

FREEDOM FROM RELIGION *foundation*

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SENT VIA U.S. MAIL AND EMAIL
info@kellyforak.com

Kelly Tshibaka
645 G St, Ste 100-561
Anchorage, AK 99501

Re: The wall of separation between state and church

Dear Ms. Tshibaka:

We are writing on behalf of the Freedom From Religion Foundation (FFRF) regarding some of your previous statements, including in legal publications. FFRF is a national nonprofit educational association with more than 35,000 members across the country, including members in Alaska. FFRF protects the constitutional separation between state and church and educates about nontheism.

During your time at Harvard Law School you wrote a number of articles that are back in the spotlight. You have written, for example, that “There is no wall of separation between church and state.” Perhaps you no longer hold this view. Maturity brings perspective and enlightenment. If, however, you still hold that position we hope you’ll consider a few facts.

Separating government and religion is a founding American principle. Without the separation of state and church, public officials can use government power and the machinery of the state to impose their religion on other citizens. Without the Establishment Clause, we could and probably would end up with a state religion. If so, which one?

As a former pastor who believes “the Holy Spirit” possesses and speaks through her in tongues, you may suppose that your particular brand of Christianity will triumph. But demographic trends suggest something different. Pentecostals make

up less than 4 percent of the American population.¹ Without a separation between state and church, the United States government or each state, for instance, could adopt its own “state religion.” Religious minorities such as Mormons, Jews, Hindus, Muslims, nonbelievers or even minority Christian sects such as Pentecostals would become outsiders, second-class citizens or even suffer persecution.

Perhaps you labor under the misapprehension that because the precise phrase “separation of state and church” does not appear in the text of the Constitution, the principle doesn’t appear there either. Not so. Our nation is founded on a godless Constitution, whose only references to religion in government are exclusionary, such as “no religious test shall ever be required” for public office. U.S. Const. art. VI. The United States was first among nations to adopt a secular constitution, investing sovereignty in “We the People,” not a divine entity. The framers of our Constitution did not find it necessary to pray during the four-month Constitutional Convention, which shows intent.

The phrase, “a wall of separation between church and state,” was coined by President Thomas Jefferson in a carefully crafted letter to the Danbury Baptists in 1802, when they had asked him to explain the meaning of the Establishment Clause of the First Amendment. The Supreme Court, and lower courts, have used Jefferson’s phrase repeatedly in major decisions upholding governmental neutrality in matters of religion. The exact words “separation of church and state” do not appear in the Constitution, but then neither do “separation of powers,” “interstate commerce,” “right to privacy,” and other phrases that represent well-established constitutional concepts and principles. (For that matter, the phrases “holy trinity” and “Christmas” don’t appear in any bible, yet are foundational to Christianity.)

Separation of state and church is a founding American principle that benefits every citizen and treats us all equally. It’s a prerequisite for the religious freedom so many Americans cherish.

Very truly,



Annie Laurie Gaylor & Dan Barker, Co-presidents

ALG/DB:als

¹ America’s Changing Religious Landscape, Pew Research Center, 145 (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.