



# FREEDOM FROM RELIGION FOUNDATION

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November 20, 2009

**Sent Via Fax and U.S. Mail  
(661) 852- 2035**

COPY

The Honorable Harvey Hall  
Mayor  
City of Bakersfield  
1600 Truxton Avenue  
Bakersfield, CA 93301

Zack Scrivner  
Vice Mayor  
1600 Truxton Avenue  
Bakersfield, CA 93301

Re: Prayers at City Council Meetings

Dear Mayor Hall and Mr. Scrivner:

I am writing on behalf of a concerned Bakersfield 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 nearly 14,000 members across the country including 2,200 members in California.

It is our information and understanding that the Bakersfield City Council (hereinafter "Council" or "City") opens meetings with an invocation given by a local clergy member. 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 September through November 4, 2009, it is clear that these prayers are rarely, if ever, non-denominational or non-sectarian. Of the prayers reviewed, all but one ended with specific references to Jesus Christ, "in Jesus' name," or "in your son's name." In the November 4, 2009 prayer "Father," "God," or "Lord" was used twenty-one times. Listed below is a sampling of this prayer and other prayers given at recent Council meetings:

**November 4, 2009: Reverend James Lair, First Assembly of God Church**

Shall we pray. Dear Heavenly **Father**, I thank you for everyone that's gathered in this room tonight. Everyone here cares about this community and about this city, and **Lord**, you care even more. And so **God**, we ask for your wisdom, for your strength. **Lord**, our community is facing challenges, and **God**, there may be many answers, but **God**, you know the best answers. And **Father** I thank you for these men and women who are willing to give up their time, and their service, and their careers to serve as public servants... And so **God**, I thank you for all these that are gathered in this place and willing to serve humanity and to serve you. And so we ask all these things **in Jesus' name**. Amen.

**September 9, 2009: Father Joseph Chaffey, St George's Greek Orthodox Church**

**O Master Lord our God**, the source of all life and immortality, the author of all created things, both visible and invisible, who has established all seasons and times by thine own authority and dost direct all things with an all-wise and all-gracious providence, we thank you for your bounties which you have always poured out upon us during our life that is past. And we entreat you, all-bountiful Lord, bless this your par (?), your Council, City Council, and all civil authority that you have granted us. Bestow upon them and all your people of this City, and this county, good things from above: health, salvation, good furtherance in all things. Deliver this city and all cities and countryside's from evil assault, and vouchsafe unto them peace and tranquility, and grant that we may always off thanksgiving unto you, the original Father, together at the beginning, **your only begotten son and the all-holy good and life-giving spirit, now and ever and into ages of ages**. Amen.

Please find enclosed transcriptions of all prayers reviewed from September - November 2009.

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 Bakersfield 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 [Bakersfield 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 Bakersfield. 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 Bakersfield 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,



Rebecca S. Kratz  
Staff Attorney

Enclosure