

FREEDOM FROM RELIGION *foundation*

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March 20, 2012

SENT VIA U.S. AND ELECTRONIC MAIL
Steve.Morris@senate.ks.gov

The Honorable Steve Morris
President
Kansas State Senate
300 SW 10th Ave
Room 333-E
Topeka KS 66612

Re: Unconstitutional Prayers before Senate Sessions

Dear President Morris:

We are writing on behalf of concerned Kansas residents and taxpayers and members of the Freedom From Religion Foundation (“FFRF”) who object to the Senate’s practice of opening sessions with religious devotions. FFRF is a national nonprofit organization representing over 17,500 members across the country including members in Kansas. Our purpose is to protect the constitutional principle of separation between state and church.

On behalf of our Kansas 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 Kansas State Senate (“Senate”) opens its sessions with sectarian prayers. Our complainants inform us that all of the prayers from 2012 save one ended “In Jesus’ name” or a variation thereof such as “In your holy name.” We also understand that the Senate has a chaplain. Currently serving in that position as he has for the last thirty years is Chaplain Fred S. Hollomon. Chaplain Hollomon always ends his prayers “in the Name of Jesus Christ.” In fact, in reviewing prayers from the last three years, the overwhelming majority, save a few, are sectarian — specifically Christian, i.e., to Jesus — prayers. Chaplain Hollomon’s prayers also quote scripture or reference the Bible.

The following are transcriptions of some impermissible prayers as recorded in the Journal of the Senate:

March 8, 2012: Military Chaplain Major Lawrence Dabeck:

“Almighty God, You are the Father of lights, with whom there is no variation or shifting shadow. You are the One eternal constant and You change not.

But not so with us Lord. We are pulled this way and that. We are daily beset by forces from without and by frailties from within. We come to You to make us steady. Ground us today Lord in this great chamber to be steady in our convictions and to be constant in our compassion. Help us to season justice with mercy. In sort, help us to be like Your Son the Lord Jesus Christ.

We come to You this afternoon with empty hands. We cannot do this thing for ourselves, for, “who is sufficient for these things?” Surely not us. Steady our boat in the midst of our storms; command again to the wind and the waves, “Peace, be still,” and thanks be to God who gives us the victory through our Lord Jesus Christ, in whose name we ask for Your peace, Amen.”

February 1, 2012: Senate Chaplain Fred S. Hollomon:

“Heavenly Father, I wonder what Jesus would do if He were a member of the Kansas Senate.

Of course I cannot presume to know exactly what He would do, but He gave us some hints the last time He was on earth. I think I would be safe to say that He would be full of surprises.

I think He would surprise a lot of people by the kind of folks with whom He would socialize.

I suspect He would surprise us at how much time He would spend with those who could not contribute and children who cannot vote.

In which case He probably would not be re-elected. However, He might surprise us in that, too.

On the other hand, before we decided to imitate Him, perhaps we should count the cost. The last time He was on earth He completed only three years of His term! And that was to benefit others.

I pray in the Name of Jesus Christ, AMEN.”

January 11, 2012: Senate Chaplain Fred S. Hollomon:

“Heavenly Father, On July 9th in ‘76

The first Chaplain was approved.

Since then many Chaplains

Into both Houses have been moved.

Some has been criticized
For the way that we have prayed,
Perhaps it was needed.
But most were not afraid.

My tenure has been 30 years,
And I really like my job.
Six Senate Presidents have I served,
None called me snob or slob.

We know You are our Boss, O God,
And we serve You above all;
Give us prayers the people need,
We are at Your beck and call.

I pray in the Name of Jesus Christ, AMEN.”

Government prayer is unnecessary, inappropriate, and divisive. Calling upon Representatives and citizens watching in the gallery or online to rise and pray (even silently) is coercive, embarrassing and beyond the scope of secular city government. Representatives 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. Even nonsectarian prayer excludes the 11% of your state population that is nonreligious, which is more than 233,000 adults in Kansas (Religious Identification Survey 2008). The violation is compounded when a majority of prayers is sectarian, i.e. to Jesus, or a majority of the officiants is of one religion, i.e., Christian or Christian clergy (which inevitably happens). Such prayer creates acrimony, makes minorities feel like political outsiders in their own community, and shows unconstitutional governmental preference not just for religion over nonreligion, but Christianity over other faiths. It also offends the 14% of the Kansas population that is Non-Christian. *Id.*

Sectarian Prayers

The prayers being offered before the Senate’s sessions 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.'").

Just recently, in 2011, the Fourth Circuit Court of Appeals ruled that prayers to Jesus during Forsyth County Commissioners meetings were unconstitutional. *Joyner v. Forsyth County, N.C.*, 653 F.3d 341, 349 (4th Cir. 2011), cert. denied No. 10-1232 (U.S. January 13, 2012). The Court said, "Faith is as deeply important as it is deeply personal, and the government should not appear to suggest that some faiths have it wrong and others got it right." *Id.* at 349. The Court explained:

"To be sure, citizens in a robust democracy should expect to hear all manner of things that they do not like. But the First Amendment teaches that religious faith stands on a different footing from other forms of speech and observance. Because religious belief is so intimate and so central to our being, government advancement and effective endorsement of one faith carries a particular sting for citizens who hold devoutly to another. This is precisely the opposite of what legislative invocations should bring about. In other words, whatever the Board's intentions, its policy, as implemented, has led to exactly the kind of 'divisiveness the Establishment Clause seeks rightly to avoid.'" *Id.* at 354-355 (quoting *Simpson v. Chesterfield County Bd. of Supr's*, 404 F.3d 276, 284 (4th Cir. 2005).

The Fourth Circuit's reasoning in another prayer at government meetings case, *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. It is also important to note that the founders did not pray at the Constitutional Convention, which shows intent.

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 Kansans in attendance.

Moreover, these types of government prayers and religious rituals 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 create 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.

Yours truly,

Annie Laurie Gaylor

Annie Laurie Gaylor and Dan Barker
Co-Presidents

Dan Barker