

FREEDOM FROM RELIGION *foundation*

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November 3, 2011

SENT VIA MAIL & FAX
(334-242-4891)

The Honorable Luther Strange
Attorney General
PO Box 300152
Montgomery AL 36130-0152

Re: Unconstitutional Bay Minette "Church or Jail" Program

Dear Mr. Strange:

I am writing on behalf of the Freedom From Religion Foundation to bring to your attention overwhelming evidence that demonstrates the Bay Minette "Church or Jail" program violates the Establishment Clause of the Constitution. FFRF is a national nonprofit organization, which works to protect the constitutional principle of separation between state and church. FFRF has more than 17,000 members across the country, including Alabama members and an FFRF chapter, the Alabama Freethought Association.

We understand that the City of Bay Minette has requested a legal opinion from your office on whether its proposed sentencing program titled "Operation ROC: Restore Our Community" is constitutional. On its face, it should be obvious that giving special treatment to offenders who attend church services is coercive and unconstitutional. Our prior letter to the Bay Minette Municipal Court Judge, Judge Biles, is enclosed. We requested records to learn more about the proposal and recently received them. We wish to highlight portions of those records that confirm the program is illegal.

Unconstitutional Coercion

As a self-avowed person of faith, you surely understand that the government has no place telling citizens and criminal offenders whether and when they must attend religious services. As the courts have said, requirements to attend religious services "exceed the constitutionally permitted scope of governmental power.... Attendance at religious exercises is an activity which under the Establishment Clause a government may never compel." *Anderson v. Laird*, 466 F.2d 283, 285 (D.C. Cir. 1972).

The City admits in its own documents that Operation ROC penalizes those who do not participate in the program: "The beauty of this program is that it allows the offender to choose whether or not to go to jail and pay a fine or to attend church in lieu of such penalties." (Ex. 4 P. 5).

The program seeks to push church attendance on offenders and calls for continued government surveillance of offender participation. During a June 9, 2011 meeting, Police Chief Rowland said:

The Police Dept. has already started to position itself, we have appointed Pastor Gates, who is [a] full time Law Enforcement Officer and our full time Police Chaplin, the liaison for Operation ROC. That is going to ultimately be his primary full time job. We talked about last time how are we going to **document whether the offenders come to church or whether they don't.** What they are going to do is get the pastor to sign off on a church bulletin with the date the person attended. Of course a date will already be on the bulletin. It is always good to have someone else's signature on the bulletin. The offender will report back to Pastor Gates and he will keep a list of those that [complete] the program and we will track these people. We will see how many complete the program, if they complete it, and how many continue on and keep coming back to church and do not reoffend. (Ex. 5 P.11).¹

It appears that the idea of using a church bulletin to monitor attendance has since been replaced by using an official attendance form. (Ex. 2). Chief Rowland continued:

The oversight will be Pastor Gates. Pastor Gates will be the Probation Officer for God, you might say. He, Pastor Gates will be the one the offenders will report to. The offenders will not be calling the church to say that they are not coming to church. They will have to call Pastor Gates and let him know, if for some reason they miss. Pastor Gates will look at the history and see if this is someone who is just blowing this off or if they are really making an effort to better themselves. We will make a decision, based on that and whether or not to report that back to the court. (Ex. 5 P. 12).

Chief Rowland also said:

I think in most part that once people get educated the offenders will take the easy way and come to church. They are not going to take a chance, and I think this is important from the judges point of view, that we emphasis (sic) to the judge that if we find someone who is violating and not coming to church and they are just using that as a way to stay out of jail then the judge will be more severe on those people than he would for someone who just misses a few because they got legitimate issues. (Ex. 5. P. 12).

City records affirm again and again that the Bay Minette Police Department and the Bay Minette Municipal Court will be inappropriately used to corral offenders into church. Additionally, the records confirm that the City will continually monitor the decisions about church attendance or nonattendance in violation of the rights of conscience of those

¹ Quotations from Chief Rowland are taken from the enclosed Operation ROC meeting transcript that was provided to FFRF by the City.

in the system. Should offenders wish to stop attending religious services, they would be punished. The police power of a local government may not be used to coerce citizens to go to church, much less to monitor their church attendance. This would be the height of government tyranny. Whether to attend religious services is an intensely personal decision protected under our First Amendment as a paramount matter of conscience.

Unconstitutional Religious Purpose

Regardless of one's views about the efficacy of Operation ROC, the evidence demonstrates that Operation ROC was created with a predominate religious purpose. The stated goal of Operation ROC is "reinforcing family and community values." (Ex. 4 P. 2). The program states, "[I]t is the consensus of the core members of Operation Roc that the reduction in morals and family values among individuals in our community" is the root of the crime problem. (Ex. 4 P. 3; Ex. 3). The Operation ROC plan says, "Additionally, morals and family values are not only social in nature but are faith-based issues that are seen by our local churches as something that they, as a collective body, can do something about." (Ex. 4 P. 3). The program is described as "A Partnership of North Baldwin Area Churches and the Bay Minette Police Department" (Ex. 4 P. 1).

A letter from Police Chief Rowland to area churches inviting participation said, "While Operation ROC is not intended to dictate values and morals to anyone, it is designed to provide access to the one place where family values and morals is taught; our churches." (Ex. 3). It is apparent that Chief Rowland uses the terms "morals and family values" to reference his religious views. Morals and family values are not exclusive to churches and, for many, morals and family values are not "faith-based." The Operation ROC program content is exclusively Christian. The logo for Operation ROC is a large Latin cross on a rock. (Ex. 1). Attendance at religious services is the only program activity discussed by the City. The plan for Operation ROC says, "The strategy behind Operation ROC is simple. Go to Church!" (Ex. 4 P. 4).

Comments from Police Chief Rowland are shocking. He said:

But the thing about is, we know if we have a young mother she probably has a couple of kids and we want her to bring the kids to church too. If a father gets arrested, we want him to bring the entire family to church, so its family involvement – Its not the obligation of one, the violator or offender, to come in there and report, but that their obligation, **we want them and encourage them to bring the whole family in because, the younger we start saying the Word to these children and they are exposed to that they are much more receptive since they are like sponges anyway they will accept these things** and hopefully we will be steering people away from crime in the future and we may never have to deal with then (sic) because we brought them in at a younger age and got them exposed. Se we know we aren't going to turn everyone around there is gonna be some that they think they work the system, but what they may find out that the system worked them and they just got exposed enough. **It is kind of like brain washing – you exposed enough people are going to buy into it and they will eventually buy**

into it and they will understand what the Word is and the truth of that and all of the other things that go along with it. (Ex. 2 P. 15).

Conclusion

As you have been asked by the City of Bay Minette to review Operation ROC, it is incumbent upon you to inform the City that this program is unconstitutional. Chief Rowland has gone beyond his powers as City Police Chief and has sought to use the City government to indoctrinate offenders. While churches may wish to offer their aid to those who have wronged the community, the City cannot legally interfere with the rights of conscience of its citizens. This unconstitutional program cannot go on.

Sincerely,



Patrick Elliott
Staff Attorney

Enclosures:

- Ex. 1: Operation ROC logo
- Ex. 2: Church attendance sheet
- Ex. 3: Police Chief letter
- Ex. 4: Operation ROC plan
- Ex. 5: ROC meeting transcript
- FFRF Letter to Judge Biles

Cc: Scotty Lewis
Attorney for Bay Minette