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Contact: Nisha Whitehead, Ph: (434) 978-3888; Cell: (434) 466-6168; nisha@rutherford.org

**Fact Sheet Regarding the Michael Salman Case
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The Rutherford Institute has come to the defense of a Phoenix man who is serving a 60-day jail sentence and was fined more than \$12,000 for using his private residential property to host a weekly Bible study, allegedly in violation of the City of Phoenix's building codes.

In coming to the defense of Michael Salman, Rutherford Institute attorneys are challenging the legality of Salman's imprisonment as a violation of his First Amendment right to religious freedom and assembly, in addition to challenging the City's assertion that if a person holds Bible studies or other forms of religious worship at his residence, he is required to comply with all local laws relating to an actual church that is open to the public. A municipal court judge for the City of Phoenix has since declared that the Salmans may not hold religious gatherings at their home with more than 12 people in attendance.

The Rutherford Institute is also challenging the city's assertion that "Bible studies are not allowed to be conducted in your residence or the barn on your property as these structures do not comply with the construction code for this use." Institute attorneys contend that Salman's religious gatherings should have been treated as accessory uses under the regulations governing residential property. However, city officials claim that they can treat the Bible studies differently than family reunions, football parties or Boy Scouts solely because they are "religious worship."

What is this case all about?

The City of Phoenix has inappropriately subjected the Salman family to the zoning and building requirements that are meant only to apply to public or commercial buildings, even though the Bible studies were intended only for family and friends.

Michael Salman and his wife Suzanne have hosted Bible studies for family and friends in their home since 2005. The Salmans subsequently erected a 2,000-square-foot building in their backyard, large enough to hold approximately 40 people, which they proceeded to use for their weekly Bible studies. Attendees parked their vehicles on the Salmans' 1.5 acre property. The Salmans also own an adjacent 3.1 acre property, which can be accessed by a gate, bringing their total property size to 4.6 acres.

Despite the fact that the participants parked on the Salmans' property, city officials got involved after a neighbor allegedly complained about the gatherings. In 2007, city officials ordered the Salmans to stop holding the Bible studies in their home, insisting that they were in violation of the zoning ordinance and construction code. Specifically, the Salmans received three separate letters from the City of Phoenix advising them that they were not permitted to hold Bible studies in their home. Here are some actual quotes from the letters:

- “Bible studies are not allowed to be conducted in your residence or the barn on your property as these structures do not comply with the construction code for this use.” (February 23, 2007)
- “In the letter, Ms. Kinsley is requesting information about why Bible studies are not allowed to be conducted in the residence at 7601 North 31st Avenue. The simple and direct answer is that the Bible study use requires a change of occupancy. . . . If you are using the residence or the chicken coop/barn for Bible study activities, it is a change of occupancy . . . and requires a Certificate of Occupancy.” (May 8, 2007)
- “Councilman Mattox has brought your request to our attention regarding conducting Bible studies at your residence. . . . Until the appropriate permits and approvals have been obtained, church related activities, including Bible studies, are not allowed.” (September 20, 2007)

None of these letters advising the Salmans that they were not permitted to host Bible studies in their home refers to concern over any objective factors such as number of guests or vehicles. Rather, the restriction is based solely on the religious purpose of the gatherings. This represents a clear violation of citizens' fundamental right to freely exercise their religion, which is protected by the First Amendment and considered to be Americans' “first freedom.”

In June 2009, nearly a dozen police officers, accompanied by city inspectors, raided the Salmans' property, searching for violations. Having determined that Salman's weekly Bible studies constituted a church, city officials subsequently charged Salman with being in violation of various code regulations that apply to commercial and public buildings, including having no emergency exit signs over the doors, no handicap parking spaces or handicap ramps. Salman was later found guilty of 67 code violations.

Where is Michael Salman now?

Michael Salman is currently serving his 60-day jail term in the Tent City Jail in Maricopa County. The Tents Jail, begun in 1993 as a response to jail overcrowding, houses inmates outdoors in military tents with four Sky Watch Towers for security, stun fences around the perimeter, facial recognition computer software for inmate identification, and K-9 units and patrol deputies for additional security.

Why shouldn't the Salmans have to comply with the City's zoning and building codes?

The Salmans should have to comply with applicable laws, and they are willing to do so. But the City is applying the *wrong set of laws* to the Salmans, based purely on the fact that their activities are religious in nature. The City would never require a family's residence to comply

with commercial building codes just because the family hosted a weekly poker night for guests, a regular Cub Scout meeting, or Monday night football parties. Yet the City argues that because the Salmans' gatherings are religious, they convert the property to a formal "church," and trigger commercial building codes.

What are the implications of this case for other Phoenix residents?

The potential implications are serious and many. For instance, if the City can apply its Building Code (as opposed to the Residential Code) to residential property, then homeschooling families could be treated as having an "Educational Group" use; dinner parties ("gathering of persons for food or drink consumption") could convert homes to an "Assembly Group A" use; and gatherings for "social functions" such as playing games or watching movies would make homes an "Assembly Group A" use. Each of these "uses" would require the home to conform to rigorous construction code requirements, including the installation of sprinkler systems, handicap-accessible restrooms and parking spaces, exit signs, etc.

A line must be drawn between uses that are "residential" and those that are commercial or public in nature. It is an affront to the religious freedom of every American for the City to conclude that religious worship—even where it includes invited friends and family members—is separate from activities that are appropriately undertaken in a family's home. In fact, the Construction Code itself states that homes and their accessory structures are to be governed by the International Residential Code—not the Construction Code under which Salman was convicted.

But weren't the Salmans' Bible studies open to the public?

No. The only time persons unknown to the Salmans attended the Bible study was when a private investigator, under the pretext that he was a friend of another family involved in the Bible study, attended the meeting. This being the first time Suzanne Salman had been confronted with an attendee unknown to her, she allowed him and his putative wife and grandchild to participate for the sake of demonstrating hospitality. Based on this lie, the investigator has since falsely claimed that his attendance proves the meetings were open to the public.

What about the charges that the Salmans routinely had 80-100 people in attendance for the Bible studies?

The size of the Bible studies ranged from 20-45 people, depending on the day of the week and time. The only time that 80 people were at the Salmans' residence was for a Christmas gathering. The Salmans' social gatherings are no different in size from their neighbors', who have had as many people in attendance at their events. For example, on May 20, 2012, one of the days on which Michael Salman is charged with violating his probation by having more than 12 people at his home for a Bible study, one of his neighbors hosted a social gathering at his home. More than 30 cars were parked along on the street for the neighbor's gathering, with some cars double parked along the street. However, the Salmans were cited for having a religious gathering, despite the fact that none of their guests had cars parked on the street.

The Salmans have a 501(c)(3) organization—doesn't that make them a church?

The Salmans have operated a charitable organization for over ten years. Their ministry involves visiting those in prison to comfort them, pray with them and teach them about the Bible. The existence of the registered 501(c)(3) organization facilitates their being allowed into prisons for these purposes.

How does the fact that Bible study participants tithe affect things?

Believing that tithing is part of worship, those who attend the Bible studies take part in a collection that is donated to different charities and ministries of their choosing. None of the money goes to Michael or Suzanne Salman. However, the simple act of tithing does not transform the Bible study gathering into a church, just as the simple act of purchasing products at a Tupperware party does not transform a home into a retail store.

Did the Salmans hand out pamphlets advertising the Bible studies?

The Salmans used to have "pamphlets" that they handed out only to those who came to their home for the Bible studies. They did not distribute them on the street or to anyone they didn't know. In an effort to make it easier for everyone to keep track of what was going on, the pamphlets provided participants with a list of upcoming events related to "doing the work of Christ." There was also a space for people to take notes on whatever topic was being taught in the Bible study that day. The pamphlets were no different from the fliers and newsletters other people pass out in their homes for Avon, Pampered Chef, Amway, Cub Scouts, Girl Scouts and the like.

Was there a sign outside the Salmans' property advertising church services?

No. The Salmans have a residential permit for a Bible board in front of their home that they use to post Scripture or religious messages but they have never used it to advertise their private Bible studies. The Salmans put the board out in late 2007 or early 2008 because they had learned through a traffic study that approximately 2500 cars pass in front of their house each day (they live across from a big park), and they thought it was a great way to evangelize.

What about the fact that the Salmans applied for a property tax exemption?

Michael Salman is an ordained minister, and as such, under Arizona law, his residence qualifies for a tax exemption as a "parsonage"—not as a church. The County Assessor's letter confirming the property's qualification for the exemption states, "Property is residence of senior pastor and qualifies as such for exempt status 1E. Permanent until pastor moves." This is entirely consistent with the Salmans' primary use of the property as a residence—not as a formal, public "church."

Why did Michael Salman tell the City that the new building was a “game room?”

The description of the new building as a “game room” most closely approximated the way the new structure would function—as a gathering place for friends and family. It would have been misleading for the Salmans to have described it as a “church,” as that term is most commonly used to refer to places of worship that are open to all comers. The building was permitted as an accessory building to the residence for private use.

The new structure should have been subject to the same requirements as any other residential building of its size where homeowners could invite family and friends to gather. It should have made no difference to the City what type of songs would be sung inside, what topics of conversation discussed, or what books were to be read.

Why is this case so important to The Rutherford Institute?

From its earliest days, the Christian Church has been comprised of people—not buildings. So in a sense, any gathering of two or more Christians might be called a “church.” But if the First Amendment protects the religious exercise of Christians, it does not permit City governments to restrict religious worship to expensive, steepled buildings that comply with rigorous construction standards meant for commercial enterprises. Such building code requirements may be appropriately applied to public churches—but not private ones.

Moreover, the concept of “separation of church and state” embodied in the First Amendment’s Establishment Clause forbids the government to parse the religious activities of families to determine when the family and its invited guests are sufficiently religious to transform a residential use of land into a formal, “church” use. Determinations on land use should instead be based on objective factors such as number of guests, number of vehicles, noise level, and whether or not the use is open to the general public.

If families may not gather with fellow believers on their own property to worship God according to the dictates of their own consciences, then religious freedom in its most basic sense is dead.

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