

**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,**

**Civil Action No. 2:18-cv-01198**

**v.**

**JURY TRIAL DEMANDED**

**THE CITY OF PARKERSBURG,**

**Defendant.**

**THE CITY OF PARKERSBURG'S ANSWER TO PLAINTIFFS' COMPLAINT**

COMES NOW the Defendant, The City of Parkersburg, by counsel and for its Answer to the Plaintiffs' Complaint, state as follows:

**GENERAL RESPONSE AND PREAMBLE**

This responsive pleading has been prepared, served, and filed by counsel for Defendant within the timeframes prescribed by the *Federal Rules of Civil Procedure*.

As permitted by Rule 8 of the *Federal Rules of Civil Procedure*, defenses to claims made in Plaintiffs' Complaint may be asserted alternatively and, in some cases, hypothetically. Defenses are being asserted regardless of their consistency and are based on both legal and equitable grounds.

As facts of this civil action are fully developed through the discovery process, certain defenses may be abandoned, modified, or amended as permitted by and consistent with the *Federal Rules of Civil Procedure*.

### **FIRST DEFENSE**

The Defendant, not being fully advised of all the circumstances surrounding the allegations set forth in the Complaint, reserves unto itself the affirmative defense that claims set forth in the Complaint fail or may fail to state claims upon which relief may be granted and should therefore be dismissed pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure*.

### **SECOND DEFENSE**

In response to the enumerated allegations of the Complaint, the Defendant answers and avers as follows:

#### **INTRODUCTION**

1. In response to the allegations contained in Paragraph 1 of the Plaintiffs' Complaint, the Defendant admits only that members of the City Council and those individuals in attendance who wish to do so recite the "Lord's Prayer" prior to meetings. The remaining allegations are denied as phrased and attempt to state legal conclusions to which no response is required.

#### **JURISDICTION AND VENUE**

2. The allegations contained in Paragraph 2 of Plaintiffs' Complaint attempt to state legal conclusions to which no response is required.

3. The allegations contained in Paragraph 3 of Plaintiffs' Complaint attempt to state legal conclusions to which no response is required.

4. The allegations contained in Paragraph 4 of Plaintiffs' Complaint attempt to state legal conclusions to which no response is required.

5. In response to the allegations contained in Paragraph 5 of the Plaintiffs' Complaint, the Defendant admits only that the City of Parkersburg is located within the Southern

District of West Virginia and that its meetings take place within City Limits. The remaining allegations are denied as phrased and attempt to state legal conclusions to which no response is required.

### **PARTIES**

6. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 6 of Plaintiffs' Complaint.

7. In response to the allegations contained in Paragraph 7 of the Plaintiffs' Complaint, the Defendant admits only that upon information and belief, Mr. Cobranchi has attended certain City Council meetings. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

8. Defendant admits the allegations contained in Paragraph 8 of Plaintiffs' Complaint.

9. In response to the allegations contained in Paragraph 9 of the Plaintiffs' Complaint, the Defendant admits only that at all times relevant to this action, the Lord's Prayer has typically been recited as a spiritual invocation during the ceremonial preamble to City Council meetings and that at no time relevant to this action was the public required to or forbidden from participating. The Defendant further admits that on approximately three (3) occasions, Council President John Reed has gestured or raised his hands at the beginning of the Lord's Prayer. The remaining allegations are denied.

10. The Defendant denies the allegations contained in Paragraph 10 of Plaintiffs' Complaint.

11. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 11 of Plaintiffs' Complaint.

12. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 12 of Plaintiffs' Complaint.

13. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 13 of Plaintiffs' Complaint.

14. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 14 of Plaintiffs' Complaint.

15. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 15 of Plaintiffs' Complaint.

16. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 16 of Plaintiffs' Complaint.

17. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 17 of Plaintiffs' Complaint.

18. Defendant admits only that Mr. Engle has attended City Council meetings. Defendant is without sufficient information or knowledge to admit or deny the remaining allegations contained in Paragraph 18 of Plaintiffs' Complaint.

19. Defendant admits only that Mr. Engle has attended City Council meetings and that a non-discrimination ordinance was considered during the general time referenced. Defendant is without sufficient information or knowledge to admit or deny the remaining allegations contained in Paragraph 19 of Plaintiffs' Complaint.

20. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 20 of Plaintiffs' Complaint.

21. Defendant denies the allegations contained in Paragraph 21 of Plaintiffs' Complaint.

22. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 22 of Plaintiffs' Complaint.

23. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 23 of Plaintiffs' Complaint.

24. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 24 of Plaintiffs' Complaint.

25. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 25 of Plaintiffs' Complaint.

26. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 26 of Plaintiffs' Complaint.

27. Defendant admits the allegations contained in Paragraph 27 of Plaintiffs' Complaint.

28. In response to the allegations contained in Paragraph 28 of Plaintiffs' Complaint, the Defendant admits only that the Lord's Prayer has typically been recited as a spiritual invocation during the ceremonial preamble to City Council meetings and that at no time relevant to this action was the public required to or forbidden from participating. The remaining allegations are denied.

29. In response to the allegations contained in Paragraph 28 of Plaintiffs' Complaint, the Defendant admits only that the members of the Parkersburg City Council are elected officials and that they attend meetings in that capacity. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of Plaintiffs' Complaint.

## FACTS

### City Council

30. Defendant admits the allegations contained in Paragraph 30 of Plaintiffs' Complaint.

31. Defendant admits the allegations contained in Paragraph 31 of Plaintiffs' Complaint.

32. Defendant admits the allegations contained in Paragraph 32 of Plaintiffs' Complaint.

33. In response to the allegations contained in Paragraph 33 of the Plaintiffs' Complaint, the Defendant admits only that at all times relevant to this action, the Lord's Prayer has typically been recited as a spiritual invocation during the ceremonial preamble to City Council meetings. Defendant denies the remaining allegation contained in Paragraph 33 of Plaintiffs' Complaint.

34. In response to the allegations contained in Paragraph 34 of the Plaintiffs' Complaint, the Defendant admits only that at all times relevant to this action, the Lord's Prayer has typically been recited as a spiritual invocation during the ceremonial preamble to City Council meetings, that the members of the Council typically do stand during the prayer and that those members of the public who choose to do so may also stand or remain seated or leave the room altogether. The Defendant denies the remaining allegation contained in Paragraph 34 of Plaintiffs' Complaint.

35. In response to the allegations contained in Paragraph 35 of the Plaintiffs' Complaint, the Defendant admits only that at all times relevant to this action, the Lord's Prayer

has typically been recited as a spiritual invocation during the ceremonial preamble to City Council meetings. The Defendant denies the remaining allegations.

36. Defendant admits the allegations contained in Paragraph 36 of Plaintiffs' Complaint.

37. Defendant admits the allegations contained in Paragraph 37 of Plaintiffs' Complaint.

38. Defendant admits the allegations contained in Paragraph 38 of Plaintiffs' Complaint.

39. Defendant admits the allegations contained in Paragraph 39 of Plaintiffs' Complaint.

40. In response to the allegations contained in Paragraph 40 of the Plaintiffs' Complaint, the Defendant admits only that City Council meeting minutes frequently include a notation that members "joined in the Lord's Prayer" prior to the meeting being called to order.

41. In response to the allegations contained in Paragraph 41 of the Plaintiffs' Complaint, the Defendant admits only that the words "prayer and pledge of allegiance" typically appear at the beginning of the meeting agenda prior to the entry for the call to order.

42. In response to the allegations contained in Paragraph 42 of the Plaintiffs' Complaint, the Defendant admits only that audio recordings of City Council meetings are made publicly available on its website and that recordings may include the ceremonial preamble to City Council meetings during which the "prayer and pledge of allegiance" occur.

43. In response to the allegations contained in Paragraph 43 of the Plaintiffs' Complaint, the Defendant admits only that live streams of City Council meetings are made

publicly available via YouTube and that the live stream typically begins prior to the ceremonial preamble to City Council meetings. The remaining allegations are denied as phrased.

44. In response to the allegations contained in Paragraph 44 of the Plaintiffs' Complaint, the Defendant admits only that any prayer takes place during the ceremonial preamble to City Council meetings. The remaining allegations are denied as phrased.

45. In response to the allegations contained in Paragraph 45 of the Plaintiffs' Complaint, the Defendant admits only that the video recording of the April 10, 2018 City Council meeting speaks for itself. To the extent Paragraph 45 misrepresents or otherwise misstates what is contained in the video, these allegations are denied.

**“Coercive Prayers”**

46. Defendant admits the allegations contained in Paragraph 46 of Plaintiffs' Complaint.

47. In response to the allegations contained in Paragraph 47 of the Plaintiffs' Complaint, the Defendant admits only that on approximately three (3) occasions, Council President John Reed has gestured or raised his hands at the beginning of the Lord's Prayer. The remaining allegations are denied.

48. Defendants admit the allegations contained in Paragraph 48 of Plaintiffs' Complaint.

49. In response to the allegations contained in Paragraph 49 of the Plaintiffs' Complaint, the Defendant admits only that members of the public are free to sit, stand, or attend only a portion of City Council meetings and/or the ceremonial preamble to same, and members of the public do exercise all three options at various times. The remaining allegations are denied as phrased.



50. The Defendant denies the allegations contained in Paragraph 50 of Plaintiffs' Complaint.

51. The Defendant denies the allegations contained in Paragraph 51 of Plaintiffs' Complaint.

52. The Defendant denies the characterization of events as set forth in Paragraph 52 of the Plaintiffs' Complaint.

**“FFRF Requests Compliance with the Constitution”**

53. In response to the allegations contained in Paragraph 53 of the Plaintiffs' Complaint, the Defendant admits only that the letter attached to the Plaintiffs' Complaint as “Exhibit 1” was received by the Defendant.

54. In response to the allegations contained in Paragraph 54 of the Plaintiffs' Complaint, the Defendant admits only that the letter attached to Plaintiffs' Complaint as “Exhibit 2” was sent by Parkersburg City Attorney Joseph T. Santer.

55. In response to the allegations contained in Paragraph 55 of the Plaintiffs' Complaint, the Defendant admits only that the Council did not fully implement the guidelines in Attorney Santer's July 22, 2015 letter. The remaining allegations are denied.

56. The allegations contained in Paragraph 56 of Plaintiffs' Complaint attempt to state legal conclusions to which no response is required.

57. The Defendant denies the allegations contained in Paragraph 56 of Plaintiffs' Complaint.

58. The allegations contained in Paragraph 58 of Plaintiffs' Complaint attempt to state legal conclusions to which no response is required.

59. In response to the allegations contained in Paragraph 59 of the Plaintiffs' Complaint, the Defendant admits only that the Council did not fully implement the guidelines in Attorney Santer's July 22, 2015 letter. The remaining allegations are denied.

60. In response to the allegations contained in Paragraph 60 of the Plaintiffs' Complaint, the Defendant admits only that the ceremonial preamble to City Council meetings includes recitation of the Lord's Prayer as a spiritual invocation, that at no time relevant to this action was the public required to or forbidden from participating. The Defendant further admits that on approximately three (3) occasions, Council President John Reed has gestured or raised his hands at the beginning

### COUNT ONE

#### **42 U.S.C. § 1983 – Deprivation of Plaintiffs' Constitutional Rights by Defendant**

61. Defendant reasserts and incorporates by reference its responses to Paragraphs 1 through 60 of this Answer as if restated verbatim herein.

62. Defendant denies the allegations contained in Paragraph 62 of Plaintiffs' Complaint.

63. Defendant denies the allegations contained in Paragraph 63 of Plaintiffs' Complaint.

64. Defendant denies the allegations contained in Paragraph 64 of Plaintiffs' Complaint.

65. Defendant denies the allegations contained in Paragraph 65 of Plaintiffs' Complaint.

66. Defendant denies the allegations contained in Paragraph 66 of Plaintiffs' Complaint.

67. Defendant denies the allegations contained in Paragraph 67 of Plaintiffs' Complaint.

In response to the *ad damnum* clause in Plaintiffs' Complaint, this Defendant denies any and all liability to the Plaintiffs.

#### **GENERAL DENIAL**

Defendant denies each and every allegation not expressly admitted herein.

#### **RELIEF REQUESTED**

To the extent Plaintiffs' Complaint contends that Plaintiffs are entitled to any compensation, damages, including punitive damages, costs, fees, declaratory or injunctive relief, or any other relief, Defendant denies that Plaintiffs are entitled to any of the aforementioned relief.

#### **THIRD DEFENSE**

Defendant is entitled to good faith immunity in that no action was taken with malice or in violation of state or federal law.

#### **FOURTH DEFENSE**

Plaintiffs have failed to present a case or controversy, thus lacks standing and this Court lacks subject matter jurisdiction.

#### **FIFTH DEFENSE**

Plaintiffs' claim is barred by the First Amendment to the United States Constitution as it relates to free exercise of religion.

#### **SIXTH DEFENSE**

Plaintiffs' claim is barred by the First Amendment to the United States Constitution as it relates to freedom of speech.

**SEVENTH DEFENSE**

Plaintiffs' claim is barred by governmental immunity, whether it be statutory, common law, absolute, or qualified immunity. Defendant does not have a policy or rule requiring prayer at any city function, including but not limited to a meeting of the City Council.

**EIGHTH DEFENSE**

Defendant does not have a rule or policy prohibiting prayer at any city function, including but not limited to a meeting of the City Council.

**NINTH DEFENSE**

Defendant did not require Plaintiffs to participate in any prayer of any kind.

**TENTH DEFENSE**

Plaintiffs' Complaint fails to state a custom, policy, practice or procedure of the Defendant sufficient to violate the constitutional rights of the Plaintiffs.

**ELEVENTH DEFENSE**

Defendant has acted in conformity with all applicable statutes, regulations, ordinances, common law, and the United States Constitution.

**TWELFTH DEFENSE**

Defendant reserves the right to raise additional affirmative defenses as may become known during the course of discovery or otherwise

**REQUEST FOR JURY TRIAL**

Defendant, City of Parkersburg, requests a trial by jury on all issues triable by a jury.

WHEREFORE, Defendant, City of Parkersburg, respectfully requests that Plaintiffs' Complaint against it be dismissed with prejudice, and that it be granted such other relief as this Court deems appropriate.

**CITY OF PARKERSBURG,**

**By Counsel,**



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**CERTIFICATE OF SERVICE**

I, the undersigned counsel for Defendant City of Parkersburg, do hereby certify that on **September 26, 2018**, I electronically filed the foregoing *The City of Parkersburg's Answer to Plaintiffs' Complaint* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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