

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

September 3, 2015

SENT VIA U.S. & ELECTRONIC MAIL

president@nsu.edu

Mr. Eddie Moore, Jr.
Interim President and CEO
Norfolk State University
700 Park Ave.
Norfolk, VA 23504

Re: NSU Prayer Breakfast – September 18, 2015

Dear Mr. Moore:

I'm writing on behalf of the Freedom From Religion Foundation (FFRF) regarding the upcoming Norfolk State University (NSU) prayer breakfast. FFRF is a national nonprofit organization, which works to protect the constitutional principle of separation between state and church. FFRF represents over 23,000 members nationwide including nearly 500 in Virginia.

It is our information and understanding that NSU will be holding its first community prayer breakfast from 7:30-9:00A.M. on September 18, 2015, in commemoration of Founder's Day. The theme for this year's event is "Forging Onward Through Prayer, Education, and Service." We understand that Rev. Al Sharpton will be the keynote speaker at this event. We are further informed that the event will feature prayers from local clergy members. Tickets for the event are being sold by the university through its website¹ and are not available for purchase at the door.

NSU's hosting and coordination of this community prayer breakfast poses serious constitutional separation of state and church concerns. While Founder's Day is certainly worthy of celebration, any events NSU puts together in commemoration of this day must conform to constitutional strictures. The Establishment Clause of the First Amendment to the United States Constitution prohibits the government from endorsing, advancing, or promoting religion. Therefore, it is illegal and inappropriate for a public university to host, organize, support, or otherwise promote a patently religious event like a prayer breakfast.

¹ <https://www.nsu.edu/i-am-nsu-annual-fund/make-a-gift-today> last visited September 3, 2015

This event certainly has the effect of government endorsement of religion even if it's considered "interfaith." Holding a prayer event sends the message that the NSU prefers religion over non-religion. It alienates nonreligious students, faculty and alumni by turning them into political outsiders in their own community, including the 23% of Americans who identify as nonreligious.² This is an 8 point increase since 2007³ and 15 point jump since 1990, and makes the "nones" the fastest growing identification in America.⁴ Among African Americans the nonreligious numbers are 11% and growing. Nationally, about 35% of millennials—born after 1981, i.e., your students—are nonreligious.⁵

NSU hosting and coordinating this prayer breakfast violates the Establishment Clause of the First Amendment to the United States Constitution, 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. Ark.*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947).

From all appearances, any reasonable NSU student, faculty member or alum would logically interpret the university's actions in this case as government endorsement of religion. NSU is actively promoting this event on its Facebook pages and is selling tickets to the event through its website. NSU must refrain from expending any further taxpayer dollars, using publicly funded employees, and drawing on any other publicly funded resources to promote the religious prayer breakfast. This includes publicizing the event on NSU's website and official social media pages, advertising, handling tickets and RSVPs, and coordinating sponsors of the event.

In 2002, a federal court enjoined a city and mayor from organizing, advertising, promoting or endorsing a prayer breakfast. *Newman v. City of East Point*, 181 F. Supp. 2d 1374 (N.D. Ga. 2002). In that case, the court restricted the use of city funds, employees, resources and supplies in facilitating the Mayor's Prayer Breakfast. *See id.* As a result of the city's activities (making and sending invitations, issuing press releases, advertising the event, etc.), the court stated, "an objective observer would most certainly conclude that the City of East Point has endorsed religion, specifically Christianity, by its actions." *Id.* at 1381. It further said that "as long as the event takes place at a non-City facility, does not use City funds, does not use City employees to publicize or organize it and is not presented as being endorsed by the City, then the Mayor and any City Officials can participate in the event." *Id.* at 1382. While this case involved a *city* organized prayer

² *America's Changing Religious Landscape*, Pew Research Center (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

³ "Nones on the Rise: One-in-Five Adults Have No Religious Affiliation," Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012) available at <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>

⁴ Barry Kosmin, National Religious Identification Survey 1989-1990.

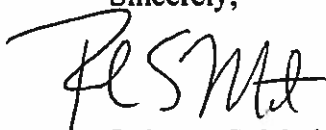
⁵ *America's Changing Religious Landscape*, Pew Research Center (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

breakfast, the rationale for the injunction is no different in the context of a public university.

It is not uncommon for ministerial associations or private groups to host a prayer breakfast/luncheon and invite public officials, who attend as individuals. This is the case at the "National Prayer Breakfast" in D.C., for example. There are also student groups who are able to put on religious events like these. But it is absolutely unlawful, inappropriate and unseemly under the First Amendment for a public university itself to host such an event or work in tandem with event organizers to put on the breakfasts.

NSU must refrain from further organization and promotion of this religious event. The university must stop selling tickets for the September 18th prayer breakfast and/or making tickets available from a university office. Please inform us in writing of the steps you are taking to ensure this constitutional violation does not recur.

Sincerely,

A handwritten signature in black ink, appearing to read 'RSMA', written over a horizontal line.

Rebecca S. Markert
Staff Attorney