

FREEDOM FROM RELIGION *foundation*

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September 10, 2020

SENT VIA U.S. MAIL AND EMAIL

bill@hayesoffices.com

Bill Hayes
Licking County Prosecutor
Licking County Prosecutor's Office
20 S. Second St
Newark, Ohio 43055

Re: Religious County Prosecutor's Office Chaplains Service Program

Dear Mr. Hayes:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to object to several aspects of the county Prosecutor's Office Chaplains Service Program. FFRF is a national nonprofit organization with more than 32,000 members across the country, including more than 800 members in Ohio. FFRF protects the constitutional separation between state and church, and educates about nontheism.

A concerned local resident contacted us to report that Craig Burdick, a chaplain with the Licking County Prosecutor's Office, delivered a religious invocation at the 2019 Newark Division of Police Awards on May 29, 2019. We requested public records related to this chaplaincy program, in particular a document titled Licking County Prosecutor's Office Chaplains Service Program. Several aspects of this program show that, in addition to delivering religious messages at government-sponsored events, the chaplains promote religion on behalf of the County Prosecutor's Office. In particular:

- The stated purposes of the chaplain program are to “**provide spiritual guidance and counseling** to all members of the Department, law enforcement agencies, and their families in times of need,” and to provide a “**field service ministry**,” providing “**spiritual guidance**” to the general public.¹

¹ Licking County Prosecutor's Office Chaplains Service Program, at 1 (emphasis added).

- The chaplains’ “creed” is explicitly religious in nature: “**Believing that God is the answer to man’s dilemma**, the chaplain stands **ready to bear witness** to the forgiving love and redeeming power of God to all people confronted with crisis. . . .”²
- The program openly excludes all members of the community who are not ordained clergy: “The prosecutor chaplain and all associate chaplains **must: a. Be duly ordained or licensed ministers employed in a church** or church related organization or retired from a church or church related organization.”³
- The chaplains’ “field ministry” includes assisting “Persons who are confused or emotionally upset” and “Persons who simply want or need to talk over problems,” plus the religious catch-all, “Assist police officers and the people they contact **in any other function of the ministerial profession** as requested.”⁴
- After “providing field service ministry,” chaplains are expected to “**notify the involved person’s clergyman.**”⁵ This presupposes that anyone interacting with law enforcement is religious, and is nonsensical unless the chaplains’ “field service ministry” is religious in nature.
- While on duty, chaplains are “**not only a representative of their religious community, but also the Licking County Prosecutor’s Office.**”⁶
- The program allows chaplains to follow up their government work with personal proselytizing: “The chaplains are **free to make follow-up calls at their discretion** or they may make a follow-up request to the chaplain of the day or the Chaplain Division Office. **How much a chaplain becomes involved in a case is their decision to make.**”⁷
- Notably absent from the program’s rules are any restrictions whatsoever on chaplains proselytizing, participating in or even initiating religious exercises, or otherwise using their government position to promote their personal religious beliefs on behalf of the county.⁸

² *Id.*

³ *Id.* at 2.

⁴ *Id.* at 4.

⁵ *Id.* at 5.

⁶ *Id.*

⁷ *Id.* at 6.

⁸ A slideshow presentation training chaplains on delivering death notifications included one cautionary note against imposing personal religious beliefs into a death notification.

While it is admirable for community members to volunteer to assist with death notifications and trauma counseling, it is unconstitutional for the County to insert religion into these activities by sending religious ministers of the County's chosen religious sects to carry out a "field ministry." The program's own terms highlight that the chaplains are expected to provide religious services, and the delivery of a religious invocation at the 2019 Newark Division of Police Awards confirms this in practice.

The best solution is to replace the chaplaincy program with a comparable, secular community support program that is not exclusive to clergy and explicitly *prohibits*, rather than *requires*, religious promotion on behalf of the County. This is what the Wisconsin Department of Justice recently did after we filed a lawsuit challenging their chaplaincy program.

Government chaplaincies are only constitutionally justified as an accommodation of religious belief when the government makes it difficult or impossible to seek out private ministries. For instance, it may be difficult for military service members on mission in a foreign country, or an inmate in a prison, to find a place of worship. Chaplains are meant to lighten the government-imposed "burden" on religious exercise.

It is something else entirely for the government to send select clergy to provide religious counsel when the government has not imposed any burden on religious exercise. Doing so sends the message that the government recommends adopting a particular brand of religion or turning to religion instead of secular counseling.

Often law enforcement departments insist that their chaplains do not advocate for their personal religious beliefs while acting as a chaplain, but by its own terms that is not the case with this chaplaincy. This program states that chaplains represent *both their church and the County simultaneously*. If a minister wishes to represent the County and provide a governmental service, they must do so as a government representative, not as a representative of their individual church and its particular set of religious beliefs. As a government representative, volunteers must abide by the same constitutional restrictions as any government employee.

Courts look to the Establishment Clause to determine if chaplaincies are legitimate. *See, e.g., Voswinkel v. City of Charlotte*, 495 F. Supp. 588 (W.D.N.C. 1980) (finding a police chaplain position unconstitutional). Law enforcement agencies acting in their official capacities may not proselytize or promote religion. *See Milwaukee Deputy*

Sheriff's Ass'n v. Clarke, 588 F.3d 523 (7th Cir. 2009) (ruling sheriff meetings with presentations by religious group unconstitutional). Paid or not, your chaplains are sponsored by the County. They are bound by the First Amendment like any other government employee, and your office is liable for their constitutional violations. Just as it would be inappropriate for a prosecutor to use their position to promote their personal religious beliefs, it is inappropriate for volunteer chaplains to do the same.

In 2018, FFRF filed a lawsuit challenging the constitutionality of a chaplaincy at the Wisconsin Department of Justice.⁹ In response, the DOJ replaced the religious program with a secular “Employee Support Team” (EST). The new EST program dropped its ordination requirement so that it no longer openly discriminated against atheists and other non-religious community members interested in volunteering. Further, EST volunteers are not given any religious duties. If clergy are unable to remove religion from their counseling, they are unfit to be government counselors.

We strongly urge the Licking County Prosecutor’s Office to end its chaplaincy program. The County must remove all religious endorsement in its official activities, including official-led religious invocations and ordination requirements to be a County representative.

Non-religious Americans are the fastest growing segment of the U.S. population by religious identification — 35 percent of Americans are non-Christians, and this includes the more than one in four Americans who now identify as religiously unaffiliated.¹⁰ Younger Americans are not just religiously unaffiliated, they are largely atheist or agnostic. A recent survey found that 21 percent of Americans born after 1999 are atheist or agnostic.¹¹ These nonreligious residents are directly prohibited from volunteering with the current program simply because they are not religious. If nonreligious residents require government assistance, it is unacceptable and unconstitutional for the County to send a religious minister to provide “spiritual guidance and counseling,” telling the resident that “God is the answer to man’s dilemma,” and making “follow-up calls” at the preacher’s discretion.

⁹ *Freedom From Religion Foundation, et al. v. Kaul*, 3:19-cv-00058 (W.D. Wisc., 2019). See also ffrf.org/legal/challenges/highlighted-court-successes/item/33558-ffrf-sues-over-wisconsin-s-doj-chaplaincy.

¹⁰ Pew Research Center, “In U.S., Decline of Christianity Continues at Rapid Pace,” (Oct. 17, 2019) at <https://pewrsr.ch/2VPIFS7>.

¹¹ *Atheism Doubles Among Generation Z*, The Barna Group (Jan. 24, 2018), <https://www.barna.com/research/atheism-doubles-among-generation-z/>.

Thank you for your attention to these concerns. Please provide a response in writing detailing the steps taken to remedy the problems with the County's religious chaplaincy program so that we may notify our local complainant that this issue has been resolved.

Sincerely,

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

Ryan D. Jayne
Staff Attorney