

<p>DISTRICT COURT, TELLER COUNTY, COLORADO</p> <p>101 W. Bennet Ave. Cripple Creek, Colorado 80813</p> <hr/> <p>TELLER COUNTY DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, and</p> <p>COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,</p> <p>Plaintiffs,</p> <p>v.</p> <p>ANDREW WOMMACK MINISTRIES, INC.</p> <p>Defendant.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Richard J. Harris 1 Innovation Way, Ste. B Woodland Park, CO 80863 (719) 284-7495 RichardHarris@AWMI.net Attorney Registration No: 46949</p> <p>Mathew D. Staver* Horatio G. Mihet* Roger K. Gannam* Daniel J. Schmid* LIBERTY COUNSEL P.O. Box 540774 Orlando, FL 32854 (407) 875-1776 court@LC.org – hmihet@LC.org rgannam@LC.org – dschmid@LC.org</p> <p>*Applications pro hac vice forthcoming</p> <p><i>Attorneys for Defendant Andrew Wommack Ministries, Inc.</i></p>	<p>Case No. 20CV30054</p> <p>Div. 2 (for Div. 11, Teller)</p>
<p style="text-align: center;">NOTICE OF APPEARANCE OF RICHARD J. HARRIS AND STATEMENT REGARDING ENTRY OF TEMPORARY RESTRAINING ORDER WITHOUT NOTICE IN VIOLATION OF THE FIRST AMENDMENT</p>	

NOTICE OF APPEARANCE OF RICHARD J. HARRIS

TO ALL COUNSEL OF RECORD:

I, Richard J. Harris (Colorado Attorney No. 46949), hereby enter my appearance in the above-captioned cause on behalf of Defendant, Andrew Wommack Ministries, Inc. (“AWMI”). My office address 1 Innovation Way, Ste. B, Woodland Park, CO 80863, telephone number (819) 284-7495, and my email address is richardharris@awmi.net.

/s/ Richard J. Harris
Richard J. Harris
Colorado Attorney No. 46949
1 Innovation Way, Ste. B
Woodland Park, CO 80863
(719) 284-7495
RichardHarris@AWMI.net

Counsel for Defendant Andrew Wommack Ministries, Inc.

“In a lawsuit, the first to speak seems right, until someone comes forth and cross-examines.”¹

**NOTICE REGARDING ISSUANCE OF TEMPORARY RESTRAINING ORDER
WITHOUT NOTICE IN VIOLATION OF THE FIRST AMENDMENT**

Defendants, Andrew Wommack Ministries, Inc. (“AWMI”), by and through the undersigned counsel, hereby submits the following statement concerning this Court’s *ex parte* issuance of a Temporary Restraining Order issued against AWMI on October 9, 2020.

1. As this Court’s October 9, 2020 Order Re: Plaintiffs’ Request for a Temporary Restraining Order (“TRO Order”) states, this Court issued a Temporary Restraining Order against AWMI **without notice** or any opportunity to be heard by this Court. (TRO Order at 3-4.)

2. In accordance with Colo. R. Civ. P. 7, 12, and 65, AWMI intends to fully avail itself of all pertinent defenses, objections, and responses in a timely manner and will more fully set forth its response to Plaintiffs’ Motion for Preliminary Injunction at such time.

3. Given the important and fundamental constitutional rights implicated by this Court’s issuance of the October 9 TRO Order, however, AWMI hereby submits the following Statement concerning the First Amendment and procedural deficiencies inherent in issuing a TRO against First Amendment activities prior to AWMI being given notice and an opportunity to be heard on the claims pending **in this Court**.

THE FIRST AMENDMENT PROHIBITS ISSUANCE OF A TRO WITHOUT NOTICE

4. Though Colo. R. Civ. P. 65(b) permits a court, under certain circumstances, to issue a TRO without notice or an opportunity to be heard, this court had not authority to issue a TRO without notice on behalf of state actors to restrict a private actor’s First Amendment rights.

¹ *Proverbs* 18:17 (NIV).

5. As a matter of law, the First Amendment prohibits the precise action this court undertook by issuing a TRO without notice to AWMI. Indeed,

[t]here is a place in our jurisprudence for ex parte issuance, without notice, of temporary restraining orders of short duration, but **there is no place within the area of basic freedoms guaranteed by the First Amendment for such orders where no showing is made that it is impossible to serve or to notify the opposing parties and give them an opportunity to participate.**

Carroll v. President & Com'rs of Princess Anne, 393 U.S. 175, 180 (1968) (emphasis added).

See also *Proctor & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 226 (6th Cir. 1996) (holding that “**there is no place in the First Amendment realm**” for issuance of an ex parte TRO against First Amendment activities (emphasis added)); *In re Providence Journal Co.*, 820 F.2d 1342, 1351 (1st Cir. 1986) (holding that a TRO against speech is a prototypical prior restraint); *id.* (“A prior restraint issues [without a hearing] faces an even heavier presumption of invalidity, and **the transparent unconstitutionality** of the order is made even more patent by the absence of such a hearing.” (emphasis added)); *id.* (noting that even though “holding a full hearing on such short notice could greatly burden the district court . . . **the First Amendment demands nothing less**” (emphasis added)).

PROCEDURAL DEFICIENCIES IN TEMPORARY RESTRAINING ORDER

6. It is axiomatic that due process requires notice and an opportunity to be heard **on the claims against AWMI**. *Whiteside v. Smith*, 67 P.3d 1240, 1248 (2003) (en banc) (“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976))).

7. In its October 9 TRO Order, this Court found that Plaintiffs’ counsel satisfied notice and an opportunity to be heard because they “made efforts to contact Defendant’s

litigation counsel in Florida.” (TRO Order at 3). What this Court fails to note (because the county and state failed to inform the court), and what Plaintiffs utterly fail to demonstrate, is that Plaintiffs never informed AWTMI that it had filed a TRO, even though Plaintiffs had the email address of counsel on a separate federal lawsuit. AWTMI had no notice that a TRO had been filed until sometime *after* this court entered the TRO. That undermines the very point of due process, namely that AWTMI be given notice that Plaintiffs intended to seek an injunction against AWTMI’s First Amendment activities.

8. By way of excusing Plaintiffs’ constitutionally deficient notices and utter failure to even allege attempting notice, this court asserts that AWTMI was given an opportunity to be heard on **its own constitutional challenges** to the Colorado and Plaintiffs’ COVID-19 Orders in **a separate federal lawsuit**. But, that is plainly insufficient. The fundamental requirements of the Constitution mandate that AWTMI be given notice and an opportunity to be heard on Plaintiffs’ claims **in this court** (which are wholly different from AWTMI’s own claims in the previous federal litigation) that it is allegedly violating Plaintiffs’ public health orders. This Court’s TRO runs roughshod over that fundamental prerequisite and violates the First Amendment.

9. “[D]ue process requires adequate notice of opposing claims [and] a reasonable opportunity to meet **those claims**.” *See, e.g., Ranum v. Co. Real Estate Com’n*, 713 P.2d 418, 419 (Colo. Ct. App. Div. 1. 1985) (emphasis added). “Notice comports with requirements of due process when it is reasonably calculated, under all circumstances, to apprise interested parties **of a pending action** and affords them an opportunity to present their objections.” *People in re K.M.K.*, 780 P.2d 43, 56 (Col. Ct. App. 199) (emphasis added). Indeed, “[t]his right to be heard has little reality or worth unless one is informed **that the matter is pending** and can choose for

himself whether to appear or default, acquiesce or contest.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (emphasis added).

10. Here, this court’s TRO was admittedly issued *without notice* to AWMI (TRO Order at 3), and noted that AWMI had an opportunity to be heard on its claims in the previous federal litigation. (TRO Order at 4). Under *Ranum, K.M.K.*, and *Mullane*, an opportunity to be heard on different claims in a different court cannot – by necessity – constitute a fair opportunity to be heard on **pending claims**. Indeed, *In re Asbestos Ltiig.*, 829 F.2d 1233, 1260 (3d Cir. 1987) (Hunter, J., dissenting) (noting that it is unprecedented that any court “has permitted a party’s opportunity to be heard to be satisfied in subsequent litigation before the same court, or – **even more incredibly – in prior litigation** before an unrelated tribunal” (emphasis added)). Thus, concluding that AWMI was afforded the fundamental prerequisite process to which it was entitled by being heard **on different federal, constitutional claims in a different court** is plainly erroneous. AWMI was given no opportunity whatsoever to be heard on Plaintiffs’ wholly different **state law claims in this court**.

11. Nevertheless, even if an opportunity to be heard can be satisfied by the opportunity to be heard on different claims in a different court, which it cannot, there is no question that AWMI was provided **no notice** in the instant case. This Court’s TRO Order makes scant mention of any notice, referencing only Plaintiffs’ counsel’s “efforts to contact” AWMI’s counsel. (TRO at 3). But, what is not mentioned because it cannot be, is that AWMI was not provided any notice whatsoever that a claim was being brought in this Court, that relief was being sought from this Court, or that AWMI was a defendant in any case in this Court. If such nonexistent notice satisfies due process, then the term is utterly hollow.

12. There are many other factual allegations in Plaintiffs' TRO moving papers that will be subsequently addressed. These misrepresentations (that AWMI's counsel was noncommittal during a federal hearing, that AWMI was uncooperative, and much more) again underscores the reason why a government actor is prohibited by U.S. Supreme Court precedent from obtaining a TRO against a private actors First Amendment rights without notice.

CONCLUSION

13. Omitted from this Court's TRO Order (or the papers requesting it for that matter) is any mention that Plaintiffs sought a TRO for a conference that ended on the very day the TRO Order was entered, which *ended before the TRO Order was served*, and thus restrains AWMI for a conference that has passed. A limited TRO Order that legally cannot extend past 14-days, *see* Colo. R. Civ. P. 65(b), a period in which AWMI has no conferences scheduled was improper at the time it was and improper now.

14. AWMI will present any and all relevant and applicable defenses in its response to Plaintiffs' Motion for Preliminary Injunction.

15. Because the First Amendment prohibits this Court from entering a TRO against First Amendment protected activity without notice and because AWMI was neither provided notice nor an opportunity to be heard on the claims pending in this Court, **the TRO was issued in error and should be dissolved.**

Respectfully submitted,

/s/ Richard J. Harris
Richard J. Harris
Colorado Attorney No. 46949
1 Innovation Way, Ste. B
Woodland Park, CO 80863
(719) 284-7495
RichardHarris@AWMI.net

/s/ Daniel J. Schmid
Mathew D. Staver*
Horatio G. Mihet*
Roger K. Gannam*
Daniel J. Schmid*
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
(407) 875-1776
(407) 875-0770 facsimile
court@LC.org – hmihet@LC.org
rgannam@LC.org – dschmid@LC.org

*Pro hac vice admission pending

Counsel for Defendant Andrew Wommack Ministries, Inc.

<p>DISTRICT COURT, TELLER COUNTY, COLORADO</p> <p>101 W. Bennet Ave. Cripple Creek, Colorado 80813</p> <hr/> <p>TELLER COUNTY DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, and</p> <p>COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,</p> <p>Plaintiffs,</p> <p>v.</p> <p>ANDREW WOMMACK MINISTRIES, INC.</p> <p>Defendant.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Richard J. Harris 1 Innovation Way, Ste. B Woodland Park, CO 80863 (719) 284-7495 RichardHarris@AWMI.net Attorney Registration No: 46949</p> <p>Mathew D. Staver* Horatio G. Mihet* Roger K. Gannam* Daniel J. Schmid* LIBERTY COUNSEL P.O. Box 540774 Orlando, FL 32854 (407) 875-1776 court@LC.org – hmihet@LC.org rgannam@LC.org – dschmid@LC.org</p> <p>*Applications pro hac vice forthcoming</p> <p><i>Attorneys for Defendant Andrew Wommack Ministries, Inc.</i></p>	<p>Case No. 20CV30054</p> <p>Div. 2 (for Div. 11, Teller)</p>
<p style="text-align: center;">CERTIFICATE OF SERVICE</p>	

I HEREBY CERTIFY that I have on this 13th day of October, 2020, sent by electronic mail, true and complete copies of Out of State Counsel's Verified Motion Requesting Pro Hac Vice Admission of Horatio G. Mihet.

Teller County Department of Health and Environment

Paul Hurcomb
Attorney Registration No. 32459
Teller County Attorney
Sparks Willson, P.C.
24 South Weber St. #400
Colorado Springs, CO 80903
(719) 634-5700
pwh@sparkswillson.com

Colorado Department of Health and Environment

Eric Kuhn
Senior Assistant Attorney General
Attorney Registration NO. 38083
Ryan Lorch
Assistant Attorney General
Attorney Registration No. 51450
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
(720) 508-6143/6168
eric.kuhn@coag.gov
ryan.lorch@coag.gov

/s/ Richard J. Harris

Richard J. Harris
Colorado Attorney No. 46949
1 Innovation Way, Ste. B
Woodland Park, CO 80863
(719) 284-7495
RichardHarris@AWMI.net

/s/ Daniel J. Schmid

Mathew D. Staver*
Horatio G. Mihet*
Roger K. Gannam*
Daniel J. Schmid*
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
(407) 875-1776
(407) 875-0770 facsimile
court@LC.org – hmihet@LC.org
rgannam@LC.org – dschmid@LC.org

*Pro hac vice admission pending

Counsel for Defendant Andrew Wommack Ministries, Inc.