

Model Public Invocations Policy:

A Primer for Christian Leaders of Oconee County

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Introduction

The Alliance Defense Fund (“ADF”) has been in contact with the Palmetto Family Council, the Rev. Wayne Morton, president of the Oconee County Ministerial Association, and other citizens concerned about the current controversy created by the American Civil Liberties Union (“ACLU”) regarding the prayer policy of the Oconee County Council. Yours is one of several confrontations on this issue nationwide, as the ACLU has recently threatened elected officials in a number of American cities and counties and made extraordinary demands that their public invocations be censored or altogether prohibited.

ADF is a not-for-profit legal alliance defending the right to hear and speak the Truth through strategy, training, funding and litigation, and we are very concerned by this latest tirade of the ACLU. In December 2006, we wrote the Oconee County Council (“the Council”) to express our support and encouragement of its continued participation in the important American tradition of opening public proceedings with an invocation. At the request of your local community leaders, we have now drafted the attached “Policy Regarding Opening Invocations before the Meetings of the Oconee County Council” (“the Policy”), to be presented to the Council as a proposed solution to the current dilemma.

This primer has been prepared to provide you, the leaders of the Christian community of Oconee County, with an explanation of the contents of the Policy and the reasons why we believe you should support it.

Q: *What Will the Policy Accomplish?*

We have drafted this proposed Policy to provide a constitutional mechanism whereby the Council can preserve its longstanding tradition of opening its meetings with a prayer. It is our understanding that the Council may currently be inclined to simply abandon this invaluable tradition in order to appease the ACLU and extinguish the present controversy. That would be a tragedy, and would merely encourage the ACLU to bully other public bodies into similar submission. The law does NOT require such a drastic measure.

To the contrary, as the Policy’s preamble and our cover letter summarize, the United States Constitution protects the right of a public body to have its meetings opened with an invocation. Public prayer has been an essential part of our heritage since the time of this nation’s founding, and it must remain so. The United States Supreme

Court has acknowledged that official proclamations of thanksgiving and prayer, and invocations before the start of government meetings, are an essential part of our culture and in no way a violation of the Constitution. This has been a consistent principle in First Amendment jurisprudence.

Q: *Why are the Specific Provisions of this Policy So Important?*

In recent years, a number of federal courts have been called upon to review the specific invocations policies and practices of particular public bodies. The legal challenges, brought primarily by the ACLU, have achieved mixed results. In several cases, the challenged prayer policies have been approved by the courts. For example, in *Simpson v. Chesterfield County Bd. of Supervisors*, 404 F.3d 276 (4th Cir. 2004), *cert. denied*, the United States Court of Appeals for the Fourth Circuit, which includes South Carolina, recently reviewed and specifically approved the prayer policy of a county board in which various clergy in a county's religious community were invited to present invocations before meetings of the board.

The Fourth Circuit found it important that the invocations policy of the Chesterfield County, Virginia, Board of Supervisors specified that the prayers were offered for the benefit and blessing of the Board itself. Equally important to the court was the fact that all local clergy were invited to participate on an equal and rotating basis, without regard to their respective faiths. Chesterfield County's only qualification was that the prayer-giver be the leader of a local monotheistic congregation. The Board compiled its invitation list primarily by referencing the listings for "churches" in the Yellow Pages of the phone book.

On the other end of the spectrum are invocations policies that have been routinely struck down by the courts, and thus spurred on the ACLU and their allies. In the Fourth Circuit, the most notable of these cases is *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2002), *cert. denied*, where the court held that the Town Council of Great Falls, South Carolina, "improperly 'exploited' a 'prayer opportunity' to 'advance' one religion over others." *Id.*, at 298 (quoting *Marsh v. Chambers*, 463 U.S. 783, 794 (1983)).

There were a number of reasons for the court's decision in *Wynne*. Not only did the Great Falls Town Council make its opening prayers "part of the public's business," "direct its prayers" to the citizenry whom it sought to involve in the prayers, and insist upon allowing only Christian prayers brought by the Council members themselves—Council members also openly and repeatedly criticized a citizen who refused to participate in the invocations. Obviously, these actions crossed well beyond the legal lines.

The combination of these two opposing cases, *Simpson* and *Wynne*, has provided us with some guidance as to what types of prayer policies should be upheld as constitutional in your jurisdiction. The bottom line is that any policy adopted and

implemented by the Council must ensure that the invocation opportunity is not exploited to proselytize any particular faith or disparage any others, or show any preference of the Council for a specific faith or religious denomination. It is our belief that the Policy we have carefully drafted meets these criteria and would pass court muster if challenged.

Q: *Would the Policy Make Allowance for Non-Christian Prayers?*

It must. No invocations policy has a chance to be upheld by a reviewing court today unless it offers equal opportunity to at least the broad array of monotheistic faiths and denominations with a presence in that particular geographic area. One conclusion from the case law is clear: if a public body allows *any* prayers, it is required to allow for most all prayers, without unlawful discrimination against any.

Q: *Are Extraordinary Efforts to Include Prayers from Minority Religions Required?*

No. If a public body implements a legitimately neutral policy and procedure to invite local clergy from established congregations in its community to offer an opening invocation, that public body is not required to extend any extraordinary efforts to include particular minority faiths. In other words, no apology is necessary for the demographics of the community that the public body serves.

The Fourth Circuit, for example, showed little concern that the prayers before board meetings in *Simpson* were “traditionally made to a divinity that is consistent with the Judeo-Christian tradition.” *Simpson*, 404 F.3d at 280. The court noted that the Supreme Court, in the *Marsh* case, “also considered, and found constitutionally acceptable, the fact that the prayers in question [by the chaplain for the Nebraska Legislature] fit broadly within ‘the Judeo-Christian tradition.’” *Id.*, at 283 (quoting *Marsh*, 463 U.S. at 793).

In another recent case, *Pelphrey v. Cobb County, GA*, 448 F.Supp.2d 1357 (N.D. Ga., Sept. 8, 2006), a federal district court in Georgia upheld an invocations policy very similar to the one we have drafted for the Oconee County Council, even though the representatives of various religious groups providing the prayers in Cobb County were predominately Christian and sometimes included sectarian content in the prayers. The court was not unduly concerned by the ACLU plaintiffs’ argument that “the large majority of religious institutions in Cobb County are Christian.” *Id.*, at 1360. The court noted, “perhaps not surprisingly, the overwhelming majority of invocational speakers [96.6% of them between January 1988 and August 2005], to the extent their faiths c[ould] be identified from the record, [we]re Christian.” *Id.*

Q: *Why Should Christians Support an Opportunity for Non-Christian Prayers?*

Because that is the position necessitated by the law. In this context, the Christian has to accept all prayers or none. Without a neutral policy that is fairly implemented on an equal basis to all, the Council will be subject to a legal challenge that could eliminate future invocations of every kind.

We are aware that this is not always an easily understood and accepted position. In the Town of Great Falls, the actions of some apparently well-meaning Christian pastors may have actually helped the ACLU's case. When a councilmember there urged local citizens to lobby the council on this issue, the Fourth Circuit found it worthy of note that "several Christian ministers drafted letter resolutions on behalf of their members expressing support for continuance of a 'Christian' prayer at Council meetings and 'opposition to allowing an alternative prayer...' and numerous citizens signed a petition urging the Council to 'not stop praying to our God in heaven!'" *Wynne*, 376 F.3d at 295. Later, the plaintiff alleged that local citizens attempted to intimidate and threaten her because she professed to be a Wiccan witch. *Id.* If such actions did take place, they certainly did not help the case. "Moreover, the district court found that Wynne's 'efforts to participate in Town Council's meetings as a member of the public [were] adversely affected by her refusal to accept the Christian prayer tradition.'" *Id.*

Certainly, most Christians would agree that intimidation tactics are not Christ-like at all. Another approach seems more consistent with the faith. Perhaps we should ask ourselves instead, "*What is the power of the Gospel in the free marketplace of ideas?*" Is it necessary to restrict all other viewpoints in order for the Truth to ultimately prevail? Of course not. Christians must show we understand that the parameters of civil government and the realm of Caesar are to be respected.

Still, as the Supreme Court famously observed in *Zorach v. Clausen*, 343 U.S. 306, 313-14 (1952), "We are a religious people whose institutions presuppose a Supreme Being." By vigorously defending religious liberty—our first freedom—we can all help to ensure that observation remains true.

Conclusion

We trust that you will support the Policy proposed for the Oconee County Council. At the present time, it is the best, and perhaps only, alternative allowed under the law. If adopted as proposed, we will offer to defend the Policy and the Council—free of charge—against any legal challenge that results. We are hopeful that the Council, and other governmental bodies who may modify and adopt the draft Policy for their own use, will do the right thing, resist the radical secularist demands of the ACLU, and preserve this most important American tradition.

If you have any questions or concerns about this matter, please do not hesitate to contact us at (318) 798-8211. It is our pleasure to assist you in this cause. •