

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**FREEDOM FROM RELIGION
FOUNDATION, INC., JANE DOE,
JOHN ROE, and JANE NOE
Plaintiffs,**

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CASE NO. 4:17-cv-881

v.

**Judge Wayne Mack
Defendant.**

**PLAINTIFFS' ORIGINAL COMPLAINT AND REQUEST
FOR DECLARATORY AND INJUNCTIVE RELIEF**

The Honorable Wayne Mack serves as a Justice of the Peace in Justice Court 1 of Montgomery County, Texas. Judge Mack has implemented a courtroom prayer practice during which a guest chaplain delivers a prayer to those assembled in the courtroom before the start of each court session. Plaintiffs object to this courtroom prayer practice as a violation of the Establishment Clause of the First Amendment. The Plaintiffs are three individuals directly affected by the Defendant's courtroom prayer practice and a non-profit membership organization devoted to the separation of church and state.

I. NATURE OF THE CLAIMS

1. Plaintiffs seek a declaration under 28 U.S.C. §2201 that the Defendant has violated the Establishment Clause of the First Amendment through his implementation of an exclusively religious courtroom prayer practice.

2. Plaintiffs further request that the Court grant them injunctive relief under 28 U.S.C. §1343 and FED. R. CIV. P. 65.

3. Plaintiffs bring this action pursuant to 42 U.S.C. §1983 to redress the deprivation of their constitutional rights, committed under the color of state law by the Defendant, who is a

government official.

II. JURISDICTION AND VENUE

4. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331.

5. The Court also has the authority to order declaratory relief under 28 U.S.C. §2201.

6. The Court further has the authority to grant injunctive relief under 28 U.S.C. §1343.

7. Venue is appropriate in the District Court for the Southern District of Texas pursuant to 28 U.S.C. §1391(e). The events giving rise to this complaint occurred predominantly or entirely within the Southern District of Texas.

III. PARTIES

8. Plaintiff Freedom From Religion Foundation, Inc. (“FFRF”), is a non-profit membership organization that advocates for the separation of state and church and educates on matters of nontheism. FFRF has more than 27,000 members, with members in every state of the United States, including more than 1,200 members living in the State of Texas.

9. Plaintiff Jane Doe is a licensed attorney whose place of business is located within Montgomery County. Ms. Doe has appeared before Judge Mack on at least four separate occasions, with separate clients, since Judge Mack instituted his courtroom prayer practice. Ms. Doe is a Christian who objects to a government official telling her when or how to pray. When appearing before Judge Mack, Ms. Doe has always remained in the courtroom during the prayers. She believes that it would be a disservice to her clients to demonstrate her objection to the prayers by leaving the courtroom. She believes that registering her objection publicly would bias Judge Mack against her and her clients, and would injure her ability to attract new clients.

Ms. Doe is also concerned that the courtroom prayer practice will make her clients feel uncomfortable. Because of the courtroom prayer practice, Ms. Doe now tries to avoid appearing in Judge Mack's courtroom, although she has appeared before him as recently as February 2017, and would appear before him again if a case required it.

10. Plaintiff John Roe is a self-employed attorney who regularly works within Montgomery County and regularly represents clients before Judge Mack. Mr. Roe is religiously unaffiliated and objects to being subjected to religious prayers in Judge Mack's courtroom. Although government-organized prayer violates Mr. Roe's sincerely held beliefs, he feels that leaving the courtroom during the prayers would jeopardize his ability to represent his clients before Judge Mack. Mr. Roe believes that publicly registering his objection to the courtroom prayer practice would jeopardize his business, insofar as it would bias Judge Mack against him and his clients.

11. Plaintiff Jane Noe is a Montgomery County resident who has appeared before Judge Mack on official business. Ms. Noe felt coerced to remain in the courtroom during the opening prayer, lest her absence from the courtroom bias the judge against her. Ms. Noe is an atheist. She does not believe in any supernatural higher power and being subjected to religious prayer by a government official violates her sincerely held beliefs. As she is still a Montgomery County resident, there is a reasonable chance that she will be compelled to appear in Judge Mack's courtroom again in the future. Ms. Noe is also a member of the Freedom From Religion Foundation.

12. All individual plaintiffs have been given pseudonyms for the purposes of this filing. In their Motion for Leave to Proceed Using Pseudonyms and for Protective Order, filed

contemporaneously with this complaint, Plaintiffs ask the court to allow them to proceed pseudonymously for the remainder of this case.

13. The Defendant, Judge Wayne Mack, is a Justice of the Peace for Precinct 1 in Montgomery County. Judge Mack is the presiding officer of Justice Court 1 of Montgomery County. He has jurisdiction over minor misdemeanor offenses (Class C) and civil matters where the amount in controversy does not exceed \$10,000. He is responsible for devising and implementing the prayer practice described below.

**IV. JUDGE MACK HAS A HISTORY OF ENDORSING RELIGION
WHILE ACTING IN HIS OFFICIAL CAPACITY**

14. Wayne Mack graduated from the Jackson College of Ministries, where he majored in Theology.

15. During his 2014 Republican primary campaign for Justice of the Peace of Montgomery County, Wayne Mack ran on a platform of reinstating religious values within the office, in part through implementing a Chaplaincy Program to assist the Justice of the Peace.

16. Judge Mack was sworn in as Justice of the Peace on May 1, 2014, and established a volunteer chaplaincy program within his first few weeks of office.

17. On October 23, 2014, Judge Mack held his first annual Faith & Freedom Prayer Breakfast, which doubled as a fundraiser for his office. At the 2014 prayer breakfast, Judge Mack noted the importance of maintaining impartiality as a judge, but then remarked, “there is no reason as an elected official that I have to be ashamed to declare to this crowd and anybody listening that as the Justice of the Peace I *will* bring the Prince of Peace to work with me every day.” Judge Mack’s campaign website selected this remark for a highlight reel of the prayer breakfast.

18. Judge Mack again organized and conducted a prayer breakfast on October 22, 2015, with keynote speaker Pastor Don Piper, who authored a book about visiting Heaven and meeting the Christian god. Judge Mack hosted his third annual prayer breakfast on October 13, 2016.

19. Each prayer breakfast has featured prayers of an exclusively Christian nature.

V. JUDGE MACK'S ORIGINAL COURTROOM PRAYER PRACTICE

20. Shortly after assuming the office of Justice of the Peace on May 1, 2014, Judge Mack implemented the practice of opening each court session with a prayer delivered by a guest chaplain.

21. In August of 2014, plaintiff Jane Noe appeared in Judge Mack's courtroom on official business and witnessed the prayer practice.

22. The August 2014 prayer practice occurred as follows: After entering the courtroom, Judge Mack announced that everyone should remain standing for a prayer.

23. He then stated, "If any of you are offended by that you can leave into the hallway and your case will not be affected."

24. Judge Mack then spent a few minutes describing his new volunteer chaplaincy program.

25. He then introduced the day's "visiting pastor" by outlining his credentials and announcing which church he was from and where it was located.

26. The guest chaplain then stood and read from the Christian Bible for five to eight minutes, directing the reading to those present in the courtroom.

27. During the sermon, Judge Mack appeared to study how those in attendance reacted to the sermon, whether they listened or expressed indifference.

28. After the five- to eight-minute sermon, the guest chaplain asked everyone to bow their heads for a prayer. During the prayer, Judge Mack did not bow his head, but observed those in the courtroom.

29. During the sermon and prayer, Ms. Noe felt that the outcome of her case would be affected by how she chose to react. She did not leave after the invitation to do so out of fear that her actions would prejudice Judge Mack against her. She felt compelled by government authority to demonstrate obeisance to someone else's religion.

30. Once the prayer had concluded, everyone in the courtroom was instructed to remain standing during a recitation of the Pledge of Allegiance and the Texas Pledge of Allegiance to the state flag. Judge Mack then took his seat and the docket was called.

31. In September 2014, attorney Jane Doe appeared in Judge Mack's courtroom in her professional capacity. The prayer practice was largely the same as reported by Jane Noe: Judge Mack entered the courtroom, introduced a guest chaplain, and then stood by while the chaplain led a prayer. Only the content of the prayers and identities of the chaplains differed.

32. Ms. Doe likewise felt the judge was using his courtroom authority to inflict prayer on her and the others in the audience, and that to conspicuously absent herself would prejudice her case and stigmatize her and her clients.

VI. INITIAL REACTION TO JUDGE MACK'S COURTROOM PRAYERS

33. On September 18, 2014, plaintiff FFRF sent a letter of complaint to Judge Mack, requesting that he voluntarily cease his courtroom prayer practice. FFRF's letter gave an example of how the prayers have created the appearance of bias within Judge Mack's courtroom and provided legal citations showing why the practice violated the Establishment Clause of the

First Amendment. *See* FFRF's complaint to the Texas State Commission on Judicial Conduct, Exhibit A at 4–5. FFRF did not receive a written response to its letter.

34. On October 10, 2014, Judge Mack addressed an open letter to “Pastors & People of Faith” in which he called for congregations to join him at a Prayer Breakfast on October 23. He wrote in part, “Since we started our Chaplaincy Program and prayer in the opening ceremonies of our Court, we have come under national and local attack from those that believe that God & Faith has no place in public lives and service.” He continued, “I want to make a statement to show those that feel what we are doing is unacceptable . . . that God has a place in all aspects of our lives and public service” *See* Exhibit A at 6.

35. Following this announcement, on October 17, 2014, FFRF filed a complaint with the Texas State Commission on Judicial Conduct. *See* Exhibit A. The State Commission's investigation of the courtroom prayers lasted over a year, during which time Judge Mack revised the practice, as described in section VII, below.

36. Ultimately, in November 2015, the State Commission on Judicial Conduct declined to issue any form of discipline against Judge Mack, citing its lack of authority to decide whether the prayer practice violates the Establishment Clause. The Commission did, however, strongly caution Judge Mack to end his current prayer practice or substitute an opening practice consistent “with the perfunctory acknowledgement of religion that is accepted and employed by the United States Supreme Court and the Texas Supreme Court.”

VII. JUDGE MACK'S REVISED COURTROOM PRAYER PRACTICE

37. By spring 2015, Judge Mack had revised his courtroom prayer practice. The revised prayer practice, as described below, may vary slightly day-to-day, but has remained largely consistent ever since.

38. After attorneys have indicated their presence in the courtroom and after the docket has been called, but before Judge Mack has entered, the bailiff calls for the attention of those assembled in the courtroom and gives a brief introductory statement. The introduction describes the prayer practice. It is also meant to include a statement that those opposed to prayer may leave the courtroom without affecting the outcome of their cases, although the invitation to leave has not been consistently included.

39. After the introduction by the bailiff, Judge Mack enters the courtroom. While everyone remains standing, Judge Mack talks briefly about his chaplaincy program and introduces a religious leader from the program, who wears an official badge issued by Judge Mack.

40. After Judge Mack's introduction, the chaplain leads a prayer, sometimes preceded by a short sermon. The prayers and sermons are directed to those in attendance in the courtroom and everyone present is asked to participate, or show obeisance, by bowing their heads.

41. After the chaplain-led prayer, attendees are encouraged to recite the Pledge of Allegiance and the Texas Pledge of Allegiance to the state flag.

42. The bailiff then announces the rules of the court and the first case is called.

43. During the bailiff's introduction, the chaplain-led prayer, and the courtroom business that follows, the courtroom doors remain magnetically locked. To exit, a person must push a button and reentry can only be granted by someone already inside the courtroom. Those seeking reentry after the prayers would need to draw attention to themselves by knocking on the courtroom doors. Because Judge Mack enters the courtroom after the bailiff's introduction, he has ample opportunity to note who has entered his courtroom after the prayer.

44. Judge Mack is the only Justice of the Peace in Montgomery County, or indeed, any surrounding county, who locks his courtroom doors. Judge Mack began locking his courtroom doors at approximately the same time he revised his courtroom prayer practice.

45. Because the docket has already been called prior to the bailiff's introduction to the prayer, all attorneys present in the courtroom have been logged. Judge Mack therefore has access to a record of those attorneys present in the courtroom prior to the bailiff's announcement.

46. Both plaintiffs Jane Doe and John Roe have been present in Judge Mack's courtroom during this revised prayer ritual.

47. John Roe recently attended Judge Mack's court in December 2016, when he observed the courtroom prayer practice along with about thirty *pro se* litigants and ten attorneys. Not a single person left the courtroom after the bailiff announced the prayer and stated that people were free to leave if they did not want to participate.

48. Jane Doe most recently attended Judge Mack's court in February 2017. About twenty people were in the courtroom during the prayer. At the conclusion of the prayer and pledges, Judge Mack asked the bailiff if there was anyone waiting in the hallway and indicated that if so, the bailiff should now let them back into the courtroom. One individual did enter the courtroom at this time and his entrance drew the attention of everyone in the courtroom, including Judge Mack.

49. All of the prayers witnessed by the three individual plaintiffs in Judge Mack's courtroom have been sectarian prayers, delivered by Christians, in the name of Jesus.

**VIII. JUDGE MACK'S COURTROOM PRAYER PRACTICE VIOLATES
THE UNITED STATES CONSTITUTION**

50. Through his courtroom prayer practice, Judge Mack has violated the rights of each individual plaintiff to be free from religious endorsement by the government.

51. Judge Mack has created a courtroom prayer practice that unambiguously and unnecessarily endorses religion in violation of the Establishment Clause of the First Amendment to the U.S. Constitution.

52. The primary purpose of Judge Mack's courtroom prayer practice is to mark the start of each court session in a manner that promotes his personal religious beliefs to those in attendance. This purpose includes a celebration of the power of prayer, which is an exclusively religious concept.

53. The primary effect of Judge Mack's courtroom prayer practice is to advance religion in general, and Christianity specifically, through the machinery of the judiciary.

54. Due to the prayer practice, Judge Mack's courtroom has become excessively entangled with an exclusively religious ritual.

55. Through his actions and public statements, Judge Mack has created the unambiguous impression that he, acting in his official capacity as Justice of the Peace for Montgomery County, endorses religion over nonreligion and Christianity over all other faiths.

56. Due to his considerable influence and power as a Justice of the Peace, Judge Mack exerts coercive influence over those in his courtroom, effectively compelling their participation in his religious practice.

57. Judge Mack's prayer practice is not in keeping with the ceremonial proceedings exercised by the Texas Supreme Court or the U.S. Supreme Court.

IX. REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs request judgment against the Defendant as follows:

a) Judgment declaring that the actions of the Defendant have violated the Establishment Clause of the First Amendment to the United States Constitution;

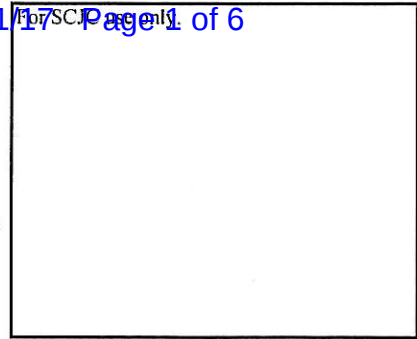
- b) Judgment against the Defendant enjoining him from opening his court sessions with prayer;
- c) Judgment against the Defendant awarding the Plaintiff its reasonable costs, disbursements, and attorneys' fees, as allowed by law, including pursuant to 42 U.S.C. §1988; and
- d) Judgment awarding or ordering such further relief as the Court deems just and equitable.

Respectfully submitted,



Patrick A. Luff
Attorney-in-Charge
Texas State Bar No. 24092728
S.D. Tex. Bar No. 2896159
LUFF LAW FIRM, PLLC
3123 NW Loop 410
San Antonio, TX 78230
Telephone: 210-504-7575
Telecopier: 830-584-0628
Email: luff@lufflaw.com

Sam Grover
Wisconsin State Bar No. 1096047
Elizabeth Cavell
Wisconsin State Bar No. 1089353
(*motions for admission pro hac vice pending*)
FREEDOM FROM RELIGION FOUNDATION,
INC.
P. O. Box 750
Madison, Wisconsin 53701
Telephone: 608-256-8900
Telecopier: 608-204-0422
Email: sgrover@ffrf.org / ecavell@ffrf.org



PO Box 12265
Austin, TX 78711-2265
Tel. (512) 463-5533 · Toll Free: (877) 228-5750

Complaint Form

- If you are filing a complaint about more than one judge, please use a separate form for each judge.
- You may complete this form online before printing.
- Send the completed form and any additional pages or related documents to SCJC.

* Indicates required fields. Please note that faxed complaints will NOT be accepted.

*Your name: Samuel T. Grover, Esq.

*Judge: Wayne L. Mack

*Mailing Address: P.O. Box 750

*Court Number: JP Precinct 1

*City, State Zip: Madison, WI 53701

*City and County: Montgomery, TX / Montgomery County

*Date of Birth: 11/08/1985

Your Phones: Day (608) 256-8900

Evening ()

Cell/Other ()

Best time to call you: 9AM - 5PM A.M. P.M.

If your complaint involves a court case, please provide the following information:

Cause Number: _____	Status of your case: <input type="checkbox"/> Pending <input type="checkbox"/> Concluded <input type="checkbox"/> On appeal
Your attorney: _____	Opposing Attorney: _____
Address: _____	Address: _____
City/Zip: _____	City/Zip: _____
Phone Number(s): _____	Phone Number(s): _____

PLEASE FILL IN ALL INFORMATION AVAILABLE FOR ANY WITNESSES (attach additional pages as needed)

Name: _____

Name: _____

Address: _____

Address: _____

Phone Number(s): _____

Phone Number(s): _____

What did this person witness?

What did this person witness?

If you are submitting documents, please provide copies, not originals.

I understand that as part of the Commission's investigation the judge may be provided a copy of this complaint. Please note - the Commission will do its best to maintain your confidentiality, if you so request. However, it may not be possible for us to pursue our investigation without revealing your identity at some point. If it is necessary to reveal your identity directly to the judge, we will advise you before proceeding.

*I request that my identity be kept confidential. Yes No

*Signature: 

*Date: 10/17/2014

How did you hear about the State Commission on Judicial Conduct? (please select one) State Bar of Texas

Another State agency News media Attorney Friend Other: web search

Please type or print the factual details of your complaint in the space provided below. **Please include the date(s) of the alleged misconduct.** If more space is needed, attach additional sheets. Please sign and date each additional sheet. Your complaint should be as specific as possible, PLEASE DO NOT CITE CASE LAW IN YOUR COMPLAINT.

*Date(s) of Alleged Misconduct of Judge: August 2014 - present

***Factual Details of your complaint against Judge:**

In August, 2014 Judge Wayne L. Mack—Justice of the Peace, Precinct 1, Montgomery, Texas—opened a court session with a bible reading lead by a pastor, followed by a Christian prayer. It is believed that Judge Mack regularly opens court sessions with similar religious rituals.

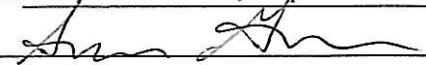
I am writing on behalf of the Freedom From Religion Foundation (FFRF), a national nonprofit organization. A local Montgomery County resident who had business before Judge Mack contacted us after witnessing this inappropriate religious ritual. I have enclosed a copy of the original email sent to FFRF by the local resident, describing the situation in full, with redactions as requested by the resident, who wishes to remain anonymous (enclosure #1). The essential details as reported to FFRF are that Judge Mack began the day's court session with the statement, "We are going to say a prayer. If any of you are offended by that you can leave into the hallway and your case will not be affected." After that announcement, we understand that he introduced a pastor who read from the bible for more than five minutes. While the pastor was reading, our complainant says, "I felt that the Judge was watching for reactions from the courtroom; bowed heads, indifference, etc. I definitely felt that our cases would be affected by our reactions [to the bible reading]." Our complainant further says, "Once the Bible reading was over we were then asked to bow our heads to pray. I was very uncomfortable and certainly felt that I was being coerced into following this ritual and that the outcome of my case depended upon my body language."

Our complainant's email further reveals how the complainant's experience of the court proceeding that followed was tainted by the opening prayer and general demeanor of Judge Mack.

Upon receiving this information, FFRF sent a letter of complaint to Judge Mack on September 18, 2014. A copy of that letter is enclosed (#2). We explained to Judge Mack that as a Justice of the Peace it was inappropriate and illegal for him to use his power and prestige to advance his personal, private religious views. As of today, October 17, 2014, FFRF has not received a response to our letter.

We understand that on October 10, 2014, Judge Mack sent a mass email addressed "Dear Pastors & People of Faith," in which he indicates that he will address FFRF's letter at his October 23rd Prayer Breakfast. A version of that email's contents is enclosed (#3) and a copy of the original can be found at www.scribd.com/doc/243151122/Eagle-Forum-Mack-Letter. In the email, Judge Mack doubles down on his commitment to endorsing religion while acting in his official capacity. The email strongly indicates that Judge Mack will not end his prayer practice and will seek to further entangle his personal religious beliefs with his judicial office. He has demonstrated indifference for how his actions undermine public confidence in his impartiality.

*Printed Name: Samuel T. Grover, Esq.

*Signature: 

*Date: 10/17/2014

Enclosure #1

AmA 10/17/2014

Email from complainant to FFRF sent in August 2014

Description: While in the courtroom of our newly elected Justice Of The Peace I witnessed an obvious C/S violation. Our new JP, Wayne Mack, Montgomery County, Texas Precinct 1 JP, announced that all present in the court should remain standing after rising for his entrance. He then stated "We are going to say a prayer. If any of you are offended by that you can leave into the hallway and your case will not be affected." Following this announcement he instructed us to remain standing while he discussed his new program that he was very proud of in which his court now has 50 Chaplains "on staff". (I don't know if that means that they are paid.) who alternate showing up at accident scenes and other incidents where the JP is involved to "pray with the families and offer guidance in times of tragedy." He then spent a few minutes introducing "today's visiting pastor", discussing his credentials, announcing which Church he was from and where it was located. The pastor then stood and announced that he was going to read from the Bible. He read a Bible passage (about 5-8 min) and while he was reading it, I felt that the Judge was watching for reactions from the courtroom; bowed heads, indifference etc. I definitely felt that our cases were to be affected by our reactions or lack of. I know I was not alone. Once the Bible reading was over we were then asked to bow our heads to pray. I was very uncomfortable and certainly felt that I was being coerced into following this ritual and that the outcome of my case depended upon my body language. I was in court for a [REDACTED] and my attorney (also a non religious person) had already made a deal with the ADA for [REDACTED] a \$ [REDACTED] fine, which I reluctantly agreed to [REDACTED]. Although I did not leave as instructed "if I was offended", no one in their right mind would have, I did not bow my head for prayer and instead watched the JP, who also did not bow his head, scan the courtroom, it is my feeling that he was watching for reactions. Afterwards, he instructed us all to, again, remain standing, while we recited both the Pledge Of Allegiance, and the Texas Pledge, both including the statements "Under God". [REDACTED]

[REDACTED]. When he called us up he immediately said "I only have one problem with this." while scratching out the agreed upon \$ [REDACTED] fine and writing in \$ [REDACTED] [a higher fine]. I have very little doubt that my apathy for the religious process in court had very much to do with this. I [REDACTED] decided to go on with a jury trial. (the jury was present in the courtroom the entire prayer session as well.)

[REDACTED]. [Subsequently, the original fine amount was agreed to.] I am not sure if all this is relevant to you but as far as I am concerned I was not only forced into a religious ceremony in court, I felt that I was singled out and the outcome of my case depended on my participation in the religious ceremony. I don't know if it matters or not but the JP most certainly had an attitude of "I know this is against the law and that it's a constitutional violation but that's just too bad. If you don't like it you can leave cause I'm the boss and I hold your future in my hands." [REDACTED]

[REDACTED] I hope that this is something that your organization is interested in pursuing. [REDACTED]

[REDACTED] Thank you for your time. [REDACTED]

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

September 18, 2014

SENT VIA U.S. MAIL AND FAX: (936) 788-8379

Judge Wayne L. Mack
Justice of the Peace, Precinct 1
19380 Highway 105 West, Ste 507
Montgomery, Texas 77356

Re: Prayer during open court

Dear Judge Mack:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a constitutional violation that occurred in your courtroom. FFRF is a national nonprofit organization with more than 21,000 members across the country, including over 900 members in Texas. Our purpose is to protect the constitutional principle of separation between state and church.

We understand that in August you opened one of your court sessions with a Christian prayer. We believe that this is a regular practice in your courtroom. A concerned Montgomery County resident who had business before you contacted us to report that after you entered the courtroom you stated, "We are going to say a prayer. If any of you are offended by that you can leave into the hallway and your case will not be affected." After that announcement, we understand that you introduced a pastor who read from the bible for more than five minutes. While the pastor was reading, our complainant says, "I felt that the Judge was watching for reactions from the courtroom; bowed heads, indifference, etc. I definitely felt that our cases would be affected by our reactions [to the bible reading]." Our complainant further says, "Once the Bible reading was over we were then asked to bow our heads to pray. I was very uncomfortable and certainly felt that I was being coerced into following this ritual and that the outcome of my case depended upon my body language."

We write to ask that you end payers at future court sessions.

It is a fundamental principle of Establishment Clause jurisprudence that the government may not in any way promote, advance, or otherwise endorse religion. *See McCreary County, Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985)). Moreover, "the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lee v. Weisman*, 505 U.S. 577, 589 (1992)).

At least one federal court has specifically held that a state judge's practice of opening court proceedings with prayer violates the Establishment Clause. *N.C. Civil Liberties Union Legal Found. v. Constangy*, 947 F.2d 1145, 1153 (4th Cir. 1991). The Christian prayer delivered in

 10/17/2014

your courtroom was given during business hours on courthouse property, and you announced this prayer while acting in your official capacity as a Justice of the Peace. Therefore, it would appear to any reasonable observer that the Montgomery County judicial system was endorsing religion in general, and Christianity in particular. This is exactly the type of government endorsement that is prohibited by our Constitution.

Please note that we are not claiming that you are actually biased against those who choose not to participate in your courtroom prayers. The quotes from our complainant included above are meant to demonstrate that the prayer practice creates the *appearance* of bias within your courtroom. Under the Texas Code of Judicial Conduct, Canon 2. A., "A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Your courtroom prayer practice does not promote public confidence or create the appearance of impartiality.

Citizens are compelled to come before you on a variety of legal matters. Opening your court sessions with prayer sends a message to non-Christians that they are that they "are outsiders, not full members of the political community and accompanying message to adherents that they are insiders, favored members of the political community." *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring). While acting as a Montgomery County Justice of the Peace, you must refrain from lending your power and prestige to Christianity, amounting to a governmental endorsement that excludes the 19% of the American population that is nonreligious.¹

Inevitably, most government prayers are Christian, but this does not mean that they are inclusive of all Christians. Many Christians recognize that Jesus condemned public prayer as hypocrisy. *See Constangy*, 947 F.2d at 1152 ("[B]y placing its imprimatur on the particular kind of belief embodied in any prayer, the state necessarily offends the sensibilities not only of nonbelievers but of devout believers among the citizenry who regard prayer 'as a necessarily private experience.'"). During the Sermon on the Mount, Jesus discourages public prayer: "And when you pray, do not be like the hypocrites, for they love to pray standing in the synagogues and on the street corners to be seen by others. . . . When you pray, go into your room, close the door and pray to your Father who is unseen." Matthew 6:5-6. Any public prayer practice violates this biblical mandate and will offend those Christians who observe it.

We request that you immediately end the practice of opening court sessions with prayer. Please reply in writing indicating the steps you are taking to avoid future violations of the Constitution so that we may inform our complainant.

Sincerely,



Sam Grover
Staff Attorney

¹ "Nones on the Rise: One-in-Five Adults Have No Religious Affiliation," Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012), available at www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx.

Am L 10/17/2014

I need your help to take a stand....

October 10,2014

Dear Pastors & People of Faith,

I need you to call on your congregation to stand with us and our Chaplaincy Program on October 23rd.

Since we started our Chaplaincy Program and prayer in the opening ceremonies of our Court, we have come under national and local attack from those that believe that God & Faith has no place in public lives and service. Among them I have been put on notice by the staff attorney for the *Freedom From Religion Foundation in Madison Wisconsin*. I will be addressing their demand that we "immediately end the practice of court prayer" at the Oct 23rd Prayer Breakfast. I am not seeking the potential controversy, as I will have to respond to these groups as well. We are on strong moral and legal ground.

I want to make a statement to show those that feel what we are doing is unacceptable, that not only is it acceptable to our community, but show them that God has a place in all aspects of our lives and public service, during times of tragedy and conflict, when we as a community need to bring peace to the storm. That it is reflected in how we as a community respond and treat each other during these times of tragedy .

I have a strong belief that we are doing the right thing for the right reasons. A strong showing from you & your members will help establish that we are operating in the community interest, and in the interest of those that we serve.

I am asking that you invite your members and friends to commit to come. We will get you the tickets or have them waiting at will call, but we need the commitments next week to get food service prepared. **I need you** to reach out and connect with us on this effort.

(CLICK HERE to read complaint letter to stop Court prayer)

Thank you again for your prayers and support. Please call me if you have any questions.

For more information - www.WayneMack.org

Judge Wayne L. Mack