

COMMITTEE REPORT
May 14, 2008

S. 638

Introduced by Senators Campsen, Fair, Bryant, Vaughn, Hawkins, Alexander, Grooms, Sheheen, Setzler, Cromer, McConnell, Land, Verdin, Peeler, Hayes, Ritchie, Anderson, Thomas, Scott, Martin, Knotts, Ryberg, Ceips, O'Dell, McGill and Malloy

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Read the first time April 29, 2008.

THE COMMITTEE ON JUDICIARY

To whom was referred a Bill (S. 638) to amend the Code of Laws of South Carolina, 1976, by adding Section 6-1-160 so as to enact the "South Carolina Public Invocation Act" to, etc., respectfully

REPORT:

That they have duly and carefully considered the same and recommend that the same do pass:

JAMES H. HARRISON for Committee.

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 6-1-160 SO AS TO ENACT THE "SOUTH CAROLINA PUBLIC INVOCATION ACT" TO ALLOW A GOVERNING BODY OF A STATE OR LOCAL GOVERNMENT BODY TO ADOPT, BY ORDINANCE, RESOLUTION, OR POLICY STATEMENT, A POLICY THAT PRESERVES THE TRADITION OF SOLEMNIZING PUBLIC PROCEEDINGS BY ALLOWING FOR AN OPENING INVOCATION USING ONE OF THREE METHODS AND TO DEFINE "PUBLIC INVOCATION" AND "DELIBERATIVE PUBLIC BODY".

Whereas, state and local governing bodies across the nation have long maintained a tradition of solemnizing their proceedings by allowing for an opening invocation before each meeting for the benefit and blessing of those public bodies; and

Whereas, such invocations before deliberative public bodies have been consistently upheld as constitutional by American courts, including the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit; and

Whereas, in *Marsh v. Chambers*, 463 U.S. 783, 786 (1983), the United States Supreme Court rejected a challenge to the Nebraska Legislature's practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars, and specifically concluded, "The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom"; and

Whereas, the United States Supreme Court clarified in *Marsh*, 463 U.S. at 794-795, “The content of [such] prayer is not of concern to judges where . . . there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief.”; and

Whereas, in *Simpson v. Chesterfield County Board of Supervisors*, 404 F.3d 276 (4th Cir. 2004), cert. denied, the United States Court of Appeals for the Fourth Circuit recently reviewed and specifically approved the policy of a county board in which various clergy in the county’s religious community were invited to present invocations before meetings of the board; and

Whereas, the Fourth Circuit’s ruling in *Simpson* can be distinguished from its earlier decision in *Wynne v. Town of Great Falls*, 376 F.3d 292, 298 (4th Cir. 2004, cert. denied) (citing *Marsh*, 463 U.S. at 794), where the court found a town council “improperly ‘exploited’ a ‘prayer opportunity’ to ‘advance’ one religion over others”; and

Whereas, the General Assembly acknowledges that differences of opinion exist with regard to whether and when sectarian references can be included in public invocations, and encourages deliberative public bodies to seek qualified counsel on that specific issue and other case law developments concerning public invocations; and

Whereas, this act signifies the General Assembly’s belief that deliberate public bodies in this State may adopt policies that will permit public invocations in a constitutionally permissible fashion. This act does not signify the General Assembly’s belief in the limits of constitutional law, nor preempt the deliberative public body from exercising a constitutional right to permit public invocations pursuant to a policy other than that set forth in this act. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “South Carolina Public Invocation Act”.

SECTION 2. Article 1, Chapter 1, Title 6 of the 1976 Code is amended by adding:

“Section 6-1-160. (A) For purposes of this section:

(1) ‘Public invocation’ means an invocation delivered in a method provided pursuant to subsection (B) to open the public meeting of a deliberative public body. In order to comply with applicable constitutional law, a public invocation must not be exploited to proselytize or advance any one, or to disparage any other, faith or belief.

(2) ‘Deliberative public body’ means a state board or commission, the governing body of a county or municipal government, a school district, a branch or division of a county or municipal government, or a special purpose or public service district.

(B) A deliberative public body, by ordinance, resolution, or written policy statement, may adopt a policy to permit a public invocation as defined in subsection (A)(1) before each meeting of the public body, for the benefit of the public body. The policy may allow for an invocation to be offered on a voluntary basis, at the beginning of the meeting, by:

(1) one of the public officials, elected or appointed to the deliberative public body, so long as the opportunity for invocation duty is regularly and objectively rotated among all of that deliberative public body’s public officials;

(2) a chaplain elected by the public officials of the deliberative public body; or

(3) an invocation speaker selected on an objective and rotating basis from among a wide pool of the religious leaders serving established religious congregations in the local community in which the

deliberative public body meets. To ensure objectivity in the selection, the deliberative public body on an annual basis shall compile a list of all known, established religious congregations and assemblies by reference to local telephone books or similar sources, or both, and on an annual basis shall mail an invitation addressed to the 'religious leader' of each congregation and assembly. The invitation must contain, in addition to scheduling and other general information, the following statement: 'A religious leader is free to offer an invocation according to the dictates of his own conscience, but, in order to comply with applicable constitutional law, the [name of deliberative public body issuing the invitation] requests that the public invocation opportunity not be exploited to proselytize or advance any one, or to disparage any other, faith or belief'. Each respondent who accepts the invitation to deliver an invocation at an upcoming meeting of the deliberative public body shall be scheduled to deliver an invocation on a first-come, first-served basis.

(C) In order that deliberative public bodies may have access to advice on the current status of the law concerning public invocations, the Attorney General's office shall prepare a statement of the applicable constitutional law and, upon request, make that statement available to a member of the General Assembly or a deliberative public body. As necessary, the Attorney General's office shall update this statement to reflect any changes made in the law. The Attorney General's office may make the statement available through the most economical and convenient method including, but not limited to, posting the statement on a website.

(D) The Attorney General shall defend any deliberative public body against a facial challenge to the constitutionality of this act.

(E) Nothing in this section prohibits a deliberative public body from developing its own policy on public invocations based upon advice from legal counsel."

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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