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Lawsuit against governor an affront to Constitution

By James C. Ho and Ted Cruz



Private citizens and civic and spiritual leaders from all across the country will assemble at Reliant Stadium in Houston on Saturday, Aug. 6, for a day of prayer and fasting for the nation. But according to a recent federal lawsuit, one particular person should not be allowed to participate.

A group led by the Freedom From Religion Foundation has filed suit against Gov. Rick Perry alleging that the Constitution forbids him from participating in the upcoming event known as The Response. According to the plaintiffs, the federal court in Houston should issue “an injunction prohibiting Gov. Perry’s further involvement” because his “participation in the Aug. 6 prayer rally at Reliant Stadium is unconstitutional.”

The lawsuit is not just wrong — it turns the Constitution on its head.

References to faith can be found throughout our public square and across our nation’s history. And they are entirely consistent with our Constitution. Courts have repeatedly rejected lawsuits challenging references to faith in a wide variety of official government functions, let alone private gatherings like The Response.

For example, in Congress and in state capitols across the country, legislators routinely open official proceedings with prayer, delivered by chaplains who typically serve as paid government employees.

The U.S. Supreme Court and other federal and state courts open each session with the traditional prayer: “God save the United States and this honorable Court.”

Official presidential and gubernatorial inauguration ceremonies nationwide include prayer and other references to God.

And public schools across the country begin each school day with a voluntary recitation of the Pledge of Allegiance — a patriotic exercise that includes a reference to our “one nation under God.”

If the plaintiffs in this case are right, then each and every one of these established customs and practices should likewise be unconstitutional. After all, each of these practices involves actual government functions, and not a private event like The Response.

But the law is overwhelmingly against the plaintiffs. The U.S. Supreme Court blessed the use of prayer during legislative sessions nearly three decades ago. Courts have likewise rejected on various grounds challenges to presidential and gubernatorial inauguration ceremonies and public school recitations of the Pledge of Allegiance, with the strong support of all 50 states.

Even more to the point, courts have rejected challenges to the National Day of Prayer and other prayer proclamations often issued by presidents and governors in all 50 states. After all, such proclamations are purely voluntary and do not require any citizen to engage in any religious activity of any kind.

The folks at the Freedom From Religion Foundation should already know this. They recently sued President Obama challenging the National Day of Prayer. In rejecting their suit, a federal court of appeals put it well: “A president frequently calls on citizens to do things that they prefer not to do — to which, indeed, they may be strongly opposed on political or religious grounds. Yet no one supposes that the Republican Party has standing to ask the judiciary to redress the ‘injury’ inflicted when President Obama speaks to his own supporters and tries to influence the undecided.”

If there is nothing wrong with President Obama inviting willing and interested private citizens to engage in voluntary prayer, there should be nothing wrong with Gov. Perry doing precisely the same thing here.

If anything, The Response should be even easier to defend, because it is a private event — not an official government function like a congressional proceeding, presidential inaugural or Supreme Court session, and not an official invitation to prayer like the National Day of Prayer.

That is what makes the plaintiffs’ actions especially troubling. They are essentially asking the courts to deprive Gov. Perry of his personal right to participate in activities in furtherance of his faith. If anything violates the Constitution, it is this lawsuit.

Ho and Cruz served as solicitor general of Texas from 2008-2010 and 2003-2008, respectively, and both successfully represented all 50 states in defense of religious liberty and the acknowledgment of faith in the public square. Cruz is a Republican candidate for the U.S. Senate.