

FREEDOM FROM RELIGION *foundation*

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March 3, 2014

**SENT VIA MAIL AND FAX
(502) 564-2517**

The Honorable Steve Beshear
Governor of Kentucky
700 Capitol Avenue, Suite 100
Frankfort, Kentucky 40601

Re: 2014 Governor's Prayer Breakfast and Electronic Mail Promotions

Dear Governor Beshear:

I write on behalf of the Freedom From Religion Foundation (FFRF) regarding your continued promotion of the Governor's Prayer Breakfast. FFRF is a national nonprofit organization whose purpose is to protect the constitutional principle of separation between state and church and to represent the rights and views of nonbelievers. FFRF represents the viewpoint of 400,000 Kentuckians who self-identify as nonreligious¹ and are offended or excluded by the Governor's Prayer Breakfast.

FFRF has contacted your office previously about the unconstitutional entanglement between the Governor's office and this inherently religious event. The purpose of this letter is to once again reiterate the constitutional concerns surrounding this annual prayer breakfast and urge you to cease any and all unconstitutional endorsement of religion by the government.

Government Promotion and Endorsement of the Prayer Breakfast on the Official Website

It is our information and understanding that this year's Governor's Prayer Breakfast is scheduled for Thursday, March 13th, at the Frankfort Convention Center. According to a press release issued by the Governor's office announcing this event:

"The Governor's Prayer Breakfast is a long-standing tradition in Kentucky dating back to 1965 and includes representatives of all three branches of government. Each year, this nondenominational gathering provides Kentuckians with an

¹ Barry Kosmin and Ariela Keysar, *American Religious Identification Survey*, 2008.

opportunity to give thanks for blessings and ask for strength to lead the Commonwealth toward a better future.”²

That same press release indicates that “Gov. Steve Beshear and First Lady Jane Beshear invite Kentuckians to participate in the 2014 Governor’s Prayer Breakfast,” which leads one to believe that the government is the sponsor of the breakfast and not a private individual or organization. The release also directs individuals interested in learning more about the breakfast to a government page: <http://governor.ky.gov/prayerbreakfast>. Thus, all news stories on the breakfast include the link to a government office, not to a private individual or organization. Indeed the prayer breakfast even has its own tab on the home page for the Governor: <http://governor.ky.gov/Pages/default.aspx>. In addition, the website includes the State of Kentucky Seal.

As was outlined for you in our previous letters, the Establishment Clause in the First Amendment to the U.S. Constitution 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 County, Ky. v. American 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. Board of Ed. of Ewing*, 330 U.S. 1, 15-16 (1947). By sponsoring or co-sponsoring a Prayer Breakfast, which calls Kentucky citizens to prayer, you abrogate your duty to remain neutral. The event sends a message that the Governor of Kentucky prefers and endorses religion over nonreligion and more specifically the Christian faith. Moreover, these actions exclude and offend a significant portion of the population, which is non-Christian or non-religious.

The separation between state and church is among one of the most fundamental principles of our system of government. The United States Supreme Court has held that public officials may not advance or promote religion. The Supreme Court has specifically stated, “If there is any fixed star in our constitutional constellation, it is that **no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.**” *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943)(emphasis added). Instead of co-sponsoring an event exhorting citizens to engage in religious ritual, we encourage you instead to celebrate our freedom of conscience and the separation between religion and government.

The danger of events like this is that they turn nonbelievers into second-class citizens; they send the 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.” *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 595 (1989)(quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984)).

² <http://migration.kentucky.gov/Newsroom/governor/20140221prayerbreakfast.htm>

Prayer is Unnecessary and Divisive

It is unnecessary and divisive for the Governor to host, sponsor or otherwise coordinate a prayer breakfast. The Founders did not require prayer when they wrote the Constitution, a godless document whose references to religion are exclusionary. Surely if the founders did not need prayer to write the document that established our great nation, then you can successfully conduct the civil business of Kentucky without prayer as well.

Religion and prayer are not only unnecessary for good government, but harmful. Religion is inherently divisive and when mixed with government causes significant discord. In the Federalist No. 10, James Madison wrote, “A zeal for different opinions concerning religion... Have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good.”

The Supreme Court wrote, “The Framers and the citizens of their time intended to guard ... against the civic divisiveness that follows when the government weighs in on one side of religious debate; nothing does a better job of roiling society,” and “the divisiveness of religion in current public life is inescapable.” *McCreary County, Ky. v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 876, 881 (2005). In fact, the “purposes of the First Amendment's Religion Clauses [are] to assure the fullest possible scope of religious liberty and tolerance for all, to avoid the religious divisiveness that promotes social conflict, and to maintain the separation of church and state.” *Van Orden v. Perry*, 545 U.S. 677, 678 (2005).

If the goal of this event is, as your website claims, to honor your citizens and build a stronger future for Kentuckians, you could hardly have chosen a more divisive event.

Use of Internet and Electronic Mail to Promote Religion

It is our further information and understanding that you, as governor, once again sent an invitation to the prayer breakfast from your official governor email address to every state employee.

The provisions of the Internet and Electronic Mail Acceptable Use Policy (CIO-060), released by the Kentucky Personnel Cabinet and applying to “all Executive Branch agencies and users,” make it clear that state email is state property. “Internet and E-mail resources, services and accounts are the property of the Commonwealth of Kentucky. These resources are to be used for state business purposes in serving the interests of state government.” In addition, misuse of email is a misuse of state resources: “The acceptable use of Internet and E-mail represents the proper management of a state business resource.”

Furthermore, these rules explicitly prohibit, “**Soliciting money for religious or political causes, advocating religious or political opinions and endorsing political candidates,**” and therefore prohibit the email you sent to state employees.

This email belies any claims that the prayer breakfast is a private event and without government sanction. The email was sent on February 21, 2014, from the “Governor’s

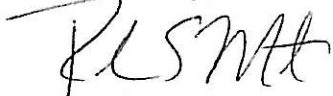
Communications Office" with the subject line "Invitation to Governor's Prayer Breakfast." The invitation sports the official seal of the State of Kentucky and states "Governor and Mrs. Steven L. Beshear cordially invite you to attend the Governor's Prayer Breakfast."

Conclusion

While elected officials may of course attend private functions on their own time in their personal capacity, it is a misuse of office for the Governor or his staff to promote, organize or cosponsor activities such as prayer breakfasts or to lend the Governor's name to a "Governor's Prayer Breakfast." If another sponsor exists, the actual sponsor must use their own names, email invitations, reservation forms, and website, and not imply State or gubernatorial approval or sponsorship.

We urge you to cancel this event immediately and to remove anything indicating official government sponsorship from the website, reservation forms, media packets, décor, etc. The event must be removed from the Governor's website, the event should drop the use of the title Governor, the State and Governor's seal must not be used to promote a strictly religious event. If you wish to be a part of this event you may do so only in your capacity as a citizen, not as Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "R. S. Markert", with a stylized flourish at the end.

Rebecca S. Markert
Staff Attorney