

# FREEDOM FROM RELIGION *foundation*

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May 21, 2012

***SENT BY MAIL AND FAX TO (423) 209-7201***

Mr. Fred Skillern  
Chairman of Hamilton County Commission  
625 Georgia Avenue #401  
Chattanooga, TN 37402

Re: Opening Hamilton County Commission Meetings with Unconstitutional Prayer

Dear Chairman Skillern and Hamilton County Commission:

I am writing on behalf of members of the Freedom From Religion Foundation (FFRF), including Hamilton County members, who object to the religious prayers opening Hamilton County Commission meetings. A local complainant brought this to our attention. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation of church and state. FFRF represents more than 18,000 members across the country including more than 250 in Tennessee.

It is our understanding that Hamilton County Commission ("Commission") meetings open with Christian prayers. We understand that the prayers are exclusively Christian and every 2012 prayer so far has been given in "Jesus' name."

First and foremost, prayer at government meetings is unnecessary, inappropriate, and divisive. Commission 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 Commission 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*).

Calling upon Commission members and citizens to pray is coercive and beyond the authority of the local government. Citizens are 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, or like political outsiders because the local government they support with their taxes imposes religious ritual at civil 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 even asking citizens to show deference or obeisance to this ritual.

### Sectarian Prayers

The Commission compounds the violation when a majority of the prayers are to Jesus and/or a majority of the officiants are Christian or Christian clergy. Sectarian prayers make religious minorities and nonbelievers feel like political outsiders in their own community, and show an unconstitutional governmental preference for Christianity over other faiths and for religion over non-religion.

The prayers here flagrantly exceed the constraints of the 1983 Supreme Court decision, *Marsh v. Chambers*, 463 U.S. 783 (1983), which carved out a narrow exception to the Establishment Clause for legislative prayer as a nod to history and custom. The *Marsh* exception was confined to a situation involving a nonsectarian, nondenominational 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 to no one else. Additionally, *Marsh* held that legislators must have the option not to participate. The prayer opportunity 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. Courts continually find sectarian government prayers to be a constitutional violation, and in January 2012, the Supreme Court declined to hear an appeal in a case declaring a county government’s prayers to Jesus unconstitutional. *See Joyner v. Forsyth County*, 653 F.3d 341 (4<sup>th</sup> Cir. 2011), *cert. denied* 2012 WL 117559 (U.S.).

Time and again, federal courts overturn government-sponsored prayers that are sectarian, denominational, or invoke a particular faith or deity. *See, e.g., Id.; Galloway v. Town of Greece*, 10-3635-CV, 2012 WL 1732787 (2<sup>nd</sup> Cir. May 17, 2012)(town council prayers that contain Christian references two thirds of the time, even when other faiths also give prayers, unconstitutionally affiliates the town with Christianity); *Wynne v. Town of Great Falls*, 376 F.3d 292 (4<sup>th</sup> Cir. 2004)(held that town board prayers referencing Jesus Christ violate Constitution), *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)(finding constitutional a city policy prohibiting sectarian prayers); *Bacus v. Palo Verde Unified School District*, 52 Fed.Appx. 355 (9<sup>th</sup> Cir. 2002)(unpublished)(prayers before school board meetings “in the name of Jesus” declared unconstitutional); *Doe v. Tangipahoa Parish School Bd.*, 473 F.3d 188 (5<sup>th</sup> Cir. 2006)(sectarian prayers before Board meetings violated the Establishment Clause)(later dismissed *en banc* for lack of standing); *Hinrichs v. Bosma*, 440 F.3d 393 (7<sup>th</sup> Cir. 2006)(declined to stay an injunction against opening legislative sessions with prayer, finding that *Marsh* precludes sectarian legislative prayer) (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).

In *Wynne*, both the presence and participation of town citizens were crucial to the court’s determination that the government’s prayers advanced the Christian faith. *See Wynne*, 376 F.3d 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 Commission meetings impermissibly advance Christianity and lead a reasonable observer to believe that the Commission is endorsing not only religion over non-religion, but also Christianity over other faiths. This practice inappropriately alienates non-Christians and nonbelievers. Their efforts to participate in public meetings are adversely affected by these types of prayers, which turn nonbelievers and non-Christians into political outsiders of their own community and government.

#### **The U.S. was Founded on Separation of State and Church**

America was founded in part by refugees seeking freedom from government dictation of religion. The Founders who adopted our entirely secular Constitution knew that religious liberty does not exist without the freedom to dissent. Our nation is founded on a godless Constitution, whose only references to religion in government are exclusionary, such as “no religious test shall ever be required” for public office. (U.S. Const. art. VI). The United States was first nation to adopt a secular constitution, investing sovereignty in “We the People,” not a divine entity. Significantly, there was no prayer during the Constitutional Convention. Surely if the founders did not need prayer to write the document that founded our nation, the Commission can successfully conduct its business without prayer as well.

President Thomas Jefferson recognized the intrinsic problems when religion and government mix and 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. (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, 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. ... An *advisory* Government is a contradiction in terms. The members of a Government as such can in no sense, be regarded as possessing an advisory trust from their Constituents in their religious capacities. In their individual capacities, as distinct from their official station, they might unite in recommendations of any sort whatever, in the same manner as any other individuals might do."

### **Solution is to Discontinue Prayer**

The constitutional rights of citizens to participate in government meetings, including the Commission's 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 Commission is illegally and inappropriately imposing its religious beliefs on the citizens of Hamilton County who attend these meetings for public business.

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

To avoid the constitutional concerns and the divisiveness these prayers cause within the community ***the solution is simple: discontinue official, government prayers before government meetings.*** Follow the wise counsel of Jefferson and Madison by stopping these divisive, unconstitutional prayers. We request a prompt response in writing about what steps you are taking to respect the Establishment Clause and remedy these constitutional violations.

Sincerely,



Patrick Elliott  
Staff Attorney  
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