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November 19, 2015

Via Email

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cc: Kamala D. Harris, Attorney General
California Department of Justice
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P.O. Box 944255
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Re: Unconstitutional Prayer Rally and Religious “Town Hall” Meetings

Dear Mr. Luebberke, Stockton City Council, and Mayor Silva,

A concerned local citizen and the Stockton Area Atheists and Freethinkers have contacted our office to request assistance with regard to a serious constitutional violation that is occurring

under the authority of the City of Stockton and its Mayor. On November 16, the Mayor of Stockton organized a 12-hour “Prayer Rally” on City property and presented an official “City key” to “God.” In addition, on November 30, the Mayor is holding a “Town Hall Meeting” at Christian Life Center, which will also be “hosted by” this Christian organization. It is our understanding the Mayor last held a “Town Hall” 19 months ago at Calvary First Assembly of God in Stockton. The purpose of this letter is to advise you that the “Mayor’s Prayer Rally” and the City-sponsored “Town Hall Meetings” held at, and sponsored by, Christian entities, violates the Establishment Clause of the First Amendment.

On November 11, Mayor Anthony Silva sent an email and press release to local reporters advertising two “community events.” The subject line reads, “Message from Mayor Anthony Silva.” His official position as “Mayor” is repeated in the first sentence. The first event was for a “Prayer Rally for Stockton,” to be held on November 16, 2015, from 6:00 am – 6:00 pm at the steps of City Hall and MLK Plaza. According to the press release, the “Mayor” is the official host, and the Mayor asks “us all to pray for common goals.” The second event in the press release is a “Mayor’s Town Hall Meeting” on November 30, 2015, hosted by the Mayor, the City, and “by (CLC) Christian Life Center” to be held at the Christian Life Center.

Attached to the press release were two flyers, one for the “Prayer Rally” and the other for the “Town Hall Meeting.” The Press Release reads:

Dear friends who love Stockton,



This is Mayor Anthony Silva and I am personally writing to you to make you aware of a few special Community Events that may interest you!

1. On Monday November 16, 2015 from 6:00 AM-6:00 PM, I will be hosting a Prayer Rally for Stockton for (12) hours. This simple but significant event will start off on the steps of City Hall @ 425 N. El Dorado and then we will resume at (MLK) Martin Luther King Plaza directly across the street. Every (30) minutes we have taken sign- ups for a prayer group or congregation to take the lead in words of encouragement for our City. All Religions and different beliefs are welcome. So far, our event looks very promising and we should have at minimum between 500-600 residents praying for our City. I have asked for us to pray for common goals that all Stocktonians can agree with such as Improving Family Values, Reducing Gun Violence, Reducing Gang Violence, Solutions for the Homeless, Opportunities for Youth, and Finding our residents Jobs! (Your group may still get involved and we encourage individuals just to pick a time when they can come. The Event Coordinators and Sharon should have a finalized list by this Thursday for you to review. (FLYER ATTACHED)

#2. On Monday November 30, 2015 from 6:30 PM-8:30 PM, I will be hosting a Mayor’s Town Hall Meeting. This event will be hosted by (CLC) Christian Life Center located on 4303 Christian Life Way. (Can be seen from Highway 99 close to Hammer and Holman Road. This is an opportunity to learn about what is happening in your City. I need YOU to please help pass this information out. Our City has come a long way the past 2.9 years but now its time to have a serious discussion about Stockton’s Past, Present, and Future. Residents need to hear my words directly from

my mouth. We will talk about the good, the bad, and the ugly. Public Safety will remain our number one topic and representatives from the Police and Fire Department will be present. Residents who attend will have an opportunity to hear about an exciting new "Game Plan" for Stockton. This event is kid friendly and Free Babysitting will be provided. I truly believe that Stockton is the "City of Dreams." Please make arrangements now to organize a carpool. (FLYER ATTACHED)

The flyer for the Town Hall Meeting features the official City of Stockton insignia, and is printed on city letterhead. The sidebar states: "Message from Mayor Silva," and mentions the "Vice-Mayor Fugazi," "Police Department," "Fire Department," "Stockton, Lodi, Manteca, & Lincoln School Districts." Beneath the governmental entities is a box that reads: "Christian Life Center, 4303 Christian Life Way www.mayorsilva.com Monday November 30th 6:30 PM."

Message from Mayor Silva

—

Vice- Mayor Fugazi

—

**Police Department
Fire Department**

—

**Stockton, Lodi,
Manteca, &
Lincoln School
Districts**


—

Free Babysitting

**NOVEMBER 30
TOWN HALL
MEETING**

City of Dreams and Second Chances

I am personally inviting all residents and business owners to Mayor Silva's Town Hall Meeting. Come and learn what is happening in your City. We will cover Stockton's Past, Present, and Future. We will talk about the good, the bad, and the ugly. Please make arrangements now to attend. Kid Friendly Event!

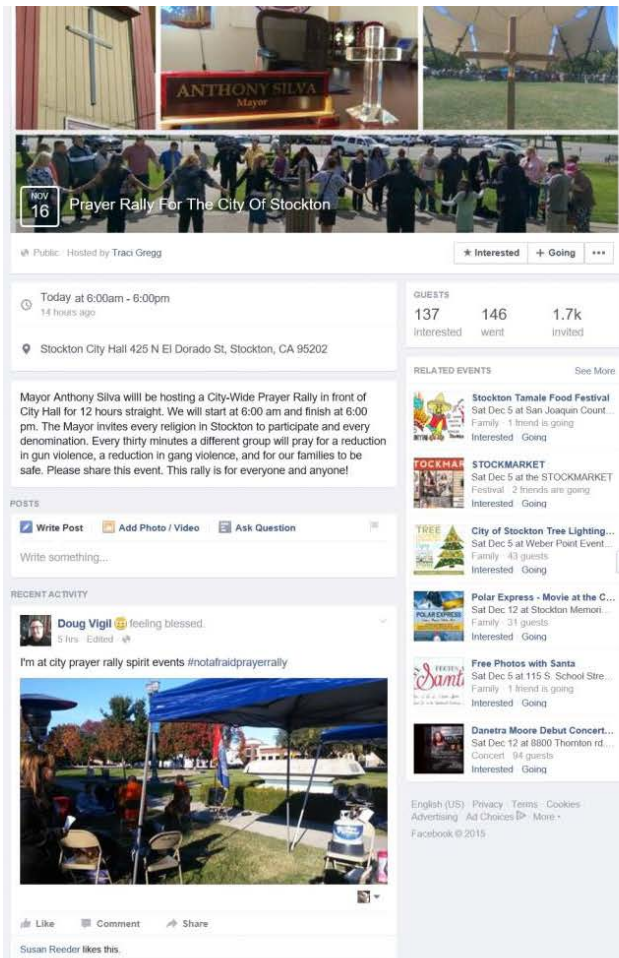


CHRISTIAN LIFE CENTER
4303 Christian Life Way
www.mayorsilva.com
Monday November 30th
6:30 PM

The flyer for the "Prayer Rally" stated in part:

THE CITY OF STOCKTON HAS MADE SIGNIFICANT PROGRESS THE PAST 25 YEARS SUCH AS EXITING FROM BANKRUPTCY, HIRING MORE POLICE, AND REDUCING RECORD-SETTING HOMICIDES. WE AS A DIVERSE COMMUNITY SHOULD JOIN TOGETHER TO CELEBRATE OUR ACCOMPLISHMENTS AND TO PRAY FOR A BRIGHTER FUTURE FOR OUR CITY. EVERY 30 MINUTES FOR 12 HOURS DIFFERENT PEOPLE FROM VARIOUS NEIGHBORHOODS AND RELIGIOUS BELIEFS WILL SHOW UNITY FOR A COMMON GOAL BY SHARING WORDS OF ENCOURAGEMENT WE MAY PRAY FOR THE FOLLOWING: REDUCING CRIME, MORE JOBS, SAFER SCHOOLS, PROTECTING SENIOR CITIZENS, OPPORTUNITIES FOR YOUTH, FAMILY VALUES, & THE HOMELESS.

On November 13, on Facebook, Mayor Silva shared a Stockton Record article promoting the event. Silva is mentioned as “Mayor Antony Silva” in the article. Mayor Silva wrote: “Please join your Mayor this Monday. Find 30 minutes in your day to pray for our City and the world!” That same day, he posted a FOX40 article promoting the event, which also referred to him as “Mayor.” There was also a Facebook page dedicated to the “Prayer Rally for the City of Stockton,” as shown below:



On November 14, an article entitled “Stockton mayor seeks 12 hours of prayer” stated, “Mayor Anthony Silva is turning to prayer in an effort to ease Stockton’s pain. Silva has announced he will host a 12-hour citywide prayer rally Monday that will begin outside City Hall at 6 a.m.

before shifting shortly afterward to nearby Dr. Martin Luther King Jr. Plaza.”¹ The article continues:

Silva also announced he will be hosting a town-hall meeting Nov. 30 “to have a serious discussion about Stockton’s past, present and future” and to talk about “the good, the bad and the ugly.” The mayor last held a town hall 19 months ago at Calvary First Assembly of God on Kelley Drive in north Stockton. Silva, who will be seeking a second term in office in 2016, said he was going to have the upcoming town hall at the same location until a recent fatal shooting nearby. The mayor was on a ride-along when that shooting occurred and said afterward he decided to move the upcoming town hall to the Christian Life Center, 4303 Christian Life Way in Stockton.

Silva said he expects crime to be a prime topic at the town hall, and that representatives from the police and fire departments will be on hand. “(Public safety is) always going to be the No. 1 priority on the minds of residents,” Silva said.

In his announcement of the town hall, Silva wrote that residents who attend will “hear about an exciting new ‘game plan’ for Stockton” and called Stockton the “City of Dreams.” He also said he will unveil a new “initiative” he has named “Stockton Proud” during the town hall.

“We have to start to change the narrative of Stockton,” Silva said. “Every time you hear the name ‘Stockton,’ people’s eyebrows are raised. We have to change the narrative so they are always saying something positive when they are speaking of Stockton.”

On November 15, the Prayer Rally was promoted on a Facebook page for “Anthony Silva, Mayor of Stockton.” The Facebook page prominently features the official city insignia and refers to Silva as a “public official,” indicating it is not a “personal” page.



Numerous articles promoting the Prayer Rally are featured on this “Mayor of Stockton” page:

¹ <http://www.recordnet.com/article/20151114/NEWS/151119839>



Anthony Silva, Mayor of Stockton shared a link.



November 16 at 11:02pm · ✨



After Young Girl is Shot, Stockton Unites in Prayer

STOCKTON-- A marathon prayer rally took place in Stockton on Monday which was hosted by Mayor Anthony Silva in an effort to combat crime. The community, desperately hoping to bring an end to the vi...

FOX40.COM



Anthony Silva, Mayor of Stockton shared a link.



November 16 at 11:01pm · ✨



Mayor leads 12-hour prayer rally

STOCKTON — Mayor Anthony Silva hosted a 12-hour prayer rally in downtown Stockton on Monday, beginning early in the morning at City Hall

RECORDNET.COM | BY THE RECORD



Anthony Silva, Mayor of Stockton shared a link.

November 15 at 12:59pm · ✨



Stockton mayor seeks 12 hours of prayer

STOCKTON — Mayor Anthony Silva is turning to prayer in an effort to ease Stockton's pain. Silva has announced he will host a 12-hour

RECORDNET.COM | BY ROGER PHILLIPS

Like Comment Share

201 people like this.

Chronological ▾

Stockton mayor seeks 12 hours of prayer

STOCKTON — Mayor Anthony Silva is turning to prayer in an effort to ease Stockton's pain. Silva has announced he will host a 12-hour

RECORDNET.COM | BY ROGER PHILLIPS

Like Comment Share

201 people like this.

Chronological ▾

151 shares



Anthony Silva, Mayor of Stockton The entire community has been invited to pray. We say a prayer before each City Council Meeting under my tenure, and each monday in my office. We will be praying on the foot steps of City Hall andthen MLK Plaza. People that want to pray can pray. People that dont want to come, dont have to come. There is no Government involved in this event and I am also a resident of Stockton and may sponsor events just like other residents. There is no violation of church and state here. And for the negative people who think that prayers dont help;; then stay tuned for the Town Hall eeting on November 30, 2015 so you can her the real problems and the exciting solutions to be presented. If you feel you have an idea that will help Stockton you want to come and Volunteer your time helping me or you have the courage to run for office, then contact me and we will chat.

Like · Reply · 18 · November 15 at 5:09pm



Anthony Silva, Mayor of Stockton shared a link.

November 14 at 12:06am · ✨



Stockton Mayor Prepares for 12-Hour Prayer for Reduced Violence at City Hall

STOCKTON -- As the Friday sun shines down on Stockton's city hall, there's a push for change. A coming together that Mayor Anthony Silva hopes will turn the tide of...

FOX40.COM

In a comment on one post, following complaints from local citizens that he was violating the First Amendment, the Mayor wrote in part:

The entire community has been invited to pray. We say a prayer before each City Council Meeting under my tenure, and each monday in my office. We will be praying on the foot steps of City Hall andthen MLK Plaza. People that want to pray can pray. People that dont want to come, dont have to come.

At the prayer rally, Mayor Silva “gave the key to the city to God,” which appears to be an official City key that would be presented for other honorary events. An article dated November 16, entitled “Mayor leads 12-hour prayer rally,” features a picture of the Mayor leading a prayer, with the following caption: “Stockton Mayor Anthony Silva, right, leads a 12-hour prayer that began at 6 a.m. Monday morning in downtown Stockton to raise awareness of homelessness and gang violence violence [sic] in Stockton. At mid-morning, Silva said he planned at noon to present the key to the city to God.”² Another article dated November 16, entitled, “After Young Girl is Shot, Stockton Unites in Prayer” stated in part: “A marathon prayer rally took place in Stockton on Monday which was hosted by Mayor Anthony Silva in an effort to combat crime.”³ The article adds: “As part of the prayer rally the Stockton mayor also gave the key to the city to God.” The plaque on the key states: “GOD we dedicate the City of Stockton to you! Mayor Silva 2015.”

² <http://www.recordnet.com/article/20151116/NEWS/151119767>

³ <http://fox40.com/2015/11/16/after-young-girl-is-shot-stockton-unites-in-prayer/>



Stockton Mayor Anthony Silva presented a key to the city to God on Monday, Nov. 16.

Anthony Silva, Mayor of Stockton shared Anthony Silva's post.
 Yesterday at 9:41am · 🌟

Anthony Silva added 30 new photos — with Pat McClanahan and 10 others.
 Yesterday at 9:38am · Edited · 🌐

The Mayor's Prayer Rally was an amazing day for the City of Stockton. More than 800 residents representing 26 different churches and prayer groups battled the w...

[See More](#)

Notably, although the Mayor’s press release promoting the Prayer Rally was sent from his personal email account, it is a commonly known fact that Mayor Silva routinely uses his personal email account for official city business. According to an ABC10 article, entitled, “Why does Stockton's mayor use his personal email for city business, News10 asks,” provided in part:

Emails from Mayor Anthony Silva about city business could shed important light on efforts to solve Stockton's problems. But getting those emails – which an expert said are public records – can be difficult.

Citing California's public records laws, News10 requested emails sent to and from Silva's work email account since he took office last January.

According to the records the city sent News10, Silva did not send a single message

from his city email account for the entire months of May and June.

It's clear now that he did send messages dealing with city business, but when he did, he used his personal AOL account or texted from his cell phone.

According to California law, those emails and text messages are public records. Still, News10 met resistance trying to get those records. News10 requested all of the mayor's emails regarding Stockton's official business from his personal email and text message accounts. Our request was dated Aug. 19, 2013....

After more than two months, the city did provide some emails from the mayor's personal email account. Most were related to the mayor's recruitment of volunteers for an advisory committee. Those emails included a few dozen people congratulating the mayor on the election or saying they were interested in serving on the committee. There was nothing related to day-to-day business or the serious challenges facing the city. ...

Last May, City Attorney John Luebberke emailed the mayor about a public records request made by The Record, the daily newspaper in Stockton. It warns the mayor to use his city email account for city business, as use of his AOL email address for city business would expose that account to public records requests.

"This is further reminder that the response to this PRA (Public Records Act) request from the Record is due Monday and I have not heard from you in response to my messages sent on May 15 or my text message sent on May 20 as to when or if you intend to produce those requested records," the email states.

"As we discussed before, use of your personal email account for City business is problematic and will expose that account to requests such as this. While this particular request is quite limited, if you continue to use your personal account for City business you can expect more of the same. Once again, I strongly recommend you use the City email system for your City business," Luebberke wrote.

That wasn't the only indication that city officials understood emails sent to and from the mayor's AOL account for city business were public. Another email, this time from Assistant City Attorney Michael Roush, spelled it out again less than a week later....⁴

At a minimum, the Mayor's decision to use his personal email in this instance strongly suggests that the Mayor realized the event violates the Establishment Clause and was attempting, albeit unsuccessfully, to avoid Establishment Clause liability. Stated differently, the Mayor's weak attempt to avoid Establishment Clause liability underscores the fact that he knew his actions would be interpreted as unconstitutional.

⁴ <http://www.abc10.com/story/news/investigations/watchdog/2014/02/21/stockton-mayor-anthony-silva-uses-personal-email-on-the-job/5669907/>.

The American Humanist Association (AHA) is a national nonprofit organization with over 510,000 supporters and members across the country, including in California. The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring a separation of church and state. Our legal center includes a network of cooperating attorneys from around the country, including in California, and we have litigated constitutional cases in state and federal courts from coast to coast, including in California.

The First Amendment's Establishment Clause "commands a separation of church and state." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). Separation "means separation, not something less." *McCullum v. Bd. of Educ.*, 333 U.S. 203, 231 (1948). The Establishment Clause "create[s] a complete and permanent separation of the spheres of religious activity and civil authority." *Everson v. Bd. of Ed.*, 330 U.S. 1, 31-32 (1947). *Accord Engel v. Vitale*, 370 U.S. 421, 429 (1962). It requires the "government [to] remain secular, rather than affiliate itself with religious beliefs or institutions." *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 610 (1989). Not only must the government not advance, promote, affiliate with, or favor any particular religion, it "may not favor religious belief over disbelief." *Id.* at 593 (citation omitted). The Establishment Clause "'means at least' that [n]either a state nor the Federal Government" can "aid one religion, aid all religions, or prefer one religion over another." *Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1125 (9th Cir. 2013) (citation omitted). In short, the government "may not place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling nonadherents to support the practices or proselytizing of favored religious organizations and conveying the message that those who do not contribute gladly are less than full members of the community." *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 9 (1989).

To comply with the Establishment Clause, a government practice must pass the *Lemon* test,⁵ pursuant to which it must: (1) have a secular purpose; (2) not have the effect of advancing or endorsing religion; and (3) not foster excessive entanglement with religion. *Allegheny*, 492 U.S. at 592. Government action "violates the Establishment Clause if it fails to satisfy any of these prongs." *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).⁶

As shown below, it is beyond clear that the Mayor's "Prayer Rally" and "Town Hall" meetings held in Christian venues, and hosted by Christian organizations, violate the Establishment Clause pursuant to these tests as well as directly applicable precedent. *See, e.g., Am. Humanist Ass'n v. City of Ocala*, 2015 U.S. Dist. LEXIS 115443, *1 (M.D. Fla. July 2, 2015) ("Mayor and Police Chief, violated the Establishment Clause to the U.S. Constitution by organizing and promoting the prayer vigil"); *Hewett v. City of King*, 29 F. Supp. 3d 584, 596, 636 (M.D.N.C. 2014) (Mayor's participation in promoting and organizing a "prayer ceremony" violated Establishment Clause); *Newman v. City of East Point*, 181 F. Supp. 2d 1374 (N.D. Ga. 2002) ("Mayor's Community Prayer Breakfast" violated the Establishment Clause); *Allen v. Morton*, 495 F.2d 65, 77-79 (D.C. Cir. 1973) (government's sponsorship of a Christmas pageant held on a park adjacent to the White House violated Establishment Clause); *Milwaukee Deputy Sheriffs' Ass'n v. Clarke*, 588 F.3d 523, 524-26 (7th Cir. 2009) (county sheriff violated Establishment Clause by inviting a religious group to speak at the sheriff's department leadership conference and related employee gatherings violated

⁵ The test is derived from *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

⁶ In addition to the *Lemon* test, in *Lee*, the Supreme Court formulated the separate "coercion test," declaring, "at a minimum, the [Establishment Clause] guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Lee v. Weisman*, 505 U.S. 577, 587 (1992).

Establishment Clause); *Doe v. Village of Crestwood, Ill.*, 917 F.2d 1476 (7th Cir. 1990) (Village of Crestwood improperly sponsored a Roman Catholic mass held during a municipal Italian Festival because information published in the Village paper would “lead an objective observer to conclude that the Village itself is the sponsor, or at least a sponsor” of the mass); *Gilfillan v. Philadelphia*, 637 F.2d 924, 929 (3d Cir. 1980) (city violated the Establishment Clause under the purpose prong of *Lemon* by funding and constructing a platform for the Pope’s visit); see also *Knight v. State Dep’t of Pub. Health*, 275 F.3d 156 (2d Cir. 2001) (Christian state employees were properly disciplined for proselytizing to clients while on state business; religious activity threatened the state’s ability to perform its legitimate functions); *Marrero-Méndez v. Pesquera*, 2014 U.S. Dist. LEXIS 116118, 1-2 (D.P.R. Aug. 19, 2014) (Puerto Rico Police Department violated Establishment Clause by including prayer in police department meeting); *Daniels v. City of Arlington*, 246 F.3d 500 (5th Cir. Tex. 2001) (state could prohibit police officer from pinning cross to uniform; “The city’s interest in conveying neutral authority through that uniform far outweighs an officer’s interest in wearing any non-department- related symbol on it.”).

Where, as here, a government sponsors an “intrinsically religious practice” such as prayer, it “cannot meet the secular purpose prong.” *Jager v. Douglas Cnty. Sch. Dist.*, 862 F.2d 824, 830 (11th Cir. 1989). See *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000); *Stone v. Graham*, 449 U.S. 39, 41 (1980). See also *Collins v. Chandler Unified Sch. Dist.*, 644 F.2d 759, 760-63 (9th Cir. 1981) (“the invocation of assemblies with prayer has no apparent secular purpose”); *Pelozo v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994) (teacher’s discussion of religion with students before and after class “would not have a secular purpose”).

The secular purpose must be the “pre-eminent” and “primary” force driving the action, and “has to be genuine, not a sham[.]” *McCreary Cnty. v. ACLU*, 545 U.S. 844, 864 (2005). Because “prayer is ‘a primary religious activity in itself,’” a government’s “intent to facilitate or encourage prayer . . . is per se an unconstitutional intent to further a religious goal.” *Holloman v. Harland*, 370 F.3d 1252, 1285 (11th Cir. 2004). See also *Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff’d*, 472 U.S. 38 (1985) (same); *Mellen v. Bunting*, 327 F.3d 355, 373 (4th Cir. 2003); *North Carolina Civil Liberties Union v. Constangy*, 947 F.2d 1145, 1150 (4th Cir. 1991) (finding religious purpose in judge’s practice of opening court sessions with prayer, as it involved “an act so intrinsically religious”); *Hall v. Bradshaw*, 630 F.2d 1018, 1020-21 (4th Cir. 1980) (state’s inclusion of prayer on state map failed purpose prong).

A religious purpose may thus be inferred in this instance since “the government action itself besp[eaks] the purpose . . . [because it is] patently religious.” *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 862-63 (2005). See also *Santa Fe*, 530 U.S. at 309-10 (“infer[ring] that the specific purpose of the policy” permitting but not requiring student-led prayers was religious thus failing the purpose prong); *Karen B. v. Treen*, 653 F.2d 897, 901 (5th Cir. 1981) (no secular purpose in authorizing teacher-initiated prayer at the start of school day), *aff’d*, 455 U.S. 913 (1982). This religious purpose is so clear that it is “controlling even if there were evidence of some other stated legislative purpose.” *Summers v. Adams*, 669 F. Supp. 2d 637, 658 (D.S.C. 2009).

“The unmistakable message of the Supreme Court’s teachings is that the state cannot employ a religious means to serve otherwise legitimate secular interest[.]” *Karen B. v. Treen*, 653 F.2d 897, 901 (5th Cir. 1981), *aff’d*, 455 U.S. 913 (1982) (emphasis added). Good intentions are not synonymous with secular purpose; a government action may be motivated by compassion but readily fail the purpose test. See *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 222-23

(1963) (accepting stated purpose of “the promotion of moral values,” but holding that practice failed purpose test because “[e]ven if its purpose is not strictly religious, it is sought to be accomplished through readings . . . from the Bible.”); *Borden v. Sch. Dist.*, 523 F.3d 153, 170 (3d Cir. 2008) (coach’s actions in silently taking a knee with players during student-led prayer was unconstitutional even if it was “intended to promote solidarity . . . and show respect for the players’ prayers.”); *Holloman*, 370 F.3d at 1286 (even though teacher’s purpose was to show “that praying is a compassionate act; such an endorsement of an intrinsically religious activity” fails the purpose test); *Jager*, 862 F.2d at 830 (the rejection of “wholly secular [means] makes it very clear that the . . . actual purpose . . . was religious.”); *Hall*, 630 F.2d at 1020-21.⁷

In *Hall*, for instance, the state contended that a prayer printed on the North Carolina state map “promoted safety, which is a legitimate secular purpose.” 630 F.2d at 1020-21. While the Fourth Circuit accepted the argument that the “prayer may foster the state’s legitimate concern for safety,” the prayer failed the purpose prong because the state chose “a clearly religious means to promote its secular end.” *Id.* “If a state could avoid the application of the first amendment in this manner, ‘any religious activity of whatever nature could be justified by public officials on the basis that it has beneficial secular purposes.’” *Id.* (quoting *DeSpain v. DeKalb Cnty. Cmty. Sch. Dist.* 428, 384 F.2d 836 (7th Cir. 1967)).

Gilfillan v. Philadelphia, 637 F.2d 924, 929 (3d Cir. 1980) is directly on point. There, the Third Circuit held that a city violated the Establishment Clause under the purpose prong of *Lemon* by funding and constructing a platform for the Pope’s visit. This was so, despite the court’s findings that the liturgical service “generated an unprecedented outpouring of warmth and good will felt throughout the City for months following,” and “favorably enhanced the image of the City.” *Id.* at 927. The court reasoned that “if some peripheral public relations benefit can constitute a sufficient secular purpose, then the purpose test is destroyed[.]” *Id.* at 930.

More recently, in *Am. Humanist Ass’n v. City of Ocala*, 2015 U.S. Dist. LEXIS 115443, *1-3, *30-31 (M.D. Fla. July 2, 2015), a case filed by the undersigned, the court found (in denying the defendant’s motion to dismiss) that a city, through its Mayor and Police Chief, “public officials who represent each and every member of this diverse community,” violated the Establishment Clause by organizing and promoting a “prayer vigil.” In finding the *Lemon* purpose test violated, the court relied on cases cited by AHA and declared:

While Defendants argue that the Prayer Vigil had a secular purpose because it was intended “to support peace” and was “part of an overall law enforcement-related practice” (see Doc. 8 at 19), “[t]he unmistakable message of the Supreme Court’s

⁷ See also *ACLU v. Rabun Cnty Chamber of Commerce, Inc.*, 698 F.2d 1098, 1111 (11th Cir. 1983) (“even if the . . . purpose for constructing the cross was to promote tourism, this . . . would not have provided a sufficient basis for avoiding conflict with the Establishment Clause”); *Greater Houston Chapter of ACLU v. Eckels*, 589 F. Supp. 222, 234 (S.D. Tex. 1984), *cert. denied*, 474 U.S. 980 (1985) (citing *Larkin v. Grendel’s Den*, 459 U.S. 116, 123-24 (1982)) (the choice to make “use of religious means to achieve secular goals where nonreligious means will suffice is forbidden.”); *Mendelson v. St. Cloud*, 719 F. Supp. 1065, 1069-70 (M.D. Fla. 1989) (rejecting contention that a cross had “secular and historical value as a guidepost for fishermen” because “[s]ecular means are availing”). Cf. *Trunk v. City of San Diego*, 629 F.3d 1099, 1102 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 2535 (2012) (there “are countless ways that we can and should honor [veterans], but without the imprimatur of state-endorsed religion” in the form of an unconstitutional Latin cross memorial).

teachings is that the state cannot employ a religious means to serve otherwise legitimate secular interest.” *Jager v. Douglas County School Dist.*, 862 F.2d 824, 830 (11th Cir. 1989).

There is similarly no secular purpose for holding “Town Hall” meetings in religious Christian venues, especially when there are ample secular government venues available. And clearly, there is no secular purpose in having a City-sponsored “Town Hall” meeting “hosted” by a Christian organization. The city’s “rejection of the alternative of wholly secular [venues] makes it very clear” that its purpose of holding the “Town Hall” meetings in churches is “religious.” *Jager*, 862 F.2d at 830. Furthermore, the express religious purpose of the Christian entities co-hosting the Mayor’s “Town Hall” Meetings may be imputed on the City. *See ACLU v. Grayson Cnty.*, 591 F.3d 837, 851 (6th Cir. 2010) (“Private purpose thus becomes relevant where there is evidence that the government has adopted the message of the organization donating the display. A sign on the display provides evidence to that effect.”); *Books v. City of Elkhart*, 235 F.3d 292, 296, 303 (7th Cir. 2000) (Ten Commandments monument donated to city by private organization failed purpose test because “[t]he participation of . . . religious congregations makes it clear that the purpose for displaying the monument was . . . religious”); *Rabun*, 698 F.2d at 1109 n.9 (Chamber’s religious motives were imputed on the government in holding cross lacked secular purpose); *Cooper v. USPS*, 577 F.3d 479, 493-95 (2d Cir. 2009) (government lacked secular purpose for “displaying [a Christian Church’s] religious material on the [government] postal counter” because the “purpose of the religious material is to raise awareness for the mission sponsored by the Church”). For instance, in *Gonzales v. North Twp. of Lake Cnty.*, 4 F.3d 1412, 1414-19 (7th Cir. 1993), a war memorial cross was erected by the Knights of Columbus and donated to the town. The town claimed that the “crucifix was intended to act as a war memorial, not a religious icon, and that this purpose prevails.” *Id.* In holding that the cross lacked a secular purpose, the court imputed the Knights’ purpose onto the town, emphasizing: “the *Knights’* goal was to spread the Christian message.” *Id.* at 1421 (emphasis added).

Regardless of the purposes motivating the Prayer Rally and the Town Hall Meetings, they clearly violate the Establishment Clause pursuant to *Lemon’s* effect prong. The “effect prong asks whether, irrespective of government’s actual purpose, the practice under review in fact conveys a message of endorsement or disapproval [of religion].” *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985) (quotation marks omitted). The “prohibition against governmental endorsement of religion ‘preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred.’” *Allegheny*, 492 U.S. at 593 (citation omitted). Whether “the key word is ‘endorsement’ ‘favoritism,’ or ‘promotion,’ the essential principle remains the same. The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief[.]” *Id.* at 593-94.

A prayer, “because it is religious, . . . advance[s] religion.” *Hall*, 630 F.2d at 1021. There is no question that “facilitating any prayer clearly fosters and endorses religion over nonreligion.” *Holloman*, 370 F.3d at 1288. A religious activity is “state-sponsored,” and therefore unconstitutional, if “an objective observer . . . w[ould] perceive official school support for such religious [activity].” *Bd. of Educ. v. Mergens*, 496 U.S. 226, 249-50 (1990). *See, e.g., Santa Fe*, 530 U.S. at 309-10 (holding that student-initiated, student-led prayers at public high school football game were unconstitutional). The policy successfully challenged in *Santa Fe* allowed the senior class to elect students to deliver a “brief invocation and/or message” at football games. *Id.* at 296-97. Despite the fact that any message would be student-led and student-initiated, the Supreme Court

found the policy unconstitutional as it “involves both perceived and actual endorsement of religion.” *Id.* at 305, 310.

Even the “mere appearance of a joint exercise of authority by Church and State provides a significant symbolic benefit to religion,” and, therefore, has the impermissible primary effect of advancing religion. *Larkin v. Grendel’s Den*, 459 U.S. 116, 126-27 (1982). The Supreme Court has stated that:

an important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices.

School Dist. v. Ball, 473 U.S. 373, 390 (1985) (internal citation omitted). For state action to violate the Establishment Clause under the second prong of *Lemon*, “the resulting advancement need not be material or tangible. An implicit symbolic benefit is enough.” *Friedman v. Bd. of Cnty. Comm’rs*, 781 F.2d 777, 781 (10th Cir. 1985). See *Allegheny*, 492 U.S. 573 (finding that the fact that a crèche exhibited a sign disclosing its ownership by a Roman Catholic organization did not alter the conclusion that it sent a message that the county supported Christianity).

In *Crestwood*, for instance, the Village of Crestwood sponsored an Italian Festival and as part of the festivities, also sponsored a mass. 917 F.2d 1476. The Seventh Circuit held that the mass violated the Establishment Clause, reasoning: “A religious service under governmental auspices necessarily conveys the message of approval or endorsement. Prevailing doctrine condemns such endorsement, even when no private party is taxed or coerced in any way.” *Id.* at 1478 (citations omitted). It was sufficient that the Village sponsored the festival, which was evidenced primarily by a newspaper article with the headline “Italian Mass to be celebrated at our Italian Fest.” *Id.* at 1479. The Seventh Circuit noted that the use of the word “our” that was used to advertise the village festival and the Catholic mass “implie[d] that the mass and Festival alike are under the Village’s sponsorship.” 917 F.2d at 1479. The court determined that the Village had endorsed religion because the information in the paper would “lead an objective observer to conclude that the Village itself is the sponsor, or at least a sponsor” of the mass. *Id.*

Likewise, in *Newman*, the court held that a mayor’s “prayer breakfast” violated the Establishment Clause under the second prong of *Lemon*. 181 F. Supp. 2d at 1379-80. The court emphasized that the courts have “recognized that ‘prayer is the quintessential religious practice.’” *Id.* (citing *Jaffree*, 705 F.2d at 1534). The evidence of city-sponsorship in *Newman* is similar to that here, *inter alia*, a letter from the Mayor addressed to “friends of the community; and a “flyer that was distributed at a City of East Point sponsored holiday party.” *Id.* at 1381. As such, the court ordered that “the Mayor . . . and the City of East Point are enjoined from organizing, advertising, promoting or endorsing the Mayor’s Prayer Breakfast.” *Id.* at 1380-82.

In *Hewett v. City of King*, 29 F. Supp. 3d 584, 635 (M.D.N.C. 2014), the court found “that the use of the word ‘us’ as it relates to the City’s advertisement of the 2013 Veterans Day ceremony has the effect of conveying sponsorship of the ceremonies, and to a further extent, the religious aspects of the ceremonies.” See also *Am. Humanist Ass’n v. City of Ocala*, 2015 U.S. Dist. LEXIS 115443, *36-37 (M.D. Fla. July 2, 2015) (“the communications made by the Mayor of the City and

its Chief of Police are evidence of the City's apparent involvement in planning and promoting the prayer vigil”); *Gilfillan*, 637 F.2d 924; *Allen*, 495 F.2d 65.

Here, as in the above cases, a reasonable observer would reasonably understand the *Mayor's* “Prayer Rally” to be endorsed by the City. The following facts would be relevant to this conclusion:

- It is repeatedly referred to as the *Mayor's* Prayer Rally;
- The event was heavily promoted on the *Mayor's* “official” Facebook page and not merely his personal one; also, the City’s official insignia appears on this official page;
- The event was held *on city property*;
- The Prayer Rally and Town Hall Meeting were both sent as the “Mayor’s” press release, and the attachment for the Town Hall Meeting features official city insignia and is printed on city letterhead;
- An official “*City key*” was dedicated to “God” on behalf of “The City of Stockton” at the Prayer Rally.

The “Town Hall Meetings” are also City-sponsored, especially because City letterhead and the City insignia are used to sponsor and promote these events, and they are attended by government officials, *supra*.

The Mayor’s actions in organizing, sponsoring and promoting the Prayer Rally are in fact, even more egregiously unconstitutional than those actions found unconstitutional in similar cases. For instance, in *Milwaukee*, the county sheriff invited a religious group to speak at the sheriff's department leadership conference and at similar employee gatherings. 588 F.3d at 524-26. The Seventh Circuit found that the religious nature of the church members’ presentation, combined with the fact that the sheriff had invited them to speak, signaled, “at the least, the appearance of endorsement by the Sheriff's Department,” in violation of the Establishment Clause. *Id.* at 528-29. The religious activity in *Milwaukee* was confined to employee gatherings; here, the religious activity was directed to the entire community. Likewise, the religious activity in *Crestwood* was only a 45-minute portion of a 3-day otherwise secular festival. 917 F.2d 1476. The “Prayer Rally” here was a 12-hour event dedicated *exclusively* to prayer and no secular activity. In *Gilfillan*, the city’s actions in constructing a platform for the Pope’s visit violated the Establishment Clause even though the event itself was organized and sponsored by the Archdiocese. 637 F.2d at 931.

The Mayor’s flyers and official Facebook posts promoting the “Town Hall Meeting” sponsored by a Christian organization, alone, without more, unconstitutionally endorses religion. See *McCreary*, 354 F.3d at 453 (“the very text ... [of the] displays manifests a patently religious purpose”); *ACLU of Ohio Found., Inc. v. Deweese*, 633 F.3d 424, 434 (6th Cir. 2011) (“The poster's patently religious content reveals Defendant's religious purpose”); *Doe v. Cnty. of Montgomery*, 915 F. Supp. 32, 36-37 (C.D. Ill. 1996) (“the sign ‘THE WORLD NEEDS GOD’ is undeniably a religious message....[and thus lacks a] secular purpose.”). The “Establishment Clause does not limit only the religious content of the government's own communications. It also prohibits the government's support and promotion of religious communications by religious organizations.” *Allegheny*, 492 U.S. at 600. *E.g.*, *Am. Atheists, Inc. v. Duncan*, 616 F.3d 1145, 1160-61 (10th Cir. 2010) (roadside memorial crosses held unconstitutional where the motorist is “bound to notice the preeminent symbol of Christianity and the UHP insignia, linking the State to that religious sign.”); *Newman v. City of East Point*, 181 F. Supp. 2d 1374, 1381 (N.D. Ga. 2002) (“a flyer advertising the

Mayor's Prayer Breakfast" was unconstitutional because the city played a "part in the promotion" by printing the flyers and distributing them). *See also Am. Atheists, Inc. v. City of Starke*, 2007 U.S. Dist. LEXIS 19512, *18 (M.D. Fla. 2007) ("the words 'STARKE' and the Cross on the water tower clearly communicates the City's endorsement of Christianity"); *Knight v. State Dep't of Pub. Health*, 275 F.3d 156, 166 (2d Cir. 2001) ("Here, both Knight and Quental promoted religious messages while working with clients on state business, raising a legitimate Establishment Clause concern").

Though merely symbolically endorsing the Christian organizations and prayer would be enough to violate the Establishment Clause, *supra*, the Mayor's actions *tangibly* advanced Christianity, compounding the Establishment Clause violation. In *Gilfillan*, the Third Circuit explained: "*regardless of imprimatur*, the City's assistance had effectively enabled the Pope to reach large numbers of persons and to perform a religious service." 637 F.2d at 930-31 (emphasis added). The same is true here.

Finally, the City's oversight, sponsorship, and control over the Prayer Rally and Town Hall Meetings foster excessive entanglement with religion, prohibited by *Lemon's* third prong. *See Allen*, 495 F.2d 65 (excessive entanglement between the federal government and the committee running the Christmas pageant); *Gilfillan*, 637 F.2d at 931 ("relationship between the City and the Archdiocese [in connection with the event] constituted entanglement in violation of the third part [of *Lemon*]"). Because a Prayer Rally is inherently religious, the government's actions in organizing and sponsoring it necessarily entangle it with religion. *E.g.*, *Constangy*, 947 F.2d at 1151-52 (when "a judge prays in court, there is necessarily an excessive entanglement of the court with religion."); *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369, 385 (6th Cir. 1999) (finding excessive entanglement where "the school board decided to include prayer" and "chose which member from the local religious community would give those prayers"); *Mellen v. Bunting*, 327 F.3d 355, 375 (4th Cir. 2003); *Hall*, 630 F.2d at 1021; *Gilfillan*, 637 F.2d at 932 ("the City's assistance and the extensive cooperation during the preparations for the Pope's visit, also fail the entanglement test, because of the potential for divisiveness.").

This letter serves as a notice of the City and Mayor's unconstitutional activity and demands that you terminate all promotion, sponsorship, endorsement or affiliation with Christian Life Center and any other religious organization immediately. We also specifically demand that you find a secular venue for the upcoming "Town Hall Meeting" and that you refrain from using Christian venues for such events. Please contact us *immediately* indicating that you will take the appropriate steps to remedy these clear constitutional violations, including by expressly renouncing any affiliation with or support of Christian Life Center and the "Mayor's Prayer Rally." We also ask for written assurances that these practices will not continue in the future.

Sincerely,
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