



November 18, 2016

Kelly Cooper, President  
Kenai Peninsula Borough Assembly  
144 North Binkley Street  
Soldotna, AK 99669

*Sent by email: kellycooper@kpb.us*

**Re: Resolution 2016-056—Limits on Who May Offer Assembly Invocations:  
ACLU of Alaska’s Ongoing Constitutional Concerns**

Dear President Cooper:

We hope that you are well. We are writing to express our ongoing concern that provisions of Resolution 2016-056—limiting who may provide an invocation at the beginning of Kenai Peninsula Borough Assembly meetings—are unconstitutional. We urge the Assembly to abandon its current policy. In its place, we suggest returning to the successful policy of allowing members of the public to deliver invocations based on a first-come, first-served basis; alternatively, the Assembly can do without invocations altogether. Either option would ensure the Assembly does not stray beyond the bounds of the Alaska or United States Constitutions.

On October 20, the ACLU of Alaska sent a letter to then-President Blaine Gilman expressing our concerns that restrictions established in Resolution 2016-056 are unconstitutional. We asked the Assembly to change its policy by Monday, November 28. Mayor Mike Navarre subsequently vetoed the Resolution, but the Assembly overrode that veto at its last meeting, on October 25, 2016. On November 10, we received a letter from the Borough Attorney, Colette Thompson, explaining that amendments to the resolution are being submitted for consideration at the next Assembly meeting, on November 22. We appreciate the response, but are nevertheless concerned that, even with the proposed amendment, the Assembly is not going far enough to ensure its invocation policy is constitutional.

As we indicated in our October 20 letter, the religion test established by Resolution 2016-056 is outside the scope of what is contemplated by the U.S. Supreme Court in *Town of Greece, N.Y. v. Galloway*.<sup>1</sup> There, the Court upheld a legislature’s invocation policy where “[t]he town at no point excluded or denied an opportunity to a would-be prayer giver” and where the town “maintained that a minister or layperson of any persuasion, including an atheist, could give the invocation.”<sup>2</sup> As the Court explained, “The First Amendment is not a

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<sup>1</sup> 134 S. Ct. 1811 (2014).

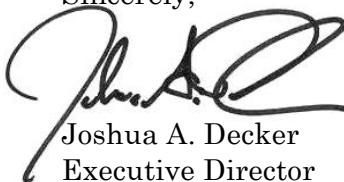
<sup>2</sup> *Id.* at 1816.

majority rule, and government may not seek to define permissible categories of religious speech.”<sup>3</sup> Resolution 2016-056 does not satisfy such conditions.

Rather than attempt to amend Resolution 2016-056 as shown in Resolution 2016-072, we urge the Assembly to avoid any ensuing legal uncertainty or financial exposure—both of which are wholly avoidable—by adopting a more fully inclusive policy, better reflecting the democratic value of welcoming diverse ideas and beliefs to the public sphere. If the Assembly finds invocations before its meetings valuable, it should repeal the current policy and again allow all members of the public to deliver invocations based on a first-come, first-served basis.

If you or your colleagues have any questions, please feel free to contact our staff attorney, Eric Glatt, at 907.258.0044, ext. 2005, or at [eglatt@acluak.org](mailto:eglatt@acluak.org). Thank you for considering our concerns.

Sincerely,



Joshua A. Decker  
Executive Director

cc: Assembly Vice President Wayne Ogle, [wogle@kpb.us](mailto:wogle@kpb.us)  
Assembly Member Dale Bagley, [dbagley@kpb.us](mailto:dbagley@kpb.us)  
Assembly Member Willy Dunne, [wdunne@kpb.us](mailto:wdunne@kpb.us)  
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<sup>3</sup> *Id.* at 1822.