



(202) 466-3234  
(202) 466-3353 (fax)  
www.au.org

1310 L Street NW  
Suite 200  
Washington, DC 20005

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**By U.S. Mail**

Asa Hutchinson, Governor of Arkansas  
500 Woodlane Ave.  
Little Rock, AR 72201

Karen Whatley, Chief Legal Counsel  
500 Woodlane Ave.  
Little Rock, AR 72201  
Karen.whatley@governor.arkansas.gov

Re: *Religious content on Governor's official Facebook page*

Dear Governor Hutchinson and Ms. Whatley:

We have received a complaint regarding Governor Hutchinson's expressly religious official social-media posts. Specifically, every Sunday the Governor posts quotes from scripture to his official Facebook page. For example, on December 19, 2021, he posted, "He will be great and will be called the Son of the Most High. The Lord God will give Him the throne of His father David. Luke 1:32." On December 12, "I sought the LORD, and He answered me; He delivered me from all my fears. Psalm 34:3." On December 5, "Lord has done great things for us, and we are filled with joy. Psalm 126:3." And on November 28, "Your love, Lord, reaches to the heavens, your faithfulness to the skies. Psalm 36:5." These posts go back several months, if not further.

The government of the state of Arkansas exists to represent all the state's citizens, regardless of faith or belief. Having the Governor routinely promote Christianity on an official social-media page flouts that responsibility and shows contempt for all citizens who do not follow the State's favored religion. These postings also violate the Establishment Clause of the First Amendment to the U.S. Constitution. Please delete them and refrain from posting religious content through official government channels.

The cardinal rule of the Establishment Clause is that government must not take any action that communicates "endorsement of religion." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 305 (2000). Instead, it must maintain "governmental neutrality between religion and religion, and between religion and nonreligion." *McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844, 860 (2005) (internal quotation mark omitted) (quoting *Epperson v. Arkansas*, 393 U.S. 94, 104 (1968)). When government officials endorse religion in general or one religion in particular, it "sends the ancillary message to . . . nonadherents 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the

community.” *Santa Fe*, 530 U.S. at 309–10 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)).

In accordance with these principles, governmental bodies and public officials—including the Governor—must not communicate religious messages to members of the public verbally or by displaying religious signs or symbols. *See, e.g., Cooper v. U.S. Postal Serv.*, 577 F.3d 479, 493 (2d Cir. 2009) (Establishment Clause prohibited religious displays in post-office space); *Berry v. Dep’t of Soc. Servs.*, 447 F.3d 642, 657 (9th Cir. 2006) (public employer’s interest in avoiding Establishment Clause violation justified prohibiting employee who had regular in-person contact with the public from displaying religious items in plain view in his cubicle); *ACLU of Ohio Found., Inc. v. Ashbrook*, 375 F.3d 484, 490–92 (6th Cir. 2004) (display of Ten Commandments poster in courtroom violated Establishment Clause); *Knight v. Conn. Dep’t of Pub. Health*, 275 F.3d 156, 164–66 (2d Cir. 2001) (Establishment Clause concerns justified reprimand of sign-language interpreter and home-healthcare worker who promoted religious messages to clients receiving state services); *Asselin v. Santa Clara Cty.*, No. 98-15356, 1999 WL 390984, at \*1 (9th Cir. May 25, 1999) (firing probation officer who incorporated religious messages into his work with minors was justified because his conduct would have violated Establishment Clause); *N.C. Civil Liberties Union v. Constangy*, 947 F.2d 1145, 1151–53 (4th Cir. 1991) (judge violated Establishment Clause by opening court sessions with prayer); *Roberts v. Madigan*, 921 F.2d 1047, 1057 (10th Cir. 1990) (public-school teacher violated Establishment Clause by displaying religious poster and keeping Bible on his desk where it would be visible to students); *Hall v. Bradshaw*, 630 F.2d 1018, 1019–22 (4th Cir. 1980) (state violated Establishment Clause by issuing maps with “Motorist’s Prayer”). The inclusion of religious content on the Governor’s official social-media accounts cannot be squared with the law. Please refrain from posting religious content to the Facebook page and remove any previous unconstitutional religious posts.

We would appreciate a response to this letter within thirty days that advises us how you plan to proceed. If you have any questions, you may contact Gabi Hybel at (202) 466-3234 or [hybel@au.org](mailto:hybel@au.org).

Sincerely,

A handwritten signature in cursive script, appearing to read "Gabi Hybel".

Richard B. Katskee, Vice President & Legal Director  
Gabi Hybel, Madison Legal Fellow