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Via email and U.S. Postal Service

February 12, 2016

Mayor Chris Marley
Town of Chino Valley
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Chino Valley Town Council
Town of Chino Valley
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Dear Mayor Marley and Councilmembers:

The American Civil Liberties Union (ACLU) of Arizona writes to express its opposition to the Town of Chino Valley's practice of conducting sectarian prayers during Town Council meetings. The Town's current practices are discriminatory and constitute an unconstitutional entanglement of government with religion in violation of the Establishment Clause of the First Amendment to the U.S. Constitution. Conflicts that arose during recent Town Council meetings, which have been reported in the media and to our office by local residents, are the foreseeable and inevitable consequence when government officials attempt to impose their religious views in a community that is comprised of diverse faiths, beliefs and values. We urge the Council to reconsider its practices.

The Supreme Court recently reaffirmed the "elemental First Amendment principle that government may not coerce its citizens 'to support or participate in any religion or its exercise.'" *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1825 (2014) (quoting *Cnty. of Allegheny v. ACLU, Greater Pittsburgh Chapter*, 492 U.S. 573, 659 (1989)). The Court held that legislative prayers of the type upheld in *Marsh v. Chambers*, 463 U.S. 783 (1983), may include sectarian prayers. The Court did not, however, give government unlimited authority to engage in prayer in whatever manner they please. *Greece*, 134 S. Ct. at 1823 (disavowing the notion that "no constraints remain" on the content of legislative prayers). More specifically, the Supreme Court made clear that local governments must "maintain a policy of nondiscrimination" in deciding who may present invocations, and that the relevant policies must not "reflect an aversion or bias . . . against minority faiths." *Id.* at 1824. The Court warned against excessive entanglement with religion by public officials, reinforcing that "[o]ur Government is prohibited from

prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior.” *Id.* at 1822.

There are significant burdens on the rights of individuals and communities when government promotes, endorses or officially sanctions one religion over another. The Supreme Court has long recognized that the “touchstone” of the Establishment Clause “is the principle that the ‘First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.’” *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)); see also, e.g., *Wallace v. Jaffree*, 472 U.S. 38, 60 (1985) (stating that “government must pursue a course of complete neutrality toward religion”); *Bd. of Educ. of Kiryas Joel v. Grumet*, 512 U.S. 687, 696 (1994) (“A proper respect for . . . the Establishment Clause[] compels the State to pursue a course of ‘neutrality’ toward religion,’ favoring neither one religion over others nor religious adherents collectively over nonadherents.”) (quoting *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 792–93 (1973)); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 226 (1963) (“In the relationship between man and religion, the State is firmly committed to a position of neutrality.”); *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947) (holding that the First Amendment “requires the state to be a neutral in its relations with groups of religious believers and non-believers”).

Rather than following these clearly established legal principles, the actions of the Chino Valley Town Council have a demonstrated coercive effect on residents who are of different faiths than Council members or who are non-believers. Based on the current composition of the Council and the practice of only allowing Council members to deliver invocations, only Christian invocations are given at Town Council meetings despite the attendance of non-believers and persons of other faiths.¹

Since the Supreme Court’s decision in *Town of Greece*, invocation practices identical to those of Chino Valley have been found to violate the First Amendment’s Establishment Clause. In *Lund v. Rowan County*, a federal court in North Carolina held that where only the elected members of a legislative body delivered prayers, and thereby exercised exclusive control over the content and delivery of the prayers given, the practice was “unconstitutionally coercive [...] in violation of the Establishment Clause.” *Lund v. Rowan Cty.*, N.C., 103 F. Supp. 3d 712, 733 (M.D.N.C. 2015). In *Hudson v. Pittsylvania City*, a federal court declined to lift an injunction on a legislative body prohibiting its unconstitutional conduct finding that “the active role of the Pittsylvania County Board of Supervisors in leading the prayers, and, importantly, dictating their content, is of constitutional dimension and falls outside of the prayer practices approved in *Town of Greece*.” *Hudson v. Pittsylvania Cty., Va.*, No. 4:11CV043, 2014 WL 10402067, at *3 (W.D.

¹ “Chino Valley council prays in name of Jesus; rabbi ejected from meeting” Sain, Ken – The Daily Courier, February 11, 2016.

Va. Aug. 4, 2014). The court found that “the Pittsylvania County Board of Supervisors involved itself in religious matters to a far greater degree than was the case in *Town of Greece*. In so doing, the prayer practice in Pittsylvania County had the unconstitutional effect, over time, of officially advancing one faith or belief, violating the clearest command of the Establishment Clause ... that one religious denomination cannot be officially preferred over another. *Id.* at *2 (Internal citations and quotations omitted).

Chino Valley’s invocation practices are not only unconstitutional, but also bad policy that promote divisiveness and engender discrimination toward religious minorities and non-believers. Residents of Chino Valley should be allowed to participate in public Council meetings without being coerced into participating in government-sponsored prayer or fear that they may be discriminated against for having different beliefs than Council members. Public meetings in Chino Valley should be open to all members of the community regardless of their religious beliefs.

The current practices of the Chino Valley Town Council are clearly unconstitutional. We urge the Town to reject any policy allowing invocations during government meetings that favor one religious view or belief over others. It is our hope that this issue can be resolved without litigation. If you have any questions or concerns, I can be reached at 602-773-6011 or by email at vlopez@acluaz.org.

Sincerely,



Victoria Lopez
Legal Director
ACLU of Arizona

Cc:
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