International Municipal Lawyers Association
2015 Annual Conference
Las Vegas, Nevada

Work Session X: "How the Supreme Court has Shaped First Amendment Issues for Local Governments from Signs to Legislative Prayer: A Discussion of Town of Greece and Reed v. Town of Gilbert"

Let Us Pray – Question Mark or Exclamation Point?

Developments in Legislative Prayer since *Galloway v. Town of Greece*

Ronald D. Stutes
Potter Minton, P.C.
Tyler, Texas

www.potterminton.com • ronstutes@potterminton.com

©2015 International Municipal Lawyers Association. This is an informational and educational report distributed by the International Municipal Lawyers Association during its 2015 Annual Conference, held October 3-7, 2015 in Las Vegas, NV. IMLA assumes no responsibility for the policies or positions presented in the report or for the presentation of its contents.

Councilmember-led prayer

- Common facts
  - Prayers led by members of governing board
  - "let us pray" or the equivalent
  - All-Christian Board
  - Sectarian prayer with references to Christ

Councilmember-led prayer

- *Lund v. Rowan County*, – F.Supp.3d –, 2015 WL 2072345 (M. D. N.C., May 4, 2015).
- *Hudson v. Pittsylvania County*, – F.Supp.3d –, 2015 WL 3447776 (W. D. Va., May 28, 2015).
- *Bormuth v. County of Jackson*, – F.Supp.3d –, 2015 WL 4477853 (E.D. Michigan, July 22, 2015).

Galloway v. Town of Greece, New York

- Based in part on historical precedent from First Congress
- Requiring prayer to be non-sectarian invites excessive entanglement
- Town sought to be inclusive, even though efforts were imperfect
- Prayer was directed at Legislators, not public

Galloway factors

- Based in part on historical precedent from First Congress
  - The case law had, until 2014, been almost exclusively related to clergy-led prayer, not legislator-led
  - Little or no evidence in trial courts regarding historical tradition
  - Amicus brief suggests that practice is now common, but doesn't address history

Galloway factors

- Requiring prayer to be non-sectarian invites excessive entanglement
  - On one hand, having the government actor give the prayer invites even more involvement in the content of the prayer
  - On the other hand, it does not involve the heavy hand of bureaucracy to be laid upon the prayer of a clergyman

Galloway factors

- Town sought to be inclusive, even though efforts were imperfect
  - No discrimination, in that every councilmember was free to participate, but
  - When every councilmember is of a single religion, all other traditions are excluded

Galloway factors

- Prayer was directed at Legislators, not public
  - When councilmember gives prayer, it is directed at public
  - When councilmember asks audience to rise, it is government giving a command

First Amendment Rights of Councilmembers

- Councilmembers act as government when on the dais
- Potential for misunderstanding role
  - Court finds purpose of giving legislators the guidance and blessing they want acceptable
  - But when legislators give the guidance and the blessing, it is seen as directed to audience

Solutions

- Follow *Galloway*
  - Requires a bit of effort
  - Requires a system to be in place
- Prayer by the Legislators
  - Non-sectarian prayer returns?
  - Opportunity for other faiths to be represented?

Let us Pray – Question Mark or Exclamation Point?

Ronald D. Stutes
Potter Minton
110 N. College Ave, Suite 500
Tyler, Texas 75702
903-597-8311
www.potterminton.com
ronstutes@potterminton.com