

July 29, 2009

Honorable Eva Muniz Valdez
Chair, Colorado Civil Rights Commission
1560 Broadway, Suite 1050
Denver, CO 80202

RE: Proposed SB 200 Implementing Regulations and Amendments to the Sexual Orientation Discrimination Rules

Dear Madam Chair and Members of the Colorado Civil Rights Commission:

I represent a substantial number of interested persons of faith and faith-based organizations who are concerned about the potential impact of the proposed SB 08-200 (herein, "SB 200") implementing regulations, as drafted, on persons of faith, faith-based organizations, and religious liberties in the State of Colorado. There is a "middle ground" where both the intent of SB 200 and protections of our citizens and their children and religious liberties can be honored and respected.

It is the purpose of this letter to analyze and comment on SB 200's proposed implementing regulations which are the subject of a July 31, 2009, public hearing. Because of a prior legal commitment, I am presently not able to attend this public hearing. In lieu of my in person appearance, however, I ask that you make this letter a part of the public record.

By way of background, it is obvious that many of Colorado's elected public officials did not heed or agree with the warnings of many Coloradans who, when the Colorado General Assembly was considering SB 200, expressed grave concerns and reservations about the potential impact of SB 200 on families, particularly women and children, and on our citizens' religious liberties.

Many Coloradans warned the Colorado Legislature that, as proposed, SB 200 was bad public policy and that no real thought had been given to the fact that the addition of "sexual orientation" to a whole host of Colorado non-discrimination statutes would have unintended consequences that would create an implementation nightmare. After SB 200 was passed by the Colorado General Assembly, many more Coloradans urged the Governor to veto the proposal. Coloradans warned that the SB 200 would, if implemented, be a major encroachment upon religious liberties including the rights of individuals of faith and faith-based businesses and organizations. Indeed SB 200 threatens the very existence of some faith-based entities. Coloradans warned that the threat of jail, fines, and civil monetary judgments would work to crush or stifle orthodox religious beliefs by force.

SB 200 and these proposed regulations, if adopted, will create a multitude of legal problems for the State of Colorado and will jeopardize the First Amendment rights of all Colorado citizens. Without adequate safeguards, many individuals of faith will be forced to engage in conduct that violates their deepest religious beliefs. Likewise, faith-based organizations will be constrained in crucial aspects and programmatic areas with regard to their free religious exercise.

SB 200's proposed regulations: (1) expose businesses and public accommodations owners to unnecessary liability because of the competing and conflicting interests that these proposed regulations create vis-à-vis the safety of the general public; (2) fail to reconcile or explain the different religious exemptions contained in Colorado's employment statutes and public accommodations statutes; (3) endanger deeply and sincerely held religious beliefs and freedom of conscience, and (4) seriously threaten the safety of Colorado's women and children.

I urge you to take the time and care to insure that these proposed regulations are as narrowly drawn as possible so as to not further restrict Coloradans' inalienable rights of religious liberty and freedom of conscience.

Constitutional Challenges to the Proposed Regulations

The First Amendment of the United States Constitution states that the government "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]" The Colorado Constitution states: "The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed." Without an exception for religious beliefs, SB 200's proposed implementing regulations violate both the federal and state religion clauses.

The United States Supreme Court has repeatedly recognized the dangerousness of laws or regulations such as those before the Commission. In one case, the Massachusetts Supreme Judicial Court ruled that a private organization — the organizers of the St. Patrick's Day Parade in Boston — engaged in "sexual orientation" discrimination when they excluded a group advocating homosexual behavior from interjecting their message into the parade. In another case, the New Jersey Supreme Court ruled that a private organization, the Boy Scouts of America, engaged in "sexual orientation" discrimination when the organization refused a request by an open practitioner of homosexual behavior to become a scout leader. Importantly, the United States Supreme Court overruled both of those decisions on First Amendment grounds, citing constitutional expression and association rights. These cases plainly demonstrate the constitutional infringements that will undoubtedly occur if SB 200 is implemented as proposed without broader religious exemption language.

Proposed Regulation Liabilities

SB 200's proposed implementing regulations are so broad that any person, business, or institution that "sells" a good or service at any time appears to be covered by these proposed regulations. As a result, if these implementing regulations are approved, the religious rights and freedoms of individuals, churches, and other religious entities, as well as the rights and freedoms of owners of small businesses, will be in jeopardy. In particular, the proposed regulations have the potential for the following serious repercussions:

Employers and public accommodations owners are exposed to significant liability because of the vagueness of the gender identity and gender expression regulations.

The proposed regulations' definition section provides that an individual's "gender identity" is the "innate sense of one's own gender." The proposed definitions of gender identity, gender expression, and transgender are all so vague that no reasonable human being, whether individual, business owner, or otherwise, can, without exposure to potential liability, provide reasonable instructions to or otherwise impose reasonable restrictions on employees or customers regarding the use of rest rooms, locker facilities, and other areas of public accommodations where partial or complete nudity is common. The breadth of potential liability for individuals or businesses created by these proposed implementing regulations is extremely troubling and, by making everyone a potential plaintiff, will flood the courts with frivolous litigation.

In addition, it would appear from proposed Rule 81.11 that a "public accommodations" owner may well be subject to charges of "discriminatory conduct" for merely requesting to see an ID of a person demanding to use an opposite gender facility. Although the previously proposed regulations (now withdrawn) made it explicit that such conduct would be grounds for "discriminatory conduct" charges, the current proposed regulations are silent on this issue. Nevertheless, the proposed implementing regulations do not help a public accommodations owner with any reasonable basis for balancing these competing interests. As a consequence, such an owner would be placed in tremendous risk of liability.

By way of example, a health club, gym, or shopping mall will have no way to shield its female patrons from men who enter their locker room or rest room facility because the male chose to self-identify as a woman on any given day. Further, from a law enforcement standpoint, police officers and security guards will have no viable way to discern whether a man who is in a public women's restroom is a sexual predator or one who sincerely believes that he is a woman at that moment. Where customer or public safety is the issue, the business or public accommodations owner has no legal authority under these proposed implementing regulations to challenge the entrance of a male into a female dressing or rest room area. This directly contradicts the duty of care owed by an owner of a public accommodation to reasonably insure patron safety and will inevitably lead to increased litigation and liability on the part of owners and their insurance companies.

Further, organizations that want to abide by the law, and avoid sexual harassment claims, must prohibit sexuality from becoming a part of their organization or workplace culture. Yet, SB

200's proposed implementing regulations run contrary to current law by directly injecting sex, sexuality, and sexual behavior into the Colorado business stream of commerce. So, on the one hand, an employer must suppress issues of sexuality to comply with governing law and prevent sexual harassment claims, but on the other hand, an employer must be cognizant of its employees' (potentially varying) sexual preferences, or *perceived* sex in order to stay vigilant and informed regarding potential "sexual orientation" claims. This is an impossible task or balance for a public accommodations owner or an employer to maintain.

Finally, not only would SB 200's proposed implementing regulations create fertile ground for a vast array of unfounded lawsuits, it would severely disadvantage employers and others trying to defend against such claims. One's "gender identity," as that term is defined in these proposed implementing regulations, is subjective, changeable, and known only to the person expressing it. Given the absence of scientific or tangible proof distinguishing an "innate sense of one's own gender," no organization or individual could reasonably refute or defend against any allegation of discrimination or unfair treatment.

On the other hand, given the distinct physical differences between sexes, if an employer or public accommodations owner ignores those differences in providing restrooms or locker rooms, they are exposing themselves to invasion of privacy suits from employees and others. Moreover, because SB 200's proposed implementing regulations protect individuals on the basis of their perceived "gender identity," the defending person or organization will be placed in the near impossible position of proving what its employees did and did not perceive regarding another's gender expression.

Religious organizations and business are given no guidance as to how the religious exemption for public accommodations applies to them.

The proposed implementing rules make no attempt to further clarify the religious exemption contained in SB 200. Church schools, religious non-profit organizations, and other ministries and para-church ministries are left to ponder whether the exemption applies to them. There should be no doubt left in these proposed implementing rules that the exemption includes as broad a definition of "church, synagogue, mosque, or other place that is principally used for religious purposes" so as to accommodate the full gamut of religious freedoms and rights of conscience guaranteed to the people under the state and federal constitutions.

Religious organizations, associations, educational institutions, and societies are exempted from the state's employment non-discrimination laws (see, *e.g.*, §24-34-402). I believe the "exemption" language in SB 200 should be viewed, for all intents and purposes, as identical in these proposed implementing regulations. In fairness to religious organizations which may have to adjust their activities to comply with these state laws, these exemptions should be co-extensive. None of the proposed implementing regulations address this ambiguity or adequately define "place that is principally used for religious purposes."

Small business owners' freedom of conscience is jeopardized by SB 200, and the proposed regulations do not address this threat.

Colorado's public accommodations statute extends far beyond mere facilities owned by businesses like hotels, restaurants, and public transportation and purports to cover the provision of goods and services as well. Many small businesses are owned and operated as an extension of the owners' moral or religious beliefs. Those moral or religious beliefs may include a conscientious objection to promoting homosexuality, bisexuality, or transgenderism through the operation of their businesses. Businesses where owners can and do operate on faith-based principles include things like wedding photography, catering, counseling, and graphic design, just to name a few. Such business owners will likely be forced, under these proposed implementing regulations, to promote a message at odds with their deeply and sincerely held moral and religious beliefs. Such business owners will either be punished for taking a moral or religious stand or close their doors with an attendant loss of jobs. These proposed implementing regulations infringe upon the constitutional rights of business owners and produce absurd results and unintended and far-reaching consequences that will deter entrepreneurship and stifle business growth in Colorado. As the proposed implementing regulations now stand, there is absolutely no recognition of these potential problems nor any protections offered.

Finally, women and children safety is severely threatened.

The safety of women and children should be one of Colorado's top concerns. Colorado should not make it easier for peeping toms, pedophiles, or other sexual predators to harm children and families. Our laws should protect the rights of families and enable parents to protect their children, not grant special privileges based strictly on someone's perceived gender or sexual orientation.

These proposed implementing regulations will put women and children at risk by allowing access to intimate public accommodations to anyone demanding it. Contrary to public statements of proponents of SB 200 at the time the Colorado General Assembly deliberated on it, the proposed implementing regulations make it clear that SB 200 was very much about bathrooms after all. I am informed and you should also be aware that, since the passage of SB 200, the following incidents have reportedly occurred:

A Focus on the Family female intern encountered a man in the women's restroom at the Colorado Springs airport who casually left only after washing his hands.

Two female children encountered a man undressing in a fitness facility women's locker room in a suburb north of Denver (parents reported this and stated that police were investigating, but no further information has been reported).

One high school principal reported that he is dealing with a request from a transgendered female teacher to use the men's/boy's restrooms at the school.

It is no consolation for Coloradans to be told that any crimes committed by peeping toms, pedophiles, and other sexual predators will be fully prosecuted after the fact. These regulations make a risky law even more dangerous by guaranteeing that no one will ever be challenged for entering any gender-segregated area. By adding dire warnings to business owners that any attempt on their part to protect the safety or privacy of their patrons will likely result in costly litigation, findings of discriminatory conduct, and criminal prosecution, fines and even jail time, these proposed regulations all but guarantee more such "incidents" in the future. Colorado's women and children deserve better.

Wide Ranging Conflicts Recognized by Legal Scholars

Public accommodations, non-discrimination laws, including these proposed implementing regulations, which include "sexual orientation," inevitably result in harassment of, and ultimately, the punishment of individual's with deeply held moral and religious beliefs. The conflicts between religious liberty and the law generally take one of two forms. First, implementing regulations do not include appropriate religious exemptions; religious organizations and individuals that object to homosexual behavior will face a barrage of new civil lawsuits and probable criminal prosecutions. So will many small businesses, which are owned by individuals of faith who believe in freedom of conscience. We have already seen the effects elsewhere in the country where such laws have passed and likely lawsuits include claims where:

A religious school or college that has a code of conduct prohibiting same-sex sexual relationships can be sued under anti-discrimination laws for refusing to admit students (or children of parents) in a homosexual relationship.

Individuals of conscience, who run a small business, such as wedding photographers, florists, banquet halls, or making wedding cakes in one's home, can be sued under public accommodations laws for refusing to offer their services in connection with a same-sex "commitment ceremony."

Religious summer camps, day care centers, retreat centers, counseling centers, or adoption agencies can be sued under public accommodations laws for refusing to offer their facilities or services to individuals in a homosexual relationship.

The second form of conflict involving faith-based organizations and individuals of faith (or the small businesses that they own) that conscientiously object to a gender expression or sexual orientation is that they will be labeled unlawful "discriminators" under Colorado law and thus face not only public scorn and ridicule, but a range of penalties at the hands of state agencies, local governments, and state criminal prosecutors. For example:

Doctors, psychologists, social workers, counselors, and other professionals who conscientiously object to homosexual behavior can have their licenses revoked.

Religious fraternal organizations or other nonprofits that object to homosexual behavior can be denied food service licenses, child care licenses, or liquor licenses on the ground that they are engaged in unlawful discrimination.

Religious colleges or professional schools can have their accreditation revoked for refusing to endorse homosexual behavior.

Religious organizations can have their tax exempt status stripped because of their conscientious objection to same-sex unions.

All of these conflicts either did not exist before, or will be significantly intensified after, the adoption of these proposed implementing regulations. It is, of course, impossible to predict the outcome of future litigation over these conflicts, and I assure you that religious liberty advocates will defend these claims vigorously pursuant to protections available under the state and federal constitutions. And religious liberty advocates can also be expected to seize the initiative and sue state and local governments for implementing, or threatening to implement, policies that harm faith-based organizations or people of faith. Thus, two things are certain: the current state of affairs will have unintended and deleterious effects and consequences on faith-based organizations and people of faith. And it will spawn years of costly litigation and criminal prosecutions across Colorado, not only for faith-based organizations, but also for small businesses owned by people of faith.

Proposed Religious Liberty Protection

The repercussions created by passage of SB 200 may not be able to be wholly avoided. However, the Civil Rights Commission's proposed implementing regulations offer little or no guidance to covered entities and will inevitably compound the number of lawsuits that will be filed. Nevertheless, these conflicts can be somewhat mitigated if this Commission takes the time and effort to further amend these proposed implementing regulations. I propose the Commission take the following actions:

First, the Commission should define a "place that is principally used for religious purposes" as including the most robust religious exemption as possible. The Commission has the authority and discretion to clarify the religious exemption language in the public accommodations section. As such, the Commission should define this phrase as a "religious corporation, association, educational institution, or society." This language is identical to the religious exemption clause in Colorado's Employment Non-Discrimination Act. Furthermore, as religious organizations adjust their own activities to comply with these laws, co-extensive exemptions are a fair interpretation and application of the non-discrimination statutes and clarify how the religious exemption for public accommodations applies to such organizations. The guidance this definition offers faith-based organizations and individuals of faith will insure more

uniform implementation of and compliance with non-discrimination statutes, decrease the number of lawsuits that will otherwise be brought to establish the boundaries of the statutory language and application, minimize or eliminate the potential of criminal prosecutions, and protect Coloradans' constitutionally guaranteed religious liberties.

Second, the Commission should delete the term "gender identity" from the proposed regulations because it is inherently ambiguous and thus unenforceable. Eight of the eleven proposed regulations are written in terms of "sexual orientation," and the Commission should redefine the remaining regulations in terms of "sexual orientation" as well. Deleting the term "gender identity" from the proposed implementing regulations will not weaken "sexual orientation" protection in the non-discrimination statutes and is advantageous for many reasons.

"Gender identity" is only used in proposed Rules 81.2, 81.10, and 81.11, and the vagueness of the term leads directly to the many problems employers and public accommodations owners will have implementing these particular regulations. However, keeping the regulations consistent will create a less ambiguous standard that will not interfere with sexual orientation protection. Furthermore, by redefining these regulations in terms of "sexual orientation," the Commission can decrease employer and public accommodations ownership liability and prevent a significant number of lawsuits or criminal prosecutions that may otherwise be brought against them and the State of Colorado.

Finally, the serious threat against the safety of women and children will be decreased because it will not be as easy for peeping toms, pedophiles, and other sexual predators to gain access to intimate public accommodations.

Thus, I ask that Rule 81.2(C) be deleted from the proposed implementing regulations, and that Rules 81.2, 81.10, and 81.11 be amended as follows:

Rule 81.2 – Sexual Orientation Definitions

(B) The term "transgender" means having a gender expression that differs from societal expectations based on gender assigned at birth.

Rule 81.10 – Dress & Grooming Standards

Covered entities may prescribe standards of dress or grooming that serve a reasonable business or institutional purpose, provided that they shall not require an individual to dress or groom in a manner inconsistent with the individual's sexual orientation.

Rule 81.11 – Facilities

(B) All covered entities shall allow individuals the use of gender-segregated facilities that are consistent with their sexual orientation.

Protecting religious liberty is very much a part of the tradition of both America and Colorado. I urge you to adopt this "middle ground" and balance the interests of all Coloradans,

not just those of a special few. The amendments I recommend to the proposed implementing regulations will ameliorate most of the major conflicts between sexual orientation expression and religious liberties and still assure respect for all individuals.

Conclusion

I am deeply concerned that the proposed implementing regulations do not properly address the dilemma created for public accommodations owners in attempting to balance gender expression issues with customer and public safety concerns, nor do they clarify the impact of these proposed implementing regulations on religious organizations, associations, educational institutions, and societies, nor, finally, do they provide exemptions for small business owners whose freedom of conscience is jeopardized.

Without adequate safeguards for religious liberties of the sort I propose, the protection of sexual orientation will lead to socially divisive and entirely unnecessary conflicts between the non-discrimination laws and religious liberties. That is a needless and destructive path where all Coloradans lose. There is a balanced “middle ground.”

The Colorado Civil Rights Commission should avoid an extreme position and take this “middle ground.” Thank you for your consideration.

Sincerely,

Michael J. Norton

cc: Honorable Bill Ritter, Jr.
Governor of Colorado

Honorable John Suthers
Attorney General of Colorado

Honorable D. Rico Munn
Executive Director
Colorado Department of Regulatory Agencies

U.S. Const. amend. I
Co. Const. art. II, § 4

Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc v. City of Boston., 636 N.E.2d 1293 (Mass. 1994).
Dale v. Boy Scouts of Am., 734 A.2d 1196 (N.J. 1999).

Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., 515 U.S. 557 (1995); *Boy Scouts of Am. V. Dale*, 530 U.S. 640 (2000).

Colorado Civil Rights Commission Rules and Regulations, 3 CCR 708-1, at Rule 81.2(C).

E.g., Current Secretary of State Bernie Buescher, a former House Representative from Grand Junction, stated in this same editorial, SB 200 "prohibits discrimination – it says nothing about men using women's bathrooms. Should it be interpreted that way, I'd be the first to lead an effort to modify it. The use by the wrong person of a bathroom is illegal, it is still." Senator Tapia was quoted as adding "That's what I voted for and what I believe in. How . . . [anyone] can take that and turn it into legislation they claim will help child molesters and sexual predators is beyond me." Joe Rice, House District 38 representative said on July 25, 2008, in a letter to a constituent, "SB08-200 has nothing at all to do with allowing one gender in another gender's restrooms." Duane Gall, senior staff attorney with the Colorado General Assembly's Office of Legislative Legal Services said on July 8, 2008, "I do not see any basis whatever for an assertion that SB200 requires that men be admitted to women's bathrooms or vice versa." Jennifer Lowe, President of the Board, Lambda Community Center of Fort Collins said on July 15, 2008, "Nothing in SB200 addresses public restrooms..." The Grand Junction Free Press Editorial Board opined on June 26, 2008, "Contrary to what a few radical interest groups have tried to lead people to believe this election year, the recently passed Senate Bill 200 in the Colorado Legislature, signed into law by Gov. Bill Ritter, has nothing to do with the use of public restrooms." Senator Abel Tapia, D-Pueblo, as reported in Pueblo Chieftain, on July 8, 2008, said that he was "among the many Democrats who voted for the legislation and said it was never debated as a matter of restrooms and public accommodations. The bill was about discrimination and added sexual orientation to the list of other protected groups, such as race and gender."

Marc Stern, Assistant Executive Director, American Jewish Congress, *Same-Sex Marriage and the Churches* at 31-33 (stating that "[t]he issue of church-school admission policies regarding children with parents in same-sex marriages will also arise," and noting that "Orthodox Jewish schools in New York have been grappling with whether to admit children of single mothers who conceived with assisted reproductive technology") [hereinafter "Stern"].

See C.R.S. §24-34-602 (2008) (public accommodations law provides some protection for places that are "principally used for religious purposes," but not for individuals of conscience); Stern at 37-39; see also *Issues Brief: Same-Sex Marriage and State Anti-Discrimination Laws* at 3-5, 35-36, available at HYPERLINK "<http://www.becketfund.org/files/34a97.pdf>" <http://www.becketfund.org/files/34a97.pdf>; *Elane Photography v. Willock*, No. D-202-CV-200806632 (N.M. 2d Jud. Dist. Ct.) (filed July 1, 2008) (New Mexico photographer fined for refusing on religious grounds to photograph a same-sex commitment ceremony); *Bernstein v. Ocean Grove Camp Meeting Ass'n*, No. PN34XB-03008 (N.J. Dep't of Law and Public Safety, Notice of Probable Cause issued Dec. 29, 2008) (finding that a Christian ministry likely violated public accommodations law by denying same-sex couples use of one of its places of worship for a civil union ceremony).

Stern at 37-39; see also *Butler v. Adoption Media*, 486 F. Supp.2d 1022 (N.D. Cal. 2007) (administrators of Arizona adoption facilitation website found subject to California's public accommodations statute because they refused to post profiles of same-sex couples as potential adoptive parents); Robin Fretwell Wilson, *A Matter of Conviction: Moral Clashes Over Same-Sex Adoption*, 22 *BYU J. PUB. L.* 475 (2008) (describing clashes over adoptions by same-sex couples).

See *North Coast Women's Care Medical Group, Inc. v. San Diego County Superior Court*, 189 P.3d 959 (Cal. 2008), (holding a physician does not have a constitutional right to refuse to perform an elective medical procedure for religious reasons and violated the state's anti-discrimination laws); Stern at 22-24 (noting that a refusal to provide counseling services to same-sex couples could be "considered a breach of professional standards and therefore grounds for the loss of a professional license"); see also Patricia Wen, "They Cared for the Children": Amid Shifting Social Winds, Catholic Charities Prepares to End Its 103 Years of Finding Homes for Foster Children and Evolving Families, *BOSTON GLOBE*, June 25, 2006, at A1 (explaining how Massachusetts threatened to revoke the adoption license of Catholic Charities for refusing on religious grounds to place foster children with same-sex couples); Robin Fretwell Wilson, *A Matter of Conviction: Moral Clashes Over Same-Sex Adoption*, 22 *BYU J. PUB. L.* 475 (2008) (describing dismissals and resignations of social services workers where conscience protections were not available).

Stern at 19-22 (noting that many state regulators condition licenses on compliance with anti-discrimination requirements).

Stern at 23 (describing how religiously affiliated law schools have unsuccessfully challenged diversity standards imposed by the American Bar Association as a condition of accreditation); D. Smith, *Accreditation Committee Decides to Keep Religious Exemption*, 33 *MONITOR ON PSYCHOLOGY* 1 (Jan. 2002) (describing a proposal of the American Psychology Association to revoke the accreditation of religious colleges and universities that have codes of conduct forbidding homosexual behavior), available at <http://www.apa.org/monitor/jan02/exemption.html>.

Jill P. Capuzzo, *Group Loses Tax Break Over Gay Union Issue*, N.Y. TIMES, Sept. 18, 2007 (describing the case of *Bernstein v. Ocean Grove Camp Meeting Ass'n*, in which the State of New Jersey revoked the property tax exemption of a beach-side pavilion controlled by religious ministry, because it refused on religious grounds to host a same-sex civil union ceremony); Douglas W. Kmiec, Pepperdine Law School, *Same-Sex Marriage and the Coming Antidiscrimination Campaigns Against Religion* in SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY: EMERGING CONFLICTS 107-121 (describing attacks on tax exemptions for religious organizations with objections to same-sex marriage); Jonathan Turley, George Washington University Law School, *An Unholy Union* in SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY: EMERGING CONFLICTS 59-76 (arguing for same-sex marriage but against withdrawal of tax exemptions for religious organizations with conscientious objections).
C.R.S. § 24-34-601(1).
C.R.S. § 24-34-402.