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Reply to: Virginia

January 29, 2013

Via Email and Facsimile (605) 394-6633

Joel Landeen, City Attorney
300 Sixth Street
Rapid City, SD 57701
joel.landeen@rcgov.org

RE: Constitutionality of Opening City Council Meetings with Prayer

Dear Mr. Landeen:

I understand there has been some discussion about the practice of opening Rapid City's Council meetings with prayer, now that the City Council has received a letter from the Freedom from Religion Foundation (FFRF) claiming the practice is unconstitutional and must stop. I write on behalf of concerned citizens to confirm in writing Liberty Counsel's offer of *pro bono* legal representation to defend City actions in conformance with Liberty Counsel's advice.

By way of introduction, Liberty Counsel is a national public interest law firm with offices in Florida, Virginia, the District of Columbia, and Jerusalem, Israel. In addition to our local offices, Liberty Counsel has hundreds of affiliate attorneys across the nation. We specialize in constitutional law, particularly free speech rights, religious freedom, and church-state matters, including representing local governments from the overreaching efforts of groups such as the FFRF.

I understand the following facts to be true. The City Council has a long-standing practice of opening its Council meetings with an invocation. The invocation is given by various representatives and leaders of numerous faiths and denominations located throughout the City. The FFRF asserts such practices are unconstitutional because the prayers supposedly express a general preference for religion over non-religion, and since a majority of those who have prayed may be of the Christian faith and may end their prayers according to the teachings of their faith and the dictates of their conscience with a reference to the Name of Jesus Christ. FFRF posits that this equates to a specific government preference for Christianity over other faiths.

Liberty Counsel disagrees with the conclusions of the Freedom from Religion Foundation, in light of *Marsh v. Chambers*, 463 U.S. 783, 792, (1983) (upholding

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legislative prayer); and *Lynch v. Donnelly*, 465 U.S. 668 at 687 (1984), (upholding Christmas display including a creche). Given the "rich American tradition of religious acknowledgments," *Van Orden v. Perry*, 545 U.S. 677 at 692 (2005) and the "unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789," *id.* at 686 (quoting *Lynch*, 465 U.S. at 674), and the Supreme Court's "[r]ecognition of the role of God in our Nation's heritage," *id.*, prayer before public meetings is constitutional, particularly where the *government* does not direct prayers that contain a certain content. Given this precedent, and the lack of a definitive 8th Circuit legislative prayer case, there is no reason to discontinue a practice of public prayer at the opening of Rapid City's City Council meetings. I attach a legal memorandum further outlining the general basis for Liberty Counsel's opinions in this matter.

Liberty Counsel stands ready to assist the City in developing a formal policy regarding prayer before Council meetings that will withstand judicial scrutiny. Should the City adopt a policy consistent with Liberty Counsel's advice or continue a practice consistent with Liberty Counsel's advice, and should the City ever be called upon to defend that policy or practice in court, Liberty Counsel stands ready to defend such a policy and practice at no cost to the citizens of Rapid City. We will provide *pro bono* representation and cover the legal costs incurred by Liberty Counsel in providing such representation. If you or members of the City Council wish clarification on this offer or Liberty Counsel's experience in these matters please do not hesitate to contact me by calling toll free at 1-800-671-1776.

Sincerely,

Richard L. Mast Jr. †

RLM/jml
Enclosure:

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