



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 24, 2020

Via Email

Dr. Robert R. Redfield
Director, Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, Georgia 30329
olx1@cdc.gov

Dear Dr. Redfield:

Thank you for your leadership during this challenging time for our nation. Texans appreciate the many ways in which the federal government is supporting our efforts to slow the spread of COVID-19 and ultimately defeat it. Texas has been following the President's Coronavirus Guidelines for America and many of the mitigation strategies recommended by the Centers for Disease Control and Prevention. We are concerned, however, that several CDC guidelines for the faith-based community violate core constitutional protections.

Religious institutions and people of faith are critical partners in our mutual effort to fight the novel coronavirus. When parts of Texas began seeing community spread of COVID-19, houses of worship helped slow the spread by moving religious services online and creating new non- and low-contact methods of serving their communities. Governor Greg Abbott and Attorney General Ken Paxton issued guidelines for houses of worship on how to best follow state executive orders protecting health and safety as well as federal disease mitigation strategies. We recently updated these guidelines to provide even more clarity to Texas's faith community.¹

Some provisions in the CDC's Interim Guidance for Administrators and Leaders of Community- and Faith-Based Organizations to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19) (hereinafter "CFBO Guidelines")² unconstitutionally invade the religious liberty of faith communities across America.

¹ Office of the Attorney General of Texas, Guidance for Houses of Worship During the COVID-19 Crisis (Apr. 21, 2020), <https://www.texasattorneygeneral.gov/news/releases/governor-abbott-and-attorney-general-paxton-provide-updated-joint-guidance-houses-worship>.

² Ctrs. for Disease Control & Prevention, Interim Guidance for Administrators and Leaders of Community- and Faith-Based Organizations to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19) (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/guidance-community-faith-organizations.html>.

Even in times of crisis, in fact, especially in times of crisis, the First Amendment “gives special solicitude to the rights of religious organizations.” *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 189 (2012). The United States Supreme Court has long explained that the Constitution “radiates a spirit of freedom for religious organizations, an independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Id.* at 186 (cleaned up). Thus, the First Amendment “bar[s] the government from interfering with the decision[s] of a religious group.” *Id.* at 181.

Most of the CFBO Guidelines provide houses of worship with sound public health recommendations on how to mitigate the spread of COVID-19. But several provisions invade doctrine, ritual, and liturgy reserved solely for religious organizations. For example, the CDC recommends “[p]lacing the Communion elements in the recipient’s hand, not on their tongue, and avoiding use of a common cup.”³ Catholics, however, believe they have an individual right to decide whether to take Communion in the hand or on the tongue.⁴ Similarly, some Protestant denominations believe in using a common consecrated cup during Communion.⁵ The First Amendment gives houses of worship the right to make those theological decisions on their own, without government interference.

The CFBO Guidelines also recommend that houses of worship implement alternative meeting options, such as “phone and online (live or recorded) meeting and service options.”⁶ They then proceed to give instruction on how Jewish faith communities should change their observation of the Sabbath: “This [recommendation on online services] also may involve permission or guidance about the use of electronic devices at times when that practice is usually not permitted, such as Jewish Sabbath.”⁷ Some Jewish denominations prohibit the use of technology during Shabbat. Thus, it is improper for the CDC to make recommendations on how these faith communities should observe their holy days.

The CFBO Guidelines even go so far as to recommend against passing the peace with a handshake—an important part of many religious services—even if both congregants have sanitized their hands, and also opine on how religious organizations should collect offerings. The risk in allowing the government to interfere in religious affairs is not only that it will invade doctrinal and liturgical decisions, which are ecclesiastical decisions protected by the First Amendment, *Hosanna-Tabor*, 565 U.S.

³ *Id.* at 4.

⁴ United States Conference of Catholic Bishops, The Reception of Holy Communion at Mass, <http://www.usccb.org/prayer-and-worship/the-mass/order-of-mass/liturgy-of-the-eucharist/the-reception-of-holy-communion-at-mass.cfm> (last visited Apr. 24, 2020).

⁵ See, e.g., The Episcopal Church, Intinction, <https://episcopalchurch.org/library/glossary/intinction> (last visited Apr. 24, 2020).

⁶ See CFBO Guidelines, *supra* note 2 at 8 & 10–11.

⁷ *Id.*

at 181, but also that it will engage in unconstitutional denominational preferences, *Larson v. Valente*, 456 U.S. 228, 245 (1982).

Houses of worship will continue to be strong partners in fighting COVID-19 if we respect their constitutional rights to worship according to their conscience. But the CDC will damage its relationship with those organizations if it appears to be dictating religious doctrine, ritual, and liturgy. Thus, we urge you to revise the CFBO Guidelines to remove any recommendations on how houses of worship should conduct their religious practices. Instead, the CDC should focus on providing those organizations with its expertise on matters of science, like health and safety strategies to fight COVID-19.

Thank you for your leadership on this issue during a critical time for our country.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. J. Hacker', written in a cursive style.

David J. Hacker
Special Counsel to the Attorney General

cc: Mr. Paul Teller
Deputy Assistant to the President & Director of Strategic Initiatives for the
Vice President
The White House

Mr. Roger Severino
Director, Office for Civil Rights
U.S. Department of Health and Human Services

Mr. Eric S. Dreiband
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