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By Email & U.S. Mail

Paul Mahoney, County Attorney
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Re: *Religious discrimination in selection of prayergivers*

Dear Mr. Mahoney:

In response to the Supreme Court's recent decision in *Town of Greece v. Galloway*, __ S. Ct. __, 2014 WL 1757828 (May 5, 2014), Roanoke County Supervisor Al Bedrosian has proposed adopting a policy that would allow only Christians to offer prayers. "Asked if a new policy he envisions proposing would allow pre-meeting prayers to be offered by non-Christians and people of no religious faith, [Bedrosian] said that was unlikely." Michelle Boorstein, Following Supreme Court Decision, Carroll Commissioners Allowed To Pray—For Now, Wash. Post, May 6, 2014, *available at* http://www.washingtonpost.com/local/following-supreme-court-decision-carroll-commissioners-allowed-to-pray--for-now/2014/05/06/d1244782-d535-11e3-aae8-c2d44bd79778_story.html. Instead, "when asked if he would allow representatives from non-Christian faiths and non-faiths, including Jews, Muslims, atheists and others, [Bedrosian] said he likely would not." Zach Crizer & Chase Purdy, *Roanoke County Supervisor Ready To Strike Prayer Policy After Supreme Court Ruling*, Roanoke Times, May 8, 2014, *available at* http://www.roanoke.com/news/local/roanoke_county/roanoke-county-supervisor-ready-to-strike-prayer-policy-after-supreme/article_95c8b212-d4a5-11e3-81c0-0017a43b2370.html. Bedrosian added, "'The freedom of religion doesn't mean that every religion has to be heard.'" *Id*.

In vowing to discriminate against non-Christians, Supervisor Bedrosian ignores what the Supreme Court actually said in *Galloway*. Although upholding the challenged prayer policy, the Court also made clear that the First Amendment's Establishment Clause prohibits legislative bodies from excluding non-Christian prayer givers or otherwise discriminating in selection.

With respect to the selection of prayergivers, the Supreme Court said this: a legislature is not required to "search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing," but only "[s]o long as the [legislature] *maintains a policy of nondiscrimination*." *Galloway*, 2014 WL 1757828, at *13 (emphasis added). The Court in *Galloway* upheld the town's practices because it had made "reasonable efforts to identify all of the congregations located within its borders and represented that it would welcome a prayer by any minister or layman who wished to give one." *Id*. Supervisor Bedrosian proposes the opposite, seeking to exclude everyone except for those who share his religious beliefs—in clear violation of the rules laid down by the Supreme Court.

More generally, the Court in *Galloway* made clear that a legislature may not use its prayers for the purpose of promoting a particular religion. The Court held that "[a]bsent a pattern of prayers that over time denigrate, proselytize, or betray an *impermissible government purpose*, a challenge based solely on the content of a prayer will not likely establish a constitutional violation." *Id*. (emphasis added). Supervisor Bedrosian's proposed policy reflects such an impermissible purpose: advancing his view that "we're a Christian nation with Christian ideology" and that "we need to move toward our Christian heritage." Crizer & Purdy, *supra*. Bedrosian, moreover, has previously written that "As a Christian, I think it's time to rid ourselves of this notion of freedom of religion in America," and that "[f]reedom of religion has become the biggest hoax placed upon the Christian people." *See* Al Bedrosian, Editorial, *Christianity is America's true faith*, Roanoke Times, August 10, 2007, *available at* http://ww2.roanoke.com/editorials/commentary/wb/wb/xp-127460. He added, "Christianity, by its own definition, does not allow freedom of religion" and that Christians cannot have a personal relationship with God "alongside the worship of other Gods." *Id.* And he applauded an instance where a Christian group shouted down a Hindu prayer in the U.S. Senate and positions Christians as being in a "battle" with the goal of "keeping the name of Jesus as Lord" and fighting to "remove all other gods." *Id.*

These goals—advancing Christianity, excluding everyone else—are flatly inconsistent with the Supreme Court's decision in *Galloway*, which states that a legislative body's "ceremonial prayers strive for the idea that people of many faiths may be united in a community of tolerance and devotion." *Galloway*, 2014 WL 1757828, at *12. Indeed, "[i]f the course and practice over time shows that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion, many present may consider the prayer to fall short of the desire to elevate the purpose of the occasion and to unite lawmakers in their common effort." *Id*. at *11. Such circumstances, the Court added, "would present a different case" than *Galloway*, *id*., and would inevitably violate the Establishment Clause.

In sum, *Galloway* does not authorize local legislatures to promote religious bigotry or to discriminate against non-Christians. If the Board wishes to invite prayer givers, it must open the opportunity to people of any and all religious beliefs. And the Board may not otherwise exploit its prayer practices to promote Christianity or to denigrate people of other faiths. Violation of these rules would subject the County to the risk of a legal challenge.

Please respond to this letter within 30 days. If you have any questions, you may contact Ian Smith at (202) 466-3234 or ismith@au.org.

Sincerely,

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Ian Smith, Staff Attorney