

FREEDOM FROM RELIGION *foundation*

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

May 26, 2020

SENT VIA EMAIL ONLY
eric.hogue@wylietexas.gov

The Honorable Eric Hogue
Mayor of Wylie
300 Country Club Road, Building 100
Wylie, TX 75098

Re: Unconstitutional invocation practices

Dear Mayor Hogue:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding constitutional violations occurring in Wylie, Texas. FFRF is a national nonprofit organization with more than 32,000 members across the country, including over 1,300 members in Texas and a local chapter in the DFW Metro area. 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.

We are informed that the City of Wylie, Texas opens its city council sessions with Christian prayer and that, in doing so, you, as Mayor, prohibit women from participating, using your religious beliefs as justification. We understand that you wrote, "All I ask is that those leading the public prayer be young men," in correspondence with Jeff Forester when securing participants to lead Wylie's city council in prayer. We are told that you justify this with reference to the bible verses 1 Corinthians 14:34–35¹ and 1 Timothy 2:11–12.² Additionally, we are informed that for the past twelve years the council has begun its sessions with exclusively Christian prayer and that no women have been allowed to lead the council in prayer for this entire period.

I write to request that you immediately cease this antiquated and discriminatory prayer practice. Government officials cannot constitutionally use their personal religious beliefs to bar citizens from participation in any portion of a government function on the basis of those citizens' status as members of a legally protected group, nor may they use their elected offices to promote their personal religious beliefs, as appears to be the case here. For the reasons that follow, Wylie's

¹ "Let your women keep silence in the churches: for it is not permitted unto them to speak. They are commanded to be under obedience as also saith the law. And if they will learn anything, let them ask their husbands at home: for it is a shame for women to speak in church."

² "Let the woman learn in silence with all subjection. But I suffer not a woman to teach, nor to usurp authority over the man, but to be in silence."

prayer practices violate the First and Fourteenth Amendments of the U.S. Constitution and must not continue.

First, prayer at government meetings is unnecessary, inappropriate, and divisive. The best solution is to discontinue invocations altogether. Government officials 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 City of Wylie ought not to lend its power and prestige to religion by scheduling, hosting or conducting governmental prayers. Citizens, including Wylie's women and its nonreligious citizens, are compelled to come before you on important civic matters, to seek licenses and permits 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,³ as well as the entire female population of the city. This government "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 an 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). Women and nonreligious citizens have every bit as much a right to participate in their local government as any other person, and your personal religious beliefs cannot constitutionally deprive them of this right.

It is coercive, embarrassing 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 city council members clearly do—especially the facially discriminatory practice of preventing the participation of women.

If the City of Wylie insists on continuing to host prayers at public meetings, it must not discriminate against any person wishing to give an invocation. Women, the nonreligious, and members of minority religions must 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.* (emphasis added). If the City of Wylie chooses to continue its prayer practice, it must similarly open its invocations to all comers, including atheists, agnostics, Wiccans, Satanists, and even women.

Although Greece created its initial list of invocation givers by having a "town employee . . . call the congregations listed in a local directory until she found a minister available for that month's meeting," the town demonstrated a willingness to go beyond its list and allow others to give invocations. *Id.* At one point the town invited a Jewish layperson (not a member of the clergy) to

³ 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/>.


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. In fact, on July 15, 2014, an atheist citizen delivered the opening invocation at Greece’s town board meeting.⁴

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 women and minority religions. There can be no “policy or practice of discriminating against minority faiths.” *Id.* at 1817. A woman or nonbeliever who requests to give the opening invocation must 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 women and nonbelievers who wish to give an invocation differently from a religious citizen constitutes discrimination in violation of the Fourteenth Amendment.

In order to demonstrate the City of Wylie’s respect for its diverse range of religious and nonreligious citizens as well as its female citizens, 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 you do choose to continue this prayer practice, it must not discriminate against women, nonbelievers, or members of minority faiths in its application. 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 'B. Johnson', with a long horizontal flourish extending to the right.

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

⁴ See www.centerforinquiry.net/newsroom/atheist_to_deliver_invocation_at_greece_ny_town_meeting_july_15/.