



STATE OF INDIANA

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CURTIS T. HILL, JR.
INDIANA ATTORNEY GENERAL

October 23, 2020

Robert Einterz, Health Officer
Mark D. Fox, Deputy Health Officer
St. Joseph County Department of Health
227 W. Jefferson Blvd. 8th Fl.
South Bend, IN 46601

Dear St. Joseph County Health Officials:

This year has been a challenging time for our state and our country as we endure an emergency unparalleled in recent decades. Local health officials have served a vital role in making decisions for safeguarding our citizens' health, and I applaud your efforts in this arena.

That said, even in a pandemic, people do not need permission to practice what liberty entitles. The U.S. Constitution's Free Exercise Clause and Indiana's Religious Freedom Restoration Act preclude government officials from imposing disfavored treatment on religious exercise. Government directives imposing substantial burdens on religious practices, or that discriminate against them, can be valid only if narrowly tailored to achieve a compelling government interest supported by evidence or especially persuasive explanation.

Even so, your office sent a letter dated October 13, 2020, discouraging St. Joseph County "Faith Community Leaders" from congregating and worshipping in person until March 2021. Notwithstanding your best intentions of safeguarding public health, I am concerned that the letter facially targets churches and carries a thinly veiled authoritarian tone. While the letter does not expressly direct churches to close until March, it "urges" them to do so and then offers the department's services reviewing COVID-19 safety plans to congregations that do not "share our sense of urgency related to either the status or the impact of COVID-19 in our community." The implication seems to be that churches must apply to the county health department for a variance from an order to close. Given the ominous warning that the department will be "compelled to act" if it gets complaints about church services, this letter is plainly designed, at the very least, to chill the right of individuals to congregate in exercise of their religious freedom.

As justification, the letter describes a COVID-19 infection data analysis that supposedly reveals "clusters associated with attendance at churches" in the county. In the very next breath, however, the letter admits the cluster study "is not conclusive." The letter goes on to observe that these "not conclusive" findings somehow "underscore[] the risks associated with large gatherings, particularly indoors."

Setting aside the evidentiary non-sequitur, this seems to be an admission that churches do not present a unique or heightened threat to public health, but instead represent merely one category of indoor large gatherings. The question arises: Is the county also threatening other “large gatherings” occurring indoors, or only churches?

Either way, a county health department may close down church worship only if doing so is the least restrictive means of slowing the spread of COVID-19. The letter seems to undermine any assertion that, based on actual evidence, churches represent a special COVID-19 threat, and it makes no mention whether the county has even considered, much less attempted, any less restrictive alternatives for addressing whatever concerns (if any) it might legitimately have about churches. Rather, your letter merely says closure for a “prolonged period” would be “beneficial for our community.” Under various sources of law, that assertion is insufficient to close churches for five months.

Your decision to write a threatening letter despite a “not conclusive” study is a surprising and disappointing abuse of your power as county health officials. Here in Indiana, we do not govern by decrees from county officials that strip individual liberty in such a manner. Unless you have actual evidence justifying the need to target churches for closure—*i.e.*, something other than the “not conclusive” study your letter cites—I advise you to cease from threatening congregations who do not comply with your demands or *my* office will be “compelled to act.” The health and safety of Hoosiers citizens is compelling, but so is liberty. Hoosiers don’t live their lives at the sufferance of the county health department.

My office is available if you need assistance in conforming your actions to religious safeguards afforded individuals under state and federal law.

Very truly yours,

A handwritten signature in black ink, appearing to read "Curtis T. Hill, Jr.", written in a cursive style.

Curtis T. Hill, Jr.
Attorney General