

October 27, 2023

Tony Sawyer
Zoning Officer
Town of Weare
Selectman's Office
15 Flanders Memorial Road
Weare, NH 03281
tsawyer@wearenh.gov

Sent via email and U.S. Mail

Re: Unconstitutional Suppression of Religious Assembly

Mr. Sawyer:

First Liberty Institute and the Law Offices of Marbury & Marbury represent Grace New England Church ("Grace"). Please direct all communications concerning this matter to my attention. Your recent letter notifying Pastor Howard Kaloogian to "stop any assembly regarding Grace New England Church" violates the U.S. Constitution. We request that it be withdrawn immediately in writing no later than 5:00 p.m. local time today.

Howard Kaloogian recently founded Grace as a church plant in his Weare, New Hampshire home. We understand that, when you noticed an advertisement for the church, you showed up unannounced on Pastor Kaloogian's property. Further, you insisted that Pastor Kaloogian provide site plans and seek other approvals from the Town of Weare in order to use his home to host a church.

Your letter of October 23, 2023 demands Pastor Kaloogian "Cease and Desist . . . any assembly regarding Grace New England Church" declaring that such "will remain in effect until a site plan is submitted, reviewed and there is a decision made by the Town Planning Board." The use of one's home for religious purposes is sacrosanct. Indeed, one look no further than the First Amendment to the U.S. Constitution to see your letter violates no less than three guarantees of the Bill of Rights.

Americans, including Pastor Kaloogian, are guaranteed the freedom of speech, which includes speaking a religious message in one's home absent interference from government agencies. Further, the First Amendment's guarantee to "free exercise" is inviolate in one's home and cannot be dismissed at the request of a town's zoning officer. Finally, your demand to "Cease and Desist . . . any assembly regarding Grace New England Church" directly implicates the First Amendment's "right of the people peaceably to assemble."

Should you fail to withdraw your demands of Pastor Kaloogian, you will deprive him of his civil rights, for which irreparable injury you would be personally liable. See *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”); *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (Those deprived of Constitutional rights may recover “an award of damages against an official in his personal capacity [which] can be executed . . . against the official’s personal assets”); see also 42 U.S.C. §§ 1983, 1988.

Your Cease and Desist letter, on its face, targets religious speech, expression, and assembly, but leaves comparable secular activity untouched. Even if “in pursuit of legitimate interests,” the Town of Weare “cannot in a selective manner impose burdens only on conduct motivated by religious belief.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993); see also *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (explaining that government actors violate principles of neutrality and general applicability “whenever they treat any comparable secular activity more favorably than religious exercise.”).

Just as it would be ludicrous for the Town of Weare to impose a “Cease and Desist” upon the assembly of its citizens at someone’s home for a birthday party for a 10-year old with his friends, a neighborhood Super Bowl party, or a gathering of local residents to read the latest *New York Times* bestseller as a part of its weekly book club, so it is equally unjustifiable under the First Amendment for the Town of Weare to insist that Pastor Kaloogian, and others, desist from religious assembly in his home.

Further, your letter is unnecessary. According to § 17.2.1 of the Zoning Ordinances of the Town of Weare, NH, churches are permitted as of right in districts zoned Residential (R) (emphasis added):

17.2 RESIDENTIAL (R) DISTRICT: Permitted uses.

17.2.1 **Churches**, municipally owned and operated educational facilities, nursing homes, golf courses, or any municipally owned and operated facility.

Conclusion

Whether guaranteed by the U.S. Constitution or the Ordinances of Weare, the members of Pastor Kaloogian’s church have every right to assemble as Grace within his home for religious exercise. You must withdraw your “Cease and Desist” letter immediately. Regardless, we have advised our client that the members and visitors of Grace are fully within their rights peaceably to assemble at Pastor Kaloogian’s home, unmolested by officials with the Town of Weare. Should they be penalized or their civil rights be otherwise punished or burdened, we are prepared to vigorously defend our client’s rights in federal court as outlined herein.

You may send the withdrawal of your “Cease and Desist” letter, and schedule a time to discuss your concerns, via email at jdys@firstliberty.org and pm@marblaw.com.

Respectfully,



Jeremy Dys
Senior Counsel
First Liberty Institute

Phillip E. Marbury
Attorney
Law Offices of Marbury & Marbury