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REPLY TO FLORIDA

July 3, 2020

Via E-Mail Only:

W. Eric Kuhn, Esq.
Senior Assistant Attorney General
Office of the Attorney General
State of Colorado Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203
Eric.Kuhn@coag.gov

RE: Executive Order D 2020 091 and Eighth Updated Public Health Order 20-28
Safer at Home and in the Vast, Great Outdoors Requirements.

Dear Mr. Kuhn:

Liberty Counsel is a national non-profit litigation, education, and public policy organization with an emphasis on First Amendment liberties. Liberty Counsel represents Andrew Wommack and Andrew Wommack Ministries, Inc. ("AWMI"). I write in response to your letter of July 2, 2020 inquiring about AWMI's Summer Family Bible Conference ("Bible Conference") held at AWMI's Charis Bible College which concludes today, July 3, at 12:00 PM CST. The follow-on to the Conference is tomorrow's July 4 Independence Day celebration at the College.

AWMI was surprised to receive your cease and desist letter of July 2 on behalf of the Colorado Office of the Attorney General, because it has worked closely with Teller County Public Health Department (TCPH) officials in order to hold the Bible Conference and July 4 events while keeping AWMI's guests and the community as safe as possible by meeting at below 50% capacity and following social distancing, personal protective equipment, signage, traffic, and sanitization protocols.

AWMI provided the attached Plan to TCPH before the conference began; TCPH provided input back to AWMI in the form of red text on the third day of the conference. AWMI has implemented or been willing to implement every suggestion of TCPH with the exception of limiting the number of Bible Conference attendees in its 3,200 seat worship center to 175 or less. However, AWMI has limited the number of attendees (currently 800-1,000) to far less than 50% of its occupancy, and has enforced social distancing and other guidelines, including sanitization, traffic patterns, and other aspects of mitigation as set forth in the Plan.

AWMI believes that gatherings of Christian believers for teaching and worship are essential to fulfilling the Great Commission of our Lord Jesus Christ. The universal Church - exemplified and reflected by local churches making up their local body of believers - is commanded by God to “not forsake the assembling of yourselves together.” AWMI believes that corporate worship is non-optional. A church – no less a “body” than the human body – cannot survive dismemberment. Jesus Christ Himself declared the church “essential” in Matthew 16:17-19 and in Matthew 4:4 that spiritual life is no less important than the physical: “man shall not live by bread alone.” AWMI believes that worship gatherings below 50% of its total 5,000 occupancy satisfies the State of Colorado’s interest in public health without unduly burdening AWMI’s First Amendment right to exercise its faith.

Governor Jared Polis has noted that there are implicit First Amendment exceptions to his Executive Order 2020 091 as extended by Executive Order D 2020 123 and the Eighth Amended Public Health Order 20-28 (“PHO 20-28”). The amended PHO 20-28 states that “All public and private gatherings are limited to no more than ten (10) individuals, except for the purposes expressly permitted in this PHO, which include Necessary Activities.” “Necessary Activities” does not explicitly include First Amendment protected activities such as the recent protests that have proceeded nationwide and in Colorado.

Yet, gatherings of thousands (not social distancing, not all wearing masks) have been permitted by Governor Polis. Governor Polis said he understands for many, even under the safer-at-home coronavirus restrictions, “it is not possible to stay home, it is not possible to stay silent.” “..I urge anyone who is demonstrating to do their best to keep their distance between themselves and others and wear a face covering,” he added.¹

Consequently, First Amendment protests in Denver have been permitted to proceed unquestioned. Liberty Counsel is unaware of any Cease and Desist letters sent to the Denver Broncos or other protest participants regarding the number persons that far exceeds the 50% capacity meeting in AWMI’s worship center, let alone the number of persons permitted under PHO 20-28 or multiple instances publicly disregarding social distancing, mask or other requirements.

[“Bronco Players join protests, lead march through Denver”²](#)



¹ <https://www.coloradoan.com/story/news/2020/06/02/polis-coloradans-george-floyd-protests-should-get-coronavirus-test/3124088001/>

² <https://www.thedenverchannel.com/news/local-news/broncos-players-join-protests-as-10th-day-of-demonstrations-take-shape-in-denver>

“10,000 expected at Denver protests for George Floyd on Saturday”³



“Thousands take part in a Black Lives Matter march along Colfax Avenue on Sunday, June 7, in Denver”⁴



³ <https://www.greeleytribune.com/2020/05/30/george-floyd-denver-protests-day-3-saturday/>

⁴ “...more than 3,000 marchers...” <https://denverite.com/2020/06/07/student-focused-black-lives-matter-march-in-denver-draws-thousands-to-colfax/>

In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) [hereinafter *Lukumi*], the Supreme Court held certain laws prohibiting religious practices violated the First Amendment, concluding “that the laws in question were enacted by officials who did not understand, failed to perceive, or chose to ignore the fact that their official actions violated the Nation's essential commitment to religious freedom.” 508 U.S. at 524.

Officials in other jurisdictions have threatened to impose criminal or other sanctions on other religious gatherings. In Louisville, Kentucky, for example, the government threatened to use police to impose criminal sanctions on those individuals found in violation of similar COVID-19 orders and threatened to impose various sanctions on individuals found in violation of such orders. The United States District Court for the Western District of Kentucky found that the mere threat of such criminal sanction warranted a TRO. *See On Fire Christian Center, Inc. v. Fischer*, No. 3:20-cv-264-JRW, 2020 WL 1820249 (W.D. Ky. Apr. 11, 2020). The *On Fire* TRO enjoined the Mayor of Louisville from “enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with any prohibition on drive-in church services at On Fire.” *Id.* at *1 (emphasis added).

In May 2020, two circuit courts of appeal issued three injunctions pending appeal (IPA) against enforcement of executive orders restricting worship services. *See Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610 (6th Cir. 2020); *Roberts v. Neace*, 958 F.3d 409 (6th Cir. 2020); *First Pentecostal Church v. City of Holly Springs, Miss.*, 959 F.3d 669 (5th Cir. 2020) (granting IPA to Mississippi church enjoining enforcement of Mississippi Governor’s order restricting worship). A week after the Sixth Circuit’s *Roberts* IPA, the Eastern District of North Carolina issued a TRO enjoining the North Carolina Governor from enforcing a 10-person limit on religious worship because it violated the Free Exercise Clause. *See Berean Baptist Church v. Cooper*, No. 4:20-cv-81-D, 2020 WL 2514313 (E.D.N.C. May 16, 2020).

Twice in April, three times in May, and once in June 2020, federal district courts enjoined COVID-19 prohibitions on religious worship. On April 18, 2020, the District of Kansas issued a TRO enjoining enforcement of a restriction on religious gatherings of more than 10 people, requiring the state to treat worship services the same as exempted “essential” gatherings. *See First Baptist Church v. Kelly*, No. 20-1102-JWB, 2020 WL 1910021, *6–7 (D. Kan. Apr. 18, 2020). The *First Baptist* TRO specifically stated that the government’s disparate treatment of religious gatherings violated the Free Exercise Clause because it showed “religious activities were specifically targeted for more onerous restrictions than comparable secular activities.” *Id.* at *7 (emphasis added). The court concluded that restricting religious gatherings while permitting other non-religious activities “show[s] that these executive orders expressly target religious gatherings on a broad scale and are, therefore, not facially neutral.” *Id.*

Recent precedent surrounding the various protests, civil unrest, rioting, and looting shows the fallacy that the Colorado’s COVID-19 restrictions on gatherings are being evenly applied. As Judge Ho pointed out in *Spell v. Edwards*, -- F.3d --, 2020 3287239 (5th Cir. June 18, 2020) (concurring), circumstances seemed to have changed. “At the outset of the pandemic, public officials declared that the *only* way to prevent the spread of the virus was for everyone to stay home . . . They ordered citizens to cease all public activities to the maximum extent possible—even the right to assemble or to protest.” *Id.* at *4 (Ho., J., concurring) (emphasis original). Yet, “[i]n recent weeks, officials have not only tolerated protests—they have encouraged them as necessary and important expressions of outrage over abuses of government power.” 2020 WL 3287239, *4. Colorado’s public officials have similarly supported and encouraged protests, even where they devolved into riots and looting – despite the fact that they violated Governor Polis’ Orders. Officials **failed to enforce any restrictions on rioting**, even

when that rioting caused injuries to over 75 police officers in Denver. See Fox31Denver, *75 Denver Police Officers Injured during Black Lives Matter Protests and Riots* (June 19, 2020), available at <https://kdvr.com/news/local/75-denver-police-officers-injured-during-george-floyd-protests-and-riots/>.

As Judge Ho continued in *Spell v. Edwards*:

For people of faith of faith demoralized by coercive shutdown policies, that raises a question: If officials are now exempting protestors, how can they justify continuing to restrict worshippers? **The answer is that they can't.** Government does not have carte blanche, even in a pandemic, to pick and choose which First Amendment rights are 'open' and which remain 'closed.'"

Id. (emphasis added).

Put simply, "[i]f protests are exempt from social distancing requirements, then worship must be too." *Id.* at *5. Indeed,

The First Amendment does not allow our leaders to decide which rights to honor and which to ignore. In law, as in life, what's good for the goose is good for the gander. **In these troubled times, nothing should unify the American people more than the principle that freedom for me, but not for thee, has no place under our Constitution.**

Id. at *6 (emphasis added).

The Northern District of New York has also held that treating protestors, rioters, and looters differently than religious gatherings plainly shows the COVID-19 orders are not generally applicable and violate the First Amendment. *Soos v. Cuomo*, No. 1:20-cv-651(GLS)(DJS), 2020 WL 3488742, *31 (N.D.N.Y. June 26, 2020) (holding that Governor Cuomo's "comments, which applauded and encouraged protesting and discouraged other from violating" the gathering Orders plainly created an exemption that removed the orders from being neutral and generally applicable); *id.* *32 (noting that Mayor De Blasio's "encouraging what [he] knew was a flagrant disregard of [his gathering orders]" removed the laws from being neutral and generally applicable). As noted *supra*, Colorado did not enforce its gathering restrictions against protestors, rioters, and looters, yet seeks to impose discriminatory and draconian restrictions on peaceful worshippers

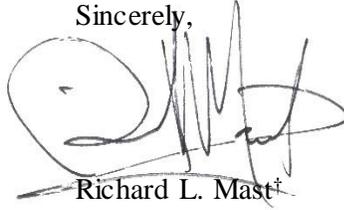
Here, the State of Colorado has failed to consider other, substantially less restrictive alternatives to an arbitrary numerical limitation for "houses of worship." Other states have determined that churches are essential and may continue to operate with no numerical restrictions, provided they follow appropriate social distancing and personal hygiene practices.

Strict enforcement of "gathering orders" limiting churches and religious meeting attendance to 50% capacity or "175 people" "whichever is less," while allowing and encouraging mass protests of tens of thousands is discriminatory and unlawful. The Colorado Office of the Attorney General and other law enforcement agencies, acting at the direction of the Office of the Governor, are each acting under color of state law. The threat of enforcement action against our clients and other similarly situated Colorado citizens deprives them of rights secured by the United States Constitution, including the First and Fourteenth Amendments, in violation of 42 U.S.C. § 1983.

Liberty Counsel therefore requests that the Colorado Office of the Attorney General consider these additional factual and legal developments in analyzing whether the State of Colorado's interest in public health actually does in fact permit Andrew Wommack Ministries, Inc. to meet at 50% building capacity, pursuant to the Plan jointly developed between AWMI and Teller County Public Health. Should the Office of the Attorney General continue in disparate, discriminatory, and unconstitutional treatment of AWMI, its Bible Conference, and other worship events, Liberty Counsel stands ready to vindicate AWMI's constitutional rights in federal court.

Thank you for your consideration. I may be reached at RMast@lc.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard L. Mast', with a small dagger symbol (†) at the end. The signature is written over a horizontal line.

Richard L. Mast[†]

CC:

Via Email:

Richard Harris, Esq.
Daniel J. Schmid, Esq.

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[†] Licensed in Virginia