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October 19, 2018

Governor Matt Bevin
State of Kentucky
700 Capitol Avenue, Suite 100
Frankfort, KY 40601

VIA EMAIL & U.S. MAIL:
governor@ky.gov

Re: Promotion of "Bring Your Bible to School Day"

Dear Governor Bevin:

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 32 states, including Kentucky, 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.

We recently learned from news reports that the Freedom from Religion Foundation ("FFRF") sent you a letter on October 8 complaining of the use of your official Twitter feed to encourage all students in the Commonwealth of Kentucky to participate in "Bring Your Bible to School Day." Rather than praising you for your encouragement of students to exercise their Free Exercise and Free Speech rights as guaranteed in the Constitution, the FFRF co-presidents condemned you for abusing history and "the power of your public office to promote your personal religious beliefs." Although the co-presidents' attacks on the Bible are beyond the scope of this letter, their revisionist view of history is not.

As you know, public officials in their official capacity often speak about religion, quote Bible verses for various purposes, and offer prayers almost every day throughout our nation. 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 sessions, 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.

Early on, Congress approved the use of the Capitol building for Christian worship services (without concern that it would violate the Establishment Clause because there was no coercion for anyone to attend). Under President Thomas Jefferson, the Marine Band performed the music in these services. 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.

On the National Day of Prayer, many official government proclamations, prepared by paid government staff, cascade out of government offices (including yours) -- 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.

On national holidays, inauguration days, and on other momentous occasions, presidents and governors have often presented the nation with a message from Scripture or have called upon the nation to seek God's favor, protection, and mercy. Nationally, it began with President George Washington, but such religious messages from public officials had long been part of American history since colonial times.

President Washington, as an example, proclaimed a day of Thanksgiving and urged all Americans 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 to our present day.

During the depths of the greatest crisis our nation experienced, President 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>]

The constitutionality of such religious practices by public officials has been tested in the courts and found constitutional. 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.

Such practices have long been part of our nation's history, and none have conflicted with the Establishment Clause. Therefore, public officials who share religious messages through social media, whether associated with their official roles or not, surely have the same constitutional protections that have been provided to former government officials who have also shared religious messages in their official capacities.

As *Zorach v. Clauson*, 343 U.S. 306, 313-314 (1952) stated, "We find 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."

If we can be of any 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. To protect our freedom, we must exercise that freedom, and it is encouraging to see your leadership in our First Amendment freedoms.

May God bless you and the citizens of the great Commonwealth of Kentucky,



Lea Carawan
Executive Director
Congressional Prayer Caucus Foundation

cc: Kentucky Prayer Caucus Members