



AMERICAN ATHEISTS

February 2, 2021

The Honorable Sen. Jason Rapert
Chairperson, State Agencies and Governmental Affairs Committee
Arkansas State Senate
1 Capitol Mall, Fifth Floor
Little Rock, Arkansas 72201

Re: OPPOSE HB 1211, Testimony from American Atheists in opposition to legislation that needlessly endanger public health during a pandemic

Dear Chairperson Rapert and Members of the Senate State Agencies and Governmental Affairs Committee:

American Atheists, on behalf of its constituents in Arkansas, writes in opposition to HB 1211, a bill that casts aside reason and common sense to force the state to allow in-person religious gatherings to occur during a public health crisis. The extremely broad religious exemptions created by this bill will have unforeseeable consequences and put at risk the safety and health of Arkansans. We strongly urge you to oppose this dangerous and unnecessary bill.

American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the “wall of separation” between government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation’s communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. As advocates for the health, safety, and well-being of all Americans, American Atheists objects to efforts to subordinate the health and safety of all to the religious beliefs of a few.

To contain the spread of COVID-19, governors and health departments across the country have issued public health restrictions to prevent in-person gatherings that may spread this disease. No one likes these restrictions, but most reasonable Americans realize they are necessary both to protect immune-compromised citizens and hasten the end of the pandemic. Unfortunately, the Centers for Disease Control and Prevention (CDC) has shown that, despite good intentions and safety precautions taken, church services can serve as a vector for the spread of this deadly disease.¹ Throughout the pandemic,

¹ James A., Eagle L., Phillips C., Hedges D.S., Bodenhamer C., Brown R., Wheeler G., and Kirking H. (2020). High COVID-19 Attack Rate Among Attendees at Events at a Church – Arkansas, March 2020. *CDC Morbidity and Mortality Weekly Report*, 69(20); 632-635, May 22, 2020. Available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6920e2.htm>; Hamner L., Dubbel P., Capron I., Ross A., Jordan A., Lee J., Lynn J., Ball A., Narwal S., Russell S., Patrick D., and Leibrand H. (2020). High SARS-CoV-2 Attack Rate Following Exposure at a Choir Practice – Skagit County, Washington, March 2020. *CDC Morbidity and Mortality Weekly Report*, 69(19); 606-610, May 15, 2020. Available at https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e6.htm?s_cid=mm6919e6_w.

many thousands of religious organizations and places of worship have adapted to these conditions by meeting safely through virtual gatherings.

And yet some religious groups, ignoring the 400,000 American deaths and massive challenges facing *all* Americans resulting from the disease, insist that the global pandemic is really a plot to stifle their religious expression. HB 1211 appear to pander to this inflated sense of persecution. No lawmaker should seriously consider stripping the Arkansas government of its power to prevent the spread of COVID-19 or even more severe diseases.

The effect of this bill is as simple as it is extreme: *Arkansas would be effectively unable to impose public health restrictions that conflict with someone's religious beliefs.*

HB 1211 creates special privileges for religious groups by applying language similar to, but broader than, a Religious Freedom Restoration Act (RFRA), for any government action related to public health restrictions. RFRA's are state laws that provide that a government action may only burden religious exercise if it meets a stringent legal test. In order to meet this test, the government must show that its action was necessary to meet a compelling government interest and the action taken was narrowly tailored, meaning that alternative methods will not be as effective to meet the government's goal. While RFRA laws were originally introduced at the federal and state level to protect religious exercise, in recent years RFRA language has been used in ways its supporters and sponsors would never have imagined, such as trumping nondiscrimination, public health, and safety laws.

This bill appears to be drafted to provide these far-reaching protections only to religious organizations and not to similarly situated secular organizations that provide many of the same purposes as religious ones. Between the unbalanced protections and the legislative intent language in the bill that is clearly supportive of religion over nonreligion, we have serious doubts as to the constitutionality of this measure.

Even aside from the bill's dubious constitutionality, HB 1211 is dangerous and unwise as a matter of public policy. Especially when it comes to public health, the state government requires the flexibility to respond to emergencies appropriately, and the introduction of such a stringent test will hamper efforts to stop the spread of disease and deal with other emergencies.

Although the bill purports that it "does not prevent the Governor from requiring religious organizations to comply with neutral health, safety, or occupancy requirements issued under state or federal law that are applicable to all organizations and businesses," in practice, HB 1211 will prevent the application of even these common sense public health protections to religious organizations. The language makes clear that no restriction may be placed on religious organizations unless they apply to "*all organizations and businesses*" (emphasis added).

However, there are no universally applicable rules – certain essential organizations and businesses (such as hospitals, police stations, etc.) will necessarily be treated differently, and so religious organizations be exempt even from generally applicable rules. If hospitals are allowed to remain open, churches must be allowed to remain open. If individuals are allowed to remove their masks while eating at restaurants, they must be permitted to do so at religious gatherings. If police are permitted to ignore social

distancing, then worshippers must be granted the same freedom. Creating formulaic rules like this, without context, is both untenable and dangerous.

In 2020, an Arkansas church became the focus of a CDC report connecting high transmission rates of coronavirus to church events.² Two symptomatic people attended church events and later tested positive for COVID-19. At least 35 of 92 attendees acquired COVID-19, and three people died as a result. The CDC detailed how the Arkansas church's attendees transmitted the virus to the broader community. "At least 26 additional confirmed COVID-19 cases were identified among community members who, during contact tracing, reported contact with one or more of the 35 [Arkansas] church members with COVID-19 as an exposure. These persons likely were infected by church attendees. Among these 26 persons, one was hospitalized and subsequently died," found the report.

It is entirely reasonable to be concerned with government overreach that undermines freedom of religion during emergencies. The best way to protect against such overreach is to create safeguards and restrictions that prevent state authorities from abusing their emergency powers by, for example, setting time limitations, requiring authorization from multiple officials, or limiting authority based on the scope of the emergency. But any potential benefits of this legislation are undercut by the overly broad and falsely equivalent exemptions for religious exercise. Setting the precedent in state law that religious belief makes one exempt from public health and safety restrictions sets Arkansas down a dangerous path.

We strongly urge you to oppose this reckless legislation and, instead, to more carefully consider how emergency powers may be set up to give lawmakers confidence that they will be used in the best interests of Arkansas and its people. If you should have any questions regarding American Atheists' opposition to HB 1211, please contact me at 908.276.7300 x309 or by email at agill@atheists.org.

Sincerely,



Alison Gill, Esq.

Vice President, Legal & Policy
American Atheists

² James A., Eagle L., Phillips C., Hedges D.S., Bodenhamer C., Brown R., Wheeler G., and Kirking H. (2020). High COVID-19 Attack Rate Among Attendees at Events at a Church – Arkansas, March 2020. *CDC Morbidity and Mortality Weekly Report*, 69(20); 632-635, May 22, 2020. Available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6920e2.htm>.