



STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR

ROY COOPER  
GOVERNOR

William C. McKinney  
General Counsel

April 20, 2020

**VIA ELECTRONIC & REGULAR MAIL DELIVERY**

ajbiller@michaelbest.com

Mr. Anthony J. Biller  
Michael Best & Friedrich LLP  
2501 Blue Ridge Road, Suite 390  
Raleigh, NC 27607

Dear Mr. Biller,

Thank you for your letter dated April 18, 2020. In that letter, you write to seek the Governor's clarification as to whether outdoor protests have been prohibited under the Governor's executive orders issued in response to the COVID-19 pandemic.

The answer to your question is no. Outdoor protests have not been prohibited. However, as always, outdoor protests during this time are subject to reasonable time, place, and manner restrictions. See e.g. Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). The reasonableness of a restriction must be measured against the circumstances in which it is imposed—here, a global pandemic that threatens the health and welfare of all North Carolinians.

In this instance, such outdoor protests are subject to the restrictions set forth in Executive Order No. 121, 34 N.C. Reg. \_\_\_\_, which was issued on March 27, 2020 and entitled "Stay at Home and Strategic Directions for North Carolina in Response to Increasing COVID-19 Cases." As you are well aware, the restrictions set forth in that Executive Order are a principal tool this State, the federal government, and other States currently have to fight the spread of COVID-19.

Section 1 of Executive Order No. 121 orders all North Carolinians to stay at home with exceptions for engaging in certain activities. Such activities include participation in outdoor activities, including, but not limited to, volunteering with civic groups. Furthermore, that Executive Order states that when outdoors, individuals must maintain social distancing of at least six feet unless they are members of the same household.

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Executive Order No. 121 provides room for outdoor protests to continue, just as they allow for the expression of other First Amendment liberties, including the free exercise of religion and the right to a free press. So that there is no confusion regarding this issue, outdoor protests are allowed so long as the space occupied by the protesters is not enclosed (i.e. with walls) and so long as the protesters maintain the Social Distancing Requirement that individuals remain at least six feet apart unless they are members of the same household. This guidance is limited to the Governor's Executive Orders and Executive Order No. 121 in particular. Outdoor protests would of course be subject to other relevant state and local laws and ordinances.

Reports from your clients' protest of April 14, 2020, show that the six-foot Social Distancing Requirement identified above was not maintained by many participants. By doing so, they endangered themselves, their families, their friends, and others with whom they came into contact. When the six-foot Social Distancing Requirement is not followed, law enforcement may intervene to enforce the order, and thereby protect both the public and the protesters themselves.

Without question, the challenges and impacts brought about by the COVID-19 pandemic have been unprecedented in modern times, both within North Carolina and across the country. The Governor has taken decisive actions consistent with his constitutional authority, the State Emergency Management Act, and other laws to confront this public health emergency. The people of North Carolina have responded by coming together to help one another and have demonstrated remarkable resolve in the face of this significant public health threat.

With kind regards, I am

Very truly yours,



William C. McKinney

Cc: Greg Ford, Chair  
Wake County Board of Commissioners