

# FREEDOM FROM RELIGION *foundation*

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October 4, 2016

**SENT VIA FAX AND U.S. MAIL:  
(414) 302-8099**

Mr. Patrick Mitchell  
Police Chief  
West Allis Police Department  
11301 W. Lincoln Ave.  
West Allis, WI 53227

Re: Religious reference in West Allis PD Code of Ethics

Dear Police Chief Mitchell:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a constitutional violation involving religious language in the West Allis Police Department's Code of Ethics. FFRF is a Wisconsin-based national nonprofit organization with more than 23,000 members across the country, including more than 1,300 members in Wisconsin. FFRF's purpose is to protect the constitutional principle of separation between state and church.

A concerned local resident informed us that the West Allis PD's Code of Ethics has included the following line since at least 2013:

I will constantly strive to achieve these objectives and ideals, dedicating myself **before God** to my chosen profession . . . LAW ENFORCEMENT.

(emphasis added). This Code of Ethics is also printed in the Department's annual report. The code's language mirrors the State of Wisconsin's Administrative Code, which prescribes a law enforcement code of ethics that "shall be administered as an oath to all trainees during the preparatory course," except that the Wisconsin Administrative Code does not include the words "before God." Wis. Admin. Code LES § 3.01(1) (d).

Altering a mandatory oath to require West Allis law enforcement officers to dedicate themselves "before God" is unconstitutional. There is no legitimate secular reason to add a religious phrase into a state-mandated secular oath. This insertion must be removed.

As you may be aware, Article VI of the U.S. Constitution prohibits the government from requiring any kind of religious test for an "office or public trust," which includes the position of police officer. "Neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.'" *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961). In *Torcaso*, the plaintiff refused to take an oath declaring the existence of a god as required by law and his appointment

as notary public was revoked. *Id.* at 489. The U.S. Supreme Court held that to require a religious oath was a violation of both the First and Fourteenth Amendments of the Constitution. *Id.* at 495. In this case, the constitutional rights of West Allis law enforcement officers are violated if they are forced to take an oath that includes an affirmation of a god's existence.

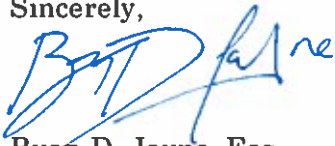
The Police Department may not require its employees to recite a monotheistic oath. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Officers who do not believe in "God" should not be forced to choose between swearing to a religious oath against their conscience or outing themselves as nonbelievers by refusing to recite the oath as written.

Besides requiring officers to take a religious oath, including the modified Code of Ethics in the Department's annual report gives the appearance that all officers believe in one particular god. This is not only divisive and inaccurate—fully 23% of American adults are nonreligious<sup>1</sup>—but also unconstitutional. The message assumes a common god, but imagine the consternation had the West Allis PD inserted "before Allah" into the Code of Ethics. It is equally inflammatory and inappropriate to add "before God."

Finally, administering the oath as it is currently written violates Wis. Admin. Code LES § 3.01(1) (d), which requires that all trainees be administered the oath "as set forth below," indicating that amendments are not permitted.

Please provide written assurances that the unnecessary and unconstitutional religious language will be removed from the West Allis Police Department's Code of Ethics. Doing so will protect all minority religious or nonreligious officers from potential embarrassment or discrimination and will also send a message that the West Allis PD equally values all officers and citizens, regardless of their personal religious or nonreligious beliefs.

Sincerely,



Ryan D. Jayne, Esq.  
Diane Uhl Legal Fellow  
Freedom From Religion Foundation

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<sup>1</sup> *America's Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at [www.pewforum.org/2015/05/12/americas-changing-religious-landscape/](http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/).