UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FREEDOM FROM RELIGION FOUNDATION, INC., ET AL., *Plaintiffs* , **v.** **GOVERNOR RICK PERRY,** *Defendant* **.**	**Case No. 4:11-cv-02585**

AMICUS CURIAE BRIEF OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF THE DEFENDANT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Kelly Coghlan
Counsel of Record
COGHLAN & ASSOCIATES
[redacted]

Jay Alan Sekulow*
Stuart J. Roth*
AMERICAN CENTER FOR LAW & JUSTICE
[redacted]

John P. Tuskey*
Laura B. Hernandez*
AMERICAN CENTER FOR LAW & JUSTICE
[redacted]

* - not admitted before this Court
Counsel for Amicus

CORPORATE DISCLOSURE STATEMENT

The ACLJ is a non-profit legal corporation dedicated to the defense of constitutional liberties secured by law. The ACLJ has no parent corporation and issues no stock.

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INTEREST OF *AMICUS*

The American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued in numerous cases involving First Amendment issues before the Supreme Court of the United States and other federal and state courts. *See, e.g., Pleasant Grove City v. Summum*, 129 S. Ct. 1125 (2009); *McConnell v. FEC*, 540 U.S. 93 (2003); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987).

The ACLJ has dedicated time and effort to defending and protecting Americans' First Amendment freedoms. It is this commitment to the integrity of the United States Constitution that compels the ACLJ to oppose Freedom From Religion Foundation (FFRF)'s efforts to eliminate a national tradition that dates to the founding.

NATURE OF THE PROCEEDING

This matter is before the court on a motion for preliminary injunction. "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A preliminary injunction is appropriate only when (1) the Plaintiff is "likely to succeed on the merits," (2) the Plaintiff is "likely to suffer irreparable harm in the absence of preliminary relief," (3) when the "balance of equities tips" in the Plaintiff's favor, and (4) when "an injunction is in the public interest." *Id.* at 20.

STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

The motion for preliminary injunction before the court involves two issues:

1. Whether plaintiffs have standing under Article III when they have alleged no injury other than mere offence at a perceived constitutional violation, which if true is a harm applicable to all citizens and not particular to the plaintiffs.

2. Whether a government official violates the Establishment Clause by calling for a day of prayer and fasting and urging participation in the call for a day of prayer and fasting.

At an irreducible minimum, Article III standing requires that the plaintiffs allege three elements: "(1) an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent; (2) a causal connection between the injury and the conduct complained of; and (3) the likelihood that a favorable decision will redress the injury." *Croft v. Governor of Texas*, 562 F.3d 735, 745 (5th Cir. 2009); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). Furthermore, the "psychological consequence presumably produced by observation of conduct with which one disagrees," does not constitute "an injury sufficient to confer standing under Article III." *Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464, 485 (1982).

The Plaintiffs' Establishment Clause claim involves the deeply ingrained national tradition of public officials' prayer proclamations; therefore, the *Marsh* historical precedence test is the applicable legal standard. The *Lemon* and Endorsement tests are inapplicable in this matter. "[H]istorical evidence sheds light not only on what the draftsmen intended the Establishment Clause to mean, but also on how they thought that Clause applied to the practice authorized by the First Congress—their actions reveal their intent." *Marsh v. Chambers*, 463 U.S. 783, 790 (1983).

SUMMARY OF THE ARGUMENT

A preliminary injunction should not be granted ,and this case should be dismissed for two reasons. First, FFRF and its member plaintiffs lack standing to sue because FFRF's claims of injury amount to nothing more than being offended by Governor Perry's statements, and *Valley Forge* precludes standing based on such offence.

Second, to hold that Governor Perry's calls for Texans and other Americans to pray and fast violates the Establishment Clause would be inconsistent with *Marsh v. Chambers*, 463 U.S. 783 (1983) and the long history of official government acknowledgement of religion in American life—specifically with the long history in this nation of legislators and executive officials calling this nation's people to prayer.

ARGUMENT

Texas Governor Rick Perry has called on Texans and all Americans to pray and fast on August 6, 2011. He has also invited Americans to join him on that date at a prayer rally in Houston to turn to God and Jesus Christ for forgiveness and guidance.

I. Plaintiffs' Allegations of Injury are not Sufficient to Demonstrate They Have Standing.

Governor Perry's call is a request, not a command. Plaintiffs do not, and cannot, allege that Governor Perry's statements calling people to pray and fast harm them in any tangible way. Governor Perry's statements require nobody to pray or fast and impose no penalty for failing to pray or fast (as if imposing such a penalty were even possible). Governor Perry's statements do not require anybody to accept the tenets of Christianity or any other religion, or to worship in any particular way, or at all. Plaintiffs remain free to believe or not to believe as they wish, to express their disagreement with the religious views expressed in Governor Perry's statements, and even to ridicule those views. They are free to vote for candidates to public office who oppose

Governor Perry's views. In short, Governor Perry's statements in no way affect plaintiffs' standing in this political community—their rights to vote, to speak, and to refrain from practicing religion as they see fit, are the same now as they were before Governor Perry's statements.

Plaintiffs allege in essence that they are injured because they disagree with Governor Perry's actions, that they are offended by those actions, and that they are made to feel like outsiders because they do not believe prayer can solve our nation's problems. Those allegations are not sufficient to support standing under the Supreme Court's standing jurisprudence.

The Supreme Court has "'consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.'" *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per curiam) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-74 (1992)).

The Supreme Court has repeatedly affirmed that being disturbed by a governmental violation of the Constitution is never enough, by itself, to qualify as a concrete, particularized injury under Article III. *Schlesinger v. Reservists' Comm. to Stop the War*, 418 U.S. 208, 220, 222 (1974); *United States v. Richardson*, 418 U.S. 166, 176-80 (1974).

In *Valley Forge*, the Court applied the principles articulated in *Richardson* and *Schlesinger* to claims brought to enforce the Establishment Clause. *Valley Forge*, 454 U.S. at 482-90. The *Valley Forge* Court held that plaintiffs did not have standing to challenge a federal land grant program that conveyed property to a Christian college. *Id.* at 489-490. The Court also repudiated the notion that offense at alleged Establishment Clause violations is somehow distinguishable from the offense suffered by the plaintiffs in *Schlesinger* and *Richardson*. *Id.* at

484-85. The Court noted further that "the proposition that all constitutional provisions are enforceable by any citizen simply because citizens are the ultimate beneficiaries of those provisions has no boundaries." *Id*. at 485.

Valley Forge could not have been clearer that mere psychological offense at the government's alleged complicity in religion does not convey Article III standing: The "psychological consequence presumably produced by observation of conduct with which one disagrees," does not constitute "an injury sufficient to confer standing under Article III." *Id.* at 485. This is true whether the person claiming the offense actually views the conduct or merely hears about it. *Id*. at 487 n.23 (finding it irrelevant that some of the plaintiffs may have lived in close proximity to the college). Proximity "does not establish an injury where none existed before." *Id*. Standing based on offence at allegedly unconstitutional government action is therefore irreconcilable with *Valley Forge, Schlesinger,* and *Richardson* because "it treats observation *simpliciter* as the injury." *Books v. Elkhart Cnty.,* 401 F.3d 857, 871 (7th Cir. 2005) (Easterbrook, J., dissenting).

Aside from being inconsistent with the Supreme Court's standing jurisprudence, standing based on offense at government action confers a unique advantage on separationist plaintiffs. There are doubtless myriad ways in which government speech or displays could offend various citizens. For example, a devout Christian viewing a government-funded depiction of a crucifix immersed in urine[1] might suffer an affront to his spiritual values that is no less profound than the offense suffered by the strict separationist plaintiff who observes a Decalogue display in the county courthouse. Devout Jews might suffer an affront to their spiritual values from viewing a public television show espousing the view that the City of Jerusalem should be ceded in its

[1] *See Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 574 (1998) (challenged statute enacted after NEA funded "art" depicting crucifix immersed in urine).

entirety to the Palestinians as part of a Mid-East peace accord. Finally, there can be no doubt of the widespread offense that would result from the government's public execution of a convicted felon. *See Valley Forge*, 454 U.S. at 489 n.26 (listing imposition of capital punishment and implementation of affirmative action as "but two among . . . many possible examples" of government action that could trigger claims "on the basis of a personal right to government that does not [violate] commands in the Constitution"). Yet, only the plaintiff who claims offence at an alleged Establishment Clause violation would have standing to sue based on that offence.

Under *Valley Forge,* however, it does not matter how severe the offense to spiritual or other personal values or how unconstitutional the alleged government conduct is. *Id.* at 484 (rejecting argument that "Article III burdens diminish as the importance of the claim on the merits increases"). The plaintiff must show that he personally suffered a "distinct and palpable" injury apart from mere offense at exposure to the government conduct. *Id*. at 488.

Plaintiffs might argue that the Supreme Court and the Fifth Circuit have decided on the merits Establishment Clause cases after *Valley Forge* in which the basis for standing was apparently that the plaintiffs had been offended by religious displays on government property and the alleged endorsement of religion evidence by those displays. *See, e.g.*, *County of Allegheny v. ACLU*, 492 U.S. 573 (1989); *Van Orden v. Perry*, 351 F.3d 173 (5th Cir. 2003). But that argument is meritless. As the Supreme Court noted this past term, "[w]hen a potential jurisdictional defect is neither noted nor discussed in a federal decision, the decision does not stand for the proposition that no defect existed." *Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1448 (2011) (citations omitted).

The only federal court to address standing on a similar issue dismissed FFRF's complaint for lack of standing when the FFRF filed suit challenging 36 U.S.C. §119 (2010) (directing the

president to proclaim a national day of prayer annually "on which [day] the people of the United States may turn to God in prayer and meditation at churches, in groups, and as individuals") and President Obama's 2010 National Day of Prayer proclamation. *Freedom from Religion Found., Inc. v. Obama*, No. 10-1973, 2011 U.S. App. LEXIS 7678 (7th Cir. April 14, 2011). The court reasoned that, although this proclamation was directed at the plaintiffs,

> no one is obliged to pray, any more than a person would be obliged to hand over his money if the President asked all citizens to support the Red Cross and other charities . . . [t]he President has made a request; he has not issued a command. No one is injured by a request that can be declined.

Id. at *4-5. The court rejected the argument that plaintiffs were injured because they "feel excluded, or made unwelcome" by a declaration of a day of prayer. *Id.* at *6-7. "[H]urt feelings differ from legal injury. The 'value interests of concerned bystanders' do not support standing to sue." *Id.* (citations omitted). Because the plaintiffs have suffered no particularized harm, plaintiffs lack standing to sue Governor Perry.

II. The Claim that Governor Perry's Call to Prayer Violates the Establishment Clause is Inconsistent with History and Supreme Court Precedent.

In *Marsh v. Chambers*, the Supreme Court conducted a searching examination of the nation's history when considering a challenge to the Nebraska state legislature's practice of opening its sessions with prayer by a paid chaplain. In upholding the practice, the Court held that "historical evidence sheds light not only on what the draftsmen intended the Establishment Clause to mean, but also on how they thought that Clause applied to the practice authorized by the First Congress—their actions reveal their intent." 463 U.S. at 790.

The *Marsh* Court refused to read the "Establishment Clause of the Amendment to forbid what [its framers] had just declared acceptable." *Id.* at 790. The Court determined that the First Congress "did not consider opening prayers as a proselytizing activity or as symbolically placing

the government's official seal of approval on one religious view," *id.* at 792 (citations omitted); rather, the framers merely considered "invocations as 'conduct whose . . . effect . . . [harmonized] with the tenets of some or all religions.'" *Id.* (quoting *McGowan v. Maryland*, 366 U.S. 420, 442 (1961)).

The Court held further that the Nebraska legislative prayer was not an establishment of religion even though the same Presbyterian minister had served as the chaplain for 16 years and had his salary paid from public funds. "To invoke Divine guidance on a public body entrusted with making the laws is not . . . 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.* The Court concluded that "legislative prayer presents no more potential for establishment" than practices previously upheld, such as grants for higher education at religious institutions and tax exemptions for religious organizations. *Id.* at 791 (citations omitted). In *Marsh*, the Court recognized that historical practice dating back to the time of the founding elucidates the meaning of "establishment of religion." As noted by Justice O'Connor, who minted the endorsement test,

> [w]hatever the provision of the Constitution that is at issue, I continue to believe that "fidelity to the notion of constitutional—as opposed to purely judicial—limits on governmental action *requires us to impose a heavy burden on those who claim that practices accepted when* [*the provision*] *was adopted are now constitutionally impermissible*." The Court properly looked to history in upholding legislative prayer, *Marsh v. Chambers*, 463 U.S. 783 (1983), property tax exemptions for houses of worship, *Walz v. Tax Comm'n*, *supra*, and Sunday closing laws, *McGowan v. Maryland*, 366 U.S. 420 (1961). As Justice Holmes once observed, "[if] a thing has been practised for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it." *Jackman v. Rosenbaum Co.*, 260 U.S. 22, 31 (1922).

Wallace v. Jaffree, 472 U.S. 38, 79-80 (1985) (O'Connor, J., concurring) (emphasis added). Referring specifically to National Day of Prayer proclamations and relying on the Court's

decision in *Marsh*, Justice O'Connor stated that such proclamations would "probably withstand Establishment Clause scrutiny given their long history." *Id.* at 81 n.6.

A. The Congress and Presidents Have Issued Proclamations Calling the Nation to Prayer since the Founding.

Marsh requires dismissal of FFRF's complaint in this case because the dedication by government officials of certain days for prayer has a compelling historical pedigree equal to that of Congressional chaplains. At the end of the years 1777, 1781, and 1782, the Continental Congress recommended that the states set apart a day for prayer and thanksgiving.[2] At the Constitutional Convention itself, Benjamin Franklin urged that "prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business."[3] Beginning with George Washington, three of the four Founding Fathers who became President proclaimed at least one National Day of Prayer.[4]

On January 1, 1795, George Washington proclaimed a "day of public thanksgiving and prayer."[5] The proclamation declared that "it is in an especial manner our duty as a people, with devout reverence and affectionate gratitude, to acknowledge our many and great obligations to Almighty God and to implore Him to continue and confirm the blessings we experience."[6]

Similarly, John Adams issued proclamations in 1798 and 1799, calling the nation to "solemn humiliation, fasting, [and] prayer."[7] The proclamations acknowledged that "dependence

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[2] The text of the Proclamation for a Day of Thanksgiving and Prayer, issued by President of Congress Thomas McKean on October 26, 1781, is available at http://www.wallbuilders.com/LIBissuesArticles.asp?id=17940.
[3] *Franklin's Appeal for Prayer at the Constitutional Convention of 1787*, WALLBUILDERS, http://www.wallbuilders.com/LIBissuesArticles.asp?id=98.
[4] *See* John T. Woolley and Gerhard Peters, The American Presidency Project, [online]. Santa Barbara, CA: University of California (hosted), Gerhard Peters (database). Available from World Wide Web: http://www.presidency.ucsb.edu/ws. [hereinafter Woolley & Peters].
[5] *See* Woolley & Peters, supra note 4, *available at* http://www.presidency.ucsb.edu/ws/?pid=65500.
[6] *Id.*
[7] Woolley & Peters, supra note 4, *available at* http://www.presidency.ucsb.edu/ws/?pid=65661; Woolley & Peters, supra note 4, *available at* http://www.presidency.ucsb.edu/ws/?pid=65675.

on God" was essential for the "promotion of that morality and piety without which social happiness cannot exist nor the blessings of a free government be enjoyed."[8]

Perhaps most significantly, James Madison, the drafter of the First Amendment, issued four proclamations calling the nation to a day of prayer. President Madison asked the nation to set aside a day of "day of public humiliation and prayer" in the years 1812, 1813, 1814, and 1815.[9] In the 1812 proclamation, Madison exhorted the nation to render to

> the Sovereign of the Universe and the Benefactor of Mankind the public homage due to His holy attributes; of acknowledging the transgressions which might justly provoke the manifestations of His divine displeasure; of seeking His merciful forgiveness and His assistance in the great duties of repentance and amendment, and especially of offering fervent supplications that in the present season of calamity and war He would take the American people under His peculiar care and protection; that He would guide their public councils, animate their patriotism, and bestow His blessing on their arms; that He would inspire all nations with a love of justice and of concord and with a reverence for the unerring precept of our holy religion to do to others as they would require that others should do to them; and, finally, that, turning the hearts of our enemies from the violence and injustice which sway their councils against us, He would hasten a restoration of the blessings of peace.[10]

Since the founding era, nearly every president has issued proclamations calling the nation to pray for various purposes. [11] The most common proclamation has been the call to observe a day of Thanksgiving with prayers of thanks to God. On the same day that the House of Representatives endorsed the First Amendment and its Establishment Clause, it adopted a resolution commissioning several of its members to join several Senators to ask the President "'to recommend to the people of the United States a day of public Thanksgiving and prayer, to

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[8] *Id.*

[9] Woolley & Peters, supra note 4, *available at* http://www.presidency.ucsb.edu/ws/?pid=65944; Woolley & Peters, supra note 4, *available at* http://www.presidency.ucsb.edu/ws/?pid=65959; Woolley & Peters, supra note 4, *available at* http://www.presidency.ucsb.edu/ws/?pid=65981; Woolley & Peters, supra note 4, *available at* http://www.presidency.ucsb.edu/ws/?pid=65984.

[10] Woolley & Peters, supra note 4, *available at* http://www.presidency.ucsb.edu/ws/?pid=65944 (quotations marks and citations omitted).

[11] A thorough compilation of presidential and congressional proclamations calling the nation to prayer is set forth as Appendix A to this brief.

be observed by acknowledging, with gratef ul h earts, the m any signal favors of Al mighty God.'"[12] President W ashington accordingly proclaim ed November 26, 1789, the first official Thanksgiving holiday and exhorted all Am ericans to "unite in m ost humbly offering our prayers and supplications to the great Lord and Ruler of Nations, and beseech Him to pardon our national and other transgressions."[13] The overwhelming majority of presidents followed suit.[14]

Presidents have also called the nation to pray on various other occasions. For example, on August 12, 1861, President Abraham Lincoln issued a proclamation marking "the last Thursday in September" of the s ame year as a day of "h umiliation, prayer and fasting. "[15] Throughout the nation's history, Am erican presidents have issued 164 proclam ations calling the nation to prayer.[16] Such calls for national prayer did not vi olate th e Establishmen t Clause during the founding era, and *Marsh* requires the conclusion that states' participation in federally permissible activities are as constitutional today as they were during the Founding era.

B. No Supreme Court Establishment Clause Case Decided Subsequent to *Marsh v. Chambers* Undercuts *Marsh*'s Vitality.

The gravamen of FFRF's Complaint is that Governor Perry's day of prayer proclam ation and related activities constitute an impermissible endorsement of religion. *See* Compl. ¶¶ 10, 37-44, 50, 54, 57, 61, 72, 89, 86, 98, 100. A careful reading of the Supreme Court's Establishm ent Clause decisions, however, reveals no diminution of *Marsh*'s vitality.

In *Lynch v. Donnelly*, 465 U.S. 668 (1984), the Court recognized the "unbroken history of official acknowledgm ent by all three branch es of governm ent of the role of religion in American life." *Id.* at 674. "Our history is replete with official references to the value and

[12] ROBERT L. CORD, SEPARATION OF CHURCH AND STATE: HISTORICAL FACT AND CURRENT FICTION 154 (1982).
[13] *Id.*
[14] *See* Appendix A.
[15] Woolley & Peters, supra note 4, *available at* http://www.presidency.ucsb.edu/ws/?pid=69979.
[16] *See* Appendix A.

invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders." *Id.* at 675. The Court listed many examples of our "government's acknowledgment of our religious heritage," leading off with the historic practice of employing Congressional chaplains. *Id.* at 672, 676.

> The interpretation of the Establishment Clause by Congress in 1789 takes on special significance in light of the Court's emphasis that the First Congress was a Congress whose constitutional decisions have always been regarded, as they should be regarded, as of the greatest weight in the interpretation of that fundamental instrument. It is clear that neither the 17 draftsmen of the Constitution who were Members of the First Congress, nor the Congress of 1789, saw any establishment problem in the employment of congressional Chaplains to offer daily prayers in the Congress, a practice that has continued for nearly two centuries. It would be difficult to identify a more striking example of the accommodation of religious belief intended by the Framers.

Id. at 674 (quotations and citations omitted).

Equally significant, the Court referred to the National Day of Prayer as a constitutional acknowledgment of the nation's religious heritage. *Id*. at 677. The Court concluded that

> this history may help explain why the Court consistently has declined to take a rigid, absolutist view of the Establishment Clause. We have refused to construe the Religion Clauses with a literalness that would undermine the ultimate constitutional objective as illuminated by history. In our modern, complex society whose traditions and constitutional underpinnings rest on and encourage diversity and pluralism in all areas, an absolutist approach in applying the Establishment Clause is simplistic and has been uniformly rejected by the Court.

Id. at 678 (quotations and citations omitted).

In *County of Allegheny*, the majority approved the *Lynch* concurrence's harmonization of the endorsement test with *Marsh*. "The concurrence [in *Lynch*] . . . harmonized the result in *Marsh* with the endorsement principle in a rigorous way, explaining that legislative prayer (like the invocation that commences each session of this Court) is a [constitutional] form of acknowledgment of religion . . . ." 492 U.S. at 595 n.46 (citations omitted).

Justices Kennedy, Rehnquist, and Scalia, went even further than the majority. The dissenters indicated that using the endorsement test to strike down national traditions would be a disturbing departure from the Court's precedents upholding the constitutionality of government practices recognizing the nation's religious heritage. Justice Kennedy explained that the Establishment Clause does not

> require a relentless extirpation of all contact between government and religion. . . . Government policies of accommodation, acknowledgment, and support for religion are an accepted part of our political and cultural heritage. . . . [W]e must be careful to avoid the hazards of placing too much weight on a few words or phrases of the Court, and so we have declined to construe the Religion Clauses with a literalness that would undermine the ultimate constitutional objective as illuminated by history.

492 U.S. at 657 (Kennedy, J., concurring) (quotations and citations omitted).

C. The Lower Federal Courts Have Held that *Marsh* Applies to Other Government-Sponsored Religious Practices That Date to the Founding of the Nation.

The lower federal courts are in accord in holding that *Marsh* governs where acts of government sponsored religious activity are "deeply embedded in the history and tradition of this country." *See generally Pelphrey v. Cobb County*, 2008 U.S. App. LEXIS 22422 (11th Cir. 2008); *Cammack v. Waihee*, 932 F.2d 765, 772 (9th Cir. 1991); *Katcoff v. Marsh*, 755 F.2d 223 (2d Cir. 1985); *Newdow v. Bush*, 355 F. Supp. 2d 265 (D.D.C. 2005).

In *Newdow v. Bush*, a case challenging the constitutionality of prayer at presidential inaugurations, the court ruled that *Marsh* controlled its decision because the historical record established that inaugural prayer can be traced to the founding of this country. 355 F. Supp. 2d at 286-87. "[H]ere there is an official endorsement of inaugural prayer by the Framers . . . a historical detail that was regarded as strong evidence of a constitutional tradition for legislative prayer in *Marsh*." *Id.* at 287-88. As in *Newdow*, the historical evidence establishing calls by

governments to join days of praye r as deeply embedded in the traditi on and history of this country is indisputable.

CONCLUSION

In sum, plaintiffs do not have Artic le III standing to challen ge that whic h does not harm them in a particularized manner beyond m ere psychological injury. In ad dition, Supreme Court precedent m akes it clear that pu blic calls f or pray er b y electe d o fficials do not vio late the Establishment Clause. For the foregoing reasons , the Am erican Center for Law and Justice respectfully urges this Court to d eny FFRF's motion for prelim inary injunction and dism iss FFRF's complaint.

Dated July 28, 2011

Respectfully submitted,

/s/ Kelly Coghlan
Kelly Coghlan
Counsel of Record
COGHLAN & ASSOCIATES
[redacted]

Jay Alan Sekulow*
Counsel of Record
Stuart J. Roth*
AMERICAN CENTER FOR LAW & JUSTICE
[redacted]

John P. Tuskey*
Laura B. Hernandez*
AMERICAN CENTER FOR LAW & JUSTICE
[redacted]

* - not admitted before this Court
Counsel for Amicus

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2011, I elec tronically filed a copy of the foregoing *Amici Curiae* Brief using the ECF Syste m which will send no tification of that filing to all counsel of record in this litigation.

Dated July 28, 2011

/s/ Kelly Coghlan
Kelly Coghlan
Counsel for Amicus