

FREEDOM FROM RELIGION *foundation*

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Sent via email only

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June 22, 2017

Mr. Stacy Eggers, IV
737 W. King Street
Boone, North Carolina 28607

Re: "Time of prayer" event

Dear Mr. Eggers,

Thank you for your prompt reply to our June 19 letter. We are pleased to learn that the advertisements for the "time of prayer" have been removed from the Ashe County Sheriff website and that the ACSO is not expending funds or staff time coordinating the event. I will discuss organizing an event of our own with out local members and the Triangle Freethought Society, our chapter. Your letter also explains that the event has been moved from the steps of the sheriff's office, as was advertised, to the parking lot.

We appreciate these changes and they begin to ameliorate some of the concerns with ACSO appearing to endorse the event. However, when it comes to violations of the Establishment Clause, i.e., the government endorsing religion, appearances matter. Government officials cannot *appear to* endorse Christianity. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (invalidating practice that would have appeared to any reasonable observer to be "delivered with the approval of the school administration").

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*.'" *County of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 593 (1989). The goal is to ensure that the government does not "*appear*[]" to take a position on questions of religious belief." *Id.* at 594. Even disclaimers cannot cure an apparent endorsement. As the Supreme Court noted in that case, "The fact that the [religious message] bears a sign disclosing its ownership by a Roman Catholic organization does not alter this conclusion. On the contrary, the sign simply demonstrates that the government is endorsing the religious message of that organization...." In other words, that a religious message is owned or delivered by a private entity can *exacerbate* not ameliorate the First Amendment violation.

In this case, we are concerned that ACSO deputies and perhaps Sheriff Buchannan will be appearing at the event, on government property, in their official uniforms, and may even speak using the titles that come with their office. This would indeed exacerbate the appearance that the ACSO endorses Christianity, which is already imperiled given the history of the event.

Using a government title and uniform to promote his personal religious beliefs or the beliefs of Mrs. Lotz would give the unfortunate impression that the county supports and endorses those particular religious beliefs. “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), (Sup. Ct. cite omitted).

Of course the sheriff is still free to attend church, pray, and even teach Sunday school. But he cannot appear to endorse religious events as *Sheriff* Buchanan, he must do so as *Mr.* Buchanan, private citizen. In his personal capacity he can freely exercise his religion as he sees fit. In his official capacity as an officer of the government, he is bound by the Establishment Clause and cannot abuse that office to promote his or Mrs. Lotz’s personal religious choices.

As you know, it does not violate a government officer’s free speech rights to insist on that they obey the Establishment Clause when acting in their official capacity. *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (“We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”); *see also Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1807 (2012) (“Because the speech at issue owes its existence to [his] position as a [government employee], [the District] acted well within constitutional limits in ordering [the employee] not to speak in a manner it did not desire,” upholding decision of school board to require a math teacher to remove two banners with historical quotes referencing “God”); *Pleasant Grove City v. Summum*, 555 U.S. 460, 470, 468 (2009) (government speech “must comport with the Establishment Clause,” i.e., not endorse one religion over others or religion over nonreligion.)

If we can have your assurances that Sheriff Buchanan and his deputies will not be attending or participating in the event in their official capacity or on government time, we can close the file on the Establishment Clause issues. We will of course discuss planning our own event, perhaps an event to celebrate atheism or the separation of state and church, with our local members.

Thank you again for your prompt attention to this matter.

Sincerely,

Andrew L. Seidel
Staff Attorney
Freedom From Religion Foundation