

FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL & U.S. MAIL: jwarren@ci.king.nc.us, nbranshaw@ci.king.nc.us

The Honorable Jack Warren
Mayor
City of King
P.O. Box 1132
King, NC 27021

Re: Unconstitutional invocation practices

Dear Mayor Warren and King City Council members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in King City Council meetings. FFRF is a national nonprofit organization with more than 35,000 members across the country, including more than 800 members and a local chapter in North Carolina. Our 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 local King resident has reported that the King City Council has appointed a rotation of 5 chaplains to deliver prayers at the beginning of council meetings. It is our understanding that these chaplains are all Christian and no one else is allowed to deliver prayer at city council meetings. Our complainant reports that they have requested to deliver an opening invocation, but have been denied. We understand that because only Christian chaplains are allowed to deliver the prayers, they are invariably Christian (including statements like “in Jesus’ name we pray,” etc.). For instance, on January 4, 2021, Chaplain Norman delivered the opening prayer:

Let us pray... Heavenly Father, these are Your servants, we are Your servants. We call upon You to give us mercy and grace. Give us wisdom to make decisions that will bring our city into the future in a great way. We pray, Lord, that each and every one here would know that Jesus Christ is their savior. For we know, Lord, that the wrath is coming upon those who do deny Him, and we pray, Lord, that Your mercy and grace will ascend and be with each and every one here that might have comfort and peace in this time of... turmoil... In Jesus’ holy name we pray. Amen.

Prayer at government meetings is unnecessary, inappropriate, and divisive. The best solution is to discontinue invocations altogether. City council members 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 council ought not to lend its power and prestige to religion by inviting religious leaders to give

prayers. As a local government, citizens, including King's nonreligious citizens, are compelled to come before you on important civic matters, to seek licenses, permits, to participate in important decisions affecting their livelihoods, property, children, and quality of life. The prayers exclude the 24% of Americans who are not religious.¹ It is coercive and intimidating for these nonreligious citizens to come to a public meeting and be required to either make a public showing of their nonbelief or show deference to a religious sentiment they do not believe in, but which their city council members clearly do.

Precedent from the Fourth Circuit Court of Appeals, which has jurisdiction over North Carolina, prohibits government-sponsored prayer of the sort practiced at the city council's meetings, where "a seat of government [wraps] itself in a single faith." *Lund v. Rowan Cty., N. Carolina*, 863 F.3d 268, 290 (4th Cir. 2017). In *Lund*, the Rowan County Board of Commissioners opened each session with a prayer led by a Board member that was invariably Christian, often featuring sectarian references that "implied that Christianity was superior to other faiths." *Id.* at 273. No other faiths were allowed or asked to take part in the prayers and, when faced with public challenges to the practice (like this one), 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. The King City Council's practice has created a situation very similar to the one in *Lund*. While the prayers are not led by city council members, they are led by Christian chaplains appointed by the council, and the prayers are invariably Christian and often include sectarian references. Like the Board in *Lund*, the King 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." *Id.*

The council's government-sponsored prayers are a far cry from the prayer addressed in *Town of Greece, N.Y. v. Galloway*, 572 U.S. 565 (2014). In *Town of Greece*, 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.* If the city council chooses to continue its prayer practice, it must similarly open its prayers to all comers, including atheists, agnostics, Wiccans, and, potentially, Satanists.

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 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 (emphasis added). In

¹ Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at www.ppri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.

fact, on July 15, 2014, an atheist citizen delivered the opening invocation at Greece's town board meeting.²

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 minority religions. There can be no "policy or practice of discriminating against minority faiths." *Id.* at 1817. If the city wishes to continue its prayer practice, it cannot limit the invocations to a select group of Christians and must instead allow anyone who requests the opportunity to give an invocation. A nonbeliever who requests to give the opening invocation must 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 an atheist or nonbeliever who wishes to give an invocation differently from a religious citizen constitutes discrimination.

In order to demonstrate the city council's respect for the diverse range of religious and nonreligious citizens living in King, 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 the city council's meetings. At the very least, the city council must ensure that your invocation policy does not discriminate against atheists and other non-Christians. Please respond in writing detailing the steps you are taking to resolve this constitutional issue so that we may inform our complainant. Thank you for your time and attention to this matter, and I hope this letter finds you in good health.

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

² See www.centerforinquiry.net/newsroom/atheist_to_deliver_invocation_at_greece_ny_town_meeting_july_15/.