
HOUSE BILL 2217

State of Washington 65th Legislature 2017 2nd Special Session

By Representatives Young and Shea

Read first time 05/29/17. Referred to Committee on Judiciary.

1 AN ACT Relating to clarifying and protecting the Constitution's
2 freedom of speech and guarantee of religious liberty for public
3 employees; adding a new section to chapter 49.60 RCW; creating a new
4 section; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) The Washington state Constitution provides in Article I,
8 section 5 that, "Every person may freely speak, write and publish on
9 all subjects, being responsible for the abuse of that right."

10 (b) The Washington state Constitution provides in Article I,
11 section 11, in part, that, "Absolute freedom of conscience in all
12 matters of religious sentiment, belief and worship, shall be
13 guaranteed to every individual, and no one shall be molested or
14 disturbed in person or property on account of religion..."

15 (c) The Washington state Constitution provides in Article XXVI
16 that perfect toleration of religious sentiment shall be secured and
17 that no inhabitant of this state shall ever be molested in person or
18 property on account of his or her mode of religious worship.

19 (d) The United States Constitution, in the first amendment of the
20 bill of rights, provides, "Congress shall make no law respecting an
21 establishment of religion, or prohibiting the free exercise thereof;

1 or abridging the freedom of speech, or of the press; or the right of
2 the people peaceably to assemble, and to petition the government for
3 a redress of grievances."

4 (2) The legislature finds that defending the fundamental rights
5 of free speech and the free exercise of religion, recognized in and
6 protected by both the state and federal Constitutions, is a
7 compelling state interest of the highest order. The legislature
8 further finds that public policy must ensure these rights are
9 safeguarded from encroachment by entities both public and private who
10 have a lack of knowledge, a misunderstanding, or a rejection of
11 constitutional history, the intent of those who drafted, debated, and
12 ratified the Constitutions, the bill of rights or declaration of
13 rights, and the plain meaning of the text of the Constitutions and
14 amendments themselves. As the Washington state Constitution boldly
15 declares in Article I, section 32, "A frequent recurrence to
16 fundamental principles is essential to the security of individual
17 right and the perpetuity of free government." John Adams, our first
18 vice president and second president, stated, "A frequent recurrence
19 to the fundamental principles of the Constitution, and a constant
20 adherence to those of piety, justice, moderation, temperance,
21 industry, and frugality, are absolutely necessary to preserve the
22 advantages of liberty, and to maintain a free government."

23 (3) The legislature finds that the freedoms of speech and
24 religious exercise are significant, substantial, long-valued rights
25 that must never be considered trivial, irrelevant, or inapplicable.
26 The legislature intends to return to these fundamental principles
27 which made our state and this nation the most free of all states and
28 nations in the history of the world and which are essential for
29 maintaining the safety of individual rights and the permanency of
30 free government.

31 (4) The legislature thus finds historic, cultural, and religious
32 value in prayer and exercise of religious freedom for public
33 employees of Washington and therefore intends to clarify and protect
34 the freedom to pray in Washington state.

35 (5) Furthermore, the opening of legislative session with prayer
36 is a long-standing tradition that has been considered by the United
37 States supreme court to be part of the fabric of our society (*Marsh*
38 *v. Chamber*). The United States supreme court has validated the
39 "unique history" and constitutionality of corporate prayer in the
40 legislature in its 1983 ruling in *Marsh v. Chamber*. The 2014 United

1 States supreme court ruling in *Town of Greece v. Galloway* affirmed
2 the protection of public prayer and the rights of prayer givers to
3 determine how they pray. In many cases, courts specifically approved
4 practices in which the invocations were delivered by the elected
5 officials.

6 (6) Whereas the United States supreme court has repeatedly
7 validated the religious exercise of state legislative bodies and
8 individual elected officials within the government, this legislature
9 hereby intends to extend the same constitutional protection to the
10 public employees of Washington. Therefore, the legislature intends to
11 clarify a permissible exercise of religion for public employees and
12 give protection for employees who choose to exercise their
13 constitutionally guaranteed rights.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.60
15 RCW to read as follows:

16 (1) Public employees may pray with and for one another, as in
17 other public forums, without fear of prior restraint, discrimination,
18 or censorship based on the content of their speech, or any civil or
19 criminal liability for freely exercising such rights.

20 (2) Public employees may offer to pray with and for one another
21 without fear of prior restraint, discrimination, or censorship based
22 on the content of their speech, or any civil or criminal liability
23 for freely exercising such rights.

24 (3) A governmental agency is prohibited from imposing a sanction
25 of any kind on a public employee for exercising any of their rights
26 recognized under subsections (1) and (2) of this section.

27 (4) Any governmental agency that complies with subsections (1)
28 through (3) of this section is immune from any civil liability based
29 on such compliance.

30 (5) Any governmental agency that fails to comply with subsections
31 (1) through (3) of this section is subject to civil liability. Any
32 public employee who alleges a violation of rights protected under
33 subsections (1) through (3) of this section has a cause of action
34 against the governmental agency. A prevailing plaintiff is entitled
35 on a first violation to an award of up to twenty thousand dollars,
36 but in no case less than ten thousand dollars; and on a second
37 violation to an award of up to thirty thousand dollars, but in no
38 case less than fifteen thousand dollars; and on a third and each
39 subsequent violation to an award of up to forty thousand dollars, but

1 in no case less than twenty thousand dollars; and in all cases to
2 costs and reasonable attorneys' fees.

3 (6) For the purposes of this section, "public employees" means
4 employees of state and local governments.

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