

FREEDOM FROM RELIGION *foundation*

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March 11, 2016

**SENT VIA EMAIL AND U.S. MAIL:
MPence@state.in.us**

The Honorable Mike Pence
Office of the Governor
206 State House
Indianapolis, IN 46204

Re: Governor's Office employees participating in religious ritual

Dear Governor Pence:

I am writing on behalf of the Freedom From Religion Foundation to alert you to constitutional concerns regarding your office's participation in a religious ritual. FFRF is a national nonprofit organization with more than 23,500 members across the country, including more than 350 members in Indiana. FFRF's purpose is to protect the constitutional principle of separation between state and church.

A concerned local resident informed us that state employees from your office, and Lt. Governor Ellspermann and her staff, participated in a Christian "foot-washing" ritual at Shepherd Community Center in January, 2016. A local media source reported that you joined the event after the religious ritual was complete.¹ The director of the school associated with Shepherd, a "faith-based ministry," explained that teachers "told the students about the biblical origins of the tradition in preparation for the event," and that the foot-washing ritual "shows humility." The same article correctly points out that it is "unusual" for politicians to participate in such an "overtly religious" activity.

Beyond being unusual, however, your office's sponsorship and participation in this religious ritual raises serious constitutional concerns. First, the state may neither require nor pay for its employees to participate in religious rituals. Second, the state appears to endorse Christianity when its top executives, with their staff, sponsor and take part in a publicized, specifically Christian, religious ritual. We are writing to request written assurances that these issues will not recur.

¹ <http://www.indystar.com/story/news/2016/01/15/students-get-new-shoes-and-lesson-faith/78690632/>.

Government offices may not appear to endorse religion. The Supreme Court has explained that “the prohibition against governmental endorsement of religion ‘preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is *avored* or *preferred*.’” *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 593 (1989). The goal of the endorsement test is to ensure that the government does not “appear[] to take a position on questions of religious belief.” *Id.* at 594. Moreover, “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lee v. Weisman*, 505 U.S. 577, 589 (1992) (O’Connor, J., concurring)). By publicizing the governor’s office’s sponsorship and participation in a religious ritual, your office violates these constitutional limits on government religious endorsement.

First, state employees may not participate in religious rituals while they are “on the clock.” Government employees have a right to an employer who is neutral on matters of religion. *See, e.g., Milwaukee Deputy Sheriff’s Ass’n v. Clarke*, 588 F.3d 523, 525–26 (7th Cir. 2009) (holding religious speech by a sheriff, bible readings, and distribution of Christian literature during mandatory employee meetings unconstitutional under the Establishment Clause). Further, the governor’s office may not spend taxpayer money on religious rituals, including paying employees to participate.

Second, your office’s sponsorship and participation in this foot-washing ceremony gives the impression that your office endorses religion in general, and Christianity in particular. This violates the Establishment Clause, which the Supreme Court has said time and again “mandates government neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.*, 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). It also alienates nonreligious citizens in Indiana by turning them into political outsiders in their own community, including the 23% of adult Americans, and 35% of millennials, who do not identify with any religion.²

Finally, the event was contradictory to its own religious purpose. The relevant bible verses, John 13:1–17, featured Jesus washing his disciples’ feet to show his humility. A scheduled photo opportunity showcasing a politician’s involvement in such a ritual undermines the sincerity of the activity. Even to

² *America’s Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

those who support the ritual's religious significance, this event was more for the purpose of publicity, rather than a bona fide act of humility.

Government employees are of course free to participate in religious rituals on their own time. However, it is inappropriate and unconstitutional to participate in religious rituals on behalf of the government. Please provide written assurances that your office will not sponsor or participate in religious events in the future so that we may notify our local complainant.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan D. Jayne". The signature is fluid and cursive, with the first name "Ryan" being the most prominent part.

Ryan D. Jayne, Esq.
Diane Uhl Legal Fellow
Freedom From Religion Foundation