

FREEDOM FROM RELIGION *foundation*

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July 11, 2011

SENT VIA FAX AND U.S. MAIL
(909) 387-5392

Supervisor Josie Gonzales, Chair
San Bernardino County Government Center
385 North Arrowhead Avenue, Fifth Floor
San Bernardino, CA 92415-0110

Re: Invocations at Board of Supervisors' Meetings

Dear Chair Gonzales:

I am writing on behalf of concerned San Bernardino County residents and taxpayers and other California members of the Freedom From Religion Foundation (FFRF) to urge you to discontinue the practice of starting Board of Supervisors' meetings with prayers. FFRF is a national nonprofit organization representing over 16,500 members across the country including nearly 2,500 members in California. Our purpose is to protect the constitutional principle of separation between state and church.

On behalf of our San Bernardino County chapter and membership, we urge you to discontinue the practice of scheduling prayers at San Bernardino County Board of Supervisors ("Board") meetings. Removing official prayers from government meetings is the only way to ensure that the Board is in compliance with the Constitution.

It is our information and understanding that the San Bernardino County Board of Supervisors ("Board") includes a prayer or invocation as part of its regular meetings. Video footage posted online informs us that all community members in attendance are asked to rise and remain standing during the prayer. These prayers often invoke Jesus Christ and are typically sectarian in nature, in this instance predominantly Christian. The prayers in recent months contained specific references to Jesus Christ and several prayers ended with "in Jesus' name," or a variation thereof such as "in your name." It is our further understanding that members of the public regularly attend Board meetings and have necessary business before the Board.

Listed below are excerpts of two prayers from Board of Supervisors meetings:

May 24, 2011 Special meeting of the Board of Supervisors: Raymond Gregory, Arrowhead Regional Medical Center Chaplain:

“Dear Heavenly Father, we bow before you today that in the name of our Lord Jesus, we thank you for this county. We thank you for all the great things you’re doing. I pray for the hospital, think about Patrick Petrie and all the staff there and all the dear, hurting people. Thank you for the privilege of being chaplain there and being able to go from bed to bed and room to room, just helping the dear ones who are hurt so bad. We thank you for your grace, thank you for your savior. We pray for our country today. Think about all the heartache and the pain back East with the tornadoes and we just pray you bring comfort and strength. Thank you for your love and your care for us and guide this meeting today, Lord, give wisdom to each one who has part in it. We thank you that we can trust you with our lives and we just ask you, Lord, to meet every need and every heart here today and we thank you in the name of our risen Lord Jesus. Amen.”

June 14, 2011: Pastor Dolores Hampton, Associate Pastor of Brighter Days Ministries in Montclair, Founder of Brighter Days Ministries:

“Good morning. Let us pray. Our Father in Heaven, holy is your name. Your kingdom come, your will be done on Earth as it is in Heaven. Father, I come before you on behalf of the County of San Bernardino and the Board of Supervisors. I thank you that those who serve the community are men and women of honor, honesty, and integrity. I am asking you, Lord, to give them wisdom to guide us in every decision that will bring prosperity to our economy, that their decisions will strengthen our communities and improve our overall wellbeing. We ask this in Jesus’ name. Amen.”

Please find enclosed additional transcriptions of some of the impermissible prayers reviewed from December of 2010 through June of 2011.

First and foremost, prayer at government meetings is unnecessary, inappropriate, and divisive. Calling upon San Bernardino County Board of Supervisors and citizens to rise and pray is coercive, embarrassing and beyond the scope of secular county government. Board 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 Board 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 Board 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.

Citizens are frequently compelled to come before you on important civic matters, to seek licenses, permits, to participate in important decisions affecting their livelihood, their property and quality of life. These citizens should not be made to feel offended, excluded and like

political outsiders because the local government they support with their taxes oversteps its power by imposing religious ritual at secular government meetings. Local government should not be in the business of performing religious rituals, or exhorting all citizens regardless of beliefs to participate in a Christian prayer, or minimally to demonstrate obeisance to such prayer.

Sectarian Prayers

The prayers being offered before the Board'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 Board has had an established history of opening its meetings with prayer, San Bernardino County's practice still violates the Establishment Clause because of its continual references to Jesus. 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 Board meetings impermissibly advance Christianity and lead a reasonable observer to believe that the Board 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 fourth president, ultimately opposed government prayers and congressional chaplaincies. *See* Andy G. Oree, *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

The constitutional rights of citizens to participate in government meetings such as the Board’s weekly meetings should not be predicated upon being subjected to Christian-based, or even non-denominational prayer. By hosting prayers, which inevitably show preference for Christianity, the Board is illegally and inappropriately imposing its religious beliefs on the citizens of San Bernardino who attend the Board’s meetings for public business.

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 Board 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,

Stephanie A. Schmitt for

Rebecca S. Markert
Staff Attorney

Enclosure