

FREEDOM FROM RELIGION *foundation*

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August 6, 2019

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

The Honorable Wes Cantrell
Georgia House of Representatives
401-H Coverdell Legislative Office Bldg.
18 Capitol Square SW
Atlanta, GA 30334

Dear Representative Cantrell:

I am writing on behalf of the Freedom From Religion Foundation to alert you to citizen concerns over your promotion of a government-sponsored religious event on your social media. FFRF is a nationwide nonprofit organization with more than 30,000 members throughout the country, including 500 members in Georgia. FFRF's purposes are to protect the constitutional separation between state and church, and to educate the public on matters related to nontheism.

One of your constituents contacted FFRF to report that you posted the following message on both of your Facebook pages on August 5, along with a picture of the religious proclamation that you describe:

Don't miss our worship services this Sunday, August 11 at First Baptist Woodstock. Governor Kemp has proclaimed August 10–11 as the "Weekend of Prayer Over Students and Educators." All Educators of all types are encouraged to join us as we pray specifically for God's wisdom & protection as we enter a new school year. Governor Kemp, Lieutenant Governor Duncan, State School Superintendent Richard Woods, Cherokee County School Superintendent Brian Hightower and many other elected officials will be joining us on this special day! Lets [sic] all join together and commit to pray regularly for our students & educators!

This same message appears on both your "Wes Cantrell" personal profile and the "Wes Cantrell" public Facebook page, associated with @cantrellforhouse. Both accounts post nearly identical content, including both personal updates and official government announcements. When you post on social media to promote an event based on a governor's proclamation and state that many "elected officials" will be present, you are undeniably speaking not as a private citizen, but as an elected state representative. In this capacity, you must not promote a church service or religious activity.

As a state representative, you represent a diverse population that consists of not only Christians, but also minority religious and nonreligious citizens. Religious endorsements made in your official

capacity send a message that excludes the 24 percent of American adults who identify as nonreligious, including 38 percent of millennials and younger Americans.¹ Religious endorsements coming from your office needlessly alienate the non-Christian and nonreligious residents you represent, turning them into political outsiders in their own community.

It would be entirely possible, of course, for you to send uplifting and motivational messages to your constituents without ostracizing a significant portion of those you represent. Regardless of your intent, this social media post sends the message to your minority religious and nonreligious constituents that their participation in the political process is less valued than that of their Christian counterparts.

Sticking to secular messages when speaking as a state representative is inclusive of everyone and honors our Constitution, the document you swore to uphold when you took your oath of office. It should be a matter of pride that the United States was first among nations to adopt an entirely secular constitution, in which the only references to religion are exclusionary, such as barring religious tests for public office and separating religion from government.

Our Constitution's Establishment Clause, which protects all Americans' religious freedom by ensuring the continued separation of religion and government, dictates that the government cannot in any way endorse religion. The First Amendment prohibits even the *appearance* of religious endorsement by government officials. *See, e.g., Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 787 (1995) (Souter, J., concurring) ("Effects matter to the Establishment Clause, and one, principal way that we assess them is by asking whether the practice in question creates the appearance of endorsement to the reasonable observer."); *Cty. of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 593–94 (1989) ("The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief . . ."). Promoting your personal religious beliefs or church while speaking as an elected official on Facebook violates your obligation under the Constitution as a public official.

Government officials must be particularly diligent not to entangle their personal religious beliefs with official government pronouncements made in this "modern public square." By posting official communications on your personal Facebook profile in addition to your government page, you have effectively converted your previously private profile into a second government account. You are leveraging your government position to invite constituents onto your Facebook profile, where you then promote personal religious messages, such as your church's baptisms, which are manifestly inappropriate on a government page. By mixing your government and private messages, you have created the appearance of government endorsement of your personal religious Facebook posts.

The private social media accounts of people who assume government office can become accounts that speak for the government, unless these officers carefully distinguish their public and private roles. Courts are willing to treat accounts that politicians believe to be private as official government accounts when they are used to disseminate official communications. *See, e.g., Hawaii v. Trump*, 859

¹ Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, Public Religion Research Institute (Sept. 6, 2017), available at www.prri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.

F.3d 741, 773 n. 14 (9th Cir. 2017) (noting that the President’s personal Twitter feed is composed of “official statements by the President of the United States”); *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019) (holding that chair of county supervisors acted under color of state law in maintaining “Chair Phyllis J. Randall” Facebook page); *Robinson v. Hunt Cty.*, 921 F.3d 440 (5th Cir. 2019) (finding that a county sheriff acted with final policymaking authority when he created a Sheriff’s Office Facebook page). We see no legal reason why both of your Facebook accounts would be treated differently—as stated above, you currently post identical content, personal and official government communications, to both accounts.

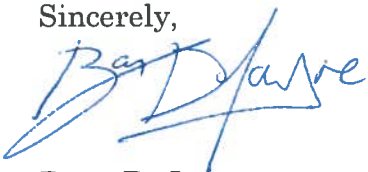
It should be noted that the governor’s proclamation itself is inappropriate and unconstitutional because it directly endorses the religious practice of prayer. Governor Kemp’s violation of the U.S. Constitution is no excuse for you to do the same. But you went further by promoting a specific church’s Sunday worship service in connection with the proclamation.

Government officials can worship, pray, or quote any religious text they wish when acting in their personal capacities. But they are not permitted to provide prestige to their personal religion by lending a government office and government title to religious ideology. Their offices and titles belong to “We the people,” not the offices’ temporary occupants. As a state representative, you are charged with great responsibility and have been given significant trust by citizens in your district, including those citizens who do not share your religious viewpoint.

The call for prayer is particularly inappropriate in the wake of two mass shootings, when “thoughts and prayers” is the stereotypical political slang for doing nothing. Instead of wasting time by praying for students and educators, and violating the U.S. Constitution in the process, we urge you to take real action to help your young constituents and their teachers.

If you wish to hold a private Facebook profile in addition to your government account, you can. But you must clearly distinguish the two and refrain from posting religious endorsements on your official Facebook page. Regardless of where it’s posted, your August 5 post remains illegal because it endorsed a religious message and a specific church’s worship service as part of a government-sponsored event and a governor’s proclamation. Please inform us in writing of the steps taken to respect the rights of conscience of all state residents, regardless of their religious or nonreligious beliefs, by refraining from promoting your personal religious beliefs on a government page.

Sincerely,

A handwritten signature in blue ink that reads "Ryan D. Jayne". The signature is stylized and cursive.

Ryan D. Jayne
Staff Attorney