



# FREEDOM FROM RELIGION FOUNDATION

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June 5, 2009

**SENT VIA U.S. MAIL & FAX**

**(757)382-6678**

The Honorable Alan P. Krasnoff  
Mayor  
City Hall Building  
306 Cedar Road, 6<sup>th</sup> Floor  
Chesapeake, VA 23322

Re: City Council Invocations

Dear Mayor Krasnoff:

I am writing on behalf of concerned Chesapeake residents and taxpayers and other Virginia members of the Freedom From Religion Foundation (FFRF) to urge you to discontinue the practice of scheduling Chesapeake City Council meetings with prayers that unconstitutionally reference Christianity and invoke Jesus Christ. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation of church and state. FFRF represents nearly 14,000 members across the country, including 300 members in Virginia.

It is our information and understanding that the Chesapeake City Council (hereinafter "Council") includes a prayer or invocation as part of its regular meetings. Our complainant informs us that it is the Council's practice to invite local members of the clergy to deliver these prayers. The City Council Rules of Order and Procedure, adopted on November 14, 2006, specifically state in Section 18 that the first order of business in a regular meeting shall be a "non-sectarian invocation." See City Council Rules of Order and Procedure, Section 18(a) & (b), p. 8-9.

Upon reviewing the prayers from 2009, it is clear that these prayers are rarely, if ever, non-denominational or non-sectarian. Please find enclosed a sample of prayers given from the months of March, April, and May of 2009. Please note that Jesus Christ was invoked in each of these prayers. Specifically, a recent invocation given on April 7, 2009:

"If we could bow our heads please? Oh Heavenly Father we thank you for the opportunity to assemble. We thank you for the democracy that is part of our great nation. And just as Solomon prayed for wisdom, Lord we ask for your wisdom to deal with the issues that are before us. And we ask that your assistance over what

we do is in the precise will, in the will of God. Lord, we ask that in the *name of the Father, the Son and the blessed Holy Spirit*. Amen.” (emphasis added)

It is our further understanding that members of the public regularly attend Council meetings and have necessary business before the Council. Moreover, our complainant informs us that their school-age son was required to watch City Council meetings for a social studies project and, therefore, was subjected to these Christian-based prayers.

First and foremost, the prayers being offered before the Council’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.

Given that it appears this prayerful practice only began in 2006, there is absolutely no ‘unique history’ of legislative prayer in this case. However, even if the Council 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, including the Fourth Circuit, which encompasses Virginia, have ruled against government sponsored prayers that were sectarian, denominational and invoke a particular faith or deity. See, e.g., *Turner v. Fredericksburg*, 534 F.3d 352, 353 (4th Cir. 2008)(holding that prayers before city council meetings are government speech that must be non-denominational and non-sectarian); *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); *Coles ex rel. Coles v. Cleveland Bd. Of*

*Educ.*, 171 F.3d 369 (6th Cir. 1999)(striking down school board's practice of opening meetings with prayer because the prayers contained repeated references to Jesus Christ and the Bible); *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.").

In *Wynne*, the Fourth Circuit held that any sectarian invocations of deities in legislative prayer are demonstrative of affiliating the government with a particular sect or creed and/or advancing a particular faith or belief. *See Wynne v. Town of Great Falls*, 376 F.3d 292. 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).*

Recently, the Supreme Court let stand another decision from the Fourth Circuit, which upheld a government policy requiring prayer before city council meetings to be non-denominational. In *Turner v. Fredericksburg*, 534 F.3d 352, 353 (4th Cir. 2008)(cert. denied, 2009 WL 56225 (U.S.)(No. 08-518), the Fourth Circuit held that prayers held at the city council meetings constituted government speech. Therefore, it was proper for the city council to prohibit sectarian prayers. *Id.* at 353. Justice O'Connor, writing for the court, stated, "[t]he restriction that prayers be nonsectarian in nature is designed to make the prayers accessible to the people who come from a variety of backgrounds, not to exclude or disparage a particular faith." *Id.* at 356.

The State of Virginia is part of the Fourth Circuit. Therefore, the City Council of Chesapeake cannot, under current law, permit any prayers that contain references to an explicit deity. The prayers currently given during Council meetings impermissibly advance Christianity and lead a reasonable observer to believe that the Council is endorsing not only religion over non-religion, but also Christianity over other faiths. Even though the Council may be permitted to engage in invocations prior to its meetings, this opportunity does not provide "license to advance its own religious views in preference to all others..." *Wynne*, 376 F.3d 292.

Also raising grave Establishment Clause concerns is that school children in Chesapeake are sometimes subjected to these Christian-prayers. School children who witness the prayers invoking Jesus Christ cannot possibly be able to discern

that the Chesapeake City Council does not endorse the religious messages contained in the prayers or that the Council does not prefer Christianity over all other faiths.

Furthermore, 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 Council's monthly meetings should not be predicated upon being subjected to Christian-based prayers.

The Council's practice of having Christian-based prayers during its meetings is illegal. This practice violates the Establishment Clause of the First Amendment to the United States Constitution, the Supreme Court's *Marsh* decision, and the Fourth Circuit's *Wynne* and *Turner* decisions, all of which are binding upon Chesapeake City Council.

We urge you to discontinue this practice immediately and bring the Council back into compliance with constitutional dictates. We respectfully request a written reply addressing the steps you are taking to remedy this constitutional violation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca S. Kratz', with a stylized flourish at the end.

Rebecca S. Kratz  
Staff Attorney

Enclosure

RSK:sas