

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

DAVID WILLIAMSON,
CHASE HANSEL,
KEITH BECHER,
RONALD GORDON,
JEFFERY KOEBERL,
CENTRAL FLORIDA
FREETHOUGHT COMMUNITY,
SPACE COAST FREETHOUGHT
ASSOCIATION, and
HUMANST COMMUNITY
OF THE SPACE COAST,

Case No. 6:15-CV-1098-ORL-28 DAB

Plaintiffs,

vs.

BREVARD COUNTY,

Defendant.

_____ /

BREVARD COUNTY'S MOTION FOR SUMMARY JUDGMENT

Brevard County, by and through its undersigned attorney, hereby moves for summary judgment in against the Plaintiffs, and as grounds therefore state that there is no issue of material fact and the County is entitled to judgment as a matter of law. The legal issues supporting the County's motion are set forth as follows and analyzed in the subsequent memorandum of law:¹

1. Plaintiffs Establishment Clause claim fails because the County's pre-meeting invocation policy conforms to Establishment Clause principles promulgated by the U.S. Supreme Court in *Town of Greece v. Galloway*.²

¹ All depositions cited hereunder have been previously filed and are not attached as exhibits to the Motion for Summary Judgment. Those documents that are attached as exhibits are labeled "Ex-#: ____" with a name identifying the document.

² 134 S. Ct. 1811 (2014).

2. The Plaintiffs Equal Protection, Free Speech and Free Exercise claims fail because the County is not required to allow Plaintiffs to present pre-meeting invocations that are not religious in nature and the Plaintiffs lack standing to present religious invocations.

3. The pre-meeting invocation policy portion of the agenda is a limited public forum with narrowly tailored and reasonable time, place and manner restrictions that can also pass strict scrutiny muster as the least restrictive way of serving the County's compelling county interest in avoiding Establishment Clause violations.

4. For the reasons set forth in Points I through III above, the Plaintiffs' stated claims for Establishment Clause, Equal Protection, Free Speech and Free Exercise violations all fail.

5. Plaintiffs' state "no aid" fails to state a claim for relief.

STATEMENT OF FACTS

County's Pre-meeting Invocation Tradition

For over forty years, the Brevard County Board of County Commissioners (hereinafter "County Commission") has opened Commission meetings with an invocation presented by a cleric or representative of the faith-based community.³ Today, the invocation takes place before the Pledge of Allegiance; prior to the awards and presentations section of the agenda where other community activities and organizations (e.g. Boy Scouting; sports teams; NASA officials) are recognized and honored; and prior to the County Commission's overwhelmingly secular business meeting.⁴ The invocation tradition is performed in recognition of the contribution of the faith-based community to the county.⁵ During the pre-meeting invocation, the cleric or

³ Ex-1: Whitten Affid. ¶9, April 28, 2016.

⁴ Ex-1: Whitten Affid. at Ex. A.

⁵ Williamson Deposition Transcript at Exhibit "DW-77."

representative of the faith-based community presents a prayer preceded by a short informative statement about activities conducted at their faith-based institution.⁶

Each Commissioner, on a rotating basis, selects a cleric from his/her district representing people who regularly attend religious services to deliver an invocation.⁷ Most Commissioners have lists of local clergymen in their districts who have given invocations in the past.⁸ According to the Plaintiffs' own compilation of Brevard's pre-meeting invocations, the speakers have nearly always been representatives from the many Christian denominations in the County.⁹ On a few occasions a non-denominational chaplain or a Jewish rabbi has given the invocation and on one occasion a Muslim imam.¹⁰

Rarely, a representative of the faith-based community cannot be arranged or fails to show up and either an audience member is called upon or a Commissioner volunteers to deliver the invocation.¹¹ Almost all prayers delivered appeal to or invoke a divine authority for a blessing on the proceedings.¹²

Plaintiffs' Beliefs and Their Requests to Deliver Pre-Meeting Invocations

On May 9, 2014 and again on July 22, 2014, Plaintiff David Williamson (an Orange County resident), wrote to Brevard County in behalf of the Central Florida Freethought Community, Inc. (hereafter "CFFC") requesting the County Commission to allow a member of CFFC to deliver a secular invocation at a Brevard County Commission meeting.¹³ CFFC is an Orange County free-thought organization whose declared purpose is "advocating for the constitutional principle of separation of state and church and educating the public on the value of

⁶ Williamson Dep. Tr. at Ex. "DW-77" at p. 2, ¶5.

⁷ Williamson Dep. Tr. at Ex. "DW-77" at p. 2, ¶4.

⁸ Williamson Dep. Tr. at Ex. "DW-77" at p. 2, ¶4.

⁹ Williamson Dep. Tr. at Ex. "DW-56."

¹⁰ Williamson Dep. Tr. at Ex. "DW-56."

¹¹ Ex-1: Whitten Affid. ¶10.

¹² Williamson Dep. Tr. at Ex. "DW-77" at p. 1-2, ¶¶1, 4, 5.

¹³ Williamson Dep. Tr. at Ex. "DW-2" – "DW-3."

a secular government.”¹⁴ CFFC is an affiliate of the American Humanist Association¹⁵ and a chapter of the Freedom From Religion Foundation (FFRF). CFFC is not a religious or religiously-based organization.

On August 19, 2014 the County Commission voted to authorize the Chairperson to respond with a letter offering CFFC or one of its members to present an invocation during the “Public Comment,” a secular section of the Commission meeting agenda.¹⁶

On January 26, 2015 Americans United for Separation of Church and State (hereafter “AU”), the American Civil Liberties Union, and FFRF sent a joint letter in behalf of Plaintiffs Williamson and Hansel requesting that the County Commission Chair allow those two Plaintiffs to be added to the list of invocation givers.¹⁷ On May 26, 2015 a second joint letter from those same organizations was sent to the Commission Chair in behalf of the all five individual Plaintiffs, Plaintiff CFFC, and Plaintiff Space Coast Freethought Association.¹⁸ The letter requested that each of those individual and groups be permitted to deliver nontheistic invocations at the opening of County Commission meetings.¹⁹

All of the individual Plaintiffs admit²⁰ to being atheists and secularists who do not believe in the existence of God or a divine authority.²¹ Plaintiffs Williamson and Hansel believe atheism is a religion, “as defined by case law.”²² Plaintiff Williamson is the founder of CFFC, as

¹⁴ Williamson Dep. Tr. at Ex. “DW-8.”

¹⁵ Williamson Dep. Tr. at Ex. “DW-8.”

¹⁶ Williamson Dep. Tr. at Ex. “DW-4.”

¹⁷ Williamson Dep. Tr. at Ex. “DW-7.”

¹⁸ Williamson Dep. Tr. at Ex. “DW-7A.”

¹⁹ Williamson Dep. Tr. at Ex. “DW- 7A.”

²⁰ Each individual Plaintiff admitted the truth of the allegations about them in Plaintiffs’ First Amended Complaint and in their depositions. Williamson Dep. Tr. at Ex. 10:12-11:3; Gordon Dep. Tr. 7:9-8:1, March 8, 2016, (previously filed); Becher Dep. Tr. 7:25-8:21, March 10, 2016, (previously filed); Koeberl Dep. Tr. 7:5-7:22, March 9, 2016, (previously filed); Hansel Dep. Tr. 7:17-8:8, March 9, 2016, (previously filed).

²¹ Pls.’ First Am. Compl. ¶¶ 3, 10, 25, 39, 57 and 66.

²² Pls.’ First Am. Compl. ¶¶ 19, 33,186; Williamson Dep. Tr. at Ex. “DW-2.”

well as an officer and director.²³ He has attended at least one County Commission meeting where he advocated for allowing secular invocations during the pre-meeting invocation.²⁴ All of the individual Plaintiffs except Gordon identify as secular humanists.²⁵ Plaintiffs Williamson, Becher and Koeberl are also Humanist Celebrants and, in Koeberl's case, he is also a Humanist Chaplain—a designation created and ordained by the Humanist Society, an adjunct organization of the American Humanist Association.²⁶ Under the heading “Inspiration/Reflection, Introduction,” the “Handbook for Celebrants” published by the Humanist Society acknowledges that an invocation “involves a prayer to bring a higher power and blessing into the ceremony,” and that “Humanists won't be invoking any higher power, and this may seem like false advertising” when talking about Humanist invocations. Therefore, the Handbook suggests using the words “inspiration” or “reflection” in lieu of “invocation.”²⁷ Plaintiffs Williamson, Becher and Koeberl, are also members of the American Humanist Association (AHA),²⁸ which advocates use of reason, ethics, knowledge, compassion and science in decision-making.²⁹

The American Humanist Association maintains a website on which it publishes articles that are hostile to the Judeo-Christian Bible, Christianity, and religion in general.³⁰ Those articles include “Some Reasons Why Humanists Reject the Bible,” which promotes rejection of the Bible as the word of God by arguing that the Bible “was written solely by humans in an ignorant, superstitious and cruel age;” that the Bible “contains many errors and harmful teachings” and “numerous contradictions;” that “biblical myths support the belief, which has been held by primitive and illiterate people throughout history, that supernatural beings

²³ Williamson Dep. Tr. 14:22-23.

²⁴ Pls.' First Am. Compl. ¶20; Williamson Dep. Tr 42:14-43:4.

²⁵ Pls.' First Am. Compl. ¶¶ 10, 25, 39, 66.

²⁶ Pls.' First Am. Compl. ¶¶ 11, 40, 67.

²⁷ Williamson Dep. Tr. Ex. “DW-17” p.80; Williamson Dep. Tr. 57:3-12, 73:23-25, 75:7-77:24.

²⁸ Williamson Dep. Tr. 79:1-5; Koeberl Dep. Tr. 19:22-25; Pls.' First Am. Compl. ¶¶ 41, 68.

²⁹ Williamson Dep. Tr. Ex. “DW-16,” “DW-26;” Williamson Dep. Tr. 40:18- 41: 5.

³⁰ Williamson Dep. Tr. Ex. “DW-18,” “DW 21-25.”

frequently and arbitrarily intervene in this world;” that “in the light of experience and reason, the Bible’s claims about supernatural occurrences do not warrant belief;” that “treating this mistake-ridden book as the word of God, humanity has been led down many paths of error and misery throughout history;” and that the Bible would “perpetuate the ideas of an ignorant and superstitious past - and prevent humanity from rising to a higher level.”³¹ These articles –though constitutional expressions of Humanist beliefs – are pointedly hostile toward all Bible-based faiths, particularly Judaism and Christianity.

Plaintiffs Hansel, Becher and Koeberl³² have expressed admiration for the writings of Professor/Astrophysicist Lawrence Krauss, a self-proclaimed anti-theist who, in an interview with atheist biologist Richard Dawkins in Krauss’ *A Universe from Nothing*, described God as a “divine Saddam Hussein-like character.”³³ Plaintiffs Hansel, Becher, Gordon and Koeberl all express admiration for the writings and statements of atheist Richard Dawkins, who, in *The God Delusion* declares his open hostility toward monotheistic faiths, calling God “arguably the most unpleasant character in all fiction: jealous and proud of it; a petty, unjust, unforgiving control-freak; a vindictive, bloodthirsty ethnic cleanser; a misogynistic, homophobic, racist, infanticidal, genocidal, filicidal, pestilential, megalomaniacal, sadomasochistic, capriciously malevolent bully.”³⁴ These three Plaintiffs also express admiration for Sam Harris, an atheist whose *Letter to a Christian Nation* is replete with hostile comments about Christianity, the Bible and Christians including the suggestion that God is “the most prolific abortionist of all.”³⁵

All of the individual Plaintiffs are members of FFRF, in whose behalf FFRF Attorney Andrew Seidel signed the two joint letters requesting Plaintiffs’ placement on the invocation

³¹ Williamson Dep. Tr. Ex. “DW-21”; Williamson Dep. Tr. pp.84-89.

³² Pls.’ First Am. Compl. ¶¶ 65-77; Koeberl Dep. Tr. 22:20-25; 23:1-8.

³³ Koeberl Dep. Tr. 22:6-7.

³⁴ Pls.’ First Am. Compl. ¶¶ 38-53; Becher Dep. Tr. 17:19-25; 18:1-17.

³⁵ Pls.’ First Am. Compl. ¶¶ 54-64; Gordon Dep. Tr. 23:23-24.

rotation. CFFC is a chapter of FFRF, utilizes lawyers provided by FFRF and receives partial funding from FFRF for its efforts to recruit new FFRF members.³⁶ FFRF has also recruited Plaintiff Williamson as a spokesperson for separation of church and state issues throughout Florida and featured Williamson on FFRF-hosted radio talk shows.³⁷ An organization “initially founded for the very purpose of protesting government prayer at city and county meetings,” FFRF views as “hostile” the United States Supreme Court’s decision upholding pre-meeting prayers in *Town of Greece v. Galloway*, the dispositive precedent in this case.³⁸ This hostility was evidenced in an FFRF news release responding to the *Town of Greece* stating: “If the Supreme Court won't uphold the Constitution, it's up to us-it's up to you is the response of the Freedom From Religion Foundation to the high court's ruling May 5 that judicially blessed sectarian prayer at official government meetings”³⁹—implying FFRF is seeking a way to eliminate pre-meeting invocations.

Indeed, the May 5, 2014 FFRF newsletter goes on to set forth FFRF’s strategy, adopted by CFFC, for overcoming the *Town of Greece* decision by promising awards to citizens “who succeed in delivering secular ‘invocations’ at government meetings.”⁴⁰ FFRF called this campaign the “Nothing Fails Like Prayer Award ” contest, to be held annually “until the *Greece* decision is overturned.”⁴¹ FFRF’s goal for the “Nothing Fails Like Prayer Award” contest “is to show that government bodies don't need prayer to imagined gods, or religion or superstition to govern—they need to be guided by reason.”⁴² A newsletter statement from an FFRF Co-

³⁶ Williamson Dep. Tr. at Ex. “DW-30.”

³⁷ Williamson Dep. Tr. at Ex. “DW-34”, “DW-44.”

³⁸ Becher Dep. Tr. at Ex. “KB-1.”

³⁹ Becher Dep. Tr. at Ex. “KB-1.”

⁴⁰ Becher Dep. Tr. at Ex. “KB-1.”

⁴¹ Becher Dep. Tr. at Ex. “KB-1.”

⁴² Becher Dep. Tr. at Ex. “KB-1.”

President states the clear aim of secular invocations contest is either to displace sectarian invocations or to abolish pre-meeting government invocations altogether:

“[D]espite the approval of sectarian governmental prayer by five Supreme Court Justices, there is no requirement for government bodies to open with prayer. Citizen request has stopped the practice of government prayer throughout the country and can continue to do so.

We’d like to see secular citizens flood government meetings with secular invocations that illustrate why government prayers are unnecessary, ineffective, divisive, embarrassing and exclusionary of the 20-30 percent of the U.S. population today that identifies as nonreligious.”⁴³

Six months after the *Town of Greece* decision, Plaintiff Williamson sent an email in behalf of CFFC reiterating the FFRF “Nothing Fails Like Prayer Award” goal: “As with government prayer and bible distributions, we want to first work hard to stop it (sic) violations before we seek equitable treatment for ourselves unless we need absolutely have to.”⁴⁴ Williamson supported the FFRF “Nothing Fails Like Prayer Award” contest by maintaining an archive of secular invocations on the CFFC website and seeking, himself, to perform secular invocations at government meetings⁴⁵—activities encouraged by FFRF Attorney Seidel, who Williamson identifies as also being CFFC’s attorney.⁴⁶ It was FFRF’s Seidel who developed the strategy for eliminating perceived violations of church-state separation, labeled the “nuclear option,” whereby the Satanic Temple is recruited to test the forum (i.e., pre-meeting invocation, public school Bible distribution, etc.) in the hopes that the government will choose to close the forum rather than allow Satanic Temple’s participation. Williamson labeled that strategy “Lucien’s Law” (a reference to Satanic Temple leader Doug Messner a/k/a Lucien Greaves).⁴⁷ The strategy was touted on CFFC tweets, Facebook page and newsletter as successful in

⁴³ Becher Dep. Tr. at Ex. “KB-1.”

⁴⁴ Williamson Dep. Tr. at Ex. “DW-38.”

⁴⁵ Williamson Dep. Tr. 26:1-13; 57:18- 59:13; Williamson Dep. Tr. at Ex. “DW-60” at pp. 5, 11, 38, 43.

⁴⁶ Williamson Dep. Tr. at Ex. “DW-44.”

⁴⁷ Williamson Dep. Tr. at Ex. “DW-74”, “DW-71”; Williamson Dep. Tr. 164:8-19.

stopping pre-meeting prayer in the City of Coral Springs, Florida as well as Bible distributions by the Orange County School District in Florida.⁴⁸

Williamson also openly opposed reinstatement of pre-meeting prayer in Winter Gardens, Florida after the *Town of Greece* decision with these words: "Government prayers turns nonbelievers into political outsiders in our own community. The practice is inappropriate, unnecessary, and divisive. It is coercive for a city government to ask its citizens to participate in prayer... The proposal on the agenda Thursday would walk back that progress, inflicting prayer on Winter Garden's citizens once again."⁴⁹

Thus, Plaintiffs' request to deliver an invocation belies their intent of displacing and eliminating the County's constitutional pre-meeting prayer practice.

County's Response to AUSCS letter

The County Commission responded to the May 26, 2015 AU, ACLU and FFRF letter in behalf of CFFC by adopting Resolution 2015-101 setting forth factual findings and conclusions incorporated into a pre-meeting invocation policy.⁵⁰ Those findings and conclusions included the following:⁵¹

18. FFRF sponsors a webpage that invites persons to sign up for the opportunity to post "Your Godless quotes" on a "cyberboard campaign designed to allow participants to proclaim that they are "a freethinker and why".

19. Apparently, the FFRF staff then selects certain "Godless quotes" to post on their website at their www.ffif.org/out/staffpicks page of that website. Many of the quotes selected for the FFRF "staff picks" page are openly scoffing, mocking, demeaning, extremely hostile and even hateful toward traditional faith-based monotheistic religions, such as those that are represented before the Board during the invocation presented at any regular Board meeting. Examples of these quotes posted as of June 21, 2015, include:

a. "Religion is the most devastating weapon ever used against humanity";

⁴⁸ Ex. 2: Pls.' Resp. to Def.'s First Req. for Admis. No. 13e, 13g, 15a, 15b; Williamson Dep. Tr. at Ex. "DW-73", "DW-74."

⁴⁹ Williamson Dep. Tr. at Ex. "DW-41."

⁵⁰ Williamson Dep. Tr. at Ex. "DW-77."

⁵¹ Williamson Dep. Tr. at Ex. "DW-77."

- b. "Superman is objectively better than Jesus, because Superman will save you whether you believe in him or not."
- c. "God-The most vengeful, jealous, pernicious, unloving dead beat Dad ever. Who also has superpowers to see and hear everything you do. Really? Who wants to sign up for that?"
- d. "The Bible is *just* a story. It's not even a very good one."
- e. "The church is a charity in precisely the same way that a tapeworm is a weight loss program."
- f. "I am a nonbeliever because there is historical and empirical proof that all religions are evil."

20. FFRF has engaged in this cyberboard campaign at least back to September of 2014 where other hostile quotes were posted at www.ffrf.org/out/staff/staffpicks. The same types of scoffing, mocking and hostile comments appeared on that page. (See Composite Exhibit 1) Examples of those statements (the first of which omits the full spelling of a common epithet) include:

- a. "Your God is an a __ , for the Bible tells me so."
- b. "Ditch God belief and re-join the real world."
- c. "I view religion like cancer. Just because a bunch of people have it doesn't make it a good thing."
- d. "How can I be good without God? I am not a socio-path."
- e. "History shows that as scientific knowledge increases, the need for the supernatural decreases."

30. CFFC-affiliated speakers giving invocations at other local government meetings have exploited the opportunity to proselytize and advance their own beliefs while disparaging the beliefs of faith-based religions.

36. ...the Board finds that yielding to FFRF and AUSCS views by supplanting traditional ceremonial pre-meeting prayer before the Board's secular business agenda at regular Board meetings-a segment reserved for the acknowledgement and interaction with the county's faith-based community-with an "invocation" by atheists, agnostics or other persons represented by or associated with FFRF and AUSCS could be viewed as County hostility toward monotheistic religions whose theology and principles currently represent the minority view in Brevard County. The Board concludes that such action may be deemed to violate the Constitution of the State of Florida.

37. ...the organizations requesting the substitution of Secular Humanists or atheists to conduct a pre-meeting invocation by displacing representatives of the minority faith-based monotheistic community which has traditionally given the pre-meeting prayer, could be viewed as the Board endorsement of Secular Humanist and Atheist principles in view of:

- a. the overwhelmingly secular nature of the Board's business meeting following the invocation; and
- b. the evidence suggesting that the requesting organizations are engaged in nothing more than a carefully orchestrated plan to promote or advance principles

of Secular Humanism through the displacement or elimination of ceremonial deism traditionally provided by monotheistic clerics giving pre-meeting prayers.

38. All of the organizations seeking the opportunity to provide an invocation have tenets or principles paying deference to science, reason and ethics, which, in most cases, are the disciplines the Board must consider, understand and utilize when acting upon secular items presented for consideration during the Board's secular business agenda.

39. Therefore, the Board finds that deferring consideration or presentation of a secular humanist supplication during the Public Comment portion of the agenda immediately after the consent agenda—which is the first item on the secular business agenda is acted upon—does not deny or unreasonably restrict the opportunity of the requesting parties to present their Secular Humanist or atheistic invocations, supplications, instruction, petitions for redress of grievances or comments, all of which can be presented during the portion of the agenda reserved for secular business matters.

In addition, the Board of County Commissioners made the following findings of fact:

8. According to The Association of Religious Data Archives (ARDA) County Membership Report, Brevard County, in 2010 the population of Brevard County was 543,376 . (See attached Exhibit B)

9. According to the ARDA report, cited above, out of the 543,376 people living in Brevard County in 2010, only 189,430 people (including church members, their children and others who regularly attend services) claimed to be adherents to any religious faith, which was 34.9% of the County's total population. (See attached Exhibit B)⁵²

In ARDA— an association comprised of members of the Sociology Department at the Pennsylvania State University⁵³—indicates that the data in the ARDA report, including data showing that only 34.9% percentage of the total County population are adherents (full members, their children and others who regularly attend services) “originally appeared in ‘2010 U.S. Religion Census: Religious Congregations & Membership Study’ published by the Association of Statisticians of American Religious Bodies (ASARB), C. Grammich, et. al.⁵⁴ Notably, this document was used as a statistical reference by Justice Alito in his concurring opinion in *Town of*

⁵² Williamson Dep. Tr. at Ex. “DW-77” at Ex. B.

⁵³ Williamson Dep. Tr. at Ex. “DW-77” at Ex. B.

⁵⁴ Williamson Dep. Tr. at Ex. “DW-77” at Ex. B.

Greece v. Galloway.⁵⁵ The affidavit of ASARB President and co-author of that study, Clifford Grammich, notes that the data in the study indicates that Brevard County ranks in the bottom 4% of congregant adherence percentage out of the 125 most populous counties in the United States and ranks in the bottom 16% of all counties, or county equivalents, nationwide.⁵⁶

Based upon the factual findings and conclusions quoted above, as incorporated into Resolution 2015-101, the County Commission adopted the following policy:

(c) . . . In view of the requests by secular, humanist, atheist and Secular Humanist organizations to provide a secular, Secular Humanist or an atheist invocation, the Board hereby clarifies the intent of the Board's existing policies allowing Public Comment to including individual or representative comments intended to instruct the Board; to petition for redress of grievances; to comment upon matters within the control, authority and jurisdiction of the Board; and to comment on matters that are relevant to business of the County Commission, as well as matters upon which the Board has traditionally expressed a position for the betterment of the community interest Secular invocations and supplications from any organization whose precepts, tenets or principles espouse or promote reason, science, environmental factors, nature or ethics as guiding forces, ideologies, and philosophies that should be observed in the secular business or secular decision making process involving Brevard County employees, elected officials, or decision makers including the Board of County Commissioners, fall within the current policies pertaining to Public Comment and must be placed on the Public Comment section of the secular business agenda. Pre-meeting invocations shall continue to be delivered by persons from the faith-based community in perpetuation of the Board's tradition for over forty years.⁵⁷

None of the Plaintiffs has ever appeared or requested to appear before the County Commission to deliver a secular invocation during the Public Comment section of the agenda in accordance with Resolution 2015-101.⁵⁸

Argument

⁵⁵ See *Town of Galloway v. Greece*, 134 S.Ct. 1811, 1828 fn 1(2014) (“See Assn. of Statisticians of Am. Religious Bodies, C. Grammich et al., 2010 U.S. Religion Census: Religious Congregations & Membership Study 400-401 (2012).”)

⁵⁶ Ex. 3: Grammich Affid. ¶¶16h, 16j, April 21, 2016.

⁵⁷ Williamson Dep. Tr. at Ex. “DW-77” at p. 10-11.

⁵⁸ Ex. 2: Pls.’ Resp. to Def.’s First Req. for Admis. No. 2.

I. Plaintiffs Establishment Clause claim fails because the County’s pre-meeting invocation policy conforms to Establishment Clause principles promulgated by the U.S. Supreme Court in *Town of Greece v. Galloway*.

In *Town of Greece v. Galloway*,⁵⁹ the U.S. Supreme Court upheld the pre-meeting sectarian invocation tradition in many cities and counties throughout the nation and rejected the claim that pre-meeting prayer violates the Establishment Clause of the First Amendment to the U.S. Constitution. Following its precedent in *Marsh v. Chambers*,⁶⁰ —which upheld the opening of each session of Nebraska’s legislature with a prayer by a government paid chaplain, -- the Court held that the two-hundred year tradition of legislative invocations delivered prior to government meetings was an acceptable practice observed by the framers of the Constitution and, therefore, an exception to the Court’s Establishment Clause jurisprudence.⁶¹ In *Town of Greece* the Court reasoned:

“There can be little doubt that the decision in *Marsh* reflected the original understanding of the First Amendment. It is virtually inconceivable that the First Congress, having appointed chaplains whose responsibilities prominently included the delivery of prayers at the beginning of each daily session, thought that this practice was inconsistent with the Establishment Clause.”⁶²

However, in *Town of Greece* the Court did pose a caveat: In pre-meeting invocation cases, “[t]he inquiry remains a fact-sensitive one that considers both the setting in which the prayer arises and the audience to whom it is directed” but that “[o]n the record in this case the Court is not persuaded that the Town of Greece, through the act of offering a brief, solemn, and respectful prayer to open its monthly meetings, compelled its citizens to engage in a religious observance.”⁶³ This “fact-sensitive” analysis, as applied by federal courts reviewing post-*Town of Greece* government invocation cases, weighs heavily in favor of the validity of the County’s

⁵⁹ *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014).

⁶⁰ 103 S.Ct. 3330 (1983).

⁶¹ *Town of Greece*, at 1834.

⁶² *Id.*

⁶³ *Id.* at 1825.

pre-meeting invocation policy in this case, particularly in light of this dispositive principle promulgated by the *Town of Greece* court:

“Adults often encounter speech they find disagreeable; and an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views in a legislative forum, especially where, as here, any member of the public is welcome in turn to offer an invocation reflecting his or her own convictions.”⁶⁴

As this Honorable Court has already discovered, the County policy *does* offer Plaintiffs’ the opportunity to perform an invocation reflecting their own convictions. Therefore, under *Town of Greece* there is no Establishment Clause violation.

Post *Town of Greece* Cases

Four federal courts have rendered decisions in pre-meeting invocation cases involving counties since the U.S. Supreme Court decided *Town of Greece*. Three of the four cases involved facts where members of the county’s governing body were the exclusive presenters of pre-meeting invocations.⁶⁵ Two federal judges found a violation of the Establishment Clause existed, reasoning that the identity of the speakers—who were exclusively elected board members—was a significant factor distinguishing those cases from the reasoning in *Town of Greece*.⁶⁶ In *Lund v. Rowan County*,⁶⁷ the court held that if Commissioners are the only eligible prayer-givers presenting prayers according to their personal Christian faiths, the prayers are effectively delivered by the government itself, and, thus, fail to be nondiscriminatory and entangle government with religion by, over time, establishing a pattern of prayers that tends to advance the Christian faith of the elected Commissioners. Likewise in *Hudson v. Pittsylvania*

⁶⁴ *Id.*

⁶⁵ *Lund v. Rowan County*, 103 F. Supp. 3d 712 (M.D.N.C. 2015); *Hudson v. Pittsylvania County*, 107 F. Supp. 3d 524 (W.D. Va. 2015); *Bormuth v. County of Jackson*, 116 F. Supp. 3d 850 (E.D. Mich. 2015); *Coleman v. Hamilton County*, 104 F. Supp. 3d 877 (E.D. Tenn. 2015).

⁶⁶ *Lund*; *Hudson*.

⁶⁷ *Lund*.

County,⁶⁸ the court kept a pre-*Town of Greece* injunction in place prohibiting the County board's exclusive practice of having a board member lead citizens in prayer associated with one faith tradition at the opening of Board meetings.

In contrast, the Federal District Court Judge addressing nearly identical facts in *Bormuth v. County of Jackson*,⁶⁹ upheld as non-coercive a practice in which pre-meeting prayers were delivered only by County Commissioners. The court found that the Commissioners' exclusive role in developing the prayers' content did not foster an entanglement with religion because “if the Court determined that the constitutionality of a legislative prayer is predicated on the identity of the speaker, potentially absurd results would ensue.”⁷⁰ Under such a holding, an invocation delivered in one county by a guest minister would be upheld, while the identical invocation delivered in another county by one of the legislators would be struck down.”⁷¹ The Court went on to say that it was constrained to follow the Supreme Court precedents set forth in *Marsh* and *Greece* by upholding the practice at issue.

Significantly, in the case before this court, pre-meeting invocations are rarely given by Commission members. Only on the relatively infrequent occasions when a volunteer cleric cannot be found to present the invocation or fails to appear at the meeting will a Commissioner (or staff member) personally present an invocation.⁷²

Coleman v. Hamilton County

In one post-*Town of Greece* pre-meeting invocation case, *Coleman v. Hamilton County*,⁷³ a Federal District Court Judge upheld a county pre-meeting invocation policy much

⁶⁸ *Hudson*.

⁶⁹ 116 F. Supp. 3d 850 (E.D. Mich. 2015).

⁷⁰ *Id.* at 859.

⁷¹ *Id.*

⁷² Ex. 1: Whitten Affid. ¶10.

⁷³ 104 F. Supp. 3d 877 (E.D. Tenn. 2015)

like the one before this court. In *Coleman*, the County's written policy withstood an Establishment Clause challenge attacking a restriction allowing only an eligible member of the clergy in Hamilton County, Tennessee to give an opening invocation at Commission meetings.

Using different language, Brevard County's policy takes a similar approach to Hamilton County's, but is more inclusive. Under Brevard's policy, only members of the faith-based community are permitted to give the invocation during the limited public forum set aside by the Commission solely for the purpose of recognizing the faith-based community prior to the commencement of the secular business meeting. However, Brevard's policy affords two separate opportunities for individuals to present secular invocations during either one of the two Public Comment time slots.⁷⁴ The first occurs after the consent agenda, but before the Commission takes up deliberative agenda items where Commissioner's apply reason, knowledge, ethics, compassion and science—all hallmark principles of secular humanism.⁷⁵

In the context of Brevard's secular invocation accommodation during Public Comment, but after the faith-based invocation, the *Coleman* court's reasoning is particularly relevant:

Implicit in the body of federal case law on legislative prayer — which all repeatedly emphasize that legislative prayer is somehow different than other Establishment Clause cases — is the understanding the government may favor religion over nonreligion in this narrow circumstance.⁷⁶

The Federal District Court Judge in *Coleman* also added this analysis: "Prayer, by its very definition, is religious in nature...Thus, while legislative bodies cannot intentionally discriminate against particular faith systems, they can require that invocation givers have some religious credentials."⁷⁷ This Court's reasoning suggests that, under a *Town of Greece* analysis, it is not necessary to allow non-religious "secular invocations" at all. However, Brevard

⁷⁴ Williamson Dep. Tr. Ex. "DW-77."

⁷⁵ Williamson Dep. Tr. Ex. "DW-16."

⁷⁶ *Coleman*, at 889-890.

⁷⁷ *Id.* at 890 (internal citations omitted).

County's policy creates two limited public forums for secular invocations during the Public Comment item at every meeting, thereby evidencing a strong conformity to the pre-meeting invocation tradition approved by the U.S. Supreme Court in *Town of Greece*.

Comparing Greece and Brevard

A comparison of the Town of Greece's policy and Brevard County's policy is warranted at this point. In Greece, N.Y., the Town's council members, the Town Supervisor and Town Police Chief sit on a raised dais at the front of the meeting room facing the audience.⁷⁸ Following the roll call and recitation of the Pledge of Allegiance, the Town Supervisor invites a local Christian clergyman to the front of the room and introduces this clergy member—denominated the chaplain of the month—to lead the assembled persons in prayer. The pastor steps up to a lectern (emblazoned with the Town's seal) at the front of the dais, and with his back to the Town officials, he faces the citizens present, asking them to stand and pray as we begin this evening's town meeting. The pastor then delivers the invocation. After the prayer, the Town Supervisor would thank the minister for serving as the board's 'chaplain for the month' and present him with a commemorative plaque.⁷⁹

In contrast, the Brevard County Commission Chair sometimes asks the audience to stand, sometimes not.⁸⁰ As the Commissioners stand, the Chair announces the name of the cleric or person who will give the invocation,⁸¹ then names the Commissioner who will lead the Pledge of Allegiance, which *follows* the invocation.⁸² For the introduction of the cleric, the Chair typically defers to the District Commissioner responsible for inviting the cleric/invocator who is typically introduced as he or she approaches a lectern (which has no county seal) and faces the

⁷⁸*Town of Greece v. Galloway*, 134 S. Ct. 1811, 1816 (2014).

⁷⁹ *Id.*

⁸⁰ Ex. 1: Whitten Affid. ¶11.

⁸¹ Ex. 1: Whitten Affid. ¶16.

⁸² This Court might take judicial notice that, in this country, it is customary to stand for the Pledge of Allegiance.

Commissioners seated on the dais.⁸³ The cleric is then given a few minutes to talk to the Board about activities in their institution before delivering the invocation while facing the Commissioners with his or her back to the audience.⁸⁴ At the conclusion of the invocation, while everyone is still standing, the Commissioner responsible for leading the Pledge turns toward the flag and leads the Pledge of Allegiance. At the conclusion of the Pledge, the Chair turns to the invocator and thanks him or her, who then leaves the lectern.⁸⁵

Both Greece and Brevard follow an informal method for selecting prayer givers, all of whom are unpaid volunteers.⁸⁶ In Greece, employees of the elected officials made calls to lists of willing Christian clergy members in the city.⁸⁷ In Brevard's case, most County Commissioners have a staff member contact willing clerics of Christian, some Jewish and, in one instance, a Muslim institution within the Commissioner's district.⁸⁸ Commissioners indicate that volunteer clerics from other religions would also be welcomed as invocators.⁸⁹ Invocators have been largely Christian because over 94% of congregations in Brevard County are Christian congregations, though only 34.9% of *all* Brevard congregations regularly attend religious services.⁹⁰

Neither Greece nor Brevard evidence a pattern of invocations that, over time, proselytize or advance any one faith, or disparage any other faith.⁹¹ Like Greece, the Brevard policy allows atheists to present invocations in a separate limited public forum during the Public Comment

⁸³ Ex. 1: Whitten Affid. ¶¶16-17.

⁸⁴ Ex. 1: Whitten Affid. ¶19.

⁸⁵ Ex. 1: Whitten Affid. ¶22.

⁸⁶ *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1816 (2014); Anderson Dep. Tr. 11:23-14:5, Feb. 17, 2016, (previously filed); Smith Dep. Tr.9:9-17, Feb. 17, 2016, (previously filed); Barfield Dep. Tr. 7:25-8:11, Feb. 19, 2016, (previously filed); Fisher Dep. Tr. 8:19-9:24, Feb. 19, 2016, (previously filed); Infantini Dep. Tr. 8:21-9:11, Feb. 18, 2016, (previously filed).

⁸⁷ *Town of Greece*, at 1816.

⁸⁸ Williamson Dep. Tr. at Ex. "DW-77" at p.2.

⁸⁹ Infantini Dep. Tr. 17:22-25; Anderson Dep. Tr. 16:10-21; Barfield Dep. Tr. 10:8-17; Fisher Dep. Tr. 10:25 – 11:5; Smith Dep. Tr. 10:12-15, 11:1-19.

⁹⁰ Williamson Dep. Tr. at Ex. "DW-77" at Ex B.

⁹¹ *Town of Greece*, at 1821, 1824; Ex. 1: Whitten Affid. ¶¶13-15.

section of the agenda. In sum, the Brevard facts are actually less onerous to Plaintiffs than those in *Town of Greece*.

Plaintiffs have not alleged any facts or revealed any evidence supporting their allegation that the invocations are coercive. There is no evidence on the record suggesting that any County Commissioners allocated benefits and burdens based on participation or non-participation in the prayer, or that citizens were received differently depending on whether they stood during the invocation and Pledge or quietly remained seated.⁹² In no instance has any Commissioner signaled disfavor toward nonparticipants or suggested that their stature in the community was in any way diminished.⁹³ Moreover, there is no evidence that “board members directed the public to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person’s acquiescence in the prayer opportunity.”⁹⁴

Williamson acknowledges he did not have to remain in the Commission chambers during the invocation⁹⁵ and that he could have viewed the proceedings on a television in the lobby outside the Commission chambers until the prayer and Pledge were finished.⁹⁶ No other plaintiff has even attended a Board meeting.⁹⁷

The facts in this case show even less coerciveness than those in *Town of Greece* where the Court found no coercion in violation of the Establishment Clause.⁹⁸ It follows that no Establishment Clause violation in this case and that none of the Plaintiffs has standing to sue for coercion because none has alleged a concrete and particular injury in fact.

II. The Plaintiffs Equal Protection, Free Speech and Free Exercise claims fail because the County is not required to allow Plaintiffs to present pre-meeting invocations that

⁹² Ex. 1: Whitten Affid. ¶¶13-15.

⁹³ Ex. 1: Whitten Affid. ¶¶13-15; *Town of Greece*, at 1826.

⁹⁴ *Town of Greece* at 1826.

⁹⁵ Williamson Dep. Tr. 43:25-44:2.

⁹⁶ Ex. 1: Whitten Affid. ¶27; Williamson Dep. Tr. 43:20 – 44:8.

⁹⁷ Koeberl Dep.Tr. 12:1-2; Gordon Dep.Tr. 21:9-12; Hansel Dep.Tr. 28:6-8.

⁹⁸ *Town of Greece*, at 1826.

are not religious in nature and the Plaintiffs lack standing to present religious invocations.

Plaintiffs seek declaratory and injunctive relief from this Court to require the County to change its *invocation* policy to allow secular humanists and atheists to present opening invocations before the Board of County Commissioners.⁹⁹ The County's invocation policy clearly states: "*Pre-meeting invocations shall continue to be delivered by persons from the faith-based community in perpetuation of the Board's tradition for over forty years.*"¹⁰⁰ That same policy affords Plaintiffs the opportunity to deliver a "secular invocation" during one of two Public Comment sections of the agenda before the Commission begins discussion of the deliberative agenda items on its secular business agenda. Therefore, Plaintiffs actual Equal Protection claim is predicated on a perceived right to regularly deliver pre-meeting "secular invocations" and to displace the faith-based community on those occasions. For the reasons that follow, the Plaintiffs' Equal Protection claim fails.

The U.S. Supreme Court has defined the word "invocation" as a "term which primarily describes an appeal for divine assistance."¹⁰¹ Similarly, the decision in held that "[p]rayer, by its very definition, is religious in nature," which is consistent with the *Santa Fe* court's definition, thereby supporting the *Coleman* court's conclusion that "while legislative bodies cannot intentionally discriminate against particular faith systems, they can require that invocation givers have some religious credentials."¹⁰²

⁹⁹ Pls.' First Am. Compl. ¶¶ 336 – 338.

¹⁰⁰ Williamson Dep. Tr. at Ex. "DW-77".

¹⁰¹ *Santa Fe Independent School District v. Doe*, 120 S. Ct. 226, 2277 (2003)(School district policy allowing students "to deliver nonsectarian, non-proselytizing invocations and benedictions for the purpose of solemnizing their graduation ceremonies held violation of Establishment clause).

¹⁰² *Cf. Marsh v. Chambers*, 103 S. Ct. 3330 (1983)(Chaplain hired to present invocation opening legislature's meetings not an Establishment Clause violation); *See also Town of Greece v. Galloway*, 134 S. Ct. 1811, 1827 (2014) (Christian clerics sectarian pre-meeting prayers acknowledge the central place that religion, and religious institutions, hold in the lives of those present).

The *Santa Fe* and *Coleman* decisions, therefore, undermine both the substance of the Plaintiffs' Equal Protection argument and Plaintiffs' very standing to bring such a claim. This is evidenced by the definition provided in the Humanist Society Celebrant Handbook that an "invocation" is "a prayer to bring a higher power and blessing into the ceremony."¹⁰³ Such "higher power," the Handbook admits, is one "Humanists won't be invoking"—as is evidenced in the plethora of secular invocations archived on the CFFC website.¹⁰⁴

The Brevard County policy on pre-meeting invocations contemplates a faith-based religious invocation invoking divine assistance. Nonreligious atheists like the Plaintiffs are no more capable of giving a faith-based religious *invocation* than they are capable of giving birth to a baby because the Brevard policy calls for an inherently a religious prayer, as defined in the *Santa Fe* and *Coleman* decisions,. Plaintiff Williamson admitted as much in a secular invocation he presented to the City of Sanford: "we cannot offer the legislative prayer the agenda calls for."¹⁰⁵

Plaintiffs are thereby unable to meet their burden of establishing standing to make any of the claims they have raised in this case because Plaintiffs cannot show an injury that can be redressed by a favorable decision from this Court, which cannot order the County to allow Plaintiffs to deliver a faith-based religious invocation, which Plaintiffs are admittedly incapable of delivering.¹⁰⁶

¹⁰³ Williamson Dep. Tr. at Ex. "DW-17" p.80. According to the Celebrant Handbook, a pre-meeting "invocation" involves "a prayer to bring a higher power and blessing into the ceremony," which the Handbook admits, "Humanists won't be invoking."

¹⁰⁴ Williamson Dep. Tr. at Ex. "DW-60."

¹⁰⁵ Williamson Dep. Tr. at Ex. "DW-60" p. 11.

¹⁰⁶ *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009) (A plaintiff who brings suit "bears the burden of showing that he has standing for each type of relief sought"); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (To establish standing Plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical'; there must be a causal connection between the injury and the conduct complained of; and *it must be 'likely,' as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."*(emphasis added)).

III. The pre-meeting invocation portion of the agenda is a limited public forum with narrowly tailored and reasonable time, place and manner restrictions that can also pass strict scrutiny muster as the least restrictive way of serving the County’s compelling county interest in avoiding Establishment Clause violations.

In *Town of Greece* the U.S. Supreme Court defined the pre-meeting invocation tradition as a time and place to acknowledge the importance of religion in the lives of Americans. Brevard County’s invocation policy is likewise “reserved for the acknowledgement and interaction with the county’s faith-based community”¹⁰⁷ in “recognition of the traditional positive role faith-based monotheistic religions have historically played in the community.”¹⁰⁸ When a public forum is created by government designation for use by certain speakers—in this case representatives of the faith-based communities performing opening prayers—it is a limited public forum.¹⁰⁹

Federal courts have held that the meetings of local government councils and commissions, as well as the public comment segments of those meetings, are limited public forums.¹¹⁰ Indeed in *Norse v. City of Santa Cruz*,¹¹¹ the 9th Circuit held that City council meetings, once open to public participation, are limited public forums at which a council can regulate the time, place, and manner of speech as well as content as long as content-based restrictions are viewpoint neutral.¹¹²

¹⁰⁷ Williamson Dep. Tr. at Ex. “DW-77” ¶36.

¹⁰⁸ Williamson Dep. Tr. at Ex. “DW-77” ¶5.

¹⁰⁹ *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 105 S. Ct. 3439 (1985); *see also Shero v. City of Grove*, 510 F.3d 1196 (10th Cir. 2007) (a limited public forum arises where the government allows selective access to some speakers or some types of speech in a nonpublic forum, but does not open the property sufficiently to become a designated public forum); *Hotel Employees and Restaurant Employees Local 100 v. City of N.Y. Dept. of Parks and Recreation*, 311 F.3d 534 (2d Cir. 2002) (a limited public forum is created only where the government makes its property generally available to a certain class of speakers).

¹¹⁰ *Galena v. Leone*, 638 F.3d 186 (3rd Cir. 2011)(a governmental entity creates a limited public forum when it provides for a forum that is limited to use by certain groups or confines their meetings to specified subject matter).

¹¹¹ 629 F.3d 966 (9th Cir. 2010).

¹¹² *See Rosenberger v. Rector and Visitors of Univ. of Va.*, 115 S. Ct. 2510 (1995).

Since the County Commission meeting is a limited public forum, Plaintiffs' Free Speech claim based on exclusion from the forum, Free Exercise claim for burdening religious exercise in the forum, and the related Equal Protection claim for discrimination all fail for three reasons.

First, Brevard has created a limited public forum dedicated to the presentation of religious invocations during the pre-meeting prayer segment of the Commission meeting. The constitutional right of access to such a limited public forum extends only to other entities (or persons) of a character similar to those for whom the forum has been made available.¹¹³ By county policy, the pre-meeting invocation forum is only available to members of the faith-based community capable and desirous of delivering faith-based religious invocations. Plaintiffs, as atheists and activist organizations, are incapable of and unwilling to deliver faith-based religious invocations and are, therefore, not persons or entities for whom the limited invocation forum has been made available. Plaintiffs' secular invocations do not fit within the limitations of the limited public forum established for religious invocations and are, thus, properly excluded.¹¹⁴ Therefore, Plaintiffs' claim for unconstitutional exclusion from the forum must fail because the forum was never open to them. .

Second, the County's policy *does not* exclude, deny, refuse or prohibit Plaintiffs' speech. Instead, the County's policy provides a reasonable alternative forum for Plaintiffs' speech. All invocations or reflections that any member of the public wishes to present to the County Commission will be heard, but the order in which they will be heard is a reasonable time, place, and manner restriction within the County Commission's discretion. Typically, the first Public Comment segment takes place after the secular consent agenda is summarily disposed. If for some reason the Plaintiffs miss the first Public Comment opportunity to present their secular

¹¹³ *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 103 S. Ct. 948 (1983).

¹¹⁴ *Rosenberger*, at 2516-17.

invocation or beliefs, a second Public Comment opportunity is available at the end of the meeting.¹¹⁵ Significantly, in upholding the Greece N.Y. pre-meeting sectarian prayer tradition, the U.S. Supreme Court made the point that its own precedent approving pre-meeting legislative prayer by the Nebraska legislature requires an inquiry into the prayer opportunity *as a whole*.¹¹⁶

As a whole, Brevard's policy affords an invocation opportunity to the Plaintiffs. The County's policy is a very narrowly tailored and is a reasonable time, place and manner restriction in light of the purpose served by the limited religious invocation public forum. Since atheists cannot deliver a religious invocation and the County policy provides Plaintiffs with two opportunities to present secular invocations and beliefs during declared Public Comment limited public forums¹¹⁷ at any meeting, this case is plainly distinguishable from the entire line of limited public forum cases in which the government discriminated against the injured parties by excluding, denying, refusing to hear, prohibiting or excessively burdening speech or free exercise rights in a limited public forum.¹¹⁸

Third, even if the Court determines that Secular Humanism is a religion and the County's policy is viewpoint discrimination, content-based discrimination or subject to strict scrutiny analysis, the policy is the least restrictive means of serving a compelling government interest: the avoidance of two Establishment Clause violations, avoidance of hostility toward the faith-based community and avoidance of a pattern of proselytizing secular invocations.¹¹⁹

Secular invocations show a pattern of disparaging religion and promoting Humanism

¹¹⁵ Williamson Dep. Tr. at Ex. "DW-77" at ¶33.

¹¹⁶ *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1824 – 1826 (2014), citing *Marsh v. Chambers*, 463 U.S. 483 (1983).

¹¹⁷ Williamson Dep. Tr. at Ex. "DW-77" at ¶33.

¹¹⁸ See *Good News Club v. Milford Cent. Sch.*, 121 S. Ct. 2093 (2001)(use of school denied to religious group); *Rosenberger* (university exclusion of student religious publication from student activities fund); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 113 S. Ct. 2141(1993)(denial of religious group access to school property).

¹¹⁹ *Good News Club* (A state interest in avoiding an Establishment Clause violation may be characterized as compelling, and therefore may justify content-based discrimination).

As set forth in Resolution 2015-101¹²⁰ and the Statement of Facts above, Plaintiffs are members of organizations and admirers of anti-theist authors whose caustic hostility toward religion in general and Christianity in particular is both admitted and palpable. Plaintiff organizations and those organizations with which they are associated also have a history of disparaging and mocking religious invocations. This is obvious from the “Nothing Fails Like Prayer Award” contest sponsored by FFRF and Plaintiff Williamson’s statement in encouraging a “Jedi” invocation:

The goal here (for me, anyway) is to mock these invocations and show them for what they are a pep rally for a closed group of Christians who don't want anyone else's mythology confused with their own.¹²¹

Mockery, disparagement and proselytization are not allowed during the pre-meeting invocation.¹²² To knowingly allow such speech during the invocation would violate the Establishment Clause for exceeding the scope of traditional pre-meeting prayer.¹²³ A pattern of secular invocations satirizing, mocking and disparaging religion while promoting secular humanism is evident in the following examples from CFFC’s secular invocation website archive:

“I would like to thank the council for inviting me to speak here today. Let us bow our heads in prayer. We give thanks and praise to you, whom in all your teachings, guide us in our lives and give meaning to our existence and endow these fine people here today to perform their duties to serve all of us. Thank you, Satan.” . . . I imagine that these words are making some of you rather uncomfortable. You probably feel that they don't represent you or further the cause of the citizens of Sparks. I would now like you to realize that this is exactly how the secular citizens of Sparks, statistically 20% of your constituents, feel when an invocation of any kind is given in this room.”¹²⁴

“May we pray together. Mother Earth, we gather today in your redeeming and glorious presence . . . May the efforts of this council blend the righteousness of Allah with the all-knowing wisdom of Satan. May Zeus, the great God of justice, grant us strength tonight.

¹²⁰ Williamson Dep. Tr. at Ex. “DW-77” at ¶¶18-25.

¹²¹ Williamson Dep. Tr. at Ex. “DW-62.”

¹²² *Town of Greece*, at 1823, citing *Marsh v. Chambers*, 463 U.S. 483, 794-795 (1983) (invocations may not be used to “exploit, to proselytize or advance any one, or to disparage any other, faith or belief”).

¹²³ *Town of Greece*, at 1823.

¹²⁴ Williamson Dep. Tr. at Ex. “DW-60” at p. 15.

Jesus might forgive our shortcomings while Buddha enlightens us . . . We praise you, Krishna . . . After all, if Almighty Thor is with us, who can ever be against us?...for the bounty of logic, reason, and science, we simply thank the atheists, agnostics, Humanists . . . In closing, let us, above all, love one another, not to obtain mythical rewards for ourselves now, hereafter, or based on superstitious threats of eternal damnation, but rather, embrace secular-based principles of morality.”¹²⁵

“...let me begin the invocation: Let us play. There is work to be done but let's not forget to play. . . Let's fly to the moon and back. Let us play...”¹²⁶

“I request from the council and our community that we don't turn towards faith or religion to guide government decisions but rather good will towards all people in our community.”¹²⁷

“While we cannot offer the legislative prayer the agenda calls for; atheists, humanists, freethinkers, religious skeptics, and other non-believers can provide something special – which no prayer could ever accomplish. As we do in every other public setting-we live, work, play, learn, and we govern more effectively and harmoniously when we find amazing ways to unite instead of divide. Only those remarks that regard the common interests of all in attendance-and not just to the beliefs of some-can embrace the entire room, can speak on behalf of the community as a whole.”¹²⁸

“Rather than bowing our heads and closing our eyes in deference, we should open our eyes widely to face the reality that confronts us. . . Lastly, we must remember that in the face of adversity we need not look above ourselves for answers. . .”¹²⁹

“Rather than bow, fall prostrate, or look inward to connect ourselves to the heavens, let us focus on the one tangible reality we all know and share: each other.”¹³⁰

“I am here as a Humanist to ask that as they consider the agenda today, they do so with the empathy and compassion that reside in each of us. But above all I am here to ask that the councilors, in the spirit of Humanism, to reach within themselves and find the strength to be the best elected officials they can be. I ask that they use their own faculties of reason and wisdom to make their decision today.”¹³¹

“So to work with this we should summon all of the best human traits that time and time again have helped us move forward: reason, wisdom, patience, compassion, logic, understanding, and critical thinking.”¹³²

¹²⁵ Williamson Dep. Tr. at Ex. “DW-60” at p. 24.

¹²⁶ Williamson Dep. Tr. at Ex. “DW-60” at p. 7.

¹²⁷ Williamson Dep. Tr. at Ex. “DW-60” at p. 4.

¹²⁸ Williamson Dep. Tr. at Ex. “DW-60” at p. 11. This invocation was presented by Plaintiff Williamson.

¹²⁹ Williamson Dep. Tr. at Ex. “DW-60” at p. 2.

¹³⁰ Williamson Dep. Tr. at Ex. “DW-60” at p. 17.

¹³¹ Williamson Dep. Tr. at Ex. “DW-60” at p. 16.

¹³² Williamson Dep. Tr. at Ex. “DW-60” at p. 21.

Plaintiff Williamson's own words evidence an intentional strategy of using secular invocations to promote humanist values and displace or eliminate religious invocations:

"We will not be invoking any divine guidance, but instead will invoke our elected officials to govern in a way that reflects our shared human values instead of one that highlights our differences with a religious worship service before the meeting."¹³³

The foregoing examples clearly show a pattern of CFFC's using invocations as an opportunity to both disparage religion and promote or preach humanist values including reason, wisdom, science, knowledge, patience, empathy, compassion, logic, understanding, and critical thinking.¹³⁴ Both patterns are strictly prohibited under *Town of Greece* and the County is expressly prohibited from allowing such patterns to manifest.¹³⁵ Allowing such secular invocations in place of religious invocations in the religious limited public forum at the opening of the meeting, would most certainly convey the message that the Commission endorsing both a pattern of hostility toward religion and the values of "secular humanism" by immediately implementing those values during the course of their decision-making process on subsequent secular agenda items.¹³⁶ Under such circumstances it is not only reasonable, but compelling that the County restrict secular invocations to the secular Public Comment part of its agenda. For the foregoing reasons, the Plaintiffs' Free Speech, Free Exercise and Equal Protection claims fail in substance and for lack of Plaintiffs' standing, given their inability to provide religious invocations at the opening of County Commission meetings.

IV. Plaintiffs' state constitutional claims for Establishment Clause, Equal Protection, Free Speech and Free Exercise violations all fail.

¹³³ Williamson Dep. Tr. at Ex. "DW-32."

¹³⁴ Williamson Dep. Tr. at Ex. "DW-16," "DW-26."

¹³⁵ *Town of Greece*, at 1823; *School District of Abington Twp. v. Schempp*, 83 S. Ct. 1560 (1963) (the State may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus preferring those who believe in no religion over those who do believe).

¹³⁶ See *Lee v. Weisman*, 112 S. Ct. 2649 (1992) (Our constitutional tradition down to the present day, has ruled out of order government-sponsored endorsement of religion).

Where the Florida Constitution parallels the U.S. Constitution, federal constitutional case law is of great value to evaluating the status of state constitutional protections.¹³⁷ Therefore, for the reasons set forth in Points I through III above, the Plaintiffs' state claims for Establishment Clause, Equal Protection, Free Speech and Free Exercise violations all fail.

V. Plaintiffs' state constitutional "no aid" claims fails to state a claim for relief.

Florida's "no-aid" provision of its Establishment Clause is substantially different from its federal counterpart. Florida's "no-aid" provision¹³⁸ prohibits the expenditure of public funds that directly or indirectly aid sectarian institutions.¹³⁹ Under the *Town of Greece* decision, the invocation is presented for the benefit of the local governing board, not the clerics or the institutions they represent and so no-aid is bestowed upon the invocation speakers.¹⁴⁰ The "no aid" provision prohibits the actual payment of public monies directly or indirectly – through intermediaries such as parents of students – to religious organizations.¹⁴¹ In this case, there is no evidence on the record that Brevard County has ever provided actual payment to religious clerics who deliver invocations or provided indirect payment through an intermediary. The mere receipt of an e-mail or letter written on a County computer by a County employee does not constitute payment in violation of Florida's no-aid provision. Plaintiffs' claim for a violation of the "no aid" provision in Art. I, sec. 3, therefore fails.

¹³⁷ *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1030 (Fla. 2004).

¹³⁸ Art. I, sec.3, Fla. Constit. (1968), which reads: "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution."

¹³⁹ *Bush v. Holmes*, 886 So.2d 340, 344 (Fla. 1st DCA 2004); *Council for Secular Humanism, Inc. v. McNeill*, 44 So.3d 112, 119 (Fla. 1st DCA 2010).

¹⁴⁰ *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1825-1826 (2014).

¹⁴¹ *Bush*, at 344 (it was a violation of the no-aid provision for the State to provide parents of students in failing schools with a tuition voucher which could be used at sectarian schools).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 3, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and served on all parties using the CM/ECF system.

s/Scott L. Knox

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