

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**DARYL COBRANCHI, ERIC ENGLE, and  
FREEDOM FROM RELIGION  
FOUNDATION, INC.,**

*Plaintiffs,*

vs.

**THE CITY OF PARKERSBURG,**

*Defendant.*

**CIVIL ACTION NO.: 2:18-cv-01198**

**PLAINTIFFS' REPLY BRIEF IN SUPPORT  
OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

The Parkersburg City Council's prayer practice does not fit within "the long tradition of legislative prayer" recognized by the Supreme Court in *Marsh* and *Greece*. As the Fourth Circuit observed in *Lund*, the prayers by guest ministers at the heart of that tradition stand a "conceptual world apart" from closed lawmaker-led prayer with a singularly sectarian message. The City of Parkersburg's attempt to analyze this prayer practice "piece by piece by piece" in comparison to *Lund* obscures this bright line. *Lund v. Rowan*, 863 F.3d 268, 289 (4th Cir. 2017). No matter the differences between this case and *Lund*, the City Council cannot wedge its consistent recitation of the Lord's Prayer to open its meetings into this country's "legislative prayer tradition."

Because this practice is unconstitutional under *Lund*, the Court must preliminarily enjoin the practice to protect plaintiffs from continuing violations of their constitutional rights. The Fourth Circuit Court of Appeals has recognized the gravity of the harm associated with being

made to feel like an outsider in one's own community. *Moss v. Spartanburg Cty. Sch. Dist. Seven*, 683 F.3d 599, 607 (4th Cir. 2012) (“[O]ne of the core objectives of modern Establishment Clause jurisprudence has been to prevent the State from sending a message to non-adherents of a particular religion ‘that they are *outsiders*, not full members of the political community.’”) (quoting *McCreary Cty. v. ACLU*, 545 U.S. 844, 860 (2005)). In contrast, the City has no countervailing interest in persisting in its unconstitutional practice. A practice that does not fit within the legislative prayer tradition does not merit protection.

**I. *Lund* controls this Court's review of closed practices of lawmaker-led, sectarian prayer.**

The City's attempt to minimize *Lund* in favor of *Greece* is unavailing: *Lund*—and not *Greece* or *Marsh*—controls this case. *Lund* specifically reviewed *Marsh* and *Greece* as the “doctrinal starting point” for a local government prayer case but ultimately determined that those cases did not deal with lawmaker-led prayer. *Id.* at 276, 277. Moreover, the court held that the circumstances presented in *Lund* were a “conceptual world apart” from cases involving the established legislative prayer tradition because (1) the prayers were given by local lawmakers instead of guest ministers and (2) the prayer opportunity was reserved only for those lawmakers. *Id.* at 277. The City Council's prayer practice in this case involves these same features, and just like *Lund*, “[t]his case requires [the court to] decide whether [the] practice of lawmaker-led sectarian prayer runs afoul of the Establishment Clause.” *Id.* at 271-72.

Unlike the prayer tradition recognized in *Marsh* and *Greece*, *Lund* found Rowan County's lawmaker-led sectarian prayer practice to violate the Establishment Clause because it impermissibly advanced one religion. *Id.* (“The prayer practice served to identify the government with Christianity and risked conveying to citizens of minority faiths a message of exclusion.”)

Such practices—like the Parkersburg City Council practice—strike at the heart of the Establishment Clause: “[i]ndeed, if elected representatives invite their constituents to participate in prayers invoking a single faith for meeting upon meeting, year after year, it is difficult to imagine constitutional limits to sectarian prayer practice.” *Id.*

Given this focus on these two key factors and the presence of those factors in this case, the *Lund* decision cannot be parsed to allow the City Council’s practice. Parkersburg City Council members have led constituents in the same sectarian prayer, the Lord’s Prayer, meeting upon meeting, year after year. Effectively, Council members collectively engage in an act of Christian worship at each meeting while signaling for attendees to join them in doing so.

The City’s “piece by piece by piece” attempts to distinguish this case from *Lund* misses the forest for the trees. The City attempts to distinguish *Lund* by decrying the lack of a perfect match after separating each of the elements of the Rowan County practice and its own for comparison. But what drives the outcome in this case is the fact that the City Council’s prayer practice is a *legislator-led prayer* consisting of *a single (and singularly) Christian prayer* delivered consistently in intimate local public meetings. The Fourth Circuit has spoken on this issue, and it has held such practices to be unconstitutional.

**II. *Lund* establishes that legislator-led prayers that advance one religion over others align the government with that religion.**

As discussed, in differentiating the Rowan County practice from the legislative prayer tradition, *Lund* placed primary importance on who is reciting the prayer (local legislators) and whether a prayer pattern affiliated the government with one religion (repeated sectarian prayers). Parkersburg argues that other factors the court considered make this case distinguishable from *Lund*. Resp. Brief at 10–14. But *Lund* addressed these other aspects of the county’s practice (proselytizing effect, invitations to attendees to participate, and the local government setting)

from the starting point that the practice was not a part of the legislative prayer tradition based upon the identity of the prayer giver. *Id.* at 281 (“This fact interacts with the other aspects of the county's practice, altering their constitutional significance.”).

And in this legislator-led context, repeated prayer practices that advance one religion violate the Establishment Clause. It is not necessary, as the City argues, that a prayer practice overtly proselytize; it need only **advance** one faith or belief to violate the Establishment Clause. *Id.* at 284 (“the Establishment Clause does not condone a prayer practice” that “over time is . . . exploited to proselytize or advance any one, or to disparage any other, faith or belief.”) (citations omitted).

*Greece* is not at odds. It dealt with an invocation practice that allowed people from minority religions and people with no religion to deliver an invocation at town meetings. Yet even under this inclusive approach, the Court held that “[p]rayer that reflects beliefs specific to only some creeds can still serve to solemnize the occasion, so long as the practice over time is not ‘exploited to proselytize **or advance any one . . . faith or belief.**’” *Greece*, 134 S. Ct. 1811, 1823 (quoting *Marsh v. Chambers*, 463 U.S. 783, 794-795 (1983)). This is the same language *Lund* built off of in holding that when a government’s prayer opportunity is not used to reflect upon shared ideals, but is instead used for “promot[ing] a preferred system of belief,” it crosses a constitutional line. *Id.* (citing *Town of Greece*, 134 S. Ct. at 1822). Thus, a prayer practice need only advance one religion consistently to run afoul of the Establishment Clause.

**A. Parkersburg’s repeated recitation of the Lord’s Prayer advances religion.**

The City Council’s adoption of the Lord’s Prayer as its own promotes Christianity. The in-unison recitation of the Lord’s Prayer by the City Council and meeting attendees at every meeting portrays the Lord’s Prayer as the official prayer of the City. But it is antithetical to the

Establishment Clause for a government to have an official prayer: “[i]t is a cornerstone principle of our Establishment Clause jurisprudence that ‘it is no part of the business of government to compose official prayers....’” *Id.* at 281 (citing *Lee v. Weisman*, 505 U.S. 577, 588 (1992), *Engel v. Vitale*, 370 U.S. 421, 425 (1962)). *Lund* makes this point powerfully:

The government “is without power to prescribe ... any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity.” *Engel*, 370 U.S. at 430, 82 S.Ct. 1261. The Court reiterated this foundational point in *Town of Greece*: “Our Government is prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior.” 134 S.Ct. at 1822.

*Id.*

This message of adoption of the prayer by the City makes this situation worse than the “closed” practice in *Lund*. There, the court found it significant that the commissioners delivered Christian prayers as part of a scheme where they had complete control over the content of the prayers. Here, the Parkersburg City Council has gone further by adopting a single prayer—the Lord’s Prayer—as the official prayer for opening its meetings.

Moreover, the content of the Lord’s Prayer undeniably “advances one faith.” The City Council’s prayer incorporates a biblical translation of Matthew 6:9–13 as well as a concluding Christian doxology. Ver. Comp. ¶ 37. The prayer involves religious obligations and calls for forgiveness of sin and veneration of the Christian god—going far beyond any purported solemnizing purpose. When the Lord’s Prayer is recited during religious worship services, it can hardly be said to be utilized for a secular or solemnizing purpose. Instead, it is rightly viewed as a deeply religious statement. When said communally, it would be viewed by a reasonable observer in the same light and as a commitment to central principles within the Christian faith.

Regardless of whether the Lord’s Prayer “denigrates, proselytizes, or betrays an impermissible government purpose,” Resp. Brief at 12, its repeated recitation and deep religious

meaning advance Christianity, which the Establishment Clause forbids. Here, the City Council has not only controlled the content of the prayer, it has adopted the Lord's Prayer as an official prayer through repeated recitations in unison at bi-monthly meetings for years. This level of government interaction between religion and government is a flagrant violation of religious establishment under the First Amendment.

**B. The local setting and communal recitation of the Lord's Prayer further demonstrates an unconstitutional religious advancement.**

**1. The City signals to attendees when to recite the Lord's Prayer.**

This case, like *Lund*, involves a pattern of invitations to pray. It is undisputed that City Council members themselves recite the Lord's Prayer at each meeting. Ver. Compl. ¶¶ 9, 34, 36; Affidavit of John Reed, Doc. 14-1, at ¶ 5. According to the current Board President, the City Council started reciting the Lord's Prayer at meetings sometime during the last ten years. Reed Aff. ¶ 8. The Board President has, at times, gestured for attendees to participate. See Exhibit 4 (video recording of June 26, 2018 meeting prayer); Reed Aff. ¶¶ 3,15. During a recent meeting, the Board President stood up and motioned to the audience to stand. Exhibit 4. He then led everyone present in a prayer. *Id.* Most of the meeting attendees stood and recited the prayer in unison with the City Council. *Id.*

While the current Board President contends that these invitations are an "infrequent occurrence" that are "not done to require public participation" (Reed Aff. ¶ 15.), the Board's overall practice encourages public participation. Whether by motioning, standing, signaling to City Council members and others in attendance, or through other indications, the City Council has invited public participation. And this conduct has, in fact, reliably led to group recitation of the Lord's Prayer by the Council President, City Council members, and other attendees who collectively recite the Lord's Prayer. Ver. Compl. ¶ 34.

Plaintiffs have observed this group participation first hand. During Council meetings that Mr. Cobranchi attended, the Council President directed attendees to stand for the Lord's Prayer and then led meeting attendees in the Lord's Prayer. Ver. Compl. ¶ 9. Many attendees stand and recite the Lord's Prayer in unison. Ver. Compl. ¶¶ 11, 22; Exhibits 4, 5, 6. Given this atmosphere, Mr. Cobranchi and Mr. Engle felt pressure to stand and participate. Ver. Compl. ¶¶ 11, 22.

In this environment, the prayers at Parkersburg City Council meetings are akin to what one would observe during a Christian church service. At the signal of the pastor, attendees collectively recite the Lord's Prayer in unison. This type of practice cannot be distinguished from *Lund*. If anything, it is worse than that situation (government officials taking turns reciting their own prayer) because it signals that the City has officially adopted one Christian prayer as its own.

**2. The intimate setting places coercive pressure on meeting attendees to participate in prayer.**

The meeting setting here is similar to that in *Lund*. The local meetings involve not just broad legislative matters, but decisions that have an immediate relation to those in attendance. Meeting minutes from City Council meetings this year reflect this. The City Council has handled rezoning of particular parcels of land. See Exhibit 7, Dkt. 6-5; Exhibit 10, Dkt. 6-8 (approving individual parcel zoning changes). The City Council has voted on approving the extension of time for speakers providing public comments on an individualized basis. See Exhibit 7, Dkt. 6-5. Meeting minutes reflect that Plaintiff Eric Engle spoke to the City Council and expressed that "he would like to work with Council related to the green infrastructure plan" and "to come up with ideas to implement it." See Exhibit 11, Dkt. 6-9. It is within this intimate atmosphere that the City Council conducts its business.

Against this backdrop, Plaintiffs—and likely other non-Christian attendees—have felt pressure to participate in the Lord’s Prayer. Mr. Cobranchi and Mr. Engle felt pressure to participate in the prayer because the City Council and many attendees stood and recited the Lord’s Prayer in unison before the Council addressed important local concerns. Ver. Compl. ¶¶ 11, 22.

This sort of coercive pressure is especially strong given the actions of the City Council. For instance, at the September 12, 2017 meeting, Councilman Eric Barber stared at attendees who did not participate in the prayer and shouted “Amen” into his microphone at the conclusion of the prayer. Ver. Compl. ¶ 52; Exhibit 5; Williams Declaration, ¶ 2, Dkt. 6-1. A meeting attendee understood these actions to be an attempt at intimidating her and others to participate. Williams Decl. ¶ 3. In addition, Councilman Barber has criticized Mr. Cobranchi for his opposition to the City Council’s prayer practice. Ver. Compl. ¶ 16. Mr. Cobranchi resigned from his position as the elected chairman of the Wood County Democratic Executive Committee because of personal attacks related to his opposition to the City Council’s prayers. Ver. Compl. ¶ 16.

Thus, unlike *Greece*, in this intimate setting, the City has “singled out dissidents for opprobrium.” *Greece*, 134 S. Ct. at 1826. This coercive pressure, in conjunction with the local nature of the City’s meetings, enhances the Constitutional violation in this case.

### **C. Conclusion**

The City Council’s practice of reciting the Lord’s Prayer at each City Council meeting aligns the government with Christianity and violates the Establishment Clause. Because the Plaintiffs have demonstrated a likelihood of success on the merits, they are entitled to a



preliminary injunction, which would directly address the actions of the City Council members and their unconstitutional practice of leading Christian prayers at each City Council meeting.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on **September 20, 2018**, I electronically filed the foregoing ***Plaintiffs' Reply Brief in Support of Plaintiffs' Motion for Preliminary Injunction*** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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