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June 24, 2021

Hon. Eric Schmitt
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Dr. Alisa Warren
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Ms. Tania Contreras
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Via Email: tania.contreras@labor.mo.gov

RE: Unconstitutional Refusal To Provide Maria Burtch Access To An Exclusive Legal Process.

Greetings Attorney General Schmitt, Dr. Warren, and Ms. Contreras,

My name is Cameron Atkinson, and I represent Ms. Maria Burtch along with Attorneys Norm Pattis, Edward Greim, and Cody Hagan. I am also of counsel to We The Patriots USA, Inc. – a national public interest organization dedicated to preserving civil liberty and opposing religious discrimination in civil processes. This letter concerns the Missouri Commission on Human Rights' (MCHR) treatment of Ms. Burtch, which violates clearly established First and Fourteenth Amendment law. As explained below, to avoid legal action, we respectfully ask you to process Ms. Burtch's MCHR religious discrimination complaint immediately and impartially or provide her with a right to sue letter so she can vindicate her legal rights on her own.

Factual Background

Ms. Maria Burtch is a medical student at A.T. Still University in Kirksville, Missouri and has just completed her second year of medical school. For medical students, the completion of their second year is a monumental achievement as they then embark into clinical placements that give them real-world experience and ultimately shape their careers. Because of her religious beliefs, Ms. Burtch is not enjoying the same opportunities as her colleagues.

Ms. Burtch – a non-denominational Christian – holds a sincere religious belief that abortion is immoral and sinful because it is the intentional premeditated murder of a human being. Ms. Burtch’s religious beliefs compel her to avoid deriving any benefit or having any participation – no matter how remote – in a process involving an abortion. Her religious beliefs about separating herself from another person’s sin have strong support in the Bible and in over 2000 years of Christian religious traditions. *See* 1 Timothy 5:22, King James Version (“Lay hands suddenly on no man, neither be partaker of other men’s sins; keep thyself pure”).

After learning that each of the available COVID-19 vaccines contain aborted fetal cells or were tested using aborted fetal cells, Ms. Burtch made a faith-based decision of conscience and chose not to receive a COVID-19 vaccine. She informed A.T. Still University of her religious beliefs and decision, and she requested an accommodation so she could continue her studies. A.T. Still University denied her an accommodation and gave her a choice between abandoning her religious beliefs or taking a one-year sabbatical with no guarantee that it would be more tolerant of her religious beliefs at the end of her sabbatical.

On June 8, 2021, Ms. Burtch attempted to file a public accommodations discrimination complaint with the MCHR. She alleged that A.T. Still University discriminated against her by denying her access to the services provided by a place of public accommodation on the basis of her religious beliefs in violation of RSMo. § 213.065.

That same day, Ms. Burtch received a call from Ms. Tania Contreras, an intake officer for the MCHR. Ms. Contreras inquired as to whether Ms. Burtch identified with a specific religion, and Ms. Burtch replied that her religious beliefs align with Christianity, that she is a non-denominational Christian, and that her religious beliefs do not allow her to take the COVID-19 vaccines. Instead of inquiring further, Ms. Contreras responded by telling Ms. Burtch that the MCHR could not help her because people who identify as Christians are taking the vaccine.

On June 9, 2021, Ms. Burtch called Ms. Contreras back to plead for help. Ms. Contreras conducted the same inquiry by asking Ms. Burtch to which religion she belonged. Ms. Burtch reiterated that she is a non-denominational Christian. Ms. Contreras responded by telling her that the MCHR could not help her because she did not belong to a specific religion that opposes the use of aborted fetal cells in vaccines.

Upon the advice of counsel, Ms. Burtch then contacted Ms. Contreras again on June 9, 2021 to request a right to sue letter since the MCHR would not investigate or accept her complaint for processing. Ms. Contreras told Ms. Burtch that the MCHR would not process her complaint because it “did not have jurisdiction” and that it would not issue her a right to sue letter. Ms. Contreras then emailed Ms. Burtch on June 10, 2021 and reiterated the MCHR’s position that it did not have jurisdiction over her complaint.

Ms. Contreras, however, never delivered a formal notice of denial of Ms. Burtch’s complaint and orally told her that the MCHR would not accept her complaint for processing.

Analysis

Mo. Stat. § 213.065 prohibits discrimination in places of public accommodation on the basis of religion. Missouri case law clearly establishes that private universities are places of public accommodation – a position that the MCHR has taken in the past. *See State ex rel. Washington Univ. v. Richardson*, 396 S.W.3d 387 (Mo. App. 2013). Mo. Stat. § 213.111 further establishes that a complainant must request and receive a right to sue letter from the MCHR as a prerequisite to bringing a civil action to vindicate her rights under § 213.065. Thus, the MCHR indisputably has jurisdiction over this matter and the only way for Ms. Burtch to vindicate her legal rights under Missouri law is to be afforded statutory process by the MCHR.

As articulated by Ms. Contreras, the MCHR’s position in this matter violates Ms. Burtch’s clearly established rights under the First Amendment.

In *United States v. Seeger*, 380 U.S. 163, 184 (1965), the U.S. Supreme Court established an objective test for religion: “[D]oes the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption?” Although arising in the context of conscientious objectors, the *Seeger* test did not deviate substantially from its prior definition in *Davis v. Beason*, 133 U.S. 333, 342 (1890): “[T]he term ‘religion’ has reference to one’s views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will.”

These precedents clearly define religion as individualistic, not sectarian or denominational. In other words, if the First Amendment truly protects religious freedom, it must protect an individual’s religion rather than confining them to a group’s definition of one.

The U.S. Supreme Court clearly articulated the rationale for this individualistic focus in *Everson v. Board of Education*, 330 U.S. 1, 15 (1947):

The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a

church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion.

The position that Ms. Contreras articulated on behalf of the MCHR establishes religion in the state of Missouri and deviates so grossly from the individualistic protections of the First Amendment as to be unrecognizable in American law. By requiring Ms. Burtch to belong to a specific denomination that shares her religious beliefs in order to access Missouri's legal process, the MCHR seeks to compel Ms. Burtch to join an establishment of religion to enjoy the protection of its laws in violation of her First Amendment rights to freely exercise her religion and be free from establishments of religion.

The MCHR's disregard for the First Amendment in Ms. Burtch's case does not end there. The First Amendment protects a person's right to freely associate or not to associate with groups or individuals for purposes of activities – speech, assembly, petition for the redress of grievances, and the exercise of religion – protected by the First Amendment. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617-18 (1984). By requiring Ms. Burtch to be associated with a particular religious denomination, the MCHR has conditioned her access to Missouri's legal process on her associations – a naked attempt to compel her to associate with a religious group that it feels like recognizing. The First Amendment does not permit such a conditioning.

As articulated by Ms. Contreras, the MCHR's position in this matter violates Ms. Burtch's clearly established rights under the First and Fourteenth Amendments.

If there is one value that the U.S. Constitution secures above all else, it is the fundamental right to access legal processes to seek justice. So important is this right that the U.S. Supreme Court has grounded the federal right of access to courts in more than one constitutional provision: the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses. *See Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002).

While a state enjoys freedom under the due process doctrine to set the parameters of its own legal processes, it does not enjoy the freedom to deny someone access to the legal processes that it has established. As discussed previously, RSMo. § 213.111 establishes that a complainant must request and receive a right to sue letter as a prerequisite to bringing a civil action to vindicate her rights under § 213.065. Thus, the only way for Ms. Burtch to vindicate her legal rights under Missouri law is to be afforded statutory process by the MCHR.

The MCHR's and Ms. Contreras' refusal to even accept Ms. Burtch's complaint for processing because of its allegations violates her right to access the legal process. Even Missouri law does not permit Ms. Contreras to perfunctorily lecture Ms. Burtch on what Christians believe and do not believe, yet Ms. Contreras did just that, telling

Ms. Burtch that Christians take COVID-19 vaccines and refusing to accept her MCHR discrimination complaint for administrative processing as required by Missouri law.

In other words, Ms. Contreras and the MCHR have denied Ms. Burtch access to Missouri's legal process simply because they dislike and disagree with her religious beliefs. In addition to violating the Fourteenth Amendment, their actions violated clearly established First Amendment law, which prohibits governments from treating individuals and parties in a legal proceeding less favorably because of their religion. *See Masterpiece Cakeshop, LTD v. Colorado Civil Rights Commission*, 138 S.Ct. 1719 (2018); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S.Ct. 2012 (2017).

Preservation of Evidence

Ms. Burtch hereby notifies you of your obligation to preserve electronically stored information in anticipation of litigation under Federal Rule of Civil Procedure 37(e). Ms. Burtch hereby notifies you that she reserves all of her legal rights pertaining to pursuing litigation and respectfully requests that you adhere to your obligations under federal law by immediately placing a litigation hold on all e-mail accounts, document collections, social media accounts, and all other sources of information or communications (including electronically stored information) that reference in any way Maria Burtch.

Conclusion

Whatever Missouri's official policy toward COVID-19 vaccinations is, the state cannot wield its power to disfavor religion in its legal processes. Your actions toward Ms. Burtch have created establishments of religion in violation of the First Amendment and violated her First Amendment rights to freely exercise her religion and freely choose who to associate with as well as her Fourteenth Amendment right to due process.

Thus, we respectfully demand that you unconditionally and immediately accept Ms. Burtch's MCHR complaint for administrative filing or, in the alternative, provide her with a right to sue letter against A.T. Still University.

We request that you provide us with a written response to this letter by July 2, 2021. Please be advised that Ms. Burtch would prefer to settle this matter amicably, but that she has authorized us to use any legal means necessary to assert and protect her rights and interests.

Lastly, please be advised that we have been retained to represent Ms. Burtch in her MCHR action against A.T. Still University, and, should you choose to proceed as required by law in processing her complaint, we ask that you communicate with us on her behalf.

Regards,


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