

FREEDOM FROM RELIGION *foundation*

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March 22, 2011

**SENT VIA ELECTRONIC MAIL & FAX
(651) 296-6511**

The Honorable Michelle Fischbach
President of the Senate
75 Rev Dr Martin Luther King Jr Blvd
Room 226 Capitol
Saint Paul MN 55155-1606

Re: Prayer at Minnesota State Senate Sessions

Dear Senator Fischbach:

I am writing on behalf of concerned Minnesota residents and taxpayers and members of the Freedom From Religion Foundation (FFRF) who object to the state Senate practice of opening sessions with religious devotions. FFRF is a national nonprofit organization representing over 16,000 members across the country including over 400 members in Minnesota. Our purpose is to protect the constitutional principle of separation between state and church.

On behalf of our Minnesota membership, we urge you to discontinue the practice of scheduling prayers to open Senate sessions. Removing official prayers from government meetings is the only way to ensure that the Senate is in compliance with the Constitution.

It is our information and understanding that the Minnesota State Senate opens its sessions with prayer. Our complainants inform us that everyone is expected to stand for the prayer and that prior to a clergy member or Senator offering a prayer, you as President of the Senate, announce the prayer and request that "following the prayer, please remain standing for the Pledge of Allegiance."

We further understand that prayers are mostly delivered by Christian clergy and are typically sectarian in nature. Most recently, on March 14, 2011, Pastor Dennis Campbell from Granite City Baptist Church in St. Cloud offended many with his overtly Christian prayer. At least one member of the Senate objected to his continual references to Jesus Christ and the Christian religious doctrine.

The following is a transcription of Pastor Campbell's controversial prayer:

"Thank you for this opportunity. I just wanted to take an opportunity to say thank you for your service and sacrifice and let you know that every Sunday morning we do publicly pray for our representatives in the federal, state and local levels. We do pray for you. Let's pray. Father, as we come to you we thank you for all your many blessings to us. We thank you for your greatness and your power. We know the heavens declare the glory of God. And we pray, Lord, that you help us to show reverence to the Lord, Jesus Christ, and to the word of God today. We ask your divine guidance upon this assembly. Give them wisdom, help them to realize that they are ministers of God as well as ministers for the people. And we pray, Lord that you would help us to recognize that there are many problems that we have in our culture and our state and our nation. And Father, there are many sins that we are concerned about. And we need to be willing to turn from sin and turn to the word of God. And we just pray, Lord, that you help us to fill our spirits with the spirit of God and with the word of God. Help us to realize that the solution to our problems are found in truth. And Jesus said, 'I am the way, the truth and the life.' And Father, that if we are willing to turn from our sins that you will bring blessing. If my people, which have called my name will humble themselves and pray and seek my face and turn from their wicked ways, I'll hear from heaven, 'Forgive their sin and heal their land.' We want to see our land healed, and it can be healed if we turn to you. In the name of the Lord, Jesus Christ, our Savior, we pray. Amen."

Other clergy members offering prayers before the Senate use other variations of "In Jesus' name" such as "In Your Name" or "In Your holy name." The following is a transcription from yesterday's prayer given by Lt. Col. John Morris, the State Chaplain for the Minnesota National Guard:

"Good morning, senators. It's an honor to be with you today. Would you bow with me for a word of prayer? Gracious and almighty God, on this day when men and women from Minnesota are in harm's way in Afghanistan, Iraq, and around our work, we bow for a moment to ask your blessing on them, their families, and on these senators who are before you today. I ask your blessing on their families as they do the business of our state and are often far from home and spending long hours away from those they love. Give this distinguished group wisdom, patience, and collegiality as they do the business of our state. Guide them in the way ahead of these difficult days and honor them for their service to our state and to our fellow citizens. I ask in Your most holy name. Amen."

First and foremost, prayer at government meetings is unnecessary, inappropriate, and divisive. Calling upon Minnesota State Senate members and citizens to rise and pray is coercive, embarrassing and beyond the scope of secular state government. Senate members 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, amounting to a governmental endorsement that excludes the 15% of the American population that is nonreligious (American Religious Identification Survey 2008).

The Senate compounds the violation when a majority of the prayers are to Jesus and/or a majority of the officiants are Christian or Christian clergy. Such prayer creates acrimony, makes religious minorities feel like political outsiders in their own community, and shows unconstitutional governmental preference not just for religion over non-religion, but Christianity over other faiths. Pastor Campbell's prayer and the reaction to it is a perfect example of the divisiveness this practice causes.

Sectarian Prayers

The prayers being offered before the Senate's meetings do not fall into the narrow exception of the constitutionally permissible government-sponsored prayer laid out by the Supreme Court. In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Supreme Court ruled that the Nebraska legislature's history and tradition of opening with a prayer was a constitutional exception. The Court found government prayer, in this case, was confined to a situation involving a non-sectarian, non-denominational prayer, led by an officiant who had not been selected based upon any impermissible religious motive, and which was addressed to the body of legislators present and no one else. See *Marsh*, 463 U.S. 783. Additionally, the Court held that legislators must have the option not to participate. The prayer opportunity must not be "exploited to proselytize or advance any one, or to disparage any other faith or belief." 463 U.S. at 794-795. The Court expressly noted that the content of the prayers was permissible because the chaplain had "removed all references to Christ." *Id.* at 793 n.14.

Even if the Senate has had an established history of opening its meetings with prayer, the Senate's practice still violates the Establishment Clause because of its sectarian nature. In *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 603 (1989), the Supreme Court found that, even if history and custom had saved non-sectarian legislative prayer, "history cannot legitimate practices that demonstrate the government's allegiance to a particular sect or creed." Additionally, the Court 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." *Id.* The Court continued, "The legislative prayers involved in *Marsh* did not violate this principle because the particular chaplain had 'removed all references to Christ.' " *Id.*

Lower federal courts have continued to emphasize that some government-sponsored prayers are constitutionally permissible only because they are non-sectarian, non-denominational and do not invoke a particular faith or deity. See, e.g., *Turner v. Fredericksburg*, 534 F.3d 292 (4th Cir. 2004), cert. denied, 2009 WL 56225 (U.S.) (No. 08-518) (finding constitutional a city council policy prohibiting sectarian prayers); *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004) (holding that the Establishment Clause was violated when the town council opened sessions with prayer containing references to Jesus Christ); *Bacus v. Palo Verde Unified School District*, 52 Fed.Appx. 355 (9th Cir. 2002) (unpublished) ("These prayers advanced one faith, Christianity, providing it with a special endorsed and privileged status in the school board. Some religions accept Jesus Christ as the Messiah, some do not, and some people do not believe in any religious faith. Solemnizing school board meetings 'in the Name of Jesus' displays 'the government's allegiance to a particular sect or creed.' ").

The Fourth Circuit's reasoning in *Wynne* is particularly helpful in understanding the boundaries for prayer at government meetings drawn in *Marsh*. In *Wynne*, the court held that any sectarian invocations of deities in legislative prayer serve to affiliate the government with a particular sect or creed and/or advance a particular faith or belief. See *Wynne*, 376 F.3d at 302. Additionally, both the presence and participation of town citizens were crucial to the court's determination that the Town Council had attempted to advance the Christian faith. See *id.* at 301. Ultimately, the court concluded:

“Marsh does not permit legislators to ... engage, as part of public business and for the citizenry as a whole, in prayers that contain explicit references to a deity in whose divinity only those of one faith believe. The invocations at issue here, which specifically call upon Jesus Christ, are simply not constitutionally acceptable legislative prayer like that approved in Marsh. Rather they embody the precise kind of “advancement” of that Marsh cautioned against.” Id. (emphasis added).

The prayers currently invoked at Senate meetings impermissibly advance Christianity and lead a reasonable observer to believe that the Senate is endorsing not only religion over non-religion, but also Christianity over other faiths. This practice inappropriately alienates non-Christians and non-believers. Their efforts to participate in public meetings are adversely affected by these types of prayers, which turn non-believers and non-Christians into political outsiders of their own community and government.

U.S. Founded on Separation of State/Church

America was founded in part by refugees seeking freedom from government dictation of religion. These refugees wanted freedom from a government telling them which church to support, what religious rituals to engage in, or what to believe or disbelieve. The U.S. founders who adopted our entirely secular Constitution knew there can be no religious liberty without the freedom to dissent. Whether to pray, whether to believe in a god who answers prayer, is an intensely precious and personal decision protected under our First Amendment as a paramount matter of conscience.

Our nation is founded on a godless Constitution, whose only references to religion in government are exclusionary, such as that there shall be no religious test for public office (U.S. Const. art. VI). The United States was first among nations to adopt a secular constitution, investing sovereignty in “We the People,” not a divinity. Our founders were aware that “[t]orrents of blood have been spilt in the old world” when religion and government were united. (James Madison, Memorial and Remonstrance, 1785). Madison added, “During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution.”

Religion had been an intensely divisive issue in the original Thirteen Colonies, where religious intolerance was endemic, and citizens might lose civil rights, be banished, jailed or in some instances executed, for holding a religious conviction contrary to that of the government. Today the religious right often touts the pre-Constitutional actions of the Continental Congress that

adopted the weak Articles of Confederation, and that failed to include safeguards separating government from religion. The religious right often conflates the short-lived 8-year Articles with the enduring Constitution that replaced it. Yet even at the inaugural session of that Continental Congress in 1774, when a delegate proposed to open a session with prayer, both John Jay and John Rutledge (two future Chief Justices of the Supreme Court) objected, saying Congress was “so divided in religious Sentiments . . . that We could not join in the same Act of Worship.” It is significant that after the catastrophic experiences with the Articles, our founders ensured there was no prayer at the Constitutional Convention, which convened in 1787 to write the U.S. Constitution. *See* Leo Pfeffer, *Church State and Freedom*, 121-122 (Beacon Press, 1967).

Significantly, President Thomas Jefferson, recognizing of the intrinsic problems when religion and government mix, actively opposed government sponsorship of prayer:

I consider the government of the U.S. as interdicted by the Constitution from intermeddling with religious institutions, their doctrines, discipline, or exercises . . .
I do not believe it is for the interest of religion to invite the civil magistrate to direct its exercises, its discipline, or its doctrines; nor of the religious societies that the general government should be invested with the power of effecting any uniformity of time or matter among them. Fasting & prayer are religious exercises. The enjoining them an act of discipline. Every religious society has a right to determine for itself the times for these exercises, & the objects proper for them, according to their own particular tenets; and this right can never be safer than in their own hands, where the constitution has deposited it.

(Jefferson’s letter to Rev. Samuel Miller, 1808).

Likewise, James Madison, the primary architect of the U.S. Constitution and Bill of Rights, and our second president, ultimately opposed government prayers and congressional chaplaincies. *See* Andy G. Olree, *James Madison and Legislative Chaplains*, 102 *Northwestern L. Rev.* 145 (2008). In his *Detached Memoranda*, Madison criticized the chaplaincies and the idea that “religious truth is to be tested by numbers or that the major sects have a right to govern the minor.”

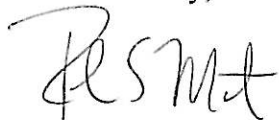
Solution is to Discontinue Prayer

Citizens electing to attend or participate in government meetings such as the Senate’s public sessions and Senators working in the state legislature should not be subjected to Christian-based, or even non-denominational prayer. By hosting prayers, which inevitably show preference for Christianity, the Senate is illegally and inappropriately imposing its religious beliefs on its own members and Minnesotans in attendance.

Moreover, these types of government prayers not only conflict with the Constitution, but also with biblical teachings. Christians who know their bible are familiar with the biblical injunction of Jesus in the Sermon on the Mount, condemning as hypocrisy public prayer. “Enter into thy closet and when thou hast shut the door, pray to thy Father which is in secret.” (Matthew 6:5-13).

To avoid the constitutional concerns these prayers cause for the Senate and the divisiveness these prayers cause within the community the solution is simple: discontinue official, government prayers before legislative meetings. We request a prompt response in writing about what steps you are taking to respect the Establishment Clause and remedy these constitutional violations.

Sincerely,

A handwritten signature in black ink, appearing to read 'RSMA', written in a cursive style.

Rebecca S. Markert
Staff Attorney