

FREEDOM FROM RELIGION *foundation*

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William J. Bunek
Chairman
Leelanau County Board of Commissioners
8527 E. Government Center Dr.
Suttons Bay, MI 49682

Re: Unconstitutional invocation practices

Dear Chairman Bunek and members of the Leelanau County Board of Commissioners:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to object to the inclusion of Christian prayer at Leelanau County Board of Commissioners' meetings. FFRF is a national nonprofit organization with more than 35,000 members across the country, including more than 800 members in Michigan. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

Multiple concerned Leelanau County residents have reported that the Leelanau County Board of Commissioners recently started opening its meetings with Christian prayer. Our complainants' report that the Board's policy limits those who can deliver an invocation to those representing an organization with an established presence in Leelanau County, ensuring that the prayers will always be Christian rather than representing the diverse religious and nonreligious beliefs of those in Leelanau County.

We write to the request that the Board end its prayer practice, either by replacing it with a moment of silence, or by removing it completely, in order to respect the views of all Leelanau County residents.

Prayer at government meetings is unnecessary, inappropriate, and divisive. The best solution is to discontinue invocations altogether. Board 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 Board ought not to lend its power and prestige to religion by inviting religious leaders to give prayers. As a local government, citizens, including Leelanau County'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 non-religious residents, who currently make up the fastest growing segment of the U.S. population by religious identification—35 percent of Americans are non-Christians, and

this includes the 30 percent of Leelanau County residents who identify as religiously unaffiliated.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 County Board members clearly do.

However, if the Board insists on continuing to host prayers at public meetings, it must not discriminate against any person wishing to give a prayer. The nonreligious and members of minority religions should therefore 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.* If the Board 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 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. A nonbeliever who requests to give the opening invocation should 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

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

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

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 Board's respect for the diverse range of religious and nonreligious citizens living in Leelanau County, 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. At the very least, the Board must ensure that your invocation policy does not discriminate against atheists and freethinkers. Please inform us in writing of the steps you are taking to resolve 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