

FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL AND U.S. MAIL:
lamar.fisher@copbfl.com

The Honorable Lamar Fisher
Mayor, City of Pompano Beach
100 West Atlantic Blvd.
Pompano Beach, FL 33060

Re: Unconstitutional city commission invocation policy

Dear Mayor Fisher

I am writing on behalf of the Freedom From Religion Foundation to alert you to the unconstitutionality of Pompano Beach's new policy regarding invocations before City Commission meetings. FFRF is a national non-profit organization with more than 22,500 members across the county, including more than 1,100 members in Florida, and a local chapter, Central Florida Freethought Community. FFRF's purpose is to protect the constitutional principal of separation between state and church.

We understand that the City Commission of the City of Pompano Beach adopted a resolution to severely restrict who is able to give invocations before City Commission meetings. This resolution limits the pool from which the "invocation speaker" can be selected to "'churches,' 'congregations,' or other religious assemblies in the annual Yellow Pages" and "religious congregations with an established presence in the local community." Additionally, this resolution calls for the city clerk to determine the "authenticity of a religious congregation" by applying the criteria for IRS 501(c)(3) tax-exempt status.

This resolution flies in the face of the Supreme Court decision that allows these invocations in the first place. *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811 (2014). The Court upheld prayers at local government meetings only "[s]o long as the town maintains a policy of nondiscrimination..." *Id.* at 1824. In *Greece*, "***The town at no point excluded or denied an opportunity to a would-be prayer giver.*** Its leaders maintained that a minister *or layperson* of any persuasion, ***including an atheist***, could give the invocation." *Id.* at 1815 (emphasis added). Pompano Beach's policy is blatantly discriminatory and would likely exclude new religions, minority religions, poor religions, and the non-religious.

The Supreme Court's decision would have been different had the town used the prayer opportunity to discriminate against minority religions as Pompano Beach appears to be doing: "The analysis would be different if town board members ... singled out dissidents for opprobrium...." *Id.* at 1814-15. There can be no "official policy or practice of discriminating

against minority faiths.” *Id.* at 1817. In fact, we understand this policy was passed specifically to exclude a minority religion.

If Pompano Beach wants to continue to host prayers, it cannot discriminate against *any person* wishing to give a prayer: “The First Amendment is not a majority rule, and government may not seek to define permissible categories of religious speech. Once it invites prayer into the public sphere, government must permit a prayer giver to address his or her own God or gods as conscience dictates, unfettered by what an administrator or judge considers to be nonsectarian.” *Id.* at 1822-23.

If the preceding language were not explicit enough, the Court clearly stated that the purpose of these prayers must be inclusive: “These ceremonial prayers strive for the idea that people of many faiths may be united in a community of tolerance and devotion.” *Id.* at 1823. The City’s new policy appears to violate the limits of *Greece* and therefore the First Amendment.

In this case, the Commission is refusing religious minorities the same prayer opportunity as people of majority religions. It is no defense to claim that the community may be worried about a Satanist message. Community feelings do not give the government the right to “prescribe what shall be orthodox in ... religion, or other matters of opinion...” *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 633-34 (1943) (Murphy, J., concurring).

If the Commission truly believes that atheist, Satanist, or Wiccan invocations will create fear and unrest in their community, the solution is *to stop having the invocations*. *Greece* does not *require* the Commission to allow invocations. All this could be avoided and taxpayer dollars saved if the Commission were to simply get down to the business of doing its job, rather than first experimenting with the dangerous mix of religion and government.

Recently, Brevard County (Fla.) passed a resolution that prevented atheists, agnostics, and non-believers from delivering invocations before County Commission meetings. Now Brevard is having to defend its policy in federal court in a lawsuit filed by FFRF, the ALCU of Florida, and Americans United. We request that the city respond in writing with its plan to ensure that people of any or no religion are allowed to give invocations.

Sincerely,



Andrew L. Seidel
Staff Attorney

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