

**POLICY REGARDING OPENING INVOCATIONS
BEFORE MEETINGS OF THE TRANSYLVANIA COUNTY
BOARD OF COMMISSIONERS**

WHEREAS, the Transylvania County Board of Commissioners (“the Board”) is an elected legislative and deliberative public body, serving the citizens of Transylvania County, North Carolina; and

WHEREAS, the Board has long maintained a tradition of solemnizing its proceedings by allowing for an opening prayer before each meeting, for the benefit and blessing of the Board; and

WHEREAS, the Board now desires to adopt this formal, written policy to clarify and codify its invocation practices; and

WHEREAS, such prayer before deliberative public bodies has 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, which includes North Carolina; and

WHEREAS, in *Marsh v. Chambers*, 463 U.S. 783 (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.” *Id.*, at 786; and

WHEREAS, the Supreme Court further held, “To invoke divine guidance on a public body. . . is not, in these circumstances, an ‘establishment’ of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country.” *Id.*, at 792; and

WHEREAS, the Supreme Court affirmed in *Lynch v. Donnelly*, 465 U.S. 668 (1984), “Our history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders.” *Id.*, at 675; and

WHEREAS, the Supreme Court further stated, “Those government acknowledgments of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society. For that reason, and because of their history and ubiquity, those practices are not understood as conveying government approval of particular religious beliefs.” *Id.*, at 693 (O’Connor, J., concurring); and

WHEREAS, the Supreme Court also famously observed in *Zorach v. Clauson*, 343 U.S. 306, (1952), “We are a religious people whose institutions presuppose a Supreme Being.” *Id.*, at 313-14; and

WHEREAS, the Supreme Court acknowledged in *Holy Trinity Church v. United States*, 143 U.S. 457 (1892), that the American people have long followed a “custom of opening sessions of all deliberative bodies and most conventions with prayer...,” *Id.*, at 471; and

WHEREAS, the Supreme Court has determined, “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.” *Marsh*, 463 U.S. at 794-795; and

WHEREAS, the Supreme Court also proclaimed that it should not be the job of the courts or deliberative public bodies “to embark on a sensitive evaluation or to parse the content of a particular prayer” offered before a deliberative public body. *Id.*; and

WHEREAS, the Supreme Court has counseled against the efforts of government officials to affirmatively screen, censor, prescribe and/or proscribe the specific content of public prayers offered by private speakers, as such government efforts would violate the First Amendment rights of those speakers. *See, e.g., Lee v. Weisman*, 505 U.S. 577, 588-589 (1992); and

WHEREAS, in *Simpson v. Chesterfield County Bd. 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 prayer policy of a county board; and

WHEREAS, the Fourth Circuit made a number of key findings about the prayer policy ruled constitutional in *Simpson*, and the Board hereby acknowledges and relies upon the most important of those findings, including the facts that the policy there:

(1) Allowed for invocations for the benefit of the legislative body itself “rather than for the individual leading the invocation or for those who might also be present,” *Id.*, at 284; and

(2) Established a practice in which various clergy in the county's religious community were invited on a rotating basis to present invocations before meetings of the board, *Id.*, at 279; and

(3) Thus, “made plain that [the county board] was not affiliated with any one specific faith” by allowing different persons of from different religious convictions and backgrounds to offer the invocations. *Id.*, at 286; and

WHEREAS, the Fourth Circuit showed little concern that the prayers before board meetings in *Simpson* were “traditionally made to a divinity that is consistent with the Judeo-Christian tradition,” *Id.*, at 280, because “*Marsh* also considered, and found constitutionally

acceptable, the fact that the prayers in question fit broadly within ‘the Judeo-Christian tradition.’” *Id.*, at 283 (quoting *Marsh*, 463 U.S. at 793); 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 (4th Cir. 2002), *cert. denied*, where a town Board “improperly ‘exploited’ a ‘prayer opportunity’ to ‘advance’ one religion over others.” *Id.*, at 298 (quoting *Marsh*, 463 U.S. at 794); and

WHEREAS, the Board intends to avoid all of the unique circumstances that rendered the practices at issue in *Wynne* unconstitutional, including the facts that:

(1) The Town Council’s resolution declared its intent that “the Town’s prayers are not just for the Council members but for all of the Town’s citizens,” and thus prayers were “directed at” the citizenry, *Wynne*, 376 F.3d at 301, n.7; and

(2) The Town Council “steadfastly refused” to invoke any “deity associated with any specific faith other than Christianity,” *Id.*, at 300, n.5; and

(3) The Town Council “advance[d] its own religious views in preference to all others,” *Id.*, at 302; and

(4) Town Council members publicly chided and “ostracized” those who refused to participate in their prayers, *Id.*, at 298; and

WHEREAS, the Board intends, and has intended in past practice, to adopt a policy that does not proselytize or advance any faith, or show any purposeful preference of one religious view to the exclusion of others; and

WHEREAS, the Board recognizes its constitutional duty to interpret, construe, and amend its policies and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, the Board accepts as binding the applicability of general principles of law and all the rights and obligations afforded under the United States and North Carolina Constitutions and statutes.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Transylvania County, North Carolina, that the Board hereby adopts the following written policy regarding opening invocations before meetings of the Board, to wit:

1. In order to solemnize proceedings of the Transylvania County Board of Commissioners, it is the policy of the Board to allow for an invocation or prayer to be offered before its meetings for the benefit of the Board.

2. The prayer shall not be listed or recognized as an agenda item for the meeting or as part of the public business.

3. No member or employee of the Board or any other person in attendance at the meeting shall be required to participate in any prayer that is offered.

4. The prayer shall be voluntarily delivered by a single Board member, scheduled on a rotating basis among all Board members who voluntarily choose to participate in the rotational list.

5. The designated Board member shall deliver the prayer or invocation in his or her capacity as a private citizen, and according to the dictates of his or her own conscience.

6. No guidelines or limitations shall be issued regarding an invocation's content, except that the Board shall request by the language of this policy that no prayer should proselytize or advance any faith, or disparage the religious faith or non-religious views of others.

7. No Board member shall receive supplemental compensation of any kind for providing the prayer or invocation.

8. No Board member shall be scheduled to offer a prayer at consecutive meetings of the Board, or at more than _____ (____) Board meetings in any calendar year.

9. No other member(s) of the Board shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by the scheduled Board member.

10. Shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Chairperson of the Board shall introduce the invitational speaker and the person selected to recite the Pledge of Allegiance following the invocation, and invite only those who wish to do so to stand for those observances of and for the Board.

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

NOW, THEREFORE, BE IT FURTHER RESOLVED that this policy shall become effective immediately upon adoption by the Board.

THUS INTRODUCED at the regular meeting of the Board of Commissioners of Transylvania County, North Carolina, on _____, 2007.

For: _____

Against: _____

THUS ADOPTED at the regular meeting of the Board of Commissioners of Transylvania County, North Carolina, on _____, 2007.

CLERK

CHAIR of BOARD