

FREEDOM FROM RELIGION *foundation*

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January 31, 2014

Tim Morales
City Manager, Saginaw City Council
1315 South Washington Ave.
Saginaw, MI 48601

Re: Opening City Council Meetings with Divisive Prayer

Dear Mr. Morales and Saginaw City Council Members:

I am writing on behalf of the Freedom From Religion Foundation ("FFRF"), including Michigan members who object to religious prayers at city council meetings. A local complainant brought this matter to our attention. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation between state and church. FFRF represents nearly 20,000 members across the country, including members in Michigan.

It is our understanding that Saginaw City Council ("City Council") meetings open with Christian prayers. Government prayers exclude a significant portion of Americans from the democratic process, are of dubious legality, and are a repudiation of our secular history. The best solution is for the City Council to drop these prayers altogether.

Government prayers are exclusionary

Prayer at government meetings is unnecessary, inappropriate, and divisive. City Council 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 city council ought not to lend its power and prestige to religion, amounting to a governmental endorsement that excludes the 19% of the American population that is nonreligious.¹ Younger voters are the least religious population in the country: 1-in-3 Americans aged 18-29 are not religious.²

Calling upon City Council members and citizens to pray is coercive and beyond the authority of any government. Local government should not perform religious rituals or exhort citizens, regardless of their beliefs, to participate in, or show deference to, a religious ritual. This official endorsement of a religious ritual "sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." *Lynch v. Donnelly*, 465 U.S. 668, 688, (1984) (O'Connor, J., concurring).

If, as the Supreme Court once wrote, "participation in local government is a cornerstone of American democracy," local governments should do all in their power to increase participation — not alienate one-in-five citizens. *F.E.R.C. v. Mississippi*, 456 U.S. 742, 789 (1982) (O'Connor, J., concurring).

¹ The Pew Forum on Religion & Public Life, *Asian Americans: A Mosaic of Faiths*, 148 (July 2012).

² "Nones on the Rise" Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012).

Unconstitutional prayers at local government meetings

The state of the law regarding the constitutionality of government-sponsored prayers is unstable. For the first time since the 1983 *Marsh v. Chambers* decision, the Supreme Court will reconsider the constitutionality of such prayers. The Second Circuit agreed with the Fourth Circuit and declared sectarian government prayers unconstitutional; this year the Supreme Court will decide the case. See *Galloway v. Town of Greece*, 681 F.3d 20 (2d Cir. 2012)(town council prayers that contain Christian references two thirds of the time, even when other faiths also give prayers, are unconstitutional) *cert. granted*, 2013 WL 2149803, (U.S. May 20, 2013) (No. 12-696).

There is a crucial difference between your prayers and the prayers upheld in the *Marsh* decision that is now being revisited by the Supreme Court. In *Marsh*, “government officials invoke[d] spiritual inspiration entirely for their own benefit without directing the religious message at the citizens they lead.” *Lee v. Weisman*, 505 U.S. 577, 630 n.8, (1992) (Souter, J., concurring); see also *Joyner v. Forsyth Cnty., N.C.*, 653 F.3d 341, 347 (4th Cir. 2011) *cert. denied*, 132 S. Ct. 1097, (citing *Larson v. Valente*, 456 U.S. 228, 244 (1982)) (“The proximity of prayer to official government business can create an environment in which the government prefers—or appears to prefer—particular sects or creeds” in violation of “the clearest command of the Establishment Clause.”); *Galloway at 22-23* (“Residents and town employees attend Town Board meetings to monitor and participate in these aspects of town governance,” children attend meetings, Boy Scouts lead the Pledge of Allegiance, “and high school students may fulfill a state-mandated civics requirement necessary for graduation by going to Board meetings.”)

Unlike the Nebraska legislature in *Marsh*, your prayers are directed at and have a greater impact on citizens. As a 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, property, children, and quality of life. This proximity casts serious doubt that these prayers are for your benefit alone, as in *Marsh*. Your citizens should not be excluded or made into political outsiders because the local government — which they support with their taxes — imposes religious rituals at its meetings.

Prayer at government meetings continues to be litigated, divisive, and problematic for local governments across the nation precisely because of this legal uncertainty and instability. The best course is to halt the prayers. If you wish to pray prior to the meeting, do so on your own time in your own way — do not make it part of the secular business of your local government.

The U.S. was founded on separation of state and church

America was founded in part by refugees seeking freedom from government imposition of religion. The framers who wrote our Constitution understood that religious liberty cannot exist without the freedom to dissent. They founded our nation on a godless Constitution, whose only references to religion in government are exclusionary, such as prohibiting “religious tests” for public office. (Art. VI).

We were the first nation to adopt a secular constitution, investing sovereignty in “We the People,” not a divine entity. We invented the separation of state and church. Significantly, there was no prayer during the Constitutional Convention. Surely if the framers did not need prayer to write the document that founded our nation, the Mesa city council 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. Letter to Rev. Samuel Miller, 1808.

Likewise, James Madison, the primary architect of our Constitution and Bill of Rights, and our fourth president, opposed government prayers and congressional chaplaincies. In his *Detached Memoranda*, Madison asked, "Is the appointment of Chaplains to the two Houses of Congress consistent with the Constitution, and with the pure principle of religious freedom?" Madison continued, "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."

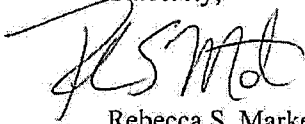
Madison was equally critical of presidential and governmental prayer calling them "shoots from the same roof" as the chaplaincy. He also distinguished government officers acting in their official capacity — such as during a government meeting — from their individual capacity as private citizens: prayer recommendations, "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." *Id.*

Jesus condemned public prayer as hypocrisy

Inevitably, most government prayers are Christian. But Christians should know that government prayers not only conflict with the beliefs or lack thereof of millions of Americans, but also with the biblical teachings of Jesus. During the Sermon on the Mount, Jesus condemns public prayer as hypocrisy: "And when you pray, **do not be like the hypocrites, for they love to pray standing in the synagogues and on the street corners to be seen by others.** . . . When you pray, go into your room, close the door and pray to your Father who is unseen." Matthew 6:5-6.

The solution is simple: discontinue official, government prayers at your meetings. We urge you to concentrate on civil matters and leave religion to the private conscience of each individual. If government meetings must show reverence, let it be for our secular and godless Constitution, which enshrines the greatest American invention — the separation of state and church.

Sincerely,



Rebecca S. Markert
Staff Attorney

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