

FREEDOM FROM RELIGION *foundation*

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July 5, 2017

SENT VIA EMAIL AND U.S. MAIL: abudish@cuyahogacounty.us

Mr. Armond Budish
Cuyahoga County Executive
Cuyahoga County Administrative Headquarters
2079 East Ninth Street
Cleveland, OH 44115

Re: County promotion of religion

Dear Mr. Budish:

I am writing on behalf of the Freedom From Religion Foundation regarding constitutional concerns with a recent “request for proposal” that was issued by Cuyahoga County. FFRF is a national nonprofit with more than 29,000 members nationwide, including more than 700 members in Ohio and a local chapter in Cleveland. FFRF’s purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned local taxpayer reported that Cuyahoga County has made a “request for proposal” to purchase outreach and referral services that is limited to faith-based organizations and coalitions of faith-based organizations. Request For Proposal #39946 entitled, “FAITH-BASED ORGANIZATION OUTREACH AND REFERRAL PROGRAM,” is intended to solicit “proposals from faith-based organizations interested in providing Outreach and Referral Activities to drive enrollment in Cuyahoga County’s Universal Pre-Kindergarten Program.” The only explanation given for why this request is limited to religious organizations is, “Faith-based organizations hold a special place in the community as a known and trusted resource.” The request defines faith-based organizations as “currently designated tax exempt churches, synagogues, mosques, temples or other religious organizations under the authority of the IRS as outlined in IRS code section 501(c)3.”

While the County’s goal of introducing more children to its high quality preschool program is laudable, it is inappropriate for the County to offer an opportunity for public funding exclusively to religious organizations. FFRF requests that the County alter its “request for proposal” so that it becomes entirely neutral on matters of religion, as is constitutionally required.

As you may be aware, the Supreme Court has long recognized that the First Amendment “mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cnty. v. ACLU*, 545 U.S. 844, 860 (2005); *Wallace v.*

Jaffree, 472 U.S. 38, 53 (1985); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15–16 (1947). A County-sponsored program available only to religious organizations fails to respect either constitutional mandate of neutrality. It endorses and promotes religion over nonreligion.

Even the *appearance* of religious endorsement is itself unconstitutional. The Supreme Court has consistently held that the government may not create the appearance of religious endorsement. *See, e.g., Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O'Connor, J., concurring) (“The [Establishment] Clause, at the very least, prohibits government from *appearing* to take a position on questions of religious belief . . .”); *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 787 (1995) (Souter, J., concurring) (“Effects matter to the Establishment Clause, and one, principal way that we assess them is by asking whether the practice in question *creates the appearance* of endorsement to the reasonable observer.”) (emphasis added to each). Between the religious requirement for organizations to make proposals and the explicit statement that “Faith-based organizations hold a special place in the community as a known and trusted resource,” the program unquestionably appears to endorse religion over nonreligion.

The “request for proposal” conveys a message to nonbelievers in Cuyahoga County that they are not “favored members of the political community.” *Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Ch.*, 492 U.S. 573, 595 (1989). These citizens should not be made to feel excluded, like outsiders in their own community, because their County promotes faith-based organizations over all secular organizations. While many Cuyahoga County residents may support their local government’s partnership with faith-based organizations, a significant proportion will feel alienated. Overall, 23% of Americans identify as nonreligious.¹

Cuyahoga County has an affirmative duty to avoid the appearance of religious endorsement. County funding may not be available exclusively to religious organizations. Given that the request for proposals is set to end on July 7, 2017, Cuyahoga County must extend the deadline to receive proposals for the length of time that it was available exclusively to religious organizations, and it must in some way notify the public that the request is now open to all non-profits regardless of religious or nonreligious status. Please respond in writing with the steps that Cuyahoga County will take to abide by its constitutional obligation to remain neutral toward religion so that we may notify our complainant.

Sincerely,



Christopher Line
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation

¹ *America's Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.