ACLU Georgia

Prepared Remarks
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Good Afternoon, my name is Christopher Bruce and I am here on behalf of the American Civil Liberties Union of Georgia and our members and our supporters throughout the state of Georgia. The ACLU of Georgia is a nonprofit organization dedicated to protecting the civil rights and civil liberties of all Georgians. Thank you to this committee for the opportunity to speak to you today on Senate Bill 200.

The ACLU of Georgia is opposed to Senate Bill 200 and today, I'd like to share our concerns with this committee in hopes that you all will keep them in mind when deciding whether or not you will permit this measure to move forward in the legislative process.

The right of religious exercise is among our most fundamental rights. But religious freedom does not entitle religious institutions or individuals to receive special exemptions from the law if it would endanger others. SB 200 would do just that. Allowing religious institutions to continue all operations and activities during a state of emergency—with no regard for the risk these activities pose and no mandated safety precautions—is deeply irresponsible and raises serious constitutional concerns.

While SB 200 would also authorize businesses to continue or resume operations during a state of emergency, they may do so only if they comply with *all* safety precautions and procedures issued or ordered by the

Governor. There is no similar requirement for religious institutions in SB 200, no matter how dangerous it may be for them to continue their activities unabated.

Under the bill, religious institutions of all types could claim the right to ignore a safety directive to evacuate an area due to an approaching Category 5 hurricane. A church could hold worship services in the midst of an Ebola outbreak with no safety precautions in place, even as comparable non-religious gatherings are severely limited due to the grave public-health risk. Public officials could be prevented from placing restrictions on a wedding held by a religious reception hall that neighbors a chemical plant explosion.

Exempting religious institutions from neutral and generally applicable restrictions enacted during public emergencies would harm others and is the type of religious preference that the U.S. Constitution forbids. As the U.S. Supreme Court has explained, "[t]he principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause.[1] Under the Establishment Clause, the right to religious exercise does not include the right to endanger or otherwise burden others.[2]

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[1] *Lee v. Weisman*, 505 U.S. 577, 587 (1992).

[2] *See, e.g.*, *Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944) ("The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death."); *Estate of Thornton v. Caldor*, *Inc.*, 472 U.S. 703, 709 (1985) (striking down a statute that gave Sabbath observers an unqualified right not to work on their Sabbath because "the statute takes no account of the convenience or interests of the employer or those of other employees who do not observe a Sabbath"); *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (noting that in analyzing religious exemptions, "courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries"); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 n.8 (1989) (invalidating sales-tax exemption for religious periodicals in part because exemption would have "burden[ed] nonbeneficiaries by increasing their tax bills"); *United States v. Lee*, 455 U.S. 252, 261 (1982) (rejecting employer's requested religious exemption from paying social-security taxes because exemption would have "operate[d] to impose the employer's religious faith on the employees"); *Burwell v. Hobby Lobby*, 573 U.S. 682, 739 (2014) (Kennedy, J., concurring) (explaining that religious exercise cannot "unduly restrict other persons . . . in protecting their own interests"); *id.* at 745 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, J., dissenting) ("Accommodations to religious beliefs or observances . . . must not significantly impinge on the interests of third parties."); *cf.*, *e.g.*, *Sherbert v. Verner*, 374 U.S. 398, 409 (1963) (exempting claimant from state unemployment benefits policy but noting that "the recognition of the appellant's right to unemployment benefits under the state statute [does not] serve to abridge any other person's religious liberties."); *W.V. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 630 (1943) (excusing students from reciting Pledge of Allegiance, but noting that "the refusal of these persons to participate in the ceremony does not interfere with or deny rights of others to do so").

Moreover, in giving religious institutions an apparently unfettered right to continue all operations during emergencies, SB 200 is so broadly written that it could have unintended consequences. For example, it could limit local officials' ability to enforce attendance limitations under the fire code merely because an emergency was declared for another reason.

While religious gatherings and activities may not be singled out for discriminatory treatment vis-à-vis similar non-religious gatherings activities, it may be constitutionally appropriate for the government to impose limitations that affect religious worship and religious institutions' operations if medical and scientific experts agree that such activities pose an immediate and grave safety or health risk. Indeed, the U.S. Supreme Court has affirmed that this approach is consistent with religious-freedom principles. While the Court has struck down sweeping bans on indoor worship services in states or areas where other risky gatherings of people have been allowed, the Court has also made clear that states *may* properly impose some restrictions on worship services and religious activities. In a recent ruling, for instance, the Court allowed California to prohibit singing and chanting during indoor worship services and cap attendance at indoor worship services to 25% of a church's occupancy limit in areas of the state hardest hit by COVID-19.[3]

SB 200 is thus not only dangerous; it is also unnecessary. The First Amendment already provides strong protections for religious worship and exercise during times of crisis, as does the Georgia Constitution. Accordingly, the ACLU of Georgia strongly opposes this effort to fully exempt religious institutions from rules enacted during public emergencies and urges this committee to vote "No" on Senate Bill 200.

Thank you.

[3] *South Bay United Pentecostal Church v. Newsom*, No. 20A136, 2021 WL 406258 (Feb. 5, 2021).