



June 16, 2021

CONGRESSIONAL
ADVISORY MEMBERS

Senator James Lankford
Congressman Tim Walberg
Congressman Rick Crawford
Senator John Boozman
Senator Marsha Blackburn
Senator Kevin Cramer
Congressman Robert Aderholt
Congressman Brian Babin
Congressman Dan Bishop
Congressman John Carter
Congressman Mike Conaway
Congressman Jeff Fortenberry
Congresswoman Vicky Hartzler
Congressman Jody Hice
Congressman Richard Hudson
Congressman Bill Huizenga
Congressman Doug Lamborn
Congressman Chris Smith
Congressman Glenn Thompson
Congressman Tim Walberg
Congressman Joe Wilson
Congressman Rob Wittman

SENT VIA EMAIL & U.S. MAIL: mark.funderburk@umchealthsystem.com

Mark Funderburk
President/CEO
University Medical Center
602 Indiana Avenue
Lubbock, TX 79415

RE: Banner with Religious Content and Hospital Chaplains

Dear President Funderburk:

I have the honor of serving as the President 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 Legislative Prayer Caucuses in over 40 states, including Texas, 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 learned that in late May, the Freedom From Religious Foundation ("FFRF") sent you a letter demanding that you remove a large religious banner from the hospital's employee parking structure. This banner contained a prayer seeking divine protection, guidance, and provision for presumably the university hospital heroes who were risking their health and well-being taking care of others during the pandemic. FFRF claims that this sign, which we regard as most fitting and encouraging for hospital workers, is a violation of the Establishment Clause which, according to FFRF, "prohibits government sponsorship of religious messages." FFRF further maintains that this message constitutes an endorsement of religion. FFRF is wrong on both claims.

Regarding FFRF's claim that the sign is an endorsement of the Christian religion, FFRF fails to understand that such references, as well as

other religious symbols that grace government buildings and monuments, are simply an acknowledgement of religion's rich influence on the development of this nation and its institutions. This Judeo-Christian historical influence is well documented in American history, as evidenced by the fact that *Laus Deo*, meaning Praise be to God, is engraved upon the aluminum capstone of The Washington Monument, and that inside the monument, there are a number of memorial stones with scriptural engravings from the Old and New Testaments. Similarly, the walls of the Library of Congress have inscribed upon them Psalm 19:1 ("The heavens declare the glory of God, and the firmament showest His handiwork"); John 1:5 ("The light shineth in the darkness, and the darkness comprehendeth it not"); and Micah 6:8 ("What does the Lord require of thee, but to do justly and love mercy and walk humbly with thy God?").

America's religious heritage is literally etched into our collective memory as a nation, from the federal level to our counties, cities, and towns. Though atheists may desire to remove every cross from every military cemetery and every religious reference upon our monuments and buildings, such hostility to religion is contrary to our nation's Founders, our Constitution, and the will of our people. As the U.S. Supreme Court stated well in *Zorach v. Clauson*, 343 U.S. 306, 314 (1952): "[W]e 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."

We realize that it can be somewhat intimidating to receive a letter quoting many Supreme Court cases, quotes which appear to take aim against the banner on the parking garage. A case omitted by FFRF was the 2005 case of *Van Orden v. Perry*, 545 U.S. 677, in which Chief Justice Rehnquist for the Court wrote that the proper analysis to apply to the use of Scripture on monuments/buildings is the nature of the monument/building and our Nation's history (545 U.S. at 686). The Chief Justice wrote the following regarding the portion of Scriptures called the Ten Commandments:

Such acknowledgments of the role played by the Ten Commandments in our Nation's heritage are common throughout America. We need only look within our own Courtroom. Since 1935, Moses has stood, holding two tablets that reveal portions of the Ten Commandments written in Hebrew, among other lawgivers in the south frieze. Representations of the Ten Commandments adorn the metal gates lining the north and south sides of the Courtroom as well as the doors leading into the Courtroom. Moses also sits on the exterior east facade of the building holding the Ten Commandments tablets.

Similar acknowledgments can be seen throughout a visitor's tour of our Nation's Capital. For example, a large statue of Moses holding the Ten Commandments, alongside a statue of the Apostle Paul, has overlooked the rotunda of the Library of Congress' Jefferson Building since 1897. And the Jefferson Building's Great Reading Room contains a sculpture of a woman

beside the Ten Commandments with a quote above her from the Old Testament (Micah 6:8). A medallion with two tablets depicting the Ten Commandments decorates the floor of the National Archives. Inside the Department of Justice, a statue entitled “The Spirit of Law” has two tablets representing the Ten Commandments lying at its feet. In front of the Ronald Reagan Building is another sculpture that includes a depiction of the Ten Commandments. So too a 24-foot-tall sculpture, depicting, among other things, the Ten Commandments and a cross, stands outside the federal courthouse that houses both the Court of Appeals and the District Court for the District of Columbia. Moses is also prominently featured in the Chamber of the United States House of Representatives. . . .

These displays and recognitions of the Ten Commandments bespeak the rich American tradition of religious acknowledgments. Of course, the Ten Commandments are religious—they were so viewed at their inception and so remain. The monument, therefore, has religious significance. According to Judeo-Christian belief, the Ten Commandments were given to Moses by God on Mt. Sinai. But Moses was a lawgiver as well as a religious leader. And the Ten Commandments have an undeniable historical meaning, as the foregoing examples demonstrate. Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause. 545 U.S. at 688-89.

We urge you to continue standing in the good company of many other governmental institutions that prominently feature visual reminders of our nation's invaluable religious history. As noted above, we can think of no finer assurance for people coming onto the university hospital campus than the banner requesting divine protection and guidance. We believe that this sign has uplifted not only members of your hospital staff, but also members of the public that ride by the garage. We encourage you to keep the banner in its place and thereby provide encouragement to the 76% of Americans who are religious (that percentage should be much higher in Lubbock!).

FFRF also complains of the hospital's use of chaplains and the production of religious videos, undoubtedly for use during the pandemic when the hospital may have restricted the ability of chaplains to provide comfort and support for the patients. In demanding that the hospital remove the chaplains, FFRF again misses the rich tradition of hospital chaplains and chaplains in general.

In focusing exclusively on the Establishment Clause, FFRF misses the demands of the other Religion Clause. Courts have consistently upheld the constitutionality of the government providing chaplains for soldiers and prisoners, who have been deprived of the opportunity to practice their faith at places of their choice. See *Abingdon School District v. Schempp*, 374 U.S. 203 (1963) (Brennan, J., concurring). The same is true of hospital patients, who lack the mobility to attend the church of their choice. Not to provide chaplains, Justice Brennan observed, would signal hostility to religion rather than neutrality.

Moreover, the constitutionality of chaplain programs 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 a chaplain (always a Christian 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. In soundly rejecting this contention, Chief Justice Burger wrote that state-sponsored prayer is "deeply embedded in the history and tradition of this country." 463 U.S. at 786. Regarding history, the Chief Justice noted that three days after Congress authorized the appointment of paid chaplains, Congress reached a final agreement on the language of the Bill of Rights. The Chief Justice reasonably concluded that the men who wrote the First Amendment's Religion Clause did not view state-sponsored prayer as a violation of that Amendment. Regarding tradition, the Chief Justice further wrote that state-sponsored prayer has continued without interruption ever since the First Congress, and has been consistently followed in most of the states. 463 U.S. at 788-89.

In short, both religious sayings on public buildings and chaplaincies are deeply embedded in the traditions of our nation, and therefore are constitutional. If we can be of any service to you on this issue, feel free to contact us. The CPCF has 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. May God bless you.

Sincerely,



Congressman J. Randy Forbes
President
Congressional Prayer Caucus Foundation
National Strategic Center