



INSTITUTE FOR JUSTICE

July 25, 2022

**Via Electronic Mail**

Nick Dawe  
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**Re: Certificate of Occupancy for Education in Churches**

Chief Dawe:

I am writing on behalf of the Institute for Justice (“IJ”), a national, nonprofit litigation firm that specializes in protecting the right of parents to direct their children’s education. After speaking with various Cobb County parents and schools, IJ has learned that the County Fire Marshal’s Office (“CCFMO”) is requiring that churches obtain an education certificate of occupancy (“ECO”) before they may host homeschool cooperative programs. We are writing to inform you that this requirement is preempted by law and may not be enforced.

As applied to these programs, the ECO requirement violates the “Learning Pod Protection Act,” passed specifically “to ensure that parents in this state who choose to voluntarily associate to advance the primary education of their children shall not be subject to additional restrictions or regulations.”<sup>1</sup> Under the Act, “voluntary association[s] of parents choosing to group their children in kindergarten through grade 12 together at various times” are exempt from “[a]ny state or local building or fire codes applicable to educational or child care facilities.”<sup>2</sup> Such associations remain exempt, even if there is exchange of “[p]ayment for services by parents of children who participate.”<sup>3</sup> “Hybrid” homeschool programs—groups designed to supplement homeschooling with group-based teaching—may thus operate anywhere in Georgia without observing fire codes otherwise applicable specifically to educational facilities.

The importance of following the statute is particularly salient, as it is unclear what legitimate purpose the ECO requirement would serve in this case. Under their current certificates of occupancy, these churches already may lawfully host hundreds (or more) of children for religious classes and services. It cannot rationally follow that those children may safely occupy the church, but children of homeschooled parents may not. And CCFMO implicitly recognizes that the additional ECO requirement is unnecessary, as it appears to exempt preschool educational programs from compliance.

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<sup>1</sup> Ga. Code Ann. § 20-2-690(f)(1)(B)

<sup>2</sup> *Id.* § 20-2-690(f)(2)(A), (f)(3)(C).

<sup>3</sup> *Id.* § 20-2-690(f)(2)(A).

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Under these circumstances, requiring an ECO would not only violate Georgia statutory law—it would be unconstitutional. Both the Georgia and United States Constitutions protect the fundamental right of parents to direct their children’s schooling.<sup>4</sup> Requiring that churches obtain an additional, patently unnecessary—and often expensive and time-consuming— occupancy certification before they may host hybrid homeschool programs unreasonably burdens that right. Indeed, at least one program has already closed down because of this requirement.

Given the clear statutory violation and the serious constitutional issues presented here, we insist that CCFMO reconsider its position; retract its previous guidance; and inform the public that voluntary parent associations, including homeschool cooperatives (or hybrids), may lawfully operate without any ECO.

This is a time-sensitive issue, given that school is resuming in mere weeks. Please contact me as soon as possible; I can be reached at any time by e-mail at [ssen@ij.org](mailto:ssen@ij.org), or by phone at (423) 335-0223.

Sincerely,



Suranjan Sen  
*Law & Liberty Fellow\**  
Institute for Justice



Erica Smith  
*Senior Attorney*  
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CC:

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<sup>4</sup> See, e.g., *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

\* Licensed to practice law in the States of Tennessee and New York.