

# FREEDOM FROM RELIGION *foundation*

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April 27, 2018

**SENT VIA EMAIL & U.S. MAIL:**

[dschmitt@columbiaheightsmn.gov](mailto:dschmitt@columbiaheightsmn.gov)

The Hon. Donna Schmitt  
Mayor of Columbia Heights  
590 40th Ave. NE  
Columbia Heights, MN 55421

Re: Unconstitutional City-Sponsored Prayer Breakfast and Invocation Policy

Dear Mayor Schmitt:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding unconstitutional sponsorship of a prayer breakfast. FFRF is a national nonprofit organization with over 32,000 members across the country, including over 600 members and two chapters in Minnesota. FFRF's purposes are to protect the separation between state and church, and to educate the public on matters related to nontheism.

A concerned Columbia Heights resident contacted FFRF and reported the following:

1. At the City Council's meeting on April 9, 2018, you issued a proclamation designating May 1, 2018 as the date of the Columbia Heights "Interfaith Prayer Breakfast." This proclamation calls upon "all citizens to join in quiet reverence and dedication as stated in the Declaration of Independence," and goes on to state the Declaration's famous first line. The "Interfaith Prayer Breakfast" will be held at John P. Murzyn Hall, which is owned and operated by the City of Columbia Heights Recreation Department. We understand that tickets for the prayer breakfast are being sold by the City Hall administration office and you personally.<sup>1</sup>
2. The City Council schedules prayers at the beginning of each meeting, typically delivered by invited local clergy. A review of the Council's meeting minutes from January 2017 to the present reveals that every meeting has begun with a Protestant Christian prayer delivered by representatives from just six different religious organizations.<sup>2</sup> On two occasions when the invited pastor was unable to attend, Councilmember Bobby Williams delivered the prayer from his seat at the City Council's table. The vast majority of these prayers have been explicitly sectarian, invoking the name of Jesus Christ and concluding with "amen." Many begin with an instruction to the public to bow their heads and join in prayer.

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<sup>1</sup> "Columbia Heights interfaith prayer breakfast set for May 1," THE SUN FOCUS, Osseo, MN. April 20, 2018. [https://www.hometownsource.com/sun\\_focus/columbia-heights-interfaith-prayer-breakfast-set-for-may/article\\_3e2fc41e-3f54-11e8-abd3-130131a4c2f9.html](https://www.hometownsource.com/sun_focus/columbia-heights-interfaith-prayer-breakfast-set-for-may/article_3e2fc41e-3f54-11e8-abd3-130131a4c2f9.html).

<sup>2</sup> Five of these are Protestant churches: First Lutheran Church, St. Matthew Lutheran Church, Community United Methodist Church, Heights Church, and Bethel Christian Fellowship. The sixth, Crest View Senior Communities, is a Christian organization.

### **The City may not host or promote religious events.**

The City's hosting and coordination of this prayer breakfast poses serious constitutional concerns. The Establishment Clause of the First Amendment to the United States Constitution prohibits the government from endorsing, advancing, or promoting religion. Therefore, it is illegal and inappropriate for the City to host, organize, support, or otherwise promote a patently religious event like a prayer breakfast.

A prayer breakfast, even an "interfaith" event such as this, sends the message that the City prefers religion over non-religion. This violates the Establishment Clause of the First Amendment to the United States Constitution, which the Supreme Court has said time and again "mandates government neutrality between religion and religion, **and between religion and nonreligion.**" *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005) (emphasis added). "[T]he Supreme Court has repeatedly stated that the [Constitution is violated] if official action, regardless of its purpose, 'conveys a message of endorsement or disapproval' of religion." *Roberts v. Madigan*, 921 F.2d 1047, 1054-55 (10th Cir. 1990) (citing *Wallace v. Jaffree*, 472 U.S. 38, 56 n. 42 (1985)).

In 2002, a federal court enjoined a city and mayor from organizing, advertising, promoting or endorsing a prayer breakfast. *Newman v. City of E. Point*, 181 F. Supp. 2d 1374 (N.D. Ga. 2002). In that case, the court restricted the use of city funds, employees, resources and supplies in facilitating the Mayor's Prayer Breakfast. As a result of the city's activities (sending invitations, issuing press releases, advertising the event, etc.), the court stated, "an objective observer would most certainly conclude that the City of East Point has endorsed religion, specifically Christianity, by its actions." *Id.* at 1381.

Furthermore, it is curious that you chose the words of the Declaration of Independence—written by the famed deist Thomas Jefferson—as justification for an official proclamation advocating prayer. Mr. Jefferson, who coined the term "separation of church and state," notably refused to issue prayer proclamations during his presidency:

I consider the government of the U.S. as interdicted by the Constitution from intermeddling with religious institutions, their doctrines, discipline, or exercises . . . I do not believe it is for the interest of religion to invite the civil magistrate to direct its exercises, its discipline, or its doctrines; nor of the religious societies that the general government should be invested with the power of effecting any uniformity of time or matter among them. Fasting & prayer are religious exercises. The enjoining them an act of discipline. Every religious society has a right to determine for itself the times for these exercises, & the objects proper for them, according to their own particular tenets; and this right can never be safer than in their own hands, where the Constitution has deposited it. (Letter to Rev. Samuel Miller, Jan. 23, 1808).

President Jefferson was right: calling on citizens to engage in any religious observance is beyond the rightful authority of civil government and an affront to religious freedom. The City of Columbia Heights would do well to abide by Mr. Jefferson's advice and the strictures of the First Amendment—the City must dissociate itself from the prayer breakfast and should refrain from issuing any prayer proclamations in the future.

### **The City's prayer practice is unconstitutional as currently implemented.**

Prayer at government meetings is unnecessary, inappropriate, and divisive. The best solution is to discontinue invocations altogether. City Council members are free to pray

privately or to worship on their own time in their own way; they do not need to worship on taxpayers' time. The City Council ought not to lend its power and prestige to religion by inviting religious leaders to give prayers. As a local government, citizens, including Columbia Heights nonreligious citizens, are compelled to come before you on important civic matters affecting their livelihoods, property, children, and quality of life. These sectarian prayers exclude the 22% of Minnesotans who are not religious.<sup>3</sup> It is coercive and intimidating for these nonreligious citizens to come to a public meeting and be required to either make a public showing of their nonbelief or show deference to a religious sentiment they do not believe in, but which their City Council members clearly do.

However, if the City Council insists on continuing to host prayers at public meetings, it may not discriminate against any person wishing to give a prayer. The nonreligious and members of minority religions must therefore be permitted to deliver invocations as well.

The Supreme Court recently addressed the issue of legislative prayer in *Greece v. Galloway*, 134 S. Ct. 1811 (2014). The Court identified several important elements to the town's invocation practice that, taken together, ensured that the practice did not impermissibly advance one religion over another or promote religion over nonreligion. Over time, the town of Greece "compiled a list of willing 'board chaplains' who had accepted invitations and agreed to return in the future." *Id.* at 1816. Additionally, the town of Greece "at no point excluded or denied an opportunity to a would-be prayer giver." *Id.* If the City Council chooses to continue its prayer practice, it must similarly open its prayers to all comers, including atheists, agnostics, Muslims, pagans, and other minority beliefs.

Although Greece created its initial list of invocation givers by having a "town employee . . . call the congregations listed in a local directory until she found a minister available for that month's meeting," the town demonstrated a willingness to go beyond its list and allow others to give invocations. *Id.* At one point the town invited a Jewish layperson (not a member of the clergy) to give an invocation and when a Wiccan priestess requested to give an opening prayer, the town granted her the opportunity. *Id.* at 1817. The town "maintained that a minister or layperson of any persuasion, *including an atheist*, could give the invocation." *Id.* at 1816 (emphasis added). In fact, on July 15, 2014, an atheist citizen delivered the opening invocation at Greece's town board meeting.<sup>4</sup>

The fact that Greece "represented that it would welcome a prayer by any minister or layman who wished to give one" was a critical factor in the Court's conclusion that the practice in *Galloway* did not violate the Constitution. *Id.* at 1824. The Court clearly stated that the purpose of these invocations must be inclusive: "These ceremonial prayers strive for the idea that people of many faiths may be united in a community of tolerance and devotion." *Id.* at 1823. At present, any person who regularly attends City Council meetings could reasonably conclude that Protestant Christianity is the only belief system welcome in the City of Columbia Heights, especially if they happened to attend one of the meetings wherein Councilmember Williams led the prayer himself. See *Lund v. Rowan Cty., N. Carolina*, 863 F.3d 268, 278 (4th Cir. 2017) (a post-*Galloway* decision in which the Court of Appeals for the Fourth Circuit found that legislator-led prayer "identifies the government

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<sup>3</sup> Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at [www.prrri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf](http://www.prrri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf).

<sup>4</sup> See [www.centerforinquiry.net/newsroom/atheist\\_to\\_deliver\\_invocation\\_at\\_greece\\_ny\\_town\\_meeting\\_july\\_15/](http://www.centerforinquiry.net/newsroom/atheist_to_deliver_invocation_at_greece_ny_town_meeting_july_15/).

with religion more strongly than ordinary invocations and heightens the constitutional risks posed by requests to participate and by sectarian prayers.”).

The Supreme Court was very clear on this point in *Galloway*: legislative prayer is permissible under certain circumstances, but legislative bodies run will afoul of the Establishment Clause if they adopt a “policy or practice of discriminating against minority faiths.” *Galloway*, 134 S. Ct. 1811 at 1817. A nonbeliever or member of a minority faith who requests to give the opening invocation should therefore be allowed to do so. This is not only the most inclusive practice, but also the most constitutionally sound.

**Conclusion**

In order to demonstrate the City Council’s respect for the diverse range of religious and nonreligious citizens living in Columbia Heights, we urge you to concentrate on civil matters and leave religion to the private conscience of each individual. The continued promotion of religion by the City Council “is impermissible because it sends the ancillary message to . . . nonadherents ‘that they are outsiders, not full members of the political community and an accompanying message to adherents that they are insiders, favored members of the political community.’” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309–10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)).

The City of Columbia Heights must completely dissociate itself from the prayer breakfast and refrain from further organization and promotion of religious events. Furthermore, the City Council should end its practice of hosting prayers at its meetings. If the Council is unwilling to do so, it must, at the very least, amend its invocation policy to ensure that it does not discriminate against nonbelievers and minority faiths. Please inform us in writing of the steps you are taking to resolve this matter.

Sincerely,



Colin E. McNamara, Esq.  
*Robert G. Ingersoll Legal Fellow*  
*Freedom From Religion Foundation*

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