



(202) 466-3234
(202) 898-0955 (fax)
www.au.org

1301 K Street, NW
Suite 850, East Tower
Washington, DC 20005

June 27, 2014

By Email & U.S. Mail

Peter Joffrion, City Attorney
City Hall, 6th Floor
308 Fountain Circle
Huntsville, AL 35801
Peter.Joffrion@huntsvilleal.gov

Re: *Unconstitutional discrimination against Wiccan priest*

Dear Mr. Joffrion:

The City of Huntsville recently rescinded its invitation to Blake Kirk, a Wiccan priest, to deliver an opening prayer at the City Council's June 26, 2014, meeting. Kay Campbell, *No Wiccan Priest for Huntsville City Council Prayer? 'Somebody Got the Collywobbles,'* AL.com (June 26, 2014), http://www.al.com/news/huntsville/index.ssf/2014/06/city_council_prayers.html. Mr. Kirk was uninvited "because of phone calls from citizens alarmed about [his] faith." *Id.* The City Attorney confirmed that Mr. Kirk "had been asked to give the invocation Thursday, but when the agenda was released publicly earlier this week, several council members received community concerns about 'a Wiccan' being invited to speak." Matt Kroschel, *Local Wiccan Uninvited To Give City Council Invocation Due To "Community Fears"*, WHNT News (June 26, 2014), <http://whnt.com/2014/06/26/breaking-local-wiccan-uninvited-to-give-city-council-invocation-due-to-community-fears/>. Apparently, the City Council may still invite Mr. Kirk to speak at a later meeting, but it plans to use the delay to "introduce him more gently." Campbell, *supra*.

The Establishment Clause of the First Amendment to the U.S. Constitution prohibits the City Council from excluding prayer-givers because of their religion, or because of citizens' opposition to that religion. Nor may the City Council impose unique requirements or burdens on a speaker—such as the requirement that he delay his remarks so that he can be introduced "more gently"—based on his religious beliefs. Please promptly reinstate the invitation to Mr. Kirk, and ensure that all future speakers are treated equally, regardless of their religious beliefs or community opposition to those beliefs.

The city’s treatment of Mr. Kirk violates “[t]he clearest command of the Establishment Clause”—“that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982). In *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), the U.S. Supreme Court held that if local legislatures invite speakers to deliver solemnizing messages at meetings, they must “maintain ... a policy of nondiscrimination.” *Id.* at 1824. The town’s practices in that case were upheld because the town assured the Court “that a minister or layperson of any persuasion, including an atheist, could give the invocation.” *Id.* at 1816. Indeed, in the Town of Greece, “[a] Wiccan priestess who had read press reports about the prayer controversy requested, and was granted, an opportunity to give the invocation.” *Id.* at 1817. And even if the city ultimately invites Mr. Kirk to speak at a later meeting, the city violated the Establishment Clause by subjecting him to additional obstacles, including the requirement that he delay his remarks so that the city could introduce him “more gently” at a later date.

Nor may city leaders deny or delay Mr. Kirk’s opportunity to speak on the ground that certain members of the community dislike Wiccans. Community outrage or prejudice does not justify imposing special conditions on speakers from minority faiths. To the contrary, the First Amendment protects even speech that “may strike at prejudices and preconceptions and have profound unsettling effect.” *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949). Speech may not be “burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.” *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134 (1992). As the Supreme Court explained in *Town of Greece*, “[t]he First Amendment is not a majority rule, and government may not seek to define permissible categories of religious speech.” 134 S. Ct. at 1822.

If the City Council wishes to start its meetings with prayers, it must open the prayer opportunity to people of any and all religious beliefs—including Wiccans—and it may not impose unique burdens or conditions on speakers of particular beliefs, whether in response to community outrage or otherwise. We would appreciate a response to this letter within 15 days. If you have any questions, please contact Zachary Dietert at (202) 466-3234 or dietert@au.org.

Sincerely,



Ayesha N. Khan, Legal Director
Gregory M. Lipper, Senior Litigation Counsel
Zachary Dietert, Madison Fellow