

May 26, 2020

The Honorable Gina Raimondo
Governor of the State of Rhode Island
Rhode Island State House, Smith Hill
Providence, Rhode Island 02903
Dear Governor Raimondo:

The *Flanders Legal Center for Freedom*, an initiative of the *Rhode Island Center for Freedom and Prosperity*, is writing this open letter to you, urging the State of Rhode Island to rescind or amend any and all executive orders that unconstitutionally infringe upon the religious freedoms of Rhode Islanders.

Religious liberty and practice are fundamental to our collective identity as Americans and Rhode Islanders. “. . . [A] principal object of our venerable ancestors, in their migration to this country and their settlement of this state, was, as they expressed it, to hold forth a lively experiment that a flourishing civil state may stand and be best maintained with full liberty in religious concerns . . .” R.I. Const. art. 1, sec. 3.

As such, the free exercise of religion is guaranteed under the United States Constitution as well as by our Rhode Island Constitution and statutory laws. Indeed, under Rhode Island law, even a restriction of general applicability that sweeps religious practice within its ambit is prohibited unless the government can show that the restriction does not intentionally discriminate against religion, that the restriction is essential to further a compelling governmental interest, and that the restriction is the least restrictive means of furthering that compelling governmental interest. See Rhode Island General Laws § 42-80.1-1 et. Seq.

Although we appreciate of the importance of maintaining public health, we respectfully suggest that your actions to date, specifically, your May 8, 2020 Executive Order 20-32, which limits gatherings in a place of worship (or church) to just five people (Section 8), is in our view, unconstitutional and otherwise in violation of state law. This same executive order, in Sections 8 and 9, permits secular “retail businesses” to “allow up to one customer per 300 square feet” and to operate in accordance RIDOH protocols.

Discriminating against churches by burdening them with special restrictions, while allowing other entities and businesses that are open to the public to have greater freedom, does not make common sense and is not supported by any scientific or medical data. But more to the point of this letter . . . it is unconstitutional to do so. Similar orders in other states have either been rescinded by executive action following public pressure or the courts have stricken down. For example,

- In Kansas, following the filing of a lawsuit, the court granted protections for churches and worshipers, prompting the Governor to issue a new executive order that does not discriminate against churches and other religious activities.
- In North Carolina, a federal judge issued a temporary restraining order striking down the portion of Gov. Roy Cooper's Executive Order 138 that barred indoor religious services involving more than 10 people.

- In Tennessee, the government reversed its prohibition on drive-in church services following the filing of a lawsuit.
- In Kentucky, a federal judge granted temporary restraining order prohibiting the state from enforcing a restriction against gatherings where a church had indicated its willingness to adhere to the same social distancing guidelines in effect at “Home Depot and Kroger [grocery stores].”

During this pandemic, churches, temples, and other faith-based venues are vital to their communities, providing spiritual support and material aid, especially for the underprivileged. Nearly all houses of worship are finding new ways to do their ministry, including streaming online services. But even as they are trying to adapt and serve their needful constituencies, your executive orders are targeting them and treating them more harshly than secular businesses.

Further, while we are encouraged by your recent publicly stated intentions of loosening restrictions of faith-based gatherings in the near future, we remain concerned, depending on the specifics, that these pending or potentially amended restrictions may not satisfy your duty to preserve and protect constitutional and religious rights.

Your more recent public statements that indoor restaurants and other secular venues may re-open at up to 50% of their capacity, while churches and other faith-based venues may only re-open at a 25% capacity - if ordered and enacted – are likely also unconstitutional – especially given that many churches and places of worship have ample physical space to accommodate social distancing protocols.

Today, we call on you to amend your orders to recognize the essential services provided by our churches, synagogues, mosques, and other houses of worship, such that, at a minimum, churches are subject to no greater restrictions than other secular entities.

To avoid a potential legal challenge to the State, the *Flanders Legal Center for Freedom* urges you to (1) voluntarily rescind any and all orders and to amend any contemplated orders and regulations that discriminate against churches and church-goers and (2) to provide the religious community with the same opportunities to safely assemble (and worship) that are provided to the business community.

Respectfully,

Robert G. Flanders, Jr.

Robert G. Flanders, Jr.

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CC: Legislative Leaders