



October 4, 2019

Via U.S. Mail & Email

The Honorable Matthew G. Bevin
Governor of the Commonwealth of Kentucky
229 West Main St., Ste. 400
Frankfort, KY 40601
governor@mail.state.ky.us

Re: Bring Your Bible to School Day Social Media Promotion

Dear Governor Bevin:

We write regarding your promotion of “Bring Your Bible to School Day” on your official Twitter page on October 1, 2019. As you know, “Bring Your Bible to School Day” is an annual contrivance of Focus on the Family, a Christian fundamentalist organization founded by James Dobson.¹ While the event is often popularly portrayed as an act of resistance against our secular public schools, the truth is that students have the First Amendment right to bring a bible to school and discuss its contents *any* day of the year – a fact which Focus on the Family itself openly admits.² Rather, it is plain that the true purpose of “Bring Your Bible to School Day” is to encourage students to proselytize their friends and teachers.³

The American Humanist Association (“AHA”) is a national nonprofit organization with over 34,000 members across the country, including many in Kentucky (including members affiliated with our state-level chapters, the Tri-State Freethinkers and the Humanist Forum of Central Kentucky). The Appignani Humanist Legal Center, the AHA’s legal arm, has litigated dozens of church-state separation cases in state and federal courts nationwide. The mission of AHA’s legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring separation of church and state.

Your Twitter post promoting “Bring Your Bible to School Day” entirely embraces Focus on the Family’s Christian evangelistic mission. In the video attached to the post, you explicitly “*encourage every single student in Kentucky*” to bring their bible to school on October 3, 2019

¹ “Frequently Asked Questions,” Bring Your Bible to School Day, official website. <https://www.bringyourbible.org/frequently-asked-questions/> (last accessed Oct. 4, 2019).

² *See Id.* (“As a student in a public school, you have First Amendment rights to engage in voluntary, free speech conversations in a way that does not interfere with or substantially disrupt classroom time and academic instruction. That means you can voluntarily express your personal and religious beliefs to your classmates through verbal or written expressions, as long as you follow school policy and do not engage in these activities during classroom or instruction time.”)

³ *See Id.* (“The event is designed to empower you as a student to express your belief in the truth of God’s Word”).

(emphasis added). You say that the bible informs you as a Governor and “[your] decision-making on everything.” You further encourage students to proselytize their peers, saying, “bring it [a bible] and share it with somebody who maybe doesn’t have one – maybe has never read this book.” Even more troubling, your use of “#WeAreKY” presumptuously associates the whole of your state with this Christian fundamentalist event. Your post’s caption reads, in part:

The Judeo-Christian principles that are bound in this book are timeless, containing an amazing amount of history, knowledge, wisdom and guidance...

Bring it. Read it. Share it. #WeAreKY

The First Amendment’s Establishment Clause “commands a separation of church and state.” *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). It requires the “government [to] remain secular, rather than affiliate itself with religious beliefs or institutions.” *Cty. of Allegheny v. ACLU, Greater Pittsburgh Chapter*, 492 U.S. 573, 610 (1989). Furthermore, the Constitution of Kentucky, which you took an oath to uphold, reads:

No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity; [...] No human authority shall, in any case whatever, control or interfere with the rights of conscience.

KY. CONST. § 5.

Promoting the pet-project of a Christian fundamentalist organization via your official Twitter account violates the Establishment Clause. There is no doubt that the “@GovMattBevin” Twitter handle is an official government communication channel. As such, any posts generated by the account are government speech, which “must comport with the Establishment Clause.” *Pleasant Grove City v. Summum*, 555 U.S. 460, 468 (2009).⁴ This is hardly an ambiguous or novel area of law. In fact, just days ago, an Arkansas District Court ruled that plaintiffs had “a fair chance of prevailing” in a case concerning official statements by Senator Jason Rapert on his social media accounts: “the Court determines that plaintiffs have a fair chance of prevailing on their argument that State Senator Rapert acted and continues to act under color of state law when operating the relevant social media accounts.” *Am. Atheists, et al. v. Rapert*, 4:19-cv-00017 at *32 (E.D. Ark, Sep. 30, 2019). *Accord Morgan, et al., v. Bevin*, 3:17-cv-00060, Doc. #26 at *15 (E.D. Ky., Mar. 30, 2018) (“...**Governor Bevin’s official Facebook and Twitter accounts are Government speech...**”) (emphasis added).

To comply with the Establishment Clause, a government practice must pass the *Lemon* test,⁵ pursuant to which it must: (1) have a secular purpose; (2) not have the effect of advancing or

⁴ Government-run social media accounts are clearly government speech, not private speech. See *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 239 (2d Cir. 2019) (“Everyone concedes that the President’s initial tweets (meaning those that he produces himself) are government speech.”); see also *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019) (holding that a county official who maintained a “Chair Phyllis J. Randall” Facebook page had acted under color of state law); *Hawaii v. Trump*, 859 F.3d 741, 773 n. 14 (9th Cir. 2017) (noting that the President’s personal Twitter feed is comprised of “official statements by the President of the United States.”).

⁵ The test is derived from *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

endorsing religion; and (3) not foster excessive entanglement with religion. *Allegheny*, 492 U.S. at 592. Government action “violates the Establishment Clause if it fails to satisfy any of these prongs.” *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).

The Supreme Court “has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools.” *Id.* at 583-84. In “no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart.” *McCullum v. Bd. of Educ.*, 333 U.S. 203, 231 (1948).

There is no conceivable secular purpose for encouraging public school students to proselytize their friends and teachers. *See Ingebretsen v. Jackson Public School Dist.*, 88 F.3d 274, at 279 (1996) (purpose behind informing students “that they can pray at any school event so long as a student ‘initiates’ the prayer” cannot “be characterized as ‘secular’”). Where, as here, the government promotes an “intrinsically religious practice” such as evangelism, it “cannot meet the secular purpose prong.” *Jager v. Douglas Cty. Sch. Dist.*, 862 F.2d 824, 829-30 (11th Cir. 1989). A religious purpose may easily be inferred in this instance since “the government action itself besp[eaks] the purpose . . . [because it is] patently religious.” *McCreary Cty., Ky. v. ACLU*, 545 U.S. 844, 862-63 (2005) (citing *Sch. Dist. Abington v. Schempp*, 374 U.S. 203, at 223-224 (1963)). *See also Stone v. Graham*, 449 U.S. 39, 41 (1980) (“[t]he Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact.”); *North Carolina Civil Liberties Union v. Constangy*, 947 F.2d 1145, 1150 (4th Cir. 1991) (finding religious purpose in judge’s practice of opening court sessions with prayer, as it involved “an act so intrinsically religious”).

In *Schempp*, the defendant school district argued that daily bible reading served secular purposes including “the promotion of moral values, the contradiction to the materialistic trends of our times, the perpetuation of our institutions and the teaching of literature.” 374 U.S. at 222-23. Without discrediting these ends, the Court held the practice violated the Establishment Clause, noting that “[e]ven if its purpose is not strictly religious, it is sought to be accomplished through readings . . . from the Bible.” *Id.*

It is beyond reasonable dispute that purpose of “Bring Your Bible to School Day” it to convert others to Christianity. By encouraging children to participate in the event, your office has adopted that decidedly non-secular purpose in contravention of the First Amendment.

AHA recently sued—and won—against a Florida police department that similarly promoted a religious event using the department’s official Facebook page. *Rojas v. City of Ocala*, 315 F. Supp. 3d 1256, 1278 (M.D. Fla. 2018). The court found that department’s actions violated the Establishment Clause, reasoning: “Given that the Facebook page posting by the Ocala Police Department asked Ocala’s citizens to join in ‘fervent prayer’— an undisputedly religious action, and that the Prayer Vigil consisted of chaplains offering Christian prayers and singing from the stage with responsive audience participation, a reasonable observer would find that the Prayer Vigil had a religious purpose” and is thus unconstitutional. *Id.*

Regardless of the purposes motivating your post, your actions also fail *Lemon’s* effect prong. The “effect prong asks whether, irrespective of government’s actual purpose, the practice

under review in fact conveys a message of endorsement or disapproval [of religion].” *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985) (quotation marks omitted). Even the “mere appearance of a joint exercise of authority by Church and State provides a significant symbolic benefit to religion,” and, therefore, has the impermissible primary effect of advancing religion. *Larkin v. Grendel’s Den*, 459 U.S. 116, 126-27 (1982) (emphasis added). A subsequent modification of this prong, commonly called the “Endorsement Test,” asks if, regardless of actual or stated purpose, the challenged government action has “the effect of communicating a message of government endorsement or disapproval of religion.” *Lynch v. Donnelly*, 465 U.S. 668, 692 (1984) (O’Connor, J., concurring). Encouraging every student in Kentucky to read and discuss the primary text of the Christian religion unquestionably has the effect of endorsing Christianity, as any reasonable observer would conclude.

Your actions further fail to pass constitutional muster under the *Lemon*’s third prong, which forbids “excessive government entanglement with religion.” *Lemon*, 403 U.S. at 613. Like the Establishment Clause generally, the prohibition on excessive government entanglement with religion “rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere.” *McCollum v. Bd. Of Educ.*, 333 U.S. 203, 212 (1948). Because “Bring Your Bible to School Day” is inherently sectarian, endorsing the event in your official capacity entangles the government with religion. Considering that no other book, sacred or otherwise, seems to have been given the same special treatment as the Christian bible, the entanglement here is particularly excessive, as “the government [has been] placed in the position of deciding between competing religious views.” *Petruska v. Gannon Univ.*, 462 F.3d 294, 311 (3d Cir. 2006). By endorsing a sectarian event championed by a Christian fundamentalist ministry like Focus on the Family, you have excessively entangled your office with religion in violation of *Lemon*’s third prong.

One must wonder whether it ever occurred to you that non-Christians in your state might take issue with their governor, acting in his official capacity on his official social media account, promoting his specific religious beliefs in this way. If you have difficulty understanding why non-Christians would be troubled by this, just imagine a non-Christian governor using the prestige of her position, her access official government communication channels, and her salaried time funded by your taxpayer dollars to encourage every student in her state spend one day a year reading, discussing, and proselytizing with the Koran, the Bhagavad Gita, or the Satanic Bible.

Even setting aside the legal implications of such actions (and there are many) common decency dictates that you show more respect for those non-Christians whom you serve – and who pay your salary. We ask that you cease this needlessly divisive and plainly unconstitutional conduct in the future. Thank you for your time and attention to this important matter.

Sincerely,
Monica L. Miller
Legal Director and Senior Counsel
American Humanist Association

(Enclosure)

Tri-State Freethinkers
Union, KY

Humanist Forum of Central Kentucky
Lexington, KY





Governor Matt Bevin ✓

@GovMattBevin



👉 STUDENTS 👉 [#BringYourBible](#) to School Day is THIS Thursday, Oct. 3!

The Judeo-Christian principles that are bound in this book are timeless, containing an amazing amount of history, knowledge, wisdom and guidance...

Bring it. Read it. Share it. [#WeAreKY](#)



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