

FREEDOM FROM RELIGION *foundation*

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May 27, 2021

SENT VIA EMAIL & U.S. MAIL: mark.funderburk@umchealthsystem.com

Mark Funderburk
President/CEO
University Medical Center
602 Indiana Avenue
Lubbock, TX 79415

Re: Multiple Constitutional Violations

Dear President Funderburk:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding multiple constitutional violations occurring in the University Medical Center. FFRF is a national nonprofit organization with more than 35,000 members across the country, including more than 1,400 members in Texas. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

Unconstitutional Religious Display

Multiple concerned University Medical Center community members, including a UMC employee, have reported that the hospital displays a large religious banner on its employee parking structure. The banner says, "Gracious Lord, for all of UMC I pray Your divine protection over them, guidance within them & provision for them daily. - Reverend Wendell Davis. Firm, not fearful." Please see the enclosed photo.

We write to ask that the University Medical Center remove this religious banner from UMC property in recognition that it represents an unconstitutional endorsement of religion over nonreligion.

The Establishment Clause prohibits government sponsorship of religious messages. The Supreme Court has said time and again that the "First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion." *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Ed. of Ewing*, 330 U.S. 1, 15-16 (1947). The Court has also ruled, "The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief." *Cty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 593-94 (1989). Like the Ten Commandments posters in county buildings in *McCreary* and the crèche display on county land in *Allegheny*, this display of religious sentiment on a large banner directed towards the public on a public hospital would be viewed by a reasonable observer as an endorsement of religion, and is therefore unconstitutional.

Federal courts have upheld restrictions on the display of religious materials by government employees on government property because such restrictions exist to avoid Establishment Clause violations. The Ninth Circuit Court of Appeals has stated that the "government has a greater interest in controlling what materials are posted on its property than it does in controlling the speech of the people who work for it." *Tucker v.*

Dept. of Educ., 97 F.3d 1204, 1214 (9th Cir. 1996); *see also Berry v. Dept. of Soc. Serv.*, 447 F.3d 642, 651 (9th Cir. 2006) (“materials posted on the walls of the corridors of government offices may be interpreted as representing the views of the state”).

The University Medical Center serves all citizens regardless of belief or nonbelief. This message alienates the 24% of Americans who are non-religious.¹ We urge UMC to recognize its obligation to provide all citizens with an environment free from religious endorsement by removing this exclusionary display. Please respond in writing detailing the actions UMC has taken so that we may notify our complainants.

Unconstitutional Religious Promotion

In addition, a concerned University Medical Center community member has reported that UMC creates videos featuring chaplains that promote and endorse Christianity. For example, one video, entitled “Chaplain Larry Cothrin - Endurance” encourages patients to endure using Christian messaging:²

... God is a great God. He’s a miracle working God and He can take care of this. Jesus said, “With man this is impossible, but with God all things are possible.” Let me encourage you not to give up or to give in. God is in control.

The video ends with the official UMC logo and is posted on UMC’s Vimeo page.

By publishing overtly Christian messages, UMC violates the Establishment Clause. When a public hospital regularly promulgates religious concepts to employees and the public, it sends a message to that the government supports those ideas. UMC sponsors a religious message that is “impermissible because it sends the ancillary message to . . . nonadherents ‘that they are outsiders, not full members of the political community and an accompanying message to adherents that they are insiders, favored members of the political community.’” *Santa Fe Indep. Sch. Dist.*, 530 at 309-10 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (O’Connor, J., concurring)).

Furthermore, government chaplains may only exist as an accommodation of a patient’s religious beliefs when the government makes it difficult or impossible to seek out private ministries. Chaplains are meant to be a resource for those seeking them out for religious counsel. Publishing religious videos is not appropriate in this context. Accommodation offers no possible rationale for allowing a chaplain to promote religion via UMC’s official channels under the UMC logo.

Nor does your workplace place any religious burden on employees, so there is no need for you to provide chaplains. Chaplains’ employment, even if completely voluntary, demonstrates endorsement of religion, here Christianity, which violates the Constitution. In the case of hospitals, there is no significant government burden on free exercise. 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). Government employees 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). This puts UMC in the position of policing the actions, words, and programs of the chaplain. In our experience, government entities rarely exert the appropriate oversight of the chaplaincy, allowing chaplains to use the

¹ Robert P. Jones & Daniel Cox, *America’s Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), www.prrri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.

² <https://vimeo.com/406230900>

workplace as their church. Paid or not, chaplains are sponsored by UMC. Chaplains are bound by the First Amendment just as any other government employee is, and your office is liable for their constitutional violations. The best solution is to discontinue this government-sponsored religious chaplaincy.

Most chaplains cannot simply set aside their religion in order to assist a nonbeliever, and are often unwilling to even try to do so. Chaplains view the world and its problems through the lens of religion and a god, a view inapposite to nonbelievers. Claims that someone is “in a better place” or that a god “works in mysterious ways” may be the bedrock of religious consolation, but are meaningless and even hurtful trivialities to nonbelievers.

While patients are trying to receive care and employees are trying to work, many are forced to listen to preaching by someone who does not share their deeply held religious or nonreligious views. You can imagine how people would react if they were forced to listen to an Imam deliver a prayer to Allah. It is also bad medicine subjecting an ill, captive audience to unwanted proselytizing, adding to stress.

We ask that you discontinue UMC’s chaplaincy and cease creating and promoting religious videos. UMC should focus on providing secular care and support services to its patients and employees and leave determinations on religious support to individuals. UMC must also remove the religious banner from its parking structure. Please reply in writing outlining the steps that you are taking to address these constitutional concerns so that we may inform our complainants.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Line", with a stylized, flowing script.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

Enclosure



GRACIOUS
LORD,
FOR ALL OF UMC
I PRAY
➤ YOUR <
DIVINE
PROTECTION
OVER THEM,
GUIDANCE
WITHIN THEM &
PROVISION
FOR THEM, DAILY.
— REVEREND WENDELL DAVIS

FIRM,
NOT FEARFUL

CAAL OFFICE PLAZA II