

FREEDOM FROM RELIGION *foundation*

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

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SENT VIA EMAIL & U.S. MAIL: ksmith@lakecountyfl.gov, dshields@lakecountyfl.gov, sparks@lakecountyfl.gov, lcampione@lakecountyfl.gov, jblake@lakecountyfl.gov

Kirby Smith
Chairman
Lake County Board of County Commissioners
P.O. Box 7800
Tavares, FL 32778

Re: Concerns Regarding Equal Treatment of Secular Invocations

Dear Chairman Smith and Lake County Commissioners:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to raise concerns regarding the Board's prayer policy and practice, and to ensure that nonbelievers in Lake County are treated with the same respect and given the same rights as religious prayergivers. FFRF is a national nonprofit organization with more than 39,000 members across the country, including more than 1,900 members in Florida and a local chapter, Central Florida Freethought Community. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

On December 6, 2022, Joseph Richardson, a Central Florida Freethought Community director, was given the opportunity to deliver an invocation before the Board. Mr. Richardson delivered a respectful secular message of equality and diversity. He quoted Central Floridian Zora Neale Hurston: "There is nothing to make you like other human beings so much, as doing things for them." He urged those in attendance to "abandon the familiar attitudes and too common practices that do not serve the whole," and to "appreciate each and every voice that enters the chamber with hearts and minds open." He continued: "May we dream and design a bold future for Lake County where all voices are heard and everyone is uplifted at their time of need. May we work together with honesty and integrity guided by rational thought and critical thinking with a shared sense of responsibility."

Immediately following Mr. Richardson's inclusive secular invocation, a man approached the podium and said: "Hello, I was just asked a few minutes ago if I would lead in a prayer. So I am happy to do so. If you would like to join me, feel free to do so." He then led those gathered in a Christian prayer:

Thank You, Father God in Heaven, for your blessings over this county and the people of Lake County. We ask You to bless our families, our friends, our loved ones, our county commissioners, our elected officials. We pray for wisdom for our

county commissioners and elected officials, wisdom from God to help them make the right choices for the people. We thank You for this special day...In Jesus' name, amen.

This Christian prayer, delivered because the invocation Mr. Richardson gave was not sufficiently Christian, was discriminatory, unconstitutional, and a slap in the face to all of Lake County's non-Christian citizens. It is our understanding that in the past, secular invocations have been delivered in the same manner as all other invocations, and that this is the first time the Board has discriminated against someone delivering an invocation.

We write to ask that the Board ensure that all future invocation givers are treated with respect and that the discriminatory conduct exhibited at the December 6th meeting does not occur again in the future. If the Board cannot treat invocation speakers equally, the practice of having an invocation needs to be eliminated entirely.

As this inappropriate "corrective" prayer has demonstrated, prayer at government meetings is unnecessary, inappropriate, and divisive. The best solution is to discontinue invocations altogether. County Commissioners 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. Citizens, including Lake County's nonreligious citizens, are compelled to come before local government bodies like the Board on important civic matters, to participate in critical decisions affecting their livelihoods, property, children, and quality of life. The prayers exclude the 22% of Lake County residents who are not religious.¹ It is coercive and intimidating for these nonreligious citizens to come to a public meeting and be required either to make a public showing of their nonbelief or to show deference to a religious sentiment they do not believe in, but which their Board members clearly do.

If the Board insists on continuing to host prayers at public meetings, it must not discriminate against any person delivering an invocation. Secular invocations must be treated the same as Christian prayers.

The Supreme Court addressed the issue of legislative prayer in *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014). The Court identified several important elements in the town's invocation practice that, taken together, ensured that the practice did not impermissibly advance one religion over others 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.*

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 to give an invocation; and

¹ *The 2020 Census of American Religion*, Public Religion Research Institute (July 8, 2021), available at <https://www.prii.org/research/2020-census-of-american-religion>.

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 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 legislative 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. The Court made clear that governmental bodies must “maintain[] a policy of nondiscrimination” with respect to invocation speakers and must not act with “aversion or bias . . . against minority faiths.” *Id.* at 1824.

The U.S. Court of Appeals for the Eleventh Circuit—which has jurisdiction over Florida—has likewise condemned discrimination against minority beliefs in invocation practices. In *Pelphrey v. Cobb County*, 547 F.3d 1263, 1281-82 (11th Cir. 2008), the Eleventh Circuit held that a county commission violated the Establishment Clause by removing Jews, Muslims, Jehovah’s Witnesses, and Mormons from a list that it used to select invocation-speakers. The court explained that the Establishment Clause “prohibits purposeful discrimination”—“the selection of invocational speakers based on an ‘impermissible motive’ to prefer certain beliefs over others.” *Id.* at 1278, 1281 (quoting *Marsh v. Chambers*, 463 U.S. 783, 793 (1983)).

And in *Williamson v. Brevard County*, 928 F.3d 1296, 1299 (11th Cir. 2019), the Eleventh Circuit ruled that a county commission violated the Establishment Clause by discriminating in favor of mainstream, monotheistic religions in its invocation practice. The court emphasized that “local governments violate the Constitution if they organize and conduct their prayers in a way that discriminates against other religious beliefs.” *Id.* at 1310. After the case returned to the district court, the defendant county agreed to a settlement that prohibited it from continuing its discriminatory practices and required it to pay \$490,000 in damages and attorney’s fees to the plaintiffs. Consent Amended Final Judgment, *Williamson v. Brevard County*, No. 6:15-cv-1098 (M.D. Fla. Feb. 19, 2020), ECF No. 152.

The Establishment Clause thus requires that a nonbeliever who delivers the invocation be treated the same as someone who delivers a Christian prayer. When the board asks for a Christian prayer to “correct” a prayer or invocation that was not Christian, the board engages in a practice that discriminates against minority faiths.

Furthermore, 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

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

nonbeliever who delivers an invocation differently from a religious citizen constitutes discrimination.

We urge you to concentrate on civil matters and leave religion to the private conscience of individuals by ending the practice of hosting prayers at your meetings. But as long as the Board continues to allow citizens to deliver invocations to begin its meetings, it must treat all invocations the same, with no “corrective” Christian prayer offered after a non-Christian prayer has finished. Please inform us in writing of the steps you are taking to resolve this matter.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Line", with a long horizontal flourish extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

Cc: Jennifer Barker, County Manager, via jbarker@lakecountyfl.gov