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Chief Counsel

September 7, 2011

The Honorable Michael R. Bloomberg  
Mayor, the City of New York  
City Hall  
New York, New York 10007

***Re: Prayer and Clergy at the 10<sup>th</sup> Anniversary of the 9/11 Attacks***

Dear Mayor Bloomberg:

We wish to communicate to you our grave disappointment with your recent announcement that prayer and clergy will not be allowed at the 10th anniversary of the September 11th attacks on the World Trade Center. Our purpose for writing is to respectfully request that you reconsider this decision and allow prayer at the commemoration.

By way of introduction, the American Center for Law and Justice is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion. *See, e.g., Pleasant Grove City v. Sumnum*, 555 U.S. 460 (2009) (unanimously holding that a Ten Commandments monument erected and maintained by the government on its own property constitutes government speech and does not create a right for private individuals to demand that the government erect other monuments); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause).

First, invocations are the quintessential American form of solemnizing events. Time and time again, the Supreme Court has recognized the importance of religion in our nation's history



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and the appropriateness of prayer and other religious references in public. For example, upholding the constitutionality of the Nebraska state legislature's tradition of opening each session with a prayer, Chief Justice Burger wrote:

To invoke Divine guidance on a public body entrusted with making the laws is not, in these circumstances, an "establishment" of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country. As Justice Douglas observed, "[we] are a religious people whose institutions presuppose a Supreme Being."

*Marsh v. Chambers*, 463 U.S. 783, 792 (1983) (internal citations omitted) (quoting *Zorach v. Clauson*, 343 U.S. 306, 313 (1952)).

September 11, 2001 will be remembered in history not only as a horrible act of terrorism upon the United States, but also a time when Americans sacrificed their lives for others, a time when we stood together, unified and resilient. Justice O'Connor summed up the appropriateness of prayer and invocation of divine assistance in remembering such an occasion as 9/11:

Facially religious references can serve other valuable purposes in public life as well. Twenty years ago, I wrote that such references "serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society." *Lynch, supra*, at 692—693 (O'Connor, J., concurring). For centuries, we have marked important occasions or pronouncements with references to God and invocations of divine assistance. Such references can serve to solemnize an occasion instead of to invoke divine provenance. The reasonable observer discussed above, fully aware of our national history and the origins of such practices, would not perceive these acknowledgments as signifying a government endorsement of any specific religion, or even of religion over non-religion.

*Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 35-36 (2004) (O'Connor, J., concurring). To exclude prayer from any events remembering 9/11 only serves to *diminish* the purpose of the event, to remember the past, appreciate the sacrifice and look forward to the future.

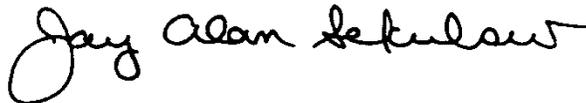
Second, fear of offense, or fear of a purported endorsement of religion are unfounded. That prayer in a public setting may offend someone is no excuse to exclude religion from public events. As the Supreme Court noted, "[t]here is always *someone* who, with a particular quantum of knowledge, reasonably might perceive a particular action as an endorsement of religion. A State has not made religion relevant to standing in the political community simply because a particular viewer of a display might feel uncomfortable." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 780 (1995) (O'Connor, J., concurring). Indeed, excluding religion from important public events such as the 9/11 commemoration likely offends more people than it protects from offense.

Fear of Establishment Clause violations is also a poor excuse to restrict prayer and religious references at public events. On the contrary, the Supreme Court has recognized that the Establishment Clause does not require all religion to be purged from the public sphere. In fact, “[a] relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution.” *Lee v. Weisman*, 505 U.S. 577, 598 (1992).

We have heard from over thirty-five thousand (35,000) citizens who are concerned about your decision to exclude prayer from the ceremony on September 11th. They have expressed that prayer is a method of unification which they desire to be a part of the events on that sacred day. Not only is prayer appropriate for this ceremony, it is indeed necessary to adequately commemorate the events of 9/11. On their behalf, we respectfully request that you reconsider your decision and allow prayer to be a part of the 9/11 commemoration.

Respectfully,

**AMERICAN CENTER FOR LAW AND JUSTICE**

A handwritten signature in black ink that reads "Jay Alan Sekulow". The signature is written in a cursive style with a large, looped initial "J".

Dr. Jay Alan Sekulow  
Chief Counsel