

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**HASHMEL C. TURNER, JR.**

*Plaintiff,*

v.

C. A. No. \_\_\_\_\_

**THE CITY COUNCIL OF THE  
CITY OF FREDERICKSBURG, VIRGINIA,**

City Hall  
715 Princess Anne Street  
Fredericksburg, Virginia 22404

and

**DR. THOMAS J. TOMZAK,  
in his official capacity as Mayor of the  
City of Fredericksburg, Virginia,**

City Hall  
715 Princess Anne Street  
Room 205  
Fredericksburg, Virginia 22404

*Defendants.*

**COMPLAINT**

Plaintiff, Hashmel C. Turner, Jr. ("Turner"), by counsel, for his Complaint against the City Council of the City of Fredericksburg, Virginia ("City Council"), and Dr. Thomas J. Tomzak in his official capacity as Mayor of the City of Fredericksburg, Virginia ("Mayor"), alleges and avers as follows:

**Statement of the Case**

1. Turner, a member of the City Council, seeks declaratory and injunctive relief for infringements of his rights to free speech and free exercise of religion under the First Amendment. This relief is required because the City Council, acting in part through the Mayor,

has adopted and applied a custom, practice and/or policy respecting the delivery of prayers by Council members at the opening of City Council meetings that is not required by the Establishment Clause, violates Turner's fundamental right to free speech, infringes Turner's religious beliefs and unduly burdens his exercise of those beliefs, and denies Turner the equal protection of the law.

### **Jurisdiction and Venue**

2. This Court has jurisdiction over this action under 28 U.S.C. § 1331, as it arises under the Constitution and laws of the United States, including without limitation the First, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States and under 28 U.S.C. § 1343, as it is an action for relief for deprivation of civil rights under 42 U.S.C. § 1983. This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 which provides for supplemental jurisdiction. Jurisdiction over the demand for a declaratory judgment exists under 28 U.S.C. §§ 2201-2202.

3. Venue in the Eastern District of Virginia is proper under 28 U.S.C. § 1391 because (a) all of the Defendants reside in this judicial district and in the Commonwealth of Virginia, and (b) all or a substantial part of the events or omissions which give rise to the claims occurred in this judicial district, and, more specifically, the City of Fredericksburg, Virginia.

### **Parties**

4. Plaintiff, Hashmel C. Turner, Jr., is an adult individual who is and at all relevant times was a citizen of the United States of America, a resident of the Commonwealth of Virginia, a resident of and taxpayer in the City of Fredericksburg, Virginia. Turner is employed full-time by the United States Army at Fort A. P. Hill and serves as a duly-elected elected member of the City Council of the City of Fredericksburg.

5. Defendant City Council of the City of Fredericksburg, Virginia, is a body politic and the governing body of the City of Fredericksburg vested with authority to exercise powers enumerated in its City Charter and Title 15.2 of the Code of Virginia.

6. Defendant Dr. Thomas J. Tomzak, is an adult individual who is the duly-elected Mayor of the City of Fredericksburg and is also a duly-elected member of the City Council of the City of Fredericksburg. As Mayor, Dr. Tomzak is vested with authority to exercise certain powers enumerated in its City Charter and Title 15.2 of the Code of Virginia. Dr. Tomzak is sued in his official capacity only and not in his individual capacity.

#### General Allegations

7. Plaintiff Turner is a Christian and serves part-time as acting pastor for First Baptist Church of Love, a non-denominational church located in the City of Fredericksburg. Turner has sincere and deeply-held religious beliefs that require him when praying to invoke the name of Jesus Christ.

8. Turner is currently a duly-elected member of the Defendant City Council of Fredericksburg, representing Ward 4 of the City. He was elected to this seat on the City Council for the term beginning July 1, 2002 and his term expires in June 2006.

9. The City of Fredericksburg is governed by the City Council, which has seven members, one of whom is the Mayor of the City.

10. The City Council is the legislative body for the City and exercises legislative control over such matters as are delegated to the City under the Constitution and laws of the Commonwealth of Virginia.

11. The Mayor presides over the meetings of the City Council and directs who is and who is not recognized to speak in accordance with the City Charter, customs and practices of the Council and standard parliamentary procedure.

12. For many years, it has been the custom and practice of the City Council, after the call to order of the regular Council meeting, for the Mayor to call upon a Council member to open the meeting with a prayer.

13. The opportunity to offer the opening prayer is and has been, at all relevant times afforded to Council members on a rotating basis and has thereby constituted a forum for the delivery of prayer by individual members of the City Council.

14. Prior to November 8, 2005, when called upon to give the opening prayer, the Council member was given the opportunity to offer the prayer in the manner and with the content that her or she chose.

15. The minutes of City Council meetings since 2000 show that opening prayer has been offered at each meeting. All but one of these prayers has been offered by a City Council member (the lone exception being a member of the local clergy) on a rotating basis.

16. In light of this custom and practice, in July 2002, after assuming his seat on the City Council, Turner requested to be placed upon the rotation of Council members offering opening prayer at Council meetings.

17. From the time he was placed on the prayer rotation until July 2003, Turner offered a prayer at the beginning of Fredericksburg City Council meetings when his turn on the rotation came.

18. In those prayers, Turner closed by invoking the name of Jesus Christ, in accordance with his sincerely-held religious beliefs.

19. In July 2003, the City Council and Turner received a letter from the American Civil Liberties Union of Virginia objecting to a prayer given by Turner at a City Council meeting in which Turner used and invoked the name of Jesus and threatening to sue the City if Turner were allowed to offer such prayers in the future.
20. Because of the letter and the threat of litigation, Turner removed his name from the rotation of City Council members desiring to offer prayers at the beginning of City Council meetings in order to seek legal advice.
21. Although Turner still desired to continue offering a prayer, his religious convictions and conscience would not allow him to offer a prayer that did not invoke the name of Jesus Christ.
22. In October 2003, however, Turner requested that he be placed back in the rotation of Council members desiring to offer prayers at Council meetings and announced his intention to continue invoking the name of Jesus Christ in his prayers as allowed by the Constitution and laws of the United States and the Commonwealth of Virginia.
23. Turner was placed back in the rotation and offered prayer that invoked Jesus Christ as is his right and privilege as a member of the City Council.
24. On July 26, 2004, the ACLU of Virginia sent another letter to the members of the Fredericksburg City Council threatening to sue both the City and Turner personally if Turner was allowed to continue offering prayer at Council meetings. A true and accurate copy of this letter is attached hereto as **Exhibit A**.
25. Because of this letter and the threat made by the ACLU, Turner and the other Council members met to address the issue soon after July 26, 2004. At that time, several City

Council members asked Turner to refrain from offering prayer at council meetings until the issue could be studied further by the City Attorney.

26. Turner reluctantly agreed in order to avoid hardship on the City and again asked that his name be removed from the prayer rotation roster.

27. Until November 8, 2005, Turner refrained from exercising his First Amendment right to participate in the rotating Council prayer forum to provide the City Attorney needed time to study the matter.

28. On November 8, 2005, the City Council held a regularly scheduled meeting at which Turner requested that the Mayor return Turner to the rotation for opening prayer roster and that he be allowed to offer a prayer at the November 22, 2005 Council meeting. A Transcript of Relevant Excerpts from the November 8, 2005, City Council Meeting is attached hereto as **Exhibit B**.

29. Also in the November 8 session, the City Attorney presented a Memorandum with recommendations concerning the custom and practice of opening prayer at Council's meetings. A true and accurate copy of this Memorandum is attached hereto as **Exhibit C**.

30. With respect to prayers to open City Council meetings, the Memorandum set forth the following proposal:

Council may continue to offer a non-denominational prayer, seeking God's blessing on the governing body and His assistance in conducting the work on the City, as part of its official meeting. At this time, there is no clear legal authority to permit a denominational prayer—one invoking Jesus Christ, for example—as part of the official meeting.

After the City Attorney's presentation, a motion was made by Councilman Withers to "accept the City Attorney's recommendation that Council continue to offer nondenominational prayers seeking God's blessing on the governing body and his assistance in governing works of

the city as a part of its official meeting.” The motion was adopted by a vote of 5-1, with Councilman Turner abstaining. See Transcript, Exhibit B, pp. 5-8.

31. On November 22, 2005, the date of the next scheduled City Council meeting, Turner came to City Hall and found prominently placed at his workspace a copy of the July 26, 2004 letter from the ACLU of Virginia (See Exhibit A attached hereto).

32. Later that day, the Mayor approached Turner and asked if Turner stood by his request made at the preceding Council meeting to have his turn in the prayer rotation at the November 22 meeting. Turner said that he did.

33. The Mayor then suggested that Turner defer and allow Councilor Girvan the opportunity to offer the opening prayer.

34. In response, Turner reaffirmed his commitment to offer prayer in accordance with the City Council’s established prayer rotation.

35. At the City Council meeting after the call to order, the Mayor declined to recognize Turner for the purpose of offering the opening prayer.

36. Instead, the Mayor recognized Councilor Girvan, who offered the opening prayer.

37. The Mayor’s decision not to recognize Turner for the purpose of the opening prayer at the November 22, 2005, Council meeting was based upon his knowledge that Turner would offer a prayer that invoked the name of Jesus or Christ and the City Council’s motion adopting the procedures for “non-denominational” prayer outlined above.

#### **Count I (Declaratory Relief)**

38. Turner incorporates by reference the allegations of paragraphs 1 through 37.

39. Turner seeks a declaration regarding his rights under the First and Fourteenth Amendments.

40. A legitimate controversy exists between Turner, on the one hand, and the City Council and the Mayor, on the other hand, related to Turner's offering of prayer including the name of Jesus Christ at City Council meetings in accordance with long-standing custom and practice. Upon information and belief, Turner faces punishment and fines under Va. Code Ann. § 15.2-1400 if he offers such prayers.

41. In addition, Turner and the Defendants both face a further legitimate controversy related to the ACLU's threats of litigation against the City Council and its members, including Turner, individually for damages.

42. Turner was at all times relevant to this lawsuit a person within the class of eligible persons – namely City Council members who requested to be on the rotating prayer roster – who were permitted to offer prayer at Council meetings on a rotating basis.

43. Turner's sincerely held religious beliefs require him to include the name of Jesus Christ in his prayers, which are private and/or hybrid speech.

44. By amending the custom and practice for opening prayer on November 8, 2005, so as to allow only "nondenominational" prayer, the City Council has imposed impermissible content and/or viewpoint discrimination on Turner's speech.

45. By refusing to recognize Rev. Turner on his turn to offer a prayer at the beginning of the November 22, 2005, City Council meeting, the Mayor deprived Turner of his opportunity to deliver prayer in accordance with his sincerely held religious beliefs and convictions based on impermissible content and/or viewpoint discrimination.

46. Upon information and belief, Defendants will not permit Turner or others similarly situated to offer an opening prayer containing any reference to a deity or other similar offensive combinations of words either now or in the future.



47. As written and as applied, the Defendants' policies, customs and/or practices have deprived Turner of his right to religious expression.

48. The Mayor's refusal to recognize Turner and allow Turner to offer a prayer on his turn according to the prayer rotation among Council members constitutes intentional and invidious classification of, and discrimination against, Turner based on an express and suspect classification of Turner's religious beliefs and speech, that is facially invalid and acts to deprive Turner of his right to equal protection of the law guaranteed by the Fourteenth Amendment.

49. The Defendants' November 8, 2005, amendment to its custom and practice regarding opening prayer represents an unlawful attempt by the City Council to prescribe the content of prayers given at City Council meetings by Turner and other members of City Council.

50. As written and as applied, the Defendants' policies, customs and/or practices are unconstitutionally vague and overbroad in that they do not properly inform persons what speech is prohibited.

51. As written and as applied, the Defendants' policies, customs and/or practices engage in impermissible content and viewpoint discrimination among different forms of social, economic, philosophical, political and religious speech.

52. As written and as applied, the Defendants' policies, customs and/or practices create an excessive entanglement of the Defendants and/or their agents with religion.

53. In all relevant actions, and in refusing to recognize Turner and allow Turner to offer a prayer at the beginning of City Council meetings, the City Council and/or the Mayor have acted under color of the law of the Commonwealth of Virginia.

54. In light of these circumstances, which have caused and will cause Turner irreparable harm, Turner respectfully requests that this Court review the facts and allegations

herein and issue a declaratory finding that the City Council and Mayor's actions (i) are not required for the City Council and the Mayor and its individual members to comply with the Establishment Clause and avoid individual and other liability that may arise out of litigation threatened by third parties such as the ACLU; and (ii) violate Turner's rights to free speech, free religious expression, non-establishment of religion and equal protection under the law, as more particularly stated in Counts II through V herein.

### **Count II (Free Speech)**

55. Turner incorporates herein by reference the allegations of paragraphs 1 through 54.

56. The actions of the Defendants have violated Turner's constitutional rights to free speech as guaranteed by the First and Fourteenth Amendments of the United States Constitution, Article I, Section 12 of the Constitution of Virginia of 1971, and 42 U.S.C. § 1983.

57. Turner is therefore entitled to injunctive relief prohibiting any continued infringements upon his right to free speech.

### **COUNT III (Free Exercise of Religion)**

58. Turner incorporates by reference the allegations in paragraphs 1 through 57.

59. The actions of the Defendants have violated Turner's constitutional rights to free exercise of religion as guaranteed by the First and Fourteenth Amendments of the United States Constitution, Article I, Section 16 of the Constitution of Virginia of 1971, the Virginia Statute for Religious Freedom, Title 57, Sections 1 & 2, Code of Virginia of 1950, as amended, and 42 U.S.C. § 1983.

60. Turner is therefore entitled to injunctive relief prohibiting any continued infringements upon his right to free exercise of religion.

**COUNT IV (Equal Protection)**

61. Turner incorporates by reference the allegations in paragraphs 1 through 60.

62. The actions of the Defendants have violated Turner's constitutional rights to free exercise of religion as guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution, Article I, Sections 1 and 11 of the Constitution of Virginia of 1971, and 42 U.S.C. § 1983.

63. Turner is therefore entitled to injunctive relief prohibiting any further infringements upon his right to equal protection of the law.

**Count V (Establishment Clause)**

64. Turner incorporates by reference the allegations in paragraphs 1 through 63.

65. The actions of the Defendants have violated Turner's constitutional rights under the Establishment Clause of the First Amendment of the United States Constitution (as applied under the Fourteenth Amendment), the provisions of Article I, Section 16 of the Constitution of Virginia of 1971, and 42 U.S.C. § 1983.

66. Turner has been and will continue to be harmed by the Defendants' violation thereof.

67. Turner is therefore entitled to injunctive relief prohibiting any further violations of the Establishment Clause by the Defendants.

WHEREFORE, Plaintiff, Hashmel C. Turner, Jr., by counsel, respectfully requests that the Court enter an order: (i) declaring the rights of the parties and ordering Defendants to honor Turner's First Amendment rights of free speech, free exercise and non-establishment of religion and his Fifth and Fourteenth Amendment rights to equal protection of the law; (ii) enjoining the Defendants from interfering with Turner's exercise of these rights, including without limitation

the issuance of a (1) mandatory permanent injunction enjoining the Defendants from enforcing the November 8, 2005, amendment and from taking any adverse action against Turner for exercising his constitutional rights of free speech, free exercise and non-establishment of religion and his constitutional right to equal protection of the law without discrimination as to his religion or the content or viewpoint of his speech and (2) directing the defendant Mayor and/or any Council member acting as the presiding officer at regular City Council meetings to put Turner on the regular prayer rotation and to recognize him in normal course of that rotation to deliver opening prayer at City Council meetings; (iii) awarding Turner his costs and an award of reasonable attorney fees pursuant to 42 U.S.C. § 1988; and (iv) awarding such further relief as the Court deems appropriate.

Dated January 10, 2006

**HASHMEL C. TURNER, JR.**

By: 

R. Johan Conrod, Jr. (VSB # 46765)  
KAUFMAN & CANOLES, P.C.  
150 West Main Street, Suite 2100  
Norfolk, Virginia 23514  
Telephone: (757) 624-3000  
Facsimile: (757) 624-3169

James J. Knicely, VSB # 19356  
KNICELY & ASSOCIATES, P.C.  
487 McLaws Circle, Suite 2  
Williamsburg, Virginia 23185  
Telephone: (757) 253-0026  
Facsimile: (757) 253-5825

Participating Attorneys for The Rutherford Institute

# ACLU of Virginia

Six North Sixth Street, Suite 400 Richmond, Virginia 23219 (804) 644-8022

July 26, 2004

Fredericksburg City Council  
PO Box 7447  
715 Princess Anne Street  
Fredericksburg, VA 22404

**RE: Sectarian Prayers at Fredericksburg City Council Meetings**

Dear Members of Council:

My purpose in writing this letter is to avoid costly and time consuming litigation for both the ACLU of Virginia and the City of Fredericksburg.

As you may know, the ACLU has asked Rev. Hashmel Turner to cease making sectarian religious references when he opens city council meetings with a prayer. That request was made pursuant to the Fourth Circuit Court of Appeals' ruling last Thursday in *Wynne v. Town of Great Falls*. In that case, a three-judge panel unanimously held that the practice of opening government meetings with a sectarian prayer is unconstitutional.

According to the Fredericksburg Free Lance Star (*Councilman Vows to Keep Christ in Prayer*, July 24, 2004), Rev. Turner has announced that he will continue to deliver sectarian prayers and that he plans to do so at tomorrow evening's meeting of council.

For this communication, I asked ACLU of Virginia legal director Rebecca Glenberg to prepare an explanation of the law on official prayers at government meetings. The enclosed legal memo traces the evolution of the court rulings on this issue, concluding with the unambiguous *Wynne* decision.

I would like to direct your attention to the memo's section on liability. Because the *Wynne* decision clearly establishes that Rev. Turner's sectarian references are unconstitutional, Rev. Turner and the City of Fredericksburg are no longer protected by the doctrine of qualified immunity. As a result he and the city could be held liable for money damages (in addition to paying the ACLU for the cost of bringing a lawsuit.)

All we are asking is that Rev. Turner obey the law as it now stands in the Fourth Circuit Court of Appeals. If the Fourth Circuit reverses the *Wynne* decision en banc or if the U.S. Supreme Court overrules the Fourth Circuit, then he will be free once again to deliver sectarian prayers at city council meetings.

I am hoping that as fellow council members you will be able to convince Rev. Turner to stop delivering sectarian prayers at your meetings. If you are unable to convince him through your personal entreaties, then you have the power to prevent him through official action of council.

This is not a question of your individual opinion on the appropriateness of sectarian prayers at council meetings, but a matter of your obligation as constitutional officers to uphold the law. Rev. Turner may have abdicated that responsibility, but I am hoping that you will not. There is also the practical question of spending taxpayers' money to defend an action that has been declared unconstitutional by a federal appellate court in whose jurisdiction you lie.

Please keep in mind that the *Wynne* decision does not prohibit non-sectarian prayers at council meetings. *Wynne* also does not prevent Rev. Turner or any of you from being guided by your individual religious beliefs when you make official decisions, or from articulating how those beliefs affect your decisions. It merely requires that official prayers of government bodies not express a preference for one religion over others.

The ACLU has been aware of Rev. Turner's sectarian prayers since last July and at that time asked him to cease the practice. In response to our request, he announced that he would stop, but changed his mind shortly thereafter. Although the law was clearly on our side, we chose not to pursue a legal challenge because the *Wynne* case was already in the Fourth Circuit, and we knew it would be decided soon.

If Rev. Turner delivers a sectarian prayer at tomorrow's meeting of council, and a qualified plaintiff seeks our assistance, the ACLU of Virginia is prepared to ask a U.S. District Court judge to order Rev. Turner and the City of Fredericksburg to refrain from such prayers in the future.

If any of you would like to talk about this matter, I would be pleased to meet with you or converse by telephone. My phone at work is (804) 644-8080; my home number is (540) 368-0538; and, my cell number is (804) 399-4191. You may also reach me by email at [kwillis@acluva.org](mailto:kwillis@acluva.org).

I thank you for your attention.

Sincerely,



Kent Willis  
ACLU of Virginia

cc: James M. Pates, City Attorney

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXCERPTS OF PROCEEDINGS FROM  
FREDERICKSBURG, VIRGINIA CITY COUNCIL MEETING  
NOVEMBER 8, 2005

TRANSCRIBED FROM VIDEOTAPE BY  
KATHLEEN L. HNATT, RPR  
JANUARY 4, 2006

**ORIGINAL**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**APPEARANCES PER NOVEMBER 8, 2005 MINUTES:**

**PRESENT:**

Mayor Thomas J. Tomzak, presiding,  
ViceMayor William C. Withers, Jr.  
Councilors Deborah L. Girvan, Thomas P.  
Fortune, Hashmel C. Turner, Jr., Matthew J.  
Kelly, and Kerry P. Devine.

**ALSO PRESENT:**

City Manager Phillip L. Rodenberg, City  
Attorney Kathleen A. Dooley, Building and  
Development Services Director T. Michael  
Naggs, Planning and Community Development  
Director Raymond P. Ocel, Jr., Budget  
Analyst Mark Whitley, and Clerk of Council  
Deborah H. Naggs.



1                   The Council of the City of  
2           Fredericksburg, Virginia, met in regular session on  
3           Tuesday, November 8, 2005, beginning at 7:30 p.m. in the  
4           Council Chambers of City hall.

5  
6                   (The following is an excerpt from the  
7           beginning of the City Council meeting:)

8  
9                   **THE MAYOR:** I'd like to call the  
10          November 8th, 2005 regular session of the Fredericksburg  
11          City Council to order. We'll be led in prayer tonight  
12          by Counselor Matthew Kelly, and tonight we'll be led in  
13          the Pledge of Allegiance by Mr. Frank Brooks.

14                   **COUNCILOR MATTHEW KELLY:** Most merciful  
15          Father, watch over our family, friends and neighbors.  
16          We would ask that you bring hope to those in despair,  
17          bring peace to those in distress, and comfort to those  
18          in pain. Watch over and protect our men and women in  
19          uniform who are serving our nation and protecting our  
20          freedoms both home and abroad. Let us not forget that  
21          we are here to serve not be served, and we ask your help  
22          in making decisions that benefit the entire  
23          Fredericksburg community. Amen.

24                   -----o0o-----

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(The following is an excerpt from a subsequent proceeding during the City Council meeting:)

**THE MAYOR:** Item 1C, prayer rotation. Reverend Turner?

**REVEREND TURNER:** Thank you, Mr. Mayor. It's been a long time coming and as I asked this evening about the prayer and you had someone already assigned on the rotation to lead this afternoon, but I do desire wholeheartedly to be added back to the rotating prayer roster, and it is my desire to be able to lead in our next council meeting on November the 22nd.

**THE MAYOR:** Thank you, Reverend Turner.

-----o0o-----

(The following is an excerpt from a subsequent proceeding during the City Council meeting:)

**THE MAYOR:** Item 20, transmittal of remittal on council prayer.

**MS. KATHLEEN DOOLEY:** Yes. Mr. Mayor, this is simply a transmittal of the memo. I think it speaks for itself. If council members have questions about it or if council would like further discussion, I'm available. I would suggest that we schedule -- if

1 more discussion is required, I would suggest that we  
2 schedule either a work session or a closed session for  
3 that. Other than that, I think it's pretty plain on its  
4 face.

5 -----oOo-----

6  
7 (The following is an excerpt from a  
8 subsequent proceeding during the City Council meeting:)

9  
10 **THE MAYOR:** Mr. Withers?

11 **MR. WITHERS:** All right. If the motion  
12 is appropriate, I'd like to make a motion that we accept  
13 the City Attorney's recommendation that council continue  
14 to offer nondenominational prayers seeking God's  
15 blessing on the governing body and his assistance in  
16 governing works of the city as part of its official  
17 meeting. I'd like to make that formal motion.

18 **UNIDENTIFIED PERSON:** I'll second that.

19 **THE MAYOR:** Reverend Turner?

20 **REVEREND TURNER:** Yes. Mr. Mayor, I  
21 will reclude (sic) myself from voting on that because  
22 it's pretty much directed toward an action that I  
23 requested, so I voice my opinion on the matter in  
24 previous setting so I will not be voting on this.

25 **THE MAYOR:** We have a motion to accept

1 the City Attorney's memo on council prayer. It has been  
2 seconded, and this motion will be council policy if  
3 passed. Is there any further discussion?

4 **MR. KELLY:** One last comment.

5 Mr. Mayor, I have followed the rules on this and will  
6 continue to do so when I have the prayer duty but,  
7 again, I've kind of voiced my issue on this thing  
8 regarding -- you know, nobody has yet explained to me  
9 why somebody who believes as they do and ask that  
10 individual, whoever it may be, to bless the entire city,  
11 everybody in the city regardless of who they are is a  
12 bad thing. So for philosophical reasons, I'm going to  
13 vote against this motion, but understand that if I  
14 continue to do my prayer duty and I will continue in  
15 rotation, I will follow the letter of this. But  
16 philosophically, I've still got some issues with it.

17 **MR. WITHERS:** May I comment?

18 **THE MAYOR:** Yes, sir.

19 **MR. WITHERS:** You know, you spoke quite  
20 eloquently tonight about a need to do things. I think  
21 based on the Attorney's recommendation, I think we  
22 should all understand why we need to pass this, to keep  
23 us out of a legal battle that we just don't need to be  
24 in.

25 **MR. KELLY:** And I understand, Billy,

1 but, again, I think it will pass and I know it will and  
 2 that's why -- again, I'm not going to do anything to get  
 3 us -- I will continue when I do my prayer to pretty much  
 4 do the prayer I do, make it nondenominational, but I do  
 5 have a bit of a philosophical issue with this.

6 **MR. WITHERS:** I have some too, but it  
 7 doesn't rise above what we ought to do for the public.

8 **THE MAYOR:** Reverend Turner?

9 **REVEREND TURNER:** Yes. Mr. Mayor, to  
 10 try to clear it up, I'm just referring back to my free  
 11 speech rights, so that is the reason why I've requested  
 12 to be put back in the prayer rotation. I feel that it's  
 13 a right that all of us as council members have if we  
 14 desire to be in the rotation roster, so that was the  
 15 reason why I made that request. It's just a matter of  
 16 my free speech and the way that I believe is acceptable.

17 **THE MAYOR:** Ms. Girvan?

18 **MS. GIRVAN:** Thank you, Mr. Mayor. I am  
 19 going to support this memo only because I agree with the  
 20 City Attorney's caution in that we not be the  
 21 front-runners in litigation to prove our points here.  
 22 However, I will say that we are individuals serving on  
 23 this council and when we open with prayer we are praying  
 24 as individuals, not on behalf of the entire council.  
 25 That's the way I see it. We each bring our own

1 backgrounds and influences and experiences and personal  
2 beliefs to this council and it does effect decisions  
3 that we make on behalf of the citizens. So I do want to  
4 acknowledge Reverend Turner's position because I think  
5 he's standing by his principles and I support that. I  
6 am supporting the memo for practical reasons because  
7 that's the policy that we've been undertaking thus far,  
8 but I'm hoping that in the near future this will be  
9 resolved in the courts or somehow legally so that we can  
10 open our meetings as we so choose. Thank you.

11 **THE MAYOR:** Thank you, Ms. Girvan. Any  
12 more discussion? There is a motion on the floor to  
13 accept the City Manager's recommendation. It's been  
14 seconded. If no further discussion, please cast your  
15 votes.

16 (Whereupon, the video shows five votes  
17 in favor and one against.)

18 **THE MAYOR:** Anything else, Ms. City  
19 Attorney?

20 **MS. DOOLEY:** No.

21 **THE MAYOR:** Okay. If there's no further  
22 business, if there's no objection, we will adjourn.

23 -----o0o-----

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COMMONWEALTH OF VIRGINIA

CITY OF WILLIAMSBURG, to-wit:

I, Kathleen L. Hnatt, RPR, do certify that the foregoing pages are true and accurate transcribed excerpts of the videotaped City Council meeting had at the time and place mentioned.

This 4th day of January, 2006.

*Kathleen L. Hnatt*

Kathleen L. Hnatt, RPR

Court Reporter

My Commission expires May 31, 2008



**TO:** City Council  
**FROM:** Kathleen Dooley, City Attorney *K. Dooley*  
**DATE:** November 4, 2005  
**RE:** Prayer at Council Meetings

**ISSUE:**

You have asked me to research the issue of whether Council members may offer a prayer to Jesus Christ during the official prayer with which they begin Council meetings. If it is not advisable to do so, you have asked whether the Council has other options for accommodating those Council members and members of the community who feel that such a prayer would be appropriate and desirable.

**RECOMMENDATION:**

I recommend that Council continue its current practice of offering the official prayer to a non-denominational "God," without invoking the name of a specifically Christian (or other denominational) deity.

The Virginia General Assembly adopted legislation in the 2005 session expressly authorizing local governing bodies to permit denominational prayer prior to the official call to order. Culpeper County Board of Supervisors and the Town Council for Manassas have both put this authority into practice, and you may wish to consider doing the same.

**BACKGROUND:**

Council has opened its meetings with a prayer for many years. In 2004, a Fredericksburg citizen objected to the then-common practice of closing a prayer with the phrase, "In Jesus' name: we pray." The Federal Fourth Circuit Court of Appeals had recently decided the case of *Wynne v.*



**Prayer at Council Meetings**  
**November 5, 2005**  
**page 2 of 3**

***Town of Great Falls, and there was a great deal of public interest in the issue. Since that time, Council has continued to open its meetings with a non-denominational prayer.***

**Meanwhile, the question of the appropriate role of religion in official public life has continued to engage both the public and the federal courts. In particular, the Fourth Circuit upheld the Chesterfield County, Virginia practice of permitting non-denominational prayers in the Judeo-Christian tradition. (The United States Supreme Court declined to hear the appeal of this decision.) The County's policy excluded a Wiccan from offering the official prayer. Next, the United States Supreme Court issued two opinions, one upholding and the other prohibiting the display of the Ten Commandments in public spaces. Finally, Cobb County, Georgia, is now in federal court over the issue of a Christian prayer during the meeting of its governing body.**

**The response of the Virginia General Assembly was to enact House Bill 2615 of the 2005 session, which is codified at Code of Virginia, 1950, as amended, section 15.2-1416-1. This new law states:**

**"During the time prior to the governing body's actual call to order or convening of business, any expressions by members of the governing body or members of the public shall be held consistent with the individual's First Amendment right of freedom of speech."**

**Our neighbors Culpeper County and the Town of Culpeper have both pursued practices under the new legislation. Neither jurisdiction has adopted an official policy with respect to the new practice. In both jurisdictions, a local minister prays for the governing body prior to the call to order of the meeting. The minister may offer a denominational or non-denominational prayer. Both jurisdictions have removed the official prayer from their meeting agendas.**

### **CONCLUSION:**

**Based on the above, and based upon the conversations that I have had either formally or informally with members of Council, I would recommend the following:**

- 1. Council is free to permit the use of the Council chambers immediately (say five or ten minutes) prior to the call to order of the meeting for private prayer, just as any number of private conversations currently take place in the Chambers prior to the commencement of the meeting. The private prayer could be offered by a member of Council or a member of the clergy. The private prayer could be offered in an expressly denominational (Christian) tradition. The prayer could be carried out amongst a small (or large) group of people who may gather together prior to the start of the meeting.**

**I would recommend that Council members who wish to participate in the prayer join the**

**Prayer at Council Meetings**  
**November 5, 2005**  
**page 3 of 3**

group in the public seating area of the Chambers. The person offering the prayer should do so without benefit of the podium or microphones. Council members and members of the public would be free to gather, as they wish, with the prayer-giver, and to stand or sit, again as they wish, during the prayer.

2. Council may continue to offer a non-denominational prayer, seeking God's blessing on the governing body and His assistance in conducting the work of the City, as part of its official meeting. At this time, there is no clear legal authority to permit a denominational prayer – one invoking Jesus Christ, for example – as part of the official meeting.

**This issue will continue to be litigated through the federal court system. We will all watch with interest the continued development of additional First Amendment doctrine through the course of litigation and public debate.**

**Please contact me if you have additional questions.**

**memo-council prayer.vpd**