



COUNTY OF LOS ANGELES
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MARY C. WICKHAM
County Counsel

September 17, 2020

Via Email: [REDACTED]
and U.S. Mail

Stephanie N. Taub, Senior Counsel
FIRST LIBERTY INSTITUTE
2001 West Plano Parkway, Suite 1600
Plano, Texas 75075

Re: Response to September 16, 2020 Letter

Dear Ms. Taub:

I am in receipt of your letter dated September 16, 2020, addressed to Dr. Muntu Davis and me. For reference, the letter is included without attachments.


As an initial matter, I want to extend our appreciation and thanks to the Rabbi Leaders of the Orthodox Jewish community who have worked collaboratively with the County of Los Angeles in battling this pandemic that has already taken a heavy toll on the Los Angeles County community. Only together will we conquer this COVID-19 virus.

In your letter, you describe how the Los Angeles Jewish community, like many communities around the world, observe the Jewish High Holy Days, including having "a series of meals in the family home with small gatherings of friends and family." You also have asked whether Los Angeles County will "dispatch Los Angeles County Sheriff's deputies to the homes of Jewish families gathered for religious meals during the High Holidays inside someone's homes." The answer to that question is no.

Stephanie N. Taub
September 17, 2020
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I look forward to your continued collaboration in the coming weeks as we continue our efforts to battle the COVID-19 virus.

Very truly yours,

By 
MARY C. WICKHAM
County Counsel

MCW:AER:mag

Attachment

c: Barbara Ferrer, Ph.D., M.P.H., M.Ed., Director
Los Angeles County Department of Public Health

Muntu Davis, M.D., M.P.H., Public Health Officer
Los Angeles County Department of Public Health

September 16, 2020

Dr. Muntu Davis
Health Officer
County of Los Angeles
Department of Public Health
5050 Commerce Drive
Baldwin Park, California 91706

Mary Wickham
Office of the County Counsel
County of Los Angeles
Kenneth Hahn Hall of Administration
500 West Temple Street #648
Los Angeles, CA 90012

Sent via U.S. Mail and email

Re: Los Angeles County Threatens to Enforce COVID-19 Policy Against Jewish Families Observing the High Holidays in Their Homes

Dr. Davis:

First Liberty Institute is a nationwide, non-profit law firm dedicated to defending and restoring religious liberty for all Americans. We represent Rabbi Yisrael Gelb, an Orthodox Jewish rabbi who traditionally observes the High Holidays with members of his religious community and encourages members of his faith throughout the State of California to do likewise. Under Los Angeles County policy, Jewish individuals are barred from observing the holidays with other families inside a private home. For Rabbi Gelb, such an unlawful ban on the free exercise of his religion means that, for the first time in his life, he would be forced under penalty of law to observe the High Holidays in solitude.

The County's COVID-19 policy stated that "having dinner with extended family and friends to honor the High Holidays (Rosh Hashanah, Yom Kippur)" was "not permitted." This prohibition applied to gatherings "of any size" with people outside of one's household, specifically listing the celebration of the High Holidays as one of several examples of prohibited conduct. This policy was reflected in the September 2, 2020 update of the county's Health Officer Order's Impact on Daily Life FAQs¹ and in a press

¹ *Health Officer Order's Impact on Daily Life FAQs*, LA CTY. DEP'T PUB. HEALTH (dated Sept. 2, 2020), Attachment A.

release accompanying the change.² Violations of local health orders are a crime, punishable by fines or imprisonment.³

In an update published yesterday, the county replaced the example specifically targeting Jewish holidays with a prohibition on “having a meal with extended family and friends for a religious or cultural holiday.”⁴ Although now hiding behind obscured language, the ban on celebrating the High Holidays with others remains.

In light of the county’s tolerance of mass political gatherings of up to 100,000 individuals,⁵ as well as its express approval of various commercial activity, the county has waived any argument that it must prohibit small gatherings for the most holy days of the Jewish calendar. It is simply beyond the pale to threaten specifically to police the homes of observant Jews during the High Holy Days, under threat of criminal penalties. The county should immediately make it clear to the public that it will not dispatch Los Angeles County Sheriff’s deputies to the homes of Jewish families gathered for religious meals during the High Holidays inside someone’s home.

Jewish High Holidays

Each year, Rabbi Gelb joins the millions of Jewish individuals around the world who observe the High Holidays, which fall between Rosh Hashanah and Yom Kippur. These days represent the holiest days of the Jewish calendar and usually include a series of meals in the family home with a small gathering of friends or family.

For millennia, the Jewish people have annually shared these meals in community, gathering by family group to break bread and consider the blessings of God, the forgiveness of their sins, and their own mortality. Even during times of intense persecution of the Jewish people — including during the Spanish Inquisition, the Holocaust, and following the communist revolution in the former Soviet Union — families would gather, often in secret, to practice their religion. It is unfortunate that today’s Los Angeles would publicly threaten to criminalize sharing a table for the High Holidays.

The burden of this policy is particularly heavy on members of the Orthodox Jewish tradition. During Shabbat on Friday evening through Saturday night, Orthodox Jewish

² *Public Health Reminds Residents of the Risks from Gathering with People from Outside Your Household*, LA CTY. DEP’T PUB. HEALTH (Sept. 1, 2020), <http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=media&prog=media&ou=ph&prid=2628&keywords=rosh&row=25&start=1>, Attachment B.

³ *Order of the Health Officer*, LA CTY. DEP’T PUB. HEALTH (revised order issued Sept. 4, 2020), http://publichealth.lacounty.gov/media/coronavirus/docs/HOO/2020_09_04_HOO_Safer_at_Home.pdf.

⁴ *Health Officer Order’s Impact on Daily Life FAQs*, LA CTY. DEP’T PUB. HEALTH (dated Sept. 13, 2020, published Sept. 15, 2020), <http://publichealth.lacounty.gov/media/Coronavirus/docs/HOO/FAQ-SaferatWorkandCommunityOrder.pdf>, Attachment C.

⁵ Samuel Braslow, *Black Lives Matter Estimates that as Many as 100,000 Protesters Gathered in Hollywood on Sunday*, L.A. Magazine (June 8, 2020), <https://www.lamag.com/citythinkblog/hollywood-protest-sunday/>.

families refrain from all work, including the use of electricity. These families cannot meet remotely during this time.

Suggestions that such meals occur out of doors are likewise unavailing. Record heat, pervasive smoke and ash from wildfires, and civil unrest targeting those dining outside present new threats to the physical health and safety of Jewish families throughout Los Angeles. Weighed against the diminishing threat of COVID-19 as seen by the reopening of neighboring counties, the intense heat, and putrid outdoor air quality, there can be no question that a small gathering of friends or family to observe the religious meals of the High Holidays of Rosh Hashanah and Yom Kippur inside the family home is the safer option.

Los Angeles County Policy

On September 2, 2020, the County of Los Angeles updated its Health Officer Order's Impact on Daily Life FAQs to include the following examples of illegal gatherings, specifically targeting the otherwise free exercise of religion in the upcoming Jewish Holidays:

Individual and family gatherings or parties of any size aren't allowed. For instance, the following in-person gatherings are not permitted, even if they feel safe: celebrating the new arrival of a baby with a baby shower or gender reveal party; having a barbeque with a group of friends in the backyard; hosting a study group with school students; *having dinner with extended family and friends to honor the High Holidays (Rosh Hashanah, Yom Kippur)*; gathering at the beach with friends.⁶

One of these examples is not like the others. Cavalierly listed among various parties and recreational gatherings are the most holy religious days of a major world religion — a major world religion that has faced and continues to face undeniable persecution around the world. In an apparent admission of the religious discrimination, yesterday, government officials with Los Angeles county amended the list to prohibit “having a meal with extended family and friends for a religious or cultural holiday.”⁷ The prohibition was not removed, only the target obfuscated.

The early September update simultaneously made other changes to lessen COVID restrictions, including permitting barbershops and hair salons to open indoors with modifications and allowing some students to meet indoors for in-person instruction in small cohorts.

Legal Analysis

“There is no pandemic exception to the Constitution of the United States or the Free Exercise Clause of the First Amendment.” *Berean Baptist Church v. Cooper*, No.

⁶ See supra note 1.

⁷ See supra note 4.

4:20-cv-00081-D (E.D.N.C. May 16, 2020) (enjoining government defendant from “taking any enforcement action” against individuals gathering for religious worship). Individual constitutional liberties remain intact, protected by longstanding standards of constitutional review. *Cty. of Butler v. Wolf*, No. 2:20-cv-00677-WSS (W.D. Pa. Sept. 14, 2020) (holding policy limiting social and other gatherings to 25 people unconstitutional).

The First Amendment protects the free exercise of religion, and fundamental to this protection is the right to gather for observance of religious holidays. *See W Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943) (“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts ... [such as the] freedom of worship and assembly.”). Likewise, the First Amendment also protects the fundamental right to peaceably assemble. *DeJonge v. Oregon*, 299 U.S. 353, 364 (1937) (“The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental.”).

A county may not selectively enforce its laws against religious observance. A law that targets the free exercise of religion “must undergo the most rigorous of scrutiny.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993); *see also Tenafly Eruv Ass’n v. Borough of Tenafly*, 309 F.3d 144, 151 (3d Cir. 2002) (holding selective enforcement of an ordinance against Orthodox Jewish community violated the Free Exercise clause).

Los Angeles county has not vigorously policed its stated ban on small gatherings with friends or extended family. Yet, despite the county’s lack of enforcement, the county’s policy threatens enforcement against the upcoming holiday of a religious minority faith. Los Angeles county appears to favor First Amendment guarantees when applied to hundreds of thousands of its citizens marching in close proximity, singing, chanting, and looting, but would single out a small Jewish family peacefully sharing a meal with friends or extended family inside their own home.

Such selective enforcement will not withstand strict scrutiny. Restricting all gatherings with others for the High Holidays is not narrowly tailored to be the least restrictive means of fulfilling the government’s interest. The county’s tolerance of mass gatherings for protest purposes undercuts any argument that it must prohibit Jewish families from hosting guests for a meal before Yom Kippur. *See, e.g., Soos v. Cuomo*, No. 1:20-cv-00651-GLS-DJS, Dkt. No. 35 (N.D.N.Y. June 26, 2020) (enjoining state from favoring mass protests while disfavoring religious gatherings); *Tabernacle Baptist Church v. Beshear*, No. 3:20-cv-00033-GFVT (E.D. Ky. May 8, 2020) (enjoining state from “enforcing the prohibition on mass gatherings” for in-person religious services that socially distance).

Conclusion

In accordance with millennia-old tradition, Rabbi Gelb intends to gather with another family to observe the High Holy Days safely in the host family’s home. Los Angeles county now has the opportunity to demonstrate whether it intends to follow

through on its threat to criminalize the observance of the High Holy Days at a family's dinner table or whether its profoundly disrespectful language was a mere empty threat. The county must immediately remove all language from county policy threatening to police small, religious gatherings at family homes.

Please direct all communication on this matter to my attention. I can be reached at [REDACTED] or 972-941-1111.

Respectfully,



Stephanie N. Taub
Senior Counsel
First Liberty Institute

CC: The Hon. William P. Barr,
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue
Washington, D.C. 20530