

# FREEDOM FROM RELIGION *foundation*

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***SENT BY U.S. MAIL & EMAIL [ltgov@leg.wa.gov](mailto:ltgov@leg.wa.gov)***

The Honorable Brad Owen  
Lieutenant Governor and President of the Washington State Senate  
Office of the Lt. Governor  
PO Box 40400  
Olympia, WA 98504-0400

Re: Unconstitutional Legislative Prayer

Dear Lt. Governor Owen:

On behalf of Washington members of our national organization, which works to protect the constitutional principle of the separation between state and church, I am writing to strenuously object to the overtly political and offensive prayer delivered by Pastor Jon Sanne at the Washington Senate's first session on January 14, 2013. The Freedom From Religion Foundation is an educational association with 19,000 nonreligious members nationwide, including more than 800 members in Washington. We also represent the 25% of the Washington population, 1.3 million Washingtonians, who are explicitly nonreligious.<sup>1</sup> (Thirty percent of Washingtonians are not Christians).

It is our understanding that Sanne, Pastor of the Calvary Chapel in Olympia, gave an invocation addressed to his "Heavenly Father," asking the "Lord, [to] bring us back into line with the timeless truths and wisdom of Your Word [the Bible]." Sanne asked his god to "lead us to a blessing, being one nation, under You." Sanne also took the opportunity to lobby the Senate to overturn the gay marriage bill and referendum, by inviting his deity to "strengthen marriage as You've ordained it for our good and Your Glory." Sanne concluded: "We openly and humbly ask these things in the name of Your Son the Living Savior, Jesus Christ."

This incident is a perfect example of all that is wrong with mixing government and religion, including legislative prayer. Legislative prayer is unconstitutional, exclusionary, divisive and serves no legitimate secular purpose.

## **The Prayer is Unconstitutional**

As the Supreme Court explained: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642

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<sup>1</sup> American Religious Identification Survey, 2008.

(1943). The Court has rigidly enforced the rule that “The government may not . . . lend its power to one or the other side in controversies over religious authority or dogma.” *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990).

In sponsoring sectarian legislative prayers, in this case to Jesus, the Washington government, which invited Sanne, is weighing in on three controversies. First, the government is inappropriately taking a side in what is arguably the most enduring religious controversy: god’s existence or non-existence. Second, the legislature is endorsing Christianity by scheduling and approving an overtly Christian prayer. Legislative prayer may not be sectarian. On January 13, 2012, the Supreme Court declined to review a Fourth Circuit decision that overturned a legislative prayer policy because the prayers “continued to reference specific tenets of Christianity.” *Joyner v. Forsyth County*, 653 F.3d 341, 344 (4<sup>th</sup> Cir. 2011). That decision held that continual, Christian prayers at a legislative sessions leads “to exactly the kind of ‘divisiveness the Establishment Clause seeks rightly to avoid.’ ” *Id.* 355. Thirdly, the Washington Senate has appeared to lend its power and imprimatur to a homophobic diatribe. This body owes an apology to Washington citizens, particularly the LGBTQ community, for this outrageous and inappropriate incident.

According to news reports, Senator Mark Schoesler invited Sanne to give the prayer. Schoesler was quoted saying: “He prayed. I asked him to speak, and I don’t censor prayer.”<sup>2</sup> That is precisely why legislative prayers should not be offered. There is no means of assuring that officiants will abide by the narrow exceptions carved out by the Supreme Court.

The prayer here flagrantly exceeded the constraints of the 1983 Supreme Court decision, *Marsh v. Chambers*, 463 U.S. 783 (1983), which carved out the narrow exception. The *Marsh* exception allowed for nonsectarian, nondenominational prayer under certain circumstances. The prayer may not be “exploited to proselytize or advance any one, or to disparage any other, faith or belief.” The Supreme Court has reiterated, “not even the ‘unique history’ of legislative prayer, can justify contemporary legislative prayers that have the effect of affiliating the government with any one specific faith or belief.” *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 603 (1989). The Court explained, “The legislative prayers involved in *Marsh* did not violate this principle because the particular chaplain had ‘removed all references to Christ.’ ” *Id.*

The *Marsh* decision is often misunderstood or misrepresented. Therefore, it is important to see how *courts* interpret the decision. Time and again, federal courts overturn government-sponsored prayers that are sectarian, denominational, or invoke a particular faith or deity.<sup>3</sup>

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<sup>2</sup> See <http://blogs.seattletimes.com/politicsnorthwest/2013/01/14/democrats-uptset-with-marriage-related-phrase-in-state-senates-opening-prayer/>

<sup>3</sup> See, e.g., *Id.*; *Galloway v. Town of Greece*, 681 F.3d 20 (2<sup>nd</sup> Cir. 2012); *Joyner v. Forsyth County*, 653 F.3d 341 (4<sup>th</sup> Cir. 2011), *cert. denied* 132 S.Ct. 1097 (2012); *Wynne v. Town of Great Falls*, 376 F.3d 292 (4<sup>th</sup> Cir. 2004), *cert. denied*, 545 U.S. 1152 (2005); *Turner v. Fredericksburg*, 534 F.3d 352 (4<sup>th</sup> Cir. 2004), *cert. denied*, 555 U.S. 1099 (2009); *Bacus v. Palo Verde Unified School District*, 52 Fed.Appx. 355 (9<sup>th</sup> Cir. 2002)(unpublished); *Doe v. Tangipahoa Parish School Bd.*, 473 F.3d 188 (5<sup>th</sup> Cir. 2006)(later dismissed *en banc* for lack of standing); *Hinrichs v.*

When the legislature invites officiants to pray and schedules official prayer, it has a responsibility to ensure that they are nonsectarian. We understand the reluctance to ensure religious speech meets constitutional requirements, but the solution is not to ignore those constitutional requirements, it is to stop conducting government prayer.

Sanne used his status as a “man of God” to lobby the legislature on an issue that has been decided in Washington courts and by the voters. He attempted to use religion to leverage legislation. It is no distortion to say that the purpose of his prayer was to exhort the gathered officials to prohibit gay marriage in the name of Sanne’s god.

### **The Prayer is Exclusionary**

Government officials represent more than just Christians; they represent all their constituents including atheists, agnostics, Jews, Muslims, Wiccans, Hindus and other minority religious views. The Senate’s active participation in a Christian prayer in your official capacity unabashedly promotes that religion over other religions and over nonreligion. Officials may, as private citizens, attend any religious functions they like, the church of your choice, pray, etc. But the federal and state Constitutions — and good etiquette — dictate that government officials avoid prayer in their official capacity and refrain from allowing religious rituals at official ceremonies.

By scheduling prayer, the Washington government sends the 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 political community.” *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 595 (1989) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984)).

### **The Prayer is Divisive**

The framers of our Constitution recognized that religion is not unifying, but divisive. James Madison thought, “to employ Religion as an engine of Civil policy” was “an unhallowed perversion of the means of salvation.”<sup>4</sup> He also thought “Religion and government will both exist in greater purity, the less they are mixed together.”<sup>5</sup>

The Supreme Court has also recognized the divisiveness of religion. In *McCreary County*, the Supreme Court wrote, “...the divisiveness of religion in current public life is inescapable.” 545 U.S. 844, 881 (2005). In *Van Orden v. Perry*, Justice Breyer wrote in his dissent that the purpose of the First Amendment is to “avoid that divisiveness based upon religion that promotes social conflict, sapping the strength of government and religion alike.” 545 U.S. 677, 698 (2005). An early Wisconsin Supreme Court justice put it most eloquently:

“There is no such source and cause of strife, quarrel, fights, malignant opposition, persecution, and war, and all evil in the state, as religion. Let it once

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*Bosma*, 440 F.3d 393 (7th Cir. 2006)(later dismissed *en banc* for lack of standing); *Rubin v. City of Burbank*, 101 Cal. App. 4th 1194, (Cal. App. 2 Dist., 2002) (city council prayer ending “in the name of Jesus Christ” violated the Establishment Clause; even when only 20% of prayers had such references, *Marsh* precludes prayers that advance any one religion), *cert. denied* 123 S.Ct. 2091 (2003).

<sup>4</sup> *A Memorial and Remonstrance Against Religious Assessments*, Article 5.

<sup>5</sup> Letter to Edward Livingston, July 10, 1822.

enter our civil affairs, our government would soon be destroyed.” *Weiss v. District Board*, 44 N.W. 967, 981 (1890)(Orton, J. concurring).

James Madison, the primary architect of the U.S. Constitution and Bill of Rights, and our fourth president, opposed government prayers and congressional chaplaincies. In his *Detached Memoranda*, Madison wrote, “Is the appointment of Chaplains to the two Houses of Congress consistent with the Constitution, and with the pure principle of religious freedom? In strictness the answer on both points must be in the negative. The Constitution of the U. S. forbids everything like an establishment of a national religion . . . The establishment of the chaplainship to Congress is a palpable violation of equal rights, as well as of Constitutional principles.” Madison was equally critical of presidential and governmental prayer.

“Religious proclamations by the Executive recommending thanksgivings & fasts are shoots from the same root. . . Although recommendations only, they imply a religious agency, making no part of the trust delegated to political rulers.” *Id.*

The U.S. Constitution is a godless and secular document, whose only references to religion in government are exclusionary, such as prohibiting a religious test for public office. It is a fundamental principle of Establishment Clause jurisprudence that the government cannot promote one religion over another, or religion over nonreligion. The framers did not pray when adopting our Constitution. Surely if the founders did not need prayer to write the document that founded our nation, the Washington Senate can successfully conduct its secular business without prayer as well.

We ask that you take immediate action to prevent future constitutional violations by dropping legislative prayer. We would appreciate hearing from you at your earliest convenience.

Very truly,



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Co-President

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