

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

October 1, 2020

SENT VIA FAX & U.S. MAIL: (805) 781-4307

Dan Dow
District Attorney
San Luis Obispo
1035 Palm St.
San Luis Obispo, CA 93408

Re: Refusal to enforce pandemic response measures against houses of worship

Dear Mr. Dow:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding your refusal to enforce California's pandemic response measures against houses of worship in San Luis Obispo County. FFRF is a national nonprofit organization with more than 32,000 members across the country, including more than 4,300 members in California. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

Multiple concerned San Luis Obispo residents have reported that you are refusing to enforce California's COVID-19 guidelines against churches. It is our understanding that you have "declared San Luis Obispo County a sanctuary county for singing and praising in [] houses of worship..."¹ We understand that this decision is not motivated by unbiased legal judgment but by your personal religious beliefs. You explained, "[n]ow more than ever in 2020, we need more people attending their houses of worship and seeking help from the Almighty for an answer to the coronavirus . . . In that spirit, I'm calling on people of faith in our county and across our state, across our country and across the world, to pray for peace [and] healing."²

Many religious leaders have expressed concern with your sanctuary county declaration:³

People of faith have always been called upon in times of crisis to worship differently. Religious devotion is no stranger to plague. In past disruptions, we have had to wait out passing diseases in isolation and forgo our worship needs. It has always been this way in human history and this is our day for such sacrifice.

It also must be said that freedom is contingent upon the freedom of our neighbors. Our freedom cannot cost another their well-being or it is no freedom at all. It is

¹ <https://www.christianpost.com/news/da-declares-california-county-a-sanctuary-county-for-church-worship-gatherings.html>

² *Id.*

³ <https://www.sanluisobispo.com/opinion/readers-opinion/article245145685.html>

not freedom if we get to sing but as a result, someone else loses their business, their children's education, or worse, their very life.

Our worshiping communities do not need sanctuary status. Sanctuary work is immigration work to protect immigrants from the dangers of torture, gang violence, murder or exile from their children. We need to lift up our endurance, not risk enabling entitlement. As leaders, we must not encourage people of faith to imagine themselves as under-served, persecuted, or criminalized during COVID-19.

To protect the health and safety of all San Luis Obispo County residents, we urge you to do your job and enforce the law against any group that violates it, including houses of worship. The coronavirus unfortunately does not relent based on the type of building one enters. To be effective, neither must San Luis Obispo County's response to the virus.

The Supreme Court has long held that the Establishment Clause "mandates government neutrality between religion and religion, and between religion and nonreligion." *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Ark.*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947). Exempting houses of worship from California's COVID-19 guidelines violates this basic stricture.

Americans have rights to worship and to assemble, but neither of those rights is unlimited. The government already regularly limits worship gatherings if they jeopardize public health. For instance, the government prohibits churches from cramming too many people into a building in violation of fire codes and also requires that church buildings comply with necessary codes. *See, e.g., Christ College, Inc. v. Bd. of Sup'rs, Fairfax Cty.*, 944 F.2d 901 (4th Cir., 1991) (rejecting the argument that "zoning and fire safety policies of the [local government] impinged on [a church's] first amendment rights to the free exercise of religion."). The congregants' right to gather and worship is limited by the government's need to protect those congregants from being trampled to death and the community from a fire. Preventing the spread of a deadly virus is even more crucial.

As you may be aware, houses of worship have repeatedly been shown to be hotbeds for spreading COVID-19. One-third of all COVID-19 cases in a California county's first coronavirus outbreak were traceable to a single church congregation. The numbers were even bigger elsewhere. As Reuters reported: "South Korea announced thousands of coronavirus cases in the space of only a few days in late February. The surge in cases centered mostly around one main cluster from a church in Daegu city."⁴ That article documents the harrowing story of ***one infected person attending two church services and spreading COVID to another 1,200 people*** and that a single "church cluster accounts for at least 60 percent of all cases in South Korea."⁵

⁴ <https://graphics.reuters.com/CHINA-HEALTH-SOUTHKOREA-CLUSTERS/0100B5G33SB/index.html>.

⁵ *Id.*

Worshippers seeking exemption from COVID-19 restrictions are not simply asking for a right to gather and worship, they are also asking for a right to risk the health and lives of every other member of the community and country. More than 100 years ago, in a 7-2 opinion, the Supreme Court explained that stopping the spread of a deadly disease, smallpox, was an interest more important to society and third parties than one individual's religious rights. *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11 (1905). Prohibiting large gatherings and other activities that exacerbate the spread of the virus are not a ban on worship, as you have asserted. Churches and believers all over the country are worshipping alone, in small groups or even in large groups online. These restrictions are simply on unsafe activities, regardless of purpose. Framing California's restrictions as a ban on worship would be like arguing that a speed limit is a ban on driving.

Your refusal to enforce neutral regulations against houses of worship is disappointing and dangerous, and a reasonable observer could see the lack of action while being aware of illegal activity as giving special exception to Christian worshippers. This favoritism is especially inappropriate given that church gatherings have been the cause of so many outbreaks.

Non-religious Americans make up the fastest growing segment of the U.S. population by religious identification—35 percent of Americans are non-Christians,⁶ and this includes the more than one in four Americans who now identify as religiously unaffiliated.⁷ The San Luis Obispo District Attorney's Office should not signal that it will give special treatment to houses of worship, sending a message of exclusion to residents, like our complainants, who are not part of the religious majority.

We ask that you enforce the law and take action against all groups that hold illegal gatherings or engage in illegal conduct, including houses of worship. Failure to do so sends a message to any would-be religious lawbreakers that they may disregard the law in San Luis Obispo County because no action will be taken. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

⁶ *In U.S., Decline of Christianity Continues at Rapid Pace*, PEW RESEARCH CENTER (Oct. 17, 2019), available at <https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace/>.

⁷ *Id.*