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REPLY TO FLORIDA

[redacted] 2025

Via Email Only:
[redacted] Area Director
Occupational Safety and Health Administration
[redacted] Area Office
U.S. Department of Labor
[redacted]
[redacted]
[redacted]@dol.gov

RE: [redacted] – [redacted]

Dear Area Director [redacted]:

Liberty Counsel responds on behalf of Pastor [redacted] and [redacted] ("the Church") to your office's [redacted], 2025 correspondence and subpoena duces tecum. Please direct further correspondence in the matter of this subpoena to Liberty Counsel.

We believe there is a misunderstanding in this matter. Neither the pastor [redacted] as individual homeowner, nor the Church, as church, are an "employer" within the contemplation of Section 5 of the Occupational Safety and Health Act (OSH Act), 29 U.S.C.A. § 652.

As such, the pastor and the Church are outside the jurisdiction of the [redacted] Area Office of the Occupational Safety and Health Administration ("OSHA") of the U.S. Department of Labor for purposes of this subpoena. OSHA has no jurisdiction over a non-employer homeowner; nor over the non-business Church, on the basis that the Church may reimburse the non-employer homeowner for the costs of improvements to the residential property.

In the absence of jurisdiction, the subpoena duces tecum attached to the [redacted] letter appears to be void for lack of jurisdiction and neither the pastor [redacted] nor the Church are obligated to respond.

For the reasons set forth below, Liberty Counsel respectfully sets forth its objections to the subpoena on behalf of the pastor [redacted] and the Church. We hereby request confirmation in writing on or before [redacted], 2025 that the subpoena has been withdrawn.

Should there be further questions in the meantime regarding the facts or applicable law set forth herein, Liberty Counsel is available for discussion at 407-875-1776.

LIBERTY COUNSEL BACKGROUND

Liberty Counsel is a national non-profit litigation, education, and public policy organization with an emphasis on First Amendment liberties, and a particular focus on the sanctity of human life, religious freedom and the family.

Liberty Counsel has successfully represented pastors and churches against government overreach outside of the government's appropriate jurisdiction. In 2020 and 2021, Liberty Counsel's groundbreaking lawsuits coast-to-coast freed houses of worship in numerous states, including Kentucky, Illinois, Maine, Virginia, and California, from discriminatory COVID-19 restrictions. Several of these cases reached the United States Supreme Court and resulted in injunctions prohibiting discriminatory COVID-19 restrictions on religious worship. For example, our case against California and its Governor Gavin Newsom resulted in a permanent injunction, *see Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 1289 (2021), and a subsequent final judgment requiring payment to Liberty Counsel of **$1,350,000** in attorney's fees and costs. *See Harvest Rock Church, Inc. v. Newsom*, No. 2:20-cv-06414, C.D. Cal. (May 14, 2021).

The national press has also reported extensively about our 9-0 unanimous Supreme Court victory against the City of Boston, in connection with its religious discrimination against Christians. *See Shurtleff v. City of Boston*, 142 S. Ct. 1583 (2022) (*See, e.g.*, Adam Liptak, *Supreme Court Rules Against Boston in Case on Christian Flag*, New York Times (May 2, 2022) https://www.nytimes.com/2022/05/02/us/supreme-court-boston-flag-free-speech.html). The City of Boston paid Liberty Counsel more than $2.125 million in attorney's fees.

FACTS

the pastor is the homeowner of the home at . and pastor of the Church. The Church's legal name is "the church The Church's congregation primarily meets (including for Sunday services) at , but the elders frequently meet at the Pastor 's home at . The Church has several ministries and activities which are more fully described on its website .

The Pastor is in the process of making improvements to his residential property at The elders of the Church determined that these improvements should be paid by the Church, as the improvements will benefit the ministries of the Church.

On or around 2025, an OSHA Compliance Safety & Health Officer ("COSHO") inspected the property, noted concerns about hard-hats and safety harnesses, and sent an email demand for items and answers OSHA now demands via the 2025 subpoena.

In response to the inspection, the Pastor immediately addressed the concerns, pausing the work until he could provide hats, safety glasses, and harnesses; purchase two fire extinguishers; and dig out and deepen the walk out for a footing, so nothing could cave in. The Pastor confirmed these actions via email to the COSHO on 2025. The email explained that the Pastor was not an "employer," but a homeowner, and the pastor of the Church.

On 2025, the Church (attention the pastor received the attached subpoena duces tecum from the Area OSHA Office, and contacted Liberty Counsel.

On , 2025, the undersigned spoke with an official within the Office. The official stated that the file had no indication that the church was a church; and that the official had not visited the Church's website to learn more about the Church. In response to the question of whether OSHA typically asserted jurisdiction over homeowners, the official said, "typically not," and that this was a very "atypical" situation.

The official stated that the original COSHO had escalated this because he was "unclear of the role of the Pastor ," and that it seemed like the "homeowner was involved in more of a general contractor capacity; the COSHO wants to understand who is the controlling entity; who does what; and get an idea of the contract between the homeowner, the business [sic], and the subcontractors as well."

The Pastor believes that he explained his role clearly when he spoke with the COSHO, and in his follow-up email, but Liberty Counsel is happy to provide further clarification. Liberty Counsel has reviewed the facts and law and believes the subpoena should be withdrawn for the following reasons.

AGENCY INTERPRETATION OF HOMEOWNER OBLIGATIONS

The jurisdiction and requirements of the Occupational Safety and Health (OSH) Act and its implementing standards apply to "employer[s]." Under Section 3 of the OSH Act, "employer" is defined as "a person **engaged in a business** affecting commerce who has employees..." (emphasis added).

OSHA has addressed whether homeowners are within its jurisdiction. *See* OSHA interpretation letter of December 29, 2004[1] in applicable part:

> Question (1)(a): Scenario: **A homeowner has no employees**. The homeowner contracts with several specialty contractors (such as foundation, **framing,** roofing, plumbing and electrical contractors) to perform the construction activities necessary to construct or expand a home. **Would the homeowner be considered a controlling employer under the Multi-Employer Worksite Policy?**
>
> Answer
> Pursuant to Section 5 of the Occupational Safety and Health Act (OSH Act), the requirements of the OSH Act and its implementing standards apply to "**employer**[s]." Under Section 3 of the OSH Act, **"employer" is defined as:**
>
> **a person engaged in a business** affecting commerce **who has employees**...
>
> **Typically, a homeowner will not meet this statutory definition of an "employer."**
>
> In addition, a homeowner who contracted with independent contractors normally would not get involved in supervising/controlling any of the contractors' employees. That being the case, **the contractor's employees would not be considered employees of the homeowner**. Therefore, **the requirements of the OSH Act and its implementing standards would not apply to the homeowner**.

[1] https://www.osha.gov/laws-regs/standardinterpretations/2004-12-29

> Question (1)(b): Same scenario as in Question (1)(a), with the added fact that the homeowner has expertise in construction safety (for instance, due to the homeowner being a construction safety professional). Does the fact that the homeowner has such expertise affect the answer?
>
> Answer
> **No, as long as the homeowner does not meet the statutory definition of an "employer."** Also, the fact that the homeowner is knowledgeable about construction safety does not make the homeowner responsible for supervising or controlling a subcontractor's employees.

(Emphasis added). Indeed, the OSHA interpretation letter also states "OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but **they cannot create additional…obligations**." (Emphasis added). The guidance in the 2001 letter is consistent with the previous interpretation letter, dated February 21, 1997, OSHA also explains that "**OSHA does not have any regulations that apply to residential properties**" but the regulations **"require *employers* to protect employees** exposed to various hazards during construction activities." See https://www.osha.gov/laws-regs/standardinterpretations/1997-02-21 (emphasis added).

The Pastor is a homeowner not "a person **engaged in a business** affecting commerce **who has employees**..." or "employer" and is thus outside of OSHA's jurisdiction based on OSHA's own agency guidance.

APPLICABLE LAW

Section 556(c)(2) of the Administrative Procedure Act provides that an administrative law judge (ALJ) may issue subpoenas *authorized by law*. 5 U.S.C. § 556(c)(2). *See also* 5 U.S.C. § 555(d). See https://www.dol.gov/agencies/oalj/topics/information/SUBPOENAS. As an ALJ is also limited in issuing subpoenas "authorized by law," so is an OSHA Area Director limited in issuing subpoenas and may only issue such "authorized by law."

OSHA simply has no jurisdiction to issue a subpoena to a not-engaged-in-a-business, residential homeowner. A residential homeowner is not a "business" within the meaning of the OSH Act. *See* 29 U.S.C.A. § 652 (5)("The term 'employer' means a person **engaged in a business** affecting commerce who has employees…")(emphasis added). For that matter, a residential homeowner – even if he hires helpers to work on his home – is not "affecting [interstate] commerce."

In addition, by its very nature, the Church is not "engaged in a business" affecting commerce. Churches are not commercial enterprises; churches have a distinct purpose and unique legal protections. Unlike a business, churches do not function to earn a profit. Rather, a church receives biblically prescribed tithes, which are used to sustain the church and support its missions. *See Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 344 (1987) ("[U]nlike for-profit corporations, nonprofits historically have been organized to specifically provide certain community services, not simply to engage in commerce. Churches often regard the provision of such services as a means of fulfilling religious duty and of providing an example of the way of life a church seeks to foster.") Therefore, it would be inappropriate for OSHA to attempt to apply to the Church the standards applied to commercial businesses under the OSH Act.

The "Commerce Clause," found in Art. I, § 8 of the U.S. Constitution, does not provide a basis for OSHA jurisdiction in this matter. While "in enacting the Occupational Safety and Health Act, Congress intended to exercise the full extent of the authority" granted by the commerce clause of the Constitution, *Austin Rd. Co. v. Occupational Safety & Health Rev. Comm'n*, 683 F.2d 905, 907 (5th Cir. 1982), Congress' "authority under the Commerce Clause [is not] a general police power of the sort retained by the States." *United States v. Lopez*, 514 U.S. 549 (1995). "The Constitution ... withhold[s] from Congress a plenary police power;" *id.*, at 584–585 (THOMAS, J., concurring) ("[W]e always have rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power"), 596–597, and n. 6. See also *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 487 (2018) (THOMAS, J., concurring) (discussing *License Tax Cases*, 5 Wall. 462, 470–471, 18 L.Ed. 497 (1867) (holding that Congress has "no power" to regulate "the internal commerce or domestic trade of the States")).

As to whether a homeowner is covered by OSHA, *Rosas v. Dishong*, 67 Cal. App. 4th 815 (4th Dist. 1998) held that homeowners who contracted with an individual who had provided landscape maintenance services **were not employers subject to OSHA coverage.** The court noted that the emphasis of OSHA coverage has historically been on **business, industry and trade**, and that average homeowners would not expect that OSHA requirements would apply when they hire someone to perform a task rather than for a commercial purpose. *See also Hottmann v. Hottmann*, 572 N.W.2d 259 (1997) (Michigan Occupational Safety and Health Act (MIOSHA) regulations were not applicable to homeowner).

There is limited authority explicitly interpreting the meaning of "engaged in a business" in the OSH Act context under 29 U.S.C.A. § 652 (5). Elsewhere in U.S. Code, the term "engaged in business" includes terms consistent with the plain meaning of the language in § 652 (5). For example:

> [A] person who devotes time, attention, and labor **to dealing in firearms as a regular course of trade or business** to *predominantly earn a profit* through the **repetitive purchase and resale of firearms**, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.

18 U.S.C. § 921(a)(21)(C) (emphasis added). This statute further defines "to predominantly earn a profit" to mean:

> [T]hat the intent underlying the sale or disposition of firearms is predominantly one of **obtaining pecuniary gain**, as opposed to other intents, such as improving or liquidating a personal firearms collection.

18 U.S.C. § 921(a)(22). Moreover, the "distinction between…a hobby and dealing as a business is not unknown to the law and it is recognized that **where transactions of sale, purchase or exchange … are regularly entered into in expectation of profit,** the conduct amounts to **engaging in business**… In its use of terms such as 'business' and 'dealing,' well defined in the law, the statute has avoided the pitfall of vagueness." *United States v. Van Buren*, 593 F.2d 125, 126 (9th Cir. 1979)(internal citations omitted); *see also United States v. Murillo*, No. 2:23-CR-00236-ODW-4, 2024 WL 1517209, at *2 (C.D. Cal. Apr. 8, 2024). Here, the homeowner is not focused on "predominantly earning a profit" as a "regular course of trade or business." He is simply overseeing improvements to his residence.

To the extent that OSHA claims jurisdiction over the homeowner or the Church because it is reimbursing "Homeowner " (who is also "Pastor " of the Church) for certain improvements to the residential property, OSHA has not satisfied its burden of demonstrating that the Church is "engaged in a business." The Church is by definition a non-profit organization whose primary focus is to engage in protected religious expression, not perform the role of a construction business. the pastor in his capacity as an individual homeowner or a pastor, is not an "employer" because he himself is also not "engaged in a business affecting commerce who has employees."

Moreover, even if OSHA could demonstrate that the pastor and the Church fall under the ambit of the OSH Act, the subpoena violates the First Amendment to the United States Constitution and the Religious Freedom Restoration Act (RFRA) because the Church has determined that it should reimburse Tweddell under principles of religious free exercise.

The burdensome and intrusive nature of the subpoena particularly runs afoul of the Religious Freedom Restoration Act (RFRA). The subpoena's demand for seven different items of "Subcontractor Information;" eleven different types of documents and policies from the Church; and ten questions to be answered by the Pastor constitute a substantial burden on religious free exercise in violation of RFRA. The time of the pastor is more appropriately devoted to the activities of the Church; and the demand on the pastor's time itself impacts the Church's religious free exercise under RFRA.

RFRA states: "**Government shall not substantially burden** a person's exercise of religion **even if the burden results from a rule of general applicability**." 42 U.S.C. §2000bb-1. (Emphasis added). The only exception to that concrete prohibition on burdening religious exercise is if the government demonstrates that its burden is both "in furtherance of a compelling government interest," and "is the least restrictive means of furthering that compelling government interest." 42 U.S.C. §2000bb-1(b). RFRA requires a focused inquiry "to the person." *Id*. See also *Gonzales v. O'Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418, 430 (2006) ("RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law to the person—the particular claimant whose sincere exercise of religion is being substantially burdened."). RFRA adopted "the most demanding test known to constitutional law," *City of Boerne v. Flores*, 521 US. 507, 534 (1997), which is rarely passed. *See Burson v. Freeman*, 504 U.S. 191, 200 (1992) ("[W]e readily acknowledge that a law rarely survives such scrutiny . . . .").

RFRA likewise applies and may be raised by the Church "as a claim or defense in a judicial proceeding." 42 U.S.C. §2000bb-1(c). And, it applies against all branches of government, including burdens imposed by an administrative agency like OSHA. *See* 42 U.S.C. §2000bb-2(1) ("the term 'government' includes a branch . . . of the United States" (emphasis added)). There is little doubt that RFRA was intended to protect the Church in instances such as this because the explicit purpose of RFRA was to restore strict scrutiny as the governing standard and "to guarantee its application in all cases where free exercise is substantially burdened." 42 U.S.C. §2000bb(b) (emphasis added).

Indeed, RFRA "operates as a kind of super statute, displacing the normal operation of other federal laws," and "supersede[s] Title VII's commands in appropriate cases." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 682 (2020) (emphasis added). "RFRA is unusual in that it amends the entire United States Code," *Rweyemamu v. Cot*e, 520 F.3d 198, 202 (2d Cir. 2008), because "[a]t bottom, the import of RFRA is that, **whatever other statutes may (or may not) say, 'the Federal Government may not, as a statutory matter, substantially burden a person's exercise of religion**.'" *Id.* (*quoting Gonzales*, 546 U.S. at 424) (emphasis original and added). S*ee also Rojas v. Roman Catholic Diocese of Rochester*, 557 F. Supp. 2d 387, 396 (W.D.N.Y. 2008) ("RFRA applies to all federal law."). RFRA

has even been recognized as a defense in claims between private parties. *See, e.g., EEOC v. Catholic Univ. of Am.*, 83 F.3d 455 (D.C. Cir. 1996).

APPLICABLE EXECUTIVE ORDER

The Church has received opposition in the past from persons in [redacted] who disagreed with the Church's sincerely-held religious beliefs, and acted out of what can reasonably be described as anti-Christian bias, based on those persons' written communications to the Church, on social media, and to government officials. Liberty Counsel has reviewed some of these archived communications and they evince anti-Christian animus.

The Church hopes that the previous OSHA inspection was not initiated by complaints from these same individuals; nor that this subpoena is the culmination of weaponized complaints. If this investigation and subpoena do stem from complaints called in by such persons, President Donald J. Trump's Executive Order 14202 of February 6, 2025, Eradicating Anti-Christian Bias,[2] establishes "the policy of the United States, and the purpose of this order, to protect the religious freedoms of Americans and **end the anti-Christian weaponization of government**. The Founders established a Nation in which people were free to practice their faith without fear of discrimination or retaliation by their government."

"[T]he United States Constitution enshrines the fundamental right to religious liberty in the First Amendment. Federal laws like the Religious Freedom Restoration Act of 1993, as amended (42 U.S.C. 2000bb *et seq.*), further prohibit government interference with Americans' rights to exercise their religion…" yet" the previous Administration engaged in an egregious pattern of targeting peaceful Christians, while ignoring violent, anti-Christian offenses."

The Trump "Administration will not tolerate anti-Christian weaponization of government or unlawful conduct targeting Christians. The law protects the freedom of Americans and groups of Americans to practice their faith in peace, and [the Trump] Administration will enforce the law and protect these freedoms. [The Trump] Administration will ensure that any unlawful and improper conduct, policies, or practices that target Christians are identified, terminated, and rectified."

Executive Order 14202 has created "a Task Force to Eradicate Anti-Christian Bias" within the Department of Justice, chaired by Attorney General Pam Bondi, and within which is "the Secretary of Labor." The Task Force shall meet and take appropriate action to "review the activities of all executive departments and agencies" including the Department of Labor. The Task Force shall "recommend to the President, through the Deputy Chief of Staff for Policy and the Assistant to the President for Domestic Policy, **any additional Presidential or legislative action necessary to rectify past improper anti-Christian conduct, protect religious liberty, or otherwise fulfill the purpose and policy of this order**." (Emphasis added).

CONCLUSION

OSHA has no jurisdiction over the Church simply because the Church is reimbursing its pastor (a homeowner) for work done on his residence. OSHA has no jurisdiction over a homeowner not "engaged in a business" but acting purely to improve his residential property. In the absence of jurisdiction, the subpoena is void.

[2] https://www.whitehouse.gov/presidential-actions/2025/02/eradicating-anti-christian-bias/

OSHA's subpoena and interrogatories to the homeowner/pastor suffer from a complete lack of jurisdiction under the Commerce Clause, and a complete lack of jurisdiction under the Occupational Safety and Health Act, including 29 U.S.C.A. § 652 (5).

The subpoena's demand for seven different items of "Subcontractor Information;" eleven different types of documents and policies from the Church; and ten questions to be answered by the Pastor constitute a substantial burden on religious free exercise in violation of RFRA. The time of the pastor is more appropriately devoted to the activities of the Church; and the demand on the pastor's time itself impacts the Church's religious free exercise under RFRA.

The subpoena to a residential homeowner who is also the pastor of a church, under these facts could very well be a violation of Executive Order 14202 Eradicating Anti-Christian Bias and weaponization of government against Christians.

For these reasons, we hereby request that on or before , 2025, you confirm to Liberty Counsel in writing that the subpoena duces tecum to the pastor has been withdrawn. Please provide this confirmation, or Liberty Counsel will take additional action to prevent irreparable harm to the rights of the Pastor and the Church.

CC

Compliance Safety & Health Officer

The Honorable Lori Chavez-DeRemer,
Secretary, U.S. Department of Labor

[†]Licensed in
[††] Licensed in