

FREEDOM FROM RELIGION *foundation*

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SENT VIA U.S. MAIL & EMAIL jrees@wintergarden-fl.gov, gbrennan@cwgdn.com

Mayor John Rees
City of Winter Garden
P.O. Box 1161
Winter Garden, FL 34777

Chief George A. Brennan
Winter Garden Police Department
251 West Plant Street
Winter Garden, FL 34787

Re: Several serious First Amendment violations at August 28, 2014 meeting

Dear Mayor Rees and Chief Brennan:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to object to several serious First Amendment violations that you both perpetrated at the last city commission meeting. FFRF is a nationwide nonprofit organization with more than 21,000 members across the country, including more than 1,000 members in Florida and a local chapter, the Central Florida Freethought Community. Our purpose is to protect the constitutional principle of separation between state and church.

A citizen, member of the Freedom From Religion Foundation, and member of our local chapter, the Central Florida Freethought Community, was escorted out of the meeting by Chief of Police Brennan because he refused to stand for the invocation and Pledge of allegiance. Mayor Rees forced the citizen's ejection. This violates the First Amendment in three distinct ways (see below). CFCC members will attend the next meeting and remain seated during the invocation and Pledge to protest these egregious violations of the Constitution.

According to our video, Mayor Rees told everyone present to "rise for the invocation, followed by the Pledge..." As the prayer began, Mayor Rees interrupted and halted it, "Wait a minute!" He pointed at John Thoreau,¹ "we're waiting for everyone to rise." John asserted that he did not have to rise. Mayor Rees responded "We appreciate—you may rise or you may leave the room as we give our prayer and our Pledge of allegiance to the flag." John again responded, "I don't believe I have to do that, thank you," and remained seated. The mayor moved on to the prayer, which a commission member gave and which ended in "your precious name," referring to Jesus.

Mayor Rees again asked John to stand for the Pledge, noting (mistakenly), "children have to in school too." As the mayor continually asks John to stand, someone in the audience shouts, "Just stand up man." Mayor Rees then asked the police "either escort him out or have him stand for the Pledge." "This is just not fair to our troops and people overseas," Rees continued.

¹ This is not his real name. We are not releasing his name out of fears of retribution.

Police Chief Brennan stood intimidatingly in front of John and asked, “are you gonna stand or leave?” John responded, “I guess I’m leaving,” and was escorted out of the room in front of nearly 100 fellow citizens.

(1) The government may not force citizens to stand for the Pledge of allegiance.

The Supreme Court ruled over seventy years ago that compelling citizens to recite the Pledge and salute the flag violates their First Amendment rights. See *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943). The Court stated,

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

Id. See also, *Holloman v. Harland*, 370 F.3d 1252, 1268 (11th Cir. 2004) (chastising citizen for “failing to salute the flag or expressing his opinion in a non-disruptive fashion” would violate the constitution as a matter of law); *Walker-Serrano ex rel. Walker v. Leonard*, 325 F.3d 412, 417 (3d Cir. 2003) (Punishing a citizen “for non-disruptively expressing her opposition to recitation of the Pledge would seem to be as offensive to the First Amendment as requiring its oration.”) (citation omitted); *Goetz v. Ansell*, 477 F.2d 636 (2d Cir. 1973); *Frain v. Baron*, 307 F. Supp. 27, 33-34 (E.D.N.Y. 1969); *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279 (11th Cir. 2008).

(2) Government officials may not ask citizens to stand for prayers or, (3) say prayers themselves.

We understand the Winter Garden is reworking its invocation policy following the latest Supreme Court decision, *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811 (2014).

The Supreme Court in *Greece* also frowned on government officials asking citizens to stand and show respect for the prayers. “Respondents point to several occasions where audience members were asked to rise for the prayer. These requests, however, came not from town leaders but from the guest ministers, who presumably are accustomed to directing their congregations in this way and might have done so thinking the action was inclusive,…”

The government cannot ask people to stand, let alone force people to stand under threat of arrest. The *Greece* decision does not provide that city employees or government officials can give prayers, only that a neutral forum for others to give prayers (including atheists) may be permissible. “Our Government is prohibited from prescribing prayers to be recited in our public institutions …” *Greece* at 1822, citing *Engel v. Vitale*, 370 U.S. 421, 430 (1962).

The *Greece* citation to *Engel v. Vitale* is instructive. In *Engel*, the Supreme Court wrote “It is neither sacrilegious nor antireligious to say that *each separate government in this country*

should stay out of the business of writing or sanctioning *official prayers and leave that purely religious function* to the people themselves and to those the people choose to look to for religious guidance.” *Engel v. Vitale*, 370 U.S. 421, 435 (1962).

Local governments should not be in the business of writing and saying prayers—though under *Greece* it may hand that duty off to citizens as long as that is done in a nondiscriminatory manner. This puts Winter Garden in an awkward position since the city commission usually says the prayers.

Conclusion and remedial action

These actions were an astounding violation of John’s rights. To remedy the invocation violations, Winter Garden has two options. First, it can get rid of prayer altogether. Or, it can stop asking citizens to stand and stop having government employees writing and reciting prayers. This is preferred given that 19% of adult Americans are nonreligious² and 32% of Americans under the age of 29 are nonreligious.³

To remedy the Pledge violation, at the next meeting, Mayor Rees ought to explain that citizens are within their rights to remain sitting for the Pledge and that it does not reflect a lack of patriotism. (In fact, refusing to rise and repeat the Pledge is more patriotic and respectful of the godless, secular constitution that created this nation, than rising and declaring our nation to be “one nation under god.”) Chief Brennan should make a similar statement. Patriotism and religiosity are not one and the same. In fact, 24% of FFRF’s membership are active or retired service members.

Further, members of our local chapter, CFFC, will be present at your next meeting. In a show of solidarity with John, they will exercise their First Amendment rights to remain seated during the invocation and Pledge, both involving gods and a religion they do not worship. Mayor Rees and Chief Brennan ought to honor their rights.

Sincerely,



Andrew L. Seidel
Staff Attorney

² The Pew Forum on Religion & Public Life, *Asian Americans: A Mosaic of Faiths*, 148 (July 2012) available at <http://www.pewforum.org/Asian-Americans-A-Mosaic-of-Faiths-overview.aspx>.

³ “Nones on the Rise: One-in-Five Adults Have No Religious Affiliation,” Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012) available at <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>