



FREEDOM FROM RELIGION FOUNDATION

P.O. Box 750 • Madison WI 53701 • (608) 256-8900 • www.ffrf.org

June 21, 2010

**SENT VIA U.S. MAIL & FAX
(989)731-7519**

COPY

Ken Glasser
Otsego County Board of Commissioners
225 West Main St.
Gaylord, MI 49735

Re: Invocations at Board of Commissioner meetings

Dear Commissioners:

I am writing on behalf of a concerned Otsego County resident and taxpayer and other Michigan members of the Freedom From Religion Foundation (FFRF) to urge you to discontinue the practice of scheduling Otsego Board of Commissioner meetings with prayers. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation of church and state. FFRF represents over 16,000 supporters across the country, including over 450 members in Michigan.

It is our understanding that the Otsego County Board of Commissioners (hereinafter "Board") includes a prayer or invocation as part of its regular meetings. Our complainant informs us that it is the Board's practice to have Board members deliver these prayers. We understand that these prayers often invoke Jesus Christ, ending frequently "in Jesus' name" or some variation thereof. These prayers are predominantly Christian. It is our further understanding that members of the public regularly attend Board meetings and have necessary business before the Board.

On behalf of our Michigan members and Otsego County residents, we urge you to discontinue the practice of scheduling prayers at Board meetings, or in the alternative, to opt for a moment of silence.

First and foremost, government prayer is unnecessary, inappropriate, and divisive. Calling upon Board members 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 county ought not to lend its power and prestige to religion, amounting to a governmental endorsement that excludes the 16% of your population that is nonreligious (American Religious Identification Survey 2008).

The Board compounds the violation when a majority of prayers are to Jesus 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 nonreligion, but Christianity over other faiths.

Secondly, the prayers being offered before the Board's meetings do not fall into the narrow exception of 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 by a paid chaplain was constitutional. The exception found by the Court 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 794-95. The Court also noted that the content of the prayers was permissible because the chaplain has "removed all references to Christ." *Id.* at 793 n.14.

Even if the Board had an established history of opening its meetings with prayer, the practice still violates the Establishment Clause because of its continual references to Christ. 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., *Snyder v. Murray City Corp.*, 159 F.3d 1227, 1234 (10th Cir. 1998) ("...the kind of legislative prayer that will run afoul of the Constitution is one that proselytizes particular religious tenet or belief, or that aggressively advocates a specific religious creed, or that derogates another religious faith or doctrine."); *Turner v. Fredericksburg*, 534 F.3d 352, 353 (4th Cir. 2008) (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).

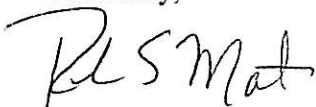
The Fourth Circuit's reasoning in *Wynne* is particularly helpful in understanding the boundaries for government-sponsored prayer drawn in *Marsh*. In *Wynne*, the court held that any sectarian invocations of deities in legislative prayer serve to affiliate the government with a particular sect or creed 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 one particular religion that Marsh cautioned against.” Id. (emphasis added).

The prayers currently given during Otsego County 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. The constitutional rights of citizens to participate in government meetings such as the Board’s monthly meetings should not be predicated upon being subjected to Christian-based, or even nondenominational prayer.

On behalf of our Otsego County membership, we request that the Otsego County Board discontinue the practice of scheduling invocations as part of its meetings. By hosting prayers, which inevitably show preference for Christianity, the Board is illegally and inappropriately imposing its religious beliefs on the citizens of Otsego County who attend the Board’s meetings for public business. To avoid the divisiveness these prayers cause within the community the solution is simple: discontinue official, government prayers before legislative meetings. In the alternative, the Board could discontinue the prayerful practices and opt for a moment of silence, as have many cities and county boards across the country.

Sincerely,



Rebecca S. Markert
Staff Attorney

cc: Kyle T. Legel, County Prosecutor

RSM:stg