

FREEDOM FROM RELIGION *foundation*

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September 17, 2015

SENT VIA EMAIL & U.S. MAIL

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Mayor Jon Thompson
Coolidge Council Chambers
911 S. Arizona Blvd.
Coolidge, AZ 85128

Re: Unconstitutional Invocation Practices

Dear Mayor Thompson and Coolidge City Councilors:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation this council is considering codifying into city law. We were contacted by a concerned resident. FFRF is a national nonprofit organization with 23,000 members across the country, including 550 members in Arizona and a local chapter, FFRF Valley of the Sun. Our purpose is to protect the constitutional principle of separation between state and church. FFRF recently filed lawsuits against the Chino Valley School Board (Calif.) and Brevard County (Fl.) for their pre-meeting invocation practices.

It is our understanding that on September 14 this council voted 4-2 to prohibit any prayers at city council meetings that are not Christian. We understand that Councilman Lewis told the media that if any non-Christian were to give a prayer, "I wouldn't sit here and listen to it, I would walk away."¹ This type of intolerance is not only despicable in a government official, but also patently unconstitutional when codified in city laws and policy.

As this vote shows, prayer at government meetings is unnecessary, inappropriate, and divisive. The best solution is to discontinue invocations altogether. 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 council ought not to lend its power and prestige to religion by inviting religious leaders to give prayers. As a local government, citizens, including Coolidge'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 one in five Americans, including one in three adult Americans under thirty, 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 council members clearly do.

However, if the council insists on continuing to host prayers at public meetings, it must not discriminate against any person wishing to give a prayer. Members of minority religions and even the nonreligious must be permitted to deliver invocations.

¹ AP, "Arizona council moves toward allowing only Christian prayer," *AZ Capitol Times* (September 16, 2015) available at <http://azcapitoltimes.com/news/2015/09/16/arizona-council-moves-toward-allowing-only-christian-prayer/>

² "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>

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 council chooses to continue its prayer practice, it must similarly open its prayers to all comers, including atheists, agnostics, Wiccans, and even Satanists.

At one point the town of Greece 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.³

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.

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 non-Christians and Christians differently is discrimination.

In order to demonstrate the council's respect for the diverse range of religious and nonreligious citizens living in Coolidge, 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 council must ensure that your invocation policy does not discriminate against atheists and freethinkers. Please inform us in writing of the steps you are taking to resolve this matter.

Sincerely,



Andrew L. Seidel
Staff Attorney

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