



April 12, 2013

Mayor Johnny L. DuPree, Ph.D.
Office of the Mayor
200 Forrest Street
Hattiesburg, MS 39403-1898

RE: Constitutionality of Mayor's Annual Prayer Breakfast – May 2, 2013

Dear Mayor,

We write to encourage your continued observance of the Mayor's Annual Prayer Breakfast and other activities done as part of the National Day of Prayer. In recent years, particular activist groups have suggested that observing the National Day of Prayer, or holding breakfasts such as yours, is somehow unlawful. These opinions have no foundation in the law.

Our organization, the Alliance Defending Freedom, is a not-for-profit legal alliance of more than 2,200 attorneys and like-minded organizations defending the right of people to freely live out their faith. We educate the public and the government about important constitutional rights, particularly *Our First Liberty*— religious freedom.

Alliance Defending Freedom also litigates in defense of these rights, and has successfully defended cities and other governmental entities that properly accommodated religious expression such as the National Day of Prayer. We are also presently consulting with Attorney General Hood in *Jackson Women's Organization v. Currier* in defending the constitutionality of HB 1390, requiring that medical standards be applied in abortion clinics.

This letter presents a brief legal analysis to demonstrate why you may freely and lawfully choose to observe Prayer events in your community.

I. LEGAL ANALYSIS

You can be confident that your participation in and acknowledgement of the National Day of Prayer are constitutionally protected activities. You are free to proclaim your city's support for this event, and you are under no obligation to satisfy the demands of any disgruntled individual or civil libertarian group that may oppose such action.

A. Official Proclamations of the National Day of Prayer are Constitutional.

Since the time of this nation's founding, public prayer has been an essential part of our heritage. The tradition of designating an official day of prayer actually began with the Continental Congress in 1775.¹ On October 3, 1789, President George Washington issued a *National Day of*

¹ June 12, 1775, Resolution Calling for a Day of Public Fasting and Prayer. *The Journals of the Continental Congress 1774-1789* (Washington, D.C.: Government Printing Office, 1905), Vol. II, p. 87.

Thanksgiving Proclamation, “to be devoted by the people of these United States 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,” so that “we may then unite in most humbly offering our prayers and supplications to the great Lord and Ruler of Nations, and beseech Him . . . to promote the knowledge and practice of true religion and virtue . . .”²

Since that time, American Presidents have continued this important tradition.³ In 1952, President Harry Truman signed into law a joint resolution by Congress to “set [] aside an appropriate day as a National Day of Prayer.”⁴ In 1988, the law was amended by Congress and signed by President Ronald Reagan to specify the annual event should be observed on “the first Thursday in May in each year.”⁵ The resulting statute, 36 U.S.C.A. § 119, currently provides as follows:

The President shall issue each year a proclamation designating the first Thursday in May as a National Day of Prayer on which the people of the United States may turn to God in prayer and meditation at churches, in groups, and as individuals.

The United States Supreme Court has repeatedly acknowledged that presidential proclamations of thanksgiving and prayer, including the National Day of Prayer, are indeed a part of our culture and tradition and are in no way a violation of the Constitution. In *Lynch v. Donnelly*, 465 U.S. 668, 675 (1984), the Court affirmed, “Our history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders.” Justice O’Connor further noted that such official references encompass “government practices embracing religion, including Thanksgiving and Christmas holidays, congressional and military chaplains and the congressional prayer room, the motto, the Pledge of Allegiance, and presidential proclamations for a National Day of Prayer.” *Id.* at 693 (concurring opinion). She explained, “Those government acknowledgments of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society. For that reason, and because of their history and ubiquity, those practices are not understood as conveying government approval of particular religious beliefs.” *Id.*

Similarly, in *Marsb v. Chambers*, 463 U.S. 783 (1983), when an offended taxpayer filed a lawsuit challenging the constitutionality of the State of Nebraska’s tradition of opening each legislative session with a prayer by a chaplain paid with public funds, the Court ruled in favor of the State. Chief Justice Burger wrote, “To invoke divine guidance on a public body . . . is not, in these circumstances, an ‘establishment’ of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country.” *Id.* at 792. Those beliefs help define who we are as a nation.

Thirty years before *Marsb*, Justice Douglas famously observed, “We are a religious people whose institutions presuppose a Supreme Being. . . . When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs,

² James D. Richardson, *A Compilation of Messages and Papers of the Presidents, 1789-1897* (Published by Authority of Congress 1899), Vol. 1, p. 64.

³ “Presidents Adams and Madison also issued thanksgiving proclamations, as have almost all our presidents.” *Lynch v. Donnelly*, 465 U.S. 668, 675, n.2 (1984).

⁴ Public Law 82-324; 66 Stat. 64— April 17, 1952.

⁵ January 25, 1988, Second Session of the One Hundredth Congress. Public Law 100-307—May 5, 1988.

it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs.” *Zorach v. Clauston*, 343 U.S. 306, 313-14 (1952). The Court affirmed the Establishment Clause does not prohibit “[p]rayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a national holiday; ‘so help me God’ in our courtroom oaths—these and all other references to the Almighty that run through our laws, [and] our public rituals . . . [including] the supplication with which the Court opens each session: ‘God save the United States and this Honorable Court.’” *Id.* at 312-13. These practices are legitimate because they are “deeply imbedded in the history and tradition of this country.” *Marsh*, 463 U.S. at 786. By simply following these traditions, government officials run no risk of violating the Constitution.

B. Local Participation in the National Day of Prayer is Constitutional.

Just as the President’s proclamations and “appeals to the Almighty” can be issued consistent with the Establishment Clause, so can the proclamations and appeals of state and local officials. Historically, all governors from all 50 states, along with the president of the United States, have issued proclamations in honor of the National Day of Prayer. There is no basis to suggest that a mayor or city council member could not do the same.

As the leader of your city, you are well within your rights to echo these sentiments. Local observances of this historic annual event, like your Mayor’s Annual Prayer Breakfast, are both lawful and appropriate. We thus encourage you to proclaim and participate in the National Day of Prayer, just as millions of Americans and thousands of other local leaders do annually on the first Thursday in May.

C. Legal Efforts to Stop Government Participation in the National Day of Prayer Have Failed.

Recent efforts to block the observance of the National Day of Prayer and gubernatorial prayer proclamations have been dismissed by federal courts. In fact, there is no binding court opinion finding that public officials cannot call upon citizens to pray.

In 2011, the United States Court of Appeals for the Seventh Circuit, in the case of *Freedom From Religion Foundation v. Obama*, 641 F.3d 803 (7th Cir. 2011), dismissed a challenge to the presidential proclamation in honor of the National Day of Prayer. The court’s decision starts with the acknowledgment that: “Since the founding of the Republic, Congress has requested Presidents to call on the citizens to pray.” *Id.* at 804. Freedom From Religion Foundation brought the suit asserting that their members were “offended” because government officials simply requested that citizens should voluntarily pray in a manner consistent with the conscience of the prayer giver. The court observed: “offense at the behavior of the government, and a desire to have public officials comply with (plaintiffs’ view of) the Constitution” is not sufficient to support a federal lawsuit. *Id.* at 807-808.

Likewise, a challenge to the “Arizona Day of Prayer” proclamation offered by Arizona Governor Jan Brewer was also dismissed. On December 12, 2011, the United States District Court for Arizona dismissed the law suit captioned *Freedom From Religion Foundation v. Brewer* on the basis that the Plaintiff lacked the legal standing to challenge the proclamation.

The National Day of Prayer was created by an act of Congress and is meant as an opportunity for all willing Americans to voluntarily pray or meditate according to their own beliefs,

not to promote any particular religion or form of religious observance. Any claim that the law is meant to do otherwise is without merit.

II. CONCLUSION

In his Farewell Address, President Washington admonished, “Of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable supports. [T]he mere Politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity.”⁶ It is both lawful and wise for public officials to respect and cherish our religious heritage, and to encourage all Americans to invoke God’s protection and guidance over our nation.

We hope that this letter will encourage you to continue your Mayor’s Annual Prayer Breakfast, as planned, and to join the countless other national, state, and local leaders who honor the National Day of Prayer.

If Alliance Defending Freedom can provide you with further information or assistance, or if you receive any threat of litigation, please contact us.

We thank you for your attention to this matter, and for your dedicated public service.

Very sincerely yours,



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⁶ September 19, 1796, Farewell Address. James D. Richardson, *A Compilation of Messages and Papers of the Presidents, 1789-1897* (Published by Authority of Congress 1899), Vol. 1, p. 220.