

# FREEDOM FROM RELIGION *foundation*

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January 9, 2020

**SENT VIA EMAIL & U.S. MAIL**

[gelliott@wheelingwv.gov](mailto:gelliott@wheelingwv.gov)

The Honorable Glenn F. Elliott, Jr.  
1500 Chapline Street  
Suite 303  
Wheeling, WV 26003

Re: Unconstitutional invocation practices

Dear Mayor Elliott:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in the meetings of the Wheeling City Council. FFRF is a national nonprofit organization with more than 30,000 members across the country, including many members in West Virginia. FFRF's purposes are to protect the constitutional principle of separation between state and church and to educate the public on matters relating to nontheism.

A concerned Wheeling citizen and taxpayer contacted us to report that each Wheeling City Council meeting begins with a Christian prayer. We are informed that these prayers are led by City Council members, and that they are invariably Christian. This was the case in every 2019 council meeting for which video is available, with the exception of March 5, 2019, in which an outside minister was invited to give the Christian invocation.<sup>1</sup>

We write to request that the Wheeling City Council cease opening its meetings with prayer. This practice represents an unconstitutional endorsement of Christianity.

Fourth Circuit precedent prohibits government-led prayer of the sort practiced at Wheeling City Council meetings. In *Lund v. Rowan Cty., N. Carolina*, the Rowan County Board of Commissioners opened each session with a prayer by a Board member that was invariably Christian, often featuring sectarian references that "implied that Christianity was superior to other faiths." 863 F.3d 268, 273 (4th Cir. 2017). No other faiths were allowed or asked to take part in the prayers, and, when faced with public challenges to the practice, the Board ignored them and stayed its course. *Id.* The Fourth Circuit declared that the Board's prayer practices violated the Establishment Clause because the Board "elevated one religion above all others and aligned itself with that faith." *Id.* at 272. Here, the Wheeling City Council's prayers closely match those at issue in *Lund*. The council members lead prayers that are invariably Christian, often include sectarian references, and ignore vocal challenges by members of the community.<sup>2</sup>

<sup>1</sup> See <https://topperstation.com/wheeling-city-council>.

<sup>2</sup> <https://topperstation.com/watch/wheeling-city-council-december-3-2019>.

Like the Board in *Lund*, the Wheeling City Council violates the Establishment Clause of the First Amendment because it “elevate[s] one religion above all others and align[s] itself with that faith.” 863 F.3d at 272.

The government-sponsored prayers of the Wheeling City Council are a far cry from the prayer addressed in *Town of Greece, N.Y. v. Galloway*, 572 U.S. 565 (2014). *Town of Greece* did not address situations in which government officials themselves lead the prayers. The Court only approved opening a neutral forum for others, including non-Christians and atheists, to give invocations. As the Court noted, “[o]ur Government is prohibited from prescribing prayers to be recited in our public institutions.” *Id.* at 581 (citing *Engel v. Vitale*, 370 U.S. 421, 430 (1962)).

The Framers who adopted our Constitution knew that religious liberty does not exist without the freedom to dissent. For this reason, the United States was the first nation to adopt a secular constitution, investing sovereignty in “We the People,” not a divine entity.

Even James Madison opposed government prayers and congressional chaplaincies. In his *Detached Memoranda*, Madison wrote,

Is the appointment of Chaplains to the two Houses of Congress consistent with the Constitution, and with the pure principle of religious freedom? In strictness the answer on both points must be in the negative. The Constitution of the U. S. forbids everything like an establishment of a national religion . . . The establishment of the chaplainship to Congress is a palpable violation of equal rights, as well as of Constitutional principles.

Prayer at government meetings is unnecessary, inappropriate, and divisive, and the best solution is to discontinue invocations altogether. Council members are of course free to pray privately or to worship on their own time in their own way, but they should not worship on taxpayers’ time. Citizens, including Wheeling’s nonreligious citizens, are compelled to come before you on important civic matters and to participate in important decisions affecting their livelihoods, property, children, and quality of life. The prayers exclude the 26% of Americans who are not religious.<sup>3</sup> It is coercive and intimidating for nonreligious citizens to be required to make a public showing of their nonbelief (by not rising or praying) or else to display deference or obeisance toward a religious sentiment in which they do not believe, but which their elected officials clearly do. This “sponsorship of a religious message is impermissible because it sends the ancillary message to . . . nonadherents that they are outsiders, not full members of the political community and accompanying message to adherents that they are insiders, favored members of the political community.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309–10 (2000) (internal quotations omitted).

In order to demonstrate the Council’s respect for the diverse range of religious and nonreligious citizens living in Wheeling, 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.

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<sup>3</sup> *In U.S., Decline of Christianity Continues at Rapid Pace*, PEW RESEARCH CENTER (Oct. 17, 2019), available at <https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace/>.

Thank you for your time and attention to these issues. Please inform us in writing of the steps you are taking to resolve this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brendan Johnson', with a stylized flourish at the end.

Brendan Johnson, Esq.  
*Robert G. Ingersoll Legal Fellow*  
*Freedom From Religion Foundation*