

FREEDOM FROM RELIGION *foundation*

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January 26, 2011

The Honorable Assembly Speaker Jeff Fitzgerald
Room 211 West
State Capitol
P.O. Box 8952
Madison WI 53708

RE: End Unconstitutional Assembly Prayers Immediately

Dear Speaker:

On behalf of the Freedom From Religion Foundation and our Wisconsin membership, we ask that the Wisconsin State Assembly drop its practices of opening sessions with prayers/sermons. The Freedom From Religion Foundation (FFRF) is a nonprofit organization dedicated to the constitutional principle of separation of church and state, representing 1,300 nonreligious Wisconsin citizens and more than 16,000 members across the United States. The Wisconsin State Assembly's practice of opening its sessions with strongly sectarian Christian prayers/sermons is an egregious violation of the Establishment Clause. These prayers/sermons are delivered by the Representatives or by clergy hand-selected and endorsed by the Representatives to advance their own particular Christian denominations.

The prayer/sermon practices of the Wisconsin State Assembly flagrantly exceed the constraints of the 1983 Supreme Court decision, *Marsh v. Chambers*, 463 U.S. 783 (1983), which carved out a very narrow exception to the Establishment Clause for legislative prayer as a nod to history and custom. The abuses in the Assembly render its practices unconstitutional. The *Marsh* exception was confined to a situation involving 1) a nonsectarian, nondenominational prayer, 2) led by an officiant who had not been selected based upon any impermissible religious motive, and 3) which was addressed to the body of legislators present, and to no one else. Additionally, *Marsh* held that legislators must have the option not to participate. It is our understanding there are legislators who are so offended by the Christian bias that they wait until after the prayer is over to enter the Assembly Chamber, which is an egregious reflection of what is wrong about this unlawful practice. The prayer opportunity may not be "exploited to proselytize or advance any one, or to disparage any other, faith or belief," *Id.*, at 794-5.

The prayer/sermon practices of the Wisconsin State Assembly violate all of the *Marsh* stipulations. The prayers/sermons are strongly sectarian and almost exclusively and explicitly Christian. The introductions by Representatives for their hand-selected Christian clergy-proxies betray their impermissible religious motives in the clergy selection process. Additionally, the Assembly's opening prayers are routinely addressed to both visitors and Wisconsin citizens, exhorting all of them to pray. Reprehensibly, Assembly rules do not

appear to even permit legislators to leave the room during the prayer. Wis. Assembly Rule 26(2). Additionally, the prayers betray shocking pleas for Christian theocracy and the subjection of Wisconsin state law to Christian doctrine by the Representatives and their Christian clergy-proxies, as well as lobbying on behalf of Jesus Christ.

The Supreme Court further clarified the *Marsh* analysis in its 1989 decision, *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573 (1989). In *Allegheny*, the Court equated legislative prayer, of the sort defined in *Marsh*, with similar practices of ceremonial deism, devoid of religious significance and more analogous to a solemn call to order. The Court found that, even if history and custom had saved nonsectarian legislative prayer, "history cannot legitimate practices that demonstrate the government's allegiance to a particular sect or creed." *Id.*, at 603. Additionally, the Court reiterated that "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.* Legislative prayer as it is being practiced and preached in the Wisconsin State Assembly, does not fall within the constraints of the *Marsh* exception, regardless of history or custom.

Explicitly and Overwhelmingly Christian Sectarian Nature of Opening Prayers/Sermons by the Wisconsin State Assembly Representatives' and their Christian Clergy-Proxies

The Wisconsin State Representatives are open in their use of the prayer opportunity to advance their personal Christian beliefs. Of the available (on WisconsinEye) Representative-led prayers during the 2009-2010 Wisconsin State Assembly Legislative Session, 100% were explicitly and unequivocally Christian. Representatives led 8 prayers, accessible for transcription, and all 8 prayers were strongly sectarian in nature and unquestionably Christian. Additionally, of the 8 available Representative-led prayers, 7 include specific invocations of the Christian deity. The Representatives are flouting U.S. Supreme Court Establishment Clause jurisprudence by exclusively invoking a Christian deity. A reasonable observer could not help but perceive a government endorsement and advancement of the Christian faith to the total exclusion of all other faiths.

Likewise, the Representatives are overwhelmingly hand-selecting and endorsing their own Christian clergy-proxies to deliver the chaplain-led prayers. Of the 26 clergypersons who delivered invocations in the Assembly Chamber during the 2009-2010 legislative session, 77% (20) were explicitly Christian.

There were 37 opening prayers in the Wisconsin State Assembly Chamber during the 2009-2010 legislative session. We transcribed and analyzed 33 of those prayers. (Two were unavailable on WisconsinEye and two were Native American prayers as part of the annual State of the Tribes Address.) Of the 33 transcribed opening prayers from the 2009-2010 Legislative Session, 21 were explicitly and unequivocally Christian and 9 were in the Judeo-Christian tradition. There were 32 total specific references to the Christian deity, including 16 invocations of "Jesus," "Christ," or "Jesus Christ," as well as 8 "In Your Name's" or "In Your Sovereign Name's" or "Holy is His Name's." There were various other specific appellations for the Christian deity, such as "The Word" and "Prince of Peace." There were

additional contextual references to the Christian deity, including “the one who was seated on the throne,” from the Book of Revelations, and “the death of Your Son and his rebirth, his resurrection.” The prayers/sermons also include Biblical scripture and numerous references to the “Holy Spirit” and Christian prophets and saints.

Impermissible Religious Motives of Wisconsin State Representatives in Hand-Selecting and Endorsing their own Christian Clergy-Proxies to Proselytize

As was made clear in *Marsh*, the constitutionality of the clergy selection process hinges on whether or not the clergy selection was motivated by an impermissible religious motive. The Representatives are undeniably motivated by unconstitutional religious purposes when they hand-select their own clergy from their own churches, in their own Assembly Districts, to advance their own denominations. The Representatives’ introductions of their Christian clergy-proxies are often little more than mini pseudo-prayers/sermons themselves and are blatant and flagrant government-endorsed and subsidized advertisements for their Christian beliefs. The Representatives are proclaiming the virtues of their religious leaders, espousing their works and proselytization efforts, and encouraging the Assembly members, Assembly Chamber visitors, and Wisconsin citizens to sing their praises as well. This also contradicts every stipulation of *Marsh*, which would preserve the practice of legislative prayer as an act of ceremonial deism, devoid of religious significance and more akin to a solemn call to order. There is nothing ceremonial, secular or solemn about the effusions of the Representatives on behalf of their own Christian religious leaders.

The *Marsh* Court determined that legislative prayer might fall within constitutional constraints, because legislative prayer existed as a practice in the First Congress. But, *Marsh* also made clear that the First Congress made efforts to avoid the impression of government endorsement of Christian denominations, going so far as omitting any reporting of either the religions or the church affiliations of the chaplains. This is a far cry from the histrionic displays of politicized religiosity being perpetrated upon the Wisconsin citizenry by their own Representatives.

Representative Barbara Toles (D) of the 17th Assembly District extolled the spiritual virtues of her Christian clergy-proxy by reciting what appeared to be an advertisement for his media appearances/broadcasts. She exclaimed that her Christian clergy-proxy “has the personal mission of proclaiming the Gospel of the Kingdom with creativity, clarity and power. He can be heard daily on the Light for the World radio broadcast and seen each week on TBN, Time Warner Cable, TV.” She continued by enumerating her Christian clergy-proxy’s resumé, “He has ministered the Gospel around the world, including such countries as Japan, China, Colombia, Africa and Israel, and throughout the United States, including having been a guest speaker for Promise Keepers Men’s Conferences, Honor Bound and No Regrets Men’s Conferences.”

Representative Gordon Hintz (D) of the 54th Assembly District sang the praises of his Christian clergy-proxies. He said that they “both share worship, leadership, pastoral and administrative duties, each bringing his and her individual gifts to our ministry.” He

compared the Wisconsin State Assembly to his church, because, just like the Assembly, under the guidance of his Christian clergy-proxies, his church “encourages faith that expresses itself in action.” He continued, “In a world that can be difficult to navigate, and in a job like ours, that can be challenging, I know that I find comfort and peace through my worship with my community . . .”

The display of politicized religiosity and government-endorsed proselytization outlined above should embarrass the Assembly into dropping prayer. The Representatives are shameless in their exploitation of the prayer opportunity for the advancement of their own Christian beliefs. The Representatives’ testimonials may make nonbelievers and believers of other faiths feel like political outsiders in their own Assembly Districts.

Exploitation of the Prayer Opportunity to Religiously Indoctrinate Wisconsin State Citizens and Visitors to the Wisconsin State Assembly Chamber

Additionally, the *Marsh* Court made clear that its determination of constitutionality of the legislative prayers in question was founded on the prayers being addressed exclusively to the body of legislators present and no one else. No one else may be asked to participate in these prayers. Likewise, legislators must have the capacity to not participate themselves, should they so desire. The Wisconsin State Assembly is routinely violating this *Marsh* principle for the constitutional bounds of legislative prayer. During the 2009-2010 Legislative Session, there were at least 25 direct addresses to the visitors in the Assembly Chamber. Most of these addresses entailed asking the visitors to stand for the prayer. Also, there were at least 10 direct addresses to Wisconsin citizens during the prayers, either purporting to represent their voices or exhorting them to act in some fashion, not merely acknowledgements of their existence. These addresses to visitors and the citizenry move Assembly prayer beyond the constitutional boundaries for legislative prayer set by *Marsh*.

Representative Andy Jorgensen’s (D) Christian clergy-proxy appeared to believe that he had been called to the Wisconsin State Assembly to “represent the Fort Atkinson religious community in the 37th District” in an official capacity to “open our session for 2009.” He also implored the Christian deity to move the Wisconsin citizenry to support their Representatives by praying for them when he said, “And lead all of the citizens of Wisconsin to uplift them with their prayers, encouragement, and efforts.”

Representative Kim Hixson (D) of the 43rd Assembly District’s Christian clergy-proxy spoke on behalf of the entirety of the Wisconsin citizenry when he proclaimed, “Gracious Father, before these Representatives and The People of Wisconsin begin their work this day, we pause to be in your presence.”

Exploitation of the Prayer Opportunity for Politicking and Lobbying and Proselytizing, as well as Advocating for a Christian Theocracy

The Representatives and their Christian clergy-proxies are also moving Assembly legislative prayer beyond the very narrow constitutional constraints of the *Marsh* decision by ignoring the definition of legislative prayer altogether. Some of the Representatives and

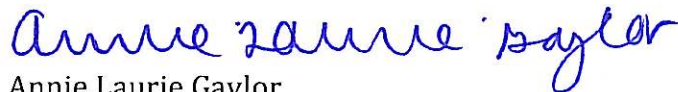
their Christian clergy-proxies are exploiting and abusing their prayer opportunities for political posturing and lobbying, in addition to proselytizing and evangelizing. Some of the Representatives have also developed the dismaying practice of asserting that Wisconsin State Law is in subjection to Christian religious law. (see LeMahieu remarks below) Advocating for theocracy is the definition of a step towards the establishment of religion.

Representative Daniel LeMahieu (R) of the 59th Assembly District preached, "But, we pray that as a body, our decisions, our actions would be pleasing to you, because you are the one that we serve." He seemed to be under the misapprehension that State Legislators serve Jesus Christ and not the citizens of Wisconsin. He later joked that he only agreed to deliver the prayer in exchange for a guaranteed vote upon his offered amendments. And, he finished by sermonizing, "And, we pray that all things we do would honor and glorify you. In Your Name we pray. Amen."

In one of the most shocking and disconcerting exploitations of the legislative prayer opportunity, the Christian clergy-proxy for Representative Fred Clark (D) of the 42nd Assembly District lobbied for specific Senate and Assembly Bills on behalf of Jesus Christ. He preached, "I wanted to thank you for taking up legislation concerning healthcare. Things as recently as Senate Bill 27, . . . Assembly Bill 103, . . . Assembly Bill 100, . . . And, finally, for including in the budget, . . . And, we pray." Regardless of the content or desirability of the Assembly Bills in question, this abuse of the prayer opportunity to lobby is an affront to the U.S. and Wisconsin Constitutions. He insisted that Wisconsin State Legislators should be "especially mindful" of the "spiritual health of our citizens." He stated that the state legislature should act to glorify Jesus Christ. This egregious exploitation of the prayer opportunity to lobby, and to do so in the name of Jesus Christ, makes a mockery of the *Marsh* exception for legislative prayer as an act of ceremonial deism. This is one of countless flagrant abuses of the *Marsh* exception under current Assembly prayer practices.

On behalf of FFRF and its Wisconsin members, we ask that the Wisconsin State Assembly end its unnecessary, coercive and unconstitutional practice of opening sessions with prayers/sermons. We urge the Assembly leadership to take immediate steps to end this clear violation of the First Amendment and Art. I, Sect. 18 of the Wisconsin Constitution and, minimally, to comply with *Marsh*. We request a response in writing at your earliest possible convenience.

Very truly,



Annie Laurie Gaylor
Co-President

cc Assembly Speaker Pro Tempore Bill Kramer
Chief Clerk Patrick Fuller
All Members of the Wisconsin State Assembly

Encl Addendum of Prayer Quotes