

FREEDOM FROM RELIGION *foundation*

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February 5, 2016

SENT VIA MAIL AND FAX TO (502) 564-2517

The Honorable Matthew Bevin
Governor of Kentucky
700 Capitol Avenue, Suite 100
Frankfort, Kentucky 40601

Re: Cancel Unconstitutional Prayer Breakfast and Stop Misuse of State Resources

Dear Governor Bevin:

The Freedom From Religion Foundation (FFRF) is a nonprofit educational organization representing over 23,500 members across the country including members in Kentucky. We represent the viewpoint of 400,000 Kentuckians who self-identify as nonreligious¹ and are offended or excluded by the Governor's Prayer Breakfast. FFRF protects the constitutional principle of separation between state and church.

We understand that on February 16, 2016, you plan to hold a "Governor's Prayer Breakfast." We urge you to cancel this event; it is unnecessary, divisive, and not within the power of a civil government. This event is clearly an official government event: it is consistently referred to as the "Governor's" prayer breakfast, it is featured on the Governor's Kentucky.gov homepage, the state seal appears on the webpage and the reservation form, and your invitation is in your official capacity as Governor. Nowhere is there a suggestion that the event is private; it is explicitly official. You also recently sent, in your official capacity as governor and from your official state email address, an invitation to every state employee asking for their attendance at a religious event hosted by the state. Please see the attached email.

Government Sponsorship and Promotion of Prayer Breakfasts is Unconstitutional

The Establishment Clause in the First Amendment to the U.S. Constitution prohibits government sponsorship of religious messages. The Supreme Court has said time and again, that the "First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion." *McCreary County, Ky. v. American 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. Board of Ed. of Ewing*, 330 U.S. 1, 15-16 (1947). By sponsoring a Prayer Breakfast, which calls Kentucky citizens to prayer, you abrogate your duty to remain neutral. The event sends a message that the Governor of Kentucky prefers and endorses religion over nonreligion and more specifically the Christian faith. Moreover, these actions exclude and offend a significant portion of the population, which is non-Christian or non-religious.

The separation between state and church is among one of the most fundamental principles of our system of government. The United States Supreme Court has held that public officials may not advance or promote religion. The Supreme Court has specifically stated, "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.” *West Virginia Board of Education v. Barnett*, 319 U.S. 624, 642 (1943)(emphasis added). Instead of co-sponsoring an event exhorting citizens to engage in religious ritual, we encourage you instead to celebrate our freedom of conscience and the separation between religion and government.

The danger of events like this is that they turn nonbelievers into second-class citizens; they send 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)).

Prayer is Unnecessary and Divisive

Prayer is not necessary for a government to be successful. The Founders did not require prayer when they wrote the Constitution, a godless document whose references to religion are exclusionary. Surely if the founders did not need prayer to write the document that established our great nation, then you can successfully conduct the civil business of Kentucky without prayer as well.

Religion and prayer are not only unnecessary for good government, but harmful. Religion is inherently divisive and when mixed with government causes significant discord. In the Federalist No. 10, James Madison wrote, “A zeal for different opinions concerning religion... Have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good.”

The Supreme Court wrote, “The Framers and the citizens of their time intended to guard ... against the civic divisiveness that follows when the government weighs in on one side of religious debate; nothing does a better job of roiling society,” and “the divisiveness of religion in current public life is inescapable.” *McCreary County, Ky. v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 876, 881 (2005). In fact, the “purposes of the First Amendment's Religion Clauses [are] to assure the fullest possible scope of religious liberty and tolerance for all, to avoid the religious divisiveness that promotes social conflict, and to maintain the separation of church and state.” *Van Orden v. Perry*, 545 U.S. 677, 678 (2005). The final word goes to a court decision that predates Ellwood's nativity by some 60 years:

“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. Let it once enter our common schools, they would be destroyed.” *Weiss v. District Board*, 44 N.W. 967 (1890).

Civil Powers and Individual Rights

Your official promotion of this event makes it appear as if a member of the civil government somehow has the authority to organize a religious event. As a civilian you are certainly able to attend prayer breakfasts on your own time with your own funds; you can worship however you choose. But as Governor, chief executive officer of Kentucky, your powers are limited by the Constitution. In the words of Alexander Hamilton, the Constitution gives the executive “no particle of spiritual jurisdiction.” Using your authority as the state's highest executive to sponsor a religious meeting is a misuse of power, nor could you be given such power under our system of government.

President Thomas Jefferson recognized the intrinsic problems when religion and government mix and actively opposed government sponsorship of prayer:

I consider the government of the U.S. as interdicted by the Constitution from intermeddling with religious institutions, their doctrines, discipline, or exercises . . . I do not believe it is for the interest of religion to invite the civil magistrate to direct its exercises, its discipline, or its doctrines; nor of the religious societies that the general government should be invested with the power of effecting any uniformity of time or matter among them. Fasting & prayer are religious exercises. The enjoining them an act of discipline... every one must act according to the dictates of his own reason, & mine tells me that civil powers alone have been given to the President of the United States and no authority to direct the religious exercises of his constituents. (Jefferson's letter to Rev. Samuel Miller, 1808).

Likewise, James Madison, the primary architect of the U.S. Constitution and Bill of Rights, and our fourth president, opposed government prayers and congressional chaplaincies. In his *Detached Memoranda*, Madison wrote, "Is the appointment of Chaplains to the two Houses of Congress consistent with the Constitution, and with the pure principle of religious freedom? In strictness the answer on both points must be in the negative. The Constitution of the U. S. forbids everything like an establishment of a national religion... The establishment of the chaplainship to Congress is a palpable violation of equal rights, as well as of Constitutional principles." Madison was equally critical of presidential and governmental prayer:

"Religious proclamations by the Executive recommending thanksgivings & fasts are shoots from the same root... Although recommendations only, they imply a religious agency, making no part of the trust delegated to political rulers. ... An *advisory* Government is a contradiction in terms. *The members of a Government as such can in no sense, be regarded as possessing an advisory trust from their Constituents in their religious capacities.* In their individual capacities, as distinct from their official station, they might unite in recommendations of any sort whatever, in the same manner as any other individuals might do."

In this passage Madison rejects the idea that any government action involving religion is somehow voluntary, going so far as to call the idea a "contradiction." If you wish to hold religious services of whatever kind please follow the role model of the primary author of our Constitution and Bill of Rights: check your elected position at the door (along with the concomitant resources of the state) and do so as a private individual.

Misuse of State Email

The provisions of the Internet and Electronic Mail Acceptable Use Policy (CIO-060), released by the Kentucky Personnel Cabinet and applying to "all Executive Branch agencies and staff," make it clear that state email is state property. "Internet and E-mail resources, services and accounts are the property of the Commonwealth of Kentucky. These resources are to be used for state business purposes in serving the interests of state government." In addition, misuse of email is a misuse of state resources, "The acceptable use of Internet and E-mail represents the proper management of a state business resource."

Furthermore, these rules explicitly prohibit, "Soliciting money for religious or political causes, advocating religious or political opinions and endorsing political candidates," and therefore prohibit the email you sent to state employees.

This email belies any claims that the prayer breakfast is a private event and without government sanction. The email was sent on January 29, 2016, from the "Governor's Communications Office" with the subject line "Governor Bevin invites you to attend the 50th Governor's Prayer Breakfast." The included invitation sports the state seal and indicates, "Governor and Mrs. Matthew G. Bevin cordially invite you to attend the 50th Governor's Prayer Breakfast."

It is unconstitutional to use government resources, such as the Kentucky.gov website, official state email, and the state seal, to endorse religious rituals, and solicit attendance by state employees. This not only lends the imprimatur of the Governor's office to prayer and a Christian event, by it also abuses your civil and administrative authority. State employees will feel they must support a religious event, regardless of their personal thoughts or reservations, to get ahead or stay on the good side of their boss.

Conclusion

James Madison, the primary architect of the U.S. Constitution and Bill of Rights, and our fourth president, wrote in his *Detached Memoranda*,

"The members of a Government as such can in no sense, be regarded as possessing an advisory trust from their Constituents in their religious capacities. *In their individual capacities, as distinct from their official station, they might unite in recommendations of any sort whatever, in the same manner as any other individuals might do.*"

Government resources, seals, and titles may not be used to endorse religion. If you wish to hold religious services of whatever kind please follow the role modeled by the primary author of our Constitution and Bill of Rights and do so as a private individual.

We urge you to cancel this event immediately, to remove the event from the Governor's website, and remove the title Governor, the State and Governor's seal from any promotional material. We would also ask you to send an email apology to all state employees who were pressured by their government to take part in a religious ritual and avoid this improper use of government resources in the future.

Very truly,



Annie Laurie Gaylor

¹ Barry Kosmin and Ariela Keysar, *American Religious Identification Survey*, 2008.