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 2517
Counsel for Petitioner

QUESTIONS PRESENTED

I. Whether the Board's practice of having members offer prayer before public meetings comports with the history and tradition of legislative prayer authorized by *Marsh v. Chambers* and *Town of Greece v. Galloway*.

II. Whether the Board's practice of beginning public meetings with prayer supports the secular purpose of solemnizing public business, or whether legislator-led prayer has a clearly religious purpose and places coercive pressures on religious minorities.

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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

A. Summary of the Facts

Barbara Pintok ("Respondent") a follower of Wicca, a Pagan religion, presented before the Hendersonville Board of Parks and Recreation ("Board") to seek a license to operate a paddleboat company on a lake. (J.A. at 1, 8). The Board oversees many aspects of the city, including permit denials.[1] (J.A. at 8). The Board consists of five members, all whom represent different branches of the Christian sect.[2] *Id.* At the start of each meeting, everyone in the room is first asked to stand and recite the Pledge of Allegiance. *Id.* Following the Pledge of Allegiance, one of the Board members delivers a short prayer. *Id.* These prayers include:

> "Almighty God, we ask for thy blessings as we conduct our work. . . . May you guide us to preside fairly and impartially over all petitions, grievances, and arguments brought before us."
>
> "We ask for a moment of quiet reflection to allow all present in this room to reflect on the pressing moments of their day. We pray that we can all come together in a spirit of unity despite whatever differences we may have."
>
> "We are all sinful but as the book of Isaiah reads, though our sins are like scarlet, they shall be as white as snow. . . . We must strive to conduct our business in a way consistent with the careful hand of the Father and His son Jesus Christ."

(J.A. at 9). Prayers delivered by the Board referenced "God" and "Lord" while seeking blessings of "peace and togetherness" in the community. (J.A. at 9). Although the prayers may have occasionally mentioned the Christian deity, a biblical verse has only been cited once, and it did not portray a "religious bent" towards Christianity. (J.A. at 8, 18). Respondent was exposed to Christianity as a child and believes that Christians in her community are intolerant to members of

[1] There is no indication that the Board's denial of Respondent's permit to operate the paddleboat company was related to Respondent's religious views. (J.A. at 18).
[2] These include: Baptist, Catholic, Presbyterian, Methodist, and Lutheran. (J.A. at 8).

other religions. (J.A. at 1). Respondent finds displays of Christianity offensive to her personal beliefs. (J.A. at 17).

The Board's practice of opening up their sessions with prayer is a long held tradition. (J.A. 2, 5, 6). Respondent has attended numerous meetings before the Board, and was aware of the Board's tradition of offering short prayers. (J.A at 1, 8). After one of the meetings, Respondent claimed as a result of the Board's prayers, she was too intimated to speak and felt like an outsider. (J.A. at 1). Respondent claimed Mr. James Lawley ("Mr. Lawley") told her, "this is a Christian Country, get over it." (J.A. at 1). However, Mr. Lawley the longest member serving on the Board does not recall making that statement. (J.A. at 6). Rather, Mr. Lawley explained that is not how he would comport himself. *Id.*

The Board had no intention to coerce the Respondent or anyone else. (J.A. at 2, 3, 6). The Board serves all people—no matter what religion, faith, or lack thereof, and treats all citizens with the dignity and respect that they deserve no matter their religion. (J.A. at 4, 9). The Board has never tried to proselytize or engage in any form of religious harassment; the prayers are short and do not resemble any type of church services. (J.A. at 2, 3, 5). The prayers were only meant to lend gravity to the Board's proceedings, and to solemnize public business. (J.A. at 4).

B. Summary of the Proceedings

Respondent filed a lawsuit, seeking declaratory and injunctive relief, as well as a preliminary injunction against the Board under the Establishment Clause of the First Amendment in the District of Caldon. (J.A. at 7, 10). The alleged violation occurred before the Board as Respondent sought a license. (J.A. at 8). Respondent claimed the Board's use of sectarian prayers at its meetings was a violation of her First Amendment rights. (J.A. at 10). The Board responded collectively with affidavits emphasizing that the prayers were used to solemnize public business

and not for proselytization. *Id.* After minimal discovery, both sides filed cross-motions for summary judgment. *Id.* The district court denied Respondent's motion for summary judgment, but granted the Board's motion for summary judgment. (J.A. at 15). The district court properly analyzed the issue under the history and tradition analysis offered in *Marsh* and *Town of Greece*. (J.A. at 13). The district court concluded the prayers offered by the members of the Board did not denigrate or mock any religion or threaten any adherents to other religions. *Id.* The district court reached a conclusion that the prayers were not in violation of the Establishment Clause. (J.A. at 7).

The Respondent filed a notice of appeal to the United States Court of Appeals for the Thirteenth Circuit. (J.A. at 16). The court of appeals, in reviewing the lower court's finding reversed and remanded the district court's decision with instructions to enter summary judgment for Respondent. (J.A. at 24). The court of appeals found the district court erred in its finding that there was no distinction between legislative-led prayers and religious leader-led prayers. (J.A. at 21). The appellate court found that governmental officials leading and composing prayer is precisely the type of activity that the Establishment Clause prohibited. *Id.* The appellate court found that the Board's prayer practice had a primary effect of advancing the Christian religion. (J.A. at 22). The Board then petitioned this Court for relief. (J.A. at 26). This Court granted certiorari. *Id.*

C. Standard of Review

The proper standard of review for questions of law is *de novo*. *United States v. Gypsum Co.*, 333 U.S. 364, 394 (1984). Therefore, this Court may review the present issues set forth using a *de novo* standard of review. *See also Rogers v. O'Donnell*, 737 F.3d 1026, 1030 (6th Cir. 2013).

SUMMARY OF THE ARGUMENT

Since the founding of this Country, Congress, State legislatures, and many municipal bodies have commenced legislative sessions with a prayer. This Court has long recognized that legislative-led prayers before legislative meetings are permitted under this Nation's history and tradition. The Board's practice of having members deliver a short prayer before a public meeting does not violate the Establishment Clause because legislative prayer is deeply embedded in the history and tradition of this Country.

This Court has twice approved the practice of legislative prayer and has created a broad exception to its constitutional inquiry. This practice is not subject to any of the original Establishment Clause test. It is of no importance that Board members are offering the prayers. The prayer givers identity is not taken into account during a constitutional analysis and if it were, absurd results would ensue. There is no difference between a legislator and an invited chaplain offering the prayers. Legislative-led prayer does not create an exception to the broad analysis this Court developed. A fact sensitive review of prayer practice is inconsistent with this Courts prior findings, and therefore, would be incorrect. There is no logical reasoning for this Court to constitutionally permit legislative prayer, but limit certain persons from offering them solely because of their governmental position.

The Board's practice of beginning public meetings with prayer supports the secular purpose of solemnizing public business. This Court has previously stated that legislative prayers lend gravity to public business by allowing lawmakers and citizens a chance to reflect before the commencement of a meeting. The Board did not intend to force religious conformity upon the citizens who attended the meetings. Rather, the Board's intention was to solemnize public business and to offer citizens a chance to reflect quietly on matters before the Board.

Furthermore, the Board's member-led prayers did not have a clearly religious purpose and did not place coercive pressures on religious minorities. This Court has recognized that the use of prayer to open legislative sessions is constitutional, even if, the prayers are explicitly Christian in tone. Even though the Board's prayers invoked God and other Christian references, the prayers involved universal themes such as inviting lawmakers to reflect upon shared ideals and to emphasize the gravity of their proceedings. The Board's prayers were limited in their context and they could coexist with the principles of disestablishment and religious freedom. The Board never engaged in any form of religious harassment to force religious conformity upon any of the citizens who attended these meetings.

The *Lemon* test is inapplicable to the facts of this case. Here, the legislative-led prayers had a secular purpose that did not have a primary effect that neither advanced nor inhibited religion, and the prayers did not create excessive entanglement between church and state. Even if *Lemon* applied, the Board's practice would still be found constitutional. The Board's prayers taken as a whole fit within our historical traditions because they did not violate the Establishment Clause, and did not exceed the limitations imposed by this Court.

ARGUMENT

I. THE BOARD'S PRACTICE OF HAVING MEMBERS DELIVER PRAYERS BEFORE PUBLIC MEETINGS DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE BECAUSE LEGISLATIVE PRAYER IS DEEPLY EMBEDDED IN THE HISTORY AND TRADITION OF THIS COUNTRY REGARDLESS OF THE PRAYER GIVERS IDENTITY.

"The First Amendment does not demand a wall of separation between church and state." *Smith v. Jefferson Cty. Bd. of Sch. Comm'rs*, 788 F.3d 580, 591 (6th Cir. 2015). The "separation" established by the First Amendment is not intended to prohibit all contact between church and state. This Court previously recognized that "it is not necessary to define the precise boundary of the Establishment Clause where history shows that the specific practice is permitted." *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1819 (2014). Government officials leading prayers does not cause intertwinement between the government and religion because the government respects "the religious nature of our people and accommodates the public service to their spiritual needs." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952).

The practice of opening legislative sessions with prayer dates back to the birth of our Republic, when the Continental Congress adopted the practice. *Marsh v. Chambers*, 463 U.S. 783, 787 (1983). Legislative-led prayer has been understood to exist and occur in cooperation with the Establishment Clause without conflict. The existence of legislative prayer is deeply embedded in the history and tradition of this Country. *Id.* For as long as legislative prayer has been around, it has been led by the legislators themselves. *Rowan Cty. v. Lund*, 138 S. Ct. 2564, 2566 (2018) (Thomas, J., dissenting). In creating the Establishment Clause, the Founders did not intend to prohibit legislators from devoting themselves to their faith. *Town of Greece*, 134 S. Ct. at 1833. Congress and state legislators have opened legislative sessions with prayer for more than two

centuries. Even this Court has long begun every session with the proclamation, "God save the United States and this Honorable Court!" *Marsh*, 463 U.S. at 786.

The historical focus of Legislative prayer in the United States at all stages of the enactment of the First Amendment brings to light the important fact, that the Framers had no intention of invalidating legislative prayer under the Establishment Clause. This Court found this to be dispositive in sustaining the practice of legislative prayer in *Marsh*, 463 U.S. at 783. Based on "the unique, unambiguous, and unbroken history" of this Country's practice of opening legislative sessions with prayer, the tradition has become "part of the fabric of our society." *Id.* at 813.

An unbroken practice is not something to be lightly set aside. Even though a right to violate the constitution is not acquired simply by long use, the Board's practice for so many years is consistent with two centuries of National practice. The historical analysis required by this Court makes clear that the Board's practice of having members offer prayers before public meetings has stood the test of time and falls directly within the bounds set forth by *Marsh* and *Town of Greece*. This is the only historically accurate conclusion this Court can reach based on the original intent of the Establishment Clause.

A. *Marsh* and *Town of Greece* create a broad exception to this Courts Establishment Clause jurisprudence because they sustained legislative prayer without subjecting the practice to any of the formal tests that originally structured this inquiry.

This Court on two separate occasions approved that the practice of legislative prayer in *Marsh* and *Town of Greece* was consistent with the Framers understanding of the Establishment Clause. *Bormuth v. Cty. of Jackson*, 870 F.3d 494, 503 (6th Cir. 2017). *Marsh* was first to break this Court free from the use of the original Establishment Clause tests. Legislative prayer is presumptively constitutional if it fits within the long followed tradition in the federal and state legislatures. *Town of Greece*, 134 S. Ct. at 1819. The holdings in both *Marsh* and *Town of Greece*

constitutionally permit legislative-led prayer because this practice is consistent with the tradition of this Country since its foundation. *Bormuth*, 870 F.3d at 509. "Neither *Marsh* nor *Town of Greece* restricts who may give prayers in order to be consistent with historical practice." *Id.* This Court has never mentioned a requirement for outside or retained clergy to be the only constitutional source of legislative prayer. There is no limitation on the officiant. *Town of Greece*, 134 S. Ct. at 1819. There can be no line drawn to exclude board members from the tradition of this Country's tradition of offering prayers before a government meeting because any historical, traditional, or logical guidance for that exclusion is undeniably nonexistent.

1. *Marsh* stands for the proposition that it is not necessary to define who gives the prayers when history shows that the specific practice is permitted.

Nearly thirty-five years ago, this Court held that Nebraska's legislative practice of beginning its sessions with a prayer led by a chaplain who was paid by the state did not violate the constitution. *Marsh*, 463 U.S. at 783. In *Marsh*, this Court explained that enactments by Congress that framed the First Amendment are "weighty evidence of its true meaning," and that "an unbroken practice is not something to be lightly cast aside." *Id.* at 790. "It would be incongruous to interpret the [Establishment] Clause as imposing more stringent First Amendment limits on the States than the draftsmen imposed on the Federal Government." *Id.* at 790-91. The unbroken practice of legislative prayer, for more than a century in many states, gives abundant assurance that the practice poses no real threat of bringing about the establishment the Founding Fathers feared, despite the prayer givers identity.

Invocations offered by Legislators fall perfectly within this Nation's longstanding legislative prayer traditions. It is of no importance who is offering the prayer. This Court emphasized that in determining the constitutionality of a specific religious practice the question is whether the prayers being offered "fit within the tradition long followed in Congress and state

legislatures." *Marsh*, 463 U.S. at 790-91. Here, the practice of prayer led by Board member's fits within the tradition of legislative prayers followed by the country, and therefore, is constitutional.

The simple fact that the prayers are led by Board members themselves does not alter this finding. This Court found no issues with a chaplain offering invocations for sixteen consecutive years. *Id.* The chaplain was paid by the government and offered the prayers under the liability of the government itself. The legislature exercised exclusive control over who offered the prayers and even then, the fact that the chaplain was paid with public funds was not material, given that the Continental Congress did the exact same thing. *Bormuth*, 870 F.3d at 504.

A board member giving an invocation before the commencement of a meeting is no less constitutional than if the board had a single clergyman to handle all the invocations, as permitted under *Marsh*. The prayer does not merely become government speech because the board member himself offers it. The permissible effect on the audience and the legislators themselves, whether a chaplain is offering the invocation or a board member, remains the same. It is also reasonable for municipalities to offer legislative-led prayer because they may not have the time nor the resources to pay a chaplain or oversee a system of rotating clergy.

The fact that invocations are given by Board members instead of by a single, paid chaplain does not deprive the Board of *Marsh's* protection. The difference is superficial. *Marsh* establishes the constitutional principle "that a legislative body does not violate the Establishment Clause when it chooses a particular person to give its invocational prayers." *Snyder v. Murray Cty. Corp.*, 159 F.3d 1227, 1233 (10th Cir. 1998). There is no constitutional violation if the government chooses to appoint a certain person to lead its prayers. If *Marsh* permits the government to select a chaplain for its invocational prayers, then it also permits the government to select itself as a speaker. In both instances the government is participating in the selection process of the prayer giver.

The identity of the prayer givers in this case are in fact more general than what this Court approved in *Marsh*. In contrast to a single Presbyterian clergyman, the Board members belong to different religions. (J.A. at 8). "The Judeo-Christian tradition is, after all, not a single faith but an umbrella covering many faiths." *Simpson v. Chesterfield Cty. Bd. of Supervisors*, 404 F.3d 276, 286 (4th Cir. 2005). Members also serve terms of different lengths of time, which allows for possible diversity on the religious affiliations of each. The individual offering the prayers is not the same person every time. Instead, five unique individuals offer prayers on a rotating basis.

It cannot be said that *Marsh* did not involve legislators offering the prayers themselves. There is no difference between the government authorizing a separate person to come offer a prayer and the government offering the prayer themselves. The legislators in *Marsh* were paying the chaplain, who himself was an officer of the legislature, thus ensuring that this Court has previously authorized legislative prayer to be constitutional despite the officiate being a part of the government.

2. *Town of Greece* supports the opening of Board meetings with legislative prayers led by governmental officials.

The historical analysis required by *Town of Greece* establishes a long tradition of opening legislative sessions with prayer offered by legislators themselves. The majority concluded in *Town of Greece* that there was no violation of the First Amendment because the prayer practice comported with our Country's tradition. The practice does not have to match a specific one, instead it must fit within the tradition of legislative prayer. Legislative prayer is the practice of opening governmental meetings with any kind of prayer. This Court has emphasized that "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." *See Town of Greece*, 134 S. Ct. at 1818; *see also Bormuth*, 870 F.3d 494 at 505. The purpose of legislative

prayers accepted by this Court indicates the audience of these prayers is the legislatures themselves. *Town of Greece* makes clear legislative prayer falls into a broad exception to the Establishment Clause; therefore, there is no need for a narrow reading of the practice of legislative prayer.

Again, the identity of the prayer giver is not relevant to a constitutional inquiry. That a prayer is given by a board member at a meeting does not remove it from this Country's tradition. This tradition extends to state and federal legislatures, as well as local deliberative bodies like city councils and board members. *Bormuth*, 870 F.3d 494 at 505. It is and has long been a practice of United States Senators and Representatives to lead prayers to open congressional legislative sessions.[3] As of 2016, forty-seven chambers allowed citizens other than the designated legislative chaplain or a visiting chaplain to offer the opening prayer.[4] In sixteen of those chambers, prayers are offered by a member of the legislative staff.[5] Legislator-led prayer has also been a practice in state capitals since at least 1849. *Bormuth*, 870 F.3d 494 at 509. This Court in *Town of Greece* extended the application in *Marsh* from state capitals to town halls. *Id.* at 510. "Our history embraces prayers by legislators as part of the benign acknowledgement of religion's role in society." *Id.* If some of the highest ranked members of our government are permitted to lead prayers before meetings, governmental entities at the local level should be granted the same privileges.

It is evident by the examples referred to by this Court in both *Marsh* and *Town of Greece* that legislative prayer is a part of an uninterrupted tradition of our Country. In his concurring

[3] *See* Sen. Robert C. Byrd, Senate Chaplain, in II The Senate, 1789-1989: Addresses on the History of the United States Senate 297, 305 (1982).
[4] *Prayer Practices*, Nat'l Conf. of State Leg., http://www.ncsl.org/documents/legismgt/ILP/02Tab5Pt7.pdf (last visited Sept. 14, 2018).
[5] *Id.*

opinion, Justice Alito stated, "The Founders did not intend to prohibit a just expression of religious devotion by the legislators of the nation, even in their public character as legislators." *Town of Greece*, 134 S. Ct. at 1833. Legislators lead prayers for their own benefit. They are able to reflect on important values they hold as private citizens of the community. While leading these prayers legislators enter a period of reflection, which gives them peace of mind and strength to begin the important task of governing. Here, permitting board members to lead their own prayers creates greater impact on their performance in their governmental roles. There is no logical reasoning for this Court to constitutionally permit legislative prayer, but limit certain persons from offering them solely because of their governmental position.

B. Prior precedent has never specified which individuals are allowed to offer prayer before legislative meetings because it is irrelevant to the finding of constitutionality.

The constitutional analysis is not affected in any way when prayer opportunities are broad, and allow for anyone to deliver an invocation before a meeting. The Sixth Circuit correctly noted that none of the opinions this Court has delivered restricts who may offer prayers before a meeting in order to be consistent with historical practice. *Bormuth*, 870 F.3d 494. In *Lund,* the court was incorrect in finding that legislative prayer is unconstitutional when the ability to lead the prayers is limited to legislators. *Lund v. Rowan Cty., N.C.*, 863 F.3d 268, 268 (4th Cir. 2017) (en banc). Following *Lund* would place all the weight on the identity of the prayer giver and allow for the content of the prayer to go unnoticed. This would permit the nonsensical normality where a prayer offered by a legislator would be unconstitutional, but that same exact prayer offered by a chaplain, or someone other than a legislator, would be constitutional. The prayer givers identity is given no weight in the proper constitutional analysis followed by this Court.

1. *Bormuth* properly concluded that if the constitutionality of a legislative prayer is predicated on the identity of the speaker, potentially absurd results would ensue.

The Sixth Circuit in *Bormuth* correctly held the prayer practice of the board of commissioners fit within the tradition followed by Congress and State legislatures, and did not violate the Establishment Clause. *Bormuth*, 870 F.3d 494. The Sixth Circuit's decision is consistent with *Marsh* and *Town of Greece* because it protects and conserves the traditional practice of beginning legislative meetings with prayer, and does not delve into the unnecessary analysis of applying the formal test used for other Establishment Clause inquiries.

In *Bormuth*, the Jackson County Board of Commissions began each of its monthly meetings with a prayer. 870 F.3d 495 at 498. The prayer was offered by one of the nine commissioners on a rotating basis. *Id.* The Sixth Circuit court held the practice of commissioners offering prayers before meetings fit within the tradition followed in Congress and State legislatures recognized by this Court in *Marsh* and *Town of Greece*. The court properly focused on viewing the prayers through our Country's historical lens and concluded the practice of legislative prayer, despite who offers the prayer, is consistent with the Framers' understanding of the Establishment Clause. *Bormuth*, 870 F.3d 495 at 503.

2. *Lund* erred by concluding that the prayer-givers identity is relevant to an Establishment Clause constitutional inquiry.

The *Lund* court's difficulty in analyzing a prayer practice analogous to that in *Bormuth*, illustrates the Fourth Circuit's failure to apply the broad Establishment Clause law established within *Marsh* and *Town of Greece*. The Fourth Circuit undermines the role of prayer in American civic life and avoids this Court's controlling authority concerning this practice.

The five-member Board of Commissioners of Rowan County, North Carolina, had a practice of opening each bimonthly public meeting with an invocation. *Lund*, 863 F.3d at 272. The prayers

were given by the commissioners themselves, all of whom were protestant. *Id.* at 282. The commissioner giving the prayer would ask attendees to stand and pray with him, and the Pledge of Allegiance and county business would follow after the prayer. *Id.*

Lund is analogous to *Bormuth* as well as to the case at bar. However, driven by their desire to reach a different end, the Fourth Circuit failed to properly analyze the issue before them. The practice of the commissioners offering prayers is in fact consistent with tradition. That the prayer givers were exclusively members of the government does not mean that a closed universe was created. Commissioners exclusivity in offering the prayers, is identical to the exclusivity of a chaplain of a single denomination, offering prayers for sixteen consecutive years in *Marsh*, which this Court found constitutional. There is no difference between a legislator and an invited chaplain, and a finding inconsistent with this would be an improper reading of this Court's precedent.

Legislative-led prayer is not an exception. There is no greater government involvement than when the government selects who will be offering the prayer. The intimacy of the matter does not change merely because of whose mouth the prayer originates from. The prayer giver is not the government itself. Although a commissioner or board member is a representative of their state or county, when they are offering a prayer they are acting in their private capacity as citizens. The fact that the prayers represent one religion reflects only each prayer-giver's faith, not a collective policy or agreement on behalf of the government.

As in the case before us, the Board member that delivers the prayer does so before the commencement of the meeting. It is not until after the prayer is offered and individuals are given a moment to reflect that the actual meeting begins and government business is addressed. Individuals do not assume their role as government agents until the actual commencement of the meeting. Until then, they are simply regular members of society.

The Fourth Circuit incorrectly conducted a fact-sensitive review of prayer practice and ignored this Courts articulation of historical principles. *Lund*, 863 F.3d at 275. *Lund* does not involve a specific circumstance. In fact, it involves the same legislative prayer practice as *Marsh*, *Town of Greece*, *Bormuth*, and this case. It is correct to extract a global significance from all of these cases because of the broad exception this Court established regarding legislative prayer in its precedent. This exception allows for Establishment Clause Jurisprudence to become a more coherent whole. Comparing any challenged legislative prayer practice to the longstanding practice this Country follows is central to a proper analysis of the legislative prayer. Unless congress has been violating the Constitution since its ratification, the Fourth Circuit's analysis is incorrect. The Fourth Circuit's wrong interpretation of this Court's precedent provides too much discretion to determine the constitutionality of a practice that has already been accepted by the Founders.

II. THE BOARD'S PRACTICE OF BEGINNING PUBLIC MEETINGS WITH PRAYER DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE BECAUSE LEGISLATIVE-LED PRAYERS SUPPORT THE SECULAR PURPOSE OF SOLEMNIZING PUBLIC BUSINESS, DO NOT HAVE A CLEARLY RELIGIOUS PURPOSE, AND DO NOT PLACE COERCIVE PRESSURES ON RELIGIOUS MINORITIES.

A. Prayer that is solemn and respectful in tone, that invites lawmakers to reflect upon shared ideals and common ends before they embark on the fractious business of governing has a secular purpose.

Legislative prayers have a unique nature, "to lend gravity to public business, reminding lawmakers to transcend petty differences in pursuit of a higher purpose, and expressing a common aspiration to a just and peaceful society." *Bormuth*, 870 F.3d at 505; (quoting *Town of Greece*, 134 S. Ct. at 1818). This Court emphasized that purposeful prayers seeking to solemnly bind legislators are consistent with this Nation's traditions, even where the prayer giver offers their own God for blessings of peace, justice, and freedom. *Bormuth*, 870 F.3d at 505; *Town of Greece*, 134 S. Ct. at 1818 (highlighting that prayers given in the name of Jesus, God, Allah, Jehovah, or has references

to religious doctrines, does not remove it from this Nation's traditions). Most importantly, history teaches that these ceremonial prayers "strive for the idea that people of many faiths may be united in a community of tolerance and devotion." *Bormuth*, 870 F.3d at 505.

In our case, the purpose of the Board's practice of beginning their monthly meetings with a short prayer is not to convert anyone from their personal beliefs. (J.A. at 2). Rather, the Board's policy strives for neutrality because the Board's intention of delivering these prayers was to solemnize public business and to offer citizens a chance to reflect quietly on matters before the Board or their lives. (J.A. at 2, 4, 5). Respondent asserts that as a result of the Board's prayers, she was to intimated to speak and felt like an outsider. (J.A. at 1). However, the Board's prayers were meant only as "a reflective moment of silence, or a short solemnizing message." *Jones v. Hamilton Cty, Tenn.*, 891 F. Supp. 2d 870, 887 (E.D. Tenn. 2012) (noting where the policy specifically stated the invocations were used as a reflective moment of silence, or short solemnizing message, the invocations did not constitue prayer that violated the Establishment Clause).

In *Pelphrey*, the Eleventh Circuit found that the county commission, as a legislative public body that was entrusted with making laws for the county did not violate the Establishment Clause when they used their prayers to open up their meetings, as long as the prayers did not advance or disparage a belief or affiliate the government with a specific faith. *Pelphrey v. Cobb Cty, Ga.*, 547 F.3d 1263, 1275 (11th Cir. 2008). In contrast, in *Edwards* the court found that when the governmental intention is to promote religion, then it is a violation of the Establishment Clause. *Edwards v. Aguillard*, 482 U.S. 578, 586 (1987) (highlighting when a state enacts law to serve a religious purpose, and the intention may be evidence of promoting a specific religion or by the advancement of particular religious' belief, there is a clear government intention to promote

religion). However, here, the Board's prayers did have a secular purpose which is consistent with our Nation's traditions.

1. The Board's prayers in their limited context did not exceed the limitations expressed in our historical traditions.

The Board's prayers, in their limited context, were not in violation of the Establishment Clause. This Court explained in *Marsh* that the use of prayer to open legislative sessions was constitutional, even if, the prayers were explicitly Christian in tone because the prayers were limited in their context and they could coexist with the principles of disestablishment, and religious freedom. *Marsh*, 463 U.S. at 786 (noting there were still constraints on the content of legislative prayers). This Court noted the constraints came from the prayer's purpose, which is to solemnize the legislative session, lend gravity to the occasion, and reflect on values. *Id.* However, if the prayer's content strayed away from the purpose, the prayers would no longer be consistent with the First Amendment. *Id. Marsh* requires an "inquiry into the prayer as a whole, rather than into the contents of a single prayer." *Bormuth*, 870 F.3d at 506. That is,"[a]bsent a pattern of prayers that over time denigrate, proselytize, or betray an impermissible government purpose, a challenge based solely on the content of a prayer will not likely establish a constitutional violation." *Id.*

Here, the prayers served to solemnize the board meetings (J.A. at 2), and did not "exploit to proselytize or advance any one, or to disparage any other, faith or belief." U.S. CONST. amend. I; *See Bormuth*, 870 F.3d at 506; *see also Jones*, 891 F. Supp. 2d at 887 (finding where the policy specifically states that the prayer was not intended to proselytize or advance any particular faith, or show any purposeful preference of one religious view to the exclusion of others, then it was not a violation of the Establishment Clause). Even though the prayers invoked God and other Christian references (J.A. at 5), the prayers involved "universal themes" such as inviting lawmakers to reflect upon shared ideals and to emphasize the gravity of their proceedings. *Bormuth*, 870 F.3d at 506.

The Board never engaged in any form of religious harassment to force religious conformity upon the citizens who attended the meetings. (J.A. at 2). Instead, the prayer practice was similar to reciting the Pledge of Allegiance, which has more of a secular purpose than a religious exercise. (J.A. at 6, 8). Accordingly, the Board's prayers taken as a whole fit within our historical traditions, and did not exceed the limitations imposed by this Court in *Marsh*.

B. Although the prayers offered before the Board generally espoused different branches of the Christian faith, the Legislative Board was not "endorsing" a particular religion, Christianity or otherwise.

This Court has repeatedly recognized that prayers before board meetings did not have to be sectarian to comply with the Establishment Clause so long as the "course and practice over time" does not "denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion. *Town of Greece*, 134 S. Ct. at 1824 (stating that even though nearly all of the congregations in *Town of Greece* turned out to be Christian, it did not reflect an aversion or bias on the part of the town leaders against minority faiths); *Marsh*, 463 U.S. at 783 (finding the practice of selecting the same Presbyterian chaplain for sixteen consecutive years was not a violation of the Establishment Clause); *Coles v. Cleveland Bd. of Educ.*, 950 F. Supp. 1337, 1347 (N.D. Ohio 1996) (relying on *Marsh* to uphold a school board's practice of invocational prayer because "the record does not support a finding that the board was using prayer as an attempt to convert audience members or to promote any particular belief").

In this case, Respondent alleged that the practice of the Board member's opening prayers, which were predominantly Christian in nature, was inherently discriminative against minority faiths. (J.A. at 1). Respondent's assertion cannot fit within the holding of *Marsh*, which upheld legislative prayers by an even more tightly "closed universe" of one speaker for over sixteen years. 463 U.S. at 793 (concluding that the Establishment Clause is not violated any time a prayer is

given in the name of a figure deified by only one faith or creed). Although every member of the Board are Christians and presumably believe in Jesus Christ (J.A at 8), their faiths of Christianity are diverse, not monolithic. *Bormuth*, 870 F.3d at 514. Nothing in the record indicates the Board members had a sectarian motive in selecting their board members. *Id.* at 537-38 (Moore, J., dissenting) (noting in Jackson County the prayer givers were exclusively Christian because of an intentional decision by the Board of Commissioners).

While the prayers may occasionally reference the Christian deity, only once has a biblical verse been cited, and it did not portray a religious bent towards Christianity. (J.A. at 8, 18). That specific prayer said, "We are all sinful but as the book of Isaiah reads, though our sins are like scarlet, they shall be as white as snow. . . . We must strive to conduct our business in a way consistent with the careful hand of the Father and His son Jesus Christ." (J.A. at 9). This prayer effectively shows the Board's main purpose was to seek guidance, and to conduct their meetings to serve the public's business and all its citizens. (J.A. at 9). At no point did the Board members attempt to promote or endorse the Christian faith with their short prayers. (J.A. at 5). Instead, one stray remark of citing to a biblical verse, pales in comparison to the litany of prayers the Fourth Circuit concluded impermissibly advanced the Christian faith in *Lund*, 863 F.3d at 284-85 (detailing prayers that "implicitly 'indicated disfavor toward' non-Christians," "proclaim[ed] that Christianity was exceptional and suggest[ed] all other faiths were inferior," and "urged attendees to embrace Christianity, thereby preaching conversion" was a violation of the Establishment Clause). Thus in comparison to *Lund,* the prayers delivered by the Board members reflected the individual Board members' religious beliefs, and did not convey a message that the Board members as a whole were endorsing a particular religion, Christianity or otherwise.

The Board's invocation practice at the beginning of their meetings is in direct conflict with the Fourth Circuit's recent en banc decision. *See Lund*, 863 F.3d at 268. However, *Lund* is distinguishable and unpersuasive because *Lund* found their specific invocations placed Christianity on a higher plane than other faiths and urged attendees to embrace that religion, and the requests to participate in those prayers were clear indicators of an effort "to promote religious observance among the public." *Id.* at 287.

The Respondent's efforts to distinguish *Marsh* and *Town of Greece* from the facts here, based solely upon the identities and faiths of the individuals giving the prayers, ignores the controlling standards established in *Town of Greece*; specifically: "[O]nce it invites a prayer into the public sphere, government must permit a prayer giver to address his or her own God or gods as conscience dictates unfettered by what an administrator or judge considers to be nonsectarian." 134 S. Ct. at 1822-23. Therefore, so long as the [Board] maintains "nondiscrimination, the Constituion does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing." *Town of Greece*, 134 S. Ct. at 1824. Respondent fails to demonstrate one example where the specific prayers offered by the Board preach conversion, denigrate nonbelievers or religious minorities, or threaten damnation to those who do not share the faith of whichever legislator is offering the prayer. To the contrary, numerous invocations express inclusiveness, "we ask for your guidance as we conduct the public's business and 'serve all people no matter what religion, faith, or lack thereof.'" (J.A. at 9). To require nonsectarian prayers would "force legislatures that sponsor prayers and the courts that are asked to decide cases to act as supervisors and censors of religious speech, a rule that would involve the government in religious matters to a far greater degree than is the case under the [Board's] current practice." 134 S. Ct. at 1823. Accordingly, the invocations at issue here were solemn and respectful in tone, invited

lawmakers to reflect upon shared ideals, sought guidance to serve all people no matter what religion, and sought protection of troops, and county residents. (J.A. at 9). Since the prayers at the opening of the board meetings do not compel Respondent or any other citizen to engage in a religious observance and the prayers fell within the religious idiom accepted by our Founders, there was not a violation of the Establishment Clause.

C. The Board's legislative-led prayers before public meetings did not violate the Establishment Clause because the prayer's contents were not coercive, and did not place coercive effects on a religious minority.

After determining that legislative prayers by the Board members fell outside *Marsh* and *Town of Greece*, the Thirteenth Circuit Court concluded that the legislator-led prayers at issue here were unconstitutionally coercive. (J.A. at 17, 21). On the issue of coercion, *Town of Greece* issued a majority result, but not a majority rationale. Nevertheless, it does not matter which test this Court applies, because Respondent's claim inherently fails under both Justice Kennedy's and Justice Thomas' coercion principle.

1. The Board member's prayers were not coercive under Justice Kennedy's Test.

The societal pressures exerted upon Respondent during the prayers are consistent with those advanced by the petitioners in *Town of Greece* and the commissioners in *Bormuth*, which rejected Justice Kennedy's plurality opinion on coercion. Under Justice Kennedy's approach, "whether a legislative prayer practice rises to the level of coercion remains a 'fact-sensitive [issue] that considers both the setting in which the prayers arise and the audience to whom it is directed,' and 'must be evaluated against the backdrop of historical practice.'" *Town of Greece*, 134 S. Ct. at 1825; *see also Bormuth*, 870 F.3d at 516. "Establishment Clause challenges are not decided by bright-line rules, but [rather] on [a] case-by-case basis with the result turning on [the] specific facts [of a case]." *Pelphrey*, 547 F.3d at 1269.

i. Although the Board's prayers were delivered at public meetings of a local governmental body, they did not violate the Establishment Clause.

This Court in *Marsh* noted that the opening of legislative sessions and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this Country. *Marsh*, 463 U.S. at 783; Marjorie A. Shields, Annotation, *Constitutionality of Legislative Prayer Practices*, 30 A.L.R.6th 459, 5 (2008) (pointing out "that from colonial times through the founding of the Republic, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom"). In this case, the Board opens its monthly meetings with a legislative prayer; however, so did the *Town of Greece*, 134 S. Ct. at 1816; *Snyder*, 159 F.3d at 1227 (concluding legislative prayer does not violate the Establishment Clause). As previously mentioned, delivering a prayer before a local board meeting does not raise Establishment Clause concerns, because by its very definition legislative prayer is a prayer before a governing body. Under the Nation's traditions, legislative prayer clearly extended before legislative meetings. *Town of Greece*, 134 S. Ct. at 1828; *Marsh*, 463 U.S. at 783. The Board's meeting is an intimate setting which differs in fundamental ways from the invocations delivered in Congress and State legislatures, where the public remains segregated from legislative activity and may not address the body except by occasional invitation. *Town of Greece*, 134 S. Ct. at 1824-25. Here, the Board meets once a month in order to oversee many facets of the community. (J.A. at 8). The citizens are allowed to come before the Board to express their views and concerns. (J.A. at 8). Thus, even though the Board's opening prayers are within a governmental setting, it does not create social pressures because citizens are allowed the opportunity to address the Board with any concerns or requests.

ii. Relying heavily on past precedent, the courts emphasize that the audience whom the prayers are directed to has a major significance on whether the prayer is coercive.

As in *Town of Greece*, there is no evidence to suggest that Respondent was not free to leave the Board meeting during the prayer, or that staying in the room during the invocation would have implied her agreement with the prayers being offered. Our traditions "assume that adult citizens, [are] firm in their own beliefs, [and] can tolerate and perhaps appreciate a ceremonial prayer delivered by a person of a different faith." *Bormuth*, 870 F.3d at 505. Respondent is an adult who has already been exposed to Christianity as a child (J.A. at 1); therefore, it is presumed Respondent is not readily susceptible to religious indoctrination, or peer pressure. *Marsh*, 463 U.S. at 792; *Bormuth*, 870 F.3d at 507 (discussing that even though adults often times encounter speech they may find distasteful, it does not violate the Establishment Clause any time an individual experiences a sense of affront during a contrary religious viewpoint in a legislative forum). At most, Respondent has shown she was offended by the Christian nature of the Board's prayers. (J.A. at 17). However, "offense does not equate to coercion." *Bormuth*, 870 F.3d at 519. The record demonstrations that none of the citizens were being forced to participate in the prayers. (J.A. at 4). Citizens had options to avoid the prayers altogether.[6] (J.A. at 4). Should Respondent have chosen to exit the room during the prayer, her absence would not have stood out as disrespectful or even noteworthy. (J.A. at 4).

The analysis would have been different had the Board members "directed the public to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced by an individual's acquiescence in the prayer opportunity." *Town of Greece*, 134 S. Ct. at 1827. However, no Board member acted in that manner. Soliciting adult members of

[6] Nothing in the record suggest that members of the public are dissuaded from leaving the Board meeting during the prayer, or arriving after the prayer is offered.

the public to assist in solemnizing the meetings by rising and remaining quiet [for the Pledge of Allegiance] followed by a short prayer is not coercive. *Bormuth*, 870 F.3d at 517; *See Am. Humaist Ass'n v. McCarty*, 851 F.3d 521, 526 (5th Cir. 2017) ("polite requests" by governmental officials to stand for invocations "do not coerce prayer"). Although Board members themselves stood, and remained standing during the recital of the short prayer after the Pledge of Allegiance, the Board members at no point solicited similar gestures by the public to remain standing during the prayer. (J.A. at 8). When the Board members asked the public to stand, these requests, were done so believing the action was inclusive, not coercive. They were in fact asked to rise for the Pledge of Allegiance, not for the prayers. (J.A. at 3, 6, 8).

As previously stated above, Respondent could have remained seated, or left the room and only participated in the Pledge of Allegiance and the business portion of the meeting. Respondent might suggest that citizens may feel pressure to join the prayers to avoid irritating the Board members who would be ruling on their petitions; however, this argument has no evidentiary support.[7] Nothing in the record indicates Board members allocate benefits and burdens based on participation in the prayer. Rather, the record made clear Board members do not pressure anyone to join their religious beliefs and have never considered the religious faith—or lack thereof—of any citizen who had appeared before them. (J.A. at 4, 6, 9).

Additionally, relying heavily on past precedent, the Board's legislative prayers did not engage in coercive pressures on religious minorities. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000); *Lee v. Weisman*, 505 U.S. 577, 593-94 (1992) ("The Establishment Clause prohibits true coercive pressure placed upon religious minorities."). The coercion test has been applied primarily in cases involving schoolchildren and minors. *Santa Fe*, 530 U.S. at 312; *Doe v.*

[7] There had been no indication that the Board's denial of the permit to operate the paddleboat company was related to Respondent's religion. (J.A. at 18).

Indian River Sch. Dist., 653 F.3d 256, 271-72 (3d Cir. 2011) (demonstrating there is a stark difference between prayers recited in school settings and legislative settings). The Board's legislative prayers are distinguishable from *Doe*, because in *Doe*, the prayers were recited during regularly scheduled meetings, which were routinely attended by students from the local school district. *Doe*, 653 F.3d at 259. Over the years, hundreds of students and their parents had attended these board meeting for recognition in the students' academic, athletic, or artistic skills, and achievements. *Doe*, 653 F.3d at 259. A student who decided not to attend the meeting, therefore, would "forfeit intangible benefits" by giving up an opportunity to celebrate success and express mutual wishes of gratitude and respect. *Doe*, 653 F.3d at 276. Adolescents are often susceptible to pressure from their peers towards conformity, and that influence is strongest in matters of social convention. *Doe*, 653 F.3d at 259 (quoting *Lee*, 505 U.S. at 593-94). Simply stated, the fact that the function of the school board is uniquely directed toward school-related matters gives it a different type of constituency than the practice by the Board.

Here, the Respondent is an adult; therefore, it is presumed she is not readily susceptible to religious indoctrination, or peer pressure. *Marsh*, 463 U.S. at 793; *Doe*, 653 F.3d at 280 (noting the need to protect "students" from coercion is of the utmost importance). If the Respondent would have been a child, then the analysis would have been different. However, since Respondent is an adult and is not presumed to be easily influenced there was no violation of the Establishment Clause.

iii. When the Board's prayers are evaluated against the backdrop of historical practice, the prayers are not in violation of the Establishment Clause.

Legislative prayer is a mere shadow on the Establishment clause rather than a real threat to it. As practice has long endured, these phrases: "In God We Trust," and "One Nation Under God" are consistent with the Establishment Clause because the Framers of the Establishment Clause

would not have themselves authorized a practice they believed violated the guarantees contained in the clause. *Marsh*, 463 U.S. at 814 (Establishing that these phrases that mention a deity are not coercive because it has become a custom in our history and tradition). Therefore, it is presumed that a "reasonable observer is acquainted with this tradition and understands that its purposes are to lend gravity to public proceedings and to acknowledge the place religion holds in the lives of many citizens, and not to afford government an opportunity to proselytize or force truant constituents into the pews." *Town of Greece*, 134 S. Ct. at 1827; *See Salazar v. Buono*, 559 U.S. 700, 720-21 (2010); *see also Santa Fe*, 530 U.S. at 312.

Here, the Board has never engaged in behavior that would force religious harassment on its citizens. (J.A at 2). Even though the Board's prayers included words that referenced the Christian deity, a reasonable observer would not find these words coercive. A reasonable observer would understand these references to be a part of this Nation's traditions that religion holds a dear place in many citizens lives, and is used to lend gravity to the Board's meetings. Many of the Board members stated they would not participate on a Board that would engage in religious coercion, and their intent was never to coerce citizens into their religious views. (J.A. at 3, 4, 5). In Respondent's affidavit, she swore under oath Mr. Lawley told her "this is a Christian Country, get over it." (J.A. at 1). Not only does Mr. Lawley not recall telling Respondent this statement, but the record indicates a discrepancy in the affidavits. (J.A. at 6). Mr. Lawley expressed that the statement Respondent was referring to was not something he would say. (J.A. at 6). This statement at worst is a stray remark by one of the five Board members and is not a reflection of the Board as a whole. Nevertheless, Mr. Lawley's poor action does not take away the fact that these prayers taken as a whole are not coercive in any manner.

Bormuth raised similar concerns regarding invocations offered during a public comment portion of a meeting. 870 F.3d at 499. While Bormuth was speaking on the issue of the sectarian prayers, one of the Commissioners swiveled his chair and turned his back to Bormuth. *Id.* Furthermore, on two separate occasions two Commissioners turned their backs to Bormuth during his public comments. *Id.* at 517. The Sixth Circuit correctly held that these isolated incidents were not indicative of a pattern and practice of coercion against nonbelievers of religion. *Id.* In contrast, the Fourth Circuit in *Lund* found multiple examples that their prayers portrayed non-Christians as "spiritually defective and suggest[ed] that other faiths [were] inferior." *Lund*, 863 F.3d at 284-85. Here, no such practice of opprobrium has been shown. Thus, the Board's references to Christian deity's in their prayers does not violate the Establishment Clause because tradition has long held these references to serve a greater purpose in lending significance to these legislative meetings. For the reasons stated above, under Justice Kennedy's test the prayers contents were not coercive and did not violate the Establishment Clause.

2. The Board member's prayers were not coercive under Justice Thomas' Test.

Under Justice Thomas' legal coercion test, Respondent's challenge easily fails. Justice Thomas explains, "that to the extent that coercion is relevant to the Establishment Clause analysis, it is actual coercion that counts—not the 'subtle coercive pressures'" allegedly felt by the Respondent in this case. *Bormuth*, 870 F.3d at 508 ("Coercion is limited to 'coercive state establishments' by 'force of law or threat of penalty.'"). Therefore, under Justice Thomas' coercion test "offense does not equate to coercion," since "adults often encounter speech they find disagreeable." *Id.* Justice Thomas states that peer pressure, unpleasant as it may be, does not rise to the level of coercion. *Id.* at 508-09.

Here, Respondent only finds forced displays of Christianity "offensive" to her personal religious beliefs (J.A. at 17), but under Justice Thomas' test being offended or disrespected does not violate the Establishment Clause. *Town of Greece*, 134 S. Ct. at 1838 (noting an Establishment Clause violation is not made any time an individual experiences a sense of affront from the expression of opposing religious views in a legislative forum); *Bormuth*, 870 F.3d at 508. Respondent only raises "subtle coercive pressures" which do not remotely approach "actual legal coercion."[8] The Board member's legislator-led prayers were not coercive under Justice Thomas' Test.

D. The *Lemon* Test has no application here because the legislator-led prayers had a secular governmental purpose that did not have a primary effect that neither advanced nor inhibited religion, and it did not create excessive entanglement between church and state.

Neither *Marsh* nor *Town of Greece* applies *Lemon's* balancing of purposes and government entanglement when examining the constitutionality of legislative prayer. *Lemon v. Kurtzman*, 403 U.S. 602, 602 (1971) (finding the intrusion of the government into the running of non-public schools through grants and other funding creates entanglement that violated the Establishment Clause). Rather, *Marsh* "carved out an exception to the Court's Establishment Clause jurisprudence, because it sustained legislative prayer without subjecting the practice to any of the formal tests that have traditionally structured this inquiry." *Marsh*, 463 U.S. at 796; *See Town of Greece*, 134 S. Ct. at 1818; *see also Lynch v. Donnelly*, 465 U.S. 668, 679 (1984) (noting that this Court in *Marsh* "did not even apply the *Lemon* test"); *Bormuth*, 870 F.3d at 514-15 (finding the *Lemon* test inapplicable); *Simpson*, 404 F.3d at 281 (*Lemon* does not extend to legislative prayer); David L. Hudson, Jr. and Emily H. Harvey, *First Amendment Tests from the Burger Court: Will*

[8] Justice Thomas seems to indicate that absent a person getting hit on the head, coercion does not exist.

They Be Flipped?, 44 Sua Sponte 52 (2018) (stating the courts have not been consistent in using the *Lemon* Test).

Lemon is distinguishable from our case because *Lemon* involved state aid to church-related educational institutions. Whereas, our case involves Board members offering prayers in front of adult citizens to solemnize their public meetings. Our case did not involve children who could be easily influenced. Even if Lemon was applied to the facts of this case, the Board's practice would still be found constitutional.

The Thirteenth Circuit Court accepted the Board's purpose that the prayers were to solemnize public business by providing citizens and the Board members a moment to reflect. (J.A. at 2, 22). *See Bown v. Gwinnett Cty. Sch. Dist.*, 112 F.3d 1464, 1464 (11th Cir. 1997) (holding that a Georgia moment of silence law called the "Moment of Quiet Reflection" passed the *Lemon* Test). The Board's secular purpose was not a sham, and was not secondary to a religious objective. *McCreary Cty, Ky. v. ACLU of Ky.*, 545 U.S. 844, 864 (2005) ("Although a legislature's stated reasons will generally get deference, the secular purpose required has to be genuine.").

As stated above, the prayers did not have a primary effect that neither advanced nor inhibited religion because the prayers did not denigrate or mock any religion nor threaten any adherents to other religions. (J.A. at 13). Even though the prayers were Christian in nature, a reasonable adult observer would not find the Board's prayers to be promoting Christianity because from this Nation's origin, prayer has been a prominent part of governmental ceremonies and proclamations. *Lee*, 505 U.S. at 633 (Scalia, J., dissenting). The Board member led prayers did not create excessive entanglement between church and state because legislative prayers are deeply embedded in this Nation's history and tradition, no matter who the prayer giver is. Therefore,

following this Court's precedent the *Lemon* Test is inapplicable to legislative prayer cases because of this Court's broad exception to the Establishment Clause inquiry.

CONCLUSION

For the aforementioned reasons, Petitioners respectfully request that this Court reverse the judgment of the Thirteenth Circuit.

Respectfully Submitted,

TEAM NO. 2517
ATTORNEYS FOR PETITIONER