



November 14, 2007

The Honorable Governor Sonny Perdue
Office of the Governor
Georgia State Capitol
Atlanta, GA 30334
Fax: (404) 657-7332

Re: Constitutionality of Voluntary Prayer Services

Dear Governor Perdue:

The American Center for Law and Justice (ACLJ) supports your call for prayer in light of the terrible drought that has plagued northern Georgia. This practice is constitutional and is consistent with the longstanding history and tradition of American presidents, governors, and legislators issuing declarations of prayer and holding voluntary prayer services.

The ACLJ has learned that the Freedom From Religion Foundation (FFRF) has sent you a letter stating that “nothing fails like prayer” and calling prayer nothing more than “human ego and superstition.” The letter mocks you and the millions of other Americans who believe in the power of prayer. While the letter contains no legal analysis, it claims that “it is a gross violation of our treasured constitutional principle of the separation between church and state for any elected official to hold a public prayer service, or to enjoin citizens to pray at all.” This informational letter explains why the First Amendment to the Constitution does not prohibit declarations of prayer or the holding of voluntary prayer services similar to yours.

By way of introduction, the ACLJ is a public interest law firm. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving constitutional freedoms. The ACLJ is dedicated to ensuring that religious expression is not unduly stripped from the public arena.

Statement of Facts

As you are well aware, northern Georgia is in the midst of an historic drought.¹ Water use restrictions have been put in place to preserve as much drinking water as possible.² “Georgia has been locked in a battle with Alabama and Florida over how much water should be sent downstream from the state’s dwindling reservoirs.”³ One commentator explained, “with Lake Lanier growing grass instead of bass, we’re definitely in desperate times.”⁴

In response, you have asked Georgians to pray for rain, and your office organized a voluntary prayer service to pray for rain.⁵ Your spokesperson stated that, “[t]he issue at the heart of our drought problems is a lack of rain. . . . [T]here is nothing the government can do to make that happen. . . . The governor recognizes that the request has got to be made to a higher power.”⁶ Spiritual leaders from several faiths and denominations were invited to participate in the service.⁷

Such calls for prayer in dire circumstances are not uncommon. Just this year, “Australian Prime Minister John Howard asked churchgoers to pray for rain in hopes of snapping a drought,” and “Alabama Gov. Bob Riley issued a proclamation declaring a week in July as ‘Days of Prayer for Rain.’”⁸ “[A] prayer rally at a high school football stadium in the Georgia town of Watkinsville drew more than 100 worshippers last week, and a gospel concert dedicated to rain attracted hundreds more two weeks ago at an Atlanta church.”⁹

Your call for voluntary prayer in a time of great need echoes President Bush’s response to the September 11 tragedy. Just days after the terrorist attacks occurred, President Bush observed and appreciated that “Republicans and Democrats [in Congress] joined together on the steps of [the] Capitol, singing ‘God Bless America.’”¹⁰ President Bush extended his gratitude for prayers from countries around the world at that time, and he also called this nation to prayer:

¹ Georgia Environmental Protection Division, *Citing Historic Drought, Georgia EPD Bans Most Outdoor Water Use in North Georgia*, Sept. 28, 2007, at http://www.gaepd.org/Files_PDF/news/Level_4_Drought_news_release.pdf.

² *Id.*

³ *Ga. Governor to Pray for Rain; Leader Will Host Prayer Service to Ask for Relief from Southeast Drought*, Associated Press, Nov. 7, 2007, at <http://www.msnbc.msn.com/id/21680340/>.

⁴ Bo Emerson, *Georgia’s Water Crisis: Putting Faith in Call for Rain*, Atlanta Journal-Constitution, Nov. 13, 2007, at <http://www.ajc.com/printedition/content/printedition/2007/11/13/prayer1113.html?cxntlid=inform>.

⁵ *Id.*

⁶ James Salzer, *Governor Seeks Divine Intervention to Get Some Rain; Invitations Going Out for Prayer Service at Capitol on Tuesday*, Atlanta Journal-Constitution, Nov. 7, 2007, at http://www.ajc.com/news/content/metro/stories/2007/11/07/droughtpray_1108.html.

⁷ *Id.*

⁸ Greg Bluestein, *Ga. Governor Prays for Rain Amid Drought*, Nov. 12, 2007, at http://www.ajc.com/shared-gen/content/shared-gen/ap/National/Southern_Drought.html?cxntlid=inform.

⁹ *Id.*

¹⁰ Press Release, The White House, President George W. Bush, *Address to a Joint Session of Congress and the American People* (Sept. 20, 2001), at <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html#>.

And, finally, please continue praying for the victims of terror and their families, for those in uniform, and for our great country. Prayer has comforted us in sorrow, and will help strengthen us for the journey ahead.¹¹

In closing, President Bush prayed himself for the nation: “In all that lies before us, may God grant us wisdom, and may He watch over the United States of America.”¹²

While many Georgians have supported your call for prayer, a few have stated their opposition to it. A member of the Atlanta Freethought Society declared that a prayer service is “a ridiculous, illogical exercise.”¹³ FFRF’s letter to you stated that some of the group’s members would attend a protest entitled, “Nothing Fails Like Prayer” near the location of the prayer service.¹⁴

FFRF’s letter mocked members of all religions who believe in God and prayer:

Think about the illogic of appealing to a “higher power” for rain! If there were an omnipotent deity who could end Georgia’s drought by sheer magical power, why has this deity permitted the drought in the first place?¹⁵

FFRF continued by stating:

It is simply human ego and superstition to imagine that assembled wishful thinking can affect the natural laws of the universe. Any effect a prayer service might have on the weather would be one of pure chance. We have a saying around our office: Nothing fails like prayer.¹⁶

Without citing any legal authorities, FFRF then declared that “it is a gross violation of our treasured constitutional principle of the separation between church and state for any elected official to hold a public prayer service, or to enjoin citizens to pray at all.”¹⁷ The letter concluded by stating, “[i]t is time to quit confusing the office of governor with that of ‘state preacher.’”¹⁸

FFRF’s reaction to your call for prayer is nothing new. Among other things, FFRF criticized calls for prayer in 2005 in the wake of Hurricane Katrina. FFRF issued a statement asking, “Is anything more useless than prayer in the face of a catastrophe?”¹⁹ FFRF referred to God as “a useless, no-

¹¹ *Id.*

¹² *Id.*

¹³ Emerson, *supra* note 4.

¹⁴ Freedom From Religion Foundation, *Letter to the Honorable Governor Sonny Perdue*, Nov. 11, 2007, at <http://ffrf.org/news/2007/perdueletter.php>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Freedom From Religion Foundation, “*Hands That Help Are Better Far than Lips That Pray*”; *Hurricane Relief Needs People Power, Not Prayer; As Usual, God Gets the Credit, Never the Blame*, Aug. 31, 2005, at <http://ffrf.org/news/2005/katrina.php>.

show deity” and declared, “[t]he 19th century’s most famous agnostic, Col. Robert Green Ingersoll, had it right when he observed: ‘The hands that help are better far than lips that pray.’”²⁰

Statement of Law

The misused concept of a wall of “separation of church and state” relied upon by FFRF does not preclude presidents or governors from declaring days of prayer. The United States Court of Appeals for the Sixth Circuit issued a stinging rebuke of the repeated reference to that phrase, stating, “[t]his extra-constitutional construct has grown tiresome. The First Amendment does not demand a wall of separation between church and state. Our Nation’s history is replete with governmental acknowledgment and, in some cases, accommodation of religion.”²¹ From the nation’s founding to the present day, presidents and governors have called for voluntary prayer or reflection in response to natural disasters, tragedies, and other significant events.

History shows that FFRF’s belief that “nothing fails like prayer” was not shared by our nation’s founding fathers, and it has not been shared by the United States Congress or American presidents. For example, those who signed the Declaration of Independence believed that God hears and answers prayer, as they “appeal[ed] to the Supreme Judge of the world to rectify their intentions.”²² The Declaration recognizes that human liberties are a gift from “Nature’s God,” as “all men . . . are endowed by their Creator with certain unalienable Rights.”²³

Public proclamations of thanksgiving and prayer are a longstanding part of American history.

Since the Founding of our Republic, American Presidents have issued Thanksgiving Proclamations establishing a national day of celebration and prayer. The first such proclamation was issued by President Washington at the request of the First Congress, and “recommend[ed] and assign[ed]” a day “to be devoted by the people of these 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”²⁴

In addition,

Congress has directed the President to “set aside and proclaim a suitable day each

²⁰ *Id.* FFRF has also asked the nation’s governors to declare a “Day of Reason” or a “Give Thanks for State/Church Separation Week” in response to the National Day of Prayer. Freedom From Religion Foundation, *State/Church Watchdog Group Protests “Day of Prayer” Proclamations, Asks Governors to Balance With “Day of Reason”*, at <http://www.ffrf.org/news/2005/noprayerday.php>.

²¹ *ACLU of Kentucky v. Mercer County*, 432 F.3d 624, 638-39 (6th Cir. 2005) (citations omitted).

²² *Declaration of Independence* (U.S. 1776).

²³ *Id.*

²⁴ *County of Allegheny v. ACLU*, 492 U.S. 573, 671-72 (1989) (Kennedy, J., concurring in part and dissenting in part) (citations omitted).

year . . . 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.” This statute does not require anyone to pray, of course, but it is a straightforward endorsement of the concept of “turn[ing] to God in prayer.”²⁵

The Supreme Court has recognized that historic practice is relevant to Establishment Clause analysis. For example, in *Marsh v. Chambers*,²⁶ the Supreme Court upheld the centuries-old practice of opening legislative sessions with a prayer. The Court explained:

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.²⁷

The Court acknowledged the fact that “the Continental Congress, beginning in 1774, adopted the traditional procedure of opening its sessions with a prayer offered by a paid chaplain.”²⁸ The Court added:

In light of the unambiguous and unbroken history of more than 200 years, there can be no doubt that the practice of opening legislative sessions with prayer has become part of the fabric of our society. To invoke Divine guidance on a public body entrusted with making laws is not, in these circumstances, an “establishment” of religion or a step toward establishment; it is simply a tolerable acknowledgement of beliefs widely held among the people of this country. As Justice Douglas observed, we are a religious people whose institutions presuppose a Supreme Being.²⁹

In addition, it is common for legislatures to establish a prayer room for the use of legislators. For example, the United States Congress has set aside

a special prayer room in the Capitol for use by Members of the House and Senate. The room is decorated with a large stained glass panel that depicts President Washington kneeling in prayer; around him is etched the first verse of the 16th Psalm: “Preserve me, O God, for in Thee do I put my trust.” Beneath the panel is a rostrum on which a Bible is placed; next to the rostrum is an American Flag.³⁰

In *Van Zandt v. Thompson*,³¹ the United States Court of Appeals for the Seventh Circuit upheld the creation of a prayer room in the Illinois State Capitol Building for the use of legislators. The court noted that allowing part of a public building to be used for voluntary prayer is similar to the practice

²⁵ *Id.* (citations omitted).

²⁶ 463 U.S. 783 (1983).

²⁷ *Id.* at 786.

²⁸ *Id.* at 787.

²⁹ *Id.* at 792 (citations omitted).

³⁰ *Id.* (citations omitted).

³¹ 839 F.2d 1215 (7th Cir. 1988).

of opening legislative sessions with a prayer that the Supreme Court upheld in *Marsh*. The court observed that the Establishment Clause argument against the prayer room was even weaker than the argument rejected in *Marsh*:

The proposed prayer room, while open to the public, need not impose any inconvenience on anyone who wishes to avoid it. Legislators and visitors to the Illinois Capitol will presumably be able to exercise their prerogatives as mature adults and avoid the room without even the bother of absenting themselves from a public and ceremonial exercise.³²

Similarly, individuals who do not desire to participate in voluntary prayer services are able to easily avoid doing so.

In *Allen v. Consolidated City of Jacksonville*,³³ a federal district court in Florida upheld a city resolution that called for voluntary community prayer, meditation, and personal commitments to aid the fight against drugs and crime. The court noted that the resolution “[did] not purport to coerce anyone to pray”³⁴ While the court held that the plaintiff lacked legal standing, the court ruled in the alternative that the resolution was consistent with the First Amendment.³⁵

The court held that the resolution had the secular purpose of stopping the sale and use of drugs. The court also rejected “the polarized view that any governmental reference to God or prayer has the effect of advancing religion.”³⁶ The court explained:

Such a view might necessitate the abolition of the National Day of Prayer, 36 U.S.C. § 169(h), the elimination of “under God” from our pledge of allegiance, the removal of “in God we trust” from our currency and the removal of many other references and calls to “God” and “prayer” in our state and national affairs.³⁷

The court added that prayer resolutions are similar to the practice upheld in *Marsh*:

The parallels to this case are so close that *Marsh* mentions a resolution by the House of Representatives, passed the same day on which the Bill of Rights was approved, requesting the President set aside a day of Thanksgiving and prayer. The continuity over time with which the Congress has requested and the President has issued proclamations designating days of prayer or personal commitment, on general and

³² *Id.* at 1219 (citation omitted).

³³ 719 F. Supp. 1532 (M.D. Fla. 1989).

³⁴ *Id.* at 1534.

³⁵ *Id.* at 1537-38.

³⁶ *Id.* at 1538.

³⁷ *Id.*

specific topics, can be seen as a continuing endorsement of the contemporaneous construction placed on the establishment clause by the First Congress.³⁸

It is important to note that the Constitution cannot be interpreted to purge all religious reference from the public square. “A relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution.”³⁹ Since “[t]here is always someone who, with a particular quantum of knowledge, reasonably might perceive a particular action as an endorsement of religion,” it is important to remember that “[a] State has not made religion relevant to standing in the political community simply because a particular viewer of [religious activity] might feel uncomfortable.”⁴⁰ The Establishment Clause “is not about the perceptions of particular individuals or saving isolated nonadherents from the discomfort of viewing symbols of a faith to which they do not subscribe.”⁴¹ Thus, the fact that some individuals may disagree with public prayer resolutions does not make the practice unconstitutional.

In addition, groups such as FFRF often lack legal standing to challenge government practices under the Establishment Clause due to the absence of any concrete injury.⁴² For example, earlier this year, the Supreme Court held in *Hein v. Freedom from Religion Foundation, Inc.* that FFRF lacked standing to challenge conferences organized by the White House Office of Faith-Based and Community Initiatives.⁴³

Conclusion

The ACLJ applauds your call for prayer and supports your right to hold voluntary prayer services. Your actions are consistent with the venerable tradition of American government leaders seeking God’s guidance and provision in times of need.

Sincerely,

Jay Alan Sekulow
Chief Counsel

³⁸ *Id.* at 1539 (citations omitted); *see also Newman v. City of East Point*, 181 F. Supp. 2d 1374 (N.D. Ga. 2002) (upholding the right of a mayor and other city officials to participate in a Christian event called the Mayor’s Prayer Breakfast, but enjoining the use of city funds to organize or advertise the event).

³⁹ *Lee v. Weisman*, 505 U.S. 577, 598 (1992).

⁴⁰ *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 780 (1995) (O’Connor, J. concurring).

⁴¹ *Id.* at 779.

⁴² *See, e.g., Hinrichs v. Speaker of the House of Representatives*, 2007 U.S. App. LEXIS 25363 (7th Cir. 2007); *Doe v. Tangipahoa Parish Sch. Bd.*, 494 F.3d 494 (5th Cir. 2007); *Kurtz v. Baker*, 829 F.2d 1133 (D.C. Cir. 1987); *Trunk v. City of San Diego*, 2007 U.S. Dist. LEXIS 82647 (S.D. Cal. 2007); *Newdow v. Bush*, 391 F. Supp. 2d 95 (D.D.C. 2005).

⁴³ 127 S. Ct. 2553 (2007).