



# CONGRESSIONAL PRAYER CAUCUS FOUNDATION

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March 16, 2018

The Honorable Gary Herbert  
Governor's Office  
350 North State Street, Suite 200  
Salt Lake City, UT 84114-2220

Dear Governor Herbert:

It has come to our attention that the Freedom from Religion Foundation (FFRF) has criticized your calling on religious leaders and other citizens to join you in a time of prayer for relief from the drought conditions your state has experienced. FFRF, starting with its very name and in comments made to you and others, does not begin with what the Constitution says or the law requires, but instead what it wishes were true, i.e., that a government must treat religious beliefs and organizations in a hostile way. To the contrary, the Constitution in the "Establishment Clause" of the First Amendment fosters religion by preventing the government from establishing a particular religion or treating one religion more favorably than others. The Constitution does *not*, as FFRF suggests, prohibit state action that facilitates religion, that recognizes the religious character and practices of its citizens, or that exempts religious individuals or organizations from generally applicable laws that might conflict with their religious beliefs and practices.

In fact, the "Free Exercise Clause" of the First Amendment only prohibits laws that *restrict* the free exercise of religion; it does not prohibit laws that *favor* religion and its exercise. As the Supreme Court reiterated just last year in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 (2017), state action that discriminates against a church or other religious organization just because it is religious, violates the Free Exercise Clause. *See also Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality opinion) (noting "our decisions that have prohibited governments from discriminating in the distribution of public benefits based upon religious status or sincerity" (citing *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995); *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454

U.S. 263 (1981)); *Walz v. Tax Comm’r of the City of N.Y.*, 397 U.S. 664 (1970) (upholding municipal tax exemption for religious nonprofit organizations against an Establishment Clause challenge). FFRF is certainly not correct that you violated the Constitution in requesting prayer by the religious community for your State.

A government official asking people to pray with him or her is certainly not new. 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 has 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. . . .

In total, there have been over 130 presidential calls to prayer, and in 1952 President Harry Truman signed a law making the National Day of Prayer an annual event. (Presidential Proclamations for Thanksgiving and Prayer can be found at <http://www.whatsoproudlywehail.org/curriculum/the-american-calendar/thanksgiving-day-proclamations-1789-present>.)

Our nation’s President is not, of course, the only public person who asks people to pray or invokes the blessing of God after almost every speech. Each session of the U.S. Supreme Court begins with the prayer that “God save the United States and this Honorable Court,” and the U.S. Congress has had a paid chaplain provide an invocation from the very first Congress under the Constitution, a practice which the Supreme Court has confirmed is constitutional. *See Marsh v. Chambers*, 463 U.S. 783 (1983).

Although we believe that people in America traditionally have a right to pray either privately or together with others in public, we also believe that others have a right NOT to pray, and that they can exercise their right not to pray without fear of punishment in any form. Your

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request for prayer from the religious community of your State does nothing to force prayer on those like FFRF who believe prayers are worthless. But the First Amendment is not a sword to be used by those of FFRF's persuasion to require government officials like yourself to ignore the traditions of this country invoking the blessings of the Creator (as the Declaration of Independence itself does) or to accept the viewpoint of some that prayer is not efficacious. FFRF's attitude is what is inconsistent with the religious liberty we enjoy in our country, not that exhibited by you in your call to prayer.

For Faith and Freedom,



Lea Carawan  
Executive Director  
Congressional Prayer Caucus Foundation