

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**KAY STALEY; SCOTT WEITZENHOFFER;
WILFRED LYON; STACIE GONZALEZ;
KRISTIN AMES; and FREEDOM FROM RELIGION
FOUNDATION, INC.,**

Plaintiffs,

v.

Case No: _____

TEXAS GOVERNOR RICK PERRY,

Defendant.

PLAINTIFFS' ORIGINAL COMPLAINT

1. The plaintiffs seek a declaration that Texas Governor Rick Perry's initiation, organization, promotion and participation as governor in a prayer rally at Reliant Stadium in Houston, Texas, scheduled for August 6, 2011, in collaboration with the American Family Association, violates the Establishment Clause of the First Amendment to the United States Constitution. The plaintiffs also request the court to enjoin said further actions and to order appropriate corrective measures.

2. This court has federal question jurisdiction pursuant to 28 U.S.C. §1331.

3. Venue is appropriate in the District Court for the Southern District of Texas-Houston Division, pursuant to 28 U.S.C. §1391(e).

4. The plaintiff, Freedom From Religion Foundation, Inc. ("FFRF"), is a non-profit membership organization that advocates for the separation of state and church and educates on matters of non-theism.

5. FFRF has approximately 16,667 members, including members in every state of the United States, and more than 700 members in Texas, who are opposed to governmental establishment and endorsement of religion in violation of the Establishment Clause of the First Amendment to the United States Constitution.

6. FFRF's purposes are to promote the fundamental constitutional principle of separation of church and state and to educate on matters relating to non-theism.

7. FFRF supports the private freedom of religion guaranteed to all citizens, but FFRF is opposed to state sponsorship and promotion of religion, which is prohibited by the Establishment Clause of the First Amendment.

8. FFRF is a non-profit organization that competes ideologically with churches and religious organizations, such as the American Family Association, an organization that advocates and promotes a rabid evangelical Christian agenda that is hostile to non-believers, non-Christians, and other protected groups, including gays and lesbians.

9. The individual plaintiffs, including Kay Staley, Scott Weitzenhoffer, Wilfred Lyon, Stacie Gonzalez and Kristin Ames, are all adult individuals residing in the metropolitan area of Houston, Texas, in Harris County, and they are all members of FFRF.

10. The individual plaintiffs are non-believers who support the free exercise of religion, but who strongly oppose the governmental establishment and endorsement of religion, including prayer and fasting, which are not only an ineffectual use of time and government resources, but which can be harmful or counterproductive as a substitute for reasoned action.

11. The individual plaintiffs have each been exposed to promotions of the Christian prayer rally to be held on August 6, 2011, initiated and advocated by Governor Perry, including

through wide and extensive media coverage; as non-believers, the individual plaintiffs are excluded from intended attendance at the Governor's event.

12. Governor Perry has declared August 6, 2011, as an official Day of Prayer and Fasting, a day on which all citizens are expressly encouraged by Governor Perry to pray to Jesus Christ; the Day of Prayer and Fasting has been declared by the Governor to coincide with the prayer rally. (See Exhibit A.)

13. The prayer rally organized by Governor Perry at Reliant Stadium is intended for believers of the Christian faith and persons who are open to conversion; the prayer rally, more particularly, is intended for evangelical Christians.

14. The defendant, Governor Rick Perry, is the Governor of the State of Texas and he is sued on the basis of actions that he has taken and is imminently going to take as Governor, including the issuance of an official proclamation that bears the State Seal of the State of Texas and public appeals to participate in the August 6 prayer rally.

15. The plaintiffs do not seek compensatory damages from Governor Perry, but they do seek equitable and injunctive relief, including an injunction prohibiting Governor Perry's further involvement in the scheduled prayer rally at Reliant Stadium on August 6, 2011, as well as an injunction against future uses of official indicia of the State of Texas in proclaiming and promoting the establishment of religion; the plaintiffs also seek appropriate corrective measures.

16. The prayer rally initiated by Governor Perry for August 6, 2011, was preceded by an official proclamation from the Governor declaring August 6, 2011, as an Official Day of Prayer and Fasting for Our Nation.

17. Governor Perry's Official Proclamation includes the following exhortation to participate in the religious practice of prayer, particularly Christian prayer:

In times of trouble, even those who have been granted power by the people, must turn to God in humility for wisdom, mercy and direction. In the spirit of the Book of Joel, Chapter 2, Verses 15-16, I urge a solemn gathering of prayer and fasting. As those verses admonish: "15 Blow the trumpet in Zion, declare a holy fast, call a sacred assembly . . . 16 Gather the people, consecrate the assembly . . ." As Jesus prayed publicly for the benefit of others in John 11:41-42, so should we express our faith in this way.

THEREFORE, I invite my fellow Texans to join me on August 6 at Reliant Stadium in Houston as we pray for unity and righteousness -- for this great State, this great nation and all mankind. I urge all Americans of faith to pray on that day for the healing of our country, the rebuilding of our communities and the restoration of enduring values as our guiding force.

18. Governor Perry concluded his Proclamation by declaring August 6, 2011, to be "a Day of Prayer and Fasting for Our Nation," and he "urged the appropriate recognition" of the Day of Prayer and Fasting by the citizens of Texas.

19. Governor Perry affixed his official signature to the Proclamation, dated May 23, 2011, "in official recognition whereof."

20. Governor Perry since has publicly and extensively promoted the prayer rally that he has initiated at Reliant Stadium, including in public letters addressed to all Texans, as well as "Fellow Americans."

21. In a public letter posed on "TheResponseUSA.com" website, bearing the State of Texas Official Seal, Governor Perry urges individuals to join "with praying people" on August 6 at Reliant Stadium. The Governor's open letter includes the following statements:

Some problems are beyond our power to solve, and according to the Book of Joel, Chapter 2, this historic hour demands a historic response. Therefore, on August 6, thousands will gather to pray for a historic breakthrough for our country and a renewed sense of moral purpose.

I sincerely hope you'll join me in Houston on August 6 and take your place in Reliant Stadium with praying people asking God's

forgiveness, wisdom and provision for our state and nation. There is hope for America. It lies in Heaven, and we will find it on our knees.

22. The letter by Governor Perry further states that "as a nation, we must come together and call upon Jesus to guide us through unprecedented struggles, and thank Him for the blessings of freedom we so richly enjoy." (See Exhibit B.)

23. The prayer rally that Governor Perry has initiated for August 6, 2011, at Reliant Stadium, is described on the Governor's website, and linked to a website set up by the American Family Association, which is collaborating with Governor Perry on the prayer rally; the official website for the prayer rally is located at "TheResponseUSA.com."

24. The official website identifies the prayer rally organized by Governor Perry as "The Response: a call to prayer for a nation in crisis." (See Exhibit C, which are true and correct copies of pages from "The Response" website.)

25. The website for The Response includes Governor Perry's open letter exhorting participation in the prayer rally by Christian believers.

26. Governor Perry is identified as the "Initiator of The Response" on the website for the event.

27. The website for The Response further describes the event as historic, and states that "as a nation, we must come together, and call upon Jesus to guide us through unprecedented struggles and thank Him for the blessings of freedom we so richly enjoy according to His grace, mercy and kindness towards us."

28. The website for The Response, linked from the Governor's website, further exhorts citizens to turn to Jesus of the Bible, as the recognized solution to the problems confronting Texas and the nation. The Response website states as follows:

Our hope is found in the One who might turn towards our nation in its time of great need -- if we, as a nation would turn to Him in repentance, prayer and fasting. The call of God to His people in times of great trouble is to gather together and call on Him with one voice, one heart, and a unified desire to see great blessing and great glory come to our nation again. The power of unified prayer from a humble gathering of the saints is found in the hope that He might answer us, and turn the tide of trouble and threats that stand against us.

29. The website for The Response, linked from the Governor's website, further describes the event as an historic and unified breakthrough in requesting the earthly intervention of the person of Christ:

On August 6 thousands will gather at Reliant Stadium in Houston, Texas, to pray for a historic breakthrough for our country and a renewed sense of moral purpose. We want the presence, power, and person of Christ to fill our nation and turn the hearts of millions to righteousness, peace and joy in Him. We want the blessing and favor of a Holy God who loves righteousness and wants to see righteousness exalt a nation in our generation. We want to see real change across our nation that only our God can perform. Will you join us in Houston? Will you pray, fast and believe with us for a mighty move of God in our nation again? There is hope for America. It lies in Heaven, and we will find it on our knees.

30. The website for The Response, linked from the Governor's website, further attempts to explain why a solemn assembly of prayer and fasting is being organized, including so that citizens might "gather together, repent of their sins, and pray to God to intervene on their behalf," as directed in the Bible, Joel Chapter 2. The website also states that in gathering together, God wants the people instructed so that they know why their nation is in peril:

God wanted the people -- from the children and nursing babes to the leaders and priests (Joel 2:16) -- to all completely understand both the nature of the crisis at hand and the only solution that would deliver them from their great crisis: God Himself. God ordained in that hour of history that prayer would serve as the only way of escape from the mounting trouble. Why? Because only God has the power to solve both the internal moral decline and the

external economic and military threats. All three were unsolvable by human means and human solutions -- but God had a solution that could be found in His great mercy.

31. The calamities referenced in Chapter 2 of Joel include: 1) locusts, 2) drought, and 3) an army from the north.

32. The Response website concludes with the hope that the Governor's prayer rally will provide divine guidance to the nation: "Who knows what can happen in our generation when we gather together to worship Jesus, fast and pray, and believe for great change in our nation?"

33. The website for The Response recites "What the Response Believes," in not uncertain terms, including:

1. We believe the Bible to be the inspired, the only infallible, authoritative word of God.
2. We believe that there is one God, eternally existent in three persons: Father, Son and Holy Spirit.
3. We believe in the deity of Lord Jesus Christ, in His virgin birth, in His sinless life, in His miracles, in His vicarious and atoning death through His shed blood, in His bodily resurrection, in His ascension to the right hand of the Father, and in His personal return in power and glory.
4. We believe that for the salvation of lost and sinful people, regeneration by the Holy Spirit is absolutely essential.
5. We believe in the present ministry of the Holy Spirit by whose indwelling the Christian is enabled to live a Godly life.
6. We believe in the resurrection of both the saved and the lost; they that are saved unto the resurrection of life and that they are lost unto the resurrection of damnation.
7. We believe in the spiritual unity of believers in our Lord Jesus Christ.

34. The website for The Response also includes a videotaped invitation from Governor Perry to join him on August 6 at Reliant Stadium, with other "praying people," turning to Jesus and asking for God's forgiveness.

35. Governor Perry's videotaped and written invitation on The Response website include indicia of the Governor's official status, including the Official Seal of the State of Texas.

36. The prayer rally organized by Governor Perry, according to its spokesman, Eric Barse, Governor Perry's former Communications Director, is intended to convey "the love, grace and warmth of Jesus Christ in that assembly hall, in that arena. And that's what we want to convey, that there's acceptance and that there's love and that there's hope if people will seek out the living Christ."

37. The Establishment Clause of the First Amendment to the United States Constitution prohibits government officials, and persons acting in joint and concerted action with government officials, from taking actions that establish religion, including actions that endorse or show preference for religion over non-religion.

38. Governor Perry's initiation of a Christian prayer rally at Reliant Stadium on August 6, 2011, is intended to and does have the effect of giving official recognition to the endorsement of religion; the event has no secular rationale; the purpose of the prayer rally is to encourage individual citizens to pray; persons who are not already Christian, moreover, will be fair game for conversion.

39. Governor Perry's actions have been deliberately made public and directed at the citizens of Texas, including the named individual plaintiffs in this case.

40. The prayer rally organized by Governor Perry has been promoted and endorsed by the Governor in his capacity as Governor and has included visible indicia of official State sponsorship, including use of the Official State Seal of Texas in promotions.

41. Prayer is an inherently and quintessentially religious activity, which is the intended point of Governor Perry's prayer rally.

42. Exhortations to pray in official proclamations, directed at all the citizens, including these plaintiffs, constitute an end in themselves, intended to promote and endorse religion.

43. The prayer rally orchestrated by Governor Perry violates the Establishment Clause of the United States Constitution by endorsing religion over non-religion, as well as by endorsing Christianity over non-Christian religions.

44. Governor Perry's organization, promotion and participation in the August 6 prayer rally violates the Establishment Clause by giving the appearance that the government prefers evangelical Christian religious beliefs over other religious beliefs and non-beliefs, including by aligning and partnering with the American Family Association, a virulent, discriminatory and evangelical Christian organization known for its intolerance.

45. The stated mission of the American Family Association is "to inform, equip, and activate individuals to strengthen the moral foundations of American culture, and give aid to the church here and abroad in its task of fulfilling the Great Commission."

46. The American Family Association "believes that God has communicated absolute truth to mankind, and that all people are subject to the authority of God's Word at all times. AFA believes that a culture based on biblical truth best serves the well-being of the nation and its families, in accordance with the alleged vision of the Nation's founding documents; and that

personal transformation through the Gospel of Jesus Christ is the greatest agent of biblical change in any culture."

47. The American Family Association describes its agenda to include:
- (1) restrain evil by exposing the works of darkness;
 - (2) promote virtue by upholding in culture that which is right, true and good according to Scripture;
 - (3) convince individuals of sin and challenge them to seek Christ's grace and forgiveness;
 - (4) motivate people to take a stand on cultural and moral issues at the local, state and national levels; and
 - (5) encourage Christians to bear witness to the love of Jesus Christ as they live their lives before the world.

48. AFA spurs activism directed to:

- Preservation of Marriage and the Family
- Decency and Morality
- Sanctity of Human Life
- Stewardship
- Media Integrity

49. AFA's stated goal is to be a champion of Christian activism: "If you are alarmed by the increasing ungodliness and depravity assaulting our nation, tired of cursing the darkness, and ready to light a bonfire, please join us. Do it for your children and grandchildren."

50. The joint action between Governor Perry and the American Family Association in organizing, promoting and conducting the prayer rally indicates to an objective observer a government preference for and endorsement of the religious dogma of the American Family Association.

51. The American Family Association espouses a very conservative evangelical Christian perspective and it has been outspokenly hostile and disdainful of non-Christian believers, non-believers, atheists, and other protected groups, including gays and lesbians.

52. Governor Perry has embraced the American Family Association's views, including by incorporating the exclusively Christian perspective of the August 6 prayer rally into

his official proclamation and promotion of the event, which event is being hosted by the American Family Association with the Governor.

53. Governor Perry's alliance with the American Family Association creates the intended impression that the American Family Association and the government are working hand-in-glove in organizing and presenting the August 6 prayer rally at Reliant Stadium.

54. The collaborative relationship between Governor Perry and the American Family Association indicates to an objective observer that the Governor prefers and endorses the religious principles of the American Family Association.

55. The evangelical mission of the American Family Association is to convey the need for all individuals to repent and accept Jesus Christ.

56. The joint and concerted action between Governor Perry and the American Family Association constitutes the establishment and endorsement of religion in violation of the Establishment Clause.

57. The prayer rally organized by Governor Perry, and promoted with official state proclamations and public exhortations for citizens to come to Reliant Stadium to pray, constitute unabashed and intentional endorsements of religion; these endorsements, moreover, are deliberately communicated to the public, the Governor's intended audience.

58. Governor Perry's actions in exhorting Texas citizens to engage in prayer create an unmistakable bond between church and state, which includes calls to others for the celebration of religion in public affairs.

59. Governor Perry, in fact, has invited the governors of all 49 other states to participate in either the prayer rally at Reliant Stadium, or in prayer celebrations in other locations in their home states.

60. Governor Perry's actions, including by issuing official proclamations and organizing the August 6 prayer rally, convey to non-religious Texans that they would be well-advised to believe in God; welcome attendance at the Governor's prayer rally is limited to persons of Christian persuasion.

61. Governor Perry's actions reflect endorsement of religion by the State of Texas and send an intended message that religion is preferred over non-religion.

62. Governor Perry's actions also send a message that believers in religion are political insiders -- and non-believers are political outsiders.

63. The individual plaintiffs in this case have been exposed to Governor Perry's message of endorsement, and they feel as if they are political outsiders by virtue of their status as non-believers.

64. Governor Perry has initiated and promoted an event that is exclusionary of persons of non-belief in God, including the individual plaintiffs.

65. The prayer rally organized and promoted by Governor Perry is discriminatory in its intended exclusion of non-believers and non-Christians.

66. The August 6 prayer rally organized by Governor Perry, in fact, reveals that persons and organizations of religious faith really are insiders, and such insiders do selectively receive the advantages and preferences of government endorsement.

67. The American Family Association, in particular, has received the preferential treatment of Governor Perry, including by receiving exclusive rights to openly and notoriously collaborate with the Governor by officiating his prayer rally.

68. Governor Perry has singled out the American Family Association to benefit in its missionary efforts through the prestige and endorsement of Governor Perry.

69. Governor Perry, in exchange for the preferences extended to the American Family Association, is receiving the benefit of goods and services from the American Family Association, which is paying the costs associated with the prayer rally at Reliant Stadium.

70. Governor Perry is using his Office as Governor of Texas to receive for his benefit the financial underwriting of the American Family Association.

71. The support from the American Family Association, by underwriting the August 6 prayer rally, allows the Governor to reflect in the limelight of American Family Association's overt Christianity and disdain for other groups, including non-believers and non-Christians.

72. Governor Perry, by his preferential endorsement of the American Family Association, conveys a message of support, using his official status as Governor for the endorsement of religion.

73. Governor Perry's preferential treatment of the American Family Association has the effect of discriminating against the plaintiff FFRF, which competes with the American Family Association through its advocacy and education regarding matters of non-theism.

74. FFRF has been refused by at least one major billboard company the opportunity to even purchase advertising space near Reliant Stadium prior to the August 6 prayer rally in order to avoid competition with the American Family Association/Governor Perry rally.

75. Governor Perry, by preferentially associating with the American Family Association, in promoting and hosting the August 6 prayer rally, has discriminated against organizations such as FFRF, and in favor of groups like the American Family Association, on the defining basis of religious belief.

76. The preferences given to the American Family Association, including exclusive rights to host the August 6 prayer rally with the public endorsement of the Governor, constitute favors derived from insider status that are based upon religious identification.

77. Governor Perry's actions in organizing and promoting the August 6 prayer rally at Reliant Stadium are intended to be public and to be known by all Texas citizens, including knowledge of the Governor's official proclamation of a Day of Prayer and Fasting and public invitation to participate in public prayer exercises; Governor Perry's pronouncements constitute official government speech, projected to citizens throughout Texas, including via the internet, official press releases, and anticipated and foreseeable media coverage; the Governor's message is intended to be reported and it has been reported in public media exposed to citizens everywhere through newspaper and television coverage.

78. Governor Perry's actions are intended to be, and they are perceived by citizens, including the plaintiffs, as exhortations to engage in prayer or to be excluded.

79. The exclusive prayer rally by Governor Perry has been widely covered by the media and it is recognized as an extraordinary promotion of religion by a government official; the prayer rally also has become highly divisive. (See Exhibit D, which are true and correct copies of media coverage relating to the prayer rally.)

80. The Houston Clergy Council, in fact, has issued a statement condemning Perry's proclamation of prayer and fasting, noting the American Family Association's anti-gay and anti-Muslim record, and saying, "We ask that Rick Perry leave the ministry to us and refocus his energy on the work of governing our state."

81. Governor Perry's actions encourage the religious exercise of prayer, and they create a hostile environment for non-believers, who are made to feel as if they are political outsiders.

82. The individual plaintiffs in this lawsuit, and other members of FFRF, have been and are being subjected to Governor Perry's unwanted proclamations and invitations to pray; by contrast, they are excluded from the Governor's rally because they are not personally open to the preferred Christian perspective.

83. The individual plaintiffs have been exposed to the Governor's actions through media reporting and on the internet.

84. The individual plaintiffs are active, involved and informed citizens who are interested in and affected by the actions of government officials, including the actions of Governor Perry.

85. The individual plaintiffs have a right to know, and they do know, that Governor Perry has officially proclaimed August 6 as a day of prayer and has invited believers to join him at an exclusive prayer rally at Reliant Stadium.

86. The individual plaintiffs are differentially affected by Governor Perry's actions because they are non-believers, in contrast to Christian believers who are identified as political insiders and invited to the Governor's exclusive prayer rally.

87. Non-believers, including atheists, constitute a protected group under the laws of the United States, including the Establishment Clause.

88. The individual plaintiffs are differentially affected by Governor Perry's actions because of their status, and they experience injury resulting from their outsider status and exclusion from events officially-sanctioned and sponsored by the Governor, including because

they do not believe that "only God can solve our problems," or that "the answer is on our knees," and they do not otherwise subscribe to the AFA's narrow sectarian Christian mission.

89. Governor Perry's endorsement and promotion of a particularly fundamentalist Protestant version of Christian beliefs, as espoused by the American Family Association, diminishes the political status of non-believers, and others who do not subscribe to the AFA mission.

90. Governor Perry's discriminatory and preferential favoritism of the American Family Association, on the basis of its religious message, also adversely affects the organizational interests of FFRF.

91. The Governor's actions give official state support to the endorsement of religion by government, acting in the public realm.

92. Governor Perry's preference for religion, and more particularly for the religious message of the American Family Association, adversely affects the ability of FFRF to carry out its organizational mission, including because such proclamations and designation of public days of prayer give formal institutional and governmental recognition to the establishment of religion.

93. The ability of FFRF to carry out its organizational purpose to keep separate church and state is adversely affected by Governor Perry's actions, including because they precipitate and give official sanction to the American Family Association.

94. The preferential advantages provided by Governor Perry to the American Family Association are not available to FFRF, which is thereby placed at a disadvantage compared to organizations receiving such preferential endorsement.

95. Governor Perry's actions, including his use of the Official State Seal, and his initiation and promotion of a major prayer rally under his official imprimatur, violate the

fundamental principle of the separation of church and state, including by actively and intentionally endorsing religion.

96. The Establishment Clause is intended to prevent the exchange of governmental prestige and endorsement for sectarian support.

97. The Establishment Clause contemplates that religious believers place their faith in the soundness of their own message, rather than relying on the prestige and support of government to spread their word.

98. Exchanging government endorsements for the marshalling of religious support is a volatile mix prohibited by the Establishment Clause.

99. Governor Perry's actions here have been and are being taken in his capacity as Governor of the State of Texas and under color of law.

100. Governor Perry's actions violate the provisions of the United States Constitution prohibiting the establishment and endorsement of religion and his actions also violate §1983 of Title 42 of the United States Code.

101. The actions of the American Family Association, in collaboration with Governor Perry, by underwriting Governor Perry's prayer rally in exchange for his promotion of religion, constitute a concerted and collaborative entanglement of religion and government, enabling Governor Perry to accomplish prominent and notorious violations of the Establishment Clause.

WHEREFORE, the plaintiffs demand judgment as follows:

A. Declaring that Governor Perry's organization, promotion and participation in the August 6 prayer rally at Reliant Stadium is unconstitutional and enjoining his further involvement and ordering appropriate corrective action;

B. Declaring that Governor Perry's official proclamation of a Day of Prayer and Fasting on August 6 violates the Establishment Clause and enjoining further publication of the Governor's Proclamation;

C. Declaring that Governor Perry's promotion of the August 6 prayer rally, including with the use of the official state Seal of Texas, violates the Establishment Clause and enjoining the Governor therefrom;

D. Ordering Governor Perry to withdraw his permission for the American Family Association to use his written and videotaped promotions of the August 6 prayer rally, including on "TheResponseUSA.com" website, and further ordering Governor Perry to discontinue the Governor's link to "TheResponseUSA" website;

E. Declaring that the actions of Governor Perry violate 42 U.S.C. §1983;

F. Enjoining Governor Perry from issuing and disseminating further Day of Prayer proclamations and making designations of official Days of Prayer;

G. Enjoining Governor Perry from initiating, organizing, promoting and participating in government-sanctioned prayer rallies;

H. Order such further relief as the court deems just and equitable; and

I. Awarding the plaintiffs their reasonable costs, disbursements and attorneys' fees, as allowed by law, pursuant to 42 U.S.C. §1988.

Dated this _____ day of July, 2011.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on July _____, 2011, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification electronically to all attorneys of record.

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