

FREEDOM FROM RELIGION *foundation*

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

September 24, 2014

SENT VIA U.S. MAIL & EMAIL

ggraham@ocalapd.org

Greg Graham
Chief of Police
Ocala Police Department
402 South Pine Ave.
Ocala, FL 34471

Re: Unconstitutional Religious Practices

Dear Chief Graham:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding multiple constitutional violations occurring in the Ocala Police Department (OPD). We have been contacted by several concerned local citizens. FFRF is a national nonprofit organization with over 21,000 members across the country, including over 1,000 members in Florida and a local chapter, the Central Florida Freethought Community. Our purpose is to protect the constitutional principle of separation between state and church.

There are three constitutional violations the OPD must address:

- 1) Tonight's impotent prayer vigil,
- 2) Police patches reading "God be with us" (a motto worn by Nazi soldiers on their uniforms), and
- 3) The police chaplain program.

Prayer Vigil

First, we understand that you posted to the OPD Facebook page a letter on OPD letterhead in support of a "Community Prayer Vigil" being held today, September 24, 2014. This letter begins, "Blessings to all our citizens, specifically Pastors . . ." and states, "We are facing a crisis in the City of Ocala and Marion County that requires fervent prayer and your presence to show unity and help . . . Please support peace and this appeal for unity on this very important 'Community Prayer Vigil' coming this next Wednesday. We need you." A media report about the vigil quotes OPD chaplain Edwin Quintana as saying, "Prayer seems to unite everybody."¹

Calling upon citizens to pray is coercive and beyond the authority of any government. Citizens should not be made to feel offended, excluded, or like political outsiders because the police department, which they support with their taxes, imposes religious ritual on them. Put simply, the OPD is misusing its secular power to call for religious rituals and exhort citizens, regardless of beliefs, to participate in prayer.

¹ Carr, Susan Latham, "Ocala will gather to pray, bring justice," *Ocala Star Banner* (September 22, 2014), available at <http://www.ocala.com/article/20140922/ARTICLES/140929924>.

It is a fundamental principle of Establishment Clause jurisprudence that the government cannot in any way promote, advance, or otherwise endorse religion. The Supreme Court has said, “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 County v. ACLU*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 15-16 (1947); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985)).

Overtly promoting religion using your official title and city resources gives the clear impression that the OPD supports and endorses particular religious rituals. Mr. Quintana’s statement that “prayer unites everyone” is patently false, given the growing population of that is nonreligious: 1 in 5 adult Americans and 1 in 3 Americans under 30 are now not religious.² Far from “uniting everyone,” the OPD is actually sending the message to these “nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members.” *Cnty. of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 595 (1989) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)).

Apparently, this prayer vigil is meant as a response to several recent shooting incidents. While FFRF’s sympathies are with the community of Ocala in the wake of these tragedies, praying, instead of taking any meaningful action, will not solve Ocala’s violence problems. Prayer is the ultimate cop-out, the admission that the prayer-giver is giving up and transferring personal responsibility to an invisible, absent being. In a scientific study, sick people who were prayed for had no better chance of recovering from surgery without complications than those not prayed for (and in fact had slightly worse chance of uncomplicated recovery).³

In addition, another study⁴ significantly showed that less religious societies are less violent:

Murder rates are actually lower in more secular nations and higher in more religious nations where belief in God is deep and widespread. And within America, the states with the highest murder rates tend to be highly religious, such as Louisiana and Alabama, but the states with the lowest murder rates tend to be among the least religious in the country, such as Vermont and Oregon. Furthermore, although there are some notable exceptions, rates of most violent crimes tend to be lower in the less religious states and higher in the most religious states. Finally, of the top 50 safest cities in the world, nearly all are in relatively non-religious countries, and of the eight cities within the United States that make the safest-city list, nearly all are located in the least religious regions of the country.⁵

² “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>.

³ Benson, H. et al., “Study of the Therapeutic Effects of Intercessory Prayer (STEP) in cardiac bypass patients: a multicenter randomized trial of uncertainty and certainty of receiving intercessory prayer.” *Am Heart J.* 151(4):934-42 (April 2006), available at <http://www.ncbi.nlm.nih.gov/pubmed/16569567>.

⁴ In a synthesis of the latest social scientific research concerning some of these issues, see Zuckerman, Phil, “Atheism, Secularity, and Well-Being: How the Findings of Social Science Counter Negative Stereotypes and Assumptions,” *Sociology Compass*, Vol. 3 Issue 6, 949-971 (2009).

⁵ Zuckerman at 955 (internal citations omitted).

Furthermore, “studies of heroic altruism during the Holocaust found that the more secular people were, the more likely they were to rescue and help persecuted Jews.”⁶ In fact, when any given factor of societal health or well-being is measured, invariably the *less* religious countries score better. The *least religious countries* of this world:

- Have the lowest rates of violent crime and homicide
- Are the best places to raise children
- Are the best places to be a mother
- Have the lowest rates of corruption
- Have the lowest levels of intolerance against racial and ethnic minorities
- Score highest when it comes to women’s rights and gender equality
- Have the greatest protection and enjoyment of political and civil liberties
- Are better at educating their youth in reading, math, and science
- Are the most peaceful
- Are the most prosperous
- Have the highest quality of life.⁷

The pattern of lower religiosity to higher societal well-being is not limited to an international analysis. This trend also exists within United States. Those states that are the most religious also have a high occurrence of societal ills. States that tend to be among the *most religious* in the nation:

- Have the highest rates of poverty
- Have the highest rates of obesity
- Have the highest rates of infant mortality
- Have the highest rates of STDs
- Have the highest rates of teen pregnancy
- Have the lowest percentage of college-educated adults
- Have the highest rates of murder
- Have the highest rates of violent crime, including rape and sexual assault.⁸

Public government prayers not only conflict with the Constitution, but also with the biblical teachings of Jesus. During the Sermon on the Mount, Jesus condemns public prayer as hypocrisy: “And when you pray, do not be like the hypocrites, for they love to pray standing in the synagogues and on the street corners to be seen by others . . . When you pray, go into your room, close the door and pray to your Father who is unseen.” Matthew 6:5-6.

Religious Patch

We also understand that OPD officers wear a patch reading “GOD BE WITH US.” We understand this is part of the Ocala city seal, and that “God be with us” is the motto of Ocala. This city seal is unconstitutional, and the OPD must no longer wear patches with religious messages.

In *Friedman v. Board of County Commissioners of Bernalillo*, the Tenth Circuit Court of Appeals held that the use of a county seal reading “With This We Conquer” in Spanish over a Latin cross on the shoulder patches of a sheriff’s department officers had the primary or principal effect of advancing

⁶ *Id.*

⁷ Zuckerman at 960-61 (internal citations omitted).

⁸ Zuckerman at 955, 961 (internal citations omitted).

religion and thus violated the Establishment Clause. 781 F.2d 777 (10th Cir.1985) (en banc), *cert. denied*, 476 U.S. 1169 (1986). In *Harris v. City of Zion* and *Kuhn v. City of Rolling Meadows*, the Seventh Circuit held that the religious imagery and words on the seal of the city of Rolling Meadows, Ill., and the seal, emblem and logo of the city of Zion, Ill., violated the Establishment Clause. 927 F.2d 1401 (7th Cir. 1991), *cert. denied*, 505 U.S. 1218 (1992). The City of Zion's seal contained the phrase "God reigns." Both cities used the seals on the shoulder patches of city police officers and, in Zion, on firefighter patches as well.

In both cases, the seal/patches violated the "endorsement element" of the *Lemon* test, used to determine when governmental religious activity is unconstitutional: "The aim of the 'effects' or endorsement element [of *Lemon*] is to prevent 'government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred. . . . Whether the word is endorsement, favoritism, or promotion, the essential principle remains the same: the Establishment Clause prevents the government from appearing to take a position on questions of religious belief.'" *Id.* at 1411-12 (quoting *Allegheny*, 492 U.S. at 593-594 (1989)). Other courts have also held that conclusion seals and patches with religious content violate the Establishment Clause. *See Robinson v. City of Edmond*, 68 F.3d 1226 (10th Cir. 1995) (holding that city seal containing Latin cross in one quadrant violated Establishment Clause); *Foremaster v. City of St. George*, 882 F.2d 1485 (10th Cir. 1989) (finding that Establishment Clause challenge to city logo depicting Mormon Temple could proceed; suit was later settled after the City had substantially stopped using the logo); *Webb v. City of Republic, Mo.*, 55 F. Supp. 2d 994 (W.D. Mo. 1999) (holding city seal with religious fish symbol in one quadrant violated Establishment Clause); *American Civil Liberties Union of Ohio, Inc. v. City of Stow*, 29 F. Supp. 2d 845 (N.D. Ohio 1998) (holding city seal containing Latin cross violated Establishment Clause).

These patches constitute a governmental endorsement of religion. OPD is not maintaining neutrality on the subject of religion as required by the Constitution, instead placing its power and imprimatur behind religion. The Supreme Court has explicitly rejected the idea that the Establishment Clause only prohibits sectarian preference: "this Court has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another." *Abington Twp. Sch. Dist. v. Schempp*, 374 U.S. 203, 216 (1963).

At one time it was thought that this right merely proscribed the preference of one Christian sect over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism. But when the underlying principle has been examined in the crucible of litigation, **the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all.** This conclusion derives support not only from the interest in respecting the individual's freedom of conscience, but also from the conviction that religious beliefs worthy of respect are the product of free and voluntary choice by the faithful, and from recognition of the fact that **the political interest in forestalling intolerance extends beyond intolerance among Christian sects—or even intolerance among 'religions'—to encompass intolerance of the disbeliever and the uncertain."**

Wallace v. Jaffree, 472 U.S. 38, 52-54 (1985) (emphasis added) (notes omitted).

The phrase “God be with us” is also an unfortunate choice for a city motto given its dubious history and associations—every soldier in Nazi Germany’s regular army wore belt buckles reading “*Gott mit uns*,” the same motto in German.

Chaplain Program

We also understand the OPD has a chaplain program, and that chaplains are slated to speak at the prayer vigil.

Government chaplains may only exist as an accommodation of a public employee’s religious beliefs when the government makes it difficult or impossible to seek out private ministries. For instance, it may be difficult for military service members to find a place of worship while on mission in a foreign country or for an inmate in a prison to find a way to worship. Chaplains are meant to lighten the government-imposed “burden” on religious exercise. Your workplace does not place any burden on employees or the public, so there is no need for you to provide chaplains for them. Chaplains’ employment, even if volunteer, demonstrates endorsement of religion, which violates the Constitution.

In the case of police chaplains, there is no significant government burden on free exercise. Courts look to the only relevant First Amendment clause, the Establishment Clause, to determine if the chaplaincy is legitimate. *See, e.g., Voswinkel v. City of Charlotte*, 495 F. Supp. 588 (W.D.N.C. 1980). Chaplains’ activities are only permissible so long as they do not proselytize or discuss religion unless asked to do so by an employee first. *See generally Milwaukee Deputy Sheriff’s Ass’n v. Clarke*, 588 F.3d 523 (7th Cir. 2009) (ruling sheriff meetings with presentations by religious group were unconstitutional). This puts the OPD in the position of policing the actions, words, and programs of the chaplain. Given that chaplains are organizing this unconstitutional prayer vigil, the OPD is already clearly failing to properly limit the chaplains from imposing religion. In our experience, government entities rarely exert the appropriate oversight of the chaplaincy, allowing chaplains to use the workplace as their church. Paid or not, chaplains are sponsored by the OPD. They are bound by the First Amendment like any other government employee, and your office is liable for their constitutional violations.

The OPD is also vulnerable to a discrimination lawsuit. No doubt the chaplains intend, at least nominally, to assist people of all faiths. But the OPD serves all Ocala citizens regardless of their religious affiliation (or lack thereof). There are almost certainly police officers who are not Christians. They should not be encouraged to compromise their beliefs and use religious support services. Nonreligious and non-Christian officers are your employees too, but if they want in-office help, they may be forced to take on costs to receive live person-to-person counseling and do so on their own time. All in all, this program discriminates against OPD employees by providing chaplains who are only equipped to handle the needs of some employees, alienating and discriminating against nonbelievers and non-Christians.

It does no good to claim that chaplains can meet the needs of nonbelievers and believers of other faiths. This is simply not true. If chaplains were adept at providing secular therapy, they would be therapists, not chaplains. There is no reason to think a nonbelieving employee would be comfortable dealing with a person who provides comfort from a religious viewpoint. Chaplains cannot simply set aside their religion in order to assist a nonbeliever, and are often unwilling to even try to do so. Chaplains view the world and its problems through the lens of religion and a god, a view inapposite to nonbelievers. Claims that someone is “in a better place” or that a god “works in mysterious ways” may be the bedrock of religious consolation, but are meaningless and even hurtful trivialities to nonbelievers.

A secular counselor would be equipped to counsel 100% of the employees, and would be actually licensed to do so. There is no doubt that police have stressful jobs. But favoring religious officers and their families with free, on-the-job counseling while ignoring the needs officers and members of the public of no faith is discriminatory

Conclusion


Any of these issues individually would cause a constitutional problem; taken together, they indicate OPD's overwhelming endorsement of religion over nonreligion, sending an unconstitutional, distasteful, and even threatening message that the OPD prefers religious citizens. They alienate all nonreligious Ocala citizens who do not believe that a god is with them and would not consider themselves "united" by prayer. Not all Floridians are Christians or even religious at all; there are more than 2 million nonreligious Floridians,⁹ and the OPD is continually and systematically disregarding these members of the community.

The *Star Banner* quotes you as stating the vigil is "an opportunity to show solidarity in our community, that we are not going to tolerate people who are going to go out and victimize innocent people."¹⁰ It is not necessary to endorse religion to achieve these aims. A secular community gathering could achieve these exact goals without excluding a significant portion of the citizens the OPD is sworn to protect. We therefore ask that the OPD:

- 1) Either cancel the prayer vigil, or convert it to an entirely secular event where *all* OPD citizens are welcome, regardless of their religion or lack thereof,
- 2) Replace the religious patches worn by its officers, and
- 3) Discontinue its illegal chaplain program.

Taking these actions would demonstrate the OPD's respect for the rights of conscience of all Ocala citizens and police officers. Please inform us promptly in writing of the steps you are taking to end these constitutional violations.

Sincerely,



Andrew L. Seidel
Staff Attorney

ALS:mez

⁹ *American Religious Identification Survey*, 2008.

¹⁰ Carr, *supra*.