

October 1, 2021

**SENT VIA EMAIL & U.S. MAIL: rickwilson@polk-county.net,
georgelindsey@polk-county.net, billbraswell@polk-county.net,
marthasantiago@polk-county.net, neilcombee@polk-county.net**

Rick Wilson
Chairman
Board of Polk County Commissioners
330 W. Church St.
Bartow, FL 33931

Re: Concerns Regarding Equal Treatment of Secular Invocations

Dear Chairman Wilson and Polk County Commissioners:

We are writing on behalf of the Freedom From Religion Foundation, Atheist Community of Polk County, Central Florida Freethought Community, and Americans United for Separation of Church and State to raise concerns regarding the Board's prayer policy and practice, and to ensure that nonbelievers in Polk County are treated with the same respect and given the same rights as religious prayergivers.

As you may recall, on May 4, 2021, Sarah Ray, Director of Atheist Community of Polk County, was given the opportunity to deliver an invocation before the Board. She delivered a respectful secular message of equality and diversity, encouraging members of the public and elected leaders to respect each other despite their differences. She reminded the Board and everyone gathered that "in our differences there is great strength." She exhorted that Polk County embraces many traditions: "We are Christians, Jews, Muslims, Hindus, Buddhists, Sikhs, Humanists, atheists, agnostics, unaffiliated, uncertain, and so many others. We are straight, gay, and transgender. We are young, old, and everything in between..." She concluded: "But there is one thing on which we all agree: We share the goal of making Polk County—our County—the best place it can be. And we unite here today around that noble aim and common purpose."

Immediately following her invocation, Chairman Wilson asked everyone to stand and bow their heads before delivering a Christian prayer:

Father God, thank you for this day and for Your mercy and grace. We ask Your guidance and blessings on this meeting and our county. In Jesus' name, amen.

This Christian prayer, delivered because the invocation Sarah gave was not sufficiently Christian, was discriminatory and unconstitutional.

On October 5, 2021, David Williamson, Director of the Central Florida Freethought Community, will be delivering a secular invocation. We write to ask that David be treated with respect and to ensure that the discriminatory conduct exhibited at the May 4 meeting does not recur. If the Board cannot treat invocation speakers equally, the practice of having an invocation needs to be eliminated entirely.

As Chairman Wilson's conduct at the May 4, 2021 meeting 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 Polk 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 Polk 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 appear to endorse.

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, as the Board's policy acknowledges: "This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Board with, nor express the Board's preference for or against any faith or religious denomination."

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 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

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/.

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 invitational 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), a case in which Mr. Williamson was the lead plaintiff, 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 a board member delivers a Christian prayer to “correct” a prayer or invocation that was not Christian, the member 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 nonbeliever who delivers an invocation differently from a religious citizen constitutes discrimination.

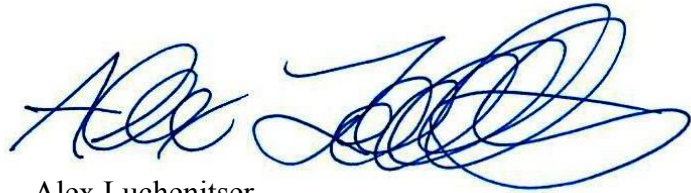
We urge you to concentrate on civil matters and leave religion to the private conscience of individuals by ending the practice of hosting prayers at your meetings. But as long as the Board continues to allow citizens to deliver invocations to begin its meetings, it must treat all

invocations the same, as its own policy requires. David should be introduced appropriately. The Board members should stand as they do for all other invocations, and no “corrective” Christian prayer should be offered after he has finished. Thank you for your time and attention to this matter.

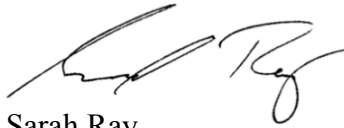
Sincerely,



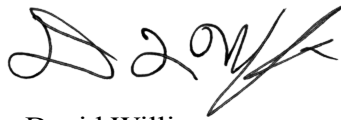
Christopher Line
Staff Attorney
Freedom From Religion Foundation



Alex Luchenitser
Associate Vice President & Associate Legal Director
Americans United for Separation of Church and State



Sarah Ray
Co-founder and Director
Atheist Community of Polk County



David Williamson
Co-founder and Director
Central Florida Freethought Community