

FREEDOM FROM RELIGION *foundation*

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February 1, 2016

SENT BY MAIL AND EMAIL TO mayor.stanton@phoenix.gov

The Honorable Greg Stanton
Mayor, City of Phoenix
200 W. Washington St.
Phoenix, AZ 85003

Re: Prayers at Phoenix City Council Meetings

Dear Mayor Stanton and Phoenix City Council:

I am writing on behalf members of the Freedom From Religion Foundation, including Phoenix members, to object to proposed changes to the prayer policy for Phoenix City Council meetings and explain why those changes are illegal. FFRF first contacted this council about its problematic prayers back in August 2012. Since then, our local member became the first nonreligious person to give a prayer at your meeting, last February. She asked you “not to bow your heads, but instead to open your eyes.” (PCC, the city, and the state all survived this nonreligious prayer.) If this council is unwilling to listen to prayers from all citizens, regardless of their belief, the solution is to not have prayers at all.

As a reminder, FFRF is a nationwide nonprofit organization, which works to protect the constitutional separation of state and church. FFRF represents more than 23,000 members nationally including more than 500 members in Arizona and a local Valley of the Sun chapter.

We understand that the PCC will be considering a proposal to change its prayer policy to do two things, both aimed at keeping out members of The Satanic Temple:

- 1) require individual council members or the mayor to invite someone to deliver the prayer before a meeting. In the words of Councilman DiCicco, this would favor “Judeo-Christian groups.”¹
- 2) require prayergivers to be residents of Phoenix

This rule change is discriminatory in both intent and effect. Regardless of the legality of the rule itself, the change was proposed to keep out one particular religion. That is discrimination.

Moreover, the rule itself is flawed. Councilman DiCicco seems to misunderstand the law and issue, claiming that this is an issue of transparency or political correctness. It’s not. This is an issue of basic fairness and of constitutional equality. The founding fathers chose to prevent our government from taking sides on questions of religion—including which religions are legitimate,

¹ <http://www.12news.com/story/news/local/valley/2016/01/30/phoenix-councilmember-works-stop-satanist-prayer/79595066/>

religious enough, within the “Judeo-Christian” tradition, or whatever other religious criteria the council might wish to impose in an attempt to keep out TST.

Government prayers are an all or none proposition.

The proposed policy will not offer the political or legal cover DiCiccio believes. As you probably know, the Supreme Court recently decided *Town of Greece, N.Y. v. Galloway*. 134 S. Ct. 1811 (2014). The Court upheld prayers at local government meetings only “[s]o long as the town maintains a policy of nondiscrimination...” *Id.* at 1824. In *Galloway*, “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).

As this decision notes, and as PCC has done up to this point, a local government must open its prayers to all comers, including atheists, agnostics, Wiccans, and Satanists. ***Government prayers are an all or none proposition: either allow every sect in or stop the prayers altogether.***

The Supreme Court’s decision would have been different had the town used the prayer opportunity to discriminate against minority religions as Phoenix is considering: “The analysis would be different if town board members ... singled out dissidents for opprobrium...” *Id.* at 1814-15. There can be no “official policy or practice of discriminating against minority faiths.” *Id.* at 1817.

If PCC wants to continue to host prayers, it cannot discriminate against any person 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 (emphasis added).

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. PCC’s proposal would violate the limits of *Galloway* and therefore the First Amendment.

If this rule passes and if PCC members refuse to sponsor a prayer from a group because they disagree with that group’s message, they will not be affording nonreligious minorities the same prayer opportunity as people of majority religions. This is still discrimination.

Residency requirements violate Equal Protection

Residency requirements are inherently discriminatory against minority religions, thereby violating the principles above.

Courts have repeatedly held that residency requirements on First Amendment rights, such as religion and speech, are invalid under the Equal Protection Clause. In an Equal Protection case involving a fundamental right, such as free speech, the government must have a compelling government interest in burdening that right. “When a statutory provision burdens First Amendment rights, it must be justified by a compelling state interest.” *Fed. Election Comm’n v.*

Mass. Citizens for Life, Inc., 479 U.S. 238, 256 (1986) citing *Williams v. Rhodes*, 393 U.S. 23, 31 (1968); *NAACP v. Button*, 371 U.S. 415, 438 (1963). Obviously, discriminating against unpopular speech is not a compelling interest.

In *Buckley v. American Constitutional Law Foundation, Inc.*, the Supreme Court held unconstitutional Colorado's requirement that circulators of initiative petitions be registered Colorado voters. 525 U.S. 182 (1999). In *Nader v. Brewer*, the Ninth Circuit, which controls Arizona, concluded that a "residency requirement nevertheless excludes from eligibility all persons who . . . live outside the state of Arizona. Such a restriction creates a severe burden on . . . out-of-state supporters' speech, voting and associational rights." 531 F.3d 1028, 1036 (9th Cir. 2008). See also *Nader v. Blackwell*, 545 F.3d 459, 475 (6th Cir. 2008) (rule requiring petition circulators to be Ohio residents was a violation of First Amendment rights.); *Chandler v. City of Arvada*, 292 F.3d 1236, 1238-39, 1241-42 (10th Cir. 2002) (holding same.); *Krislov v. Rednour*, 226 F.3d 851 (7th Cir. 2000) (speech residency requirement was a substantial burden on First Amendment rights, not narrowly tailored to serve a compelling interest, and thus was unconstitutional.) In each of these cases the freedom of speech was burdened by residency requirements and those requirements were found to be unconstitutional.

Just last year, FFRF and TST filed a federal lawsuit in cooperation with the ACLU against Franklin County, Indiana over a residency requirement in the county's display policy. The County quickly amended its policy to remove the residency requirement and settled the lawsuit. PCC's proposal is similarly unconstitutional.

Yes, government prayers to a deity that you do not believe in are alienating.

That you do not wish to hear a prayer ending with the phrase "Hail Satan," is understandable. Many Americans don't want to hear prayers that end "in Jesus' name" from their government. It alienates them. Nearly 30% of Americans are non-Christians, either practicing a minority religion or no religion at all, and about 44% of millennials are non-Christian.²

That discomfort you feel at having to suffer through a satanic prayer is what we atheists, agnostics, and nonreligious Americans feel every time our government prays to a god that we don't believe in. It's something countless citizens feel when the government weighs in on religious issues in ways that conflict with their personal religion. The best policy, the most inclusive policy, is to stop prayers altogether and get straight to the business of working for your citizens.

Prayers before this council regularly alienate citizens by ending "in name Jesus name." This occurs despite the fact that Jesus condemns public prayer as hypocrisy in the Sermon on the Mount: "And when thou prayest, thou shalt not be as the hypocrites are: for they love to pray standing in the synagogues and in the corners of the streets, that they may be seen of men. Verily I say unto you, They have their reward. But thou, when thou prayest, enter into thy closet, and when thou hast shut the door, pray to thy Father which is in secret; and thy Father which seeth in secret shall reward thee openly." Matthew 6:5-6.

² *America's Changing Religious Landscape*, Pew Research Center (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

Jesus' point is simple: people that want to pray should pray. People that want to *be seen praying* are hypocrites. Any council member is free to pray at any time, before, during, or after the meetings. But as this proposal shows, that is not enough. Apparently, you need to be seen praying. You are using religion to pander and, in the process, are denigrating yourself, your office, your religion, and, according to the bible, Jesus himself.

To avoid the constitutional concerns and the divisiveness these prayers cause within the community ***the solution is simple: discontinue official, government prayers before government meetings***. We request a prompt written response confirming that you are either (1) stopping prayers altogether to avoid alienating any community members or (2) allowing The Satanic Temple to deliver its prayers as you would any other prayergiver.

Sincerely,

Andrew L. Seidel
Staff Attorney

