No. _____

In The
Supreme Court of the United States

ROWAN COUNTY, NORTH CAROLINA,

Petitioner,

v.

NANCY LUND, LIESA MONTAG-SIEGEL, ROBERT VOELKER,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether legislative prayer delivered by legislators comports with this Court's decisions in *Town of Greece* v. *Galloway*, 134 S. Ct. 1811 (2014), and *Marsh* v. *Chambers*, 463 U.S. 783 (1983), as the *en banc* Sixth Circuit has held, or does not, as the *en banc* Fourth Circuit has held.

PARTIES TO THE PROCEEDINGS

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Rowan County respectfully submits this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS AND ORDERS BELOW

The *en banc* opinion of the court of appeals is reported at 863 F.3d 268. The panel opinion of the court of appeals is reported at 837 F.3d 407. The district court order granting summary judgment is reported at 103 F. Supp. 3d 712.

STATEMENT OF JURISDICTION

The judgment of the *en banc* court of appeals was entered on July 14, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution provides in relevant part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]

U.S. CONST. amend. I.

STATEMENT

Legislative prayer has been part of the Nation's traditions since the "First Congress made it an early item of business to pay official chaplains" to pray before official proceedings. *Town of Greece* v. *Galloway*, 134 S. Ct. 1811, 1818 (2014). It has remained so ever since, "virtually uninterrupted since that time." *Ibid*. These prayers, "principal[ly]" for "the lawmakers themselves," serve "largely to accommodate the spiritual needs of lawmakers," to set lawmakers' "mind[s] to a higher purpose and thereby ease[ ] the task of governing." *Id*. at 1825, 1826 (Kennedy, J., plurality opinion). Through such prayers, legislators connect the task at hand "to a tradition dating to the time of the Framers" and "reflect the values [that] they hold as private citizens." *Id*. at 1826. A legislative prayer "is an opportunity" for legislators "to show who and what they are without denying the right to dissent by those who disagree." *Ibid*.

Like numerous federal and state legislatures since the Founding, Rowan County's Board of Commissioners precedes its official business with a short legislative prayer. App. 198-99 & n.2; JA14. The Commissioners—as some of their counterparts have done for centuries—deliver legislative prayers themselves as a way of meeting their "spiritual needs [as] lawmakers," and "reflect[ing] the values they hold as private citizens." *Town of Greece*, 134 S. Ct. at 1826 (Kennedy, J., plurality opinion). The prayers occur before the opening of official business, begin with phrases such as "let us pray," and use faith-specific language

that reflects the praying Commissioner's own personal beliefs. JA15-18, 275-77; App. 247-306.

As this Court held in *Town of Greece*, "prayer practices * * * [that] fit within the tradition long followed in Congress and the state legislatures" necessarily comport with the Establishment Clause. 134 S. Ct. at 1819. As the Sixth Circuit has acknowledged, the *en banc* Fourth and Sixth Circuits irreconcilably disagree as to whether prayers given by legislators themselves fit within that tradition and thus comport with the Establishment Clause. *Bormuth* v. *County of Jackson*, 870 F.3d 494, 509 n.5 (6th Cir. 2017) (en banc).

As the *en banc* Sixth Circuit recognized, legislators have delivered legislative prayers themselves "in the state capitals for over one hundred fifty years," placing this practice firmly within the Nation's traditions. *Id.* at 510. The *en banc* Fourth Circuit, by contrast, considered four factors—the identity of the prayer-giver, along with the three other factors this Court approved of in *Town of Greece*—to condemn in tandem features that the Fourth Circuit held were unproblematic individually. App. 24-25. This approach certainly resembles an opinion in *Town of Greece*: the dissent. Compare *id.* at 31, with *Town of Greece*, 134 S. Ct. at 1849 (Kagan, J., dissenting).

Thousands of legislative bodies with tens of thousands of members and millions of citizens across nine States are now subject to conflicting legal regimes regarding one of the Nation's oldest traditions. Legislatures in the remaining States must hazard a guess as

to which approach to take. As in *Town of Greece*, this Court's review is required to resolve this intractable conflict on a recurring, exceptionally important issue of First Amendment law.

1. Rowan County, a political subdivision of North Carolina, is governed by a five-member Board of Commissioners, led by a Chairman. App. 6-7. The Board meets twice monthly to perform typical municipal governmental functions: hearing zoning requests, processing permit applications, and promulgating local ordinances. *Id.* at 6, 43.

2. Until enjoined by the district court in 2013, the County began its meetings with a brief invocation followed by the Pledge of Allegiance. Commissioners rotated in delivering the invocation. Each Commissioner solely decided according to his own conscience whether to hold a moment of silence or a prayer, or to forgo the prayer opportunity altogether. JA276, 280, 284, 288, 292.

Each prayer necessarily reflected the Commissioner's personal beliefs, values, and contemporary concerns about the community or world at large. Prayers nonetheless shared some common characteristics. As in *Town of Greece*, they usually began with an introduction such as "let us pray" or "please pray with me," followed immediately by the prayer itself. Likewise as in *Town of Greece*, the prayers typically implored divine guidance for the Commissioners, sought divine protection for the County and its residents, highlighted a recent event or holiday and expressed

concern or gratitude regarding it, or beseeched divine providence for the County or its citizens. Compare Br. of Resp. at *9-11, *Town of Greece*, 134 S. Ct. 1811 (2014) (No. 12-696), 2013 WL 5230742, with App. 32-33.[1]

Citizens arrived both before and after the prayer; some prayed along with the Commissioner, and others did not. Following the invocation, the Commissioner who delivered the invocation usually recited the Pledge of Allegiance, and the Board began its official business. App. 198-99.

3. Respondents are Rowan County residents who attended the Board's meetings. Each initially objected to the Board's prayer practice based on then-governing Fourth Circuit precedent requiring legislative prayer to be nonsectarian to comport with the Establishment Clause. See, e.g., *Joyner* v. *Forsyth County*, 653 F.3d 341, 348 (4th Cir. 2011) (Wilkinson, J.) ("Our cases have * * * approv[ed] legislative prayer only when it is nonsectarian in both policy and practice.").[2] Relying on this precedent, respondents insisted that "*Marsh* forbids sectarian legislative prayer,

[1] The text of each prayer at issue is included in the appendix at 247-306.

[2] This now-abrogated precedent relied specifically on the gloss on *Marsh* v. *Chambers*, 463 U.S. 783 (1983), rendered in dictum in *County of Allegheny* v. *American Civil Liberties Union*, 492 U.S. 573, 603 (1989), that this Court rebuked in *Town of Greece* as "disputed when written and * * * repudiated by later cases." *Town of Greece*, 134 S. Ct. at 1821; cf. *Joyner*, 653 F.3d at 348 (Wilkinson, J.) ("*Allegheny* underscored the point, clarifying that '[t]he legislative prayers involved in *Marsh* did not violate

whether given by Board members themselves, or by outside prayer-givers invited to give the opening prayer on behalf of the Board." JA272-73 (citing *Joyner*, 653 F.3d at 348).

The Board disagreed; Commissioners continued to deliver invocations as their consciences dictated without guidance from or review by the Board. Respondents, in turn, sought an injunction prohibiting sectarian invocations before Board meetings along with nominal damages and attorneys' fees. App. 201.

4. This Court then decided *Town of Greece*, rejecting any "insistence on nonsectarian or ecumenical prayer." 134 S. Ct. at 1820. Instead, this Court cast the critical Establishment Clause question as to whether a challenged practice fits within the Nation's "historical practices and understandings." *Id.* at 1819 (quoting *County of Allegheny*, 492 U.S. at 670 (Kennedy, J., concurring in judgment in part and dissenting in part)). Reviewing its prior cases and the Nation's historical tradition, this Court determined that prayers fit within that tradition when they are "solemn and respectful in tone" and "invite[] lawmakers to reflect upon shared ideals and common ends before they embark on the fractious business of governing." *Id*. at 1823. Greece's prayer practice, and the sectarian prayers it produced, fit comfortably into this tradition—and thus comported with the Establishment Clause. *Id*. at 1824.

[the Establishment Clause] *because* the particular chaplain had "removed all references to Christ." ' ").

A plurality of this Court likewise concluded that Greece's prayer practice did not unconstitutionally coerce listeners. The plurality "presumed that the reasonable observer is acquainted with" the Nation's legislative-prayer "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 private citizens." *Id*. at 1825 (Kennedy, J., plurality opinion). The plurality noted that public "apprecia[tion of] these acknowledgments * * * does not suggest that those who disagree are compelled to join" in the legislative prayer. *Ibid*. Greece permitted attendees to come and go as they pleased "during the prayer, arriving late, or even * * * making a later protest." *Id.* at 1827. Thus, "[s]hould nonbelievers choose to exit the room during a prayer they find distasteful, their absence [would] not stand out as disrespectful or even noteworthy"—nor would their presence signal "quiet acquiescence * * * [or] agreement with the words or ideas expressed." *Ibid.* Absent a strong showing that Greece's legislators had "direct[ed] the public to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced" by prayer participation, *id*. at 1826, the plurality held, a legislative prayer could not unconstitutionally coerce attendees.

Justice Thomas articulated a narrower view of coercion. *Id*. at 1835, 1838 (Thomas, J., concurring in part and concurring in the judgment). Applying the Court's historical approach to the idea of religious

coercion itself, Justice Thomas explained that the coercion the Establishment Clause protected against "was coercion of religious orthodoxy and of financial support *by force of law and threat of penalty*." *Id*. at 1837 (citation omitted). Justice Thomas concluded that the "[o]ffense" that the objectors in *Town of Greece* felt "[did] not equate to coercion." *Id*. at 1838 (citation omitted).

Writing for four Justices, Justice Kagan dissented. *Id*. at 1841 (Kagan, J., dissenting). While agreeing that *Marsh* correctly permitted Nebraska's legislative-prayer practice, the dissent pointed to "three differences [that], taken together, remove[d]" Greece's prayer practice "from the protective ambit of *Marsh*." *Id*. at 1841-42, 1849.

"First," the public-participatory setting of "Greece's town meetings" necessarily "revolve[d] around ordinary members of the community." *Id*. at 1847. Unlike Congress, where the public does not participate, Greece's local-government setting "both by design and in operation" involved the public. *Ibid.* "Second," Greece's prayers were "directed squarely at the citizens" because they "almost always beg[an] with some version of 'Let us all pray together.' " *Id*. at 1847, 1848. "And third," Greece's prayers were "explicitly Christian—constantly and exclusively so." *Id*. at 1848. The prayers used terms such as "Jesus," "Christ," "Your Son," or "the Holy Spirit," and "contained elaborations of Christian doctrine or recitations of scripture." *Ibid*. The dissent specifically faulted Greece's failure to

"ma[k]e any effort to be inclusive," such as by "assur[ing] attending members * * * that they need not participate in the prayer session." *Id*. at 1849. These "three differences, taken together," rendered Greece's prayer practice unconstitutional to the dissent. *Ibid*.

5. In the wake of *Town of Greece*, respondents and the County each sought summary judgment. App. 204. The County contended that *Town of Greece* defeated respondents' challenge to the County's prayer practices based on their sectarian content. *Id*. at 197-98. Sectarian prayer by legislators, the County argued, fit comfortably within the Nation's history and traditions as required by *Town of Greece*. Respondents changed theories as to why the County's prayer practice violated the Establishment Clause following *Town of Greece*, arguing instead that it did not protect prayers delivered by legislators. *Id*. at 197-98, 224.

The district court acknowledged that *Town of Greece* abrogated the Fourth Circuit's precedent permitting only nonsectarian prayers, see *Joyner*, 653 F.3d at 349, yet nonetheless concluded that *Town of Greece* applied only to prayers given by chaplains—not legislators. App. 217-18. The court described the "crucial question in comparing the present case with *Town of Greece* [as] the significance of the identity of the prayer-giver." *Id.* at 217. The court agreed that this Court "did not explicitly premise its decision on the fact that [Greece's] Town Council members were not the ones giving the prayers." *Ibid.* Still, it found "telling that throughout its *Town of Greece* opinion and the opinion in *Marsh*," this Court "discussed legislative

prayer practices in terms of invited ministers, clergy, or volunteers"—even though neither *Town of Greece* nor *Marsh* involved prayers by legislators. *Id.* at 217-18. The district court granted respondents summary judgment and permanently enjoined the County's prayer practice.

6. A divided panel of the Fourth Circuit reversed. The panel majority agreed with the district court that the essential "dispute" was "whether the Board's practice of the elected commissioners delivering such prayers makes a substantive constitutional difference." App. 147. Yet it disagreed with the district court, instead finding a "long and varied tradition of lawmaker-led prayer." *Id*. at 152. The panel observed that this aligned with the Court's observations that the "principal audience for these invocations is * * * lawmakers themselves." *Id.* at 152-53 (quoting *Town of Greece*, 134 S. Ct. at 1825 (Kennedy, J., plurality opinion)). The panel further noted that if "legislative prayer is intended to allow lawmakers to 'show who and what they are' in a public forum, then it stands to reason that they should be able to lead such prayers for the intended audience: themselves." *Id*. at 153 (quoting *Town of Greece*, 134 S. Ct. at 1826 (Kennedy, J., plurality opinion)).

The panel then surveyed the prayer record, aware of this Court's instruction that "invocations [that] denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion" do not fit within the Nation's legislative-prayer traditions. *Id.* at 156 (quoting *Town of Greece*, 134 S. Ct. at 1823). Reviewing the

"practice * * * on the whole," *Town of Greece*, 134 S. Ct. at 1824, the panel determined that the County's prayers "did not stray across this constitutional line of proselytization or disparagement." App. 157. At most, the panel determined, Respondents called to the court's "attention * * * a few examples that contain[ed] more forceful references to Christianity out of the hundreds of legislative prayers delivered before Board meetings." *Id*. at 159. But even these were "austere and innocuous when measured against invocations upheld in *Marsh*." *Ibid*. Thus, the County's prayer practice satisfied *Town of Greece*, the panel reasoned, and Respondents' Establishment Clause challenge necessarily failed.

The panel dissent sharply disagreed. *Id.* at 179-96 (Wilkinson, J., dissenting). The dissent faulted the County's "combination of legislators as the sole prayer-givers, official invitation for audience participation"—phrases like "let us pray"—"consistently sectarian prayers referencing but a single faith, and the intimacy of a local governmental setting," arguing that the combination violated *Town of Greece*. *Id*. at 180. "Legislator-led prayer, when combined with" the above-mentioned "other elements, poses a danger not present" otherwise, *id*. at 185, and the "closed universe" of legislator-led prayers advanced the County "one step closer to a de facto religious litmus test for public office." *Id*. at 188. The dissent exhorted the County to embrace "non-denominational prayers or diverse prayer-givers," or to adopt a suggested "Message of Religious Welcome" set out at the beginning of the dissent. *Id.* at 195.

7. The Fourth Circuit granted rehearing *en banc* and affirmed the district court on a 10-5 vote. App. 12 (Wilkinson, J.). Agreeing that the critical question was whether "Rowan County's practice of lawmaker-led prayer runs afoul of the Establishment Clause," *id.* at 5, the *en banc* majority determined that the County's exclusively legislator-led prayer, when taken "in combination with the other aspects of the Board's prayers," violated the Establishment Clause. *Id.* at 18. The *en banc* court did not hold that prayers led by lawmakers violated the Clause—but instead that the practice "interact[ed] with other aspects of the county's practice, altering their constitutional significance." *Id*. at 27. When this aspect was joined with a failure to "embrac[e] religious pluralism and the possibility of a correspondingly diverse invocation practice," an "unceasing[] and exclusive[]" invocation of "Christianity," introductions like "Let us pray," and the "intimate setting of a municipal board," the County's practice violates the Establishment Clause. *Id*. at 29, 31, 42.

As with the panel decision, the *en banc* majority opinion drew sharp dissent. *Id*. at 62-73 (Niemeyer, J., dissenting), 74-126 (Agee, J., dissenting). Judge Agee's principal dissent argued that three of the four factors on which the *en banc* majority relied—"(1) commissioners as the sole prayer-givers; (2) invocations that drew exclusively on Christianity and sometimes served to advance that faith; (3) invitations to attendees to participate; and (4) the local government setting"—had already been addressed and approved by this Court. *Id*.

at 86-87. Taking *Town of Greece* and *Marsh* as settling the constitutional permissibility of the latter three of these four factors, the dissent concluded that prayer by legislators extended back to the Founding, and thus fit comfortably within the *Town of Greece* framework. *Id*. at 77-78. Judge Niemeyer's dissent agreed, finding the majority's purported distinction a mere "handle" through which the "majority [could] consider[] itself absolved of precedent and free to launch its own free-standing analysis." *Id.* at 68.

8. While *Rowan County* was on appeal in the Fourth Circuit, the Sixth Circuit resolved the same question—the constitutionality of legislative prayer led by legislators—in the opposite way.

Like Rowan County, Jackson County begins its official meetings with an invocation delivered by commissioners on a rotating, voluntary basis. The prayers begin with statements like "Please bow your heads and let us pray" and often contain faith-specific language like "Lord" and "Heavenly Father," as dictated by the individual commissioner's conscience and "spiritual needs." *Bormuth*, 870 F.3d at 498, 511 (quoting *Town of Greece*, 134 S. Ct. at 1826 (Kennedy, J., plurality opinion)).

The *Jackson County* district court identified the issue presented as "sectarian legislative prayer delivered by a government official." *Bormuth* v. *County of Jackson*, 116 F. Supp. 3d 850, 856 (E.D. Mich. 2015). But "[c]ontrary to the district court's finding in [*Rowan*

County], the [c]ourt maintain[ed] that the present factual circumstances fall within" this Court's legislative prayer doctrine. *Id.* at 857.

A divided panel of the Sixth Circuit reversed, specifically approving the Fourth Circuit panel dissent. *Bormuth* v. *County of Jackson*, 849 F.3d 266, 287-91 (6th Cir. 2017). The Sixth Circuit panel majority determined that "[a] combination of factors" rendered Jackson County's prayer practice unconstitutional, "including one important factor: the identity of the prayer giver." *Id.* at 281.

Judge Griffin's panel dissent approvingly cited the Fourth Circuit panel majority's approach, *id.* at 311 (Griffin, J., dissenting), concluding that "[o]ur history clearly indicates a role for legislators to give prayers before legislative bodies." *Id.* at 298.

Twelve days later, the Sixth Circuit voted *sua sponte* to grant rehearing *en banc*. App. 128. Two months after the *en banc* Fourth Circuit prohibited Rowan County's prayer practice based on a "combination of factors," *id.* at 182, the *en banc* Sixth Circuit rejected that approach on a 9-6 vote. *Bormuth*, 870 F.3d at 509 n.5.

The *en banc* Sixth Circuit observed that the tradition long followed in Congress and the state legislatures "[a]t the heart of this appeal is whether Jackson County's prayer practice falls outside our historically accepted traditions because the Commissioners themselves, not chaplains, or invited community members, lead the invocations." *Id.* at 509. The court noted that

"[b]efore the founding of our Republic, legislators offered prayers to commence legislative sessions," and listed multiple historical examples that, it concluded, established that such prayers fit within the Nation's traditions. *Ibid.* It sharply disagreed with the *en banc* Fourth Circuit's contrary conclusion, describing that holding as an "aberration" that could be explained only because the Fourth Circuit "apparently did not consider the numerous examples of such prayers presented to" the Sixth Circuit. *Id.* at 510. The *en banc* Sixth Circuit was divided as to which rationale regarding coercion controlled in *Town of Greece*. *Id.* at 515 n.10. It determined, however, that Jackson County's practice satisfied either analysis. *Id.* at 515-19.

Judges Moore and White authored separate dissents. Each hewed to the panel majority's (and the *en banc* Fourth Circuit's) "combination of factors" approach. *Id.* at 537 (Moore, J., dissenting); *id.* at 545 (White, J., dissenting).

REASONS FOR GRANTING THE PETITION

I. The Circuits Are Split On The Exceedingly Important, Frequently Recurring Question Of Whether Legislator-Led Prayer Comports With The Establishment Clause.

Whether the identity of a legislative prayer-giver is constitutionally significant is an issue that has sharply—and intractably—divided two *en banc* courts of appeals. In the five States that make up the

Fourth Circuit, when a local government's legislators deliver legislative prayers that contain sectarian language, that practice falls "well outside the confines of *Town of Greece*," App. 25, and is constitutionally prohibited; in the four States that make up the Sixth Circuit, that same practice falls well within "American historical practices" by which courts "determine what the Establishment Clause allows and what it does not." *Bormuth*, 870 F.3d at 521 (Sutton, J., concurring).

Innumerable cities and counties rely on legislator prayer-givers. This widespread practice has several advantages: it is less expensive than retaining a full-time chaplain, it is easily available in remote or rural areas where volunteers may be scarce, and it can permit legislators to more authentically express their need for spiritual guidance before embarking upon the difficult task of governance. Hundreds of local governments in the Fourth Circuit must either abandon this practice—or legislative prayer altogether—or risk lawsuits (and hefty attorneys' fees), while hundreds of cities and counties throughout the Sixth Circuit are under no such threat and may continue to engage in a practice that traces its lineage back to the Founding. The conflict on such an important issue is intolerable, and only this Court can resolve it.

A. The Circuits Are Split On Whether Legislative Prayer Delivered By Legislators Fits Within The Nation's Historical Tradition.

In *Marsh*, this Court held that the Nebraska legislature's practice of opening sessions with a prayer by a chaplain paid by the State did not violate the Establishment Clause. This Court reaffirmed that central holding in *Town of Greece*, 134 S. Ct. 1811, confirming the constitutional soundness of a local government's legislative prayer before opening meetings with invocations delivered by local, volunteer clergy even though many, if not most, of the prayers were sectarian. This Court reaffirmed that opening public meetings with a prayer does not violate the Establishment Clause. "In light of the unambiguous and unbroken history of more than 200 years, there can be no doubt that the practice of opening legislative sessions with a prayer has become part of the fabric of our society." *Id.* at 1819 (quoting *Marsh*, 463 U.S. at 792).

Justice Kennedy's majority opinion rejected the argument that sectarian prayers are not part of that "fabric," holding that "[a]n insistence on nonsectarian or ecumenical prayer as a single, fixed standard is not consistent with the tradition of legislative prayer outlined in the Court's cases." *Id.* at 1820. This Court expressly rejected the "proposition" that only nonsectarian legislative prayer can pass constitutional muster as "irreconcilable with the facts of *Marsh* and with its holding and reasoning." *Id.* at 1821. This Court also pointed out that, although the chaplain in *Marsh*

"modulated the 'explicitly Christian' nature of his prayer and 'removed all references to Christ' after a Jewish lawmaker complained, * * * *Marsh* did not suggest that Nebraska's prayer practice would have failed had the chaplain not acceded to the legislator's request." *Ibid.* (quoting *Marsh*, 463 U.S. at 793 n.14).

In *Town of Greece*, the legislative prayer practice involved a rotating group of volunteer clergy from the surrounding community—and this Court emphasized that while "nearly all of the congregations in town turned out to be Christian," that did "not reflect an aversion or bias on the part of town leaders against minority faiths." *Id.* at 1824. Rather, "[s]o long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing." *Ibid.* Any other rule, the Court reasoned, "would require the town 'to make wholly inappropriate judgments about the number of religions [it] should sponsor and the relative frequency with which it should sponsor each,' a form of government entanglement with religion that is far more troublesome than the current approach." *Ibid.* (quoting *Lee* v. *Weisman*, 505 U.S. 577, 617 (1992) (Souter, J., concurring)).

Having rejected the argument that the town's legislative prayers violated the Establishment Clause because they were sectarian, this Court next rejected the argument that the prayers violated the Establishment Clause because they were coercive. Justice Kennedy's plurality opinion made clear that mere exposure to a

prayer (even sectarian prayer) in a public meeting does not constitute unconstitutional coercion, given that legislative prayer's "purposes are to lend gravity to public proceedings and to acknowledge the place religion holds in the lives of many private citizens, not to afford government an opportunity to proselytize or force truant constituents into the pews"—and that because "many appreciate these acknowledgments of the divine in our public institutions does not suggest that those who disagree are compelled to join the expression or approve its content." *Id.* at 1825 (Kennedy, J., plurality opinion) (citations omitted).

Justice Kennedy acknowledged the argument that some of the invocations at issue "disparaged those who did not accept the town's prayer practice," including "[o]ne guest minister [who] characterized objectors as a 'minority' who are 'ignorant of the history of our country,'" and "another [who] lamented that other towns did not have 'God-fearing' leaders." *Id.* at 1824. Nonetheless, "[al]though these two remarks strayed from the rationale set out in *Marsh*, they do not despoil a practice that on the whole reflects and embraces our tradition." *Ibid.* "Absent 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." *Ibid.* That is because, Justice Kennedy explained, "*Marsh* * * * requires an inquiry into the prayer opportunity as a whole, rather than into the contents of a single prayer." *Ibid.* (citing *Marsh*, 463 U.S. at 794-95).

Justice Kennedy next rejected the argument that *Marsh* was distinguishable because "prayer conducted in the intimate setting of a town board meeting 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." *Id.* at 1824-25. While the *Town of Greece* plaintiffs argued that "the public may feel subtle pressure to participate in prayers that violate their beliefs in order to please the board members from whom they are about to seek a favorable ruling," *id.* at 1825, Justice Kennedy disagreed: "The principal audience for these invocations is not, indeed, the public but lawmakers themselves, who may find that a moment of prayer or quiet reflection sets the mind to a higher purpose and thereby eases the task of governing." *Ibid.* Thus, while "many members of the public find these prayers meaningful and wish to join them[,] * * * their purpose is largely to accommodate the spiritual needs of lawmakers and connect them to a tradition dating to the time of the Framers." *Id.* at 1826.

Crucially for this case, Justice Kennedy observed that "[f]or members of town boards and commissions, who often serve part-time and as volunteers, ceremonial prayer may also reflect the values they hold as private citizens. The prayer is an opportunity for them to show who and what they are without denying the right to dissent by those who disagree." *Ibid.*

Justice Kennedy noted that "[t]he analysis would be different if town board members directed the public

to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person's acquiescence in the prayer opportunity." *Ibid.* But this Court made clear that "offense" and feeling "disrespected" "do[ ] not equate to coercion." *Ibid.* Where "the prayers neither chastised dissenters nor attempted lengthy disquisition on religious dogma," they do not amount to unlawful coercion. *Ibid.* Prayers are "denigrating" and "proselytizing" "if the course and practice over time shows that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion." *Id.* at 1823. But "[p]rayer 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, serves th[e] legitimate function" approved in *Marsh* of "elevat[ing] the purpose of the occasion and * * * unit[ing] lawmakers in their common effort." *Ibid.*

In *Town of Greece*, then, this Court set forth a framework for resolving Establishment Clause challenges to legislative prayer: courts first must "determine whether the * * * practice fits within the tradition long followed in Congress and the state legislatures." *Ibid*. Two *en banc* courts of appeals have undertaken that inquiry into materially identical prayer practices—which are widespread throughout the Nation—and reached opposite conclusions.

Like thousands of other state and local governments throughout the Nation, the municipalities in both cases opened their meetings with a brief

invocation. App. 198-99; *Bormuth*, 870 F.3d at 497. Board members have the opportunity to deliver an invocation on a voluntary, rotating basis, as they have for years. App. 198-99; *Bormuth*, 870 F.3d at 497. No attempt is made to supervise, dictate, or edit the content of the prayers—and board members remain free to offer a prayer, ask for a moment of silence, or pass on the prayer opportunity altogether, according to the dictates of their own consciences. App. 198-99; *Bormuth*, 870 F.3d at 498.

As in *Town of Greece*, the invocations typically begin with "Let us pray" or a similar phrase. App. 199; *Bormuth*, 870 F.3d at 498; Joint Appendix at 32a, 35a, 37a, *Town of Greece*, 134 S. Ct. 1811 (2014) (No. 12-696), 2013 WL 3935056. As in *Town of Greece*, the vast majority of prayers contain faith-specific language and references. App. 7-8; *Bormuth*, 870 F.3d at 498; *Town of Greece* Joint Appendix, *supra*, at 28a, 34a, 114a-115a. And as in *Town of Greece*, the invocations take place in a local-government setting, with official business beginning shortly thereafter. App. 6-7; *Bormuth*, 870 F.3d at 498; *Town of Greece*, 134 S. Ct. at 1816.

The only difference between the prayer practice upheld in *Town of Greece* and the one at issue here is the identity of the prayer-giver. In the Fourth Circuit, that difference is constitutionally significant, even dispositive; in the Sixth Circuit, it is not. The conflict could hardly be starker. The Fourth Circuit—while acknowledging that legislator-led prayer is "far from rare"—nonetheless concluded that legislator-led prayer is an "exception to the rule" of chaplain-led

prayer and thus "a conceptual world apart" from the prayer practice approved by this Court in *Town of Greece*. App. 18, 22. The Sixth Circuit, expressly disagreeing with the Fourth Circuit, concluded instead that "history shows that legislator-led prayer is a longstanding tradition" that "is uninterrupted and continues in modern time" and thus "is consistent with *Marsh* v. *Chambers* and *Town of Greece* v. *Galloway* and does not violate the Establishment Clause." *Bormuth*, 870 F.3d at 509, 510, 519.

B. The Circuits Are Split On Whether Legislative Prayer Delivered By Legislators Coerces Nonparticipants.

The Fourth and Sixth Circuits further disagree as to *Town of Greece*'s coercion analysis. The *en banc* Fourth Circuit listed four features of the County's prayer practice that, taken together, made it impermissibly coercive in that court's view: (1) the prayers' openings; (2) the local-government setting; (3) the prayers' faith-specific contents; and (4) the prayers' delivery by legislators. App. 39-42. The court said "that it [was] the combination of * * * elements—not any particular feature alone—that * * * threaten[ed] to blur the line between church and state to a degree unimaginable in *Town of Greece*." App. 27. But the first three "elements" considered by the Fourth Circuit were expressly approved by this Court in *Town of Greece*—so they cannot possibly justify a finding of coercion. That leaves the prayer-giver's identity as the only salient difference between the prayer practice approved in

Town of Greece and the one at issue here. But if, as the Fourth Circuit itself recognized, legislator-led prayer has long been part of the Nation's history and traditions, *id*. at 22-23, then a combination of permissible traits cannot somehow result in an impermissible practice without abandoning *Town of Greece* altogether.

The Fourth Circuit found each factor troubling precisely *because* of the identity of the prayer-giver as a legislator. *Id.* at 40. Faith-specific prayer, for example, while not coercive standing alone, became "persistent[]" and "relentless[]" when delivered by a lawmaker, *id*. at 32; the phrase "Let us pray," when said by a legislator, became an unconstitutional directive. *Id.* at 41. Not only is the Fourth Circuit's four-rights-make-a-wrong rule inconsistent with *Town of Greece*, it is also a mere conduit for the Circuit's fundamental objection to legislative prayer delivered by legislators.

By contrast, the Sixth Circuit—recognizing that *Town of Greece* had already deemed each challenged feature (save the identity of the prayer-giver) not problematic—rejected the Fourth Circuit's "totality of the circumstances" approach and instead applied the standard set forth by the *Town of Greece* plurality. See, e.g., *Bormuth*, 870 F.3d at 516 n.11 (noting that the options that the Fourth Circuit derided were "options Justice Kennedy's plurality opinion expressly approved"). The Sixth Circuit thus focused on whether the prayer practice, taken as a whole and over time, revealed negative official actions against objectors, or

otherwise a pattern of denigrating nonbelievers. *Id.* at 516-17.

The conflict between the Fourth and Sixth Circuits' approaches creates intolerable uncertainty for state and local governments, who will be hard pressed to know when any particular combination of factors—including those expressly approved in *Town of Greece*—"blur[s] the line between church and state" and risks exposure to litigation (and attorneys' fees). See App. 189 (Wilkinson, J., dissenting). As demonstrated more fully below, the conflict unsettles precisely what *Town of Greece* settled in the first place. Only this Court can resolve the intractable conflict between two *en banc* courts of appeals and provide state and local officials with much-needed guidance on this important, frequently recurring Establishment Clause question.

II. The Fourth Circuit's Decision Conflicts With This Court's Precedent.

The Fourth Circuit's decision in this case also conflicts with this Court's decisions in *Marsh* and *Town of Greece*. It all but disregards the historical analysis held dispositive by this Court in *Town of Greece*, and it effectively nullifies that analysis by radically expanding the coercion inquiry.

A. The Fourth Circuit Disregarded The Dispositive Role That History Plays Under *Town Of Greece*.

In *Town of Greece*, this Court directed a straightforward historical inquiry to resolve Establishment Clause challenges to prayer practices: if a practice "fits within the tradition long followed in Congress and the state legislatures," it comports with the Establishment Clause. 134 S. Ct. at 1819. But the Fourth Circuit first analyzed the historical record incorrectly, and then treated this dispositive inquiry as merely one consideration among many. Neither comports with *Town of Greece*.

The Fourth Circuit's historical analysis departs from this Court's in several key respects. For example, in *Town of Greece*, this Court explained that it need not "define the precise boundary of the Establishment Clause" when analyzing a longstanding practice like legislative prayer—and proved the point by not even mentioning factual differences between the prayer practice before it in *Town of Greece* (multiple volunteer, rotating clergy delivering invocations in a local-government setting) and the one approved in *Marsh* (a single paid chaplain delivering invocations in a state-legislature setting). See *id.* at 1851-52 (Kagan, J., dissenting) ("The majority thus gives short shrift to the gap—more like, the chasm—between a legislative floor session involving only elected officials and a town hall revolving around ordinary citizens."). The Fourth Circuit essentially confined *Town of Greece* to its facts and moved on to apply a "totality of the circumstances" test:

"[W]hen the historical principles articulated by the Supreme Court do not direct a particular result, a court must conduct a 'fact-sensitive' review of the prayer practice." App. 15.

But the "fact-sensitive review" performed by the Fourth Circuit bears little resemblance to the historical analysis performed by the *Town of Greece* majority, although it does share much in common with the preferred approach of the dissent in that case. See, e.g., *Town of Greece*, 134 S. Ct. at 1849 (Kagan, J., dissenting) ("Th[e]se three differences, taken together, remove this case from the protective ambit of *Marsh* and the history on which it relied."). The Fourth Circuit derived from this Court's "historical principles" in *Town of Greece* "that sectarian references are permissible *in the proper context*," so long as prayers do "not get out of hand," and expressed concern that "local government" could "work sectarian practices into public meetings in whatever manner it wishes." App. 15, 18, 21 (emphasis added). But this Court addressed that concern in *Town of Greece*—not by licensing courts to supervise sectarian prayers so they do not "get out of hand," but by explaining that "[t]he relevant constraint derives from [legislative prayer's] place at the opening of legislative sessions, where it is meant to lend gravity to the occasion and reflect values long part of the Nation's heritage." 134 S. Ct. at 1823. The Fourth Circuit was not free to impose additional constraints on legislative prayer that effectively restore that court's prior ban on sectarian legislative prayer.

The Fourth Circuit's historical analysis also departed from this Court's by focusing not primarily on actual history and tradition, but on what the Fourth Circuit called "[t]he conspicuous absence of case law on lawmaker-led prayer"—which the Fourth Circuit speculated is "likely no accident." App. 20. But that gets the analysis exactly backwards: if anything, that a practice has survived for decades without legal challenge suggests its soundness, not its weakness. After all, the passage of only "40 years * * * suggest[ed] more strongly than can any set of formulaic tests that few individuals, whatever their system of beliefs, are likely to have understood" legislative prayer delivered by legislators "as amounting, in any significantly detrimental way, to a government effort to favor a particular religious sect." *Van Orden* v. *Perry*, 545 U.S. 677, 702 (2005) (Breyer, J., concurring in the judgment). All the more so here: legislators have offered legislative prayers unchallenged for centuries longer than that.

The Fourth Circuit's analysis regarding the significance of the prayer-giver is particularly puzzling given that the court previously *rejected* the argument that the identity of the prayer-giver as a legislator matters to the constitutional analysis. See, e.g., *Simpson* v. *Chesterfield Cty. Bd. of Supervisors*, 404 F.3d 276, 286 (4th Cir. 2005) (Wilkinson, J.) (noting that "neither * * * *Marsh* nor * * * *Allegheny*[ ] held that the identity of the prayer-giver, rather than the content of the prayer," was relevant); see also App. 62 (Niemeyer, J., dissenting) (criticizing the en banc majority for "seek[ing] to avoid [*Town of Greece*] and to reinstate

instead" its prior precedent prohibiting sectarian prayer). Taken at face value, this doctrinal shift suggests that the Fourth Circuit understands *Town of Greece* as *reducing* constitutional protections for legislators delivering legislative prayers. That cannot be right.

The Fourth Circuit's historical analysis further departed from this Court's by relying on a comparative analysis that appears nowhere in *Town of Greece*. The Fourth Circuit acknowledged the long tradition of lawmakers delivering invocations at both the federal and state levels, App. 21-22—a recognition that should have settled the historical question in the County's favor. See *Town of Greece*, 134 S. Ct. at 1819 ("The Court's inquiry, then, must be to determine whether the prayer practice in the town of Greece fits within the tradition long followed in Congress and the state legislatures."). Legislator-led prayer indeed extends back to the Founding and forward to the modern day.[3]

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[3] See, e.g., 1 JOURNAL OF THE PROVINCIAL CONGRESS OF SOUTH CAROLINA, 1776, at 75 (1776) (noting prayers led by Reverend Turquand, a Member of the South Carolina legislature); Sen. Robert C. Byrd, Senate Chaplain, in 2 THE SENATE, 1789-1989: ADDRESSES ON THE HISTORY OF THE UNITED STATES SENATE 297, 305 (Wendy Wolff ed., 1982) ("Senators have, from time to time, delivered the prayer."); 119 CONG. REC. 17,441 (1973) (noting prayer offered by Rep. William H. Hudnut III); 161 CONG. REC. S3313 (daily ed. May 23, 2015) (Senator Lankford offering a prayer "[i]n the Name of Jesus"); 159 CONG. REC. S3915 (daily ed. June 4, 2013) (Sen. William M. Cowan offering a prayer); 155 CONG. REC. 32,658 (2009) (Sen. John Barrasso offering a prayer).

The Fourth Circuit's methodological errors aside, its conclusion is perhaps the most puzzling of all—that even though "lawmaker-led prayer" is "far from rare," it nonetheless "falls outside the tradition of legislative prayer elaborated in *Marsh* and *Town of Greece*" because chaplain-led prayer was more common. App. 22. But *Town of Greece* does not suggest that the historical analysis of one longstanding practice should turn on whether it is more or less "common" than another iteration of the same practice. If it did, then sectarian prayer would only be constitutional if it were more "common" than nonsectarian prayer. The Fourth Circuit's analysis would constitutionally enshrine through the Establishment Clause the Nation's majority prayer practices—and *only* the majority prayer practice—on the paradoxical ground of promoting inclusiveness. But that is not what *Town of Greece* held. What matters under *Town of Greece* is whether a particular practice fits within the Nation's history and traditions—and the Fourth Circuit's own historical analysis confirms that lawmaker-led prayer does—regardless of whether another prayer practice happens to be more common.

Under *Town of Greece*, the Fourth Circuit's historical analysis should have stopped there. But pivoting away from history, the court went on to hold that because, in the court's view, legislator-led prayer "poses greater risks under the Establishment Clause," *id.* at 23, it can only be allowed in the right circumstances, with "no * * * *per se* rule." *Id.* at 24. In the Fourth

Circuit's view, the relevant question is not whether legislator-led prayer fits within the Nation's history and tradition, but whether in any particular instance it "crosse[s] the line," *id.* at 35, when taken with "other aspects of the prayer practice." *Id.* at 24. But that is no historical analysis at all.[4]

Town of Greece directed a straightforward inquiry: if legislator-led prayer fits within the Nation's historical prayer traditions, it satisfies the Establishment Clause. If it does not, then it may be subject to one or more of the other tests propounded by this Court. But this Court left no room for the Fourth Circuit's approach—giving half-credit for legislator-led prayer's "far from rare" historical practice, but then requiring an additional, *ad hoc* analysis of whether a specific legislator-led prayer practice "crosse[s] the line," see App. 35; see also *Bormuth*, 870 F.3d at 521 (Sutton, J., concurring) ("History judges us in this area. We do not judge history.").

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[4] The *en banc* majority relied on its assessments that the County's legislator-led prayer practice "served to identify the government with Christianity," App. 5, that it "identifies the [County] with religion more strongly than ordinary invocations," *id.* at 20, and that its practice implied "one true faith * * * of government itself." *Id.* at 34. These concerns about whether the County "identified with" Christianity are barely concealed references to this Court's *Lemon* test. See *Lemon* v. *Kurtzman*, 403 U.S. 602, 622 (1971). That test has no role, however, in analyzing historical practices like legislative prayer. See *Town of Greece*, 134 S. Ct. at 1819-20; see also *Marsh*, 463 U.S. at 790-91.

B. The Fourth Circuit Radically Expanded *Town Of Greece*'s Coercion Inquiry To Effectively Abrogate Its History-Based Holding.

Having brushed aside this Court's instruction regarding history's central role in evaluating challenges to legislative prayer practices, the Fourth Circuit radically expanded *Town of Greece*'s understanding of coercion. The effect is to smuggle back into the Fourth Circuit what *Town of Greece* flatly prohibited: *ad hoc* inquiries into whether a prayer practice is sufficiently ecumenical. Only this Court can resolve the conflict with *Town of Greece* in this regard as well.

The Fourth Circuit's coercion analysis irreconcilably conflicts with *Town of Greece* (under either Justice Kennedy's plurality or Justice Thomas's concurrence) because it relied almost exclusively on features already deemed unproblematic by a majority of this Court in *Town of Greece*. See App. 39-42. For example, the Fourth Circuit cited three instances of prayer-givers saying "Let's pray together," "Please pray with me," and "Let us pray" as examples of impermissible directions to pray. App. 39-40. But prayers in *Town of Greece* began with the same or substantially similar phrases: "Would you bow your heads with me as we invite the Lord's presence here tonight?" and "Let us join our hearts and minds together in prayer." *Town of Greece*, 134 S. Ct. at 1826 (Kennedy, J., plurality opinion). The Court held that these were "inclusive, not coercive." *Ibid.* Just so here.

The Fourth Circuit also faulted the County's "local government" setting, giving three reasons why in its view that setting is "even more questionable" from an Establishment Clause perspective. App. 42. First, the "intimate setting of a municipal board meeting present[ed] a heightened potential for coercion." *Ibid.* Second, "the commissioners considered citizen petitions shortly after the invocation." *Id*. at 43. And third, although citizens "could time their arrival at the meeting to come after the prayer, leave the room before the prayer, or simply stay seated," the "intimacy of a town board meeting may push attendees to participate" in the practice to avoid disapproval. *Id.* at 44. But the challengers to Greece's prayer practice raised this same argument, and Justice Kennedy's plurality expressly rejected it. See 134 S. Ct. at 1825 (Kennedy, J., plurality opinion).

Indeed, the Fourth Circuit's discussion of the County's "unceasingly and exclusively * * * Christian[]" prayers, App. 31, echoes the *Town of Greece* dissent's description of the prayers there as "constantly and exclusively" Christian. 134 S. Ct. 1848 (Kagan, J., dissenting). And in conflict with this Court's rejection of any "insistence on nonsectarian" prayer, *id.* at 1820, the Fourth Circuit relied heavily on the prayers' sectarian content in holding them coercive, citing "In Jesus' name we pray," "King of Kings," "Lord of Lords," and Jesus and "His Kingdom," App. 32, as proof that "attendees must have come to the inescapable conclusion that the Board 'favors one faith and one faith only.'" *Id*. at 34.

Again, nothing here differs meaningfully from *Town of Greece*, where the prayers included references to "your Son and our brother the Lord Jesus Christ," *Town of Greece* Joint Appendix, *supra*, at 32a, the "words of the prophet Isaiah," *id*. at 113a, "Jesus Christ, Thy Son and our Savior," *ibid*., God's "kingdom," *id*. at 128a, and the recitation of a portion of Psalm 127, *id*. at 104a. If anything, the Fourth Circuit's analysis is more akin to that rejected by this Court in reversing the Second Circuit, which had concluded that the " 'steady drumbeat' of Christian prayer, unbroken by invocations from other faith traditions, tended to affiliate the town with Christianity." *Town of Greece*, 134 S. Ct. at 1818 (quoting *Galloway* v. *Town of Greece*, 681 F.3d 20, 32 (2d Cir. 2012)).[5]

[5] The Fourth Circuit identified one prayer (out of 143) that it characterized as "preaching conversion," three prayers that it characterized as "denigrating" other religions, and three prayers that in the Fourth Circuit's view promoted Christianity as a "preferred system of belief." App. 35-37. None of these prayers, however, differs materially from those in *Town of Greece* (or *Marsh*). See, e.g., *Town of Greece* Joint Appendix, *supra*, at 99a-100a, 104a, 110a-111a; Br. of *Amicus Curiae* Rev. Dr. Robert E. Palmer Supporting Petitioner at *6-8, *Town of Greece*, 134 S. Ct. 1811 (2014) (No. 12-696), 2013 WL 99190 (brief by minister from *Marsh* v. *Chambers* providing prayers issued before the Nebraska Legislature). Even crediting the Fourth Circuit's characterization of these individual prayers, that would only deepen the conflict with *Town of Greece*, which "requires an inquiry into the prayer opportunity as a whole, rather than into the contents of a single prayer," 134 S. Ct. at 1824—a standard that 7 prayers (at most) out of 143 (or roughly 5 percent) cannot meet, and the Fourth Circuit did not conclude otherwise.

In sum, the Fourth Circuit's constitutional analysis cannot be reconciled with *Town of Greece* or *Marsh*. Indeed, the Fourth Circuit's analysis is at odds with the very purpose of legislative prayer articulated in *Town of Greece*. Legislative prayer "accommodate[s] the spiritual needs of lawmakers," first and foremost, 134 S. Ct. at 1826 (Kennedy, J., plurality opinion); the Fourth Circuit condemns the County's prayer practice as coercive because legislators themselves speak to those needs. That cannot be right. Whatever the Fourth Circuit's views on either the seemliness of the County's legislative prayer practice or the soundness of this Court's legislative prayer precedents, it was not free to abandon those precedents in favor of its own preferred approach.

III. Only This Court Can Resolve The Conflict Between Two *En Banc* Courts Over The Constitutionality Of The Widespread Practice Of Legislator-Led Prayer.

Whether legislators may offer legislative prayers implicates state and local participation in a practice extending from "colonial times through the Founding of the Republic and ever since." *Marsh*, 463 U.S. at 788. Local governments seek to participate in this "unambiguous and unbroken history of more than 200 years," *id.* at 792, to express "shared ideals and common ends before" legislators "embark on the fractious business of governing." *Town of Greece*, 134 S. Ct. at 1823. Whether local governments may do so through

legislator-led prayer is unquestionably an issue of substantial importance—as the decisions of two *en banc* courts of appeals demonstrate. That those courts reached opposite conclusions on materially identical facts only heightens the need for this Court's review—particularly given that the split cannot resolve itself.

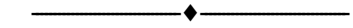
As things now stand, thousands of state and local governments with tens of thousands of members across nine States are subject to conflicting legal regimes regarding one of the Nation's oldest and most widespread traditions. Legislatures in the remaining States must hazard a guess as to which approach to take—and legislatures in the Fourth Circuit must grapple with a "totality of the circumstances" test that provides little meaningful guidance. Given the prospect of protracted litigation and hefty attorneys' fees, it would hardly be surprising if some local governments decide to forgo legislative prayer altogether—as happened before this Court provided clarity in *Town of Greece*. See Pet. for a Writ of Certiorari at *27, *Town of Greece*, 134 S. Ct. 1811 (2014) (No. 12-696), 2012 WL 6054799.

As the petition in *Town of Greece* explained, the Fourth Circuit's gloss narrowing *Marsh* prompted numerous challenges to longstanding prayer practices, necessitating review in *Town of Greece*, *ibid.*; the Fourth Circuit's narrowing of *Town of Greece* warrants this Court's review in just the same fashion. This Court's review is needed now to avoid the chilling of legislative prayer practices, to resolve the acknowledged conflict between the Fourth and Sixth Circuits,

and to confirm that this Court meant what it said in *Marsh* and *Town of Greece*.

This case is the ideal vehicle to resolve this conflict and dispel the confusion. As the *en banc* Sixth Circuit recognized, *Bormuth*, 870 F.3d at 509 & n.5, were Rowan County located in that jurisdiction, its legislative prayer practice would be upheld, not enjoined. The Fourth and Sixth Circuits diverge on purely legal questions. And there is no vehicle problem that would complicate the Court's review of those questions.

Nor is there any need for further percolation. Two *en banc* courts comprising 30 judges have thoroughly analyzed the issues and rendered multiple, comprehensive opinions. There is no possibility that the conflict will resolve itself over time—while additional delay can only exacerbate the conflict and confusion, with no concomitant benefit. Especially with the interests of state and local governments across the Nation at stake, further delay—like the conflict itself—is intolerable.



CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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863 F.3d 268
United States Court of Appeals,
Fourth Circuit.

Nancy LUND; Liesa Montag-Siegel; Robert Voelker,
Plaintiffs-Appellees,
v.
ROWAN COUNTY, NORTH CAROLINA,
Defendant-Appellant.
State of West Virginia; State of Alabama; State of Arizona; State of Arkansas; State of Florida; State of Indiana; State of Michigan; State of Nebraska; State of Nevada; State of Ohio; State of Oklahoma; State of South Carolina; State of Texas; Members of Congress; United States Justice Foundation; Conservative Legal Defense and Education Fund; Citizens United; Citizens United Foundation, Amici Supporting Appellant,
Americans United for Separation of Church and State; American Humanist Association; Anti-Defamation League; Center for Inquiry; Freedom From Religion Foundation; Interfaith Alliance Foundation; Sikh Coalition; Union for Reform Judaism; Women of Reform Judaism, Amici Supporting Appellees.

No. 15-1591
|
Argued: March 22, 2017
|
Decided: July 14, 2017

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Before GREGORY, Chief Judge, and WILKINSON, NIEMEYER, MOTZ, TRAXLER, KING, SHEDD, DUNCAN, AGEE, KEENAN, WYNN, DIAZ, FLOYD, THACKER, and HARRIS, Circuit Judges.

Affirmed by published opinion. Judge Wilkinson wrote the opinion, in which Chief Judge Gregory and Judges Motz, King, Duncan, Keenan, Wynn, Floyd, Thacker, and Harris joined. Judge Motz wrote a concurring opinion in which Judges Keenan and Harris joined. Judge Niemeyer wrote a dissenting opinion in which Judge Shedd joined. Judge Agee wrote a dissenting opinion in which Judges Niemeyer, Traxler, Shedd, and Diaz joined.

ON REHEARING EN BANC

WILKINSON, Circuit Judge:

This case requires that we decide whether Rowan County's practice of lawmaker-led sectarian prayer runs afoul of the Establishment Clause. For years on end, the elected members of the county's Board of Commissioners composed and delivered pointedly sectarian invocations. They rotated the prayer opportunity amongst themselves; no one else was permitted to offer an invocation. The prayers referenced one and only one faith and veered from time to time into overt proselytization. Before each invocation, attendees were requested to rise and often asked to pray with the commissioners. The prayers served to open meetings of our most basic unit of government and directly preceded the business session of the meeting. The district court, applying the Supreme Court's decision in *Town of Greece* v. *Galloway*, ___ U.S. ___, 134 S.Ct. 1811, 188 L.Ed.2d 835 (2014), held the county's prayer practice unconstitutional. A panel of this court reversed. See *Lund* v. *Rowan Cty.*, 837 F.3d 407 (4th Cir. 2016). The full court then granted rehearing en banc.

We conclude that the Constitution does not allow what happened in Rowan County. The prayer practice served to identify the government with Christianity and risked conveying to citizens of minority faiths a message of exclusion. And because the commissioners were the exclusive prayer-givers, Rowan County's invocation practice falls well outside the more inclusive,

minister-oriented practice of legislative prayer described in *Town of Greece*. Indeed, if elected representatives invite their constituents to participate in prayers invoking a single faith for meeting upon meeting, year after year, it is difficult to imagine constitutional limits to sectarian prayer practice.

The great promise of the Establishment Clause is that religion will not operate as an instrument of division in our nation. Consistent with this principle, there is a time-honored tradition of legislative prayer that reflects the respect of each faith for other faiths and the aspiration, common to so many creeds, of finding higher meaning and deeper purpose in these fleeting moments each of us spends upon this earth. Instead of drawing on this tradition, Rowan County elevated one religion above all others and aligned itself with that faith. It need not be so. As the history of legislative invocations demonstrates, the desire of this good county for prayer at the opening of its public sessions can be realized in many ways that further both religious exercise and religious tolerance.

I.

A.

We begin by describing the challenged prayer practice itself. Rowan County, North Carolina is governed by an elected body known as the Rowan County Board of Commissioners. The five-member Board convenes twice a month. The commissioners sit at the front of the room facing their constituents.

Each Board meeting begins in the same way: with a prayer composed and delivered by one of the commissioners. After calling the meeting to order, the chairperson asks everyone in attendance—commissioners and constituents alike—to stand up. All five Board members rise and bow their heads, along with most of the attendees. A commissioner then asks the community to join him in worship, using phrases such as "Let us pray," "Let's pray together," or "Please pray with me." The invocations end with a communal "Amen," and the Pledge of Allegiance follows a moment later. Next, the Board typically approves the previous meeting's minutes, schedules future items of business, and holds a public comment period before continuing on to the day's work.

Board members rotate the prayer opportunity amongst themselves as a matter of long-standing custom. The content of the prayer is "entirely at the discretion of the commissioner." J.A. 284.[1] No one outside the Board is permitted to offer an invocation.

The prayers are invariably and unmistakably Christian in content. Over the five-and-a-half years for which video recordings are available, 97% of the Board's prayers mentioned "Jesus," "Christ," or the "Savior." See *Lund* v. *Rowan Cty.*, 103 F. Supp. 3d 712, 714 (M.D.N.C. 2015). No religion other than Christianity was represented. Sectarian references often appeared at the conclusion of the prayer. See, e.g., S.A.

[1] "J.A." refers to the Joint Appendix; "S.A." refers to the Supplemental Appendix.

14 (prayer of April 21, 2008) ("I ask all these things in the name of Jesus, the King of Kings and the Lord of Lords. Amen."). Several prayers confessed sin and asked for forgiveness on the community's behalf. See, e.g., S.A. 30 (prayer of August 1, 2011) ("Lord, we confess that we have not loved you with all our heart, and mind and strength, and that we have not loved one another as Christ loves us. We have also neglected to follow the guidance of your Holy Spirit, and have allowed sin to enter into our lives."). Other prayers implied that Christianity was superior to other faiths. See, e.g., S.A. 33 (prayer of March 5, 2012) ("[A]s we pick up the Cross, we will proclaim His name above all names, as the only way to eternal life."). On occasion, Board members appeared to implore attendees to accept Christianity. See, e.g., S.A. 21 (prayer of October 5, 2009) ("Father, I pray that all may be one as you, Father, are in Jesus, and He in you. I pray that they may be one in you, that the world may believe that you sent Jesus to save us from our sins.").

In response to the growing controversy over the prayer practice, a number of commissioners publicly announced that they would continue delivering Christian invocations for the community's benefit. Prior to the filing of this lawsuit, the American Civil Liberties Union of North Carolina Legal Foundation notified the Board that sectarian prayers violated the Establishment Clause under then-applicable Fourth Circuit precedent. The Board did not respond, but several members stated that they would not stop praying in Jesus' name. "[A]sking for guidance for my decisions

from Jesus," one commissioner explained, "is the best I, and Rowan County, can ever hope for." *Lund*, 103 F. Supp. 3d at 715 (quoting Commissioner Ford). Another commissioner remarked, "I volunteer to be the first to go to jail for this cause* * * *" *Id.* (quoting Commissioner Sides). After the district court enjoined the county prayer practice, a third commissioner issued a statement noting, "I will always pray in the name of Jesus* * * * God will lead me through this persecution and I will be His instrument." See Pls.' Mem. Law Supp. Mot. Summ. J. at 9 (quoting Commissioner Barber).

B.

The three plaintiffs in this case are long-time residents of Rowan County. Active in the community, each one has attended multiple Board meetings to follow issues of public importance. Nancy Lund, a volunteer tutor, cares about school funding. So does Liesa Montag-Siegel, a retired middle school librarian. Robert Voelker is interested in education policy and the county's provision of social services. The plaintiffs, none of whom identify as Christian, encountered prayers of the sort described above at Board meetings.

In March 2013, Lund and her co-plaintiffs filed this action against Rowan County, asserting that the Board's prayer practice violated the Establishment Clause. They argued that the Board, by delivering exclusively Christian prayers, affiliated the county with Christianity, advanced Christianity, and coerced the

plaintiffs into participating in religious exercises. According to the plaintiffs, the prayers "sen[t] a message that the County and the Board favor Christians" and caused the plaintiffs to feel "excluded from the community and the local political process." J.A. 11-12. The plaintiffs also averred that they felt compelled to stand for the invocations to avoid sticking out. Voelker added that he felt pressured to stand because "the invocation is immediately followed by the Pledge of Allegiance, for which [he] feels strongly that he needs to stand." J.A. 12. At one meeting, Voelker proposed a nondenominational prayer and later worried that his "open questioning" of the Board's sectarian invocations would impair his advocacy on other matters. J.A. 13. The plaintiffs sought declaratory and injunctive relief as well as a preliminary injunction against sectarian prayers at Board meetings.

Rowan County responded with affidavits from each Board member adding new details on the prayer practice. According to these affidavits, the Board has no written policy on the invocations. The commissioners also claimed that the Board has "no expectation * * * regarding the form or content" of the prayers, J.A. 291, which are offered "for the edification and benefit of the commissioners and to solemnize the meeting," J.A. 293. Finally, the affidavits clarified that attendees may leave the room or arrive after the invocation and that the Board "respects the right of any citizen" to remain seated or disregard the invocation. J.A. 277.

After the district court preliminarily enjoined the Board from delivering sectarian prayers, the Supreme

Court decided *Town of Greece* v. *Galloway*. The Court upheld the town's practice of opening its legislative sessions with sectarian prayers and ruled that sectarian prayers, while subject to some limits, are constitutional as a general matter.

In light of *Town of Greece*, both the plaintiffs and Rowan County moved for summary judgment. The district court held that Rowan County's prayer practice remained unconstitutional and issued a permanent injunction. *Lund*, 103 F. Supp. 3d at 733-34. The court found that the practice was unconstitutionally coercive and "deviate[d] from the long-standing history and tradition" of legislative prayer. *Id.* at 723. That tradition, as articulated by the Supreme Court, involved the delivery of prayers by "a chaplain, separate from the legislative body." *Id.* Here, the court reasoned, the prayers were "exclusively prepared and controlled" and delivered by the government, "constituting a much greater and more intimate government involvement in the prayer practice than that at issue in *Town of Greece*." *Id.* Further, restricting the prayer opportunity to the Board resulted in "a closed-universe of prayer-givers * * * who favored religious beliefs believed to be common to the majority of voters in Rowan County." *Id.* The district court noted that although lawmaker-led prayer "is not *per se* unconstitutional," the prayer-giver's identity is relevant to the constitutional inquiry "in relation to the surrounding circumstances." *Id.* at 722 n.4.

On appeal, this court reversed the district court's judgment and upheld the county's prayer practice.

Lund, 837 F.3d at 411-31. The panel majority recognized that "[t]he five commissioners, all Christian, 'maintain[ed] exclusive and complete control over the content of the prayers.'" *Id.* at 434 (quoting *Lund*, 103 F. Supp. 3d at 733). Nonetheless, the majority held that the identity of the prayer-giver was not "a significant constitutional distinction, at least in the context of this case." *Id.* at 420. Having discounted the source of the prayer as a relevant consideration, the majority next examined the other elements of the Board's practice seriatim. The majority held that the practice was consistent with tradition as outlined in *Town of Greece* and was not coercive. *Id.* at 430.

Judge Wilkinson dissented. The dissent argued that the "combination of legislators as the sole prayer-givers, official invitation for audience participation, consistently sectarian prayers referencing but a single faith, and the intimacy of a local governmental setting exceed[ed] even a broad reading of *Town of Greece*." *Id.* at 431 (Wilkinson, J., dissenting) (hereinafter panel dissent). After examining "the interaction among elements specific to this case," *id.* at 433, the dissent concluded that the county's prayer practice was unconstitutional.

We granted rehearing en banc, and we now affirm. Reviewing the district court's decision de novo, see *Simpson* v. *Chesterfield Cty. Bd. of Supervisors*, 404 F.3d 276, 280 (4th Cir. 2005), we hold that Rowan County's prayer practice violated the Establishment Clause of the First Amendment.

II.

"[A] moment of prayer or quiet reflection sets the mind[s] [of legislators] to a higher purpose and thereby eases the task of governing." *Town of Greece*, 134 S.Ct. at 1825 (plurality opinion). 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." *Id.* at 1818 (majority opinion). Owing to its unique history and longstanding role in public life, legislative prayer occupies "a field of Establishment Clause jurisprudence with its own set of boundaries and guidelines." *Simpson*, 404 F.3d at 281.[2]

But the general principles animating the Establishment Clause remain relevant even in the context of legislative prayer. First, the Constitution "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any." *Lynch* v. *Donnelly*, 465 U.S. 668, 673, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984). Second, the government "may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or religious faith, or tends to do so.'" *Lee* v. *Weisman*, 505 U.S. 577, 587, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992) (quoting *Lynch*, 465 U.S. at 678, 104 S.Ct. 1355). By "ensuring governmental neutrality in matters of religion," *Gillette* v. *United States*, 401

[2] The term "legislative prayer" refers to offering an invocation to open government meetings, while "lawmaker-led prayer" or "legislator-led prayer" denotes a subset of invocations delivered by members of the legislative body.

U.S. 437, 449, 91 S.Ct. 828, 28 L.Ed.2d 168 (1971), the Establishment Clause safeguards religious liberty and wards off "political division along religious lines," *Lemon* v. *Kurtzman*, 403 U.S. 602, 622, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971). An instrument of social peace, the Establishment Clause does not become less so when social rancor runs exceptionally high.

In addition, "[b]y pairing the Free Exercise Clause with the Establishment Clause," the Framers sought to prevent government from choosing sides on matters of faith and to protect religious minorities from exclusion or punishment at the hands of the state. *Lund*, 837 F.3d at 438 (panel dissent). "Americans are encouraged to practice and celebrate their faith but not to establish it through the state." *Id.*

In the legislative prayer context, the Supreme Court has given meaning to the abstract guarantees of the Establishment Clause by considering "historical practices and understandings." *Town of Greece*, 134 S.Ct. at 1819 (internal quotation marks omitted). This history "shed[s] light on how the Founders viewed the Establishment Clause in relation to legislative prayer." *Lund*, 837 F.3d at 414. The resulting principles, first elucidated in *Marsh* v. *Chambers*, 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983), and refined in *Town of Greece*, reflect "what history reveals was the contemporaneous understanding" of the Establishment Clause. *Lynch*, 465 U.S. at 673, 104 S.Ct. 1355.

Marsh and *Town of Greece*, however, in no way sought to dictate the outcome of every subsequent case.

The Court acknowledged that it has not "define[d] the precise boundary of the Establishment Clause." *Town of Greece*, 134 S.Ct. at 1819. Accordingly, when the historical principles articulated by the Supreme Court do not direct a particular result, a court must conduct a "fact-sensitive" review of the prayer practice. *Id.* at 1825 (plurality opinion).

Marsh and *Town of Greece* do not settle whether Rowan County's prayer practice is constitutional. Those decisions did not concern lawmaker-led prayer, nor did they involve the other unusual aspects of the county's prayer practice. And they certainly did not address the confluence of these elements. That said, *Marsh* and *Town of Greece* provide our doctrinal starting point. We shall begin by describing the principles they developed and then proceed to apply those principles to this case.

A.

In *Marsh* v. *Chambers*, the Supreme Court upheld the Nebraska legislature's practice of opening its sessions with nonsectarian prayers delivered by a paid chaplain. 463 U.S. at 793 n. 14, 103 S.Ct. 3330. The Court noted that legislative prayer "has coexisted with the principles of disestablishment and religious freedom" since the colonial period. *Id.* at 786, 103 S.Ct. 3330. In addition, the First Congress "authorized the appointment of paid chaplains" shortly after finalizing language for the First Amendment. *Id.* at 788, 103

S.Ct. 3330. Accordingly, the Court reasoned, the Framers could not have viewed "paid legislative chaplains and opening prayers as a violation of that Amendment." *Id.*

Marsh, then, stands for the principle that "legislative prayer, while religious in nature, has long been understood as compatible with the Establishment Clause." *Town of Greece*, 134 S.Ct. at 1818. But even as the Court concluded that legislative prayer is constitutional as a general matter, *Marsh* recognized certain limits on the practice. Namely, the prayer opportunity may not be "exploited to proselytize or advance [a particular faith] or to disparage any other." *Marsh*, 463 U.S. at 794-95, 103 S.Ct. 3330.

Thirty years later, in *Town of Greece* v. *Galloway*, the Court held that sectarian prayer is not by itself unconstitutional. 134 S.Ct. at 1820. In that case, the town board in Greece, New York began its monthly meetings with sectarian invocations given by volunteer guest ministers. *Id.* at 1816. Because "nearly all of the congregations in town turned out to be Christian," most of the ministers were Christian too. *Id.* at 1824. Nonetheless, the town also invited a Jewish layman and Baha'i practitioner to deliver prayers and granted a Wiccan priestess's request to do so. *Id.* at 1817. The town "neither reviewed the prayers in advance of the meetings nor provided guidance as to their tone or content." *Id.* at 1816.

Invoking the historical tradition first described in *Marsh*, the Court held that the Establishment Clause

does not require "nonsectarian or ecumenical prayer as a single, fixed standard." *Id.* at 1820. As a result, "a challenge based *solely* on the content of a prayer will not likely establish a constitutional violation." *Id.* at 1824 (emphasis added).

At the same time, the Court was quick to clarify that invocation content is still germane to the constitutionality of a prayer practice. The "relevant constraint" on faith-specific prayer "derives from its place at the opening of legislative sessions, where it is meant to lend gravity to the occasion and reflect values long part of the Nation's heritage." *Id.* at 1823. Prayer that "invites lawmakers to reflect upon shared ideals and common ends before they embark on the fractious business of governing" serves that purpose. *Id.* But the Establishment Clause does not countenance prayers that "denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion" or, per *Marsh*, prayers that proselytize or advance or disparage a particular faith. *Id.*

Applying these principles, the Court concluded that the sectarian prayers offered by guest ministers fell within the historical tradition outlined in *Marsh*. *Id.* at 1824. The Court also emphasized that Greece selected chaplains without discriminating among faiths and "welcome[d] a prayer by any minister or layman who wished to give one." *Id.*

Finally, the Court concluded that the town's prayer practice did not coerce participation by meeting

attendees. *Id.* at 1828. While no single test commanded a majority, Justice Kennedy's opinion for the plurality explained that "[t]he analysis would be different if town board members directed the public to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person's acquiescence in the prayer opportunity." *Id.* at 1826.

B.

Marsh and *Town of Greece* thus show a Court generally supportive of legislative prayer, careful to emphasize that sectarian references are permissible in proper context, but cautioning that the prayer opportunity not get out of hand. This case differs from *Marsh* and *Town of Greece* in two crucial respects that, in combination with other aspects of the Board's prayers, give rise to an unprecedented prayer practice. First, whereas guest ministers delivered the prayers in those cases, the legislators themselves gave the invocations in Rowan County. Second, the prayer opportunity here was exclusively reserved for the commissioners, creating a "closed-universe" of prayer-givers. *Lund*, 103 F. Supp. 3d at 723. This case is therefore "more than a factual wrinkle on *Town of Greece*." *Lund*, 837 F.3d at 431 (panel dissent). "It is a conceptual world apart." *Id.*

To begin, *Town of Greece* simply does not address the constitutionality of lawmaker-led prayer. The Court has "consistently discussed legislative prayer

practices in terms of invited ministers, clergy, or volunteers providing the prayer." *Lund*, 103 F. Supp. 3d at 722. And in elaborating on our national tradition of legislative prayer—the history informing its interpretation of the Establishment Clause—the Court has "not once described a situation in which the legislators themselves gave the invocation." *Id.* *Town of Greece* instead recounts how "[t]he First Congress made it an early item of business to appoint and pay official *chaplains*," adding that "both the House and Senate have maintained the office virtually uninterrupted since that time." 134 S.Ct. at 1818 (emphasis added).

To the extent that *Town of Greece* touches on the constitutional relevance of the prayer-giver's identity, the decision takes for granted the use of outside clergy. The Court emphasized that the town "neither edit[ed] [n]or approv[ed] prayers" offered by the guest ministers. *Id.* at 1822. Addressing the fact that attendees were asked to stand, the plurality reasoned that "[t]hese requests * * * came not from town leaders but from the guest ministers, who presumably are accustomed to directing their congregations in this way." *Id.* at 1826. And "[t]he inclusion of a brief, ceremonial prayer as part of a larger exercise in civic recognition," the plurality explained, "suggests that its purpose and effect are to acknowledge religious leaders and the institutions they represent." *Id.* at 1827.

Thus the historical "practice of prayer," at least as described by the Supreme Court, is not entirely "similar to that now challenged." *Marsh*, 463 U.S. at 791, 103 S.Ct. 3330. In Rowan County, the commissioners

themselves, not guest ministers, led the community in prayer, and they composed each invocation "according to their personal faiths." *Lund*, 103 F. Supp. 3d at 724; see J.A. 275-94 (affidavits of the commissioners). Relative to *Town of Greece*, the county's prayer practice featured "much greater and more intimate government involvement." *Lund*, 103 F. Supp. 3d at 723. The conspicuous absence of case law on lawmaker-led prayer is likely no accident. As elaborated below, this type of prayer both identifies the government with religion more strongly than ordinary invocations and heightens the constitutional risks posed by requests to participate and by sectarian prayers.

This is especially true where legislators are the *only* eligible prayer-givers. Both *Town of Greece* and *Marsh* involved open, inclusive prayer opportunities. In the former case, the town "at no point excluded or denied an opportunity to a would-be prayer giver," and town leaders affirmed that "a minister or layperson of any persuasion, including an atheist, could give the invocation." *Town of Greece*, 134 S.Ct. at 1816. *Marsh* emphasized that the ordinary chaplain "was not the only clergyman heard by the Legislature; guest chaplains * * * officiated at the request of various legislators and as substitutes during [the regular chaplain's] absences." *Marsh*, 463 U.S. at 793, 103 S.Ct. 3330. The openness evinced by these other elected bodies contrasts starkly with Rowan County's policy of restricting the prayer opportunity to the commissioners alone.

Marsh and *Town of Greece*, while supportive of legislative prayer, were measured and balanced decisions.

See 134 S.Ct. at 1824-25 (describing the proper inquiry as "fact-sensitive" and the analysis as "an inquiry into the prayer opportunity as a whole"). The dissents in this case, by contrast, are wholly bereft of any sense of balance. Any balanced assessment of *Marsh* and *Town of Greece* makes clear the dissents' lack of fidelity to those decisions. The dissents' reading of *Town of Greece* is faithful only to what the dissents wish that opinion would say, not to what it actually said. As *Town of Greece* makes plain, the Court has never approved anything like what has transpired here or anything resembling the dissents' invitation to local government to work sectarian practices into public meetings in whatever manner it wishes. *Id.* at 1826. Rather *Town of Greece* told the inferior federal courts to do exactly what the majority has done here—that is to grant local governments leeway in designing a prayer practice that brings the values of religious solemnity and higher meaning to public meetings, but at the same time to recognize that there remain situations that in their totality exceed what *Town of Greece* identified as permissible bounds. It is the dissents' unwillingness to identify any meaningful limit to any sort of sectarian prayer practice in local governmental functions that draws their fidelity to *Town of Greece* into serious question.

C.

The county, bolstered by amici, argues that there is "a long tradition of opening legislative sessions—at all levels of government—with prayer by legislators

themselves." Supp. Br. of Appellant at 3. Members of Congress have occasionally delivered invocations in the Senate and House of Representatives. See Br. of Amici Curiae Members of Congress at 6. The state amici, drawing on a national survey, assert that a majority of state legislatures allow lawmakers to offer invocations "on at least some occasions," including seven of the ten state legislative chambers in the Fourth Circuit. Br. of Amici Curiae State of West Virginia and 12 Other States at 13-14. Many county and city governments also permit elected officials to deliver invocations. *Id.* at 15. Setting aside the question of whether contemporaneous practices provide compelling evidence of historical tradition, it is clear that lawmaker-led prayer is far from rare.

The evidence collected by Rowan County and amici, however, only reinforces our conclusion that the county's prayer practice falls outside the tradition of legislative prayer elaborated in *Marsh* and *Town of Greece*. First, while lawmakers may occasionally lead an invocation, this phenomenon appears to be the exception to the rule, at least at the state and federal levels. Amici members of Congress note that "Senators have, from time to time, delivered the prayer," but that "[m]embers routinely invite guest ministers" to offer the invocation. Br. of Amici Curiae Members of Congress at 6-7 (citations omitted). The survey cited by the state amici clarifies that "it is a tradition for a chaplain to be selected to serve the [legislative] body." National Conference of State Legislatures, *Inside the Legislative Process* 5-147 (2002) (hereinafter NCSL

Survey). Twenty-seven state legislative chambers designate an official chaplain. *Id.* Seventy-nine invite "visiting chaplains [who] usually rotate among religions." *Id.* Second, Rowan County and amici elide the distinction between extending the prayer opportunity to lawmakers (as many legislatures do) and restricting it to those lawmakers (as Rowan County did here). For the reasons we discuss below, the latter approach poses greater risks under the Establishment Clause.

In marshaling the historical and contemporaneous evidence of lawmaker-led prayer, Rowan County and its amici are waging war against a phantom. The plaintiffs have never contended that the Establishment Clause prohibits legislators from giving invocations, nor did the district court so conclude. See *Lund*, 103 F. Supp. 3d at 722 n.4 ("[T]he Commissioners' provision of prayers is not *per se* unconstitutional* * * * Under a different, inclusive prayer practice, Commissioners might be able to provide prayers* * * *"). Like the plaintiffs and the district court, we "would not for a moment cast all legislator-led prayer as constitutionally suspect." *Lund*, 837 F.3d at 433 (panel dissent). Religious faith is "a source of personal guidance, strength, and comfort." *Id.* at 431. And legislative prayer's "solemnizing effect for lawmakers is likely heightened when they personally utter the prayer." *Id.* at 433. Accordingly, the Establishment Clause indeed allows lawmakers to deliver invocations in appropriate circumstances. Legislator-led prayer is not inherently unconstitutional.

We simply conclude, as the district court did, that the identity of the prayer-giver is relevant to the constitutional inquiry. Establishment Clause questions are by their nature "matter[s] of degree," presupposing some acceptable practices and others that cross the line. *Van Orden* v. *Perry*, 545 U.S. 677, 704, 125 S.Ct. 2854, 162 L.Ed.2d 607 (2005) (Breyer, J., concurring in the judgment); see also *Lynch*, 465 U.S. at 678-79, 104 S.Ct. 1355 ("In each case, the inquiry calls for line drawing; no fixed, *per se* rule can be framed* * * * The line between permissible relationships and those barred by the [Establishment] Clause can no more be straight and unwavering than due process can be defined in a single stroke or phrase or test."). Prayers led by lawmakers, like sectarian prayers, may violate the Establishment Clause in some circumstances. And just as sectarian prayer has its limits, so, too, does legislator-led prayer.

Within the universe of prayers delivered by legislators, the constitutionality of a particular government's approach ultimately will depend on other aspects of the prayer practice. In fact, the very survey proffered by state amici illustrates the importance of viewing lawmaker-led prayer in context. The survey recommends that the prayer-giver "be especially sensitive to expressions that may be unsuitable to members of some faiths" when "opening and closing the prayer." NCSL Survey at 5-146. Because legislator-led invocations vary so widely, "[w]e cannot discern from the general survey proffered by amici which prayers were

primarily for the benefit of legislators or commissioners as in *Town of Greece* and which focused, as the prayers did here, on requesting the citizens at the meeting to pray." *Lund*, 837 F.3d at 433 (panel dissent). "Nor do we know from the survey what percentage of prayers given by elected officials generally contain sectarian references or proselytizing exhortations, or which are non-denominational or delivered by legislators of diverse faiths." *Id.*

In sum, the elected members of Rowan County's Board of Commissioners composed and delivered their own sectarian prayers featuring but a single faith. They prevented anyone else from offering invocations. The Board's prayer practice thus pushes this case well outside the confines of *Town of Greece* and indeed outside the realm of lawmaker-led prayer itself. To see just how far outside those boundaries the prayer practice was, we must turn to the operation of the practice itself. Because *Town of Greece* does not resolve this challenge, we must decide whether the county's prayer practice, taken as a whole, exceeded constitutional limits on legislative prayer.

III.

"[W]hen a seat of government begins to resemble a house of worship, the values of religious observance are put at risk, and the danger of religious division rises accordingly." *Lund*, 837 F.3d at 431 (panel dissent). That is why "[t]he clearest command of the Establishment Clause is that one religious denomination

cannot be officially preferred over another." *Larson* v. *Valente*, 456 U.S. 228, 244, 102 S.Ct. 1673, 72 L.Ed.2d 33 (1982). Rowan County's prayer practice violated this maxim by so clearly identifying the government with a particular faith.

Courts adjudicating a challenge to legislative prayer inquire "into the prayer opportunity as a whole, rather than into the contents of a single prayer." *Town of Greece*, 134 S.Ct. at 1824. They must conduct a "fact-sensitive" review of "the setting in which the prayer arises and the audience to whom it is directed," *id.* at 1825 (plurality opinion), as well as "the pattern of prayers over time," *id.* at 1827.

As the exclusive prayer-givers, Rowan County's elected representatives—the very embodiment of the state—delivered sectarian invocations referencing one and only one religion. They asked their constituents to join them in worship. They did so at every meeting of a local governing body for many years. We examine each of these features in turn: commissioners as the sole prayer-givers; invocations that drew exclusively on Christianity and sometimes served to advance that faith; invitations to attendees to participate; and the local government setting.

To respect the Supreme Court's insistence on a fact-sensitive inquiry, we must also pay close attention to the interplay between the various facets of the county's prayer practice. As previously noted, the invocations here were written and given by elected representatives acting in their official capacity. This fact

interacts with the other aspects of the county's practice, altering their constitutional significance. Accordingly, we must evaluate these other elements through the lens of the prayer-giver's identity. We conclude that it is the combination of these elements—not any particular feature alone—that "threatens to blur the line between church and state to a degree unimaginable in *Town of Greece*." *Lund*, 837 F.3d at 435 (panel dissent).

A.

"It is a cornerstone principle of our Establishment Clause jurisprudence that 'it is no part of the business of government to compose official prayers* * * *'" *Lee*, 505 U.S. at 588, 112 S.Ct. 2649 (quoting *Engel* v. *Vitale*, 370 U.S. 421, 425, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962)). The government "is without power to prescribe * * * any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity." *Engel*, 370 U.S. at 430, 82 S.Ct. 1261. The Court reiterated this foundational point in *Town of Greece*: "Our Government is prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior." 134 S.Ct. at 1822.

But that is precisely what happened in Rowan County, where the five commissioners "maintain[ed] exclusive and complete control over the content of the prayers." *Lund*, 103 F. Supp. 3d at 733. In *Marsh*, the

prayer-giver was paid by the state. In *Town of Greece*, the prayer-giver was invited by the state. But in Rowan County, the prayer-giver was the state itself. The Board was thus "elbow-deep in the activities banned by the Establishment Clause—selecting and prescribing sectarian prayers." *Lund*, 837 F.3d at 434 (panel dissent).

By arrogating the prayer opportunity to itself, the Board also restricted the number of faiths that could be referenced at its meetings. When guests are allowed to deliver invocations, as in *Marsh* and *Town of Greece*, legislators can easily expand the religions represented (perhaps in response to requests or on their own initiative). In upholding sectarian prayer, *Town of Greece* emphasized that legislatures are typically able and willing to accommodate diverse faiths. The way to acknowledge "our growing diversity," the Court suggested, is "not by proscribing sectarian content but by welcoming ministers of many creeds." *Town of Greece*, 134 S.Ct. at 1820-21 (citing congressional prayers referencing Buddhism, Hinduism, Islam, and Judaism).

Compare the county's rigid, restrictive practice with the more flexible, inclusive approach upheld in *Town of Greece.* Greece welcomed adherents of all faiths, allowing "any member of the public [the chance] to offer an invocation reflecting his or her own convictions." *Id.* at 1826 (plurality opinion). Most of the guest ministers were Christian, owing to the fact that "nearly all of the congregations in town turned out to be Christian." *Id.* at 1824 (majority opinion). To address complaints, however, the town "invited a Jewish

layman and the chairman of the local Baha'i temple to deliver prayers" and granted a Wiccan priestess's request to participate. *Id.* at 1817. By opening its prayer opportunity to all comers, the town cultivated an atmosphere of greater tolerance and inclusion.

Rowan County regrettably sent the opposite message. Instead of embracing religious pluralism and the possibility of a correspondingly diverse invocation practice, Rowan County's commissioners created a "closed-universe" of prayer-givers dependent solely on election outcomes. *Lund*, 103 F. Supp. 3d at 723. The commissioners effectively insulated themselves from requests to diversify prayer content. And we cannot overlook the fact that the decision to restrict the prayer opportunity to the commissioners was not made by the citizens of Rowan County or some disinterested group but perpetuated by the commissioners themselves—all of whom identify as Protestant Christian. See J.A. 275 (United Methodist); J.A. 287 (same); J.A. 279 (Independent Baptist); J.A. 291 (same); J.A. 283 (Southern Baptist).

For any Buddhists, Hindus, Jews, Muslims, Sikhs, or others who sought some modest place for their own faith or at least some less insistent invocation of the majority faith, the only recourse available was to elect a commissioner with similar religious views. See Br. of Appellant at 26. We find this point troubling. "[V]oters may wonder what kind of prayer a candidate of a minority religious persuasion would select if elected. Failure to pray in the name of the prevailing faith risks becoming a campaign issue or a tacit political debit,

which in turn deters those of minority faiths from seeking office." *Lund*, 837 F.3d at 435 (panel dissent). Further, allowing the county to restrict to one the number of faiths represented at Board meetings would warp our inclusive tradition of legislative prayer into a zero-sum game of competing religious factions. Our Constitution safeguards religious pluralism; it does not sanction activity which would take us "one step closer to a de facto religious litmus test for public office." *Id.*

Finally, we note that the risk of political division stemming from prayer practice conflict is no mere abstract matter. At one meeting, an individual who "expressed opposition to the Board's prayer practice" was booed and jeered by the audience. *Lund*, 103 F. Supp. 3d at 729. In addition, the prayer practice became a campaign issue in the 2016 Board elections. The two incumbent commissioners favored continuing the county's defense of the prayer practice, while two challengers opposed it. See Supp. Br. of Appellees at 16 n.6. The incumbents ultimately prevailed. *Id.* Almost four decades ago, the Supreme Court cautioned that "political division along religious lines * * * is a threat to the normal political process," and is therefore "one of the principal evils against which the First Amendment was intended to protect." *Lemon*, 403 U.S. at 622, 91 S.Ct. 2105. Time has done nothing to diminish the salience of this warning.

B.

Having structured the prayer opportunity so that Board members alone could give voice to their religious convictions, the commissioners unceasingly and exclusively invoked Christianity. Even more problematic, the prayer practice at times "promote[d]" Christianity, the commissioners' "preferred system of belief." *Town of Greece*, 134 S.Ct. at 1822.

Rowan County makes the entirely fair point that courts must not become censors of public prayer. The Supreme Court echoed this concern, warning courts away from becoming "supervisors and censors of religious speech." *Id.* A single prayer will thus not "despoil a practice that on the whole reflects and embraces our tradition" of legislative prayer. *Id.* at 1824. At the same time, however, courts must decide the case before them, which cannot be done without "review[ing] the pattern of prayers over time." *Id.* at 1826-27 (plurality opinion). Where even the most cursory look reveals a constitutionally problematic prayer practice, courts have no choice but to examine the entire record, which of course includes the invocations. A proper sensitivity toward the dangers of judicial overreach in this area cannot divest us of a duty which if not performed would grant free rein to governmental sectarian abuse.

The lead dissent decries this inquiry as "judicial review run amok."[3] Infra Lead Dissent at 318. But while judicial review of prayer practices might indeed

[3] The lead dissent refers to Judge Agee's dissent.

pose a danger in some instances, there is no danger here. Every single individual in Rowan County remains free to pray as he or she sees fit and in the individual or collective setting that he or she finds most meaningful. What government is not free to do, however, is link itself persistently and relentlessly to a single faith. See *Larson*, 456 U.S. at 244, 102 S.Ct. 1673 ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another."). This evident an identification of the state with one and only one faith is not, we repeat, some marginal or peripheral constitutional violation that we can just shrug off and wish away. For to do so here would wish away the Establishment Clause itself. The overwhelming majority of the Board's invocations referenced tenets of Christianity. Over a period of more than five years, only 4 of 143 prayers were non-sectarian. *Lund*, 103 F. Supp. 3d at 714. The remaining 139 prayers, or 97%, "use[d] ideas or images identified with [Christianity]," *Lee*, 505 U.S. at 588, 112 S.Ct. 2649, such as "Jesus," "Christ," or the "Savior," *Lund*, 103 F. Supp. 3d at 714. No other religion was ever represented in the invocations. *Id.* Sectarian references were especially common at the conclusion of the prayer. To list but a few representative examples: "I ask this in the name of the King of Kings, the Lord of Lords, Jesus Christ," S.A. 33 (prayer of March 5, 2012); "[I] ask these things in the name of Jesus and for the sake of His Kingdom," S.A. 15 (prayer of June 2, 2008); "For the sake of your Son, our Savior, the Lord Jesus Christ," S.A. 31 (prayer of October 3, 2011); and "In Jesus' name we pray," S.A. 22 (prayer of

November 16, 2009). Several invocations delved into the finer points of Christian theology. One prayer during the holiday season began, "[W]e'd like to thank you for the Virgin Birth, we'd like to thank you for the Cross at Calvary, and we'd like to thank you for the resurrection." S.A. 12 (prayer of December 3, 2007). Another remarked, "Father God, * * * [w]e thank you so much for sending your Son Jesus Christ to this world, and we always remember that this time of year, Lord, and we should remember it always." S.A. 27 (prayer of December 6, 2010).

Town of Greece instructs courts to consider a prayer practice from the perspective of the "reasonable observer," who is presumed to be "acquainted with [the] tradition" of legislative prayer. 134 S.Ct. at 1825 (plurality opinion). Although "adult citizens, firm in their own beliefs, can tolerate and perhaps appreciate a ceremonial prayer delivered by a person of a different faith," *id.* at 1823 (majority opinion), the "reasonable observer"—or even the exceptionally well-informed citizen steeped in the Court's legislative prayer jurisprudence—would be surprised to find exclusively sectarian invocations being delivered exclusively by the commissioners because, as noted, the Court has consistently spoken in terms of guest ministers and outside volunteers.

In addition, as noted, no religion other than Christianity was ever represented at Board meetings. "When the state's representatives so emphatically evoke a single religion in nearly every prayer over a period of many years, that faith comes to be perceived

as the one true faith, not merely of individual prayer-givers, but of government itself." *Lund*, 837 F.3d at 434 (panel dissent). Faced with this unchanging tableau, attendees must have come to the inescapable conclusion that the Board "favors one faith and one faith only." *Id.* at 435. This was the inference drawn by the plaintiffs, who described their sense of separation from their own government and the political process itself. See S.A. 1-10 (affidavits of the plaintiffs).

It is not necessary, of course, for governments to go out of their way "to achieve religious balancing" in prayer content or to represent some minimum number of faiths. *Town of Greece*, 134 S.Ct. at 1824. But in considering whether government has aligned itself with a particular religion, a tapestry of many faiths lessens that risk whereas invoking only one exacerbates it. Here, the Board's practice created the perception that Rowan County had taken sides on questions of faith.

Not only did the Board's invocations convey its singular approval of Christianity, the prayer opportunity on occasion served to advance that faith. The tradition of legislative prayer elaborated in *Town of Greece* was composed of prayers that "reflect upon shared ideals and common ends" and that "strive for the idea that people of many faiths may be united in a community of tolerance and devotion," using sectarian "religious themes [as] particular means to [these] universal ends." *Id.* at 1823. In contrast, the Establishment Clause does not condone a prayer practice that "over time is * * * 'exploited to proselytize or advance

any one, or to disparage any other, faith or belief.'" *Id.* (quoting *Marsh*, 463 U.S. at 794-95, 103 S.Ct. 3330).

On multiple occasions, the invocations crossed the line from "reflect[ing] upon shared ideals and common ends," *id.* at 1823, to "promot[ing] a preferred system of belief," *id.* at 1822. To begin, several prayers purported to confess spiritual shortcomings on the community's behalf. Consider the following examples:

- "Although you sent Jesus to be Savior of the world, we confess that we treat Him as our own personal God. Although you are one, and the body of Christ is one, we fail to display that unity in our worship, our mission, and our fellowship." S.A. 31 (prayer of October 3, 2011).
- "Lord, we confess that we have not loved you with all our heart, and mind and strength, and that we have not loved one another as Christ loves us. We have also neglected to follow the guidance of your Holy Spirit, and have allowed sin to enter into our lives." S.A. 30 (prayer of August 1, 2011).
- "God of healing mercies, we come to you this day confessing that we are an imperfect people* * * * We acknowledge that we've been given the pathway to peace, in the witness of Jesus Christ* * * * [But] oftentimes we have failed to witness on Earth." S.A. 26 (prayer of August 16, 2010).

By portraying the failure to love Jesus or follow his teachings as spiritual defects, the prayers implicitly

"signal[ed] disfavor toward" non-Christians. *Town of Greece*, 134 S.Ct. at 1826 (plurality opinion).

Multiple prayers characterized Christianity as "the one and only way to salvation," S.A. 15 (prayer of August 18, 2008), thus implying that adherents of other faiths were in some ways condemned. For example, one commissioner unequivocally stated that "we do believe that there is only one way to salvation, and that is Jesus Christ." S.A. 12 (prayer of December 3, 2007); see also S.A. 13 (prayer of February 18, 2008) ("I ask all these things in the name of Jesus, the one and only way to salvation.").

The record is replete with other invocations proclaiming that Christianity is exceptional and suggesting that other faiths are inferior. This message risks "denigrat[ing] nonbelievers [and] religious minorities." *Town of Greece*, 134 S.Ct. at 1823. Consider the following inexhaustive survey:

- "We have been blessed to be the recipients of your immeasurable grace. We can't be defeated, we can't be destroyed, and we can't be denied because we are going to live forever with you through the salvation of Jesus Christ* * * * And as we pick up the Cross, we will proclaim His name above all names, as the only way to eternal life." S.A. 33 (prayer of March 5, 2012).
- "We can't be defeated, we can't be destroyed, and we won't be denied, because of our salvation through the Lord Jesus Christ." S.A. 19 (prayer of May 18, 2009).

- "You saved us and you call us with the holy calling. We are the recipients of your immeasurable grace and glory. We are the richest people in the world* * * * [W]e're going to live forever with Him." S.A. 15 (prayer of June 2, 2008).

Finally, several prayers urged attendees to embrace Christianity, thereby "preach[ing] conversion." *Town of Greece*, 134 S.Ct. at 1823. One invocation advocated that the community take up the Christian faith:

> Father, I pray that all may be one as you, Father, are in Jesus, and He in you. I pray that they may be one in you, that the world may believe that you sent Jesus to save us from our sins. May we hunger and thirst for righteousness, be made perfect in holiness, and be preserved, whole and entire, spirit, soul, and body, irreproachable at the coming of our Lord Jesus Christ.

S.A. 21 (prayer of October 5, 2009). "Holy Spirit," went another prayer, "open our hearts to Christ's teachings, and enable us to spread His message amongst the people we know and love through the applying of the sacred words in our everyday lives." S.A. 28 (prayer of March 7, 2011).

Religious faith has both doctrinal and ecumenical features. The doctrinal aspects of religion, most often expressed in religious services, signify the ideas and rituals that make religions distinctive. Doctrine can lend strength, cohesion, comfort, and spiritual depth to religious communities. The ecumenical aspects of

faith, by contrast, draw on the beliefs shared by many different creeds and "widely held among the people of this country." *Marsh*, 463 U.S. at 792, 103 S.Ct. 3330. Central among these beliefs is faith in a higher providence that lends meaning and purpose to our life on earth and encourages us to embrace our common humanity and to strive for the best versions of ourselves. At its best, legislative prayer gives voice to the ecumenical dimensions of religious faith. Invocations that, like the above examples, hone too sharply in on doctrinal distinctions, risk "the divisiveness the Establishment Clause seeks rightly to avoid." *Simpson*, 404 F.3d at 284. Prayer that would be welcome and moving to the faithful in so many a setting ought to in some way become welcoming to others where the powers of government are implicated and persons of diverse faiths are involved.

Two serious harms arise "[w]hen the power [and] prestige * * * of government is placed behind a particular religious belief." *Engel*, 370 U.S. at 431, 82 S.Ct. 1261. One is suffered by the individual. "A state-created orthodoxy puts at grave risk that freedom of belief and conscience which are the sole assurance that religious faith is real, not imposed." *Lee*, 505 U.S. at 592, 112 S.Ct. 2649; see *Engel*, 370 U.S. at 429, 82 S.Ct. 1261 ("[O]ne of the greatest dangers to the freedom of the individual to worship in his own way lay[s] in the Government's placing its official stamp of approval upon one particular kind of prayer* * * *"). The second injury is to the government itself. A well-founded perception that a government favors citizens subscribing

to a particular faith would undermine the democratic legitimacy of its actions. See *Engel*, 370 U.S. at 431, 82 S.Ct. 1261 ("[W]henever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs.").

By proclaiming the spiritual and moral supremacy of Christianity, characterizing the political community as a Christian one, and urging adherents of other religions to embrace Christianity as the sole path to salvation, the Board in its prayer practice stepped over the line. Concerns of this nature underlay Justice Jackson's enduring distillation of First Amendment values: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion* * * *" *W. Va. State Bd. of Educ.* v. *Barnette*, 319 U.S. 624, 642, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943). This is no less true when orthodoxy reflects, as it did here, the most sincere manifestations of the most deeply held convictions.

C.

Before delivering their invocations, the commissioners told attendees to rise and often invited them to pray. See, e.g., S.A. 12 (prayer of November 19, 2007) ("Let's pray together."); S.A. 26 (prayer of October 4, 2010) ("Please pray with me."); S.A. 37 (prayer of

February 19, 2013) ("Let us pray."). Through these requests and the proselytizing invocations just discussed, the Board members "press[ed] religious observances upon their citizens." *Van Orden*, 545 U.S. at 683, 125 S.Ct. 2854.

Justice Kennedy's plurality opinion in *Town of Greece* advises courts to assess whether the "principal audience" for the invocations is the lawmakers or the public. 134 S.Ct. at 1825. An internally-focused prayer practice "accommodate[s] the spiritual needs of lawmakers," *id.* at 1826, while an externally-oriented one attempts "to promote religious observance among the public," *id.* at 1825.

The invitations here fall "within the realm of soliciting, asking, requesting, or directing * * * of concern to the *Town of Greece* plurality." *Lund*, 103 F. Supp. 3d at 728. The lead dissent insists that the Rowan County "legislators themselves [were] the intended 'congregation' for legislative prayer." Infra Lead Dissent at 312. But the record makes clear that the commissioners were seeking audience involvement, not merely addressing fellow legislators. Indeed, it is difficult to imagine more probative evidence of a government's concern for the community's religiosity than a legislator's request that citizens join him in prayers that, for instance, ask "the world [to] believe that [God] sent Jesus to save us from our sins." S.A. 21 (prayer of October 5, 2009). Because the invocations here placed Christianity on a higher plane than other faiths and urged attendees to embrace that religion, the requests to participate in those prayers are clear indicators of

an effort "to promote religious observance among the public." *Town of Greece*, 134 S.Ct. at 1825 (plurality opinion).

Town of Greece involved similar requests, but the prayers in that case did not approach the degree of proselytization here and—even more important—the invitations "came not from town leaders but from the guest ministers, who presumably are accustomed to directing their congregations in this way." *Id.* at 1826. Justice Kennedy underscored that "[a]lthough board members themselves stood [or] bowed their heads," they "at no point solicited similar gestures by the public." *Id.*

From the perspective of the reasonable observer, this distinction matters. Such an observer is aware that phrases like "Let us pray" may be "for many clergy * * * almost reflexive." *Id.* at 1832 (Alito, J., concurring). But when these words are uttered by elected representatives acting in their official capacity, they become a request on behalf of the state. The invitations suggest that the lawmaker conceives of the political community as comprised of people who pray as he or she does.

The *Town of Greece* plurality expressly cautioned that "[t]he analysis would be different if *town board members* directed the public to participate in the prayers." *Id.* at 1826 (emphasis added). Yet Rowan County would have us approve such requests regardless of their source. See Supp. Br. of Appellant at 7 ("The

Supreme Court saw no conflict between these introductions and the Establishment Clause."). Accepting this argument would require us to blind ourselves to the very fact that the *Town of Greece* plurality regarded as relevant and perhaps even dispositive. In the end, the record speaks for itself: elected officials exhorted their constituents to participate in sectarian—and sometimes even proselytizing—religious exercises.

D.

Justice Kennedy's plurality opinion in *Town of Greece* instructs courts to consider "the setting in which the prayer arises." 134 S.Ct. at 1825. The prayers here were delivered at the public meetings of a local government body, a fact that makes the other aspects of the county's prayer practice even more questionable.

Relative to sessions of Congress and state legislatures, the intimate setting of a municipal board meeting presents a heightened potential for coercion. Local governments possess the power to directly influence both individual and community interests. As a result, citizens attend meetings to petition for valuable rights and benefits, to advocate on behalf of cherished causes, and to keep tabs on their elected representatives—in short, to participate in democracy. The decision to attend local government meetings may not be wholly voluntary in the same way as the choice to participate in other civic or community functions. Going to one's seat

of government and going to one's place of worship are "very different forms of attendance." *Lund*, 837 F.3d at 437 (panel dissent).

In addition, the commissioners considered citizen petitions shortly after the invocation. Like other local governments, the Board exercises both legislative authority over questions of general public importance as well as a quasi-adjudicatory power over such granular issues as zoning petitions, permit applications, and contract awards. In *Town of Greece*, the board apparently bifurcated its meetings into legislative and adjudicative portions. See 134 S.Ct. at 1829 (Alito, J., concurring). As Justice Alito explained in his concurrence, the prayer "preceded only the portion of the town board meeting that [was] essentially legislative." *Id.* Accordingly, the case did not "involve the constitutionality of a prayer prior to what may be characterized as an adjudicatory proceeding." *Id.*

In the parlance of Justice Alito's concurrence, Rowan County's Board intermingled its legislative and adjudicative business. On numerous occasions, adjudicatory proceedings were the first items up for consideration after the standard opening protocols. See, e.g., J.A. 27 (agenda of November 5, 2007) ("Quasi-Judicial Public Hearing for PCUR 02-07 for Request by Nelson Lingle"); J.A. 105 (agenda of August 17, 2009) ("Quasi-Judicial Hearing for CUP 01-09 for Albert Ray Kepley"); J.A. 163 (agenda of February 21, 2011) ("Quasi-Judicial Hearing for SUP 01-11").

The "close proximity" between a board's sectarian exercises and its consideration of specific individual petitions "presents, to say the least, the opportunity for abuse." *Lund*, 837 F.3d at 436 (panel dissent). The plurality in *Town of Greece* recognized as much in advising courts to consider whether "town board members directed the public to participate in the prayers." 134 S.Ct. at 1826. This is not to suggest that the commissioners made decisions based on whether an attendee participated in the prayers. But the fact remains that the Board considered individual petitions on the heels of the commissioners' prayers.

Finally, the intimacy of a town board meeting may push attendees to participate in the prayer practice in order to avoid the community's disapproval. This is especially true where, as here, the government has aligned itself with the faith that dominates the electorate. Rowan County's commissioners always stood up and bowed their heads, as did most of the audience. Due to the Board's requests, the plaintiffs also felt compelled to stand so that they would not stand out. And as we noted, one person who spoke out against the Board's prayer practice was booed and jeered by her fellow citizens.

To be sure, citizens could time their arrival at the meeting to come after the prayer, leave the room before the prayer, or simply stay seated. But these options, such as they were, served only to marginalize. It is simply wrong to attribute discomfort with the situation here to hyper-sensitivity. Plaintiffs were placed in

a situation that required them to decide "between staying seated and unobservant, or acquiescing to the prayer practice." *Lund*, 103 F. Supp. 3d at 732. What was forced upon plaintiffs at these meetings was "no trivial choice, involving, as it does, the pressures of civic life and the intimate precincts of the spirit." *Lund*, 837 F.3d at 437 (panel dissent).

There remains the question of what prayer practice in Rowan County would be a permissible one. We decline, however, to select one from among the various options available to defendant. Any future course of action is, and certainly would be in the first instance, for Rowan County to decide. The problematic features of the present practice noted in our decision should provide substantial guidance for whatever future steps the county may wish to take. The ultimate criterion is simply one of conveying a message of respect and welcome for persons of all beliefs and adopting a prayer practice that advances "the core idea behind legislative prayer, 'that people of many faiths may be united in a community of tolerance and devotion.'" *Id.* at 438 (quoting *Town of Greece*, 134 S.Ct. at 1823).

IV.

We finally find unavailing the two primary arguments advanced in Rowan County's favor. To begin, the county urges this court to conduct a blinkered review of its prayer practice. The county first reduces the practice to its constituent elements, then finds that each element is not dispositive, and finally concludes

that each element is therefore immaterial. See, e.g., Supp. Br. of Appellant at 9 ("[F]our rights do not make a wrong* * * * [E]ach feature enumerated by plaintiffs is common to prayer practices observed in [other] legislatures* * * *").

But when a court looks to the totality of the circumstances to assess the constitutionality of a prayer practice, as the Supreme Court says we must, a fact may be relevant to the court's inquiry while not outcome-determinative. And by dissecting the prayer practice and subjecting each piece to an independent constitutional evaluation, the county's approach overlooks the crucial interaction between the elements. This mode of analysis simply fails to heed the Supreme Court's instruction that we examine "the prayer opportunity as a whole." *Town of Greece*, 134 S.Ct. at 1824.

The dissents do not even begin to consider the prayer practice here holistically. They address it piece by piece by piece. Unsurprisingly, they find each piece "standing alone [is] undoubtedly constitutional." Infra Lead Dissent at 306. Be that as it may, the citizens of Rowan County are not experiencing the prayer practice piece by piece by piece. It comes at them whole. It would seem elementary that a thing may be innocuous in isolation and impermissible in combination. In fact, the lead dissent's tired "divide and conquer" strategy has been frowned upon by the Supreme Court itself. See, e.g., *United States* v. *Arvizu*, 534 U.S. 266, 274, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002) ("The court's evaluation and rejection of seven of the listed factors in isolation from each other does not take into account the

'totality of the circumstances,' as our cases have understood that phrase* * * * [Precedent] precludes this sort of divide-and-conquer analysis.").

Second, we cannot discern any meaningful distinction between the commissioners and the Board. The lead dissent argues that "[t]here is no evidence that the Board, as a Board, had any role in any of the prayers given by any of the individual commissioners," who are "free agent[s] no different from the ministers in *Town of Greece* or the paid chaplain in *Marsh*." Infra Lead Dissent at 312. On this view, "it is only through [the] act of the deliberative body writing or editing religious speech that government would impermissibly seek 'to promote a preferred system of belief or code of moral behavior' with selected content." *Lund*, 837 F.3d at 421. (quoting *Town of Greece*, 134 S.Ct. at 1822). This reasoning proves too much. Such an approach would create a constitutional safe harbor for all prayers delivered by legislators "no matter how proselytizing, disparaging of other faiths, or coercive" so long as the legislature itself did not collectively compose the prayers. Supp. Br. of Appellees at 13-14 n.5.

Further, the attempted distinction between the members of the Board and the Board itself rests on a formalism that cannot withstand scrutiny. When one of Rowan County's commissioners leads his constituents in prayer, he is not just another private citizen. He is the representative of the state, and he gives the invocation in his official capacity as a commissioner. His power to offer a prayer derives from this status; were he not a member of the Board, he would be barred

from doing so. The commissioners themselves recognized as much. Invoking a recurrent theme in the prayer practice, one Board member observed: "[W]e're not here representing ourselves. Lord, we represent you and we represent the taxpayers of Rowan County." S.A. 16 (prayer of October 6, 2008). And unlike a guest minister, the commissioner remains on the scene to participate in the Board's decision-making. Finally, "it is hard to believe that a practice observed so uniformly over so many years was not by any practical yardstick reflective of board policy." *Lund*, 837 F.3d at 434 (panel dissent). In the context of Rowan County's prayer practice, there is no daylight between the individual commissioners and the Board of Commissioners.

V.

The principle at stake here may be a profound one, but it is also simple. The Establishment Clause does not permit a seat of government to wrap itself in a single faith. But here elected officials took up a ministerial function and led the political community in prayers that communicated exclusivity, leaving members of minority faiths unwilling participants or discomforted observers to the sectarian exercises of a religion to which they did not subscribe. The solemn invocation of a single faith in so many meetings over so many years distanced adherents of other faiths from that representative government which affects the lives of all citizens and which Americans of every spiritual persuasion have every right to call their own.

If the prayer practice here were to pass constitutional muster, we would be hard-pressed to identify any constitutional limitations on legislative prayer. In arguing that the Establishment Clause would still retain vitality, the lead dissent writes that the Board members would still not be permitted to offer "prayers that implored the audience to attend a particular church" or to issue "official decisions based on whether a member of the public participated in, or voiced opposition to, the legislative prayer practice." Infra Lead Dissent at 318. Well of course such things would be wholly out of bounds. In setting such criteria however, the dissent unwittingly reveals it recognizes few realistic limits on public sectarian practice at all.

We recognize that dissents by their nature attempt to broaden majority opinions and portray them as doomsday propositions. But these dissents go well beyond even that. The lead dissent writes that the majority restricts all lawmakers to "only a generic prayer to a generic god." Infra Lead Dissent at 323. That assertion is incorrect. Any reading of the majority opinion reveals it as a straw man. This case involves one specific practice in one specific setting with one specific history and one specific confluence of circumstances. To extract global significance from such specificity is beyond a stretch.

In concluding that Rowan County's prayer practice is constitutionally infirm, we reiterate that legislator-led prayer can operate meaningfully within constitutional bounds. And "[n]othing about the constitutional drawbacks of Rowan County's prayer practice should

be construed as disparaging the prayers themselves, which were moving and beautiful on many levels." *Lund*, 837 F.3d at 436 (panel dissent). But ruling in the county's favor would send us down a rancorous road. It would bear "unfortunate consequences for American pluralism, for a nation whose very penny envisions one out of many, a nation whose surpassing orthodoxy belongs in its constitutional respect for all beliefs and faiths, a nation which enshrined in the First and Fourteenth Amendments the conviction that diversity in all of its dimensions is our abiding strength." *Id.* at 432.

A final word as to our two friends and valued colleagues in dissent. Judge Niemeyer's dissent seeks to characterize the majority opinion as anti-religious. See infra Niemeyer Dissent at 296 ("[T]he majority opinion's reasoning strikes at the very trunk of religion* * * *"); *id*. at 55 ("The majority's most basic error is its underlying assumption that the Establishment Clause is an *anti-religion* clause* * * *"). This suggestion may be easily dismissed. To reject the establishment of a single religious faith by the state is not to reject religion itself. See *Engel* v. *Vitale*, 370 U.S. 421, 435, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962) ("It is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance."). The Founders were able to distinguish between the importance of religion (the Free Exercise

Clause) and the establishment of religion in a way that Judge Niemeyer refuses to do.[4]

The lead dissent, meanwhile, disparages the majority for its belief in an "ecumenical utopia" and its respect for the pluralistic nature of religious faith in our country. See infra Lead Dissent at 317. If that be our sin, we shall gladly confess it. Localities enjoy wide discretion in designing a prayer practice, but those that do aspire to an ecumenical and pluralistic prayer opportunity should not have to suffer the scarcely concealed aspersions of "ecumenical utopias" and "generic gods" that some may cast upon them. In its eager acceptance of state-entwined religious orthodoxy, the lead dissent evokes an America that is not ours and never has been. It was in simple recognition of religious pluralism that the Founders adopted the Establishment Clause. See James Madison, Speech at the Virginia Ratifying Convention (June 12, 1788), in 11 The Papers of James Madison 130 (Robert Rutland et al. eds., 1977) ("[The] freedom [of religion] arises from that multiplicity of sects, which pervades America, and which is the best and only security for religious liberty in any society."). Had America been a monolithic religious entity, there would have been no need for the protection of religious diversity at all. Any thought that ecumenism and respect for religious pluralism would become disfavored in judicial quarters would have left

[4] We do note that our colleague has flatly mischaracterized the majority opinion. Nowhere does it say or hold that "Rowan County's prayer practice [is] unconstitutional, essentially because the prayers were sectarian." Infra Niemeyer Dissent at 296.

the Founders saddened at what their First Amendment had become.

Our Constitution seeks to preserve religious liberty without courting religious animosity. In this quest, our two religion clauses have been a great success, helping to spare Americans the depth of religious strife that so many societies have had to suffer and endure. And yet free religious exercise can only remain free if not influenced and directed by the hand of the state. On this score, the county simply went too far. The First Amendment in the end is not either/or, but both/and. Believing that free religious exercise in Rowan County may likewise further the values of religious welcome and inclusion, we affirm the judgment of the district court.

AFFIRMED

DIANA GRIBBON MOTZ, Circuit Judge, concurring:

I concur in full with the majority opinion. I write separately to emphasize that our decision today fully comports with *Marsh* v. *Chambers*, 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983), *Town of Greece* v. *Galloway*, ___U.S. ___, 134 S.Ct. 1811, 188 L.Ed.2d 835 (2014), and the history of the Establishment Clause itself.

I.

The Constitution forbids a legislative body from using its prayer opportunity to advance one religion or set of religious beliefs to the exclusion of others. See *Town of Greece*, 134 S.Ct. at 1823; *Marsh*, 463 U.S. at 794-95, 103 S.Ct. 3330. This rule derives from "[t]he clearest command of the Establishment Clause," namely, "that one religious denomination cannot be officially preferred over another." *Larson* v. *Valente*, 456 U.S. 228, 244, 102 S.Ct. 1673, 72 L.Ed.2d 33 (1982). The most obvious way to show a preference for one religion is publicly to profess faith in its teachings. The Constitution fiercely protects this type of expression by individual citizens. But for the government, the Constitution absolutely forbids it. See, e.g., *Epperson* v. *Arkansas*, 393 U.S. 97, 103-04, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968).

This remains the law, and neither *Marsh* nor *Town of Greece* exempts prayer made before a legislative body from this rule. Rather, those cases simply hold that a legislative body may participate in some limited forms of religious activity without officially taking sides or appearing to do so.

In *Marsh*, the Supreme Court concluded that the Nebraska Legislature did not abandon official neutrality by employing a chaplain of one particular religious denomination to invoke divine guidance before a legislative session. See 463 U.S. at 793-95, 103 S.Ct. 3330. In so holding, the Court rightly deferred to the Framers' judgment about this type of government

involvement with religion. See *id.* at 790-91, 103 S.Ct. 3330. However, the *Marsh* Court plainly did not abandon or make an exception to the Establishment Clause's basic commitment to neutrality. Instead, the Court ultimately approved the Legislature's practice because it found "no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief." *Id.* at 794-95, 103 S.Ct. 3330.

In *Town of Greece*, the Court held that a legislative body's chaplain-led prayer could include sectarian content. 134 S.Ct. at 1823. Thus, the town board in that case did not impermissibly prefer one religion over another simply because volunteer chaplains spoke in a particular religious idiom. To hold otherwise, the Court reasoned, would require legislatures and courts to "act as supervisors and censors of religious speech," which would entangle government with religion far more than a rule allowing a prayer-giver to draw on his private religious beliefs. *Id.* at 1822. Reviewing the town's practice as a whole, the Court concluded that no other features of the town's rotating system of volunteer chaplains, all recruited in a non-discriminatory manner from local congregations, advanced one religion to the exclusion of others. See *id.* at 1824.

Thus, *Marsh* and *Town of Greece* provide a guidepost for resolving the case at hand. If the Board's practice sends the message that it prefers or accepts the teachings of one religion over others, it violates the Constitution. If the practice simply allows a prayer-giver to espouse his own private religious beliefs when

helping to solemnize the Board's meetings, it does not.

Of course, resolving whether a given practice violates the Establishment Clause requires us to engage in a sensitive "interpretation of social facts." *Santa Fe Indep. Sch. Dist.* v. *Doe*, 530 U.S. 290, 315, 120 S.Ct. 2266, 147 L.Ed.2d 295 (2000) (quoting *Lynch* v. *Donnelly*, 465 U.S. 668, 694, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984) (O'Connor, J., concurring)). Yet some clear boundaries exist. For example, neither *Marsh*, nor *Town of Greece*, nor any other case suggests that a legislative body may begin each and every one of its meetings by reciting a particular religion's creed. It does not matter whether that creed is the *Shahada* of Islam, the Triple Gem of Buddhism, a recitation from the Vedas or other *shruti* sacred to Hinduism, the Wiccan Rede, the *Shema Yisrael* of Judaism—or the Apostle's Creed of Christianity.

If members of a legislative body recited one religion's creed month after month, year after year, allowing no opportunity for members of any other religion to lead a prayer, a reasonable observer could only conclude that the legislative body preferred that religion over all others. See *Engel* v. *Vitale*, 370 U.S. 421, 430, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962) ("There can be no doubt that New York's state prayer program officially establishes the religious beliefs embodied in the Regents' prayer," even though the prayers were optional for students.). If a practice like this does not violate the Establishment Clause, nothing would prevent that

legislature from passing a statute, ordinance, or resolution declaring a particular faith the true religion. No principled distinction exists between a legislative body's proclaiming, for example, Christianity's status as the one true religion in a written instrument and professing that it is so—over and over again with no room for an alternative viewpoint—during public meetings. Both constitute state action. See *Turner* v. *City Council of Fredericksburg*, 534 F.3d 352, 354-55 (4th Cir. 2008) (O'Connor, J.). And both convey the message of government preference for one religion over all others.

In this case, for all the reasons set forth in the majority opinion, the Board's practice sends the same message as the Apostle's Creed. The undisputed record evidence renders untenable Rowan County's contention that the Commissioners were simply espousing their own personal religious beliefs. In over five years, the Board made no disclaimers and adopted no official policies to that effect. Moreover, the prayers themselves were typically phrased using first-person plural pronouns like "we" and "our," undermining any suggestion that the prayers were simply personal petitions. Nor is the conclusion Rowan County would have us draw apparent from the overall context of the prayers. In sum, nothing about the Board's practice would lead a reasonable observer to conclude that the Commissioners spoke only as individuals, rather than speaking for the legislative body representing the people of Rowan County. Cf. *Joyner* v. *Forsyth Cty.*, 653 F.3d 341, 344 (4th Cir. 2011) (noting the board's formal written

policy that its prayers were "not intended * * * to affiliate the Board with, nor express the Board's preference for, any faith or religious denomination").

Given the Commissioners' role in the prayer practice, the exclusivity of those prayers, the uniformity of the Christian message found in nearly every prayer, the frequency of these sectarian prayers, the degree of sectarian content in the prayers, the long duration of the prayer practice, and the reactions to the objections of non-Christian residents, a reasonable observer would conclude that the Board had placed its imprimatur on Christianity. In fact, a reasonable observer could not conclude otherwise.

II.

Nor can the historical practice of the First Congress save the Board's practice. Of course, to the extent we can discern it, the Framers' understanding of what constitutes permissible religious activity by the government serves as highly probative evidence of what the Establishment Clause allows and what it forbids. See *Marsh*, 463 U.S. at 790-91, 103 S.Ct. 3330. Courts consider the Framers' understanding probative because they drafted the First Amendment and sent it on to the states for ratification. As such, it is unlikely that the Establishment Clause forbids a practice the First Congress engaged in or permits a practice it eschewed. For this very reason, the *Marsh* Court found it significant that the First Congress employed chaplains to deliver opening prayers, explaining that "[i]t

can hardly be thought" the Framers "intended the Establishment Clause of the Amendment to forbid what they had just declared acceptable." *Id.* at 790, 103 S.Ct. 3330.

Study of the practice of the First Congress thus serves as a useful interpretive tool in legislative prayer cases, but this tool can easily be misused. One way to misuse it is to claim that a practice dating back to the First Congress justifies a significantly different modern practice. That is precisely what Rowan County and its supporting amici attempt to do here. They shoehorn the legislator-led prayer at issue in this case into the tradition begun by the First Congress. But examination of the practice of the First Congress shows that it provides no support at all for the Board's prayer practice. Rowan County and its supporting amici do not cite a single authority suggesting that the First Congress engaged in a practice similar to the one at issue—that is, having one of its own members deliver the opening prayer. Perhaps most notably, my dissenting colleagues cannot cite any such authority either.

This stands to reason. A search of the Journals of House and Senate from 1789 to 1791, the official contemporaneous records of the proceedings in the First Congress, and the Annals of Congress, which were compiled later from the best available sources from that time period, does not yield even one example of legislator-led prayer during the First Congress. The Framers apparently relied exclusively on chaplain-led prayer to solemnize their proceedings. Of course,

this does not establish that legislator-led prayer is unconstitutional, but it does preclude any argument that legislator-led prayer must be constitutional because the First Congress approved of it.

Rather than cite historical evidence that is truly probative of the meaning of the Establishment Clause, the principal dissent relies on recent instances of legislator-led prayer in Congress, none of which occurred before 1973; the contemporary practices of state and local legislatures; the practice of the South Carolina Provincial Congress; and a vague, citation-free statement from the late Senator Robert C. Byrd that senators have given the opening prayer "from time to time." See 2 Robert C. Byrd, *The Senate 1789-1989: Addresses on the History of the United States Senate* 305 & 647 n.17 (Wendy Wolff ed., 1991) (citing two resolutions as support for a different proposition). In the historical analysis endorsed by the *Marsh* Court, this is very thin gruel. And it is certainly no substitute for the Framers' own practice and understandings.

Furthermore, the limits the Framers imposed on their own practice of chaplain-led prayer provide significant evidence of what they believed to be the dividing line between permissible and impermissible legislative prayer. By the standards of an overwhelmingly Protestant society, the First Congress took pains to ensure that its own legislative prayer practice remained religiously neutral, both in appearance and in practice. As one of its very first orders of business, the House and Senate formed committees "to take under consideration the manner of electing Chaplains." S.

Journal, 1st Cong., 1st Sess. 10 (1789). On April 15, 1789, the Senate committee reported back with a proposed resolution:

> That two Chaplains, *of different denominations*, be appointed to Congress, for the present session, the Senate to appoint one, and give notice thereof to the House of Representatives, who shall, thereupon, appoint the other; which Chaplains shall commence their services in the Houses that appoint them, *but shall interchange weekly*.

Id. at 12 (emphases added); see also *Marsh*, 463 U.S. at 793 n.13, 103 S.Ct. 3330. The Senate adopted the resolution, S. Journal, 1st Cong., 1st Sess. 12 (1789), and the House concurred two days later, H.R. Journal, 1st Cong., 1st Sess. 16 (1789). The Senate went on to elect Samuel Provoost, an Episcopalian bishop, as its first chaplain, and the House in turn elected William Linn, a Presbyterian minister. S. Journal, 1st Cong., 1st Sess. 16 (1789); H.R. Journal, 1st Cong., 1st Sess. 26 (1789).*

This history surely reflects the Framers' concern with avoiding even a suggestion that Congress subscribed to the tenets of a single religion. I can discern

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* This rule stood without interruption for the next sixty-one years. Along the way, Congress rejected proposals that would have omitted or specifically struck the "of different denominations" language in 1800, 1810, 1845, 1846, and 1847. S. Journal, 6th Cong., 2d Sess. 109 (1800); S. Journal, 11th Cong., 3d Sess. 526 (1810); H.R. Journal, 11th Cong., 3d Sess. 441 (1810); H.R. Journal, 29th Cong., 1st Sess. 72 (1845); H.R. Journal, 29th Cong., 2d Sess. 52 (1846); H.R. Journal, 30th Cong., 1st Sess. 59 (1847).

no other reason why the House and Senate would have bound themselves to select chaplains of different denominations *and* to rotate their chaplains so often. The Framers understood that legislative prayer, even when led exclusively by chaplains, can be just as dangerous as other forms of government-sponsored religious activity unless measures are taken to avoid a sectarian preference, or even the appearance of one.

The Board's practice in the case at hand simply does not fit the tradition of legislative prayer the First Congress began. In the aggregate, the Board's practice amounts to an advancement of the tenets of a preferred religion. The members of the First Congress, who were far less acquainted with religious diversity than we are today, managed to avoid this, and they fashioned their own prayer practice to do so. Surely, Rowan County can do the same.

III.

The Supreme Court has not disavowed the fundamental rule that a legislative body may not use its prayer opportunity to promote or affiliate itself with one religion to the exclusion of others. If the Board's practice does not violate this rule, then I cannot imagine what does.

Judge Keenan and Judge Harris have authorized me to indicate that they join in this concurring opinion.

NIEMEYER, Circuit Judge, with whom Judge SHEDD joins, dissenting:

I am pleased to concur in Judge Agee's fine opinion, which carefully and faithfully applies the Supreme Court's recent decision in *Town of Greece* v. *Galloway*, ___ U.S. ___, 134 S.Ct. 1811, 188 L.Ed.2d 835 (2014). I write separately to focus on how the majority opinion, beyond simply sidestepping *Town of Greece*, actively undermines the appropriate role of prayer in American civic life. While it pays lip service to controlling law, it nonetheless seeks to avoid it and to reinstate instead the holding in *Joyner* v. *Forsyth County*, 653 F.3d 341 (4th Cir. 2011), which was squarely overturned by *Town of Greece*.

I

In finding Rowan County's prayer practice unconstitutional, essentially because the prayers were sectarian, the majority opinion's reasoning strikes at the very trunk of religion, seeking to outlaw most prayer given in governmental assemblies, even though such prayer has always been an important part of the fabric of our democracy and civic life.

The history of prayer practice in governmental assemblies is well documented both by the Supreme Court in its decisions in *Marsh* v. *Chambers*, 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983), and *Town of Greece* and by the amicus brief submitted in this case by several States, which demonstrates that the

practice is an important reflection of the values underlying both the Free Exercise and Establishment Clauses of the U.S. Constitution. By ignoring these values, the majority is able to mischaracterize and thus misapply those constitutional provisions.

The majority's most basic error is its underlying assumption that the Establishment Clause is an *anti-religion* clause that exists in tension with the Free Exercise Clause. This, however, misunderstands the Establishment Clause's role. In his seminal book on the subject, Philip Hamburger details how the Establishment Clause was actually included in the Constitution *to enhance* the free exercise of religion by prohibiting establishments that favored one religion to the detriment of others:

> These established churches (Episcopal in the southern states and Congregationalist in most New England states) were established through state laws that, most notably, gave government salaries to ministers on account of their religion. Whereas the religious liberty demanded by most dissenters was a freedom from the laws that created these establishments, the separation of church and state was an old, anticlerical, and, increasingly, antiecclesiastical conception of the relationship between church and state. As might be expected, therefore, separation was not something desired by most religious dissenters or guaranteed by the First Amendment. Indeed, it was quite distinct from the religious liberty

> protected in any clause of an American constitution, whether that of the federal government or that of any state.
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> The religious dissenters who participated in the campaign against establishments and whose claims seem to have affected the wording of the constitutional guarantees against establishments made demands for a religious liberty that limited civil government, especially civil legislation, rather than for a religious liberty conceived as a separation of church and state. Moreover, in attempting to prohibit the civil legislation that would establish religion, they sought to preserve the power of government to legislate on religion in other ways.

Philip Hamburger, *Separation of Church and State* 10, 107 (2002).

Hamburger thus details how the Establishment Clause was designed to enable the presence of religion in civic life without impairing the religious diversity central to the Republic. This is a far different understanding than that assumed by the majority, in which the Establishment Clause is designed to erect barriers around public life through which expressions of faith are not allowed. The majority seems to understand religious freedom as freedom *from* religion, not as the freedom to practice religion openly in all aspects of American life.

The free exercise of religion, including prayer practice, as *enhanced* by the prohibition of establishments, has been recognized as profoundly important to the vitality of American democracy and liberty—an important aspect of the Founders' genius. In his magnum opus *Democracy in America*, Alexis de Tocqueville observed about America in the 1830s:

> [A] democratic and republican religion * * * contributed powerfully to the establishment of a republic and a democracy in public affairs; and from the beginning, *politics and religion contracted an alliance* which has never been dissolved.

1 Alexis de Tocqueville, *Democracy in America* at 311 (Henry Reeve trans., Vintage Books 1960) (emphasis added). Tocqueville explained the benefit of the relationship, observing that "despotism may govern without faith, but liberty cannot. Religion is much more necessary in the republic * * * than in the monarchy." *Id*. at 318. The theoretical basis underpinning this observation was that "religion sustains a successful struggle with that spirit of individual independence which is her most dangerous opponent." 2 *id*. at 29.

And this deeply grounded balance of democracy, religion, and freedom is well recognized in our jurisprudence, as eloquently and unambiguously related in Supreme Court cases. For instance, in *Marsh* v. *Chambers*, when the Court evaluated the practice of legislative prayer, its analysis was rooted in the Founders' recognition of the practice's value. The Court observed,

"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*." *Marsh*, 463 U.S. at 786, 103 S.Ct. 3330 (emphasis added). In light of this history, the Court accepted "the interpretation of the First Amendment draftsmen who saw no real threat to the Establishment Clause arising from a practice of prayer." *Id.* at 791, 103 S.Ct. 3330. It concluded that "there can be no doubt that the practice of opening legislative sessions with prayer has become part of *the fabric of our society*." *Id.* at 792, 103 S.Ct. 3330 (emphasis added).

In *Town of Greece*, the Court echoed these sentiments, stressing the value of faith expression in public life. As the Court recognized, "That the First Congress provided for the appointment of chaplains only days after approving language for the First Amendment demonstrates that the Framers considered legislative prayer *a benign acknowledgment of religion's role in society*." *Town of Greece*, 134 S.Ct. at 1819 (emphasis added). The Court stated that any test under the Establishment Clause "must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Id.* After all, any "test that would sweep away what has so long been settled would create new controversy and begin anew the very divisions along religious lines that the Establishment Clause seeks to prevent." *Id.*

Simply put, there is no ambiguity in the historical role and importance of legislative prayer in civic life. In both *Marsh* and *Town of Greece*, the Court was entirely clear about this. And, in each case, the Court took pains to mention that the Establishment Clause was intended to protect, rather than constrain, public expression of religious faith.

The majority refuses to recognize the importance of religion—and of legislative prayer in particular—to democracy and American civic life. And its decision to "pay close attention to the interplay between the various facets of the County's prayer practice" to assess whether it is too sectarian, ante at 281, unwisely inserts government into the role of regulating faith expression in precisely the way the Establishment Clause was intended to forbid. To be sure, prayer practice can be misused, rendering it unprotected, when it denigrates or interferes with the religious practice of others. But short of those abuses, it ought not to be subject to the scrutiny and skepticism with which it is met by the majority. The proper respect for a practice so venerated and important to our democratic order does not include the niggling of civil courts assessing whether the practice "pointedly" invokes a particular name of the Divine to bless and solemnize the governmental proceeding. Ante at 271-72. In carrying out its self-assigned mission to police Rowan County's prayer practice, the majority turns its back on the historical role and values of religion and prayer, as well as the principles of *Town of Greece*, and recasts the law and facts to serve its mission.

II

In order to advance its theory of the Establishment Clause, the majority opinion brushes past *Town of Greece* through an attempt to distinguish it. This effort relies on the distinction that the case before us involves invocations given by the legislators, while *Town of Greece* involved prayers given by chaplains, and then concludes casually that this difference takes this case "well outside the confines of *Town of Greece*." Ante at 280. Having found that handle, the majority then considers itself absolved of precedent and free to launch its own freestanding analysis.

A closer look at the distinction of which the majority makes so much, however, demonstrates that its analysis is nothing but a loosely disguised rationalization adopted to open the way to its new approach. The fact that the prayer-giver in Rowan County was a commissioner, not a minister designated or hired by the Board of Commissioners, resonates with nothing in *Town of Greece*, nor has anything outside of the majority opinion itself ever suggested that the status of the person giving an invocation is material to the constitutional analysis. Indeed, the Court has never specified which individuals are allowed to pray publicly. On the contrary, both *Marsh* and *Town of Greece* teach that the purpose of legislative prayer "is largely to accommodate the spiritual needs of lawmakers," *Town of Greece*, 134 S.Ct. at 1826. It is thus not surprising that the historical facts of the long-standing tradition of prayer practice at governmental assemblies show that prayer-givers can include governmental officials or

members of the assembly. In the U.S. Congress, for example, prayers have been given not only by the hired Chaplain, but also by Members of Congress. Similarly, the amicus brief filed by the States shows that a *majority* of state and territorial legislators rely on *lawmaker-led* invocations. And they show the same is true for local governments, where the practice of government officials giving the invocations is widespread.

The majority's pro forma distinction of *Town of Greece* can only be driven by its desire to reach a different end, because the nature of Rowan County's prayer practice is, in all aspects of plaintiffs' complaints, virtually indistinguishable from the practice upheld by the Supreme Court in *Town of Greece*. As Judge Agee shows in detail, *Town of Greece* upheld the prayer practice in the context of a small local political assembly, as is the case here; *Town of Greece* upheld prayers primarily invoking Jesus and other Christian elements, as is the case here; *Town of Greece* upheld the request to stand for prayer, as is the case here; and *Town of Greece* rejected the complaints about the prayers being "offensive, intolerable, and an affront to a diverse community," 134 S.Ct. at 1817 (internal quotation marks omitted), as made by the plaintiffs here. The *Town of Greece* Court also rejected the argument, which the majority embraces here, that it was the totality of these elements that offended the Establishment Clause.

To advance its mission under the banner of the Establishment Clause, the majority opinion also spins the facts to suggest that Rowan County is, through

some unwritten agreement of its Commissioners, coercing its citizens to pray Christian prayers. It states that the prayer practice *was designed* "to identify the government with Christianity"; that the five Commissioners "maintained *exclusive and complete control* over the content of prayers"; that the Commissioners *agreed* on the prayer "featuring but a single faith"; and that the prayer was "*pointedly* sectarian." Ante at 272, 274, 280, 272 (emphasis added and citations omitted). The record, however, simply does not support any such suggestion of coercion, exclusion, or agreement.

Rather, under the practice of Rowan County, as set forth in the record, one of the five Commissioners, in rotation, gives a brief invocation according to that Commissioner's individual discretion, without any prestanding instruction or understanding about the content or nature of the invocation. Each Commissioner has affirmed by affidavit that the nature and composition of the invocation—or indeed a moment of silence—is left entirely to the discretion of the Commissioner and that there is no policy—written or unwritten—"regarding the form or content of any commissioner's Invocation." And each has stated that the invocation is given "for the edification and benefit of the commissioners and to solemnize the meeting." The fact that the prayers were Christian in nature only reflected each prayer-giver's religion, not some design, policy, or agreement of the Commissioners.

Thus, evading the lessons of *Town of Greece* and armed with recharacterized facts, the majority conducts its own analysis, based in large part on isolated

quotations from the author's own opinions, either in dissent or overruled, or from the very district court opinion it is reviewing in this case. This approach amounts simply to a barely disguised disagreement with the Supreme Court's support of sectarian legislative prayer in *Town of Greece*.

III

The reason behind the majority's wayward approach is not a total mystery. Judge Wilkinson, writing for the majority, and the ACLU, representing the plaintiffs, have acted with harmonious parallelism, both having sought to circumvent the application of *Town of Greece*, and to return to the principles of *Joyner* v. *Forsyth County*, which *Town of Greece* overruled.

In February 2012, the ACLU complained to the Rowan County Commissioners about the "practice of convening Board meetings with *sectarian prayer*, *particularly Christian prayers*," (emphasis added), and, to support its position, quoted Judge Wilkinson's opinion in *Joyner*, which held that legislative prayer is appropriate "only when it is nonsectarian," 653 F.3d at 345, and that, in order to embrace a nonsectarian ideal, States and local governmental entities must be "proactive in discouraging *sectarian prayer* in public settings," *id*. at 353 (emphasis added). Then, shortly after the decision in *Town of Greece* was handed down, the ACLU announced, "This morning, the Supreme Court issued a *disappointing and troubling decision* upholding a town board's practice of opening its meetings

with Christian prayers." Heather L. Weaver, *Supreme Court Turns Blind Eye to Exclusionary Prayers at Government Meetings*, ACLU (May 5, 2014, 2:57 PM), https://perma.cc/2UGE-5TNL.

Similarly, in his dissent in this case from the panel's application of *Town of Greece* to uphold Rowan County's prayer practice, Judge Wilkinson lamented that the prayers in this case were "*uniformly sectarian*, referencing one and only one faith." 837 F.3d 407, 431 (4th Cir. 2013) (Wilkinson, J., dissenting) (emphasis added). He continued, "I have seen nothing like it," *id*., even though *Town of Greece* explicitly upheld uniformly sectarian prayer made in the tradition of only one faith. In this dissenting opinion, Judge Wilkinson essentially sought to return to his own earlier opinion in *Joyner*, where he had held that opening a meeting with *sectarian* prayer violated the Establishment Clause because the prayers "referred to Jesus, Jesus Christ, Christ, or Savior with overwhelming frequency." *Joyner*, 653 F.3d at 349 (internal quotation marks omitted). His panel dissent thus concluded that, "[t]he desire of this fine county for prayer at the opening of its public sessions can be realized in *nondenominational* prayer." *Lund*, 837 F.3d at 437 (Wilkinson, J., dissenting) (emphasis added) (adopting the ACLU's position that *sectarian* prayer was unconstitutional). But again, these very conclusions were overruled in *Town of Greece*, which upheld *uniformly sectarian* prayer given at similar local governmental meetings.

The positions taken by the ACLU and Judge Wilkinson, while uncannily harmonious with each other, are starkly at odds with *Town of Greece*, *relying on the very arguments rejected* by the Supreme Court in both *Marsh* and *Town of Greece*. In *Marsh*, the Court rejected arguments based on the facts (1) that the legislative prayer was given by a clergyman of only one denomination for 16 years; (2) that public funds were used to pay for the services of the prayer-giver; and (3) that the prayers were in a single faith tradition. And in *Town of Greece*, the Court rejected arguments based on the facts (1) that the prayers were given disproportionately by Christians; (2) that this disparity effectively sponsored sectarian prayers, given predominantly in the name of Jesus; (3) that the prayer givers began by asking the audience to stand and by saying, "Let us pray"; and (4) that the totality of the circumstances "conveyed the message that Greece was endorsing Christianity." 134 S.Ct. at 1818. Reading the majority opinion here in light of *Town of Greece*, one could well believe that Justice Kagan's dissent was in fact controlling.

* * *

At bottom, there simply is no constitutional defect in the prayer practice followed by Rowan County, and the majority's effort to find it unconstitutional, despite *Town of Greece*, is, I respectfully suggest, aberrational.

AGEE, Circuit Judge, with whom Judge Niemeyer, Judge Traxler, Judge Shedd, and Judge Diaz join, dissenting:

The majority holds that the Rowan County Board of Commissioners' practice of opening its public meetings with a commissioner-led invocation violates the Establishment Clause. That decision is irreconcilable with *Marsh* v. *Chambers*, 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983), and *Town of Greece* v. *Galloway*, 572 U.S. ___, 134 S.Ct. 1811, 188 L.Ed.2d 835 (2014). Therefore, I respectfully dissent.

I.[1]

Rowan County, North Carolina, exercises its municipal power through an elected Board of Commissioners ("the Board"), which typically holds public meetings twice a month. For many years, the Board has permitted each commissioner, on a rotating basis, to offer an invocation before the meetings.[2]

Typically, the Board chair would call the meeting to order and invite the other commissioners and public audience to stand for the ceremonial opening. A designated commissioner would then offer an invocation of

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[1] At times, this opinion parallels language used in the now-withdrawn panel majority opinion. *Lund* v. *Rowan Cty.*, 837 F.3d 407 (4th Cir. 2016), reh'g en banc granted, 670 Fed.Appx. 106 (4th Cir. 2016).

[2] The record does not reflect that the Board adopted a written policy regarding the invocations, but it followed a relatively routine practice.

his or her choosing followed by the Pledge of Allegiance. The content of each invocation was entirely in the discretion of the respective commissioner; the Board neither composed the prayer nor policed its content. The prayers frequently, though not invariably, invoked the Christian faith. For example, after beginning the prayers with some variant of "let us pray" or "please pray with me," the prayer givers often referred to "Jesus," "Christ," and "Lord." E.g., Suppl. J.A. 36-37.[3] Although not required to do so, most of the public audience joined the commissioners in standing for the invocation and the Pledge of Allegiance. Once this ceremonial part of the meeting concluded, the Board turned to its public business.

Rowan County residents Nancy Lund, Liesa Montag-Siegel, and Robert Voelker (collectively, "Plaintiffs") filed a complaint in the U.S. District Court for the Middle District of North Carolina "to challenge the constitutionality of [the Board's] practice of delivering sectarian prayer at meetings." J.A. 10. Plaintiffs alleged that the prayer practice unconstitutionally affiliated the Board with one particular faith and caused them to feel excluded as "outsiders." J.A. 12. In addition, they alleged that the overall atmosphere was coercive, requiring them to participate so they "would not stand out," Suppl. J.A. 2, or otherwise be singled out in a manner they speculated might negatively affect business before the Board.

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[3] This opinion omits internal marks, alterations, citations, emphasis, and footnotes from quotations unless otherwise noted.

Plaintiffs sought a declaratory judgment that the Board's prayer practice violated the Establishment Clause, along with an injunction preventing any similar future prayers. Plaintiffs successfully obtained a preliminary injunction based on now-abrogated case law from this Court which had held that sectarian legislative prayer violated the Establishment Clause. See *Joyner* v. *Forsyth Cty.*, 653 F.3d 341, 348 (4th Cir. 2011) (explaining that our decisions "hewed to [the] approach[of] approving legislative prayer only when it is nonsectarian in both policy and practice"), abrogated by *Town of Greece*, 134 S.Ct. 1811. The Supreme Court then issued its decision in *Town of Greece*, which held that sectarian legislative prayer was constitutional. 134 S.Ct. at 1815, 1820, 1824.

In the wake of *Town of Greece*, the parties filed cross-motions for summary judgment. Although the district court granted the Plaintiffs' motion, it first recognized that *Town of Greece* "repudiated" and "dismantl[ed] the Fourth Circuit's legislative prayer doctrine [that had] developed around the core understanding that the sectarian nature of legislative prayers was largely dispositive" of its constitutionality. *Lund* v. *Rowan Cty.*, 103 F. Supp. 3d 712, 719, 721 (M.D.N.C. 2015). Nonetheless, the district court concluded that "[s]everal significant differences" between *Town of Greece* and this case—including the identity of the prayer givers and the invitation to the public to stand—rendered the Board's practice unconstitutional. *Id.* at 724.

II.

As the majority acknowledges, this case requires a case-specific evaluation of all the facts and circumstances. See *Lynch* v. *Donnelly*, 465 U.S. 668, 678-79, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984) (observing that the Establishment Clause cannot be applied mechanistically to draw unwavering, universal lines for the varying contexts of public life). Those facts and circumstances must be viewed through the lens of the Supreme Court's prior legislative prayer decisions, including both its broader explications of what legislative prayer practices are permissible and its narrower applications of those principles to the facts presented in those cases. So, before turning to the facts and circumstances of this case, it's important to review the first principles from *Marsh* and *Town of Greece*.

Though legislative prayer is government speech touching on religion, *Turner* v. *City Council of Fredericksburg*, 534 F.3d 352, 354 (4th Cir. 2008), the Supreme Court has not relied on traditional Establishment Clause analysis to assess its constitutionality. See *Marsh*, 463 U.S. at 792, 103 S.Ct. 3330. Legislative prayer is its own genre of Establishment Clause jurisprudence, assessed under a different framework that takes the unique circumstances of its historical practice and acceptance into account. See *Town of Greece*, 134 S.Ct. at 1818 ("*Marsh* is sometimes described as 'carving 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.").

The Supreme Court first articulated this approach in *Marsh*, which involved a challenge to the constitutionality of the Nebraska legislature's practice of having a paid chaplain offer a prayer to open each legislative session. Recounting the long-standing American tradition of opening legislative sessions with prayer, the Supreme Court traced the history of legislative prayer "[f]rom colonial times through the founding of the Republic and ever since." *Marsh*, 463 U.S. at 786, 103 S.Ct. 3330.

The Court ascribed particular significance to the views of the First Congress, which, "as one of its early items of business, adopted the policy of selecting a chaplain to open each session with prayer." *Id.* at 787-88, 103 S.Ct. 3330. The Senate and House, in turn, appointed official chaplains in 1789. *Id.* at 788, 103 S.Ct. 3330. Placing great significance on these events, the Court explained those acts reflected how legislative prayer fit into the Founders' understanding of the Establishment Clause: "It can hardly be thought that * * * they intended the Establishment Clause * * * to forbid what they had just declared acceptable." *Id.* at 790, 103 S.Ct. 3330. "This unique history [led the Court] to accept the interpretation of the First Amendment draftsmen who saw no real threat to the Establishment Clause arising from [the] practice of [legislative] prayer[.]" *Id.* at 791, 103 S.Ct. 3330.

Having upheld the constitutionality of legislative prayer in general, the *Marsh* Court next considered whether Nebraska's practice fell within the bounds of the First Amendment. In particular, the Court considered the plaintiff's specific challenges to three characteristics of Nebraska's legislative prayer practice: (1) the State had selected a representative of "only one denomination" for sixteen years; (2) the chaplain was a paid state employee; and (3) his prayers were offered "in the Judeo-Christian tradition." *Id.* at 792-93, 103 S.Ct. 3330.

The Court rejected each claim. First, the Court observed that the First Congress "did not consider opening prayers as a proselytizing activity or as symbolically placing the government's official seal of approval on one religious view." *Id.* at 792, 103 S.Ct. 3330. Next, it noted that there was no evidence that the chaplain's long tenure "stemmed from an impermissible motive," and thus his continuous appointment did "not in itself conflict with the Establishment Clause." *Id.* at 793-94, 103 S.Ct. 3330. That the chaplain was paid from public funds was similarly "grounded in historic practice" and thus not prohibited. *Id.* at 794, 103 S.Ct. 3330. Lastly, as for the content of the prayers, the Court explained it was "not of concern" because "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." *Id.* at 794-95, 103 S.Ct. 3330. Accordingly, the Court declined "to parse the [prayer] content." *Id.* at 795, 103 S.Ct. 3330.

In *County of Allegheny* v. *ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 578-79, 602, 109 S.Ct. 3086, 106 L.Ed.2d 472 (1989), a case about the constitutionality of two religious holiday displays located on public property, the Court referred in dicta to its prior holding in *Marsh*, observing that "[t]he legislative prayers involved in *Marsh* did not violate [the Establishment Clause] because the particular chaplain had removed all references to Christ." *Id.* at 603, 109 S.Ct. 3086. In additional dicta, the Court observed that "not even the unique history of legislative prayer can justify contemporary legislative prayers that have the effect of affiliating the government with any one specific faith or belief." *Id.*

Whatever fleeting persuasiveness that dicta merited, the Supreme Court unequivocally rejected it in *Town of Greece*. There, the Court explicitly disavowed any constitutional requirement that legislative prayers be nonsectarian to comply with the Establishment Clause: "An insistence on nonsectarian or ecumenical prayer as a single, fixed standard is not consistent with the tradition of legislative prayer outlined in [our] cases." *Town of Greece*, 134 S.Ct. at 1820.

The Town of Greece, New York, Board opened its monthly legislative meetings with an invocation delivered by volunteer clergy. Guest chaplains were found by placing calls to congregations listed in a local directory. *Id.* at 1816. Nearly all of these churches were Christian, as were the guest clergy. Most of the invocations referenced the Christian faith, but the Town Board was not aware of the prayer content beforehand,

nor did it attempt to edit the content of the prayer or otherwise instruct the prayer giver on what to say. *Id.* Though the Second Circuit concluded that this "steady drumbeat of Christian prayer * * * tended to affiliate the town with Christianity," in violation of the Establishment Clause, the Supreme Court disagreed. *Id.* at 1818.

The Supreme Court explained that *Marsh* instructed that the constitutionality of a legislative prayer practice must be considered in light of "historical practices and understandings." *Id.* at 1819; accord *id.* at 1818-19. A practice is constitutional so long as it "fits within the tradition long followed in Congress and the state legislatures" because "[a]ny test [we] adopt[for analyzing invocations] must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Id.*

The Court rejected the plaintiffs' argument that legislative prayer must be to a generic god or otherwise nonsectarian to pass muster under the Establishment Clause by focusing on three principles: the Framer's understanding of legislative prayer, the historical place legislative prayer occupies in society, and avoiding official government entanglement in crafting the content of prayers. In addition, the Court recognized that legislative prayer historically served a ceremonial function "at the opening of legislative sessions, where it is meant to lend gravity to the occasion and reflect values long part of the Nation's heritage." *Id.* at 1823. Observing first that legislative invocations containing

explicitly religious themes were accepted at the time of the First Congress and remained vibrant throughout American history to modern times, the Court concluded, "[a]n insistence on nonsectarian or ecumenical prayer as a single, fixed standard is not consistent with [our accepted] tradition of legislative prayer." *Id.* at 1820. On this point, the Court specifically disavowed *Allegheny*'s "nonsectarian" interpretation of *Marsh* as dictum "that was disputed when written and has been repudiated by later cases." *Id.* at 1821; see also *id.* ("*Marsh* nowhere suggested that the constitutionality of legislative prayer turns on the neutrality of its content.").

The Court further observed that a content-based rule "would force the legislatures that sponsor prayers and the courts that are asked to decide these cases to act as supervisors and censors of religious speech." *Id.* at 1822. Enforcing specific content restrictions would "involve government in religious matters to a far greater degree than is the case under the town's current practice of neither editing or approving prayers in advance nor criticizing their content after the fact." *Id.* "Once it invites prayer into the public sphere," the Court stated, "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." *Id.* at 1822-23.

Synthesizing these factors, the Court fashioned three distinct, but related, holdings. First, the Court held that the years of prayers offered on behalf of the Town of Greece, although almost exclusively

Christian, did not evince a pattern of denigration (of non-Christian faiths) or proselytization (to bolster Christianity). Although some prayers arguably contained proselytizing or disparaging content, the Court concluded that the practice as a whole served only to solemnize the board meetings. In other words, a few questionable prayers were of no constitutional consequence. *Id.* at 1824.

Second, the Court determined to be of no moment the fact that the invited prayer givers were predominantly Christian: "[s]o long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing." *Id.* Continuing, the Court observed

> [t]he quest to promote a diversity of religious views would require the town to make wholly inappropriate judgments about the number of religions it should sponsor and the relative frequency with which it should sponsor each, a form of government entanglement with religion that is far more troublesome than the current approach.

Id.

Third, the Court rebuffed the plaintiffs' contention that the prayers unconstitutionally "coerce[ ] participation by nonadherents." *Id.* (Kennedy, J., plurality opinion). The Court acknowledged that "coercion" could render legislative prayer beyond constitutional protection in some outlying circumstances, such as "[i]f

the course and practice over time shows that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion." *Id.* at 1823 (majority opinion). And although Justices in the majority differed in their approaches, the Court nonetheless rejected the plaintiffs' argument that coercion arose from either the context of a local municipal government meeting, or the prayer givers' invitation that others could stand or join in the prayer. Compare *id.* at 1824-28 (Sec. II.B of Justice Kennedy's plurality opinion), with *id.* at 1837-38 (Sec. II of Justice Thomas's concurring opinion).

Justice Kennedy, joined by Chief Justice Roberts and Justice Alito, framed the coercion inquiry as "a fact-sensitive one that considers both the setting in which the prayer arises and the audience to whom it is directed." *Id.* at 1825 (plurality opinion). These Justices found no coercion in Greece's prayer practice, relying heavily on the historical approach of *Marsh*. They presumed that reasonable observers are aware of the multiple traditions acknowledging God in this country, including legislative prayer, the Pledge of Allegiance, and presidential prayers. They concluded that, because of these traditions, citizens could appreciate the Town's prayer practice without being compelled to participate. *Id.* Further, they observed that the prayers served a non-religious purpose: putting legislators in a contemplative state of mind and connecting them to the historical tradition of their forerunners. *Id.* at 1826. Justice Kennedy made clear that "[o]ffense * * * does not equate to coercion." *Id.* He

observed that "[a]dults often encounter speech they find disagreeable," even in a legislative forum, but that does not give rise to an Establishment Clause violation. *Id.* Instead, the historical acceptance of legislative prayer recognizes that "citizens, firm in their own beliefs, can tolerate and perhaps appreciate a ceremonial prayer delivered by a person of a different faith." *Id.* at 1823 (majority opinion).

Justice Thomas, joined by Justice Scalia, interpreted the Establishment Clause to prohibit only "actual legal coercion," which they defined as the exercise of "government power in order to exact financial support of the church, compel religious observance, or control religious doctrine." *Id.* at 1837 (Thomas, J., concurring in part and concurring in the judgment). As no evidence of actual legal coercion existed in this case, they concurred in the Court's judgment. *Id.* at 1837-38.

As this review of *Marsh* and *Town of Greece* confirms, our nation's long historical tradition of welcoming and encouraging legislative prayer gives the practice a unique place in Establishment Clause jurisprudence. It requires a different legal analysis than other types of government conduct touching on religion. The majority muddies the distinct analysis required in this type of Establishment Clause case, relying on more general principles applicable in other Establishment Clause contexts to avoid the clear legal

principles set out in *Marsh* and *Town of Greece*.[4] While lower court judges may personally disagree with the principles the Supreme Court pronounces, they are not at liberty to ignore or dilute them. *DIRECTV, Inc.* v. *Imburgia*, 577 U.S. ___, 136 S.Ct. 463, 468, 193 L.Ed.2d 365 (2015) (reiterating that although "[l]ower court judges are certainly free to note their disagreement with a decision of this Court," they are nonetheless bound to follow those decisions); *United States* v. *Taylor*, 754 F.3d 217, 223 (4th Cir. 2014) (Wilkinson, J.) ("[W]e shall follow the plain lessons of Supreme Court cases * * * , which must of necessity govern our disposition of this case.").

III.

The majority points to "the combination of [four] elements" that render the Board's prayer practice unconstitutional: (1) "commissioners as the sole prayer-givers"; (2) "invocations that drew exclusively on Christianity and sometimes served to advance that

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[4] For example, the majority relies on *Engel* v. *Vitale*, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962) (striking down structured prayers in public schools), for several general principles regarding why government should not become too affiliated with any religion. Majority Op. 286. These principles are valid insofar as they go. But taken at face value, they would also lead to the conclusion that sectarian legislative prayers violate the Establishment Clause. See *McCreary Cty.* v. *ACLU*, 545 U.S. 844, 859 n.10, 125 S.Ct. 2722, 162 L.Ed.2d 729 (2005) (citing *Marsh* as an example of a permissible governmental action whose "manifest purpose was presumably religious"). Because *Marsh* and *Town of Greece* demand otherwise, their principles in this particular context must govern instead.

faith"; (3) "invitations to attendees to participate"; and (4) "the local government setting." Majority Op. 280-81. But a proper application of the principles of *Marsh* and *Town of Greece* to the Board's prayer practices leads to the opposite conclusion. Indeed, the Supreme Court has already addressed three of the four factors the majority relies on, and has explained why they do not serve as a basis for an Establishment Clause violation. The only new feature in this case is the identity of the prayer giver. But—for the reasons explained below—that single characteristic does not remove the Board's practice from the protected scope of *Marsh* and *Town of Greece*. In short, the majority wrongly concludes that the sum of the parts is greater than the whole—that is, that the four factors they present, which standing alone are undoubtedly constitutional, somehow combine to render the Board's legislative prayer practice unconstitutional.

Curiously, the majority accuses the dissents of lacking "any sense of balance." Majority Op. 278. Even more curiously, it suggests we fail to "consider the prayer practice * * * holistically." Majority Op. 289. However, the majority's invocation of balancing factors and viewing otherwise valid principles "holistically" in order to reach a preferred result is no camouflage for its lack of merit. In short, the majority misapplies *Town of Greece*'s assessment of how the factors are to be evaluated both individually and in tandem.

As we've set out at great length, the only factor that distinguishes this case from *Marsh* or *Town of Greece* is that, here, an individual commissioner gives a prayer on a rotating basis. We conclude that factor does not skew the totality of the circumstances to make Rowan County's practice unconstitutional. We then recount why the remaining aspects of the County's practice align with the practices previously approved of—in the aggregate—in *Marsh* and *Town of Greece*. That is precisely the sort of analysis *Marsh* and *Town of Greece* require.

A.

Town of Greece instructs that the constitutionality of legislative prayer hinges on its historical roots. Because legislative prayer has been a constant and recognized part of civic life for more than two centuries, it "has become part of the fabric of our society." *Town of Greece*, 134 S.Ct. at 1819. Hence, if a prayer practice has long been "followed in Congress and the state legislatures," courts must view it as "a tolerable acknowledgement of beliefs widely held" by people in the United States. *Id.* at 1818-19; see also *id.* at 1819 (observing that prayer practices "accepted by the Framers and [which have] withstood the critical scrutiny of time and political change" must not be "swe[pt] away" because doing so "would create new controversy and begin anew the very divisions along religious lines that the Establishment Clause seeks to prevent").

The majority gives this principle only a curt nod before decrying the Board's practice of lawmaker-led legislative prayer as "unprecedented." Majority Op. 277. That conclusion cannot withstand review.

1.

Straightaway—and without any legal support for doing so—the majority attaches near-dispositive meaning to the fact that lawmakers, as opposed to clergy, gave the legislative prayers at issue in this case. While both *Marsh* and *Town of Greece* considered prayers given by clergy, the distinction between state-selected clergy prayer, on the one hand, and lawmaker-led prayer, on the other, is a distinction without a difference. Neither *Marsh* nor *Town of Greece* attached particular significance to the identity of the speakers. Moreover, the tradition and history of lawmaker-led prayers is as prevalent as that of other legislative prayer givers. Thus, contrary to the majority's suggestion, the fact that the Supreme Court has not specifically addressed lawmaker-led prayer signifies nothing. Could it simply be that until recently, no one since 1788 had conceived that legislators leading legislative prayers for legislators was outside the historical tradition "followed in Congress and the state legislatures"? *Town of Greece*, 134 S.Ct. at 1819. Contra Majority Op. 278 ("The conspicuous absence of case law on lawmaker-led prayer is likely no accident.").[5]

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[5] Neither *Marsh* nor *Town of Greece* specifically put into issue lawmaker-led legislative prayers as their focus was the issue

The Supreme Court's analysis of legislative prayer in *Marsh* and *Town of Greece* did not look to the speakers' identities; instead, the Court confined its discussion to the circumstances of the prayer practices before it. See *Town of Greece*, 134 S.Ct. at 1820-28; *Marsh*, 463 U.S. at 786-95, 103 S.Ct. 3330. Nowhere did the Court say anything that could reasonably be construed as a requirement that outside or retained clergy are the only constitutional source of legislative prayer. Quite the opposite, *Town of Greece* specifically directs courts' focus to what has been done in "Congress and the state legislatures" without limitation regarding the officiant. 134 S.Ct. at 1819. Far from suggesting that this case falls outside the scope of *Marsh* or *Town of Greece*, the Supreme Court's silence on the issue of lawmaker-led prayer is simply that: silence. See *United States* v. *Stewart*, 650 F.2d 178, 180 (9th Cir. 1981) (remarking it would be improper to draw any inference from the Supreme Court's silence on an issue not placed before it).

Nor has this Court previously assigned weight to the identity of the prayer giver. To the contrary, we have suggested that the speaker's identity is irrelevant. For example, in *Wynne* v. *Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004), we remarked that "[p]ublic officials' brief invocations of the Almighty before

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of legislative prayer as a whole. That said, the record in *Town of Greece* shows that on at least one occasion a councilman offered a prayer during the ceremonial opening. See Joint Appendix, *Town of Greece* v. *Galloway*, 134 S.Ct. 1811 (2014) (No. 12-696), 2013 U.S. S. Ct. Briefs LEXIS 3132, at *62-63.

engaging in public business have always, as the *Marsh* Court so carefully explained, been part of our Nation's history." *Id.* at 302. Similarly, *Joyner* v. *Forsyth County*, 653 F.3d 341 (4th Cir. 2011), observed that "[i]t [is] the governmental setting for the delivery of sectarian prayers that courted constitutional difficulty, not those who actually gave the invocation." *Id.* at 350; see also *id.* at 351 ("Once again, the important factor was the nonsectarian nature of the prayer, not the identity of the particular speaker."). And in *Simpson* v. *Chesterfield County Board of Supervisors*, 404 F.3d 276 (4th Cir. 2005), we noted that the Supreme Court, "neither in *Marsh* nor in *Allegheny*, held that the identity of the prayer-giver, rather than the content of the prayer, was what would affiliate the government with any one specific faith or belief." *Id.* at 286. Although these cases ultimately turned on the now-rejected position that sectarian prayer was constitutionally invalid, none made the prayer giver's identity a factor in, let alone dispositive of, its analysis.

That conclusion makes sense given that legislative prayer constitutes a form of government speech regardless of the identity of the speaker; otherwise, it would not implicate the Establishment Clause at all. See, e.g., *Snyder* v. *Murray City Corp.*, 159 F.3d 1227, 1238 (10th Cir. 1998) (Lucero, J., concurring in the judgment) (recognizing that "chaplains speak for the legislature"). Practically speaking, the public is unlikely to draw any meaningful distinction between a state-paid chaplain (*Marsh*) or state-invited cleric (*Town of Greece*) and members of the legislative body

that appoints him. These invited officiants are in essence "deputized" to speak on behalf of the governing body. Cf. *Town of Greece*, 134 S.Ct. at 1850 (Kagan, J., dissenting). Yet the practice was constitutional, even when those officiants aligned with a particular religion and were paid with state funds. Because a paid or invited officiant stands on the same footing as the legislators, it follows that elected representatives may also be their own prayer givers. And when they take on that role, their religious preference in the ceremonial invocation is no different than the state-sponsored clergy in *Marsh* and *Town of Greece*. The Supreme Court directly observed in *Town of Greece* that a purpose of legislative prayer was to allow legislators to "show who and what they are" through their prayers. *Id.* at 1826 (plurality opinion). It thus makes abundant common and constitutional sense that legislators are ideally suited to offer meaningful, heartfelt prayer to the audience of those prayers: their fellow legislators. *Id.* at 1825.

On a broader level, the very "history and tradition" anchoring *Town of Greece* underscores a long-standing national practice of legislative prayer generally and lawmaker-led prayer specifically. Opening invocations offered by elected legislators have long been accepted as both a mainstay of civic life and a permissible form of religious observance. See S. Rep. No. 32-376, at 4 (1853) (commenting that the authors of the Establishment Clause "did not intend to prohibit a just expression of religious devotion *by the legislators of the nation, even in their public character as legislators*"

(emphasis added)); see also *Lynch*, 465 U.S. at 674, 104 S.Ct. 1355 ("There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789."). As just one example, the South Carolina Provincial Congress—South Carolina's first independent legislature—routinely welcomed an elected member to deliver invocations. See, e.g., South Carolina Provincial Congress, Thanks to the Continental Congress (Jan. 11, 1775), http://amarch.lib.niu.edu/islandora/object/niu-amarch%3A94077 (last visited May 23, 2017) (saved as ECF opinion attachment). These early public pronouncements are important evidence demonstrating that lawmaker-led legislative prayer was viewed no differently from legislative prayer as a whole. To conclude otherwise is to impugn the practical wisdom of the Framers—a factor that weighed heavily in *Town of Greece*—and to suggest "the founders of the United States were unable to understand their own handiwork." *Myers* v. *Loudoun Cty. Pub. Sch.*, 418 F.3d 395, 404 (4th Cir. 2005).

Equally troubling, the majority turns a blind eye to the prevalence of lawmaker-led legislative prayer. A majority of states and territories honor requests from individual legislators to give an opening invocation. See Nat'l Conference of State Legislatures, *Inside the Legislative Process* 5-151 to -152 (2002), http://www.ncsl.org/documents/legismgt/ILP/02Tab5Pt7.pdf (observing legislators may offer an opening prayer in at least thirty-one states). Lawmaker-led prayer is especially prevalent in the states under our jurisdiction,

where seven of the ten legislative chambers utilize elected members for this purpose. See *id.*; Br. of Amici Curiae State of West Virginia et al. Supporting Def.-Appellant at 14 & Add. 2-8; see also Office of Speaker Pro Tem Paul Stam, *Prayers Offered in the North Carolina House of Representatives: 2011-2014*, http://nchousespeaker.com/docs/opening-prayers-nchouse-2011-2014.pdf (last visited May 23, 2017). Several of these states have enacted legislation recognizing and protecting the historical practice of lawmaker-led prayer. For example, a Virginia statute protects legislators who deliver a sectarian prayer during deliberative sessions. See Va. Code Ann. § 15.2-1416.1. And South Carolina expressly authorizes its elected officials to open meetings with prayer. See S.C. Code Ann. § 6-1-160(B)(1). Other states inside and outside our jurisdiction rely exclusively on lawmaker-led prayers. See, e.g., Mich. H.R. Rule 16 (requiring the clerk of the Michigan House of Representatives to "arrange for a Member to offer an invocation" at the beginning of each session); Nat'l Conference of State Legislatures, supra, at 5-152 (the Rhode Island Senate); Kate Havard, *In delegates they trust: Md. House members lead secular prayer*, Wash. Post (Mar. 9, 2013), https://www.washingtonpost.com/local/md-politics/in-delegates-they-trust-md-house-members-lead-secular-prayer/2013/03/09/571fef8e-810a-11e2-8074b26a871b165a_story.html.

Lawmaker-led prayer finds contemporary validation in the federal government as well. Both houses of Congress allow members to deliver an opening invocation. The congressional record is replete with

examples of legislators commencing legislative business with a prayer. See, e.g., 161 Cong. Rec. S3313 (daily ed. May 23, 2015) (prayer by Sen. James Lankford); 159 Cong. Rec. S3915 (daily ed. June 4, 2013) (prayer by Sen. William M. Cowan); 155 Cong. Rec. S13401 (daily ed. Dec. 18, 2009) (prayer by Sen. John Barrasso); 119 Cong. Rec. 17,441 (1973) (prayer by Rep. William H. Hudnut III); see also 2 Robert C. Byrd, *The Senate 1789-1989: Addresses on the History of the United States Senate* 305 (Wendy Wolff ed., 1990) ("Senators have, from time to time, delivered the prayer.").

Particularly relevant to this case, lawmaker-led prayers frequently accompany the opening of local governmental meetings. See, e.g., Br. of Amici Curiae State of West Virginia et al. Supporting Def.-Appellant at 24-26 & Add. 11-43. In many localities, those prayers are exclusively lawmaker-led. See *id.*; see also Suppl. Br. of Amici Curiae State of West Virginia et al. Supporting Def.-Appellant Seeking Reversal at 9-10 & A10-A54.

In view of this long and varied tradition of lawmaker-led prayer, any wall barring elected legislators from religious invocations runs headlong into the Supreme Court's acknowledgement that "[a]ny test [we] adopt[] must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Town of Greece*, 134 S.Ct. at 1819. As Justice Alito aptly explained, "if there is any inconsistency between any [Establishment Clause] test[] and the historic practice of legislative

prayer, the inconsistency calls into question the validity of the test, not the historic practice." *Id.* at 1834 (Alito, J., concurring). The majority's conclusion strikes down a legislative prayer practice that is "part of the fabric of our society." *Id.* at 1819 (majority opinion).

2.

The majority couples its angst about the identity of the prayer giver in this case with "legislators [being] the *only* eligible prayer-givers." Majority Op. 278. That again is a fact without constitutional significance. The fact that the overwhelming majority of the prayers represented the Christian faith stems not from any "aversion or bias on the part of town leaders against minority faiths," *Town of Greece*, 134 S.Ct. at 1824, but from the composition of the Board. *Town of Greece* made clear that the Constitution does not require the government actively court religious balance "[s]o long as the town maintains a policy of nondiscrimination." *Id.*; see also *Pelphrey* v. *Cobb Cty.*, 547 F.3d 1263, 1281 (11th Cir. 2008) ("[*Marsh*] does not require that all faiths be allowed the opportunity to pray. The standard instead prohibits purposeful discrimination.").

There is no indicia of discrimination in this record. None. Nor is there any suggestion that the Board has or would bar any commissioner from offering a prayer faithful to the commissioner's own traditions, regardless of his or her faith. Without such evidence, we cannot conclude that the Board's prayer practice

unconstitutionally limits the universe of prayer givers in violation of the Establishment Clause.

The majority implicitly acknowledges the lack of evidence in the record on this point, and so instead faults the Board's "rigid, restrictive" prayer practice as contrasted with the "flexible, inclusive approach upheld in *Town of Greece*." Majority Op. 282. That widely misses the point.

Marsh and *Town of Greece* were both acceptable legislative prayer practices, but neither imposed a fixed standard for the nature or number of prayer givers that would be constitutional. Just because the Supreme Court has upheld a more "flexible, inclusive approach" does not mean that other, more structured approaches are thereby unconstitutional. If anything, the prayer practice here is far more "inclusive" and multi-faceted than the one the Supreme Court approved in *Marsh*, with only one prayer giver from one faith tradition. See infra Sec. II. Moreover, while *Town of Greece*'s practice resulted in a larger population of prayer givers, the majority elevates diversity to be the *sine qua non* of constitutionality. See Majority Op. 281-82 (citing the need for a constitutional practice to "embrac[e] religious pluralism and the possibility of a correspondingly diverse invocation practice," and considering whether a particular prayer practice could be more welcoming or do more to "cultivate[] an atmosphere of greater tolerance and inclusion"); see also Majority Op. 286 (expounding that "legislative prayer gives voice to the ecumenical dimensions of religious faith"). But *Marsh* and *Town of Greece* do not require

enforced ecumenicalism nor do they demand denominational diversity; indeed, the Supreme Court expressly distanced itself from such a requirement. E.g., *Town of Greece*, 134 S.Ct. at 1824 (rejecting the view that lawmaking bodies must "promote a diversity of religious views"). Instead, the Court focused on whether the legislature's practice—whatever that practice might be—evinces an unlawful discriminatory motive. Here, the record reflects none.

In short, the Supreme Court's prohibition on discrimination in this context is aimed at barring government practices that result from a deliberate choice to favor one religious view to the exclusion of others. As explained in *Town of Greece*, concerns arise only if there is evidence of "an aversion or bias on the part of town leaders against minority faiths" in choosing the prayer giver. *Id.* The *Marsh* Court likewise alluded to this requirement when it cautioned that the selection of a guest chaplain cannot stem from "an impermissible motive." 463 U.S. at 793, 103 S.Ct. 3330. This parameter is directed at the conscious selection of the prayer giver on account of religious affiliation or conscious discrimination against a prayer giver due to a religious affiliation. See *id.* Because there's no evidence of either in this record, the limited-universe of prayer givers does not violate the principles espoused in *Marsh* and *Town of Greece*.

In another misreading of Supreme Court precedent, the majority contorts *Marsh* to foster its novel rule mandating a broad universe of eligible prayer givers. A contextual review of *Marsh* leads to the opposite

conclusion: the Nebraska legislature paid the same Presbyterian minister to offer prayers for sixteen years. 463 U.S. at 785, 793, 103 S.Ct. 3330. In rejecting the argument that this closed universe of prayer givers created a constitutional concern, the Supreme Court observed, "[a]bsent proof that the chaplain's reappointment stemmed from an impermissible motive, we conclude that his long tenure does not in itself conflict with the Establishment Clause." *Id.* at 793-94, 103 S.Ct. 3330. While it is true that other individuals occasionally substituted for the Nebraska chaplain, the fact remained that the overwhelming majority of prayers during that sixteen-year period were given by a single state-paid prayer giver from a single faith tradition. Even so—and entirely consistent with the Court's later statements in *Town of Greece*—that fact did not give rise to a constitutional concern because there was, as here, no evidence of an impermissible motive. 134 S.Ct. at 1824. *Marsh*'s facts and holding stand for the principle that the selection of a single legislative prayer giver, or a limited set of prayer givers, who represent a single religious tradition does not advance any one faith or belief over another. See 463 U.S. at 793, 103 S.Ct. 3330 ("We cannot, any more than Members of the Congresses of this century, perceive any suggestion that choosing a clergyman of one denomination advances the beliefs of a particular church."); *Ctr. for Inquiry, Inc.* v. *Marion Circuit Court Clerk*, 758 F.3d 869, 874 (7th Cir. 2014) ("*Marsh* and *Greece* show that a government may, consistent with the First Amendment, open legislative sessions with Christian prayers while not inviting leaders of other religions[.]").

A fortiori, *Town of Greece* does not support the majority's expansive view. Not only are the legislators themselves the intended "congregation" for legislative prayer, *Town of Greece*, 134 S.Ct. at 1825 (plurality opinion), but the Supreme Court has recognized that legislative prayer practices carry special meaning to the thousands of local and state "citizen representatives" throughout this country. In fact, the Supreme Court in *Town of Greece* specifically acknowledged "members of town boards and commissions, who often serve part-time and as volunteers," were lawmakers for whom "ceremonial prayer may * * * reflect the values they hold as private citizens." *Id.* at 1826. To repeat an earlier observation, if legislative prayer particularly reflects the values of "citizen representatives," then it stands to reason that these "citizen representatives" should be able to lead prayers in a way that connects with their intended audience: themselves. *Id.* Legislators are uniquely qualified to offer uplifting, heartfelt prayer on matters that concern themselves and their colleagues.

These precepts also demonstrate why lawmaker-led prayer does not, as the majority misconstrues, violate the principle that governments not be in the business of "compos[ing] official prayers." Compare Majority Op. 281 (quoting *Lee* v. *Weisman*, 505 U.S. 577, 588, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992)), with *Town of Greece*, 134 S.Ct. at 1822 (observing that requiring prayers to be nonsectarian "would involve *government* in religious matters to a far greater degree than is the case under the town's current practice of

neither editing or approving prayers in advance nor criticizing their content after the fact" (emphasis added)).

Here, the Board's practice does not venture into impermissible writing or editing of religious speech. Rather, each commissioner gives his or her own prayer without oversight, input, or direction from the Board, which does not supervise or censor the speech of its individual commissioners in crafting the prayers. Indeed, there is no evidence that the Board, as a Board, had any role in any of the prayers given by any of the individual commissioners. The record is devoid of any suggestion that any prayer in this case is anything but a personal creation of each commissioner acting in accord with his or her personal views. As a consequence, each commissioner is essentially a free agent no different from the ministers in *Town of Greece* or the paid chaplain in *Marsh*, who gave invocations of their own choosing. Contrary to the majority's conclusion, the Board's practice does not present the same concerns as when the "*government* [attempts] to define permissible categories of religious speech." *Town of Greece*, 134 S.Ct. at 1822 (emphasis added). Instead, the Board's legislative prayer practice amounts to nothing more than an individual commissioner leading a prayer of his or her own choosing.

For all these reasons, the majority errs in concluding that commissioners delivering the ceremonial

prayer to open a Board meeting is a relevant distinguishing feature for the constitutional analysis set out [in] *Marsh* and *Town of Greece*.[6]

B.

As the identity of the legislative prayer givers at issue has no cognizable constitutional significance in this case, I turn next to the remaining characteristics of the Board's prayer practice discussed by the majority: content, coercion, and local government setting. Although the Supreme Court has not forged a comprehensive template for all acceptable legislative prayer, its decisions set out guideposts for analyzing whether a particular practice goes beyond constitutional bounds. See *Snyder*, 159 F.3d at 1233 ("*Marsh* implicitly acknowledges some constitutional limits on the scope and selection of legislative prayers[.]").

1.

As the majority points out, one of the guideposts to acceptable legislative prayers is the content of those

[6] The majority also conjures up the "risk of political division" arising from alleged conflicts concerning the Board's prayer practice. Majority Op. 282. But neither audience-initiated criticism of those who object to a prayer practice nor election-oriented policy statements by Board candidates are relevant to the issue of law before the Court. Questions concerning the wisdom of the practice of legislative prayer can be rightly debated in many squares, but the judiciary is not one of them. The Court's task is solely to decide whether the Board's practice is lawful under the First Amendment, not whether it is popular or wise.

prayers. After reaffirming the holding in *Marsh* that lower courts should refrain from becoming embroiled in review of the substance of legislative prayer, *Town of Greece* noted that there could be certain sectarian actions that might cause a legislative prayer practice to fall outside constitutional protection, such as "[i]f the course and practice over time shows that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion." 134 S.Ct. at 1823. In that circumstance, the Court observed, "many present may consider the prayer to fall short of the desire to elevate the purpose of the occasion and to unite lawmakers in their common effort." *Id.*

To this end, courts need only assure themselves that sectarian legislative prayer, viewed from a cumulative perspective, is not being exploited to, inter alia, proselytize or disparage. Less egregious conduct warrants no further review. Indeed, the Supreme Court has disclaimed any interest in the content of legislative invocations, announcing a strong disinclination "to embark on a sensitive evaluation or to parse the content of a particular prayer." *Marsh*, 463 U.S. at 795, 103 S.Ct. 3330. The record in this case demonstrates that the Board's prayer practice did not stray across the constitutional line of advancement, proselytization, or disparagement. In fact, the prayers here are much further from that line than those before the Supreme Court in *Marsh* and *Town of Greece*.

To reach the opposite conclusion, the majority selectively quotes a handful from the hundreds of prayers offered in Board meetings to demonstrate what it

perceives to be impermissible "promotion" of Christianity. E.g., Majority Op. 283-86. But in so doing, the majority untethers *Town of Greece*'s broader analysis from the specific prayers at issue in that case which the Supreme Court necessarily found did not cross any constitutional line. Even a cursory comparison shows that the prayers highlighted by the majority have less questionable language than that contained in the prayers upheld in *Marsh* and *Town of Greece*.

The content of the commissioners' prayers largely encompassed universal themes, such as giving thanks and requesting divine guidance in deliberations, much in line with the prayers challenged in *Town of Greece*. Cf. *Town of Greece*, 134 S.Ct. at 1824 (noting the prayers "invoked universal themes, as by celebrating the changing of the seasons or calling for a 'spirit of cooperation' among town leaders"). References to exclusively Christian concepts typically consisted of the opening or closing line, such as "In Jesus' name. Amen," exactly as in most prayers in *Town of Greece*. Compare Suppl. J.A. 29-31, with *Town of Greece*, 134 S.Ct. at 1824 (noting a "number of the prayers did invoke the name of Jesus, the Heavenly Father, or the Holy Spirit").

The invocation delivered at the Board's October 17, 2011, meeting illustrates what Board members and the public would typically hear:

> Let us pray. Father we do thank you for the privilege of being here tonight. We thank you for the beautiful day you've given us, for

> health and strength, for all the things we take for granted. Lord, as we read in the paper today, the economic times are not good, and many people are suffering and doing without. We pray for them; we pray that you would help us to help. We pray for the decisions that we will make tonight, that God, they would honor and glorify you. We pray that you would give us wisdom and understanding. We'll thank you for it. In Jesus' name. Amen.

Suppl. J.A. 31.

Some of the commissioners' prayers contained more direct references to Christian teachings, but so did the prayers in *Town of Greece*. E.g., Majority Op. 283-86 (quoting prayers from the record). For example, the following prayers in *Town of Greece* gave the Supreme Court no pause, but would be anathema and forbidden under the majority's reasoning:

- "Let us pray* * * * Lord this evening we ask you especially to bless [the new fire marshal and police captain]. Fill their hearts Lord with zeal to serve your people, and Lord we ask you to bless us all, that everything we do here tonight will move you to welcome us one day into your kingdom as good and faithful servants. We ask this in the name of our brother Jesus. Amen." Joint Appendix, *Town of Greece* v. *Galloway*, 134 S.Ct. 1811 (2014) (No. 12-696), 2013 U.S. S. Ct. Briefs LEXIS 3132, at *34.
- "[W]e acknowledge the role of the Holy Spirit in our lives and that while there is a variety

of gifts, there is always the one and the same spirit working in different ways in different people* * * * We pray this evening for the guidance of the Holy Spirit as the Greece Town Board meets* * * * Praise and glory be Yours oh Lord. Now and forever. Amen. Let's just say the Our Father together. Our Father who art in Heaven, hallowed by [sic] thy name, thy kingdom come, thy will be done, on Earth as it is in Heaven, give us this day, our daily bread, forgive us our trespasses, as we forgive those who trespass against us, and lead us not into temptation, but deliver us from evil for thine is the kingdom, and the power, and the glory forever and ever." Amen." *Id.* at *49.

- "Would you bow your heads with me as we invite the Lord's presence here tonight? Gracious Lord, we thank you so much for this opportunity to come together, to plan, to build, to establish direction for this fine community. And Lord, we acknowledge tonight that without your help, without your grace, without your wisdom, we'd probably make a mess of things* * * * Direct, guide, lead and establish your will." *Id.* at *66.

- "Join me in prayer, if you would please* * * * My sister doesn't get to live in a town where there's a supervisor and councilmen that are God-fearing people* * * * Lord, may we not take the freedoms, the privileges, the opportunity that we have for granted* * * * I pray, Father, that they might remember to look to

your word for wisdom and direction. And Father that you would help us to keep you first and foremost in our lives and in our minds. We thank you for what you have done. In Christ's name I pray. Amen." *Id.* at *78-79.

- "Our Father, we know that you are sovereign over all creation. You are sovereign over this world. You are sovereign over this town. And Lord, you have placed these men and women as your servants to serve you first of all and then to serve this town and the people that live in this town, and so I pray that for them, they would have the attributes of godly leaders that would serve well* * * * Lord help them to stand up for those things that this town would be blessed because of godly leadership, of leadership that does right, that this town would flourish because it reflects the kingdom of God where things are done in order. And so I bring them before you. I pray that the proceedings tonight and through this year would reflect who you are and how you are leading, for I pray it in the name of your son Jesus Christ. Amen." *Id.* at *89-90.

- "Let us pray. Lord, God of all creation, we give you thanks and praise for your presence and action in the world. We look with anticipation to the celebration of Holy Week and Easter. It is in the solemn events of next week that we find the very heart and center of our Christian faith. We acknowledge the saving sacrifice of Jesus Christ on the cross. We draw strength, vitality, and confidence from his resurrection at Easter. Jesus Christ, who took away the

sins of the world, destroyed our death, through his dying and in his rising, he has restored our life. Blessed are you, who has raised up the Lord Jesus, you who will raise us, in our turn, and put us by His side." *Id.* at *91.

- "Let's pray. Father, we acknowledge that all authority and power resides [sic] in you. So as we come before you this evening, I pray for the men and women who sit behind me. I pray that they would acknowledge that you are the supreme ruler of all and that any authority they have, any rulership they have, is granted to them by you, by your sovereign will." *Id.* at *92-93.

- "Lord, you are a mighty and awesome God, the ruler of the nations, the king of the earth, and all authority, whether wielded in state, or in home, or in church, is derived from you as a stewardship* * * * You are also a wise God, oh Lord, as seen in the world around us, and as evidenced even in the plan of redemption that is fulfilled in Jesus Christ* * * * We ask these things in the name of the Lord and Savior Jesus Christ, who lives with you and the Holy Spirit, one God for ever and ever. Amen." *Id.* at *104-05.

- "Lord God of all creation, we give you thanks and praise for your presence and action in the world. We are approaching the end of the Easter Season [indiscernible] Easter, the ascension of the Lord on Thursday, this week, coming at the end of the forty days of Jesus

> Christ's resurrection appearances, and with the Feast of Pentecost ten days later, on Sunday, May the 31st. The beauties of spring—the flowers, the blossoms, the fresh green on the trees, and the warmer weather—are an expressive symbol of the new life of the risen Christ. The Holy Spirit was sent to the apostles at Pentecost so that they would be courageous witnesses of the Good News to different regions of the Mediterranean world and beyond. The Holy Spirit continues to be the inspiration and the source of strength and virtue, which we all need in the world of today* * * * We pray this evening for the guidance of the Holy Spirit as the Greece Town Board meets." *Id.* at *148-50.

The prayers in *Marsh* invoked similarly pointed Christian themes, none of which caused any constitutional question in the Supreme Court's view. For example, one prayer contained the following language:

> Father in heaven, the suffering and death of your son brought life to the whole world moving our hearts to praise your glory. The power of the cross reveals your concern for the world and the wonder of Christ crucified.
>
> The days of his life-giving death and glorious resurrection are approaching. This is the hour when he triumphed over Satan's pride; the time when we celebrate the great event of our redemption.
>
> We are reminded of the price he paid when we pray with the Psalmist[,]

at which point the chaplain quoted from Psalm 22. *Marsh*, 463 U.S. at 823 n.2, 103 S.Ct. 3330 (Stevens, J., dissenting). And in a prayer offered before Easter one year, the Nebraska chaplain prayed, "Today as we are about to celebrate the great Holy Days of Christians and Jews, Holy Week and Passover, let us be reminded again through the faith and beliefs of our religions of the principles and directives which should guide us* * * * May these Holy Days, then, enable us to act as true followers of the beliefs which we have and may it find expression in every act and law that is passed." Joint Appendix at 108, *Marsh* v. *Chambers*, 463 U.S. 783 (1983) (No. 82-23), quoted in *Snyder*, 159 F.3d at 1234 n.11.

In short, the prayers actually offered in *Marsh* and *Town of Greece* contained the same sort of pleas to the Christian God and to Jesus Christ, the same recognition of a Christian tenet of salvation and dependence on God's favor, and the same generalized exhortations to obedience to Christian teachings as those prayers singled out for concern by the majority. If the prayers in *Marsh* and *Town of Greece* did not independently merit concern as to content, then neither do the prayers offered in Rowan County.

Contrary to the majority's consternation, the prayers in the case at bar do not, taken together, reflect a pattern of proselytizing any more than those in *Town of Greece* or *Marsh*. The majority's examples merely reflect sectarian themes that hew to Christian doctrines. Other examples assume that the audience agrees with the prayer givers' words or *already* shares

a Christian viewpoint. Proselytization, in contrast, "means to seek to 'convert' others to" "a particular religious belief," *Wynne*, 376 F.3d at 300, meaning that it seeks a change from one view to a different one. But the prayers by the commissioners never explicitly or implicitly ask the hearers to change beliefs, to adopt as true any principles of the Christian faith, or anything else traditionally understood to be words imploring conversion. In addition, none of the prayers here threaten damnation to those of different faiths, belittle or chastise dissenters, or denigrate any other religious viewpoints. See, e.g., *Snyder*, 159 F.3d at 1235 (finding the plaintiff's proffered prayer unconstitutional because it "strongly disparage[d] other religious views" and "s[ought] to convert his audience").

Notably, although the majority concludes that the prayers "suggest[ed] that other faiths are inferior," it does not point to any language from the prayers maligning non-Christian beliefs. See Majority Op. 285. At most, it subjectively intuits the prayers "implicitly signaled disfavor toward non-Christians" whenever they "portray[ed] the failure to love Jesus or follow his teachings as spiritual defects." Majority Op. 285. That conclusion contradicts *Town of Greece*'s direct instruction that legislative prayers can be sectarian, and thus espouse Christian or other faith teachings. Distilled, the majority holds that any time a legislative prayer contains sectarian language favoring one belief it implicitly signals disfavor toward sects that do not adhere to that belief. But that cannot be what *Town of*

Greece meant by denigrating other faiths because it expressly held that sectarian prayers do not cross this line.

Stripped of these considerations, what remains are passing references in only some of the prayers at issue that—at worst—merely approach the line drawn in *Town of Greece*. Given their paucity against the entire record, however, the prayers in this case easily meet the test articulated in *Town of Greece*, which held that a few stray remarks are insufficient to "despoil a practice that on the whole reflects and embraces our tradition" of legislative prayers. 134 S.Ct. at 1824. Or, to use *Town of Greece*'s other admonition, even if certain phrases in a handful of prayers are questionable, the practice at issue as a whole does not show "a pattern of prayers that over time, denigrate, proselytize, or betray an impermissible government purpose," a legal condition precedent to any claim of a constitutional violation. *Id.*

Nor do the number of sectarian prayers and period of time at issue change the analysis. *Town of Greece*'s reference to a "pattern of prayers * * * over time" must be understood in the context of that case. The period at issue there was 1999 to 2010, which encompassed some 120 monthly meetings, and for all but the last three years in that record, the prayers were offered *solely* from a Christian tradition. Even during those last three years, only four prayers were given from a non-Christian faith tradition. *Id.* at 1839 (Breyer, J., dissenting). If those circumstances did not constitute an impermissible pattern of prayers that advanced

Christianity or otherwise crossed the line, neither do the facts of this case.

Here, the complaint challenged the Board's prayer practice from November 2007 through March 2013, a much shorter period of time than that covered in *Town of Greece*, though the meetings occurred twice a month rather than monthly. Suppl. J.A. 12-38. The majority notes that "97% of the Board's prayers mention [] 'Jesus,' 'Christ,' or the 'Savior.'" Majority Op. 273. Thus, in both *Town of Greece* and here, the prayers skewed heavily toward the Christian faith. Yet Greece's prayer practice was not the ecumenical utopia the majority paints in order to cast Rowan County's practice in a more negative light. Viewed against the facts of *Town of Greece*, the Board's practice crossed no constitutional line.

The same cannot be said of the majority's review of the Board's practice: by engaging in such detailed parsing of both the words of individual prayers and the percentages of sectarian versus non-sectarian prayers, the majority violates the Supreme Court's instruction that courts should not be the "supervisors and censors of religious speech." *Town of Greece*, 134 S.Ct. at 1822. In other words, "[o]nce it invites 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*." *Id.* at 1822-23 (emphasis added).

The majority appears to prefer the pre-*Town of Greece* principle that legislative prayers must consist

of generic, nonsectarian prayers that appease the broadest audience while offending the least. E.g., Majority Op. 284 ("[I]n considering whether government has aligned itself with a particular religion, a tapestry of many faiths lessens that risk whereas invoking only one exacerbates it."); Majority Op. 286 ("At its best, legislative prayer gives voice to the ecumenical dimensions of religious faith."); Majority Op. 289 ("The ultimate criterion is simply one of conveying a message of respect and welcome for persons of all beliefs and adopting a prayer practice that advances the core idea behind legislative prayer, that people of many faiths may be united in a community of tolerance and devotion."). The majority's trouble with the ceremonial legislative prayer here thus stems from its disagreement with the basic holding of *Town of Greece*. But that disagreement cannot alter our role, as we are bound to faithfully apply the law articulated by the Supreme Court. *ARA Servs., Inc.* v. *NLRB*, 71 F.3d 129, 138 (4th Cir. 1995) (Motz, J., concurring in part and dissenting in part) ("[D]isagreement provides no basis for refusing to follow a directive of the Supreme Court[.]"). That is judicial review run amok, particularly in a context where the Supreme Court has exhorted restraint.

One of the majority's recurring themes is that if Rowan County's legislative prayer practice is constitutional, there would be no limits to the constitutionality of legislative prayer. E.g., Majority Op. 290-91. Not so. As the above analysis observes, the Board's practice adheres to the constitutional limits set out in *Marsh* and *Town of Greece*. This conclusion does not ignore

the boundaries both cases set for practices that would cross a constitutional line. For example, prayers that implored the audience to attend a particular church would violate *Town of Greece*'s admonition that a prayer practice should not, over time, proselytize. Prayers that exhorted the hearers to renounce their faith tradition would similarly transgress this line. So, too, one can easily understand *Town of Greece*'s concern that a legislative body could not, in fact, make official decisions based on whether a member of the public participated in, or voiced opposition to, the legislative prayer practice. Contrary to the majority's hyperbole, concluding that the prayer practice at issue in this case is constitutional does not leave *Town of Greece*'s boundaries meaningless; far from it.

2.

The majority also finds constitutionally significant that the legislative prayer at issue here occurs before local government meetings as opposed to state or federal legislatures. See Majority Op. 287-89. Rather than following *Town of Greece*'s instructive analysis, the majority instead muses about local government meetings as different than other legislative entities. For example, it notes that "[r]elative to sessions of Congress and state legislatures, the intimate setting of a municipal board meeting presents a heightened potential for coercion" because, inter alia, citizens routinely come directly before the board. Majority Op. 287. It also observes that the "Board exercises both legislative

authority * * * [and] quasi-adjudicatory power." Majority Op. 287. And it fears "the intimacy of a town board meeting may push attendees to participate in the prayer practice in order to avoid the community's disapproval," or so "they would not stand out" just prior to the Board considering their petitions. Majority Op. 288. In so doing, the majority draws on an argument posited by the petitioners in *Town of Greece* and firmly rejected by the Supreme Court.

Specifically, in *Town of Greece* the petitioners asserted that

> the intimate setting of a town board meeting 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. Citizens attend town meetings, on the other hand, to accept awards; speak on matters of local importance; and petition the board for action that may affect their economic interests, such as the granting of permits, business licenses, and zoning variances* * * * [T]he fact that board members in small towns know many of their constituents by name only increases the pressure to conform.

134 S.Ct. at 1824-25 (plurality opinion). In concluding none of these points affected the constitutionality of Greece's prayer practice, the Supreme Court plurality considered both the history and purpose of legislative prayer.

First, the plurality measured legislative prayer "against the backdrop of historical practice." *Id.* at 1825. As discussed above, lawmaker-led legislative prayer is part and parcel of the same historical roots as legislative prayer more broadly. Infra Sec. III.A.1. Similarly, prayers at local government meetings are as historically rooted as prayers at the state and federal levels. *Id.*; see also infra Sec. II (discussing *Town of Greece*).

Next, the plurality noted that "[t]he principal audience for these invocations is not, indeed, the public but lawmakers themselves." *Town of Greece*, 134 S.Ct. at 1825 (plurality opinion). In fact, the plurality found that legislative prayer has a particularly meaningful personal connection "[f]or members of town boards and commissions, who often serve part-time and as volunteers," precisely because it "reflect[s] the values they hold as private citizens. The prayer is an opportunity for them to show who and what they are without denying the right to dissent by those who disagree." *Id.* at 1826. That the Supreme Court lauded the opportunity legislative prayer afforded *local* lawmakers to express their values highlights the majority's perplexing conclusion here that prayer practices at the local level are actually *more* suspect. For the majority, it's as if *Town of Greece* never happened.

Of course, this is not to say that legislative prayers cannot be coercive. But as the *Town of Greece* plurality recognized, "if town board members *directed* the public to participate in the prayers, *singled out* dissidents for opprobrium, or *indicated that their decisions might be*

influenced by a person's acquiescence in the prayer opportunity," then coercion may exist. *Id.* (emphasis added). But the record here is devoid of those features.

For example, the record does not show that the Board ever ordered public participation in its prayer services. Instead, the record presents precisely the sort of procedure the Supreme Court approved in *Town of Greece*. There, "board members themselves stood, bowed their heads, or made the sign of the cross during the prayer, [but] they at no point solicited similar gestures by the public." *Id.* There's no evidence in the record before this Court that any of the commissioners ever commanded or demanded the public audience to rise or bow their heads, make the sign of the cross, or otherwise make any symbol of religious expression during the prayer. And while the Board extended the courtesy to those in attendance by inviting them to stand, there's no evidence that anyone was required to do so. Tellingly, the Plaintiffs' own evidence shows portions of the public audience simply chose not to participate. See J.A. 12 (noting only "most" of the audience stood). That a simple invitation to join—which the audience was free to reject—could be twisted into coerced participation in a religious act distorts the record. Instead, lower courts, including this one, must take the Supreme Court's counsel to heart and safely assume that mature adults can follow contextual cues without the risk of religious indoctrination. See *Marsh*, 463 U.S. at 792, 103 S.Ct. 3330; *Town of Greece*, 134 S.Ct. at 1823 ("[A]dult citizens, firm in their own beliefs, can

tolerate and perhaps appreciate a ceremonial prayer delivered by a person of a different faith.").

In *Town of Greece*, the prayer givers often asked the audience "to rise for the prayer" by extending invitations such as "Would you bow your heads with me as we invite the Lord's presence here tonight?"; "Let us join our hearts and minds together in prayer"; and "Would you join me in a moment of prayer?" 134 S.Ct. at 1826 (plurality opinion). Here, the designated commissioner would similarly offer a ceremonial invocation that typically started with "let us pray" or "please pray with me." Such transitional and prefatory courtesy hardly constitutes coercion under the Supreme Court's guidance. No case, before or after *Town of Greece*, stands for that principle. To the contrary, for coercion to be found the government must "orchestrate[] the performance of a formal religious exercise in a fashion that practically obliges the involvement of non-participants." *Myers*, 418 F.3d at 406. And in the context of legislative prayer, coercion must be measured "against the backdrop of historical practice" in which reasonable observers are deemed to be familiar with the tradition and purpose of a ceremonial prayer to open a legislative session. *Town of Greece*, 134 S.Ct. at 1825 (plurality opinion). Viewed through that lens, no reasonable person would interpret a commissioner's commonplace and "almost reflexive" opening line of "let us pray" to compel their submission to the prayer. Cf. *id.* at 1832 (Alito, J., concurring). Such standard openings have been routinely offered for over two centuries in the U.S. Congress, the state legislatures, and

countless local bodies. In short, such innocuous language cannot be what the Supreme Court contemplated when it expressed concern about prayer givers "direct[ing] the public to participate in the prayers." *Id.* at 1826 (plurality opinion).

Plaintiffs, the district court, and the majority assert that the Board's prayer practice made audience members feel subjectively "excluded at meetings" and that the Board's "disagreement with [their] public opposition to sectarian prayer could make [them] less effective advocate[s]." See *Lund*, 103 F. Supp. 3d at 715-16. This is a failed argument. *Town of Greece* explicitly rejected the same claim that perceived "subtle pressure to participate in prayers that violate their beliefs in order to please the board members from whom they are about to seek a favorable ruling" constitutes coercion. 134 S.Ct. at 1825 (plurality opinion). Merely exposing constituents to prayer they may find offensive is not enough. "[I]n the general course[,] legislative bodies do not engage in impermissible coercion merely by exposing constituents to prayer they would rather not hear and in which they need not participate." *Id.* at 1827.

Nor did the Board's prayer practice "chastise[ ] dissenters [ ]or attempt [ ] lengthy disquisition on religious dogma." *Id.* at 1826. Rather, as illustrated above, the prayer content largely followed the spirit of solemn, respectful prayer approved in *Marsh* and *Town of Greece*. Moreover, the record shows that both attendance and participation in the invocations were voluntary. The Board has represented without contradiction

that members of the public were free "to remain seated or to otherwise disregard the Invocation in a manner that [was] not disruptive." J.A. 277. Thus, as a practical matter, citizens attending a Board meeting who found the prayers objectionable were not without recourse; they could arrive after the invocation, leave for the duration of the prayer, or remain for the prayer without participating, just like the audiences in *Marsh* and *Town of Greece*. To the extent individuals like Plaintiffs elected to stay, "their quiet acquiescence [would] not, in light of our traditions, be interpreted as an agreement with the words or ideas expressed." *Town of Greece*, 134 S.Ct. at 1827 (plurality opinion).

By suggesting that audience members should not be required to arrive "after the prayer, leave the room before the prayer, or simply stay seated" because doing so "served only to marginalize," Majority Op. 288, the majority rejects the precise actions the Supreme Court approved in *Town of Greece*. 134 S.Ct. at 1827 (plurality opinion) ("Nothing in the record suggests that members of the public are dissuaded from leaving the meeting room during the prayer, arriving late, or even, as happened here, making a later protest. In this case, as in *Marsh*, board members and constituents are free to enter and leave with little comment and for any number of reasons. Should nonbelievers choose to exit the room during a prayer they find distasteful, their absence will not stand out as disrespectful or even noteworthy. And should they remain, their quiet acquiescence will not, in light of our traditions, be interpreted as an agreement with the words or ideas

expressed. Neither choice represents an unconstitutional imposition as to mature adults[.]").

The record is similarly devoid of evidence that anyone who chose not to participate during the prayer suffered adverse consequences, that their absence was perceived as disrespectful or was recognized by the Board in any way. To the contrary, the Board has attested, again without contradiction, that such conduct would have "no impact on [the constituent's] right to fully participate in the public meeting, including addressing the commission and participating in the agenda items in the same manner as permitted any citizen of Rowan County." J.A. 277. Plaintiffs point us to no evidence to the contrary. Thus, it is implausible on this record to suggest that Plaintiffs were "in a fair and real sense" coerced to participate in the exercise of legislative prayer. *Lee*, 505 U.S. at 586, 112 S.Ct. 2649. In short, there's no evidence that "town leaders allocated benefits and burdens based on participation in the prayer, or that citizens were received differently depending on whether they joined the invocation or quietly declined." *Town of Greece*, 134 S.Ct. at 1826 (plurality opinion).

As it must do given the record, the majority concedes that it is not "suggest[ing] that the commissioners made decisions based on whether an attendee participated in the prayers." Majority Op. 288. Nonetheless, the majority divines constitutional jeopardy in the juxtaposition of ceremonial prayer immediately prior to Board business. See Majority Op. 288. That distinction lacks meaning given that legislative prayer

is a ceremonial prayer practice that occurs at the start of a legislative meeting where a legislative body presumably intends to engage in legislative work. More to the point, Rowan County's meeting process is precisely that approved by the Supreme Court in *Town of Greece*. 134 S.Ct. at 1823 ("The relevant constraint derives from [the prayer's] place at the opening of legislative sessions, where it is meant to lend gravity to the occasion and reflect values long part of the Nation's heritage.").

Significantly, at no time did the Supreme Court in *Town of Greece* suggest that legislative prayers at a local government meeting inherently presented any constitutional issue. Yet the innate qualities of local government meetings are where the majority directs its concerns. E.g., Majority Op. 287 ("[T]he intimate setting of a municipal board meeting presents a heightened potential for coercion."); Majority Op. 288 ("[T]he commissioners consider[ ] citizen petitions shortly after the invocation," and "the Board exercises both legislative authority over questions of general public importance as well as a quasi-adjudicatory power over such granular issues as zoning petitions, permit applications, and contract awards."); Majority Op. 288 ("[T]he intimacy of a town board meeting may push attendees to participate in the prayer practice in order to avoid the community's disapproval."). If any of these inherent characteristics conflicted with the First Amendment, it would have been addressed in the Supreme Court's decision in *Town of Greece* because those circumstances were squarely part of that case

and those arguments were made to the Court. But the Supreme Court rejected those claims, and the majority plainly errs by rejecting the course laid out by the Supreme Court.

Drawing on distinctions noted in Justice Alito's concurring and Justice Kagan's dissenting opinions in *Town of Greece*, the majority also cobbles together a distinction between prayers offered before the totality of a local governmental meeting and those said before a legislative portion of the meeting as distinct from an adjudicatory phase of the meeting. Majority Op. 287-88. But the majority in *Town of Greece* relied on no such demarcation. The only relevant point in terms of order was that legislative prayer has historically been offered—as it was in *Marsh* and *Town of Greece*—at the "opening of legislative sessions, where it is meant to lend gravity to the occasion and reflect values long part of the Nation's heritage" and "invite[] lawmakers to reflect upon shared ideals and common ends before they embark on the fractious business of governing." *Town of Greece*, 134 S.Ct. at 1823. The legislative prayers here similarly occur at the opening of the Board's meeting as part of the ceremonial part of the meeting that also includes the Pledge of Allegiance. It occurs before *any* Board business, whether adjudicative or legislative. The majority's quibble finds no support in *Town of Greece*'s holding.

Because the Supreme Court has already rejected the concerns about the intimacy of legislative prayer before a local government meeting, that factor has no bearing on the constitutionality of Rowan County's

practice. But the equally troubling result is that the rest of the majority's analysis applies with the same force to local, state, and federal legislatures. It will no doubt come as a surprise to members of the United States House of Representatives and Senate to learn that neither *Marsh* nor *Town of Greece* protect their right to offer legislative prayer.

IV.

Make no mistake, while the majority purports to have no problem with the idea of lawmaker-led legislative prayer in the abstract, its reasoning actually leaves no room for lawmakers to engage in the full panoply of legislative prayer practices to which *Town of Greece* grants constitutional protection. The lawmaker's mere status as a prayer giver is viewed with immediate skepticism, and any sectarian content to his or her prayers is deemed to have an added coercive effect. Moreover, the majority refrains from providing any guidelines as to when, if ever, lawmaker-led legislative prayers can meet their newly minted constitutional standards. Majority Op. 288-89. Indeed, the only safe practice for lawmakers who want to offer a legislative prayer is to ignore what *Marsh* and *Town of Greece* permit and offer only a generic prayer to a generic god.

The Rowan County legislative prayer practice falls within the historical traditions recognized in *Marsh* and *Town of Greece* and the principles the Supreme Court articulated in both cases. It is constitutional.

For all these reasons, I would reverse the district court's judgment and enter final judgment for Rowan County. I respectfully dissent.

670 Fed.Appx. 106 (Mem)
This case was not selected for
publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1
generally governing citation of judicial
decisions issued on or after Jan. 1, 2007.
See also U.S.Ct. of Appeals 4th Cir. Rule 32.1.
United States Court of Appeals,
Fourth Circuit.

Nancy LUND; Liesa Montag-Siegel; Robert Voelker,
Plaintiffs-Appellees
v.
ROWAN COUNTY, NORTH CAROLINA,
Defendant-Appellant

No. 15-1591
|
Filed: October 31, 2016

(1:13-cv-00207-JAB-JLW)

Attorneys and Law Firms

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ORDER

A majority of judges in regular active service and not disqualified having voted in a requested poll of the court to grant the petition for rehearing en banc,

IT IS ORDERED that rehearing en banc is granted.

The parties and any amici curiae shall file 16 additional paper copies of their briefs and appendices previously filed in this case within 10 days. The parties may move, or the court may sua sponte order, the filing of supplemental en banc briefs pursuant to Local Rule 35(d).

This case is tentatively calendared for oral argument at the January 24-26, 2017, session of court.

837 F.3d 407
United States Court of Appeals,
Fourth Circuit.

Nancy LUND; Liesa Montag-Siegel; Robert Voelker,
Plaintiffs-Appellees,

v.

ROWAN COUNTY, NORTH CAROLINA,
Defendant-Appellant.

State of West Virginia; State of Alabama; State of Arizona; State of Arkansas; State of Florida; State of Indiana; State of Michigan; State of Nebraska; State of Nevada; State of Ohio; State of Oklahoma; State of South Carolina; State of Texas; Members of Congress, Amici Supporting Appellant,
Americans United for Separation of Church and State; American Humanist Association; Anti-Defamation League; Center for Inquiry; Freedom from Religion Foundation; Interfaith Alliance Foundation; Sikh Coalition; Union for Reform Judaism; Women of Reform Judaism,
Amici Supporting Appellees.

No. 15-1591
|
Argued: January 27, 2016
|
Decided: September 19, 2016
|
Amended: September 21, 2016

Attorneys and Law Firms

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Before WILKINSON, SHEDD, and AGEE, Circuit Judges.

Opinion

Reversed and remanded with directions by published opinion. Judge Agee wrote the majority opinion, in which Judge Shedd concurs. Judge Wilkinson wrote a dissenting opinion.

AGEE, Circuit Judge:

The Board of Commissioners of Rowan County, North Carolina, ("the Board") opens its public meetings with an invocation delivered by a member of the Board. The district court determined that practice violates the Establishment Clause of the First Amendment. Under the Supreme Court's most recent decision explaining legislative prayer, *Town of Greece* v. *Galloway*, ___ U.S. ___, 134 S.Ct. 1811, 188 L. Ed. 2d 835 (2014), we find the Board's legislative prayer practice constitutional and reverse the judgment of the district court.

I.

The relevant facts are undisputed. Rowan County, North Carolina, exercises its municipal power through an elected Board of Commissioners, which typically holds public meetings twice a month. For many years prior to this proceeding, the Board has permitted each

commissioner, on a rotating basis, to offer an invocation before the start of the Board's legislative agenda.[1]

At most Board meetings, the chairperson would call the meeting to order and invite the Board and audience to stand for the ceremonial opening. A designated commissioner would then deliver an invocation of his or her choosing followed by the pledge of allegiance. The content of each invocation was entirely in the discretion of the respective commissioner; the Board, as a Board, had no role in prayer selection or content. The overwhelming majority of the prayers offered by the commissioners invoked the Christian faith in some form. For example, prayers frequently included references to "Jesus," "Christ," and "Lord." E.g., Supp. J.A. 36-37.[2] It was also typical for the invocation to begin with some variant of "let us pray" or "please pray with me." *Id.* Although not required to do so, the audience largely joined the commissioners in standing and bowing their heads during the prayer and remained standing for the pledge of allegiance.

In February 2012, the American Civil Liberties Union of North Carolina sent the Board a letter objecting to the invocations and asserting a violation of the Establishment Clause. The Board did not formally respond, but several commissioners expressed their intent to continue delivering prayers consistent with

[1] The record does not reflect that the Board adopted a written policy regarding the invocations but it followed a relatively routine practice.

[2] This opinion omits internal marks, alterations, citations, emphasis, and footnotes from quotations unless otherwise noted.

their Christian faith. For example, a then-commissioner stated, "I will continue to pray in Jesus' name. I am not perfect so I need all the help I can get, and asking for guidance for my decisions from Jesus is the best I, and Rowan County, can ever hope for." J.A. 325.

Subsequently, Rowan County residents Nancy Lund, Liesa Montag-Siegel, and Robert Voelker (collectively, "Plaintiffs") filed a complaint in the U.S. District Court for the Middle District of North Carolina "to challenge the constitutionality of [the Board's] practice of delivering sectarian prayer at meetings[.]" J.A. 10. Specifically, Plaintiffs alleged that the prayer practice unconstitutionally affiliated the Board with one particular faith and caused them to feel excluded as "outsiders." J.A. 12.

Apart from their objections to the prayers' contents, Plaintiffs further alleged that the overall atmosphere of the meetings coerced them to participate as a condition of attendance. Lund stated she felt "compelled to stand [during the invocation] so that [she] would not stand out." Supp. J.A. 2. Voelker offered a similar account, claiming he was "coerced" into participating because the commissioners and most audience members stood and bowed their heads. Supp. J.A. 9. Voelker also posited that any public opposition to the prayers could negatively affect his business before the Board.

Based on these allegations, Plaintiffs sought a declaratory judgment that the Board's prayer practice violated the Establishment Clause, along with an

injunction preventing any similar future prayers. Plaintiffs also moved for a preliminary injunction based on then-controlling precedent that sectarian legislative prayer was a constitutional violation. See *Joyner* v. *Forsyth Cty.*, 653 F.3d 341, 347 (4th Cir. 2011) (explaining that our decisions "hewed to [the] approach [of] approving legislative prayer only when it is nonsectarian in both policy and practice"). Observing that "97% of the [Board's recorded] meetings[] have opened with a [commissioner] delivering a sectarian prayer that invokes the Christian faith," the district court entered a preliminary injunction barring the County from permitting such invocations. J.A. 296.

The Supreme Court then issued its decision in *Town of Greece*, holding that the legislative prayer in that case, although clearly sectarian, was constitutionally valid and did not transgress the Establishment Clause. *Id.* at 1820 ("An insistence on nonsectarian or ecumenical prayer as a single, fixed standard is not consistent with the tradition of legislative prayer outlined in [our] cases."); see also *id.* at 1815, 1824. The parties filed cross-motions for summary judgment in light of *Town of Greece*.

In reviewing the summary judgment motions, the district court acknowledged that in *Town of Greece* the Supreme Court had "repudiated" and "dismantled" "the Fourth Circuit's legislative prayer doctrine [that had] developed around the core understanding that the sectarian nature of legislative prayers was largely dispositive" of its constitutionality. *Lund* v. *Rowan Cty., N.C.*, 103 F. Supp. 3d 712, 719, 721

(M.D.N.C. 2015). Moreover, the Plaintiffs did not raise the sectarian nature of the prayers as part of their summary judgment motion. Nonetheless, the district court struck down the Board's legislative invocation practice, concluding that "[s]everal significant differences" between *Town of Greece* and this case rendered that practice unconstitutional. *Lund*, 103 F. Supp. 3d at 724. The district court thought the fact that the commissioners delivered the prayers, instead of invited clergy, "deviates from the long-standing history and tradition of a chaplain, separate from the legislative body, delivering the prayer." *Id.* at 723. The district court further emphasized that the Board's practice created a "closed-universe of prayer-givers" that "inherently discriminates and disfavors religious minorities." *Id.* at 723.

After finding the Board's practice outside the constitutionally protected historical practice of legislative prayer, the district court went on to consider whether the Board's prayer practice otherwise "violate[d] the Establishment Clause as a coercive religious exercise." *Id.* at 724-25. Although the unrefuted record disclosed that individuals could leave the room or remain seated during the opening prayer, the district court held the Board's conduct was nonetheless coercive because, among other things, the commissioners often invited the public to stand before the invocation. In the court's words,

> the Board's legislative prayer practice leads to prayers adhering to the faiths of five elected

> Commissioners. The Board maintains exclusive and complete control over the content of the prayers, and only the Commissioners deliver the prayers. In turn, the Commissioners ask everyone—including the audience—to stand and join in what almost always is a Christian prayer. On the whole, these details and context establish that [the Board's] prayer practice is an unconstitutionally coercive practice in violation of the Establishment Clause.

Id. at 733.

Based on this analysis, the district court granted Plaintiffs' motion for summary judgment and entered a permanent injunction barring the Board's legislative prayer practice. The Board timely appealed, and we review the district court's decision de novo. *Simpson* v. *Chesterfield Cty. Bd. of Supervisors*, 404 F.3d 276, 280 (4th Cir. 2005); see also *Weinbaum* v. *City of Las Cruces*, 541 F.3d 1017, 1029 (10th Cir. 2008) ("We review de novo a district court's findings of constitutional fact and its ultimate conclusions regarding a First Amendment challenge.").

II.

A.

Recognizing "this Nation's history has not been one of entirely sanitized separation between Church and State," the Supreme Court has acknowledged that

government, in some instances, may properly commemorate religion in public life. *Comm. for Pub. Educ. & Religious Liberty* v. *Nyquist*, 413 U.S. 756, 760, 93 S.Ct. 2955, 37 L. Ed. 2d 948 (1973). Pertinent here, the Court has expressly approved the practice of opening legislative sessions with prayer. See *Joyner*, 653 F.3d at 347 ("There is a clear line of precedent not only upholding the practice of legislative prayer, but acknowledging the ways in which it can bring together citizens of all backgrounds and encourage them to participate in the workings of their government."). In contrast to other Establishment Clause jurisprudence, legislative prayer stands on its own distinct ground owing to its historically based practice and acceptance.

While legislative prayer is generally a type of government speech, *Turner* v. *City Council of Fredericksburg*, 534 F.3d 352, 354 (4th Cir. 2008), the Supreme Court has always stressed its unique status. That status was evident in *Marsh* v. *Chambers*, 463 U.S. 783, 103 S.Ct. 3330, 77 L. Ed. 2d 1019 (1983), which involved a challenge to the constitutionality of the Nebraska legislature's practice of having a paid chaplain offer a prayer to open each legislative session. Applying the three-part test from *Lemon* v. *Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L. Ed. 2d 745 (1971), the Eighth Circuit had concluded such invocations violated the Establishment Clause. The Supreme Court disagreed.

Recounting the long-standing American tradition of opening legislative sessions with prayer, the Supreme Court traced its history "[f]rom colonial times

through the founding of the Republic and ever since." *Marsh*, 463 U.S. at 786, 103 S.Ct. 3330. The Court noted that "the First Congress, as one of its early items of business, adopted the policy of selecting a chaplain to open each session with prayer." *Id.* at 787-88, 103 S.Ct. 3330. The Senate and House, in turn, appointed official chaplains in 1789. *Id.* Ascribing great significance to these events, the Court explained they shed light on how the Founders viewed the Establishment Clause in relation to legislative prayer. "It can hardly be thought that * * * they intended the Establishment Clause * * * to forbid what they had just declared acceptable." *Id.* at 790, 103 S.Ct. 3330. "This unique history [led the Court] to accept the interpretation of the First Amendment draftsmen who saw no real threat to the Establishment Clause arising from [the] practice of [legislative] prayer." *Id.* at 791, 103 S.Ct. 3330.

Having upheld legislative prayer in general, the *Marsh* Court next considered whether specific features of Nebraska's practice fell outside constitutional protection. In that regard, the plaintiff raised three challenges: (i) Nebraska had selected a representative of "only one denomination" for sixteen years; (ii) the chaplain was a paid state employee; and (iii) his prayers were offered "in the Judeo-Christian tradition." *Id.* at 792-93, 103 S.Ct. 3330. The Supreme Court rejected all three claims, noting that the First Congress "did not consider opening prayers as a proselytizing activity or as symbolically placing the government's official seal of approval on one religious view." *Id.* at 792, 103 S.Ct.

3330. Moreover, there was no evidence that the chaplain's long tenure "stemmed from an impermissible motive," and thus his continuous appointment did "not in itself conflict with the Establishment Clause." *Id.* at 793-94, 103 S.Ct. 3330. That the chaplain was paid from public funds was similarly "grounded in historic practice" and thus not prohibited. *Id.* at 794, 103 S.Ct. 3330. As for the content of the prayers, the Court explained it was "not of concern" because "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." *Id.* at 794-95, 103 S.Ct. 3330. "That being so," the Supreme Court concluded it would not "embark on a sensitive evaluation or to parse the content of a particular prayer." *Id.* at 795, 103 S.Ct. 3330.

The Supreme Court later referenced its holding in *Marsh* during the course of ruling on the propriety of two religious holiday displays located on public property in *County of Allegheny* v. *ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 578-79, 602, 109 S.Ct. 3086, 106 L. Ed. 2d 472 (1989). In dicta commenting about legislative prayer practice permitted in *Marsh*, the Court noted that "[t]he legislative prayers involved in *Marsh* did not violate [the Establishment Clause] because the particular chaplain had removed all references to Christ." *Id.* at 603, 109 S.Ct. 3086. The Court also observed that "not even the unique history of legislative prayer can justify contemporary legislative prayers that have the effect of affiliating the government with any one specific faith or belief." *Id.*

Whatever fleeting validity those observations may have had, the Supreme Court flatly rejected this approach in *Town of Greece*. Clarifying its earlier holdings, the Court disavowed a requirement that legislative prayers must be neutral and reference only a generic God to comply with the Establishment Clause: "An insistence on nonsectarian or ecumenical prayer as a single, fixed standard is not consistent with the tradition of legislative prayer outlined in [our] cases." *Town of Greece*, 134 S.Ct. at 1820.

The Supreme Court's decision in *Town of Greece* guides review of this case, which, like other legislative prayer cases, requires a case-specific evaluation of all the facts and circumstances. See *Lynch* v. *Donnelly*, 465 U.S. 668, 678-79, 104 S.Ct. 1355, 79 L. Ed. 2d 604 (1984) (observing that the Establishment Clause cannot mechanistically be applied to draw unwavering, universal lines for the varying contexts of public life). To guide that review we turn to a fuller examination of the Supreme Court's discussion in *Town of Greece*.

B.

The town of Greece opened its monthly legislative meetings with an invocation delivered by volunteer clergy. It solicited guest chaplains by placing calls to local congregations listed in a directory. *Town of Greece*, 134 S.Ct. at 1816. Nearly all of the local churches were Christian, as were the guest clergy, and thus most invocations referenced some aspect of the Christian faith. The town made no attempt to guide

the prayer-givers in the content of the prayer. *Id.* Although the district court found the town's practice constitutional the Second Circuit disagreed and concluded that the "steady drumbeat of Christian prayer * * * tended to affiliate the town with Christianity," in violation of the Establishment Clause. *Id.* at 1818. The Supreme Court reversed.

Beginning with a summary of *Marsh*, the Court explained "that the Establishment Clause must be interpreted by reference to historical practices and understandings." *Id.* at 1819; see also *id.* at 1818-19. "*Marsh* stands for the proposition that it is not necessary to define the precise boundary of the Establishment Clause where history shows that the specific practice is permitted." *Id.* at 1819. The pertinent inquiry in legislative prayer cases, therefore, is whether the practice at issue "fits within the tradition long followed in Congress and the state legislatures." *Id.* The Court added, "[a]ny test [we] adopt[ ] [for analyzing invocations] must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Id.*

Rooted thus, the Court rejected the plaintiffs' argument that legislative prayer must be generic or nonsectarian under the Establishment Clause. Observing that legislative invocations containing explicitly religious themes were accepted at the time of the first Congress and remain vibrant today, the Court concluded, "[a]n insistence on nonsectarian or ecumenical prayer as a single, fixed standard is not consistent with [our accepted] tradition of legislative prayer." *Id.* at

1820. On this point, the Court disavowed *Allegheny*'s "nonsectarian" interpretation of *Marsh* as dictum "that was disputed when written and has been repudiated by later cases." *Id.* at 1821; see also *id.* ("*Marsh* nowhere suggested that the constitutionality of legislative prayer turns on the neutrality of its content.").

The Court further observed that a content-based rule "would force the legislatures that sponsor prayers and the courts that are asked to decide these cases to act as supervisors and censors of religious speech." *Id.* at 1822. Enforcing such a line would "involve government in religious matters to a far greater degree than is the case under the town's current practice of neither editing or approving prayers in advance nor criticizing their content after the fact." *Id.* "Once it invites prayer into the public sphere," the Court stated, "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." *Id.* at 1822-23.

Noting that legislative prayer has historically served a ceremonial function, "[t]he relevant constraint derives from its place at the opening of legislative sessions, where it is meant to lend gravity to the occasion and reflect values long part of the Nation's heritage." *Id.* at 1823. Even so, the Court cautioned there could be a circumstance where a legislative prayer practice failed to "serve[ ] [its] legitimate function": "If the course and practice over time shows that

the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion[.]" *Id.* at 1823.

Synthesizing these factors, the Court held that the prayers offered on behalf of the town, although almost exclusively Christian, did not evidence any pattern of denigration or proselytization. See *id.* ("Our tradition assumes that adult citizens, firm in their own beliefs, can tolerate and perhaps appreciate a ceremonial prayer delivered by a person of a different faith."). Though the plaintiffs pointed to at least two prayers in the record that arguably contained disparaging content, the Court concluded that the prayer practice as a whole served only to solemnize the board meetings. A few deviating prayers, the Court explained, were of no constitutional consequence. *Id.* at 1824.

Relatedly, the Court also determined there was no constitutional defect arising from the fact that the invited prayer-givers were predominantly Christian: "[s]o long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing." *Id.* Continuing, the Court observed

> [t]he quest to promote a diversity of religious views would require the town to make wholly inappropriate judgments about the number of religions [it] should sponsor and the relative frequency with which it should sponsor each,

> a form of government entanglement with religion that is far more troublesome than the current approach.

Id.

Lastly, the Court addressed the plaintiffs' contention that the prayers unconstitutionally "coerce participation by nonadherents." *Id.* (Kennedy, J., plurality opinion). In jettisoning this argument, the Court acknowledged that "coercion" could render legislative prayer beyond constitutional protection in some outlier circumstances. But the justices differed in their understandings of what constituted coercion. Compare *id.* at 1824-28 (Sec. II.B of Justice Kennedy's plurality opinion), with *id.* at 1837-38 (Sec. II. of Justice Thomas's concurring opinion).

Justice Kennedy, joined by Chief Justice Roberts and Justice Alito, framed the coercion inquiry as "a fact-sensitive one that considers both the setting in which the prayer arises and the audience to whom it is directed." *Id.* at 1825 (Kennedy, J., plurality opinion). These Justices found no coercion in the town's prayer practice and relied heavily on the historical approach of *Marsh*. They presumed that reasonable observers are aware of the multiple traditions acknowledging God in this country, including legislative prayer, the pledge of allegiance, and presidential prayers. They concluded that, because of these traditions, citizens could appreciate the town's prayer practice without being compelled to participate. *Id.* Furthermore, they observed that the purpose of the prayers was to put

legislators in a contemplative state of mind rather than have an effect on observers. *Id.* at 1826. Justice Kennedy further stated that "[o]ffense * * * does not equate to coercion." *Id.* "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.*[3]

With these principles from *Town of Greece* in mind, we now apply them to the facts presented here.

III.

Legislative prayer thus has a unique status relative to the First Amendment that places it in a different legal setting than other types of government conduct touching the Establishment Clause. See *Marsh*, 463 U.S. at 792, 103 S.Ct. 3330. *Town of Greece* reflects that the constitutionality of legislative prayer hinges on its historical precedence, as it "has become part of the fabric of our society." 134 S.Ct. at 1819. If a prayer exercise has long been "followed in Congress and the state legislatures," *Town of Greece* reflects that

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[3] Justices Thomas and Scalia, on the other hand, interpreted the Establishment Clause as prohibiting only "actual legal coercion," which they defined as the exercise of "government power in order to exact financial support of the church, compel religious observance, or control religious doctrine." *Town of Greece*, 134 S.Ct. at 1837 (Thomas J., concurring in part and concurring in the judgment). As no such evidence was present in the record, they concurred in the holding that the town's prayer practice should be upheld. *Id.* at 1837-38.

a court must view it "as a tolerable acknowledgement of beliefs widely held among the people of this country." *Id.* at 1818-19. A court reviewing a challenge to legislative prayer "must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Id.* at 1819. "A test that would sweep away what has so long been settled would create new controversy and begin anew the very divisions along religious lines that the Establishment Clause seeks to prevent." *Id.*

A.

Following *Town of Greece*, both parties correctly acknowledge that sectarian legislative prayer, as a general matter, is compatible with the Establishment Clause.[4] What remains in dispute is whether the Board's practice of the elected commissioners delivering such prayers makes a substantive constitutional difference. The district court found this feature largely dispositive. See *Lund*, 103 F. Supp. 3d at 722. In its view, the prayer-giver's status as "a member of the legislative body" is a "crucial" and "determinative difference." *Id.* at 722, 724. The district court's decision has the practical effect of imposing a bright-line prohibition on lawmaker-led prayer.

[4] At oral argument before this Court, the Plaintiffs specifically agreed the sectarian aspect of the invocation prayers at the Board meetings was not an issue they raise. Oral Argument at 17:10-17:32 and 20:10-21:24.

In reaching its conclusion, the district court observed that the Supreme Court has never before sanctioned legislator-led prayers: "[I]t is telling that throughout its *Town of Greece* opinion and the opinion in *Marsh*, the Supreme Court consistently discussed legislative prayer practices in terms of invited ministers, clergy, or volunteers providing the prayer, and not once described a situation in which the legislators themselves gave the invocation." *Id.* at 722. In essence, the district court treated the Supreme Court's jurisprudential silence on lawmaker-led prayer as conclusively excluding legislators from being permissible prayer-givers to their own legislative bodies. That conclusion is not supportable.

While *Town of Greece* involved a rotating group of local clergy and *Marsh* concerned a paid chaplain, the Supreme Court attached no significance to the speakers' identities in its analysis and simply confined its discussion to the facts surrounding the prayer practices before it. See *Town of Greece*, 134 S.Ct. at 1816; *Marsh*, 463 U.S. at 784-85, 103 S.Ct. 3330. Nowhere did the Court say anything that could reasonably be construed as a requirement that outside or retained clergy are the only constitutionally permissible givers of legislative prayer. Quite the opposite, *Town of Greece* specifically directs our focus to what has been done in "Congress and the state legislatures" without any limitation regarding the officiant. *Id.* at 1819. We find the Supreme Court's silence on the issue of lawmaker-led prayer to be simply that: silence. See *United*

States v. *Stewart*, 650 F.2d 178, 180 (9th Cir. 1981) (remarking it would be improper to draw any inference from the Supreme Court's silence on an issue not placed before it).

Nor has this Court previously assigned weight to the identity of the prayer-giver. To the contrary, we have suggested this feature is irrelevant. For example, in *Wynne* v. *Town of Great Falls*, we remarked that "[p]ublic officials' brief invocations of the Almighty before engaging in public business have always, as the *Marsh* Court so carefully explained, been part of our Nation's heritage." 376 F.3d 292, 302 (4th Cir. 2004). Similarly, *Joyner* v. *Forsyth County* observed that "[i]t [is] the governmental setting for the delivery of sectarian prayers that courted constitutional difficulty, not those who actually gave the invocation." 653 F.3d at 350; see also *id.* at 351. And in *Simpson* v. *Chesterfield County Board of Supervisors*, we noted that the Supreme Court, "neither in *Marsh* nor in *Allegheny*, held that the identity of the prayer-giver, rather than the content of the prayer, was what would affiliate the government with any one specific faith or belief." 404 F.3d at 286. Although these cases ultimately turned on the now-rejected position that sectarian prayer was constitutionally invalid, none made the prayer-giver's identity dispositive.

On a broader level, and more importantly, the very "history and tradition" anchoring the Supreme Court's holding in *Town of Greece* underscores a long-standing practice not only of legislative prayer generally but of lawmaker-led prayer specifically. Opening invocations

offered by elected legislators have long been accepted as a permissible form of religious observance. See S. Rep. No. 32-376, at 4 (1853) (commenting that the authors of the Establishment Clause "did not intend to prohibit a just expression of religious devotion *by the legislators of the nation, even in their public character as legislators*" (emphasis added)); see also *Lynch*, 465 U.S. at 674, 104 S.Ct. 1355 ("There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789."). As just one example, the South Carolina Provincial Congress—South Carolina's first independent legislature—welcomed an elected member to deliver its opening invocations. See South Carolina Provincial Congress, Thanks to the Continental Congress (Jan. 11, 1775), http://amarch.lib.niu.edu/islandora/object/niu-amarch94077 (last visited Aug. 31, 2016 and saved as ECF opinion attachment). "The recognition of religion in these early public pronouncements is important, unless we are to presume the founders of the United States were unable to understand their own handiwork." *Myers* v. *Loudoun Cty. Sch. Bd.*, 418 F.3d 395, 404 (4th Cir. 2005).

This tradition of legislative prayer has continued to modern day. A majority of state and territorial assemblies honor requests from individual legislators to give an opening invocation. See National Conference of State Legislatures, *Inside the Legislative Process* 5-151 to -152 (2002), http://www.ncsl.org/documents/legismgt/ILP/02Tab5Pt7.pdf (observing legislators may offer an opening prayer in at least thirty-one

states). Lawmaker-led prayer is especially prevalent in the states under our jurisdiction, where seven of the ten legislative chambers utilize elected members for this purpose. See *id.*; Br. for State of W. Va. et al. as Amici Curiae Supporting Defendant-Appellant at 14 & Addend. 2; see also Prayers Offered in the North Carolina House of Representatives: 2011-2014, http://nchousespeaker.com/docs/opening-prayers-nchouse-2011-2014.pdf (last visited July 12, 2016). Several of these states have enacted legislation recognizing the historical practice of legislative prayer. For example, a Virginia statute protects legislators who deliver a sectarian prayer during deliberative sessions. See Va. Code § 15.2-1416.1. And South Carolina expressly authorizes its elected officials to open meetings with prayer. See S.C. Code § 6-1-160(B)(1); see also Mich. H.R. Rule 16 (requiring the clerk of the Michigan House of Representatives to arrange "for a Member to offer an invocation" at the beginning of each session).

Lawmaker-led prayer finds contemporary validation in the federal government as well. Both houses of Congress allow members to deliver an opening invocation. As recently as May 2015, Senator James Lankford commenced legislative business in the Senate with a prayer invoking the name of Jesus. 161 Cong. Rec. S3313 (daily ed. May 23, 2015). The congressional record is replete with similar examples. See, e.g., 159 Cong. Rec. S3915 (daily ed. June 4, 2013) (prayer by Sen. William M. Cowan); 155 Cong. Rec. S13401-01 (daily ed. Dec. 18, 2009) (prayer by Sen. John Barrasso); 119 Cong. Rec. 17,441 (1973) (statement of Rep.

William H. Hudnut III); see also 2 Robert C. Byrd, *The Senate 1789-1989: Addresses on the History of the United States Senate* 305 (Wendy Wolff ed., 1990) ("Senators have, from time to time, delivered the prayer.").

In view of this long and varied tradition of lawmaker-led prayer, the district court's judicial wall barring elected legislators from religious invocations runs headlong into the Supreme Court's acknowledgement that "[a]ny test [we] adopt[] must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Town of Greece*, 134 S.Ct. at 1819. As Justice Alito aptly explained, "if there is any inconsistency between any [Establishment Clause] test[] and the historic practice of legislative prayer, the inconsistency calls into question the validity of the test, not the historic practice." *Id.* at 1834 (Alito, J., concurring). Heeding this advice, we decline to accept the district court's view that legislative prayer forfeits its constitutionally protected status because a legislator delivers the invocation. A legal framework that would result in striking down legislative prayer practices that have long been accepted as "part of the fabric of our society" cannot be correct. *Id.* at 1819.

In reaching its decision, the district court seems to have wholly ignored a foundational principle in *Town of Greece*. "The principal audience for these invocations is not, indeed, the public but lawmakers themselves, who may find that a moment of prayer or quiet reflection sets the mind to a higher purpose and

thereby eases the task of governing." *Id.* at 1825 (Kennedy, J., plurality opinion).

Not only are the legislators themselves the intended "congregation" for legislative prayer, but the practice carries special meaning to the thousands of state and local legislators who are citizen representatives. In this respect, the Supreme Court has specifically singled out "members of town boards and commissions, who often serve part-time and as volunteers," as lawmakers for whom "ceremonial prayer may * * * reflect the values they hold as private citizens." *Id.* at 1826. If legislative prayer is intended to allow lawmakers to "show who and what they are" in a public forum, then it stands to reason that they should be able to lead such prayers for the intended audience: themselves. *Id.* Indeed, legislators are perhaps uniquely qualified to offer uplifting, heartfelt prayer on matters that concern themselves and their fellow legislators.

The district court's determination that the fact that a legislator delivers a legislative prayer is a significant constitutional distinction, at least in the context of this case, was error.

B.

We turn now to the question of whether some other facet of the Board's practice, beyond the bare fact that lawmaker-led prayer is offered, takes this case outside the protective umbrella of legislative prayer. Although the Supreme Court has not forged a comprehensive template for all acceptable legislative prayer,

its decisions set out guideposts for analyzing whether a particular practice goes beyond constitutional bounds. See *Snyder*, 159 F.3d at 1233 ("*Marsh* implicitly acknowledges some constitutional limits on the scope and selection of legislative prayers[.]").

1.

An initial guidepost relates to the selection of the content of legislative prayer. In rejecting the plaintiffs' position that invocations must be nonsectarian, the Supreme Court in *Town of Greece* explained that such a rule "would force the legislatures that sponsor prayers and the courts that are asked to decide these cases to act as supervisors and censors of religious speech." 134 S.Ct. at 1822. Such an outcome, the Court continued, "would involve government in religious matters to a far greater degree than is the case under the town's current practice of neither editing or approving prayers in advance nor criticizing their content after the fact." *Id.*

The district court determined the Board's practice was invalid under this standard because the individual commissioners author their own invocations, and by doing so act as "supervisors of the prayers." *Lund*, 103 F. Supp. 3d at 723. It reasoned that "the government is [thus improperly] delivering prayers that were exclusively prepared and controlled by the government[.]" *Id.* We disagree. The Board's practice here, where each commissioner gives their own prayer without oversight, input, or direction by the Board simply does not present the same concerns of the "*government*

[attempting] to define permissible categories of religious speech." *Town of Greece*, 134 S.Ct. at 1822 (emphasis added).

What the Supreme Court has cautioned against in this context is "for [cing] *the legislatures* that sponsor prayers * * * to act as * * * supervisors and censors of religious speech." *Id.* (emphasis added). To be sure, in offering the invocations the individual commissioners sometimes convey their personal alignment with a particular faith. But the Court has always looked to the activities of the legislature as a whole in considering legislative prayer. This makes perfect sense; for it is only through act of the deliberative body writing or editing religious speech that government would impermissibly seek "to promote a preferred system of belief or code of moral behavior" with selected content. *Town of Greece*, 134 S.Ct. at 1822. There is no evidence that the Board, as a Board, had any role in any of the prayers by the individual commissioners. The record is devoid of any suggestion that any prayer in this case is anything but a personal creation of each commissioner acting in accord with his or her own personal views.

In effect, each commissioner is a free agent like the ministers in *Town of Greece* and the chaplain in *Marsh* who gave invocations of their own choosing. In other Establishment Clause contexts, the Supreme Court has stressed this element of private choice, holding that when a neutral government policy or program merely allows or enables private religious acts, those acts do not necessarily bear the state's imprimatur. See *Zelman* v. *Simmons-Harris*, 536 U.S. 639, 652, 122

S.Ct. 2460, 153 L. Ed. 2d 604 (2002) (school voucher programs); *Mueller* v. *Allen*, 463 U.S. 388, 399, 103 S.Ct. 3062, 77 L. Ed. 2d 721 (1983) (school-related income tax deductions). As the Supreme Court stated in *Town of Greece*, "[o]nce it invites 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.

The Board's legislative prayer practice amounts to nothing more than an individual commissioner leading a prayer of his or her own choosing.

2.

A second guidepost to acceptable legislative prayer discussed in *Town of Greece* concerns its content. After reaffirming the holding in *Marsh* that lower courts should refrain from becoming embroiled in the review of the substance of legislative prayer, the Supreme Court noted that there could be certain circumstances where sectarian references cause a legislative prayer practice to fall outside constitutional protection. *Id.* at 1823. "If the course and practice over time shows that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion," a constitutional line can be crossed. *Id.* In that circumstance, the Court observed, "many present may consider the prayer to fall short of the desire to elevate the purpose of the occasion and to unite lawmakers in their common effort." *Id.*

To this end, courts need only assure themselves that sectarian legislative prayer, viewed from a cumulative perspective, is not being exploited to proselytize or disparage. Below this threshold, the Supreme Court has disclaimed any interest in the content of legislative invocations, announcing a strong disinclination "to embark on a sensitive evaluation or to parse the content of a particular prayer." *Marsh*, 463 U.S. at 795, 103 S.Ct. 3330.

The record in this case reflects that the Board's prayer practice did not stray across this constitutional line of proselytization or disparagement. See *Wynne*, 376 F.3d at 300 ("To 'proselytize' on behalf of a particular religious belief necessarily means to seek to 'convert' others to that belief[.]"). The content of the commissioners' prayers largely encompassed universal themes, such as giving thanks and requesting divine guidance in deliberations. References to exclusively Christian concepts typically consisted of the closing line, such as "In Jesus' name. Amen." See Supp. J.A. 29-31. There is no prayer in the record asking those who may hear it to convert to the prayer-giver's faith or belittling those who believe differently.[5] And even if there were, it is the practice as a whole—not a few isolated incidents—which controls. *Town of Greece*, 134

[5] The four prayers that the dissent cites as constitutionally offensive bear in common the fact that none attempt to convert any hearer to change their faith; none belittle those of another faith; and none portend that a person of another faith would be treated any differently by the prayer-giver in the business of the Board. In short, none of those cited prayers bears any of the hallmarks of constitutional question set out in *Town of Greece*.

S.Ct. at 1824 ("Absent 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.").

The invocation delivered at the Board's October 17, 2011, meeting is illustrative of what the Board members and the public in Rowan County would hear:

> Let us pray. Father we do thank you for the privilege of being here tonight. We thank you for the beautiful day you've given us, for health and strength, for all the things we take for granted. Lord, as we read the paper today, the economic times are not good, and many people are suffering and doing without. We pray for them; we pray that you would help us to help. We pray for the decisions that we will make tonight, that God, they will honor and glorify you. We pray that you would give us wisdom and understanding. We'll thank you for it. In Jesus' name. Amen.

Supp. J.A. 31. Such prayer comes nowhere near the realm of prayer that is out of bounds under the standards announced in *Town of Greece*. Prayers that chastise dissenters or attempt to sway nonbelievers press the limits of the Supreme Court's instruction and may not merit constitutional protection, but no such prayers have been proffered in this case. See, e.g., *Snyder*, 159 F.3d at 1235 (finding the plaintiff's proffered prayers unconstitutional because they "strongly

disparage[d] other religious views" and "s[ought] to convert his audience").

Plaintiffs call our attention to a few examples that contain more forceful references to Christianity out of the hundreds of legislative prayers delivered before Board meetings. As an initial matter, the sectarian content cited in Plaintiffs' opening brief (and referenced by the dissent) is austere and innocuous when measured against invocations upheld in *Marsh*. See 463 U.S. at 823 n.2, 103 S.Ct. 3330 (Stevens, J., dissenting) (quoting an exemplar challenged prayer). Regardless, Plaintiffs' hypersensitive focus is misguided. *Town of Greece* "requires an inquiry into the prayer opportunity as a whole, rather than into the contents of a single prayer." 134 S.Ct. at 1824. "Absent 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.* Given the respectful tone of nearly all the invocations delivered here, which largely mirror those identified in *Town of Greece*, the Board's practice crossed no constitutional line. See *id.* at 1824 (holding that a few stray remarks are insufficient to "despoil a practice that on the whole reflects and embraces our tradition").

3.

Moving beyond the invocations themselves, a third guidepost to legislative prayer relates to the selection of the prayer-giver. In *Town of Greece*, the challenged

practice resulted in "a predominately Christian set of ministers * * * lead[ing] the prayer." *Id.* The Court found this fact unremarkable because "[t]he town made reasonable efforts to identify all of the congregations located within its borders and represented that it would welcome a prayer by any minister or layman who wished to give one." *Id.* "So long as the town maintains a policy of nondiscrimination," then "the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing." *Id.*

The district court found the Board's legislative prayer practice objectionable because the invocation opportunity was rotated among only the elected commissioners; that is, all of the Board members. According to the district court, "[w]hen all faiths but those of the five elected Commissioners are excluded, the policy inherently discriminates and disfavors religious minorities." *Lund*, 103 F. Supp. 3d at 723. *Marsh* and *Town of Greece* reflect that the district court's conclusion was mistaken.

The Supreme Court's prohibition on discrimination in this context is aimed at barring government practices that result from a deliberate choice to favor one religious view to the exclusion of others. As explained in *Town of Greece*, concerns arise only if there is evidence of "an aversion or bias on the part of town leaders against minority faiths" in choosing the prayer-giver. 134 S.Ct. at 1824. The *Marsh* Court likewise alluded to this requirement when it cautioned that the

selection of a guest chaplain cannot stem from "an impermissible motive." 463 U.S. at 793, 103 S.Ct. 3330. Read in context, this condition appears directed at the conscious selection of the prayer-giver on account of religious affiliation. See *id.* at 793, 103 S.Ct. 3330.

The district court's opinion aims elsewhere, essentially mandating prayer-giver diversity. See *Lund*, 103 F. Supp. 3d at 723 ("[T]he present case presents a closed-universe of prayer-givers, * * * [leaving] minority faiths [with] no means of being recognized."). For example, under the district court's framework, a legislature, including Congress, would be prohibited from permitting individual members to deliver the opening invocation to solemnize its proceedings unless an unlimited number of faiths were actually represented by the elected representatives. But diversity among the beliefs represented in a legislature has never been the measure of legislative prayer. *Town of Greece* specifically rejected the notion that lawmaking bodies must "promote a diversity of religious views." 134 S.Ct. at 1824. Consequently, the town was not obliged to "search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing." *Id.* And in *Marsh*, the Nebraska legislature appointed the same Presbyterian minister for sixteen years to the exclusion of all other creeds. The Court was unpersuaded that this made a constitutional difference. See *Marsh*, 463 U.S. at 793, 103 S.Ct. 3330.

Thus, while the Board's practice limits the represented faiths to those of the individual commissioners, that is no different from the limitations built into the

constitutional prayer practices in *Town of Greece* and *Marsh*. See *Simpson*, 404 F.3d at 285 ("A party challenging a legislative invocation practice cannot * * * rely on the mere fact that the selecting authority chose a representative of a particular faith, because some adherent or representative of some faith will invariably give the invocation."). There is simply no requirement in our case law that a legislative prayer practice reflect multiple faiths or even more than one to be constitutionally valid.

Absent proof the Board restricted the prayer opportunity among the commissioners as part of an effort to promote only Christianity, we must view its decision to rely on lawmaker-led prayer as constitutionally insignificant. See *Pelphrey* v. *Cobb Cty.*, 547 F.3d 1263, 1281 (11th Cir. 2008) ("[*Marsh*] does not require that all faiths be allowed the opportunity to pray. The standard instead prohibits purposeful discrimination."). Plaintiffs have not directed the Court to any evidence that would suggest the Board harbored such a motive. It is uncontested that the Board's policy was facially neutral and bereft of government discretion. A person of any creed can be elected to the Board and is entitled to speak without censorship. Furthermore, as far as we can tell, the Board never altered its practice to limit a non-Christian commissioner or attempted to silence prayers of any viewpoint. See *Lund*, 103 F. Supp. 3d at 714-16.

The Supreme Court has determined that the selection of a prayer-giver who represents a single religious sect, even over many years, does not advance any

one faith or belief over another. See *Marsh*, 463 U.S. at 793, 103 S.Ct. 3330 ("We cannot, any more than Members of the Congresses of this century, perceive any suggestion that choosing a clergyman of one denomination advances the beliefs of a particular church."); *Ctr. for Inquiry, Inc.* v. *Marion Circuit Court Clerk*, 758 F.3d 869, 874 (7th Cir. 2014) ("*Marsh* and *Greece* show that a government may, consistent with the First Amendment, open legislative sessions with Christian prayers while not inviting leaders of other religions[.]"). A party challenging a legislative prayer practice cannot rely on the mere fact that the selecting authority has confined the invocation speakers to a narrow group. This is particularly true here as the Board has no voice in the selection of commissioners, which is entirely up to the citizens by election.

4.

A final guidepost to legislative prayer is found in the statement from *Town of Greece* that the prayer practice "over time" may not be "exploited to * * * advance any one * * * faith or belief." 134 S.Ct. at 1823. We must discern, then, whether over time the Board's practice conveys the view that Rowan County "advance[d]" Christianity over other creeds. *Id.*

The Board has not picked any of the prayers under its legislative prayer practice of ceremonial invocation by which the commissioners' prayers solemnize their meeting. *Town of Greece* fully supports this approach, reaffirming the principle first set out in *Marsh* that a

governmental subdivision does not endorse any one faith or belief by opening its forum to prayers, even sectarian ones. See *McCreary Cty.* v. *Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 859 n.10, 125 S.Ct. 2722, 162 L. Ed. 2d 729 (2005) (citing *Marsh* as an example of a permissible governmental action whose "manifest purpose was presumably religious"). And this remains true even when sectarian religious content is communicated regularly. See *Galloway* v. *Town of Greece*, 681 F.3d 20, 24-25 (2d Cir. 2012) (observing that "[r]oughly two-thirds" of the prayers at issue in that case "contained uniquely Christian language," while "[t]he remaining third of the prayers spoke in more generically theistic terms").

The prayers in this case, like those in *Town of Greece*, were largely generic petitions to bless the commissioners before turning to public business. References to Christian concepts typically consisted of the closing statement "in Jesus' name we pray," or a similar variation. Supp. J.A. 31. As *Town of Greece* imparts, such prayers do not unconstitutionally convey the appearance of an official preference for Christianity. Rather, "[o]ur tradition assumes that adult citizens, firm in their own beliefs, can tolerate and perhaps appreciate [sectarian] ceremonial prayer[.]" *Town of Greece*, 134 S.Ct. at 1823.

Had a chaplain offered prayers identical to those in the instant case, *Town of Greece* and *Marsh* would unquestionably apply to uphold the Board's practice. Unlike the district court, we are unconvinced

the feature of a legislator delivering the prayer to fellow legislators signals an unconstitutional endorsement of religion.

Practically speaking, the public seems unlikely to draw a meaningful distinction between a state-paid chaplain and the legislative body that appoints him. "Such chaplains speak for the legislature." *Snyder*, 159 F.3d at 1238 (Lucero, J., concurring in judgment). They are in essence "deputized" to represent the governing body in this context. Cf. *Town of Greece*, 134 S.Ct. at 1850 (Kagan, J, dissenting). Consequently, when an elected representative underscores his alignment with a particular faith during the invocation, as is sometimes the case here, the risk of placing the government's weight behind this view is the same as those practices upheld in *Marsh* and *Town of Greece*. In other words, the degree of denominational preference projected onto the government with lawmaker-led prayer is not significantly different from selecting denominational clergy to do the same. Both prayers arise in the same context and serve the same purpose.

If anything, allowing the legislative body to collectively select a tenured chaplain as in *Marsh* would seem to pose a greater problem. The presence of a single religious figure, particularly a paid state employee, seems more likely to reflect a perceived governmental endorsement of the faith that individual represents. Yet, the Supreme Court has concluded this more obvious preference is not constitutionally significant. See *Rubin* v. *Lancaster*, 710 F.3d 1087, 1097 (9th Cir. 2013) ("[W]hatever message Nebraska might have conveyed

through its practice of selecting, paying, and retaining for sixteen years a Presbyterian chaplain who often delivered explicitly Christian invocations, the Supreme Court concluded that the legislature had not advanced Christianity.").

Legislative prayer is constitutionally acceptable when it "fits within the tradition long followed in Congress and the state legislatures." *Town of Greece*, 134 S.Ct. at 1819. The Supreme Court has observed that prayers offered within this tradition have a common theme and "respectful" tone—they are given "at the opening of legislative sessions, where it is meant to lend gravity to the occasion." *Id.* at 1823. Acceptable legislative prayer thus "solemnize[s] the occasion" and "invites lawmakers to reflect upon shared ideals and common ends before they embark on the fractious business of governing[.]" *Id.* The record here reflects just such prayers.

C.

We now turn to Plaintiffs' claims that the Board's legislative prayer practice is impermissibly coercive. The "coercion test" under the Establishment Clause reflects that the government violates the Constitution if it compels religious participation. See *Allegheny*, 492 U.S. at 660, 109 S.Ct. 3086 (Kennedy, J., concurring in judgment in part and dissenting in part). Although spurned by the Supreme Court for some time, see *Sch. Dist. of Abington Twp.* v. *Schempp*, 374 U.S. 203, 223, 83 S.Ct. 1560, 10 L. Ed. 2d 844 (1963) (noting that Free

Exercise cases were "predicated on coercion while [an] Establishment Clause violation need not be"), the coercion test gradually emerged as part of Establishment Clause doctrine in several decisions regarding school-sponsored prayer. See *Lee* v. *Weisman*, 505 U.S. 577, 593, 112 S.Ct. 2649, 120 L. Ed. 2d 467 (1992) (striking down clergy-led prayers at graduation ceremonies because the school district's "supervision and control * * * places public pressure, as well as peer pressure, on attending students * * * as real as any overt compulsion."); *Santa Fe Indep. Sch. Dist.* v. *Doe*, 530 U.S. 290, 310-17, 120 S.Ct. 2266, 147 L. Ed. 2d 295 (2000) (finding prayers at high school football games unconstitutionally coercive).

Although previously unclear whether the coercion test applied beyond the schoolhouse, see G. Sidney Buchanan, *Prayer in Governmental Institutions: The Who, the What, and the At Which Level*, 74 Temp. L. Rev. 299, 339-42 (2001); see also *Mellen* v. *Bunting*, 327 F.3d 355, 366-72 (4th Cir. 2003) (recognizing a gap in Supreme Court precedent with regard to secular expression not directed to children), *Town of Greece* settled that ambiguity by observing that a coercion-based analysis applies to adults encountering religious observances in governmental settings. See 134 S.Ct. at 1825 (Kennedy, J., plurality opinion) ("It is an elemental First Amendment principle that government may not coerce its citizens to support or participate in any religion or its exercise.").

The *Town of Greece* majority, however, was unable to settle on what constitutes coercion in the legislative

prayer context. Although five Justices agreed that the town did not engage in an unconstitutional coercion, they reached this conclusion by separate paths. Justices Thomas and Scalia would require coercion to consist of "the coercive state establishments that existed at the founding," which essentially equates to religious observance "by force of law and threat of penalty." *Town of Greece*, 134 S.Ct. at 1837 (Thomas J., concurring in part and concurring in the judgment). Justice Kennedy, joined by Chief Justice Roberts and Justice Alito, framed the inquiry as "a fact-sensitive one that considers both the setting in which the prayer arises and the audience to whom it is directed." *Id.* at 1825 (Kennedy, J., plurality opinion). Under this view, "[c]ourts remain free to review the pattern of prayers over time to determine whether they comport with the tradition of solemn, respectful prayer approved in *Marsh*, or whether coercion is a real and substantial likelihood." *Id.* at 1826-27. The history and tradition of legislative prayer is relevant here, too, and the "reasonable observer" is presumed to be aware of that history and recognize the purpose of such practices. *Id.* at 1825.

The district court divided its coercion analysis into two parts. First, it considered the issue under *Town of Greece*, concluding "Justice Kennedy's general rules for evaluating potential coercion in the legislative prayer context * * * point the [c]ourt in the direction of finding the practice of [the Board] unconstitutionally coercive." *Lund*, 103 F. Supp. 3d at 729. The district court then

"turn[ed] to the principles of [the] coercion doctrine developed prior to the *Town of Greece* decision," finding these cases likewise suggested the Board violated the Establishment Clause. *Id*.

As noted above, the Supreme Court's coercion doctrine prior to *Town of Greece* developed in several cases involving public school events with children. The potential for undue influence, however, is less significant when dealing with prayer involving adults, and this distinction warrants a difference in constitutional analysis. The law recognizes a meaningful distinction between children in a school setting and a legislative session where adults are the participants. See *Stein* v. *Plainwell Cmty. Schs.*, 822 F.2d 1406, 1409 (6th Cir. 1987) ("The potential for coercion in the prayer opportunity was one of the distinctions employed by the Court in *Marsh* to separate legislative prayer from classroom prayer."). The Supreme Court assumes that adults are "not readily susceptible to religious indoctrination or peer pressure." *Marsh*, 463 U.S. at 792, 103 S.Ct. 3330; see also *Town of Greece*, 134 S.Ct. at 1823 ("[A]dult citizens, firm in their own beliefs, can tolerate and perhaps appreciate a ceremonial prayer delivered by a person of a different faith.").

Consistent with this distinction, we do not find the Supreme Court's prior coercion cases applicable in analyzing legislative prayer like that at issue here. See *Simpson*, 404 F.3d at 281 ("*Marsh*, in short, has made legislative prayer a field of Establishment Clause jurisprudence with its own set of boundaries and guidelines."). Thus, we look to the coercion analysis in *Town*

of Greece, recognizing first that the Board clearly did not engage in coercion under the view expressed by Justices Scalia and Thomas. But we analyze the issue under the view more favorable to the Plaintiffs as expressed in Justice Kennedy's plurality opinion. Under that approach, the Court must conduct a fact-sensitive inquiry "consider[ing] both the setting in which the prayer arises and the audience to whom it is directed." *Town of Greece*, 134 S.Ct. at 1825 (Kennedy, J., plurality opinion).

In upholding the invocation practice in *Town of Greece*, the Supreme Court plurality identified several "red flags" that could signal when a prayer exercise is coercive and thus not within the historical tradition of constitutionally protected legislative prayer. See *id.* at 1825-27. Specifically, the Court explained that coercion may exist "if town board members directed the public to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person's acquiescence in the prayer opportunity." *Id.* at 1826. The Court also identified as problematic "practice[s] that classified citizens based on their religious views" or resulted in a pattern of prayers used to "intimidate" or "chastise[] dissenters." *Id.*

It is not difficult to understand why the Court placed the coercion bar so high in this context. As noted, adults are not presumed susceptible to religious indoctrination or pressure simply from speech they would rather not hear. Thus, there is limited risk that

disenchanted listeners would be affected by mere contact with lawmaker-led legislative prayer. "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[.]" *Id.*; see also *Elk Grove Unified Sch. Dist.* v. *Newdow*, 542 U.S. 1, 44, 124 S.Ct. 2301, 159 L. Ed. 2d 98 (2004) (O'Connor, J., concurring in the judgment) ("[T]he Constitution does not guarantee citizens a right entirely to avoid ideas with which they disagree.").

The district court erred in concluding the Board's prayer practice was coercive under this framework. The commissioners' prayers "neither chastised dissenters nor attempted lengthy disquisition on religious dogma." *Town of Greece*, 134 S.Ct. at 1826 (Kennedy, J., plurality opinion). Rather, as illustrated previously, the content largely followed the spirit of solemn, respectful prayer approved in *Marsh* and *Town of Greece*. Moreover, the record shows that both attendance and participation in the invocations were voluntary. The Board has represented without contradiction that members of the public were free to remain seated or otherwise "disregard the Invocation in a manner that [was] not disruptive." J.A. 277. Thus, as a practical matter, citizens attending a Board meeting who found the prayer unwanted had several options available—they could arrive after the invocation, leave for the duration of the prayer, or remain for the prayer without participating: just like the audiences in *Marsh* and *Town of Greece*. And to the extent individuals like

Plaintiffs elected to stay, "their quiet acquiescence [would] not, in light of our traditions, be interpreted as an agreement with the words or ideas expressed." *Town of Greece*, 134 S.Ct. at 1827 (Kennedy, J., plurality opinion).

The record is similarly devoid of evidence that anyone who chose not to participate during the prayer suffered adverse consequences, that their absence was perceived as disrespectful, or was recognized by the Board in any way. To the contrary, the Board has attested that such conduct would have "no impact on [the constituent's] right to fully participate in the public meeting, including addressing the commission and participating in the agenda items in the same matter as permitted any citizen of Rowan County." J.A. 277. Plaintiffs point us to no evidence to the contrary. Thus, it is implausible on this record to suggest that Plaintiffs were "in a fair and real sense" coerced to participate in the Board's exercise of legislative prayer. *Lee*, 505 U.S. at 586, 112 S.Ct. 2649.

Plaintiffs' allegations that the prayer practice made them feel subjectively "excluded at meetings" and that the Board's "disagreement with [their] public opposition to sectarian prayer could make [them] less effective advocate[s]" does nothing to change the outcome. *Lund*, 103 F. Supp. 3d at 715-16. *Town of Greece* explicitly rejected the claim that a citizen's perceived "subtle pressure to participate in prayers that violate their beliefs in order to please the board members from

whom they are about to seek a favorable ruling" constitutes coercion. 134 S.Ct. at 1825 (Kennedy, J., plurality opinion). This is true even where the legislative body may "know many of their constituents by name," making anonymity less likely for those citizens who decline to rise or otherwise participate in the invocation. *Id.* Likewise, merely exposing constituents to prayer they find offensive is not enough. "[I]n the general course[,] legislative bodies do not engage in impermissible coercion merely by exposing constituents to prayer they would rather not hear and in which they need not participate." *Id.* at 1827.

To be sure, legislative prayer may stray across the constitutional line if "town leaders allocate[ ] benefits and burdens based on participation in the prayer, or that citizens were received differently depending on whether they joined the invocation or quietly declined." *Id.* at 1826. But there must be evidence in the record to support allegations of that sort. There is no such evidence in this case.

Plaintiffs make several arguments in support of the district court's coercion ruling. They first claim that the prayer practice here was "an external act focused on the broader public," which "has a type of coercive power that the internally directed [prayers] in *Town of Greece* [did] not." Response Br. 8, 11. Plaintiffs point to several invocations where the commissioners offered prayers on behalf of others as well as themselves. This evidence, in Plaintiffs' view, shows that the commissioners did "not consider the prayer practice an internal act directed at one another, but rather,

that it is also directed toward citizens and for the benefit of all." *Id.* at 11.

Town of Greece notes the internal or external nature of a prayer practice in determining whether impermissible coercion occurred. See 134 S.Ct. at 1825 (Kennedy, J., plurality opinion) ("The principal audience for these invocations is not, indeed, the public but lawmakers themselves, who may find that a moment of prayer or quiet reflection sets the mind to a higher purpose and thereby eases the task of governing."). The Supreme Court's rationale here is obvious. The probability of coercion can be heightened should the prayers be directed at those in attendance. Plaintiffs' argument, however, posits that any prayer referencing a person or concern beyond the members of the legislative body is externally directed and thus prohibited. That cannot be. Legislative prayer does not lose its constitutionally protected status because it includes a request for divine protection for persons other than those serving in office, such as our troops overseas or first responders. The Supreme Court has never required such a single-minded purpose. Indeed, the prayers in *Town of Greece* contained similar expressions focused at persons other than fellow legislators. See *id.* at 1824. The fact that individual commissioners here sometimes prayed that God bless, protect, and

heal wounded soldiers in Iraq and injured police officers does not take the prayers outside the realm of constitutionally protected legislative prayer.[6]

Plaintiffs next argue that the commissioners unacceptably directed public participation in the prayers. To reiterate, the Board's opening ceremony usually began with the chairperson asking everyone to stand "for the Invocation and Pledge of Allegiance." *Lund*, 103 F. Supp. 3d at 714. The designated commissioner would then offer an invocation that typically started with "let us pray" or "please pray with me." *Id.* Plaintiffs maintain that these statements amount to unconstitutional coercion. The district court agreed, concluding the commissioners' statements "fall squarely within the realm of soliciting, asking, requesting, or directing, and thus within the territory of concern [in] *Town of Greece*." *Id.* at 728.

Again, we disagree. Similar invitations have been routinely offered for over two centuries in the U.S. Congress, the state legislatures, and countless local boards and councils. No case has ever held such a routine courtesy opening a legislative session amounts to coercion of the gallery audience. It would come as quite a shock to the Founders if it had.

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[6] Taking two of the exemplar prayers referenced by the dissent, we do not understand the connection to coercion if the gallery audience heard the Commissioner delivering the prayer ask God to "continue to bless everyone in this room, our families, our friends, and our homes" or to "forgive our pride and arrogance, heal our souls, and renew our vision." Cf. infra (citing J.A. 16, 17).

When the Supreme Court in *Town of Greece* expressed concern about prayer-givers "direct[ing] the public to participate in the prayers," it did not have the foregoing in mind. 134 S.Ct. at 1826 (Kennedy, J., plurality opinion). Coercion is measured "against the backdrop of historical practice." *Id.* at 1825. "As a practice that has long endured, legislative prayer has become part of our heritage and tradition * * * similar to the Pledge of Allegiance [or] inaugural prayer[.]" *Id.* "It is presumed that the 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 private citizens[.]" *Id.* Viewed through this lens, no reasonable person would interpret the commissioners' commonplace invitations as government directives commanding participation in the prayer. The phrase "let us pray" is a familiar and "almost reflexive" call to open an invocation that hardly compels in the rational mind thoughts of submission. *Id.* at 1832 (Alito, J., concurring). The same goes for the Board's request for audience members to stand. We may safely assume that mature adults, like Plaintiffs, can follow such contextual cues without the risk of religious indoctrination. See *Marsh*, 463 U.S. at 792, 103 S.Ct. 3330. Telling here is Plaintiffs' own evidence, which indicates that some portion of the audience often chose not to participate. See J.A. 12 (noting only "most" of the audience stood). In sum, opening a legislative prayer with a short invitation to rise and join hardly amounts to "orchestrat[ing] the performance of a formal religious exercise in a fashion that practically obliges the

involvement of non-participants." *Myers*, 418 F.3d at 406.

Lastly, Plaintiffs claim they were singled out for opprobrium by "Board members signaling their disfavor of those who did not fall in line." Response Br. 20. Plaintiffs cite to several public statements where acting commissioners were critical of those in the religious minority. See, e.g., *Lund*, 103 F. Supp. 3d at 715. (then-chairman Jim Sides: "I am sick and tired of being told by the minority what's best for the majority. My friends, we've come a long way—the wrong way. We call evil good and good evil."). Even giving these comments the weight Plaintiffs would like, which is itself doubtful because most came post-litigation and in response to other issues having nothing to do with legislative prayer, they are insufficient to carry the day. Such isolated incidents do not come close to showing, as *Town of Greece* requires, "a pattern of prayers that over time denigrate, proselytize, or betray an impermissible government purpose." 134 S.Ct. at 1824. Indeed, the comments cited here are not materially different from those referenced in *Town of Greece*, where several invocations referred to prayer opponents as the "minority" and "ignorant." *Id.* A few stray remarks are simply insufficient to "despoil a practice that on the whole reflects and embraces our tradition." *Id.*

Participation in the Board's opening ceremony, including the invocation, is voluntary. Yet the district court concluded that Plaintiffs are subject to unconstitutional coercion because they claim to be compelled

and coerced based on their subjective speculation about how their abstention might be received. That conclusion cannot be reconciled with *Town of Greece* and its rejection of the notion of coercion of adults in similar circumstances. *Town of Greece* identified a narrow range of exceptional circumstances that could render a legislative prayer practice coercive and outside the historical tradition of invocations that comport with the Establishment Clause. The Board's legislative prayer practice is not close to crossing that constitutional line.

IV.

None of the constitutional contentions raised by the Plaintiffs have validity under the facts of this case for the reasons set out above. Similarly, even taking all the Plaintiffs' claims as an amalgamated whole, they do not reflect a meritorious claim for the same reasons such claims failed in *Marsh* and *Town of Greece*.

The Board's legislative prayer practice falls within our recognized tradition and does not coerce participation by nonadherents. It is therefore constitutional. The district court erred in concluding to the contrary. Accordingly, the judgment of the district court is reversed and remanded with directions to dismiss the complaint.

REVERSED AND REMANDED WITH DIRECTIONS

WILKINSON, Circuit Judge, dissenting:

Welcome to the meeting of the Rowan County Board of Commissioners. As many of you are aware, we customarily begin these meetings with an invocation. Those who deliver the invocation may make reference to their own religious faith as you might refer to yours when offering a prayer. We wish to emphasize, however, that members of all religious faiths are welcome not only in these meetings, but in our community as well. The participation of all our citizens in the process of self-government will help our fine county best serve the good people who live here.

—Message of Religious Welcome

The message actually delivered in this case was not one of welcome but of exclusion. That is a pity, because even a brief prefatory statement akin to that above might have helped to set a different tone for the meetings here while not requiring the judiciary to police the content of legislative prayer.

I.

Religious faith is not only a source of personal guidance, strength, and comfort. Its observance is also a treasured communal exercise which serves in times of need as the foundation for mutual support and charitable sustenance. But when a seat of government begins to resemble a house of worship, the values of religious observance are put at risk, and the danger of

religious division rises accordingly. S.A. 1-10 (affidavits of Nancy Lund, Liesa Montag-Siegel, and Robert Voelker). This, I respectfully suggest, is what is happening here. It cannot be right. This case is more than a factual wrinkle on *Town of Greece* v. *Galloway*, ___ U.S. ___, 134 S.Ct. 1811, 188 L. Ed. 2d 835 (2014). It is a conceptual world apart.

Rowan County's prayer practice featured invocations week after week, month after month, year after year, with the same sectarian references. To be sure, *Town of Greece* ruled that sectarian prayer is not by itself unconstitutional. 134 S.Ct. at 1820-23. But the issue before us turns on more than just prayer content, the primary concern in *Town of Greece*. Whereas guest ministers led prayers in that case, it was public officials who exclusively delivered the invocations in Rowan County. Those prayers served to open a meeting of our most basic unit of government, a local board of commissioners that passes laws affecting citizens in the most daily aspects of their lives. The prayers, bordering at times on exhortation or proselytization, were uniformly sectarian, referencing one and only one faith though law by definition binds us all.

I have seen nothing like it. This combination of legislators as the sole prayer-givers, official invitation for audience participation, consistently sectarian prayers referencing but a single faith, and the intimacy of a local governmental setting exceeds even a broad reading of *Town of Greece*. That case in no way sought to dictate the outcome of every legislative prayer case. Nor did it suggest that "no constraints remain on

[prayer] content." *Id.* at 1823. The Establishment Clause still cannot play host to prayers that "over time * * * , threaten damnation, or preach conversion." *Id.* To assess those risks, "[c]ourts remain free to review the pattern of prayers over time." *Id.* at 1826-27.

Above all, the Supreme Court stressed that "[t]he inquiry [into legislative prayer] remains a *fact-sensitive* one that considers both the *setting* in which the prayer arises and the *audience* to whom it is directed." *Id.* at 1825 (emphasis added). The parties have not cited any legislative prayer decision combining the particular speakers, audience involvement, prayer content, and local government setting presented here. Rowan County's counsel conceded during oral argument that this case is without precedent. Oral Argument at 9:20-10:08, *Lund* v. *Rowan Cty.* (No. 15-1591). I am left to wonder what limits, if any, to sectarian invocations at meetings of local government appellants would be prepared to recognize.

No one disputes that localities enjoy considerable latitude in opening their meetings with invocations and prayers. But the legislative prayer practice here pushes every envelope. I would not welcome this exceptional set of circumstances into the constitutional fold without considering its implications. A ruling for the County bears unfortunate consequences for American pluralism, for a nation whose very penny envisions one out of many, a nation whose surpassing orthodoxy belongs in its constitutional respect for all beliefs and faiths, a nation which enshrined in the First and Fourteenth Amendments the conviction that

diversity in all of its dimensions is our abiding strength.

II.

Though the majority treats this case as all but resolved by *Town of Greece*, that decision did not touch upon the combination of factors presented here, particularly the question of legislator-led prayer. Indeed, prayers by public officials form a distinct minority within Establishment Clause case law. The great majority of legislative prayer cases have not involved legislators at all, but invocations by guest ministers or local religious leaders. E.g., *Marsh* v. *Chambers*, 463 U.S. 783, 784-85, 103 S.Ct. 3330, 77 L. Ed. 2d 1019 (1983) (invocation by a chaplain paid by the state at the opening of state legislative sessions); *Joyner* v. *Forsyth Cty.*, 653 F.3d 341, 343 (4th Cir. 2011) (prayers by leaders of local congregations at county commission meetings). The invocations in *Town of Greece* were likewise delivered solely by ministers from local congregations. 134 S.Ct. at 1816-17. Nearly all the congregations were Christian, and every minister selected during an eight-year period came from that faith. *Id.* But crucially, no public officials delivered prayers or influenced their content in any way. *Id.* As the district court noted, *Town of Greece* "consistently discussed legislative prayer practices in terms of invited ministers, clergy, or volunteers providing the prayer, and not once described a situation in which the legislators themselves gave the invocation." *Lund*, 103 F. Supp. 3d at 722.

By contrast, the only eligible prayer-givers at Rowan County commission meetings were the five board commissioners, each of whom took up the responsibility in turn. Not only did they lead the prayers, but they also composed all the invocations "according to their personal faiths," which were uniformly Christian denominations. *Id.* at 724; J.A. 275-94 (affidavits of the five Rowan County commissioners). Compared to *Town of Greece*, the "much greater and more intimate government involvement" by the Rowan County board led the district court to find its prayer practice unconstitutional. *Lund*, 103 F. Supp. 3d at 723.

Of course, the prayer practice was not infirm simply because it was led by the commissioners. As the majority and the states' amicus brief rightly remind, there exists a robust tradition of prayers delivered by legislators. According to a national survey and amici's own research, all but two state legislative bodies engage in legislative prayer or a moment of silence. Br. of Amici Curiae State of West Virginia and 12 Other States at 13. Lawmakers lead at least some legislative prayers in just over half of those states, including seven of the ten state legislative chambers within our circuit. *Id.* at 13-14. Many county and city governments also call upon elected officials to give prayer. *Id.* at 15.

The tradition of prayer by legislators is but one indicator of how unrealistic it would be to divorce democratic life from religious practice. We see their intertwined nature whenever candidates for all levels of political office proclaim their faith on the campaign

trail. Voters may understandably wish to factor the religious devotion of those they elect into their political assessments. It could not be otherwise. As Justice William O. Douglas aptly observed, "We are a religious people whose institutions presuppose a Supreme Being." *Zorach* v. *Clauson*, 343 U.S. 306, 313, 72 S.Ct. 679, 96 L. Ed. 954 (1952).

The Supreme Court thus recognized that "a moment of prayer or quiet reflection sets the mind[s] [of legislators] to a higher purpose and thereby eases the task of governing." *Town of Greece*, 134 S.Ct. at 1825. The solemnizing effect for lawmakers is likely heightened when they personally utter the prayer. In deference to that purpose, I would not for a moment cast all legislator-led prayer as constitutionally suspect. As the Supreme Court has emphasized, "[L]egislative 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." *Id.* at 1818.

Prayers delivered by legislators, however, are themselves quite diverse. We cannot discern from the general survey proffered by amici which prayers were primarily for the benefit of legislators or commissioners as in *Town of Greece* and which focused, as the prayers did here, on requesting the citizens at the meeting to pray. Nor do we know from the survey what percentage of prayers given by elected officials generally contain sectarian references or proselytizing exhortations, or which are non-denominational or delivered by legislators of diverse faiths. And in fact,

the very survey on which the majority and amici rely takes care to note that highly sectarian prayers represent "not only a breach of etiquette," but also an "insensitivity to the faith of others." National Conference of State Legislatures, *Inside the Legislative Process* 5-145 (2002) [hereinafter NCSL Survey]; see Maj. Op. at 419; Br. of Amici Curiae State of West Virginia and 12 Other States at 13. Further, the survey cautions, the prayer-giver "should be especially sensitive to expressions that may be unsuitable to members of some faiths." NCSL Survey at 5-146.

We should focus then not on any general survey but on the interaction among elements specific to this case—legislative prayer-givers exclusively of one faith, legislative invitation to the citizens before them to participate, and exclusively sectarian prayers referencing a single faith in every regular meeting of a local governing body over a period of many years. At a certain point, the interaction of these elements rises to the level of coercion that *Town of Greece* condemned. *Id.* at 1823.

III.

A.

I shall discuss each of the aforementioned elements in turn, beginning with the fact that the commissioners themselves delivered the invocations. Legislator-led prayer, when combined with the other elements, poses a danger not present when ministers lead prayers. The Rowan County commissioners, when

assembled in their regular public meetings, are the very embodiment of the state. From November 2007, when the county began recording its board meetings, to the start of this lawsuit in March 2013, 139 out of 143 meetings, or 97%, began with legislators delivering prayers explicitly referencing Christianity. *Lund*, 103 F. Supp. 3d at 714; see also *Lee* v. *Weisman*, 505 U.S. 577, 588, 112 S.Ct. 2649, 120 L. Ed. 2d 467 (1992) (defining sectarian prayer as "us[ing] ideas or images identified with a particular religion"). The vast majority of those 139 prayers closed with some variant of "in Jesus' name." S.A. 12-38 (transcript of all Rowan County prayers on record). Only four invocations, given by the same now-retired commissioner, were non-sectarian, J.A. 296 & n.2, and no prayer mentioned a religion other than Christianity in five-and-a-half years, *Lund*, 103 F. Supp. 3d at 714.

The five commissioners, all Christian, "maintain[ed] exclusive and complete control over the content of the prayers." *Lund*, 103 F. Supp. 3d at 733. At times, the prayers seemed to blend into their legislative role. As one commissioner put it, "Lord, we represent you and we represent the taxpayers of Rowan County." S.A. 16. When the state's representatives so emphatically evoke a single religion in nearly every prayer over a period of many years, that faith comes to be perceived as the one true faith, not merely of individual prayer-givers, but of government itself. The board's rules and regulations bind residents of all faiths, Christian, Hindu, Jewish, Muslim, and many other believers and non-believers as well. And yet

those laws that govern members of every faith are passed in meetings where government overtly embraces only one. That singular embrace runs up against "[t]he clearest command of the Establishment Clause," that "one religious denomination cannot be officially preferred over another." *Larson* v. *Valente*, 456 U.S. 228, 244, 102 S.Ct. 1673, 72 L. Ed. 2d 33 (1982).

An equally clear command is that "each separate government in this country should stay out of the business of writing or sanctioning official prayers." *Engel* v. *Vitale*, 370 U.S. 421, 435, 82 S.Ct. 1261, 8 L. Ed. 2d 601 (1962). *Town of Greece* echoed that principle even as it upheld legislative prayer: "Our Government is prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior." 134 S.Ct. at 1822. These age-old warnings have apparently fallen on deaf ears here. By instituting its elected officials as the sole proclaimers of the sole faith, Rowan County is elbow-deep in the activities banned by the Establishment Clause—selecting and prescribing sectarian prayers. Although the county contends that the prayer practice reflects only the desire of individual members of the board, Appellant's Reply Br. at 8-9, it is hard to believe that a practice observed so uniformly over so many years was not by any practical yardstick reflective of board policy.

Further, the prayer-giver's identity affects the range of religions represented in legislative prayer. Because only commissioners could give the invocation, potential prayer-givers in Rowan County came from a

"closed-universe" dependent solely on electoral outcomes. *Lund*, 103 F. Supp. 3d at 723. Appellant frames this as a benefit. The election process, it says, which welcomes candidates of all faiths or no faith, holds greater promise of diversity than the selection of ministers by government officials, which, the county points out, resulted in the same chaplain for sixteen years in the case of *Marsh* v. *Chambers*. Appellant's Br. at 26.

But the county is comparing apples and oranges. While a small group of legislators can diversify their appointment of prayer-givers at will, it may be more difficult to expect voters to elect representatives of minority religious faiths. For instance, after residents in the town of Greece complained about the pervasive Christian prayers, local officials granted a Jewish layman, a Baha'i practitioner, and a Wiccan priestess the opportunity to lead prayers. *Town of Greece*, 134 S.Ct. at 1817. The Court took comfort in the fact that "any member of the public is welcome in turn to offer an invocation reflecting his or her own convictions." *Id.* at 1826. But no guest ministers or clergy and no member of the public delivered an invocation here, that being reserved for the commissioners belonging to the faith that dominates the electorate.

Entrenching this single faith reality takes us one step closer to a de facto religious litmus test for public office. When delivering the same sectarian prayers becomes embedded legislative custom, voters may wonder what kind of prayer a candidate of a minority religious persuasion would select if elected. Failure to

pray in the name of the prevailing faith risks becoming a campaign issue or a tacit political debit, which in turn deters those of minority faiths from seeking office. It should not be so.

None of this is to imply a need for "religious balancing" among candidates, elected officials, or legislative prayers. *Id.* at 1824. Without going so far, we still must contend with the far-reaching implications of an unremitting record-overwhelmingly sectarian prayers led solely by legislators through many meetings over many years. No single aspect or consequence of this case alone creates an Establishment Clause problem. Rather, it is the combination of the role of the commissioners, their instructions to the audience, their invocation of a single faith, and the local governmental setting that threatens to blur the line between church and state to a degree unimaginable in *Town of Greece*.

B.

That brings us to the second problematic element in this case: the fact that the prayers of the commissioners were preceded by a request or encouragement for audience participation. *Town of Greece* reminds us to look to the effect of legislative prayer on the audience, not merely the actions of the prayer-givers. See 134 S.Ct. at 1825-26. Here the effect is apparent. The attendees at Rowan County board meetings, upon hearing the invocations uttered by the state's representatives day in and day out, must have grasped the obvious: the Rowan County commission favors one

faith and one faith only. In the eyes and ears of the attendees, that approval sets the tone for the meetings to follow. As expressed by one plaintiff in this case, "[T]he prayers sent a message that the County and Board favors Christians and that non-Christians, like [her], are outsiders." S.A. 5 (affidavit of Liesa Montag-Siegel).

This message was amplified by frequent exhortations. Commissioners spoke directly to the attendees during prayer, asking them to stand and leading with phrases like "Let us pray" or "Please pray with me." *Lund*, 103 F. Supp. 3d at 714, 727. The record reflects that the great majority of attendees did in fact "join the Board in standing and bowing their heads," *id.* at 714, and that plaintiffs themselves "[a]s a result of the [Board] Chair's instructions" felt "compelled to stand" so that they would not stand out, S.A. 1-10 (plaintiffs' affidavits). When reviewing phrases like "Let us pray" or "Please pray with me," *Town of Greece* underscored that the requests "came not from town leaders but from the guest ministers." 134 S.Ct. at 1826. The Court noted that its "analysis would be different if *town board members* directed the public to participate in the prayers." *Id.* (emphasis added). Here they did. "[T]he Board's statements," the district court noted, "fall squarely within the realm of soliciting, asking, requesting, or directing * * * of concern to the *Town of Greece* plurality." *Lund*, 103 F. Supp. 3d at 728.

A request to an audience to stand or pray carries special weight when conveyed in an official capacity by an elected commissioner facing his constituents, with

his board arrayed behind or beside him, directly before discharging his official duties. *Id.* County board decisions affect both property and livelihood, including zoning laws and variances, school funding, police protection, fire prevention and sanitation budgets, and the location of parks and other areas of recreation. Br. of Amici Curiae Religious Liberty Orgs. at 25. I do not at all suggest that commissioners would base their decisions on who prays and who doesn't. I do note, however, that the close proximity of participatory sectarian exercises to citizen petitions for the many benefits that local boards can withhold or dispense presents, to say the least, the opportunity for abuse.

C.

Nothing about the constitutional drawbacks of Rowan County's prayer practice should be construed as disparaging the prayers themselves, which were moving and beautiful on many levels. Each invocation was luminous in the language that many millions of Americans have used over many generations to proclaim the Christian faith. The constitutional challenge directed at the invocations is in no sense a commentary on the worth and value of prayer or on the devotion of the citizens of Rowan County and their elected officials to their faith.

The prayers here, which would be so welcome in many a setting, cannot be divorced from the proceedings in which they were spoken. It is not the prayers but the context that invites constitutional scrutiny.

Establishment Clause questions are by their nature "matter[s] of degree," which indicates some acceptable practices and others that cross the line. *Van Orden* v. *Perry*, 545 U.S. 677, 704, 125 S.Ct. 2854, 162 L. Ed. 2d 607 (2005) (Breyer, J., concurring in judgment). For the average citizen of Rowan County, these meetings might well have been the closest interaction he or she would have with government at any level. To reserve that setting for an embrace of one and only one faith over a period of years goes too far.

This is especially so where prayers have on occasion veered from invocation to proselytization. Even with the greater latitude afforded in *Town of Greece*, legislative prayer still cannot be "exploited to proselytize or advance any one * * * faith or belief." 134 S.Ct. at 1823 (quoting *Marsh*, 463 U.S. at 794-95, 103 S.Ct. 3330). Plaintiffs, all non-Christians, cited examples that they found overtly sectarian or proselytizing:

- "As we get ready to celebrate the Christmas season, we'd like to thank you for the Virgin Birth, we'd like to thank you for the Cross at Calvary, and we'd like to thank you for the resurrection. Because we do believe that there is only one way to salvation, and that is Jesus Christ." J.A. 16 (prayer of December 3, 2007).
- "Our Heavenly Father, we will never, ever forget that we are not alive unless your life is in us. We are the recipients of your immeasurable grace. We can't be defeated, we can't be destroyed, and we

won't be denied, because of our salvation through the Lord Jesus Christ. I ask you to be with us as we conduct the business of Rowan County this evening, and continue to bless everyone in this room, our families, our friends, and our homes. I ask all these things in the name of Jesus, Amen." *Id.* (prayer of May 18, 2009).

- "Let us pray. Holy Spirit, open our hearts to Christ's teachings, and enable us to spread His message amongst the people we know and love through the applying of the sacred words in our everyday lives. In Jesus' name I pray. Amen." *Id.* at 17 (prayer of March 7, 2011).
- "Let us pray. Merciful God, although you made all people in your image, we confess that we live with deep division. Although you sent Jesus to be Savior of the world, we confess that we treat Him as our own personal God. Although you are one, and the body of Christ is one, we fail to display that unity in our worship, our mission, and our fellowship. Forgive our pride and arrogance, heal our souls, and renew our vision. For the sake of your Son, our Savior, the Lord Jesus Christ, Amen." *Id.* (prayer of October 3, 2011).

The point here is not to pick apart these prayers or to measure objectively their proselytizing content. It is to consider how this language might fall on the ears of Hindu attendees, Jewish attendees, Muslim attendees, or others who do not share the commissioners'

particular view of salvation or their religious beliefs. It is not right to think that adherents of minority faiths are "hypersensitive." Maj. Op. at 422. If we Christians were a religious minority, we would surely be sensitive to the invariable commencement of town hall meetings through invocation of a faith to which we did not subscribe. And if religious faith was not a matter of sensitivity, then why would two of our Constitution's best known and most prominent provisions have been devoted to it?

The invocations here can sound like an invitation to take up the tenets of Christian doctrine. And an invitation can take on tones of exhortation when issued from the lips of county leaders. Although those attending the board meeting may have "had several options available—they could arrive after the invocation, leave for the duration of the prayer, or remain for the prayer without participating," maj. op. at 428, such options served only to marginalize.

Indeed, to speak of options masks important differences. People often go to church or join groups and organizations out of a sense of choice. It is the faith they have chosen or it is a group to which they wish to belong. But people often go to local government meetings in their capacity as citizens in order to assert their views or defend their rights vis-à-vis an entity with legal and coercive powers. These are two very different forms of attendance. In board meetings, it fell to non-Christian attendees, facing their elected representatives and surrounded by bowed heads, to choose

"between staying seated and unobservant, or acquiescing to the prayer practice." *Lund*, 103 F. Supp. 3d at 732. It is no trivial choice, involving, as it does, the pressures of civic life and the intimate precincts of the spirit.

The Rowan County board can solemnize its meetings without creating such tensions. The desire of this fine county for prayer at the opening of its public sessions can be realized in many ways, such as nondenominational prayers or diverse prayer-givers. Another possibility, open to legislators of any faith, might be the Message of Religious Welcome described above. Such an expression of religious freedom and inclusion would promote the core idea behind legislative prayer, "that people of many faiths may be united in a community of tolerance and devotion." *Town of Greece*, 134 S.Ct. at 1823. A Message of Religious Welcome separate from the invocation itself also reduces the risk that courts will "act as supervisors and censors" of prayer language, a major concern voiced by the Supreme Court. *Id.* at 1822. Indeed, the availability of so many inclusive alternatives throws into relief the unfortunate confluence of factors in the county's practice. For the county to insist on uniformly sectarian prayer led by legislators of one faith in a closed and purely governmental space carries us far from the central premise of the Establishment Clause.

IV.

By pairing the Free Exercise Clause with the Establishment Clause in the First Amendment, the Framers struck a careful balance. Americans are encouraged to practice and celebrate their faith but not to establish it through the state. See *Engel*, 370 U.S. at 429-34, 82 S.Ct. 1261 (discussing the historic roots of the Establishment Clause as it relates to the Free Exercise Clause). This seems an inapt moment to upset that ancient balance. The violent sectarian tensions in the Middle East are only the most visible religious divisions now roiling the globe. Are such levels of hostility likely here? Probably not, but it behooves us not to take our relative religious peace for granted and to recognize that the balance struck by our two great religion clauses just may have played a part in it. In venues large and small, a message of religious welcome becomes our nation's great weapon, never to be sheathed in this or any other global struggle. Believing that legislative prayer in Rowan County can further both religious exercise and religious tolerance, I respectfully dissent.

103 F. Supp. 3d 712
United States District Court,
M.D. North Carolina.

Nancy LUND, Liesa Montag-Siegel and
Robert Voelker, Plaintiffs,
v.
ROWAN COUNTY, NORTH CAROLINA,
Defendant.

No. 1:13CV207.
|
Signed May 4, 2015.

Attorneys and Law Firms

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MEMORANDUM OPINION AND ORDER

BEATY, District Judge.

This matter is before the Court on the respective Motions for Summary Judgment of Defendant Rowan County [Doc. # 51] and Plaintiffs Nancy Lund, Liesa Montag-Siegel, and Robert Voelker [Doc. # 52]. The motions are fully briefed and ripe for adjudication. Plaintiffs contend that Defendant's prayer practice is distinguishable from that at issue in *Town of Greece* v.

Galloway, ___U.S. ___, 134 S.Ct. 1811, 188 L. Ed. 2d 835 (2014), and constitutes unconstitutional coercion in violation of the First Amendment's Establishment Clause. Defendant argues that *Town of Greece* controls and permits its legislative prayer practice. For the reasons discussed below, the Court will grant Plaintiffs' Motion and deny Defendant's Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

Nancy Lund, Liesa Montag-Siegel, and Robert Voelker ("Plaintiffs") are residents of Rowan County, North Carolina, and each has attended multiple meetings of the Rowan County Board of Commissioners ("the Board"). Commissioners are elected to the Board, and Defendant Rowan County ("Defendant") exercises its powers as a governmental entity through the Board. The Board usually holds two public meetings per month. From at least November 5, 2007, until the initiation of the present lawsuit in March 2013, the Board regularly opened its meetings with a Call to Order, an Invocation, and the Pledge of Allegiance, in that order.[1] Once called to order, the Board Chair typically

[1] In their Verified Complaint [Doc. # 1], Plaintiffs cited to and provided the website address for public video recordings of the Board's meetings, which are "available for viewing online through Defendant's website." (Compl. [Doc. # 1], at ¶ 17 & n. 2.). The videos are available for meetings beginning with the November 5, 2007 meeting, and accordingly, Plaintiffs' Verified Complaint describes the Board's practices for meetings held from November 5, 2007 through March 4, 2013, "with the exception of (1) Board meetings that were continued over from a previous meeting that had already been called to order; and (2) the February 8, 2013,

asked or directed everyone in attendance to stand for the Invocation and Pledge of Allegiance, at which point either the Chairman or another member of the Board would deliver the invocation or prayer.[2] All of the Commissioners stood for the Invocation and Pledge of Allegiance, and the Commissioners almost always bowed their heads during the Invocation. Frequently, the prayer-giver would begin the prayer with a phrase such as "let us pray" or "please pray with me." The majority of the audience members would join the Board in standing and bowing their heads during the prayer. Between November 5, 2007, and the filing of Plaintiffs' Complaint, 139 of 143 Board meetings—in other words, 97%—opened with a Commissioner delivering a sectarian prayer invoking Christianity. For example, the prayers normally included references to Jesus, the Savior, and other tenets of the Christian

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joint meeting of the Board of Commissioners and the Rowan-Salisbury School Board of Education, which was conducted pursuant to a unique protocol." (*Id.* at ¶ 17 n. 2.) Along with their Verified Complaint and filings regarding a preliminary injunction, Plaintiffs also submitted a transcript of each prayer, as transcribed from viewing the videos. (Pls.' Ex. D [Doc. # 6-4].) Each prayer transcript was also accompanied by the web address of the video from which it was derived. (*Id.*) Without exclusively relying on the videos, the Court notes the videos tend to corroborate Plaintiffs' facts as depicted in the Verified Complaint and in their other filings.

[2] Although the agendas and individual Commissioners' affidavits use the word "Invocation," the invocation practice as implemented routinely consists of a prayer. As such, the Court often uses "prayer" or "legislative prayer" in referring to Defendant's Invocation practice. Likewise, the Parties' briefings on the matter use invocation and prayer interchangeably.

faith. No invocation delivered since November 5, 2007, referenced a deity specific to a faith other than Christianity.

On February 12, 2012, the American Civil Liberties Union of North Carolina Legal Foundation sent the Board a letter explaining that the sectarian nature of its Invocations violated the First Amendment of the United States Constitution, based on then-governing Fourth Circuit precedent.[3] The letter requested a response indicating the Board's planned course of action, but the Board did not formally respond. However, certain Commissioners did make public statements indicating their intentions to continue delivering Christian invocations at Board meetings. For example, then-Commissioner Carl Ford declared to the local television news, "I will continue to pray in Jesus' name. I am not perfect so I need all the help I can get, and asking for guidance for my decisions from Jesus is the best I, and Rowan County, can ever hope for." (Compl. [Doc. # 1], at ¶ 31.) Commissioner Jim Sides stated in an e-mail obtained by local media that he would "continue to pray in JESUS name * * * I volunteer to be the first to go to jail for this cause * * * and if you [Commissioner Mitchell] will [get] my bail in time for the next meeting, I will go again!" (*Id.*) Commissioner Jim Sides also made other publicly disseminated statements—

[3] Until the Supreme Court's decision in *Town of Greece* v. *Galloway*, ___ U.S. ___, 134 S.Ct. 1811, 188 L. Ed. 2d 835 (2014), Fourth Circuit precedent held that sectarian legislative prayer was unconstitutional. *Joyner* v. *Forsyth Cnty.*, 653 F.3d 341, 349 (4th Cir. 2011).

albeit not specifically regarding objections to the Board's prayer practice—regarding his views on religious minorities: "I am sick and tired of being told by the minority what's best for the majority. My friends, we've come a long way—the wrong way. We call evil good and good evil." (Pls.' Mem. Law Supp. Mot. Summ. J. [Doc. # 53], at 3.)

On March 12, 2013, Plaintiffs filed a Motion for Preliminary Injunction [Doc. # 5] and a Verified Complaint [Doc. # 1] asserting claims of First Amendment violations against Defendant pursuant to 42 U.S.C. § 1983. Specifically, the Complaint contended that Defendant violated the Establishment Clause by delivering sectarian legislative prayers and by coercing Plaintiffs to participate in religious exercises. Plaintiffs have attended multiple Board meetings at which they have witnessed Commissioners deliver sectarian, Christian-themed prayers. Plaintiffs, none of whom are Christian, each attested to feeling coerced by Defendant's prayer practice. At each meeting attended by Plaintiffs Nancy Lund and Liesa Montag-Siegel, the Board Chair "asked or requested that all stand for the invocation and Pledge of Allegiance," and as a result, "each member of the Board stood as did everyone [they] saw in the audience." (Pls.' Ex. A, Lund Aff. [Doc. # 6-1], at ¶ 9; Pls.' Ex. B, Montag-Siegel Aff. [Doc. # 6-2], at ¶ 9.) Plaintiff Lund averred that the prayer practice caused her to feel excluded from the community and the local political process, and further, that she felt "compelled to stand so that [she] would not stand out," at the Board meetings. (Pls.' Ex. A,

Lund Aff. [Doc. # 6-1], at ¶¶ 9-11.) Plaintiff Montag-Siegel likewise objected to the sectarian prayers delivered by the Board, stating that the prayers caused her to feel excluded at meetings, excluded from the community, and coerced into participating in the prayers which were not in adherence with her Jewish faith. Plaintiff Montag-Siegel averred that "the prayers sent a message that the County and Board favors Christians and that non-Christians, like [her], are outsiders." (Pls.' Ex. B, Montag-Siegel Aff. [Doc. # 6-2], at ¶ 10.)

Plaintiff Robert Voelker similarly objected to the Board's prayer practice, averring that the prayers caused him to "feel uncomfortable and excluded from the meeting and the political community," as well as "coerced," and "like an outsider at a governmental meeting." (Pls.' Ex. C, Voelker Aff. [Doc. # 6-3], at ¶¶ 9-10.) Plaintiff Voelker further stated that he felt pressured to stand and participate in the prayers because at each meeting he had attended, Commissioners and most audience members stood during the invocation, and he "stood because the Invocation goes directly into the Pledge of Allegiance, for which I feel strongly I need to stand." (*Id.* at ¶ 7.) Plaintiff Voelker also expressed concern about the sectarian prayer practice at a Board meeting and proposed a non-sectarian prayer that the Board could use instead to open meetings. Plaintiff Voelker now fears "that the [Board]'s clear disagreement with [his] public opposition to sectarian prayer could make [him] a less effective advocate on other issues" he cares about, and that he now "would have to

think seriously about whether [he] would speak up out of fear [his] dissent * * * would make [him] a less credible and effective advocate in the eyes of the Rowan County Commissioners." (*Id.* at ¶ 13.)

The Board's invocation practice was completed according to a long-standing tradition of the Board. The Board has no written policy regarding its legislative prayer practices, but the Commissioners' post-litigation affidavits establish that each Commissioner gave the invocation on a rotating basis. Each Commissioner stated that "[t]he Commission respects the right of any citizen to remain seated or to otherwise disregard the Invocation in a manner that is not disruptive of the proceedings." (Def. Affs. [Docs. # 23-1-# 23-5], at ¶ 14.) Likewise, the Commissioners all attested to the invocation being given for the benefit of the Board and for the purpose of solemnizing the meetings. The Board, in their respective affidavits, further averred that citizens may leave the room during the Invocation or arrive after the Invocation has been delivered, and that such actions would not impact citizens' rights to participate in the meetings.

Based on then-controlling circuit precedent, this Court granted Plaintiffs' Motion for Preliminary Injunction [Doc. # 5] on July 23, 2013. This Court enjoined Defendant from knowingly and/or intentionally delivering or allowing to be delivered sectarian prayers at meetings of the Rowan County Board of Commissioners during pendency of this suit. In the same Memorandum Opinion and Order [Doc. # 36], this Court denied Defendant's Motion to Dismiss [Doc.

22] and denied Defendant's Motion to Stay Proceedings [Doc. # 30]. On May 5, 2014, the Supreme Court issued its opinion in *Town of Greece* v. *Galloway*, ___ U.S. ___, 134 S.Ct. 1811, 188 L. Ed. 2d 835 (2014), upholding sectarian legislative prayers as delivered at the Town of Greece's Town Council meetings. On January 20, 2015, the Parties here filed their respective Motions for Summary Judgment, arguing the merits of the present case predominately based upon the holdings of *Town of Greece.*

II. LEGAL STANDARD

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, a court shall grant summary judgment when there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a); *Zahodnick* v. *Int'l Bus. Machs. Corp.*, 135 F.3d 911, 913 (4th Cir. 1997). "In considering a motion for summary judgment, the district court must 'view the evidence in the light most favorable to the' nonmoving party." *Jacobs* v. *N.C. Admin. Office of the Courts*, 780 F.3d 562, 568 (4th Cir. 2015) (quoting *Tolan* v. *Cotton*, ___ U.S. ___, 134 S.Ct. 1861, 1866, 188 L. Ed. 2d 895 (2014) (per curiam)). A court's belief that the movant would prevail on the merits at trial is insufficient to grant a motion for summary judgment. *Jacobs*, 780 F.3d at 568. The court cannot make credibility determinations or weigh evidence, and "must disregard all evidence favorable to the moving party * * * that a jury would not be required to believe." *Edell & Assocs., P.C.* v. *Law Offices*

of Peter G. Angelos, 264 F.3d 424, 436 (4th Cir. 2001); see *Jacobs*, 780 F.3d at 568-71, 2015 WL 1062673, at *4-5, 2015 U.S.App. LEXIS 3878, at *12-13. However, the party opposing summary judgment may not rest on mere allegations or denials, and the court need not consider "unsupported assertions" or "self-serving opinions without objective corroboration." *Evans* v. *Techs. Applications & Serv. Co.*, 80 F.3d 954, 962 (4th Cir. 1996); *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248-49, 106 S.Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986).

III. DISCUSSION

Both Parties contend that no genuine issue of material fact remains for trial, and accordingly, this Court should enter judgment as a matter of law. The Parties focus their arguments almost exclusively on the rules of legislative prayer espoused in the Supreme Court's recent *Town of Greece* decision. However, Defendant also raises a legislative immunity argument. Thus, the Court must preliminarily consider whether legislative immunity applies in the present situation. To the extent that the Court concludes that legislative immunity does not shield Defendant from the present claims, the Court's analysis will then consider the present facts under the framework provided in *Town of Greece.* Furthermore, to the extent the Court concludes that Defendant's present prayer practice falls outside the practice approved of in *Town of Greece*, the Court will consider whether Defendant's particular practice exercised here is impermissibly coercive in violation of the Establishment Clause.

A. Legislative Immunity

In a lengthy footnote, Defendant suggests that legislative immunity shields the Board from suit based on the prayers given at Board meetings. (Def.'s Br. Supp. Summ. J. [Doc. # 54], at 13 n. 4.) Defendant essentially argues that the prayers are a product of the individual Commissioners acting in their legislative capacities, for which they are immune from suit pursuant to the Speech or Debate Clause of the Constitution. In supporting its Motion to Dismiss [Doc. # 22], Defendant hinted at this argument, positing that "Plaintiffs have sued the wrong Defendant by naming Rowan County. The actions Plaintiffs complain of * * * are entirely the choices of five separate Commissioners acting in their individual * * * capacities." (Def.'s Br. Supp. Mot. Dismiss [Doc. # 23], at 1.) Initially, and as Defendant acknowledges, the Court notes that the defendant in this lawsuit remains only Rowan County, not the individual Commissioners in their official capacities. This Court, in an Order previously entered, has already rejected Defendant's arguments that municipal liability did not apply, based upon a determination that the actions of the Commissioners constituted a custom or policy attributable to Defendant Rowan County.

Nonetheless, Defendant asserts that legislative immunity can be applied to the municipality in the present case. However, Defendant's own arguments and authorities used earlier in this case foreclose this argument. Defendant cited to *Berkley* v. *Common Council of City of Charleston*, 63 F.3d 295, 299 (4th Cir. 1995) (en banc), in arguing for dismissal because the

lack of any policy or legislation prevented a finding of municipality liability. *Berkley*, however, clearly explains how Supreme Court and Fourth Circuit precedent soundly establish that legislative immunity does not apply to municipalities. *Id.* at 300 ("Our holding today that a municipality does not enjoy immunity with respect to the acts of its legislative body, thus, should come as no surprise."). In a case cited by Defendant in its present argument, *Bogan* v. *Scott-Harris*, 523 U.S. 44, 118 S.Ct. 966, 140 L. Ed. 2d 79 (1998), only the individuals in their official capacities were claiming legislative immunity, and only those individual defendants were before the Supreme Court when it determined immunity extended to the officials' actions. *Id.* 523 U.S. at 47-48 & n. 1, 118 S.Ct. 966, 969 & n. 1. Thus, while *Bogan* held that local legislators are entitled to the same legislative immunity as their federal and state counterparts, *Bogan* did not extend that immunity to a defendant-municipality. *Id.* at 53, 118 S.Ct. 966 ("Municipalities themselves can be held liable for constitutional violations * * * *"). Municipalities, including the present Defendant, are therefore not accorded legislative immunity. *Berkley*, 63 F.3d at 296, 300; see *Hake* v. *Carroll Cnty.*, No. WDQ-13-1312, 2014 WL 3974173, at *3-4, 2014 U.S. Dist. LEXIS 112572, at *10-11 (D.Md. Aug. 13, 2014) (magistrate judge's recommendation) (rejecting nearly identical argument of legislative immunity for defendant county when county commissioners offered legislative prayers); *Doe* v. *Pittsylvania Cnty.*, 842 F. Supp. 2d 906, 917-919 (W.D. Va. 2012) (refusing to extend legislative immunity to county board of commissioners because (1) the

county and the board were governmental entities not eligible for such immunity and (2) regardless, legislative prayer is not a legitimate legislative activity protected by legislative immunity).

To the extent Defendant suggests that Defendant is immune because the prayers constitute speech of the individual Commissioners, such an argument is without merit. Under Fourth Circuit precedent, the prayers delivered by the Board are government speech, not private speech. See, e.g., *Turner* v. *City Council*, 534 F.3d 352, 354-355 (4th Cir. 2008) (holding that prayers delivered by members of a City Council were government speech and not private speech). Defendant nonetheless directs the Court to the two-part legislative immunity test of *Gravel* v. *United States*, 408 U.S. 606, 625, 92 S.Ct. 2614, 2627, 33 L. Ed. 2d 583 (1972), in applying the protections of the Speech or Debate Clause. The Board's practices here fail to warrant immunity under *Gravel* because legislative prayers are not integral to the legislative process, and moreover, the members of the Board are not being sued in their individual capacities. See *Hake*, 2014 WL 3974173, at *3-4, 2014 U.S. Dist. LEXIS 112572, at *10-11; *Pittsylvania Cnty.*, 842 F. Supp. 2d at 917-919.

Gravel itself defined the scope of the Speech or Debate Clause, which Defendant attempts to rely upon, as reaching speech, debate, or conduct that is "an integral part of the deliberative and communicative process by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with

respect to other matters which the Constitution places within the jurisdiction of either House." *Gravel*, 408 U.S. at 625, 92 S.Ct. at 2627. This does not capture every official act of a legislator, "but only [those matters] necessary to prevent indirect impairment of such deliberations." *Id.* (quotations omitted) (quoting with approval the Court of Appeals's description of the limits of the Speech or Debate Clause); see *Roberson* v. *Mullins*, 29 F.3d 132, 135 (4th Cir. 1994) (declaring that function of a local government body is legislative only "when it engages in the process of 'adopting prospective, legislative-type rules.'" (quoting *Front Royal & Warren Cnty. Indus. Park Corp.* v. *Town of Front Royal*, 865 F.2d 77, 79 (4th Cir. 1989))). Legislative bodies can and do successfully function absent a legislative prayer practice. As such, prayer can hardly be considered necessary or integral to local government's legislative processes. See *Pittsylvania Cnty.*, 842 F. Supp. 2d at 919-20.

Simply stated, Defendant's legislative immunity arguments are inapplicable here, where Plaintiffs claim that the defendant-municipality's practice violated their constitutional rights, and where the activity complained of is not integral to the legislative process. Accordingly, the Court rejects Defendant's legislative immunity argument and next turns to the merits of Plaintiff's claims, that is, whether Defendant's practice is constitutional under recent Supreme Court precedent.

B. Defendant's Practice as Distinguished from that Approved in *Town of Greece*

On May 5, 2014, the Supreme Court upheld the invocation practices of the Town of Greece, New York, at its monthly Town Council meetings. *Town of Greece*, 134 S.Ct. at 1815. In doing so, the Supreme Court clarified its earlier holdings regarding legislative prayer and rejected any requirement that legislative prayers must be neutral in content and invoke only a generic God. *Id.* at 1821-23. Prior to the Supreme Court's decision in *Town of Greece*, courts routinely analyzed legislative prayer cases under *Marsh* v. *Chambers*, 463 U.S. 783, 103 S.Ct. 3330, 77 L. Ed. 2d 1019 (1983), particularly as discussed in *County. of Allegheny* v. *ACLU*, 492 U.S. 573, 603, 109 S.Ct. 3086, 3106, 106 L. Ed. 2d 472 (1989). E.g., *Joyner* v. *Forsyth Cnty.*, 653 F.3d 341, 349 (4th Cir. 2011); *Wynne* v. *Town of Great Falls*, 376 F.3d 292, 299 (4th Cir. 2004). This Court and the Fourth Circuit interpreted these precedents as establishing that sectarian legislative prayer violated the First Amendment. See[] *Joyner*, 653 F.3d at 349. This interpretation was repudiated by the Supreme Court in *Town of Greece*, thus dismantling the Fourth Circuit's legislative prayer doctrine which developed around the core understanding that the sectarian nature of legislative prayers was largely dispositive of the question of whether there was a constitutional violation.

Town of Greece, however, held that a sectarian legislative prayer does not violate the Establishment Clause, and an otherwise nondiscriminatory practice

resulting in one faith dominating the legislative prayer practice likewise does not create an Establishment Clause violation. *Town of Greece*, 134 S.Ct. at 1823-24. However, this pronouncement does not end the constitutional inquiry regarding the present controversy. The Supreme Court has consistently remarked that Establishment Clause questions are inherently fact-intensive, requiring a thorough examination of all relevant details. See, e.g., *id.*, 134 S.Ct. at 1825 (plurality opinion) (stating in coercion context that "the inquiry remains a fact-sensitive one that considers both the setting in which the prayer arises and the audience to whom it is directed"); *McCreary Cnty., Kentucky* v. *ACLU of Kentucky*, 545 U.S. 844, 867, 125 S.Ct. 2722, 2738, 162 L. Ed. 2d 729 (2005) ("[U]nder the Establishment Clause detail is key."); *Santa Fe Indep. Sch. Dist.* v. *Doe*, 530 U.S. 290, 315, 120 S.Ct. 2266, 2282, 147 L. Ed. 2d 295 (2000) ("Whether a government activity violates the Establishment Clause is 'in large part a legal question to be answered on the basis of judicial interpretation of social facts * * * * Every government practice must be judged in its unique circumstances * * * * *'" (quoting *Lynch* v. *Donnelly*, 465 U.S. 668, 693-94, 104 S.Ct. 1355, 1370, 79 L. Ed. 2d 604 (1984) (O'Connor, J., concurring))); *Lee* v. *Weisman*, 505 U.S. 577, 597, 112 S.Ct. 2649, 2660-61 120 L. Ed. 2d 467 (1992) ("Our Establishment Clause jurisprudence remains a delicate and fact-sensitive one * * * * * "). Likewise, in both *Marsh* and *Town of Greece*, the Supreme Court emphasized the importance of the specific factual contours of the historical tradition of legislative prayer. See *Town of Greece*, 134 S.Ct. at 1819 ("*Marsh*

stands for the proposition that it is not necessary to define the precise boundary of the Establishment Clause where history shows that the specific practice is permitted."); *Marsh*, 463 U.S. at 791, 103 S.Ct. at 3335 (relying on "unique history" of Congress's "practice of prayer similar to that" at issue in *Marsh*). Because of the factually-demanding nature of Establishment Clause questions, and because the legislative prayer permitted under the Establishment Clause represents a narrow rule in First Amendment jurisprudence, the facts before the Supreme Court in *Town of Greece* are particularly relevant to this Court's analysis. As such, a review of *Town of Greece* is necessary in order to carefully evaluate the constitutionality of Defendant's prayer practice based upon the facts before this Court.

1. Facts of *Town of Greece*

The Town of Greece held monthly town meetings, and since 1999, had opened its meetings with a roll call followed by the Pledge of Allegiance and a prayer delivered by a local clergyman. *Town of Greece*, 134 S.Ct. at 1816. As explained in the Supreme Court's opinion:

> The town followed an informal method for selecting prayer givers, all of whom were unpaid volunteers. A town employee would call the congregations listed in a local directory until she found a minister available for that month's meeting. The town eventually compiled a list of willing "board chaplains" who had accepted invitations and agreed to return

> in the future. The town at no point excluded or denied an opportunity to a would-be prayer giver. Its leaders maintained that a minister or layperson of any persuasion, including an atheist, could give the invocation. But nearly all of the congregations in town were Christian; and from 1999 to 2007, all of the participating ministers were too.

Id. at 1816. The town did not review the content of any prayers. *Id.* Two citizens attended town board meetings and "complained that Christian themes pervaded the prayers, to the exclusion of citizens who did not share those beliefs." *Id.* at 1817. This prompted the town board to invite a Jewish layman and the chairman of a Baha'i temple to deliver prayers at meetings; moreover, a Wiccan priestess who learned about the prayer practice contacted the town board about delivering the prayer and was granted an opportunity to do so. *Id.* The two citizens filed suit challenging the prayer practices of the town, arguing that the practice impermissibly sponsored sectarian prayer and preferred Christian prayer-givers over others. *Id.*

The Supreme Court rejected the argument that only nonsectarian, or "generic" legislative prayers comport with the First Amendment. *Id.* at 1820-21. The Supreme Court observed that this mistaken belief that prayer must be nonsectarian "derives from dictum in *County of Allegheny*, 492 U.S. 573, 109 S.Ct. 3086, that was disputed when written and has been repudiated by later cases." *Id.* at 1821. "*Marsh* nowhere suggested that the constitutionality of legislative prayer

turns on the neutrality of its content." *Id.* The Supreme Court reinforced that legislative prayer has a robust history and serves to solemnize legislative proceedings. *Id.* at 1823; see *Marsh*, 463 U.S. at 786, 103 S.Ct. at 3333. The Supreme Court incorporated and added to its observations from *Marsh* establishing legislative prayers' historical mooring. *Id.* at 1818-19. "That the First Congress provided for the appointment of chaplains only days after approving language for the First Amendment demonstrates that the Framers considered legislative prayer a benign acknowledgment of religion's role in society." *Id.* at 1819; see also *Marsh* 463 U.S. at 787-90, 103 S.Ct. at 3333-35 (discussing practices of Congress and state legislatures in having paid chaplains provide legislative prayers). The Supreme Court highlighted that sectarian prayers were in accord with the "tradition of legislative prayer outlined in the Court's cases," pointing to the example of a Christian prayer delivered by one of the U.S. Senate's first chaplains, and Congress's continued practice of permitting its "chaplains to express themselves in a religious idiom." *Town of Greece*, 134 S.Ct. at 1820

Thus, *Town of Greece* held that sectarian legislative prayer does not run afoul of the Establishment Clause. However, the Court indicated some limits to this holding, deriving from the purpose of legislative prayer "to lend gravity to the occasion" so as to "invite[] lawmakers to reflect upon shared ideals and common ends." *Id.* As such, the Supreme Court highlighted an exception when legislative prayer may be unconstitutional: "If the course and practice over time

shows that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion, many present may consider the prayer to fall short of the desire to elevate the purpose of the occasion and unite lawmakers in their common effort." *Id.* "Prayer that reflects beliefs specific to only some creeds can still serve to solemnize the occasion, so long as the practice over time is not 'exploited to proselytize or advance any one, or to disparage any other, faith or belief.'" *Id.* (quoting *Marsh*, 463 U.S. at 794-95, 103 S.Ct. 3330). The Supreme Court determined that the facts disclosed in *Town of Greece* did not constitute any such pattern of denigration or proselytization. *Id.*

The Supreme Court also upheld the Town of Greece's policy and procedure for selecting prayer-givers, even though that process resulted in a majority of Christian-themed prayers led by Christian ministers. *Id.* at 1824. "That nearly all of the congregations in town turned out to be Christian does not reflect an aversion or bias on the part of town leaders against minority faiths." *Id.* In making this determination, the Supreme Court emphasized the town's willingness to welcome a prayer delivered by any religious leader or layperson. *Id.* "So long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing." *Id.*; see also *id.* at 1820-21 ("[Congress] acknowledges our growing diversity not by proscribing sectarian content but by welcoming ministers of many creeds.") This cautionary language was not elaborated

upon by the *Town of Greece* Court, aside from rejecting any requirement that the town achieve a particular level of religious diversity or balancing of views in its invocations. *Id.* Such efforts could foster governmental entanglement with religion. *Id.*

In declaring sectarian legislative prayer constitutional, the Supreme Court relied on the specific history of legislative prayer practices, as it had done in *Marsh.* Based on the long history of legislative prayer as practiced by the First Congress and early state legislatures, and continuing to the present day, the practice of the Town of Greece was constitutional—even when an appointed or volunteer chaplain gave a sectarian prayer. Turning to the case at hand, the "inquiry * * * must be to determine whether the prayer practice [of Defendant] fits within the tradition long followed in Congress and the state legislatures." *Id.* at 1819.

2. Notable Differences Here from *Town of Greece*

In considering the present matter, the Court is guided by the significance the Supreme Court attributed to the historical legislative prayer practice recognized by the Founders and continued by Congress to the present day. Likewise, the Court considers the "constraints" the Supreme Court recognized in upholding sectarian legislative prayer—namely, the purpose of the prayer to solemnize legislative proceedings, and that the particular prayer practice does not advance, proselytize, disparage, or denigrate any religion. In

other words, the legislative prayer practice must fit within this Nation's long-standing tradition of legislative prayer in a manner that does not over time have the effect of promoting or disparaging any given religion, and instead unites lawmakers in a moment of solemnity.

The crucial question in comparing the present case with *Town of Greece* is the significance of the identity of the prayer-giver, either as a member of the legislative body or a non-member of the legislative body. In the present matter, the Commissioners themselves—and only the Commissioners—delivered the prayers at the Board's meetings. In contrast, the Town of Greece invited volunteers from a variety of religious faiths to provide the prayers. After careful consideration, this Court concludes that this distinction matters under the Establishment Clause.

As Defendant asserts, the Supreme Court did not explicitly premise its decision on the fact that the Town Council members were not the ones giving the prayers.[4] However, it is telling that throughout its *Town of*

[4] Defendant points to this Court's observation in an earlier case regarding sectarian prayer to support its proposition that Commissioners can provide legislative prayers. See *Joyner* v. *Forsyth Cnty.*, No. 1:07CV243, Order, at 4 (Jan. 28, 2010) (identifying legislative prayer options for Forsyth County Board of Commissioners, including possibility of board members offering *nonsectarian* prayers). However, this Court's previous decision was issued prior to *Town of Greece* and was premised on the sectarian nature of the prayers in that case under now abrogated Fourth Circuit precedent. Additionally, the Court notes that the Commissioners' provision of prayers is not *per se* unconstitutional. The

Greece opinion and the opinion in *Marsh*, the Supreme Court consistently discussed legislative prayer practices in terms of invited ministers, clergy, or volunteers providing the prayer, and not once described a situation in which the legislators themselves gave the invocation. See e.g., *Town of Greece*, 134 S.Ct. at 1822 ("The law and the Court could not draw this line for each specific prayer or seek to require *ministers* to set aside their * * * personal beliefs * * * * * ") (emphasis added) *id.* at 1823 ("The tradition reflected in Marsh permits *chaplains* to ask their own God for blessings * * * * * ") (emphasis added). Likewise, when recounting the historical practice of legislative prayer, the Supreme Court pointed to how "the First Congress provided for the *appointment of chaplains* only days after approving language for the First Amendment" as evidence that this practice of legislative prayer was constitutional. *Id.* at 1819 (emphasis added); see also *Marsh*, 463 U.S. at 788, 103 S.Ct. at 3334 ("Clearly the men who wrote the First Amendment Religion Clause did not view *paid legislative chaplains* and opening prayers as a violation of that Amendment * * * * * "). Thus, either the Supreme Court carefully limited its analysis in *Town of Greece* and approval of legislative prayer to instances in which the prayer-giver is an individual separate from the deliberative body, or the Supreme Court simply did not consider the issue of whether a

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prayer-givers' identities are significant here in relation to the surrounding circumstances. Under a different, inclusive prayer practice, Commissioners might be able to provide prayers, but that is not the case before the Court.

legislator-as-prayer-giver would comport with historical traditions.[5] Either way, *Town of Greece* and *Marsh* thus do not squarely approve of the practice at issue here, which deviates from the long-standing history and tradition of a chaplain, separate from the legislative body, delivering the prayer. *Town of Greece*, 134 S.Ct. at 1819 ("*Marsh* stands for the proposition that it is not necessary to define the precise boundary of the Establishment Clause where history shows that the specific practice[ ] is permitted."); cf. *North Carolina Civil Liberties Union Legal Found.* v. *Constangy*, 947 F.2d 1145, 1149 (4th Cir. 1991) (observing in case where judge routinely opened court by delivering a prayer that judge acts as the court itself, and accordingly, "[f]or a judge to engage in prayer in court entangles governmental and religious functions to a much greater degree than a chaplain praying before the legislature").

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[5] Defendant argues that in approving of the Nebraska legislature's appointment of a paid chaplain position, the Supreme Court in *Marsh* approved of government officials providing prayers, which would extend to the Commissioners as government officials. Defendant's argument misconstrues *Marsh* and misconceives the role of a legislator. To say that *Marsh* held that any person drawing a paycheck from the government is eligible to deliver a legislative prayer ignores the specific history of legislative prayer. It also ignores that legislators, unlike an appointed or volunteer chaplain, are elected decisionmakers who deliberate within the legislative body to whom the prayers are allegedly directed. An appointed chaplain possesses no such legislative, policy-making power.

The *Town of Greece* Court's concern with government involvement in legislative prayer practices underscores the constitutional dilemma posed by legislators acting as prayer-givers. *Town of Greece* reasoned that requiring prayers to be nonsectarian would "force the legislatures that sponsor prayers * * * to act as supervisors and censors of religious speech, a rule that would involve government in religious matters to a far greater degree than is the case under the town's current practice of neither editing or approving prayers in advance nor criticizing their content after the fact." *Town of Greece*, 134 S.Ct. at 1821. Where the Commissioners themselves are the ones giving the prayer, they are by default acting as "supervisors" of the prayers, and are themselves "editing [and] approving prayers" as they simultaneously deliver those prayers. In the same discussion of government involvement in prayers, the Supreme Court continued by reinforcing that "[o]ur Government is prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior." (citing *Engel* v. *Vitale*, 370 U.S. 421, 430, 82 S.Ct. 1261, 1266, 8 L. Ed. 2d 601 (1962)). Under the Board's practice, the government is delivering prayers that were exclusively prepared and controlled by the government, constituting a much greater and more intimate government involvement in the prayer practice than that at issue in *Town of Greece* or *Marsh*. The Commissioners here cannot separate themselves from the government in this instance.

Additionally, because of the prayer practice's exclusive nature, that is, being delivered solely by the Commissioners, the prayer practice cannot be said to be nondiscriminatory. The need for the prayer policy to be nondiscriminatory was one of the characteristics key to the constitutionality of the Town of Greece's practice. *Town of Greece*, 134 S.Ct. at 1824. Instead, the present case presents a closed-universe of prayer-givers, that being the Commissioners themselves, who favored religious beliefs believed to be common to the majority of voters in Rowan County. While an all-comers policy is not necessarily required, a nondiscriminatory one is. When all faiths but those of the five elected Commissioners are excluded, the policy inherently discriminates and disfavors religious minorities. That some day a believer in a minority faith could be elected does not remedy that until then, minority faiths have no means of being recognized. When only the faiths of the five Commissioners are represented, the Board "reflect[s] an aversion or bias on the part of [county] leaders against minority faiths," namely, any faith not held by one of the Commissioners. See *id.* Such a system is in stark contrast with the policy at issue in *Town of Greece*, where a follower of any faith, including members of the general public, were welcome to deliver the prayer at town council meetings.

The observations of one district court regarding a case similar to the present matter, while not binding on this Court, provide further persuasive support for

this Court's conclusions. In considering the possibility[6] of modifying an injunction against the Pittsylvania County Board of Supervisors, the district court noted that, like in this case, the "Board members themselves served as exclusive prayer providers," and thus "persons of other faith traditions had no opportunity to offer invocations." *Hudson* v. *Pittsylvania Cnty.*, No. 4:11cv043, 2014 U.S. Dist. LEXIS 106401, at *5 (W.D.Va. Aug. 4, 2014). The board in *Hudson* also "directed the assembled citizens to participate in the prayers by asking them to stand." *Id.* at *6. Based on these details—which parallel those presently before this Court—the *Hudson* district court concluded "the active role of the Pittsylvania County Board of Supervisors in leading the prayers, and, importantly, dictating their content, is of constitutional dimension and falls outside of the prayer practices approved in *Town of Greece*." *Id.* at *6-7.

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[6] The district court issued its short memorandum opinion while the merits of the original case and an attorney's fees issue were on appeal to the Fourth Circuit. *Hudson*, 2014 U.S. Dist. LEXIS 106401, at *7. Thus, the district court's opinion was an indication of how it was inclined to rule on the Motion for Relief before it, but the Court was unable to issue an Order modifying the injunction during the pendency of the appeal. *Id.* Subsequently, on October 28, 2014, the Fourth Circuit addressed the attorney's fees issue before it, but determined it lacked jurisdiction to consider the merits of the district court's earlier judgment. See *Hudson* v. *Pittsylvania Cnty.*, 774 F.3d 231, 233-34 & n. 2 (4th Cir. 2014). The Fourth Circuit explicitly recognized that it did not consider the *Town of Greece* decision as applied to the facts of *Hudson*. *Id.* at 234 n. 2.

The prayer practice of Defendant likewise fails to comport with the tradition and purposes embodied in the *Town of Greece* decision. Several significant differences distinguish the constitutional, historically-rooted legislative prayer of *Town of Greece* and *Marsh* from the present case. These determinative differences include that the legislators themselves—the Commissioners—deliver the prayers. The Commissioners are the solely eligible prayer-givers and provide prayers according to their personal faiths,[7] which have overwhelmingly been Christian. The prayers are thus effectively being delivered by the government itself. Such distinctions implicate the cautionary words in *Town of Greece.* The Board's practice fails to be non-discriminatory, entangles government with religion, and over time, establishes a pattern of prayers that tends to advance the Christian faith of the elected Commissioners at the expense of any religious affiliation unrepresented by the majority.

C. Establishment Clause Coercion Analysis

As detailed above, the prayer practices of Defendant do not "fit [] within the tradition long followed in Congress and the state legislatures," *Town of*

[7] The Court acknowledges that after initiation of the present lawsuit, then-Commissioner Coltrain offered a moment of "silent prayer" at two meetings instead of delivering sectarian prayers. However, those two isolated prayers do not negate the overwhelming pattern and practice of the Board, which the Board seems prepared to return to.

Greece, 134 S.Ct. at 1820, and thus cannot be constitutional by virtue of legislative prayer's history. Accordingly, the Court must next turn to whether the practice, as not fitting within the legislative prayer exception, constitutes an unconstitutional establishment of religion. Specifically, Plaintiffs argue that Defendant's specific practice of opening Board meetings with a Commissioner-led prayer violates the Establishment Clause as a coercive religious exercise.

This Court is mindful that the Fourth Circuit has "emphasized that the *Lemon* test guides our analysis of Establishment Clause challenges." *Mellen* v. *Bunting*, 327 F.3d 355, 370-371 (4th Cir. 2003); *Koenick* v. *Felton*, 190 F.3d 259, 264-265 & n. 4 (4th Cir. 1999) (acknowledging "the Supreme Court has employed several different tests presented as either glosses or replacements for the *Lemon* test" but determining that courts must rely on *Lemon's* principles until overruled). The *Lemon* test requires a government action to satisfy three conditions: "First, the [governmental act] must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the [governmental act] must not foster an excessive government entanglement with religion." *Lemon* v. *Kurtzman*, 403 U.S. 602, 612-13, 91 S.Ct. 2105, 2111, 29 L. Ed. 2d 745 (1971) (internal citations and quotations omitted); see *Lambeth* v. *Bd. of Comm'rs*, 407 F.3d 266, 269 (4th Cir. 2005) (reciting *Lemon* factors and noting incorporation of "endorsement" test under *Lemon's* second prong).

The relationship between the *Lemon* test and coercion doctrine remains unclear. See *Mellen*, 327 F.3d at 370-71; *Doe* v. *Elmbrook Sch. Dist.*, 687 F.3d 840, 850 (7th Cir. 2012) (en banc) ("Where the coercion test belongs in relation to the Lemon test is less clear."), *cert. denied*, ___ U.S. ___, 134 S.Ct. 2283, 189 L. Ed. 2d 795 (2014). Neither party cites to *Lemon* as relevant on the present facts. However, as some courts have observed, if a government act would fail the coercion test, it would almost necessarily fail under the second, "effects" prong of *Lemon*. E.g. *Gray* v. *Johnson*, 436 F. Supp. 2d 795, 799 n. 4 (W.D.Va. 2006); *Nusbaum* v. *Terrangi*, 210 F. Supp. 2d 784, 788 (E.D.Va. 2002) ("[W]here coercion is present, the program will inevitably fail the Lemon test."); *Ross* v. *Keelings*, 2 F. Supp. 2d 810, 817 (E.D.Va. 1998) ("[A]s a practical matter, a per se rule focusing on coercion is a permissible substitute for the traditional *Lemon* test in this context because the mere fact that coercion is exerted by the state is enough to fail the second prong of the test."). This appears true here: If Defendant's prayer practice unconstitutionally coerces Plaintiffs into religious exercises, then the practice would almost certainly have the effect of advancing religion. See *Lemon*, 403 U.S. at 612-13, 91 S.Ct. at 2111; *Lambeth*, 407 F.3d at 269; see also *Mellen*, 327 F.3d at 372 (4th Cir. 2003) (determining, after finding prayer practice coercive, that "in sponsoring an official prayer, VMI has plainly violated *Lemon's* second and third prongs"). Insomuch as the Parties have limited their argument to coercion, and have not raised *Lemon*, the Court will limit its review to whether the practice is unconstitutionally coercive.

Nonetheless, the Court notes that if the prayer practice is coercive, then it would necessarily advance religion in violation of the second *Lemon* prong.[8]

1. The *Town of Greece* Plurality's Coercion Analysis

In advancing their respective arguments regarding coercion, both Plaintiffs and Defendant rely on Justice Kennedy's opinion in *Town of Greece*. In a footnote, Defendant declares that Justice Kennedy's plurality opinion as to the coercion analysis is binding law. Defendant offers no explanation or analysis for this aside from a naked citation to the Fourth Circuit case *A.T. Massey Coal Co.* v. *Massanari*, 305 F.3d 226, 236 (4th Cir. 2002). *Massanari* cites to and explains the Supreme Court's rule in *Marks* v. *United States*, 430 U.S. 188, 97 S.Ct. 990, 51 L. Ed. 2d 260 (1977), that in a Supreme Court decision lacking a majority opinion, "the judgment on the 'narrowest grounds' is to be regarded as the Court's holding." *Massanari*, 305 F.3d at 236 (quoting *Marks*, 430 U.S. at 193, 97 S.Ct. at 993). "The *Marks* rule does not apply, however, unless 'the narrowest opinion represents a common denominator of

[8] The Court also notes that there are serious questions of whether the practice might violate the other two *Lemon* prongs, particularly the third prong regarding excessive government entanglement with religion. Indeed, as is relevant here, the majority opinion in *Town of Greece* evoked this prong of *Lemon* in expressing concerns with government control over prayer content and prayer procedures. See *Town of Greece*, 134 S.Ct. at 1822, 1824.

the Court's reasoning and embodies a position implicitly approved by at least five Justices who support the judgment.'" *Id.* (quoting *Ass'n of Bituminous Contractors, Inc.* v. *Apfel*, 156 F.3d 1246, 1254 (D.C.Cir. 1998) (internal quotations omitted)); see also *United States* v. *Abdulwahab*, 715 F.3d 521, 530 (4th Cir. 2013) ("[I]n the case of a plurality opinion, the holding of the Court is the narrowest holding that garnered five votes." (citing *United States* v. *Halstead*, 634 F.3d 270, 277 (4th Cir. 2011))).

On the facts presented in *Town of Greece*, five Justices concurred that unconstitutional coercion did not occur. Justice Kennedy, joined by Chief Justice Roberts and Justice Alito, reached this conclusion by noting that whether citizens were "compelled * * * to engage in a religious observance" is a fact-intensive inquiry that "considers both the setting in which the prayer arises and the audience to whom it is directed." *Town of Greece*, 134 S.Ct. at 1825 (plurality opinion). The history and tradition of legislative prayer is relevant in the coercion context as well, according to Justice Kennedy, and the "reasonable observer" is presumed to be aware of that history and recognize the purpose of such practices. *Id.* at 1826. Justice Kennedy provided examples of when a legislative prayer practice might cross the constitutional line, such as "if town board members directed the public to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person's acquiescence in the prayer opportunity." *Id.* Justice Kennedy continued by observing that "a practice that

classified citizens based on their religious views would violate the Constitution, but that is not the case before this Court." *Id.*

In contrast, Justices Thomas and Scalia would require coercion to consist of being " 'by force of law and threat of penalty,' " according to their understanding of "coercive state establishments that existed at the founding." *Id.* at 1837 (Thomas, J., concurring in part and concurring in the judgment) (quoting *Lee* v. *Weisman*, 505 U.S. 577, 640, 112 S.Ct. 2649, 120 L. Ed. 2d 467 (1992) (Scalia, J., dissenting)). Justice Thomas summarized this view and its relevance to the facts of *Town of Greece* by stating "to the extent coercion is relevant to the Establishment Clause analysis, it is actual legal coercion that counts—not the 'subtle coercive pressures' allegedly felt by respondents in this case." *Id.* at 1838. Nonetheless, Justice Thomas and Justice Scalia agreed with Justice Kennedy's plurality analysis that an individual taking or finding offense from the activity does not constitute coercion, "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.* (quotations and citations omitted).

Thus, five Justices agreed that the Town of Greece did not engage in an unconstitutionally coercive practice in how it implemented its opening prayer practice. Those five Justices likewise agreed that offense or a sense of affront due to exposure to "contrary religious views in a legislative forum" does not constitute coercion. *Id.* at 1838; *id.* at 1826 (plurality opinion). The

plurality opinion's fact-dependent inquiry and its examples of when "the analysis would be different" and Justice Thomas's concurrence's legal coercion standard provide suggestions of when coercion might occur, but neither can be said to constitute a definitive holding. In other words, "the narrowest holding that garnered five votes," *Halstead*, 634 F.3d at 277, is that the specific circumstances of *Town of Greece*, including the plaintiffs' offense at the prayer practice, did not rise to the level of unconstitutional coercion. *Town of Greece* simply gives one situation that does not constitute coercion, but does not conclusively declare when legislative prayer might constitute coercion.

Even though the plurality's coercion analysis represented the views of only three Justices, the Court considers it persuasive to the extent it provides some possible guiding principles for applying the coercion doctrine in the context of legislative prayer. See *Myers* v. *Loudoun Cnty. Pub. Schs.*, 418 F.3d 395, 406 (4th Cir. 2005) ("Although we are not bound by dicta or separate opinions of the Supreme Court, 'observations by the Court, interpreting the First Amendment and clarifying the application of its Establishment Clause jurisprudence, constitute the sort of dicta that has considerable persuasive value in the inferior courts.'" (quoting *Lambeth*, 407 F.3d at 271 (4th Cir. 2005))). In rejecting the plaintiffs' coercion argument, the plurality emphasized the inclusive nature of the town's policy and that a variety of invited clergy delivered the prayers in question. *Town of Greece*, 134 S.Ct. at 1827

(plurality opinion). As noted above, the plurality expressed doubt as to the constitutionality of situations where town leaders were to solicit gestures of religious observance from the public audience, or direct them to join in the prayers. The plurality framed the inquiry as fact-dependent, including the setting and the audience to whom the prayers are directed. *Town of Greece*, 134 S.Ct. at 1825 (plurality opinion)

Applying the plurality's analysis here suggests that Defendant's practice constituted unconstitutional coercion in violation of the Establishment Clause. The undisputed facts establish that a Commissioner always provided the opening prayer, and almost always did so by delivering an exclusively Christian prayer. Cf. *id.* at 1826 (observing that "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, *especially where, as here, any member of the public is welcome in turn to offer an invocation reflecting his or her own convictions*" (emphasis added)). The Board Chair here would regularly ask that everyone stand for the prayer and the Pledge of Allegiance. Then, the designated prayer-giving Commissioner would often open the prayer by saying such phrases as "let us pray," or "please pray with me." Because no one other than the Commissioners provided the prayers, the prayers repeatedly and exclusively advanced only the faiths of the five Commissioners.

That the Commissioners themselves, and not a volunteer minister without community policy-making

power, issued such directives is significant. See *Town of Greece*, 134 S.Ct. at 1826. The Commissioners "directed the public to participate in the prayers" by asking them to stand for and join in the prayer. See *id.* Although Defendant argues that the prayers are offered solely for the benefit of the Board, that the Board signaled for the public to join in the prayers undercuts such an argument. Defendant likewise suggests that the Commissioners' statements are mere invitations to stand, and do not rise to the level of a command as Defendant apparently reads *Town of Greece* to require. Plaintiffs respond that Defendant attempts to substitute the word "command" and a corresponding implication of possible penalties with *Town of Greece's* actual phraseology, which consisted of variations of the words ask, request, solicit, and direct. As Plaintiff argues, the *Town of Greece* plurality did not premise its definitions of "soliciting" or "directing" on a threat of penalty and never used the word "command." Here, the Board's statements fall squarely within the realm of soliciting, asking, requesting, or directing, and thus within the territory of concern to the *Town of Greece* plurality. Even if the Board's statements were mere invitations, and if that distinction mattered, an invitation from a government authority issued to the public often carries more weight and an expectation of compliance than other invitations. For example, when a government official states at a public meeting, "If you would come to order," or "Please be quiet," few, if any, would consider such requests to be mere invitations which could be ignored.

While Defendant asserts that members of the public do not have to participate in the prayers and may leave the room or remain seated without consequence, Defendant relies on the post-litigation affidavits of the individual Commissioners in making such claims. (See Def.'s Resp. Pls.' Cross M. for Summ. J. [Doc. # 55], at 2.) The affidavits fail to demonstrate that the attending public is ever made aware of such options, particularly when the public only hears phrases instructing everyone to stand and join in prayer, and not any statements indicating that public attendees need not do so. Indeed, Defendant does not contend or provide evidence that the Board did not actually solicit the public to stand and join in prayer on those occasions discussed by Plaintiffs in their Verified Complaint and Affidavits.[9] To the extent that Defendant attempts to provide post-lawsuit disclaimers that were never communicated to the public, such evidence does not demonstrate that the public knew they could leave or refrain from participating. In sum, that the Commissioners personally held such beliefs about the public's participation in prayers does not alter the atmosphere and context in which the prayers were given and received by the public.

The individual Commissioners' statements to news media enhance the coercive setting and further demonstrate that the prayers were for the benefit of

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[9] To the extent the online, public videos of the Board meetings, as incorporated by reference in Plaintiffs' Verified Complaint and Exhibit D, are considered, such videos would foreclose any such refutation by Defendant.

the public, as well as the Board. For example, Commissioner Jon Barber, in professing his adamant opposition to changing the Board's prayer practice, was quoted by the local newspaper as saying that the practice "has been a tradition for the board, for our citizens and for our country." (See Pls.' Ex. 2 [Doc. # 53-2], at 1.) The same newspaper article quoted then-Chairman Chad Mitchell as being in favor of fighting the present litigation "because it's not just fighting for these five people's rights but for all the citizens of Rowan County." (*Id.* at 2.) Former Commissioner Carl Ford professed that "asking for guidance for my decisions from Jesus is the best I, and Rowan County, can ever hope for." These statements, along with the previously-mentioned statement by Commissioner Sides indicating his frustration and disapproval with minority religions, demonstrate that Commissioners do not consider the prayer practice as an internal act directed at one another, but rather, that it is also directed toward citizens and for the benefit of all of Rowan County.

The Commissioners' statements also develop the atmosphere of coercion surrounding Board meetings. To the extent that "[i]t is presumed that the reasonable observer is acquainted with this tradition" of legislative prayer, a reasonable observer would likewise be aware of such public statements made by Commissioners outside of meetings. *Town of Greece*, 134 S.Ct. at 1826 (plurality opinion). The public statements attributed to the Commissioners indicate that at least some of the Commissioners have a preference for

Christianity, and that they perceive the prayer practice as being for the benefit of the citizens of Rowan County, not just for themselves. Likewise, many members of the public appear to view the prayers as being for public consumption, as indicated by the audience's booing and jeering of an individual who expressed opposition to the Board's prayer practice (Compl. [Doc. # 1], at ¶ 32.) While the audience's reaction cannot be directly attributed to the Board, the audience's jeering further develops the context and atmosphere of Board meetings, which in turn places additional pressure on Plaintiffs to conform.

Insomuch as the coercion analysis in the *Town of Greece* plurality opinion is persuasive authority, the opinion in *Town of Greece* places this case more toward the coercive end of the spectrum than toward the constitutional practice at issue in *Town of Greece.* Justice Kennedy's general rules for evaluating potential coercion in the legislative prayer context, particularly the examples he identified as being problematic, and the inclusive characteristics of the Town of Greece's practice that he emphasized, point the Court in the direction of finding the practice of Defendant unconstitutionally coercive. However, because the plurality's coercion analysis does not constitute binding precedent, the Court must next consider the coercion doctrine as developed prior to *Town of Greece.*

2. General Principles of the Coercion Doctrine Pre-*Town of Greece*

Having reviewed the *Town of Greece* plurality's coercion analysis, the Court turns to the principles of coercion doctrine developed prior to the *Town of Greece* decision. Although the Parties rest their coercion arguments on *Town of Greece*, the Court will consider the background of coercion cases in addressing the present matter, since the coercion analysis in *Town of Greece* is not a majority opinion of the Supreme Court.

Outside of the legislative prayer context, the Supreme Court and Fourth Circuit have found certain practices unconstitutionally coercive under the Establishment Clause, and have accordingly developed guiding principles for such fact-sensitive inquiries. The coercion doctrine prohibits the government from engaging in actions that coerce citizens to engage in religious conduct. "It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or religious faith, or tends to do so.'" *Lee* v. *Weisman*, 505 U.S. 577, 587, 112 S.Ct. 2649, 2655, 120 L. Ed. 2d 467 (U.S. 1992) (quoting *Lynch* v. *Donnelly*, 465 U.S. 668, 678, 104 S.Ct. 1355, 79 L. Ed. 2d 604 (1984)); see *Santa Fe Indep. Sch. Dist.* v. *Doe*, 530 U.S. 290, 312, 120 S.Ct. 2266, 2280-81, 147 L. Ed. 2d 295 (2000). As the Fourth Circuit explained, "indirect coercion may be unconstitutional when government orchestrates 'the performance of a formal religious exercise' in a fashion that practically

obliges the involvement of non-participants." *Myers*, 418 F.3d at 406 (quoting *Lee*, 505 U.S. at 586, 112 S.Ct. 2649). Coercion analysis is also concerned with the possibility of majority viewpoint dominance over minority viewpoints in a manner that thrusts majoritarian views upon the minority. See *Santa Fe*, 530 U.S. at 304, 310, 120 S.Ct. at 2276, 2279-80 ("The majoritarian process implemented by the District guarantees, by definition, that minority candidates will never prevail and that their views will be effectively silenced."); *Engel* v. *Vitale*, 370 U.S. 421, 430-431, 82 S.Ct. 1261, 1267, 8 L. Ed. 2d 601 (1962) ("When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain."); see also *Wallace* v. *Jaffree*, 472 U.S. 38, 60 n. 51, 105 S.Ct. 2479, 2492 n. 51, 86 L. Ed. 2d 29 (1985) (quoting *Engel* and noting that the impact of "indirect coercive pressure" is particularly concerning in the public school context). The bulk of the coercion cases—in the Fourth Circuit and beyond—demonstrate that context is key. These cases require an atmosphere that renders the plaintiff "particularly susceptible to the religious indoctrination or peer pressure" of the governmental actor. *Hewett* v. *City of King*, 29 F. Supp. 3d 584, 638 (M.D.N.C. 2014); see *Mellen* v. *Bunting*, 327 F.3d 355, 371-72 (4th Cir. 2003).

The Supreme Court's coercion doctrine prior to *Town of Greece* has developed largely in several cases involving school children. E.g. *Lee*, 505 U.S. at 586-87,

112 S.Ct. at 2655; *Santa Fe*, 530 U.S. at 311-12, 120 S.Ct. at 2280-81; *Engel*, 370 U.S. at 424, 82 S.Ct. at 1263-64; cf. *Sch. Dist. of Abington Twp.* v. *Schempp*, 374 U.S. 203, 224, 83 S.Ct. 1560, 1572, 10 L. Ed. 2d 844 (1963) (holding state laws requiring reading of bible verses and recitation of the Lord's Prayer as unconstitutional under the First Amendment because the laws "require[d] religious exercises"). See generally *Mellen*, 327 F.3d at 366-368 (summarizing and discussing Supreme Court decisions involving prayers in public school settings). The two seminal cases in the Supreme Court's coercion jurisprudence are *Lee* and *Santa Fe*, both of which involved prayers at public school events. In *Lee*, the Supreme Court emphasized the public school context in finding that the school's practice of selecting a member of the clergy to deliver a prayer at high school graduations was unconstitutionally coercive. *Lee*, 505 U.S. at 597, 112 S.Ct. at 2660-61. The Supreme Court distinguished the high school graduation prayer from the legislative prayers in *Marsh*, noting that *Marsh* concerned adults who were free to come and go during a state legislature's opening session. The *Lee* court highlighted the significance of high school graduation in a student's life, characterizing "[t]he influence and force of a formal exercise in a school graduation are far [greater] than the prayer exercise we condoned in *Marsh*."

In *Santa Fe*, the Supreme Court found the practice of a high school in opening its football games with a student-led prayer was an unconstitutionally coercive practice in violation of the Establishment Clause.

Santa Fe, 530 U.S. at 310-11, 120 S.Ct. at 2279-80. Even though attendance at the football games was not mandatory, the Supreme Court observed that for students involved in extracurricular activities like cheerleading or the football team, attendance was effectively required. *Id.* at 311, 120 S.Ct. at 2280. "Even if we regard every high school student's decision to attend a home football game as purely voluntary, we are nevertheless persuaded that the delivery of a pregame prayer has the improper effect of coercing those present to participate in an act of religious worship." *Id.* at 312, 120 S.Ct. at 2280. In holding as such, the Supreme Court recognized the difficult choice students would be presented with if they had to choose between not attending the games or to attend and be submitted to a "personally offensive religious ritual." *Id.*

The school setting and impressionability of youth were important factors in the Supreme Court's decisions in *Lee* and *Santa Fe.* However, the Supreme Court nowhere suggested that coercion could not occur with an adult audience. Indeed, the plurality in *Town of Greece* admits that coercion could occur specifically in the legislative prayer context. Moreover, the Fourth Circuit has explicitly included adults as being susceptible to unconstitutionally coercive state practices. In *Mellen* v. *Bunting*, the Fourth Circuit found that * * * the Virginia Military Institute's ("VMI") practice of holding a supper prayer six nights a week violated the Establishment Clause as an unconstitutionally coercive practice. The supper prayer was delivered once cadets were in formation, and the cadets were required

to stand still and remain silent while the prayer was delivered, although the cadets were "not obliged to recite the prayer, close their eyes, or bow their heads." *Mellen*, 327 F.3d at 362. The Fourth Circuit ascribed great significance to VMI's "adversative method" of instruction which created a "coercive atmosphere." *Id.* at 371. The technically voluntary nature of the supper prayer did not prevent a finding of coercion. *Id.* at 372. Instead, given the context of the prayer and the coercive atmosphere, the Fourth Circuit held "the Establishment Clause precludes school officials from sponsoring an official prayer, even for mature adults." *Id.* at 371-72. Other courts have also acknowledged the applicability of coercion analysis beyond the school context or child plaintiffs. E.g. *DeStefano* v. *Emergency Hous. Group, Inc.*, 247 F.3d 397, 413 (2d Cir. 2001) (observing tenets of Supreme Court coercion would apply to state-sponsored religiously-imbued alcoholism treatment program without non-religious alternative, even if the program was technically voluntary); *Kerr* v. *Farrey*, 95 F.3d 472, 476-480 (7th Cir. 1996) (finding an inmate's mandatory participation in Narcotics Anonymous, which included religious exercises, to be unconstitutionally coercive under the Establishment Clause); *Marrero-Méndez* v. *Pesquera*, No. 13-1203, 2014 WL 4109518, at *3-4, 2014 U.S. Dist. LEXIS 116118, at *8-10 (D.P.R. Aug. 19, 2014) (applying *Lee* and coercion doctrine to claim of coercive prayer practice brought by police officer against supervisor); *Gray* v. *Johnson*, 436 F. Supp. 2d 795, 799-800 & n. 4 (W.D.Va. 2006) (considering whether inmate was coerced within *Lemon* framework,

noting that a coercive practice would fail *Lemon's* effects prong).

In one of its more recent coercion decisions, the Fourth Circuit conceptualized the coercion inquiry as involving two factors. First, the court "looks to the context in which the assertedly coerced activity occurs," and second, the court considers "the character of the activity itself." [S]ee *Child Evangelism Fellowship of Md., Inc.* v. *Montgomery Cnty. Pub. Schs.*, 373 F.3d 589, 598 (4th Cir. 2004). In the prison context, other Circuits have employed a similar, three-part test derived from *Lee* which looks to whether the state acted, whether the action was coercive, and whether the coercion was religious in nature. See *Kerr*, 95 F.3d at 479; *Jackson* v. *Nixon*, 747 F.3d 537, 542 (8th Cir. 2014); *Inouye* v. *Kemna*, 504 F.3d 705, 713 (9th Cir. 2007); see also *Marrero-Méndez*, 2014 WL 4109518, at *3-4, 2014 U.S. Dist. LEXIS 116118, at *8-10, (using three-part coercion test where police officers engaged in closing prayer and atheist officer was not allowed to leave, was isolated from the rest of the officers, and was verbally humiliated by supervisor).

These tests are particularly useful given the fact-specific nature of Establishment Clause cases, as well as the lack of consensus from the Supreme Court in *Town of Greece* as to the appropriate coercion inquiry in a legislative prayer case. Moreover, the Court observes that the *Town of Greece* plurality structured its coercion analysis around similar factors to the Fourth Circuit's, identifying the inquiry as fact-intensive and focused on that "both the setting in which the prayer

arises and the audience to whom it is directed." *Town of Greece*, 134 S.Ct. at 1825 (plurality opinion). Applying the Fourth Circuit's factors from *Child Evangelism Fellowship of Maryland, Inc.* here, while cognizant of the greater background of coercion cases and principles, directs a finding that Defendant's prayer practice is coercive. The context in the present case is one in which the government, through elected, policymaking officials, engages in a religious exercise (almost exclusively representing one faith) directly before making decisions on public matters and addressing the concerns of county citizens and residents. The character of the particular coerced activity is that of the government asking for public participation in a prayer exercise, so that non-adherents in the majority faith must either acquiesce to the exercise or effectively brand themselves as outsiders by not following along. See *Child Evangelism Fellowship of Md., Inc.*, 373 F.3d at 599 (identifying situations in which the coerced activity constituted unconstitutional coercion because of its inherently religious nature, including being "bound to sit by while other students or faculty pray," and being "required, or even encouraged, to accept a religious tract, or asked to read or listen to a religious message"); see also *Peck* v. *Upshur Cnty. Bd. of Educ.*, 155 F.3d 274, 287 (4th Cir. 1998) (" 'The inquiry with respect to coercion must be whether the *government* imposes pressure upon a student to participate in a religious activity.' " (quoting *Bd. of Educ.* v. *Mergens*, 496 U.S. 226, 261, 110 S.Ct. 2356, 2378, 110 L. Ed. 2d 191 (1990) (Kennedy, J., concurring in part and concurring in the judgment))).

Even when looking beyond the *Child Evangelism Fellowship of Maryland, Inc.* factors to the broader themes of coercion captured in coercion cases, the practices here indeed appear to fall within those generally unconstitutional practices. "Certainly "subtle coercive pressures" deprive attendees of a "real choice" as to whether to participate in the prayer practice by standing along with the majority of the public and the Commissioners." See *Lee*, 505 U.S. at 592, 595, 112 S.Ct. at 2658-59; see also *DeStefano*, 247 F.3d at 412 (observing in context of adults that "Government and those funded by government 'may no more use social pressure to enforce orthodoxy than [they] may use more direct means.' " (quoting *Lee*, 505 U.S. at 594, 112 S.Ct. at 2659)). While attendance at Board meetings is of course not mandatory, for concerned citizens wishing to advocate for matters of local import with direct impact on local citizens' lives, attendance and maintaining the Board's respect are of utmost importance. When Plaintiffs wish to advocate for local issues in front of the Board, they should not be faced with the choice between staying seated and unobservant, or acquiescing to the prayer practice of the Board, as joined by most, if not all, of the remaining public in attendance.

Defendant argues that "hurt feelings" do not prove that a practice is unconstitutionally coercive, citing to the *Town of Greece* plurality's statement that "[o]ffense, however, does not equate to coercion." *Town of Greece*, 134 S.Ct. at 1826 (plurality opinion). As Plaintiffs note, Defendant in essence argues for a

heightened showing for coercion, stating that Plaintiffs never alleged or proved that they suffered penalties for failing to comply with a request to stand and pray. The plurality in *Town of Greece* required no such showing, and coercion jurisprudence before *Town of Greece* likewise does not demand such a showing. Moreover, Plaintiffs have attested to much more than "hurt feelings" as argued by Defendant, in that each Plaintiff attested to feeling compelled and coerced to participate in the prayers so as not to diminish their community standing and ability to be effective advocates.

As past coercion cases and the *Town of Greece* plurality emphasize, context is key in Establishment Clause violations involving coercive practices. Here, the Board's legislative prayer practice leads to prayers adhering to the faiths of five elected Commissioners. The Board maintains exclusive and complete control over the content of the prayers, and only the Commissioners deliver the prayers. In turn, the Commissioners ask everyone—including the audience—to stand and join in what almost always is a Christian prayer. On the whole, these details and context establish that Defendant's prayer practice is an unconstitutionally coercive practice in violation of the Establishment Clause. The practice "sends the * * * message to members of the audience who are nonadherents 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.'" *Santa Fe*, 530 U.S. at 309-310, 120 S.Ct. at 2279 (quoting *Lynch* v. *Donnelly*, 465 U.S. 668, 688,

104 S.Ct. 1355, 79 L. Ed. 2d 604 (1984) (O'Connor, J., concurring)). The Board's practice contravenes the Establishment Clause by dividing along religious lines and exacting coercive pressure on nonadherents to conform to the majority-represented faith. Nonadherents, such as Plaintiffs, would feel pressured to conform so as to not diminish their political clout or social standing. "When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." *Engel* v. *Vitale*, 370 U.S. 421, 430-431, 82 S.Ct. 1261, 1267, 8 L. Ed. 2d 601 (1962); see *Hudson*, 2014 U.S. Dist. LEXIS 106401, at *6 ("[T]he prayer practice in Pittsylvania County had the unconstitutional effect, over time, of officially advancing one faith or belief, violating 'the clearest command of the Establishment Clause * * * that one religious denomination cannot be officially preferred over another.'" (quoting *Larson* v. *Valente*, 456 U.S. 228, 244, 102 S.Ct. 1673, 72 L. Ed. 2d 33 (1982))). The Court, therefore, finds that Defendant's prayer practice, in directing the public to stand and pray, violates the bedrock principles of the Establishment Clause, in that it serves as an unconstitutionally coercive practice.

IV. CONCLUSION

It is the Court's conclusion that Defendant's practice does not fit within the long history and tradition of legislative prayer condoned in *Marsh* and *Town of*

Greece. As noted herein, key distinctions, including that Commissioners themselves are the sole prayer-writers and prayer-givers, distinguish Defendant's practice from that at issue in *Town of Greece.* In turn, considering the persuasive weight of the *Town of Greece's* plurality opinion and the general principles of past coercion cases, Defendant's practice is unconstitutionally coercive in violation of the Establishment Clause of the United States Constitution.[10] As the Supreme Court reiterated in *Town of Greece*, "[o]ur Government is prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior." 134 S.Ct. at 1822 (citing *Engel*, 370 U.S. at 430, 82 S.Ct. at 1266 (1962)). The practice of the Board is much more similar to this prohibited activity than it is to the inclusive, non-discriminatory, and non-coercive practice of the *Town of Greece* in inviting volunteers to deliver legislative prayers. The Court finds that the Board's practice violates the Establishment Clause for the reasons more fully discussed above. In turn, Plaintiffs are entitled to judgment as a matter of law.

Accordingly, the Court will deny Defendant's Motion for Summary Judgment [Doc. # 51] and grant Plaintiffs' Motion for Summary Judgment [# 52]. As such, the Court will replace its preliminary injunction

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[10] In their Verified Complaint, Plaintiffs also claimed Defendant's practice violated the North Carolina Constitution. Because the Court finds that Defendant's prayer practice violates the United States Constitution, the Court need not address this claim.

against sectarian prayer with a permanent injunction enjoining Defendant Rowan County from engaging in the prayer practice described above, under which Commissioners and only Commissioners provide the prayers and Commissioners direct citizens to stand and pray along with the Commissioners. The Court further concludes that Plaintiffs may pursue attorney's fees and costs from Defendant under 42 U.S.C. § 1988 pursuant to the procedure set out in Local Rule 54.2.

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Summary Judgment [Doc. # 52] is GRANTED. IT IS DECLARED that Defendant's invocation practice violates the Establishment Clause of the United States Constitution, and Defendant is ENJOINED from continuing its practice as discussed above. IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment [Doc. 51] is DENIED. FINALLY, IT IS ORDERED that Plaintiffs be awarded $1.00 in nominal damages as requested in their Verified Complaint, and that Plaintiffs may pursue attorney's fees and costs under 42 U.S.C. § 1988, pursuant to the procedure set out in Local Rule 54.2.

Exhibit D
Transcription of Invocations
Rowan County Board of
Commissioners Meetings
(November 5, 2007 through March 4, 2013)[1]

November 5, 2007, Commissioner Sides

Let us pray. Father, we thank you for the beautiful day you have given us, for health, strength, for all the things we take for granted. Lord, we live in a privileged world. Sometimes we don't realize it. We thank you for Rowan County. We thank you for the privilege of being able to represent the citizens. I pray you give us wisdom and guidance tonight as we deliberate. God help us to make the right decisions. We'll thank and praise you for it. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=147

November 19, 2007, Chairman Chamberlain

Let's pray together. Father, oh Lord we thank you for so much. You're so good to us. Lord, I ask you in the name of your Son, bless this meeting tonight. Touch our minds. Touch our attitudes. Lord, help us to do the work that we've been elected to do. Father, we thank you for your goodness, your kindness. Now anoint our

[1] This transcription was prepared based on videos posted on Rowan County's website, which makes available a video and audio recording of each Board meeting dating back to November 7, 2007. The videos are available at http://www.rowancountync.gov/GOVERNMENT/Commission/MediaArchive.aspx.

words and our actions as we do this business. In the name of Jesus the Christ, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=157

December 3, 2007, Commissioner Barber

Father, we thank you for your grace and your glory. We ask you to be with us this evening as we conduct the business of Rowan County. We'd also like to ask you to have your will as it relates to all the burdens and problems the citizens of Rowan County have today. As we get ready to celebrate the Christmas season, we'd like to thank you for the Virgin Birth, we'd like to thank you for the Cross at Calvary, and we'd like to thank you for the resurrection. Because we do believe that there is only one way to salvation, and that is Jesus Christ. I ask all these things in the name of Jesus. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=141

December 17, 2007, Chairman Chamberlain

Father God, we thank you for the privilege of doing the job that's been set before us, but more than that we thank you for the privilege of being able to draw people together to make decisions for the biggest number of people we can do that, Lord. We ask you to anoint us. Help us to think with clarity. Help us to be good to one another. Help us to recognize who we are. Father, I ask you for a special blessing for each one of us here tonight, those that thought enough to come to this

meeting. Touch us with that Christmas joy that only this time of year brings for some folks. Lord, we thank you and we praise you. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=152

January 7, 2008, Commissioner Sides

Let us pray. Father, we do thank you for your grace, your mercy, for the beautiful day you've given us, for health, strength, for all the things we take for granted. We thank you for this wonderful county, and we thank you for the opportunity you give us to serve. We ask you to guide our thoughts and our words this evening, give us direction. I ask that you'd help us to conduct the business of the County of Rowan, and the citizens, in a way that will please you and we'll thank you for it. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=150

January 22, 2008, Commissioner Hall

Please pray with me. Heavenly Father, we thank you for the opportunity to gather as commissioners to discuss ways to improve the lives of the citizens of Rowan County. We ask your blessing and guidance as we deliberate the many issues before us. We pray that you help each of us to grow in grace and in the knowledge of our Lord and Savior, Jesus Christ. To Him be glory, both now and forever. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=160

February 4, 2008, Commissioner Mitchell

Heavenly Father, thank you for this opportunity to come together and do the business of Rowan County. We thank you for the rain that we've been getting this afternoon and through the last couple of weeks and hope that it affects our drought. We ask that you be our guiding hand in our deliberations and decisions. In Jesus' name I pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=144

February 18, 2008, Commissioner Barber

Let us pray. Our Heavenly Father, we thank you for your grace and your glory. We realize that we can do nothing without you. I ask that you be with us tonight as we conduct the business for the citizens of Rowan County. I ask you to continue to bless everyone in this room, our family, our homes, and friends. Please be with us as we continue to conduct this business, and again, we thank you for your grace and your glory. I ask all these things in the name of Jesus, the one and only way to salvation. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=155

March 3, 2008, Commissioner Sides

Father, we do thank you for the beautiful sunshine, the beautiful day you've given us, for health and strength, Lord, for all the things we take for granted. Thank you for this great country, America, and the great state of

North Carolina, and the great county of Rowan. Thank you for the privilege of being able to serve the citizens. I pray you give us wisdom and understanding today in our deliberations, and we thank and praise you for all we do, for we ask it in Christ's name, for His sake. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=143

March 17, 2008, Commissioner Hall

Please pray with me. Heavenly Father, too often we listen to voices that are not your voice, especially when they tell us what we want to hear. Unfortunately, we often follow the desires of our hearts rather than perceiving your wisdom. Please allow your spirit within us to guide us in wise decisions and faithful behavior. And Heavenly Father, please protect Rowan County's firefighters and all public servants. Please be with and comfort their families. And also, a special prayer for Deputy Sheriff Janet Wietbrock, who has been severely injured in the line of duty. Please be with her and her family. In Jesus' name we pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=154

April 3, 2008 [special meeting], Chairman Chamberlain

Father, thank you for another day of life and good health. I ask you, Lord, to let our words be acceptable

and our very thoughts acceptable to you. Help us to be good to one another. In Christ's name I pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=140

April 7, 2008, Commissioner Mitchell

Dear Heavenly Father, thank you for the opportunity for us to come together and work on the business of Rowan County. I ask your blessing on this board and for all those in attendance and for all the citizens of Rowan County. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=149

April 21, 2008, Commissioner Barber

Let us pray. Our Heavenly Father, we thank you for your grace and your glory. I ask that you be with us tonight as we conduct the business of Rowan County. Continue to bless everyone in this room, our families, our friends, and our homes. I ask all these things in the name of Jesus, the King of Kings and the Lord of Lords. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=159

May 5, 2008, Commissioner Mitchell

Heavenly Father, thank you for the opportunity that you've given us to come together to work on the business for the citizens of Rowan County. I ask your

guiding hand in our deliberations and our decisions. In Jesus' name I pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=146

May 19, 2008, Commissioner Sides

Let us pray, Father, we do thank you for the blessings of the day, for, Lord, the daily blessings you give us. We take a lot for granted, yet we're a blessed people. We thank you for the privilege of being able to serve the citizens of Rowan County in this capacity. We pray you give us wisdom tonight. Guide our thoughts and the words of our mouth. We pray you bless everything tonight, your honor and glory. We thank you for it in Jesus' name. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=156

May 27, 2008, Chairman Chamberlain

Father, we thank you for this privilege again. Lord, give us clear minds, clear hearts. Touch us with only the wisdom that you can give. Help us to care for one another, be ladies and gentlemen, and do the business that's before us. We ask this in Christ's name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=161

June 2, 2008, Commissioner Barber

Let us pray. Our Heavenly Father, we will never, ever forget that we are not alive unless your life is in us.

You saved us and you call us with the holy calling. We are the recipients of your immeasurable grace and glory. We are the richest people in the world. Because of our salvation through our Lord Jesus Christ, we cannot be defeated, we cannot be destroyed, and we won't be denied, because we're going to live forever with Him. We confess our sins and we ask you for forgiveness, and we thank you for your blessings. I ask you to be with us as we conduct the business of Rowan County this evening, and ask these things in the name of Jesus and for the sake of His Kingdom. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=174

June 16, 2008, Commissioner Mitchell

Heavenly Father, thank you for the opportunity today for us to get together to work on the business of Rowan County. I ask for your guiding hand in our deliberations and our decisions. In Jesus' name I pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=88

July 7, 2008, Commissioner Sides

Let's pray. Father we do thank you for the beautiful day you've given us, Lord, for health and strength, for just life every day. God, we thank you for your mercy and your grace. We thank you for this time together. We pray that God should be in our deliberations today. I pray you give us wisdom and understanding in the matters that come before us. Help us to do the

business of this county in a way that would honor you. We pray these things in Jesus' name, for His sake. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=86

August 4, 2008, Commissioner Hall

Please pray with me. Lord, we thank you for the opportunity together to discuss ways to improve the lives of the citizens of Rowan County. We ask your blessing and guidance as we discuss the many issues before us. May we never forget your presence and your gentle voice that calls us to your side. Show us the joy, meaning, and purpose that come through living our lives in you. Through Christ our Savior we pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=84

August 18, 2008, Commissioner Barber

Let us pray. Our Heavenly Father, we thank you for your grace and your glory. I ask that you be with us this evening as we conduct the business of Rowan County and its citizens. Continue to bless everyone in this room, our families, our friends, and our homes. I ask all these things in the name of Jesus, the one and only way to salvation. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=90

September 2, 2008, Commissioner Mitchell

Heavenly Father, thank you for the opportunity that you have given us to come together and work on the business of Rowan County. I ask for your guiding hand in our deliberations and our decisions. In Jesus' name I pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=82

September 15, 2008, Chairman Chamberlain

Heavenly Father, we thank you for another good day, for another good opportunity to try to do something for someone else. Lord, I ask you to touch all of our hearts and all of our minds and help us all to desire wisdom. Lord, I ask you to anoint us to do the right thing as we see it for the right reasons. Father, I ask you all this in the name of Jesus the Christ. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=87

October 6, 2008, Commissioner Sides

Let's pray. Father, we do thank you for your grace and your mercy, for the beautiful day, for health and strength, for, Lord, all of the things we take for granted from day to day. Lord, I pray you help us to recognize tonight that we're not here representing ourselves. Lord, we represent you and we represent the taxpayers of Rowan County. I pray you'd help us to guide our thoughts and words, that they might honor you in all

that we do and say. We'd thank you for it. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=85

October 20, 2008, Commissioner Hall

Please pray with me. Heavenly Father, we thank you for the opportunity together to discuss ways to improve the lives of the citizens of Rowan County. We ask your blessing and guidance as we deliberate the many issues before us. Please help us to always be mindful of the distinction between achievement, where we know that we have studied and worked hard and done the best that is within us, and success, where each is praised by others. Praise is nice, but not as important or satisfying. Help us to always aim for achievement on behalf of our citizens and forgo individual success. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=91

November 3, 2008, Commissioner Mitchell

Dear Heavenly Father, we thank you for the opportunity to come together and work on the business of Rowan County. We also thank you for the ability that we have to celebrate our liberty tomorrow starting at 6:30 AM. I ask for your guiding hands in our deliberations and our decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=83

November 17, 2008, Commissioner Sides

Let us pray. Father, we do thank you for health, for strength, for life, for the country that we live in, for the privilege we have to serve the people of Rowan County. We pray that you'd be in our deliberations tonight. Give us wisdom and knowledge. Lord, the decisions that we make are important decisions, God, they need to be made with much thought and much prayer. We pray that you'd bless our country here in this time of transition. Lord, during these hard economic times we pray for those that, God, are suffering right now and pray you'd be with them and help them. Help us to always want to serve you and to serve others. We'll thank you for it. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=89

December 1, 2008, Chairman Chamberlain

Heavenly Father, Lord, we thank you for the privilege of living in America, and especially for living in Rowan County. Lord, we have a room full of wonderful people out here tonight. There's so much important going on in our County, Father. This is part of it. Lord, I ask you to touch this board as we sit just for a few more minutes and then, Lord, I pray a special, special, special blessing on Raymond Coltrain, Carl Ford, Tina Hall, Jon Barber, and Chad Mitchell. God, I pray that they'll pursue wisdom with all of their might, and they'll accept the knowledge that you provide. Lord, I ask you to touch Jim Sides and me, give us long, productive days. Now Father we thank you for the

opportunity to do business for Rowan County. We ask you to bless this county and to bless everybody in this room in the name of Jesus the Christ. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=81

December 8, 2008, Commissioner Mitchell [Special Meeting]

Heavenly Father, thank you [for] the opportunity that you've given us to come together and work on the business for the citizens of Rowan County today. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=151

December 31, 2008, Chairman Ford [Special Meeting]

Lord, we thank you for this day, another day you've given us. Thank you for this year you've given us, and we're looking forward to this coming year. Pray that you'll bless us individually, bless the folks in this county, bless this county. We thank you in Jesus' name. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=80

January 5, 2009, Commissioner Barber

Let us pray. Our Heavenly Father, we thank you for your grace and graciousness and your glory. I ask for your presence here at this meeting this evening on

January 5, 2009, and for the rest of our meetings for the rest of the year. I ask you to continue to bless all of us in this room, our families, our friends, and our homes. I ask all these things in the name of Jesus. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=67

January 20, 2009, Commissioner Coltrain

Heavenly Father, we give you thanks for the many, many blessings that you give to us each and every day. One of the greatest blessings that we have is to be of service and benefit to our fellow man. We ask that you guide and direct us in our efforts to do that, and help us to do so in a way that brings honor and glory to you. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=72

February 2, 2009, Commissioner Hall

Please pray with me. Heavenly Father, you have given our citizens this wonderful county as our heritage. Please help us to always remember your generosity and constantly do your will. Bless our county with honest industry, sound learning, and an honorable way of life. Give those of us whom you have entrusted with the authority of government the spirit of wisdom. When times are prosperous, let our hearts be thankful, and in troubled times, do not let our trust in you

fail. We ask all this through Jesus Christ our Lord. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=65

February 16, 2009, Commissioner Mitchell

Dear Heavenly Father, thank you for the opportunity that you've given us to come together and work on the business of Rowan County. I ask for your guiding hand in our deliberations and in our decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=70

March 2, 2009, Commissioner Barber

Let us pray. Our Heavenly Father, I ask you to be with us this evening as we conduct the business of Rowan County. We thank you for your grace and your glory. We realize that we cannot do anything without you and your help. Continue to bless all of us in this room, our families, our friends, and our homes. I ask all these things in the name of Jesus, the King of Kings and Lord of Lords. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=32

March 16, 2009, Chairman Ford

Lord, we thank you for this day and all you've done for us. We thank you for the rain that you've sent our way. We pray that you'll bless all of our citizens right now

that are hurting, those that are unemployed. We pray that you'll bless them and help them through this difficult time. We pray that you'll bless our troops that are fighting for our freedoms around the world. We pray that you'll bless this meeting tonight. We thank you for all you do. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=36

April 6, 2009, Commissioner Coltrain

Heavenly Father, we give you thanks for the many blessings that you give to us each and every day, especially for the opportunity [to] be your servant in the service of our citizens and our fellow man. Please guide and direct us in that effort so that we can do your will, for your satisfaction and for your honor and glory, and not for our own egos. Please guide and direct us in our discussions and decisions today, that we will make the decisions that will benefit the current and future citizens of this county. We also give you thanks for the rain that you're blessing us with, to water the earth, to nurture the plants for our benefit. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=42

April 20, 2009, Commissioner Hall

Please pray with me. Heavenly Father, we thank you for the spring, a time for nature's renewal, a special

time of hope. Please restore in us a vision of community where all are valued and peace is a daily offering. In this difficult economic climate, help us to share and be generous, especially remembering those in need. Show us ways to help and care and serve. In the name of our risen Lord, Jesus Christ, we ask for your guidance. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=39

May 4, 2009, Commissioner Mitchell

Dear Heavenly Father, thank you for the opportunity that you've given us today to come together to work on the business of Rowan County. I ask for your guiding hand in our deliberations and our decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=66

May 18, 2009, Commissioner Barber

Our Heavenly Father, we will never, ever forget that we are not alive unless your life is in us. We are the recipients of your immeasurable grace. We can't be defeated, we can't be destroyed, and we won't be denied, because of our salvation through the Lord Jesus Christ. I ask you to be with us as we conduct the business of Rowan County this evening, and continue to bless everyone in this room, our families, our friends, and our homes. I ask all these things in the name of Jesus, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=44

May 27, 2009, Chairman Ford

Father, we thank you for this day, thank you for all you've done for us, thank you for the rain that you've sent our way. I thank you for your Son Jesus Christ. We pray that you'll bless us as we go about your business here in Rowan County and about the business of the taxpayers. We thank you for all you do for us. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=63

June 1, 2009, Chairman Ford

Father, we thank you so much for this day and this time together. We thank you for the rain you've sent our way and thank you for blessing the farmers as they provide us with food. We thank you for all you do for us, pray that you'll guide and direct us in our discussions and our decisions tonight, Father. Bless Rowan County. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=64

June 15, 2009, Commissioner Coltrain

Heavenly Father, we give you thanks for the many, many blessings that you bless us with each and every day. Please guide and direct us in the use of those blessings to do your will for always, bring honor and glory to you in service to our fellow man. Please especially be with us tonight in our deliberations and decisions so that we can have a positive effect on the

current and future citizens of Rowan County. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=69

June 29, 2009, Commissioner Hall

Please pray with me. Heavenly Father, we thank you for the privilege of meeting in order that we may work to improve the lives of the citizens of Rowan County. We ask your blessing and guidance as we deliberate the issues before us. Please expand our vision of our community's economic well-being so that we might grow in service and more nearly follow Jesus our Savior. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=34

July 6, 2009, Commissioner Mitchell

Dear Heavenly Father, thank you for the opportunity that you've given us to come together to discuss the business of Rowan County. I ask for your guidance in our deliberations and decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=30

July 20, 2009, Commissioner Barber

Let us pray. Our Heavenly Father, we love you, we need you, we realize that we cannot do anything without your help and your guidance. So please be with us

this evening as we conduct the business of Rowan County. Thank you for all of your blessings, and I ask you to have a special blessing for all of those that are struggling now, here in our county, in our state, and in our nation. I ask all these things in the name of Jesus. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=28

August 3, 2009, Chairman Ford

Father, we thank you for this day you've given us, thank you for the recent rain you sent our way. We praise you for that. We thank you for all you do for us here, pray we'll make decisions that will help the people of Rowan County, not hurt them. We pray that you'll bless those that are out of work at this time and bless them as best you can, Lord. Help everyone through these trying times. We thank you for all that you do for us. In the name above every name, Jesus, I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=24

August 17, 2009, Commissioner Coltrain

As always, our Heavenly Father, we give you thanks for the many blessings that you give to us each and every day. We ask that you guide and direct us to recognize your will and to do that and let you use us to be a service to our fellow man, follow your ways and not ours, for your honor and glory and their benefit. We

also ask that you continue to bless the crops and the soil with rainfall to meet their needs. We certainly appreciate what you've done this year so far, but we certainly need for it to continue. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=21

September 8, 2009, Commissioner Hall

And now please pray with me: Heavenly Father, we know that all things bright and beautiful, all creatures great and small, all things wise and wonderful, you made them all. How great is God almighty, who has made all things well. We thank you for our countless blessings, and pray that you create in each of us a clean heart and plant a new and right spirit within so that we may better serve you. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=5

September 21, 2009, Commissioner Mitchell

Dear Heavenly Father, thank you for the opportunity to come together and work on the business of Rowan County. I ask for your guiding hand in our deliberations and our decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=4

October 5, 2009, Commissioner Barber

Let us pray. Father, I pray that all may be one as you, Father, are in Jesus, and He in you. I pray that they may be one in you, that the world may believe that you sent Jesus to save us from our sins. May we hunger and thirst for righteousness, be made perfect in holiness, and be preserved, whole and entire, spirit, soul, and body, irreproachable at the coming of our Lord Jesus Christ. And I pray, Father, that you will continue to bless this nation, because without your blessings, we don't have any hope. I ask all these things in the name of Jesus. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=3

October 19, 2009, Chairman Ford

Father, we thank you for this day, we thank you for this time this evening, we thank you for your love, your grace, your mercy. We thank you for your blessings upon this county, Lord, pray that you'll continue to bless us in the future. Help those that are without jobs right now, Lord God, be with them. Help us to find more jobs for our citizens. Help us to lead the citizens and be leaders as we should. Lord God, we pray that you'll touch every decision that we make. We thank you for this in Jesus' name. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=19

November 2, 2009, Commissioner Coltrain

Heavenly Father, we give you thanks for the many, many blessings that you give to us each and every day. Please guide and direct us in our efforts that you use us to use those blessings in a positive way for our fellow man for your honor and glory. We give you thanks for the rainfall which you have blessed our area with over the last several weeks, and now for the sunshine that will help the farmers to be able to plant the crops and harvest them as well. Please guide and direct us in all of our deliberations today, so that we will serve our fellow man and not ourselves. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=46

November 16, 2009, Commissioner Hall

If you would, please pray with me. Heavenly Father, all too often we have not recognized the mission you would have us do: to transform our small portion of the world through your will. Instead, we have trusted in our ability to get things done rather than in your power. We have trusted in our wisdom instead of the wisdom of the Holy Spirit. May we always seek your will above our wills. May we always pray for your strength and aid in all that we do, for in our hearts, minds, and wills completely to you, that we may serve you at all times. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=56

December 7, 2009, Commissioner Mitchell

Dear Heavenly Father, we thank you for this opportunity that you've given us, to come together and work on the business of Rowan County. We ask for your guiding hand in our deliberations and decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=101

January 4, 2010, Commissioner Barber

Let's pray. Our Heavenly Father, we thank you for your grace and your glory. We thank you for the many blessings that we've received every day. We ask you to continue to bless all of us in this room, our families, our friends, and our homes. We also thank you for the blessings and would like to give thanks for those men and women who have died to protect the freedom and the constitution of this country, and to give thanks for the many men and women who are away from this country now, protecting it. I ask all these things in the name of Jesus. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=172

January 19, 2010, Chairman Ford

Father, we thank you for this day, thank you for this time here together. Lord, we pray that you'll bless this body here today as we make decisions. Help us to make the decisions that we should do, and thank you for your love, your grace, your mercy, Lord. We pray

that you'll bless everyone in this room. Bless the folks in this county. Bless them spiritually, bless them financially. Bless Rowan County, Lord. We ask this in Jesus' name. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=176

February 1, 2010, Commissioner Coltrain

Heavenly Father, we always give you thanks for the many blessings that you bestow upon us each and every day. One of the greatest blessings of these is the ability and the privilege of being of service to our fellow man. Please guide and direct us in our discussions and decisions, and allow you to use us to be of service to our fellow man for your honor and glory and not ours. Please be with all the people who are traveling during these treacherous road conditions and help them to do so safely. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=178

February 15, 2010, Commissioner Hall

Please pray with me. Heavenly Father, with Valentine's Day just concluded, we pray for a world community where everyone respects each other's ways, where love is lived, not for just one day, but as a way of life, and all is done with justice and with praise. We pray for a world where resources are shared and misery relieved, where truth is spoken and children spared, the weak become strong, the foolish ones learn wisdom.

We pray hope for all who mourn, and outcast will belong. Those who perish will rise. We pray for a world that prepares for your glorious reign of peace, where time and tears will be no more, and all but love will cease. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=180

March 1, 2010, Commissioner Barber

Let us pray. Our Heavenly Father, thank you for allowing us to be here today at this meeting. I ask you to be with us as we conduct the business of Rowan County. We thank you for all your blessings. We also thank you for being a loving and very forgiving God. Please be with all those citizens who are struggling in Rowan County and the state of North Carolina and across the United States during these very difficult economic times. Continue to bless everyone in this room: our families, our friends, and our homes. I ask all these things in the name of Jesus. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=182

March 9, 2010, Chairman Ford [Special Meeting]

Father, we thank you for this day, thank you for this time together. We pray that you'll bless those that are in this room, bless this county, Lord God. Bless us most of all spiritually. Bless this county financially. We thank you for all you do for us. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=184

March 15, 2010, Commissioner Mitchell

Heavenly Father, thank you for the opportunity for us to come together and work on the business of Rowan County. I ask your guiding hand in our deliberations and our decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=186

March 22, 2010, Chairman Ford [Special Meeting]

Father, we thank you for this day and thank you for this time. Thank you, Lord God, for your grace and your mercy, Lord. We pray that you'll guide and direct our thoughts and our actions here today, Father. We'll bring glory to you. Thank you for all you do. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=188

April 5, 2010, Commissioner Coltrain

Heavenly Father, we give you thanks for the many, many blessings that you give to us each and every day, especially this time of the year when we can celebrate your gift, the Savior, for our souls. Please guide and direct us in our actions so that we can show true appreciation for that blessing that we cannot get any other way. We ask that you give us guidance so that we will do your will in our discussions and deliberations for the benefit of our fellow citizens and for your

honor and glory, and not for our ego. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=190

April 8, 2010, Chairman Ford [Special Meeting]

Father God, we thank you for this day, thank you for the rain you sent our way today. We pray for your grace and your mercy. Thank you for this meeting. Please bless our hearts and minds here today. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=192

April 19, 2010, Commissioner Hall

Please pray with me. Heavenly Father, we thank you for the spring, a time for nature's renewal. A special time of hope. Please restore in us a vision of community where all are valued in peace as a daily offering. In this difficult economic climate, help us to share and be generous, especially remembering those in need. Show us ways to help and care and serve. In the name of our Risen Lord, Jesus Christ, we ask for your guidance. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=194

May 3, 2010, Commissioner Mitchell

Father, thank you for this opportunity you've given us to come together and work on the business of Rowan

County. I ask for your guiding hand in our deliberations and decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=195

May 17, 2010, Commissioner Barber

Let's pray. Our Heavenly Father, thank you for your blessings and your glory. Please be with us tonight as we conduct the business of Rowan County. Thank you for the wonderful rainfall that we're receiving that was very much needed. I ask you to continue to bless everyone in this room, our family, our homes, and our friends. I ask all these things in the name of Jesus. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=198

June 2, 2010, Chairman Ford

Father, we thank you for this day, we thank you for your grace, your mercy, your love. We thank you for all you've done for us. Thank you for the rain you've sent our way, Lord. We pray that you'll bless everyone in our county, and pray that you'll bring our economy back strong, Lord. We pray that you'll bless this meeting today, Lord, guide and direct us as we make these decisions and discuss the budget today, Father. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=200

June 7, 2010, Chairman Ford

Father, we thank you for this day. We thank you for this time together today. We pray that you'll guide and direct our minds as we make the decisions for the citizens of Rowan County. We pray that you'll bless those that are out of work during these tough times and bless them with a job and help us to bring many more jobs to this county. Lord, we thank you for the rain you've sent our way, Lord. We thank you for all that you do for us: your grace, your mercy, your love. We praise you tonight in Jesus' name. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=202

June 14, 2010, Chairman Ford

Father, we thank you for this day, we thank you for this time together, pray that you'll guide and direct our thoughts and everything we say and do today in here, Lord, to bring honor and glory to you. Guide and direct us. Father, we thank you for all you do, for your grace, mercy and love, in Jesus' name. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=205

June 21, 2010, Commissioner Coltrain

Heavenly Father, again we give you thanks for the many blessings that you give to us each and every day. We give you thanks for the opportunity to be your instrument in the service of our fellow man for your honor and glory. We thank you for the weather that

you've blessed us with so that the farmers can harvest the crops that you have blessed them with, and also the rain to nourish those that are growing this time of the year. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=210

July 6, 2010, Chairman Ford [Special Meeting]

Father, we thank you for this day. We thank you for our recent Independence Day celebration, thank you for what it means to us. Lord God we thank you for all you do for us here in Rowan County. Bless in Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=212

July 19, 2010, Commissioner Hall

If you would, please pray with me. Heavenly Father, so often we listen to voices that are not your voice, especially when these voices tell us what we want to hear. Sadly we tend to follow the desires of our own hearts rather than perceiving your wisdom. Please allow your spirit within us to guide us in wise decisions and faithful behavior. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=213

August 2, 2010, Commissioner Mitchell

Let us pray. Dear Heavenly Father, we ask your guiding hands in our deliberations and our decisions as we

discuss and work on the business for the citizens of Rowan County. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=215

August 16, 2010, Commissioner Barber

Let us pray. God of healing mercies, we come to you this day confessing that we are an imperfect people. We know that you desire for us hope, happiness, and love, yet we have found so many ways to block your gifts or to treat them as if they were our entitlement. We acknowledge that we've been given the pathway to peace, in the witness of Jesus Christ and his instructions to live as people of compassion and service. Unfortunately, our service has been mostly for ourselves and oftentimes we have failed to witness on Earth. Forgive us, oh merciful God, heal our wounded spirits, turn us again to you that we may again learn of your love and mercy. Help us to become partners in peace and hope for others. For we ask this in Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=217

September 7, 2010, Chairman Ford

Father, we thank you for this day. Thank you for your grace and mercy. Thank you for all you've done for us, Lord. We pray that you'll guide and direct our

thoughts and our minds tonight to make good decisions to bring honor and glory to you, Father. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=221

September 20, 2010, Commissioner Coltrain

Our Heavenly Father, we give you thanks for the many, many blessings that you bestow upon us each and every day. We apologize and ask your forgiveness for the misuse of those blessings. We ask that you guide and direct us in that effort and allow you to use us as your investment for the benefit of our fellow man for your honor and glory, especially in this role as county commissioners. We ask you also, dear Lord, if you would please send us some rain to water the plants and animals, especially the soy beans that you have provided for us. In my Lord and Savior's name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=223

October 4, 2010, Commissioner Hall

Please pray with me. Heavenly Father, we thank [you] for the opportunity to gather to discuss ways to improve the lives of the citizens of Rowan County. We ask your blessing and guidance as we discuss the issues before us. May we never forget your presence and your

gentle voice that calls us to your side. Show us the joy, meaning, and purpose that come through living our lives in you. In Christ our Savior, we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=225

October 18, 2010, Commissioner Mitchell

Heavenly Father, I thank you for this opportunity for us to come together and work on the business for Rowan County. I ask your guiding hand in our deliberations and decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=227

November 1, 2010, Commissioner Barber

Let us pray. Guide us, oh God, by your word and Holy Spirit, that in your life we may see light, in your truth find freedom, and in your will discover peace. Through Jesus Christ our Lord, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=229

November 15, 2010, Chairman Ford

Father, we thank you for this day. We thank you for this evening. Thank you for the rain you're sending our way. Thank you for our troops that are making sure we have our freedoms here. Lord, we pray that you'll bless all them around this world. God bless our elected officials from locally all the way to Raleigh to Washington, Lord, and guide and direct them in their

decisions all across this land. Bless us here tonight. We praise you Lord for your grace, your mercy, your love, for everything. In Jesus' name. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=231

December 6, 2010, Chairman Ford

Father God, we thank you for this day, we thank you for this time together. We pray for our troops guarding our freedoms around the world. We pray for Commissioner Hall, who has served us well these last four years, pray for Commissioner Sides who is about to take his place on this board and with the other commissioners up here tonight. Pray that you'll bless each and every one of them, every one of the staff. We thank you so much for sending your Son Jesus Christ to this world, and we always remember that this time of year, Lord, and we should remember it always. Thank you for all you've done for us. Bless Rowan County. Bless these folks that have recently lost their jobs. God, help them and help us to help them, Father. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=234

December 13, 2010, Commissioner Coltrain

Heavenly Father, we give you thanks for the many, many blessings that you give to us each and every day, especially during this time of the year when we celebrate the birth of your Son, our Savior, who came to

show us how we should interact with each other for the benefit of each other. As servants for this community, please help us as the commissioners to really practice that principle so that we can have a positive effect on the lives of the citizens of the county, for your honor and glory. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=236

January 3, 2011, Commissioner Sides

Let us pray. Father we thank you for the beautiful sunshine, for the break in the bad weather, for the good weather, Lord we certainly pray for a break in the bad financial news that we continue to hear the economy. We pray that, Lord, this year will improve for our citizens, Lord, things will get better for all of us. We thank you for the opportunity to be here to serve today. We pray that you give us wisdom and direction and guidance in the decisions that we'll make. Lord we'll thank you and praise you for what you do. For we ask it in Christ's name, for His sake, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=237\

January 18, 2011, Commissioner Ford

Let us pray. Father God, thank you for this day. Thank you for this time you've given us; thank you for this weather. Lord we praise you for the rain; we pray that you would bless our troops around the world fighting for our freedoms and keeping us free. We thank you

for all you do for us—for your grace and mercy, Father. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=239

February 7, 2011, Commissioner Barber

Let us pray. Our heavenly Father, we thank you for your grace and your glory. I ask that you be with us today as we conduct the business of Rowan County. We realize that we cannot do anything without you. We love you, and we need you. I ask all these things in the name of Jesus. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=241

February 16, 2011 [special meeting], Commissioner Mitchell

Dear heavenly Father, we thank you for the opportunity that you have given us to come together and work on the business for the citizens of Rowan County. I ask for your guiding hands in our deliberations and our decisions, in Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=242

February 21, 2011, Commissioner Coltrain

Heavenly Father, we give you thanks for the many, many blessings that you have bestowed upon us each and every day. We ask that you guide and direct us to let you use us—to use those blessings to be of service

to our fellow man for your honor and glory and not ours. Please guide and direct our discussions tonight so that we can make decisions that will be of benefit to all the people. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=245

March 7, 2011, Commissioner Barber

Let us pray. Holy Spirit, open our hearts to Christ's teachings, and enable us to spread His message amongst the people we know and love through the applying of the sacred words in our everyday lives. In Jesus' name I pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=246

March 21, 2011, Commissioner Sides

Let us pray. Father we do thank you for your love, and your mercy and your grace. For the beautiful day that you've given us, for health and for strength, and Lord for anything that we take for granted. And we thank you God for our country. We thank you Lord for the privilege that we have to serve in this capacity in Rowan County as commissioners. Lord I pray that you would give us wisdom and direction tonight in the decisions that we make—might they honor and glorify you. We'll thank and praise you for it in Jesus' name, for His sake. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=248

April 4, 2011, Commissioner Ford

Let us pray. Father, we thank you for this day, and thank you for this time here today. Guide and direct our decisions at it affects the citizens of Rowan County. We pray that you would protect us tonight with these storms expected to be here. Watch over our county, Lord. And we pray that you will watch over this meeting today. Thank you for all that you do for us, Lord. Thank you for your forgiveness and grace. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=250

April 18, 2011, Commissioner Sides

Let us pray. Father, we do thank you for your grace, your mercy, for your love. We thank you for the beautiful day, for health and strength, and Lord, for the many things we take for granted. And Lord we do pray for those who suffered damage the other day in the storm. Those that lost family members, we pray for them, that you would be with them. We pray for our servicemen overseas; we had a big deployment recently—local people that went over to Iraq, we pray for them. Be with them and protect them. And Lord we pray that you would help us today. Give us wisdom and direction today about the decisions that we will make for the citizens of Rowan County. We'll thank you and praise you for it in Christ's name, for His sake. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=252

May 2, 2011, Commissioner Coltrain

Heavenly Father, we give you thanks for the many blessings that you have bestowed upon us each and every day. We ask that you guide and direct us so that we will use those blessings to be of significant effect and contribute it to the lives of our fellow man for your honor and glory, not ours. In Jesus' name we pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=254

May 16, 2011, Commissioner Sides

Let us pray. Father, we come to you this evening wanting to thank you for your grace, and your mercy, for your goodness, for every good gift and for every perfect gift that you give us. Lord, we live in a privileged country in a privileged time. Lord, we would not forget those that are serving us in the military right now, protecting us. God, we pray that you would be with them. Lord, we thank you for this opportunity that we have to serve the citizens of Rowan County. We realize, God, that the business that we will discuss tonight is very important to them. We pray that you would give us wisdom and understanding, Lord, that the decisions that we make would be pleasing to you. And we will thank you and praise you for all that you do. We ask in the name of our Lord and Savior, Jesus Christ. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=256

June 6, 2011, Commissioner Coltrain

Heavenly Father, we give you thanks for the many, many blessings that you give to us each and every day. We ask that you guide and direct us in the use of those blessings so you can use us to be a benefit for our fellow man for your honor and glory and not our ego. Please guide and direct all of our discussions today so that we can make the decisions that will be of benefit to our fellow citizens. In Jesus' name we pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=259

June 20, 2011 [special meeting], Commissioner Sides

Father, we do thank you for the beautiful day you have given us. We thank you for the health, strength, for the grace and the mercy that you provide us every day. We thank you Lord for the opportunity to serve the citizens of Rowan County and we ask you to Lord bless our deliberations today, guide our thoughts and our words that what we say would bring honor and glory to you. We'll thank you and praise you for it. In Jesus' name. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=260

June 20, 2011, Commissioner Ford

Let us pray. Father God we thank you for this day. We thank you for the rain you've given us recently. We thank you for all that you do for us. Thank you for your

grace and mercy. Oh God, we thank you for everyone in this room and all the citizens of Rowan County. I pray, right now, Lord, that you would bless my fellow commissioners and county staff. Help us and guide us through this meeting tonight, Father. We love you, and we thank you for all you do. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=261

July 5, 2011, Commissioner Mitchell

Dear heavenly Father, thank you for the opportunity you've given us to come together and work on the business of Rowan County. I ask for your guiding hand in our deliberations and decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=263

July 18, 2011, Commissioner Mitchell

Dear heavenly Father, thank you for the opportunity that you've given us to come together and work on the business for Rowan County. I ask for your guiding hand in our deliberations and decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=265

August 1, 2011, Commissioner Barber

Let us pray. Lord, we confess that we have not loved you with all our heart, and mind and strength, and

that we have not loved one another as Christ loves us. We have also neglected to follow the guidance of your Holy Spirit, and have allowed sin to enter into our lives. Forgive us for what we've been, and by your spirit, direct what we shall be. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=267

August 15, 2011, Commissioner Coltrain

Let us pray. Heavenly Father, we give you thanks again for the many blessings that you've bestowed upon us each and every day. We ask that you guide and direct us so that we can be your servants for the benefit of the people in Rowan County for your honor and glory, to the Lord and not ours. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=274

September 6, 2011, Commissioner Sides

Let us pray. Father, we are grateful for your love, your mercy, for your grace, for all the things you give to us that God, we take so often for granted. We thank you for our country. We thank you Lord, for those that fight to give us our freedoms we have. We pray that you bless them and be with them. Lord, we pray for the business that will be conducted today. We pray that you would give us wisdom and understanding. Lord, guide our deliberations, and our words and our

thoughts. And may what we say and do be that would honor and please you. We'll thank you for it. In Jesus' name. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=276

September 19, 2011, Commissioner Ford

Let's pray. Father, thank you for this day. We thank you for your grace and mercy that you show toward us every day. I thank you for all that you do for us and I pray that you will bless Rowan County, bless our businesses, bless our citizens that really need help during these tough, tough times we're going through, Father. I pray that you will bless this commission tonight, each and every one of us as we make decisions. Father we ask that you would continue to bless our county. Lord, send us some rain. We thank you for all that you do, Father. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=276

October 3, 2011, Commissioner Barber

Let us pray. Merciful God, although you made all people in your image, we confess that we live with deep division. Although you sent Jesus to be Savior of the world, we confess that we treat Him as our own personal God. Although you are one, and the body of Christ is one, we fail to display that unity in our worship, our mission, and our fellowship. Forgive our pride and arrogance, heal our souls, and renew our

vision. For the sake of your Son, our Savior, the Lord Jesus Christ, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=279

October 17, 2011, Commissioner Sides

Let us pray. Father we do thank you for the privilege of being here tonight. We thank you for the beautiful day you've given us, for health and strength, for all the things we take for granted. Lord, as we read in the paper today, the economic times are not good, and many people are suffering and doing without. We pray for them; we pray that you would help us to help. We pray for the decisions that we will make tonight, that God, they would honor and glorify you. We pray that you would give us wisdom and understanding. We'll thank you for it. In Jesus' name. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=280

November 7, 2011, Commissioner Mitchell

Dear Heavenly Father, thank you for the opportunity you've given us to come together to work on the business for Rowan County. I ask for your guiding hands in our deliberations and decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=282

November 21, 2011, Commissioner Ford

Let us pray. Father God, thank you for this day that you've given us. I thank you for your grace, your forgiveness, Lord, I praise you for that. I pray that you'll bless us here tonight. Guide and direct each county commissioner as we go about the business of Rowan County. I pray that you'll bless those in attendance. Bless those in our county; bless the businesses, Lord, in this county, and those that are less fortunate, Father God. We pray that you'll bless us and help us tonight. We thank you for all you do for us, Father. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=284

December 5, 2011, Commissioner Coltrain

Heavenly Father, we give you thanks for the many, many blessings that you give to us each and every day. We ask that you guide and direct us to be ambassadors of your spirit and your will, for the betterment of our fellow man, for your honor and glory. During this special time of the year, when we celebrate your birth and our Lord and Savior, we ask that you would help us remember that the greatest gift that we can give to people is ourselves—not material items, but ourselves. Please guide and direct us in our discussions today, and allow you to use us as your ambassadors in this will. In Jesus' name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=285

December 19, 2011, Commissioner Sides

Let us pray. Father we do thank you for your love, mercy, for your grace. We thank you for this time of the year when we celebrate the birth of Jesus Christ. Lord, we realize that the most important thing was not His birth, but His death that made a way for us to have life, and have it more abundantly. We pray that you would be with us today; give us grace and mercy. Lord, give us wisdom in the decisions that we need to make. I pray that you would help us, God, to guide this county in a way that you would see fit. Lord, we thank you for it. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=288

January 3, 2012, Commissioner Ford

Let us pray. Father God, we thank you for this day. We thank you for your love, your grace toward us, your mercy. We pray that you will guide and direct us here today. Guide our thoughts, and our words. God, help us through this process of serving the citizens of Rowan County. Bless everyone that's here today; bless the citizens of Rowan County. We thank you so much Lord for all that you have done for us. Bless our troops around the world that are fighting for our freedoms, Lord; we thank you for them. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=290

January 17, 2012, Commissioner Barber

Lord, we are meeting today to conduct matters of business for Rowan County. Guide our hearts and our minds in the spirit of fairness, right thought, and speech. Impart your supreme wisdom upon our activities so that our affairs may reach a successful conclusion. Thank you for being our source of guidance today, and always. Ask all these things in the name of Jesus. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=292

January 25, 2012 [special meeting], Commissioner Coltrain

Heavenly Father, we give you thanks for this beautiful day that you have blessed us with along with all the other blessings that you give to us each and every day. Please guide and direct us in use of those blessings to be of service to our fellow man, for your honor and glory. In Jesus' name we pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=294

February 6, 2012, Commissioner Sides

Let us pray. Father, we thank you for the beautiful day you've given us. We thank you for health and strength, for all your grace and mercy, and things we take for granted from day to day. We thank you for this great county, we thank you for this great opportunity you give us to serve the citizens. Lord I pray that you

would help us today in the deliberations we make. Give us wisdom and understanding. We thank you for it. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=295

February 20, 2012, Commissioner Mitchell

Heavenly Father, I thank you for the opportunity you've given us to come together and work on the business of Rowan County. On this president's day, I ask for your wisdom and grace for our elected representatives, and those in authority, and I ask for your guiding hand in our deliberations and decisions, in Jesus' name I pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=297

February 29, 2012 [planning work session], Commissioner Ford

Father, we thank you for this day; thank you for the rain you're sending our way. Thank you for the forgiveness of our sins, and we praise you for that. We ask that you guide and direct our thoughts today, our words, and our decisions. Guide and direct us, Father, and direct our county. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=298

March 5, 2012, Commissioner Barber

Let us pray. Our heavenly Father, we will never ever forget that we are not alive unless your life is in us. We have been blessed to be the recipients of your immeasurable grace. We can't be defeated, we can't be destroyed, and we can't be denied because we are going to live forever with you through the salvation of Jesus Christ. Lord, be with us today and provide us with your supreme guidance and wisdom as we conduct the business of Rowan County. And as we pick up the Cross, we will proclaim His name above all names, as the only way to eternal life. I ask this in the name of the King of Kings, the Lord of Lords, Jesus Christ. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=300

March 19, 2012, Commissioner Coltrain

Our heavenly Father, we give you thanks for the many, many blessings that you have bestowed upon us each and every day. We ask that you please guide and direct our thoughts and decisions tonight as we strive to serve you by trying to be of service to our fellow man. In His Holy name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=301

April 2, 2012, Commissioner Sides

Let us pray. Father, we thank you for the beautiful day, for your grace and mercy. Lord, we take so many

things in life for granted. We thank you for this opportunity to serve the citizens of Rowan County. I pray you be with us in the deliberations we'll make today. Give us wisdom and understanding. Lord, we'll thank you and we'll praise you for it. We ask it in Christ's name, for His sake. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=303

April 2, 2012 [special meeting], Commissioner Sides

Let us pray. Father, we do thank you for your love, your mercy, and your grace. We thank you for the beautiful day, for all the things we take for granted. We thank you for the opportunity to serve the citizens of Rowan County. We pray you give us wisdom, leadership, guidance, and direction. God, guard our words and our thoughts today. May they be pleasing to you. We'll thank you and praise you. In Jesus' name, Amen.

April 16, 2012, Commissioner Mitchell

Dear heavenly Father, I thank you for this opportunity you've given us to come together and work on the business of Rowan County. I ask for your guiding hand in our deliberations and decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=306

April 30, 2012 [special meeting], Commissioner Ford

Father God, we thank you for this day. Thank you for your love and your mercy, your forgiveness. Father, we pray that you'll bless us today and guide and direct our thoughts as we move through this decision today. We pray that you'll bless our county. We thank you for all you've done for us, Father. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=312

May 7, 2012, Commissioner Ford

Father God, we thank you for this day. Thank you for all that you have done for us, for your grace. We pray that you will guide and direct us here today as we make decisions for Rowan County. We pray that you will bless our citizens. Lord, bless this county; we praise you for all that you do for us Father. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=313

May 21, 2012, Commissioner Barber

Let us pray. Lord, we do not look to the world for strength or encouragement, but we look to your word where we are convinced that you will protect and guard that which you have entrusted to us. By the empowerment of your indwelling holy spirit, help us boldly stand when the world, even those close to us, assault our faith. It is in your strength and your power

that we remain faithful. May the purifying of our faith bring praise, glory and honor to Jesus, our Lord and Savior. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=314

June 4, 2012, Commissioner Coltrain

Let us have a moment of private meditation and prayer, please. (silence) Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=315

June 11, 2012 [special meeting], Commissioner Sides

Let us pray. Father, we thank you for the beautiful day, for health, for strength, for all you do for us. Lord, our thoughts and our heart are with our finance officer today with the loss of her mother. We pray that, God, you'd be with her, be with her family, offer them comfort. Lord, I pray for my own mom going through some major physical problems right now. I pray you'd be with her and many others, Lord, that are hurting. I pray that you'd bless them. Lord, we ask that you bless our deliberations today, give us wisdom and understanding in the decisions that we have to make for the citizens of Rowan County. I pray that you'd help us to do what's best for them. We thank you for it. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=317

June 18, 2012, Commissioner Mitchell

Heavenly Father, thank you for the opportunity that you've given us to come together and work on the issues before Rowan County. I ask for your guiding hand in our deliberations and our decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=319

July 2, 2012, Commissioner Ford

Father God in the name of Jesus, we come to you today thanking you for all you've done for us. Thank you for forgiving us of []our sins and giving us eternal life. Lord, we pray that you'll bless in these meetings today. We pray that you'll guide and direct our thoughts. Help us to make the right decisions for Rowan County, Lord. We thank you so much for the rain you sent early this morning. We thank you for all you do. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=323

August 6, 2012, Commissioner Barber

Let us pray. Our heavenly Father, thank you for another glorious day. We need you, we love you, and we realize that we can do nothing without you. Please be with us as we conduct the business of Rowan County this evening. I ask all these things in the name of Jesus, our King of Kings and Lord of Lords. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=324

August 20, 2012, Commissioner Coltrain

Please join me in a moment of silence of prayer for our meeting, please. (silence) Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=326

September 4, 2012, Commissioner Sides

Let us pray. Father, we thank you for the beautiful day you've given us. For health, for strength, for your mercy and your grace; for all that you do for us. We live in a blessed country, and Lord, we take a lot for granted. We thank you for your love and your mercy. Lord, we ask for your grace here in this meeting today. We pray that you would give us wisdom and guidance for the decisions that we make. Lord, might we honor you in all that we do and say. We'll thank you for it. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=327

September 17, 2012, Commissioner Mitchell

Dear heavenly Father, thank you for the opportunity that you've given us to come together and work on the business of Rowan County. I ask for your guiding hands in our deliberations and decisions. In Jesus' name I pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=328

October 1, 2012, Commissioner Ford

Father God, we thank you for this day. We thank you for the rain that you've sent our way. Thank you for all your blessings. I pray that you'll bless Rowan County spiritually. I pray that you'll bless us financially, Lord. I thank you for all that you do for us, Father. I praise you for your grace. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=330

October 15, 2012, Commissioner Barber

Let us pray. Our heavenly Father, we love you, we need you, and we realize that we cannot do anything without you. Please be with us as we conduct the business of Rowan County. Please forgive us for all of our sins, and thank you for the blessings we receive every day. I ask all these things in your name, Jesus. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=337

November 5, 2012, Commissioner Coltrain

Heavenly Father, we give you thanks for this beautiful day. We ask that you especially be with all people throughout the world who are working to repair and replace their homes and businesses that have been damaged by the recent storms, especially in the northeastern part of our country. We ask that you guide and direct us in our efforts to be of service to our fellow man

and not to ourselves. (inaudible) In your Holy name we pray. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=338

November 19, 2012, Commissioner Sides

Let us pray. Father, we thank you for the opportunity to be here this evening to conduct the business of Rowan County. We pray you'd give us guidance and direction and wisdom in the decisions we make. Lord, we pray for our soldiers who are still in harm's way. We pray for those on the east coast that, Lord, still don't have houses to live in and power. We pray you'd be with them. Help us to be more thankful for what we have. We pray you'd give us wisdom tonight, and we'll thank you for it. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=342

December 3, 2012, Commissioner Ford

Let us pray. Father God, we thank you for this day. Thank you for grace and mercy and love. I thank you so much, Lord, for sending your Son; this is the reason for the season, Jesus Christ. We thank you for all you've done for us these last four years. We pray that you'll bless these men and women. God, I pray to you today, I pray the new commissioners will seek your guidance. I pray that the citizens of Rowan County will love you, Lord, and put you first. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=344

January 7, 2013, Commissioner Sides

Father, we want to thank you for the privilege that we have to serve the citizens of Rowan County. We thank you for this opportunity to come together to do their business. Lord, I pray you will give us wisdom and guidance and direction. Lord, I pray that everything we say would be that that would honor and glorify you. We'll thank you and praise you for all we do for we ask it in Christ's name, for His sake. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=346

January 22, 2013 [special meeting], Commissioner Pierce

Dear Heavenly Father, we thank you for this beautiful day. We thank you for these people who are here representing Rowan County. And help us lead our citizens to a better future. We ask this in Jesus' name. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=350

January 22, 2013, Commissioner Pierce

Dear heavenly Father, thank you for the gathering of these concerned citizens. Thank you for the County Commissioners and thank you for Rowan County. Help us no[w] to guide through the problems of our county and give us the right answers to move this county into the future. In Jesus' name we pray. Amen.

February 4, 2013, Commissioner Mitchell

Heavenly Father, thank you for the opportunity that you have given us to come together to work on the business for the people of Rowan County. I ask for your guiding hand in our deliberations and decisions, in Jesus' name I pray, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=354

February 19, 2013, Commissioner Caskey

Let us pray. Dear Lord Jesus, we thank you for the day. Thank you we're in a free country and can worship you freely, we can assembly freely, and govern ourselves. Pray you will be with us, help us to make the right decisions for everyone in the county. We know we are not perfect but please give us wisdom. We pray that you be with our troops around the world, wherever they are today. Please protect them, keep them safe. Ask this all in Jesus' name. Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=357

March 4, 2013, Commissioner Sides

Father, we do thank you for the beautiful day you have given us. We thank you for health, for strength, for all the things we take for granted. We thank you for the great country that we live in. We thank you for the privilege we have as ordinary citizens to represent[] others in their business and I pray you give us wisdom and understanding today. I pray you'd guide our

thoughts and our intents and, Lord, even our words that we might honor and glorify you, and I, personally, ask for your help in that realm. I pray you bless what we say and do today, might it be to honor and glorify you and we'll thank and praise you for it. In Jesus' name, Amen.
http://rowancountync.granicus.com/MediaPlayer.php?view_id=2&clip_id=359
