



CONGRESSIONAL PRAYER CAUCUS FOUNDATION

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Congressman Robert Wittman

December 8, 2017

Mayor Elizabeth Swift
City of Buena Park
6650 Beach Boulevard
Buena Park, CA 90622

Dear Mayor Swift:

I have the honor of serving as the Executive Director of the Congressional Prayer Caucus Foundation. The Foundation serves nearly 100 members of Congress who are part of the Congressional Prayer Caucus (the names of those members of Congress who serve on the Congressional Prayer Advisory Team are listed on the left).

In addition, the Foundation serves a network of Legislative Prayer Caucuses in over 30 states, which has over 1,000 state senators and state representatives as members. These leaders are working together to preserve the integrity of our founding principles and to protect First Amendment rights for all.

We recently learned from news reports that an out-of-state organization, Freedom from Religion Foundation, sent a threatening legal letter which urged the city to end its association with the annual Mayor's Prayer Breakfast and demanded a number of public records related to the event. We are writing to thank you for carrying on this 39-year tradition in the City of Buena Park and to provide information you may find helpful.

Former Congressman Randy Forbes, who is the President of this Foundation, recently attended the Hampton Roads Leadership Prayer Breakfast with local mayors, city councilmen, and state representatives. This event, like yours, was sponsored by a local charitable organization. Similar events take place all over the nation at various times, perhaps most notably on the National Day of Prayer.

The principal reasons asserted by the organization for its allegation that the city is violating the Constitution are that the city provides information to the public about the event through its website, instructs the public to send RSVPs and ticket payments to City Hall, and allows the City Manager's office phone number to be used as a resource for further information. However, nothing is said as to whether the City of Buena Park facilitates other city-wide invitational events in a similar manner. Especially if such cooperative coordination occurs with other events, then an event such as this must be treated in an equal manner. See

Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012, 2021-2022 (2017) (holding that a public entity cannot discriminate against religious institutions in providing benefits); *Zorach v. Clauson*, 343 U.S. 306, 313-314 (1952) (finding “no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence”).

Furthermore, prayer is said by publicly funded officials in their official capacity in publicly funded places multiple times every day. Weekly when Congress is in session the Congressional Prayer Caucus meets in Room 219 of the U.S. Capitol and prays. Before the U.S. House and Senate start their session, a publicly paid chaplain prays in the publicly supported Capitol asking for God’s blessing. The same practice, though not normally with a publicly paid chaplain, occurs in most state capitols, as well as many cities, villages, and counties throughout our country.

The constitutionality of whether a paid government employee could pray in a government owned building to start a governmental legislative session was first considered nearly 45 years ago. In *Marsh v. Chambers*, 463 U.S. 783 (1983), a state legislator challenged his legislature’s practice of hiring chaplains (always Christians of the same denomination) who always opened the legislative sessions with a Judeo-Christian prayer. The legislator contended that this practice violated the First Amendment’s Establishment Clause, a contention soundly rejected by the Supreme Court. Chief Justice Burger wrote for the Court as follows:

The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom. In the very courtrooms in which the United States District Judge and later three Circuit Judges heard and decided this case, the proceedings opened with an announcement that concluded, “God save the United States and this Honorable Court.” The same invocation occurs at all sessions of this Court. 463 U.S. at 786.

After reviewing the colonial practice of opening legislative sessions with prayer, the Chief Justice reviewed the practice of the First Congress and noted,

On Sept. 25, 1789, three days after Congress authorized the appointment of paid chaplains, final agreement was reached on the language of the Bill of Rights Clearly the men who wrote the First Amendment Religion Clause did not view paid legislative chaplains and opening prayers as a violation of that Amendment, for the practice of opening sessions with prayer has continued without interruption ever since that early session of Congress. It has also been followed consistently in most of the states . . .

Id. at 788-89. These principles in *Marsh* were reaffirmed a few years ago in *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), in which the Supreme Court once again held that opening government meetings in prayer is constitutionally permissible, this time at the city council level.

On the National Day of Prayer, many official government proclamations, prepared by paid government staff, cascade out of government offices -- from the White House all the way down to local city halls. They frequently are placed on public websites. From the earliest beginnings of this nation, we have honored the role of prayer and depended upon it in good times and bad.

President George Washington proclaimed a day of Thanksgiving so that all Americans would be called to honor God. Acting officially as the President, he issued a presidential proclamation asking all Americans to devote themselves “to the service of that great and glorious Being who is the beneficent author of all the good that was, that is, or that will be,” to “unite in rendering unto Him our sincere and humble thanks for His kind care and protection of the people of this country previous to their becoming a nation,” and “to pardon our national and other transgressions” This proclamation was printed by government printing presses and distributed by government employees, as were similar proclamations of other presidents, including John Adams and Abraham Lincoln. During the depths of the greatest crisis our nation experienced, Lincoln implored American citizens to confess their sins and seek God’s mercy through prayer:

[I]t is the duty of nations as well as of men to own their dependence upon the overruling power of God, to confess their sins and transgressions in humble sorrow, yet with assured hope that genuine repentance will lead to mercy and pardon, and to recognize the sublime truth, announced in the Holy Scriptures and proven by all history, that those nations only are blessed whose God is the Lord. . . .

[Presidential Proclamations for Thanksgiving and Prayer can be found at <http://www.whatsoproudlywehail.org/curriculum/the-american-calendar/thanksgiving-day-proclamations-1789-present>]

Just as publicizing these calls for prayer in government publications and using government auspices has never been unconstitutional, using physical facilities for such purposes is not either, assuming they are open to others evenhandedly. Early on, Congress approved the use of the Capitol building for Christian worship services. Under President Thomas Jefferson, the Marine Band performed the music in them. Jefferson also approved Christian services on Sunday in his own Executive Branch buildings, at the Treasury Building, and at the War Office. By 1867, the First Congregational Church meeting in the Capitol had become America’s largest Protestant church.

If we can be of any further service to you on this issue, feel free to contact us. We have First Amendment lawyers on staff who will work with you, without charge, if you need their services.

May God bless you and your community,



Lea Carawan
Executive Director