FIRST LIBERTY

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Mt. Sterling Village Council
1 S. London St.
Mt. Sterling, OH 43143
*Via email and USPS, postage pre-paid*

**RE: Affirming the Constitutionality of Prayers Before Public Meetings**

Councilmembers:

I write on behalf of First Liberty Institute, the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans.

Recent reports by *The Columbus Dispatch* indicate that your newly constituted village council has "opened itself up" to a new controversy "by beginning meetings with Christian prayer."[1] There should be no controversy, real or perceived. The Supreme Court unequivocally resolved any controversy by "rejecting the suggestion that legislative prayer must be nonsectarian." *Town of Greece v. Galloway*, 572 U.S. 565, 582 (2014).

The practice of opening public meetings with prayer is as old as our country. All Americans are free to pray (or not) before public meetings according to the dictates of their consciences.

**The Supreme Court has repeatedly affirmed the constitutionality of legislative prayer.**

The Supreme Court of the United States has upheld the practice of legislative prayer against two challenges. First confronted with the use of chaplains to open legislative sessions in prayer, the Court concluded that "legislative prayer presents no more potential for establishment than the provision of school transportation, beneficial grants for higher education, or tax exemptions for religious organizations," practices the

[1] *See* Dean Narciso, *Restocked Mount Sterling council opens meetings with Christian prayers*, The Columbus Dispatch, Mar. 15, 2019, https://www.dispatch.com/news/20190315/restocked-mount-sterling-council-opens-meetings-with-christian-prayers.

Court has long upheld as constitutional. *Marsh v. Chambers*, 463 U.S. 783, 791 (1983) (internal citations omitted).

The Court rooted its analysis in the very framing of our country, noting that "the men who wrote the First Amendment Religion Clauses did not view paid legislative chaplains and opening prayers as a violation of that Amendment . . .." *Id.* At 788. If the authors of the First Amendment did not see a conflict in opening their own meetings with legislative prayer, either personally or with a paid chaplain, it is difficult to conceive how the Constitution could be violated by the councilmembers of the Mt. Sterling Village Council for doing so.

More recently, the Supreme Court again evaluated the practice of a legislature regularly opening its meetings with Christian prayer. *Town of Greece*, 572 U.S. 565. The Court held that such prayers were permissible "[s]o long as the town maintains a policy of nondiscrimination" that would allow persons of other faiths to also open up legislative sessions with prayer. *Id.* at 585-86.

Justice Kennedy, writing for the Court, explained that legislative prayer need not be neutral in its content to satisfy the First Amendment. Rather, sectarian prayers demonstrate the growing diversity of our country. "The decidedly Christian nature of these prayers," Justice Kennedy wrote, "must not be dismissed as a relic of a time when our Nation was less pluralistic than it is today." *Town of Greece*, 572 U.S. at 579. In so holding, the Court offered guidance on the constitutionality of such prayers:

> In rejecting the suggestion that legislative prayer must be nonsectarian, the Court does not imply that no constraints remain on its content. The relevant constraint derives from its place at the opening of legislative sessions, where it is meant to lend gravity to the occasion and reflect values long part of the Nation's heritage. Prayer that is solemn and respectful in tone, that invites lawmakers to reflect upon shared ideals and common ends before they embark on the fractious business of governing, serves that legitimate function.

*Id. at 582-83*. In contrast to the tenor of the article, the Supreme Court has indicated that Christian prayer is an appropriate and constitutional means of solemnizing a legislative session.

**Sixth Circuit Affirms Legislator-Led Prayer**

The U.S. Court of Appeals for the Sixth Circuit, in which the Village of Mt. Sterling sits, agrees with the U.S. Supreme Court. In a recent decision, the Sixth Circuit, sitting en banc, concluded that if a paid chaplain or a volunteers from the community could open a public meeting in prayer, so too should the lawmakers for whom these prayers are meant.

In *Bormuth v. County of Jackson*, 870 F.3d. 494 (6th Cir. 2017) (en banc), the Sixth Circuit affirmed that the decisions in *Marsh* and *Town of Greece* apply not only to paid clergy and volunteers from the community, but to the lawmakers themselves. As Judge Griffin, writing for the Sixth Circuit, wrote, "It is clear from *Marsh* and *Town of Greece* that creed-specific prayers alone do not violate the First Amendment." Judge Sutton explained it even more thoroughly in his concurring opinion:

> History judges us in this area. We do not judge history. For all of American history, such prayers have been allowed, whether invoking Jesus, God, or something else, whether by government-paid chaplains or by the elected officials themselves. And for all of American history, the United States Supreme Court has authorized such prayers. No one doubted the practice for most of our history. And when challenges to the practice first arose about thirty-five years ago, the Supreme Court made clear that such prayers are constitutional so long as they do not coerce non-believers.

*Id*. at 521-22 (Sutton, J. concurring). The Sixth Circuit, therefore, affirms lawmaker-led prayers before public meetings.

**Conclusion**

In short, whether affirmed by history and tradition or two U.S. Supreme Court opinions, plus another from the U.S. Court of Appeals for the Sixth Circuit sitting en banc, the practice of the Mt. Sterling Village Council to open with prayer—including those led by individual councilmembers—is lawful and reflective of one of the very best traditions of our nation's long history.

As such, we urge you to ignore complaints to the contrary. As Judge Sutton said, "No one doubted the practice [of legislative prayer] for most of our history." Neither should you.

Should you have any questions related to this topic, you are welcome to contact me at any time.

Respectfully,

Jeremy Dys
Deputy General Counsel
First Liberty Institute