



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 4, 2020

The Honorable Eddie Treviño
County Judge
Cameron County
1100 East Monroe Street
Brownsville, Texas 78520

Dear Judge Treviño:

This letter concerns the control order jointly issued by you and the county's health authority that specifically purports to dictate how religious private schools may operate in the county.¹ In particular, the order attempts to prohibit in-person instruction at religious private schools until September 28, 2020.² The Office of the Attorney General has been made aware that the county intends to enforce its order against religious private schools. We offer this letter as a warning.

This office has clearly stated that local orders like yours may not violate religious liberties protected by the United States and Texas Constitutions and the Texas Religious Freedom Restoration Act (RFRA).³ We have also unequivocally explained that local orders may not conflict with State law or the Governor's Executive Orders.⁴ Yet your order does both: it violates the religious freedoms guaranteed to religious private schools and it conflicts with State law and the Governor's orders.

¹ See <https://www.cameroncounty.us/wp-content/uploads/2020/09/08.31.2020-First-Amended-Joint-Cameron-County-Health-Authority-and-Cameron-County-Judge-EM-Order.pdf>.

² *Id.* at 3.

³ See *Guidance for Religious Private Schools*, July 17, 2020, available at: <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/2020.07.17%20Letter%20to%20Religious%20Schools%20re%20COVID%2019%20Orders%20-%20Final.pdf>; see also U.S. Const. amend. I; Tex. Const. art. I, § 6; Tex. Civ. Prac. & Rem. Code §§ 110.001–.012.

⁴ See *Ltr. to the Mayor of Stephenville, Tex.*, July 27, 2020, available at: https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Disaster%20Counsel%20Letter%20to%20Stephenville%20re%20Local%20Health%20Orders_07282020.pdf; see also Tex. Const. art. XI, § 5(a); *City of Laredo v. Laredo Merchants Ass'n*, 550 S.W.3d 586, 592 (Tex. 2018) (recognizing the Constitution prohibits a home-rule city from enacting a local law that conflicts with the Constitution or State law).

Less than two months ago, the United States Supreme Court upheld a challenge to government interference in religious school governance.⁵ The Court reaffirmed that “[t]he First Amendment protects the right of religious institutions ‘to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.’”⁶ Likewise, the Texas Supreme Court acknowledges that “the government cannot set standards for religious education or training.”⁷ These cases identify the limits of State and local action against religious institutions such as religious private schools—limits that your order brazenly exceeds by intruding upon the operation of such institutions.

The Texas RFRA, moreover, prohibits a government restriction from “substantially burden[ing]” the free exercise of religion,⁸ which includes the ability of faith communities to educate their youth,⁹ unless it can demonstrate a compelling interest for the restriction and prove it applies in the least restrictive way.¹⁰ And RFRA applies to every “ordinance, rule, order, decision, practice, or other exercise of governmental authority” in Texas.¹¹ Even assuming a compelling interest exists here, restricting the operation of all religious private schools in the county is not the least restrictive means to achieve that interest. Nor is the general applicability of your order to all public and private schools sufficient to withstand RFRA scrutiny.¹²

Finally, the Texas Constitution prohibits local restrictions that are inconsistent with State law. Neither local emergency orders under chapter 418 of the Texas Government Code, nor local health control orders under chapter 81 of the Texas Health and Safety Code, are immune from this proscription. As this office has explained, nothing in the law allows local officials to restrict religious private school operations as your order seeks to do.

⁵ *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, No. 19-267, 2020 WL 3808420, at *3 (U.S. July 8, 2020).

⁶ *Id.* (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)).

⁷ *HEB Ministries, Inc. v. Texas Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 643 (Tex. 2007).

⁸ Tex. Civ. Prac. & Rem. Code § 110.003(a).

⁹ *Our Lady of Guadalupe Sch.*, 2020 WL 3808420, at *11–12.

¹⁰ Tex. Civ. Prac. & Rem. Code § 110.003(b).

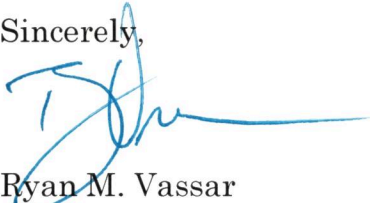
¹¹ *Id.* § 110.002(a).

¹² See *Barr v. City of Sinton*, 295 S.W.3d 287, 294–96 (Tex. 2009) (explaining that the federal Religious Freedom Restoration Act and its Texas counterpart were enacted to provide greater protection to religious freedom following the United States Supreme Court’s holding in *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872 (1990), in which the Court declined to apply strict scrutiny to a generally applicable law).

In short, the edicts in your order that purport to restrain the operation of religious private schools violate the religious freedoms guaranteed by the United States and Texas Constitutions and the Texas RFRA. These portions of your order also conflict with State law and are, therefore, invalid. If the county insists on enforcing its order against religious private schools, it may expose the county to liability in litigation.

We appreciate your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan M. Vassar", with a long horizontal flourish extending to the right.

Ryan M. Vassar
Deputy Attorney General for Legal Counsel