



## **AN OPEN LETTER TO INTERESTED PARTIES REGARDING THE LEGALITY OF PUBLIC INVOCATIONS**

To whom it may concern:

In recent years the historical and cherished tradition of opening public meetings with an invocation has come under attack. A series of lawsuits have been filed challenging different invocation policies and practices. Elected officials in cities, counties, and states across the country have received correspondence from activists groups such as the American Civil Liberties Union, Americans United for the Separation of Church and State, and The Freedom from Religion Foundation making the extraordinary demand that public invocations be censored or altogether prohibited. We write to assure elected officials and concerned citizens that the Constitution clearly protects public invocations, even those that include a prayer.

By way of introduction, Alliance Defending Freedom is a not-for-profit legal ministry defending the right to hear and speak the Truth through strategy, training, funding and direct litigation. Our organization exists to educate the public and the government about important constitutional rights, particularly the freedom of religious expression. Alliance Defending Freedom has been called upon to assist and successfully defend many public officials nationwide. This letter provides a detailed legal analysis concerning public invocation practices and concludes with an offer of free legal assistance.

### **I. LEGAL ANALYSIS**

In his Farewell Address on September 19, 1796, President Washington famously admonished: “Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. . . . The mere Politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their

connections with private and public felicity.” It is both lawful and wise for public officials to respect and cherish our religious heritage and to invoke God’s protection and guidance over their public work and our nation.

There is simply no question that a public deliberative body may open its meetings with an invocation, even one that includes a prayer. Public prayer has been an essential part of our heritage since before this nation’s founding, and our Constitution has always protected the activity. Contrary to some recent claims, such prayer can also include distinctly Christian references without running afoul of the First Amendment’s Establishment Clause.

#### **A. The Legality of Public Invocations is Beyond Dispute.**

The United States Supreme Court has acknowledged that official proclamations of thanksgiving and prayer, and invocations before the start of government meetings, are an essential part of our culture and in no way a violation of the Constitution. This has been a consistent principle in First Amendment jurisprudence.

The central case on this subject is *Marsh v. Chambers*, 463 U.S. 783 (1983), where the Court approved the Nebraska Legislature’s practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars. *Marsh* has been repeatedly mischaracterized by some advocacy groups in recent months, but its holding is clear. In *Marsh*, Chief Justice Burger concluded:

The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom.

*Id.*, at 786. In fact, the Court noted that agreement was reached on the final language of the Bill of Rights on September 25, 1789, just three days *after* Congress authorized opening prayers by paid chaplains. *Id.*, at 788. Clearly then, “To invoke divine guidance on a public body . . . is not, in these circumstances, an ‘establishment’ of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country.” *Id.*, at 792. Those beliefs help define who we are as a nation.

In *Lynch v. Donnelly*, 465 U.S. 668, 675 (1984), the Supreme Court again affirmed that “[o]ur history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders.” Justice O’Connor opined that such official references encompass “legislative prayers of the type approved in *Marsh* [citation omitted], government

declaration of Thanksgiving as a public holiday, printing of ‘In God We Trust’ on coins, and opening court sessions with ‘God save the United States and this honorable court.’” *Id.*, at 693 (concurring opinion). She explained, “Those government acknowledgments of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society. For that reason, and because of their history and ubiquity, those practices are not understood as conveying government approval of particular religious beliefs.” *Id.*

In *Marsh*, the court reiterated historical precedent. Thirty years before *Marsh* was decided, Justice Douglas famously observed, “We are a religious people whose institutions presuppose a Supreme Being.” *Zorach v. Clauson*, 343 U.S. 306, 313-14 (1952). Ninety-one years before *Marsh*, the Court acknowledged in *Holy Trinity Church v. United States*, 143 U.S. 457 (1892), that America had a “custom of opening sessions of ALL deliberative bodies and most conventions with prayer. . .” *Id.*, at 471 (emphasis added). By simply following these traditions, government officials run no risk of violating the Constitution.<sup>1</sup>

## **B. Sectarian Prayers are Historical and Constitutionally Permissible.**

Recently, some activist groups have implied that all references to a particular deity, such as Jesus Christ, in public invocations are unlawful. To the contrary, the Constitution does *not* require such censorship. Courts focus on the *context* of legislative prayers rather than the specific *content* of any particular invocation. While the Constitution does not prohibit legislative prayers and other formal recognitions of this nation’s heritage, it does make clear that the government cannot establish a preferred religious viewpoint, such as a nonsectarian/civil religion. In fact the Supreme Court has made it clear that the government cannot compose official prayers for any group of Americans incident to a formal government exercise. *See Engle v. Vitale*, 370 U.S. 421, 425 (1962). The Court later warned that mandating a “nonsectarian” prayer involves a dangerous element of governmental control on the content of public prayers. *See Galloway v. Town of Greece*, 681 F.3d 20, 28 (2nd Cir. 2012) (*quoting Lee v. Weisman*, 505 U.S. 577 (1992)). It is clear that the Supreme Court has never mandated deliberative bodies to require “nonsectarian” prayers, but its caution against the government exercising too much control over the content of public prayers reveal that public bodies are much safer when they allow individuals to offer prayers according to the dictates of their own consciences.

### **1. Supreme Court Cases.**

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<sup>1</sup> As explained below, the lower courts have extended *Marsh* beyond the context of a state legislature, and applied it in deciding whether to permit prayer at meetings of local governmental bodies as well.

In *Marsh*, the Supreme Court gave no indication that the mere mention of a specific deity or belief would violate the Establishment Clause. Instead, the Court reviewed and relied upon the examples of chaplains who gave overtly Christian prayers as evidence of permissible public invocations. *See Marsh*, 463 U.S. at 794–95. The *Marsh* Court did not explicitly address the constitutionality of legislative prayers offered in Jesus’ name (or in the name of any other specific deity) because that issue was not before the Court. However, the Court did reference the prayers delivered in Congress and at the Constitutional Convention as examples of what would and should be historically and traditionally permitted. *See Id.* at 791-92. Included in those example invocations were prayers mentioning the name of Jesus brought by invited guests.

For example, the *Marsh* Court reviewed and discussed the opening of the first session of Congress with prayer and concluded that “the subject was considered carefully and the action not taken thoughtlessly, by force of long tradition and without regard to the problems posed by a pluralistic society.” *Id.* The prayer at the first session of the Continental Congress, in Carpenter’s Hall, Philadelphia on September 7, 1774, was delivered by the Rev. Jacob Duché. He included these words (emphasis added):

Be Thou present; O God of Wisdom, and direct the councils of this Honorable Assembly: enable them to settle all things on the best and [surest] of foundations: that the scene of blood may be speedily closed: that Order, Harmony and Peace may be effectually restored, and Truth, and Justice, Religion, and Piety prevail and flourish among the people. Preserve the health of their bodies and the vigor of their minds, shower down on them, and the millions they here represent, such temporal Blessings as Thou seest expedient for them in this world, and crown them with everlasting Glory in the world to come. *All this we ask in the name and through the merits of Jesus Christ, Thy Son and Our Savior, Amen.*<sup>2</sup>

The content of Rev. Duché’s prayer is virtually indistinguishable from the content of the typical opening prayer at any public meeting in America today. If the above prayer is exemplary of the prayers reviewed with approval and referenced by the Supreme Court in *Marsh*,<sup>3</sup> then it, and prayer like it, is certainly appropriate today as well. Neither

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<sup>2</sup> September 7, 1774, *First Prayer in Congress: Beautiful Reminiscence* (Washington, D.C. Library of Congress); William J. Federer, *America’s God and Country: Encyclopedia of Quotations* (Coppell, TX Fame Publishing, Inc., 1994), p.137; Gary DeMar, *God and Government: A Biblical and Historical Study* (Atlanta, GA American Vision Press, 1982), Vol. I, p. 108; John S.C. Abbott, *George Washington* (New York, NY Dodd, Mead & Co., 1875, 1917), p.187; Reynolds, *The Maine Scholars Manual* (Portland, ME Dresser, McLellan & Co., 1880).

<sup>3</sup> Notably, many of the prayers offered by the Nebraska Legislature’s chaplain and reviewed by the *Marsh* Court were overtly Christian. *See, e.g., Marsh* 463 U.S. at 823 n.2 (Stevens, J., dissenting) (“Father in heaven, the suffering and death of your son brought life to the whole world moving our hearts to praise

*Marsh* nor any other Supreme Court case commands removal of all sectarian references from public prayer, particularly where different persons of varying creeds take turns offering the prayer.

## 2. Lower Court Cases.

Numerous appellate and district courts that have had occasion to apply *Marsh* have found no trouble with references to unique faith traditions—so long as they are not exploited and used for proselytizing. The lower courts have rightfully focused on the key guideline provided by *Marsh*:

*The content of the prayer is not of concern* to judges where, as here, there is no indication that the prayer opportunity has been *exploited to proselytize or advance any one*, or to *disparage any other*, faith or belief. That being so, it is not for us to embark on a sensitive evaluation or to parse the content of a particular prayer.

*Marsh*, 463 U.S. at 794-795 (emphasis added).

For example, the U.S. Court of Appeals for the Tenth Circuit has stated that “the mere fact a prayer evokes a particular concept of God is not enough to run afoul of the Establishment Clause.” *Snyder v. Murray*, 159 F.3d 1227, 1234, n.10 (10th Cir. 1998). In that case, the court held that a city council could lawfully bar a speaker because he would “proselytize” his own views and “disparage” others by offering a mock, unconventional “prayer.” Applying *Marsh*, the court observed: “The kind of legislative prayer that will run afoul of the Constitution is one that *proselytizes* a particular religious tenet or belief, or that *aggressively advocates* a specific religious creed, or that *derogates another* religious faith or doctrine.” *Id.*, at 1234 (emphasis added). Specifically addressing what it means to “advance” a particular faith under *Marsh*, the court found that, “All prayers ‘advance’ a particular faith or belief in one way or another. . . . By using the term ‘proselytize,’ the [*Marsh*] Court indicated that the real danger in this area is effort by the government to *convert* citizens to particular sectarian views.” *Id.*, 1234, n.10 (emphasis added).

The United States Court of Appeals for the Eleventh Circuit upheld county commission meeting prayers, even though more than 70% of them concluded in Jesus’ name. *Pelphrey v. Cobb County, Ga.*, 547 F.3d 1263 (11th Cir. 2008). In that case, the federal district court below provided helpful standards for reviewing a legislative prayer and looked to whether the public officials had an “impermissible motive” to proselytize only one faith, or to show “purposeful preference of one religious view to the exclusion

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your glory. The power of the cross reveals your concern for the world and the wonder of Christ crucified.”).

of others[.]” *Pelphrey v. Cobb County, Ga.*, 410 F.Supp.2d 1324, 1338 (N.D. Ga. 2006). Below this type of threshold, most courts<sup>4</sup> have consistently disclaimed any interest in the content of legislative invocations, announcing a strong disinclination “to embark on a sensitive evaluation or to parse the content of a particular prayer.” *Marsh*, 463 U.S. at 795. “To read *Marsh* as allowing only nonsectarian prayers is at odds with the clear directive by the Court that the content of a legislative prayer ‘is not of concern to judges where . . . there is no indication that the prayer opportunity has been exploited to proselytize or advance any one . . . faith or belief.’” *Pelphrey*, 547 F.3d at 1271 (quoting *Marsh*, 463 U.S. at 794-95). “Whether invocations of ‘Lord of Lords’ or ‘the God of Abraham, Isaac and Mohammed’ are ‘sectarian’ is best left to theologians, not courts of law.” *Id.* at 1267. The court reaffirmed the analysis and approved another legislative prayer practice in *Atheist of Florida v. City of Lakeland*, --- F.3d ----, 2013 WL 1197772 (11th Cir. 2013).

Included in the unreasonable demands of some activist groups is the misleading implication that lower courts have concluded that distinctly Christian references in public invocations are unlawful. This is simply untrue. Rather than rely upon the statements of groups who are committed to the eradication of public invocations, look to the actual ruling of the courts. To date, no federal appellate court mandates that legislative prayers exclude all sectarian references, or references unique to a particular faith tradition. See *Pelphrey*, 547 F.3d at 1272. Even in the Fourth Circuit, which shares the unique status of being the only jurisdiction in the country that asks local governments to monitor the content of public invocations, does not require censorship of all sectarian references from legislative prayers. Recently the Fourth Circuit issued an opinion that cautioned that sectarian references that promote the same faith tradition may at some point become too frequent, but the court made it clear that the Constitution does not prohibit the occasional sectarian reference. See *Joyner v. Forsyth County*, 653 F.3d 341, 351 (4th Cir. 2011)

Similarly, federal district courts reviewing this issue in the last several years have refused to prohibit legislative prayers, simply because they include a reference to a particular deity. For example, in *Doe v. Tangipahoa Parish Sch. Bd.*, 631 F.Supp.2d 823 (E.D. La. 2009), the court held that a model prayer policy drafted by Alliance Defending Freedom is constitutional on its face. The court clarified: “Fidelity to *Marsh* commands not a content-based approach, or an inquiry into whether prayers are sectarian or nonsectarian at the outset, but, rather, focuses on exploitation of the prayer opportunity and efforts, direct or not, to proselytize; to promote or sell a religion.” *Id.* at 839. “In

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<sup>4</sup> See *Doe v. Indian River School District*, 685 F.Supp.2d 524, 542 (D.Del. 2010) reversed on other grounds, 653 F.3d 256 (3rd Cir. 2011); *Doe v. Tangipahoa Parish School Board (Doe II)*, 631 F.Supp.2d 823, 839 (E.D.La. 2009).

approving *Pelphrey* and *Marsh*, this Court refuses to ‘reduce *Marsh* to a sectarian/non-sectarian litmus test.’” *Id.* at 840 (citations and quotations omitted).

In *Galloway v. Town of Greece, N.Y.*, 681 F.3d 20, 28 (2nd Cir. 2012), the court concluded that a prayer practice that permits a person to pray according to the dictates of their conscience was not unconstitutional simply because it permitted sectarian prayers and warned that mandating nonsectarian prayers may be an unconstitutional establishment of a civil religion. Even the U.S. Court of Appeals for the Ninth Circuit agrees that uncensored legislative prayers are constitutional and do not run afoul of the constitution simply because the prayer giver refers to Jesus or names another deity. *Rubin v. City of Lancaster, Ca.*, 710 F.3d. 1087 (9th Cir. 2013).

In addition to the solid court precedence, state and local governments can look to the practices of the U.S. Congress for examples of what is constitutionally permitted. The legislative prayers offered in Congress often make clear references to a specific deity, such as Jesus.<sup>5</sup> By way of example, on July 15, 2010, the Rev. Dr. John Cross offered the following prayer in the United States House of Representatives:

Heavenly Father, thank You for being so kind, gracious, holy, and just. Thank You for demonstrating Your endless love through Jesus. Thank You for giving us the honor of living in our great country. Thank You for those who have gone before us.

We pray for those who are serving now to protect our freedom. Please give them safety. We pray for peace. We pray for our President, Congress, and all who lead our country. Please give them wisdom and direction as they make decisions.

May we look to You as our Source, not our economy. In these days of global terror, may we remember You as our security. Use us to be instruments who bring hope to the underserved and safety for the unprotected. May we be a Nation who humbles ourselves before You. We bless You and please bless America.

In Jesus’ name, Amen.

156 Cong. Rec. H5619-02 (2010). His prayer was far from extraordinary. In the 111th Congress alone (i.e. the 2010 Congress), at least 32 prayers have been offered in the

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<sup>5</sup> See, e.g., *Newdow v. Bush*, 355 F.Supp.2d 265, 285 n.3 (D.D.C. 2005) (acknowledging that “the legislative prayers at the U.S. Congress are overtly sectarian”).

name of Jesus Christ.<sup>6</sup> Moreover, sectarian references in inaugural prayers have also been historically common.<sup>7</sup> At President Obama's inauguration, Dr. Rick Warren's invocation quoted scripture, referred to Jesus in four languages, and closed with the Lord's Prayer.<sup>8</sup> His prayer mirrored those of Rev. Kirbyjon Caldwell, Rev. Franklin

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<sup>6</sup> "In Jesus' name, Amen." 156 Cong. Rec. H5619-02 (2010); "These things we pray in the name of our Lord Jesus Christ. Amen." 156 Cong. Rec. H5205-02 (2010); "Cause us always to look to You, to bow before You, and to humbly follow You is my prayer in Jesus' name. Amen." 156 Cong. Rec. H4908-03 (2010); "Finally, Lord, bless President Obama, his family, and all of the leaders of this great Nation, in the matchless name of Your Son, Jesus, the Christ. Amen." 156 Cong. Rec. H4333-02 (2010); "In the precious name of Christ we pray. Amen." 156 Cong. Rec. H3661-03 (2010); "All this we ask in the name of Jesus. Amen." 156 Cong. Rec. H3313-03 (2010); "This I pray in the name of Your Son, Jesus. Amen." 156 Cong. Rec. H3205-03 (2010); "It is in the blessed name of our Lord, Jesus Christ, that we lay these requests at Your feet. Amen." 156 Cong. Rec. H2581-03 (2010); "We thank You for the sacred gift and trust given to us in the Senate, looking to You in all things, through Christ, in whose Name we pray. Amen." 156 Cong. Rec. S2331-01 (2010); "In Jesus' name, amen." 156 Cong. Rec. H2507-02 (2010); "We put our trust in You alone, in Jesus' name we pray. Amen." 156 Cong. Rec. H2321-02 (2010); "We pray respecting all faiths, but pray this prayer in the Name of the Lord Jesus Christ. Amen." 156 Cong. Rec. S757-01 (2010); "These and many other blessings we ask in the name of our Savior, Jesus Christ, Amen." 155 Cong. Rec. H11796-03 (2009); "I offer this prayer in the name of the One I call Jesus the Christ. Amen." 155 Cong. Rec. H11519-03 (2009); "In Jesus' name, amen." 155 Cong. Rec. H11385-03 (2009); "In Jesus' name, amen." 155 Cong. Rec. H11301-02 (2009); "We ask all of this in the name of our Lord and Savior, Jesus Christ. Amen." 155 Cong. Rec. H10523-02 (2009); "In Jesus' name we pray. Amen." 155 Cong. Rec. H10411-03 (2009); "Father, I ask this prayer in the powerful Name of Jesus. Amen." 155 Cong. Rec. S9761-01 (2009); "We pray these things over this place, this House today, in Jesus' name. Amen." 155 Cong. Rec. H9553-03 (2009); "We pray this prayer, respecting all faiths, but we pray this prayer in the name of our Lord and Savior Jesus Christ. Until You come, we pray. Amen." 155 Cong. Rec. H9345-03 (2009); "And in Jesus' name we pray. Amen." 155 Cong. Rec. H8963-03 (2009); "With gratitude to You, most high God, I pray in the name of my Savior, the Lord Jesus Christ, amen." 155 Cong. Rec. H8587-03 (2009); "I ask this in Jesus' name. Amen." 155 Cong. Rec. H8103-03 (2009); "In the name of Jesus, I pray. Amen." 155 Cong. Rec. H7839-03 (2009); "In Jesus' name we pray. Amen." 155 Cong. Rec. H7743-01 (2009); "In the Name of Jesus Christ, I pray. Amen." 155 Cong. Rec. H7253-04 (2009); "We humbly ask all of this in the name of Jesus Christ. Amen." 155 Cong. Rec. H6907-01 (2009); "We pray these things in the Name of the One who binds up the brokenhearted and proclaims liberty to the captives. In Jesus' Name, amen." 155 Cong. Rec. S5767-01 (2009); "In the name of Christ, amen." 155 Cong. Rec. H5311-03 (2009); "May the words that are written behind me 'In God We Trust' be true this day, in the name of my God and my Savior, the Lord Jesus Christ, I pray. Amen." 155 Cong. Rec. H4399-01 (2009); "We ask all this in the Name of our Lord and Savior, Jesus Christ. Amen." 155 Cong. Rec. S1615-01 (2009).

<sup>7</sup> Inaugural prayers are akin to legislative prayers. *See, e.g., Newdow v. Roberts*, 603 F.3d 1002, 1019 (D.C. Cir. 2010) (Kavanaugh, J., concurring) ("[Inaugural] prayers closely resemble the legislative prayers upheld by the Supreme Court in *Marsh*"). Indeed, presidential inaugurations are effectively joint sessions of Congress; the leadership and many members of Congress typically attend the ceremonies, the proceedings of which are published in the Congressional Record.

<sup>8</sup> The prayer concluded: "I humbly ask this in the name of the one who changed my life, Yeshua, Esau, Jesus, Jesus, who taught us to pray: Our Father, who art in heaven, hallowed be Thy name. Thy kingdom come. Thy will be done, on Earth as it is in heaven. Give us this day our daily bread, and forgive us our trespasses as we forgive those who trespass against us. And lead us not into temptation but deliver us from evil. For thine is the kingdom and the power and the glory forever. Amen." 155 Cong. Rec. S667-02, 667 (2009).



Graham, and Rev. Billy Graham—all of whom prayed in Jesus’ name at each of President George W. Bush’s and President Clinton’s inaugurations<sup>9</sup>—and the prayers offered at every inauguration since at least 1937. Epstein, *supra*, at 2107-08. Clearly, if sectarian references in legislative prayers are constitutionally impermissible, then Congress and many (if not most) of our presidents are serial offenders.

In summary, Supreme Court precedent and the precedent of many lower courts, along with the practices of Congress and many of this nation’s presidents, indicate that legislative prayers—even distinctly Christian ones—are clearly constitutional and “deeply embedded in the history and tradition of this country.” *Marsh*, 463 U.S. at 786. Sectarian references in legislative prayers are not unconstitutional. Only exploitative government action that deliberately seeks to aggressively promote one religion to the exclusion of others is a problem. Absent such exploitation, it is not the government’s job “to embark on a sensitive evaluation or to parse the content of a particular prayer.” *Id.* at 795.

### C. The Government Must Avoid “Comparative Theology.”

It is indeed an important principle that government officials cannot “assume the role of regulators and censors of legislative prayer.” *Pelphrey*, 410 F.Supp.2d at 1339. As that court summarized:

It would seem anomalous for the outcome of the *Marsh* inquiry to turn on the obviousness or subtlety of the sectarian references in question; such a rule would create the perverse incentive for speakers to endeavor to couch sectarian concepts in opaque terms, and place courts in the unenviable position of determining just how “obvious” a sectarian reference has to be before it must be excised from legislative invocations, even when not otherwise offensive to *Marsh*’s prohibition against proselytization, advancement, or disparagement.

*Id.* at 1338 n.14.

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<sup>9</sup> “Respecting persons of all faiths, I humbly submit this prayer in the name of Jesus Christ. Amen.” 151 Cong. Rec. S101-05, 105 (2005); “May this be the beginning of a new dawn for America as we humble ourselves before You and acknowledge You alone as our Lord, our Saviour, and our Redeemer. We pray this in the name of the Father and of the Son, the Lord Jesus Christ, and of the Holy Spirit. Amen.” 147 Cong. Rec. S421-05, 422 (2001); “This we pray in the name of the Father, the Son, and the Holy Spirit. Amen.” 143 Cong. Rec. S119-03, 120 (1997); “I pray this in the name of the One who was called Wonderful Counselor, the mighty God, the everlasting Father, and the Prince of Peace. Amen.” 139 Cong. Rec. S55-01, 55 (1993).

The legislative branch of government, like the judicial, should avoid divining the “religious” from the “non-religious” and must avoid sifting through individual prayers to subjectively determine whether or not an invocation would be “sectarian.” Such editorial endeavors would offend the Constitution and are clearly prohibited by Supreme Court precedent.

Examples of this precedent include: *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (stating that for authorities to troll through a religious institution’s beliefs in order to identify if they are “pervasively sectarian” is offensive and contrary to precedent); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 843-44 (1995) (rejecting the argument that a university should distinguish between evangelism on the one hand and the expression of religious views on secular subjects on the other); *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327, 336 (1987) (recognizing a problem should government attempt to divine which jobs are sufficiently related to the core of a religious organization so as to merit exemption from statutory duties); *Rusk v. Espinosa*, 456 U.S. 951 (1982) (mem.) (striking down a charitable solicitation ordinance that required officials to distinguish between “spiritual” and secular purposes underlying solicitation by religious organizations); *Widmar v. Vincent*, 454 U.S. 263, 269 n.6, 272 n.11 (1981) (finding that inquiries into the religious significance of words or events are to be avoided); *Walz v. Tax Comm’n*, 397 U.S. 664, 674 (1970) (holding that it is desirable to avoid the entanglement that would follow should tax authorities evaluate the temporal worth of religious social welfare programs).

## **II. OFFER OF *PRO BONO* DEFENSE**

Courts across the country have approved alternative avenues for establishing public invocation policies. The U.S. Supreme Court, in *Marsh v. Chambers*, 463 U.S. 783 (1983), approved a practice of using a chaplain to deliver a public invocation before a deliberative body. Numerous courts have also affirmed the practice of inviting local clergy to deliver a public invocation. See *Pelphrey*, 547 F.3d 1263; *Joyner*, 653 F.3d at 345. In *Simpson v. Chesterfield County Bd. of Supervisors*, 404 F.3d 276 (4<sup>th</sup> Cir. 2004), *cert. denied*, and *Turner v. The City Council of the City of Fredericksburg*, 534 F.3d 352 (4<sup>th</sup> Cir. 2008) courts specifically approved a practice in which the invocation was delivered by the elected members of the city council. Alliance Defending Freedom has consulted with many state and local government leaders across the nation to assist in crafting solutions to the recent challenges brought by the ACLU and others. Alliance Defending Freedom is prepared to assist legislative bodies in developing policies and practices that rightly preserve the American practice of opening legislative sessions with a prayer.

We strongly believe that Alliance Defending Freedom can work with any government body to craft invocation policies that will pass constitutional muster. For that reason, Alliance Defending Freedom is not only offering to consult with deliberative bodies in the development of an invocation policy, free of charge, but Alliance Defending Freedom will also provide a free legal defense to any local governmental body working cooperatively with Alliance Defending Freedom whose invocation policy is legally challenged.

It is our hope that the information provided in this letter will be helpful in explaining the reasons why governmental bodies can and should continue the tradition of opening invocations, and we encourage each deliberative body to codify its invocation practices with a safe and constitutionally sound written policy.

Please do not hesitate to contact us if Alliance Defending Freedom can provide any further information or assistance, or if we may help respond to any challenge or threat of litigation with regard to public invocations. As a not-for-profit organization, our services are provided *pro bono*.

Very sincerely yours,  
Sincerely,



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