

# FREEDOM FROM RELIGION *foundation*

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July 25, 2011

**SENT VIA FAX & U.S. MAIL**  
**(760) 735-5782**

The Honorable Sam Abed  
Mayor  
City of Escondido, City Hall  
201 North Broadway  
Escondido CA 92025

Re: Moments of Reflection at City Council Meetings

Dear Mayor Abed:

I am writing on behalf of concerned Escondido residents and taxpayers and other Escondido members of the Freedom From Religion Foundation (FFRF) to urge you to discontinue the practice of scheduling City Council meetings with prayers. FFRF is a national nonprofit organization representing over 16,600 members across the country including over 2,460 members in California. Our purpose is to protect the constitutional principle of separation between state and church.

It is our information and understanding that the Escondido City Council ("Council") includes a prayer or invocation as part of its regular meetings, known as "moments of reflection." We understand that Dick Bridgman, a volunteer outside the city staff who is affiliated with Emmanuel Faith Community Church, is in charge of coordinating clergy from different faiths to give prayers at the meetings. Moreover, while Mr. Bridgman is instructed to inform speakers to keep their comments inclusive and non-denominational, the speakers continuously ignore such provisions, and Mr. Bridgman himself has admitted that he does "not...go to every meeting and enforce them." Garrick, David "ESCONDIDO: ACLU says city illegally endorsing Christianity", *North County Times*, July 17, 2011.

We further understand all twelve speakers this year have represented only the Christian faith, and nine out of those 12 have given prayers invoking Jesus, which make the moments of reflection sectarian in nature, in this instance predominantly Christian. It is our further understanding that members of the public regularly attend Council meetings and have necessary business before the Council, and that they are coerced to join in the prayers when they are told by the speakers to rise or bow their heads in prayer.

Listed below are excerpts of two prayers from City Council meetings:

July 13, 2011: David Hall, Pastor of Emmanuel Faith Community Church

“Oh God, our pausing for a moment such as this is witness to the fact that we are finite, our knowledge is limited, our perspective is limited as well. We grapple with complex and difficult problems in which many times we do not have within us all that we need to come to good and sound decisions for the benefit and blessing of our community. So we pause for a moment to ask for your assistance. We ask that as a result of this meeting today the good work that will be done by our elected officials and city employees, that our city and our community would be a place of blessing, a place of peace, of prosperity, of compassion, and of justice. We ask for all of this for Your namesake and in Your name. Amen.”

June 15, 2011: Dick Bridgman, affiliated with Emmanuel Faith Community Church

“Would you bow with me for just a moment? Father we do thank you for all the leaders across this country that acknowledge you and the sovereignty of you for the decision making that they do. We thank you so much that you care a lot for our great city of Escondido. And we sure pray for wisdom and guidance for all of our leaders here, that you would show a way. We thank you Lord so much for our mayor and our city council. Father it takes a lot of strength and courage really to serve in this capacity. It seems like we have so many difficult decisions these days, and many that our so divisive. So thank you that they’re here, and Lord as we pray for each one of them, we think of some of the things—they have a five-year plan for capital, and working on some economic growth, and many other issues. Lord would you watch over them with each of the decisions they have to make. Father we thank you also for all the other folks who serve in our government. We’re grateful too for their willingness to serve. Just pray that Father for each one of them that you would strengthen their integrity and character, that with every decision they make, it would be in the best interest of our city. Lastly we thank you for our first responders. We thank you for all that serve in that capacity, and Lord there’s a lot of them put in a lot of danger on many occasions, and we just ask that you guard and watch over them. Father we just ask that the community would remember to thank them for the service that they give, and that they might feel a real sense of pride as they do the work they do. So Father we thank you for hearing our prayer and we offer these in the name of Jesus. Amen.”

Please find enclosed additional transcriptions of some of the impermissible prayers reviewed from April through July of 2011.

First and foremost, prayer at government meetings is unnecessary, inappropriate, and divisive. Calling upon Escondido City Council members and citizens to rise and pray is coercive, embarrassing and beyond the scope of secular city government. Council 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 Council ought not to lend its power and prestige to religion, amounting to a governmental endorsement that excludes the 15% of the American population that is nonreligious (American Religious Identification Survey 2008).

The Council compounds the violation when a majority of the prayers are to Jesus, and when all of the officiants are Christian or Christian clergy. Such prayer creates acrimony, makes religious minorities feel like political outsiders in their own community, and shows unconstitutional governmental preference not just for religion over non-religion, but Christianity over other faiths.

Citizens are frequently compelled to come before you on important civic matters and to participate in important decisions affecting their livelihood, their property and quality of life. These citizens should not be made to feel offended, excluded and like political outsiders because the local government they support with their taxes oversteps its power by imposing religious ritual at secular government meetings. Local government should not be in the business of performing religious rituals, or exhorting all citizens regardless of beliefs to participate in a Christian prayer, or minimally to demonstrate obeisance to such prayer.

### ***Sectarian Prayers***

The prayers being offered before the Council's meetings do not fall into the narrow exception of the constitutionally permissible government-sponsored prayer laid out by the Supreme Court. In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Supreme Court ruled that the Nebraska legislature's history and tradition of opening with a prayer was a constitutional exception. The Court found government prayer, in this case, was confined to a situation involving a non-sectarian, non-denominational prayer, led by an officiant who had not been selected based upon any impermissible religious motive, and which was addressed to the body of legislators present and no one else. See *Marsh*, 463 U.S. 783. Additionally, the Court held that legislators must have the option not to participate. The prayer opportunity must not be "exploited to proselytize or advance any one, or to disparage any other faith or belief." 463 U.S. at 794-795. The Court expressly noted that the content of the prayers was permissible because the chaplain had "removed all references to Christ." *Id.* at 793 n.14.

Even if the Council has had an established history of opening its meetings with prayer, Escondido's practice still violates the Establishment Clause because of its continual references to Jesus. In *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 603 (1989), the Supreme Court found that, even if history and custom had saved non-sectarian legislative prayer, "history cannot legitimate practices that demonstrate the government's allegiance to a particular sect or creed." Additionally, the Court reiterated, "not even the 'unique history' of legislative prayer, can justify contemporary legislative prayers that have the effect of affiliating the government with any one specific faith or belief." *Id.* The Court continued, "The legislative prayers involved in *Marsh* did not violate this principle because the particular chaplain had 'removed all references to Christ.' " *Id.*

Lower federal courts have continued to emphasize that some government-sponsored prayers are constitutionally permissible only because they are non-sectarian, non-denominational and do not invoke a particular faith or deity. See, e.g., *Turner v. Fredericksburg*, 534 F.3d 292 (4th Cir. 2004), cert. denied, 2009 WL 56225 (U.S.) (No. 08-518) (finding constitutional a city council policy prohibiting sectarian prayers); *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004) (holding that the Establishment Clause was violated when the town council opened sessions with prayer containing references to Jesus Christ); *Bacus v. Palo Verde Unified School District*, 52 Fed.Appx. 355 (9th Cir. 2002) (unpublished) ("These prayers advanced one faith, Christianity, providing it with a special endorsed and privileged status in the school board. Some religions accept Jesus Christ as the Messiah, some do not, and some people do not believe in any religious faith. Solemnizing school board meetings 'in the Name of Jesus' displays 'the government's allegiance to a particular sect or creed.' ").

The Fourth Circuit's reasoning in *Wynne* is particularly helpful in understanding the boundaries for prayer at government meetings drawn in *Marsh*. In *Wynne*, the court held that any sectarian invocations of deities in legislative prayer serve to affiliate the government with a particular sect or creed and/or advance a particular faith or belief. See *Wynne*, 376 F.3d at 302. Additionally, both the presence and participation of town citizens were crucial to the court's determination that the Town Council had attempted to advance the Christian faith. See *id.* at 301. Ultimately, the court concluded:

*“Marsh does not permit legislators to ... engage, as part of public business and for the citizenry as a whole, in prayers that contain explicit references to a deity in whose divinity only those of one faith believe. The invocations at issue here, which specifically call upon Jesus Christ, are simply not constitutionally acceptable legislative prayer like that approved in Marsh. Rather they embody the precise kind of “advancement” of that Marsh cautioned against.” Id.* (emphasis added).

The prayers currently invoked at Council meetings impermissibly advance Christianity and lead a reasonable observer to believe that the Council is endorsing not only religion over non-religion, but also Christianity over other faiths. This practice inappropriately alienates non-Christians and non-believers. Their efforts to participate in public meetings are adversely affected by these types of prayers, which turn non-believers and non-Christians into political outsiders of their own community and government.

### ***U.S. Founded on Separation of State/Church***

America was founded in part by refugees seeking freedom from government dictation of religion. These refugees wanted freedom from a government telling them which church to support, what religious rituals to engage in, or what to believe or disbelieve. The U.S. founders who adopted our entirely secular Constitution knew there can be no religious liberty without the freedom to dissent. Whether to pray, or whether to believe in a god who answers prayer, is an intensely precious and personal decision protected under our First Amendment as a paramount matter of conscience.

Our nation is founded on a godless Constitution, whose only references to religion in government are exclusionary, such as that there shall be no religious test for public office (U.S. Const. art. VI). The United States was first among nations to adopt a secular constitution, investing sovereignty in “We the People,” not a divinity. Our founders were aware that “[t]orrents of blood have been spilt in the old world” when religion and government were united. (James Madison, Memorial and Remonstrance, 1785). Madison added, “During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution.”

Religion had been an intensely divisive issue in the original Thirteen Colonies, where religious intolerance was endemic, and citizens might lose civil rights, be banished, jailed or in some instances executed, for holding a religious conviction contrary to that of the government. Today

the religious right often touts the pre-Constitutional actions of the Continental Congress that adopted the weak Articles of Confederation, and that failed to include safeguards separating government from religion. The religious right often conflates the short-lived 8-year Articles with the enduring Constitution that replaced it. Yet even at the inaugural session of that Continental Congress in 1774, when a delegate proposed to open a session with prayer, both John Jay and John Rutledge (two future Chief Justices of the Supreme Court) objected, saying Congress was “so divided in religious Sentiments . . . that We could not join in the same Act of Worship.” It is significant that after the catastrophic experiences with the Articles, our founders ensured there was no prayer at the Constitutional Convention, which convened in 1787 to write the U.S. Constitution. See Leo Pfeffer, *Church State and Freedom*, 121-122 (Beacon Press, 1967).

Significantly, President Thomas Jefferson, recognizing of the intrinsic problems when religion and government mix, actively opposed government sponsorship of prayer:

I consider the government of the U.S. as interdicted by the Constitution from intermeddling with religious institutions, their doctrines, discipline, or exercises . . . I do not believe it is for the interest of religion to invite the civil magistrate to direct its exercises, its discipline, or its doctrines; nor of the religious societies that the general government should be invested with the power of effecting any uniformity of time or matter among them. Fasting & prayer are religious exercises. The enjoining them an act of discipline. Every religious society has a right to determine for itself the times for these exercises, & the objects proper for them, according to their own particular tenets; and this right can never be safer than in their own hands, where the constitution has deposited it.

(Jefferson’s letter to Rev. Samuel Miller, 1808).

Likewise, James Madison, the primary architect of the U.S. Constitution and Bill of Rights, and our fourth president, ultimately opposed government prayers and congressional chaplaincies. See Andy G. Olree, *James Madison and Legislative Chaplains*, 102 *Northwestern L. Rev.* 145 (2008). In his *Detached Memoranda*, Madison criticized the chaplaincies and the idea that “religious truth is to be tested by numbers or that the major sects have a right to govern the minor.”

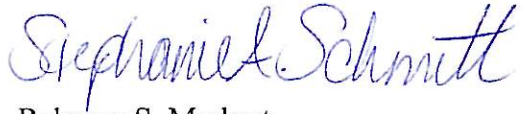
### ***Solution is to Discontinue Prayer***

The constitutional rights of citizens to participate in government meetings such as the Council’s weekly meetings should not be predicated upon being subjected to Christian-based, or even non-denominational prayer. By hosting prayers, which inevitably show preference for Christianity, the Council is illegally and inappropriately imposing its religious beliefs on the citizens of Escondido who attend the Council’s meetings for public business.

Moreover, these types of government prayers not only conflict with the Constitution, but also with biblical teachings. Christians who know their bible are familiar with the biblical injunction of Jesus in the Sermon on the Mount, condemning as hypocrisy public prayer. “Enter into thy closet and when thou hast shut the door, pray to thy Father which is in secret.” (Matthew 6:5-13).

To avoid the constitutional concerns these prayers cause for the Council and the divisiveness these prayers cause within the community the solution is simple: discontinue official, government prayers before legislative meetings. We request a prompt response in writing about what steps you are taking to respect the Establishment Clause and remedy these constitutional violations.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie A. Schmitt". The signature is written in a cursive style with a large initial 'S'.

Rebecca S. Markert  
Staff Attorney

RSM:ask

Enclosure

July 13, 2011: David Hall, Pastor of Emmanuel Faith Community Church

“Oh God, our pausing for a moment such as this is witness to the fact that we are finite, our knowledge is limited, our perspective is limited as well. We grapple with complex and difficult problems in which many times we do not have within us all that we need to come to good and sound decisions for the benefit and blessing of our community. So we pause for a moment to ask for Your assistance. We ask that as a result of this meeting today the good work that will be done by our elected officials and city employees, that our city and our community would be a place of blessing, a place of peace, of prosperity, of compassion, and of justice. We ask for all of this for Your namesake and in Your name. Amen.”

June 15, 2011: Dick Bridgman, affiliated with Emmanuel Faith Community Church

“Would you bow with me for just a moment? Father we do thank you for all the leaders across this country that acknowledge You and the sovereignty of You for the decision making that they do. We thank You so much that You care a lot for our great city of Escondido. And we sure pray for wisdom and guidance for all of our leaders here, that You would show a way. We thank you Lord so much for our mayor and our city council. Father it takes a lot of strength and courage really to serve in this capacity. It seems like we have so many difficult decisions these days, and many that our so divisive. So thank You that they’re here, and Lord as we pray for each one of them, we think of some of the things—they have a five-year plan for capital, and working on some economic growth, and many other issues. Lord would You watch over them with each of the decisions they have to make. Father we thank You also for all the other folks who serve in our government. We’re grateful too for their willingness to serve. Just pray that Father for each one of them that You would strengthen their integrity and character, that with every decision they make, it would be in the best interest of our city. Lastly we thank You for our first responders. We thank You for all that serve in that capacity, and Lord there’s a lot of them put in a lot of danger on many occasions, and we just ask that You guard and watch over them. Father we just ask that the community would remember to thank them for the service that they give, and that they might feel a real sense of pride as they do the work they do. So Father we thank You for hearing our prayer and we offer these in the name of Jesus. Amen.”

June 8, 2011: Tulu Peters, Elder at Emmanuel Faith Community Church

“Heavenly Father, we just thank You for this day. And we thank You for these leaders. We pray that You would give them wisdom and knowledge as they listen to the discussions and also the deliberations. We pray also that You would help us to respect one another. In Jesus name, Amen.”

May 25, 2011: Assad Saif, Pastor at Emmanuel Faith Community Church

“Let’s pray. Lord we come to You to thank You for the opportunity to meet together as a civil government. Pray God that as we look at the different things that are on the agenda today, that we will come to decisions that will be good for the city, that will honor the people within it, would also, Lord, be a reflection of who You are as well. And pray that as people are being served in the city, that they would recognize that the city government is doing the best that it

possibly can to lead the city, Lord, into the future. So pray that as the decisions are made, God will be reflected in them. Pray this in Jesus name, Amen.”

May 11, 2011: Tom Fry, Senior Pastor at the Escondido First Church of the Nazarene

“May the Lord bless and protect all those who come to this chamber today. Give wisdom to those who make decisions and to those who carry them out. Give grace to those who do not get their way, that they may work side-by-side with those who do, for the greatest good for our neighborhoods and our city. May the Lord make his face shine upon us, to smile at us, that all in our city may know His love and His grace in every part of their lives. May the Lord turn His face toward us and show us His favor, as we endeavor not only to walk in the way of integrity for the good of our city, but also in the way of righteousness that pleases God, so that we may know above all else, His peace. Amen.”

May 4, 2011: Mel Bittner, affiliated with the North County Prayer Breakfast

“Father it’s a joy to come before You, before this council meeting. We ask that You would give to each member Your wisdom, the wisdom that maybe that You gave to Solomon. We pray Lord that your Holy Spirit will just work in their hearts, give them experience beyond their days. Help them to make decisions that are beneficial to the people. We ask Your blessing upon them. In Jesus name, Amen.”

April 13, 2011: Joan Read, affiliated with the North County Prayer Breakfast

“God our Father, we bow before You today recognizing Your authority here in our city, in this chamber. Thank You for the beautiful city that we have, and for these city leaders that You’ve entrusted to govern us. We pray for Your clarity and Your compassion for them as they listen today. Give them Your wisdom and integrity as they make decisions. And may Your peace and protection continue to be over every one of our city leaders and those that protect us. In Jesus name, Amen.”

April 6, 2011: John Rankin, affiliated with the North County Prayer Breakfast

“Our gracious Heavenly Father. Lord, we praise you Lord for being the one true great God of the universe, and we thank you Lord for this beautiful city of Escondido, the city of choice where we live Lord. And we thank you Lord for this council, and the mayor Sam Abed, and all the others on the Governing Board Lord, and Lord tonight we just lift them up to you Lord, and Lord we just pray that You would be with them and guide them. And Lord we know that these are tough times, and we have people out of work and people that have lost their homes and the money is not there Lord—it used to be—and we just pray for guidance in these tough times Lord. And we thank you Lord for our agencies around town, the police department, the fire department, and we ask You to be with them Lord and give them safety as they go through this week. And we ask these things in your name Lord. Amen.”