

Secular Coalition for Arizona  
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January 13, 2017

Arizona Corporation Commission  
1200 W Washington  
Phoenix, AZ 85007

RE: Prayer in Meetings

Dear Chairman Forese and Members,

In a January 10, 2017 press release the Corporation Commission announced that it will start a new practice of having a prayer to begin the meeting. Contrary to the statements of Chairman Tom Forese, prayer in any form does not encompass all faiths and beliefs. In fact, prayer before government meetings is a very divisive act and only serves to set people apart. That was immediately evident by the comment of Forese to a reporter that if the Satanists requested to do a prayer, “Satan has no place at the commission.” This is exactly the kind of discrimination that is prohibited under the First Amendment.

**Government prayer is unnecessary and divisive.**

First and foremost, prayer at government meetings is unnecessary, inappropriate, and divisive. Commissioners are free to pray privately or to worship on their own time in their own way. They do not need to worship on taxpayers’ time. The Commission ought not to lend its power and prestige to religion, amounting to a governmental endorsement that excludes at a minimum the 25% of adult Americans, including more 39% of young adults from ages 18-29.<sup>1</sup>

Calling upon citizens to pray is coercive and beyond the authority of the state government. Citizens are compelled to come before you on important business and civic matters, to participate in major decisions affecting their livelihood, their property, and their quality of life. These citizens should not be made to feel offended, excluded, or like political outsiders because the government they support with their taxes imposes religious ritual at civil government meetings. Government should not perform religious rituals, or exhort citizens, regardless of beliefs, to participate, or even to show deference or obeisance to this ritual (such as asking citizens to stand).

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<sup>1</sup> Jones, Robert P., Daniel Cox, Betsy Cooper, and Rachel Lienesch. “Exodus: Why Americans Are Leaving Religion – and Why They’re Unlikely to Come Back.” *PRRI*. 2016. <http://www.prii.orgsearch/prri-rns-poll-nones-atheist-leaving-religion/>

Our nation is founded on a secular Constitution, whose only references to religion in government are exclusionary, such as “no religious test shall ever be required” for public office.<sup>2</sup> The United States was the first nation to adopt a secular constitution, investing sovereignty in “We the People,” not a divine entity. The framers did not think it necessary to pray during the four-month Constitutional Convention. We fail to see why it is necessary for the Commission to pray to complete its daily civil business.

### **The Commission’s actions violate the U.S. and Arizona Constitutions.**

The U.S. Supreme Court in *Town of Greece, N.Y. v. Galloway*<sup>3</sup> approved a non-discriminatory prayer policy that allowed others, explicitly including non-Christians and atheists, to give invocations: “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.”

The Supreme Court believes atheists capable of giving invocations that satisfy the sole criteria on which invocations can be justified—to solemnize the proceeding. The more than 75 secular invocations<sup>4</sup> recently delivered at government meetings around the country prove the high court correct.

Once the Commission decides to host prayers, it cannot determine what is said in those prayers or which god, if any, the officiant decides to address: “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.***” *Galloway* at 1822-23 (emphasis added).

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. If the Commission refuses to sponsor a prayer from a group because they disagree with that group’s message, they will not be affording minority religions and nonreligious minorities the same prayer opportunity as people of majority religions. That would clearly be discrimination.

*Galloway* relies on the seminal Establishment Clause case, *Engel v. Vitale*, that prohibits the government and government officers from composing prayers: “Our Government is prohibited from ***prescribing prayers*** to be recited in our public institutions.” *Galloway*, 134 S. Ct. at 1822 (citing *Engel v. Vitale*, 370 U.S. 421, 430 (1962))(emphasis added).

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<sup>2</sup> U.S. Const. art. VI.

<sup>3</sup> 134 S. Ct. 1811, 1815 (2014) (emphasis added).

<sup>4</sup> See <http://cflfreethought.org/invocations/>

The Commission Chairman's threat to ban minority religions and nontheistic prayers also violates the Arizona Constitution. The Supreme Court of Arizona wrote, "We cannot imagine that the Legislature would give preferential treatment to one religion over another because one is more established and thus more acceptable than another." *Appeal in Cochise County Juvenile Action No. 5666-J*, 133 Ariz. 157, 650 P.2d 459 (1982). Nor may the Commission give preferential treatment to one religion over another or nonreligion.

That point is made even more strongly in Article XX §1 of the Arizona Constitution that requires the government, including the Commission, give "perfect toleration of religious sentiment" and that "no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship, **or lack of the same.**" In short, if the Commission wishes to hear Christian prayers, it must also be prepared to hear Muslim, Hindu, Buddhist, Native American, Satanists and even atheist invocations as well.

Nothing prevents any commissioner from praying privately at any time, before, during, or after the meetings. That really should be enough. Jesus was suspicious of people who need to be seen publicly praying. He condemned public prayer as hypocrisy in the Sermon on the Mount: "And when thou prayest, thou shalt not be as the hypocrites are: for they love to pray standing in the synagogues and in the corners of the streets, that they may be seen of men. Verily I say unto you, They have their reward. But thou, when thou prayest, enter into thy closet, and when thou hast shut the door, pray to thy Father which is in secret; and thy Father which seeth in secret shall reward thee openly." Matthew 6:5-6.

Jesus' point was simple: People who wish to *be seen praying* are hypocrites. We urge the Commission to drop prayers altogether. It will create a more inclusive, productive environment for everyone and avoid the hypocrisy of public piety. If the Commission continues to insist on prayers, it has no power or authority to regulate the content of those opening remarks, to bar would-be officiants.

### **Government prayers are an all or none proposition.**

The proposed policy as stated by Chairman Forese does not comply with constitutional rulings. In 2014, the Supreme Court decided *Town of Greece, N.Y. v. Galloway*. 134 S. Ct. 1811 (2014) and upheld prayers at local government meetings only "[s]o long as the town maintains a policy of nondiscrimination..." *Id.* at 1824. In *Galloway*, "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).

As this decision notes, a governmental body must open its prayers to all comers, including atheists, agnostics, Wiccans, and Satanists. The Supreme Court made it clear in *Galloway* that if the city discriminated against minority religions, they would have found

that action unconstitutional. *Id.* at 1814-15. ***Government prayers are an all or none proposition: either allow every sect in or stop the prayers altogether.***

**Government prayers to a deity that you do not believe in are divisive and alienating.**

That you may not wish to hear a prayer ending with the phrase “Hail Satan” is understandable. Many Americans don’t want to hear prayers that end “in Jesus’ name” from their government. It alienates them. That discomfort you feel at having to suffer through a satanic prayer is what atheists, agnostics, and nonreligious Americans feel every time our government prays to a god that they don’t believe in. It’s something countless citizens feel when the government weighs in on religious issues in ways that conflict with their personal religion. The best policy, the most inclusive policy, is to stop prayers altogether and get straight to the business of working for all the citizens.

**Conclusion**

To avoid the constitutional concerns and the divisiveness these prayers cause within the community ***the solution is simple: discontinue official, government prayers before government meetings.*** We urge the Commission to concentrate on civil matters and leave religion to the private conscience of each individual. If government meetings must show reverence, let it be for our secular Constitution, which you have taken an oath to uphold, and whose only references to religion are exclusionary. If this Commission is unwilling to listen to prayers from all citizens, regardless of their belief, the solution is to not have prayers at all.

We request a prompt written response confirming that you are either (1) stopping prayers altogether to avoid alienating any community members or (2) fairly allowing all religious and non-religious groups to deliver invocations.

Sincerely,

A handwritten signature in black ink that reads "Dianne Post". The signature is written in a cursive style with a large, looped initial "D" and a horizontal line extending from the end of the name.

Dianne Post, Attorney  
Secular Coalition for Arizona