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August 16, 2018

Transmitted via email to:

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Vice-Mayor Wanda Y. Rentas, wrentas@kissimmee.org
Commissioner Olga Gonzalez, ogonzalez@kissimmee.org
Commissioner Angela Eady, aeady@kissimmee.org,
Mayor Pro Tem Jim Fisher, jfisher@kissimmee.org,
City Manager Mike Steigerwald, msteiger@kissimmee.org,
City Attorney Don Smallwood, dsmallwood@kissimmee.org,
Attorney Olga Sanchez de Fuentes, osanchezdf@kissimmee.org,
Attorney Celia Thacker Dorn, cthacker@kissimmee.org,
Executive Secretary Alicia Smith, aasmith@kissimmee.org

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
FLORIDA

4343 W. Flagler St.
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MIAMI, FL 33134
WWW.ACLUFL.ORG

Re: City of Kissimmee's Proclamation

Dear Mayor Alvarez; Vice-Mayor Rentas; Commissioners Gonzalez, Eady, and Fisher; City Manager Steigerwald; Attorneys Smallwood, Thacker Dorn, and Sanchez de Fuentes; and Executive Secretary Smith,

The Freedom From Religion Foundation, the ACLU of Florida, and the ACLU of Florida's Central Chapter are in receipt of your response letters dated 8/13/2018. As we noted previously, the City of Kissimmee has initiated a Proclamation for "Forty Days of Celebration of Life, Love, and Family." The Proclamation calls for "40 days of *prayer* for peace, justice, love and solidarity between men and women of all faiths, and *invite[s] all residents to join them in this celebration by praying*, doing acts of kindness, watching over the safety of all neighbors and fellow citizens, volunteering and uniting to help those in need to make our City the best place to live."¹

The First Amendment prohibits the government and its actors from interfering with the free exercise of religion, and bars the government and its

¹ Paragraph 5, City of Kissimmee's "40 Days of Celebration of Life, Love, and Family" Proclamation.

actors from establishing a religion. This means that the state and federal governments cannot pass laws that “aid one religion, aid all religions, or prefer one religion over another.”²

When analyzing an Establishment Clause case, courts scrutinize challenged legislation or official conduct to determine primarily if it establishes a religion or religious faith, or if it is predisposed to one over another.³ The *Lemon* test has been adopted as the principal tool to evaluate neutrality of government action under the Establishment Clause.⁴ *Lemon* also applies under the Florida Constitution’s infringement-of-religious-freedom clause. In *Lemon*, the Supreme Court struck down a state program providing financial aid for teacher salaries, books, and instructional materials for secular subjects to religious schools. The *Lemon* test requires the following: (1) the law must have a primarily secular purpose, (2) it may not have the principal effect of advancing or inhibiting religion, and (3) it may not foster excessive entanglement with religion.⁵ “Failure to satisfy any one of the three prongs of the *Lemon* test is sufficient to invalidate the challenged law or practice.”⁶

Recently, the U.S. District Court for the Middle District of Florida, which has jurisdiction over Kissimmee, declared unconstitutional a prayer vigil organized by the City of Ocala, Fla., because it failed the *Lemon* test.⁷ Just like Kissimmee’s prayer proclamation, in that case, “citizens . . . were called to join a Prayer Vigil whose stated purpose was ‘to show unity . . .’”⁸ As in that case, Kissimmee’s prayer proclamation is unconstitutional.

Secular Purpose

The first prong of the *Lemon* test is **whether the law or government action was enacted for a secular purpose.**⁹ If the law was not enacted for a valid, non-religious purpose, it is unconstitutional.

Here, in the fifth paragraph of the City’s Proclamation, it calls on citizens to join in a religious exercise, by stating “Whereas, members of the

² *Everson v. Bd. of Ed. of Ewing Tp.*, 330 U.S. 1, 15 (1947).

³ *Lynch v. Donnelly*, 465 U.S. 668 (1984).

⁴ *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

⁵ *Id.* at 612-13.

⁶ *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1076–77 (9th Cir. 2010).

⁷ *Rojas v. City of Ocala*, No. 5:14-CV-251-OC-32PRL, 2018 WL 2359139 (M.D. Fla. May 24, 2018).

⁸ *Id.* at 10.

⁹ *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

City of Kissimmee are celebrating this hope for the City with 40 days of prayer for peace, justice, love and solidarity between men and women of all faiths, and invite all residents to join them in this celebration by praying...and uniting to help those in need to make our City the best place to live.”

Though it does not reference one specific religion or denomination, the call for “Fast and Prayer” is on signage displayed in City Hall, clearly depicting the City’s preference of religious affiliation over non-religious affiliation. Photos displayed in the Orlando Sentinel have Commissioner Rodriguez and Mayor Alvarez posing in front of the poster displayed at the City Chambers entrance, which indicates the Proclamation 40 Days, August 21, 2018, will officially commence at 4267 Yates Road in Kissimmee, Fla., where citizens are invited to attend a “Fast & Prayer” from 6 a.m. – 7 a.m..

Additionally, City Commissioner Olga Rodriguez is quoted at the decree of the Proclamation on 8/7/2018 as saying “This is a prayer and a fasting just because of the things that are going on around the world, the hurricanes, all the displacements of families and all the things that are going around, not just in Kissimmee but the world.”

Because the stated purpose of the City in passing the Proclamation is to advance a religious message, it was not enacted for a valid secular purpose. This governmental partiality towards religion violates the first prong of the *Lemon* test.

Primary Effect

Lemon’s second prong requires that the primary effect of a law not advance a specific religion or inhibit a specific religion, and not advance the practice of religion over non-religion.¹⁰ This inquiry ascertains whether the law has an effect that is more than just coincidental, and instead was intended to benefit, advance, or inhibit religion.¹¹

Here, the Proclamation advances religion, as it calls for “40 days of *prayer* for peace, justice, love and solidarity between men and women of all faiths, and *invite[s] all residents to join them in this celebration by praying, doing acts of kindness, watching over the safety of all neighbors and fellow citizens, volunteering and uniting to help those in need to make our City the*

¹⁰ *Id.* at 612.

¹¹ *Id.*

best place to live.” This constitutes government endorsement of religion over non-religion because the fasting and prayer were advertised on Municipal property, they were supported by Mayor Alvarez and Commissioner Rodriguez, and the poster on City property promoted the “Fast & Prayer” event. Other affiliated advertisements for the “Fast and Prayer” event had the telephone numbers for Commissioner Olga Rodriguez and Mayor Alvarez as points of contact for information. Because the City of Kissimmee’s call for “40 days of prayer” advances religion—and advances religion over non-religion—it violates the primary-effect prong of *Lemon*.

Entanglement

Finally, under the *Lemon* test, there must not be excessive government entanglement with religion.¹² Here, because the Proclamation issued by the City of Kissimmee advances religion by calling for prayer and fasting, it has a significantly religious mission, and the activities associated with the Proclamation on August 21, 2018 call for prayer and fasting from 6 a.m. – 7 a.m. at Shingle Creek Park, a city-owned park. It is encouraged by the Mayor and City Commissioner and promoted at the City of Kissimmee Chambers. It is therefore an excessive entanglement of government actors and entities in religion.

* * *

In short, this proclamation violates all three prongs of *Lemon*, when violating only one prong is enough to for it to be unconstitutional.

Apart from its unlawfulness, we ask that you consider the harmful effects of the City’s Proclamation, by which government officials advance a religious message, with the primary effect of advancing religion over non-religion. In a religiously diverse democracy, citizens of all faiths (or no faith at all) should not be subjected to City-sponsored religious practices.

In order to remain neutral and impartial, the City of Kissimmee must retract the Proclamation immediately and cancel the 40 Days of Fast and Prayer. Please let us know by close of business on Friday, August 17, whether the City will cancel the Call to Fast and Prayer event and retract its unconstitutional Proclamation.

¹² *Id.* at 13.

Thank you for your consideration of this matter.

Sincerely,

Jacqueline Azis, Staff Attorney, ACLU of Florida

Maryjane Cooper, President, ACLU of Florida Central Chapter

Andrew L. Seidel, Attorney, Director of Strategic Response for the
Freedom From Religion Foundation

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