

October 6, 2009

**SENT VIA U.S. MAIL & FAX**  
**(630) 260-2017**

The Honorable Michael Gresk and Members of the Council  
City of Wheaton  
City Hall  
303 W Wesley St  
Wheaton IL 60187-0727

Dear Mr. Gresk and Members of the Council:

I am writing on behalf of a concerned Wheaton resident and taxpayer and other area members of the Freedom From Religion Foundation (FFRF) to urge you to discontinue the practice of opening Wheaton City Council meetings with prayers. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation of church and state, and represents the rights of nonbelievers. FFRF represents nearly 14,000 members across the country including more than 530 members in Illinois.

It is our information and understanding that the Wheaton City Council (“Council” or “City”) includes a prayer or an invocation as part of its regular meetings. Our complainant informs us that it is the Council’s practice to invite local clergy members to give the invocation. 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 March 2009 through September 2009, it is clear that these prayers are rarely, if ever, non-denominational or non-sectarian. The majority of the invocations from this year contained specific references to Jesus Christ. Six prayers specifically invoked Jesus Christ and/or ended “in Jesus’ name” while three ended in a variation thereof such as “In Your name” or “in the name above all names.” Listed below are two of the prayers given this year:

**August 3, 2009: Rev. Henry Gordon, Second Baptist Church**

“Let us pray. Our Father in Heaven, most gracious God, we gather in this place in the name of Jesus. We invite your grace, O Father, in this city council meeting, Father, and we pray that you would lead and direct us by the power of your Holy Spirit, that the words of thee might flow from our heart and lovely kindness and

tender mercy towards one another, in the mighty name of Jesus. We thank you for this opportunity, O gracious Father, to gather here to take care of the business of the city of Wheaton, O gracious Father. I ask that you bless every soul in here in the mighty name of Jesus, heal and restore, complete, and make whole in the mighty name of Jesus. I give you the glory and praises for the opportunity to be here in this time. In Jesus' holy name, Amen.”

**April 20, 2009: Fr. Joe Kupka, St. Joseph Orthodox Church**

“Let us pray. O Lord Jesus Christ our God, as we celebrate your glorious resurrection from the dead, accept our prayers and the good intentions and the works of these thy servants, the mayor and city council. May they successfully begin their work for thy glory and complete it without any obstacle. Guide their hands, their hearts, and their minds by the power of thy Holy Spirit. May their labors be peacefully accomplished, for thine is to show mercy and save us O our God, and to thee we ascribe glory now and ever. Amen.”

These prayers do not fall into the narrow exception of constitutionally permissible government-sponsored prayer outlined by the Supreme Court. 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 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).

Most recently, the Supreme Court let stand a decision from the Fourth Circuit, which upheld a government policy requiring prayer before city council meetings 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 type of prayer offered at the Council’s meetings runs afoul of the First Amendment. The prayers 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.

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 ask that the Wheaton City Council discontinue the unconstitutional practice of scheduling invocations that unconstitutionally reference Christianity and invoke Jesus Christ. By hosting these sectarian prayers, which show preference for Christianity, the Council is illegally and inappropriately imposing its religious beliefs on the citizens of

Wheaton who attend the Council's meetings for public business. 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 Wheaton should require that any invocations given before Council meetings comply with the Supreme Court's requirements and be non-sectarian and non-denominational. We ask that you respond in writing about the steps the Council undertakes to bring its practices into conformity with constitutional dictates.

Sincerely,

Rebecca S. Kratz  
Staff Attorney

Enclosure

**City Council Invocations  
Wheaton, IL**

**September 21, 2009: Rev. Kevin Holly, Hope Presbyterian Church**

Let us pray. God of all life, you call us to live in community and teach us to care for one another after the pattern of Jesus Christ, your Son, our Lord. We pray for those whose positions and authority affect the lives of others. Inspire them with a vision of the community as it might be: where love of neighbor and concern for one another drive out discontent and strife, anxiety and fear. Help us all to work together with one heart and will with sympathy and understanding to serve the common good, to minister the people in trouble and despair and to multiply true happiness among us. Through Jesus Christ, our Lord, Amen.

**September 8, 2009: Pastor Melody Eastman, St Paul Lutheran Church**

Let us pray. Gracious and Holy God, this day again we give you thanks for all who labor and this night we especially thank you for those who have been called to offices of governance and leadership. And we ask your blessings against this night on the work that takes place in this space. We ask your spirit of wisdom to guide conversations and deliberations and decisions. We ask your guidance so that your people will work continuing to serve you and we ask that the work that takes place this night continue to strengthen, to uphold, to encourage and to support the residents of Wheaton and all who find their lives touched by this place. We thank you for your presence, for your strength, for our leaders. We lift all these things to you in your most holy name. Amen.

**August 17, 2009: Rev. Dave Tietjen, Evangel Baptist Church**

Father, we're grateful to gather here in peace and in freedom in the great country with which you have blessed us. I thank you for this city, and the servants who have given up their skills and training and role in life to serve others in their community. I ask your presence to be with this meeting this evening. Guide all those who have a great interest in participating in our government to speak with wisdom, with thoughtfulness, with kindness, and with insight. We are thankful for your many blessings in life, most of all for the gift of your Son to us, and the way of salvation that he plans. We are grateful for your blessings to us as a nation and a county and a community, and pray your presence would be manifest here tonight. This I ask in Jesus' name. Amen.

**August 3, 2009: Rev. Henry Gordon, Second Baptist Church**

Let us pray. Our Father in Heaven, most gracious God, we gather in this place in the name of Jesus. We invite your grace, O Father, in this city council meeting, Father, and we pray that you would lead and direct us by the power of your Holy Spirit, that the words of thee might flow from our heart and lovely kindness and tender mercy towards one another, in the mighty name of Jesus. We thank you for this opportunity, O gracious Father, to gather here to take care of the business of the city of Wheaton, O gracious Father. I ask that you bless every soul in here in the mighty name of Jesus, heal and restore, complete, and make whole in the mighty name of Jesus. I give you the glory and praises for the opportunity to be here in this time. In Jesus' holy name, Amen.

**July 6, 2009: Sister Alice Drewek, Wheaton Franciscan Sisters**

God, as the city council gathers here this evening, may they be guided in their work by your presence. As they set about their work, we ask that you lead them. Help them to see with your eyes; help them to listen with your ears. Inspire them to make decisions for the good of the whole. May the importance and sacredness of their work bring abundant blessings to those who called them to this position of leadership. And when this evening's work is complete, may they feel that what they have done, they have done with you, to share your love and peace, in this little part of your beautiful world. Amen.

**June 15, 2009: Rev. Josh Howard, Wheaton Wesleyan Church**

Let's pray. Lord, we just thank you so much for this beautiful day that you have given to us, and we thank you right now for this great country and this great city with which we have the privilege to reside in. I thank you for the women and men who are gathered here tonight to do the business of the city. Lord, your scriptures tell us to ask you for wisdom, and so we do so tonight. Grant unto each councilmember and each person here tonight the wisdom and discernment needed to make the right decisions. Lord, we ask for you to

develop a spirit of unity. We know that there's going to be probably some disagreements, and we're not going to agree on all the issues, but Lord I just ask that you would help us leave this place with the understanding that we're working towards the same goals, to make the city of Wheaton a better place to live in and serve in. So go before us tonight, Lord, light the way. Give this council exactly what they need to be productive and effective. We ask these things in your name, Lord. Amen.

**June 1, 2009: Pastor Devin Leftwich, Vessels of His Love Ministries**

Let us look to the Lord in prayer. Heavenly Father, we just thank you, Lord, for every opportunity we have to come and to talk about business of the city and things that are important to us, Lord. I thank you in the name of Jesus, Father God, that each councilmember, Father God, is not just doing things on their own behalf, Lord, but that they are just working together for the betterment of the city of Wheaton. We thank you for this wonderful city you have allowed us to live in, Lord, and we thank you this day that each person that wants to be heard will be heard, that each item of the agenda will be taken care of the way that you would want it taken care of. And Lord I just want to say that I know that people have dissenting opinions and that things happen, Lord, but I think everything is done in love and honor and respect for one another, patiently enduring through the things that need to be endured through, and in the end, Lord, that you will take care of everything the way that it should be, Father, so that this city of Wheaton continues to be one of the great cities here on the state of Illinois. We thank you and count it on this day, in Jesus' name, Amen.

**May 18, 2009: Rev. Tom Zoelzer, St. Matthew United Church of Christ**

Shall we pray. Creating God, you shower us with your grace, and we are blessed. You shower us with your love, and we're lifted up. You shower us with your peace, and we find a calmness in our life. And so tonight we ask that your grace and your peace and your love be with us, both with those who are honored and recognized tonight, and those who come to do the business of the city of Wheaton. Bless us with your wisdom, give us your grace, give us your peace, give us your love. Lead us forward in faith. In Jesus' name, for who many, we call our way, our truth, our life, Amen.

**May 4, 2009: Father Don McLaughlin, St. Michael's Church**

God of power and might, wisdom and justice, through you authority is rightly administered. Assist with your spirit of council and fortitude the members of this city council, especially those newly elected, and our mayor and other government leaders of this city of Wheaton. May they always seek the ways of goodness and righteousness, justice and mercy. Grant that they may be enabled by your powerful protection to lead our city with honesty and integrity. We ask this through you, Lord and God of all peoples. Amen.

**April 20, 2009: Fr. Joe Kupka, St. Joseph Orthodox Church**

Let us pray. O Lord Jesus Christ our God, as we celebrate your glorious resurrection from the dead, accept our prayers and the good intentions and the works of these thy servants, the mayor and city council. May they successfully begin their work for thy glory and complete it without any obstacle. Guide their hands, their hearts, and their minds by the power of thy Holy Spirit. May their labors be peacefully accomplished, for thine is to show mercy and save us O our God, and to thee we ascribe glory now and ever. Amen.

**March 16, 2009: Pastor Mike Roe, First Baptist Church**

Let's pray together. Father, how many meetings have taken place in this room. And this is just one of many. But there are many decisions and many problems that face us as a community, as a nation, our world. And so, Lord, it is appropriate for us to stop, right at the beginning, and recognize that although the men and women gathered in front of me are intelligent and prepared and thoroughly thought out, what we need, Lord, is wisdom. Because some of the problems that face us just go beyond preparation, go beyond planning. And so I pray that you would give incredible wisdom. You are the God of wisdom. Father, some of the [audio feedback] about to be made, some will like them, some will not. You are the God of reconciliation, and we pray that you would help us work it through so that we would stay together, a united people. You are the God of peace. Because Lord some of the things, well they can keep us awake at night. And we pray that you would give us peace in all that takes place in this room tonight. Be pleased to be with us, give wisdom, guidance, give courage. And we will say thank you in that name that is above all names. Amen.