

FREEDOM FROM RELIGION *foundation*

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June 29, 2015

SENT VIA EMAIL & U.S. MAIL

citycouncil@cityoforange.org

The Honorable Teresa Smith
Mayor, City of Orange
300 East Chapman Avenue
Orange, CA 92866

Re: Unconstitutional City-Sponsored Prayer Breakfast

Dear Mayor Smith:

I am writing on behalf of the Freedom From Religion Foundation regarding unconstitutional sponsorship of the Mayor's Prayer Breakfast. FFRF is a national nonprofit organization with more than 22,500 members across the country, including more than 3,200 members in California. Our purpose is to protect the constitutional principle of separation between state and church.

You may remember that we wrote to you in 2013 to point out that the Mayor's Prayer Breakfast raised serious constitutional problems. We also requested records about that breakfast. Though you neglected to respond to the letter, the city did provide records.

These records show that city officials used city time and resources to coordinate the Mayor's Prayer Breakfast in 2013 and 2014 – a religious event. Not only is it clear that city personnel coordinated the event, including sending invitations, responding to RSVPs, arranging musical performances and speakers, setting the seating arrangements, ensuring government staff attendance, and preparing your opening remarks, but they also coordinated the religious message. For instance, city personnel coordinated your bible verse selections and the theme of the keynote speaker's message.

Additionally, these prayer breakfasts were undoubtedly Christian affairs. In an October 8, 2013 email between a city staffer, Deputy City Manager Irma Hernandez, when asked about the content of the keynote speaker's address, Hernandez stated “[h]e will be talking about how Christ and following Christ has impacted his life – *duh it's a prayer breakfast and their goal is to share the Gospel and bring people to Christ and strengthen their beliefs...*” (emphasis added).

The City's coordination of these prayer breakfasts poses serious constitutional concerns. 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 the City to organize, support, or otherwise promote a patently religious event like a prayer breakfast.

These events certainly have the effect of government endorsement of religion, and specifically Christianity. Holding a prayer event sends the message that the City not only prefers religion over non-religion, but also Christianity over all other faiths. It alienates the rising number of nonreligious and specifically non-Christian citizens in Orange by turning them into political outsiders in their own community, including 37% of California adults, and 35% of Los Angeles Metro Area adults who are non-Christian.¹ This violates the Establishment Clause, 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).

The Supreme Court has also held that public officials may not seek to advance or promote religion, specifically stating, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

“[T]he Supreme Court has repeatedly stated that the [Constitution is violated] if official action, regardless of its purpose, ‘conveys a message of endorsement or disapproval’ of religion.” *Roberts v. Madigan*, 921 F.2d 1047, 1054-55 (10th Cir. 1990) (citing *Wallace v. Jaffree*, 472 U.S. 38, 56 n. 42 (1985)); *Sch. Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 389 (1985); *Lynch v. Donnelly*, 465 U.S. 668, 690 (1984); *Lemon v. Kurtzman*, 430 U.S. 602, 619 (1971)). Put simply, government power cannot be “exploited to proselytize or advance any one, or to disparage any other, faith or belief.” *Marsh v. Chambers*, 463 U.S. 783 (1983).

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 only “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.

Any reasonable City resident would logically interpret the City’s actions in this case as government endorsement of religion. It is of no consequence that the event took place on private property. Given the high degree of City involvement and entanglement in the event, any reasonable person or court would interpret this conduct as government espousal of religion. Given the history, the city must cease all coordination and promotion of this event. Even the title “Mayor” should not be used. If Mayor Smith wishes to attend she must do so in her personal capacity, as Ms. Smith, and not lend a public title to promote one particular religion.

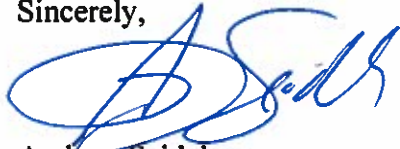
¹ *America’s Changing Religious Landscape*, Pew Research Center (May 12, 2015) available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

Finally, given that tickets to this event are now \$35 and were \$30, and given the city's promotion, coordination, and organization of this event, the city is violating the California Constitution by fundraising for a religious organization, the Christian Business Men's Connection. *See* Art. 16 §5 "Neither the Legislature, nor any ... city ... or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose...."

The City 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 the City website, advertising and handling tickets and RSVPs, and coordinating sponsors of the event. In short, all official connection to the prayer breakfast, including the title Mayor, must cease.

Please inform us in writing of the steps you are taking to cure this constitutional violation.

Sincerely,



Andrew Seidel
Staff Attorney

ALS:njf

From: Irma Hernandez
Sent: Tuesday, October 8, 2013 11:18 AM
To: Paul Sitkoff
Subject: RE: Help! Drowning!

No just sharing stories and experiences – no topic. I asked the Mayor for her bible verses so that might help narrow her general theme.sorry.jh

From: Paul Sitkoff
Sent: Tuesday, October 08, 2013 11:16 AM
To: Irma Hernandez
Subject: RE: Help! Drowning!

Well, yes, that is a bit obvious. I kind of meant do we know specifically the themes his speech will touch on. ;-)

From: Irma Hernandez
Sent: Tuesday, October 08, 2013 11:15 AM
To: Paul Sitkoff
Subject: RE: Help! Drowning!

He will be talking about how Christ and following Christ has impacted his life – duh it's a prayer breakfast and their goal is to share the Gospel and bring people to Christ and strengthen their beliefs.jh

From: Paul Sitkoff
Sent: Tuesday, October 08, 2013 8:18 AM
To: Irma Hernandez
Subject: RE: Help! Drowning!

Irma,

Do we know what the speaker's topic will be? Do we ever know ahead of time?

From: Irma Hernandez
Sent: Monday, October 07, 2013 6:10 PM
To: Paul Sitkoff
Subject: RE: Help! Drowning!

From: Paul Sitkoff
Sent: Monday, October 07, 2013 10:49 AM
To: Irma Hernandez
Subject: Help! Drowning!

Here's the intro. I hate it. What do you think?