

FREEDOM FROM RELIGION *foundation*

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July 17, 2012

SENT VIA FAX & U.S. MAIL
(706) 842-5556

Andrew Mackenzie
General Counsel
Augusta Law Department
520 Greene St
Augusta GA 30901

Re: Mayor's Monthly Prayer Breakfast

Dear Attorney Mackenzie:

Thank you for your response to FFRF's concerns regarding Mayor Copenhaver's monthly prayer breakfasts. We appreciate the prompt reply. We have reviewed your response as well as the documents the Augusta Law Department forwarded responsive to our open records request.

Once again, on behalf of FFRF and its local members, we request that the City of Augusta ("City") cease all organization of the monthly Mayor's Prayer Breakfasts. The City is excessively entangled in the coordination and promotion of a religious event, which violates the Establishment Clause of the First Amendment to the United States Constitution. The City must discontinue using City resources — including City e-mails, phone lines and administrative assistant's time — to organize, coordinate and promote these breakfasts.

The documents produced from our open records request also demonstrate the troubling and illegal organization of the prayer breakfasts by City employees. Specifically, the documents show that Ms. Karyn Nixon, who is employed by the City of Augusta as the Executive Assistant to the Mayor, is primarily responsible for coordinating the event. She selects the churches used to host the breakfasts. Ms. Nixon sends out all invitations for the monthly religious service and is the point of contact for RSVPs to the event. She also puts together a sample agenda for the breakfasts, which includes an "opening prayer, remarks by the Mayor, greetings from the pastor of the host church, Scripture readings (usually 3), volunteer prayers and closing remarks."

Moreover, City resources are used on a regular basis to coordinate an inherently religious event. Ms. Nixon utilizes her City-issued e-mail account to organize the prayer breakfast. These emails reveal that Ms. Nixon works on the prayer breakfast during normal business hours. City phone lines are also used for participants to RSVP and to field requests for further information on the event.

The City cannot expend taxpayer dollars or use publicly funded employees and resources such as e-mail, phone lines, etc., to organize, coordinate and promote the religious prayer breakfasts. Courts have upheld restrictions on such activity.

In 2002, a federal court in Georgia enjoined the city and mayor from organizing, advertising, promoting or endorsing a prayer breakfast. *See Newman v. City of East Point*, 181 F.Supp.2d 1374 (N.D. Ga. 2002). In that case, the court restricted the use of city funds, employees, resources and supplies in facilitating the Mayor's Prayer Breakfast. *See id.* As a result of the City's activities (making and sending invitations, issuing press releases, advertising the event, etc.), the court stated "an objective observer would most certainly conclude that the City of East Point has endorsed religion, specifically Christianity, by its actions." *Id.* at 1381. It further stated "... as long as the event takes place at a non-City facility, does not use City funds, **does not use City employees to publicize or organize it and is not presented as being endorsed by the City**, then the Mayor and any City Officials can participate in the event." *Id.* at 1382. (emphasis added).

In 1993, FFRF also won an injunction against the mayor of Denver, Colorado, over his promotion, endorsement and sponsorship of a "Day of Prayer." *See FFRF, v. Denver*, No. 93 CV 6056 (District Court, City and County of Denver, Colorado 1993). In that case, Mayor Wellington Webb designated December 5, 1993, as a "city wide day of prayer..." His office held a press conference announcing the event, issued a press release on official government stationery, and formed an interfaith committee to work on the day of prayer. The court granted an injunction that enjoined Mayor Webb and other City officials "acting in an official capacity, from promoting, endorsing, or supporting the Day of Prayer..." *Id.* at 5. It reasoned

"Since prayer is exclusively a religious act, the endorsement of a Day of Prayer would logically be interpreted by a reasonable person as an endorsement of religion. Because from all appearances Mayor Webb was acting in his official capacity in issuing the press release and conducting the press conference endorsing the Day of Prayer, the Court concludes that a reasonable person would interpret his conduct as governmental endorsement of religion. As such, it violates the Establishment Clause." *Id.*

Neither of these cases prevented government officials from participating in prayer events in their personal capacities. As mentioned in our first letter to Mayor Copenhaver, it is not uncommon for ministerial associations or private groups to host a prayer breakfast/luncheon and invite public officials, who attend as *individuals*. This is the case at the "National Prayer Breakfast" in D.C., for example. But it is absolutely unlawful,

inappropriate and unseemly under the First Amendment for a mayor's office itself to host such an event or work in tandem with event organizers to put on the breakfasts.

Your reliance on *Hein v. Freedom From Religion Foundation*, 551 U.S. 587 (2007) as the basis for the constitutionality of the mayor's monthly prayer breakfasts is misguided. The *Hein* decision, as you are certainly aware, touches on the issue of standing for federal cases – not the merits. *Hein* is inapplicable in municipal taxpayer cases. *See, gen., Pelphrey v. Cobb*, 547 F.3d. 1263, 1280 (11th Cir. 2008)("The standing of municipal taxpayers to challenge, as unconstitutional, expenditures by local governments remains settled law.") Even if *Hein* were somehow applicable to the City of Augusta's prayer breakfast, there is a stark distinction between the faith-based organizations established by former President Bush and Mayor Copenhaver's initiative to hold a monthly prayer breakfast, which his own staff terms a worship "service." The executive orders establishing the faith-based initiatives at issue in *Hein*, allowed faith-based community groups to compete for federal funding so long as they did "not use direct federal financial assistance to support any inherently religious activities, such as worship, religious instruction, or proselytization." *Hein*, 551 U.S. at 594.

Prayer, of course, is an inherently religious activity. In fact, it is "...an act so intrinsically religious ...[that it] cannot meet, or at least would have difficulty meeting the secular purpose prong of the *Lemon* test." *North Carolina Civil Liberties v. Constangy*, 947 F.3d 1145, 1150 (4th Cir. 1991), *cert. denied*, 112 S.Ct. 3027 (1992). *See also Wallace v. Jaffree*, 472 U.S. 38, 72 (1985)(discussing prayer as an inherently religious exercise). It is one of the most sacred exercises of religion.

Finally, the Mayor's Prayer Breakfast in Augusta is different from the invocations before city council meetings that were at issue in *Pelphrey v. Cobb*.¹ While FFRF disagrees with the opening of any government meetings with prayer, the U.S. Supreme Court has deemed opening legislative sessions with prayers under narrow circumstances permissible to solemnize the occasion. *See Marsh v. Chambers*, 463 U.S. 783 (1983). The entire purpose of a prayer breakfast is to engage in religious exercise. They are, as Ms. Nixon puts it, "services" at which participants worship and pray for their community. The Mayor's Prayer Breakfast includes readings from the bible — "usually 3." The prayer breakfasts are more than a simple occasion to solemnize an otherwise secular gathering.

The Mayor's office and his staff — even if deemed a "weak" and "ceremonial" office — still put the City of Augusta's power and prestige behind this religious exercise in sponsoring and organizing the monthly breakfasts. This endorsement of a religious

¹ Interestingly, FFRF wrote to Cobb County, Georgia, in April 2011 regarding the Cobb County Prayer Breakfast, which coincided with the National Day of Prayer. There, the County used a County telephone line as an "information line" for those seeking further information about the annual breakfast. This was manned by County administrative staff. Upon FFRF's complaint, the county's attorney advised that the County had discontinued use of the telephone line and it had been transferred to a private group organizing the breakfast.

exercise goes against the very essence of the constitutional principle of separation of state and church.

Thus, the Mayor and his staff must refrain from organizing, coordinating and promoting the prayer breakfasts on city time. The Mayor should disassociate his office from the religious services and prohibit staff from setting them up on City time. Any City employees, who wish to participate in the breakfast, must do so in their private individual capacities and on their own time. We would appreciate a response in writing as to the steps the Mayor's Office intends to take to remedy these ongoing concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read 'RSM at', is positioned above the typed name.

Rebecca S. Markert
Staff Attorney

cc: Deke Copenhaver, Mayor