



May 31, 2012

**VIA ELECTRONIC AND U.S. MAIL**

Mayor Joyce A. Spratt  
Members of the Hurlock Town Council  
Town of Hurlock  
311 Charles St.  
Hurlock, MD

Re: Constitutional Concerns about Sectarian Legislative Prayer  
Opening Meetings of the Hurlock Town Council

AMERICAN CIVIL  
LIBERTIES UNION OF  
MARYLAND FOUNDATION  
3600 CLIPPER MILL ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
F/410-366-7838  
[WWW.ACLU-MD.ORG](http://WWW.ACLU-MD.ORG)

FIELD OFFICE  
6930 CARROLL AVENUE  
SUITE 610  
TAKOMA PARK, MD 20912  
T/240-274-5295

OFFICERS AND DIRECTORS  
ALLI HARPER  
PRESIDENT

SUSAN GOERING  
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN  
GENERAL COUNSEL

Dear Mayor Spratt and Members of the Council:

I write at the request of the Ministers and Citizens for Change and Growth ("MCCG"), concerning the practice of the Hurlock Town Council of convening its meetings with sectarian prayer. According to the complainants, these legislative prayers are explicitly sectarian and favor only one religion, Christianity, by regularly invoking the name of "Jesus Christ," "Christ," or "Jesus our Lord." The MCCG is aggrieved by this practice -- not due to any hostility to religion, as several of the organization's members are themselves religious leaders -- but rather, because the group believes the Hurlock practice disrespects the increasing diversity of the community. MCCG therefore asked the ACLU to offer the Town legal guidance in order to ensure that the Town's practices comply with the religious freedom guarantees of the First Amendment to the United States Constitution.

Pursuant to the First Amendment, governments are prohibited from encouraging or promoting religion. Rather, the government is to remain neutral on matters of religion. The Supreme Court has held that "the clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). The Court has also emphasized that government entities should not "demonstrate a preference for one particular sect or creed (including a preference for Christianity over other religions)." *County of Allegheny v. ACLU*, 492 U.S. 573, 605 (1989). The Establishment Clause applies to state and local government entities. *Everson v. Bd. of Educ. of Ewing Township*, 330 U.S. 1, 15 (1947).

Even though the Supreme Court has upheld the constitutionality of prayer before legislative bodies, *Marsh v. Chambers*, 463 U.S. 783 (1983), such prayer, as stated by the majority in *Marsh*, must not be “exploited to proselytize or advance any one, or to disparage any other, faith or belief.” *Id.* at 794-795. This admonition in *Marsh* forbids sectarian legislative prayer, whether given by Council members themselves, or by outside prayer-givers invited to give the opening prayer on behalf of the Council. See *Joyner v. Forsyth County, North Carolina*, 653 F.3d 341, 348 (4<sup>th</sup> Cir. 2011), *cert. denied*, *Forsyth County, N.C. v. Joyner*, --- S.Ct. ----, 2012 WL 117559 (2012) (noting that the law “approv[es] legislative prayer only when it is nonsectarian in both policy and practice”); *Wynne v. Town of Great Falls*, 376 F.3d 292, 298 (4<sup>th</sup> Cir. 2004); *cert. denied*, *Town of Great Falls v. Wynne*, 125 S. Ct. 2990 (2005) (“The invocations at issue here, which specifically call upon Jesus Christ, are simply not constitutionally acceptable legislative prayer like that approved in *Marsh*. Rather, they embody the precise kind of ‘advance[ment]’ of one particular religion that *Marsh* cautioned against.” (alteration in original)); *Simpson v. Chesterfield County Bd. of Supervisors*, 404 F.3d 276, 288 (4<sup>th</sup> Cir. 2005), *cert. denied*, 126 S. Ct. 426 (2005) (concluding that sectarian legislative prayer “runs counter to the credo of American pluralism and discourages the diverse views on which our democracy depends”); *Turner v. City Council of City of Fredericksburg*, 534 F.3d 352, 356 (4<sup>th</sup> Cir. 2008), *cert. denied*, 129 S.Ct. 909 (2009) (noting that “[t]he restriction that prayers be nonsectarian in nature is designed to make the prayers accessible to people who come from a variety of backgrounds, not to exclude or disparage a particular faith”).

As explained most recently in the *Joyner* case by the United States Court of Appeals for the Fourth Circuit, which has jurisdiction over all local governments in Maryland, “faith is as deeply important as it is deeply personal, and the government should not appear to suggest that some faiths have it wrong and others got it right.” *Joyner*, 653 F.3d at 349. The court further explained:

As our nation becomes more diverse, so also will our faiths. To plant sectarian prayers at the heart of local government is a prescription for religious discord. In churches, homes, and private settings beyond number, citizens practice diverse faiths that lift and nurture both personal and civic life. But in their public pursuits, Americans respect the manifold beliefs of fellow citizens by abjuring sectarianism and embracing more inclusive themes.

*Joyner*, 653 F.3d at 355.

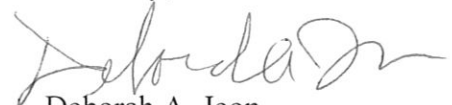
As such, “in order to survive constitutional scrutiny, invocations must consist

of the type of nonsectarian prayers that solemnize the legislative task and seek to unite rather than divide.” *Id.* at 342. Writing for the court in *Joyner*, Judge J. Harvie Wilkinson explained: “Sectarian prayers must not serve as the gateway to citizen participation in the affairs of local government. To have them do so runs afoul of the promise of public neutrality among faiths that resides at the heart of the First Amendment’s religion clauses.” *Id.* at 342-43. In order to “embrace a non-sectarian ideal,” state and local government entities must be “proactive in discouraging sectarian prayer in public settings.” *Id.* at 347, 354-55 (noting that “[t]ake-all-comers policies that do not discourage sectarian prayer will inevitably favor the majoritarian faith in the community at the expense of religious minorities living therein”).

In light of the above constitutional concerns, we recommend that the Town adopt a policy that halts the practice of opening meetings with sectarian invocations. Under *Marsh* and its progeny, the Council is permitted to open its meetings with a prayer, so long as the prayer is nonsectarian. See *Simpson* and *Turner* (upholding nonsectarian prayer policies). Alternatively, the Town could solemnize its meetings with a moment of reflection, as some communities do, in order to be as inclusive as possible. Notably, for example, the City of Salisbury recently eliminated its longtime practice of opening meetings with the Lord’s Prayer due to community concerns, substituting instead a policy that alternates a moment of meditation with nonsectarian prayers.

Thank you for your attention to this matter. We request that you inform us of your proposed course of action by June 29, 2012. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Deborah A. Jeon  
Legal Director