

FREEDOM FROM RELIGION *foundation*

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April 28, 2011

**SENT VIA U.S. MAIL & FAX
(801) 538-1528**

The Honorable Gary R Herbert
Governor
Utah State Capitol
PO Box 142220
Salt Lake City UT 84114-2220

Re: Governor's Participation in National Day of Prayer Events

Dear Governor Herbert:

We represent the Freedom From Religion Foundation ("FFRF"), a national organization with 16,500 freethinkers across the country including members in Utah. The purpose of our educational charity is to defend the Establishment Clause of the First Amendment, which Thomas Jefferson famously noted, builds "a wall of separation between church and state." For over three decades, FFRF has received complaints from citizens who are offended, excluded and made to feel like political outsiders in their own community when their government oversteps its power to influence decisions over whether and when to pray. We request that you refrain, as Governor of the State of Utah from issuing a National Day of Prayer proclamation and from participating in your official capacity in National Day of Prayer events.

It is our information and understanding that at least two events will mark the National Day of Prayer, which is on May 5th this year. We understand that the group, Standing Together, is organizing a prayer rally at the Utah State Capitol on May 5th at 6:30pm. This group is also hosting an annual Community Leadership Breakfast "in honor of the National Day of Prayer" which will be held at the Downtown Sheraton Hotel beginning at 7:30am. We understand that you spoke at last year's Community Leadership Breakfast.

We further understand that the theme for this year's National Day of Prayer is "A Mighty Fortress is Our God." This theme is based on a biblical verse from Psalm 91:2, which states: "I will say of the Lord, He is my refuge and my fortress, my God, in whom I trust."

You may be aware that Standing Together is a group of 90 evangelical churches in the state. The group's coordinator describes its events as "an evangelical expression of the National Day of Prayer, and [holds] exclusively evangelical events." Mark Haddock,

Several Events to Mark National Day of Prayer, Deseret News, May 5, 2010. We understand that the Utah prayer event is contentious and divisive because of the evangelical slant. This event excludes not only the non-religious but also non-evangelical Christians including Mormons — the dominant faith in Utah —, Jews, Buddhists, Hindus and Muslims, etc.

Under our secular Constitution, elected officials have neither the moral nor the constitutional authority to exhort constituents to pray, much less to set aside an entire day for prayer every year, and tell them to gather with others “to turn to God in prayer and meditation at churches, in groups, and as individuals.” Public Law 100-307.

Ironically, America was founded in part by refugees seeking freedom from precisely this kind of religious tyranny by government. They wanted freedom from a government dictating to them which church to support, what religious rituals to engage in, or what to believe or disbelieve. The U.S. founders who adopted our secular Constitution knew there can be no religious liberty without the freedom to dissent. Whether to pray, whether to believe in a god who answers prayer, is an intensely precious and personal decision protected under our First Amendment as a paramount matter of conscience.

National Day of Prayer Tainted by Sectarianism, Christian Purpose

The National Day of Prayer originated with Rev. Billy Graham during his religious crusade in Washington, D.C. in 1952. He expressed an openly Christian purpose, seeking such an annual proclamation by the President because he wanted “the Lord Jesus Christ” to be recognized across the land. Congressional sponsors likewise openly expressed an agenda of promoting Christianity and belief in a god. Christian evangelical lobbies were behind the 1988 change in law designating the first Thursday in May as the annual National Day of Prayer. Subsequently, the National Day of Prayer Task Force was created to “communicate with every individual the need for personal repentance and prayer, mobilizing the Christian community to intercede for America and its leadership.” Chair Shirley Dobson, wife of the founder of Focus on the Family, or her designate issues annual National Day of Prayer proclamations and submits them to the President, choosing a theme with supporting scripture from the bible. The task force’s stated goal is to pressure as many mayors and other elected officials as possible to also issue National Day of Prayer proclamations. Coordinators, volunteers and speakers at task force events must share the view that the bible is inerrant and “there is only one Savior and only one gospel.”

Government Sponsorship, Promotion and Participation in the Evangelical National Day of Prayer Raises Constitutional Concerns

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 issuing a proclamation calling Utah citizens to prayer you abridge your duty to remain neutral. The proclamation and the day's events even if organized by a private group such as Standing Together send a message that you as Governor and the State of Utah prefer and endorse 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 seek to 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. Barnett*, 319 U.S. 624, 642 (1943)(emphasis added). Instead of issuing a proclamation exhorting citizens to engage in religious ritual, we encourage you instead to issue proclamations celebrating our freedom of conscience and the separation between religion and government.

Even Inclusive/Interfaith National Day of Prayer Events Raise Constitutional Concerns

The inclusion of many faiths at city-promoted or sponsored National Day of Prayer proclamations and events notably would still exclude those of no religious faith — the non-religious and the non-believers. The non-religious are the fastest-growing segment of the U.S. population by religious identification — at 15% by national average, and as high as 22% in the Northeast, 17% in the Mid-Atlantic, 19% in the Western Mountain Division states, and 20% on the West Coast (American Religious Identification Survey 2008, Trinity College). The purpose and effect of any National Day of Prayer proclamation or activity "sends the ancillary message to members of the audience who are 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. v. Doe*, 530 U.S. 290, 309-310 (2000)(quoting *Lynch v. Donnelly*).

Elected Officials Must Limit Participation in NDP Events

As a matter of policy, government sponsorship of a National Day of Prayer proclamation or endorsement is inappropriate and unnecessary. Promotion of prayer by elected officials unfortunately raises the distasteful appearance of political pandering to appeal to or appease a vocal Christian evangelical constituency. At the same time, religious right groups seek government to promote their agenda, using the credibility and prestige of government officials like yourself.

Elected officials may of course attend private functions on their own time as private citizens. It would be a misuse of office, however, for the Governor or state staff to

promote, organize or cosponsor such activities as have commonly been spawned by the unconstitutional National Day of Prayer, such as prayer breakfasts.

There is a necessary distinction between private speech (which may take any position on religion) and governmental speech (which may not be religious or take a religious position) — a distinction which groups antagonistic to the Establishment Clause refuse to acknowledge. As Governor you have taken an oath of office to uphold the secular U.S. Constitution, and must scrupulously avoid using your public office to promote or advance your personal religious beliefs.

As the State's highest elected official, you are charged with great responsibility and have been given significant trust by citizens, including those citizens who may not share your personal religious viewpoints. Leaving prayer as a private matter for private citizens is the wisest public policy. (As an aside: Gubernatorial action which may suggest that such civic duties be left to divine intervention would hardly inspire public confidence.)

We appreciate the courtesy of your attention to this timely matter, and encourage you to stand up for the precious constitutional principle of the separation between church and state, which unites and protects all citizens, believers and non-believers alike.

Very truly yours,


Dan Barker and Annie Laurie Gaylor
Co-Presidents