

PUBLIC ADVOCATE OF THE UNITED STATES, INC.

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April 15, 2020 by mail and email

Hon. William P. Barr
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Protecting Religious Liberties during COVID-19 Pandemic

Dear Attorney General Barr:

I am the President of Public Advocate of the United States (“PA”). Public Advocate members and supporters applauded your [speech at Notre Dame Law School](#) on October 11, 2019, and your reliance on James Madison’s “Memorial and Remonstrance Against Religious Assessments” and the leadership you have provided on religious liberty issues.

We thank you for your recent actions in protecting the religious liberties of all Americans against discriminatory actions by certain state and local government officials during the COVID-19 pandemic, beginning with the [announcement on Twitter](#) issued last weekend by U.S. Department of Justice spokesman Kerri Kupec that you would be monitoring government regulation of religious services to ensure that states and localities are not implementing regulations and restrictions that demonstrate lawless hostility toward religion and that you would be taking action this week. This defense of the free exercise of religion is much needed, as many state governors and mayors are using COVID-19 to impose unconstitutional burdens against churches, demonstrating their personal hostility to Christianity.

Late last week we saw the encouraging decision of U.S. District Court Judge Justin Walker, who [ruled to protect a church in Louisville, Kentucky](#) from Kentucky Governor Andy Beshear’s threats against those who would attend Easter “drive-in services.” As Judge Walker put it: “On Holy Thursday, an American mayor criminalized the communal celebration of Easter. That sentence is one that this Court never expected to see outside the pages of a dystopian novel, or perhaps the pages of The Onion.” Yet it happened, demonstrating once again the importance of the federal judiciary in protecting the constitutional rights of Americans from encroachment by hostile state actors. We were encouraged to see that, at the beginning of this week, the Department of Justice filed a [Statement of Interest](#) in the case of Temple Baptist Church in Greenville, Mississippi, also to preserve and protect First Amendment rights.

We are writing today to bring to your attention three specific matters bearing on religious liberties.

1. Specific Threats to Religious Organizations.

First, we direct your attention to certain specific threats being faced by Christians around the country, so that appropriate action can be taken by your Department:

- In [Baltimore, Maryland](#), police have been harassing and intimidating an African-American church over their weekly services.
- In [Louisville, Kentucky](#), the State Police have been capturing the license plate numbers of those attending church services.
- In [Tampa, Florida](#), a pastor was arrested for holding an “unlawful assembly.”
- In [Charlotte, North Carolina](#), David Benham was arrested for standing outside an abortion clinic, while not violating any law.
- In [Lodi, California](#), one church found that its landlord had changed the locks to prohibit the congregants from worshipping there.

2. Resistance by U.S. Attorneys to Directive Protecting Religious Liberties.

Second, we bring to your attention a problem that may still exist within the U.S. Department of Justice, that we discovered when we were forced to file a Freedom of Information Act lawsuit against the Department of Justice on April 9, 2019. On May 4, 2017, President Trump issued Executive Order 13798 entitled “Promoting Free Speech and Religious Liberty.” On October 6, 2017, former Attorney General Sessions issued a memorandum (referenced in your Mississippi Statement of Interest) requiring that each of the 94 U.S. Attorneys Offices designate a “religious liberty point of contact.” Through that litigation, we discovered that only 20 offices appointed such a point of contact. The rest just routinely listed their “civil chief” as their point of contact. We urge you to follow up to ensure that the U.S. Attorneys Offices are not just nonchalantly giving short shrift to the Department’s religious liberty directives.

3. Religious Organizations Are Outside the Jurisdiction of Civil Government.

Third, while Public Advocate appreciates your defense of religious liberties, we believe that [your statement of April 14, 2020](#) reflects an incorrect understanding of the limits of government power over the church. Your statement correctly asserts that: “government may not impose special restrictions on religious activity that do not also apply to similar nonreligious activity.... Religious institutions must not be singled out for special burdens.” However, your statement implies that, whenever the government has a “compelling reason to impose restrictions on places of worship” and those restrictions “are narrowly tailored to advance its compelling interest,” the state may abridge the Free Exercise of religion. This may be a correct statement of what Congress and some federal judges have done narrowing the Free Exercise Clause to a guarantee to tolerate religious expression and actions — unless the government has a compelling interest.

Late last week, Public Advocate took our own action to support religious liberties during the pandemic, assisting another organization (the Conservative Legal Defense and Education Fund) in the filing of an *amicus curiae* brief in Russell County, Virginia, in support of a challenge against Virginia Governor Ralph Northam’s executive orders prohibiting religious gatherings in the case of *Hughes v. Northam*, [Amicus Brief](#) (Apr. 9, 2020). In that brief, we provide a historical analysis of the Free Exercise Clause, which demonstrates that the reason that the government may not burden its exercise is that the government has no jurisdiction whatsoever over the church in its assembling for religious services or in the doctrine it teaches. As this *amicus* brief explains, the Free Exercise Clause of the First Amendment imposes a jurisdictional limitation on government, and takes the power to prohibit church assemblies completely out of the hands of government — federal, state, or local.

The text of your speech at [Notre Dame Law School](#) brilliantly captured this concept when you described James Madison’s 1785 pamphlet “Memorial and Remonstrance Against Religious Assessments” where you correctly stated:

James Madison described religious liberty as “a right towards men” but “a duty towards the Creator,” and a “duty...precedent both in order of time and degree of obligation, to the claims of Civil Society.”

Those few words explain the entire concept. Truly, we Americans are subject to “the claims of Civil Society,” but we also have a prior and superior “duty towards the Creator.” And our government officials also must operate within that same structure — even during a declared emergency. Those in positions of authority in government simply exceed their lawful authority to ban church services, to mandate certain doctrine be advanced, or (as oligarchs like Bill Gates appear to want) to mandate that certain vaccines be forcibly required.

We would ask that you take steps to ensure that the various components of the U.S. Department of Justice consistently adopt and apply this Madisonian principle to keep the civil government from intruding into the affairs of the church, as recognized in and protected by the First Amendment religion clauses.

Sincerely yours,

Eugene Delgaudio
President

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