

FREEDOM FROM RELIGION *foundation*

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March 29, 2019

SENT VIA U.S. MAIL AND EMAIL: David.Ralston@house.ga.gov

The Honorable David Ralston
Speaker of the Georgia House of Representatives
332 State Capitol
Atlanta, GA 30334

Re: Unconstitutional sermon and invocation in House proceedings

Dear Speaker Ralston:

I am writing on behalf of the Freedom From Religion Foundation to object to a recent invocation and to seek assurances that the House will take immediate corrective measures. FFRF is a national nonprofit with over 31,000 members across the country, including more than 500 members and a chapter in Georgia. FFRF's protects the constitutional separation between state and church, and educates the public on matters relating to nontheism.

We understand that Rep. Trey Kelley invited his father, Doyle Kelley, to be “chaplain of the day” on March 26, 2019. Several concerned citizens reported Kelley’s remarks to us—which we have viewed—and we write because the House must take corrective action.

The elder Kelley spoke for nearly twelve minutes.¹ First, he delivered a ten-minute long sermon that discussed how people who do not adhere to his particular brand of religion will be tortured in hell for eternity. “[T]here’s 70 percent of the people in the state of Georgia that are lost. That are lost. 70 percent. There’s over ten million people in the state of Georgia. That means there’s seven million people lost. And you want to hear it in Baptist terms? Seven million people that are lost are dying and on their way to Hell.”

He also read from the bible, Colossians 3, instructed the legislators that all they do, they should do “in the name of the Lord Jesus,” and sermonized on the verses he read. He instructed legislators to stand and sit down. He told the legislators that “a person can only experience true peace as they come to know Jesus Christ as their Lord and Savior. If you don’t have peace in this room today it may be because you don’t know Jesus Christ as your Lord and Savior. . . . Only Jesus can bring real peace to the human heart.” He moved to Philippians 4. Kelley even said “that’s what’s wrong with the church and most Christians today, we don’t have enough of the word of Christ dwelling in our heart.” He went as far as to solicit a few “amens” from the audience.

In short, this was a sermon straight out of a church service, something Kelley admitted during his remarks. Then, only after that my-god-is-the-right-god sermon, did Kelley begin his invocation. But he stuck to his proselytizing, disparaging, and damnation-threatening theme. He instructed legislators to “look to” his god, not to fellow humans. He told

¹ Available at youtu.be/COd-1V0vnX0. The sermon lasted from 23:40–33:25. The invocation lasted from 33:25–35:31.

legislators that they needed to “do everything to bring honor and glory to you[, God.]” He tied the prayer back to his sermon, revisiting the threat of hell: “I thank you once again for your son, Jesus Christ, for the one who died on the cross for my sins and for the sins of the people in this room, because of our belief in him we can have everlasting life. God, I’ve heard the saying, ‘Eternity is too long to be wrong.’ So God, let us be right about where we are going to spend eternity. And it’s in Jesus name I pray. And all God’s people this morning said, AMEN!” Finally, he led the House in the Pledge of Allegiance.

There are at least two significant problems here. First, the House dais cannot be used as a pulpit. This sermon was absolutely unconstitutional. Second, while legislative invocations have been upheld by the Supreme Court, those invocations are not a blank check, but strictly limited. They cannot be proselytizing or disparaging, nor does the permission for an invocation equate to a permission to deliver a sermon. This invocation, which referenced the sermon it directly proceeded, flatly violated this narrow rule.

The sermon was unconstitutional.

The Supreme Court has said time and again that the First Amendment “mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cty., 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. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15–16 (1947). The government must remain neutral toward religion because “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).

Put another way, “The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief.” *Cty. of Allegheny v. Am. Civil Liberties Union, Greater Pittsburgh Ch.*, 492 U.S. 573, 593–94 (1989). Turning over the full power and imprimatur of the Georgia House to Kelley to promote his personal religion violated this clear command. That Kelley’s message centered on converting people to his particular brand of Christianity and threatening them with an eternity of torture otherwise, only exacerbates the impropriety and the violation.

While the Supreme Court has permitted legislative invocations, it has not permitted legislative sermons—nor has any other court. And if even the legislative prayer exception to the First Amendment applied to the sermon and the prayer, in this instance both violated the limits placed on that exception.

The invocation was also unconstitutional.

The U.S. Supreme Court addressed legislative prayer in *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014). *Galloway* only allowed invocations so long as the practice “is not ‘exploited to proselytize or advance any one, or to disparage any other, faith or belief.’” *Id.* at 1823 (citing *Marsh v. Chambers*, 463 U.S. 783, 794–95 (1983)). The Court indicated that it would have been a different case had the prayers been like Kelley’s, that is, had it been a case where “the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion.” *Id.*

Kelley’s sermon and his invocation (1) denigrated and threatened those who were not of his religion; (2) threatened damnation for those, and (3) preached conversion. In other words,

his was *precisely* the kind of prayer the Court was worried about. This invocation removes the practice from the *Greece* exception and violates the Establishment Clause.

There is a simpler solution: stop organized prayer.

Rather than imposing specific rules about the content of legislative prayers, the House should discontinue the prayers altogether. They are unnecessary. Nothing would stop any individual member from praying to him- or herself when and if they saw fit. We suspect the organized prayers exist, not because legislators truly want to pray, but because they want to *be seen* to be praying. That is, they want to appear pious for political reasons. This treats religion as a tool of political manipulation and is, in James Madison’s words, “an unhallowed perversion of the means of salvation.”²

It also happens to be unbiblical and against the words of the very savior Kelley claims to follow. In his Sermon on the Mount, Jesus condemned public prayers as hypocrisy: “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.” Matthew 6:5–6.

If the House continues to host invocations in spite of their unbiblical and unnecessary nature, you must ensure in the future that:

1. The chaplain of the day does not deliver sermons, only invocations. Any sermon should be immediately cut off and the chaplain escorted out and never invited back.
2. The invocations are not proselytizing, disparaging to other beliefs or to nonreligion, or “threaten damnation.” Chaplains that do so should be cut off, escorted out, and never invited back.
3. The invocations are limited in time; twelve minutes is a colossal waste of taxpayer time and money. We suggest 90 seconds as a limit for chaplains to shoot for. Chaplains who flout this rule should be cut off, escorted out, and never invited back.
4. To avoid the conflation of religiosity with patriotism, the chaplain should not lead the House in Pledge of Allegiance.

Of course, enforcing these rules may appear distasteful in the future—you won’t want to usher someone off the dais. But that is the danger of injecting religion into the proceedings of government. This also shows that it is far better to do away with the prayers altogether.

I look forward to your written assurances that you are taking appropriate corrective action. Thank you for your time and attention to this matter.

Sincerely,



Andrew L. Seidel
Director of Strategic Response
Constitutional Attorney

² Memorial and Remonstrance against Religious Assessments, 20 June 1785.