

# FREEDOM FROM RELIGION *foundation*

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**SENT VIA EMAIL AND U.S. MAIL**

[don.pierson@la.gov](mailto:don.pierson@la.gov)

Mr. Don Pierson  
Secretary, Louisiana Office of Economic Development  
617 North Third Street  
Baton Rouge, LA 70802-5239

Re: Acting on the request to rescind AMC *Preacher* television show tax incentives would be unconstitutional

Dear Secretary Pierson:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to rebut a complaint we believe your office may have received. FFRF is a national nonprofit organization with over 33,000 members across the country, including members in Louisiana. 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.

It is our understanding that State Senator John Milkovich and two Baptist preachers, Larry Pridmore of the Southside Baptist Church of Mansfield and Edward Roberts of Woodsprings Baptist in Grand Cane, wrote a letter asking "the Louisiana Office of Economic Development to flatly reject [a] request for a \$16.2 million tax refund check." The incentives in question are for the AMC show *Preacher*.<sup>1</sup>

Their letter attempts to argue that one scene of less than five minutes, in an episode of 44 minutes, in a season of 13 episodes, in a show with three seasons, constitutes pornography and that therefore all the tax incentives for the show should be revoked. The scene in question portrays Jesus having sex with a woman the night before he is to be crucified, and it is graphic with graphic dialogue. But graphic is not the same as pornographic and, in any event, the complainants' true concern is a perceived insult to their religion, not sex.

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<sup>1</sup> Philip Timothy, "State shouldn't subsidize pornography," *The Baptist Message* (April 9, 2018), available at <http://baptistmessage.com/state-shouldnt-subsidize-pornography/>.

The trio complains about a show that aired nearly a year ago, on August 21, 2017, claiming it was pornographic and blasphemous and therefore not eligible for the tax credits extended to encourage film production to Louisiana. It's remarkable that, according to them, pornography aired on television in August and the first people to realize it were these religious leaders months later. One would think that pornography on television, were it truly pornography, would have aroused the ire of regulators immediately since that would violate federal law.

The complainants inadvertently admit that the scene is not pornographic when they quote producer Seth Rogen's Twitter feed: "I'm SHOCKED they let us do it," he wrote. "They let us do it." The show was vetted and passed legal muster, perhaps because, as the complainants also admitted, the director "used shadows and silhouettes to soften the two figures."

Even without this accidental admission, it's obvious that the attack on the show as pornography is pretextual. The FCC allowed the show to air, as did the network. Senator Milkovich and his Baptist allies may not think the show was appropriate, but that is not their call, and it was not Milkovich et al.'s true concern with the program. Instead, the complainants are seeking to penalize AMC and *Preacher* for blasphemy. They stated their case plainly in the last sentence of their letter: "[T]he larger truth is that there is never a good time to reward production companies that trash our Louisiana values, mock our beliefs— and dishonor Christ."

Governments have no business, indeed no authority, to protect religion from criticism or even mockery, as the Supreme Court recognized more than 65 years ago:

"from the standpoint of freedom of speech and the press, it is enough to point out that the state has no legitimate interest in protecting any or all religions from views distasteful to them which is sufficient to justify prior restraints upon the expression of those views. It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications, speeches, or motion pictures." *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 505, 72 S. Ct. 777, 782, 96 L. Ed. 1098 (1952).

If the Louisiana government were to take action against AMC to protect the sensibilities of a particular religious group or belief, it would violate the duty of neutrality regarding religion that the First Amendment imposes on all governmental actions: "The touchstone for our analysis is the principle that the 'First Amendment mandates governmental neutrality between religion and religion, and between religion

and nonreligion.” *McCreary Cty. v. ACLU*, 545 U.S. 844, 860 (2005), (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15–16 (1947)).

A federal court in Pennsylvania took up a case similar to this in 2010. George Kalman wanted to name his film company “I Choose Hell Productions.” His choice was rejected by the state because it was deemed “blasphemous.” The court held that this denial violated both the Establishment and Free Speech Clauses of the First Amendment. *Kalman v. Cortes*, 723 F. Supp. 2d 766 (E.D. Pa. 2010).

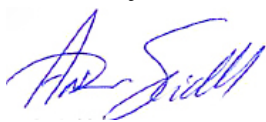
In fact, the complainant’s letter called to mind the unconstitutional blasphemy laws some states had on the books. In overturning a law punishing “profane words of and concerning our Saviour Jesus Christ,” one court wrote that the state’s effort “to extend its protective cloak to the Christian religion or to any other religion is forbidden by the Establishment and Free Exercise Clauses of the First Amendment. *State v. W.*, 9 Md. App. 270, 276, 263 A.2d 602, 605 (1970).

As you can see, any attempt to penalize the network for a few minutes of air time that some considered blasphemous will violate the First Amendment. Twice. The government cannot punish a company with the equivalent of a multi-million dollar fine because some a few individuals felt offended.

AMC likely has an army of lawyers ready to defend it. But should this body attempt to enforce a religious objection to “blasphemy,” FFRF will work to get involved in the case against the government as well.

We encourage you reject the pretextual complaint and avoid getting into the unlawful business of regulating speech that touches on religion. May we hear from you at your earliest convenience?

Sincerely,



Andrew L. Seidel  
Constitutional Attorney  
Director of Strategic Response