



April 9, 2020

Mayor Errick Simmons
340 Main St
Greenville, MS 38701

Sent via email only to: [REDACTED]

Re: Drive-in Services

Dear Mayor Simmons:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. First Liberty Institute represents Charleston Hamilton and King James Bible Baptist Church (KJBBC). Please direct all correspondence on this matter to my attention.

Pastor Hamilton's Drive-In Church

Pastor Hamilton and KJBBC have rigorously followed the CDC guidelines for the COVID-19 crisis since it came to Mississippi.¹ However, your recent order prohibiting drive-in services² leaves him in reasonable fear that he and his church members will be fined and criminally prosecuted for merely engaging in drive-in church services that fall well within the CDC guidelines. We require Greenville, Mississippi to withdraw the unconstitutional order that, disturbingly, targets religious exercise.

Unable to meet in-person, KJBBC creatively chose to utilize a "drive-in" method of holding church services. Members of KJBBC drive in their cars and park in their parking lot—in maybe 7 or 8 cars total. Pastor Hamilton stands at a distance greater than 6 feet from his parishioners as they remain their cars with the windows up. No one leaves their cars at any time during the service. Rather, they listen to Pastor Hamilton as he, utilizing a bullhorn, preaches to them in the open air.

A dear friend of Pastor Hamilton has a similar practice for his congregation nearby, also in Greenville. On Wednesday, April 7, 2020, Greenville Police arrived on the scene and ticketed every car in the lot, issuing them a summons to appear in court, and the prospect of facing a \$500 per person. In just a few days, Pastor Hamilton and KJBBC will gather for Easter—one of the most precious days on the Christian calendar—in a manner consistent with guidelines issued

¹ See Centers for Disease Control, *Interim Guidance for Administrators and Leaders of Community- and Faith-Based Organizations to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/guidance-community-faith-organizations.html>.

² "Mayor and Greenville City Council Issue Orders on Church Services and City Curfew" (April 7, 2020), <https://files.constantcontact.com/b25064bb701/oae6b068-7c53-4aa2-aaaa-e017349816c7.pdf>.

by the CDC for community and faith-based organizations³ to ensure the safety and well-being of members and congregants.

Unless the City of Greenville takes immediate action, Pastor Hamilton fears that he and his small congregation will be criminally prosecuted for worshipping according to CDC guidelines. Contrary to Greenville’s draconian and unconstitutional ordinance, Pastor Hamilton and KJBBC’s practice is well within the directives issued by the State of Mississippi⁴ and the CDC Guidelines. Greenville must end its unconstitutional and unlawful practice of fining and prosecuting church members who peaceably assemble according to CDC guidelines and the directives of the State of Mississippi.

Greenville’s Ordinance Targets Religion and Violates Clearly Established Law

Your prohibition of religious gatherings of this type and the ticketing of participants, regardless of the precautions taken, is forbidden under both federal and Mississippi state law. Mississippi’s Religious Freedom Restoration Act (“MRFRA”) prohibits government officials from substantially burdening religious exercise without demonstrating that the restriction imposed advances a compelling interest by the least restrictive means. Miss. Code Ann. § 11-61-1 (2014). The First Amendment’s Free Exercise Clause imposes a similar standard when government action targets religious exercise. See *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531–32 (1993). The government bears the burden of meeting this exceptionally demanding standard. See *id.* at 546; *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 726 (2014);⁵ Miss. Code Ann. § 11-61-1. The requirements are so high that government action “that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation will survive [this standard] only in rare cases.” *Lukumi*, 508 U.S. at 546.

It is clear that your prohibition of drive-in church services imposes a substantial burden - indeed, a wholesale prohibition—on this particular religious exercise by the Church. Cf. *Hobby Lobby*, 573 U.S. at 726. Stated another way, your directive prohibits the gathering of believers that is central to the Easter celebration, effectively limiting religious services by houses of worship to video or teleconferencing only, but does not force the same restriction on other entities or activities. As a result, it uniquely handicaps churches from implementing the social distancing guidelines⁶ provided by the CDC.

³ See *CDC Guidelines*, *supra* note 1.

⁴ Executive Order No. 1466 (April 1, 2020),

<https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1466.pdf>

(adopting the definition of essential businesses and operations from Executive Order No. 1463 (March 24, 2020), <https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1463.pdf>

(Essential businesses and operations include “Religious entities including religious and faith-based facilities, entities and groups, religious gatherings provided that they adhere to the CDC and the Mississippi Department of Health recommendations and guidance to prevent the spread of COVID-19.”)).

⁵ MRFRA is substantially similar to the federal Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb-1. Thus, cases interpreting RFRA are instructive in interpreting MRFRA.

⁶ It also effectively prohibits any Easter services for houses of worship that lack the expertise or technological infrastructure necessary to provide religious services by video or teleconference.

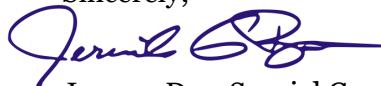
Imposing more restrictive requirements that target only churches and their drive-in services, which houses of worship across the county have implemented,⁷ does not meet the requirements of the least restrictive means test and so violates state and federal law because of the burden it lays on religious exercise.

The prohibition is similarly unlawful because it treats houses of worship less favorably than similarly situated entities. For example, the prohibition does not apply to restaurants that provide drive through or take out service. Nor does it apply to establishments such as Wal-mart, where far more people park with more contact and less oversight. A government cannot meet its burden to demonstrate a compelling interest in restricting religious exercise if it implements such exemptions. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436–37 (2006); *Lukumi*, 508 U.S. at 547.

Mississippi’s executive orders recognize religious activities as essential, yet similar “essential” activities are not handicapped in the way religious expression has been by the Greenville ban on drive-in services. No government may suspend the Constitution because that government insufficiently values its citizens’ religious needs. Furthermore, the federal Cybersecurity & Infrastructure Security Agency of the U.S. Department of Homeland Security includes clergy within its list of essential infrastructure personnel.⁸

The Church recognizes that you are dealing with a tremendously difficult situation, and it applauds you for your work to protect the city and its residents. The Church will continue to work with you and the City to keep everyone safe and well. Even so, the prohibition against drive-in church services for Easter goes beyond the CDC’s requirements and violates both the First Amendment’s Free Exercise Clause and the Mississippi Religious Freedom Restoration Act. As Easter Sunday is only a couple of days away, please let me know no later than Noon CT, Friday, April 10 (also known as Good Friday on the Christian calendar) what action the City of Greenville intends to take in response to these demands.

Sincerely,



Jeremy Dys, Special Counsel
First Liberty Institute

⁷ See, e.g., Salena Zito, “While some churches go virtual, others go old school: Drive-ins,” *Washington Examiner* (March 23, 2020), <https://www.washingtonexaminer.com/opinion/while-some-churches-go-virtual-others-go-old-school-drive-ins>.

⁸ See U.S. Dep’t of Homeland Security Cybersecurity & Infrastructure Security Agency, “Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response,” available at https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated.pdf (includes “Clergy for essential support” as essential workers).