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SENT VIA EMAIL & U.S. MAIL

August 15, 2018

The Honorable Beth E. Spiegel
Mayor, City of North Miami Beach
17011 NE 19 Avenue
North Miami Beach, FL 33162
beth.spiegel@citynmb.org

Re: National Day of Prayer

Dear Mayor Spiegel:

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 (including Florida), which have 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.

Thank you for the City of North Miami Beach's tradition of holding a National Day of Prayer event each year in May. In doing so, the City has responded affirmatively to a presidential proclamation declaring a National Day of Prayer, as required by federal law. This proclamation has followed the tradition of almost every American President, who in their official capacity called on citizens to pray for local, state, and federal officials. Because of this tradition, we were disappointed to learn that the Interim City Manager, by means of a letter dated July 31, has announced that the City will no longer participate in the National Day of Prayer this coming May. We respectfully request that you and the City Council reconsider this decision and reverse it, so the City can once again hold a National Day of Prayer event next May.

We understand that the Interim City manager's action was prompted by a June 26 letter from the Freedom From Religion Foundation ("FFRF"). We have

reviewed this letter and would like to clear up some misleading statements. First of all, it should not be surprising to anyone that when the National Day of Prayer was originally created in the 1950s, it was the work of Christians. Christianity has always been the most populous religion in our country. Assuming the accuracy of FFRF's statistics near the end of its letter, even in today's much more religiously-diverse environment, Christians comprise 70% of the population. These Christians, as well as Buddhists, Hindus, Jews, Sikhs, Muslims and all other people of faith (including atheists), have a guaranteed right to the free EXERCISE of religion under the First Amendment.

Secondly, the National Day of Prayer is no more divisive than other events the City sponsors. Sure, some City residents with joy attend the National Day of Prayer event, others attend because they have to, and still others do not attend at all. We see from your current website that the City is currently sponsoring Summer Camps for children, an opportunity to get Driver's Licenses in the Lobby of City Hall, and STEM Saturday at the NMB Library. According to FFRF's logic, each of these City-sponsored activities is divisive – the Summer Camps divide those residents with children and those without, the Driver's License opportunity divides those able to own or rent cars and those unable, and STEM Saturday clearly divides STEM disciples from those fond of the liberal arts. If the City can sponsor events that benefit City parents with children, those financially able to own or rent cars, and those interested in the STEM disciplines, certainly it can benefit the theists in the City that comprise presumably 70% of the City residents and want to honor local, state, and federal officials by praying for them.

FFRF's claim that government must be neutral between religions and between religion and irreligion is also true to an extent, but is misleading as well. It is true that government cannot, as did Virginia before the Revolution, tax all residents and give some of the revenue to the Church of England, and levy fines against those residents who did not attend Church of England worship services. Government cannot prefer Methodists over Presbyterians, Catholics over Jews, or theists over atheists. Accordingly, if the atheists want to use a City facility, or seek City publicity for their event, the City should offer them the same terms and conditions as a National Day of Prayer event.

FFRF's claim of neutrality does not mean, however, that government is barred from supporting religion in any way. As the U.S. Supreme Court stated in *Lynch v. Donnelly*, 465 U.S. 668, 673-75 (1984),

the Constitution [does not] require complete separation of church and state; it affirmatively *mandates accommodation*, not merely tolerance, of all religions, and *forbids hostility toward any*. See, e.g., *Zorach v. Clauson*; *McCullum v. Board of Education*. Anything less would require the "callous indifference" we have said was never intended by the Establishment Clause. *Zorach*. Indeed, we have observed, such hostility would bring us into "war with our national tradition as

embodied in the First Amendment's guaranty of the free exercise of religion.”
McCullum.

The Court's interpretation of the Establishment Clause has comported with what history reveals was the contemporaneous understanding of its guarantees. A significant example of the contemporaneous understanding of that Clause is found in the events of the first week of the First Session of the First Congress in 1789. In the very week that Congress approved the Establishment Clause as part of the Bill of Rights for submission to the states, it enacted legislation providing for paid chaplains for the House and Senate. In *Marsh v. Chambers*, we noted that seventeen Members of that First Congress had been Delegates to the Constitutional Convention where freedom of speech, press and religion and antagonism toward an established church were subjects of frequent discussion. We saw no conflict with the Establishment Clause when Nebraska employed members of the clergy as official Legislative Chaplains to give opening prayers at sessions of the state legislature. *Id.*

The interpretation of the Establishment Clause by Congress in 1789 takes on special significance in light of the Court's emphasis that the First Congress

“was a Congress whose constitutional decisions have always been regarded, as they should be regarded, as of the greatest weight in the interpretation of that **1360 fundamental instrument,” *Myers v. United States*.

It is clear that neither the seventeen draftsmen of the Constitution who were Members of the First Congress, nor the Congress of 1789, saw any establishment problem in the employment of congressional Chaplains to offer daily prayers in the Congress, a practice that has continued for more than two centuries. It would be difficult to identify a more striking example of the accommodation of religious belief intended by the Framers (citations omitted and emphasis added).

Forcing prayer out of the public arena is, of course, offensive to those who believe in the power of prayer and is, frankly, divisive. Declaring prayer “out of bounds” for civil discourse is intolerant of religion and actually is hostile to religious people. As noted in *Lynch*, quoted above, this hostility to religion is directly contrary to our national tradition and our First Amendment’s free exercise rights.

FFRF, you and we share many things in common, including living in a country that protects our rights to free speech and the free *exercise* of religion (or, for that matter, the free exercise of non-religion). FFRF has every right to speak on their non-belief, just like I have a right to speak on behalf of my belief and attend a National Day of Prayer event. If residents of the City are somehow offended by a National Day of Prayer event, they are free not to attend

it, just like advocates for liberal arts programs can avoid STEM Saturday at the Library. Although I strongly disagree with the theological and legal positions of FFRF, I will defend its members' right to believe and exercise their belief. I hope the City can extend the same rights to theists, and permit the National Day of Prayer organizers to again have an event in North Miami Beach this coming May.

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. We are encouraged that you know your rights under the U.S. Constitution and that you will not allow threats of this nature to rob your community of your rights and heritage. To protect our freedom, we must exercise that freedom.

Sincerely,



Lea Carawan
Executive Director
Congressional Prayer Caucus Foundation