

FREEDOM FROM RELIGION *foundation*

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September 22, 2011

SENT VIA MAIL & FAX

The Honorable James Reid
Twenty-eighth Judicial Circuit Court
312 Courthouse Square, Suite 22
Bay Minette, AL 36507

The Honorable Judge Jody Bishop
Twenty-eighth District Court
312 Courthouse Square, Suite 24
Bay Minette, AL 36507

The Honorable Bayless Biles
Bay Minette Municipal Court
PO Box 1208
Bay Minette, AL 36507

Re: Flagrant Constitutional Violation Proposed by Police Chief

Dear Judges Reid, Bishop and Biles:

I am writing to you regarding an unconstitutional proposal by the Bay Minette Police Chief to permit offenders to attend church services in lieu of incarceration. The Freedom From Religion Foundation (FFRF) is a national nonprofit organization, which works to protect the constitutional principle of separation between state and church. We were contacted by a concerned local FFRF member. FFRF represents more than 17,000 members across the country, including Alabama members and an FFRF chapter, the Alabama Freethought Association.

It is our understanding that Bay Minette Police Chief Mike Rowland is working to institute a program called "Operation ROC: Restore Our Community," which would put offenders under the supervision of pastors and would require them to attend church services for one year in place of serving jail time. In a local report, a pastor working on instituting the program said it would teach "that God has a plan, God has a purpose. That they can be successful, that they possibly can become the person that God wants them to become." Police Chief Rowland said, "It's a crime intervention program." Local 15 News reported that 56 churches have agreed to take part in the program.

This proposal is an egregious violation of the First Amendment. It is a bedrock principle of constitutional law that the state cannot coerce citizens to participate in religious practices. As the Supreme Court has said, "It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or

religious faith, or tends to do so.” *Lee v. Weisman*, 505 U.S. 577, 587 (1992).

The courts have uniformly struck down less egregious violations of the rights of offenders and other citizens. See *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943)(Striking down coerced flag salute in school); *Inouye v. Kemna*, 504 F.3d 705 (9th Cir. 2007)(Parole officer violated clearly established constitutional right in coercing attendance at 12 step program); *Kerr v. Farrey*, 95 F.3d 472 (7th Cir. 1996)(Prison violated establishment clause in coercing 12 step program attendance); *Anderson v. Laird*, 466 F.2d 283,285 (D.C. Cir. 1972) (Ruling military service academies could not require attendance at religious services).

The proposal also violates the rights guaranteed in the Alabama Constitution. Art. I, § 3 of the Alabama Constitution provides:

That no religion shall be established by law; that no preference shall be given by law to any religious sect, society, denomination, or mode of worship; that no one shall be compelled by law to attend any place of worship; nor to pay any tithes, taxes, or other rate for building or repairing any place of worship, or for maintaining any minister or ministry; that no religious test shall be required as a qualification to any office or public trust under this state; and that the civil rights, privileges, and capacities of any citizen shall not be in any manner affected by his religious principles.

Chief Rowland apparently told Local 15 News that the program was legal because the church option is not “mandatory.” He is clearly wrong on the law and fails to grasp the state and federal constitutional problems. Offenders cannot be treated differently because they attend church on Sundays. It should also be obvious that attendance at religious services is not akin to community service. The false “choice” that would be given to offenders between church attendance or jail/community service is not a true choice at all. Our concerns relate only to the church attendance issue and are in no way a criticism of bona fide probation conditions or sentencing plans which permit community service or work release in lieu of jail time.

Chief Rowland’s comments indicate that he is misusing his public office in furtherance of his religious views. Even those persons in your community who have violated the law cannot be subject to violations of their right of conscience. They must always be free to choose whether or not to attend church without government interference.

We understand that appropriate sentences for criminal activity are vital concerns to the court and to society. We ask that the court address those concerns through appropriate secular programs, not through religious programming. We respectfully request notification in writing of the appropriate actions you are taking to address our concerns at your earliest convenience.

Sincerely,



Patrick C. Elliott
Staff Attorney