



FREEDOM FROM RELIGION FOUNDATION

P.O. Box 750 • Madison WI 53701 • (608) 256-8900 • www.ffrf.org

February 8, 2010

COPY

The Honorable Ashley Swearengin
Office of the Mayor
2600 Fresno Street
Fresno, CA 93721

Re: Prayers at City Council Meetings

Dear Mayor Swearengin:

I am writing on behalf of a concerned Fresno resident and taxpayer and other California members of the Freedom From Religion Foundation (FFRF) to urge you to discontinue the practice of opening City Council meetings with prayers, and specifically prayers that unconstitutionally reference Christianity and invoke Jesus Christ. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation of church and state. FFRF represents over 14,500 members across the country including 2,300 members in California.

It is our information and understanding that the Fresno City Council (hereinafter "Council" or "City") opens meetings with an invocation given by local clergy members. We are unaware of any formal written policy or guidelines concerning the invocation practice. It is our further understanding that members of the public regularly attend Council meetings and have necessary business before the Council.

Upon reviewing the invocations available online from January through December 2009, it is clear that these prayers are rarely, if ever, non-denominational or non-sectarian. Of the prayers reviewed, all ended with specific references to Jesus Christ, "in Jesus' name," or "in the name of Christ." Prayers given at recent Council meetings:

**December 17, 2009 Father Gosdianian of the Holy Trinity
Armenian Church delivered the following prayer**

"In the name of the Father, of the Son, and of the Holy Spirit. Heavenly Father, thank you for your constant blessings. We praise you and glorify you day and night. Thank you for this beautiful city and this honorable council. Oh Christ guardian of all creatures, let your right hand be a shadow over this council day and night. Guide them and grant them the wisdom that they may at all times think, speak and do before you that which is good in your sight and live according to your good will. Save them oh Lord, from all error, ignorance, pride and prejudice. Guide them and protect them from visible and invisible enemies. Make them worthy to offer you thanks and glory, now and

always. As the holy book says, by you only kings reign and rulers make laws that are just. By justice a king gives a country stability. May the grace, the love and divine sanctifying power of the Father and Son and of the Holy Spirit be with all. Amen.”

December 10, 2009 Pastor Terry Townsend of People’s Church delivered the following prayer

“I for one am grateful to live in a city where we can come together and we can ask for God’s help in the affairs of our city. And so I’d like to pray for each member of our council, so let’s bow in prayer. Lord, we come to you today for the members of our City Council. We thank you for their willingness to serve. We thank you for the dedication that they show to leading and governing us. And Lord we pray today for Ms. Sterling in her role as Council President. Lord, we pray for Mr. Borges and Mr. Brand. We pray for Mr. Dages, we pray for Mr. Perea, we pray for Mr. Westerlund, we pray for Mr. Xiong. We ask God, that you will give them discernment, not just between what is right and what is wrong, but between what is better and what is best. We pray that you will give them compassion to see beyond their normal boundaries. We pray that you will give them wisdom that will take them far beyond their natural capabilities. We pray for their families. We know that many times the families pay the price for someone in public service and we ask you to take care of them. Then Lord we pray for them in their inner person, their hidden person, the inside of them that only You see. We pray that in that inner-man, that inner-woman, that they will be in sync with you. Lord, we also pray for their staffs who do so much of the necessary work for our city, we ask you to guide them. And Lord, we thank you for each one of these that is giving of their time and energy to govern our city, we pray for this meeting. We ask that you will lead and guide it. We recognize that, God, you are our source of wisdom and knowledge. And so we ask all of these things in the name of Jesus. Amen.”

The Supreme Court has only found prayers before legislative bodies permissible in narrow circumstances. In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Supreme Court ruled that a legislative practice confined to 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, was permissible. 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 794-95. The Court also noted that the content of the prayers was permissible because the chaplain has “removed all references to Christ.” *Id.* at 793 n.14.

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, including the Ninth Circuit, which encompasses California, 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., 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.' "); *Snyder v. Murray City Corp.*, 159 F.3d 1227, 1234 (10th Cir. 1998)("...the kind of legislative prayer that will run afoul of the Constitution is one that proselytizes particular religious tenet or belief, or that aggressively advocates a specific religious creed, or that derogates another religious faith or doctrine."); *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); *Coles ex rel. Coles v. Cleveland Bd. Of Educ.*, 171 F.3d 369 (6th Cir. 1999)(striking down school board's practice of opening meetings with prayer because the prayers contained repeated references to Jesus Christ and the Bible).

Recently, the Supreme Court let stand a decision from the Fourth Circuit, which upheld a government policy requiring prayer before city council meetings to be non-denominational. In *Turner v. Fredericksburg*, 534 F.3d 352, 353 (4th Cir. 2008)(cert. denied, 2009 WL 56225 (U.S.)(No. 08-518), the Fourth Circuit held that prayers held at the city council meetings constituted government speech. Therefore, it was proper for the city council to prohibit sectarian prayers. *Id.* at 353. Justice O'Connor, writing for the court, stated, "[t]he restriction that prayers be nonsectarian in nature is designed to make the prayers accessible to the people who come from a variety of backgrounds, not to exclude or disparage a particular faith." *Id.* at 356.

Even under California state law, the practice of invoking Jesus during prayers at legislative sessions is illegal. In *Rubin v. City of Burbank*, 101 Cal. App. 4th 1194, 1205 (Cal. Ct. App. 2002), a California appellate court ruled that an "invocation offered to Jesus Christ violated the Establishment Clause because it conveyed the message that Christianity was being advanced over other religions." The court explained, "By directing the prayer to 'Our Father in Heaven... in the name of Jesus Christ' the invocation conveyed the message that the Burbank City Council was a Christian body,

and from this it could be inferred that the council was advancing a religious belief.” *Id.* The court also rejected the argument that a policy restricting or prohibiting clergy or others who offer the invocations from invoking Jesus Christ or other deities abridges the right to free speech. *See id.* at 1207.

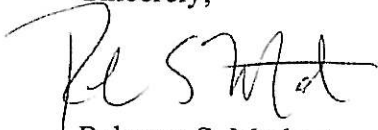
The Fresno City Council cannot, under current federal and state law, permit any prayers that contain references to an explicit deity. The prayers currently given during Council meetings impermissibly advance Christianity and lead a reasonable observer to believe that the Council is endorsing not only religion over nonreligion, but also Christianity over other faiths. Even though the Council may be permitted to engage in invocations prior to its meetings, this opportunity does not provide “license to advance its own religious views in preference to all others...” *Wynne*, 376 F.3d 292. To do so would “[convey] a message that the [Fresno City Council] is a Christian body and ... the council [is] advancing a religious belief.” 101 Cal. App. 4th at 1205. Therefore, the City cannot allow prayers which invoke Jesus Christ as well as those which quote patently Christian scripture, readings or prayers.

Furthermore, this practice inappropriately alienates any non-Christians and non-believers in Fresno. 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. The constitutional rights of citizens to participate in government meetings such as the Council’s monthly meetings should not be predicated upon being subjected to Christian-based prayers.

By hosting sectarian prayers, which tend to show preference for Christianity, the Council is inappropriately entangling itself with religion. To avoid the divisiveness these prayers cause within the community the solution is simple: discontinue official, government prayers before legislative meetings. At a minimum, the City of Fresno should require that any invocations given before Council meetings are non-sectarian and non-denominational.

We urge you to discontinue this practice immediately and bring the Council back into compliance with constitutional dictates. We respectfully request a written reply addressing the steps you are taking to remedy this constitutional violation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca S. Markert', written in a cursive style.

Rebecca S. Markert
Staff Attorney