FREEDOM FROM RELIGION *foundation*

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September 25, 2017

SENT VIA EMAIL & U.S. MAIL
Landry.J@ag.louisiana.gov

The Honorable Jeff Landry
Attorney General, State of Louisiana
Post Office Box 94005
Baton Rouge, LA 70804

Re: State-organized and state-endorsed prayers do not belong in public schools

Dear Mr. Attorney General:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding comments you made at the Louisiana Family Forum legislative award party on September 21, 2017. FFRF is a national nonprofit organization with more than 29,000 members across the country, including Louisiana. Our purposes are to protect the constitutional principle of separation between state and church and to educate the public on matters relating to nontheism.

It is our understanding that during your address at that award ceremony, you promised to fight to put state-organized and state-endorsed prayers back in public schools. According to reports, you said:[1]

> "With your prayers, and an offense, we will get prayer back in public schools."

According to that report, you were "encouraged recently by a court ruling that a Michigan county board may open its meetings with a Christian prayer and invite audience members to join." Apparently, you "hope[] that means a shift in the way courts interpret prayer in other public places." You went on to tell the crowd:

> "I just want you to know that we are winning, and we will get God back into this country."

These remarks show either a disturbing ignorance of the U.S. Constitution or a deliberate attempt to subvert the protections it contains. Either way, Louisiana deserves more from its chief law enforcement officer. The State Attorney General must know the law and act to uphold it. If you are unwilling or unable to perform this duty when it comes to maintaining separation between religion and government—which is the law of the land—then you are unfit to hold the office.

The Constitution clearly prohibits what you are advocating.

Perhaps you skipped constitutional law in law school. If so, we'd like to remind you that the Supreme Court has continually struck down teacher or school-led prayer in public schools. *See, e.g., Engel v. Vitale,* 370 U.S. 421 (1962) (declaring instructor-led prayers in public schools

[1] Julia O'Donoghue, " 'We will get prayer back in our schools,' Attorney General Jeff Landry says," *Times-Picayune*, (September 22, 2017) *at* http://www.nola.com/politics/index.ssf/2017/09/jeff_landry_school_prayer.html

unconstitutional); *Sch. Dist. of Abington Twp. v. Schempp,* 374 U.S. 203 (1963) (declaring unconstitutional devotional bible reading and recitation of the Lord's Prayer in public schools); *Wallace v. Jaffree,* 472 U.S. 38 (1985) (overturning law requiring daily "period of silence not to exceed one minute . . . for meditation or daily prayer").

It is beyond disturbing that a man who took an oath to uphold the U.S. Constitution is deliberately advocating actions that violate that foundational document.

The Supreme Court has also explained that public schools have a constitutional obligation to make certain that "subsidized teachers do not inculcate religion." *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971). This is not an ambiguous area of law. The thing you are advocating for—prayer led by public school instructors—has been firmly established as illegal for more than 55 years. *See Engel*, 370 U.S. 421 (1962); *Schempp*, 374 U.S. 203 (1963).

The ban on state-organized prayer actually promotes religious freedom.

This constitutional obligation is critical to ensuring successful public schools, and to ensuring that the state does not trespass on the religious freedom rights of students and families. Again, the Supreme Court has stated it most eloquently: "Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family." *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

Of course, the law also means that children are allowed to pray on their own time in their own way. For instance, a student is perfectly free to bow her head and say a prayer before lunch, or at any other time and in any manner that it is not disruptive to others. That has always been the case, no court has decided otherwise, and no one—certainly not the Freedom From Religion Foundation—is advocating to take away students' individual religious liberties. But religious freedom doesn't end with your preferred religious group. It extends to minority religious and nonreligious students as well.

School staff cannot use their offices to impose religion on other people's children.

The neutrality duty is so important that "a school can direct a teacher to 'refrain from expressions of religious viewpoints in the classroom and like settings.'" *Helland v. S. Bend Comm. Sch. Corp*., 93 F.3d 327 (7th Cir. 1993) (quoting *Bishop v. Arnov*, 926 F.2d 1066, 1077 (11th Cir. 1991)). Put another way, teachers are not permitted to abuse their public positions to promote their personal religion.

Given your vocal ignorance on this area of law, we fear we'll have to risk beating a dead horse and reiterate this point: There is no violation of the free speech rights of teachers when a school district regulates what they teach to students while acting in their official capacities. Teachers have access to a captive audience of students due to their position as public educators. Therefore, schools have a duty to regulate religious proselytizing during the school day and school-sponsored activities. "Because the speech at issue owes its existence to [his] position as a teacher, [the School District] acted well within constitutional limits in ordering [the teacher] not to speak in a manner it did not desire." *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1807 (2012) (upholding decision of school board to require a math teacher to remove two banners with historical quotes referencing "God"); *see also 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.").

Your vision for religious endorsement in public schools is un-American.

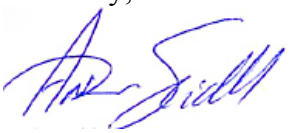
Your expressed hope that the Sixth Circuit's recent decision in *Jackson County* "means a shift in the way courts interpret prayer in other public places" is essentially a call for the courts to abandon the long history of secular government on which this country was founded.

Our nation is founded on a godless Constitution, whose only references to religion in government are exclusionary, such as "no religious test shall ever be required" for public office. U.S. Const. art. VI. The United States was the first nation to adopt a secular constitution, investing sovereignty in "We the People," not a divine entity. The framers did not think it necessary to pray during the four-month Constitutional Convention. James Madison, who we know today as the Father of the Constitution and the Father of the Bill of Rights, explained, "Religion and government will both exist in greater purity, the less they are mixed together."[2] He was correct.

Religious liberty is one of America's greatest achievements. But that liberty is guaranteed by our secular government. There is no such thing as freedom *of* religion—it does not exist—unless our government is free *from* religion. True freedom of religion can only exist when we divorce the awesome power religion holds over the supposed eternal life, from the power government undeniably has in everyday life. In short, a secular government is a prerequisite for religious freedom.

In short, history is not on your side. As Attorney General, you should not be encouraging people to violate the law. In particular, you should not be encouraging state employees to violate the rights of conscience of Louisiana students. The machinery of the state cannot be used to impose your particular brand of religion on other people's children. Shame on you for suggesting otherwise. If you had any honor or took your oath to uphold the Constitution seriously, you would retract these statements.

Sincerely,



Andrew L. Seidel
Constitutional Attorney
Director of Strategic Response

[2] Letter to Edward Livingston, July 10, 1822.