

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

DARYL COBRANCHI, ERIC ENGLE, and  
FREEDOM FROM RELIGION  
FOUNDATION, INC.,

*Plaintiffs,*

vs.

THE CITY OF PARKERSBURG,

*Defendant.*

CIVIL ACTION NO.: 2:18-cv-01198

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

**INTRODUCTION**

The City of Parkersburg has adopted and instituted an official practice of opening all of its bi-monthly public meetings with a recitation of the Lord's Prayer. Notwithstanding well-established law barring legislator-led sectarian prayer at local government meetings, City Council members lead the recitation of this decidedly Christian prayer and encourage city residents to join them. The Fourth Circuit recently declared this sort of practice unconstitutional under the Establishment Clause of the First Amendment. *Lund v. Rowan Cty., N. Carolina*, 863 F.3d 268, 290 (4th Cir. 2017), *cert. denied sub nom. Rowan Cty., N.C. v. Lund*, 138 S. Ct. 2564 (2018). As was the case in *Lund*, the principle at stake here is profound yet simple: "The Establishment Clause does not permit a seat of government to wrap itself in a single faith." *Id.*

Plaintiffs, Parkersburg citizens and residents, are suffering constitutional injury on an ongoing basis because of the city's Christian invocation practice. They are subjected to the

Lord's Prayer at every City Council meeting that they attend. The invocation practice pressures Plaintiffs, who are not Christian, to participate in a legislator-led Christian prayer. And to them it sends a clear message that the City favors Christianity and wishes to exclude Plaintiffs and any other citizens who are not Christian.

The Plaintiffs respectfully request that this Court enjoin the City's unlawful invocation practice and restore their right to attend City Council meetings without being subjected to legislator-led sectarian prayer. As discussed more fully below, the similarity between this case and *Lund* and the magnitude of the interests at stake require this Honorable Court to enjoin this practice on a preliminary basis.

## FACTS

### **I. Parkersburg City Council meetings include a Christian invocation at the beginning of every meeting.**

The Parkersburg City Council has established an official policy and custom of opening every meeting with a Christian prayer. Ver. Compl. ¶ 33. The City Council holds two public meetings each month. *Id.* ¶ 31. Since at least the beginning of 2016, and likely much earlier, these bimonthly meetings typically open in the same fashion. At or around 7:30 p.m., the City Council President stands and signals to others in attendance, including his fellow City Council members, to stand with him. *Id.* ¶ 34. The Council President then recites the Lord's Prayer and the other City Council members and meeting attendees join in. *Id.* The recitation of the Lord's Prayer is in substantially the same manner at each meeting:

Our Father who art in heaven,  
Hallowed be thy Name.  
Thy kingdom come.  
Thy will be done,  
On earth as it is in heaven.  
Give us this day our daily bread.  
And forgive us our trespasses,

As we forgive those who trespass against us.  
And lead us not into temptation,  
But deliver us from evil.  
For thine is the kingdom,  
the power, and the glory,  
for ever. Amen

*Id.* ¶ 36. This recitation incorporates a biblical translation of Matthew 6:9-13 as well as a concluding Christian doxology. *Id.* ¶ 37.

Following the prayer, the City Council recites the Pledge of Allegiance and begins with the business of the City Council. *Id.* ¶ 38. Though the prayers no longer appear on City Council agendas, for over a decade the City Council’s meeting minutes routinely state that the Council members “joined in the Lord’s Prayer.” *Id.* ¶ 39. The City Council’s 2018 meeting minutes include a statement that the “Council of the City of Parkersburg . . . joined in the Lord’s Prayer.” Exhibits 7-14 (City Council meeting minutes).

Regardless of the content of its meeting agendas, the City Council members treat the Lord’s Prayer as an official part of the meeting. *Id.* ¶ 44. For example, on April 10, 2018, City Council president John Reed called the meeting to order without first reciting the prayer. *Id.* ¶ 45. Upon realizing he had forgotten to lead the prayer, he adjourned the meeting, said “we forgot about the prayer,” and told everyone they may sit down. He then said, “now rise,” and motioned for attendees to stand as he began reciting the Lord’s Prayer. *Id.* After reciting the Lord’s Prayer and the Pledge of Allegiance, he called the meeting to order again. *Id.* Plaintiffs have filed a video of this incident with this motion. Exhibit 6 (video of April 10, 2018 City Council meeting) (attached to Kim Williams Declaration).

The City Council encourages the public attendees to participate in the Lord’s Prayer. The Council members face the public while they recite the Lord’s Prayer. *Id.* ¶ 46. The City Council President often motions for City Council members and meeting attendees to stand and participate

in the prayer. *Id.* ¶ 47. On June 26, 2018, City Council President John Reed initiated the Lord’s Prayer by announcing “alright” as he stood, and he looked out at the audience as he motioned with both arms for everyone to stand for the prayer. *Id.* ¶ 48. After this direction, many meeting attendees stood and joined the Council in reciting the Lord’s Prayer. *Id.* Plaintiffs have filed a video of this incident with this motion. Exhibit 4 (video of June 26, 2018 City Council meeting).

Public attendees who do not participate in the Lord’s Prayer are conspicuous within the meeting room. *Id.* ¶ 50-51. On September 12, 2017, City Council member Eric Barber stared at attendees who sat during the Lord’s Prayer. *Id.* ¶ 52. At the end of the prayer, Council member Barber positioned himself near his microphone, pressed the button, and shouted, “Amen” into his microphone. *Id.* Exhibit 5 (video of September 12, 2017 City Council meeting) (attached to Kim Williams Declaration).

## **II. Plaintiffs frequently attend Parkersburg City Council meetings and feel excluded.**

Plaintiff Daryl Cobranchi is a resident of Parkersburg who attended nearly every City Council meeting from January 2017 through October 2017. *Id.* ¶¶ 6–7. He has spoken before the City Council on several topics and has been present when the Council President led meeting attendees in the Lord’s Prayer. *Id.* ¶¶ 8–9. During Council meetings that he attended, he was conspicuous by not participating in the Lord’s Prayer. *Id.* ¶ 10.

Mr. Cobranchi identifies as an atheist and feels excluded by the Council’s repeated recitations of the Lord’s Prayer because he does not share the religious beliefs of the Council and the majority of attendees who join in the prayer. *Id.* ¶ 12. Mr. Cobranchi stopped regularly attending Council meetings in late 2017 because he feels the Council treats him like a second-class citizen. *Id.* ¶¶ 13–14. He even resigned from his position as the elected chairman of the Wood County Democratic Executive Committee because of personal attacks related to his

opposition to these prayers. *Id.* ¶ 16. Mr. Cobranchi wants to continue participating in his local government, but the Council's insistence on reciting the Lord's Prayer has made him feel unwelcome at Council meetings. *Id.* ¶ 15. He plans to attend meetings again if the Council stops reciting sectarian prayers. *Id.* ¶ 15.

Plaintiff Eric Engle is a resident of Parkersburg who attends City Council meetings. ¶¶ 17–18. He attended nearly every Council meeting from March 2017 to August 2017. *Id.* ¶ 19. Mr. Engle wants to remain engaged with matters that come before the City Council so he can have a voice in City Council decisions that affect his local community. *Id.* ¶ 20.

Mr. Engle identifies as an agnostic atheist and feels singled out by the Council's recitations of the Lord's Prayer. *Id.* ¶ 23. The prayer recitation makes Mr. Engle very uncomfortable at Council meetings. He feels excluded by the recitation of the Lord's Prayer and has observed that others who do not participate in standing during the prayer appear to be excluded as well. *Id.* ¶ 24. Despite this feeling of exclusion, he plans to attend future Council meetings. *Id.* ¶ 25.

These legislator-led sectarian invocations cause Plaintiffs, who are not Christians, to feel uncomfortable during City Council meetings. *Id.* ¶ 11–13, 23–24. Plaintiffs object to and are offended by the Council's sectarian prayer practice because it affiliates the City of Parkersburg with one particular faith and sends a message that the city and its Council members favor adherents of that faith. *Id.* ¶ 12, 23. This invocation practice makes Plaintiffs feel excluded from the community and the local political process because Plaintiffs do not subscribe to the religious beliefs promoted by the Lord's prayer. *Id.* ¶ 12–14, 23–24. Additionally, because all the City Council members stand and because nearly all in attendance join in the prayer, Plaintiffs feel

pressured to participate in the prayers, even though the prayers profess religious beliefs specific to a faith to which that they do not subscribe. *Id.* ¶ 11, 22.

**III. Freedom From Religion Foundation encouraged Parkersburg's City Council to abandon its Christian invocation and comply with the Constitution.**

On behalf of its member Mr. Cobranchi, FFRF sent a letter to the Parkersburg City Council requesting the cessation of the recitation of the Lord's Prayer to open City Council meetings. *Id.* ¶ 53. FFRF's July 1, 2015 letter, sent to then Council President J.R. Carpenter, informed the City Council that the practice was coercive and violated the Establishment Clause. *Id.*; Exhibit 1 (FFRF July 1, 2015 letter to Parkersburg City Council).

In response to the FFRF letter, City Attorney Joseph T. Santer sent a letter to FFRF outlining suggested changes to the invocation practice he had provided to the City Council. *Id.* ¶ 54; Exhibit 2 (July 22, 2015 letter from Attorney Santer to FFRF). According to the letter, Attorney Santer advised the Council to alter its prayer practice in three ways: (1) conduct any prayer prior to calling the meeting to order, (2) refrain from inviting the public to stand or otherwise participate in the prayer, and (3) adopt a prayer policy that is not led by elected officials. *Id.* Other than conducting the prayers prior to calling the meeting to order, which the City Council was allegedly already doing, the City Council did not follow this advice and the practice of reciting the Lord's Prayer has remained largely unchanged: since July 2015, the City Council continues to schedule the Lord's Prayer at the beginning of City Council meetings, City Council members continue to lead the prayer, and meeting attendees are still invited to join in reciting the prayer. *Id.* ¶ 59-60.

**ARGUMENT**

Plaintiffs are entitled to a preliminary injunction if they demonstrate: (1) they are likely to succeed on the merits of their claims; (2) they are likely to suffer irreparable harm in the absence

of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017). Based upon the Fourth Circuit’s recent decision in *Lund*, Plaintiffs meet all of these requirements and are entitled to the requested preliminary relief. 863 F.3d 268.

**I. Plaintiffs are likely to succeed on the merits of their Establishment Clause challenge because they have standing and Fourth Circuit precedent prohibits Parkersburg City Council’s Christian invocation practice.**

The Fourth Circuit’s decision in *Lund* controls this case. There, the Fourth Circuit held that lawmaker-led, sectarian prayer policies like the one here are unconstitutional. *Lund*, 863 F.3d at 272 (prayer practices that “serve[e] to identify the government with Christianity and risk[] conveying to citizens of minority faiths a message of exclusion” are unconstitutional). *Lund* readily distinguished these sorts of practices from the “more inclusive, minister-oriented practice of legislative prayer,” which the Supreme Court has allowed. *Lund*, 863 F.3d 268, 272 (distinguishing *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014)). Thus, provided Plaintiffs have standing, *Lund* establishes Plaintiffs will succeed on the merits of their Establishment Clause challenge to the Parkersburg City Council prayer practice.

**A. Plaintiffs Have Standing to Challenge the City Council’s Invocation Practice.**

In order to establish standing, Plaintiffs must show that that (1) they “ha[ve] suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). There is no

question that the Christian invocation practice at issue is traceable to the actions of Parkersburg City Council and that removal of the practice will redress Plaintiffs' alleged injuries. Thus, so long as Plaintiffs demonstrate they have alleged a sufficient injury-in-fact, they have standing to pursue their claims.

Establishment Clause plaintiffs can meet this requirement in two ways. First, Establishment Clause plaintiffs have standing where they demonstrate "direct unwelcome contact" with a challenged religious exercise. *Suhre v. Haywood County*, 131 F.3d 1083, 1088 (4th Cir. 1997) (noting standing requirements in Establishment Clause cases are tailored to "the spiritual, value-laden beliefs" typically affected in such cases (quoting *Am. Civil Liberties Union v. Rabun Cty. Chamber of Commerce, Inc.*, 698 F.2d 1098, 1102 (11th Cir. 1983))). Under this standard, standing is more likely to lie "where there is a personal connection between the plaintiff and the challenged display." *Suhre*, 131 F.3d at 1087. Similarly, where the spiritual affront "is located within a public facility," the injury may "be compounded." *Id.* Alternatively, Establishment Clause plaintiffs may demonstrate standing where they alter their conduct to avoid unwelcome contact with a challenged exercise. *Id.* at 1087–88.

Plaintiffs Cobranchi and Engle clearly have the necessary personal stake in their challenge to the City's Christian invocation policy. Plaintiffs are citizens and residents of the City of Parkersburg. They have been active in the community by attending City Council meetings where they have been directly exposed to the City Council's Christian invocation practice. Plaintiffs' direct contact with this practice is unwelcome and has caused both Plaintiffs to feel offended and excluded because the practice affiliates the City with one particular faith, Christianity, and sends the message that the City favors adherents of that faith. As non-Christian citizens of Parkersburg, Plaintiffs are precisely the sort of individuals the Establishment Clause



protects from divisive government practices like the Parkersburg City Council's prayer practice. While Mr. Engle plans to continue attending meetings despite this feeling of exclusion, Mr. Cobranchi has chosen to forego participation in his local government in order to avoid these exclusionary prayers. Either approach constitutes sufficient "concrete and particularized injury" to confer Establishment Clause standing.

**B. Parkersburg's Christian invocation practice violates the Establishment Clause.**

To assess the constitutionality of the prayer practice at issue in this case, *Lund* requires the Court to conduct "a 'fact-sensitive' review of 'the setting in which the prayer arises and the audience to whom it is directed,' as well as 'the pattern of prayers over time.'" *Lund*, 863 F.3d at 281 (quoting *Town of Greece v. Galloway*, 134 S. Ct. at 1827). The legal analysis of the facts identified by this review is informed by well-defined principles of Establishment Clause jurisprudence that substantially limit government prayer. *Id.* ("It is a cornerstone principle of our Establishment Clause jurisprudence that 'it is no part of the business of government to compose official prayers . . . .' The government 'is without power to prescribe . . . any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity.'") (quoting *Lee v. Weisman*, 505 U.S. 577, 588 (1992); *Engel v. Vitale*, 370 U.S. 421, 430 (1962) (internal citations omitted)); ("Our Government is prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior.") (quoting *Town of Greece*, 134 S. Ct. at 1822).

In *Lund*, this analysis identified four features of the Rowan County prayer practice that combined to render it unconstitutional: (1) commissioners were the sole prayer givers, (2) invocations were exclusively Christian, (3) attendees were invited to participate, and (4) the practice existed in the local government setting. *Lund*, 863 F.3d at 281. Rowan County's bi-

monthly meetings began with a commissioner-led prayer delivered to attendees who were invited to stand and join the prayer. *Id.* at 272. The commissioners, who would bow their heads and invite attendees to joint in prayer, “invariably and unmistakably” offered Christian prayer. *Id.* at 273.

Based upon these key features of the Rowan County prayer practice, the Fourth Circuit found the practice to be “a conceptual world apart” from the minister-oriented legislative prayer upheld by the Supreme Court in *Town of Greece*. *Id.* at 271. The Court explained that legislator-led prayer features “much greater and more intimate government involvement” than the traditional legislative prayer found in *Town of Greece*. *Id.* at 278. Moreover, in contrast to the “open, inclusive prayer opportunities” in *Town of Greece* and *Marsh*, the legislator-led prayer policy of Rowan County “both identifies the government with religion more strongly than ordinary invocations and heightens the constitutional risks posed by requests to participate and by sectarian prayers.” *Id.* Ultimately, the Court concluded the policy before it fell well outside of the easily identified limits of the legislative prayer exception: “Indeed, if elected representatives invite their constituents to participate in prayers invoking a single faith for meeting upon meeting, year after year, it is difficult to imagine constitutional limits to sectarian prayer practice.” *Id.* at 272.

This case is on all fours with *Lund*. Parkersburg’s invocation practice is strikingly similar to the prayer policy struck down in *Lund*. Under the City Council’s invocation practice the City Council members open every meeting with a group recitation of the Lord’s Prayer. In carrying out this practice, Council members encourage attendees to participate, going so far as to nonverbally cast aspersions upon nonparticipants. As a result, like the plaintiffs in *Lund*, Plaintiffs Cobranchi and Engle are subjected to this sectarian prayer every time they choose to

attend City Council meetings. They feel pressured to participate in the prayer, even though they do not subscribe to the Christian faith, and as a result, they feel marginalized and excluded from their community.

Based upon these similarities, *Lund* establishes that the Parkersburg practice is unconstitutional. As the exclusive prayer-givers, Parkersburg City Council members “deliver[] . . . sectarian prayers featuring but a single faith,” a practice that “clearly identif[ies] the government with a particular faith.” *Id.* at 280. They invite “their constituents to join them in worship” and they have done so “at every meeting of a local governing body for many years.” *Id.* at 281. “Instead of embracing religious pluralism and the possibility of a correspondingly diverse invocation practice,” Parkersburg City Council members have “created a ‘closed-universe’ of prayer-givers” that risks “warp[ing] our inclusive tradition of legislative prayer into a zero-sum game of competing religious factions.” *Id.* at 282. And where the government “so emphatically evoke[s] a single religion in nearly every prayer over a period of many years, that faith comes to be perceived as the one true faith, not merely of individual prayer-givers, but of government itself.” *Id.* at 284. This leads Parkersburg City Council meeting attendees “to the inescapable conclusion that the” City of Parkersburg “favors one faith and one faith only.” *Id.*

The Parkersburg invocation practice actually presents a more coercive environment than the one found in *Lund* because the City Council exclusively delivers the Lord’s Prayer as opposed to a different sectarian prayer at each meeting. The Lord’s Prayer comes directly from the New Testament and has long been held to be a singularly Christian prayer. *See, e.g., Mullin v. Sussex Cty.*, 861 F. Supp. 2d 411, 425-27 (D. Del. 2012); *Doe ex rel. Doe v. Sch. Dist. of Norfolk*, 340 F.3d 605, 607 (8th Cir.2003) (referring to The Lord’s Prayer as “a Christian prayer”); *Chaudhuri v. Tennessee*, 886 F. Supp. 1374, 1380 (M.D. Tenn. 1995) (referring to The

Lord's Prayer as "a well-known Christian prayer"); *Warner v. Orange Cty. Dep't of Probation*, 870 F. Supp. 69, 71 (S.D.N.Y. 1994) (calling The Lord's Prayer "a specifically Christian prayer"); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 267, 284 n.61 (1963) (Brennan, J., concurring) (referring to The Lord's Prayer as "an essentially Christian supplication" and stating that recitation of The Lord's Prayer is "clearly sectarian"); *Goluba v. Sch. Dist. of Ripon*, 45 F.3d 1035, 1037 n.2 (7th Cir. 1995) ("The Lord's Prayer, a prayer taught by Jesus to the Disciples, appears in the Christian Bible at two places: a longer version contained in the Sermon on the Mount at *Matthew* 6:9–13, and a shorter version at *Luke* 11:2–4."); *United States ex rel. Phillips v. Downer*, 135 F.2d 521, 523 (2d Cir. 1943) (referring to The Lord's Prayer as a "teaching [] of the Christian church"); *Skarin v. Woodbine Cmty. Sch. Dist.*, 204 F.Supp.2d 1195, 1197 (S.D. Iowa 2002) (citing expert testimony to support conclusion "that the words of 'The Lord's Prayer' and its ritual unison recitation or singing are central to the Christian faith and liturgy"). The prayer is well known among attendees, many of whom join in reciting it, which creates a Christian worship environment at each and every City Council meeting.

Because of the sectarian nature of the Lord's Prayer, the District Court of Delaware granted a preliminary injunction where plaintiffs challenged a county council's practice of opening its meetings with a recitation of the prayer. *Mullin*, 861 F.Supp.2d at 425-27. The court found that the plaintiffs had demonstrated likely success on the merits given the longstanding practice of reciting the Lord's Prayer, and only the Lord's Prayer, to open council meetings: "The fact that the Lord's Prayer has been the *only* prayer recited at the beginning of Council meetings for over six years is likely to be found to demonstrate that the Council gives

Christianity an unconstitutionally preferred status, sending a message to meeting attendees that the Council is promoting the beliefs of Christianity.” *Id.* at 426-27 (emphasis in original).

This Court should reach the same conclusion based upon the Fourth Circuit’s decision in *Lund*. Parkersburg City Council members have impermissibly “[taken] up a ministerial function and led the political community in prayers that communicate[] exclusivity, leaving members of minority faiths unwilling participants or discomforted observers to the sectarian exercises of a religion to which they d[o] not subscribe.” *Lund*, 863 F.3d at 290. The repeated recitation of the Lord’s Prayer, an “invocation of a single faith in so many meetings over so many years[,] distance[s] adherents of other faiths from that representative government which affects the lives of all citizens and which Americans of every spiritual persuasion have a right to call their own.” *Id.*

**C. Parkersburg City Council members’ recitation of the Lord’s Prayer constitutes government speech even though it is recited before meetings are officially called to order.**

Government-led prayers constitute government speech regardless of whether they occur before or during government meetings. *See Turner v. Fredericksburg*, 534 F.3d 352, 353 (4th Cir. 2008) (holding opening prayers to be government speech), *cert. denied*, 129 S. Ct. 909 (2009); *Simpson v. Chesterfield County Bd. of Supervisors*, 404 F.3d 276, 288 (4th Cir. 2005); *Joyner v. Forsyth County*, 1:07CV243, 2009 WL 3787754, at \*5 (M.D.N.C. 2009) *aff’d*, 653 F.3d 341 (4th Cir. 2011). In *Turner*, the Fourth Circuit Court of Appeals applied its four-factor test to conclude that the Council of the City of Fredericksburg’s legislative prayers were government speech. 534 F.3d 352, 354. The test considers: (1) the central “purpose” of the program in which the speech in question occurs; (2) the degree of “editorial control” exercised by the government or private entities over the content of the speech; (3) the identity of the

“literal speaker”; and (4) whether the government or the private entity bears the “ultimate responsibility” for the content of the speech. *Id.* at 354–55.

Under this test, the legislative prayers delivered by the Parkersburg City Council are government speech. First, the purpose of the prayer “suggests that the speech is governmental in nature.” *Id.* at 354. The prayer is an official part of every City Council meeting “and is delivered as part of the opening, along with the Pledge of Allegiance.” *Id.* As to the second and third factors, the City Council “exercises substantial editorial control over the speech in question,” as it delivers the same Christian prayer at each meeting without deviation. *Id.* at 354–55. The City Council members are “allowed to speak only by virtue of [their] role as . . . Council member[s].” *Id.* at 355. Finally, the City Council members recite the prayer as a collective, leaving no question that the government “bears the ultimate responsibility for its content.” *Id.* No private entity has been given the opportunity to dictate the content of the speech occurring at the outset of every meeting.

Thus, Defendant cannot escape the conclusion that its Christian invocation practice is likely to be found unconstitutional by relying upon the timing of its practice. The test for evaluating whether speech at a public meeting constitutes government speech cuts through these sorts of technicalities. Indeed, the Fourth Circuit has previously held an invocation practice unconstitutional even though prayers were conducted before the official opening of the meeting and were not placed on a public agenda. *Joyner v. Forsyth County*, 653 F.3d 341, 343 (4th Cir. 2011), *cert. denied*, 132 S. Ct. 1097 (2012). These decisions demonstrate that this Honorable Court need not second guess the conclusion clearly dictated by *Lund*: Parkersburg City Council’s Christian invocation practice is unconstitutional.

**II. Plaintiffs' alleged ongoing First Amendment injuries constitute irreparable harm.**

Plaintiffs' allegations of ongoing direct, unwelcome contact with their local government's religious exercise is sufficient, without more, to satisfy the irreparable harm prong of the preliminary injunction test. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 303 (D.C. Cir. 2006). This is so because the First Amendment rights Plaintiffs seek to vindicate rank among the most fundamental in our society. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011) (quoting same). Thus, in Establishment Clause cases, the injury caused by government endorsement of religion "occurs merely by virtue of the government's purportedly unconstitutional policy or practice establishing a religion, without any concomitant protected conduct on the movants' part." *Chaplaincy of Full Gospel Churches*, 454 F.3d at 302.

Plaintiffs' ongoing First Amendment injuries constitute irreparable harm. For as long as Plaintiffs have sought to participate in their local government, Parkersburg has consistently sent a message of exclusion to them by opening its meetings with legislator-led sectarian prayer, despite governing case law that clearly prohibits this practice. Plaintiff Cobranchi is suffering injury because he has altered his conduct to avoid Parkersburg meetings so long as the invocation practice remains in place, and Plaintiff Engle is suffering injury as a result of his continued exposure to this practice. Although informed that its practice is unconstitutional some three years ago, Parkersburg's practice has continued in substantially the same way. There is no reason to believe that Defendant will cease this unconstitutional practice absent injunctive relief from this Court, and thus, Plaintiffs will continue to suffer irreparable First Amendment injury.

**III. The equities favor the entry of a preliminary injunction because Parkersburg has no legitimate interest in promoting Christianity.**

While Plaintiffs will continue to suffer irreparable injury so long as Parkersburg's legislator-led sectarian invocation practice continues, the City will suffer absolutely no harm to its legitimate interests if preliminary relief is granted. The City Council will be able to continue its role for Parkersburg unabated, and it need not stop its meetings from occurring. If a preliminary injunction is entered, Parkersburg's City Council may begin its meetings without council member-led prayers pending the final outcome of this litigation. Parkersburg cannot articulate an interest in continuing its invocation practice unabated because the practice endorses Christianity and Parkersburg has no legitimate governmental interest in endorsing religion. Such religious endorsement is unconstitutional.

**IV. A preliminary injunction serves the public interest in preventing violations of the Constitution.**

The public has a significant interest in ensuring that local governmental bodies comply with the First Amendment and courts have repeatedly recognized that the vindication of First Amendment rights is a significant public interest. *See, e.g., Giovanni Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (“upholding constitutional rights surely serves the public interest”); *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 436 (6th Cir. 2004) (“the public interest is served by preventing the violation of constitutional rights”); *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006) (“[I]njunctive protections of First Amendment freedoms are always in the public interest.”). Again, as to this part of the preliminary injunction test, there is no competing interest that requires consideration. There exists no constitutional interest in continuing the practice of government endorsement of Christianity.



**V. The preliminary injunction should be issued without bond.**

The issuance of a preliminary injunction will not impose any monetary injuries on the City of Parkersburg. While a district court may not fail to address the bond requirement altogether, the “court retains the discretion to set the bond amount as it sees fit or waive the security requirement.” *See Pashby v. Delia*, 709 F.3d 307, 332 (4th Cir. 2013) (citing *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 (4th Cir. 1999)). The Fourth Circuit has recognized that “[t]he amount of the bond . . . ordinarily depends on the gravity of the potential harm to the enjoined party.” *Hoechst*, 174 F.3d at 421 n.3. Where, as here, no harm will be imposed on the Defendant upon the issuance of a preliminary injunction, the court “may fix the amount of the bond accordingly,” including setting a “nominal bond” or “fixing [the] bond amount at zero.” *Id.* (citing, with approval, *Int’l Controls Corp. v. Vesco*, 490 F.2d 1334 (2nd Cir. 1974)). In the absence of monetary injuries, no bond should be required. *See, e.g., Doctor’s Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2nd Cir. 1996). To require a bond in the present case would be to condition the exercise of the plaintiffs’ constitutional rights on their ability to pay. No bond should be required.

**CONCLUSION**

Given the similarities between this case and *Lund*, Parkersburg’s Christian invocation practice cannot stand. Plaintiffs’ right to relief under *Lund* is so clear that Defendant’s practice must be enjoined on a preliminary basis. Not only is it likely Plaintiffs will prevail on the merits of their Establishment Clause challenge to their government’s practice, it is *certain* that without the intervention of the Court, Plaintiffs will continue to suffer irreparable constitutional injury every time their local government convenes to do business. The importance of the interests

implicated by this case—and the lack of any legitimate interest Parkersburg has in continuing its promotion of Christianity—calls for preliminary relief from the Court without bond.

Respectfully Submitted,

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\* Visiting Attorney Application Pending

**CERTIFICATE OF SERVICE**

I hereby certify that on July 31, 2018, the foregoing **Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction** was filed electronically on the Court's ECF System. A true and correct copy of the filed motion is being served on the following individual, a representative of Defendant authorized to accept service on its behalf, via hand delivery.

Mayor Tom Joyce  
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/s/ Marcus B. Schneider  
Marcus B. Schneider, Esq.