



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

West Virginia

P O Box 3952

Charleston WV 25339-3952

(304) 345-9246

www.acluww.org

The Honorable Jim Justice
Office of the Governor
State Capitol, 1900 Kanawha Blvd., E
Charleston, WV 25305

Dear Governor Justice:

Once again, you have proclaimed November 21-27 to be “Christian Heritage Week.” This proclamation shows blatant disregard for the fundamental tenant of separation of church and state enshrined in both the United States and West Virginia Constitutions, and reaffirmed countless times by the courts. In this era of divisive politics, this is an act that appeases special interests who seek to undermine one of America’s most long-standing legal traditions.

The First Amendment of the US Constitution says, in relevant part, “Congress shall make no law respecting the establishment of religion...” The West Virginia Constitution similarly says, “...the Legislature shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination...” It is widely understood that this means the government cannot show preference for any religion over another.

The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief or from "making adherence to a religion relevant in any way to a person's standing in the political community."

Cnty. of Allegheny v. ACLU, 492 U.S. 573, 594 (1989) (citing *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984)).

Similarly, the Supreme Court has repeatedly expressed concerns about overly politicizing religion. *See, e.g., Larson v. Valente*, 456 US 228 (1982). The West Virginia Supreme Court of Appeals has recognized that these protections go even further in the state Constitution.

As recognized by Mr. Justice Berry in the recent decision of *State v. Everly*, 150 W.Va. 423, at page 425, 146 S.E.2d 705, at page 707 (1966) in drawing a comparison between the West Virginia provisions on religious freedom and the First Amendment to the United States Constitution, and speaking for the entire Court said, “The provision of the West Virginia Constitution . . . is much broader [than the First Amendment to the United States Constitution]. . . .” By its specification of the rights incident to the free exercise of religion and the prohibition of the establishment of any church or religious belief to the detriment of another, it is even more stringently protective than the corresponding federal provision.

Brady v. Rainer, 198 S.E. 2d 812, 834 (W. Va. 1973).

The is no corresponding day or week in which West Virginia honors the ways in which Jewish, Muslim, Indigenous religions, other religious minorities, and non-religious people, have contributed to, and shaped the state. Singling out one religion to honor is clear preferential treatment. It suggests that those who adhere to Christian theology have greater standing in the political community. Since protections in West Virginia

go beyond those in the federal Constitution, the state should be particularly wary of such proclamations.

As we have noted before “Christian Heritage Week” is a project of an organization called “Wallbuilders”. Wallbuilders’ mission includes, “(1) educating the nation concerning the Godly foundation of our country; (2) providing information to federal, state, and local officials as they develop public policies which reflect Biblical values; and (3) encouraging Christians to be involved in the civic arena.” Wallbuilders’ founder, David Barton, has been profiled by the Southern Poverty Law Center for anti-LGBT, anti-immigrant, and anti-Muslim rhetoric. Mr. Barton, and Wallbuilders, of course, have every right to affiliate, assemble, and speak. However, their mission is explicitly to politicize Christianity, and we call on our governmental leaders and institutions to reject that mission in accordance with our Constitution and laws.

The past several years have heightened divisiveness in American politics. Muslim, Latinx, transgender, and black communities have all been targeted in policy and rhetoric from the highest echelons of American politics. This coincides with a rise in ethno-nationalism, hate speech, and hate groups, led by people like Mr. Barton. In this environment, a proclamation that may have been relatively benign takes on a new, dangerous and toxic meaning.

The timing of “Christian Heritage Week” is ironic and cruel. It is timed to coincide with Thanksgiving a national holiday celebrated by people of all faiths. It is also during National Native American Indian Heritage Month. Christianity was often invoked in some of the most egregious treatment of Native Peoples, including family separation, cultural genocide, and actual genocide.

That the state has made such a proclamation for 30 consecutive years should hardly be a reason continue it. It is fitting that West Virginia’s provision on religious freedom is modeled after Virginia’s, which was written by Thomas Jefferson. Jefferson also famously wrote, “But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors.” A new administration, in a new era of revitalized hate should reaffirm our commitment to diversity and religious plurality and reject making proclamations which are clearly driven by a desire to entangle and show preference for one religion over all the others that have and continue to make our state great.

Sincerely,

Eli Baumwell
Advocacy Director
American Civil Liberties Union