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April 14, 2020

Via Email

Governor Asa Hutchinson
State Capitol Room 250
500 Woodlane Ave.
Little Rock, AR 72201
governor@governor.arkansas.gov

Dear Gov. Hutchinson,

I am writing on behalf of the American Humanist Association (AHA) and concerned members who contacted our office regarding a serious constitutional violation. On March 29, 2020, under your authority as Governor, the State of Arkansas Executive Department issued a proclamation for a “Special Day of Prayer in Arkansas.” (tiny.cc/ja0ymz) The proclamation quotes Deuteronomy 31:8, refers to a singular “God,” and asks that “[He] bless all Arkansans of all faiths.” We appreciate seeking to provide a sense of hope and comfort during these trying times, but you have specifically requested a day of Christian prayer to the Christian God. This proclamation marginalizes citizens of every other faith in Arkansas as well as those who do not believe in any god or gods. As briefly set forth below, such sectarian religious endorsement violates the First Amendment’s Establishment Clause. I am writing as a courtesy to request that you avoid making such unconstitutional religious proclamations in the future.

The American Humanist Association (“AHA”) is a national nonprofit organization with tens of thousands of members across the country, including many in Arkansas. 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. We have litigated dozens of church-state separation cases in federal courts from coast to coast, including in the U.S. Supreme Court and in Arkansas.

You have the absolute right to believe in and worship whatever god you like during your service as Governor of Arkansas. But marginalizing citizens of other faiths and of no faith is detrimental in times of crisis, and this proclamation runs afoul of our constitutional tradition mandating religious neutrality.

The First Amendment’s Establishment Clause “commands a separation of church and state.” *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). It prohibits the government from promoting “a point of view in religious matters” or otherwise taking sides between “religion and religion or religion and nonreligion.” *McCreary Cty. v. ACLU*, 545 U.S. 844, 860 (2005) (citing *Epperson v. Ark.*, 393 U.S. 97, 104 (1968)). The Establishment Clause “absolutely

prohibit[s] government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith.” *Sch. Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 385 (1985) (emphasis added). The government must not “place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general . . . conveying the message that those who [are not adherents] are less than full members of the community.” *Tex. Monthly, Inc. v. Bullock*, 489 U.S. 1, 9 (1989).

Moreover, the Supreme Court has repeatedly held that government-sponsored prayer violates the Establishment Clause. *Engel v. Vitale*, 370 U.S. 421, 430 (1962) (“[G]overnment in this country . . . is without power to prescribe by law any particular form of prayer . . . in carrying on any program of governmentally sponsored religious activity.”); *see also Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302-03, 308 (2000); *Lee v. Weisman*, 505 U.S. 577, 592 (1992). The “First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of [government] would be used to control, support or influence the kinds of prayer the American people can say.” *Engel*, 370 U.S. at 429-30. Thus, your proclamation for a Christian prayer is “inconsistent both with the purposes of the Establishment Clause and with the Establishment Clause itself.” *Id.* at 433.

We remind you that you are a servant of the People of the United States of America—religious and non-religious—and that your office “contains no particle of spiritual authority.” *The Federalist No. 69* (Alexander Hamilton).

Thank you for turning your attention to this important matter.

Sincerely,
Monica L. Miller