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May 5, 2020

City of Columbia Mayor Brian Treece- mayor@CoMo.gov
John Glascock, City of Columbia Manager- cmo@CoMo.gov
Stephanie Browning, Director of Columbia/Boone County Public
Health and Human Services- Stephanie.Browning@CoMo.gov
Dan Atwill, Boone County Presiding Commissioner-
datwill@boonecountymo.org

ALL VIA EMAIL, NO HARDCOPY TO FOLLOW

Re: Open Columbia Coalition

Dear Mayor Treece, City Manager Glascock, Director Browning and
Commissioner Atwill:

We represent the following Columbia and Boone County
businesses and individuals who are adversely impacted by the
order of Stephanie Browning dated April 30, 2020 (hereinafter
"the April 30 local order"). Our clients include, but are not
limited to, the following:

Edward Baker, Executive Hotel Management; Kathy Baker,
Holiday Inn Executive Center; Cameron Dunafon, D-Verse Holdings
LLC; Paul Prevo, Tiger Tots Preschools and Market Ready, LLC;
Rusty Strodtman, Columbia Mall; James Gray, Mid-Missouri
Restaurant Association, Nelly Roach, Caledon Virtual; Melissa
Murphy, Johnston Paints; Mills Menser, Buchroeders Jewelers;
Frank Ham, Ham Realty; Matt Thompson, Matt Thompson Consulting;
Chad Linder, M.D.; Sarah Slay-Norden, American Shoe, Inc.;
Stacey Dexter, The Clip Joint; Toby & Tim Rost, Rost
Landscaping, Superior Garden Center and Midway Golf and Games;
Randy Deline, Deline Holdings; Randy Minchew, Deline Holdings;
Hall Trice, M.A., L.P.C., Psychotherapist; Teri Weise; Jeff &
Barb Glenn, Missouri Cotton Exchange; Christy Huggans, The
Strand Salon and Spa; Rob Wolverton, R. Anthony Development

Group, LLC; Taylor Burks; Mike Zweifel; Jay Lindner, Lindner Properties; Chad Linder, M.D. and Kerri Linder; Nic Parks, Parks Amusements; Maxwell Family Chiropractic; Laura Skaer; Carla Ciollo Hair Studio; Billy Don McCormick, McCormick Home Improvement.

Our clients represent a diverse group of businesses, owned and operated by people of all political persuasions and who employ hundreds of Columbia and Boone County citizens. Our clients understand that Covid-19 is a serious health issue and believe it is important to understand and rely on data derived from our local experience with Covid-19 when deciding what limitations, if any, to impose on citizens and businesses.

Thankfully, the data shows that Columbia and Boone County have experienced very few confirmed cases of Covid-19, fewer hospitalizations attributable to the virus and even fewer deaths. In the almost one month that the City has been making the data available, out of approximately One Hundred Eighty Thousand (180,000) citizens in Boone County, there have been 97 confirmed Covid-19 cases in the county. If the reason for the initial six (6) week stay at home order issued by Ms. Browning was to flatten the curve, and to avoid overwhelming local hospitals with Covid-19 patients, it is fair to conclude, by any objective standard, that the purpose was accomplished. Both the City of Columbia and Boone County acknowledged "a significant flattening of the curve" in the April 30, 2020 Columbia/Boone County Plan for Response and A Road Map to Reopening. It is indisputable that Columbia hospitals have not even come close to being overwhelmed by Covid-19 patients. Unfortunately, those same hospitals who were directed not to perform any "elective" procedures are now, because of those orders, facing significant financial losses and layoffs which may compromise their ability to treat future patients, including any future Covid-19 patients.

While it is a challenge for any government to know what to do in these unprecedented times, we do not believe that the Boone County data with respect to Covid-19 justifies or excuses any directives or measures which are inconsistent with the present effective State order issued by Dr. Randall Williams, the Missouri Director of the Department of Health and Senior Services on April 27, 2020 (hereinafter sometimes referred to as "the April 27th State order or "Dr. Williams' order"). Our clients are ready, willing and able to abide by the State order as it seems to least restrictively balance the seriousness of Covid-19 with the principle that, as a State, we cannot live

indefinitely under stay-at-home orders and forced business closures, and we must seek the least restrictive means, that have a rational basis in fact, to keep our citizens safe while allowing our businesses to stay afloat.

We have reviewed the April 27th State order issued by Dr. Williams. Ms. Browning's order conflicts with, and is inconsistent with, Dr. Williams' order in that Ms. Browning's order purports to impose additional burdens on certain Columbia and Boone County citizens, and businesses, which cause, and will continue to cause, grave and irreparable economic harm not just to our business clients, but their hundreds of employees who count on them for a paycheck. No contiguous counties to Boone County have in effect orders as restrictive as the Boone County order which means that Ms. Browning's order places Columbia and Boone County businesses at a distinct and real disadvantage in offering goods and services. Again, there is nothing about the Covid-19 data for Boone County that justifies these additional restrictions that are inconsistent on their face from the April 27th State order.

On behalf of these damaged and concerned individuals and businesses, I respectfully request that you reconsider the April 30th local order, which has no expiration date, that places the citizens of Columbia and Boone County at a distinct disadvantage to do business, and to patronize businesses compared with neighboring counties, without any rational justification or excuse. We respectfully request that Ms. Browning rescind her April 30th local order which would subject the citizens of Columbia and Boone County to the restrictions and limitations contained in Dr. Williams' April 27th Order.

In support of our legal position, we believe that Ms. Browning does not have the proper legal authority to make the inconsistent local order and, therefore, that the order is null and void. Specifically, Dr. Williams April 27th order only purports to permit local officials to make further rules and regulations "not inconsistent with this order." It is our position that any order by a local authority that imposes more or less burdens on local citizens and businesses than does Dr. Williams' order is inconsistent with Dr. Williams' order and, therefore, on its face any such local order is without legal authority. Further, there is a significant question as to whether and to whom Dr. Williams could even properly delegate any such authority under applicable Missouri law.

Indeed, it is unlikely that Dr. Williams could delegate or

authorize multiple local authorities to make rules that are more or less stringent than his own orders. A clear reading of the statutes and regulations does not provide him that authority. Specifically, during health emergencies, local officials derive their authority to act from RSMo. 192.300 which states:

1. The county commissions and the county health center boards of the several counties may make and promulgate orders, ordinances, rules or regulations, respectively as will tend to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county, but any orders, ordinances, rules or regulations shall not:

- (1) Be in conflict with any rules or regulations authorized and made by the department of health and senior services in accordance with this chapter or by the department of social services under chapter 198.

The prior section, RSMo. 192.290, similarly states:

All rules and regulations authorized and made by the department of health and senior services in accordance with this chapter shall supersede as to those matters to which this chapter relates, all local ordinances, rules and regulations and shall be observed throughout the state and enforced by all local and state health authorities. Nothing herein shall limit the right of local authorities to make such further ordinances, rules and regulations not inconsistent with the rules and regulations prescribed by the department of health and senior services which may be necessary for the particular locality under the jurisdiction of such local authorities.

The relevant State regulation, 19 CSR 20-20.050 provides:

- (2) The local health authority, the director of the Department of Health and Senior Services or the director's designated representative is empowered to close any public or private school or other place of public or private assembly when, in the opinion of the local health authority, the director of the Department of Health and Senior Services or the director's designated representative, the closing is necessary to protect the

public health. However, in a statewide pandemic, only the director of the Department of Health and Senior Services or the director's designated representative shall have the authority to close a public or private school or other place of public or private assembly. The director or designated representative shall consult with the local health authorities prior to any such closing. Any school or other place of public or private assembly that is ordered closed shall not reopen until permitted by whomever ordered the closure.

By its terms, this regulation specifically contemplates that, in a time of state pandemic, it is not within the purview or authority of local health officials to order closure of places of assembly. Ms. Browning's order is, accordingly, facially in conflict with the underlined part of 19 CSR § 20-20,050(3) which states that in these circumstances only Dr. Williams has the authority to shut down, or significantly restrict, places of assembly. These statutory and regulatory provisions also preclude any reliance on Section 11-98 of the City Code because those statutory provisions expressly prohibit any local regulations or ordinances that are inconsistent with State orders.

It is our contention that Ms. Browning, as a Boone County and City of Columbia official, has no legal basis to enter orders based on Covid-19 data from other counties. Further, the fact that citizens of other counties who may have Covid-19 may travel to Boone County for any purpose, including medical treatment, is not a reasonable or rational reason for imposing onerous restrictions on Columbians and Boone Countians because there is nothing in the local order that limits the activities of those individuals when they arrive in Boone County and the local order, therefore, is not narrowly tailored to limit the activities of any person with the virus who enters Boone County. Instead, it purports to impose burdens on all citizens of Boone County, including the overwhelming majority who do not have the virus.

In addition to the lack of legal authority for Ms. Browning's order, we contend that it violates the First(1st), Fifth (5th), and Fourteenth (14th) Amendments of the United States Constitution and also violates provisions of the Missouri Constitution. Specifically, Ms. Browning's order has deprived,

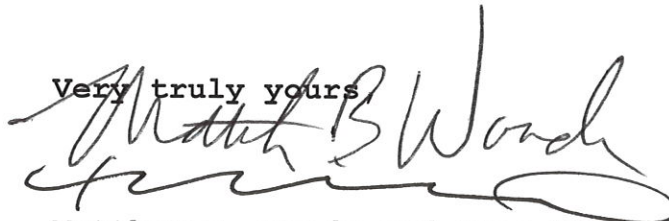
and will continue to deprive, Boone County and Columbia citizens' rights to peacefully assemble, to travel, to pursue happiness, and to equal protection under the law. The order is vague, arbitrary, and not narrowly tailored to meet intended purposes, and does not pass constitutional muster. The order treats our clients differently than similarly situated persons and, therefore, violates the equal protection clause of the Fourteenth (14th) Amendment to the Constitution.

Again, our request is that Ms. Browning's April 30, 2020 order be rescinded and that the citizens of Columbia and Boone County then be subject to Dr. Williams' April 27th order to be put on equal footing as the citizens and businesses, within and surrounding Boone County. We are not advocating that our citizens be permitted to resume normal pre-Covid life at this time, and we certainly understand that those more vulnerable to Covid-19 will need the continued protection and support of local authorities and their fellow citizens. Respectfully, Ms. Browning's April 30th order overreaches in that it is both unconstitutional and exceeds her lawfully given authority. The only acceptable remedy is to rescind the order.

We request a meeting with City and County officials to provide certain unique instances, and the impact, of Ms. Browning's order on our clients by no later than this Friday May 8, 2020. If we are unable to reach a result acceptable to our clients by that time, we will advise our clients to pursue all other immediately available remedies.

Please respond forthwith so that such a meeting can be calendared.

Very truly yours,

A handwritten signature in black ink, appearing to read "Matthew B. Woods", with a large, sweeping flourish underneath.

Matthew B. Woods and Thad Mulholland
Eng & Woods Law Partnership

MBW/alp