

FREEDOM FROM RELIGION *foundation*

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March 18, 2019

**SENT VIA FAX AND U.S. MAIL:
(202)647-1579**

The Honorable Mike Pompeo
Secretary of State
U.S. Department of State
2201 C St., NW
Washington, DC 20520

Re: Unconstitutional exclusion of nonreligious media from State Dept. call

Dear Secretary Pompeo:

I am writing on behalf of the Freedom From Religion Foundation to alert you to a constitutional violation that took place earlier today. FFRF is a nationwide nonprofit organization with more than 31,000 members. FFRF's purposes are to protect the constitutional principle of separation between state and church, and to educate the public about matters related to nontheism.

Earlier today, a member of the State Department press corps reported that the State Department limited a special informational call to "faith-based media," excluding all other members of the media.¹

This official exclusion of nonreligious media from an informational State Department call violates both the Establishment Clause and the Freedom of the Press guarantee of the First Amendment to the U.S. Constitution. We request written assurances that future State Department media calls and events will not exclude nonreligious media or otherwise favor religion over nonreligion.

First, it is a fundamental principle of Establishment Clause jurisprudence that the government may not promote, advance, or otherwise endorse religion. It may neither promote one religion over another, nor religion over nonreligion. Holding government-sponsored calls or events that are open only

¹ Michelle Kosinski, Twitter (Mar. 18, 2019) ("The State Dept is holding a special informational call today. But the State Dept press corps wasn't invited. Being told it's for 'faith-based media only'...").

to “faith-based” groups or individuals violates this principle. Communicating exclusively with “faith-based media” sends an unmistakable message that religious media contacts are preferred by the State Department over their secular counterparts. This favoritism endorses religion over nonreligion and openly excludes nonreligious Americans based on their religious status.

The nonreligious is the fastest-growing segment of the U.S. population by religious identification, now making up 24% of Americans, and 38% of younger Americans.² Turning an event which should be secular into an event for religious eyes only “sends the ancillary message to . . . 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, 309–10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)).

Second, denying access to nonreligious media sources violates the Free Press guarantee of the First Amendment. When the government holds an informational call that is generally available to the press, it may not discriminate against certain media outlets based on their viewpoint or their lack of religious affiliation. *See, e.g., Nation Magazine v. U.S. Dep’t of Def.*, 762 F. Supp. 1558, 1573 (S.D.N.Y. 1991) (“Regardless of whether the government is constitutionally required to open the battlefield to the press . . . once it does so it is bound to do so in a non-discriminatory manner.”).

Holding an informational media call that is open only to members of the media with your preferred religious viewpoint is anathema to your constitutional obligation to treat all Americans equally regardless of their religious affiliation. In addition, media that are not “faith-based” have a right to be included in media calls or events that are open to their religious counterparts. Please reply in writing with assurances that all future State Department media calls or events will not discriminate against nonreligious media or otherwise favor religion over nonreligion.

Sincerely,



Ryan D. Jayne
Staff Attorney

² Robert P. Jones & Daniel Cox, *America’s Changing Religious Identity*, Public Religion Research Institute (Sept. 6, 2017), available at www.prrri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.