

FREEDOM FROM RELIGION *foundation*

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July 16, 2024

SENT VIA EMAIL & U.S. MAIL: bill.lee@tn.gov

The Honorable Bill Lee
Governor
State Capitol, 1st Floor
600 Dr. Martin Luther King, Jr. Blvd.
Nashville, TN 37243

Re: Rescind improper and offensive prayer proclamation

Dear Governor Lee:

We are writing on behalf of the Freedom From Religion Foundation (FFRF) to object to your recent Month of Prayer proclamation on behalf of our Tennessee members and to ask you to rescind it. FFRF is a national educational nonprofit with more than 40,000 members across the country, including hundreds of members in Tennessee and a chapter, FFRF East Tennessee. FFRF protects the constitutional separation between state and church and educates about nontheism.

On April 16, 2024, you signed HJR 803, a bill designating the entire month of July “be recognized as a time of prayer and fasting in Tennessee.” HJR 803 is titled “A RESOLUTION to seek God’s hand of mercy healing on Tennessee.”¹ Tennessee, seemingly using official government resources, created a website to inform constituents of public, official prayer events occurring at county courthouses throughout the state.² The bill even has a Facebook page where Representative Monty Fritts’s email address serves as the contact.³ Pray4TN.us states that “[a]fter doing research as to how many of our founding fathers called upon calling out [sic] to the most high God for help because there was no where [sic] else to turn.”⁴

Using your official powers, you declared “that the period of July 1, 2024, through July 31, 2024, be recognized as a time of prayer and fasting in Tennessee.” Your declaration, along with HJR 803, explicitly refers to Jesus. It sounds like a Christian sermon, not a governmental proclamation. It is replete with religious phrases such as: “God, as Creator and King of all Glory,” “God’s mercy,” “His hand of blessing,” “the omnipotent hand of Providence,” “Lord Jesus ... heal our land.” The proclamation has the State of Tennessee asking “that the Holy Spirit fill our falls of government, our classrooms, our places of business, our churches, and our homes with peace, love and joy.” Further, it says “we recognize our sins and shortcomings before Him and humbly ask His Forgiveness.”

¹ <https://legiscan.com/TN/bill/HJR0803/2023>.

² <https://www.pray4tn.us/county-events>.

³ <https://www.facebook.com/people/Pray4TN/61561283751304/>.

⁴ <https://www.pray4tn.us/about>.

The forgiveness that ought to be begged is for adopting a religious and sectarian proclamation that no public official, under our secular and entirely godless Constitution, has the authority to make.⁵ Gov. Lee, you were not elected pastor-in-chief. As a government official, you are tasked with upholding the nation’s Constitution — including the First Amendment’s Establishment Clause. You represent a religiously diverse population that consists not only of Christians, but atheists and agnostics who do not believe in prayer or deities.

The religiously unaffiliated (atheists, agnostics and “nothing in particulars”) is the fastest-growing segment of the U.S. population by religious identification, now making up three-in-ten Americans.⁶ At least 20 percent of Tennesseans are religiously unaffiliated and another 3 percent follow non-Christian religions. Hosting a religious event in your official capacity “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. v. Doe*, 530 U.S. 290, 309–10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. at 668 (O’Connor, J., concurring)).

Furthermore, it is deeply inappropriate for government officials to use public resources, such as email addresses and courthouses, to host public prayers. Private venues, such as churches, are more appropriate for private citizens to rally. Instead, Tennessee officials are flocking to public courthouses to host officially sanctioned, Christian prayer. Please note that this proclamation is not protected by the so-called legislative prayer exception to the Establishment Clause. *See Marsh v. Chambers*, 463 U.S. 783 (1983).

HJR 803 affronts Tennessee’s own constitution. Tennessee’s Establishment Clause has remained unchanged in substance since 1796. *Compare* Tenn. Const. Art. XI § 3 (1796) *with* Tenn. Const. Art. I § 3 (1834) *and* Tenn. Const. Art. I § 3 (1870).⁷ Article 1 of the Tennessee Bill of Rights protects freedom of conscience and states “that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever control or interfere with the rights of conscience; and that no preference shall ever be given, by law to any religious establishment or mode of worship.”

Tennessee prides itself on Thomas Jefferson’s compliment of its 1796 Constitution as the “least imperfect and most republican of the state constitutions.”⁸ But, Jefferson was among the staunchest defenders of the wall between church and state and actually coined the term. *See Everson v. Bd. of Educ.*, 330 U.S. 1, 12 (1947); *See also Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 231 (1948) (“Separation means separation, not something less. Jefferson’s metaphor in describing the relation between Church and State speaks of a ‘wall of separation,’ not of a fine line easily overstepped.”) You have overstepped.

⁵ The American Values Atlas, PRRI, <https://ava.prrri.org/#religious/2023/States/religion1/m/US-TN>.

⁶ Gregory A. Smith, *Religious ‘Nones’ in America: Who They Are and What They Believe*, Pew Research Center, Jan. 24, 2024, <https://www.pewresearch.org/religion/2024/01/24/religious-nones-in-america-who-they-are-and-what-they-believe/>.

⁷ <https://tsla.tnsosfiles.com/digital/teva/transcripts/33633.pdf>; <https://tsla.tnsosfiles.com/digital/teva/transcripts/33662.pdf>; <https://tsla.tnsosfiles.com/digital/teva/transcripts/39417.pdf>.

⁸ <https://sos.tn.gov/civics/guides/tennessee-state-constitution#:~:text=The%20first%20constitution%20of%20the,the%20Congress%20before%20it%20adjourned.>

Borrowing Tennessee's **exact words**, other states' constitutional provisions "'declaring that there shall be a separation of church and state are not only more explicit but *more restrictive*' than the First Amendment." *Gibson v. Brewer*, 952 S.W.2d 239, 246 (Mo. banc 1997) (quoting *Paster v. Tussey*, 512 S.W.2d 97, 101-02 (Mo. banc 1974) (emphasis added)). The Supreme Court of the United States's decision in *Trinity Lutheran Church of Columbia, Mo., Inc. v. Comer*, 137 S.Ct. 2012 (2017) did not change that. See *Doe v. Marianist Province of U.S.*, 620 S.W.3d 73, 78 (Mo. banc 2021) (quoting *Brewer* and *Paster*). So, Tennessee's Establishment Clause is *stricter* than the federal First Amendment. Compare Tenn. Const. Art. I § 3 with Mo. Const. Art. I §§ 5-7.

If you are unwilling to honor the constitutional provisions you took an oath to uphold, then perhaps you would at least honor the Sermon on the Mount: "And when you pray, do not be like the hypocrites, for they love to pray standing in the synagogues and on the street corners to be seen by others. . . . when you pray, go into your room, close the door and pray to your Father, who is unseen. Then your Father, who sees what is done in secret, will reward you." (Matthew 6:5-6). Yet, here you are openly worshiping and asking other Christians to do the same.

Finally, we must add that nothing fails like prayer. To issue a proclamation like this is a political cop-out, doing nothing for the problem of violent crime, human trafficking or drug addiction. These, sir, are in your bailiwick and your proclamation is an admission of failure.

It is unfortunate that some public officials seek to inject religion into public life to score easy political capital. However, those given the privilege of serving Americans must be guided by our godless and entirely secular Constitution, barring religious tests for public office and any establishments of religion by government. Observing a strict separation of church and state offends no one, and respects the First Amendment and Tennessee's Constitution. Please rescind this unconstitutional and unpatriotic proclamation immediately.

Very truly,



Dan Barker and Annie Laurie Gaylor
Co-Presidents
Freedom From Religion Foundation

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