

In The
**United States Court Of Appeals
For The D.C. Circuit**

DANIEL BARKER,

Plaintiff – Appellant,

v.

**PATRICK CONROY, Chaplain; KAREN BRONSON,
Chaplain's Liaison to Staff; PAUL RYAN, Speaker of the
House of Representatives in his official capacity;
UNITED STATES HOUSE OF REPRESENTATIVES,**

Defendants – Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**BRIEF OF AMICUS CURIAE
THE AMERICAN HUMANIST ASSOCIATION
IN SUPPORT OF APPELLANT**

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**CERTIFICATE AS TO PARTIES, RULINGS UNDER REVIEW,
AND RELATED CASES**

Pursuant to D.C. Circuit Rule 28(a)(1), Amicus Curiae certify that:

(A) Parties, Intervenors, Amicus

All parties, intervenors, and amicus appearing before this Court are set forth in Brief for Respondent.

(B) Ruling Under Review

The District Court's Order was entered on October 11, 2017 dismissing Plaintiff's Complaint, based upon memorandum opinion, also entered on October 11, 2017.

(C) Related Cases

The case on appeal has not previously been before this Court or any court other than the District Court from which this appeal arises. Counsel is not aware of any other related cases currently pending in this Court or in any other court.

(D) Authority to File

All parties to this proceeding have consented to the filing of this brief. Pursuant to Circuit Rule 29(d), counsel for Amicus Curiae certify that filing of this separate brief is necessary because it addresses issues distinct from those addressed by other amici, including issues relevant to Secular Humanist invocations.

(E) Authorship and Financial Contributions

- 1) No party's counsel authored this Amicus Curiae brief in whole or in part;
- 2) No party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and
- 3) No person, other than the Amicus Curiae, their members, or their counsel, contributed money that was intended to fund preparing or submitting the brief.

Dated this 21st day of May, 2018.

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CORPORATE DISCLOSURE INFORMATION

The American Humanist Association is a non-profit corporation, exempt from taxation under 26 U.S.C. § 501(c)(3). It has no parent or publicly held company owning ten percent or more of the corporation.

TABLE OF CONTENTS

	Page:
CERTIFICATE AS TO PARTIES, RULINGS UNDER REVIEW, AND RELATED CASES	i
CORPORATE DISCLOSURE INFORMATION.....	iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES	v
INTEREST OF THE AMICUS CURIAE	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
I. The Establishment Clause prohibits the government from discriminating against nonbelievers, and legislative prayer practices are no exception	3
II. The District Court’s decision upholding the government’s categorical exclusion of nonbelievers from solemnizing government meetings fails Establishment Clause and Equal Protection Clause standards	9
III. Secular invocations solemnize public meetings in a manner consistent with the standards set forth in <i>Town of Greece</i>	13
CONCLUSION.....	30
CERTIFICATE OF COMPLIANCE.....	31
CERTIFICATE OF FILING AND SERVICE	32

TABLE OF AUTHORITIES

	Page(s):
Cases:	
<i>Abington Sch. Dist. v. Schempp</i> , 374 U.S. 203 (1963).....	3, 9
<i>Allegheny v. ACLU</i> , 492 U.S. 573 (1989).....	3
<i>Am. Humanist Ass’n v. Perry</i> , 2017 U.S. Dist. LEXIS 38600 (E.D.N.C. Mar. 17, 2017).....	4, 5
<i>*Am. Humanist Ass’n v. United States</i> , 63 F. Supp. 3d 1274 (D. Or. 2014).....	4, 6, 10, 11
<i>American Humanist Association & Kwame Jamal Teague v. Frank L. Perry, et al.</i> , No. 5:15-CT-3053-BO, 2018 WL 1701356 (E.D.N.C. Mar. 29, 2018).....	4
<i>Atheists of Fla., Inc. v. City of Lakeland</i> , 713 F.3d 577 (11th Cir. 2013).....	8
<i>Awad v. Ziriax</i> , 670 F.3d 1111 (10th Cir. 2012).....	10
<i>Ball v. Massanari</i> , 254 F.3d 817 (9th Cir. 2001).....	11
<i>Board of Educ. v. Grumet</i> , 512 U.S. 687 (1994).....	6
<i>City of Boerne v. Flores</i> , 521 U.S. 507 (1997).....	10
<i>Corp. of Presiding Bishop v. Amos</i> , 483 U.S. 327 (1987).....	10

<i>*Ctr. for Inquiry, Inc. v. Marion Circuit Court Clerk,</i> 758 F.3d 869 (7th Cir. 2014)	4, 5, 6, 11
<i>Everson v. Bd. of Educ.,</i> 330 U.S. 1 (1947).....	3
<i>Galloway v. Town of Greece,</i> 681 F.3d 20 (2d Cir. 2012)	7
<i>*Gillette v. United States,</i> 401 U.S. 437 (1971).....	4
<i>Goguen v. Clifford,</i> 304 F. Supp. 958 (D.N.J. 1969).....	12
<i>Hassan v. City of N.Y.,</i> 804 F.3d 277 (3d Cir. 2015)	11
<i>Hatzfeld v. Goord,</i> 2007 U.S. Dist. LEXIS 98782 (N.D.N.Y. Feb. 5, 2007).....	12
<i>Jones v. Hamilton County,</i> 891 F. Supp. 2d 870 (E.D. Tenn. 2012)	8
<i>Joyner v. Forsyth Cnty.,</i> 653 F.3d 341 (4th Cir. 2011).....	7
<i>Kaufman v. McCaughtry,</i> 419 F.3d 678 (7th Cir. 2005)	6
<i>Kaufman v. Pugh,</i> 733 F.3d 692 (7th Cir. 2013)	6
<i>*Larson v. Valente,</i> 456 U.S. 228 (1982).....	3, 10
<i>Lee v. Weisman,</i> 505 U.S. 577 (1992).....	6

<i>*Marsh v. Chambers</i> , 463 U.S. 783 (1983).....	8
<i>McCreary Cnty. v. ACLU</i> , 545 U.S. 844 (2005).....	3
<i>McDaniel v. Paty</i> , 435 U.S. 618 (1978).....	4
<i>Patel v. U.S. Bureau of Prisons</i> , 515 F.3d 807 (8th Cir. 2008).....	11
<i>Pelphrey v. Cobb County</i> , 448 F. Supp. 2d 1357 (N.D. Ga. 2006).....	8
<i>*Pelphrey v. Cobb County</i> , 547 F.3d 1263 (11th Cir. 2008).....	7, 8
<i>Plyler v. Doe</i> , 457 U.S. 202 (1982).....	12
<i>Rubin v. City of Lancaster</i> , 710 F.3d 1087 (9th Cir. 2013) <i>cert. denied</i> , 134 S. Ct. 284 (2013).....	8
<i>State v. Powers</i> , 51 N.J.L. 432 (1889).....	30
<i>*Torcaso v. Watkins</i> , 367 U.S. 488 (1961).....	4, 5, 30
<i>*Town of Greece v. Galloway</i> , 134 S. Ct. 1811 (2014).....	<i>passim</i>
<i>TWA v. Hardison</i> , 432 U.S. 63 (1977).....	11
<i>U.S. v. Batchelder</i> , 442 U.S. 114 (1979).....	11

<i>U.S. v. Seeger</i> , 380 U.S. 163 (1965).....	6
<i>Wallace v. Jaffree</i> , 472 U.S. 38 (1985).....	3
* <i>Wash. Ethical Soc’y v. District of Columbia</i> , 249 F.2d 127 (D.C. Cir. 1957).....	4
<i>Washington v. Trump</i> , 847 F.3d 1151 (9th Cir. 2017)	11
* <i>Welsh v. United States</i> , 398 U.S. 333 (1970).....	6
<i>Williams v. Allied Waste Serv.</i> , 2010 U.S. Dist. LEXIS 84218 (E.D. Tex. June 30, 2010)	11
<i>Wynne v. Town of Great Falls</i> , 376 F.3d 292 (4th Cir. 2004)	7-8
Statutes:	
26 U.S.C. § 501(c)(3).....	1
Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e et seq (1964)	12
Constitutional Provisions:	
U.S. Const. amend. I	2, 4, 6
Other Authorities:	
4 William Blackstone, <i>Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769</i> (1979)	12
American Ethical Union, <i>About Us</i> , https://aeu.org/who-we-are/ethical-humanism/ (last visited Mar. 5, 2018).....	14

<i>Become a Humanist Celebrant</i> , https://americanhumanist.org/get-involved/become-a-humanist-celebrant/ (last visited Mar. 5, 2018).....	15
Cragun, Barry Kosmin, et al., <i>On the Receiving End: Discrimination toward the Nonreligious in the United States</i> , 27 <i>J. Contemp. Religion</i> 105, http://bit.ly/2czdyQv (2012)	12
Gallup, <i>Support for Nontraditional Candidates Varies by Religion</i> , http://bit.ly/2d46Z5V (June 24, 2015)	13
<i>Give Secular Invocations</i> , http://thehumanistsociety.org/invocations/apply/ (last visited Feb. 27, 2018)	16
Humanist Chaplaincies, <i>Humanist Chaplaincies</i> , http://humanistchaplaincies.org/humanist-chaplaincies/ (last visited Mar. 5, 2018)	14
Humanist Society, http://thehumanistsociety.org/ (last visited Feb. 27, 2018).....	15
<i>Humanist Society Guidelines</i> , https://perma.cc/FD8A-PWW9 http://thehumanistsociety.org/about/guidelines/ (last visited Jan. 31, 2018)	15
<i>Join The Humanist Society</i> , http://thehumanistsociety.org/apply/ (last visited Mar. 5, 2018).....	16
Margaret Downey, <i>Discrimination Against Atheists: The Facts</i> , 24 <i>Free Inquiry</i> No. 4, http://bit.ly/2cXO1jc (2004)	13
Merriam-Webster, <i>prayer</i> , https://www.merriam-webster.com/dictionary/prayer (last visited Mar. 5, 2018)	10
Penny Edgell, Joseph Gerteis, and Douglas Hartmann, <i>Atheists as “Other”</i> : <i>Moral Boundaries and Cultural Membership in American Society</i> , 71 <i>Am. Soc. Rev.</i> 211, http://bit.ly/2daChwS (2006)	12
Ryan T. Cragun, Barry Kosmin, et al., <i>On the Receiving End: Discrimination toward the Nonreligious in the United States</i> , 27 <i>J. Contemp. Religion</i> 105, http://bit.ly/2czdyQv (2012)	12

<i>Secular Invocations</i> , http://thehumanistsociety.org/invocations/ (last visited Mar. 7, 2018)	15
<i>Secular Invocation Maine House 2 7 2017</i> , <i>YouTube</i> , http://bit.ly/2BpQGjb (May 15, 2017)	26
Society for Humanistic Judaism, <i>About SHJ</i> , http://www.shj.org/about-shj/ (last visited Mar. 5, 2018)	14
<i>The Humanist Society</i> , http://thehumanistsociety.org/invocations/ (last visited Feb. 27, 2018)	15, 16
The Pew Forum on Religion & Public Life, July 24, 2003: <i>Many Wary of Voting For an Atheist or a Muslim</i> , 1 (2003)	13

INTEREST OF THE AMICUS CURIAE

The American Humanist Association (“AHA”) is a national nonprofit membership organization based in Washington, D.C., with over 236 local chapters and affiliates in 47 states and the District of Columbia, and over 650,000 members and supporters. Founded in 1941, AHA is the nation’s oldest and largest Humanist organization. Humanism is a worldview of life that, without theism or other supernatural beliefs, affirms a responsibility to lead a meaningful, ethical life that adds to the greater good of humanity. AHA’s adjunct organization, The Humanist Society, is a religious 501(c)(3) organization, incorporated in 1939 under the laws of California to issue charters anywhere in the world and to train and certify Humanist clergy. The Humanist Society specifically trains and certifies citizens to deliver secular invocations before government bodies across the country.

SUMMARY OF THE ARGUMENT

The District Court’s opinion sanctions overt religious discrimination against a minority group in direct contravention of the Constitution. Extensive precedent, under both the Establishment Clause and the Equal Protection Clause, prohibit such discrimination. At its core, the Establishment Clause of the First Amendment mandates religious neutrality. It prevents the government from favoring some religions over others, and religion over nonreligion. The Supreme Court has made clear that even in the context of legislative prayer —a unique exception to the Establishment Clause’s general prohibition against governmental prayer — the practice must be inclusive and nondiscriminatory towards religious minorities and nonbelievers. The District Court’s ruling, which allows the government to categorically prohibit nonbelievers from delivering a solemnizing secular invocation before government sessions, violates that mandate. It also separately violates the Equal Protection mandate, which requires the most exacting judicial scrutiny in cases involving religious discrimination.

The District Court’s ruling also failed to grasp that an “invocation” need not involve the divine or supernatural, and that secular invocations are no less solemnizing than their theistic counterparts. Indeed, the court overlooked incontrovertible evidence that secular invocations are not only theoretically feasible, but in fact have been utilized widely to solemnize and lend gravity to government meetings.

ARGUMENT

I. The Establishment Clause prohibits the government from discriminating against nonbelievers, and legislative prayer practices are no exception.

The “clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982). The Establishment Clause equally prohibits the government from favoring “religious belief over disbelief.” *Allegheny v. ACLU*, 492 U.S. 573, 593 (1989). Indeed, the Establishment Clause guarantees “religious liberty and *equality* to ‘the infidel, the *atheist*, or the adherent of a non-Christian faith.’” *Id.* at 589-90 (citation omitted, emphasis added). Its protection undoubtedly “extends beyond intolerance among Christian sects – or even intolerance among ‘religions’ – to encompass intolerance of the disbeliever and the uncertain.” *Wallace v. Jaffree*, 472 U.S. 38, 52-54 (1985). These concepts are not new. The Supreme Court declared over fifty years ago that the government must “be a neutral in its relations with groups of religious believers and *non-believers*.” *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 218 (1963) (emphasis added); accord *Everson v. Bd. of Educ.*, 330 U.S. 1, 9 (1947). In *Schempp*, the Supreme Court “rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another.” 374 U.S. at 216. And in one of its most recent Establishment Clause decisions, the Supreme Court reiterated that the Establishment Clause demands neutrality between “religion and nonreligion.” *McCreary Cnty. v. ACLU*, 545 U.S. 844, 860 (2005).

It is therefore apodictic that the government “must treat atheism as favorably as theistic religion. What is true of atheism is equally true of humanism.” *Ctr. for Inquiry, Inc. v. Marion Circuit Court Clerk*, 758 F.3d 869, 873 (7th Cir. 2014) (“*CFI*”). See *Torcaso v. Watkins*, 367 U.S. 488, 495, & n.11 (1961) (recognizing Secular Humanism as a “religion” for First Amendment purposes); *Wash. Ethical Soc’y v. District of Columbia*, 249 F.2d 127, 128 (D.C. Cir. 1957) (nontheistic ethical society qualified for tax exemption as church); *American Humanist Association & Kwame Jamal Teague v. Frank L. Perry, et al.*, No. 5:15-CT-3053-BO, 2018 WL 1701356, at *4 (E.D.N.C. Mar. 29, 2018) (treating Humanism as a religion for Establishment Clause and Equal Protection Clause purposes and concluding that prison department violated both by refusing to recognize Humanism and authorize Humanist study group meetings on the same terms as theistic faiths); *Am. Humanist Ass’n v. United States*, 63 F. Supp. 3d 1274, 1284 (D. Or. 2014) (recognizing that Humanism is a religion for Establishment Clause and Equal Protection Clause purposes); *Am. Humanist Ass’n v. Perry*, 2017 U.S. Dist. LEXIS 38600, *2 n.1 (E.D.N.C. Mar. 17, 2017) (warning prison that “the Supreme Court has held that Secular Humanism is, a religion”).¹ In striking down a statute requiring notaries to affirm their belief in the existence of God, the Court in *Torcaso*

¹ See also *Gillette v. U.S.*, 401 U.S. 437, 439, 461-62 (1971) (entertaining claim “based on a humanist approach to religion”); *McDaniel v. Paty*, 435 U.S. 618, 633 n.4 (1978) (Brennan, J., concurring) (condemning discrimination “among religions” including “*humanistic faiths*”) (emphasis added).

famously declared that the government must not “aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.” 367 U.S. at 495. The Court stressed: “We repeat and again reaffirm that neither a State nor the Federal Government” can “pass laws or impose requirements which aid all religions as against non-believers.” *Id.*

Applying the foregoing principles to a case challenging discrimination against Humanists, the Seventh Circuit in *CFI* ruled that although a state “may accommodate religious views that impose extra burdens on adherents,” this “does not imply an ability to favor religions over non-theistic groups that have moral stances that are equivalent to theistic ones except for non-belief in God.” 758 F.3d at 873. In *CFI*, a group of Secular Humanists alleged that Indiana’s marriage-solemnization statute violated the Establishment and Equal Protection Clauses because it allowed solemnization by religious officials of certain religious groups but disallowed solemnization by equivalent officials of secular groups, including Humanists. *Id.* at 872. The Seventh Circuit agreed that the statute violated both Clauses by discriminating “arbitrarily among religious and ethical beliefs.” *Id.* at 873, 875. The court found no reason for the fact that, under the statute, “Lutherans can solemnize their marriage in public ceremonies conducted by people who share their fundamental beliefs; humanists can’t.” *Id.* “[L]ike many others, humanists want a ceremony that celebrates *their values*.” *Id.* at 875.

Furthermore, it is well settled that “religious beliefs protected by the . . . Establishment Clauses need not involve worship of a supreme being.” *Kaufman v. Pugh*, 733 F.3d 692, 696 (7th Cir. 2013). In fact, the “Supreme Court has recognized atheism as equivalent to a ‘religion’ for purposes of the First Amendment on numerous occasions.” *Kaufman v. McCaughtry*, 419 F.3d 678, 682 (7th Cir. 2005). The Supreme Court has long “forbidden distinctions between religious and secular beliefs that hold the same place in adherents’ lives.” *CFI*, 758 F.3d at 873. *E.g.*, *Welsh v. United States*, 398 U.S. 333, 342-43 (1970) (moral or ethical beliefs about what is right and wrong held with the strength of traditional religious convictions qualify as “religious” beliefs); *U.S. v. Seeger*, 380 U.S. 163, 166, 174-76 (1965) (“belief in and devotion to goodness and virtue for their own sakes and a religious faith in a purely ethical creed.”).² In short, the “disparate treatment of theistic and non-theistic religions is as offensive to the Establishment Clause as disparate treatment of theistic religions.” *Am. Humanist Ass’n*, 63 F. Supp. 3d at 1283 (citation omitted).

There is no exception to this rule for legislative prayer. In *Town of Greece v. Galloway*, the Supreme Court held that a legislative prayer practice, to pass

² See also *Bd. of Educ. v. Grumet*, 512 U.S. 687, 716 (1994) (O’Connor J., concurring) (“A draft law may exempt conscientious objectors, but it may not exempt conscientious objectors whose objections are based on theistic belief (such as Quakers) as opposed to nontheistic belief (such as Buddhists) or atheistic belief”); *Lee v. Weisman*, 505 U.S. 577, 617 (1992) (Souter, J., concurring) (a policy that treats theistic religions similarly is not sufficient to avoid Establishment Clause concerns because many religions are non-theistic).

constitutional muster, must be “nondiscriminatory” and inclusive of everyone including atheists. 134 S. Ct. 1811, 1823 (2014). The Court upheld that town’s practice because a “minister or layperson of any persuasion, *including an atheist*, could give the invocation.” *Id.* at 1816 (emphasis added). The Court indicated that a practice would fail if it reflected “an aversion or bias on the part of town leaders against minority faiths.” *Id.* at 1824. The Court admonished that “[i]f the course and practice over time. . . denigrate[s] *nonbelievers* or religious minorities,” it “fall[s] short” of constitutionality. *Id.* at 1823 (emphasis added). A practice that classifies “citizens based on their religious views would violate the Constitution.” *Id.* at 1826. Unlike here, “[t]he town at no point excluded or denied an opportunity to a would-be prayer giver.” *Id.* at 1816. The Second Circuit also went out of its way to note that the town permitted anyone “to give an invocation, including adherents of any religion, atheists, and the nonreligious,” and it had “never rejected such a request.” *Galloway v. Town of Greece*, 681 F.3d 20, 23 (2d Cir. 2012).

A practice that categorically excludes atheists from delivering invocations, is therefore plainly unconstitutional. Although *Town of Greece* made this explicit, its holding was hardly revolutionary. Prior to *Town of Greece*, courts ruled that legislative prayer practices are constitutional only if they are nondiscriminatory in form and substance. See *Pelphrey v. Cobb County*, 547 F.3d 1263, 1277-78 (11th Cir. 2008); *Joyner v. Forsyth Cnty.*, 653 F.3d 341, 354-55 (4th Cir. 2011); *Wynne v. Town of Great*

Falls, 376 F.3d 292, 299 n.4 (4th Cir. 2004). In *Pelphrey*, the Eleventh Circuit held that a county's practice was unconstitutional because the county "'categorically excluded' certain faiths." 547 F.3d at 1279 (quoting *Pelphrey v. Cobb County*, 448 F. Supp. 2d 1357 (N.D. Ga. 2006)). In so holding, the court rejected the county's argument that "the selection process is immaterial when the content of the prayer is constitutional." *Id.* at 1281 (citing *Marsh v. Chambers*, 463 U.S. 783, 794-95 (1983)).

By contrast, in *Rubin v. City of Lancaster*, the Ninth Circuit upheld a city's legislative prayer practice because the clerk had "never removed a congregation's name from the list of invitees or *refused to include one.*" 710 F.3d 1087, 1097-98 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 284 (2013) (emphasis added). The court deemed it relevant that invocations were "given by a self-identified 'metaphysicist,' one was given by a Sikh, and another by a Muslim." *Id.* at 1090. The court added, "[w]hatever the content of the prayers or the *denominations of the prayer-givers*, the City chooses neither." *Id.* at 1097 (emphasis added).³

Yet the District Court inexplicably ruled that "the refusal of the House Chaplain to invite an avowed atheist to deliver the morning 'prayer,' in the guise of

³ See also *Atheists of Fla., Inc. v. City of Lakeland*, 713 F.3d 577 (11th Cir. 2013) (upholding legislative prayer practice because city required that invitations to participate be extended to all religious groups); *Jones v. Hamilton County*, 891 F. Supp. 2d 870, 886 (E.D. Tenn. 2012) ("Even when operating under a facially neutral policy, a legislature may not select invocational speakers based on impermissible motives or sectarian preferences.").

a non-religious public exhortation as a ‘guest chaplain,’ did not violate the Establishment Clause.” [Opinion at 26]. Because this decision sanctions overt discrimination against atheists, and allows the government to categorically exclude atheists, Humanists, and other nonbelievers from participating in the invocation opportunity, it flouts decades of Supreme Court precedent holding that the government must “be a neutral in its relations with groups of religious believers and *non-believers.*” *Schempp*, 374 U.S. at 218, *supra*.

II. The District Court’s decision upholding the government’s categorical exclusion of nonbelievers from solemnizing government meetings fails Establishment Clause and Equal Protection Clause standards.

In an effort to allow the House to continue discriminating against atheists, the District Court created a false dichotomy to justify its decision. The opinion erroneously posed the issue in disjunctive terms: either the occasion is limited to theistic “prayer,” or it must be broadened to include a secular invocation that is not categorized as prayer: “. . . the reality is that his request to open the House with a secular invocation, which resulted in the denial of his request to serve as a guest chaplain, was a challenge to the ability of Congress to open with a prayer.” [Opinion at 26]. As *Town of Greece* made clear, however, it is not an either/or question at all. Again, the Supreme Court upheld that town’s practice largely because it allowed *atheists* to deliver secular invocations. 134 S. Ct. at 1816, 1823. Although normally a theistic undertaking, “prayer” has multiple

definitions, one of which is simply: “an earnest request or wish.”⁴ Indeed, because “prayer” is so often associated with theistic belief, many atheists prefer the term “secular invocation” to refer to nontheistic legislative prayers. Nevertheless, such preferences should not result in the courts, when considering legislative prayer in a *constitutional* context, ignoring a legitimate definition that clearly includes the non-theistic. Once this mistaken disjunctive approach is corrected, there is no justifiable basis for excluding an atheist from solemnizing a government session.

The District Court’s decision therefore reflects nothing more than a conscious choice to draw boundaries in a way that excludes nonbelievers. Such boundaries cannot possibly satisfy *Town of Greece*’s inclusive and non-discriminatory standard for legislative prayer, nor of course the strict-scrutiny standard that applies to religious discrimination generally. *Larson*, 456 U.S. at 246-47, 252 & n.23.⁵ Strict scrutiny is “the most demanding test known to constitutional law.” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). It is hard to find any reason, let alone a compelling governmental interest, for limiting invocations to theistic callings and excluding the non-theistic. *See Am. Humanist Ass’n*, 63 F. Supp. 3d at 1282-83 (government’s

⁴ Merriam-Webster, “prayer”, <https://www.merriam-webster.com/dictionary/prayer> (last visited Mar. 5, 2018).

⁵ *See also Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 339 (1987); *Awad v. Ziriax*, 670 F.3d 1111, 1126-27 (10th Cir. 2012).

disparate treatment of Humanists presumed unconstitutional under Establishment and Equal Protection Clauses).

The District Court's arbitrary line drawing cannot satisfy the separate Equal Protection Clause either, which also "prohibits the Government from impermissibly discriminating among persons based on religion." *Washington v. Trump*, 847 F.3d 1151, 1167 (9th Cir. 2017) (citation omitted).⁶ In *CFI*, the Seventh Circuit properly held that the exclusion of Humanists from Indiana's marriage-solemnization statute violated the Equal Protection Clause by drawing arbitrary distinctions among "religious and ethical beliefs." 758 F.3d at 874-75.⁷ In *American Humanist Association*, the court likewise found that by "[a]llowing followers of other faiths to join religious group meetings while denying [Humanist inmates] the same privilege is discrimination on the basis of religion." 63 F. Supp. 3d at 1284. *See also TWA v. Hardison*, 432 U.S. 63, 90 n.4 (1977) ("The exemption here, like those we have upheld, can be claimed by any religious practitioner, a term that the EEOC has sensibly defined to include atheists").⁸

⁶ Discrimination on the basis of religion mandates strict scrutiny. *See U.S. v. Batchelder*, 442 U.S. 114, 125 n.9 (1979); *Hassan v. City of N.Y.*, 804 F.3d 277, 300 (3d Cir. 2015); *Patel v. U.S. Bureau of Prisons*, 515 F.3d 807, 816 (8th Cir. 2008); *Ball v. Massanari*, 254 F.3d 817, 823 (9th Cir. 2001).

⁷ The statute included a list of religious officials but excluded "equivalent officials of secular groups such as humanist societies." *Id.* at 871.

⁸ *See also Williams v. Allied Waste Serv.*, 2010 U.S. Dist. LEXIS 84218, *22-23 (E.D. Tex. June 30, 2010) ("Atheism is not a religion. Literally, it represents antipathy to religion. Nonetheless, discrimination against employees because of their

“Some classifications are more likely than others to reflect deep-seated prejudice.” *Plyler v. Doe*, 457 U.S. 202, 216 n.14 (1982). The District Court’s categorical exclusion of atheists from participation in a government program is reflective of McCarthy-era stereotypes about atheists. Prejudice against atheists dates back to our nation’s founding⁹ and studies demonstrate that they remain a highly disfavored minority today. A study published in *American Sociological Review* in 2006 ranked atheists as the most disliked and distrusted minority group in the country, below immigrants, Muslims, and gays.¹⁰ An article by two leading researchers on the rise of secularism noted atheists “are one of the most despised people in the US today.”¹¹ Even after the September 11 attacks, a study revealed that while a significant number of Americans would be reluctant to vote for a well-qualified candidate if they were Muslim (38%), many more expressed reservations

atheistic beliefs is equally prohibited under the penumbra of rights guaranteed by Title VII.”) (citations omitted); *Hatzfeld v. Goord*, 2007 U.S. Dist. LEXIS 98782, *13-14 (N.D.N.Y. Feb. 5, 2007) (“atheist” is a religion under Equal Protection Clause); *Goguen v. Clifford*, 304 F. Supp. 958, 961-62 (D.N.J. 1969) (“atheists or heretics” are entitled to equal protection).

⁹ Denying the existence of God was a criminal offense. 4 William Blackstone, *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769*, at 59 (1979).

¹⁰ Penny Edgell, Joseph Gerteis, and Douglas Hartmann, *Atheists as “Other”: Moral Boundaries and Cultural Membership in American Society*, 71 *Am. Soc. Rev.* 211, 218 (2006), <http://bit.ly/2daChwS>.

¹¹ Ryan T. Cragun, Barry Kosmin, et al., *On the Receiving End: Discrimination toward the Nonreligious in the United States*, 27 *J. Contemp. Religion* 105, 105 (2012), <http://bit.ly/2czdyQv>.

about voting for an atheist (52%).¹² Not much has changed, with 42% of Americans stating in 2015 that they still would not vote for an atheist for president.¹³ The 2008 American Religious Identification Survey reported that 42.9% of atheists and agnostics had experienced discrimination because of their lack of religious affiliation.¹⁴ The discrimination atheists suffer has resulted in job loss, harassment, death threats, physical violence, and assault.¹⁵ By rubber-stamping official discrimination against this politically unpopular group, the District Court not only defied decades of legal precedent, but perpetuated the notion that marginalizing atheists and Humanists is socially acceptable too.

III. Secular invocations solemnize public meetings in a manner consistent with the standards set forth in *Town of Greece*.

The District Court erroneously assumed, again contrary to *Town of Greece*, that the ostensible purposes of legislative prayer can be accomplished only via theistic prayers. As the District Court noted, quoting *Town of Greece*, legislative prayer is intended to “lend gravity to the occasion” and “to solemnize the occasion.” 134 S. Ct. at 1823 [Opinion at 11]. Implicit (if not explicit) in the opinion is that a

¹² The Pew Forum on Religion & Public Life, July 24, 2003: *Many Wary of Voting For an Atheist or a Muslim*, 1, 10-14 (2003).

¹³ *Support for Nontraditional Candidates Varies by Religion*, Gallup (June 24, 2015), <http://bit.ly/2d46Z5V>.

¹⁴ Cragun, *supra*, at 111, 114.

¹⁵ Margaret Downey, *Discrimination Against Atheists: The Facts*, 24 *Free Inquiry* No. 4 (2004), <http://bit.ly/2cXO1jc>.

secular invocation cannot accomplish those purposes. But there is no convincing argument that the conveyance of solemnity, gravity, or inspiration requires theistic references. Whether the author is Shakespeare, Whitman, Thoreau, or a figure less esteemed, many have demonstrated that carefully crafted words, lacking even the slightest hint of a deity, can generate awe, wonder, and profound appreciation. Indeed, the gravity of such words often endures not just for one occasion, as a legislative prayer would be expected to do, but for many generations.

Humanists are no strangers to solemnizing occasions in a manner akin to theistic solemnizations. Humanism has a formal structure akin to many religions, with clergy (usually known as celebrants), chaplains, and entities dedicated to the practice of Humanism, such as the American Ethical Union (based on the Ethical Culture movement founded in 1876) and the Society for Humanistic Judaism, among others.¹⁶ Humanist chaplaincies are established at prominent educational institutions including Harvard University, New York University, Yale University, Stanford University, Columbia University, Rutgers University, and American University.¹⁷

In fact, Humanists are formally trained specifically to deliver secular invocations through AHA's adjunct organization, The Humanist Society. The

¹⁶ American Ethical Union, "About Us," <https://aeu.org/who-we-are/ethical-humanism/> (last visited Mar. 5, 2018); Society for Humanistic Judaism, "About SHJ," <http://www.shj.org/about-shj/> (last visited Mar. 5, 2018).

¹⁷ Humanist Chaplaincies, "Humanist Chaplaincies," <http://humanistchaplaincies.org/humanist-chaplaincies/> (last visited Mar. 5, 2018).

Humanist Society endorses and trains Humanist celebrants, chaplains, lay leaders, and invocators to conduct observances across the nation and worldwide, including weddings, commitment/same-sex unions, memorial services, baby namings, and other life-cycle events.¹⁸ Humanist celebrants are accorded the same rights and privileges granted by law to priests, ministers, and rabbis of traditional theistic religions.¹⁹ The Humanist Society specifically trains and certifies individuals to deliver solemnizing invocations at government meetings.²⁰ The Humanist Society defines a secular invocation as follows:

It is essentially a short speech that calls upon the audience's shared human values for assistance and authority in their public discourse. Unlike a traditional invocation, a secular invocation does not call upon a supernatural entity as a guide. It redirects our attention away from those supernatural entities towards those common human values that we do in fact share for guidance. It emphasizes the bounds within which our public discourse should be held, without disenfranchising certain groups. It reminds us of what is important and of our responsibilities to each other and the world around us. In a sense it is calling upon all those involved to exercise their humanity in a way that is dignified while allowing the same for others.²¹

¹⁸ Humanist Society, <http://thehumanistsociety.org/> (last visited Feb. 27, 2018).

The Association for Professional Chaplains recognizes *The Humanist Society* as an endorser of chaplains, *Humanist Society Guidelines*, <https://perma.cc/FD8A-PWW9> (<http://thehumanistsociety.org/about/guidelines/>) (last visited Jan. 31, 2018).

¹⁹ "Become a Humanist Celebrant," <https://americanhumanist.org/get-involved/become-a-humanist-celebrant/> (last visited Mar. 5, 2018).

²⁰ *The Humanist Society*, <http://thehumanistsociety.org/invocations/> (last visited Feb. 27, 2018).

²¹ "Secular Invocations," <http://thehumanistsociety.org/invocations/> (last visited Mar.7, 2018)

Candidates are required to register and apply online and certify that they agree with the Humanist worldview.²² The Humanist Society only endorses individuals as invocators who satisfy the Society's ethical standards.²³

The fact of secular invocations serving their solemnizing purpose is not just theoretical, but well-documented. Below is a mere sampling of solemnizing secular invocations delivered at governmental sessions, ranging from local city councils to state legislatures. It is beyond debate that such God-free invocations further the solemnizing purpose, as the following invocations illustrate:

Thank you for this opportunity to “invoke” a minority point of view. Each of us is a minority in some way. It might be race, religion, sexual orientation, nationality, or any other aspect in which we may be regarded as different. Each of us is also part of some majority. It is when we wear our majority hats that we need to be most mindful of how we treat others. We must pledge our best efforts to help one another, and to defend the rights of all of our citizens and residents. What divides us is not so much our religious differences in this diverse country, but the degree of commitment we have to equal freedom of conscience for all people.

We are gathered today, both religious and secular members of our community, with the shared belief that we must treat our fellow human beings with respect and dignity.

In this invocation, I don't ask you to close your eyes, but to keep your eyes constantly open to the serious problems that city government can solve or improve. I don't ask you to bow your heads, but to look up at

²² “Give Secular Invocations,” <http://thehumanistsociety.org/invocations/apply/> (last visited Feb. 27, 2018).

²³ “Join *The Humanist Society*,” <http://thehumanistsociety.org/apply/> (last visited Mar. 5, 2018).

what you can accomplish by applying your considerable talents and experience to the issues that confront us.

As you work together on behalf of all who live in this city, may you draw strength and sustenance from one another through reason and compassion. I'd like to close in a bipartisan manner by quoting from two presidents I greatly admire--one a Republican and the other a Democrat.

First, the Republican:

“When I do good, I feel good; when I do bad, I feel bad. That is my religion.”

- Abraham Lincoln

And now, the Democrat:

“It's remarkable how much you can accomplish if you don't care who gets the credit.”

- Harry S. Truman

Herb Silverman, *Charleston City Council Meeting* (SC) (Mar. 25, 2004), <http://cflfreethought.org/charleston-sc-2004-mar-25>.

An invocation is an appeal for guidance from a supernatural power, but it is not only that. It is also a call, a petition, to positive action on behalf of and for a diverse citizenry. On behalf of Atheists of Florida, I would like to express our gratitude in being invited to deliver today's invocation.

We are committed to the separation of state and church as defined by the United States Constitution. It is the core value of that remarkable and visionary document to protect the human-derived rights of all people in the continuous struggle for equal opportunities to pursue a safe and decent quality of life.

When an invocation takes on the form of public prayer, it is also a violation of the very principles upon which our country and Constitution were founded. Although we are dismayed that the practice of public prayer by governing bodies charged with representing all

citizens still continues in violation of the Constitution, we also recognize that this practice has become deeply embedded in the national psyche.

Elected and appointed leaders who wish to seek the guidance of a deity can do so in private, as is their right. But not in the public arena where the establishment of religion is an assured end-result.

History – that ever-unfolding, ever-flourishing story of human civilization – teaches us that the rights and accomplishments of humanity are the results of its past struggles, and that the road less traveled is many times the highest path to human progress. We therefore invoke this council and all of our leaders to be guided and inspired by the invaluable lessons of history, the honest insights of science, the guileless wisdom of logic, and the heart and soul of our shared humanity - compassion and tolerance.

So rather than clasping your hands, bowing your heads and closing your eyes, open your arms to that which truly makes us strong - our diversity. Raise your heads and open your eyes to recognize and fully understand the problems before you and know that ultimately, solutions to human problems can come only from human beings.

Michael Harvey, *Tampa City Council Meeting* (FL) (July 29, 2004), <http://cflfreethought.org/tampa-fl-2004-jul-29>.

Members of the County Commission and staff, citizens and guests of Lake County, for today's invocation, rather than bowing your heads, please take a moment to look around at others who are here this morning. Fifty years ago had you done that the people you'd be looking at would be folks pretty much like yourself; people who had grown up in Lake County and who shared the same faith and culture.

But since then, our community has seen incredible growth. People have moved here from other states and from countries and cultures around the world. We have citizens who are Christian, Jewish, Hindu, Muslim, Buddhist, Wiccan, and people who profess no religious belief at all. Because of that, I believe that any prayer in this diverse setting could cause at least some of our citizens to feel like outsiders—that they had

entered a place where their requests or problems might be considered with suspicion or indifference because their beliefs differed from the majority.

Because of this, and in respect to all of our citizens, I come before you not to pray, but instead to invoke the spirit of good will between all of us. To be sure, we don't agree about everything and sometimes we feel fiercely protective of what we do believe, but there's one thing on which we can all agree: we share the goal of making our Lake County the best place it can be.

It is my hope that at this meeting, we will work together to make positive changes in our County. It is my hope that respect is always extended to others and it is my hope that logic and reason guide the decisions of all within and outside of this room.

Thank you.

Paul Tjaden, *Lake County Commission Meeting (FL)* (Aug. 26, 2014), <http://cflfreethought.org/lake-county-fl-2014-aug-26>.

Thank you Chairman Dallari, Commissioners, staff, and community members for the opportunity to offer some opening words for this meeting.

I'm a wife, mother of 4, business owner, and member of the Central Florida Freethought Community. I have lived in Seminole county for 7 years and love the beauty of this county, the wildlife, and the many fun things do to here.

This moment of reflection is to remind us that we are a diverse human family with common values and needs, with varying beliefs, politics, and backgrounds, but are here to work in harmony even when there may be honest disagreement.

In light of President Lincoln's Birthday yesterday I would like to add: Just as he fought for the abolishment of slavery and the equality of

mankind, we too in this day of age, are looking to our government officials to do the same for us.

Today and moving forward, we ask that you use evidence based knowledge, as well as compassion and inclusiveness, in guiding your civil discussions and decision making that affect all members of society. Thank you again.

Kathy Starke, *Seminole County Council Meeting* (FL) (Feb. 13, 2018), <http://cflfreethought.org/seminole-county-fl-2018-feb-13>.

A sampling of additional secular invocations by state include:

Alabama

- Kelly McCauley, *City Commission Meeting* (Sept. 25, 2014), <http://cflfreethought.org/huntsville-al-2014-sep-25>.

Arizona

- Brooke Mulder, *Glendale City Council Meeting* (Aug. 12, 2014), <http://cflfreethought.org/glendale-az-2014-aug-12>.
- Juan Mendez, *Arizona House of Representatives* (Mar. 3, 2014), <http://cflfreethought.org/arizona-house-of-representative-2014-mar-3>.
- Juan Mendez, *Arizona House of Representatives* (May 21, 2013), <http://thehumanistsociety.org/invocations/resources/>.

California

- George Gold, *Chico City Council Meeting* (Jan. 6, 2015), <http://cflfreethought.org/chico-ca-2015-jan-6>.

Colorado

- Eric Williams, *Colorado Springs City Council Meeting* (Aug. 12, 2014), <http://cflfreethought.org/colorado-springs-co-2014-aug-12>.

- Joe Alaimo, *Grand Junction City Council Meeting* (Jan. 5, 2011), <http://thehumanistsociety.org/invocations/resources/>.

Florida

- Kathy Starke, *Seminole County Council Meeting* (Feb. 13, 2018), <http://cflfreethought.org/seminole-county-fl-2018-feb-13>.
- Joseph Richardson, *Eustis City Council Meeting* (Jan. 18, 2018), <http://cflfreethought.org/eustis-fl-2018-jan-18>.
- Tee Rogers, *Florida House of Representatives* (Jan. 11, 2018), http://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2018011097.
- David Williamson, *Lake County Commission Meeting* (Jan. 9, 2018), <http://cflfreethought.org/lake-county-fl-2018-jan-9>.
- David Williamson, *Winter Park City Council Meeting* (Oct. 23, 2017), <http://cflfreethought.org/winter-park-fl-2017-oct-23>.
- Paul Truman, *Longwood City Council Meeting* (Sept. 18, 2017), <http://cflfreethought.org/longwood-fl-2017-sep-18>.
- David Williamson, *Orlando Commission Meeting* (Aug. 8, 2017), <http://cflfreethought.org/orlando-fl-2017-aug-8>.
- Brandon Haught, *Volusia County Council Meeting* (July 6, 2017), <http://cflfreethought.org/volusia-county-fl-2017-jul-6>.
- Athena Jeanne Hale, *DeLand City Council Meeting* (July 5, 2017), <http://cflfreethought.org/deland-fl-2017-jul-5>.
- Dave Starkweather, *Seminole County Commission Meeting* (June 27, 2017), <http://cflfreethought.org/seminole-county-fl-2017-jun-27>.
- Joseph Richardson, *Casselberry City Council Meeting* (May 22, 2017), <http://cflfreethought.org/casselberry-fl-2017-may-22>.
- Joseph Richardson, *Eustis City Commission Meeting* (May 4, 2017), <http://cflfreethought.org/eustis-fl-2017-may-4>.

- David Williamson, *Seminole County Commission Meeting* (Apr. 11, 2017), <http://cflfreethought.org/seminole-county-fl-2017-apr-11>.
- David Williamson, *Casselberry City Council Meeting* (Feb. 13, 2017), <http://cflfreethought.org/casselberry-fl-2017-feb-13>.
- Joseph Richardson, *Winter Park City Council Meeting* (Jan. 9, 2017), <http://cflfreethought.org/winter-park-fl-2017-jan-9>.
- Randa Black, *Longwood City Council Meeting* (Nov. 7, 2016), <http://cflfreethought.org/longwood-fl-2016-nov-7>.
- Jocelyn Williamson, *Sanford City Council Meeting* (Oct. 24, 2016), <http://cflfreethought.org/sanford-fl-2016-oct-24>.
- Jocelyn Williamson, *Orlando City Council Meeting* (Sept. 26, 2016), <http://cflfreethought.org/orlando-fl-2016-sep-26>.
- Mike Mello, *Osceola County Council Meeting* (Sept. 12, 2016), <http://cflfreethought.org/osceola-county-fl-2016-sep-12>.
- Chris Jepson, *Seminole County Commission Meeting* (Aug. 9, 2016), <http://cflfreethought.org/seminole-county-fl-2016-aug-9>.
- Jocelyn Williamson, *Casselberry City Commission Meeting* (July 25, 2016), <http://cflfreethought.org/casselberry-fl-2016-jul-25>.
- Jocelyn Williamson, *Volusia County Council Meeting* (July 21, 2016), <http://cflfreethought.org/volusia-county-fl-2016-jul-21>.
- Jocelyn Williamson, *Casselberry City Commission Meeting* (Apr. 11, 2016), <http://cflfreethought.org/casselberry-fl-2016-apr-11>.
- Michael Rowe, *Lake County Council Meeting* (Feb. 16, 2016), <http://cflfreethought.org/lake-county-fl-2016-feb-16>.
- Simon Bravo, *Maitland City Council Meeting* (Jan. 25, 2016), <http://cflfreethought.org/maitland-fl-2016-jan-25>.
- Randa Black, *Maitland City Council Meeting* (Jan. 11, 2016), <http://cflfreethought.org/maitland-fl-2016-jan-11>.

- Jocelyn Williamson, *Longwood City Commission Meeting* (Dec. 21, 2015), <http://cflfreethought.org/longwood-fl-2015-dec-21>.
- David Williamson, *Volusia County Council Meeting* (Nov. 19, 2015), <http://cflfreethought.org/volusia-county-fl-2015-dec-19>.
- Martha Kirby, *Longwood City Commission Meeting* (Nov. 16, 2015), <http://cflfreethought.org/longwood-fl-2015-nov-16>.
- Edward Lynch, *Winter Garden City Commission Meeting* (Oct. 22, 2015), <http://cflfreethought.org/winter-garden-fl-2015-oct-22>.
- Joseph Richardson, *Apopka City Commission Meeting* (Oct. 21, 2015), <http://cflfreethought.org/apopka-fl-2015-oct-21>.
- Brenda Frei, *Seminole County Commission Meeting* (Sept. 22, 2015), <http://cflfreethought.org/seminole-county-fl-2015-sep-22>.
- Jason Grooms, *Osceola County Commission Meeting* (Sept. 21, 2015), <http://cflfreethought.org/osceola-county-fl-2015-sep-21>.
- Cynthia Lodyga, *Lake County Commission Meeting* (Sept. 15, 2015), <http://cflfreethought.org/lake-county-fl-2015-sep-15>.
- David Williamson, *Sanford City Commission Meeting* (Sept. 14, 2015), <http://cflfreethought.org/sanford-fl-2015-sep-14>.
- Loren Kahle, *Longwood City Commission Meeting* (Sept. 10, 2015), <http://cflfreethought.org/longwood-fl-2015-sep-10>.
- Jake Lee Smith, *DeLand City Commission Meeting* (July 20, 2015), <http://cflfreethought.org/deland-fl-2015-jul-15>.
- Warren Geltch, *Orange County Commission Meeting* (July 16, 2015), <http://cflfreethought.org/orange-county-fl-2015-jul-16>.
- Robert Ridgard, *Lady Lake City Commission Meeting* (June 1, 2015), <http://cflfreethought.org/lady-lake-fl-2015-jun-1>.
- Chris Allen, *Orlando City Commission* (May 4, 2015), <http://cflfreethought.org/orlando-fl-2015-may-4>.

- Mike Mello, *Osceola County Commission Meeting* (May 4, 2015), <http://cflfreethought.org/osceola-county-fl-2015-may-4>.
- Peter Wood, *Board of Leon County Commissioners* (Apr. 28, 2015), <http://cflfreethought.org/leon-county-fl-2015-apr-28>.
- Chris Allen, *Winter Park City Commission Meeting* (Apr. 27, 2015), <https://cityofwinterpark.org/docs/government/city-commission/minutes/min-2015-04-27.pdf>.
- Choice Edwards, *Lake County Commission Meeting* (Apr. 7, 2015), <http://cflfreethought.org/lake-county-fl-2015-apr-7>.
- Robert Wilson, *Volusia County Council Meeting* (Apr. 2, 2015), <http://cflfreethought.org/volusia-county-fl-2015-apr-2>.
- Jocelyn Williamson, *Tavares City Council Meeting* (Dec. 3, 2014), <http://cflfreethought.org/tavares-fl-2014-dec-3>.
- Preston Smith, *Lake Worth City Commission Meeting* (Dec. 2, 2014), <http://cflfreethought.org/lake-worth-fl-2014-dec-2>.
- Robert Ridgard, *Lady Lake City Commission Meeting* (Dec. 1, 2014), <http://cflfreethought.org/lady-lake-fl-2014-dec-1>.
- Michael Mello, *Board of Osceola County Commissioners Meeting* (Oct. 20, 2014), <http://cflfreethought.org/osceloa-county-fl-2014-oct-20>.
- James Bartel, *Ocoee City Commission Meeting* (Oct. 7, 2014), <http://cflfreethought.org/ocoee-fl-2014-oct-7>.
- David Suhor, *Escambia County Commission Meeting* (Sept. 25, 2014), <http://cflfreethought.org/escambia-county-fl-2014-sep-25>.
- Jocelyn Williamson, *Seminole County Commission Meeting* (Sept. 9, 2014), <http://cflfreethought.org/seminole-county-fl-2014-sep-9>.
- Gloria Julius, *St. Petersburg City Council Meeting* (Sept. 4, 2014), <http://cflfreethought.org/st-petersburg-fl-2014-sep-4>.

- Paul Tjaden, *Lake County Commission Meeting* (Aug. 26, 2014), <http://cflfreethought.org/lake-county-fl-2014-aug-26>.
- Dave Kovar, *Clearwater City Council Meeting* (Aug. 20, 2014), <http://cflfreethought.org/clearwater-fl-2014-aug-20>.
- Joseph Rhinehart, *Largo City Commission Meeting* (Aug. 5, 2014), <http://cflfreethought.org/largo-fl-2014-aug-5>.
- David Williamson, *Eustis City Commission Meeting* (July 17, 2014), <http://cflfreethought.org/eustis-fl-2014-jul-17>.
- Phil Katrovitz, *Vero Beach City Council Meeting* (July 15, 2014), <http://cflfreethought.org/vero-beach-fl-2014-jul-15>.
- Chris Allen, *Winter Park City Commission Meeting* (July 14, 2014), <http://cflfreethought.org/winter-park-fl-2014-jul-14>.
- Paul Tjaden, *Groveland City Council Meeting* (July 7, 2014), <http://cflfreethought.org/groveland-fl-2014-jul-7>.
- Jack Maurice, *Volusia County Council Meeting* (July 3, 2014), <http://cflfreethought.org/volusia-county-fl-2014-jul-3>.
- Chris Allen, *Orlando City Council Meeting* (June 23, 2014), <http://thehumanistsociety.org/invocations/resources/>.
- Joe Beck, *Board of Martin County Commissioners Meeting* (June 17, 2014), <http://cflfreethought.org/martin-county-fl-2014-jun-17>.
- David Williamson, *Board of Osceola County Commissioners* (June 16, 2014), <http://cflfreethought.org/osceola-county-fl-2014-jun-16>.
- David Tolliver, *Tampa City Council Meeting* (Apr. 4, 2014), <http://cflfreethought.org/tampa-fl-2014-apr-4>.
- David Suhor, *Pensacola City Council Meeting* (Feb. 13, 2014), <http://cflfreethought.org/pensecola-fl-2014-feb-13>.
- David Suhor, *Board of Escambia County Commissioners* (Aug. 9, 2012), <http://cflfreethought.org/escambia-county-fl-2012-aug-9>.

- Tom Clark, *Cape Coral City Council Meeting* (Oct. 18, 2004), <http://cflfreethought.org/cape-coral-fl-2004-oct-18>.
- Michael Harvey, *Tampa City Council Meeting* (July 29, 2004), <http://cflfreethought.org/tampa-fl-2004-jul-29>.

Georgia

- Ed Buckner, *Cobb County Commission Meeting* (July 28, 2009), <http://cflfreethought.org/cobb-county-ga-2009-jul-28>.

Illinois

- Ted Utchen, *Wheaton City Council Meeting* (June 2, 2014), <http://thehumanistsociety.org/invocations/resources/>.

Iowa

- Justin Scott, *Iowa Legislature* (Apr. 5, 2017), *House Video* (2017-04-05) <http://www.legis.state.ia.us/dashboard?view=video&chamber=H&clip=H20170405083235272&dt=2017-04%2005>.

Kentucky

- Linda Allewalt, *Shelbyville City Council Meeting* (July 17, 2014), <http://cflfreethought.org/shelbyville-ky-2014-jul-17>.

Louisiana

- Harry Greenberger, *New Orleans City Council Meeting* (Sept. 26, 2013), <http://cflfreethought.org/new-orleans-la-2013-sep-26>.

Maine

- Tom Waddell, *Maine Legislature* (Feb. 7, 2017), *A Secular Invocation Maine House 2 7 2017*, YouTube (May 15, 2017), <http://bit.ly/2BpQGjb>.
- Andrew Lovley, *City of South Portland Inauguration Ceremony* (Dec. 7, 2009), <http://cflfreethought.org/south-portland-me-2009-dec-7>.

Maryland

- Rabbi Binyamin Biber, *Invocation for the Maryland State Senate Session* (Feb. 12, 2015), 7 Journal of Proceedings of the Senate of Maryland, 2015 Regular Session 30
<http://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/021000/021648/unrestricted/20151814e-007.pdf>.

Massachusetts

- Greg Epstein, *Boston Mayor's Inaugural Interfaith Prayer Service* (Jan. 5, 2014), <http://thehumanistsociety.org/invocations/resources/>.

Michigan

- Steven Belstra, *Grandville City Council Meeting* (Dec. 28, 2015), <http://cflfreethought.org/grandville-mi-2015-dec-28>.
- Tim Earl, *Portage City Council Meeting* (July 23, 2013), <http://cflfreethought.org/portage-mi-2013-jul-23>.
- Tim Earl, *Portage City Council Meeting* (July 2012), <http://cflfreethought.org/portage-mi-2012-july>.

Nevada

- Ryan Davis, *Sparks City Council Meeting* (June 8, 2015), <http://cflfreethought.org/sparks-nv-2015-jun-8>.

New York

- Dan Courtney, *Town of Greece Board Meeting* (July 15, 2014), <http://cflfreethought.org/town-of-greece-ny-2014-jul-15>.

North Dakota

- Cadet Julia F. Cicci, University of North Dakota (Aug. 1, 2008), <http://cflfreethought.org/university-of-north-dakota-2008-aug-1>.

Oklahoma

- Dan Nerren, *Tulsa City Council Meeting* (Aug. 30, 2012), <http://thehumanistsociety.org/invocations/resources/>.

Oregon

- Cheryl Kolbe, *Yamhill County Board of Commissioners Meeting* (Apr. 16, 2015), <http://cflfreethought.org/yamhill-county-or-2015-apr-16>.

Pennsylvania

- Deana Weaver, *Pennsylvania State Senate* (Apr. 15, 2015), <http://cflfreethought.org/pennsylvania-state-senate-2015-apr-15>.
- Justin Vacula, *Wilkes- Barre City Council Meeting* (June 12, 2014), <http://cflfreethought.org/wilkesbarre-pa-2014-jun-12>.

South Carolina

- Herb Silverman, *Charleston City Council Meeting* (Mar. 25, 2004), <http://cflfreethought.org/charleston-sc-2004-mar-25>.

South Dakota

- Amanda Novotny, *Sioux Falls City Council Meeting* (Aug. 5, 2014), <http://cflfreethought.org/sioux-falls-sd-2014-aug-5>.

Texas

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CONCLUSION

“One of the great causes which led to the settlement of the American colonies was the desire of the immigrants” that their “belief or disbelief on religious topics should not debar them from rights which the laws afforded to other subjects.” *State v. Powers*, 51 N.J.L. 432, 433-35 (1889) (rejecting argument that “disbelief cannot be called a religious principle”). In the North Carolina Convention on the adoption of the U.S. Constitution, James Iredell, later a Supreme Court Justice, said: “It is objected that the people of America may, perhaps, choose representatives who have no religion at all, and that pagans and Mahometans may be admitted into offices. But how is it possible to exclude any set of men, without taking away that principle of religious freedom which we ourselves so warmly contend for?” *Torcaso*, 367 U.S. at 495 n.10. That principle of religious freedom was trampled on by the District Court’s decision, which accordingly, must be reversed.

Dated: May 21, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure, I certify as follows:

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29(d) because it contains 6,236 words.

2. This brief complies with the typeface requirement of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 21st day of May, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Monica L. Miller

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