

FREEDOM FROM RELIGION *foundation*

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July 16, 2014

SENT VIA U.S. MAIL AND FAX TO: 954-429-1442

Andrew Maurodis
City Attorney
City of Deerfield Beach
150 NE 2nd Avenue
Deerfield Beach, FL 33441

Re: Discrimination against Satanist

Dear Mr. Maurodis:

I am writing on behalf of concerned Florida members of the Freedom From Religion Foundation (FFRF), to alert you to serious constitutional concerns surrounding the City of Deerfield's perceived refusal to allow a Satanist to give an invocation before a City Commission meeting. FFRF is a national nonprofit organization with more than 20,000 members nationally, including more than 900 members in Florida. We protect the constitutional separation of state and church. We understand that, despite the recent Supreme Court decision requiring invocation opportunities to remain open to minority religions and even the nonreligious, the Commission has exclusionary practice.

Apparently, the Commission has ignored Chaz Stevens request to give an invocation before the Commission. According our information, Mr. Stevens, a Satanist, sent a letter requesting an opportunity to give the invocation before the commission meeting. However, two months after Mr. Stevens' letter the City has not responded to, nor invited him to give an invocation. The City's action, or rather inaction causes serious concerns over the potential violation of both the First Amendment's strictures on government prayer and the Constitution's requirements for equal treatment and non-discrimination.

First Amendment violations

As you probably know, the Supreme Court recently decided *Town of Greece, N.Y. v. Galloway*. 134 S. Ct. 1811 (2014). The Court upheld and would uphold prayers at local government meetings only "[s]o long as the town maintains a policy of nondiscrimination..." *Id.* at 1824. In *Greece*, "The town at no point excluded or denied an opportunity to a would-be prayer giver. Its leaders maintained that a minister or layperson of any persuasion, *including an atheist*, could give the invocation." *Id.* at 1815 (emphasis added). Deerfield Beach must open its prayers to all comers, including Satanists and atheists. (An atheist delivered an invocation in Greece yesterday and a Wiccan gave an invocation just prior to litigation).

Notably, the Supreme Court wrote that their decision would have been different had the town used the prayer opportunity to discriminate against minority religions as Deerfield Beach appears to be doing: "The analysis would be different if town board members ... singled out dissidents for opprobrium...." *Id.* at 1814-15. There can be no "an official policy or practice of discriminating against minority faiths." *Id.* at 1817.

If Deerfield Beach wants to continue to host prayers, it cannot discriminate against any person or religion wishing to give a prayer: “The First Amendment is not a majority rule, and government may not seek to define permissible categories of religious speech. Once it invites prayer into the public sphere, government must permit a prayer giver to address his or her own God or gods as conscience dictates, unfettered by what an administrator or judge considers to be nonsectarian.” *Id.* at 1822-23.

If the preceding language were not explicit enough, the Court clearly stated that the purpose of these prayers 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 City’s inaction appears to violate the limits of *Greece* and therefore the First Amendment.

Denial of access based on religion is discrimination

It is 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)). The government “must treat like cases alike.” *Vacco v. Quill*, 521 U.S. 793, 799 (1997). Laws, rules, and policies must be equally applied. “To state an equal protection violation, a plaintiff must show that they were treated differently from similarly situated people and that defendants unequally applied a facially neutral ordinance for the purpose of discriminating against plaintiffs.” *Manseau v. City of Miramar*, 395 F. App’x 642, 645 (11th Cir. 2010) (citing *Campbell v. Rainbow City, Ala.*, 434 F.3d 1306, 1314 (11th Cir. 2006)).

In this case, the Commission is ignoring and excluding a person adhering to a minority religion the same prayer opportunity as people of majority religions. This exclusion seems premised solely on Mr. Stevens’ religion. It is no defense to claim that the community may be worried about a Satanist message. Community feelings do not give the government the right to “prescribe what shall be orthodox in ... religion, or other matters of opinion....” *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 633-34 (1943) (Murphy, J., concurring).

If the Commission truly believes that its invocations will create fear and unrest in their community, the solution is ***to stop having the invocations***. *Greece* does not ***require*** the Commission to allow invocations. All this could be avoided if the Council were to simply get down to the business of doing their jobs, rather than first experimenting with the dangerous mix of religion and government.

We request that the City respond in writing with what steps it is taking to ensure that people are not being excluded from giving invocation because of their religious beliefs. Further we request that the City respond to Mr. Stevens’ letter by inviting him to give an invocation before a commission meeting.

Sincerely,



Andrew L. Seidel
Staff Attorney

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