

FREEDOM FROM RELIGION *foundation*

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

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**SENT VIA EMAIL & U.S. MAIL: David.Dennis@sedgwick.gov,
Dave.Unruh@sedgwick.gov, Michael.O'Donnell@sedgwick.gov,
Richard.Ranzau@sedgwick.gov, Jim.Howell@sedgwick.gov**

Mr. David Dennis
Chairman
Board of Sedgwick County Commissioners
525 N. Main, Suite 320
Wichita, KS 67203

Re: Unconstitutional Invocation Practices

Dear Chairman Dennis and Sedgwick County Commissioners:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Sedgwick County. FFRF is a national nonprofit organization with 32,000 members across the country, including members in Kansas. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A Sedgwick County resident reported that he has been denied the opportunity to present an invocation before the Board of Sedgwick County Commissioners (Board) because he is an atheist. On January 9, 2018, our complainant formally requested an opportunity to provide an atheist invocation before the Board because he felt that “all voices [in the county] should have an opportunity to be heard.” On February 21, 2018, his request was denied by Sedgwick County Manager Mike Scholes because it was “not made on behalf of a religious group.” We understand that Sec. 2-28(3) of the Sedgwick County Code restricts those who can give an invocation before the county commission to “religious leader[s] or clergy member[s] of a religious group with an established presence in Sedgwick County.”¹

The Board’s current invocation practice is unconstitutional. If the Board continues to have invocations, it cannot discriminate against atheists.

Prayer at government meetings is unnecessary, inappropriate, and divisive. The best solution is to discontinue invocations altogether. Commissioners 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 Board ought not to lend its power and prestige to religion by inviting religious leaders to give prayers. As a local government, citizens, including Sedgwick County’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

¹ goo.gl/yRtUkN

prayers exclude the 24% of Americans who are not religious.² 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 county commissioners clearly do.

However, if the Board 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 should therefore be permitted to deliver invocations as well.

The Supreme Court 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.* The town "maintained that a minister or layperson of any persuasion, including an atheist, could give the invocation." *Id.* (emphasis added). In fact, on July 15, 2014, an atheist citizen delivered the opening invocation at Greece's town board meeting.³ If the Board chooses to continue its prayer practice, it must similarly open its prayers to all comers, including atheists, agnostics, Wiccans, and, potentially, Satanists.

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. 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 should therefore be allowed to do so. This is not only the most inclusive practice, but after *Galloway*, it is the most constitutionally sound option.

Please note that FFRF was recently victorious in a lawsuit that turned on this very proposition. In *Williamson v. Brevard Cty.*, 276 F. Supp. 3d 1260 (M.D. Fla. 2017), *appeal docketed*, No. 18-10109 (11th Cir. Jan. 11, 2018), a federal court ruled that a county board's practice of excluding atheists, agnostics, and secular humanists from offering invocations at board meetings violated the Establishment Clause. The court specifically held that it was unconstitutional for the county to impose a "theism" requirement on invocations. *Id.* at 1281. "For a governmental entity to require, or attempt to require, 'religious' content in invocations is, in effect (or, at best, but a step removed from) that entity composing prayers for public consumption or censoring the content of prayers—in contravention of the principles set forth in the *Town of Greece*." *Id.* at 1283.

² Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at www.ppri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.

³ See www.centerforinquiry.net/newsroom/atheist_to_deliver_invocation_at_greece_ny_town_meeting_july_15/.

Furthermore, Sedgwick County Code Sec. 2-28(3), which restricts those who can give an invocation to only religious leaders and clergy members, is unconstitutional because it treats 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. Thus, this provision of the Sedgwick County Code cannot be enforced.

In order to demonstrate the Board’s respect for the diverse range of religious and nonreligious citizens living in Sedgwick County, 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. If the Board wishes to continue allowing individuals to deliver invocations before the Board, you must alter your invocation policy to ensure that it does not discriminate against atheists and freethinkers. We ask for a written response notifying us what corrective action you have taken to address this serious constitutional violation. We look forward to hearing from you.

Sincerely,



Christopher Line
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation