

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

Atheists of Florida, Inc.,  
and EllenBeth Wachs,

Plaintiffs

v.

Case No:

City of Lakeland, Florida and Mayor Gow  
Fields in his official capacity as Chairman of  
the Lakeland City Commission.

Defendants

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**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND NOMINAL DAMAGES**

Plaintiffs, the Atheists of Florida, Inc. and EllenBeth Wachs, bring this action against the City of Lakeland and Mayor Gow Fields in his official capacity as Chairman of the Lakeland City Commission, seeking to protect individual civil and Constitutional rights, including the right to be free from government intrusion into, entanglement with and endorsement of religious matters, and states as follows:

**NATURE OF THE CASE**

1. This is a civil rights action to protect and defend the Constitution of the United States, the Florida Constitution, and the individual rights and liberties of citizens. These rights include the right to be free from government intrusion into and endorsement of matters of religion, freedom of and from religion, the right to equal protection under the laws, and the freedom of speech. This action challenges the constitutionality of the City of Lakeland's practice of directing, organizing, seeking out, retaining, sponsoring

and endorsing specifically Christian ministers to perform religious prayer rituals during city commission meetings which have the purpose and effect of endorsing religion and creating an excessive entanglement with religion. Plaintiffs contend that the religious prayer rituals violate the First Amendment's Establishment Clause as incorporated through the Fourteenth Amendment and Article I, Section 3, of the Florida Constitution. Plaintiffs further contend that the prayer rituals operate to deny Equal Protection under the law to non-believers and to believers of excluded faiths, and operate to compel persons attending government meetings in Lakeland to express, whether verbally or symbolically through standing, bowing one's head, or remaining seated, either agreement with or opposition to the government sponsored and endorsed prayer.

2. Plaintiffs do not seek any relief which would deny individual rights to pray or to practice any religion. To the contrary, Plaintiffs desire to vindicate the rights of individual citizens to be free from government intrusion into, entanglement with, sponsorship of and endorsement of particular religions and religion in general. Plaintiffs seek equal protection under the law, irrespective of religion or lack thereof. All persons attending government meetings should not be compelled, coerced or influenced to express either agreement with or opposition to government sponsored and endorsed religion.

3. If Plaintiffs prevail in this case, each person will be allowed to follow their own conscience at Lakeland city government meetings, such that every person will be permitted to pray or not pray, during a moment of seated silence in place of government sponsored and endorsed prayers.

4. Plaintiffs are demanding declaratory and injunctive relief and nominal damages under 42 U.S.C. § 1983 together with costs and attorney's fees under 42 U.S.C. § 1988, together with such other and further relief as the court may deem just and equitable.

### **JURISDICTION**

5. This action is brought pursuant to 42 U.S.C. § 1983; the First and Fourteenth Amendments to the United States Constitution, and Article I, Section 3, of the Florida Constitution.

6. This Court has subject matter jurisdiction over the federal constitutional claims pursuant to §§ 1331 and 1343(a)(3) and has supplemental jurisdiction over state constitutional claims under 28 U.S.C. §1367(a).

7. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Plaintiffs' action for injunctive relief is authorized by the foregoing statutes and by Rule 65 of the Federal Rules of Civil Procedure.

8. Plaintiffs have satisfied all conditions precedent to filing this civil action.

### **VENUE**

9. Venue is proper in this Court because "a substantial part of the events" at issue occurred within this district. 28 U.S.C. § 1391(b)(2).

### **PARTIES**

10. The Defendant City of Lakeland was at all times pertinent hereto a duly incorporated municipal corporation, located in Polk County, Florida, and organized and existing under the laws of the State of Florida. In this case the City acted through its

agents, employees, and servants, including but not limited to the Lakeland City Commission, and others.

11. The Defendant Mayor Gow Fields is the mayor of the City of Lakeland, Chairman of the Lakeland City Commission, and is a citizen and resident of the United States, State of Florida, County of Polk.

12. The Defendants routinely and consistently authorized, directed, sponsored and organized prayer rituals and invocations in furtherance of a particular religion during its meetings. In conjunction therewith Defendants sought out, retained, invited, sponsored and endorsed religious figures from both within and outside of the City of Lakeland to prepare and present the religious prayer rituals and invocations.

13. The Defendants post video and audio recordings on the City of Lakeland website which can be and are accessed by residents of the City of Lakeland, as well as Polk County and State of Florida residents in general, among others worldwide.

14. Plaintiff Atheists of Florida, Inc. (hereinafter "AOF") is a Florida non-profit corporation with offices and meeting locations in various Florida municipalities including but not limited to Tampa, Florida, and the City of Lakeland, Florida.

15. AOF is a membership organization dedicated in part to advancing and preserving the constitutional protections found in the First Amendment to the US Constitution and Article I of the Florida Constitution. AOF seeks freedom of and from religion, equal treatment under the law, and AOF brings this action to assert the First and Fourteenth Amendment rights of its members.

16. AOF has chapters throughout the State of Florida, including but not limited to, in the City of Lakeland, County of Polk, which meets regularly in the City of Lakeland.

17. AOF has members residing in the City of Lakeland and who pay taxes to the City of Lakeland.

18. Plaintiff, EllenBeth Wachs (hereinafter “Wachs”), is a resident of Polk County, State of Florida, with a Lakeland postal address, and receives essential services from and through the City of Lakeland and pays taxes and/or fees for said services.

19. Wachs is the Director of the Lakeland Chapter of AOF.

20. Wachs and other members of AOF, including but not limited to AOF members who reside in the City of Lakeland, have attended Lakeland City Commission meetings in the past and they intend to attend Lakeland City Commission meetings in the future.

21. Wachs and other members of AOF are offended that a particular religion and religion in general have been presented with governmental imprimatur, as if believers are more American and more Floridian than non-believers, and the non-religious in general.

22. Wachs and other members of AOF believe that the Defendants’ governmentally endorsed and sponsored practice of arranging for and presenting ritual prayers at Lakeland City Commission meetings is unconstitutional.

23. Wachs and other members of AOF and its City of Lakeland Chapter have been harmed by unwelcome contact with the City of Lakeland and Lakeland City Commission’s prayer rituals. Wachs and other members of AOF and its City of Lakeland

Chapter members must submit to the prayer ritual in order to attend City Commission meetings, address issues during the Lakeland City Commission, address and seek redress of grievances, and/or remain informed regarding the city and commission's business.

24. Wachs and other members of AOF otherwise have standing to sue in her and their own right.

25. The interests AOF seeks to protect through this Complaint are germane to AOF's and its Lakeland chapter's purposes. Neither the claims asserted, nor the relief requested, necessarily require participation of individual members of AOF in the lawsuit.

26. In addition to attending in person, Plaintiff Wachs and individual members of AOF watch Lakeland City Commission meetings on the internet.

27. Plaintiff Wachs and individual members of AOF intend to watch some future meetings on the internet and attend some future meetings in person.

28. Plaintiffs have been subjected to unwelcome religious statements and were for all times pertinent hereto, and continue to be, affected by the Defendants' policies and practices against which this civil action is directed.

29. In order to participate in Lakeland City Commission meetings, the Plaintiffs have been compelled, coerced or influenced to either symbolically or verbally express support for the religious messages (which as non-believers they do not support), or to "out" themselves as outsiders and non-believers.

30. Plaintiffs have retained the undersigned attorney to prosecute this action and have agreed to pay said attorney a reasonable sum for such services. Plaintiffs are entitled to recover reasonable attorneys fees for the successful prosecution of this action pursuant to 42 U.S.C. § 1988.

## **FACTUAL ALLEGATIONS**

31. The Lakeland City Commission meets in regular sessions twice each month. The central purpose of the meetings is to conduct the business of City of Lakeland municipal government. The meetings are open to the public, and the public may address the Commission.

32. At every twice-monthly regular session, the Lakeland City Commission holds as part of its government business a religious prayer ritual, generally with specific reference to Jesus Christ. The prayers are part of the official agenda of the Lakeland City Commission, and the City's prayer rituals are referred to as "prayers" and "invocations."

33. The prayers are part of the official agenda of the Lakeland City Commission, and are referred to interchangeably as prayers or invocations, both of which are generally and (in this specific case) religious concepts with the primary purpose of advancing religion.

34. The Defendants, through its agents, control and dictate which persons present the prayers at each of Defendants' meetings.

35. The Defendants' purposes and intent in organizing, sponsoring and arranging for prayer rituals at government meetings is to encourage, endorse and add Defendants' governmental imprimatur to religion in general and a specific religion.

36. On information and belief, the Defendants, through its agents, compiles and maintains an exclusive list from which persons ultimately are drawn for the express purpose of providing religious prayer invocations during government meetings.

37. From the exclusive list, on information and belief, the Defendants mail invitation letters to prospective speakers, and Defendants schedule speakers to deliver the invocation at a particular meeting.

38. Defendants do not include and/or specifically exclude disfavored religious groups, and non-religious groups.

39. In compiling the list of potential religious figures to present prayer rituals during Lakeland City Commission meetings, on information and belief, as part of Defendants' policy, custom and practice, employees of Defendants search a "yellow pages" book for "churches" and preferentially list primarily Christian churches on a list of potential prayer presenters. A letter directed "To Whom It May Concern" from the City Manager's Office is sent to select persons inviting the recipients to be added to the Invocation Rotation List for the City Commission Meetings. The purpose and effect of Defendants' policy, practice and custom related to prayers is to advance the Christian religion and categorically exclude other religions and the non-religious (with, at most, negligible exceptions).

40. In choosing speakers to present prayers at its meetings, the Defendants have traditionally and categorically excluded (with, at most, negligible exceptions) non-Christian religious groups and the non-religious.

41. For 2010, the Defendants prepared an Invocation Schedule which listed solely Protestant religious figures with the exception of a Catholic figure who did not, in fact, attend. No other religions were included on the 2010 Invocation Schedule, and no secular or non-religious groups were included.

42. The focus of the prayers concern and inform government business at the opening of the government meetings, and the prayer rituals are included on the agenda of each government meeting.

43. The prayers at issue are government speech.

44. The prayers at issue have the purpose and effect of affiliating the government with a particular religion and religion in general, to advance a particular religion over other religions, and to advance religion in general over non-religion.

45. By way of example, on May 18, 2009, Pastor Tim Sizemore of the Lakeland Fellowship presented a Christian prayer on behalf of the Lakeland City Commission, calling on the Christian God to bless, lead and guide the Commission.

46. On June 1, 2009, Pastor Dennis Waymire of Faith Wesleyan Church performed a Christian prayer at the Lakeland City Commission meeting, "...in the name of Jesus Christ," stating "Our Heavenly Father, we come to you in the name of Jesus Christ." He asked for divine blessings, thanked the divinity, and entreated "may this be a day when Your [God's] name is honored and glorified" at the Lakeland City Commission meeting.

47. On June 15, 2009, Father Ramon Bolatete was called upon to deliver a Christian prayer, but was not in attendance. The City chose to appoint a Protestant Christian Pastor who conveniently happened to be in attendance, and the Protestant Pastor gave the official prayer.

48. On July 6, 2009, Pastor Dan Harvey performed a Christian prayer at the Lakeland City Commission meeting and "invoked [God's] presence." He thanked God for various blessings, including that Lakeland had "leaders willing to follow You [God]."

He suggested that “we” give to God the “business of the day,” and that the people “commune with You [God].”

49. On July 20, 2009, Pastor Buddy Pyles of Edgewood Baptist Church to performed a Christian prayer, “...in Jesus’ name,” during the Lakeland City Commission meeting. As part of the prayer, Pastor Pyles referred to the Commission’s business as “Your [God’s] business.” The prayer asked for God’s leadership, wisdom, and knowledge “of what You [God] want[s] them to do.” And, the prayer stated that the Commission’s goal should not only be to do what is best for the people, but also to do what is best for God.

50. On August 3, 2009, Chaplain Kerri Kroeker performed a Christian prayer during the Lakeland City Commission meeting. In the prayer, Chaplain Kroeker thanked the “Eternal God” and sought divine blessings and guidance.

51. On August 17, 2009, Pastor Keith Conley of the Harvest Assembly of God performed a Christian prayer, “...in Jesus’ name,” during the Lakeland City Commission meeting. As part of the prayer, Pastor Conley announced that, among other things, “In Lakeland, Florida we still believe in prayer,” and that “[w]e know that it is the power of prayer that accomplishes things” that we can not do.

52. On September 8, 2009, Pastor Wayne Blackburn of the Victory Assembly of God performed a Christian prayer, “...in Jesus’ name,” and acknowledged that God is “...our sovereign God.”

53. On September 21, 2009, Chaplain Jesse McNeal performed a Christian prayer, asking for protection for the City and the City Commission, acknowledging that

“Lord, we know that you are in charge,” and seeking that God “intervene” in “our” lives and in the affairs of the Lakeland City Commission.

54. On October 5, 2009, Chaplain Roger Jahn performed a Christian prayer “...in the name of the King of Kings.” Chaplain Jahn called upon God to “oversee these proceedings,” and that God’s “presence [at the meeting] be certain.”

55. On October 19, 2009, Chaplain Greg Robinson performed a Christian prayer in what he referred to as a “hallowed chamber” (i.e. a sanctified or consecrated location). Pastor Robinson credited God with creating the world and imparting wisdom and blessings. Chaplain Robinson called upon the “Heavenly Father to “influence and guide” all discussions, debates and decisions, and instructed the Lakeland City Commission to be mindful that God is “honored” by their decisions.

56. On November 2, 2009, Greg De Valle who is Director of Teen Challenge International (a Christian “faith based” organization which maintains a network of Christian ministries) performed the prayer. The prayer was given “...in the name of Jesus,” and called numerous times on the “Holy Father,” the “Lord God,” “Heavenly Father,” and the “Lord God Almighty.” The prayer directed people to “think about Your [the Christian God’s] kingdom,” asked God to “touch the Commission” to increase stewardship, and otherwise sought divine blessing and guidance.

57. On November 16, 2009, Pastor Tim Sizemore of the Church of the Meadows performed the prayer. As part of the prayer, he asked for God’s leadership, thanked God for the people and the City, sought blessings and “guidance in each decision that is made.”

58. On December 7, 2009, Pastor Dennis Waymire of Faith Wesleyan Church performed the prayer, "...in Jesus name" and the "Heavenly Father." As part of the prayer, he quoted from the Christian Bible, specifically called for the will of God to be done, and asked that God guide the Defendants' affairs just as God is the "superintendant" of all things.

59. On December 21, 2009, Defendant Mayor Fields performed the prayer during the Lakeland City Commission meeting "...in His holy Son Jesus' name," credited and thanked the "Heavenly Father," and sought divine blessings for the Defendants, attendees of the meeting, and the City of Lakeland.

60. On January 4, 2010, Pastor Jay Dennis of the First Baptist Church presented the prayer during the Lakeland City Commission meeting, "...in Jesus' name." Pastor Dennis thanked God for the New Year, and for blessing Lakeland with its leaders. The prayer sought the unchanging God's wisdom and blessings, and asked that the Mayor and the Commission be blessed with "the wisdom of Solomon, the courage of Daniel, the heart of David, the perseverance of Job, the encouragement of Barnabas, and the fortitude of Paul."

61. On January 19, 2010, Father Ramon Bolatete performed a Christian prayer at the Lakeland City Commission meeting, "in the name of the Father, Son and Holy Spirit." Among other things, the prayer called upon the Mayor (and the Defendants' business) to be "lifted up to You [God]" so that it may receive divine blessing, and called for the surrender of the Commission and the people's needs to God's "embrace," and to make God's will the "utmost priority."

62. On February 1, 2010, Reverend Cecelia Moore presented a Christian prayer and called upon the Protestant Christian God to help the city government do, among other things, “His will.”

63. On February 15, 2010, Reverend Mike Zarle of the Victory Assembly of God Church presented a Christian prayer during the Lakeland City Commission meeting. The Mayor required those in attendance to stand. The prayer called upon the “Eternal Father” to impart “supernatural wisdom” and credited the deity with not only making Lakeland great, but also for God’s “leadership” over the citizens of Lakeland.

64. On March 1, 2010, the Mayor of the City of Lakeland, who has been reported to be a “devout” member of the First Baptist Institutional Church and Redeemed Ministries Church, presented the Defendants’ “favorite” minister to perform a prayer ritual during a Lakeland City Commission hearing. The minister, Reverend Jesse McNeal, is pastor of Freedom in Christ Ministry in Lakeland. As part of the prayer, the Reverend announced that all present were to bow their heads in prayer. The minister called upon the Protestant Christian “Heavenly Father” and invoked divine protection, divine gifts, divine powers, and otherwise called upon his specific deity to assist the government, expressly or impliedly asking the attendees and the Defendants to do the same.

65. On March 1, 2010, the Plaintiff Wachs, among others, addressed the City Commission and clearly stated opposition to the practice of prayer rituals, particularly citing the exclusivity of the Christian Protestant prayer rituals, and the conspicuous absence of non-Protestant invocations. Plaintiff Wachs requested that the religious prayer rituals be stopped.

66. On March 1, 2010, Rob Curry, Executive Director of AOF, notified the Defendants of the climate of fear among Lakeland non-believers. Plaintiff Wachs and other non-believers fear retribution if they express their own religious beliefs, due to the entrenchment of and entanglement with religion in the government of the City of Lakeland. Mr. Curry also suggested that the commission should change to a moment of silence in place of a prayer, allowing believers and non-believers alike to be treated equally and each act according to his or her conscience.

67. On March 15, 2010, Plaintiffs delivered a letter to the Defendants notifying the Defendants of Plaintiffs' claims and reiterating the suggestion that the city modify its practice from that of a religious prayer ritual to "a silent moment of reflection as a way to give each and every citizen the personal choice to pray or not (as they prefer), without singling anyone out as the current practice does." The same message was read into the record during the March 15, 2010, City Commission meeting. A copy of the March 15, 2010, letter is attached hereto as Exhibit A.

68. The March 15, 2010, letter and the statement read into the record by Mr. Curry of AOF explained that "Official government prayers by official Christian clergy invited to perform those religious rituals at public meetings of the Lakeland City Commission are an outrage that we cannot ignore. These prayers have the practical effect of targeting atheists and others in the community for discrimination."

69. AOF clearly expressed that the prayer rituals sponsored and endorsed by the Defendants constitute a violation of the federal and Florida Constitutions' "Establishment Clauses," and impermissibly discriminate against the non-religious and

excluded religions in violation of Equal Protection rights through improper discrimination.

70. During the March 15, 2010, city commission meeting the Defendants sponsored and endorsed another Protestant Christian prayer ritual, this time presented by a Reverend from the Faith Wesleyan Church, another Protestant Christian denomination. The prayer quoted passages from a Christian Bible. The prayer called exclusively upon "Jesus' name," and invoked the name of Jesus at least three times.

71. During the March 15, 2010, City Commission meeting Plaintiff Wachs, AOF and others objected to the prayer ritual invoking the name of Jesus at least three times during the prayer, and suggested once again a moment of silence in place of the exclusionary prayers and invocations.

72. During the March 15, 2010, Lakeland City Commission meeting, AOF's President, John Kieffer, presented a discussion of various worldviews associated with the myriad religions that citizens of Lakeland profess or may profess, and also suggested that citizens are left with the option to either (a) pretend to pray in order to avoid potentially displeasing the City Commission members, or (b) sit and be singled out and potentially discriminated against.

73. On March 18, 2010, the Defendants denied Plaintiffs' request to stop the unconstitutional prayers and invocations and replace them with a moment of silence, and stated that: "The practice of opening Lakeland City Commission meetings with an invocation has a long history and will continue unless the City Commission decides it should be changed." The Defendants' response incorrectly stated, however, that "every effort is made to ensure that those offering an inspirational message be representative of

Lakeland's diverse religious community." No significant effort has been made in that regard. A copy of the Defendants' letter is attached hereto as Exhibit B.

74. After voicing her concerns, Plaintiff Wachs was specifically targeted by persons in the community with express or implied threats. One individual informed Wachs that Wachs was "a bitch." The email sender communicated to Wachs that the sender had a "high position in the local community" and that the sender had the "ability to rip [Wachs] to shreds in the community."

75. During the course of voicing her objections to the prayer rituals, Plaintiff Wachs was vigorously questioned by the Lakeland City Commission members, and her patriotism challenged, but meeting attendees who supported government sponsored and endorsed prayers were not similarly challenged.

76. After the verbal and written claim and demand by Plaintiff that the prayers stop and be replaced by a moment of silence were denied by the Defendants, the Defendants have not modified that policy and practice in any meaningful way, except to intensify the religious nature of the prayer invocations, and to, on information and belief, create a policy and/or practice of silencing those who oppose the prayers.

77. On April 5, 2010, a Christian Chaplain performed the invocation and prayer ritual. While much of the prayer cannot be heard due to what appears to be an audio problem, the prayer is clearly closed, "In the name of Jesus Christ."

78. On April 19, 2010, Richard Geringswald of Legacy Christian Church invoked the "Lord Eternal God" as part of a lengthy Christian prayer, without whom, Mr. Geringswald said, our lives would be empty. Geringswald specifically asked for divine

guidance and direction from the “Heavenly Father,” through the “Heavenly Father’s Son’s name.”

79. On May 3, 2010, the City appointed Cantor Victor Geigner of Temple Emanuel, a Jewish religious figure, to perform the religious prayer ritual at a Lakeland City Commission meeting.

80. On May 17, 2010, Pastor Ed Gardner of the Griffin Baptist Church presented the invocation and prayer, and directly called upon the attendees to pray in the name of Jesus Christ.

81. On June 7, 2010, Defendant, Mayor Gow Fields, presented the invocation on behalf of the City of Lakeland, calling upon “Our Heavenly Father,” and ultimately praying “In Jesus’ name.” Defendant Fields also specifically singled out nonbelievers in his invocation by pointing out that they do not accept Jesus Christ or otherwise believe.

82. On June 21, 2010, Pastor Don Steiner, a Protestant Christian minister, delivered a prayer on behalf of the Commission which was overtly exclusionary and discriminatory. Pastor Steiner held an approximately five (5) minute prayer ritual which included: (a) a greeting “in the name of Jesus Christ, who is our Savior and incoming King;” (b) an assertion that Defendant City of Lakeland has a “spiritual destiny that has yet to be fulfilled;” (c) a statement that “[w]hat God began before the founding of our city...has not yet been completed;” (d) an injunction that “it is the responsibility of the citizens of Lakeland and its leadership to seek the face of God Almighty and to live a life of Godliness exemplified by integrity and a high moral standard, looking to Jesus to fulfill the destiny of this great central Florida city by moving in our churches, parishes

and the individual lives of its citizens;” (e) “Based on the aforementioned known facts, let us pray.” (emphasis added)

83. On June 21, 2010, Pastor Steiner went on to deliver the message, on behalf of the Defendants, that the City is in the process of “fulfilling a divine destiny” that has not yet been fulfilled, and that citizens are obligated to follow Pastor Steiner’s deity’s commands and intentions. The message included a reference to Lakeland becoming a city whose purpose is for people to find a true relationship with the Christian God, and that the citizens will have an “awakening” to the religion advocated by Pastor Steiner on behalf of the City.

84. On July 6, 2010, Jackie Davis of His Ministry Central, Inc., delivered the prayer and invocation during the Lakeland City Commission meeting, “...in Jesus’ name.” She referred to God’s plan for the City of Lakeland, and acknowledged that as a city, Lakeland “trusts in the Lord” and chooses “to put You [God] first.” She suggested that God “governs the affairs” of Lakeland.

85. The Defendants’ prayer and invocation rituals constitute a policy, practice and custom of holding Christian sermons on government time, funded by the government, endorsed by the government, arranged by the government, and imposed by the government.

86. The prayers and invocations amount to proselytizing on behalf of a particular religion, advancing a particular religion, establishing a particular religion as preeminent and elevating a particular religion as officially preferred in the City of Lakeland.

87. The Christian prayer rituals organized, endorsed and sponsored by the Defendants demonstrate that the prayer policy and practice has been and will be exploited to proselytize or advance one, and/or to disparage other faiths or beliefs.

88. The prayers at Lakeland City Commission meetings constitute the Defendants' endorsement of religion over non-religion and/or a particular religion over other religions.

89. The Defendants' prayers invoke the name of a specific god, a Protestant Christian God, to the exclusion of all other gods. The Plaintiffs are offended and repressed by this practice. Each time they attend government meetings the Plaintiffs are affronted by the Defendants' overtly Christian prayers and subjected to unavoidable and unwelcome religious messages sponsored and endorsed by the City of Lakeland and presented as the government's message.

90. The governmentally endorsed prayers are demeaning and disparaging to excluded religions and/or denominations and/or nonbelievers.

91. The Defendants' prayers cause Plaintiff Wachs and members of AOF and its Lakeland Chapter to feel like outsiders in their own community, unwelcome at government meetings and disfavored in general. They are offended because the prayers are an unconstitutional endorsement of religion.

92. The prayers are not mere "references" to a god, and are not mere "acknowledgements" of the religious heritage of the people of the United States, the State of Florida, and/or the City of Lakeland. The prayers are religious rituals, invocations of spiritual or divine intervention, which evoke and invoke a particular deity to guide

government affairs and to have government affairs guided by a particular religious worldview.

93. In this case, the performance of the religious rituals during each Lakeland City Commission meeting constitutes an endorsement of the message and the particular deity worshiped, and discrimination against excluded religions and non-believers in general.

94. The prayers convey the message that the Protestant Christian religion is favored or preferred by the Defendants over all other religions and over non-religion.

95. The prayers send the message to adherents of Protestant Christianity that they are full members, or even insiders, of the political community, while simultaneously sending non-adherents the message that they are outsiders in the political community.

96. Certain Christian(s) who have spoken in support of the religious invocations during at least one Lakeland City Commission meeting referred to Lakeland as “our city” (apparently meaning a Protestant Christian city).

97. On March 15, 2010, Protestant Christian supporters of the prayer rituals expressed the view that this issue is about a right “to pray.” This case is not about taking away the “right to pray.” This case is about governmental endorsement of a particular religion, and Plaintiffs have suggested an alternative that allows everyone to pray, or not pray, in accordance with their individual religious or non-religious viewpoint.

98. The effect of the policy and practice of religious and prayer rituals is illustrated, by way of example, on April 5, 2010, when a Protestant Christian who has presented Protestant Christian prayers at City Commission meetings, announced, with no objection from a single commissioner, that that City Hall was, “Our House!” (a Protestant

Christian “house,” and not the “house” of those who do not conform to the prevailing orthodoxy).

99. Defendants’ sponsorship of prayers has the impact of requiring the Plaintiffs, who attend and view the City government meetings on the internet to accept unwanted religious message as a condition for their participation in City government and keeping informed of government activities. The prayers also send the message that City Hall is for Christians, and Lakeland is a Christian city, all other citizens are (at best) merely tolerated and at worst, not welcome.

100. The Plaintiffs and others who attend meetings personally and/or view Lakeland City government meetings on the internet are coerced into encountering unwanted religious messages in order to attend or watch a Lakeland government meeting.

101. The unwanted religious messages offend Plaintiffs. Each time they attend a government meeting, or view it on the internet, Plaintiffs are affronted by the Defendants’ overtly Protestant Christian prayers and subjected to unavoidable and unwelcome religious message sponsored by the City. The prayers make them feel like outsiders in their own community and unwelcome at government meetings.

102. Defendants have expended public funds to arrange the prayers, as they must pay for the costs of the staff time of the employees or Council members who arrange for the participation of clergy who recite the invocations. The City must also pay for the materials, equipment and postage used to send to clergy regarding the invocations. Furthermore, the prayers are made over the public address system at the meetings and are video-recorded, both of which are done at city expense.

103. The Defendants' prayers and the Defendants' prayer policy and practice have the effect of demonstrating a preference for one particular sect or creed.

104. The Defendants' prayers and Defendants' prayer policy and practice have the effect of affiliating the government with one specific faith or belief.

105. The Defendants' prayers and Defendants' prayer policy and practice have been exploited to proselytize and advance one faith and/or disparage other faiths or beliefs, or non-belief.

106. The Defendants' selection and retention policies and practices operate to select and retain particular speakers because of the speakers' religious beliefs or affiliations, and amounts to purposeful discrimination.

107. Under the facts and circumstances in this case, the Defendants' prayers and Defendants' prayer policy and practice render the prayers "official prayers."

### **CAUSES OF ACTION**

#### **COUNT I: VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION (ESTABLISHMENT CLAUSE)**

108. The Plaintiffs incorporate by reference and reallege the allegations set forth in paragraphs 1 through 90 as if fully set forth herein.

109. Defendants' policy, practice and custom relative to prayers at City of Lakeland government meetings were and continue to be taken under color of state law as defined in 42 U.S.C. § 1983.

110. The Establishment Clause of the First Amendment of the United States Constitution, incorporated and applied to the State of Florida through the

Fourteenth Amendment, provides that “Congress shall make no law respecting an establishment of religion.”

111. The Establishment Clause embodies the fundamental right of freedom of and from government sponsored, endorsed, or encouraged religion.

112. The Establishment Clause prohibits the government from officially preferring one religion over another.

113. The Establishment Clause prohibits the government from officially preferring religion over non-religion.

114. Defendants have violated and continue to violate the Establishment Clause of the First Amendment to the United States Constitution through their sponsorship of Protestant Christian prayers at Lakeland City government meetings because such sponsorship serves the purpose of promoting Protestant Christian religion over other denominations and religions, and religion over non-religion.

115. Under the Establishment Clause, it is not the business of government to compose, endorse, sponsor or encourage official prayers for any group of people to recite as part of a religious program carried out by the government.

116. The Defendants’ selective and discriminatory selection process constitutes Defendants’ direction and control over the kinds and content of prayers to be recited at government meetings, and is tantamount to government composition of official prayers.

117. Attendees at the government meetings in this case are forced to stand and bow their heads and either acknowledge and express approval of the prayers, or be singled out from the group as non-believers or outsiders.

118. The sponsorship of the prayers has the primary effect of identifying the Lakeland City Government with the Christian religion, and Lakeland citizens have made statements to that effect at city government meetings, demonstrating that Protestant Christianity is the preferred religion, holding a higher place, all other beliefs to be merely “tolerated.”

119. The government prayers in this case have been exploited to advance or disparage a belief and have affiliated the government with a specific faith.

120. The prayers convey the message that the Christian religion and specifically certain Protestant Christian denominations are favored or preferred by the City government over all other religions and over non-religion.

121. The City of Lakeland’s prayers and invocations send the message to adherents of a certain portion of a certain religion that they are preferred among the political community, while simultaneously sending the message to non-adherents that they are outsiders and not full and equal members of the community.

122. The City of Lakeland’s sponsorship of prayer rituals requires ongoing financial and administrative commitments by the City which constitutes an excessive entanglement between the government and with religion in general.

123. The aforementioned financial and administrative commitments by the City constitute an excessive entanglement between the government and with the Christian religion, favoring certain denominations thereof.

124. The Defendants’ policy and practice regarding prayers operates to advance a single religion to the exclusion of other faiths or beliefs, and non-religion in general.

125. The continued sponsorship of prayer rituals and efforts to recruit individuals to create the prayers, encouraging the Christian focus of those prayers, discouraging other religious and non-religious invocations or statements constitute policies, customs, and usages for the purposes of 42 U.S.C. § 1983, which render Defendants liable for damages for violation of the Plaintiffs' civil rights.

126. A fact-sensitive inquiry in the present case reveals a clear and official preference on the part of the Defendants to the Christian religion, to the exclusion of other religions and non-religion.

127. Due to the Defendants' unlawful establishment of religion, the Plaintiffs have suffered and will continue to suffer irreparable harm to their constitutional rights as citizens who attend and watch the meetings and as taxpayers and fee payers of the United States, the County of Polk, and the City of Lakeland.

128. Plaintiffs' objected both verbally (on the record at a Lakeland City Commission meeting) and in writing to the Defendants' unlawful policy, practice and custom relative to prayers, and requested that Defendants stop engaging in the practice.

129. Defendants rejected the Plaintiffs' claim, refused to modify their policy, practice and custom, intensified the religious and exclusionary nature of the prayers, and took steps to silence opposition to the prayers.

WHEREFORE, in light of the foregoing, the Plaintiffs respectfully request that they be awarded the following:

- A. A declaratory judgment declaring that the Defendants' practice of presenting prayer rituals during Lakeland City Commission meetings

violates the United States Constitution and is a violation of Plaintiffs' constitutional rights under color of law pursuant to 42 U.S.C. §1983;

- B. An injunction enjoining the Defendants, their successors, assigns, those persons in active concert or participation with them, and all other persons within the scope of Fed. R. Civ. P. 65, from knowingly and intentionally allowing prayers or prayer rituals during city government meetings, making any further expenditures of public funds, and taking any further action to hold or sponsor prayers during Lakeland city government meetings; and requiring the Defendants, their successors, and assigns to advise anyone conducting a prayer as part of the city commission meetings that prayers are not permitted;
- C. A judgment in Plaintiffs' favor for nominal damages;
- D. The costs of this action, including but not limited to all out of pocket expenses, court costs and fees, and reasonable attorney's fees pursuant to 42 U.S.C § 1988 and otherwise; and,
- E. Any other and further relief as the Court may deem just, proper and equitable in the premises.

**COUNT II:  
VIOLATION OF ARTICLE I, SECTION 3  
OF THE FLORIDA CONSTITUTION**

130. The Plaintiffs incorporate by reference and reallege the allegations set forth in paragraphs 1 through 110 as if fully set forth herein.

131. Under the Florida Constitution, Declaration of Rights, Article I, Section 3, "There shall be no law respecting the establishment of religion or prohibiting or

penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any institution.”

132. Defendants have violated and continue to violate the Florida Constitution’s Establishment Clause through their sponsorship of Protestant Christian prayers at Lakeland City government meetings because such sponsorship of the prayers serves the purpose of promoting Protestant Christian religion over other denominations and religions, and religion over non-religion.

133. The sponsorship of the prayers is for the purpose and has the primary effect of identifying the Lakeland City Government with the Christian religion, in violation of Article I, section 3, of the Florida Constitution, and Lakeland citizens have made statements to that effect at city government meetings, demonstrating that Protestant Christianity is the preferred religion, holding a higher place, all other beliefs to be merely tolerated.

134. In violation of Article I, Section 3, of the Florida Constitution, the prayers convey the message that the Christian religion and specifically certain Protestant Christian denominations are favored or preferred by the City government over all other religions and over non-religion.

135. Contrary to the letter and spirit of the Florida Constitution, Article I, Section 3, the Defendants’ prayers and invocations send the message to adherents of a certain portion of a certain religion that they are preferred among the political

community, while simultaneously sending the message to non-adherents that they are outsiders and not full and equal members of the community.

136. The City of Lakeland's sponsorship of and policy and practice regarding prayer rituals requires ongoing financial and administrative commitments by the City which constitutes an excessive entanglement between the government and with religion in general.

137. The Defendants do not allow diverse faiths or the non-religious to be represented among the pool of potential persons who may present the official prayers and invocations.

138. The Defendants' process for selecting persons to present official prayers is necessarily discriminatory and excludes the non-religious and those who do not adhere to the Defendants' preferred religions.

139. The Defendants' policy, custom and practice regarding prayers operate to advance a single religion to the exclusion of other faiths or beliefs, and non-religion in general.

140. The continued sponsorship of the prayers at Lakeland City Commission meetings requires the direct and indirect expenditure of city revenues in direct contravention of Article I, Section 3, of the Florida State Constitution.

141. The aforementioned financial and administrative commitments by the City constitute an excessive entanglement between the government and with the Christian religion, favoring certain denominations thereof, and constitute an improper expenditure of funds in aid of a church, sect, religious denomination and institution.

142. The continued sponsorship of the prayers at City Commission meetings requires Defendants to directly or indirectly expend public funds to promote a certain faith or subset of a certain faith.

143. The continued sponsorship of prayer rituals and efforts to recruit individuals to create the prayers, encouraging the Christian focus of those prayers, discouraging other religious and non-religious invocations or statements constitute violations of the Florida Constitution, Article I, Section 3.

144. Due to the Defendants' unlawful establishment of religion and expenditures of funds in aid of religion, the Plaintiffs have suffered and will continue to suffer irreparable harm to their constitutional rights as citizens who attend and watch the meetings and as taxpayers and fee payers of the United States, the County of Polk, and the City of Lakeland.

WHEREFORE, in light of the foregoing, the Plaintiffs respectfully request that they be awarded the following:

- A. A declaratory judgment declaring that the Defendants' practice of presenting prayer rituals during Lakeland City Commission meetings violates the Florida Constitution and is a violation of Plaintiffs' constitutional rights under the Florida Constitution;
- B. An injunction enjoining the Defendants, their successors, assigns, those persons in active concert or participation with them, and all other persons within the scope of Fed. R. Civ. P. 65, from knowingly and intentionally allowing prayers or prayer rituals during city government meetings, making any further expenditures of public funds, and taking any further

action to hold or sponsor prayers during Lakeland city government meetings; and requiring the Defendants, their successors, and assigns to advise anyone conducting a prayer as part of the city commission meetings that prayers are not permitted;

- C. A judgment in Plaintiffs' favor for nominal damages;
- D. The costs of this action, including but not limited to all out of pocket expenses, court costs and fees, and reasonable attorneys fee's pursuant to 42 U.S.C § 1988, Florida law and otherwise; and,
- E. Any other and further relief as the Court may deem just, proper and equitable in the premises.

**COUNT III:  
VIOLATION OF THE EQUAL PROTECTION CLAUSE  
OF THE UNITED STATES CONSTITUTION**

145. The Plaintiffs incorporate by reference and reallege the allegations set forth in paragraphs 1 through 125 as if fully set forth herein.

146. The continued sponsorship of prayer rituals and efforts to recruit individuals to create the prayers, encouraging the Christian focus of those prayers, discouraging other religious and non-religious invocations or statements constitute policies, practices, customs, and usages for the purposes of 42 U.S.C. § 1983, which render Defendants liable for damages for violation of the Plaintiffs' civil rights under the Equal Protection Clause of the Fourteenth Amendment.

147. The Equal Protection Clause of the 14th Amendment of the United States Constitution provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

148. Freedom of religion and from government sponsored and endorsed religion are fundamental rights.

149. By imposing invocations at government meetings, the Defendants are discriminating against non-believers, discriminating against believers in excluded faiths, and denying non-believers and believers alike Equal Protection of the laws.

150. The continued government sponsorship of prayers constitutes a subsidy or subsidies of religious speech.

151. There is no rational reason for Defendants' discriminatory and exclusionary policy, practice, and custom relative to prayers and invocations.

152. The Defendants' invocation policy and practice serves no legitimate end of government, and has the purpose and effect of advancing or endorsing religion or religious messages.

153. The Defendants' invocation policy and practice is not narrowly tailored to promote a compelling or overriding governmental interest.

154. Defendants' policy, practice and custom relative to prayers and invocations necessarily discriminates against non-believers.

155. Attendees at the City of Lakeland city government meetings are forced to stand and bow their heads and either acknowledge the prayers (or feign acknowledgement or approval), or be singled out from the group as non-believers or outsiders.

156. Due to the Defendants' unlawful discrimination and disparate treatment of the Plaintiffs, the Plaintiffs have suffered and will continue to suffer irreparable harm to their constitutional rights as citizens who attend and watch the meetings and as taxpayers and fee payers of the United States, the County of Polk, City of Lakeland.

157. The Defendants' discriminatory policy and practice of imposing religious prayers at city government meetings should be enjoined pursuant to 42 U.S.C § 1983 for the reason that Defendants are denying the Plaintiffs and similarly situated persons Equal Protection of the laws.

WHEREFORE, in light of the foregoing, the Plaintiffs respectfully request that they be awarded the following:

- A. A declaratory judgment declaring that the Defendants' practice of presenting prayer rituals during Lakeland City Commission meetings violates the United States Constitution and is a violation of Plaintiffs' constitutional rights under color of law pursuant to 42 U.S.C. §1983;
- B. An injunction enjoining the Defendants, their successors, assigns, those persons in active concert or participation with them, and all other persons within the scope of Fed. R. Civ. P. 65, from knowingly and intentionally allowing prayers or prayer rituals during city government meetings, making any further expenditures of public funds, and taking any further action to hold or sponsor prayers during Lakeland city government meetings; and requiring the Defendants, their successors, and assigns to advise anyone conducting a prayer as part of the city commission meetings that prayers are not permitted;

- C. A judgment in Plaintiffs' favor for nominal damages;
- D. The costs of this action, including but not limited to all out of pocket expenses, court costs and fees, and reasonable attorney's fees pursuant to 42 U.S.C § 1988 and otherwise; and,
- E. Any other and further relief as the Court may deem just, proper and equitable in the premises.

**COUNT IV:  
VIOLATION OF THE FIRST AMENDMENT  
OF THE UNITED STATES CONSTITUTION  
(FREEDOM OF SPEECH)**

158. The Plaintiffs incorporate by reference and reallege the allegations set forth in paragraphs 1 through 138 as if fully set forth herein.

159. The continued sponsorship of invocation rituals and efforts to recruit individuals to create prayers, encouraging the Christian focus of prayers, discouraging other religious and non-religious invocations or statements constitute policies, customs, and usages for the purposes of 42 U.S.C. § 1983, which render Defendants liable for damages for violation of the Plaintiffs' civil rights under the Freedom of Speech Clause of the First Amendment to the United States Constitution.

160. The First Amendment to the Constitution states that "Congress shall make no law abridging the freedom of speech..."

161. Freedom of thought and belief is central to all First Amendment Freedoms, and all First Amendment Freedoms are fundamental rights.

162. Under the First Amendment of the United States Constitution, no person can be required to endorse governmental positions or governmental speech.

163. The Defendants' invocations constitute government speech and government endorsement of the specific messages therein.

164. Through their custom, policy and practice related to invocations, the Defendants have adopted a position favorable to religion over non-religion, and favorable to a particular sect or denomination over other sects or denominations.

165. In this case, persons attending the Defendants' governmental meetings are required, as a condition of participating in the governmental process, to make or express a statement (whether verbal or symbolic) regarding the religious messages.

166. Either the attendees at Lakeland City Commission meetings, including but not limited to those who hold non-religious worldviews, (a) must symbolically express religious speech by standing and bowing their heads in tacit acknowledgment, approval or acquiescence in the message of the speaker; or, (b) the attendees, including but not limited to those who hold non-religious worldviews, must sit in opposition to the religious messages and be singled out as religious outsiders and non-believers.

167. Whatever symbolic expression an attendee chooses to make, he or she is essentially coerced, compelled or improperly influenced to make a religious expression to the Defendants and to the other attendees as to whether he or she is (a) part of the group, or, (b) an outsider to or opponent of the religious ideas being expressed.

168. The Defendants' policy, custom and practice relative to religious prayers and invocations in this case has a purpose and effect to establish a religious orthodoxy, and to compel, coerce or influence citizens and other persons to express (symbolically or otherwise) support or acquiescence in religious messages.

169. Due to the Defendants' violation of the Plaintiffs' First Amendment free speech rights, and Defendants' coercion, compulsion or improper influencing of attendees' to make religious expressions, the Plaintiffs have suffered and will continue to suffer irreparable harm to their constitutional rights as citizens who attend and watch the meetings and as taxpayers and fee payers of the United States, the County of Polk, City of Lakeland.

170. The Defendants' discriminatory policy, custom and practice of imposing prayers at city government meetings should be enjoined pursuant to 42 U.S.C § 1983 for the reason that Defendants are compelling, coercing or influencing the Plaintiffs and other attendees at City government meetings to engage in overt or symbolic speech.

#### **PRAYER FOR RELIEF**

WHEREFORE, in light of the foregoing, the Plaintiffs respectfully request that they be awarded the following:

- A. A declaratory judgment declaring that the Defendants' practice of presenting prayer rituals during Lakeland City Commission meetings violates the United States and Florida Constitutions and is a violation of Plaintiffs' constitutional rights under color of law pursuant to 42 U.S.C. §1983.
- B. An injunction enjoining the Defendants, their successors, assigns, those persons in active concert or participation with them, and all other persons within the scope of Fed. R. Civ. P. 65, from knowingly and intentionally allowing prayers and prayer rituals during city government meetings, making any further expenditures of public funds, and taking any further

action to sponsor prayers during Lakeland city government meetings; and requiring the Defendants, their successors, and assigns to advise anyone conducting a prayer as part of the city commission meetings that prayers are not permitted.

- C. A judgment in Plaintiffs' favor for nominal damages;
- D. The costs of this action, including but not limited to all out of pocket expenses, court costs and fees, and reasonable attorney's fees pursuant to 42 U.S.C § 1988 and otherwise; and,
- E. Any other and further relief as the Court may deem just, proper and equitable in the premises.

Dated: This \_\_\_\_ day of July, 2010.

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IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

Atheists of Florida, Inc.,  
Atheists of Florida, Inc. Lakeland Chapter  
and EllenBeth Wachs,

Plaintiffs

v.

Case No:

City of Lakeland, Florida and  
Lakeland City Commission.

Defendants

\_\_\_\_\_ /

**VERIFICATION OF COMPLAINT**

I, EllenBeth Wachs, verify, under penalty of perjury under the laws of the United States of America that the foregoing complaint is true to the best of my knowledge, information and belief, is based upon my personal knowledge, and is true and correct.

Dated: July \_\_\_\_, 2010.

\_\_\_\_\_  
Ms. EllenBeth Wachs