

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

January 14, 2016

SENT VIA EMAIL AND U.S. MAIL:

CityCouncil@oakridgetn.gov

Oak Ridge City Council
P.O. Box 1
200 S. Tulane Ave.
Oak Ridge, TN 37831

Re: Discrimination against nonreligious invocation

Dear Mayor Gooch and City Council members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a constitutional violation that occurred at a recent Oak Ridge City Council meeting. FFRF is a national nonprofit organization with more than 23,000 members nationwide, including more than 250 members in Tennessee. Our purpose is to protect the constitutional principle of separation between state and church.

Aleta Ledendecker delivered a secular invocation at the Oak Ridge City Council meeting on January 11, 2016, on behalf of the Rationalists of East Tennessee. A video recording shows the invocation beginning at 0:0:24, and Ms. Ledendecker is cut off mid-sentence at 0:02:48, two minutes and twenty-four seconds into her invocation.¹ We understand that City Council policy is to allow three minutes for each invocation. To our knowledge, the City Council has never cut off a religious invocation mid-sentence prior to the expiration of this allotted time.

We are writing to request assurances that the City Council will not discriminate against nonreligious invocations, or the citizens delivering them, in the future. We also request that the City Council permit Ms. Ledendecker the opportunity to present another invocation—and allow her three full minutes—at her earliest convenience. The best solution, however, is to discontinue invocations at future City Council meetings altogether.

Prayer at government meetings is unnecessary, inappropriate, and divisive. 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 of Oak Ridge ought not to lend its power and prestige to religion by inviting religious leaders to give prayers. As a local government, citizens, including Oak Ridge's nonreligious citizens, are compelled to come before you on important civic matters, to seek licenses, permits, to participate in important decisions affecting their livelihoods, property, children, and quality of life. The prayers exclude the 23% of adult Americans, including more than one-in-three millennials, who are not religious.² It is coercive and intimidating for these nonreligious citizens to come to a public meeting and be

¹ Video available at <http://www.oakridgetn.gov/videojs/JSCouncilMeeting01112016.htm>.

² *America's Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

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 must not discriminate against any person wishing to give a prayer. The nonreligious and members of minority religions must therefore be permitted to deliver invocations on equal footing as religious prayer-givers. It is illegal for the City Council to give less time to citizens because they are nonreligious or because a City Council member dislikes the content of their invocation.

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 treat all comers similarly, including atheists, agnostics, Wiccans, and, potentially, Satanists. The City Council may not cut off these invocations early.

The Supreme Court's decision would have been different had the town used the prayer opportunity to discriminate against minority religions. There can be no "policy or practice of discriminating against minority faiths." *Id.* at 1817. A nonbeliever who requests to give the opening invocation must therefore be allowed equal time. It is unconstitutional discrimination to treat similarly-situated persons differently: "[t]he Equal Protection Clause of the Fourteenth Amendment . . . is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). Treating an atheist or nonbeliever who wishes to give an invocation differently from a religious citizen constitutes discrimination.

In order to demonstrate the City Council's respect for the diverse range of religious and nonreligious citizens living in Oak Ridge, we urge you to concentrate on civil matters and leave religion to the private conscience of each individual by ending the practice of hosting prayers at your meetings. At the very least, the City Council must ensure that your invocation policy does not discriminate against atheists and freethinkers. Additionally, a public apology to Ms. Ledendecker for the City Council's discriminatory treatment of her is clearly warranted. Please inform us in writing of the steps you are taking to resolve this matter.

Sincerely,

A handwritten signature in blue ink that reads "Ryan D. Jayne". The signature is written in a cursive style with a large initial "R" and "J".

Ryan D. Jayne, Esq.
Diane Uhl Legal Fellow
Freedom From Religion Foundation

cc: Kenneth Krushenski, Esq., City Attorney, [via kkrushenski@oakridgetn.gov](mailto:kkrushenski@oakridgetn.gov)