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May 22, 2014

Via Electronic Mail and First Class Mail

Jeffrey L. Mincks
Chesterfield County Attorney
PO Box 40
Chesterfield, VA 23832-0040
countyattorney@chesterfield.gov

Dear Mr. Mincks:

We write to request that the Chesterfield County Board of Supervisors rescind its policy of permitting only “ordained religious leaders of monotheistic religions” to deliver invocations at Board meetings. Although this policy has previously been upheld in court,¹ the Supreme Court’s recent decision in *Town of Greece v. Galloway*² makes clear that prayer opportunities must be available to persons of all faiths.

In *Greece*, the town allowed invited clergy to deliver sectarian invocations at Town Council meetings. Since most of the invited clergy were Christian, most of the prayers were Christian as well. The Court found that this was not by design; rather, “[t]he 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.”³

This open-access policy was key to the Court’s holding that the town had not violated the First Amendment: “That nearly all of the congregations in town turned out to be Christian does not reflect an aversion or bias on the part of town leaders against minority faiths. *So long as the town maintains a policy of nondiscrimination*, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing.”⁴

¹*Simpson v. Chesterfield Cnty. Bd. of Supervisors*, 404 F.3d 276 (4th Cir. 2005)

²No. 12-696, 2014 U.S. LEXIS 3110 (U.S. May 5, 2014)

³*Id.* at *10.

⁴*Id.* at *35 (emphasis added).

Under *Greece*, Chesterfield County's policy of inviting only "monotheistic" clergy to deliver invocations cannot be reconciled with the First Amendment. The requirement that prayer-givers be "ordained" is similarly problematic, as some religions do not require their clergy to be ordained, and others do not have clergy at all.⁵ Government may not discriminate against faiths that are nontheistic or polytheistic, or that lack ordained clergy.

Besides being unconstitutional, distinguishing among religions along these lines is not a task suited for government officials, who are not theologians. For example, the County's list of religious organizations invited to deliver invocations does not include the Chesterfield County Sikh congregation Richmond Gurdwara, even though, according to the group's website, Sikhs practice "strict monotheism." Sikhs also do not have ordained clergy but, after *Greece*, they cannot be excluded on that basis.

The Board may well anticipate that opening the prayer opportunity to members of all faiths will result in invocations that are offensive to many residents. There is a simple solution to this concern: instead of an invocation, the Board could open meetings with a moment of silence. That approach would still solemnize meetings, while also showing respect for the diversity of faiths in the County. Moreover, it would not deny any Board or audience member the opportunity to pray. To the contrary, each person then could pray in exactly the manner he or she sees fit.

If, however, the County continues to invite individuals to deliver invocations at meetings, it must make the invitation open to people of all religious persuasions, consistent with the *Greece* decision. We ask that you notify us within fourteen days whether the County will cease its exclusion of minority faiths from the invocations.

If you would like to discuss this matter further, we can be reached at rglenberg@acluva.org and khan@au.org. Thank you for your attention to this matter.



Rebecca K. Glenberg, Legal Director
American Civil Liberties Union of Virginia

Sincerely,



Ayesha N. Khan, Legal Director
Americans United for Separation
of Church and State

⁵ *In re Dhanoa*, 86 Va. Cir. 373, 2013 Va. Cir. LEXIS 18 (Fairfax Cir. Ct. Mar. 29, 2013) (invalidating a Virginia statute imposing additional procedural requirements on members of religions without ordained clergy who sought authorization to perform marriages.)