

# FREEDOM FROM RELIGION *foundation*

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September 18, 2014

SENT VIA U.S. MAIL AND FAX: (936) 788-8379

Judge Wayne L. Mack  
Justice of the Peace, Precinct 1  
19380 Highway 105 West, Ste 507  
Montgomery, Texas 77356

Re: Prayer during open court

Dear Judge Mack:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a constitutional violation that occurred in your courtroom. FFRF is a national nonprofit organization with more than 21,000 members across the country, including over 900 members in Texas. Our purpose is to protect the constitutional principle of separation between state and church.

We understand that in August you opened one of your court sessions with a Christian prayer. We believe that this is a regular practice in your courtroom. A concerned Montgomery County resident who had business before you contacted us to report that after you entered the courtroom you stated, "We are going to say a prayer. If any of you are offended by that you can leave into the hallway and your case will not be affected." After that announcement, we understand that you introduced a pastor who read from the bible for more than five minutes. While the pastor was reading, our complainant says, "I felt that the Judge was watching for reactions from the courtroom; bowed heads, indifference, etc. I definitely felt that our cases would be affected by our reactions [to the bible reading]." Our complainant further says, "Once the Bible reading was over we were then asked to bow our heads to pray. I was very uncomfortable and certainly felt that I was being coerced into following this ritual and that the outcome of my case depended upon my body language."

We write to ask that you end payers at future court sessions.

It is a fundamental principle of Establishment Clause jurisprudence that the government may not in any way promote, advance, or otherwise endorse religion. *See McCreary County, Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985)). Moreover, "the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lee v. Weisman*, 505 U.S. 577, 589 (1992)).

At least one federal court has specifically held that a state judge's practice of opening court proceedings with prayer violates the Establishment Clause. *N.C. Civil Liberties Union Legal Found. v. Constangy*, 947 F.2d 1145, 1153 (4th Cir. 1991). The Christian prayer delivered in

your courtroom was given during business hours on courthouse property, and you announced this prayer while acting in your official capacity as a Justice of the Peace. Therefore, it would appear to any reasonable observer that the Montgomery County judicial system was endorsing religion in general, and Christianity in particular. This is exactly the type of government endorsement that is prohibited by our Constitution.

Please note that we are not claiming that you are actually biased against those who choose not to participate in your courtroom prayers. The quotes from our complainant included above are meant to demonstrate that the prayer practice creates the *appearance* of bias within your courtroom. Under the Texas Code of Judicial Conduct, Canon 2. A., “A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Your courtroom prayer practice does not promote public confidence or create the appearance of impartiality.

Citizens are compelled to come before you on a variety of legal matters. Opening your court sessions with prayer sends a message to non-Christians that they are that they “are outsiders, not full members of the political community and accompanying message to adherents that they are insiders, favored members of the political community.” *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring). While acting as a Montgomery County Justice of the Peace, you must refrain from lending your power and prestige to Christianity, amounting to a governmental endorsement that excludes the 19% of the American population that is nonreligious.<sup>1</sup>

Inevitably, most government prayers are Christian, but this does not mean that they are inclusive of all Christians. Many Christians recognize that Jesus condemned public prayer as hypocrisy. *See Constangy*, 947 F.2d at 1152 (“[B]y placing its imprimatur on the particular kind of belief embodied in any prayer, the state necessarily offends the sensibilities not only of nonbelievers but of devout believers among the citizenry who regard prayer ‘as a necessarily private experience.’”). During the Sermon on the Mount, Jesus discourages public prayer: “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. Any public prayer practice violates this biblical mandate and will offend those Christians who observe it.

We request that you immediately end the practice of opening court sessions with prayer. Please reply in writing indicating the steps you are taking to avoid future violations of the Constitution so that we may inform our complainant.

Sincerely,



Sam Grover  
Staff Attorney

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<sup>1</sup> “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* [www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx](http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx).