

FREEDOM FROM RELIGION *foundation*

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July 14, 2016

SENT VIA FAX & U.S. MAIL
254-897-2600

Mr. Andrew Lucas
County Attorney
Somervell County
P.O. Box 1335
Glen Rose, Texas 76043

Re: Unconstitutional invocation practices

Dear Mr. Lucas:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Somervell County. We were contacted by a concerned county resident. FFRF is a national nonprofit organization with 24,000 members across the country, including nearly 1,000 members in Texas. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that the Somervell County Commissioner's Court regularly opens its meetings with an invocation. We understand that until recently, the invocations were invariably Christian prayers delivered by members of the Commissioner's Court. When it was pointed out to Commissioners that this practice was unconstitutional, the practice was changed. Now, we understand that members of the community are invited by County Judge Danny Chambers to deliver invocations at the start of meetings. So far, under the new policy only Christian religious leaders have been invited. Local minister Dennis Moore delivered a Christian prayer at the June 13 meeting and a pastor from First Baptist Church delivered a religious invocation on July 11.

We write now because we are informed that a local resident, [REDACTED], has made several written and oral requests to Judge Chambers to be included on the list of invocation givers. We understand that [REDACTED] has made it clear that she desires to give an invocation as an atheist that celebrates our shared humanity and "reflect[s] good wishes and wisdom for the officials." [REDACTED] most recently addressed Judge Chambers at the conclusion of the July 11 Commissioner's Court meeting, where Judge Chambers stated that "he didn't want atheists to do the prayer because he didn't want the court mocked." Judge Chambers also expressed doubt that an atheist could deliver an invocation "since you don't believe in God."

We write to encourage the Somervell County Commissioner's Court to end its practice of including invocations at its meetings; or in the alternative, to ensure that atheists are given equal access to the invocation forum that the Commissioner's Court has created.

Prayer at government meetings is unnecessary and divisive. The best solution is to discontinue invocations altogether. Members of the Commissioner's Court 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 Commissioner's Court ought not lend its power and prestige to religion by inviting religious leaders to give prayers. As a local government, citizens, including Somervell's nonreligious citizens, are compelled to come before the Commissioner's Court on important civic matters, to seek licenses, permits, to participate in important decisions affecting their livelihoods, property, children, and quality of life. The prayers exclude the over 23% of Americans who identify as nonreligious, including one-in-three adult Americans under thirty.¹ It is coercive and intimidating for these nonreligious citizens to come to a public meeting and be required to either make a public showing of their nonbelief or show deference to a religious sentiment they do not believe in, but which members of the Commissioner's Court clearly do.

However, if the Commissioner's Court insists on continuing to host invocations at public meetings, it must not discriminate against any person wishing to give a prayer. The nonreligious and members of minority religions must be permitted to deliver invocations on an equal basis.

The Supreme Court recently addressed the issue of legislative prayer in *Greece v. Galloway*, 134 S. Ct. 1811 (2014). The Court identified several important elements to the town's invocation practice that, taken together, ensured that the practice did not impermissibly advance one religion over another or promote religion over nonreligion. Over time, the town of Greece "compiled a list of willing 'board chaplains' who had accepted invitations and agreed to return in the future." *Id.* at 1816. Additionally, the town of Greece "at no point excluded or denied an opportunity to a would-be prayer giver." *Id.* If the Commissioner's Court chooses to continue its prayer practice, it must similarly open its prayers to all comers, including atheists, agnostics, Wiccans, and, potentially, Satanists.

Although Greece created its initial list of invocation givers by having a "town employee . . . call the congregations listed in a local directory until she found a minister available for that month's meeting," the town demonstrated a willingness to go beyond its list and allow others to give invocations. *Id.* At one point the town invited a Jewish layperson (not a member of the clergy) to give an invocation and when a Wiccan priestess requested to give an opening prayer, the town granted her the opportunity. *Id.* at 1817. The town "maintained that a minister or layperson of any persuasion, *including an atheist*, could give the invocation." *Id.* at 1816 (emphasis added). In fact, on July 15, 2014, an atheist citizen delivered the opening invocation at Greece's town board meeting.²

The fact that Greece "represented that it would welcome a prayer by any minister or layman who wished to give one" was a critical factor in the Court's conclusion that the practice in *Galloway* did not violate the Constitution. *Id.* at 1824. The Court clearly stated that the purpose of these invocations 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 Supreme Court's decision would have been different had the town used the prayer opportunity to

¹ *America's Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

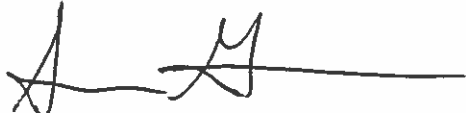
² See www.centerforinquiry.net/newsroom/atheist_to_deliver_invocation_at_greece_ny_town_meeting_july_15/.

discriminate against minority religions or the nonreligious. There can be no “policy or practice of discriminating against minority faiths.” *Id.* at 1817. A nonbeliever who requests to give the opening invocation must therefore be allowed to do so. This is not only the most inclusive practice, but after *Galloway*, it is the most constitutionally sound option.

It is unconstitutional discrimination to treat similarly-situated persons differently: “[t]he Equal Protection Clause of the Fourteenth Amendment . . . is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). Treating an atheist or nonbeliever who wishes to give an invocation differently from a religious citizen constitutes discrimination.

In order to demonstrate the Commissioner’s Court’s respect for the diverse range of religious and nonreligious citizens living in Somervell County, we urge the Commissioners to concentrate on civil matters and leave religion to the private conscience of each individual by ending the practice of hosting prayers at their meetings. At the very least, the Commissioner’s Court must ensure that its invocation policy does not discriminate against atheists and freethinkers. [REDACTED] must be permitted to give an invocation at an upcoming meeting and must be added to the rotation of invocation givers if she desires. Please inform us in writing of the steps you are taking to resolve this matter so that we may notify our complainant.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sam Grover', with a long horizontal line extending to the right.

Sam Grover
Staff Attorney