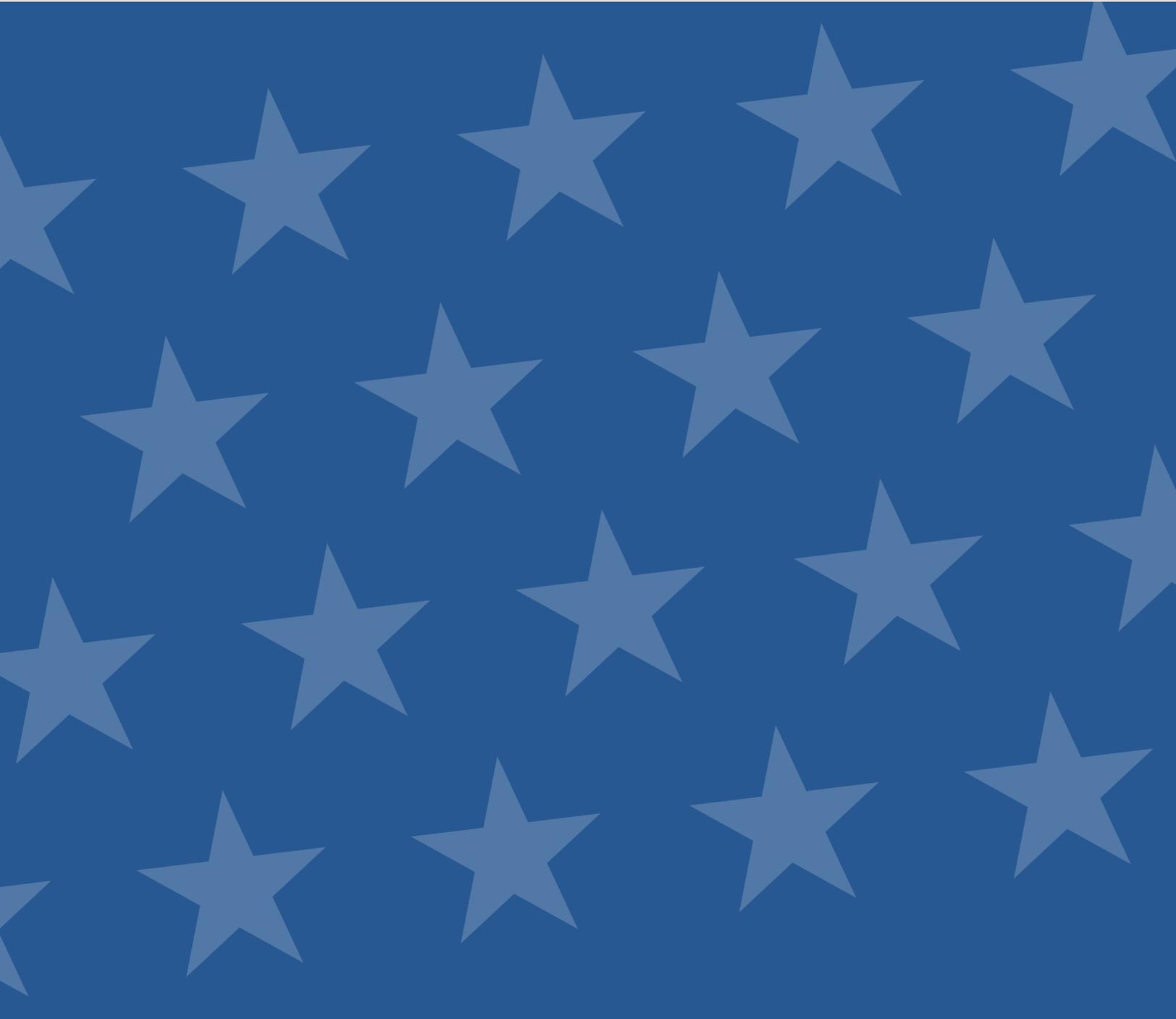


# LEGAL

## AND MEDIA SUPPORT

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Volunteer Coordinator  
Training, Planning and Resource Manual

1 (800) 444-8828  
[www.NationalDayofPrayer.org](http://www.NationalDayofPrayer.org)

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## Legal Support

The first place for information and support is your **State Coordinator and National Area Leader (NAL)**.

If you do not have this leader's contact information, please email [news@nationaldayofprayer.org](mailto:news@nationaldayofprayer.org) or call: 800-444-8828, option #3. The NAL will contact the National Office for extra support as needed.

### Legality of the National Day of Prayer:

#### Letter by Alliance Defending Freedom:

RE: Legality of National Day of Prayer events

Dear Mayor,

We write to encourage your observance of the 63rd Annual National Day of Prayer to be held on Thursday, May 1, 2014. In recent years, particular activist groups have suggested that observing the National Day of Prayer is somehow unlawful. Such opinions have no foundation in the law.

Our organization, the Alliance Defending Freedom (ADF), is a not-for-profit legal alliance of more than 1,300 attorneys and like-minded organizations defending the right of people to freely live out their faith. ADF educates the public and the government about important constitutional rights, particularly Our First Liberty— religious freedom. ADF 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. This letter presents a brief legal analysis to demonstrate why you may freely and lawfully choose to observe the National Day of Prayer 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 Thanksgiving and Prayer, including 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. On October 3, 1789, President George Washington issued a National Day of 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 . . ."

**The Alliance Defense Freedom** also provides additional legal support to the National Task Force Office and queries for coordinator network.

Also be sure to post this "Event Photo Permission" wording at your event if you will be taking photos.

*"By my attendance and participation in this event, I give permission if I am photographed, to use in reporting or promotional efforts."*

Since that time, American Presidents have continued this important tradition. 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. 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. 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.”

Similarly, in *Marsh 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 *Marsh*, 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, 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. Clauson*, 343 U.S. 306, 313-14 -1952.) The Court affirmed the Establishment Clause does not prohibit prayers 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.” “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. State and Local Participation in the National Day of Prayer is likewise Protected by Law.**

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 50 governors, along with the president of the United States, have issued proclamations in honor of the National Day of Prayer, and we anticipate this year will be no different. There is no basis to suggest that a mayor or city council member could not do the same.

For example, the 2009 proclamations issued by the nation's governors once again affirmed the importance of this annual event. Governor M. Jodi Rell of Connecticut observed, "It is fitting that we should give thanks for [our] freedom and prosperity. . . and pray for continued guidance and comfort, which has been graciously bestowed upon this Nation since its inception." As Wisconsin Governor Jim Doyle noted, "Prayer is a comfort for many people, especially during times of trial and tribulation." Georgia Governor Sonny Perdue agreed, "We are afforded the privilege of prayer and the joy of seeking guidance, strength, comfort and inspiration from Almighty God. Regardless of our individual beliefs and faith practices, we have an assurance that God hears our prayers and faithfully responds to our humble petitions." The 2014 proclamations will express similar ideas.

As the leader of your city, you are well within your rights to echo these sentiments. Local observances of this historic annual event 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 will be doing on May 1, 2014.

**C. The City has No Legal Obligation to Issue the Suggested 'Non-believers' Proclamation.**

Finally, we want to assure your administration that there is no legal precedent to suggest that observance of the National Day of Prayer necessitates special treatment of, or official recognition for, those who choose not to participate. Several years ago, the mayor of one large city received an unprecedented demand to prove that he does not show favoritism toward believers by issuing a simultaneous proclamation for all non-believers of the city. That contention was patently absurd. Any similar demand upon you or your city would have no basis in existing law and would run counter to the well-established right of the government to accommodate religious expression.

Again, the National Day of Prayer was created by an act of Congress and is meant as an opportunity for all willing Americans to 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. 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 join the countless other national, state, and local leaders who will be participating with full confidence in the 2014 National Day of Prayer.

If ADF can provide you with any further information or assistance, or if you receive any threat of litigation to which we may be able to help you respond, please contact us. As a not-for-profit legal organization, our services are provided pro bono.

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

Very sincerely yours,

Alliance Defending Freedom

Senior Legal Counsel

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. James D. Richardson, A Compilation of Messages and Papers of the Presidents, 1789-1897 (Published by Authority of Congress 1899), Vol. 1, p. 64. –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). Public Law 82-324; 66 Stat. 64– April 17, 1952. January 25, 1988, in the Second Session of the One Hundredth Congress. Public Law 100-307–May 5, 1988. 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.