



FREEDOM FROM RELIGION FOUNDATION

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

June 5, 2009

SENT VIA U.S. MAIL & FAX
(816)325-7012

COPY

The Honorable Don Reimal
Mayor
City Hall
111 E. Maple St.
Independence, MO 64050

Re: City Council Invocations

Dear Mayor Reimal:

I am writing on behalf of concerned Independence residents and taxpayers and other Missouri members of the Freedom From Religion Foundation (FFRF) to urge you to discontinue the practice of scheduling Independence City Council meetings with 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 nearly 14,000 members across the country, including 200 members in Missouri.

It is our information and understanding that the Independence City Council (hereinafter "Council") includes a prayer or invocation as part of its regular meetings. Our complainant informs us that it is the Council's practice to invite local members of the clergy to deliver these prayers.

Upon reviewing the prayers from 2009, it is clear that these prayers are rarely, if ever, non-denominational. Christian churches exclusively provided the invocations at all of the prayers from 2009, and clergy and a Council member have invoked Jesus Christ during these public invocations. A transcription of some of the illegal invocations, with emphasis added on the language invoking Christ, follows:

Pastor Fred Larson given on March 2, 2009

"Shall we pray? Oh God of grace and God of glory, hallowed be thy name. For the blessings of life, liberty and the pursuit of happiness, we give thee thanks. For this Independence city government that allows us to petition you in this public meeting, we give thanks. On behalf of all those that have faith in you oh Lord, we uphold our city council, our mayor and our city staff, that they may be guided by

discernment for the needs of this community. And be wise in their decisions of business that may affect those that they govern. We raise our voice in compassion for those not as fortunate, as many of us here are tonight. May we pray that at every opportunity, we might find ourselves able to assist those in need. Let us be guided oh Lord by the principles of righteousness in all that we do. Honoring your holy name and always treating our neighbors as ourselves. Bless us to the end, that all might be done in harmony and good will and for the benefit of this community, the city of Independence, MO. *In Christ's name we pray, Amen.*"

Prayers given by Council member James Schultz on February 17, 2009, and January 5, 2009, state:

"Shall we pray? Our gracious God and loving Heavenly Father, before we begin this meeting we come to you and we look to you and ask that you would be with us as we do the work of the city. Both staff and city council, we look to you for the blessings of discernment and the blessings of wisdom, that the things that we do might be done for the benefit of all and with the intent of helping all. Be with us to this end in all that we do and be with all those in this community. Bless them as they have need. *We ask these things in Jesus' name.* Amen."

"Shall we pray? Our gracious God and our loving Heavenly Father, we do pause to spend this moment with you. To thank you for all the blessings that you give each one of us individually and for the many ways that you have blessed us as a community. And father we ask that you would be with us and preside over our meeting tonight, over the things that we do and say and we decide might be to the benefit of this community and ultimately might be done for your honor and your glory. Please bless us all and bless our families with the strength that we need for this New Year to come, that we may always strive to do what is right. *We ask these things in Jesus' name.* Amen."

It is our further understanding that members of the public regularly attend Council meetings and have necessary business before the Council.

First and foremost, the prayers being offered before the Council's meetings 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 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 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., 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).

In *Wynne*, the court 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).

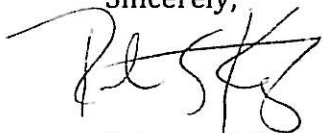
Recently, the Supreme Court let stand another decision from the Fourth Circuit, which upheld a government policy requiring prayer before city council meetings to

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.

The City Council of Independence cannot, under current 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 non-religion, but also Christianity over other faiths. This preference is reinforced by Councilman Schultz' invocations. 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. Furthermore, 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 the Council's meetings should not be predicated upon being subjected to Christian-based prayers.

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,



Rebecca S. Kratz
Staff Attorney

RSK:sas