050037a

2nd DRAFT : Invocation Instructional Invitation (3I)

______, 2005

Greetings ___________,

This letter is to confirm your offer to give the invocation at the City Commission meeting on ___________, _____. Hosting a moment of reflection and reverence is a tradition for many legislative bodies. Recent decisions by the courts addressing the legality of invocations provide certain guidelines that the City of Gainesville must adhere to. Therefore, we respectfully request your consideration of the following criteria. Invocations should:

1. be void of any reference to a specific deity or god (i.e. Jesus Christ, Muhammad, etc…);
2. use language that respects the diversity of the community;
3. not proselytize or solicit any particular denomination or doctrine (ex: inviting others to services, referencing the advantages of certain beliefs, or inviting other to join a particular religion);
4. refrain from criticizing or condemning any other faith or belief;
5. be directed toward the Commission or City, and not focused on particular individual or agenda item (ex: praying that resolution XYZ passes).

Any questions regarding the application of these guidelines should be directed to the City Clerk's Office at (352) 334-5015. We greatly appreciate your willingness to serve our community through this service. Thank you for your cooperation. At the earliest convenience please provide confirmation of your intention to attend the City Commission's meeting on ___________, _____.

Respectfully,

____________,

____

050037

Invocation Sign-up Sheet

2005	2006
	January 9th ______
	January 23rd ______
	February 13th ______
	February 27th ______
	March 13th ______
	March 27th ______
	April 10th ______
	April 24th ______
	May 8th ______
	May 22nd ______
	June 12th ______
	June 26th ______
July 11th ______	July 10th ______
July 25th ______	July 24th ______
August 8th ______	August 14th ______
August 22nd ______	August 28th ______
September 12th ______	September 11th ______
September 26th ______	September 25th ______
October 10th ______	October 9th ______
October 24th ______	October 23rd ______
November 14th ______	November 13th ______
November 28th ______	November 27th ______
December 12th ______	December 11th ______

M RY L. CHAMBERS, CMC
City Clerk
P.O. Drawer 1300
Pompano Beach, Florida 33061

050037

Phone: (954) 786-4611
Fax: (954) 786-4095
e-mail: www.ci.pompano-beach.fl.us

City of Pompano Beach, Florida

December 1, 2003

Dr. Edward Hernandez
Pastor
Christ Community Church
901 East McNab Road
Pompano Beach, Florida 33060

Dear Dr. Hernandez:

You have been invited to give an invocation on behalf of the Pompano Beach City Commission prior to the City Commission Meeting on *November 25, 2003, at 7:00 p.m.*, in Commission Chambers, 100 West Atlantic Boulevard, Pompano Beach, Florida.

Since the Invocation will be given at a public government meeting, our legal counsel has respectfully asked that your inspirational message be applicable to all faiths and include all persons in our diverse community, and that no specific religion or religious deity be mentioned or promoted in any way.

Thank you for your participation and cooperation in this regard.

Sincerely,

Mary L. Chambers, CMC
City Clerk

MLC/ah

The City of Pompano Beach is An Equal Opportunity Employer And Does Not Discriminate On The Basis Of Handicapped Status

050037

City of Clearwater

Post Office Box 4748, Clearwater, Florida 33758-4748
City Hall, 112 South Osceola Avenue, Clearwater, Florida 33756
Telephone (727) 562-4090 Fax (727) 562-4086

Official Records And
Legislative Services

, 2005

Reverend

Clearwater, FL 33755

Dear Reverend

Non-sectarian

This letter is to confirm your offer to give the invocation at the City Council Meeting on Thursday, , 2005. The Council would appreciate your consideration of the diverse beliefs of our citizens as you prepare your invocation.

The meeting will begin at 6:00 P.M. in the City Council Chambers on the third floor in City Hall, 112 South Osceola Avenue.

Your willingness to serve is sincerely appreciated. If you have any questions, please call me at 562-4093.

When you arrive, please advise the City Clerk, Cyndie Goudeau.

Respectfully yours,

Judith LaCosse
Staff Assistant

Frank Hibbard, Mayor
Bill Jonson, Vice-Mayor
Hoyt Hamilton, Councilmember
John Doran, Councilmember
Carlen A. Petersen, Councilmember

"Equal Employment and Affirmative Action Employer"

Lannon, Kurt M.

From: Radson, Marion J.
Sent: Wednesday, April 27, 2005 9:21 AM
To: Lannon, Kurt M.
Cc: DG_Legal_Attorneys
Subject: Recent case regarding invocational prayers at public meetings

Attached is a recent case from the Fourth Circuit Court of Appeals of the Federal Court for your consideration. I am not familiar with how you select and instruct those who deliver the invocation. By reading this case you will you better understand the constitutional limitations on invocations at public meetings. If you have any questions, please contact me.

In *Simpson v. Chesterfield County Bd. of Supervisors*, No. 04-1045 (4th Cir. April 14, 2005), the Board of Supervisors adopted a policy under which its public meetings included a non-sectarian invocation. The policy stated that each "invocation must be non-sectarian with elements of the American civil religion and must not be used to proselytize or advance any one faith or belief or to disparage any other faith or belief" (it was later amended to direct clerics to avoid invoking the name of Jesus Christ). The board invited religious leaders from congregations within the county to make the invocation and those who replied were scheduled to give the invocation on a first-come, first-serve basis. The actual list included a diverse representation of faiths, as well as several Christian denominations. A Wiccan ("a member of a local group known as the Broom Riders Association") applied to deliver the invocation, was denied, and sought to eliminate the invocation altogether. The Fourth Circuit upheld the policy, finding it "embodies the principle that religious expression can promote common bonds through solemnizing rituals, without producing the divisiveness the Establishment Clause seeks rightly to avoid. We therefore conclude that the content of the invocations given at County Board meetings has not 'crossed the constitutional line.'"

case.pdf

Marion J. Radson
City Attorney
(352) 334-5011

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PUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

CYNTHIA SIMPSON, *Plaintiff-Appellee,* v. CHESTERFIELD COUNTY BOARD OF SUPERVISORS, *Defendant-Appellant.* NATIONAL LEGAL FOUNDATION, *Amicus Supporting Appellant.*	No. 04-1045
CYNTHIA SIMPSON, *Plaintiff-Appellant,* v. CHESTERFIELD COUNTY BOARD OF SUPERVISORS, *Defendant-Appellee.* NATIONAL LEGAL FOUNDATION, *Amicus Supporting Appellee.*	No. 04-1141

Appeals from the United States District Court
for the Eastern District of Virginia, at Richmond.
Dennis W. Dohnal, Magistrate Judge.
(CA-02-888-03)

Argued: February 3, 2005

Decided: April 14, 2005

Before WILKINSON, NIEMEYER, and WILLIAMS, Circuit Judges.

Affirmed in part, reversed in part, and remanded with directions by published opinion. Judge Wilkinson wrote the opinion, in which Judge Niemeyer and Judge Williams joined. Judge Niemeyer wrote a concurring opinion.

COUNSEL

ARGUED: Steven Latham Micas, COUNTY ATTORNEY'S OFFICE FOR THE COUNTY OF CHESTERFIELD, Chesterfield, Virginia, for Chesterfield County Board of Supervisors. Rebecca Kim Glenberg, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VIRGINIA, Richmond, Virginia, for Cynthia Simpson. **ON BRIEF:** Jeffrey L. Mincks, Stylian P. Parthemos, COUNTY ATTORNEY'S OFFICE FOR THE COUNTY OF CHESTERFIELD, Chesterfield, Virginia, for Chesterfield County Board of Supervisors. Victor M. Glasberg, Kelly M. Baldrate, VICTOR M. GLASBERG & ASSOCIATES, Alexandria, Virginia; Ayesha Khan, AMERICANS UNITED FOR SEPARATION OF CHURCH & STATE, Washington, D.C., for Cynthia Simpson. Steven W. Fitschen, THE NATIONAL LEGAL FOUNDATION, Virginia Beach, Virginia, for Amicus Supporting Chesterfield County Board of Supervisors.

OPINION

WILKINSON, Circuit Judge:

In this case we consider the effect of the Establishment Clause on a local government's policy concerning legislative invocations. Because that policy does not "proselytize or advance any one, or [ ] disparage any other, faith or belief," *Marsh v. Chambers*, 463 U.S. 783, 794-95 (1983), we believe it fits within the Supreme Court's

requirements for legislative prayer. We therefore remand the case with directions that the district court dismiss the complaint.

I.

A.

Chesterfield County, Virginia, a suburban jurisdiction south of Richmond, has a population of approximately 280,000. The County is governed by a Board of Supervisors composed of five elected representatives. The Board of Supervisors — like the United States Congress and many state and local legislative bodies — has adopted a policy under which its public meetings include a non-sectarian invocation. It instituted this practice in 1984, immediately after the Supreme Court upheld legislative invocations under the First Amendment's Establishment Clause. *See Marsh v. Chambers*, 463 U.S. 783 (1983). The County's policy, tracking the language of *Marsh*, states that each "invocation must be non-sectarian with elements of the American civil religion and must not be used to proselytize or advance any one faith or belief or to disparage any other faith or belief."

On days when it meets, the Board conducts some business in the afternoon, breaking for dinner at about 5:00. The evening session, which begins at 7:00, includes most of the substantive work requiring public hearings, and also provides an opportunity for citizens to address the Board. The Board begins this evening session with a "non-sectarian invocation" and the pledge of allegiance.

Instead of choosing a single chaplain to provide the invocations, the Board invites religious leaders from congregations within Chesterfield County. The Board's clerk maintains a record of such congregations, with addresses taken primarily from the phone book. Each December, the clerk sends an invitation to these congregations, addressed to the "religious leader." Sending these letters is designed to foster widespread participation throughout the County and to facilitate planning. Those who reply are scheduled to give the invocation on a first-come, first-serve basis.

The 2003 list maintained by the clerk includes 235 congregations. The bulk of them, but by no means all, are traditional Christian churches. The Islamic Center of Virginia is in Chesterfield County, and it is on the list. Imams associated with the Center have been involved in giving invocations, including at a Board meeting shortly after September 11, 2001. A Spanish-speaking Protestant church is on the list too; the invocation on July 25, 2001, given by a minister of that church, was split between Spanish and English. Several Jewish congregations appear on the list, and a rabbi gave an invocation before the Board. Roman Catholic and mainline Protestant churches are well represented, but the list also includes Jehovah's Witness congregations, a number of Mormon churches, and many independent churches.

This diversity reflects the Board's requirement that prayers be "non-sectarian." The magistrate judge noted that this principle was generally satisfied: "As to the effect and/or impact of the invocations . . . , they are but brief, benign pronouncements of simple values that are not controversial nor confrontational but for, at most, mention of specific Judeo-Christian references that are nevertheless clearly recognized as symbols of the universal values intended to be conveyed." *Simpson v. Chesterfield County Bd. of Supervisors*, 292 F. Supp. 2d 805, 820 (E.D. Va. 2003). The County, seeking to avoid the slightest hint of sectarianism, revised its invitation letter to the clergy. The letter now directs clerics to avoid invoking the name of Jesus Christ, a custom to which Christian clergy often had adhered when closing their invocations in the past.[1]

B.

Cynthia Simpson, a resident of Chesterfield County, contacted the clerk of the County Board in August 2002 seeking to be added to the list of religious leaders available to give an invocation.[2] Asked of

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[1]That this policy was changed subsequent to litigation is not significant. Precisely the same policy revision was noted in *Marsh* itself, where the complaint was dated December 1979 but the chaplain "removed all references to Christ" in 1980. *Marsh*, 463 U.S. at 793 n.14.

[2]The County argues that Simpson lacks standing to bring this suit. She has never been denied the opportunity to address the County Board or to

which religion she was a leader, Simpson "told [the deputy clerk] that [she] was a witch." Simpson stated in her deposition that there was no difference between the words "Wicca" and "witchcraft," but that "I prefer the words witchcraft and witch myself, but that's a personal preference." She belongs to the Reclaiming Tradition of Wicca, and is a member of a local group known as the Broom Riders Association. Simpson claims eligibility to lead an invocation because she is a "spiritual leader" who frequently takes a leadership position in conducting the rites and worship for her group. Simpson identified herself as "a monotheistic witch" who "believe[s] in the goddess," in a pantheistic sense. Although she acknowledged that in the course of her worship gods and goddesses such as Kore, Diana, Hecate, and Pan had been invoked, she explained that, to her, "they are aspects of the one."

The deputy clerk referred Simpson's request to the County Attorney, who stated to Simpson and her attorneys that she was not eligible to be added to the list. He observed that "Chesterfield's non-sectarian invocations are traditionally made to a divinity that is consistent with the Judeo-Christian tradition," a divinity that would not be invoked by practitioners of witchcraft.

The first letter that Simpson's attorney sent to the County, meanwhile, pointed out the constitutional tension in denying witches the opportunity to lead an invocation. She then suggested a solution: "This is easily — and constitutionally — accomplished by eliminating prayer as part of the meetings. If, however, the Board insists on having prayers," it could not exclude Simpson.

Spurred to review its policy by Simpson's repeated requests — the first time the policy had ever been challenged — the County Board affirmed it. After it became clear that the County would not recon-

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practice her religion. The County also suggests that she lacks standing because her proposed invocation would not, as she acknowledges, "invoke" a deity's guidance, but would be more akin to inspirational, welcoming remarks. We agree with the magistrate judge that Simpson's exclusion from the list of those eligible to give an invocation is an injury sufficient to satisfy standing requirements. *See Simpson*, 292 F. Supp. 2d at 809.

sider or make an exception for Simpson, she brought suit in the U.S. District Court for the Eastern District of Virginia. She alleged that her exclusion from the list amounted to a violation of the Establishment Clause in that the County's policy impermissibly advanced Judeo-Christian religions. She also argued that the policy violated her rights under the Free Exercise and Free Speech Clauses of the First Amendment, as well as the Equal Protection Clause of the Fourteenth Amendment.

The district court, on cross motions for summary judgment, granted Simpson's motion as to the Establishment Clause claim, finding that the County had engaged in impermissible denominational preference. It simultaneously granted the County's motion as to the remaining allegations. *Simpson*, 292 F. Supp. 2d at 823. Both parties have appealed, and we consider the issues de novo. *See Canal Ins. Co. v. Distribution Servs., Inc.*, 320 F.3d 488, 491 (4th Cir. 2003).

II.

The parties here differ as to which lines of precedent govern this case. Simpson rejects the County's argument that the principles of *Marsh v. Chambers* suffice to resolve the dispute. She instead offers, and the district court accepted, *Larson v. Valente*, 456 U.S. 228 (1982) (finding "denominational preference" to violate the Establishment Clause), as well as *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (creating a general framework to evaluate Establishment Clause challenges). We think her reliance on these cases is misplaced and conclude that *Marsh v. Chambers* controls the outcome of this case.

First, *Marsh* deals directly with legislative invocations, the specific issue before us. *Marsh* defines legislative prayer as an act to "invoke Divine guidance on a public body entrusted with making the laws . . . ." *Marsh*, 463 U.S. at 792. The County's invocations have been explicitly tied to this notion since their inception in 1984.

Second, *Marsh* was decided after both *Lemon* and *Larson*, and it declined to apply either of them. *Marsh* mentioned *Lemon* only once, and then only to note that the court of appeals, which the Supreme Court reversed, had relied on it. *Id.* at 786. The Court's failure to

apply this well-known precedent suggests that *Lemon* was not the proper lens through which to view this particular dispute. *Larson*, meanwhile, was not even referenced, despite being a particularly fresh precedent, decided barely a year before *Marsh* itself. Even though *Marsh* considered the question of clergy selection, which Simpson claims is governed by *Larson*, the Court found *Larson*'s denominational preference test no more dispositive than it found *Lemon*.

Marsh's refusal to adopt the framework of *Lemon* or *Larson* could not have been inadvertent. This impression is confirmed by the dissent's heavy reliance on both cases, and its frustration that the Court had refused to acknowledge their relevance. The dissent quite accurately observed that "[t]he Court makes no pretense of subjecting Nebraska's practice of legislative prayer to any of the formal 'tests' that have traditionally structured our inquiry under the Establishment Clause," *id.* at 796 (Brennan, J., dissenting), and asserted that "the Nebraska practice, at least, would fail the *Larson* test." *Id.* at 801 n.11 (Brennan, J., dissenting). The dissent added that "if any group of law students were asked to apply the principles of *Lemon* to the question of legislative prayer, they would nearly unanimously find the practice to be unconstitutional." *Id.* at 800-01 (Brennan, J., dissenting).

We are of course governed not by the dissent, but by the majority. Thus we must follow the rubric announced in *Marsh* itself, and not the tests it rejected, in the limited context of legislative prayer. We do not disrespect *Lemon* or *Larson* by so doing. We simply recognize that their guidance, though generally applicable to Establishment Clause disputes, does not extend to the present controversy. The Court itself recognized as much, stating that in *Marsh* it "did not even apply the *Lemon* 'test.'" *Lynch v. Donnelly*, 465 U.S. 668, 679 (1984). *See also Edwards v. Aguillard*, 482 U.S. 578, 583 n.4 (1987) (noting that *Marsh* had not applied the *Lemon* test). *Marsh*, in short, has made legislative prayer a field of Establishment Clause jurisprudence with its own set of boundaries and guidelines. We therefore agree with the Tenth Circuit, considering a similar challenge to a legislative prayer policy, that "the mainline body of Establishment Clause case law provides little guidance for our decision in this case. Our decision, instead, depends on our interpretation of the holding in *Marsh*." *Sny-*

der v. Murray City Corp., 159 F.3d 1227, 1232 (10th Cir. 1998) (en banc).[3]

Third, applying *Marsh* here follows this circuit's case law. The magistrate judge, during oral argument, remarked that "[s]everal courts, including our own Fourth Circuit, want to escape somewhat of *Marsh*." This is incorrect. Fourth Circuit case law demonstrates not an intent to escape *Marsh* but a determination to apply it as the Supreme Court has directed. Most recently, our decision in *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004), found a Town Council's practice explicitly advancing exclusively Christian themes to be unconstitutional. *Wynne* reached this conclusion by applying *Marsh*, unequivocally signaling thereby that *Marsh* provided the appropriate rubric for questions of this sort.

Moreover, even when we have declined to apply *Marsh*, we have done so in a way that clearly indicates its appropriate application to the present case. For instance, in *North Carolina Civil Liberties Union Legal Foundation v. Constangy*, 947 F.3d 1145, 1148 (4th Cir. 1991), we declined to apply *Marsh* for the simple reason that judges praying from the bench did not fit within the ambit of the Court's discussion of *legislative* prayer. Likewise, *Mellen v. Bunting*, 327 F.3d 355, 370 (4th Cir. 2003), did not apply *Marsh* because "the supper prayer [at a state-sponsored university] does not share *Marsh*'s 'unique history.'"

In short, this case squarely presents questions concerning legislative prayer. To ignore *Marsh*, when the Supreme Court explicitly tied

[3]Simpson claims that the Court modified *Marsh* in *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989). We recognize, as the court did in *Wynne*, that *Allegheny*'s language was "carefully considered" and "must be treated as authoritative." *Wynne*, 376 F.3d at 298 n.3 (internal quotation omitted). That language, however, does not operate to invalidate the County's policy, because that policy does "not demonstrate a preference for one particular sect or creed." *Allegheny*, 492 U.S. at 605. *Allegheny* concerned religious holiday displays, referencing *Marsh* to confirm that *Marsh* did not apply in that context. Nothing in *Allegheny* suggests that it supplants *Marsh* in the area of legislative prayer.