The brief stressed three points, including the following:

1. Constitutional Rights Are Preserved During a Public Health Crisis

Even during a public health crisis, constitutional rights must be preserved. There is no pandemic clause in the constitution that allows our rights to disappear regardless of the crisis. However, the constitution does allow the government to act during a national crisis. This line is extremely thin, and it must be continually re-evaluated based on the continued status of the crisis.

2. The Free Exercise Clause Prohibits Unequal Treatment of Religious Individuals and Organization

Churches cannot be treated differently than drive-in restaurants and essential businesses. The categories for nonessential and essential cannot unequally prohibit religious individuals and organizations. This is a growing concern due to standards in place for businesses and restrictions being placed on churches. The government cannot unequally restrict religious individuals or organizations.

3. The Compelling Interest/Least Restrictive Means Test Is a Searching Inquiry

Finally, there must be a compelling interest, and the mandate or order must be the least restrictive means available. Additionally, there must be continued evaluation of both of these tests rather than a one-time inquiry. This searching inquiry continues to ensure that the rights of religious individuals and organizations are not violated.



Our focus at the NCLL is to provide maximum ministry with minimum liability and to advise churches regarding the best means to navigate these challenging times. Join us for an important webinar on Thursday, April 15, 2020, as we discuss the path forward for churches over the next four to six weeks as the country begins to reassess the response to COVID-19, understanding the free exercise of religion, and keeping those in our care safe during this time.

Right Stand—Right Way—Right Spirit

Webinar Title: WHEN SHOULD OUR CHURCH BEGIN MEETING IN OUR BUILDING AGAIN?

Description: Many of you have asked our office, “What should we do next?” As churches held services this Easter in a variety of formats, many pastors and church leaders are looking to the coming weeks wondering what their next steps should be. We will hold a webinar on Thursday, April 16, 2020, to discuss this topic and take questions. As governors and state officials make decisions about mandates for May, we want to assist your church in planning for this time.

Registration Link: https://zoom.us/webinar/register/WN_ae_eCVArRsy3qXAyIS-jmw

Additional Links for Information

Link to the Attorney General Filing in Mississippi:

<https://www.justice.gov/opa/press-release/file/1268651/download>

Attorney General William P. Barr Issues Statement on Religious Practice and Social Distancing; Department of Justice Files Statement of Interest in Mississippi Church Case:

<https://www.justice.gov/opa/pr/attorney-general-william-p-barr-issues-statement-religious-practice-and-social-distancing-0>