

FREEDOM FROM RELIGION *foundation*

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August 16, 2010

**SENT VIA MAIL, E-MAIL AND FAX
(864) 596-2232**

Jeffrey Horton, Chairman
Spartanburg County Council
366 North Church St.
Spartanburg SC 29303

Re: Unconstitutional and Inappropriate Prayer Policy

Dear Mr. Horton and Council Members:

This letter is in response to a proposed prayer and chaplain policy of the Spartanburg County Council. We write to inform the Council of both the legal and policy reasons why the Council should decline the proposal.

If implemented, the policy will violate the Establishment Clause because it will advance one faith or belief. In *Wynne v. Town of Great Falls, S.C.*, the Fourth Circuit Court of Appeals rejected the claim that word “advance” was “merely a synonym for ‘proselytize.’” 376 F.3d 292, 300 (4th Cir. 2004). The Court said, “to ‘advance’ a religious belief means simply to ‘forward, further, [or] promote’ the belief.” *Id.* The Court went on to explain, “the Supreme Court has explained that *Marsh* prohibits ‘contemporary legislative prayers that have the effect of *affiliating* the government with any one specific faith or belief.” *Id.* at 301 (quoting *Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 603 (1989)).

The proposed policy allows the Council to elect a chaplain by popular vote and fails to provide assurances that the chaplain’s prayers will be free of sectarian references. Repeated sectarian references by an elected chaplain cannot withstand judicial scrutiny in the Fourth Circuit. Both *Wynne v. Town of Great Falls, S.C.* and *Simpson v. Chesterfield County Bd. of Sup’rs*, 404 F.3d 276 (4th Cir. 2004), make clear that sectarian government prayers are outside of the scope of *Marsh* and have the effect of advancing one faith or belief in violation of the Establishment Clause.

Regardless of the legal questions on the policy, electing a religious leader as the official prayer-officiant for the Council is absurd. Religious belief and ritual should not be subject to majority rule. James Madison came to oppose congressional chaplaincies saying:

The establishment of the chaplainship to [Congress] is a palpable violation of equal rights, as well as of Constitutional principles: The tenets of the chaplains elected [by the majority] shut the door of worship [against] the members whose creeds & consciences forbid a participation in that of the majority. To say nothing of other sects, this is the case with that of Roman Catholics & Quakers who have always had members in one or both of the Legislative branches. Could a Catholic clergyman ever hope to be appointed a Chaplain? To say that his religious principles are obnoxious or that his sect is small, is to lift the evil at once and exhibit in its naked deformity the doctrine that religious truth is to be tested by numbers or that the major sects have a right to govern the minor.

Madison’s Detached Memoranda, 1817.

The best policy is to avoid religious ritual at government meetings and permit all citizens to choose if and in what ways to practice and express individual freedom of conscience. The Council may consider incorporating provisions of our enclosed alternative to the chaplain policy in a revised policy statement.

Sincerely,

A handwritten signature in cursive script that reads "Patrick Elliott". The signature is written in black ink and is positioned above the typed name.

Patrick C. Elliott
Staff Attorney