



August 18, 2020

Juan A. Gonzalez
Chief Legal Counsel
Cameron County Courthouse
Cameron County, Texas
1100 East Monroe Street
Brownsville, TX 78520

Sent via email [REDACTED] and U.S. Mail

Re: Cameron County Lacks Legal Authority to Prevent Laguna Madre Christian Academy from Re-Opening

Mr. Gonzalez:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We represent Laguna Madre Christian Academy ("LMCA"), please direct all communications concerning this matter to my attention.

Like many private, Christian schools throughout the country, the threat of COVID-19 presents LMCA's community with difficult decisions, including when to reopen its small campus to its twenty (20) students taught by five (5) teachers. After much consideration and lengthy planning, the school's leadership arrived at the decision that it will open on August 31, 2020, strictly following the safety guidelines recommended by the U.S. Center for Disease Control as reflected in the protocols attached hereto. *See Exhibit 1.* For example, LMCA will restrict access to their 4,500 square foot facility to just students and essential staff. Students arriving through controlled and separated ingress and egress to the building will have their temperatures checked and asked relevant exposure questions prior to gaining entry to the building. Masks or face shields will be worn by students. Student desks will be separated following social distancing protocols and students will remain separated from one another at all times.

We write to inform you that, following these safety protocols and the guidance of Texas Attorney General Ken Paxton, LMCA will resume in-person instruction on August 31, 2020.

Cameron County Cannot Issue a Blanket Order Closing Religious Schools

On August 10, 2020, Cameron County Health Authority and Cameron County Judge Eddie Treveño issued a joint order "Delaying in Person Face-to-Face and Private School Instruction until after September 28, 2020." *See Exhibit 2.* The order purports to prevent the reopening of not only the public schools over which Cameron County has

authority, but also private schools in Cameron County, over which it lacks the authority to close on this matter.

As you know, Governor Greg Abbott issued Executive Order GA 28 on June 26, 2020. In his directive, he explicitly noted:

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such local order restricts services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list or scope of services as set forth this executive order.

See Exhibit 3.

Further, on July 17, 2020, Texas Attorney General Ken Paxton provided guidance in a letter to religious private schools. His guidance is unequivocal:

Under the Governor's orders, local governments are prohibited from closing religious institutions or dictating mitigation strategies to those institutions. Local governments are similarly prohibited from issuing blanket orders closing religious private schools. Because a local order closing a religious private school or institution is inconsistent with the Governor's order, any local order is invalid to the extent it purports to do so.

Moreover, local public health orders attempting to restrict the provision of religious instruction through religious private schools violate the United States and Texas Constitutions and the Texas Religious Freedom Restoration Act.

See Exhibit 4.

Moreover, perhaps anticipating your objection, General Paxton explained that, "Local public health orders issued by cities and counties must be consistent with the Governor's orders and the Attorney General's guidance. If local public health orders are inconsistent with these authorities, the local orders must yield." *Id.*

On Thursday, August 13, 2020, our client received an email from you dismissing both Governor Abbott's executive order and General Paxton's guidance. Of the latter, you noted that, "Cameron County is of the opinion that Paxton's guidance is not grounded in legitimate or correct legal analysis. Further, it is nothing more than an opinion and does not have controlling legal authority over the situation." See Exhibit 5.

We need not restate General Paxton's legal analysis, nor the copious citations he made to cases from the Supreme Court of the United States and the Supreme Court of Texas that outline a fundamental principle that cannot be neglected, even in the face of a worldwide pandemic: private, religious institutions retain the freedom to determine when

it is safe to resume in-person meetings or instruction, not the State of Texas, nor Cameron County. Cameron County's order must yield.

LMCA certainly appreciates the delicate situation presented by COVID-19. Nonetheless, we must insist that Cameron County respect the laws and fundamental freedoms of this state and nation. If, in fact, Cameron County maintains that General Paxton's guidance "is nothing more than an opinion and does not have controlling legal authority over the situation," we urge you to discuss the matter with his office directly.

Conclusion

LMCA agrees with, and relies upon, the guidance of Texas Attorney General Ken Paxton, "Religious private schools therefore need not comply with local public health orders to the contrary." *See* Exhibit 4. The school will resume in-person meetings on August 31, 2020. Any effort by Cameron County to enforce its unlawful order of August 10, 2020, will be viewed as an affront to the religious liberty of LMCA and met with the strictest legal defense.

Sincerely,



Jeremy Dys
Special Counsel
First Liberty Institute

CC: The Hon. Ken Paxton
Texas Attorney General
PO Box 12548
Austin, TX 78711-2548

James W. Castillo, M.D.
Cameron County Health Authority
1390 W. Expressway 83
San Benito, TX 78586

The Hon. Eddi Treviño, Jr.
Cameron County Judge
1100 E. Monroe St, Ste 218
Brownsville, TX 78520

Enclosures.

Exhibit 1

COVID-19 Protocols

- PK2-3/K4-5 enter/exit through Miss Brenda's door AM/PM.
- 1st-11th grades enter/exit through Mrs. Houston's door AM/PM
- Parents and students will remain in their car until a staff member comes to help them out of the car, in the case of drop-off.
- Parents will remain in their car until a staff member brings the student to the car in the case of pick-up.
- There will be two lanes of cars: one lane closest to school for 1st-11th grade drop-off/pick-up, one lane closest to Holly Beach Road for PK2-K5 drop-off/pick-up.
- Parents (masked) of PK2-3/K4-5 may take their children into the classroom for the first day of school only. We are trying to limit outside contact.
- Students/staff will have temperature check/exposure questions upon entering the building each day.
- LMCA has purchased a lithium fogger/mister, and staff will be disinfecting the entire school daily with a CDC approved substance.
- Desks, door knobs, bathrooms, and other surfaces will be sanitized frequently during the day.
- Students will eat in their classroom.
- There will be no PE for the meantime, however frequent outside breaks will be taken.
- There will be physical space between students at all times.
- Student desks/tables will have dividers for separation.
- We have ordered face shields if parents want to purchase them for \$4.00 each and/or the students may wear a mask if parents desire. We will do our best to ensure students' masks remain on their faces.
- Chapel will be held in individual classrooms, as needed, to prevent contact.
- If a student/staff has over 99 degrees, that person will be sent home until fever is controlled.

- If a student/staff has tested positive, or has a household member who has tested positive, that person will stay home until a valid doctor excuse is presented, stating they may return to school.

Exhibit 2



FILED FOR RECORD

AT 5:00 O'CLOCK P M

AUG 10 2020

Sylvia Garza-Perez
CAMERON COUNTY CLERK
By [Signature] Deputy

**JOINT CAMERON COUNTY HEALTH AUTHORITY AND CAMERON
COUNTY JUDGE EMERGENCY HEALTH CONTROL ORDER DELAYING
IN PERSON FACE-TO-FACE PUBLIC AND PRIVATE SCHOOL
INSTRUCTION UNTIL AFTER SEPTEMBER 28, 2020**

WHEREAS, the Cameron County Judge and Cameron County Health Authority have consulted with the Mayors and Superintendents, including independent schools' leadership of each city within Cameron County; and

WHEREAS, on July 13, 2020, Texas ranked only behind California (No. 1) and Florida (No 2.) with the most confirmed positives COVID-19 cases – 258,658 – in the nation. Texas has seen an increase of 63,419 new cases in the last seven days, surpassing California which had 60,649 new cases, only 5,624 cases behind Florida. Out of Texas' 254 counties, Cameron County had the twelfth most positive cases in the state – 3,854 – of which 1,227 of those cases are active; and

WHEREAS, on August 9, 2020, according to the CDC, in less than a month's time, Texas' positive cases have surged to 481,483, a 186% increase within 27 days. Out of 254 Texas counties, Cameron County ranks eighth in most positive cases, sixth with most COVID-19 related deaths, and third with most active cases, as per the Texas Department of State Health Services. Between July 3, 2020 and August 8,

2020, the total number of recorded COVID-19 cases went from 2,692 to 16,590, and from 63 deaths to 367 deaths within the same time period; and

WHEREAS, School Districts across the County have developed contingency plans to include in-person instruction, hybrid instruction, and full-time remote/online instruction. These strategic entry plans have been developed with prioritized safeguards for the health, safety, and well-being of our teachers, campus staffs, and students through full-time remote/online learning instruction; and

WHEREAS, the enforcement of egress and ingress to and occupancy of premises and of area control orders during the worldwide COVID-19 pandemic and health emergency are matters of vital interest to the public in general and to the health and safety of school children and school personnel; and

WHEREAS, failure to comply with any of the provisions of this Order constitutes an imminent threat to public health; and

WHEREAS, the County Judge in his authority pursuant to the Texas Government Code §418 et. seq., with the advice and consent of Commissioners Court and the Cameron County Health Authority pursuant to his authority under Chapter 81, et. seq. of the Texas Health and Safety Code in consultation with the Texas Department of State Health Services hereby issue the following Joint Cameron County Health Authority and Cameron County Judge Emergency Health Control Order Delaying In Person Face-To-Face Public and Private School Instruction until after September 28, 2020.

THEREFORE, The County Judge and the Cameron County Health Authority hereby delay the reopening for all school districts and private schools in Cameron County for face-to-face instruction, with the exception of any military boarding school.

A. RESTRICTIONS: The following restrictions are effective August 10, 2020, and will continue until September 28, 2020, unless extended in writing;

1. School systems shall not re-open schools for on-campus, face-to-face instruction until at least September 28, 2020, unless extended in writing. This Order may be extended if there continues to be substantial community spread of COVID-19 in Cameron County as that date approaches.
2. Administrators, teachers, and staff are permitted to conduct or facilitate virtual/remote learning and provide curbside meals from the school campuses while following Federal, State, and Local guidelines to prevent transmission of COVID-19 in the workplace.
3. School personnel are permitted to return to school campuses and facilities to conduct remote instruction and related instructional activities, to provide food distribution, and to perform administrative duties. Such duties and activities are to be conducted consistent with the health guidance and protocols issued by the Texas Education Agency.
4. Virtual/remote learning platforms shall be permitted as per a school system's own plan.
5. To the extent permitted under the Individuals with Disabilities Education Act ("IDEA"), and consistent with the procedures required under the federal regulations and state rules implementing IDEA, all students that are

considered medically fragile, as determined by a licensed physician, may return to school for on-campus, face-to-face instructions if the student's Individualized Education Program ("IEP") and Admission, Review, and Dismissal ("ARD") Committee, with the involvement of the parents, determine that such is appropriate when prioritizing the health and safety of the student, other students, staff, and the community. Decisions on the placement of students must be done on a case-by-case basis and based upon the most recent and up-to-date medical, health care, Centers for Disease Control ("CDC"), Texas Department of State Health Services ("DSHS"), Local Health Authority, Texas Education Agency ("TEA"), and local school district guidance and information.

6. Extracurricular sports and activities shall not take place until school systems re-open for on-campus instruction.
7. School systems shall develop a plan for re-opening on-campus, face-to-face instruction and activities at least two weeks prior to September 28, 2020.

B. **EFFECT**: This Order shall remain in full force and effect unless it is modified, rescinded, superseded, or amended pursuant to applicable law. Cameron County must promptly provide copies of this order to the governing body of each municipality and each affected public and private school district and facility in Cameron County and by posting on the County website. In addition, the owner, manager, or operator of any school district or facility that is likely to be impacted by this Order is strongly encouraged to post a copy of the Order onsite and to provide a copy to any member of the public asking for one.

C. SEVERABILITY: The sections, paragraphs, sentences, clauses, and phrases of this Order are severable and if any phrase, clause, sentence, paragraph, or section of this Order should be declared invalid by the final judgment or decree of any court or competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections that can be given effect without the invalid provision, and to this end, the provisions of this Order are severable.

D. INTERPRETATIONS AND ADDITIONAL TERMS: To the greatest extent possible, this Order shall be interpreted as consistent with and supplemental to any executive order issued by the Texas Governor. All provisions of the executive orders of the Texas Governor either existing or as, if and when issued, which are made applicable to all jurisdictions by law shall be automatically incorporated into and constitute terms of this Order, enforceable as if set forth herein without necessity for the issuance of any further orders.

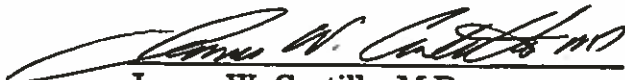
E. ENFORCEMENT: In accordance with the limitations contained in the executive orders of the Governor, that any peace officer or other person with lawful authority is hereby authorized to enforce the provisions of this Order in accordance with the authority granted under the Texas Disaster Act of 1975.

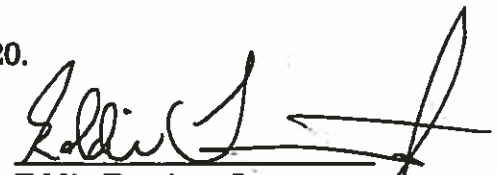
F. PENALTIES: Failure to knowingly comply with these orders and control measures may subject an actor to:

1. Prosecution under Texas Health and Safety Code §81.087 which may be punished by a fine not to exceed \$2,000, confinement in the county jail for a period not to exceed 180 days, or both;

2. Prosecution under Texas Government Code §418.173(b) which may be punished a fine not to exceed \$500 except that the offense shall be punished by a fine not to exceed \$1,000 or confinement in jail for a term not to exceed 180 days if it is shown on the trial of the offense that the person has been previously convicted one time of an offense under Tex. Gov't Code §418.173; or,
3. Other Federal, State and Local civil and criminal penalties that may apply.

ORDERED and EFFECTIVE this 10th day of August 2020.


James W. Castillo, M.D.
Cameron County Health Authority


Eddie Treviño, Jr.
Cameron County Judge

ATTESTED BY:

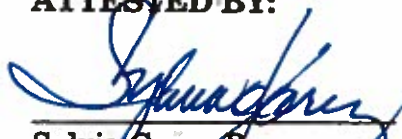

Sylvia Garza-Perez
Cameron County Clerk



Exhibit 3



GOVERNOR GREG ABBOTT

June 26, 2020

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
8:45 AM 'CLOCK

JUN 26 2020

Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-28 relating to the targeted response to the COVID-19
disaster as part of the reopening of Texas.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson
Executive Clerk to the Governor
GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
June 26, 2020

EXECUTIVE ORDER GA 28

*Relating to the targeted response to the COVID-19 disaster
as part of the reopening of Texas.*

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating certain social-distancing restrictions for Texans in accordance with guidelines promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC); and

WHEREAS, I issued Executive Order GA-14 on March 31, 2020, expanding the social-distancing restrictions for Texans based on guidance from health experts and the President; and

WHEREAS, I subsequently issued Executive Orders GA-16, GA-18, GA-21, GA-23, and GA-26 from April through early June 2020, aiming to achieve the least restrictive means of combatting the threat to public health by continuing certain social-distancing restrictions, while implementing a safe, strategic plan to Open Texas; and

WHEREAS, as Texas reopens in the midst of COVID-19, increased spread is to be expected, and the key to controlling the spread and keeping Texas residents safe is for all Texans to consistently follow good hygiene and social-distancing practices, especially those set forth in the minimum standard health protocols from DSHS; and

WHEREAS, due to recent substantial increases in COVID-19 positive cases, and increases in the COVID-19 positivity rate and hospitalizations resulting from COVID-19, targeted and temporary adjustments to the reopening plan are needed to achieve the

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least restrictive means for reducing the growing spread of COVID-19 and the resulting imminent threat to public health, and to avoid a need for more extreme measures; and

WHEREAS, everyone must act safely, and to that end, this executive order and prior executive orders provide that all persons should follow the health protocols from DSHS, which whenever achieved will mean compliance with the minimum standards for safely reopening, but which should not be used to fault those who act in good faith but can only substantially comply with the standards in light of scarce resources and other extenuating COVID-19 circumstances; and

WHEREAS, the “governor is responsible for meeting ... the dangers to the state and people presented by disasters” under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed \$1,000, and may be subject to regulatory enforcement;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, and in accordance with guidance from DSHS Commissioner Dr. Hellerstedt and other medical advisors, the Governor’s Strike Force to Open Texas, the White House, and the CDC, do hereby order the following on a statewide basis effective at noon on June 26, 2020:

Every business establishment in Texas shall operate at no more than 50 percent of the total listed occupancy of the establishment; provided, however, that:

1. There is no occupancy limit for the following:
 - a. any services listed by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) in its Guidance on the Essential Critical Infrastructure Workforce, Version 3.1 or any subsequent version;
 - b. religious services, including those conducted in churches, congregations, and houses of worship;
 - c. local government operations, including county and municipal governmental operations relating to licensing (including marriage licenses), permitting, recordation, and document-filing services, as determined by the local government;
 - d. child-care services;
 - e. youth camps, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths; and
 - f. recreational sports programs for youths and adults;
2. Except as provided below by paragraph number 5, this 50 percent occupancy limit does not apply to outdoor areas, events, or establishments, except that the following outdoor areas or outdoor venues shall operate at no more than 50 percent of the normal operating limits as determined by the owner:
 - a. professional, collegiate, or similar sporting events;
 - b. swimming pools;
 - c. water parks;
 - d. museums and libraries;
 - e. zoos, aquariums, natural caverns, and similar facilities; and

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- f. rodeos and equestrian events;
- 3. This 50 percent occupancy limit does not apply to the following establishments that operate with at least six feet of social distancing between work stations:
 - a. cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade;
 - b. massage establishments and other facilities where licensed massage therapists or other persons licensed or otherwise authorized to practice under Chapter 455 of the Texas Occupations Code practice their trade; and
 - c. other personal-care and beauty services such as tanning salons, tattoo studios, piercing studios, hair removal services, and hair loss treatment and growth services;
- 4. Amusement parks shall operate at no more than 50 percent of the normal operating limits as determined by the owner;
- 5. For any outdoor gathering in excess of 100 people, other than those set forth above in paragraph numbers 1, 2, or 4, the gathering is prohibited unless the mayor of the city in which the gathering is held, or the county judge in the case of a gathering in an unincorporated area, approves of the gathering, and such approval can be made subject to certain conditions or restrictions not inconsistent with this executive order;
- 6. For dine-in services by restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages, the occupancy limit shall remain at 75 percent until 12:01 a.m. on June 29, 2020, at which time such restaurants may only operate at up to 50 percent of the total listed occupancy of the restaurant, subject to paragraph number 9 below;
- 7. People shall not visit bars or similar establishments that hold a permit from the Texas Alcoholic Beverage Commission (TABC) and are not restaurants as defined above in paragraph number 6; provided, however, that the use by such bars or similar establishments of drive-thru, pickup, or delivery options for food and drinks is allowed to the extent authorized by TABC;
- 8. People shall not use commercial rafting or tubing services, including rental of rafts or tubes and transportation of people for the purpose of rafting or tubing;
- 9. For any business establishment that is subject to a 50 percent “total listed occupancy” limit or “normal operating limit,” and that is in a county that has filed with DSHS, and is in compliance with, the requisite attestation form promulgated by DSHS regarding minimal cases of COVID-19, the business establishment may operate at up to 75 percent of the total listed occupancy or normal operating limit of the establishment;
- 10. For purposes of this executive order, facilities with retractable roofs are considered indoor facilities, whether the roof is opened or closed;
- 11. Staff members are not included in determining operating levels, except for manufacturing services and office workers;
- 12. Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at www.dshs.texas.gov/coronavirus, people should not be in groups larger than ten and should maintain six feet of social distancing from those not in their group;
- 13. People over the age of 65 are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the

home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation;

14. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) should use good-faith efforts and available resources to follow the minimum standard health protocols recommended by DSHS;
15. Nothing in this executive order or the DSHS minimum standards precludes requiring a customer to follow additional hygiene measures when obtaining services. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering;
16. People shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible; and
17. For the remainder of the 2019-2020 school year, public schools may resume operations for the summer as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency (TEA). Private schools and institutions of higher education are encouraged to establish similar standards. Notwithstanding anything herein to the contrary, schools may conduct graduation ceremonies consistent with the minimum standard health protocols found in guidance issued by TEA.

Notwithstanding anything herein to the contrary, the governor may by proclamation add to the list of establishments or venues that people shall not visit.

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list or scope of services as set forth in this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

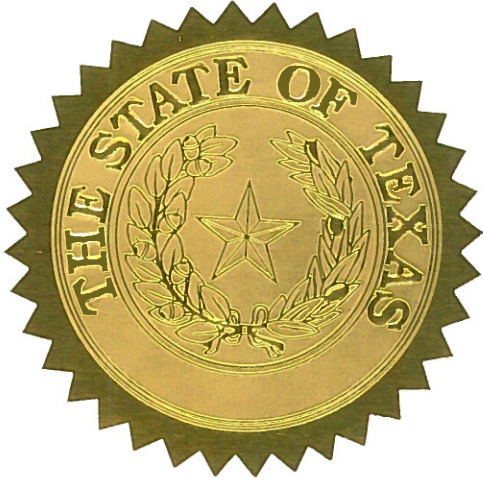
All existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes Executive Order GA-26, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, GA-24, GA-25, or GA-27. This

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8:45am O'CLOCK

JUN 26 2020

executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 26th
day of June, 2020.

A handwritten signature in black ink, reading "Greg Abbott", written over a horizontal line.

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink, reading "Ruth R. Hughs", written over a horizontal line.

RUTH R. HUGHS
Secretary of State

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SECRETARY OF STATE
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JUN 26 2020

Exhibit 4



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 17, 2020

To Religious Private Schools in Texas:

With the start of the school year approaching, the Office of the Attorney General provides this guidance to help you comply with COVID-19 public health and disaster orders from State and local governments.

The Attorney General acknowledges the robust constitutional and statutory protections unique to religious individuals and communities at all times, even during the COVID-19 pandemic.¹ These protections promote religious liberty and ensure that permissible government action takes only the least restrictive form.

The Governor of Texas rightfully identified access to “religious services” as essential services, which must remain open even when other aspects of our communities must close to mitigate the spread of the virus.² Religious private schools and religiously affiliated private schools should utilize prior joint guidance on mitigation strategies for houses of worship issued by the Governor and Attorney General.³ The Governor also exempted religious services from the state-wide masking order, but strongly encouraged houses of worship to require masks.⁴ Additionally, when the Governor issued orders applicable to public schools, he expressly acknowledged that private schools and institutions have the freedom to make their own decisions.⁵

To mitigate the spread of COVID-19, the Governor referred all schools to the Texas Education Agency’s (TEA) guidance on how to safely reopen for in-person instruction during the 2020–2021 school year.⁶ While this guidance by its terms applies only to

¹ *Guidance for Houses of Worship During the COVID-19 Crisis*, <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Third%20Revised%20AG%20Guidance%20for%20Houses%20of%20Worship%20During%20the%20COVID-19%20Crisis%20-%20Final.pdf>. This joint guidance identifies that the recommendations provided to houses of worship for religious services are just that—recommendations—and are the least restrictive means of serving a compelling government interest to protect public health. *Id.* at 5.

² See generally Exec. Order GA-28.

³ See *supra* note 1.

⁴ See Exec. Order GA-29 at 2.

⁵ See Exec. Order GA-28 at 4.

⁶ Tex. Educ. Agency, SY 20-21 Public Health Planning Guidance, July 17, 2020, <https://tea.texas.gov/sites/default/files/covid/Covid-19-SY-20-21-Public-Health-Guidance.pdf>.

public schools, TEA recommended that all “school system leaders should do everything feasible to keep students, teachers, staff, and our communities safe.”⁷ It is important to keep in mind, however, that “research from the Centers for Disease Control (CDC), among others, has found that while children do get infected by COVID-19 and some severe outcomes have been reported in children, relatively few children with COVID-19 are hospitalized or have severe symptoms.”⁸ And as TEA recognized, “the American Academy of Pediatrics notes that COVID-19 risks must be balanced with the need for children to attend school in person, given that lack of physical access to school leads to a number of negative consequences, placing ‘children and adolescents at considerable risk of morbidity, and in some case, mortality.’”⁹ TEA also determined that public schools may provide virtual education in limited circumstances, if the schools satisfy certain conditions.¹⁰ As identified by TEA, schools have many tools at their disposal to safely reopen while also mitigating spread of the virus to students, faculty, and staff.

Recently, however, local public health officials have begun to issue orders restricting or limiting in-person instruction in private and public schools. This guidance is intended to clarify the application of those local orders to religious private schools and institutions.

Local public health orders issued by cities and counties must be consistent with the Governor’s orders and the Attorney General’s guidance. If local public health orders are inconsistent with these authorities, the local orders must yield.¹¹

Under the Governor’s orders, local governments are prohibited from closing religious institutions or dictating mitigation strategies to those institutions. Local governments are similarly prohibited from issuing blanket orders closing religious private schools. Because a local order closing a religious private school or institution is inconsistent with the Governor’s order, any local order is invalid to the extent it purports to do so.

Moreover, local public health orders attempting to restrict the provision of religious instruction through religious private schools violate the United States and Texas Constitutions and the Texas Religious Freedom Restoration Act. As the Supreme Court reaffirmed last week, “[t]he First Amendment protects the right of religious institutions ‘to decide for themselves, free from state interference, matters of church

⁷ *Id.* at 1.

⁸ *Id.*

⁹ *Id.* (quoting Am. Academy of Pediatrics, COVID-19 Planning Considerations: Guidance for School Re-entry, June 25, 2020).

¹⁰ *Id.* at 2–3.

¹¹ See Exec. Order GA-28 (providing that the Governor’s order supersedes conflicting local orders and suspends local authority to impose inconsistent restrictions).

government as well as those of faith and doctrine.”¹² Likewise, the Texas Supreme Court acknowledges that “the government cannot set standards for religious education or training.”¹³

“Religious education is vital to many faiths practiced in the United States.”¹⁴ For example, “[i]n the Catholic tradition, religious education is ‘intimately bound up with the whole of the Church’s life.’”¹⁵ “Similarly, Protestant churches, from the earliest settlements in this country, viewed education as a religious obligation.”¹⁶ Likewise, Judaism, Islam, the Church of Jesus Christ of Latter-day Saints, and the Seventh-day Adventist Church, among others, all have long traditions of religious education that demonstrate the “close connection that religious institutions draw between their central purpose and educating the young in the faith.”¹⁷ In fact, “[m]ost of the oldest educational institutions in this country were originally established by or affiliated with churches, and in recent years, non-denominational Christian schools have proliferated with the aim of inculcating Biblical values in their students. Many such schools expressly set themselves apart from public schools that they believe do not reflect their values.”¹⁸ These principles inform how the State must treat religious private schools, whether in normal times or times of crisis.

In addition to protections afforded to religious communities by the First Amendment to the United States Constitution and article I, section 6 of the Texas Constitution,¹⁹ the Texas Religious Freedom Restoration Act (RFRA) applies to every “ordinance, rule, order, decision, practice, or other exercise of governmental authority” in Texas.²⁰ Texas RFRA prohibits the government from “substantially burden[ing]” the free exercise of religion,²¹ which includes the ability of faith communities to educate their youth,²² unless it can demonstrate a compelling interest for the restriction and prove it applies in the least restrictive way.²³ Even if the government may have a compelling interest in closing certain aspects of society to contain the spread of a virus, blanket government orders closing all religious private schools are not the least restrictive means of achieving that interest.

¹² *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, No. 19-267, 2020 WL 3808420, at *3 (U.S. July 8, 2020) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)).

¹³ *HEB Ministries, Inc. v. Texas Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 643 (Tex. 2007).

¹⁴ *Our Lady of Guadalupe Sch.*, 2020 WL 3808420, at *10.

¹⁵ *Id.* (quoting Catechism of the Catholic Church 8 (2d ed. 2016)).

¹⁶ *Id.*

¹⁷ *Id.* at *11–12.

¹⁸ *Id.* at *11.

¹⁹ In *HEB Ministries*, 235 S.W.3d 627, the Texas Supreme Court held that the State’s attempt to regulate the accreditation standards of a postsecondary institution and the use of the name “seminary” violated the First Amendment and article I, section 6 of the Texas Constitution.

²⁰ Tex. Civ. Prac. & Rem. Code § 110.002(a).

²¹ *Id.* § 110.003(a).

²² *Our Lady of Guadalupe Sch.*, 2020 WL 3808420, at *11–12.

²³ Tex. Civ. Prac. & Rem. Code § 110.003(b).

Thus, as protected by the First Amendment and Texas law, religious private schools may continue to determine when it is safe for their communities to resume in-person instruction free from any government mandate or interference. Religious private schools therefore need not comply with local public health orders to the contrary.

Sincerely,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style with a large, prominent "K" and "P".

Ken Paxton
Texas Attorney General

Exhibit 5

Subject: Fw: LAGUNA MADRE CHRISTIAN ACADEMY

Date: Monday, August 17, 2020 at 3:14:49 PM Central Daylight Time

From: Susie Houston

To: Jeremy Dys

----- Forwarded Message -----

From: Susie Houston [REDACTED] >

To: Juan Gonzalez [REDACTED] >

Sent: Friday, August 14, 2020, 03:13:50 PM CDT

Subject: Re: LAGUNA MADRE CHRISTIAN ACADEMY

I am in receipt of your email dated August 13.

[Sent from Smallbiz Yahoo Mail for iPhone](#)

On Thursday, August 13, 2020, 2:21 PM, Susie Houston [REDACTED] > wrote:

----- Forwarded Message -----

From: Juan Gonzalez [REDACTED] >

To: [REDACTED] Eddie Trevino
[REDACTED]; James W. Castillo [REDACTED] >; Esmeralda
Guajardo [REDACTED] >

Sent: Thursday, August 13, 2020, 02:18:37 PM CDT

Subject: LAGUNA MADRE CHRISTIAN ACADEMY

Dear Ms. Houston,

Judge Trevino asked me to respond to the below email. It is the official position of Cameron County that the Joint Cameron County Health Authority and Cameron County Judge Emergency Health Control Order Delaying in Person Face-to-Face Public and Private School Instruction Until After September 28, 2020 is in full legal force and effect for all schools in Cameron County. We are aware that Attorney General Ken Paxton issued his guidance letter concerning religious schools on July 17, 2020 that takes the position that religious schools may determine when it is safe for their communities to resume in-person instruction free from government mandate or interference and that religious private schools therefore need not comply with local public health orders to the contrary, Cameron County is of

the opinion that Paxton's guidance is not grounded in legitimate or correct legal analysis. Further, it is nothing more than an opinion and does not have controlling legal authority over the situation. The Joint Order is based on the compelling interest of the County to contain the spread of COVID-19 and is applied in the least restrictive way. It is applicable to both public and private schools and does not discriminate based on religion nor violate any Constitutional right. Please see the ruling of the United States Supreme Court in *Jacobson v. Massachusetts* which contains the controlling legal analysis. We further refer you to the rulings in *South Bay United Pentecostal Church v. Gavin* and *Elim Romanian Pentecostal Church v. Pritzker* also by the United States Supreme Court, which do not support the reasoning or conclusion of Attorney General Paxton.

There is no question that if schools open when the cases in the community are high, as they currently are in Cameron County, they will open only to close again in 1-2 weeks when they have an outbreak of cases.

Schools will be closed again if they have multiple cases under the guidelines from the TEA. In a community with a case rate like ours it will typically result in closing the entire school if there is more than a single case since "all contaminated areas" would have to be closed for cleaning. . In addition to all the new cases, reopening schools for in person instruction prematurely would increase the spread of the disease and the potential for some people to get very sick (students, staff or the family they bring the virus home to).

Nevertheless we are willing to further consider your situation. Please provide your written COVID-19 protocols to myself, Dr. James Castillo, the Cameron County Health Authority at [REDACTED] and to Esmeralda Guajardo, Cameron Health Administrator at [REDACTED].

We will give due consideration to your protocol and your situation. Unless we advise you otherwise, if you elect to reopen schools in a manner inconsistent with the Joint Order, you will do so at the risk of enforcement actions and potential penalties as set forth in the Order.

Juan A. Gonzalez
Cameron County Courthouse
Chief Legal Counsel
Civil Legal Division
1100 East Monroe Street
Brownsville, Texas 78520
(956) 550-1345 office
(956) 550-1348 facsimile

Honorable Judge Trevino,

Laguna Madre Christian Academy was established on South Padre Island in 1998 as a non-denominational Christian school, seeking to educate the children of the Laguna Madre area in an environment of Christ-like love, Biblical truth, and academic excellence.

We are a private Christian school and are unable to receive state funds, as public schools do, to help with our finances. All of our income comes primarily through tuition fees and our major fundraiser.

LMCA will begin in-school instruction on Monday, August 31 with an enrollment of approximately twenty students and five staff. We have developed COVID-19 protocols.

According to Governor Abbott and Attorney General Ken Paxton, private, religious schools may determine when they can begin in-school instruction:

Thus, as protected by the First Amendment and Texas law, religious private schools may continue to determine when it is safe for their communities to resume in-person instruction free from any government mandate or interference. Religious private schools therefore need not comply with local public health orders to the contrary.

Susie Houston, Director
Laguna Madre Christian Academy

Cameron County Information Technology | This email was scanned by Bitdefender

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