



March 27, 2020
Via Electronic and U.S. Mail

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**Re: Cease and Desist Violating the Civil Rights of Members of Cross Culture
Christian Center**

Dear Public Servants of Lodi,

Thank you for your prompt attention to the urgent and important matters addressed in this legal cease and desist letter involving the Lodi Police Departments infringement and

threatened infringement of my client's constitutional rights. Please be advised that the National Center for Law & Policy (NCLP) is a non-profit organization providing legal assistance to individuals and organizations whose civil rights have been threatened or infringed by the government and its various agents.

Because of my experience as a constitutional attorney licensed to practice and practicing before the Supreme Court of the United States and the NCLP's extensive experience involving advocating for constitutional rights, I was recently contacted and retained by Cross Culture Christian Center (CCCC), a California non-profit religious corporation and church, to represent them regarding this matter. Please do not contact my client or its officer or members, but refer all communications regarding these important legal matters discussed herein to my attention only.

However, I am compelled to write you today because Lodi Police officers have already disrupted a peaceful and lawful worship service of CCCC earlier this week and because these officers provided verbal warnings to my client that threaten the continuing exercise of my client's constitutional freedoms, guaranteed by the First Amendment. I also reiterate here what my client has already informed your officers, that CCCC intends to continue to meet this Sunday, and all future Wednesdays and Sundays in the future. Unfortunately, because of the urgency and gravity of this matter, I am sending this letter to you in somewhat of a rush today. As such, I reserve the right to amend the facts and adjust my legal arguments as additional information is obtained and confirmed by my office.

Statement of Facts

Cross Culture Christian Center (CCCC) is an evangelical Christian church located in Lodi, California. CCCC has the sincerely held religious belief that the church is the assembly of God's people, regularly gathered together for the teaching of God's Word, prayer, worship, baptism, communion and fellowship (See Hebrews 10:25, Acts 2:40-47, Acts 5: 40-42). As a result, CCCC holds regular church meetings on Sundays (the Christian Sabbath) and on Wednesday evenings. CCCC also hold the religious belief that God's law is higher than man's law. Therefore, they agree with Martin Luther King, Jr., that when an unjust man-made law conflicts with God's law, they are obligated to obey God's law (See [Letter from a Birmingham Jail](#), Acts 5:29).

On March 19, 2020, California Governor Gavin Newsome issued Executive Order N-33-20 in response to the threat of COVID-19. The executive order states, in part that "all residents are directed to immediately heed the current State public health directives.... to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors...."¹ The Governor's edict states that it is "enforceable pursuant to California law, including, but not limited to, Government Code section 8665." and has no end date. Subsequently, San Joaquin County issued a strict stay at home order on March 21, 2020, running through April 7, 2020.² The County edict has exceptions for individuals to obtain "essential services" or engage in "essential

¹ <https://covid19.ca.gov/img/N-33-20.pdf>

² <https://www.sjgov.org/WorkArea/DownloadAsset.aspx?id=32463>

activities.” The County’s order warns that violations are a “misdemeanor, punishable by fine, imprisonment or both (California Health and Safety Code §120295, et. seq).” Religious services are not included in the County’s list of essential services or essential activities.

Consistent with CCCC’s sincerely held religious beliefs based on scripture, the church has continued to regularly meet on Sundays (the Christian Sabbath) and Wednesday evenings. However out of genuine love and concern for their neighbor, in light of COVID-19, the CCCC has been careful and diligent to discuss and observe widely recommended health and safety measures including, but not limited to, regular handwashing, social distancing, and asking the elderly, sick or immune compromised to stay at home, among others.

Responding to a report from a government informant, Lodi Police Department officers entered, disrupted, and stopped CCCC’s Wednesday evening service on March 25, 2020. Lodi Police Corporal Bradley and Officer Silva entered the foyer of the building where CCCC meets at approximately 7:30 p.m. Due to their presence, CCCC Pastor Jon Duncan was forced to communicate with them for an extended period of time and was therefore prohibited from performing his regular pastoral duties at CCCC that evening by Lodi Police. Thus, CCCC’s mid-week religious service was materially disrupted and stopped by law enforcement.

During the conversation, Corporal Bradley advised Pastor Duncan that he was there to “educate” CCCC about the San Joaquin County Order. However, Corporal Bradley proceeded to warn Pastor Duncan about the steps the Police Department was prepared to take against the Church following this of “education” incident, including posting a written cease and desist notice on the building for non-compliance. Bradley continued, that, if this were not heeded, the police would likely follow up with an enforcement action, purportedly for “disturbing the peace.” Based on the totality of the conversation, it was the Pastor’s understanding, who is a retired law enforcement officer, that these officers had been dispatched with orders to shut down CCCC’s religious service and order them to vacate the building. Before they left, Pastor Jon Duncan informed the officers that their “education” and any ongoing enforcement actions were seeking a result that was in violation of the Constitutional rights of CCCC members protected by the First Amendment and that the church had no intention of discontinuing its ongoing meetings.

Legal Analysis

The First Amendment to the U.S. Constitution, enshrined in the Bill of Rights, states:

“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.”

The U.S. Supreme Court has made it clear that the U.S. Constitution is the supreme law of the land, superior to and binding upon all other laws, including state constitutions, statutes, ordinances and enforcement actions.³

State governors, counties, municipalities and law enforcement officers do not have the unfettered discretion to unilaterally suspend or restrict the freedoms guaranteed by U.S. Constitution, whether by executive order, edict, or enforcement actions, except in extreme and unique circumstances not applicable to the current COVID-19 outbreak. The First Amendment, as written and as interpreted, robustly guarantees and protects the freedom of speech (which includes religious speech), free exercise of religion and freedom of assembly of all American citizens.

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits laws that abridge the freedom of speech. The freedom of speech includes the right of individuals to articulate their opinions and ideas without fear of retaliation, censorship or legal sanction. Freedom of assembly protects the right of groups of citizens to gather together peacefully.⁴

Except for limited exceptions, content based government restrictions on the freedom of speech and assembly are usually subject to strict scrutiny by the courts. Content-based regulations “target speech based on its communicative content.”⁵ As a general matter, such laws “are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”⁶ Narrow tailoring is often judged by whether the government has employed the “least restrictive means” to obtain its objective.

Here, the state and county may argue that protecting the health and safety of its citizens serves a compelling state interest. While the state may have a valid compelling state interest to act here, it is clear that neither Governor Gavin Newsom’s edict nor the San Joaquin County order are not narrowly tailored to address the problem, nor do they employ the least restrictive means.

In fact, these sweeping mandates are very “broadly tailored” and employ the “most restrictive means” of addressing the COVID-19 outbreak. Indeed, entire swaths of constitutional safeguards, not just those discussed herein, have been cavalierly cast aside as the entire state is on lock down in a condition of effective martial law. Rather than quarantining only those diagnosed with the Coronavirus or those known to have been exposed to the infected, as has been the standard approach in past pandemics, both the Governor’s and county’s orders effectively mandate the quarantine of all citizens, except

³ The U.S. Supreme Court has ruled that the First Amendment is applicable to states and state action, being incorporated through the Fourteenth Amendment. *See e.g. NIFLA v. Becerra*, 138 S.Ct 2361, 2371 (2018).

⁴ *See Edwards v. South Carolina*, 372 U.S. 229 (1963) (holding that the arrest and prosecution of a peaceful gathering of blacks for the purported “breach the of peace” violated their rights of free speech, free assembly and freedom of petition).

⁵ *See NIFLA v. Becerra*, 138 S.Ct 2361, 2371 (2018) (quoting *Reed v. Town of Gilbert*, 576 U.S. —, —, 135 S.Ct. 2218, 2226 (2015)).

⁶ *Id.*

for the limited exceptions for obtaining “essential services” or engaging in “essential activities.” Furthermore, as written and as applied, the orders give local enforcement officers discretion to determine what activities are essential and which are not. Clearly, the Governor and County have determined that religious beliefs and practices, including regularly assembling together, are not essential.

Even if the court would deem the Governor and County’s restrictions as a content neutral (regulating speech without reference to its content), rather than content based, the orders must be narrowly tailored and leave open alternative avenues of expression.⁷ Here, as already discussed above, the government edicts are not narrowly tailored to serve the government’s interest in slowing the COVID-19 virus, but are broadly tailored, impacting all citizens, whether or not they are infected or have been exposed to the virus. Furthermore, these orders do not leave open alternative avenues of expression for CCCC—they don’t leave open any alternative avenues of expression. In fact, the government’s ban is totalistic. CCCC is forbidden to meet in its leased building, and it may not meet anywhere else to express its religious beliefs together. As such, whether content-based or content neutral, the Governor’s Executive Order and the County order are an unconstitutional infringement on CCCC’s freedom of assembly and freedom of speech. Furthermore, the state and local edicts infringe upon CCCC’s free exercise of religion. Specifically, here, the Governor’s indefinite stay at home order and county edicts infringe upon CCCC’s sincerely held religious belief that the church is the assembly of God’s people, regularly gathered together for the teaching of God’s Word, prayer, worship, baptism, communion and fellowship.

Before *Smith*, the U.S. Supreme Court, required that, like freedom of speech, state restrictions impacting the freedom of speech must serve a compelling state interest employing the least restrictive means. In *Smith*, the U.S. Supreme Court has held that state laws that are otherwise valid, may be upheld against free exercise challenges if they are also neutral and generally applicable.⁸ However, the U.S. Supreme Court in recent oral arguments has shown some willingness to reconsider *Smith*. In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, Justice Kennedy, wrote for the majority:

“The Free Exercise Clause bars even “subtle departures from neutrality” on matters of religion. *Id.*, at 534. Here, that means the Commission was obliged under the Free Exercise Clause to proceed in a manner neutral towards and tolerant of Phillip’s religious beliefs. The Constitution “commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures.” *Id.* at 547.”⁹

⁷ *Ward v. Rock against Racism*, 491 U.S. 781 (1989).

⁸ *Employment Division, Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990)

⁹ 548 U.S. ____ (2018); 138 S.Ct. 1719, 1731 (quoting, *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993)).

Here, the broad prohibitions in the state and county edicts do not target churches per se by name. However, the government's decision to exempt a myriad of other activities where individuals gather in close proximity and may infect others with COVID-19 (public transportation, food shopping, places of work, etc.) as "essential," without similarly exempting the religious gatherings of churches is neither tolerant of nor is it neutral towards religious beliefs as is required by *Masterpiece*. The state's discretionary line drawing here is arbitrary and capricious and harms the First Amendment right of CCCC and other churches desiring to meet. As such, the state does not exhibit neutrality towards religion and religious free exercise, but hostility. Therefore, the government edicts and threats of police enforcement are an unconstitutional infringement on CCCC's free exercise of religion.

Conclusion

In conclusion, I must insist that you and your officers respect CCCC's constitutional rights and immediately cease and desist any and all unlawful police threats of enforcement actions or enforcements actions against the church. The U.S. Supreme Court has not lightly dismissed civil rights violations by governmental agencies in these circumstances, but has held that "a violation of an individual's constitutional rights, even for minimal amounts of time, results in irreparable injury."¹⁰ As you are probably aware, 42 U.S. Code §1983 allows persons to sue government officials individually when they deprive a person of Constitutional rights under the color of state law, as is occurring here.

Failure to comply with this demand and refusal to insist that your officers respect my client's civil rights may give rise to the pursuit of all available legal remedies by CCCC including, but not limited to, seeking injunctive and declaratory relief in federal court, and pursuing damages and recovering attorney's fees¹¹ and costs. Please confirm whether you will comply with this cease and desist demand immediately, but no later than March 31, 2020.

Thank you again for your immediate attention to the important matters addressed in this letter. I look forward to your anticipated courtesy and cooperation in acknowledging, honoring, and respecting the civil rights of CCCC, including their inalienable rights to the free exercise of religion, freedom of speech and assembly. Should you have any questions regarding this matter, please direct them only to me at The National Center for Law and Policy.

Sincerely,



Dean R. Broyles, Esq.

President & Chief Counsel

THE NATIONAL CENTER FOR LAW & POLICY

¹⁰ *Elrod v. Burns*, 427 U.S. 347 (1976).

¹¹ 42 U.S. Code §1988 allows court to award attorney's fees to the prevailing party in a 42 U.S. Code §1983 action.