

FREEDOM FROM RELIGION *foundation*

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July 31, 2014

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The Honorable Scott Gruendl
Mayor of City of Chico
P.O. Box 3420
Chico, CA 95927

Re: Chico City Council discriminating against non-believers

Dear Mayor Gruendl and City Councilors:

I am writing on behalf of concerned members of the Freedom From Religion Foundation (FFRF), to alert you to serious constitutional concerns surrounding the City of Chico's refusal to allow atheists to give an invocation before City Council meetings. A concerned local resident contacted us. FFRF is a national nonprofit organization with 21,000 members, including more than 3,200 members in California and a Sacramento chapter. We protect the constitutional separation of state and church.

We wrote you in June of 2013 and several times thereafter regarding the Council's prayer practices. You neglected to respond to these letters. This issue is not going away. You cannot legally continue to discriminate against the large percentage of Chico citizens who are non-religious. Today 19% of adult Americans are nonreligious¹ and 32% of Americans under the age of 29 are nonreligious.² That 19% figure is up from 15% in 2007,³ and 7.5% in 1990.⁴

We understand that, despite the recent Supreme Court decision requiring invocation opportunities to remain open to minority religions and even the nonreligious, the Council has an exclusionary practice. Apparently, you have ignored and refused requests from nonreligious citizens to give invocations. Specifically, George Gold, president of the Atheists of Butte County, has requested permission to give an invocation and has been studiously ignored by this Council. This violates the Constitution and illegally discriminates against nonreligious citizens.

First Amendment violations

As you probably know, the Supreme Court recently decided *Town of Greece, N.Y. v. Galloway*. 134 S. Ct. 1811 (2014). The Court upheld prayers at local government meetings only "[s]o long

¹ The Pew Forum on Religion & Public Life, *Asian Americans: A Mosaic of Faiths*, 148 (July 2012) available at <http://www.pewforum.org/Asian-Americans-A-Mosaic-of-Faiths-overview.aspx>.

² "Nones on the Rise: One-in-Five Adults Have No Religious Affiliation," Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012) available at <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>

³ Id.

⁴ Barry Kosmin, National Religious Identification Survey 1989-1990, available at <http://commons.trincoll.edu/aris/files/2013/11/ARIS-1990-report1.pdf>

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). Chico must open its prayers to all comers, including atheists, agnostics, Wiccans, and Satanists. (An atheist delivered an invocation in Greece earlier this month and a Wiccan gave an invocation just prior to litigation).

The Supreme Court’s decision would have been different had the town used the prayer opportunity to discriminate against minority religions as Chico 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.

If Chico 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 inaction appears to violate the limits of *Greece* and therefore the First Amendment.

Denial of access based on religion is discrimination

It is 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)). The government “must treat like cases alike.” *Vacco v. Quill*, 521 U.S. 793, 799 (1997). Laws, rules, and policies must be equally applied. “To state an equal protection violation, a plaintiff must show that they were treated differently from similarly situated people and that defendants unequally applied a facially neutral ordinance for the purpose of discriminating against plaintiffs.” *Manseau v. City of Miramar*, 395 F. App’x 642, 645 (11th Cir. 2010) (citing *Campbell v. Rainbow City, Ala.*, 434 F.3d 1306, 1314 (11th Cir. 2006)).

In this case, the Council is refusing nonreligious minorities the same prayer opportunity as people of majority religions. It is no defense to claim that the community may be worried about an atheist 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 Council 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 Council to allow invocations. All this could be avoided if the Council were to simply

get down to the business of doing their jobs, rather than first experimenting with the dangerous mix of religion and government.

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. Further we request that the City respond to Mr. Gold's letter by inviting him to give an invocation before a Council meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew L. Seidel". The signature is fluid and cursive, with the first name "Andrew" and last name "Seidel" clearly distinguishable.

Andrew L. Seidel
Staff Attorney
Freedom From Religion Foundation