

May 24, 2010

**SENT VIA U.S. MAIL & FAX**  
**(864) 476-8119**

The Honorable Brad Burnett  
Mayor  
City of Woodruff  
231 East Hayne Street  
Woodruff SC 29388

Re: Prayers at City Council Meetings and City Seal

Dear Mayor Burnett:

I am writing on behalf of concerned Woodruff residents and taxpayers and other South Carolina members of the Freedom From Religion Foundation (FFRF) to urge you to discontinue the practice of praying at Woodruff City Council meetings and to notify you of a serious Constitutional problem with the City seal. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation of church and state. FFRF represents over 15,000 members across the country, including more than 100 members in South Carolina.

**Inappropriate and Unconstitutional Prayers**

It is our information and understanding that the City Council frequently includes a prayer or invocation as part of its regular meetings. We understand that these prayers often invoke Jesus Christ. It is our further understanding that members of the public regularly attend City Council meetings and have necessary business before the City Council.

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

The City compounds the violation when a majority of prayers are to Jesus or a majority 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.

Secondly, the prayers being offered before the City Council do not fall into the narrow exception of 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 by a paid chaplain was constitutional. The exception found by the Court 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 794-95. 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.

Even if the City Council had an established history of opening its meetings with prayer, the practice still violates the Establishment Clause because of its continual references to Christ. 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 Fourth Circuit, which encompasses South Carolina, have ruled against government-sponsored prayers that were sectarian, denominational and invoke a particular faith or deity. *See, e.g., Turner v. Fredericksburg*, 534 F.3d 352, 353 (4th Cir. 2008)(holding that prayers before city council meetings are government speech that must be non-denominational and non-sectarian); *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); *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.").

In *Wynne*, the Fourth Circuit held that any sectarian invocations of deities in legislative prayer are demonstrative of affiliating the government with a particular sect or creed and/or advancing a particular faith or belief. *See Wynne v. Town of Great Falls*, 376 F.3d 292. 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 one particular religion that Marsh cautioned against.*” *Id.* (emphasis added).

The Supreme Court let stand another 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.

Recently, a federal district court in North Carolina struck down the County's practice of sponsoring sectarian prayer during Board of Commissioners meetings in conformity with clear Fourth Circuit precedent. *See Joyner v. Forsyth County*, No. 1:07CV243 (MD NC 2009). In that case, the Magistrate Judge recommended summary judgment for the plaintiffs finding that “the prayers offered before the meetings of the Forsyth County Board of Commissioners advance one particular faith or belief and thus have the effect of affiliating the Board of Commissioners with that particular faith or belief in violation of the Establishment Clause.” The district court adopted the Magistrate Judge's recommendation and granted the plaintiff's motion for summary judgment (appeal pending).

The prayers currently given during City Council meetings impermissibly advance Christianity and lead a reasonable observer to believe that the City 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. The constitutional rights of citizens to participate in government meetings such as City Council meetings should not be predicated upon being subjected to Christian prayers.

### **Unconstitutional City Seal**

The Woodruff City seal contains a Latin cross and the word “Church.” The Latin cross is one of three symbols on the City seal. The other symbols represent “School” and

“Commerce.” We understand that the City seal is prominently displayed on City stationery that is used for such things as sewer bills and City Council meeting agendas. We also understand that the seal is placed on City vehicles and uniforms of some City employees. We were told that the seal was designed by a young student and was approved by the City Council in the late 1980s or early 90s. We also understand that the City promotes its history as having its foundation with “The Church of Christ of Jamey’s Creek.”

The inclusion of a Latin cross and the word “Church” on the official city seal violate the Establishment Clause of the First Amendment. The Establishment Clause, “at the very least, prohibits government from appearing to take a position on questions of religious belief or from ‘making adherence to a religion relevant in any way to a person's standing in the political community.’ ” *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 594 (1989) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984)).

The federal courts that have examined similar seals have found that such displays violate the Establishment Clause. In striking down a Latin cross that was included in a city seal, the Seventh Circuit Court of Appeals addressed the problem with such endorsement:

The images on the seal are not just neutral snapshots of the community; they are charged with endorsement. The City tries to hide behind the fact that a young girl essentially designed the seal with no attempt to endorse a particular faith. Yet, regardless of its origins, the Rolling Meadows seal does promote the selected images it depicts. To any observer, the Rolling Meadows seal expresses the city's approval of those four pictures of city life—its flora, its schools, its industry and commercial life, and its Christianity.

*Harris v. City of Zion, Lake County, Ill.*, 927 F.2d 1401, 1412 (7<sup>th</sup> Cir. 1991). The Court concludes, “The Latin cross on the Rolling Meadows seal is surely a sectarian display. As such, we hold that it endorses Christianity in violation of the first amendment.” *Id.* at 1413.

Many courts have come to the same conclusion. See *Robinson v. City of Edmond*, 68 F.3d 1226 (10<sup>th</sup> Cir. 1995) (City seal containing Latin cross in one quadrant violated Establishment Clause); *Foremaster v. City of St. George*, 882 F.2d 1485 (10<sup>th</sup> Cir. 1989) (City logo depicting Mormon Temple had effect of advancing religion); *Friedman v. Board of County Com’rs of Bernalillo County*, 781 F.2d 777 (10<sup>th</sup> Cir. 1985) (Latin cross with Spanish motto meaning “With This We Conquer” on county seal violated Establishment Clause); *Webb v. City of Republic, Mo.*, 55 F. Supp. 2d 994 (W.D. Mo. 1999) (City seal with religious fish symbol in one quadrant violated Establishment Clause); *American Civil Liberties Union of Ohio, Inc. v. City of Stow*, 29 F.Supp.2d 845 (N.D. Ohio 1998) (Finding city seal containing Latin cross violated Establishment Clause).

Any claims of historical significance to the Latin cross and the words “Church” on the Woodruff City seal do not relieve the City of its constitutional obligations. In *Friedman*, the Tenth Circuit Court of Appeals ruled that the county seal violated the Establishment Clause even though the religious symbols were claimed to commemorate Christians that

settled the Southwest. 781 F.2d 777, 779. Also, in *Harris*, the City claimed that the seal commemorated the historical origins of the City and thus did not convey unconstitutional endorsement of religion. 927 F.2d 1401, 1414. The court ruled that the seal endorsed a Christian message and said, “No appeal to history can abate that message when the images in the seal are abstract symbols of a particular Christian sect. The Establishment Clause, at the very least, ‘prohibits government from appearing to take a position on questions of religious belief.’ ” *Id.* at 1415 (*quoting* County of *Allegheny*, 465 U.S. 573, 594).

### **Conclusion**

On behalf of concerned Woodruff residents and taxpayers and our South Carolina membership, we request that the Woodruff City Council discontinue the practice of praying at meetings. By hosting prayers, the City Council is illegally and inappropriately imposing its Christian religious beliefs on the citizens of Woodruff. To avoid the divisiveness these prayers cause within the community the solution is simple: discontinue official, government prayers before legislative meetings.

The City must also immediately remove the Latin cross and word “church” from its official city seal.

Please take immediate action to ensure your city government is in compliance with constitutional dictates. Please inform us in writing of these steps so we may notify our complainant.

Sincerely,

Patrick C. Elliott  
Attorney