

FREEDOM FROM RELIGION *foundation*

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

December 12, 2012

The Honorable Ken Bennett
Arizona Secretary of State
Capitol Executive Tower, 7th Floor
1700 W. Washington Street
Phoenix, AZ 85007-2808

Yavapai County Bd. of Supervisors
Yavapai County Admin. Building
1015 Fair Street
Prescott, AZ 86305-1852
web.bos.district1@co.yavapai.az.us

Mayor Marlin Kuykendall
Prescott City Council
201 S. Cortez Street
Prescott, AZ 86303

David C. Smucker
Superintendent
Prescott Unified School District
146 S Granite Street
Prescott, AZ 86303
dave.smucker@prescottschools.com

Mrs. Totsy McCraley
Prescott High School
1050 N. Ruth Street
Prescott, Arizona 86301
Totsy.McCraley@prescottschools.com

Matthew Kiesling
Prescott High School
1050 N. Ruth Street
Prescott, Arizona 86301
matthew.kiesling@prescottschools.com

Re: Prescott Christmas Ceremony on Dec. 1, 2012

Dear City, County, State and School Officials:

Our national organization, which works to keep state and church separate, has been contacted by taxpayers and residents of Prescott who strenuously oppose Arizona public schools, the City of Prescott, Yavapai County and the Arizona Secretary of State endorsing Christianity during the courthouse lighting ceremony. The Freedom From Religion Foundation (FFRF), has over 19,000 members including more than 500 members in Arizona, Prescott members, and a local chapter based in Phoenix, The Valley of the Sun Chapter.

On December 1, 2012, in Prescott, Arizona, the City of Prescott and Yavapai County held an official government ceremony in front of the Yavapai County Courthouse, in Courthouse Square. According to our local member and complainant, the ceremony "was like going to church." Video verifies this observation. A full transcript is attached and a copy of the video can be found at http://www.youtube.com/watch?v=nJ6fDGV_fJ0. If this video is removed we have a digitally archived copy we can send to you.

The ceremony began with David Maurer of the Prescott Chamber of Commerce speaking to the crowd: "On behalf of the City of Prescott and Yavapai County, we are proud to welcome you to the 58th annual courthouse lighting in Arizona's Christmas City, Prescott." Maurer went on to introduce the choir director and narrator: "Our Christmas story tonight is presented by the Prescott Area School Players under the direction of Mr. Matt Kiesling. Our narrator, for the 20th consecutive year, now Arizona Secretary of State, Mr. Ken Bennett."

“The Christmas Story” is nothing more than passages from the book of Luke in the Christian bible punctuated by religious music. For instance, Secretary Bennett mirrored Luke 1:26-31¹ when he said:

“and it came to pass in those days, that the angel Gabriel was sent from God to a city in Galilee, named Nazareth. He came to a virgin named Mary who was betrothed to Joseph of the house of David. And appearing to her the angel said, ‘the Lord is with you, blessed are you among women.’ Mary was troubled at the sight of him and by his words, and the angel said to her ‘do not fear Mary for you have found favor with God. Behold you shall conceive and bring forth a son and you shall call him Jesus.’ ”

Secretary Bennett’s bible readings were interspersed with religious choir music. The choir, directed by Matt Kiesling, a public school teacher, is constituted primarily of almost 600 or 700 public school students. Local news stories of earlier ceremonies report “Kiesling said of the event that regularly draws students from all of the local schools and many out-of-town schools as well. ‘All of the teachers in all of Yavapai County are invited to bring their students,’ Kiesling said, adding that the event also is open to students of charter schools and those who are home-schooled.”² The ceremony required the extensive use of public schools, public school employees, and public resources to teach public school students overtly religious music including: *Oh Come all Ye Faithful*; *Gloria in excelsis Deo (Angels We Have Heard on High)*; *Little Town of Bethlehem*; *Away in a Manger*; *Silent Night*, *Holy Night*; *The First Noel*; and *Joy to the World*. In fact, seven of the eight songs performed by the children were sectarian (Christian) and only one, “Jingle Bells,” was appropriately secular.

This ceremony, which we understand has been performed in its present form for *at least 20, and possibly almost 60, years* raises several serious constitutional concerns for Arizona public schools, the City of Prescott, Yavapai County and the Arizona Secretary of State.

Official government endorsement of the Christian religion

The Establishment Clause in the First Amendment to the U.S. Constitution prohibits government sponsorship of religious messages. The Supreme Court has said time and again, that the “First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion.” *McCreary County, Ky. v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 15-16 (1947). By officially endorsing the teachings at the heart of the Christian religion, reading from the Christian bible, teaching public school children Christian hymns, the county, city, and state have violated their duty to remain neutral.

¹ The American Standard Version of the mirrored biblical text reads:

²⁶ Now in the sixth month the angel Gabriel was sent from God unto a city of Galilee, named Nazareth,

²⁷ to a virgin betrothed to a man whose name was Joseph, of the house of David; and the virgin's name was Mary.

²⁸ And he came in unto her, and said, Hail, thou that art highly favored, the Lord is with thee.

²⁹ But she was greatly troubled at the saying, and cast in her mind what manner of salutation this might be.

³⁰ And the angel said unto her, Fear not, Mary: for thou hast found favor with God.

³¹ And behold, thou shalt conceive in thy womb, and bring forth a son, and shalt call his name JESUS.

² Cindy Barks, “Parade, Courthouse Lighting to brighten down Prescott, *The Daily Courier*, Nov. 30, 2011. Available at <http://www.dcourier.com/main.asp?SectionID=1&SubSectionID=1&ArticleID=100624>

Your inappropriate actions exclude and offend a significant portion of the Arizona population that is non-Christian or non-religious. This official ceremony unconstitutionally “send[s] the ancillary message to members of the audience who are nonadherents ‘that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.’ ” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-310 (2000)(quoting *Lynch v. Donnelly*). The ceremony excluded the 19% of the American population that is nonreligious.³ Not only are 1 in 5 Americans nonreligious, younger Americans are the least religious population in the country: 1 in 3 citizens aged 18-29 are not religious.⁴ Survey and census data show that almost one million Arizonans are not Christian.⁵

The religious music, bible reading, the references to angels and Jesus as “savior,” and the virgin birth of Jesus illustrate the clearly religious nature of this event. Words have meaning, whether spoken or sung, and words of this ceremony undoubtedly espoused the Christian religion. Indeed the song lyrics preclude any possibility of a mere cultural celebration. To address only one of the seven songs, *Joy to the World*’s lyrics include references to “the Lord,” our “King,” “Heaven,” “the Savior reigns,” “sins,” “He rules the world through truth and grace” and “His righteousness.” According to the opening verse of the song the world is meant to feel joy because “The Lord is come! Let earth receive her King; let every heart prepare him room...” This proclaims Jesus the King of the Earth and asks every listener to become Christian. In other words, the government stamp of approval is given to a song not only espousing Christianity, but also proselytizing for Christianity. The other lyrics are just as sectarian—if not more so—and can be found on the enclosed transcript.

The Supreme Court has stated: “The government may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day by suggesting people praise God for the birth of Jesus.” *Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 601 (1989). **The city, county, state and schools far exceeded this constitutional limitation during this ceremony.**

Secretary of State appearing in his official capacity to read from the bible

The United States Supreme Court has held that public officials may not seek to advance or promote religion. The Supreme Court has specifically stated, “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. If there are any circumstances which permit an exception, they do not now occur to us.” *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

When weighing in on religious belief, the government divides, not unites, our society. The U.S. Supreme Court has ruled: “The Framers and the citizens of their time intended to guard ... against the civic divisiveness that follows when the government weighs in on one side of religious debate; nothing does a better job of roiling society.” *McCreary County, Ky. v. American Civil Liberties Union of Ky.*, 876, 881 (2005). In fact, the “purposes of the First Amendment’s Religion Clauses [are] to assure the fullest possible scope of religious liberty and tolerance for all, to avoid the

³ The Pew Forum on Religion & Public Life, *Asian Americans: A Mosaic of Faiths*, 148 (July 2012), based on aggregated data from Pew Research Center for the People & the Press 2011 surveys.

⁴ “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).

⁵ American Religious Identification Survey 2008 percentages using US Census 2010 population statistics. In all probability this number is now higher.

religious divisiveness that promotes social conflict, and to maintain the separation of church and state.” *Van Orden v. Perry*, 545 U.S. 677, 678 (2005).

When the Arizona Secretary of State stands in front of citizens, using his official title,⁶ he is acting as a government official, not as a private citizen. When he reads from the Christian bible in his official capacity, he is endorsing the Christian religion for the government, not exercising his own religious values or beliefs. If you wish to endorse religious events and religious beliefs, you must do so in your private capacity as a citizen, not in your official capacity as the Arizona Secretary of State.

Regardless of who is narrating, it is impossible for a government ceremony to constitutionally include the reading of Christian bible verses claiming that Jesus was born of a virgin and that angels heralded this birth, even under the guise of reading “The Christmas Story.” The ceremony took place on government property in front of the County courthouse that houses the county and city courts, was an official city and county ceremony, and included local and state government dignitaries, and public schoolchildren. Every reasonable observer would believe this bore the official stamp of the government. Therefore the government must remain neutral about religion at the ceremony. No matter who is reading or singing, the ceremony may not appear—as this one so shamelessly did—to endorse Christianity over other faiths or religion over nonreligion.

Public Schoolchildren being taught and singing religious songs

The newspaper reports quoted above show that the students participating in this ceremony were taught these religious songs by public school teachers, invited to participate in the concert by those teachers, and that those teachers organized their students’ participation. Undoubtedly, the recruitment, training, and organization occurred during the school day and on the taxpayers’ dime.

It is wholly inappropriate for a public school teacher to teach songs of Christian worship in a public school setting. This music has a devotional message and would be appropriate in a church setting, but not in a public school or government ceremony. There are a multitude of secular songs that would be appropriate. While one secular song made the program, the balance of the program is Christian, and therefore unconstitutional. The songs were chosen to emphasize the bible passages read.

Teaching young and impressionable students pervasively Christian music in a public school violates the First Amendment. It is well settled that public schools may not advance or endorse religion. *See generally, Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 393 U.S. 97 (1967); *Sch. Dist. of Abington Twshp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). Courts have reviewed religious music in public schools and held that its use must comport with the Establishment Clause. *See Nurre v. Whitehead*, 580 F.3d 1087, 1097 (9th Cir. 2009). In *Nurre*, the Ninth Circuit, which also has jurisdiction over Arizona, held that barring religious music from high school graduations was constitutionally permissible.

The fact that participation in this choir may have been voluntary is irrelevant. Courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See, generally, Weisman* at 596 (“the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.”); *Schempp* at 288 (Brennan, J., concurring) (“Thus, the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question...”); *Mellen* at 372 (“...VMI cannot

⁶ Secretary Bennett was introduced as the Arizona Secretary of State and most calendars advertising the ceremony stated the Secretary of State Ken Bennett would read the Christmas Story.

avoid Establishment Clause problems by simply asserting that a cadet's attendance at supper or his or her participation in the supper prayer are 'voluntary.' ”).

Moreover, because the government sponsored the ceremony and because it used public school personnel to organize the choir, children and parents have a legitimate expectation that Mr. Kiesling will teach their children secular songs. If the teachers and choir director wish to repeat this performance next year they must do so with secular songs, including the sole secular tune the children sang at the ceremony, *Jingle Bells*. There are plenty that celebrate the season:

- *Deck the Halls*
- *White Christmas*
- *Let it Snow*
- *Rockin' Around the Christmas Tree*
- *Most Wonderful Time of the Year*
- *Frosty the Snowman*
- *It's Beginning To Look A Lot Like Christmas*
- *Silver Bells*
- *Winter Wonderland*
- *Rudolph the Red-nosed reindeer*
- *Santa Claus is coming to town*
- *All I want for Christmas*
- *Have yourself a Merry little Christmas*
- *Christmas (Baby Please Come Home)*
- *I'll be Home for Christmas*
- *The Twelve Days of Christmas*

This ceremony flouted the First Amendment requirement that state and church remain separate. The public schools, city, county, and state all clearly endorsed the central tenets of Christianity: that Jesus was born of a virgin and that he is humanity's "savior."

When striking down a nativity in a County Courthouse as a violation of the Establishment Clause, the Supreme Court noted that its religious meaning was "unmistakably clear. 'Glory to God in the Highest!' says the angel in the crèche—Glory to God because of the birth of Jesus. This praise to God in Christian terms is indisputably religious—indeed sectarian—just as it is when said in the Gospel or in a church service." *Allegheny* at 598. The Court could have been writing about the Prescott ceremony. Not only did our local member remark that the ceremony "was like going to church" but the children sang the very phrase "Glory to God in the Highest," during *Gloria in excelsis Deo*, the Latin translation of that phrase. The religious meaning of this ceremony was "unmistakably clear" to all viewers; it praised God in indisputably Christian terms.

Any future courthouse lighting ceremony must adhere to the constitution requirement that, "The government may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day by suggesting people praise God for the birth of Jesus." *Id.* at 601. Public schoolchildren cannot be taught and asked to sing explicitly and almost exclusively religious songs as part of the school curriculum or events or for an official government ceremony. The city, county, and state cannot endorse the belief that Jesus was born of a virgin to be our savior. In the future, this ceremony should not include bible readings and Christian hymns. Stick to secular songs and symbols like the tree lighting, Santa, and reindeer. May we hear from you, in writing, at your earliest convenience?

Sincerely,



Andrew L. Seidel
Staff Attorney
enclosure

Prescott Courthouse Lighting Ceremony Transcript 12/1/12

The following ceremony took place in Prescott, Arizona, on December 1, 2012. Video is available at http://www.youtube.com/watch?v=nJ6fDGV_fJ0. The ceremony was held in front of the Yavapai County Courthouse, in Courthouse Square (public property). This building houses both city and county courts.

DAVID MAURER, CEO of the Prescott Chamber of Commerce: “On behalf of the City of Prescott and Yavapai County, we are proud to welcome you to the 58th annual courthouse lighting in Arizona’s Christmas City, Prescott. [Thanks sponsors.] Our Christmas story tonight is presented by the Prescott Area School Players under the direction of Mr. Matt Kiesling. Our narrator, for the 20th consecutive year, now Arizona Secretary of State, Mr. Ken Bennett.”

Schoolchildren sing verses from *Oh Come all Ye Faithful*, Hymn #41 in the Lutheran Hymnal. The lyrics are:

Oh, come, all ye faithful,
Joyful and triumphant!
Oh, come ye, oh, come ye to Bethlehem;
Come and behold him
Born the king of angels:

Oh, come, let us adore him,
Oh, come, let us adore him,
Oh, come, let us adore him,

Christ the Lord.
Highest, most holy,
Light of light eternal,
Born of a virgin,
A mortal he comes;
Son of the Father
Now in flesh appearing!

Oh, come, let us adore him,
Oh, come, let us adore him,
Oh, come, let us adore him,

Christ the Lord.
Sing, choirs of angels,
Sing in exultation,
Sing, all ye citizens of heaven above!
Glory to God
In the highest:

Oh, come, let us adore him,
Oh, come, let us adore him,
Oh, come, let us adore him,
Christ the Lord.

Yea, Lord, we greet thee,
Born this happy morning;
Jesus, to thee be glory given!
Word of the Father,
Now in flesh appearing!

Oh, come, let us adore him,
Oh, come, let us adore him,
Oh, come, let us adore him,
Christ the Lord.

KEN BENNETT: “and it came to pass in those days, that the angel Gabriel was sent from God to a city in Galilee named Nazareth. He came to a virgin named Mary who was betrothed to Joseph of the house of David. And appearing to her the angel said, ‘the Lord is with you, blessed are you among women.’ Mary was troubled at the sight of him and by his words, and the angel said to her ‘do not fear Mary for you have found favor with God. Behold you shall conceive and bring forth a son and you shall call him Jesus.” [Quoting from Luke 1:26-31]

Schoolchildren sing verses from Gloria in excelsis Deo (*Angels we have heard on high*), the Latin title translates to "Glory to God in the highest." The lyrics are:

Angels we have heard on high
Sweetly singing o'er the plains,
And the mountains in reply
Echoing their joyous strains.

Gloria, in excelsis Deo!
Gloria, in excelsis Deo!

Shepherds, why this jubilee?
Why your joyous strains prolong?
What the gladsome tidings be
Which inspire your heav'nly song?

Gloria, in excelsis Deo!
Gloria, in excelsis Deo!

Come to Bethlehem and see
Christ Whose birth the angels sing;
Come, adore on bended knee,
Christ the Lord, the newborn King.

Gloria, in excelsis Deo!
Gloria, in excelsis Deo!

See Him in a manger laid,
Whom the choirs of angels praise;
Mary, Joseph, lend your aid,
While our hearts in love we raise.

Gloria, in excelsis Deo!
Gloria, in excelsis Deo!

KEN BENNETT: "and the decree for a census went out from Caesar Augustus, that all the world should be registered. And all went to be enrolled, each to the city of his birth. And Joseph also went up from Galilee, out of the city of Nazareth to Judea and into Bethlehem the city of David." [Quoting from Luke 2:1-3]

Schoolchildren sing verses from *Little Town of Bethlehem*. The lyrics are:

O little town of Bethlehem
How still we see thee lie
Above thy deep and dreamless sleep
The silent stars go by
Yet in thy dark streets shineth
The everlasting Light
The hopes and fears of all the years
Are met in thee tonight

For Christ is born of Mary
And gathered all above
While mortals sleep, the angels keep
Their watch of wondering love
O morning stars together
Proclaim the holy birth
And praises sing to God the King
And Peace to men on earth

How silently, how silently
The wondrous gift is given!
So God imparts to human hearts
The blessings of His heaven.
No ear may hear His coming,
But in this world of sin,
Where meek souls will receive him still,
The dear Christ enters in.

O holy Child of Bethlehem
Descend to us, we pray
Cast out our sin and enter in
Be born to us today
We hear the Christmas angels
The great glad tidings tell
O come to us, abide with us
Our Lord Emmanuel

KEN BENNETT: “And Joseph took Mary with him, she being at that time great with child. While they were there, the days for her to give birth were fulfilled and she bore her first-born son and wrapped him in a swaddling cloth and she laid him in a manger for there was no room for them in the inn.” [Quoting from Luke 2:4-7]

Schoolchildren sing verses from *Away in a Manger*. The lyrics are:

Away in a manger,
No crib for His bed,
The little Lord Jesus
Laid down His sweet head;
The stars in the heavens
Looked down where He lay,
The little Lord Jesus
Asleep on the hay.

Be near me, Lord Jesus;
I ask Thee to stay
Close by me forever
And love me I pray!
Bless all the dear children
In Thy tender care,
And fit us for Heaven
To live with Thee there.

The cattle are lowing,
The poor Baby wakes,
But little Lord Jesus,
No crying He makes.
I love Thee, Lord Jesus;
Look down from the sky
And stay by my cradle
Till morning is nigh.

Away in a manger,
No crib for His bed,
The little Lord Jesus
Laid down His sweet head;
The stars in the heavens
Looked down where He lay,
The little Lord Jesus
Asleep on the hay

KEN BENNETT: “and behold the angel of the lord stood among them and the Lord’s glory shone around them and they feared greatly but the angle said to them, ‘fear not for behold, I bring you good tidings of great joy which shall be to all people, for today in the city of David a savior was born to you. You shall find the babe wrapped in a swaddling cloth lying in a manger.” [Quoting from Luke 2:9-12]

Schoolchildren sing verses from *Silent Night, Holy Night*. The lyrics are:

Silent night! Holy night!
All is calm all is bright
Round yon virgin mother and child
Holy infant so tender and mild
Sleep in heavenly peace!
Sleep in heavenly peace!

Silent night! Holy night!
Shepherds quake at the sight
Glories stream from heaven afar

Heavenly hosts sing
Hallelujah Christ the Saviour is born!
Christ the Saviour is born!

Silent night! Holy night!
Son of God love’s pure light
Radiant beams from thy holy face
With the dawn of redeeming grace,
Jesus, Lord at thy birth,
Jesus, Lord at thy birth.

KEN BENNETT: “and in that same country there were shepherds lying in the fields and keeping watch over their flocks at night.” [Quoting from Luke 2:8]

Schoolchildren sing verses from *The First Noel*. The lyrics are:

The first Noel,
The Angels did say
Was to certain poor shepherds
In fields as they lay

In fields where they lay
Keeping their sheep
On a cold winter's night
That was so deep.

Noel, Noel, Noel, Noel
Born is the King of Israel!

They looked up and saw a star
Shining in the East beyond them far
And to the earth it gave great light
And so it continued both day and night.

Noel, Noel, Noel, Noel
Born is the King of Israel!

And by the light of that same star
Three Wise men came from country far
To seek for a King was their intent
And to follow the star wherever it went.

Noel, Noel, Noel, Noel
Born is the King of Israel!

This star drew nigh to the northwest
O'er Bethlehem it took its rest
And there it did both Pause and stay
Right o'er the place where Jesus lay.

Noel, Noel, Noel, Noel
Born is the King of Israel!

Then entered in those Wise men three
Full reverently upon their knee
And offered there in His presence
Their gold and myrrh and frankincense.

Noel, Noel, Noel, Noel
Born is the King of Israel!

Then let us all with one accord
Sing praises to our heavenly Lord
That hath made Heaven and earth of nought
And with his blood mankind has bought.

Noel, Noel, Noel, Noel
Born is the King of Israel

KEN BENNETT: "Suddenly there was with the angel a multitude of the heavenly host praising God, and saying, Glory to God in the highest, peace on earth and good will toward men." The tree lights went on at the conclusion of that quote. [Quoting from Luke 2:13-14]

Schoolchildren sing verses from *Joy to the World*. The lyrics are:

Joy to the World, the Lord is come!
Let earth receive her King;
Let every heart prepare Him room,
And Heaven and nature sing,
And Heaven and nature sing,
And Heaven, and Heaven, and nature sing.

Joy to the World, the Savior reigns!
Let men their songs employ;
While fields and floods, rocks, hills and plains
Repeat the sounding joy,
Repeat the sounding joy,
Repeat, repeat, the sounding joy.

No more let sins and sorrows grow,
Nor thorns infest the ground;
He comes to make His blessings flow
Far as the curse is found,
Far as the curse is found,
Far as, far as, the curse is found.

He rules the world with truth and grace,
And makes the nations prove
The glories of His righteousness,
And wonders of His love,
And wonders of His love,

And wonders, wonders, of His love.

KEN BENNETT: “And so the joyful story has once again been told. May god grant that its promise of peace and of goodwill among men will become a reality. Merry Christmas to all of you. Many of us have fond memories of Christmas caroling with friends. Let’s join together now, as in days gone by, and sing a verse of one of our favorite carols, Jingle Bells.”

[Jingle Bells sung by entire crowd]

DAVID MAURER: “Thank you secretary Bennett. Thank you all very much. Merry Christmas to you, drive safely.”