

No. 15-1869

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETER CARL BORMUTH,

Appellant,

v.

COUNTY OF JACKSON,

Appellee.

On Appeal from the United States District Court
for the Eastern District of Michigan
2:13-CV-13726

MOTION FOR LEAVE TO FILE *AMICUS* BRIEF ON BEHALF OF
MICHIGAN, KENTUCKY, TENNESSEE, AND OHIO
LOCAL AND STATE LEGISLATORS, AND THE COMMONWEALTH OF
KENTUCKY BY AND THROUGH GOVERNOR MATTHEW G. BEVIN,
SUPPORTING THE COUNTY OF JACKSON AND AFFIRMANCE

Attorneys for Amici Curiae:

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April 27, 2017

A bipartisan group of over 300 current and former state and local legislators and governors from Michigan, Kentucky, Tennessee, and Ohio request this Court's leave to file the attached 12-page brief in support of Jackson County, Michigan and affirmance of the District Court.¹ As Appendix A details,² *amici* consist of:

- Twelve members of the Michigan Senate, including Sen. Mike Shirey, who represents Jackson County, Michigan;
- Forty-four members of the Michigan House of Representatives, including Rep. Julie Alexander, who represents Jackson County, Michigan and is a former member of the Jackson County Board of Commissioners, whose practices are at issue in this case;
- The current and two former governors of Kentucky;
- Thirty-one current members of the Kentucky Senate, and eight former members;
- Eighty-four current members of the Kentucky House of Representatives, and forty-two former members;
- Two members of the Tennessee Senate;
- Seven members of the Tennessee House of Representatives;
- One member of the Ohio House of Representatives; and
- Eighty-four county and municipal legislators from Kentucky.

As current and former state and local legislators and government officials—many of whom have personally opened their respective public bodies in prayer—*amici* have a strong religious liberty interest in ensuring that the constitutionally

¹ Jackson County, Michigan has consented to *amici* filing this brief. Peter Bormuth has not consented.

² A full list of *amici* is attached to this Motion as Appendix A.

protected practice of opening “legislative and other deliberative public bodies with prayer” *Marsh v. Chambers*, 463 U.S. 783, 786 (1983), remains open to lawmakers at all levels of government.

Amici believe their brief will aid this Court’s *en banc* considerations. “[T]he Establishment Clause must be interpreted by reference to historical practices and understandings,” *Town of Greece v. Galloway*, 134 S.Ct. 1811, 1819 (2013). The brief of *amici* will aid this Court by showing that the practice of legislator-led invocations “is deeply embedded in the history and tradition of this country,” *Marsh*, 463 U.S. at 786, and specifically in the history and tradition of the States within the Sixth Circuit. *Amici* will also show that this tradition continues within this Circuit to this day. Further, the brief of *amici* will aid the Court’s understanding of the harmful effects on the religious liberty of legislators, their guests, and ministers caused by re-embracing the repudiated distinction between “sectarian” and “non-sectarian” prayer—an unconstitutional distinction that “would force the legislatures that sponsor prayers . . . to act as supervisors and censors of religious speech,” *Town of Greece*, 134 S.Ct. at 1822.

Amici note that their brief does not repeat arguments of the parties’ briefs, but provide historical research previously unavailable and directly relevant to the constitutional question before this *en banc* Court.

Amici request the leave of this Court to file the attached brief.

Respectfully submitted on April 27, 2017.

/s/ Michael P. Taunton

One of the Attorneys for *Amici Curiae*

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CERTIFICATE OF COMPLIANCE

Amici curiae hereby certify that this motion, in Times New Roman 14-point type face, contains 464 words and is in compliance with the requirements of Fed. R. App. P. 27.

/s/ Michael P. Taunton

One of the Attorneys for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2017, a copy of the foregoing has been sent by e-mail to the Court's En Banc Coordinator, Ms. Beverly Harris, who will file it electronically in the Court's CM/ECF system. The following counsel of record will receive a copy of the brief through the Court's CM/ECF system, as well as being sent a copy by United States first class mail, properly addressed and postage prepaid:

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2966 Woodward Avenue
Detroit, MI 48201

Further, I hereby certified that a copy of the foregoing has been sent by United States first class mail, properly addressed and postage prepaid, to Mr. Peter Bormuth:

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142 W. Pearl Street
Jackson, MI 49201
Telephone: (517) 787-8097

/s/ Michael P. Taunton

Of Counsel

APPENDIX A
(List of *amici curiae*)

<u>Name</u>	<i>Lead Amici</i>	<u>Position/District</u>
Sen. Mike Shirkey*		MI-16 ¹
Rep. Julie Alexander*		MI-64
Fmr. Rep. Claudia Badgett Riner*		KY-36 ²
Fmr. Rep. Thomas N. Riner, Jr.*		KY-41

Governors

The Commonwealth of Kentucky, by and through Governor Matthew G. Bevin
 Fmr. Gov. Brereton C. Jones 58th Governor of Kentucky
 Fmr. Gov. Julian Carroll* 54th Governor of Kentucky

Michigan Senators

Sen. Arlan Meekhof	Majority Leader/30
Sen. David Robertson	Majority Caucus Chair/14
Sen. Tom Casperson	38
Sen. Patrick Colbeck	7
Sen. Judy Emmons	33
Sen. Rick Jones	23
Sen. Peter MacGregor	28
Sen. Margaret O'Brien	20
Sen. Wayne Schmidt	37
Sen. Mike Shirkey*	16
Sen. Jim Stamas	36
Sen. Dale Zorn	17

* *Denotes individuals who appear under multiple headings.*

¹ Senator Mike Shirkey and Representative Julie Alexander are the representatives to the Michigan Legislature for Jackson County, Michigan, who is a party to this case. Representative Alexander is also formerly a member of the Jackson County Board of Commissioners whose practices are at issue in this case.

² Former Representatives Tom and Claudia Riner have volunteered to serve as lead *amici* for legislators from the Commonwealth of Kentucky in this case.

Michigan Representatives

Rep. Tom Leonard	Speaker of the House/93
Rep. Lee Chatfield	Speaker Pro Tempore/107
Rep. Chris Afendoulis.....	73
Rep. Julie Alexander*	64
Rep. Sue Allor.....	106
Rep. Tom Barrett.....	71
Rep. John Bizon	62
Rep. Tommy Brann.....	77
Rep. Julie Calley	87
Rep. Edward Canfield.....	84
Rep. Tom Cochran	67
Rep. Triston Cole	105
Rep. Kathy Crawford	38
Rep. Diana Farrington.....	30
Rep. Ben Frederick	85
Rep. Sherry Gay-Dagnogo.....	8
Rep. Gary Glenn	98
Rep. Joseph Graves	51
Rep. Beth Griffin.....	66
Rep. Roger Hauck	99
Rep. Pamela Hornberger.....	32
Rep. Gary Howell	82
Rep. Steve Johnson	72
Rep. Bronna Kahle.....	57
Rep. Tim Kelly.....	94
Rep. Beau LaFave	108
Rep. Kim LaSata	79
Rep. Donna Lasinski	52
Rep. Eric Leutheuser.....	58
Rep. James Lower	70
Rep. Steve Marino.....	24
Rep. Aaron Miller	59
Rep. Jeff Noble	20
Rep. Phil Phelps	49
Rep. John Reilly.....	46
Rep. Daire Rendon.....	103
Rep. Brett Roberts.....	65
Rep. Jim Runestad.....	44

Rep. Jason Sheppard	56
Rep. Lana Theis	42
Rep. Curtis VanderWall	101
Rep. Scott VanSingel	100
Rep. Robert VerHeulen.....	74
Rep. Roger Victory	88

Kentucky Senators

Sen. Robert Stivers.....	President of the Senate/25
Sen. David Givens.....	President Pro Tem/9
Sen. Damon Thayer.....	Majority Floor Leader/17
Sen. Ray S. Jones II	Minority Floor Leader/31
Sen. Dan “Malano” Seum	Majority Caucus Chairman/38
Sen. Dorsey Ridley	Minority Caucus Chairman/4
Sen. Jimmy Higdon.....	Majority Whip/14
Sen. Julian Carroll*	Minority Whip/7
Sen. Ralph Alvarado	28
Sen. Joe Bowen	8
Sen. Tom Buford.....	22
Sen. Jared Carpenter	34
Sen. Danny Carroll.....	2
Sen. C.B. Embry	6
Sen. Rick Girdler.....	15
Sen. Ernie Harris	26
Sen. Paul Hornback.....	20
Sen. Stan Humphries.....	1
Sen. Alice Forgy Kerr	12
Sen. Christian McDaniel.....	23
Sen. Stephen Meredith	5
Sen. Dennis Parrett.....	10
Sen. Albert Robinson	21
Sen. John Schickel	11
Sen. Brandon Smith	30
Sen. Johnny Ray Turner.....	29
Sen. Robin Webb	18
Sen. Stephen West.....	27
Sen. Whitney Westerfield	3
Sen. Mike Wilson.....	32
Sen. Max Wise	16

Fmr. Sen. Walter "Doc" Blevins, DMD*	27
Fmr. Sen. Ken Gibson	6
Fmr. Sen. Vernie McGaha	5
Fmr. Sen. Charles Michael Reynolds	32
Fmr. Sen. Richard L. "Dick" Roeding	11
Fmr. Sen. Landon Sexton	34
Fmr. Sen. Gary Tapp	20
Fmr. Sen. Jack Westwood	23

Kentucky Representatives

Rep. Jeff Hoover	House Speaker/83
Rep. David Osborne	Speaker Pro Tem/59
Rep. Jonathan Shell	Majority Floor Leader/71
Rep. Rocky Adkins	Minority Floor Leader/99
Rep. Dennis Keene	Minority Caucus Chairman/67
Rep. Kevin Bratcher	Majority Whip/29
Rep. Wilson Stone	Minority Whip/22
Rep. Lynn Bechler	4
Rep. Danny Bentley	98
Rep. Robert Benvenuti, III	88
Rep. John Blanton	92
Rep. George Brown, Jr.	77
Rep. Larry Brown	95
Rep. Regina Bunch	82
Rep. Tom Burch	30
Rep. John "Bam" Carney	51
Rep. Matt Castlen	14
Rep. Tim Couch	90
Rep. Will Coursey	6
Rep. Jim DeCesare	17
Rep. Jeff Donohue	37
Rep. Myron Dossett	9
Rep. Jum DuPlessis	25
Rep. Daniel Elliott	54
Rep. Joseph M. Fisher	68
Rep. Ken Fleming	48
Rep. Chris Fugate	84

Rep. Al Gentry	46
Rep. Jim Gooch, Jr.....	12
Rep. Derrick Graham	57
Rep. Jeff Greer	27
Rep. David Hale.....	74
Rep. Chris Harris.....	93
Rep. Mark Hart	78
Rep. Richard Heath	2
Rep. Kenny Imes.....	5
Rep. D.J. Johnson.....	13
Rep. Dan Johnson	49
Rep. James Kay.....	56
Rep. Kim King	55
Rep. Adam Koenig.....	69
Rep. Stan Lee	45
Rep. Brian Linder.....	61
Rep. Donna Mayfield.....	73
Rep. David Meade.....	80
Rep. Michael Meredith	19
Rep. Russ A. Meyer	39
Rep. Suzanne Miles.....	7
Rep. Charles Miller	28
Rep. Jerry T. Miller.....	36
Rep. Robby Mills	11
Rep. Phill Moffett	32
Rep. Tim Moore	18
Rep Rick G. Nelson	87
Rep. Ruth Ann Palumbo	76
Rep. Jason Petrie	16
Rep. Phillip Pratt.....	62
Rep. Melinda Gibbons Prunty.....	15
Rep. Marie Rader	89
Rep. Rick Rand	47
Rep. Brandon Reed	24
Rep. Jody Richards	20
Rep. Steve Riggs	31
Rep. Steve Riley.....	23
Rep. Rob Rothenburger	58
Rep. Bart Rowland.....	21
Rep. Steve Rudy.....	1

Rep. Sal Santoro.....	60
Rep. Dean Schamore.....	10
Rep. Arnold Simpson.....	65
Rep. John Sims, Jr.....	70
Rep. Kevin Sinnette.....	100
Rep. Diane St. Onge.....	63
Rep. Jim Stewart III.....	86
Rep. Walker Thomas.....	8
Rep. James Tipton.....	53
Rep. Tommy Turner.....	85
Rep. Ken Upchurch.....	52
Rep. Gerald Watkins.....	3
Rep. Russell Webber.....	26
Rep. Morgan C. Wesley.....	81
Rep. Susan Westrom.....	79
Rep. Addia Wuchner.....	66
Rep. Jill York.....	96
Fmr. Rep. Don Blandford.....	House Speaker/14
Fmr. Rep. Bobby Richardson.....	House Speaker/23
Fmr. Rep. Jon Ackerson.....	47
Fmr. Rep. Royce Adams.....	61
Fmr. Rep. Adrian Arnold.....	74
Fmr. Rep. Sheldon Baugh.....	16
Fmr. Rep. Dwight Butler.....	18
Fmr. Rep. Vernon Jeffrey Buis.....	52
Fmr. Rep. Mike Cherry.....	4
Fmr. Rep. Howard Cornett.....	94
Fmr. Rep. Ron Crimm.....	33
Fmr. Rep. Robert R. Damron.....	39
Fmr. Rep. Milward Dedman*.....	55
Fmr. Rep. Jon Draud.....	63
Fmr. Rep. Joel Ellington.....	4
Fmr. Rep. David Floyd.....	50
Fmr. Rep. Donald J. Gedling, Jr.....	18
Fmr. Rep. Gippy Graham.....	57
Fmr. Rep. J. R. Gray.....	6
Fmr. Rep. Charles M. "Hank" Hancock.....	57
Fmr. Rep. Mike Harmon.....	54
Fmr. Rep. Melvin B. Henley.....	5

Fmr. Rep. Kathy Hogancamp	4
Fmr. Rep. Charles Holbrook, III.....	100
Fmr. Rep. Edward Holloway	27
Fmr. Rep. E. Louis Johnson.....	13
Fmr. Rep. Ronnie Layman.....	19
Fmr. Rep. Henry Clay “Hank” List	79
Fmr. Rep. Jim Maggard	89
Fmr. Rep. Carl A. Nett.....	35
Fmr. Rep. Lewis “Lew” Nicholls	98
Fmr. Rep. Claudia Badgett Riner*	36
Fmr. Rep. Thomas N. Riner, Jr.*	41
Fmr. Rep. David Reinhardt.....	59
Fmr. Rep. Archie Romines, Sr.....	28
Fmr. Rep. Melvin Kent Stevens.....	55
Fmr. Rep. Jeff Taylor.....	8
Fmr. Rep. Tommy Thompson.....	14
Fmr. Rep. Thomas "Tommy" W. Todd	83
Fmr. Rep. Mark Treesh.....	14
Fmr. Rep. F. L. “Ben” Waide	10
Fmr. Rep. Jack Westwood	23

Tennessee Senators

Janice Bowling.....	16
Mark Green	22

Tennessee Representatives

Rep. Sheila Butt	64
Rep. David Byrd	71
Rep. Ron Gant.....	94
Rep. Mark Pody	46
Rep. Jay Reedy.....	74
Rep. Paul Sherrell	43
Rep. Terri Lynn Weaver	40

Ohio Representatives

Rep. Bill Patmon	10
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Kentucky County Commissioners

J.W. Bill Bartleman..... McCracken County
 Thomas Jackson Boyd County
 Mike Koger Daviess County
 Janet Mattern..... Jefferson County
 Joe McKay Mason County
 Beth Sewell Kenton County
 Melody Townsend..... Montgomery County

Kentucky County Magistrates

Mark Bates Carroll County
 Brian Bayers..... Spencer County
 Floyd Bowling..... Carroll County
 Tom Boykin Madison County
 Tony Carriss.....Shelby County
 Robert Cummin..... Lyon County
 Larry Curling..... Caldwell County
 Tim Darland Mercer County
 Teresa Davis..... Owen County
 Carl Howard Dickerson Barren County
 Eli Dix Meade County
 Tony Felker Webster County
 Darryl Flatt.....Adair County
 Cecil Foley Bourbon County
 Gary Gardner.....Hart County
 Leslie Gedling.....Breckinridge County
 Darrell Glover Rowan County
 Kerry Graham Carroll County
 Thomas Goddard.....Meade County
 Hal Goode Washington County
 Kerry Graham Carroll County
 H. Jack Hendricks Boyle County
 Kenny Holbrook.....Nicholas County
 Matthews Hughes.....Nicholas County
 Wayne Thomas Jackson..... Mercer County
 George Jones Fulton County
 Hobert Judd Spencer County
 Joe Leavell Garrard County

Robert Leslie	Oldham County
Brent Likens	Oldham County
Scotty Lippert.....	Bracken County
Anthony Lykins.....	Morgan County
Scotty Mosby	Metcalfe County
Roger Phillips.....	McCreary County
Joel Shinkle	Gallatin County
Todd Spurgeon.....	Owen County
Blake Tarpley	Simpson County
Vicki D. Thomison.....	Hopkins County
E. G. Thompson	Hardin County
Darrell Traugher.....	Warren County
Josephine Orange	Logan County
Woody Underwood	Lewis County
Gary Veirs	Pendleton County
Danny Walker	Lyon County
Steve Wardrip	Meade County
Douglas William Wells.....	Hardin County
Joe Wells	Union County
Ray White.....	Rowan County
Mark Young	Warren County

Kentucky County Judge Executives

Hollis L. Alexander.....	Trigg County
Walter “Doc” Blevins, DMD*	Rowan County
R. T. “Tucker” Daniel.....	Johnson County
Teresa Davis.....	Owen County
Milward Dedman*	Mercer County
Stanley Franklin	Morgan County
Cecil Foley	Bourbon County
Shane Gabbard	Jackson County
Michael Hale	Barren County
Charles Doc Hardin, Jr.....	Magoffin County
Jim Henderson.....	Simpson County
Steve Kelley	Pulaski County
Maurice D. Lucas.....	Breckinridge County
Gerry Lynn	Meade County
Gary W. Moore	Boone County
Dan Mosley	Harlan County

Melanie J. Roberts.....Bullitt County
Bobby C. Rogers Bath County
John Lester “JL” Smith.....Breathitt County
Kelly Thurman McLean County
Tommy Turner LaRue County
David Voegele..... Oldham County
Bobby Lee Westrick..... Carroll County

Kentucky City Council Members

Amy Engelman City of Independence
Bonnie J. Enlow City of Shepherdsville
Mike Hibbard, Sr..... City of Shepherdsville
Janet Mattern..... City of Rolling Hills
Judy C. Pfeffer City of Maysville