

FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL & U.S. MAIL

jack.whitver@legis.iowa.gov

The Honorable Jack Whitver
President of the Iowa Senate
Iowa State Capitol
1007 East Grand Avenue
Des Moines, IA 50319

Re: Unconstitutional Invocation Practices

Dear Senator Whitver:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in the Iowa Senate. FFRF is a national nonprofit organization with over 32,000 members across the country, including members in Iowa. FFRF's purposes are to protect the constitutional separation between state and church, and to educate the public on matters relating to nontheism.

It is our understanding that the Senate regularly welcomes guest clergy to give an invocation before each session. We understand that the only way to give an invocation is to be invited by a Senator. While we are not aware of any formal, written policy barring non-Christians from giving an invocation, all invitees are conferred the distinctly Protestant title of "Pastor of the Day" and the overwhelming majority of invocations have accordingly been Christian prayers, delivered by Protestant ministers, in the name of Jesus Christ.

Justin Scott, an FFRF member and the Director of Eastern Iowa Atheists, delivered a well-received secular invocation to the Iowa House of Representatives last year. In an effort to bring a similar modicum of diversity to the Iowa Senate chamber, Mr. Scott reached out to Senator Craig Johnson—of whom Mr. Scott is a constituent—to ask if the Senator would invite him to give a secular invocation to the Senate. Sen. Johnson responded that he could no more invite Mr. Scott to give an invocation than he could sponsor a bill favoring abortion. Undeterred by this hostility, Mr. Scott then reached out to all 49 remaining Senators—yourself included—but was turned away by every last one. Some Senators declined to sponsor Mr. Scott due to their personal objection to the practice of giving invocations in the first place; some, like Senator Johnson, appeared openly hostile to Mr. Scott's beliefs; others simply ignored his request despite repeated contacts.

We write first to ask that the Senate focus on the secular business of government and consider abandoning these superfluous invocations altogether. However, if the Senate insists on having invocations, the means of selecting those who lead them must be reformed to pass constitutional muster.

Prayer at government meetings is unnecessary, inappropriate, and divisive. The best solution—which is apparently supported by a number of Senators—is to discontinue invocations altogether. Senators are free to pray privately or to worship on their own time in their own way. They do not need to worship on taxpayers' time. The Senate ought not to lend its power and prestige to religion by inviting religious leaders to give prayers. The people of Iowa, both religious and nonreligious, count on the Senate to act in the best interest of all Iowans by reaching consensus on important civic matters affecting their livelihoods, property, children, and quality of life. Opening sessions with almost exclusively-Christian prayer undermines the appearance that the Senate acts for the good of all by actively excluding the 1 in 5 Iowans who are not religious.¹ The cleanest solution is for the Senate to conduct its work in a wholly secular manner, leaving matters of religious belief to the conscience of each individual.

However, if the Senate insists on continuing to host invocations before its sessions, it must not discriminate against any person wishing to give one. The nonreligious and members of minority religions should therefore be permitted to deliver invocations as well.

The Supreme Court recently addressed the issue of legislative prayer in *Greece v. Galloway*, 134 S. Ct. 1811 (2014). The Court identified several important elements to that town's invocation practice that, taken together, ensured that the practice did not impermissibly advance one religion over another or promote religion over nonreligion. Over time, the town of Greece "compiled a list of willing 'board chaplains' who had accepted invitations and agreed to return in the future." *Id.* at 1816. Additionally, the town of Greece "at no point excluded or denied an opportunity to a would-be prayer giver." *Id.* The town "maintained that a minister or layperson of any persuasion, *including an atheist*, could give the invocation." *Id.* (emphasis added). In fact, on July 15, 2014, an atheist citizen did deliver the opening invocation at Greece's town board meeting.²

The fact that Greece "represented that it would welcome a prayer by any minister or layman who wished to give one" was a critical factor in the Court's conclusion that the practice in *Galloway* did not violate the Establishment Clause. *Id.* at 1824. The Court clearly stated that the purpose of these invocations must be inclusive: "These ceremonial prayers strive for the idea that people of many faiths may be united in a community of tolerance and devotion." *Id.* at 1823. The Supreme Court's decision would have been different had the town used the prayer opportunity to discriminate against minority religions or had forced would-be prayer-givers to don a sectarian religious title like "pastor." The Supreme Court in *Galloway* specifically disapproved of any "policy or practice of discriminating against minority faiths." *Id.* at 1817.

A nonbeliever who requests to give the opening invocation the Senate chamber should therefore be allowed to do so. If the Senate chooses to continue its invocation practice, it must, like the Town of Greece, open its prayers to all comers, including atheists, agnostics, Humanists, Wiccans, and other minority beliefs. This is not only the most inclusive practice, but in light of the *Galloway* decision, it is the most constitutionally sound option.

¹ Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at www.ppri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.

² See www.centerforinquiry.net/newsroom/atheist_to_deliver_invocation_at_greece_ny_town_meeting_july_15/.

FFRF is committed to ensuring that nonbelievers are able to deliver secular invocations before legislative bodies. In May 2016, FFRF sued the Congressional House Chaplain for refusing to allow its Co-President Dan Barker to deliver the invocation before the House of Representatives as a guest chaplain. *See Barker v. House of Representatives Chaplain Patrick Conroy*, No. 1:16-cv-0850-RMC (D. D.C. filed May 5, 2016) (on appeal before the U.S. Court of Appeals, District of Columbia Circuit). A similar case was filed against the Speaker of the Pennsylvania House of Representatives in August 2016 after nontheists were barred from delivering the invocation because of their lack of belief in a god. *See Fields v. Speaker of the Pennsylvania House of Representatives*, No. 1:16-cv-1764 (D. M.D. Pa. filed August 25, 2016).

FFRF has also sued a Florida county for violations of the U.S. and Florida Constitutions over its persistent rejection of nontheists who wish to deliver solemnizing messages at the start of its meetings. In that case, *Williamson v. Brevard Cty.*, 2017 WL 4404444 (M. D. Fla., September 30, 2017) (appeal pending), a federal district court ruled that the county board's practice of **excluding atheists, agnostics, and secular humanists from offering invocations at board meetings violated the Establishment Clause.**

It is unconstitutional discrimination to treat similarly-situated persons differently: “[t]he Equal Protection Clause of the Fourteenth Amendment . . . is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). Treating an atheist or nonbeliever who wishes to give an invocation differently from a religious citizen constitutes discrimination. The Senate’s invocation practice, in its current form, gives Senators free reign to do exactly that—as Mr. Scott’s experience clearly shows.

To demonstrate the Iowa Senate’s respect for the diverse range of religious and nonreligious perspectives of the people it serves, we urge you to concentrate on civil matters and stop scheduling prayer at the start of your sessions. But if the Senate is unwilling to do so, it must, at the very least, ensure that its invocation policy does not discriminate against atheists, freethinkers, and minority religions. Please inform us in writing of the steps you are taking to resolve this matter.

Sincerely,



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Robert G. Ingersoll Legal Fellow
Freedom From Religion Foundation

CC: *VIA EMAIL*
The Honorable Janet Petersen
Iowa Senate Democratic Leader
janet.petersen@legis.iowa.gov