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Spring 4-11-2022

## Public Policy and Religion in the Pandemic: U.S. Constitution and the First Amendment

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### WMU ScholarWorks Citation

Covell, Stephen; Riggs, Diane; and Borg, Cameron, "Public Policy and Religion in the Pandemic: U.S. Constitution and the First Amendment" (2022). *Modules for Teaching Pandemic Response and Religion in the USA*. 1.

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## Public Policy and Religion in the Pandemic: U.S. Constitution and the First Amendment

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### THIS SAMPLE TEACHING MODULE CONTAINS:

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- A summary of 2-3 issues on the topic.
- A background "fact page" for students.
- Two to three articles from the data base with a brief summary for each.
- An activity, such as the debate assignment, a case study, or a film.
- Links to in-depth articles for instructors.



U.S. Capital Building located in Washington D.C. Photo by *Andy Feliciotti* and is Free to use under the Unsplash License.

## Fact Page and Resources for Students

### **Constitution: Bill of Rights**

See URL: <https://www.archives.gov/founding-docs/bill-of-rights/what-does-it-say>

### **Introduction:**

The Bill of Rights refers to the first 10 Amendments to the Constitution. It spells out Americans' rights in relation to their government. It guarantees civil rights and liberties to the individual—like freedom of speech, press, and religion. It sets rules for due process of law and reserves all powers not delegated to the Federal Government to the people or the States. And it specifies that “the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

- Ratified: December 15, 1791
- Location: National Archives
- Created: September 25, 1789
- Writer: James Madison



Street signs near the Oregon State Capital. “The intersection of Church and State” by *Chris Phan* is licensed under CC BY 2.0.

## SUMMARY OF ISSUES:

Issue #1: Can Federal and / or state governments restrict rights granted by the Bill of Rights in order to protect the health and safety of the people? Who can decide? Is it a violation of the first amendment to ask religious groups to conform to the same rules established for secular groups?

Issue #2: What protections for religion are contained in Amendment #1 of the Constitution? Are these protections violated by temporary executive orders that appear to limit these rights?

Issue #3: Are there consequences for churches that defy government orders?

Issue #4: To what extent does the objections to limiting church services mirror partisan conflicts?

## First Amendment

### Summary:

The First Amendment provides several rights protections: to express ideas through speech and the press, to assemble or gather with a group to protest or for other reasons, and to ask the government to fix problems. It also protects the right to religious beliefs and practices. It prevents the government from creating or favoring a religion.

### Original Text of Bill of Rights, Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. [See: <https://www.archives.gov/founding-docs/bill-of-rights-transcript>]

How do the two above statements compare? How can the government protect religious freedoms while making no law respecting an establishment of religion?



Officers from the Seattle Police Department gather near a local church near Cal Anderson Park in Capital Hill before confronting a George Floyd protest. Located in Seattle, Washington, July 25<sup>th</sup>, 2020. “Church and State” by Derek Simeone is licensed under CC BY 2.0.



## Centers for Disease Control and Prevention: Guidance on Group meetings

The following advice on gatherings was issued by the CDC in June of 2020:

- A gathering refers to a planned or spontaneous event, indoors or outdoors, with a small number of people participating or a large number of people in attendance such as a community event or gathering, concert, festival, conference, parade, wedding, or sporting event.
- The more people an individual interacts with at a gathering and the longer that interaction lasts, the higher the potential risk of becoming infected with and spreading COVID-19.
- The higher the level of community interaction at a gathering increases the risk of COVID-19 spreading.
- The size of an event or gathering should be determined based on state, local, territorial or tribal safety laws and regulations.

### **The risk of COVID-19 spreading at events and gatherings increases as follows:**

Lowest risk: Virtual-only activities, events, and gatherings.

More risk: Smaller outdoor and in-person gatherings in which individuals from different households remain spaced at least 6 feet apart, wear cloth face coverings, do not share objects, and come from the same local area (e.g., community, town, city, or county).

Higher risk: Medium-sized in-person gatherings that are adapted to allow individuals to remain spaced at least 6 feet apart and with attendees coming from outside the local area.

Highest risk: Large in-person gatherings where it is difficult for individuals to remain spaced at least 6 feet apart and attendees travel from outside the local area. See URL: <https://www.cdc.gov/coronavirus/2019-ncov/php/infection-control.html>



“Shepherd of the Valley United Brethren in Christ church” by *Dan Keck*, located in Logan, Ohio, is licensed under CC0 1.0 Universal (CC0 1.0).



## Activities for Students

This teaching module can be presented in two lectures / classes:

1. First class: Present the issues and introduce the documents on the student fact sheet.
  - Homework: Students prepare their own interpretation of the issues and debates on both sides
2. Second class: Group work, followed by a formal debate with a spokesperson from each group. Recap and general discussion.
  - Homework: Response paper.

### Online classes:

The "debate" can take place online, asynchronously, with students organized in two groups. Both groups have until the next class to present arguments to their own group, decide on a spokesperson and a core list of 3-4 points. In the second discussion, the two groups come together and comment on each other's points: it will look a bit like a blog. Each student then submits a response paper to a dropbox.

## Sample Case study: Michigan Governor Whitmer Executive Order

### **What happened?**

Governor Whitmer issued Executive order 2020-11 prohibiting large assemblages and events on March 16, 2020, saying that "all assemblages of more than 50 people in a single indoor shared space and all events of more than 50 people are prohibited." The listed exemptions included: health care facilities, workplaces not open to public, state legislature and mass transit, grocery shopping and agricultural or construction work. Churches were not exempted. See [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-521890--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-521890--,00.html)

Later in the week, the order was updated to add a part that reads: "A place of religious worship is not subject to penalty under section 3 of Executive Order 2020-11." Section three of the original order said that "a willful violation of this order shall constitute a misdemeanor."

### **Interpretation:**

The update to the original order meant that churches, synagogues, mosques, and temples will not be penalized with a misdemeanor if they violate the rule to keep assemblies under 50 people.

See: Detroit Free Press <https://www.freep.com/story/news/local/michigan/2020/03/21/coronavirus-whitmer-updates-order-assemblies-exempt-churches-penalty/2885395001/>

Religious groups and other groups continued to press Whitmer after she made this exemption, filing a federal lawsuit:

See: <https://www.mlive.com/public-interest/2020/05/churches-sue-whitmer-claim-coronavirus-orders-hinder-religious-gatherings-despite-exceptions.html>



## RESOURCES FOR INSTRUCTORS:

### Response from National Organizations to Whitmer's religious exemption:

Americans United for Separation of Church and State. March 23 letter to Governor Whitmer. This letter contains arguments for the equal treatment of religious and secular groups when banning gatherings of large groups. The letter cites the CDC recommendations, and a number of articles about the transmission of disease at churches.

See: AU letter to MI Gov. Whitmer on Coronavirus 3.23.20.pdf  
American Atheists Response to Whitmer's exemption of churches from executive order: April 3, 2020 Note that the president of this group, Nick Fish, is from Lapeer, Michigan.

Argues that making these kinds of exemptions endangers the health of others. Cites U.S. Supreme Court ruling: 1944 case Prince v. Massachusetts, "The right to practice religion freely does not include liberty to expose the community...to communicable disease." See: <https://www.atheists.org/2020/04/michigan-governor-whitmer-churches/>

The lawsuit was then "paused" in response to Whitmer's exemption:

See:  
<https://www.detroitnews.com/story/news/local/michigan/2020/05/08/churches-pause-federal-lawsuit-against-whitmer-after-most-recent-order/3096810001/>

#### American Constitution Society:

Argues that the closing of houses of worship during the pandemic are legal. Exemptions for religious groups is a misreading of the constitution.

Some states have laws called "Religious Freedom Restoration Acts" (RFRA) that give exemptions to people whose religion is hampered by existing laws. The government has to prove that the law is necessary: compelling government interest; and as little restrictive as possible.

See:  
<https://www.acslaw.org/expertforum/forced-closing-of-houses-of-worship-during-the-coronavirus-both-legal-and-right/>

First Liberty: Some religious groups recognize the need for restrictions, but emphasize that these must be temporary, not permanent. See the First Liberty website: <https://firstliberty.org>

The Berkley Center of Georgetown University provides a clear explanation of the constitutional issues: See: <https://berkeleycenter.georgetown.edu/responses/balancing-religious-freedoms-and-public-health-protections-during-the-covid-19-pandemic>



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**\*This project was made possible with a WMU Meader Presidential Endowment Covid-19 Response Grant\***