

FREEDOM FROM RELIGION *foundation*

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January 20, 2012

SENT BY U.S. MAIL & FAX (502) 564-2517

The Honorable Steve Beshear
Governor of Kentucky
700 Capitol Avenue, Suite 100
Frankfort, Kentucky 40601

Re: Unconstitutional Legislative Prayer

Dear Governor Beshear:

On behalf of Kentucky members of our national organization, which works to protect the constitutional principle of the separation between state and church, I am writing to most strenuously object to the prayer given by Hershael York prior to the Governor's budget address on January 17, 2012. The Freedom From Religion Foundation is an educational association with 17,000 members nationwide, including members in Kentucky.

It is our understanding that, prior to the Governor's budget address on January 17, 2012, Dr. Hershael York gave a prayer. This prayer was overtly Christian: York began by addressing his prayer to "Heavenly Father, I ask you to..." and concluded "In the name of God the Father, and of His Son, Jesus, and of the Blessed Holy Spirit we pray, Amen." This prayer was also overtly political. York was invited to deliver the invocation by Senate President David Williams and took advantage of his special position to weigh in on matters before the legislature. In an obvious attempt to sway the legislature toward his position on the expanded gaming amendment that will come before the legislature he said:

"May they never resort to leveraging vice and avarice to pay our bills. Help us to admit that we cannot truly love our neighbor as ourselves and then scheme to get his money by enticing him with vein hope. May they not leave this state to share profits from an industry that prays on greed or desperation. Help us to foster salaries, not slot machines. To build cars and enable jobs, not license casinos and seduce the simple into losing what they have."

Shortly thereafter he applied some supernatural blackmail, "And may the decisions that they make and the judgments they render be consistent with Your eternal character and truth."

This incident is a perfect example of all that is wrong with mixing government and religion and specifically with sanctioning legislative prayer. Legislative prayer is unconstitutional, exclusionary, divisive, and serves no legitimate secular purpose.

The Prayer is Unconstitutional

The Supreme Court has explained the principal like this: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *W. Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). The Court has rigidly enforced the rule that “The government may not ... lend its power to one or the other side in controversies over religious authority or dogma.” *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990).

In sponsoring legislative prayers to the Christian god, the State government, which invited York, is weighing in on two controversies. First, the government is taking a side in what is arguably the most enduring religious controversy: god’s existence or non-existence. Second, the legislature is endorsing Christianity with an overtly Christian prayer. Legislative prayer cannot be sectarian. On January 13, 2012, the Supreme Court declined to review a Fourth Circuit decision that overturned a legislative prayer policy because the prayers “continued to reference specific tenets of Christianity.” *Joyner v. Forsyth County*, 653 F.3d 341, 344 (4th Cir. 2011). That decision held that continual, Christian prayers at a legislative sessions leads “to exactly the kind of ‘divisiveness the Establishment Clause seeks rightly to avoid.’ ” *Id.* 355. The prayer itself admits of no other possibility except that the government is endorsing Christianity. No government in this country has that power.

This prayer in particular had some highly unethical and possibly illegal rhetoric. York used his status as a “Man of God” to instruct the legislature on how to vote. He did not use reason, economic data, crime statistics, or even a personal anecdote; he used religion to leverage votes. It is no distortion to say that the purpose of his prayer was to exhort the gathered officials to vote against expanded gaming because God desires it. York is not appealing to their minds, or even their hearts, he is appealing to their fear of eternal damnation and their desire for eternal reward. Spiritual blackmail is the most wicked aspect of church politicking. It takes the vote out of the hands of people and puts it in the mouth of preachers.

The Prayer is Exclusionary

Government officials represent more than just Christians; they represent all their constituents including atheists, agnostics, Jews, Muslims, Wiccans, Hindus and other minority religious views. Your active participation in a Christian prayer in your official capacity unabashedly promotes that religion over other religions and over nonreligion. Officials may, as private citizens, attend any religious functions they like, the church of your choice, pray, etc. But the federal and state Constitutions — and good etiquette — dictate that government officials avoid prayer in their official capacity and refrain from allowing religious rituals at official ceremonies.

With prayers like this the Kentucky government sends the message “to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.” *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 595 (1989) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984)).

The Prayer Serves No Legitimate Purpose

It is no argument to suggest that these prayers were simply meant to “solemnize” the occasion. For the 13% of the Kentucky population, 560,000 Kentucky citizens, who are nonreligious, these prayers do not solemnize the event, quite the opposite. (American Religious Identification Survey, 2008). Appeals to gods, subjugation of the human in favor of gods, begging for mercy of gods, supplicating to invisible means of support — prayers, in other words — alienate nonbelievers.

The Prayer is Divisive

Nor do these prayers unify the citizenry. The founders recognized that religion is not unifying, but divisive. James Madison thought, “to employ Religion as an engine of Civil policy” was “an unhallowed perversion of the means of salvation.” *A Memorial and Remonstrance Against Religious Assessments*, Article 5. He also thought “Religion and government will both exist in greater purity, the less they are mixed together.” Letter to Edward Livingston, July 10, 1822.

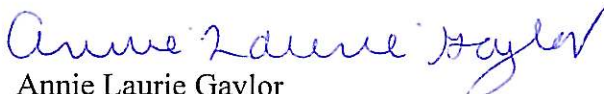
The Supreme Court has also recognized the divisiveness of religion. In *McCreary County*, the Supreme Court wrote, “...the divisiveness of religion in current public life is inescapable.” 545 U.S. 844, 881 (2005). In *Van Orden v. Perry*, Justice Breyer wrote in his dissent that the purpose of the First Amendment is to “avoid that divisiveness based upon religion that promotes social conflict, sapping the strength of government and religion alike.” 545 U.S. 677, 698 (2005). But an early Wisconsin Supreme Court judge put it most eloquently:

“There is no such source and cause of strife, quarrel, fights, malignant opposition, persecution, and war, and all evil in the state, as religion. Let it once enter our civil affairs, our government would soon be destroyed.” *Weiss v. District Board*, 44 N.W. 967, 981 (1890)(Orton, J. concurring).

Each member of the legislature has a duty to uphold the U.S. Constitution. The Constitution is a godless and secular document, whose only references to religion in government are exclusionary — religion cannot be established by the government and there can be no religious test for public office. It is a fundamental principle of Establishment Clause jurisprudence that the government cannot promote one religion over another, or religion over nonreligion.

We ask that you take immediate action to prevent future constitutional violations. We would appreciate hearing from you at your earliest convenience.

Very truly,


Annie Laurie Gaylor
Co-President

cc: Senator David L. Williams
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