

8 April 2020

To: Ravalli County Health Board, Ravalli County Health Officer
From: James R. Olsen

Subjects: 1) Directive Implementing Executive Orders 2-2020 and 3-2020 providing measures to stay at home and designating certain essential functions,” dated March 26, 2020 (“Directive”);
2) Medical Rights.

While I have given a number of inputs to the County on ideas of how to manage the COVID-19 outbreak, and have volunteered to help my neighbors, there is another important issue that must be dealt with.

The subject Directive is unconstitutional because it does not allow the practice of 1st Amendment rights as declared in the Montana and United States Constitutions. The Directive gives no rational or authority for omitting these rights. Attachment 1 shows instances of how Americans have let their rights slip away in times of fear and uncertainty — and later regretted it.

Attachment 2 is a legal rationale. While someone from Governor Bullock’s office claimed that the attorney on staff thought the Directive was constitutional, and a lawsuit may fail, it is clear that the founders of our country and the authors of the Montana Constitution thought of the right to assemble was the cornerstone of our liberties.

Bullock’s order provides no authority and no rationale for banning religious and political gatherings – even while allow gatherings to, for instance, buy hardware and buy liquor.

REQUEST. 1). The Health Board declare by resolution that religious and political assembly is a constitutional right. Assemblies should be held using the physical distancing and other health requirements and guidelines directed by the State and Ravalli County Health Board and Health Officer.

2). The board forward a copy of the resolution to Governor Bullock with a request for the Directive to be modified to accommodate these rights.

3). The Board should inform the public that their religious and political rights to assemble are supported by the Board, given that physical distancing and other health directives and guidance are followed.

The right to consent to treatment and preventative medicine. The treatments for COVID-19 are evolving as are attempts to create a vaccine. There is uniform admission that vaccines and many of the treatments being considered can have adverse health effects. In the current state of affairs, treatments that have even less testing for safety and side effects are being offered — the risk/reward choice is up to the individual, not the provider. Most people accept the side effects risk — but it is their choice not the provider or the Board of Health.

REQUEST. The Health Board declare that Individuals have the right to accept or reject any medical treatment or vaccine.

Best Regards,


James R. Olsen

ATTACHMENT 1 – First Amendment

Don't Let Your Rights Slip Away

*The Times Were Uncertain and Fearful.
Nearly everyone thought it was a good idea at the time.*

- 1863 — Abraham Lincoln suspended Habeas Corpus – Imprisoned without a trial.
- 1918 — The Sedition Act - 73 Montanans put in prison for saying the war was not a good idea.
- 1942 — Put Japanese, citizen or not, men, women, and children into concentration camps.

Maybe it wasn't a good idea after all.

Governor Bullock's Directive – What Happened to the First Amendment?

“Stay and home or place of residence.”

“All persons may leave their home or place of residence only for Essential Activities or to operate Essential Business and Operations, all as defined below.”

- You can buy food.
- You can go to the doctor.
- You can go to the hardware store.
- You can go to the liquor store.

BUT these Essential activities are missing.

- You cannot go to church.
- You cannot assemble to petition the government.

The Montana Constitution declares the following rights:

“Section 5. **Freedom of religion.** The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Section 6. **Freedom of assembly.** The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.”

The Directive makes no provision for these rights.

We send veterans into harms way to defend these rights. It is your turn to overcome fear and anxiety – defend these rights – **don't let democracy slip away.**

Let Governor Bullock know. Governor@mt.gov. (406) 444-5554.

ATTACHMENT 2: Legal Rationale

PLAINTIFFS HAVE STANDING

1. Governor Steve Bullock issued a directive titled, “Directive Implementing Executive Orders 2-2020 and 3-2020 providing measures to stay at home and designating certain essential functions,” dated March 26, 2020, directed to” “Montanans; all officer and agencies of the State of Montana, hereinafter called “Directive.”
2. The plaintiffs are residents of Montana and thus are affected by this order.

STAY-AT-HOME DIRECTIVE SPECIFIES PRECISELY ACTIVITIES ALLOWED

3. The Directive on page 4, paragraph I.1, directs each person to “Stay and home or place of residence,” stating, “All persons may leave their home or place of residence only for Essential Activities or to operate Essential Business and Operations, all as defined below.
4. The Directive on page 4, paragraph I.2, states that “All business and operations of the State, except Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations, as defined below.”
5. The Directive on page 4, paragraph I.3, states that “All public and private gatherings of any number of people outside of a household or living unit are prohibited, except for the limited purposes permitted by this directive.”
6. On page 9, Section II, the Directive states, “This Directive, along any prior Directive...that constitutes a ‘public health...order’ is enforceable by the Attorney General, DPHHS, a county attorney, or other local authorities under the direction of the county attorney.”

STAY-AT-HOME DIRECTIVE UNCONSTITUTIONAL

7. The Essential Business and Operations and Limited Purposes defined do not include: Religious assembly or religious practice, assembly for political purposes, participation in government prior to a decision being made, to observe government deliberations.
8. The directive itself shows that such assemblies are feasible, since assembly to purchase non-necessities such as alcohol and hardware are permitted.
9. The Montana Constitution declares the following right:
“Article II Declaration of Rights
Section 5. Freedom of religion. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.
Section 6. Freedom of assembly. The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.
Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.
Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.”
The Directive make no provision for these rights.
10. The authorities listed on Page 9 of the directive “Authorities: Section 10-3-104, MCA; §§ 50-1-103, -202, -203, and -204, MCA; Executive Orders 22020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; §§ 10-3-103, -302, and -305, MCA” do not provide for the elimination of these rights.

NO PUBLIC PARTICIPATION; ADMINISTRATIVE REMEDIES EXHAUSTED

11. While the situation at hand may require the “social distancing” provisions, the need did not suddenly appear – scientists have predicted the eventual need to deal with COVID-19 in all states for numerous weeks. The plaintiffs allege that this directive was deliberated upon for at least a week and that the public was denied the right to participate and the right to know. The Constitution of Montana does not exempt the Governor from the right of participation or right to know. The statutes cited in the Directive do not waive these rights.
12. Comments regarding the unconstitutional nature of the Directive were submitted in writing on March 29 by the email address provided for both the Governor and the Governor’s COVID-19 task force. No response has been received.
13. The phone number given in the directive 406-444-3111 is message that has no information on how to comment on the Directive. Repeated calls to the Montana Executive Branch Directory yielded no answers. The assistant Chief of Staff finally responded to a message on March 31, was told that the Directive was unconstitutional in failing to provide for religious and political activities and assemble and was easily corrected. He said he would “pass it up the line.” He was asked to get back – it has not happened.

VIOLATES THE UNITED STATES CONSTITUTION

14. Article II, Sections 5, 6, 8 and 9 of the Montana Constitution is inviolate – there are no exceptions to the preservation of these rights.
15. Article I of the Montana Constitution is a compact with the United States. The United States Constitution, Amended in what is known as the “Bill of Rights,” in Article I states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” This is inviolate — there are no exceptions to the preservation of these rights.

VIOLATES CONSTITUTIONAL RIGHTS ARBITRARILY

16. The science and experience show that other countries, particularly South Korea, Singapore, and Taiwan have the best outcomes in the industrialized world and have not found it necessary to prohibit activities to the extent of the Directive. Thus, there is no scientifically based evidence that prohibiting the rights specified in Article II, Sections 5, 6, 8 and 9 of the Montana Constitution nor the first amendment to the United States Constitution is needed in any case.
17. The Directive makes no mention of these rights, evidence of an arbitrary dismissal of the religious and political rights and the rights to participate in government.
18. The Governor of the State of Montana arbitrary and capriciously deprived the plaintiffs of the rights listed in the Montana Constitution, Article II, Sections 5, 6, 8, and 9 and the United States Constitution, Article 1 for the Bill of Rights.