

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

March 11, 2014

SENT BY MAIL AND EMAIL to ac.roper@birminghamal.gov

A.C. Roper
Chief, Birmingham Police Department
1710 1st Avenue North
Birmingham, AL 35203

Re: Birmingham P.D. inappropriately claiming city “for the Kingdom of God”

Dear Chief Roper:

I am writing on behalf of the Freedom From Religion Foundation and local members who object to the Birmingham Police Department Chief promoting Christianity. FFRF is a nationwide nonprofit organization that protects the constitutional separation between state and church. FFRF represents 20,000 members across the country and has a state chapter, the Alabama Freethought Society.

We understand that you are “a licensed and ordained minister serving at Faith Chapel Christian Center in Birmingham,” and that you are violating the Constitution by mixing your official government duties with your religious zeal.¹ Prayer Force United, a religious program you’ve used your power and office as police chief to implement, lists four goals — all of them religious. The goals are to (1) pray (2) help pastors wield their “spiritual authority” (3) “unite pastors” with the government, in violation of the Constitution, and (4) “to give God the glory He deserves in Birmingham.”² You have even said to a group of sheriffs, judges, and state representatives that the purpose is to get people “together on Saturday morning for the express purpose of praying.”³

In a video for Prayer Force, you explain what it is: “it’s a *prayer ministry*, it’s an intercessory ministry, that, in addition to *our officers* working every day to make the streets of Birmingham safe, *we have* a prayer force that’s interceding...”⁴ Clearly you view this as part of the BPD.

We understand that a police cruiser leads these prayer walks with lights flashing, followed by a truck with a sound system that “cranks up some gospel music.”⁵ At the end, a “worship team [is] going full bore, just praising Jesus.”⁶ Then the “local pastor introduces the police chief,” and you then give a sermon invoking Jesus several times.⁷

In the Prayer Force promotional video, where you appear in your official capacity (using your government title and powers of your government office), you state that you “are claiming the city of Birmingham for the Kingdom of God.”⁸ Statements like this, made as police chief, are grossly inappropriate and using your public office to implement these goals is illegal.

We further understand that you use your official email to encourage city employees to participate in Prayer Force’s religious events. We also understand that you inflict prayers “in

the name of Jesus” on officers at police functions — which forces those uncomfortable with your particular religion to leave the room.

You have violated your oath to uphold the Constitution in several ways. **First**, you cannot use your government office to promote your religion or Prayer Force. This includes using your official email. If you wish to participate in religious events, you must do so as a private citizen, without using your office, title, and badge. Prayer Force United’s explicitly stated goals are all religious – your official participation is therefore unconstitutional. **Second**, the assumption that religion lowers crime is mistaken. Science contradicts this notion, as do crime statistics in your very own city. **Third**, it is unconstitutional to impose Christian prayers on BPD employees.

1. You are misusing your government power

It is a fundamental principle of Establishment Clause jurisprudence that the government cannot in any way promote, advance, or otherwise endorse religion. The Supreme Court has said, “The touchstone for our analysis is the principle that the ‘First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.’” *McCreary County v. ACLU*, 545 U.S. 844, 860 (2005), (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 15-16 (1947); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985)). Your affiliation with Prayer Force runs afoul of this stricture.

As noted above, Prayer Force’s stated purposes are all religious. The promotional video makes this clear. Prayer Force is advertised to Christians as “our chance to come and show that Jesus Christ is the answer.”⁹ One of the alleged benefits is that “we immediately saw people saved,” i.e., converted to a particular brand of Christianity.¹⁰

Under Establishment Clause jurisprudence, the *Lemon* test controls the constitutionality of any challenged government action. The test requires that any government action “must have a secular legislative purpose.” *Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1971). The government cannot organize, participate, or otherwise aid a religious ministry. The government cannot seek to convert citizens to one religion or another. Nor can government officials use their offices and titles to promote a religious message. Your overt promotion of religion violates *Lemon* and 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...” *Id.* (citations omitted).

It is unconstitutional for government officials to use their government office and email to advance, promote or endorse one religion over another, or religion over nonreligion. You must keep your religion to yourself when acting in your official capacity as police chief.

“[T]he Supreme Court has repeatedly stated that the [Constitution is violated] if official action, regardless of its purpose, ‘conveys a message of endorsement or disapproval’ of religion.” *Roberts v. Madigan*, 921 F.2d 1047, 1054-55 (10th Cir. 1990) citing *Wallace v. Jaffree*, 472 U.S. 38, 56 n. 42 (1985); *School District of Grand Rapids v. Ball*, 473 U.S. 373, 389 (1985); *Lynch v. Donnelly*, 465 U.S. 668, 690 (1984); and *Lemon* 430 U.S. at 619. Put simply, government power cannot be “exploited to proselytize or advance any one, or to disparage any other, faith or belief.” *Marsh v. Chambers*, 463 U.S. 783 (1983).

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 Webb designated a “city wide day of prayer.” The court 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:

“[the event] 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.*

Government officials can worship, pray, and participate in religious events in their *personal* capacities. But they are not permitted to provide credibility or prestige to their religion by lending a government office and government title to religious events. Their office and title belong to “We the people,” not the office’s temporary occupant.

Even if you are maintaining appropriate constitutional boundaries with the financial aspects of Prayer Force United, something our records request will illuminate, the *appearance* of official government endorsement at these events is a violation. There is an official police cruiser escort, lights flashing; officers lining the route; you wear a BPD shirt featuring the BPD badge; you often wear your BPD badge on your belt; and in every news story, press release, publicity notice, and before every sermon you give, you are always introduced in your official capacity as Police Chief:

- “Prayer Force United is *led by Birmingham Police Chief A.C. Roper* and Prayer Force United Leader Mark Hand. ... Our police chief has asked churches all across our city to pray for the City of Birmingham.”¹¹
- “I *recognize as the Chief of Police* that we can’t do this alone, it takes a spiritual covering because we’re in spiritual warfare. The vision for us, and we believe its God-inspired, is for us to unite... the people of God, the body of Christ coming together.”¹²
- “First, I want to introduce our great *Birmingham Police Chief A.C. Roper*”¹³
- The walks are organized by the “*civil authority*.”¹⁴

Your prayer force partner, Mark Hand, constantly uses your official title, for example “Police Chief Roper is a fantastic police Chief and we want to give him all the credit.”¹⁵ Thus, even if the BPD does not endorse the events, the appearance of governmental endorsement is unavoidable and renders your official participation unconstitutional.

These prayer events are invariably Christian: it “is our chance to come and show that Jesus Christ is the answer.”¹⁶ Your prayers are unabashedly exclusionary. In a single 63-second prayer during a walk in Norwood you addressed “Jesus” six times and “Lord” God six times.¹⁷ The sole attempt at inclusion limits the events to Christians of various denominations: “Who cares if you’re Methodist, or you’re Baptist or you’re Presbyterian, ... I’m a Christian! I mean that’s the bottom line. I am saved. I am going to Heaven...”¹⁸ Not

only do you tell people to pray, you tell them how to pray and to whom they ought to pray (Jesus):

“As the Chief, I consider myself the chief servant, that’s all just the servant — the servant of Almighty God, the servant of my king, King Jesus. A name that’s higher than every other name and at his name every knee will bow. At that name crime will bow. Yes it will, yes it will. At that name, homicides are bowing. At the name robbery and thefts and burglary are bowing because that name has all power. So we’re here to pray today. . . . The Bible says that the effectual, fervent prayers of the righteous . . . Pray with fervency today, pray with a hunger, pray with a strong desire and commitment to see this entire city change.”¹⁹

The exclusively Christian nature of these events alienates all non-Christians – 27% of the U.S. population.²⁰ BPD excludes 1.3 million Alabamans by officially aligning itself with Christianity. These events do not unite your city, they privilege insiders, Christians, and exclude non-Christians in their own city.

2. Prayers and converting people to Christianity will not lower crime

Apparently, you believe that prayer will lower crime. You’ve said, while in your uniform, that “the police are not the answer, never have been, never will be. Jesus said that he’s the answer.”²¹ You’ve claimed that “one of the biggest problems [Birmingham is] facing is a lack of godliness.” Then, quoting that the bible, Joshua 1:3, you tell Christians that “everywhere your feet tread, I have given to you” as though Christians are to take over the city. This is particularly disturbing given the Book of Joshua tells the story of God’s Chosen People committing genocide after genocide in a divinely sanctioned land grab. Chapters 6 through 12 detail at least 50 genocides committed by Joshua and commanded by his god.²² Hardly an exemplar of nonviolence.

The walks themselves may lower crime simply by having crowds on the streets escorted by police cars with flashing lights, but that is not because of the power of prayer — it is the power of people. Prayer cannot stop violence. Scientific studies²³ show that societies with less prayer have less violence:

“Murder rates are actually lower in more secular nations and higher in more religious nations where belief in God is deep and widespread. And within America, the states with the highest murder rates tend to be highly religious, such as Louisiana and Alabama, but the states with the lowest murder rates tend to be among the least religious in the country, such as Vermont and Oregon. Furthermore, although there are some notable exceptions, rates of most violent crimes tend to be lower in the less religious states and higher in the most religious states. Finally, of the top 50 safest cities in the world, nearly all are in relatively non-religious countries, and of the eight cities within the United States that make the safest-city list, nearly all are located in the least religious regions of the country.”²⁴

Furthermore, “studies of heroic altruism during the Holocaust, found that the more secular people were, the more likely they were to rescue and help persecuted Jews.”²⁵ In fact, when any given factor of societal health or well being is measured, invariably the *less* religious countries score better. The *least religious countries* of this world:

- Have the lowest rates of violent crime and homicide
- Are the best place to raise children and be a mother
- Have the lowest rates of corruption
- Have the lowest levels of intolerance against racial and ethnic minorities
- Score highest when it comes to women's rights and gender equality
- Have the greatest protection and enjoyment of political and civil liberties
- Are better at educating their youth in reading, math, and science
- Are the most peaceful and the most prosperous
- Have the highest quality of life.²⁶

The pattern of lower religiosity to higher societal well being also exists within United States. Those states that are the most religious also have a high occurrence of societal ills. States that tend to be among the *most religious* in the nation:

- Have the highest rates of poverty
- Have the highest rates of obesity
- Have the highest rates of infant mortality
- Have the highest rates of STDs
- Have the highest rates of teen pregnancy
- Have the lowest percentage of college-educated adults
- Have the highest rates of violent crime and murder.²⁷

These studies do not prove that religion causes all of society's ills, but it seems that Prayer Force United's goals may be counterproductive. According to City-Data.com, some crime has actually increased during Prayer Force United's tenure. For instance, in 2011 there were 54 murders, but that number jumped to 67 in 2012. Assaults have also jumped from 1,399 in 2009 to 1,916 in 2011 to 2,035 in 2012. That's a nearly 50% increase in assaults.²⁸

3. The BPD should not be imposing prayers on your employees

We understand that you impose Christian prayers prior to any police department gathering. Non-Christian officers are either forced to "out" themselves by leaving the room or to suffer through the sacred rites of a religion not their own. Not only does this create serious division within your department, it is also illegal.

The United States "Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way in which 'establishes a [state] religion or religious faith, or tends to do so.'" *Lee*, 505 at 578. This principle is at odds with your stated beliefs that your police department is "ordained" by God, citing Romans 13 "the powers that be are ordained by God."²⁹

Federal courts have found that prayers at government employee meetings constitute illegal government endorsement of religion. *Warnock v. Archer*, 380 F.3d 1076, 1080 (8th Cir. 2004) ("The Constitution, however, forbids [the government] from conveying the message that it decisively endorses a particular religious position."). *See also Milwaukee Deputy Sheriff's Ass'n v. Clarke*, 588 F.3d 523, 525-26 (7th Cir. 2009) (holding sheriff's religious speech, bible readings, and Christian literature distributions during mandatory employee meetings unconstitutional).

The latter case, *Milwaukee Sheriff*, is particularly interesting as the Sheriff was committing some of the same violations as yourself. “This presents a problem for the Sheriff because the Establishment Clause prohibits the government from ‘promot[ing] or affiliat[ing] itself with any religious doctrine or organization.’” *Milwaukee Deputy Sheriffs’ Ass’n v. Clarke*, 588 F.3d 523, 528 (7th Cir. 2009).

To avoid the constitutional concerns and the divisiveness this program will cause within the community ***the solution is simple: discontinue using your official office to promote religion, cease your official relationship Prayer Force, and stop imposing your religion on your employees via prayer.*** Do something practical to prevent crime. Please inform us in writing that you have decided to uphold your oath to protect the Constitution, not trample it underfoot. May we hear from you at your earliest convenience?

Sincerely,



Andrew L. Seidel
Staff Attorney

¹ <http://www.birminghamal.gov/police/chief-roper.html>

² <http://prayerforceunited.com/about>

³ A.C. Roper, Speech, Prayer Force United Kick-Off Leadership Lunch, 2010. Available at <http://www.youtube.com/watch?v=vF1SYZ7NC2A> At approx. 3:45

⁴ Video at <http://prayerforceunited.com/>

⁵ Prayer Force United promotional video, available at http://www.youtube.com/watch?v=_CuojyjnXWs

⁶ *Id.*

⁷ *Id.*

⁸ <http://prayerforceunited.com/>

⁹ Prayer Force United promotional video, *supra* note 5 at 6:10.

¹⁰ Prayer Force United promotional video, *supra* note 5 at 4:45.

¹¹ Prayer Force United promotional video, *supra* note 5 at 0:20.

¹² Prayer Force United promotional video, *supra* note 5 at 0:48.

¹³ *See* note 3.

¹⁴ Prayer Force United promotional video, *supra* note 5.

¹⁵ Mark Hand, Sermon at Nov. 12, 2009 Prayer Force United Pastors Lunch, available at <http://www.youtube.com/watch?v=mfOytr4jxIU>

¹⁶ Pastor Mark Hand, Prayer Force United promotional video, *supra* note 5 at 6:20

¹⁷ A.C. Roper, Sermon, Norwood Prayer Walk, Nov. 21, 2009. Available at

<http://www.youtube.com/watch?v=tljoQoXE7yQ> 1:02 “Father God we lift up your Holy name King Jesus and we bind that spirit of poverty that’s effecting our community Lord God. King Jesus you said in Luke 4:18 that the spirit of the Lord is upon you for he has anointed you to preach the good gospel to the poor. He sent you to heal the brokenhearted and we claim that right now that your healing power is flowing through this community is flowing through [this] city Lord God. We bind the spirit of drug abuse and drug trafficking and drug sales right now, we bind and put it up [inaudible] that drives so many of our crimes. We bind it now, we break the power of it in the name of Jesus and we pray Lord God that resources will flow, that healing virtue will flow throughout the city of Birmingham now, in Jesus’ name. We declare lives are changed right now, lives are changed Lord God, that families are built up right now Lord God. In the name of Jesus we thank you now, we thank you for victory right now in the name of Jesus and let the saints of God shout ‘Amen!’” 2:05

¹⁸ Pastor Mark Hand, Prayer Force United promotional video, *supra* note 5 at 6:20

¹⁹ A.C. Roper, Sermon at Norwood Prayer Walk, Nov. 2009, *available at* <http://www.youtube.com/watch?v=n8uSjQ06ae4>

²⁰ “Nones on the Rise: One-in-Five Adults Have No Religious Affiliation,” Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012) *available at* <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>

²¹ A.C. Roper, Sermon on Prayer Force United, *available at* <http://www.youtube.com/watch?v=Cox8pUdROqM>

²² Some of the genocides committed by Joshua, according to the bible, are:

- Joshua 8.21-25 – “and Israel struck them down until no one was left who survived or escaped.”; **“when Israel had finished slaughtering all the inhabitants of Ai...”**
- Joshua 10.28 – “Joshua took Makkedah... he **utterly destroyed every person in it**, he left no one remaining.”
- Joshua 10.30 – “[Joshua] struck [Makkedah] with the edge of the sword, and every person in it; he left no one remaining in it...”
- Joshua 10.31 – “The lord gave Lachish into the hand of Israel... he struck it with the edge of the sword and every person in it...”
- Joshua 10.33 – “Then the King Horam of Gezer came up to help Lachish; and Joshua struck him and his people **leaving no survivors.**”
- Joshua 10.35 – Israel “took [Eglon] that day, and struck it with the edge of the sword; and **every person in it he utterly destroyed...**”
- Joshua 10.37 – Israel “struck [Hebron] with the edge of the sword, and its king and its towns, and every person in it; he **left no one remaining... and utterly destroyed it with every person in it.**”
- Joshua 10.38 – “they struck [Debir] with the edge of the sword, and **utterly destroyed every person in it**; he left no one remaining...”
- Joshua 10.40 – “so Joshua defeated the whole land, the hill country and the Negeb and the lowland and the slopes, and all their kings; he left no one remaining, but **utterly destroyed all that breathed...**”
- Joshua 11.1-9 – When King Jabin of Hazor,, King Jobab of Madon, King of Shimron, king of Achshaph, kings who were in the northern hill country, and in Arabah, and in the lowland and in Naphothdor, the Canaanites, the Amorites, the Hittites, the Perizzites, and the Jebusites, and the Hivites , Joshua **“struck them down, until they had left no one remaining.” A total of 13 genocides.**
- Joshua 11.11,14 – Israel **“put to the sword all who were in [Hazor], utterly destroying them; there was no one left who breathed**, and he burned Hazor with fire.”... “all the people they struck down with the edge of the sword until the destroyed them, and they did not leave any who breathed.”
- Joshua 11.20 – “it was the Lord’s doing to harden their hearts in battle, in order that they might be utterly destroyed, and might receive no mercy, **but be exterminated...**”
- Joshua 11.21 – “at the time Joshua came and wiped out the Anakim from the hill country, from Hebron, from Debir, from Anab, and from all the hill country of Judah, and from all the hill country of Israel; Joshua utterly destroyed them with their towns. **None of the Anakim was left in the land of the Israelites...**”
- Joshua 12.7-24 – lists the names of kings of peoples wiped out by Joshua. **31 genocides total.**

²³ In a synthesis of the latest social scientific research concerning some of these issues *see* Zuckerman, Phil. 2009. ‘Atheism, Secularity, and Well-Being: How the Findings of Social Science Counter Negative Stereotypes and Assumptions.’ *Sociology Compass*, Vol. 3 Issue 6, 949-971.

²⁴ Zuckerman at 955 (internal citations omitted).

²⁵ *Id.*

²⁶ Zuckerman at 960-61 (internal citations omitted).

²⁷ Zuckerman at 955, 961 (internal citations omitted).

²⁸ <http://www.city-data.com/crime/crime-Birmingham-Alabama.html>

²⁹ A.C. Roper, Sermon at the Wylam Prayer Walk, (Oct. 17, 2009) *available at* <http://www.youtube.com/watch?v=YaLsn3ymVnI> at approx 3:15.