

THE RUTHERFORD INSTITUTE

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May 15, 2020

Adam J. Love, Chief of Police
Massena Police Department
60 Main Street
Massena, New York 13662
alove@massenapd.com

Re: Ban on Drive-In Church Services / Central Bible Baptist Church

Dear Chief Love:

The Rutherford Institute¹ has been authorized to represent the First Amendment interests of Pastor Samson Ryman and Central Bible Baptist Church in their efforts to hold “drive-in” worship services at the Church, located at 21 Columbia Road in the Town of Massena, N.Y.

While we appreciate your diligence in working to combat the spread of this virus, you are mistaken in your assertion that church “drive-in” worship services are prohibited under New York’s current emergency orders and could result in fines. Although federal and state governments *have* adopted specific restrictive measures in an effort to decelerate the spread of the COVID-19 virus, the current public health situation has *not* resulted in the suspension of fundamental constitutional rights such as religious freedom, freedom of speech and the right of assembly.

The Church, its leaders and its members are being unfairly subjected to threats that are grounded in a misunderstanding of the law and a misapplication of the Governor’s Executive Orders, which severely chills their exercise of the fundamental right to practice their religion.

In the hopes of avoiding formal legal action, I would strongly advise you to withdraw your threat to enforce the Executive Orders’ restrictions on gatherings to Central Bible Baptist Church’s drive-in services and allow them to proceed as planned.

Despite your assertion to the contrary, the drive-in worship services the Central Bible Baptist Church seeks to conduct are not forbidden by Governor Cuomo’s COVID-19 Executive Orders restricting gatherings. However, even if the Governor’s Executive Orders could be

¹The Rutherford Institute is a national, non-profit civil liberties organization that educates the public on policy issues of constitutional concern and provides legal representation at no charge to individuals whose civil rights are threatened or infringed.

construed to apply to church gatherings, application of the gatherings restriction to the Church's proposed drive-in worship services would violate the First Amendment's guarantee to free exercise of religion. Indeed, a federal court recently struck down an attempt in Kentucky to apply a COVID-19 gathering restriction to a drive-in church service.²

The Church's Drive-In Worship Services Comply with the Law and COVID-19 Guidelines

Pastor Ryman formulated a plan to hold drive-in services at Central Bible Baptist Church after Massena Police warned him that he could not conduct open-air worship services under the current COVID-19 related restrictions.

According to the plan for the drive-in worship services, attendees would drive to Central Bible Baptist Church and park in the parking lot on the east side of the church, remaining in their vehicles and with their windows up at all times. Pastor Ryman would then conduct the service from a porch attached to the Church and adjacent to the parking lot, using a low-power FM transmitter that attendees could tune into with a radio. At all times during the worship service, Pastor Ryman would remain well over six feet from other church attendees.

Pastor Ryman advised the Massena Police Department of the Church's plan for drive-in services. Although Pastor Ryman had previously been warned against holding an open-air service, he was not expressly prohibited from conducting the drive-in services and, in fact, was left with the impression that such services would be permissible.

On Sunday, May 3, 2020, Pastor Ryman held a drive-in worship service in the Church's parking lot without any incident. Approximately 23 worshippers attended in 18 vehicles.

On Monday, May 4, Pastor Ryman was contacted by Massena Police and informed that, per your instructions, the drive-in services violate current orders by Governor Cuomo and could not be held again. Upon contacting you directly, Pastor Ryman was warned that drive-in worship services are a violation of the law and that he could be subject to prosecution for holding the drive-in services and would face a fine of up to \$1000. As a result of this threat, Pastor Ryman discontinued the Church's drive-in worship services.

The Governor's New York State on PAUSE Order Does Not Forbid Drive-In Services

Unfortunately, your assertion that the Church's drive-in worship services are against the law and subsequent threat of prosecution for violating the current restrictions on gatherings in effect in New York constitute a gross misreading of the guidelines issued by Gov. Cuomo's office.

² *On Fire Christian Center, Inc. v. Fischer*, No. 3:20-cv-264 (W.D. Ky. Apr. 11, 2020).

On March 20, 2020, Governor Cuomo announced the New York State on PAUSE Executive Order that, among other things, closes all non-essential businesses and prohibits all “non-essential gatherings.”³

That same day and in connection with the NYS on PAUSE Executive Order, the New York State Department of Economic Development issued guidance for the application of the Order and what is and is not “essential.”⁴ That guidance specifically provides: “Houses of worship are not ordered closed however it is strongly recommended no congregate services be held and social distance maintained.”

Clearly, the NYS on PAUSE Executive Order does not prohibit the closure of houses of worship or their activities. Even though the Order recommends no congregate services, it is not a *ban* on such services, and its reference to maintaining social distancing indicates that worship services conducted within social distancing guidelines are not considered a risk to public health.

Gov. Cuomo’s Executive Order does not forbid the congregants of Central Bible Baptist Church from gathering together, particularly for events that adhere to social distance guidelines such as a drive-in worship services in which all social distancing protocols are practiced and no public health risk is posed.

Moreover, although you expressed concern that allowing the drive-in services would result in different households using a single vehicle to attend the service contrary to social distancing protocols, this unreasonably assumes that worshippers will violate those protocols. Your concern is contradicted by the fact that at the Church’s May 3 drive-in service, 23 persons attended in 18 vehicles. Indeed, the mere possibility that persons will violate social distancing requirements applies to all activities currently allowed under the Executive Orders (the state’s restrictions allow for gathering in convenience stores, beverage stores, hardware stores, and drive-thru restaurant takeout), so there is no basis for singling out religious activity for different treatment.

Applying the Governor’s Gathering Restriction to Drive-In Worship Services Violates the First Amendment’s Guarantee to Free Exercise of Religion

Even to the extent the NYS on PAUSE Executive Order can be construed to prohibit Central Bible Baptist Church’s drive-in worship services, doing so would violate the First Amendment’s guarantee to free exercise of religion. This is confirmed by a recent federal court decision from Kentucky that the City of Louisville could not, under emergency orders banning gatherings, prohibit a church from holding drive-in services.⁵

³ “Governor Cuomo Signs the ‘New York State On Pause’ Executive Order,”

<https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>.

⁴ “Governor Cuomo Issues Guidance on Essential Services Under The ‘New York State on PAUSE’ Executive Order,” <https://www.governor.ny.gov/news/governor-cuomo-issues-guidance-essential-services-under-new-york-state-pause-executive-order>.

⁵ *On Fire Christian Center, Inc. v. Fischer*, No. 3:20-cv-264 (W.D. Ky. Apr. 11, 2020).

As the court ruled in *On Fire Christian Center, Inc. v. Fischer*, even when the government is acting in response to a public health emergency, the measures it adopts may not burden or suppress religiously-motivated conduct when similar secular conduct is not subject to the same burden.⁶ Because the city's restrictions allowed other drive-in services, such as making liquor purchases and parking at retail stores, the city could not credibly claim that it was necessary to forbid drive-in worship services.⁷

Such arbitrary, needless restrictions on religious activity violates the First Amendment.

The same reasoning is wholly applicable and controlling in the case of Central Bible Baptist Church's drive-in worship services. Those services and the manner in which they would be conducted pose no greater or different threat to public health than do other kinds of gatherings allowed under the NYS on PAUSE Executive Order.

Activities allowed under the NYS on PAUSE Executive Order include gathering in convenience stores, beverage stores, hardware stores, and drive-thru restaurant takeout.⁸ If these activities can be conducted safely with social distancing, then certainly the Church's drive-in services, where worshippers will remain in their cars, can be conducted safely. To burden religious activity in this way renders the order overbroad in violation of the First Amendment.

On behalf of Pastor Ryman and Central Bible Baptist Church, we demand that you abide by the requirements of the First Amendment and respect the right of the Church to conduct its drive-in worship services. If the threat of prosecution is not lifted, we will be required to explore other options for protecting the fundamental constitutional rights of the Church.

Should you have any questions or concerns, feel free to contact me at (434) 978-3888.

For freedom,



John W. Whitehead
President

cc: Pastor Ryman, Central Bible Baptist Church

⁶ *Id.*, slip op. at 11.

⁷ *Id.*, slip op. at 12-13.

⁸ "Governor Cuomo Issues Guidance on Essential Services Under The 'New York State on PAUSE' Executive Order," <https://www.governor.ny.gov/news/governor-cuomo-issues-guidance-essential-services-under-new-york-state-pause-executive-order>.