

## TO OPEN OR NOT TO OPEN

*May 12, 2020*

As Governor Mills' Executive Orders have now extended the Stay Healthy at Home order through the end of May, and have indicated a slow re-opening beyond the end of May, many pastors and parishioners have understandably been frustrated by the limitations upon their ability to gather at their local church. Indeed, some churches around the nation, and now some in Maine, have publicly re-opened their church in defiance of the orders prohibiting assemblies over a certain number of people. Many have asked how Faith Church will respond.

This paper outlines the foundation for our position that, as of today, Faith Church should abide by the Governor's Orders. As you read and consider the arguments and principles in this article, we urge our congregation to remember that - given the nature of this particular crisis - everyone, including our national, state, and local leaders, is learning as we go. As a result, the facts change frequently - often on a daily basis. As the situation develops, Faith's leadership will refer to the principles outlined in this document and may conclude that the church needs to legally challenge, or otherwise oppose, the Governor's orders.

Finally, we recognize there is a diverse range of opinions on this subject within our congregation. There is an ancient Christian maxim that says, "In essentials unity, in non-essentials diversity, in all things charity." As we work through these changing times as a congregation and consider the implications and our response, let's demonstrate to the world that we belong to Christ by our constant love for each other in spite of our different perspectives. Recognizing that those who disagree with us about a particular response are still unified in the desire to faithfully serve Christ, let's display our love for one another by showing each other the same grace and humility demonstrated to us by Christ.

### Legal Background

The Governor's Executive Order, as applied to restrictions on all gatherings in excess of 10 people, is neither illegal nor unconstitutional.

#### *A. Governor Mills' orders are not illegal.*

Several people have suggested that Governor Mills has exceeded her authority by limiting public gatherings of more than 10 people.

First, it's important to understand the nature of the government's "police powers" - the power to use the coercive power of the state for the general welfare (health, safety, morals) of the public. The difference between the federal government's and a state government's authority is hinted at in the 10<sup>th</sup> Amendment to the U.S. Constitution:

*The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.*

Since the foundation of our republic, it has been generally held that the federal government is given certain enumerated rights – such as the right to wage war or the right to conduct diplomacy with foreign powers – and no more. On the other hand, the states retained the general right to exercise what are referred to as police powers - except for those rights specifically enumerated as belonging to the federal government. A state’s police power is assumed, which means a state may take actions without a specific grant of authority. As the U.S. Supreme Court said in [Jacobson v. Massachusetts, 197 U.S. 11 \(1905\):](#)

*The authority of the state ... is to be referred to what is commonly called the police power,—a power which the state did not surrender when becoming a member of the Union under the Constitution. Although this court has refrained from any attempt to define the limits of that power, yet it has distinctly recognized the authority of a state to enact quarantine laws and ‘health laws of every description;’ indeed, all laws that relate to matters completely within its territory and which do not by their necessary operation affect the people of other states. According to settled principles, the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.*

See also [Gibbons v. Ogden, 22 U.S. 1, 6 L. Ed. 23, 1824 U.S. LEXIS 370, 9 Wheat. 1 \(1824\).](#)

Consequently, it is within the power of the Maine legislature to adopt health laws to address a coronavirus pandemic or any other threat to the public’s health. Under that power, the Maine legislature gave the Governor the authority to declare an emergency and take such actions as necessary to face the emergency (see [37-B M.R.S.A. § 742](#)). Governor Mills declared this emergency on March 15, 2020, and began taking steps to address the perceived dangers to the State of Maine from COVID 19. And, on March 17, 2020, the Maine legislature, by unanimous consent, voted to expand the Governor’s emergency powers by passing [An Act To Implement Provisions Necessary to the Health, Welfare and Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency, 2019 Me. Laws 617](#). The powers already granted to the Governor under §742 included certain specific powers such as the power to suspend certain state functions, the power to limit travel, or the power to acquire necessary supplies, but also includes the broad power to “[t]ake whatever action is necessary to abate, clean up or mitigate whatever danger may exist within the affected area.” The Governor’s prohibition of public gatherings in excess of 10 people falls within this broad grant of power to address the perceived threat of the coronavirus pandemic. The Governor has not exceeded her authority in issuing orders prohibiting public assemblies.

*B. Governor Mills’ Orders are not unconstitutional (yet)*

Orders banning public assemblies, when applied universally, will necessarily affect rights protected under the Maine and federal constitutions. Specifically, because of the breadth of Governor Mills’ orders, they necessarily prohibit religious assemblies or gatherings over 10 people – a clear infringement upon the rights of free exercise of religion and the right to assemble granted in the First Amendment to the U.S. Constitution and the religious freedoms delineated under Article II Section 3 of the Maine Constitution.

Here, again, established case law lays down the basic principles that govern the clash between a state's police power and the free exercise clause of the U.S. Constitution. In [\*Smith v. Employment Division\*, 494 U.S. 872 \(1990\)](#), in writing the majority opinion, the Court ruled that "if prohibiting the exercise of religion . . . is not the object . . . but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended." The Court further clarified this standard in [\*Church of Lukumi Babalu Aye, Inc. v. City of Hialeah\*, 508 U.S. 520 \(1993\)](#), where it found that when a law is not neutral or not of general application, then the law must be justified by a compelling state interest and narrowly tailored to advance that interest. Thus, by way of example, if a church was forced to close by the State because it was in violation of the state electrical code - a neutral, generally applicable law - then it is not a violation of the free exercise of religion. On the other hand, a zoning ordinance that permits a movie theater in a particular district, but explicitly prohibits religious institutions, would likely be found to violate the free exercise clause.

In our particular case, the Governor's orders meet the standard of a neutral, generally applicable law. Here's the text of Executive Order No. 14 issued on March 17<sup>th</sup>, and subsequently extended to May 31<sup>st</sup>:

*Gatherings of more than 10 people are prohibited throughout the State. Gatherings subject to this Order are those that are primarily social, personal, and discretionary events other than employment. Such gatherings include, without limitation, community, civic, public, leisure, and faith-based events; social clubs; sporting events with spectators; concerts, conventions, fundraisers, parades, fairs, and festivals; and any similar event or activity in a venue such as an auditorium, stadium, arena, large conference room, meeting hall, theatre, gymnasium, fitness center or private club.*

The text of this Order is general - it is broadly applied to all gatherings over 10 people - and it is neutral - it does not single out religious activity or a particular religion for special, negative treatment.

This is not to say that the application of the Executive Orders in the future could not violate the free exercise clauses of the U.S. and Maine Constitutions. If applied inconsistently, or with favoritism to one group or another, a general, neutral law or order can, by its inconsistent application, violate the protections of the free exercise clause. But, with the prohibitions being consistently applied across our State, it would be difficult to claim a violation at this time.

Therefore, without addressing the wisdom of Governor Mills' orders, she is not acting illegally, nor has her orders violated the constitutional protections found in the U.S. or Maine constitutions.

#### Relationship between two institutions - the Church and the State

While Governor Mills' orders may be legal and constitutional, this does not necessarily mean the Church, or individual Christians, must submit to them. So, we turn to a different question – what are our obligations – as a Church or individual Christians – to the State?

## *General Principles Governing the Relationship between Church and State*

Before we discuss a few general principles relating to the relationship between the Church and State, consider the following relevant passages from scripture:

### *1 Peter 2:11-17*

*<sup>11</sup> Beloved, I urge you as aliens and strangers to abstain from fleshly lusts which wage war against the soul. <sup>12</sup> Keep your behavior excellent among the Gentiles, so that in the thing in which they slander you as evildoers, they may because of your good deeds, as they observe them, glorify God in the day of visitation.*

*<sup>13</sup> Submit yourselves for the Lord's sake to every human institution, whether to a king as the one in authority, <sup>14</sup> or to governors as sent by him for the punishment of evildoers and the praise of those who do right. <sup>15</sup> For such is the will of God that by doing right you may silence the ignorance of foolish men. <sup>16</sup> Act as free men, and do not use your freedom as a covering for evil, but use it as bondslaves of God. <sup>17</sup> Honor all people, love the brotherhood, fear God, honor the king.*

*<sup>18</sup> Servants, be submissive to your masters with all respect, not only to those who are good and gentle, but also to those who are unreasonable. <sup>19</sup> For this finds favor, if for the sake of conscience toward God a person bears up under sorrows when suffering unjustly. <sup>20</sup> For what credit is there if, when you sin and are harshly treated, you endure it with patience? But if when you do what is right and suffer for it you patiently endure it, this finds favor with God.*

*<sup>21</sup> For you have been called for this purpose, since Christ also suffered for you, leaving you an example for you to follow in His steps, <sup>22</sup> who committed no sin, nor was any deceit found in His mouth; <sup>23</sup> and while being reviled, He did not revile in return; while suffering, He uttered no threats, but kept entrusting Himself to Him who judges righteously; <sup>24</sup> and He Himself bore our sins in His body on the cross, so that we might die to sin and live to righteousness; for by His wounds you were healed. <sup>25</sup> For you were continually straying like sheep, but now you have returned to the Shepherd and Guardian of your souls.*

### *Romans 13:1-10*

*<sup>1</sup> Let everyone be subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. <sup>2</sup> Consequently, whoever rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. <sup>3</sup> For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and you will be commended. <sup>4</sup> For the one in authority is God's servant for your good. But if you do wrong, be afraid, for rulers do not bear the sword for no reason. They are God's servants, agents of wrath to bring punishment on the wrongdoer. <sup>5</sup> Therefore, it is necessary to submit to the authorities, not only because of possible punishment but also as a matter of conscience.*

<sup>6</sup> This is also why you pay taxes, for the authorities are God's servants, who give their full time to governing. <sup>7</sup> Give to everyone what you owe them: If you owe taxes, pay taxes; if revenue, then revenue; if respect, then respect; if honor, then honor.

<sup>8</sup> Let no debt remain outstanding, except the continuing debt to love one another, for whoever loves others has fulfilled the law. <sup>9</sup> The commandments, "You shall not commit adultery," "You shall not murder," "You shall not steal," "You shall not covet," and whatever other command there may be, are summed up in this one command: "Love your neighbor as yourself." <sup>10</sup> Love does no harm to a neighbor. Therefore love is the fulfillment of the law.

### Titus 3:1-11

<sup>1</sup> Remind them to be subject to rulers, to authorities, to be obedient, to be ready for every good deed, <sup>2</sup> to malign no one, to be peaceable, gentle, showing every consideration for all men. <sup>3</sup> For we also once were foolish ourselves, disobedient, deceived, enslaved to various lusts and pleasures, spending our life in malice and envy, hateful, hating one another. <sup>4</sup> But when the kindness of God our Savior and His love for mankind appeared, <sup>5</sup> He saved us, not on the basis of deeds which we have done in righteousness, but according to His mercy, by the washing of regeneration and renewing by the Holy Spirit, <sup>6</sup> whom He poured out upon us richly through Jesus Christ our Savior, <sup>7</sup> so that being justified by His grace we would be made heirs according to the hope of eternal life. <sup>8</sup> This is a trustworthy statement; and concerning these things I want you to speak confidently, so that those who have believed God will be careful to engage in good deeds. These things are good and profitable for men. <sup>9</sup> But avoid foolish controversies and genealogies and strife and disputes about the Law, for they are unprofitable and worthless. <sup>10</sup> Reject a factious man after a first and second warning, <sup>11</sup> knowing that such a man is perverted and is sinning, being self-condemned.

### 1 Timothy 2:1-7

<sup>1</sup> First of all, then, I urge that entreaties and prayers, petitions and thanksgivings, be made on behalf of all men, <sup>2</sup> for kings and all who are in authority, so that we may lead a tranquil and quiet life in all godliness and dignity. <sup>3</sup> This is good and acceptable in the sight of God our Savior, <sup>4</sup> who desires all men to be saved and to come to the knowledge of the truth. <sup>5</sup> For there is one God, and one mediator also between God and men, the man Christ Jesus, <sup>6</sup> who gave Himself as a ransom for all, the testimony given at the proper time. <sup>7</sup> For this I was appointed a preacher and an apostle (I am telling the truth, I am not lying) as a teacher of the Gentiles in faith and truth.

<sup>8</sup> Therefore I want the men in every place to pray, lifting up holy hands, without wrath and dissension.

From these passages and others, we derive the following principles:

1. *Our relationship with the State, or our nation, is defined by who we are in Christ.* Before coming to Christ we were defined, in part, by our place of birth. For most of us, we are

citizens of the United States of America with which comes all sorts of privileges and rights, coupled with the associated duties to our country. But when we were called to Christ, we were made into “a chosen race, a royal priesthood, a holy nation, a people for God’s own possession” (I Peter 2:9). We have a living God and a new King whom we serve – our Lord Jesus Christ. And in being joined to the Kingdom of God, we became aliens and strangers (I Peter 2:11) in the land of our birth. To be sure, we remain citizens of the United States, but when the laws of our nation or the passions of our culture clash with the standards of the Kingdom of Heaven, the demands of our culture or nation must bow to the dictates of the Kingdom of Heaven. Thus, we find ourselves as exiles in this world, in this time, looking forward – as Abraham – to the heavenly city “whose architect and builder is God” (Hebrews 11:9-10).

This concept of living as exiles helps us begin to understand our relationship to our nation in general and the State in particular. But there is another image that is helpful as we consider this relationship. Like the Apostle Paul, we take on the role of an ambassador (I Cor. 5:20). Three things mark an ambassador: (1) An ambassador represents their country – their King. Likewise, we represent Christ and His Kingdom. (2) An ambassador conducts himself in a manner worthy of his King and country. Likewise, we are to keep our behavior excellent ... so that even those who slander use unjustly will give glory to God because of our good deeds (I Peter 2:12). (3) An ambassador delivers the message of his King, not his own message. Likewise, we – representing God’s desire that all men be saved (II Peter 3:9) - beg that all people “be reconciled to God.”

2. *Government is an institution of God to which we must submit.* We are to submit to human authorities, for the sake of our Lord (I Peter 2:13), and because our governing authorities are established by God (Rom 13:1-2).

Our civil governments are tasked with promoting justice – punishing evil and praising or promoting good (I Peter 2:13; Romans 13:4). “By justice a king builds up the land” ([Prov. 29:4](#)). The protection of the life and health of its citizens falls within this broad mandate given to civil government by God. We see this mandate worked out, for example, in the laws relating to leprosy and other sicknesses found in the Levitical laws.

Therefore, the Apostle Paul observes that if we do good, we have nothing to fear; if we do what is evil, then we have every reason to fear the government and God. So, we are to submit to the government, not just to avoid its wrath, but also for our conscience sake (Rom. 13:5). For these reasons, we pay our taxes (Rom. 13:6-7), and we honor the authorities over us (Rom. 13:7; I Peter 2:17).

We submit and show respect to a ruler even when they are unreasonable. As he continues his discussion on our relationship with human authorities, Peter admonished slaves to submit to, and show respect for, not only good and gentle masters, but also to those who are unreasonable (or in some translations – crooked or cruel) (I Peter 2:18). We have one

example of this in scripture when David submits to King Saul, refusing - even though David has been told he will succeed Saul as King - to take the life of the man who is trying to kill him. David's reasoning – he will not touch the Lord's anointed.

Later, Jeremiah instructed the people of Judah to settle in Babylon, seek the good of the city and submit to their pagan rulers - the same rulers who had just brutally defeated and enslaved their nation (Jeremiah 29).

And we have another striking example when we consider that the passages in Romans 13 and I Peter 2 were written by Paul and Peter at a time when the emperor of Rome was Nero. This same Nero had Paul beheaded and Peter crucified. As they wrote each Epistle, Paul and Peter were urging fellow believers to submit to, and honor, the man who would oversee their executions.

3. *We live as a free people with love for our neighbors.* We do not submit to governing authorities reluctantly, but neither are we servile in our relationship to governing authorities. As Peter writes - “[a]ct as free men, and do not use your freedom as a covering for evil, but use it as bondslaves of God” (I Pet. 2:16). We submit, but we submit as a free people. In this relationship with civil authority, we hope to lead “a tranquil and quiet life in all godliness and dignity” (I Tim. 2:2) and in our excellent behavior, we desire that our accusers will glorify God because of our good deeds (I Peter 2:12), and we will silence the ignorance of foolish men (I Peter 2:15).

To behave as free people, our motivation must be love for our neighbor. When we act out of love for our neighbor, then the law has been fulfilled. If our government exists to promote justice – to punish evil and reward good – then love will fulfill the law. Paul sums up Romans 13:8-10 as follows: “Love does no harm to a neighbor. Therefore love is the fulfillment of the law.” And, if we follow the example of the Good Samaritan, not only does love “do no harm” but love for our neighbor means we actively seek, at our own risk and our own expense, to right wrongs or alleviate harm that has befallen our neighbor (Luke 10:25-37). If we live this way – motivated by love – then the law has no cause against us.

#### *When a Christian can or must disobey civil government*

These general principles governing our relationship with the State and our community as Christians and the Church help us understand the times when we may or must disobey civil government. Understanding the principles help us avoid the trap of letting the exceptions swallow the rule. Here are a few of these exceptions:

1. *A Christian can defy the orders of civil magistrates when that order violates clear commands of God.* The Apostles refused to follow the commands of the Sanhedrin when they instructed the Apostles to cease preaching in the name of Jesus (Acts 4:13-22; Acts

5:29). Shadrach, Meshach and Abed-nego refused to bow down to worship the golden image made by Nebuchadnezzar (Daniel 3). Daniel refused to follow the edict of King Darius that no one should pray to any god, or petition any man, except him (Daniel 6). In short, we can practice civil disobedience when, to quote another pastor, the government “commands what God forbids, or prohibits what God commands.” When we understand that our citizenship is in heaven – that we belong first to the Kingdom of God - then the Apostles declaration that “we must obey God rather than men” (Acts 5:29) clearly follows from this first principle.

2. *A Christian can defy, or resist, the orders of civil magistrates when the order perpetuates clear injustices.* The Egyptian midwives refused to kill the Hebrew male children as instructed by Pharaoh and God rewarded them (Exodus 1). Esther broke the customs of Persia to approach King Ahasuerus without being called (which could have resulted in her death) to plead for the lives of the Hebrews in his kingdom (Esther 4-7). When a government is promoting injustice or undermining a peaceful society by killing innocents or oppressing the poor, the widow or orphan, or the foreigner, then it is acting against its divine purpose. In these instances, the Church must defend the rights of the innocent or the oppressed and, if necessary, do so by defying the orders of the unjust government.
3. *A Christian can assert the legal rights they have as a citizen of their particular jurisdiction.* Paul asserted his rights as a Roman citizen in Philippi (Acts 16:35-40) and before Festus (Acts 25:1-12). Although our citizenship is now in Heaven, it does not mean we have relinquished the rights given us as citizens of our temporal home.

### *One Last Consideration*

There is one Man who was perfectly sinless, and yet was unjustly accused by His religious and civil leaders who condemned Him to death. Despite having the ability to resist and defeat His enemies, He submitted to His own execution. His submission was the will of His Father, motivated by His love for the people He came to redeem. This man is Jesus, the Son of God. If we claim to be His followers, Peter tells us that Christ is our example for times of suffering (I Peter 2:21-25). And, in giving His life for ours, He exemplified the love for our neighbor that Paul commands for us in Romans 13:8-10. As we consider these strange COVID times, keep His example in our minds as we navigate our response as a church and as individual Christians. Following Christ’s example, there are times we do not assert what may be our right for the greater good of our neighbors.

### Stay Healthy at Home Orders as they Affect Churches

As we have already stated, the Governor’s Orders have extended the Stay Healthy at Home order through the end of May, and the State has laid out a plan for a slow re-opening beyond the end of

May. Many pastors and parishioners have understandably been frustrated by the limitations upon their ability to gather at their local church. Given the above principles, our position is that, at this time, Faith Church should abide by the Governor's Orders.

We are instructed by the writer of the Book of Hebrews:

*<sup>23</sup> Let us hold fast the confession of our hope without wavering, for He who promised is faithful, <sup>24</sup> and let us consider how to stimulate one another to love and good deeds, <sup>25</sup> not forsaking our own assembling together, as is the habit of some, but encouraging one another; and all the more as you see the day drawing near.*

The example of the early church includes gatherings at the temple, and sharing meals from house to house (Acts 2:43-47). Together, we listen to the Word preached, we pray and we exhort one another "to love and good deeds." Our ability to fulfill each of these functions of assembling together has clearly been impacted or changed by Governor Mills' orders.

However, changing how we perform these functions, does not mean they have been prohibited. Churches, including our own, have still been able to gather as a whole to hear the preaching of God's Word through the gift of technologies such as Zoom or Facebook or YouTube. We are not prohibited from praying together, as several small groups and others have found ways to hold prayer meetings using Zoom or other media. And, whether in person, using newer technologies such as Zoom, Facebook or YouTube, or using old technologies such as a letter or a telephone, we are still able to exhort one another to love and good deeds.

In short, the functions of our gathering together as a church, while changed, may still be performed. If, for a temporary period of time we are inconvenienced in the manner in which we gather together, it is the position of Faith's leadership that we need to abide by the Governor's Orders intended for our good.

We have come to this position based on our understanding that the limitation on our ability to assemble together in person is temporary, our understanding of the current legal environment, and our commitment to honor those obligated to protect the health of our friend, neighbors, and community. As we continue to evaluate the ever shifting environment - internally, with other churches, and with leaders like the Christian Civic League - it may be necessary to challenge or defy the Governor's Orders to fulfill our duty to serve God or to assert rights we hold under the U.S. and Maine Constitutions. But, it is not yet that time.

## SUMMARY

1. Governor Mills' executive orders are lawful – exercised under statutory authority given her by the Maine legislature consistent with the police powers retained by the states to protect the general welfare, health, and morals of the public.
2. Because Governor Mills' orders banning gatherings or assemblies over 10 are general and neutral, and not specifically targeting churches or religious groups, they do not violate the protections of the Free Exercise Clause found in the First Amendment of the U.S. Constitution applied to the states through the Fourteenth Amendment.
3. Protecting the health of the public falls within the legitimate role of government as instituted by God and, therefore, limitations intended to preserve life (such as a ban on large gatherings) are within the role of government as instituted by God.
4. The Church's obligation to assemble, as commanded in the Book of Hebrews and exemplified in the early church, is certainly inconvenienced. But the Executive Orders do not prohibit our gatherings, nor do they exercise control over the content of our gatherings. They only affect the size for in-person gatherings, and while not ideal, have had the effect of generating significant innovation in delivering our Sunday morning services.
5. Faith's leadership intends to submit to the Executive Orders (i) in recognition of the rightful role of government to protect the health of her citizens; (ii) in a manner consistent with our obligation to love our neighbor; and (iii) as part of our submission to Christ and for God's glory. We continue to evaluate the application or enforcement of the Orders and will re-evaluate this position if it becomes apparent that the Orders are being enforced or applied in a way that targets religious institutions or churches.