



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## New Business - Miscellaneous

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J.3.

12/22/2020

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### Subject:

Approval of Selection Policy for Invocation Speakers; Rescission of Resolution 2015-101  
District 4

### Fiscal Impact:

None

### Dept/Office:

District 4

### Requested Action:

Request the Board approve the attached Board Policy for the selection of invocation speakers before Board meetings, and formally rescind Resolution 2015-101 and all other associated Resolutions.

### Summary Explanation and Background:

The Board of County Commissioners is currently opening Board meetings with the Pledge of Allegiance and a moment of silence. The attached Board Policy creates a procedure for selection of invocation speakers who would be invited to come to the meetings to provide an invocation for the Commissioners prior to the Board conducting County business. The County Attorney's Office indicates the attached policy closely follows the procedure currently used by the City of Lakeland, which was found constitutional by the 11<sup>th</sup> Circuit Court of the United States in 2013. A memo from the County Attorney's Office on this topic is attached. Additionally, approving this agenda item will rescind Resolution 2015-101, which the 11<sup>th</sup> Circuit enjoined Brevard County from using in Williamson v. Brevard County, 928 F.3d 1296, 1299 (11<sup>th</sup> Circuit, 2019), as well as Resolution 05-332 and Resolution 14-219.

### Clerk to the Board Instructions:

Return a signed copy of the BCC policy and the Resolution Rescinding 2015-101 to the County Attorney's Office.

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Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

December 23, 2020

**M E M O R A N D U M**

**TO:** Frank Abbate, County Manager

**RE:** Item J.3., Approval, of Selection Policy for Invocation Speakers and Recission of Resolution 2015-101

The Board of County Commissioners, in regular session on December 22, 2020, adopted Resolution No. 20-161, rescinding Resolution No. 2015-101 and all prior actions of the Board as to invocation procedures; and approved Board Policy for the selection of invocation speakers before Board meetings. Enclosed is a fully-executed Resolution and Board Policy.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK**

*for: Donna Scott*  
Kimberly Powell, Clerk to the Board

Encl. (2)

cc: Each Commissioner

2020-161

**A RESOLUTION RESCINDING ALL PRIOR ACTIONS OF  
THE BOARD OF COUNTY COMMISSIONERS AS TO  
INVOCATION PROCEDURES**

**WHEREAS**, in Williamson v. Brevard County, the 11<sup>th</sup> Circuit Court of the United States enjoined Brevard County from executing Resolution 2015-101; and

**WHEREAS**, the Brevard County Board of County Commissioners now wishes to rescind all prior resolutions on invocation procedures and establish a County policy for such procedures.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, as follows:

Section 1. Resolution 2015-101, Resolution 05-332, Resolution 14-219 and any prior such Resolutions establishing invocation procedures for the Board of County Commissioners are rescinded.

Section 2. This Resolution shall take effect immediately upon its execution and filing pursuant to law.

DONE and ADOPTED in regular session by the Brevard County Board of County Commissioners, this 22 day of December 2020.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY

By: 

Scott Ellis, Clerk

By: 

Rita Pritchett, Chair

Reviewed for legal form and content:

As Approved by the Board on December 21 2020

\_\_\_\_\_  
Assistant County Attorney



**BOARD OF COUNTY COMMISSIONERS**

**POLICY**

**Number:** BCC-99  
 **Cancels:** New  
**Approved:** 12/22/2020  
**Originator:** Board of County Commissioners  
**Review:** 12/22/2023

**TITLE: Collective Bargaining**

**I. Objective**

The purpose of this policy is to ensure good faith negotiations between Brevard County and public employees pursuant to Florida Statutes section 447.201, et. seq. and, where applicable, articles set forth in the County's collective bargaining agreements.

**II. References and Authority**

Section 447.201, et. seq. is the statutory implementation of section 6, Article 1 of the Florida Constitution intended to promote harmonious and cooperative relationships between government and its employees.

The Board of County Commissioners for Brevard County is a public employer and the legislative body as defined by section 447.203(2) and section 447.203(10), Florida Statutes.

The County Manager is the chief executive officer for Brevard County as defined by section 447.203(9), Florida Statutes.

Pursuant to Article 1.01 of the current collective bargaining agreements with the Firefighters' union and in accordance with the certification of the Public Employees Relations Commission in case number R.C.-85-028 on August 20, 1985, and as modified in case number 93-001 on May 26, 1993, the County recognizes the Brevard County Professional Firefighters Local 2969, an affiliate of International Association of Fire Fighters, AFL-CIO as the sole collective bargaining agent for the bargaining unit consisting of all permanent full time employees of Brevard County Fire Rescue, who are engaged in fire and medical services, in the occupation of Firefighters (including recruits), Assistant Fire Marshal, Lieutenants, Paramedics, Emergency Medical Technicians, Emergency Vehicle Dispatchers, Emergency Vehicle Dispatcher Supervisors, Fire Prevention Inspectors, or any occupation combining the duties of the foregoing occupations.

Brevard County has two collective bargaining agreements with the Firefighters' Union; one for Rank and File members and one for the Supervisory Unit.

Brevard County has one collective bargaining agreement with the Laborers' Union. In accordance with the Public Employees Relations Commission certification of June 12, 1975, the County recognizes the Public Employees Local 630, Laborers' International Union of North America (AFL-CIO) as the exclusive bargaining agent to represent its employees in various defined categories of laborers.

Pursuant to 447.309(1):

- the bargaining agent for the organization and the chief executive officer of the public employer shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit.
- the chief executive officer or his or her representative and the bargaining agent or its representative shall meet at reasonable times and bargain in good faith.
- in conducting negotiations with the bargaining agent, the chief executive officer or his or her representative shall consult with and attempt to represent the views of the legislative body of the public employer.

Pursuant to Article 1.04 of the Firefighters' Rank and File agreement and Article 1.05 of the Firefighters' Supervisory Unit agreement for the Firefighters' Union, The Firefighters' Union "recognizes that the County Manager and designees are the collective bargaining representatives for the County. The Union further recognizes its obligation to bargain solely and exclusively with the County Manager and/or designees, and to refrain from any direct negotiations with the legislative body of the County (County Commission) or any of its members regarding work related issues."

Mandatory subjects of collective bargaining include, but are not limited to, the following:

- Wages, hours and fringe benefits;
- Health and safety;
- Non-discrimination charges;
- Length of contract (not to exceed three years per 447.309(5), Florida Statutes);
- Management rights;
- Discipline;
- Seniority;
- Dues collection;
- Grievance procedures; and
- Arbitration.

Pursuant to 447.605, Florida Statutes, all collective bargaining negotiations between a chief executive officer, or his or her representative, and a bargaining agent shall be in compliance with the provisions of section 286.011(2), Florida Statutes.

### III. Directives

Based upon the statutory requirements as referenced above and intent to ensure good faith negotiations that comply with 286.011, Florida Statutes (Sunshine law);

- A. A member of the Board of County Commissioners, or their staff, shall not engage in discussions or negotiations with a member of a labor union, or a representative/agent of a union, during a period of formal negotiations with said union regarding any subject which is related to a bargaining agreement.
- B. This policy shall not be construed to bar discussions between a Board member and a union member or its agents on matters unrelated to collective bargaining. For instance, this policy shall not restrict a discussion regarding an unrelated zoning matter.
- C. This policy is not intended as a basis to interpret any existing or future contractual agreement, and shall not be used as a basis to construct any provision of a collective bargaining agreement. Any reference to such agreements are intended only as an example.
- D. The procedure that the Board of County Commissioners shall follow to reach a vote on censure and/or a finding of malfeasance is:
  - 1. Any member of the Board may call for a point of order if a violation of this policy is alleged, at which point the Chair may allow the allegedly offending member to explain and/or apologize.
  - 2. First violation: Notwithstanding the provisions of Robert's Rules of Order, if the Board member fails to adhere to the procedures, as deemed necessary by the circumstances, the Board shall hold a contemporaneous vote to censure the Board member for his/her conduct. This vote shall require a majority vote of the Board.
  - 3. Prior to the vote, the Board member in question shall have a reasonable amount of time to rebut or otherwise make a statement for the record. For purposes of this subsection, a "reasonable amount of time" shall not exceed ten (10) minutes.

4. Second violation: if the Board member fails to comply with the regulations or if the Board member has been censured under this section within the past one (1) year and indicates intent to continue violating this section, the Board shall hold a contemporaneous vote as to whether a petition shall be sent to the Governor, in accordance with Article IV, Section 7(a) of the Florida Constitution, requesting the Board member be suspended from office for malfeasance, misfeasance, or neglect of duty. This vote shall require four fifths (4/5) vote of the Board.


**IV. Penalty**

Any member of the Board of County Commissioners who violates this policy may be subject to the following after completing the process set forth in section III (D) above:

- A. Censure and/or a finding of malfeasance within the meaning of Article IV, section 7(a), Florida Constitution.
- B. No Board member so censured shall be eligible to be elected Chair of the Brevard County Board of County Commissioners for a period of one (1) year

Attest:

  
\_\_\_\_\_  
Scott Ellis, Clerk

  
\_\_\_\_\_  
Rita Pritchett, Chair  
Brevard County  
Board of County Commissioners

As Approved by the Board on 12/22/2020



BOARD OF COUNTY COMMISSIONERS

## POLICY

Number: BCC-98  
Cancels: New  
Approved: 12/22/2020  
Originator: Board of County Commissioners  
Review: 12/22/2023

# TITLE: Selection of Invocation Speakers

## I. Objective

Invocations before deliberative public bodies have been consistently upheld as constitutional by American courts, including the United States Supreme Court. The Commission wishes to maintain a tradition of solemnizing its proceedings by allowing for an opening invocation before each meeting, for the benefit and blessing of the Commission. Further, the Commission desires to establish a policy for the selection of invocation speakers for Brevard County meetings.

## II. Definitions and References

Town of Greece v. Galloway, 134 S.Ct. 1811 (2014); Lynch v. Donnelly, 465 U.S. 668 (1984); March v. Chambers, 463 U.S. 783 (1983); Pelphrey, et al. v. Cobb County, Georgia, et al, 547 F.3d 1263 (11<sup>th</sup> Circuit, 2008); Atheists of Florida, Inc. v. City of Lakeland, Florida, 713 F.3d 577 (11<sup>th</sup> Circuit, 2013).

## III. Directives

1. In order to solemnize proceedings of the Commission, it is the policy of the Commission to allow for an invocation, prayer, or moment of silence to be offered before its meetings for the benefit of the Commission. If other Brevard County boards choose to have an invocation speaker, those boards must follow this policy, and may use the next in-line available invocation speaker for their meeting.
2. The invocation shall not be listed or recognized as an agenda item for the meeting or as part of the public business.
3. No member or employee of the Commission or any other person in attendance at the meeting shall be required to participate in any invocation that is offered.
4. The invocation shall be voluntarily delivered by an eligible member of the clergy, as specified below. To ensure that such person (the "invocation speaker") is selected from among a wide pool of local clergy, on a rotating basis, the invocation speaker shall be selected according to the following procedure:



- a. The County Manager or designee (hereinafter the "County Manager") shall compile and maintain a database (the "Congregations List") of the religious congregations with an established presence in the local community of Brevard County from each Commission District.
- b. The Congregations List shall be compiled by referencing the listing for "churches," "congregations," or other religious assemblies in the annual Yellow Pages phone book(s) published for Brevard County, research from the Internet (<http://www.connectbrevard.org/PubApps/geoShowOrgs.php?id=C12009&code=C12009&v=cong>), and consultation with local chambers of commerce. All religious congregations with an established presence in the local community of Brevard County are eligible to be, and shall be, included in the Congregations List. Any such congregation not otherwise identified for participation may request its inclusion by specific written communication to the County Manager's Office.
- c. This policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious congregation in Brevard County. The Congregations List is compiled and used for purposes of logistics, efficiency and equal opportunity for all of the community's religious leaders, who may themselves choose whether to respond to the Commission's invitation and participate. Should a question arise as to the authenticity of a religious congregation, the County Manager shall refer to criteria used by the Internal Revenue Service in its determination of those religious organizations that would legitimately qualify for Section 501(c)(3) tax-exempt status.
- d. The Congregations List shall also include the name and contact information of any chaplain who may serve one or more of the fire departments or law enforcement agencies of Brevard County.
- e. The Congregations List shall also include the name and contact information of any religious congregation located outside of Brevard County, if such religious congregation is attended by a resident or residents of Brevard County, and such resident requests the inclusion of said religious congregation by specific written communication to the County Manager.
- f. The Congregations List shall be updated, by reasonable efforts of the County Manager, on or about the month of November of each calendar year.
- g. Within thirty (30) days of the effective date of this policy, and on or about December 1 of each calendar year thereafter, the County Manager shall mail, email, or fax, an invitation addressed to the "religious leader" of each congregation listed on the Congregations List, as well as to the individual chaplains included on the Congregations List.

h. The invitation shall be dated at the top of the page, signed by the County Manager, at the bottom of the page, and read as follows:

*Dear Religious Leader,*

*The Brevard County Board of County Commissioners makes it a policy to invite members of the clergy in Brevard County to voluntarily offer an invocation before the beginning of its meetings, for the benefit and blessing of the Commission. As the leader of one of the religious congregations with an established presence in the local community, or in your capacity as a chaplain for one of the local fire departments or law enforcement agencies, or as the religious leader of one or more Brevard County residents, you are eligible to offer this important service at an upcoming meeting of the Commission.*

*If you are willing to assist the Commission in this regard, please send a written reply at your earliest convenience to the County Manager at the address included on this letterhead. Clergy are scheduled on a first-come, first-serve basis. The dates of the commission's scheduled meetings for the upcoming year are listed on the following, attached page. If you have a preference among the dates, please state that request in your written reply. This opportunity is voluntary, and you are free to offer the invocation according to the dictates of your own conscience. To maintain a spirit of respect and ecumenism, the Commission requests only that the invocation opportunity not be exploited as an effort to convert others to the particular faith of the invocation speaker, nor to disparage any faith or belief different than that of the invocation speaker.*

*On behalf of the Brevard County Board of County Commissioners, I thank you in advance for considering this invitation.*

*Sincerely,*

*County Manager*

5. As the invitation letter indicates, the respondents to the invitation shall be scheduled on a first come, first-serve basis to deliver the invocations.
6. No invocation speaker shall receive compensation for his or her service.
7. The County Manager shall make every reasonable effort to ensure that a variety of eligible invocation speakers are scheduled for the Commission meetings. In any event, no invocation speaker shall be scheduled to offer an invocation at consecutive meetings of the Commission, or at more than three (3) Commission meetings in any calendar year.

8. The County staff shall not engage in any prior inquiry, review of, or involvement in, the content of any invocation to be offered by an invocation speaker. If a speaker exploits the invocation to convert others to the particular faith of the invocation speaker, or disparages a faith or belief different than that of the invocation speaker, the County Manager is so empowered, in consultation with the County Attorney's Office, to remove that congregation's speaker from the eligibility list for future invocations.

9. Shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Chair of the Commission shall introduce the invocation speaker and the person selected to recite the Pledge of Allegiance following the invocation, and invite only those who wish to do so to stand for those observances of and for the Commission. If no invocation speaker is available for a particular meeting, the Commission will observe a moment of silence.

10. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Commission with, nor express the Commission's preference for or against, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the Commission's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of Brevard County.

11. To clarify the Commission's intentions, as stated herein above, the following disclaimer shall be included in at least 10-point font at the bottom of any printed Commission meeting agenda: "Any invocation that may be offered before the official start of the Commission meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Commission. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Commission, and the Commission is not allowed by law to endorse the religious beliefs or views of this, or any other speaker."

#### IV. Reservation of Authority

The authority to issue and/or revise this policy is reserved to the Board of County Commissioners.

(Signature Page Follows)

**IN WITNESS WHEREOF**, the Brevard County Board of County Commissioners executes this policy by the Chair of said Board.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA



\_\_\_\_\_  
Scott Ellis, Clerk



By: \_\_\_\_\_  
RITA PRITCHETT , Chair

As approved by the Board on 12/22/2020.

Approved for Legal Form & Content:

  
\_\_\_\_\_  
Assistant County Attorney



BOARD OF COUNTY COMMISSIONERS

## POLICY

Number: BCC# \_\_\_\_\_  
Cancels: n/a  
Approved: December \_\_, 2020  
Originator: District 4  
Review: December \_\_, 2023

## TITLE: Selection of Invocation Speakers

### I. Objective

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### III. Directives

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procedure:

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*Sincerely,*

*County Manager*

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10. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Commission with, nor express the Commission's preference for or against, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the Commission's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of Brevard County.

11. To clarify the Commission's intentions, as stated herein above, the following disclaimer shall be included in at least 10-point font at the bottom of any printed Commission meeting agenda: "Any invocation that may be offered before the official start of the Commission meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Commission. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Commission, and the Commission is not allowed by law to endorse the religious beliefs or views of this, or any other speaker."

#### IV. Reservation of Authority

The authority to issue and/or revise this policy is reserved to the Board of County Commissioners.


(Signature Page Follows)



**IN WITNESS WHEREOF**, the Brevard County Board of County Commissioners executes this policy by the Chair of said Board.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Scott Ellis, Clerk

By:   
\_\_\_\_\_  
RITA PRITCHETT , Chair

As approved by the Board on 12/22/2020.

Approved for Legal Form & Content:

\_\_\_\_\_  
Assistant County Attorney





County Attorney's Office  
2725 Judge Fran Jamieson Way  
Building C, Room 308  
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

## Inter-Office Memo

**TO:** Curt Smith, District Four, Brevard County Board of County Commissioners

**THRU:**  Eden Bentley, County Attorney

**FROM:**  Christine M. Schverak, Assistant County Attorney

**SUBJECT:** Invocation Speaker Selection Procedures

**DATE:** November 10, 2020

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**ISSUE:** Can the Board establish procedures to select invocation speakers which will comply with existing law?

**SHORT ANSWER:** Yes, provided the Board follows some general principles, as set out in *Town of Greece*<sup>1</sup> and 11<sup>th</sup> Circuit's opinion in the *City of Lakeland*,<sup>2</sup> which requires an inclusive and neutral process.

**FACTS:**

Before discussing the use of the *Town of Greece* or *City of Lakeland* procedures to allow invocations, it is important to understand the existing injunction and what the Board cannot do.<sup>3</sup> Currently, the Court has permanently enjoined Brevard County from continuing the invocation-speaker-selection practices and procedures as explained by the Commissioners in their testimony taken in *Williamson v. Brevard County*<sup>4</sup> and as embodied in [Brevard County] Resolution 2015-101,<sup>5</sup> insofar as such practices and procedures resulted in discrimination in favor of certain monotheistic religions.<sup>6</sup> This injunction does not resolve the issue of whether

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<sup>1</sup> *Town of Greece v. Galloway*, 572 U.S. 565 (2014).

<sup>2</sup> *Atheists of Florida, Inc. v. City of Lakeland*, 713 F.3d 577 (11<sup>th</sup> Cir. 2013).

<sup>3</sup> The injunction does not prohibit the County's current practice of observing a moment of silence before the meetings.

<sup>4</sup> See generally *Williamson v. Brevard*, 928 F.3d 1296, 1299 (11<sup>th</sup> Cir. 2019).

<sup>5</sup> Brevard County Resolution No. 2015-101, A Resolution of the Brevard County Board of County Commissioners amending the Board operating procedures set forth in Resolution 05-332, as amended by Resolution 14-219; adopting a formal policy relating to traditional ceremonial pre-meeting prayer, July 7, 2015.

<sup>6</sup> Consent Amended Final Judgment, *Williamson v. Brevard County*, Case No. 6:15-cv-1098-Orl-28DCI, United States District Court, Middle District of Florida, Orlando Division, February 18, 2020.

**SUBJECT:** Invocation Speaker Selection Procedures

**DATE:** March 5, 2020

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the County must permit nontheists or humanists to deliver opening invocations;<sup>7</sup> nor did the 11<sup>th</sup> Circuit rule on that issue. In discussing the prior practice, the 11<sup>th</sup> Circuit noted that it gave Brevard's Commissioners plenary authority, on a rotating basis, to invite whomever they want to deliver invocations, with no consistent standards or expectation of inclusiveness.<sup>8</sup> In finding Brevard's speaker selection process violated the Establishment Clause, the Court stated:

From [the Commissioners'] testimony, it is abundantly clear that most if not all of the Commissioners exercise their discretion in a way that discriminates among religions based on their beliefs, favoring some but not all monotheistic and familiar religious sects over those faiths that fall outside the "mainstream." ... Thus, for example, some of the Commissioners and former Commissioners have testified unambiguously that they would not allow deists, Wiccans, Rastafarians, or, for that matter, polytheists to deliver prayers, and that they would have to think long and hard before inviting a Hindu, a Sikh, or a follower of a Native American religion.<sup>9</sup>

The Board may also wish to be aware we have been advised the plaintiffs involved in the Williamson case continue to monitor Brevard County's procedures.

#### **LEGAL ANALYSIS:**

You have asked if there is a method to allow the Board of County Commissioners to have an invocation at the beginning of the meeting and comply with existing law. In setting up a process for selecting invocation speakers that does not violate the injunction, the process used to select the speaker should be inclusive and neutral as to matters of religion, and the invocation should occur at the beginning of the meeting.<sup>10</sup> A general discussion of the law follows.

The Supreme Court has stated that "the clearest command of the Establishment Clause is that one religious faith should not be officially preferred over another."<sup>11</sup> The Constitution "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any."<sup>12</sup> In upholding sectarian prayer, in *Town of Greece*, the Court emphasized

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<sup>7</sup> *Id.*

<sup>8</sup> *Williamson v. Brevard*, 928 F.3d 1296, 1299 (11<sup>th</sup> Cir. 2019).

<sup>9</sup> *Id.*

<sup>10</sup> *Atheists of Florida Inc. v. City of Lakeland*, 713 F.3d 577, 583 (11<sup>th</sup> Cir. 2013). See generally *Lee v. Weisman*, 505 U.S. 577 (1992); *Pelphrey v. Cobb County*, 547 F.3d 1263 (11<sup>th</sup> Cir. 2008).

<sup>11</sup> *Larson v. Valente*, 456 U.S. 228, 244 (1982).

<sup>12</sup> *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984).

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the legislatures are typically able and willing to accommodate diverse faiths.<sup>13</sup> The Court suggested the way to acknowledge our growing diversity is not to proscribe sectarian content but to welcome ministers of many creeds.<sup>14</sup>

Courts have found legislative prayers are part of the nation's heritage and tradition at the local level, when performed at the opening of local legislative meetings,<sup>15</sup> where it is meant to lend gravity to the occasion, to reflect values long part of the nation's heritage, and to acknowledge the place religion holds in the lives of many private citizens.<sup>16</sup> In *Town of Greece*, the Supreme Court stated "From the [n]ation's earliest days, invocations have been addressed to assemblies comprising many different creeds, striving for the idea that people of many faiths may be united in a community of tolerance and devotion, even if they disagree as to religious doctrine."<sup>17</sup>

The Supreme Court has stated that the principal audience for these invocations is not the public, but the lawmakers themselves.<sup>18</sup> "[A] moment of prayer or quiet reflection sets the mind[s] [of legislators] to a higher purpose and thereby eases the task of governing."<sup>19</sup> Legislative prayer "lends gravity to public business, reminds lawmakers to transcend petty differences in pursuit of a higher purpose, and expresses a common aspiration to a just and peaceful society."<sup>20</sup>

There cannot be any coercion of citizens to participate in the invocation. The Constitution guarantees the government "may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or religious faith, or tends to do so.'"<sup>21</sup> In implementation, while the Commissioners or the invocation giver may request that attendees rise for the invocation, citizens must be free to decline to participate or to leave during the invocation.<sup>22</sup> Finally, the Commission cannot attach any consequence (positive or negative) to a citizen or a citizen's item before the board based upon whether or not the citizen participated in the invocation.<sup>23</sup> In *Town of Greece*, the Supreme Court looked

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<sup>13</sup> *Lund v. Rowan County*, 863 F.3d 268, 281 (4<sup>th</sup> Cir. 2017); cert. denied 2018.

<sup>14</sup> *Lund v. Rowan County*, 863 F.3d 268, 281-82 (4<sup>th</sup> Cir. 2017); cert. denied 2018 (citing to *Town of Greece v. Galloway*, 134 S.Ct. 1811, 1820-1821 (2014)).

<sup>15</sup> *Marsh v. Chambers*, 463 U.S. 783, 786 (1983).

<sup>16</sup> *Town of Greece v. Galloway*, 572 U.S. 565, 566 (2014).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 587.

<sup>19</sup> *Id.* at 587 (plurality opinion).

<sup>20</sup> *Id.* at 575 (majority opinion).

<sup>21</sup> *Lee v. Weisman*, 505 U.S. 577, 587 (1992) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 678 (1984)).

<sup>22</sup> *Town of Greece v. Galloway*, 572 U.S. at 588.

<sup>23</sup> *Id.*

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but did not find any indication that “board members directed the public to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person’s acquiescence in the prayer opportunity.”<sup>24</sup> This concept was tested in Brevard County.<sup>25</sup> In *Williamson v. Brevard County*, the Federal District Court upheld the County, finding that a Commissioner asking the audience, including children, to stand during the county’s religious invocation practice was not coercing participation in a religious exercise.<sup>26</sup>

In general, the Supreme Court has stated that the content of the prayer (sectarian or non-sectarian) should not be of concern to government, provided there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief.<sup>27</sup> Specifically, the invocation giver should not be permitted to “threaten damnation,” “preach conversion,” or otherwise denigrate any other religious belief.<sup>28</sup> The Supreme Court has held that there is no requirement that prayers be nonsectarian or ecumenical as a single, fixed standard.<sup>29</sup> In *Town of Greece*, the Supreme Court has stated that to require invocations to be nonsectarian forces a legislature to act as supervisors and censors of religious speech, thus involving government in religion.<sup>30</sup> Another case has stated, “it is a cornerstone principle of our Establishment Clause jurisprudence that ‘it is no part of the business of government to compose official prayers....’” and “the government ‘is without power to prescribe ... any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity,’” and further “[o]ur government is prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior.”<sup>31</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> *Williamson v. Brevard County*, 276 F.Supp.3d 1260, 1289 (M.D. Fla. 2017).

<sup>26</sup> *Id.* at 1291-1292.

<sup>27</sup> *Marsh v. Chambers*, 463 U.S. 783, 794 (1983).

<sup>28</sup> *Town of Greece v. Galloway*, 572 U.S. at 567.

<sup>29</sup> *Lund v. Rowan County*, 863 F.3d 268, 227 (4<sup>th</sup> Cir. 2017)(Lund citing *Town of Greece* at 578).

<sup>30</sup> *Town of Greece v. Galloway*, 572 U.S. at 581.

<sup>31</sup> *Lund v. Rowan County*, 863 F.3d 268, 281 (4<sup>th</sup> Cir. 2017); cert. denied 2018 (citing to *Rowan County v. Lund*, 138 S.Ct. 2564 (2018)).

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Example of Process from Town of Greece.

In the *Town of Greece*,<sup>32</sup> by a 5-4 majority, the Supreme Court held that (1) prayer opening town board meetings did not have to be nonsectarian to comply with the Establishment Clause; (2) that the Town did not violate the First Amendment by opening town board meetings with prayer that comported with tradition of the United States; and (3) prayer at the opening of town board meetings did not compel citizens to engage in a religious observance, in violation of the establishment clause.<sup>33</sup> Additionally, the Court stated that “so long as the Town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing” (the Town of Greece was predominantly Christian).<sup>34</sup>

The Town used the following processes: As to format, the Town had: roll call, pledge of allegiance, a prayer given by clergy selected from congregations listed in a local directory,<sup>35</sup> presentation of “Chaplain for the month” with a commemorative plaque,<sup>36</sup> and then Town Business. The clergy members were unpaid volunteers.<sup>37</sup> At first, a town employee would call congregations listed in the local directory until a minister was available.<sup>38</sup> Later, the Town compiled a list of willing “board chaplains” who had accepted invitations and agreed to return in the future.<sup>39</sup> The Court noted that the Town did not exclude or deny an opportunity to a anyone.<sup>40</sup> The Town’s maintained that any minister or layperson, of any persuasion, including an atheist, could give the invocation.<sup>41</sup> But, as the Town was predominantly Christian, all the participating ministers were also.<sup>42</sup> When the citizens (who eventually filed suit) complained about the Christian themes pervading the prayers, to the exclusion of citizens who did not share those beliefs, the town invited a Jewish layman and the Chairman of the local Baha’i temple to deliver prayers.<sup>43</sup> A Wiccan priestess who had read press reports about the prayer controversy requested, and was granted, an opportunity to give the invocation.<sup>44</sup> The Town did

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<sup>32</sup> *Town of Greece v. Galloway*, 572 U.S. at 565.

<sup>33</sup> *Id.* at 565.

<sup>34</sup> *Id.* at 586.

<sup>35</sup> *Id.* at 565.

<sup>36</sup> *Id.* at 570.

<sup>37</sup> *Id.* at 571.

<sup>38</sup> *Id.* at 571.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 572.

<sup>44</sup> *Id.*

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not review the prayers in advance, nor provide any guidance as to tone or content, in the belief that exercising any degree of control over the prayers would infringe both the free exercise and speech rights of the ministers.<sup>45</sup> The prayers were typically asking the divine to abide at the meeting and bestow blessings on the community, although some of the ministers spoke in a distinctly Christian idiom or invoked religious holidays, scripture or doctrine.<sup>46</sup> At the District Court level, the Court concluded that “[b]y welcoming many viewpoints...the town would be unlikely to give the impression that it was affiliating itself with any one religion.”<sup>47</sup>

Example of Invocation Process from the *City of Lakeland, Florida Court case*.<sup>48</sup>

The City of Lakeland (hereinafter City) opens each bi-monthly Lakeland City Commission legislative session with a sectarian prayer.<sup>49</sup> After a lawsuit was initiated, Lakeland adopted an official policy (Resolution 4848) for the selection of invocational speakers. On appeal in 2013, the 11<sup>th</sup> Circuit found the City’s new practices for selecting invocation speakers did not violate the establishment clause of the U.S. Constitution.

Resolution 4848 codifies Lakeland’s policy regarding invocations before meetings of the Lakeland City Commission.<sup>50</sup> Resolution 4848 is attached to this memo as Exhibit A. The process extends invitations to all religious congregations in Polk County, and outside of the Polk County, if residents attend the congregation.<sup>51</sup> The secretary to the Commission (hereinafter the secretary) compiles a “Congregations List” of the religious congregations with an established presence in the local community of Lakeland and Polk County from the annual Yellow Pages phone book, research from the internet, and consultation with local chambers of commerce.<sup>52</sup> If a congregation is not identified, it can request inclusion by written correspondence to the secretary.<sup>53</sup> Once the list is generated, the City staff then mailed letters of invitation to those congregations asking if they were interested in offering an invocation before the City commission meeting.<sup>54</sup> Based on the response to the invitations, a schedule was printed for the year.<sup>55</sup>

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<sup>45</sup> *Id.* at 571.

<sup>46</sup> *Id.* at 572.

<sup>47</sup> *Id.* at 574.

<sup>48</sup> *Atheists of Florida, Inc. v. City of Lakeland*, 713 F.3d 577 (11<sup>th</sup> Cir. 2013).

<sup>49</sup> *Id.* at 579.

<sup>50</sup> *Id.* at 583.

<sup>51</sup> *Id.* at 585.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 582.

<sup>55</sup> *Id.*

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One of the issues that was noted by the court, is that the secretary to the Commission did not meet the time deadlines in the resolution for when the invitations would be mailed out, or the list refreshed. Eventually, however, when the list was refreshed, the list of religious organizations was over 600 entities.<sup>56</sup> The cost to the City of Lakeland in updating the Congregations List and mailing out invitations was \$1,200 to \$1,500 annually<sup>57</sup>, and neither the speaker nor any congregation was paid.<sup>58</sup> See Exhibit A – City of Lakeland’s Invocation Policy, Resolution No. 4848, attached on next page.

**CONCLUSION:**

The Board of County Commissioners could create a process to select invocation speakers using procedures similar to those set out in *Town of Greece* or *City of Lakeland*. The Board should expect individuals of many faiths to apply to provide invocations. The humanists and atheists are also likely to apply. Declining to allow such invocation speakers could result in new litigation over the right of atheists or humanists to offer an invocation, as that issue was not resolved by the Williamson litigation.

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<sup>56</sup> *Id.* at 589. It should be noted that there is a list on the internet of all “congregations and other religious organizations in Brevard County, Florida” by the entities federal identification number (EIN) showing 821 entries at <http://www.connectbrevard.org/PubApps/geoShowOrgs.php?id=C12009&code=C12009&v=cong>.

<sup>57</sup> Possibly, if Brevard adopted this procedure, some of this expense could be reduced by using email to deliver the invitations, or by permanently advertising on the internet a general invitation and inviting congregations to respond to a point of contact.

<sup>58</sup> *Atheists of Florida, Inc. v. City of Lakeland*, 713 F.3d at 596.