Docket No. 17-1891

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2018

HENDERSONVILLE PARKS and RECREATION BOARD, Petitioner,

v.

BARBARA PINTOK, Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

Team # 2505

Counsel for Petitioner

QUESTIONS PRESENTED

I. Under the Establishment Clause of the First Amendment, does the board member-led prayer before the Hendersonville Parks and Recreation Board meeting comport with the history and tradition of legislative prayer authorized by *Marsh v. Chambers* and *Town of Greece v. Galloway* when the prayer shares similar religious creeds of Christianity?

II. Under the Establishment Clause of the First Amendment, does board member-led prayer before the Hendersonville Parks and Recreation Board meeting serve a legitimate secular purpose, or does it place coercive pressures on religious minorities attending the meetings by endorsing a specific religion through its invocations?

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STATEMENT OF JURISDICTION

A Formal Statement of Jurisdiction has been omitted in accordance with the Rules of the Washington College of Law's Burton D. Wechsler First Amendment Moot Court Competition.

STATEMENT OF THE CASE

Procedural History

This suit derives from Barbara Pintok, the Respondent, filing suit against Hendersonville Parks and Recreation Board ("the Board"), the Petitioner, seeking declaratory and injunctive relief, as well as a preliminary injunction against Petitioner's use of sectarian prayers. J.A. at 10. After the Respondent filed suit, the Board responded with affidavits from its board members, emphasizing that the prayers are used to solemnize public business and not for proselytization. J.A. at 10. After minimal discovery, both sides filed cross-motions for summary judgment. J.A. at 10.

On September 15, 2017, the United States District Court for the District of Caldon found in favor of the Board, granting its Motion for Summary Judgment. J.A. at 7, 15. However, on January 4, 2018, the United States Court of Appeals for the Thirteenth Circuit entered a verdict in favor of the Respondent, reversing the lower court's ruling, and remanding it with instructions to enter summary judgment for the Respondent. J.A. at 16-7. Now comes Petitioner, upon a granted Writ of Certiorari, to litigate this issue in this Supreme Court. J.A. at 26.

Statement of Facts

The Hendersonville Parks and Recreation Board is a five-member body of local government that oversees a litany of facets of the city. J.A. at 8. The Board oversees cultural arts, greenways, golf courses, historic sites, permit rentals and reservations, and outdoor recreation. J.A. at 8. The Board meets once a month to hear various issues. J.A. at 8. At the beginning of each meeting, one member of the board asks everyone to stand for the pledge of allegiance, and then recites a short prayer. J.A. at 8. All five members of the board are Christian, however only one of the provided example prayers refers specifically to a discernable Judeo-Christian deity

and religious work in the record. J.A. at 8-9. References to deities in the prayers include, "Almighty God," "God," "Heavenly Father," "Lord," "Father," and "Jesus Christ." J.A. at 9.

Barbara Pintok, Respondent, is a Wiccan who claims that hearing the short prayer at the beginning of the Board meetings put her in such a distraught and nervous state, that she could not enunciate words when speaking to the Board about a permit issue. J.A. at 1. The record does not state whether Respondent was successful in resolving the permit issue she had with a paddleboat company she was forming. The record does, however, state that the Board reviews permit denials during its meetings. J.A. at 8. Respondent also states that hearing the prayers humiliated her, caused her distress, and made her feel like and outsider. J.A. at 1.

The Board has been conducting short prayers at the beginning of each of its meeting since 2005, and maybe earlier than that. J.A. at 6. Of the Board member's affidavits: one member states that the prayer is not meant to proselytize; two members state the prayer is spoken to solemnize public business; three members state the prayer is to lend gravity to their proceedings; and four members state that the prayers are not intended to coerce anyone. J.A. at 2-5.

In the District Court of Caldon's opinion, the Court reasoned that the prayers comported with the time-honored tradition of solemnizing public business. J.A. at 7. However, in the Thirteenth Circuit Court opinion, the Court stated that the cases used by the District Court to reach its decision, and the cases utilized in this brief, were distinguishable from the case at bar. J.A. at 17.

SUMMARY OF THE ARGUMENT

This Court should reverse the Thirteenth Circuit Court of Appeals' decision that the Board-led prayer did not comport with the history and tradition of legislative prayer. Further, this

Court should reverse the Thirteenth Circuit Court of Appeals' decision because the short prayer at the beginning of the Board meetings served and secular purpose, and were not coercive. The standard of review in this case is *de novo*, "[t]he simple fact is that First Amendment questions of 'constitutional fact' compel this Court's *de novo* review." *Rosenbloom v. Metromedia*, 403 U.S. 29, 54 (1971).

This case presents two issues on Petition for Writ of Certiorari from the Thirteenth Circuit Court of Appeals. First, whether the Petitioner offering prayer before public meetings comports with the history and tradition of legislative prayer authorized by *Marsh v. Chambers* and *Town of Greece v. Galloway*. Second, whether the Petitioner's practice of beginning its public meetings with prayer has a secular purpose of solemnizing public business or if it places coercive pressures on its audience.

This case concerns the Establishment Clause of the First Amendment, which states, "Congress shall make no law respecting an establishment of religion . . . ." U.S. Const. amend. I. Under this clause, no government, state or federal, "can [establish] a church . . . pass laws which [benefits] one religion, all religions, or prefers one religion over another." *Everson v. Bd. Of Educ.*, 337 U.S. 1, 16 (1947). However, the Establishment Clause does not create a "no religion zone" in society because "[w]e are a religious people whose institutions presuppose a Supreme being" and all branches of government recognize the importance of religion. *Zorach v. Clausen*, 342 U.S. 306, 312 (1957).

This Court should find that the prayer offered at the beginning of the Board meetings comports with the history and tradition of legislative prayer. The history and tradition of this country has shown that "the opening of legislative and other deliberative public bodies with prayer" does not violate the Establishment Clause. *Marsh v. Chambers*, 463 U.S. 783, 786

(1983). This Court should follow its own rulings in *Marsh* and *Galloway*, as both speak directly to this very issue.

This Court should also find that the prayer served a secular purpose of solemnizing public business, and was not coercive. Prayers before government meetings have been an accepted practice since the Constitution's creation and their purpose is secular because "a moment of prayer or quiet reflection sets the mind[s of legislators] to a higher purpose and thereby eases the task of governing." *See Town of Greece v. Galloway*, 134 S. Ct. 1811, 1825 (2014). Also, the coercion test is not applicable to this case because this case does not concern minors. Even if this Court finds the coercion test should be applied the practice of prayer in this manner still passes the test.

Further, Summary judgment should be granted to a moving party when "[t]here is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The Board in this case bears the initial burden to show a lack of dispute over material facts. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Although inferences are to be made in favor of the nonmoving party, the nonmoving party cannot rely on "mere allegations or denials" and must produce "specific facts" showing the moving party is not entitled to summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

This Court should reverse the Thirteenth Circuit Court of Appeals because the Board is entitled to summary judgment because the Board's prayer comports with the history and tradition of legislative prayer. This Court should also reverse the Thirteenth Circuit Court of Appeals because the Board member-led prayer has a secular purpose for solemnizing public business and does not place coercive pressures on its citizens attending the meetings. Therefore, this Court

should reverse the Thirteenth Circuit's decision and reinstate the District Court of Caldron's decision to grant the Petitioner's Motion for Summary Judgment because there is no genuine issue to any material fact and the Petitioner is entitled to judgment as a matter of law.

ARGUMENT

I. THE THIRTEENTH CIRCUIT COURT OF APPEALS ERRED WHEN IT FOUND THAT THE BOARD MEMBER-LED PRAYERS AT HENDERSONVILLE'S PARKS AND RECREATION BOARD MEETINGS DID NOT COMPORT WITH THE HISTORY AND TRADITION OF LEGISLATIVE PRAYER.

This Court should reverse the Thirteenth Circuit Court of Appeals and affirm the District Court of Caldon's decision to grant the Board's Motion for Summary Judgment because its practice of board member led prayer does not violate the Establishment Clause when that prayer comports with the history and tradition of legislative prayer for the following four reasons. First, this Court has recognized in *Marsh* and *Galloway* that legislative prayer is deeply rooted within this Nation's history and tradition of the Establishment Clause. Second, the Board is a deliberative body that legislative history extends to. Third, the Boards's prayers sharing similar religious creeds does not violate the Establishment Clause alone. Fourth, as an alternative, if this Court upheld the Thirteenth Circuit Court of Appeals' decision preventing the Petitioner from opening its meetings with prayer would violate the Free Exercise Clause of the First Amendment. Therefore, this Court should reverse the Thirteenth Circuit Court of Appeals' decision and reinstate the District Court of Caldon's grant of summary judgment.

A. This Court Ruled the Establishment Clause Permits Legislative Prayer in both *Marsh* and *Galloway*.

This Court should apply its precedents in *Marsh* and *Galloway*, rather than applying the *Lemon* Test, and uphold its prior decision that the practice of opening legislative and other deliberative public meetings with prayer is protected under the First Amendment.

Traditionally, an Establishment Clause violation is viewed under the *Lemon* test, which states that "[a] statute must have a secular legislative purpose, its principle or primary effect must be one that neither advances nor inhibits religions, and the statute must not foster 'an excessive government entanglement with religion.'" *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971) (citation omitted). However, this Court did not apply the *Lemon* test in *Marsh* and "focused on the history and tradition of legislative prayer in American society." *Marsh*, 463 U.S. at 786. Further, this Court in *Galloway* extended *Marsh* to apply protection to prayers in public town meetings. *See Town of Greece v. Galloway*, 134 S. Ct. 1811, 1823 (2014).

This Court should reverse the Thirteenth Circuit Court of Appeals and affirm the District Court of Caldon's decision to grant the Board's Summary Judgment for the following two reasons. First, *Marsh* recognizes the importance of legislative prayer. Second, *Galloway* recognizes that predominant religious legislative prayers in public town meetings do not violate the Establishment Clause. Therefore, the Thirteenth Circuit Court of Appeals erred when it found the Board's opening prayers differed from *Marsh* and *Galloway* and when applying the *Lemon* Test.

1. *Marsh v. Chambers*

In *Marsh*, the issue was whether Nebraska's Legislature violated the Establishment Clause when it opened each legislative day with a prayer that was delivered by a chaplain paid by the State. *See Marsh*, 463 U.S. at 784. The Nebraska Legislature chose a chaplain biennially through the Executive Board of the Legislative Council and paid the chaplain out of public

funds. *Id.* A taxpayer and member of the Nebraska Legislature brought an action alleging that Nebraska Legislature's practice of opening its sessions violated the Establishment Clause and sought to enjoin the enforcement of legislative prayer. *Id.* at 785. This Court ultimately held that having a chaplain-led prayer in state legislature was constitutional because the Founding Fathers of the Constitution saw "no real threat to the Establishment Clause" from prayer practices. *Id.* at 791, 795. Further, this Court found that prayer practices such as Nebraska's had become incorporated as "part of the fabric" of American society. *Id.* at 792.

In *Marsh,* this Court relied on the history and tradition of legislative prayer rather than applying the *Lemon* Test. *See Marsh,* 463 U.S. at 786. In reaching the majority decision, this Court noted that beginning in 1974, the Continental Congress adopted the tradition of opening the session with a prayer offered by a paid chaplain. *Id*. at 787; *see also* 1 J. Cont'l Cong. 26 (1777). When implementing this practice, the Founding Fathers did not consider opening prayers by paid legislative chaplains to be in violation of the First Amendment because the practice of legislative prayer continued without interruption since Congress' first session. *See Marsh,* 463 U.S. at 788. Thus, this Court concluded that throughout America's history, of more than 200 years, legislative prayer "presents no more potential for establishment than . . . school transportation." *Id.* at 791; *see also Everson*, 330 U.S. 1 (1974).

In furthering its analysis, this Court, determined whether a Nebraska Legislature's Judeo-Christian clergyman of sixteen years violates the Establishment clause when he receives compensation from the state. *See Marsh,* 463 U.S. at 793. This Court found that a clergyman of one denomination does not advance the beliefs of a particular church because Nebraska Legislature's decision to reappoint him was due to his performance. *Id.* The record also reflected that Nebraska Legislature often had guest chaplains deliver the opening prayers due to other

legislators' requests or as a substitute. *Id.* This Court also found no Establishment Clause violation when the chaplain's compensation derived from Nebraska's public funds and Nebraska had a history of paying its chaplain for over a century. *Id.* at 794. Moreover, this Court found the "content of the prayer is not of concern to judges where . . . there is no indication that the prayer opportunity has been exploited to proselytize or advance one, or to disparage any other, faith or belief." *Id.* at 795. Ultimately, this Court determined that the courts should not engage in "sensitive evaluation" or analyze the contents of prayers. *See Marsh*, 463 U.S. at 795.

2. *Town of Greece v. Galloway*

Thirty-one years after *Marsh*, this Court found a New York town's practice of prayers with sectarian references to a Christian divinity before town hall meetings were constitutional under the Establishment Clause. *See Galloway*, 134 S. Ct. at 1823. In *Galloway*, a town in New York, began its monthly meetings with a moment of silence. *Id.* at 1816. But in 1999, the newly elected town supervisor decided to replicate a prayer practice similar to prayer at legislative sessions following the Pledge of Allegiance at their town meetings by inviting a local clergyman to deliver a prayer. *Id.*

The process of selecting a clergyman was an informal method of calling congregations listed in a local directory until the town board found a volunteer. *Id.* Eventually, the town board developed a list of volunteer chaplains, mostly all of Christian denomination, who had agreed to return to delivery opening prayers in the future. *Id.* The record reflected that the town board never excluded or denied an opportunity to a potential prayer giver; including any layperson. *See Galloway*, 134 S. Ct. at 1816. As a part of their prayer selection process, the town board neither reviewed the prayers or directed the clergymen on the content of those prayers; which resulted in both civic and religious themes that invoked a divinity or scripture. *Id.* Two individual citizens

sought an injunction to require the town board to limit the prayers to refer to only a "generic God" and not associate with one particular belief. *Id*. at 1817.

This Court focused on three points to reach their decision. *Id.* at 1818. First, this Court interpreted *Marsh* to prohibit town halls from acting as supervisors and censors of religious speech invocations and enforcing nonsectarian beliefs. *Id.* at 1822. Second, this Court found that the ministers being predominantly Christian did not violate the Establishment Clause because the town board was not advancing or disparaging a particular religion. *See Galloway*, 134 S. Ct. at 1824. Third, the town board's prayer practice did not coerce its members and citizens attending the meetings to participate in prayer; which will be addressed in the second argument of this brief. *Id.* at 1827.

In reaching its first conclusion, this Court noted that "the contention legislative prayer must be generic or nonsectarian derives from dictum in [*Cty.*] *of Allegheny* [*v. ACLU*], 492 U.S. 573 (1989)." *Id.* at 1821. However, this Court reasoned that this argument is "irreconcilable with the facts of *Marsh* and with its holding and reasoning" because nowhere in *Marsh* requires legislative prayers must remain neutral. *Id.* Thus, this Court found that "our government is prohibited from prescribing prayers to be recited in public institutions in order to promote a preferred system of belief or code of moral behavior." *Id.* at 1822. However, this Court ultimately concluded that specific references to religious creeds still serve a purpose; but, that there are also constraints on legislative prayer if the "invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion." *See Galloway*, 134 S. Ct. at 1823.

When determining its second conclusion, this Court reasoned that Greece's town board did neither advanced or disparaged a particular religion or belief because it made reasonable

efforts to identify, reach out to, and invited all of the local congregations. *Id.* at 1824. The Court further reasoned that although the majority of the congregations in Greece were Christian, it was not enough to show the town board was biased in who delivered prayers. *Id.* Further, requiring the board to make judgments about which religions were allowed to give invocations would be inappropriate. *Id.* In fact, the Court noted that the town board maintained a policy of nondiscrimination, and allowed laymen and other ministers to deliver the opening prayer. *Id.*

Thus, this Court's prior precedents have continuously held that legislative prayer should be analyzed under the history and tradition of opening prayer practices. It is likely the Respondent will urge this Court to follow its prior precedent under *Lemon*, however, this Court should rely on *Marsh* and *Galloway* when reaching its decision because the Petitioner's prayer practice comports with the history and tradition of legislative prayer. Therefore, this Court should reverse the Thirteenth Circuit Court of Appeals' decision because it erred when applying the *Lemon* test.

B. The Establishment Clause Does Not Prohibit a Board Member Led Prayer with Similar Religious Creeds.

While the Respondent argues that *Marsh* and *Galloway* do not apply because the invocations in those cases are led by religious figures rather than board members themselves endorsing their own religion, this Court should find that there is no constitutional distinction between the two cases and the case at bar. Further, this Court should apply *Marsh* and *Galloway* as controlling precedents for the following three reasons. First, the Board is a deliberative body and therefore the privilege of invocations is permissible. Second, a board member led invocation is not prohibited under the Establishment Clause. Third, the Board's invocations do not advance Christianity nor proselytize or disparage the Respondent's religion. Therefore, this Court should

reverse the Thirteenth Circuit Court of Appeals' and reinstate the District Court of Caldon's decision because the Board's practice of opening its board meetings with prayer led by its members that share similar religious ideologies is not prohibited by the Establishment Clause.

1. A parks and recreation board is a deliberative body and therefore opening prayers are permissible.

The Board is a deliberative body because a parks and recreation board is analogous to *Marsh* and *Galloway* and fits the Sixth Circuit Court of Appeal's description of a deliberative body. In *Galloway*, this Court found that the practice of legislative prayer was not explicitly for legislative sessions and extends to local deliberative bodies like city councils. *See Galloway*, 134 S. Ct. at 1823. Determining the "setting in which prayer arises and the audience to whom the [prayer] is directed" is crucial as to whether opening prayers are allowed. *Id.* at 1825.

If this Court has doubt as to whether a parks and recreation board is analogous to *Galloway*, this Court should adopt the Fourth, Sixth, Tenth, and Eleventh Circuits' approach of determining whether a school board is a deliberative body under some circumstances. *See Am. Humanist Ass'n v. McCarty*, 851 F.3d 521, 529-30 (5th Cir. 2017); *see also Simpson v. Chesterfield Cty. Bd. of Supervisors*, 404 F.3d 276, 278 (4th Cir. 2005) (finding a county board of supervisors is a deliberative body governed by *Marsh*); *Snyder v. Murry City Corp.* 159 F.3d 1227, 1228 (10th Cir. 1998) (holding *Marsh* applies to a city council); *Pelphrey v. Cobb Cty.*, 547 F.3d 1263, 1275 (11th Cir. 2008) (suggesting nothing within *Marsh* states legislative prayer does not apply to local legislative bodies). In that case, the issue was whether a school board of elected officials constituted a deliberative body and whether an opening prayer violated the Establishment Clause. *See McCarty*, 851 F.3d at 526. The Sixth Circuit ultimately held that the school board was a deliberative body in that case because "[it was] charged with overseeing the

district public schools, adopting budgets, collecting taxes, conducting elections, issuing bonds, and other undeniably legislative [tasks]." *Id.*

This case is analogous to *McCarty* because the Board oversees many departments of Hendersonville; including cultural arts, greenways, golf courses, historic sites, permit rentals and reservations, and outdoor recreation that are undeniably legislative. J.A. at 8. While the Board is not a town council, like in *Galloway*, the Board is a department of the city of Hendersonville that holds monthly meetings to hear and decide various issues and elect its officials. J.A. at 8. Further, if the Sixth Circuit found that a school board is a deliberative body, then this Court should conclude that a parks and recreation board is a deliberative body because its entire purpose and structure is to hear and determine particular issues pertaining to Hendersonville's city. Therefore, this Court should follow its prior precedents in *Marsh* and *Galloway* because the Board is a deliberative body under the history and tradition of legislative prayer.

2. The practice of counsel led prayer is not uncommon with legislative prayer.

After this Court's decision in *Galloway*, the circuit courts are split as to whether the practice of board members leading the opening prayers violates the Establishment Clause. This Court, however, should adopt the Sixth Circuit's conclusion that *Marsh* and *Galloway* do not define *who* may give a legislative prayer. *See Bormuth v. Cty. Of Jackson*, 870 F.3d 494, 509 (6th Cir. 2017). Under *Marsh* and *Galloway*, the "court's inquiry must be to determine whether the prayer practice [at issue] fits within the tradition long followed in Congress and the state legislatures." *Id.* at 506; *see also Galloway*, 134 S. Ct at 1819.

In *Bormuth*, a county board of nine individuals opened its monthly meetings with commissioner-led prayers following a call to order. *See Bormuth*, 870 F.3d at 498. The practice

asked the public to participate, if they chose to do so, in the invocations, and the prayers were given by various commissioners on a rotating basis. *Id.* The invocations typically involved invocations relating to the commissioners' own conscience, mainly relating to Christianity, and the board did not review or approve the content of the prayers before they were given. *Id.* An attendee of the board meeting brought suit alleging that the commissioner-led prayer violated the Establishment Clause. *Id.* However, the Sixth Circuit concluded that this approach was "too narrow of a reading of this Court's legislative-prayer jurisprudence and history" and found it "insignificant that the prayer-givers are publicly-elected officials" *Id.* at 509, 512.

The Sixth Circuit reasoned that "opening legislative prayer may be given by various classes of individuals. They include chaplains, guest clergymen, *legislators*, and legislative staff members." *See Bormuth*, 870 F.3d at 510 (emphasis added). The Establishment Clause does not mandate that opening prayer be led by chaplains, instead "all bodies, including regular chaplains, *honor requests from individual legislators either to give the opening prayer* or invite a constituent minister to conduct the prayer." *Id.* (emphasis added). The Sixth Circuit supported their conclusion by stating "[American] history shows legislator-led prayer is a longstanding-tradition" and "has persisted in various state capitals since at least 1849." *Id.*

In this case, it is likely the Respondent will urge this Court to adopt the Fourth Circuit's conclusion that commissioner-led prayer is unconstitutional under the Establishment Clause because it is given in his official capacity as a commissioner. *See Lund v. Rowan Cty., N.C.*, 863 F.3d 268, 282 (4th Cir. 2017). However, if this court were to adopt the Respondent's argument, "it would be nonsensical to permit legislative prayers but bar the legislative officers for whom the [prayers] are being primarily recited from participating in the prayers in anyway." *See Bormuth*, 870 F.3d at 512; *see also Am. Humanist*, 851 F.3d at 529.

This case is analogous to *Bormuth* because the record shows the Board's longstanding practice of board-member led prayer at the beginning of the monthly meetings. At the beginning of each meeting, one of the five board members offers an invocation after the Pledge of Allegiance is recited. J.A. at 8. Further, these prayers are often short and are immediately followed by the board's business agenda. J.A. at 8. While the Petitioner's prayer practice has no written policy, all five of the board members, in their affidavits, have stated that the board has practiced the same rotating, board-member led prayer since being elected to serve on the board. J.A. at 3-6. Therefore, based on this Court's recognition in *Marsh* and *Galloway* that the Establishment Clause does not limit *who* may provide an invocation, this Court should adopt the Sixth Circuit's conclusion that board-member led prayer does not violate the Establishment Clause.

3. The Board's prayer practice does not advance Christianity or disparage the Respondent's religion or beliefs.

Under this Court's precedents in *Marsh* and *Galloway*, this Court should find that the Board's prayers involving invocations with arguably similar religious creeds does not violate the Establishment Clause because the Board is not advancing Christianity nor is it disparaging the Respondent's religion or beliefs. In *Marsh*, this Court concluded that a Christian clergyman of 16 years for the Nebraska Legislature did not violate the Establishment Clause because "the content of the prayer is not of concern to judges where . . . there is no indication the prayer . . . has been exploited to proselytize or advance one, or to disparage any other, faith or belief." *See Marsh*, 463 U.S. at 794. This Court noted that invocations are *only* unconstitutional when the "invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion." *See Galloway*, 134 S. Ct. at 1823. Further, prayers given in the name of a religious

divinity, or reference religious doctrines does *not* remove the practice or legislative prayer from this Court's longstanding tradition. *Id.*

The Respondent will likely argue that the Board's prayers advanced the beliefs of Christianity because they invoked Christian-like references and the invocations were from board members who identified with Christianity. However, the Respondent's argument fails because the Board's prayers do not advance Christianity nor do they disparage the Respondent's personal beliefs.

Here, the record reflects five different invocations that were given before the beginning of each meeting. J.A. at 9. These invocations referenced "Almighty God," "God," "His Healing Hand," "Heavenly Father," "Father," "God's People," "Lord," the book of Isaiah, and "Father and His Son Jesus Christ." J.A. at 9. While the invocations appear to promote the ideologies of Christianity in one of the five prayers, the Board alleges that each prayer was given by the board member's own conscience. The Chairman of the Board, Wyatt J. Koch, states that the board members represent "*all citizens* from the religiously devout to the fiercely atheistic." J.A. at 2 (emphasis added).

Further, Mr. Koch states that board has never sought to engage in any form of religious harassment. J.A. at 2. Mr. Koch's statement is also backed by the remaining board members who have expressed that they do not consider other individual's beliefs, or lack of beliefs, and would never engage in such conduct. J.A. at 3-6. Additionally, the Board has stated that they would not disparage or exclude another individual's belief or prevent them from offering an invocation. Thus, it is clear that the Board's prayers, only one of which relating directly to Christian creeds, do not violate the Establishment Clause under this Court's decisions in *Marsh* and *Galloway*.

This Court should reverse the Thirteenth Circuit Court of Appeals' decision because the Board's prayer practice before monthly board meetings does not violate the Establishment Clause under *Marsh* and *Galloway* and there is no genuine issue of material fact. The Respondent has failed to identify specific facts showing the Board is not entitled to Summary Judgment as a matter of law. The Respondent instead relies on mere allegations that the Board's prayer practice violates the Establishment Clause because it does not fall under the legislative prayer exceptions outlined in *Marsh* and *Galloway.*

Under the totality of circumstances, the Respondent's argument that the *Lemon* test should apply fails for three reasons. First, the Board is a deliberative body because they handle city matters and decide issues relating to the Parks and Recreation of Hendersonville. Second, *Marsh* and *Galloway* did not expressly state that legislator, or board-member, led prayer is unconstitutional and should adopt the Sixth Circuit's conclusion. Third, regardless of whether one of the Board's invocations share similar Christian ideologies, this Court has consistently held that the content of the prayers is not an issue unless it is to advance, or disparage, a particular religion; which the record reflects the Petitioners have not engaged in this conduct. Therefore, this Court should reinstate the District Court of Caldon's grant of the Petitioner's summary judgment because their tradition of board-member led prayer does not violate the Establishment Clause.

C. <u>As a Policy Reason, Censoring or Prohibiting the Petitioner's Opening Prayers Would Violate the Free Exercise Clause as an Alternative.</u>

This Court should reverse the Thirteenth Circuit's decision because ruling in favor of the Respondent violates the Free Exercise Clause of the First Amendment by requiring the Board to monitor their opening prayers or by prohibiting the opening prayers entirely. Under the Free

Exercise Clause, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I. The purpose of this clause is to "plainly protect individuals against congressional interference with the right to exercise their religion." *See Galloway*, 134 S. Ct. at 1836.

In *Marsh*, this Court noted that "the content of the prayer is not of concern to judges . . . [and] it is not for [the judges] to embark on a sensitive evaluation or to parse the content of a particular prayer." *See Marsh*, 463 U.S. at 794-95. In applying the decision in *Marsh*, this Court also found that the Constitution does not require the prayers to be non-religious and that "requir[ing] a town 'to make wholly inappropriate judgments about the number of religions [it] should sponsor'" is a form of governmental entanglement. *See Galloway*, 134 S. Ct. at 1824 (citation omitted). Thus, a challenge based solely on the content of the prayers will not establish an Establishment Clause violation and would prohibit individuals from expressing their beliefs; violating the Free Exercise Clause. *Id.*

In this case, the Respondent is asking this Court to require the Board to either monitor the content of the opening prayers or to cease opening their meetings with invocations. Based on this Court's rationale in *Marsh* and *Galloway*, this claim fails because it violates not only the Establishment Clause, but as well as the Free Exercise Clause. As a policy concern, requiring the Board to cease giving an opening prayer or monitor the content violates the Free Exercise Clause because the board members would be unable to express their own beliefs and religion. Further, there is no evidence in the Record that shows the Board excluded other individuals from giving their own invocation pertaining to their religion or beliefs. Therefore, if this Court were to rule in favor of the Respondents, this Court would essentially be creating a precedent that contradicts the Establishment Clause and Free Exercise Clause.

In conclusion, this Court should reverse the Thirteenth Circuit's decision to remand this case and should reinstate the District Court of Caldon's decision for the following reasons. First, this Court should follow its prior controlling precedents in *Marsh* and *Galloway* regarding the boundaries for legislative prayer. Second, the Board's prayer practice of board-member led prayer does not violate the history and tradition of legislative prayer under the Establishment Clause. Third, as a policy reason, ruling in favor of the Respondents would violate and contradict the purpose of the Free Exercise Clause and the Establishment Clause. Fourth, the Respondent has failed to show there is a genuine issue of material fact to be determined. Therefore, this Court should reverse the Thirteenth Circuit's decision to remand this case and reinstate the District Court's conclusion under *Marsh* and *Galloway*.

II. THE THIRTEENTH CIRCUIT COURT OF APPEALS ERRED WHEN IT FOUND THAT HENDERSONVILLE'S PARKS AND RECREATION BOARD VIOLATED THE FIRST AMENDMENT'S ESTABLISHMENT CLAUSE BECAUSE THE BOARD OPENING MEETINGS WITH PRAYER SERVES A LEGITIMATE SECULAR PURPOSE, AND IS NOT COERCIVE.

The Board did not violate the First Amendment prohibition against government establishment of religion when the Board conducted prayers before each meeting.

Since *Marsh*, this Court has held that prayer at the beginning of legislative meetings is "deeply embedded in the history and tradition" of the United States. *Marsh*, 463 U.S. at 787. Prayer has been used at the start of public meetings as a way to bring those in attendance together, and to bring the business at hand to the forefront of everyone's mind. This Court has tested the legitimacy of such an action by using the history and tradition test from *Marsh* and *Galloway* to determine what the Founders intended by creating the Establishment Clause. This Court has also used the *Lemon* test which examines if there is a secular purpose, if the action is advancing religion, and if there is excessive government entanglement. This Court has also used

the endorsement test, as a part of *Lemon,* to decide if the government has endorsed a religion through the challenged action. This Court has repeatedly found the traditional practice of prayer at a public meeting is not a practice the Founders intended to limit when they created the Establishment Clause.

The opinion from the Thirteenth Circuit should be reversed for three reasons. First, this Court has found legislative prayer before government meetings serves a secular purpose of solemnizing public business. Second, prayers lead by board members does not clearly serve a religious purpose. Third, board member-led prayer does not place coercive pressure on religious minorities because individuals are not required to participate in the Board's prayer practice. Therefore, the judgment of the Thirteenth Circuit should be reversed.

A. Prayer Opening Public Meetings Serves a Secular Purpose to Solemnize Public Business.

Prayer before a government meeting is used to solemnize public business. Prayer emphasizes the importance of public business by reminding lawmakers to set aside their differences and express "a common aspiration to a just and peaceful society." *Galloway,* 134 S. Ct. at 1818. This Court has prohibited legislative and governmental actions that lack a secular purpose *only* when the action is motivated *wholly* by religious considerations. *Lynch v. Donnelly*, 465 U.S. 668, 680 (1984). (emphasis added).

The town of Greece practiced prayer at monthly board meetings; but invited different people to give the prayer at different meetings. *See Galloway*, 134 S. Ct. at 1816. In that case, most of the religions within Greece were of the Christian faith. *Id.* Thus, most of the prayers were Christian. *Id.* Plaintiff filed suit claiming she was offended and that Christian prayers were favored over others. *Id.* at 1817. Prayers before government meetings have been an accepted

practice since the Constitution's creation and their purpose is secular because "a moment of prayer or quiet reflection sets the mind[s] [of legislators] to a higher purpose and thereby eases the task of governing." *See Galloway*, 134 S. Ct. at 1825.

In *Lynch*, this Court found a city-owned Christmas display did not violate the Establishment Clause because of the secular purpose of celebrating the holiday and depicting the origins of religion. *Lynch*, 465 U.S. at 687. Even when there are benefits to a religion indirectly, the state action can still be valid if there is a secular purpose. *Id.* at 680. Justice O'Connor's concurrence states "[c]elebration of public holidays, which have cultural significance even if they also have religious aspects, is a legitimate, secular purpose." *Id.* at 691.

Here, the Board begins its monthly public meetings with a short prayer. J.A. at 8. It is a practice the Board has continued for more than a decade. J.A. at 6. The Board does not pay anyone to give the prayer before the meeting, but instead, gives the prayer themselves. J.A. at 8. Like *Galloway*, the prayers are Christian, but they are different sects of Christianity. J.A. at 8. The Board members agreed the prayer is used as a way to solemnize public business by providing those in attendance time to reflect on their own thoughts. J.A. at 2. Further, like *Lynch*, the practice has a secular purpose regardless of the prayer's religious content.

This Court should reverse the Thirteenth Circuit's decision because the Petitioner does not violate the Establishment Clause because their prayer serves a secular purpose to solemnize public business for the following two reasons. First, the *Lemon* test does not prohibit prayers before parks and recreation board meetings. Second, presumably Christian prayers at the Board meetings pass the endorsement test.

1. The *Lemon* Test Allows Prayer at Parks and Recreation Board Meetings.

This Court should use the history and tradition test set forth in *Marsh* and *Town of Greece* because the *Lemon* test is primarily used for cases concerning public funds. This Court stated *Lemon* only serves as "helpful signpost" in determining an Establishment Clause violation. *Van Orden v. Perry*, 535 U.S. 677, 686 (2005). However, if *Lemon* is determined the appropriate test, the Court must still find that the practice of prayer before meetings serves a secular purpose of solemnizing public business. The constitutionality of a law under the Establishment Clause can be determined by the *Lemon* test. Under *Lemon*, the law must serve a secular purpose, it cannot have a primary effect of advancing religion, and it cannot create excessive government entanglement. *Id.* To satisfy an Establishment Clause violation, each prong of the test must be met. *Id.*

In *Lemon*, the states of Pennsylvania and Rhode Island both adopted statutes which would help fund religious schools through state aid. *Id.* at 606. This Court held aid to religious schools violates the First Amendment. *Id.* at 612. The Court reasoned the aid was part of three main evils the Establishment Clause was created to protect against: government sponsorship of religion, financial support, and active involvement in religious activities. *Id.* at 612 (citing *Walz v. Tax Comm'n of N.Y.C.*, 397 U.S. 664, 668 (1970)). This Court should first determine if the purpose of the religious practice serves a secular purpose, then if the government involvement has the effect of advancing religion, and finally, whether the government's involvement in the religious practice creates excessive government entanglement with religion. *Id.* Similar to *Galloway*, this Court should find that "a challenge based *solely* on the content of a prayer will not likely establish a constitutional violation." *Galloway*, 134 S. Ct. at 1814. (emphasis added.)

In *Wynne*, a Wiccan filed suit against the city council because the council delivered Christian prayers before its meetings and therefore advanced one religion. *Wynne v. Town of*

Great Falls, 376 F.3d 292, 294 (4th Cir. 2004). The Fourth Circuit held the council violated the Establishment Clause because each prayer referenced a specific religion and the council would not allow outside religions to participate. *Id.* The Court looked to *Marsh* and *Cty. of Allegheny v. ACLU*, 492 U.S. 573, to determine whether "a legislative body may, without violating the Establishment Clause, invoke Divine guidance for itself before engaging in its public business." *Id.* at 298. However, the legislative body cannot exploit the prayer opportunity to advance religion for "one specific faith or belief in preference to others." *Id.* The Fourth Circuit reasoned the prayer in *Marsh* did not violate the Establishment Clause because the prayer was nonsectarian, preceded public business, and directed only the legislators. *Id.* at 302.

In *Walz*, this Court defined excessive government entanglement as "inescapably one of degree." *Walz*, 397 U.S. at 674. There, the issue was whether granting a church a tax exemption was excessive government entanglement. *Id.* at 667. This Court found the tax exemption actually creates less government interference, but either way, there is some degree of government involvement. *Id.* at 674. However, this Court found there cannot be *excessive* government entanglement; not no government involvement at all. *Id.* at 674-75.

Like *Wynne*, the prayer here is nonsectarian because the board members are not of the same sect and each prayer is not explicitly Christian in nature. The prayers take place before each meeting and are intended for the board members but a moment of reflection is directed to all attendees. J.A. at 2. Additionally, the prayers ask for guidance for decisions and conducting business done by council. J.A. at 9. Further, this case is analogous to *Walz*, because the government will have some degree of involvement regardless of who leads the prayer or what religion the prayer invokes.

In *Utah Highway Patrol*, this Court denied the petition for Writ of Certiorari to determine whether constructing crosses on the highway for slain officers violated the Establishment Clause; however, Justice Thomas wrote a dissent. *Utah Highway Patrol Ass'n v. Am. Atheists, Inc.*, 565 U.S. 994, 995 (201l). Justice Thomas found the case should have been taken up by this Court because there is no set test to follow for Establishment Clause issues. *Id.* at 1008. Thomas states "the *Lemon*/endorsement test continues to 'stal[k] our Establishment Clause jurisprudence' like 'some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried." *Id.* at 998 (quoting *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 398 (1993), Scalia, J., concurring in judgment.) Thomas argues that since this Court has started using the endorsement test, it has been decided that a crèche (a Christmas decoration displaying a nativity scene) "on government property violates the Establishment Clause, except when it does not." *Id.* at 1001. The same is said for other religious symbols, like the menorah and the Ten Commandments. *Id.* at 1002-03.

For these reasons, this Court should find the *Lemon* test inapplicable and reverse the Thirteenth Circuit's decision.

2. Presumably Christian Prayer Before Parks and Recreation Board Meetings Passes the Endorsement Test.

This Court should find neither the *Lemon* test nor the endorsement test are applicable to this case but that if this Court chooses to use those tests, the practice of prayer before a public meeting does pass the endorsement test. Justice O'Connor created the endorsement test as an amendment to the *Lemon* test, to determine if the government has endorsed a religion. *Lynch*, 465 U.S. at 688-89. A relationship between government and religion is inevitable. *Id.* at 672. A law which indirectly benefits religion is not constitutionally invalid because of that reason alone.

Id. at 683. It is important that the government not have a practice which provides a message that it endorses or disapproves of religion. *Id.* at 692.

In *Lynch*, the city of Pawtucket displayed a nativity scene, which it owned and maintained, at Christmas time. *Id.* at 671. This Court found the display did not violate the Establishment Clause because the display was not an endorsement of religion by the government. *Lynch,* 465 U.S. at 687. This Court reasoned the display was "no more [of] an advancement or endorsement of religion [compared to] the Congressional and Executive recognition of the origins of the Holiday itself as "Christ's Mass" or the exhibition of hundreds of religious paintings in governmentally supported museums." *Id.* at 683.

Justice O'Connor's concurrence in *Lynch* states government endorsement or disapproval of religion should also be determined when reviewing a possible Establishment Clause violation. *Id.* at 688-89. She argues that a large audience will receive the objective meaning, while others receive the subjective meaning behind government speech. *Id.* at 690. Therefore, both the objective and the subjective meaning should be examined. *Id.* O'Connor found the first prong of *Lemon* determines the actual purpose of the practice and the second prong determines the effect. Irrespective of the government's actual purpose, "[a]n affirmative answer to either question should render the challenged practice invalid under the Establishment Clause." *Lynch,* 465 U.S. at 690. However, a focus on government endorsement of religion provides the correct interpretation of *Lemon's* effect prong because it does not "require invalidation of a government practice merely because it . . . advance[s] or inhibit[s] religion." *Id.* at 691-92. What is important, is that the practice does not relay a message that the government endorses or disapproves of religion. *Id.* at 692.

Additionally, Justice Thomas in *Utah Highway Patrol* states the endorsement test should not be used because it is too flexible because different judges will interpret the reasonable observer in different ways. *Utah Highway Patrol Ass'n,* 565 U.S. at 1009. Whether the reasonable observer believes a government has endorsed religion is a key to the endorsement test. *Id.* at 996. Further, Justice Thomas states that various tests create inconsistent outcomes to determine whether an Establishment Clause violation has occurred, and so individuals will refrain from religion when the government is involved. *Id*. However, this was not the result the Establishment Clause was enacted for. *Id.*

Under the endorsement test, the Board has not endorsed or disapproved of any religion. A reasonable observer would find the objective meaning of the Board's intended purpose for the prayers were to solemnize public business and the prayers delivered before the meetings reflect that purpose. J.A. at 2-6, 9. Additionally a reasonable observer, under the prayers subjective meaning, could find that the prayer is given for a religious reason, but still, they should not find the prayer an endorsement of religion. Even if this Court determines that Christianity was indirectly benefited due to the Board's prayer practice, this Court should conclude that it is insufficient to find an Establishment Clause violation.

This Court should find *Lemon* inapplicable because the test is primarily used for issues involving aid. *Lemon* and the endorsement test are not the correct avenue for this Court because the history and tradition test laid out in *Marsh* is the applicable test in this case. However, if this Court determines *Lemon* should be used, the practice of prayer before the Board meetings satisfies those tests. This Court should reverse the decision of the Thirteenth Circuit and grant summary judgment for the Board because it has not violated the Establishment Clause of the First Amendment.

B. Board Member-Led Prayer Does Not Serve a Clearly Religious Purpose.

A short prayer at a pubic government meeting does not serve a clearly religious purpose. A state action which has religious undertones does not violate the Establishment Clause if there is historic and social meaning. *Van Orden*, 535 U.S. at 690. Further, if an action does serve a religious purpose, it must neutrally serve a secular purpose. *McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844, 860 (2005).

In *Van Orden*, this Court found that a statue of the Ten Commandments constructed in front of the Texas State Capitol does not violate the Establishment Clause because it is among several other secular items. *Van Orden*, 535 U.S. at 681. This Court also found that when determining state actions with religious undertones, the context matters. *Id.* at 690-91. A religious practice or item cannot be dismissed as an automatic violation of the First Amendment just because it involves religion. *Id.* at 692.

Yet the same year, this Court ruled that the Ten Commandments could *not* be hung on the walls inside of several Kentucky courthouses. *McCreary Cty.*, 545 U.S. at 881 (emphasis added). This Court stated the Ten Commandments were hung for a religious purpose and outweighed the secular purpose therefore violating the Establishment Clause. *Id.* The display was hung in three different courthouses and all three were displayed differently. *Id.* at 851-53. Two of the displays made the Ten Commandments the focal point of the display and one only included secular pieces of history which involved Christianity. *Id.* However, Justice Scalia pointed out in his dissent that the court mistakenly looked to whether people would believe the government was trying to advance religion. *Id.* at 911.

Here, the Thirteenth Circuit found the short prayers at the beginning of the Board's monthly board meetings served a secular purpose. J.A. at 22. The prayers before the meetings are

similar to the issues in *Van Orden* and *McCreary*. Like *Van Orden*, this is not a situation an individual is subjected to every day. The prayers only happen once a month and the individuals may not be subjected to the prayers on a monthly basis if they choose not to attend the meetings. J.A. at 8. Like the Board, Congress and many state legislative bodies begin their sessions with prayer.

This case is distinguishable from *McCreary* because the prayer is only one small portion of a secular meeting compared to a large display of a religiously affiliated document. It is hard to argue that one short prayer lasting mere minutes can turn a long meeting into a religious experience or contain a clearly religious purpose. However, if the prayer does serve a religious purpose, it cannot be argued the religious purpose outweighs the secular purpose of solemnizing public business through a practice engrained in history and society.

This Court should find that the Board giving a prayer before a government meeting does not serve a clearly religious purpose. This Court should reverse the decision of the Thirteenth Circuit because the prayer given before the Board meeting does not have a clearly religious purpose to endorse a particular religion. Further, one religious practice among several secular practices does not create a religious purpose or experience. Therefore, this Court should reinstate the District Court's grant of the Board's Summary Judgment because there is no genuine issue of material fact that the Petitioner was attempting to endorse Christianity.

C. Board Member-Led Prayer Does Not Place Coercive Pressure on Religious Minorities.

The coercion test is not applicable to this case because this case does not concern minors; but if this Court finds the coercion test should be used, the practice of prayer still passes the test. Under the Establishment Clause, a government cannot coerce a person into supporting or

participating in a religious exercise. *Lee v. Weisman*, 505 U.S. 577, 587 (1992). Prayers led by lawmakers, like sectarian prayers, only *sometimes* violate the Establishment Clause due to placing coercive pressures on individuals attending the meetings. *Lund v. Rowan Cty., N.C.*, 863 F.3d 268, 274 (4th Cir. 2017) (emphasis added).

In 1992, this Court found that a principal selecting a religious figure to give an invocation at a school graduation violated the Establishment Clause. *Lee*, 505 U.S. at 580. This Court found prayer cannot be held at graduations where minors are present due to their susceptibility to religious pressures. *Id.* at 599. However, Justices Scalia, White, and Thomas argued in their dissent that those in attendance do not have to participate and they only need to be respectful to the others participating in prayer. *Id.* at 637. Justice Scalia also argued that if prayer coerces a person, then the Pledge of Allegiance is also government coercion. *Id.* at 638-39.

Adults can tolerate and respect other religions without being coerced. *Galloway*, 134 S. Ct. at 1823. This Court found adults have their own beliefs and are not easily coerced into changing those beliefs. *Id.* Peer pressure does not affect adults the same way it affects children that are present under these circumstances. *Id.* at 1827. Further, this Court determined adults "often encounter speech they find disagreeable; and an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views in a legislative forum." *Id.*

In *Lund*, government officials led the opening prayers, but they did not permit anyone else to give prayers at the meeting. *Lund*, 863 F.3d at 272. Further, all of the board members were of the same faith and the prayers only referenced one faith. *Id.* at 271-72. Also, the members in that case requested the audience rise and take part in the prayer and those who did not partake in the prayer were singled out by the board members and other attendees. *Id.* at 272.

therefore, coercing them to exercise in the religious practice. *Id*. For those reasons, the Fourth Circuit found the Establishment Clause was violated. *Id.*

Here, unlike *Lund*, the coercion test from *Lee* should not apply because the Board meeting is not an important ceremony dedicated to minors. As Justice Scalia argued in his dissent, "speech is not coercive, the listener may do as he likes." *Lee* 505 U.S. at 642 (citing *Am. Jewish Cong. v. Chi.*, 827 F.2d 120, 132 (7th Cir. 1987) (Easterbrook, J. dissenting). The Fourth Circuit has stated this Court assumes "mature adults can follow contextual cues without risk of religious indoctrination." *Lund*, 863 F.3d at 320.

The Thirteenth Circuit relied on *Lund* when reaching its decision to state the Board members cannot be the ones who lead the prayers at the meetings. J.A. at 21. However, this case is distinguishable from *Lund* because the Petitioner has not prohibited anyone else from praying at the meetings, the prayers do not reference the same faith, and the Board does not require those in attendance to join in the exercise of prayer. J.A. at 8.

This Court should find that when prayer is used at the beginning of a public meeting, the prayer is not coercing the audience to join the religion. Further, this Court should find that the coercion test in applicable because those attending the Board meetings are not minors.

In conclusion, this Court should reverse the decision of the Thirteenth Circuit Court. The lower court erred in its application of the *Lemon*/endorsement test because *Lemon* is more commonly used for financial issues. The lower court also erred in using the coercion test because those in attendance at the Board meetings should not be coerced by mere words because they are mature adults. However, if this Court finds the *Lemon*, the endorsement, and the coercion tests are all applicable, this Court should still find in favor of the Board because the facts contained within the record passes both the *Lemon*/endorsement test and the coercion test. We pray this

Court reverse the decision of the Thirteenth Circuit and grant Summary Judgment in favor of Petitioner because there is no genuine issue of material fact.

CONCLUSION

The Board's practice of member-led prayer comports with the history and tradition of legislative prayer under this Court's precedents in *Marsh v. Chambers* and *Town of Greece v. Galloway*. The Board's prayers may have contained specific references to Christian ideologies, but this is not enough to sustain an Establishment Clause violation because it is unconstitutional under the First Amendment to require the members monitor the content of the invocations. While the Board members were predominantly Christian, this does not endorse one specific religion over another because the intent was strictly for solemnizing business and to bring peace-of-mind before determining issues. Further, the Board's practice of inviting the attendees to participate does not place coercive pressures on individuals that are not Christians because individuals were never harassed if they chose to participate. Therefore, the Board asks this Court to reverse the Thirteenth Circuit's decision and reinstate the District Court's grant of the Petitioner's Motion for Summary Judgment.