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**HOUSE BILL 2217**

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**State of Washington 65th Legislature 2017 2nd Special Session**

**By** Representatives Young and Shea

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

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

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

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

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

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

(d) The United States Constitution, in the first amendment of the bill of rights, provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

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

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

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

(5) Furthermore, the opening of legislative session with prayer is a long-standing tradition that has been considered by the United States supreme court to be part of the fabric of our society (*Marsh v. Chamber*). The United States supreme court has validated the "unique history" and constitutionality of corporate prayer in the legislature in its 1983 ruling in *Marsh v. Chamber*. The 2014 United States supreme court ruling in *Town of Greece v. Galloway* affirmed the protection of public prayer and the rights of prayer givers to determine how they pray. In many cases, courts specifically approved practices in which the invocations were delivered by the elected officials.

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

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

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

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

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

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

(5) Any governmental agency that fails to comply with subsections (1) through (3) of this section is subject to civil liability. Any public employee who alleges a violation of rights protected under subsections (1) through (3) of this section has a cause of action against the governmental agency. A prevailing plaintiff is entitled on a first violation to an award of up to twenty thousand dollars, but in no case less than ten thousand dollars; and on a second violation to an award of up to thirty thousand dollars, but in no case less than fifteen thousand dollars; and on a third and each subsequent violation to an award of up to forty thousand dollars, but in no case less than twenty thousand dollars; and in all cases to costs and reasonable attorneys' fees.

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

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