

ACLU of Virginia

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VIA FAX: (804) 371-6351

The Honorable Robert F. McDonnell
Office of the Governor
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

RE: Sectarian Prayers at Police-Sanctioned Events

Dear Governor McDonnell:

According to news reports, several Virginia organizations have asked you to rescind a policy requiring police chaplains to offer only non-sectarian prayers at police-sanctioned events. I urge you to leave the policy in place in order to ensure that police chaplains in Virginia fully comply with U.S. Supreme Court and Fourth Circuit Court of Appeals decisions requiring that government-sponsored prayers be nonsectarian.

Bills to Rescind Superintendent's Policy Failed in 2009 and 2010

The Virginia General Assembly has twice considered legislation intended to reverse the Superintendent's policy. In 2009, the House of Delegates passed HB 2314, which prohibited the Superintendent from interfering with content of prayers offered by police chaplains at government-sponsored events. HB 2314, however, was rejected by the Senate. In 2010, both the House and the Senate rejected similar bills.

Court Precedents Support Superintendent's Policy

In *Marsh v. Chambers*, the U.S. Supreme Court ruled that that the Nebraska legislature could open its meetings with a prayer. Although the clear implication of the ruling was that non-sectarian prayers were permissible but that sectarian prayers were not, the court did not explicitly come to this conclusion. ("The content of the prayer is not of concern to judges where, as here, there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief.")¹

However, in *County of Allegheny v. ACLU*, the high court clarified that government-sponsored prayers must be non-sectarian. ("Indeed, in *Marsh* itself, the Court recognized that not even the 'unique history' of legislative prayer can justify contemporary legislative prayers that have the effect of affiliating the government with any one specific faith or belief. The legislative prayers involved in *Marsh* did not violate this principle because the particular chaplain had 'removed all references to Christ.'")²

Later, in *Wynne v. Town of Great Falls*, the Fourth Circuit Court of Appeals ruled that Christian prayers offered at the Great Falls Town Council meetings were impermissible. (“Here, the Town Council insisted upon invoking the name ‘Jesus Christ,’ to the exclusion of deities associated with any other particular religious faith, at Town Council meetings in public prayers in which the Town's citizens participated. Thus, the Town Council clearly “advance[d]” one faith, Christianity, in preference to others, in a manner decidedly inconsistent with *Marsh*.”)³

In *Turner v. Fredericksburg Rev. Hashmel Turner*, a member of the Fredericksburg City Council, challenged a policy prohibiting him from delivering sectarian prayers at the beginning of council meetings. In an opinion written by Justice Sandra Day O’Connor, who cited both *Marsh* and *Wynne*, the Fourth Circuit in 2008 upheld the Fredericksburg policy.⁴

In September 2008, shortly after the *Turner* decision, State Police Superintendent Col. W. Steven Flaherty instituted the policy at issue here, which mirrors the Fredericksburg City Council policy upheld by the Fourth Circuit.

Presence of Policy Avoids Legal Action

It is our understanding that the Superintendent of Police enacted the non-sectarian prayer policy because some police chaplains regularly violated the legal precedents cited above when they prayed at police-sponsored events. Indeed, according to news reports several chaplains resigned in protest after the new policy was implemented.

If the Superintendent’s policy is rescinded, it stands to reason that some chaplains may again offer sectarian prayers at police-sponsored events. Were that to occur, the participating chaplains would be in clear violation of the law, thus inviting litigation.

Why the Policy Matters: Religious Liberty in the U.S.

According to recent studies, the people of the United States are the most religious of all the western democracies. They also practice more different religions than any nation in history. We owe this remarkable state of affairs to two constitutional principles that have served our nation well for more than 200 years: the right to free exercise of religion and the mandate that the government act with strict neutrality on matters of religion.

Government officials are, of course, free to practice the religion of their choice and even to invoke their personal religious beliefs while at work. However, when government officials offer a prayer at a government-sponsored event, they speak not for themselves but on behalf of the government they represent. It is during these times – at school board meetings, city council meetings, police-sanctioned events, and the like – that government officials must maintain religious neutrality. Any hint that the government prefers one religion over others not only constitutes an endorsement of a particular religion, but also implies that other religions are somehow inferior.

The Superintendent’s policy is therefore not only consistent with legal precedents, but also with our nation’s broad mandate for religious liberty.

I thank you for your attention to this important matter, and I hope that you will refrain from rescinding the Superintendent's policy on non-sectarian prayers at police-sponsored events.

Please feel free to contact me at 644-8080 or kwillis@acluva.org if you would like to discuss this issue.

Sincerely,

Kent Willis
Executive Director

¹ *Marsh v. Chambers*, 463 U.S. 783, 794-5 (1983).

² *County of Allegheny v. ACLU*, 492 U.S. 573, 603 (1989).

³ *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004).

⁴ *Turner v. Fredericksburg*, 534 F.3d 352 (4th Cir. 2008).