No. 15-1869

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETER CARL BORMUTH,

Plaintiff/Appellant,

COUNTY OF JACKSON

Defendant/Appellee.

Appeal from the United States District Court, Eastern District of Michigan Southern Division
Lower Court File No. 2:13-cv-13726

BRIEF ON APPEAL FOR APPELLEE COUNTY OF JACKSON

Oral Argument Not Requested

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STATEMENT IN REGARD TO ORAL ARGUMENT

The issues on appeal are addressed adequately by Defendant-Appellee's brief. Under all the circumstances, oral argument may not necessarily assist the Court in deciding this appeal. Defendant-Appellee County of Jackson, therefore, does not request oral argument before the Court.

JURISDICTIONAL STATEMENT

Defendant-Appellee County of Jackson acknowledges that Plaintiff-Appellant timely appealed as of right from the ruling of the United States District Court for the Eastern District of Michigan granting Defendant's Motion for Summary Judgment, denying Plaintiff's Motion for Summary Judgment and dismissing Plaintiff's Complaint.

STATEMENT OF THE ISSUES

1. WHETHER THE DISTRICT COURT CORRECTLY GRANTED DEFENDANT'S MOTION FOR A PROTECTIVE ORDER TO QUASH DISCOVERY.

   The District Court answered, "Yes."
   Defendant-Appellee County of Jackson answers, "Yes."
   Plaintiff-Appellant answers, "No."

2. WHETHER THE DISTRICT COURT CORRECTLY DENIED PLAINTIFF'S SECOND MOTION TO SUPPLEMENT.

   The District Court answered, "Yes."
   Defendant-Appellee County of Jackson answers, "Yes."
   Plaintiff-Appellant answers, "No."

3. WHETHER THE DISTRICT COURT PROPERLY GRANTED DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, DENIED PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DISMISSED PLAINTIFF'S CLAIMS FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND NOMINAL DAMAGES AGAINST THE COUNTY OF JACKSON, A MUNICIPAL CORPORATION AND SUBDIVISION OF THE STATE OF MICHIGAN, WHERE THE DEFENDANT'S ELECTED BOARD OF COMMISSIONERS OPEN THEIR MEETINGS WITH AN INVOCATION DELIVERED BY COMMISSIONERS.

   The District Court answered, "Yes."
   Defendant-Appellee County of Jackson answers, "Yes."
   Plaintiff-Appellant answers, "No."

4. WHETHER THE DISTRICT COURT CORRECTLY FOUND THAT THE PLAINTIFF LACKED STANDING TO ASSERT A CLAIM ON BEHALF OF UNRELATED CHILDREN ATTENDING THE JACKSON COUNTY BOARD OF COMMISSIONERS MEETINGS.

   The District Court answered, "Yes."
   Defendant-Appellee County of Jackson answers, "Yes."
   Plaintiff-Appellant answers, "No."

STATEMENT OF THE CASE

A. Plaintiff's Complaint, as Amended

On August 30, 2013, Plaintiff Peter Bormuth filed his Complaint, *pro se*, against Defendant County of Jackson (R #1: ID #1-32) in the U.S. District Court for the Eastern District of Michigan, docketed as Case No. 2:13-cv-13726, and assigned to the Hon. Marianne O. Battani. Plaintiff filed an Amended Complaint on November 14, 2013. (R #10: ID #1-33)

In his Amended Complaint, Plaintiff alleged that the practice of the Jackson County Board of Commissioners to open meetings with an invocation given by an individual commissioner on a rotating basis violates the Establishment Clause[1] of the First Amendment to the United States Constitution and the Treaty of Tripoli of 1797, Article 11. The operative assertions of Plaintiff's Amended Complaint are:

1. At meetings of the Jackson Board on January 15, 2013, April 16, 2013, May 21, 2013, June 18, 2013, July 23, 2013 and August 20, 2013, and October 15, 2013 (R #10: ID #5-11) the Invocation included sectarian references such "Jesus", "in your holy name" ""heavenly father", "lord", "amen" or "bless our troops".[2] Plaintiff asserts, on numerous occasions, that the inclusion of sectarian references violates the Establishment Clause or the rights of non-Christians;
2. That often the public was "asked" to rise or bow their heads. *Id*.
3. That children were present at some of the meetings of the Jackson Board and at times led the Pledge of Allegiance. *Id*.
4. That while Plaintiff remained seated and did not participate in the Invocation, that he felt isolated. (R #10: ID #9)

[1] The Establishment Clause provides "Congress shall make no law respecting an establishment of religion. . . ."

[2] A transcript of all Invocations for the period of January, 2011 through January, 2014 and an Affidavit of Nicole Moles, Legal Assistant for Defendant's counsel, that such transcript is accurate was filed by Defendant (R #25-2: ID # 1-9; R #25-3: ID #1-3)

However, absent from the Plaintiff's Amended Complaint is any assertion of fact (as opposed to opinion) and Plaintiff has not claimed, nor addressed, how the invocation practice utilized by the County has been exploited to proselytize or advance any one, or to disparage any other, faith or belief. Also absent is a claim, or evidence, that any invocation (much less a "course and practice over time") denigrates nonbelievers or religious minorities, threatens damnation, or preaches conversion in violation of the standard set forth by the Supreme Court. *Town of Greece, N.Y. v. Galloway,* 134 S. Ct. 1811, 1823 (2014).

While this case was pending in the District Court, the Supreme Court reaffirmed and clarified the constitutionality of legislative prayer in *Town of Greece, N.Y. v. Galloway,* 134 S. Ct. 1811, 1823 (2014). The principal holdings in *Greece* are as follows, and are directly contrary to Plaintiff's claims here:

1. Prayer opening town board meetings did not have to be nonsectarian to comply with the Establishment Clause so long as the "course and practice over time" does not "denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion. " (*Id.* at 1823). In fact, the Court held:

> Once 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, 1823;

2. The town did not violate the First Amendment by opening town board meetings a prayer notwithstanding being predominantly Christian and sectarian even where the presenter of the invocation requested that persons stand and bow their heads (*Id*. at 1826);
3. Prayer at the opening of town board meetings did not compel its citizens to engage in a religious observance, in violation of the Establishment Clause and persons are free to leave, arrive late, or simply not participate – which as Plaintiff admits, is exactly what he did.

4. The presence of children at the town board meetings does not create a basis drawing distinction regarding the permissibility of sectarian legislative prayers. *Id.* at 1831 (Justice Alito concurring). [3]

The decision in *Greece* is directly contrary to each of Plaintiff's claims and affirms the validity of the District Court's Order granting Defendant's Motion for Summary Judgment and denying Plaintiff's Motion for Summary Judgment. (R #61: ID #1-18)

B. Dismissal of Plaintiff's Claim

On June 11, 2014, Defendant County of Jackson filed a Motion for Summary Judgment under Fed. R. Civ. P. 56, together with a Brief in Support and exhibits. (R #25: ID #1-21; R #25-1: ID #1; R #25-2: ID #1-9; R #25-3: ID #1-3; R #25-4: ID #1-4; R #25-5: ID #1-4) The County of Jackson set forth two arguments:

1. The facts of *Greece* are consistent with the facts here, and the holding in *Greece* thus requires summary judgment for the Defendant; and

[3] The fact that children may attend Board of Commissioners meetings from time-to-time and recite the Pledge of Allegiance is not in dispute. (R #11: ID #2). However, the Supreme Court in *Greece* made it clear that the presence of children during a legislative invocation is of no legal significance:

> At Greece Town Board meetings, the principal dissent pointedly notes, ordinary citizens (and even children!) are often present. *Post*, at 10–11. …
> The features of Greece meetings that the principal dissent highlights are by no means unusual. … Nor is there anything unusual about the occasional attendance of students, and when a prayer is given at the beginning of such a meeting, I expect that the chaplain generally stands at the front of the room and faces the public. … In short, I see nothing out of the ordinary about any of the features that the principal dissent notes. Therefore, if prayer is not allowed at meetings with those characteristics, local government legislative bodies, unlike their national and state counterparts, cannot begin their meetings with a prayer. **I see no sound basis for drawing such a distinction**.

*Id.*at 1832, J. Alito concurring (*emphasis added)*. As such, the presence of children at meetings of the Jackson County Board of Commissioners is of no relevance to this action.

2. Plaintiff's attempt to distinguish *Marsh v. Chambers*, 463 U.S. 783 (1983) and *Greece* based upon members of the legislative body giving the invocation is without merit. (R #25: ID # 13-19)

On September 11, 2014, Plaintiff filed his second Motion for Summary Judgment (R #37: ID #1-100) after his first Motion for Summary Judgment filed on December 20, 2013 (R #14: ID #1-43) was terminated by the Order Terminating Motion (Dkt. 14). (R #32: ID #1-3) The Order Terminating Motion (Dkt. 14) provided the Plaintiff with the opportunity to re-argue for summary judgment in light of the decision reached in *Greece*. (R #32: ID #1)

The parties' cross-motions for summary judgment were referred to District Court Magistrate Michael Hluchaniuk who issued his Report and Recommendation Cross-Motions for Summary Judgment (Dkt. 25, 37) on March 31, 2015. (R #50: ID #1-40) Both the Plaintiff (R #51: ID #1-15) and the Defendant (R #53: ID #1-22; R #53-1: ID #1; R #53-2: ID #1-34) filed objections to the Magistrate's Report and Recommendation Cross-Motions for Summary Judgment (Dkt. 25, 37).

On July 22, 2015, District Judge Marianne Battani issued her Opinion and Order Overruling the Plaintiff's Objections, Overruling in Part and Sustaining in Part Defendant's Objections, Adopting in Part the Report and Recommendation, Granting Defendant's Motion for Summary Judgment, and Denying Plaintiff's Motion for Summary Judgment. (R #61: ID # 1-18) Subsequently, Judgment in favor of Defendant Jackson County was entered on July 23, 2015. (R #62: ID # 1)

C. Appeal to Sixth Circuit

Plaintiff filed his Notice of Appeal on July 27, 2015. (R #63: ID #1). Plaintiff filed his Notice of Appeal [Corrected] on July 28, 2015. (R #65: ID #1) Plaintiff filed his Appellant's

Brief (Document 5) in this Court on September 9, 2015. Appellant's Brief fails to articulate any coherent argument demonstrating error by the District Court, or otherwise justifying reversal. Rather, he rehashes his arguments against the Order Overruling in Part and Adopting in Part the Magistrate Judge's Order (R #59: ID #1-3) which granted Defendant's Motion to Quash, the Order Overruling in Part and Adopting in Part the Magistrate Judge's Order (R #60: ID #1-4) which denied Plaintiff's Second Motion to Supplement , and the same faulty arguments related to legislative prayer and standing to sue on behalf of unrelated children who attend meetings of the Jackson County Board of Commissioners. This Court should affirm the District Court's ruling.

SUMMARY OF ARGUMENT

I. The District Court correctly granted Defendant's Motion to Quash Discovery.

II. The District Court correctly denied Plaintiff's Second Motion to Supplement.

III. The District Court correctly dismissed Plaintiff's claims for declaratory judgment, injunctive relief and nominal damages.

A. The Supreme Court's decision in *Greece* applies to legislative prayer generally; the position of the individual, here an elected official offering an otherwise constitutional legislative prayer, does not circumvent the legislative prayer standard set out in *Greece*.

B. The prayers offered by County Commissioners do not show a "course and practice" that denigrate non-believers or religious minorities, threaten damnation, or preach conversion and thus the prayer practice is constitutional as supported by Establishment Clause jurisprudence.

C. The Plaintiff's request for an injunction of the County's prayer practice, absent a course or practice by the Defendant which denigrate nonbelievers or religious minorities, threats of damnation, or preach conversion, seeks to create a *per se* violation of the Establishment Clause on the sole basis that the individual offering the prayer is a legislator.

IV. The District Court correctly found that the Plaintiff lacked standing to assert a claim on behalf of unrelated children attending the Jackson County Board of Commissioners meetings.

APPLICABLE STANDARD OF REVIEW

The Appellee is satisfied with the Appellant's statement of the standard of review.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY GRANTED DEFENDANT'S MOTION TO QUASH DISCOVERY.

During the course of litigation in District Court, Plaintiff sought to depose individual Jackson County Commissioners. Plaintiff's sole claim for which relief is sought involved certain identified legislative invocations which occurred at Defendant's Board meetings. Plaintiff claimed that these invocations, which reference Jesus Christ, violate the Establishment Clause of the First Amendment to the United States Constitution and the Treaty of Tripoli of 1797, Article 11. (R #10: ID #5-11) Plaintiff confirmed in his Response to Defendant's Motion to Quash that the purpose of his inquiry was to seek the religious beliefs of the deponents for the purpose of showing "interest or bias." (R #26: ID #11-15). There is no question that the deponents' motives, interest or bias related to the invocations are irrelevant in deciding Plaintiff's claim.[4]

Plaintiff bases his claim on seven invocations (R #10: ID #5-11) which he alleged are unconstitutional because they include sectarian references such as "Jesus", "in your holy name" ""heavenly father", "lord", "amen" or "bless our troops". The specific

[4] *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811, 1823 (2014) makes clear, the only possible issue in this case involves the content of the invocations and whether such content, "over time shows that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion" *Id.* at 1823 (It does not). Here, the content of each and every invocation from January, 2011 through January, 2014 has been provided to Plaintiff by Defendant in the form of video records of the meetings. As such, in seeking to depose the Commissioners, Plaintiff is not seeking "facts" relevant to his claim.

invocations complained of by Plaintiff contain these consistent – and legally approved by the Supreme Court in *Greece* – themes[5]:

1. January 15, 2013 (R #10: ID #5-6):
   Heavenly Father I just thank you for everybody in this room. Lord we have a lot of difficult and tough decisions to address. Lord I just appreciate everyone showing up tonight and I just ask that you provide them wisdom as they get up and speak. I just thank you for the blessings that you've given us. Lord, to paraphrase you Lord, you tell us too much is given, too much is expected, and you Lord you mean that in more than just a monetary way. Us as leaders, people who, us who serve others, Lord you expect us to truly look to you and your will as we move about our business and make decisions for the best interest of the people in this County. Lord, I just ask that you be with us all and that you just help us do your will. In Jesus's name I pray, Amen.

2. April 16, 2013 (R #10: ID #6):
   Dear Heavenly Father, we humbly thank you for our many blessings. We are blessed as individuals as a community and as a Nation. As it is easy to overlook and take for granted the gifts you've bestowed on

[5] The principal holdings in *Greece* are as follows, and are directly contrary to Plaintiff's claims here:

1. Prayer opening town board meetings did not have to be nonsectarian to comply with the Establishment Clause so long as the "course and practice over time" does not "denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion. " (*Id.* at 1823). In fact, the Court held:
   Once 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, 1823;
2. The town did not violate the First Amendment by opening town board meetings a prayer notwithstanding being predominantly Christian and sectarian even where the presenter of the invocation requested that persons stand and bow their heads (*Id*. at 1826);
3. Prayer at the opening of town board meetings did not compel its citizens to engage in a religious observance, in violation of the Establishment Clause and persons are free to leave, arrive late, or simply not participate – which as Plaintiff admits, is exactly what he did.
4. The presence of children at the town board meetings does not create a basis drawing distinction regarding the permissibility of sectarian legislative prayers. *Id.* at 1831 (Justice Alito concurring)

us, we take this moment to give you thanks and praise. We also ask for your presence in the hearts of those that are suffering and mourning in Massachusetts. We ask for your continued guidance and presence on those that serve including those that protect us here and abroad. We ask in your holy name, Amen.

3. May 21, 2013 (R #10: ID #6):
If you will bow your heads with me for word of prayer. Lord we thank you for this day. Lord we thank you because you said in your word that in all things we are to give thanks because that is your will concerning us and Lord we ask that you be with us tonight as we conduct the business of Jackson County. Help us with the decisions that we are about to make. Now Father, I ask that you would look over this Country, you see the condition, you see the tragedies that's happened. Father we ask that you will be with those families during this time when loved ones are missing and loved ones have died. Lord I ask that you will touch them, the grieving hearts and give them strength. Now Lord we ask that you would bless our armed forces that protect us and give them the courage and the strength they need. We ask that you would bless the families Lord that have loved ones that are protecting us on this soil and abroad be with them also. Now Lord we ask that you will be with us in the furtherance of this meeting that we might conduct business in a way that would be reverence to you. In your name son Jesus's name we pray, Amen.

4. June 18, 2013 (R #10: ID #6):
Lord we come before you tonight asking for your guidance and support. We face many challenges but we can overcome them if we work together towards a common goal and remember we are here to serve your will. Also Lord watch over our military personnel and all those in uniform, and protect them as they serve our Country and may this great Nation continue to be in your grace, In your name, Amen.

5. July 23, 2013 (R #10: ID #6-7):
Bow your heads with me please. Heavenly Father we thank you for this day and for this time that we have come together. Lord we ask that you be with us as while we conduct the business of Jackson County. Lord help us to make decisions that will be best for generations to come. We ask that you will bless our troops that protect us near and far, be with them and their families. Now Lord we want to give you all the thanks and all the praise for all that you do. Lord I want to remember [indecipherable] family tonight that you would be with them and take them through difficult times. We ask these things in your son Jesus's name, Amen.

6. August 20, 2013 (R #10: ID #9):
Please bow our heads. Our Heavenly Father, we thank you for allowing us to gather here in your presence tonight. We ask that you watch over us and keep your guiding hand on our shoulder as we deliberate tonight. Please protect and watch over the men and woman serving this great Nation, whether at home or abroad, as well as our police officers and firefighters. In this we pray in Jesus's name Amen.

7. October 15, 2013 (R #10: ID #11):
Our Heavenly Father watch over us tonight. Help us to make the best decisions for the total population of the city, or the County of Jackson. And I know your tough so give all those guys in Washington a (sound effect made from mouth) 2X4 upside the head and tell them to start working together. In Jesus's name we pray, Amen.

There was nothing relevant left for the Plaintiff to question the deponents about, beyond the undisputed content of the invocations. Plaintiff admits in his Response to the Motion to Quash that the purpose for deposing Commissioners and the County Administrator/Controller is to seek "evidence of bias" and "intent." (R #26: ID #11-15) This is an improper purpose and the information sought is not discoverable.[6]

Upon the review of Defendant's Motion to Quash, the District Court correctly determined that:

> To the extent Plaintiff sought to discover the Commissioners' bias or motives underlying the challenged legislative prayer, *motive is not a relevant factor*. In determining whether legislative prayer is constitutional, courts focus not on the personal motives or biases of government officials, but rather on the

[6] "[t]he collective or individual motives of a legislative body are not discoverable," because "[c]ourts are not concerned with the motives which actuate members of a legislative body in enacting a law, but in the results of their action." *Sheffield Development Co. v. City of Troy,* 99 Mich. App. 527, 530; 298 N.W.2d 23 (1980) (Internal citations omitted).

The "deliberative process privilege rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news." *Department of the Interior v. Klamath Water Users Protective Assoc.,* 532 U.S. 1 (2001).

> objective content of the prayer, the impact it has on the listeners, and any situational aspects of it that could be unduly coercive. See generally, Town of Greece v. Galloway, 134 S. Ct. 1811 (2014). Therefore, the Commissioners' private and personal attitudes toward religion or nonreligion are not relevant to the present action. (R #59: ID #3) [*emphasis added*]

Regardless of how Plaintiff characterizes his claims, he is unable to demonstrate that the District Court abused its discretion in granting Defendant's Motion to Quash.

II. THE DISTRICT COURT CORRECTLY DENIED PLAINTIFF'S SECOND MOTION TO SUPPLEMENT.

Plaintiff filed his Second Motion to Supplement on April 13, 2015 (R #52: ID #1-10) to add the following evidence to the District Court's record: 1.) a letter from the Jackson County Board of Commissioners thanking him for his recent application to an advisory board and notifying him that another applicant was selected; and 2.) Plaintiff's personal affidavit related to his application to the advisory board and his recollection related to the pledge of allegiance at the January 2, 2015 meeting of the Jackson County Board of Commissioners.

Plaintiff's Second Motion to Supplement was correctly denied prior to the deadline for Defendant to file its response. The District Court found as follows:

> Plaintiff seeks to introduce his affidavit regarding his application to a position on the Jackson County Resource Recovery Facility and the Board's failure to hire him for this position. (Doc. 52.) Plaintiff's affidavit also briefly mentions the Board's solicitation of children to recite the Pledge of Allegiance. Because Plaintiff's complaint makes no employment discrimination claim, instead advancing as the sole cause of action an Establishment Clause violation, his affidavit describing the Board's failure to hire him is irrelevant to the case at hand. Although Plaintiff also attests to the solicitation of children to deliver the Pledge of Allegiance, his description of and objections to this practice are adequately set forth elsewhere in the record. Therefore, it is within the broad discretion accorded to the Court by Rule 15(d) to DENY this motion to supplement. (R #60: ID# 3)

Leave to file a supplemental pleading should be freely given, in the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, et cetera. *San Luis & Delta-Mendota Water Authority v. U.S. Dept. of Interior*, 236 F.R.D. 491, E.D.Cal.2006. Allowance of supplemental pleadings is a matter of discretion to be determined by the trial court on the basis of all relevant facts and circumstances. *Friedman v. Typhoon Air Conditioning Co.*, 31 F.R.D. 287, E.D.N.Y.1962. See, also, *U.S. v. L. D. Caulk Co.*, 114 F.Supp. 939, D.C.Del.1953.

Plaintiff's Second Motion to Supplement is futile and frivolous. The information Plaintiff seeks to supplement, related to his failure to be appointed to sit on an advisory board, is irrelevant to his claim. The decision of whether or not to appoint an individual to an advisory board is within the sole discretion of the Jackson County Board of Commissioners. Further, Plaintiff's unfounded and inflammatory statement in his Appellant's Brief on Appeal that, "This material further shows that the Commissioners a[re] employing a religious test when making appointments to public bodies…" is entirely without merit. (Document 5, pp. 25)

The information Plaintiff sought to introduce related to the undisputed fact that children are asked and often do lead the pledge of allegiance at Jackson County Board of Commissioners' meeting is also irrelevant when considering Plaintiff's claim. Notably, Plaintiff lacks standing on behalf of these children and his entire line of argument related to

children is frivolous. This information is irrelevant to Plaintiff's Complaint and is not probative of the issues in dispute.

Plaintiff's Second Motion to Supplement offered nothing new for the District Court to consider under the applicable legal standard articulated in *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811, 1822-1823 (2014). Consequently, the Plaintiff's request to add his thoughts on his qualifications for an appointment to sit on an advisory board, and whether unrelated children should lead the pledge of allegiance, do not assist in resolution of this case. Regardless of how Plaintiff characterizes his claims, he is unable to demonstrate that the District Court committed clear error and misapplied the law when it denied his Second Motion to Supplement.

III. THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFF'S CLAIMS FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND NOMINAL DAMAGES.

A. The Supreme Court's decision in *Greece* applies to legislative prayer generally; the position of the individual, here an elected official offering an otherwise constitutional legislative prayer, does not circumvent the legislative prayer standard set out in *Greece*.

The Judgment issued by the District Court granting Defendant's Motion for Summary Judgment is correct and consistent with the holdings in *Town of Greece, N.Y. v. Galloway,* 134 S. Ct. 1811 (2014), *Joyner v. Forsyth County, N.C.* 653 F.3d 341 (4th Cir., 2011) and *Marsh v. Chambers,* 463 U.S. 783 (1983). Invocations given by legislators, the Commissioners in this case, are not subject to different standards from invocations offered by guest chaplains, paid chaplains or the general public.[7] As the District Court held:

[7] *Joyner v. Forsyth County, N.C.* 653 F.3d 341 (4th Cir.,2011), involved invocations offered by guest chaplains. The Court's reasoning behind this decision also applies to paid chaplains, legislators, and the general public.

> Further, in the opinion of this Court, the Commissioners' development of the prayers' content does not foster an entanglement with religion. Indeed, the hiring and payment of an official chaplain as upheld in Marsh may be regarded as a greater governmental entanglement with religion than the Commissioners' rather benign religious references at issue in the present case. That is, the presence of a religious figure could serve to strengthen perceived governmental ties to religion, not to distance them. Moreover, if the Court determined that the constitutionality of a legislative prayer is predicated on the identity of the speaker, potentially absurd results would ensue. Under such a holding, an invocation delivered in one county by a guest minister would be upheld, while the identical invocation delivered in another county by one of the legislators would be struck down. In light of these considerations, the Court finds that the present legislative prayer practice is not coercive. (R #61: ID #15-16)

This is the correct result. It is the content of the legislative prayer, not the title of the person delivering it, which answers the question of constitutionality under the First Amendment. The District Court concluded that the standards articulated by the Supreme Court in *Greece* apply to all legislative prayer; not only legislative prayer given by clergy, volunteers, staff, or members of the public.

The Supreme Court did not carve out a special constitutional prohibition to prevent legislators from giving legislative prayers. Legislative prayers may be offered by anyone as long as the prayers do not violate the *Greece* standards. *Greece*'s discussion of private-citizen prayers resulted from the challengers' efforts to "distinguish the [County's] prayer practice from the tradition upheld in *Marsh* on the ground that is coerces participation by nonadherents." *Greece* at 1824. The Court rejected all of those distinctions, and upheld the municipality's prayer practice by applying the same test under which government officials can offer prayers in *Marsh*.[8]

[8] The District Court is correct in finding that the test in *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971) does not control the outcome in this case.

The Plaintiff's efforts to distinguish *Marsh* and *Greece* from the facts here, based solely upon the identities of the individual giving the invocation, ignores the controlling standards established in *Greece*; specifically:

> 1. Prayer opening town board meetings did not have to be nonsectarian to comply with the Establishment Clause so long as the "course and practice over time" does not "denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion. " (*Id.* at 1823). In fact, the Court held:
>
> > Once 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, 1823 (*emphasis supplied*);
>
> 2. The town did not violate the First Amendment by opening town board meetings with a prayer notwithstanding being predominantly Christian and sectarian even where the presenter of the invocation requested that persons stand and bow their heads (*Id*. at 1826);
> 3. Prayer at the opening of town board meetings did not compel its citizens to engage in a religious observance, in violation of the Establishment Clause and persons are free to leave, arrive late, or simply not participate – which as Plaintiff admits here, is exactly what he did.
> 4. The presence of children at the town board meetings does not create a basis to draw a distinction regarding the permissibility of sectarian legislative prayers. *Id.* at 1831 (Justice Alito concurring). [9]

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[9] The fact that children may attend Board of Commissioners meetings from time-to-time and recite the Pledge of Allegiance is not in dispute. (R #11: ID #2) However, the Supreme Court in Greece made clear that the presence of children during a legislative invocation is of no legal significance:

> At Greece Town Board meetings, the principal dissent pointedly notes, ordinary citizens (and even children!) are often present. *Post*, at 10–11. …
> The features of Greece meetings that the principal dissent highlights are by no means unusual. … Nor is there anything unusual about the occasional attendance of students, and when a prayer is given at the beginning of such a meeting, I expect that the chaplain generally stands at the front of the room and faces the public. … In short, I see nothing out of the ordinary about any of the features that the principal dissent notes. Therefore, if prayer is not allowed at meetings with those characteristics, local government legislative bodies, unlike their national and state counterparts, cannot begin their meetings with a prayer. *I see no sound basis for drawing such a distinction*.

*Id.*at 1832, J. Alito concurring (*emphasis added)*. As such, the presence from time-to-time of children or teenagers at meetings of the Board of Commissioners – which the Defendant admits – is of no relevance to this action.

In *Joyner*, the defendant attempted (as does the Plaintiff here) to claim the existence of a legal distinction under the Establishment Clause[10] between a member of a governing body giving an invocation as opposed to outside clergy. The 4th Circuit rejected this very distinction:

> These arguments miss the forest for the trees. With respect to *Wynne,* the Board is right to observe that the prayers were delivered by members of the town council. *See Wynne,* 376 F.3d at 294. But that fact was not dispositive. It was the governmental setting for the delivery of sectarian prayers that courted constitutional difficulty, not those who actually gave the invocation**.** *Wynne* rested on two pillars: the Supreme Court's opinion in *Marsh,* which flatly declared that legislative prayer cannot "proselytize or advance any one ... faith or belief," *id.* at 300 (quoting *Marsh,* 463 U.S. at 794–95, 103 S.Ct. 3330), and the Court's subsequent clarification that the prayers in *Marsh* were constitutional "*because* the particular chaplain had removed all references to Christ," *id.* at 299 (quoting *Allegheny,* 492 U.S. at 603, 109 S.Ct. 3086). Those principles apply with equal force here. And lest there be any doubt, we applied the same type of analysis in *Wynne* to the policy in *Simpson, see Simpson,* 404 F.3d at 283–84, which featured prayers delivered by local clergy on a first-come, first-serve basis, *see id.* at 279.
>
> The Board's arguments regarding *Simpson* are equally unpersuasive. Once again, the important factor was the nonsectarian nature of the prayer, not the identity of the particular speaker. While the Board contends that *Simpson*'s discussion of the non-sectarian nature of the prayers was due to the county board's decision to "specifically *den[y]* the intention to create an open forum for private speakers, and instead maintain[ ] a degree of 'content-control' over what was said by the guests," Appellant's Br. at 23 (citation omitted), that fact was not central to *Simpson*'s holding in any way. Indeed, we never once mentioned that fact in analyzing whether the prayers met constitutional muster. *See Simpson,* 404 F.3d at 282–84. …. *Id.* at 350,*351 (emphasis added).*

In *Greece* the Court noted, with approval, that Congress' practice (both in the First

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[10] The Establishment Clause provides "Congress shall make no law respecting an establishment of religion. . . ."

Congress that wrote the Establishment Clause, as well as today) is to "appoint and pay official chaplains." *Greece* at 1818. Although guest chaplains offer some of Congress' prayers, most of Congress' prayers are given by government officials. Of the 319 prayers offered in the House of Representatives during the 112th Congress, 197 (62%) were offered by the House Chaplain, and 126 (38%) by guest chaplains. (R #53-2: ID #1-34) Since a significant number of those guest prayers were offered by the Senate Chaplain, *see, e.g., Id.* (prayer of Mar. 30, 2012), or the Senate Chaplain's Chief of Staff, *see, e.g., Id.* (prayer of Jan. 27, 2012), who like the House Chaplain are government officials, the percentage of prayers offered by government officials in Congress is higher than 62%. Nothing in *Greece* suggests the Supreme Court was overruling *Marsh* to hold legislative prayers by government officials are unconstitutional.

The Establishment Clause, in general, and legislative prayer in particular, "must be interpreted by reference to historical practices and understandings." *Greece* at 1819. "Any test the Court adopts must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Id.* "The Court's inquiry, then, must be to determine whether the prayer practice in [Jackson County] fits within the tradition long followed in Congress and the state legislatures." *Id.* Prayers offered by government officials, as well as those with sectarian references, fit within that tradition. However, if correct, the Plaintiff's claim would invalidate the legislative prayer practice in at least 31 states where prayers are offered by elected legislators. (R #53-2: ID #8-9) If the Plaintiff is correct, and prayers offered by legislators themselves are unconstitutional without applying the standards in *Greece*, the landscape of Establishment Clause

jurisprudence has a new strict liability rule. If the argument set forth by the Plaintiff was applied nationwide, the legislative prayer practices of the majority of the States' legislatures would be *per se* unconstitutional.

The voters in the County of Jackson elect each of the nine Commissioners to a 2-year term. Whatever faiths those nine individuals have will be represented if they so choose to make a reference to their faith in the prayers that may or may not be part of the faith of any of the other eight Commissioners. Each individual Commissioner has a right to offer a prayer, or not, and all of the Commissioners respect that right. In the future there might be a Jewish Commissioner, or a Muslim, Buddhist, Hindu, Druid, atheist or agnostic. Each will be free to act according to their distinctive faith, or absence of faith. The religious composition of the Board of Commissioners is determined by the voters of Jackson County, not by a government actor subject to the Establishment Clause. The Board's practice does not favor one religion at the expense of others.

The Supreme Court has never said a municipality must adopt a private-citizen prayer practice. Instead, the Court held that only if a municipality chooses that route, it cannot deliberately exclude certain faiths from participating on a non-preferential basis. *Greece* at 1824 (requiring that government not show "aversion or bias" and instead "maintain a policy of nondiscrimination"). The Court was careful to balance that with a countervailing factor, cautioning that "a quest to promote 'a diversity of religious views' would require . . . wholly inappropriate judgments[.]" *Id.* There is no support for the Plaintiff reading into this line of cases, culminating in *Greece*, a strict liability standard barring democratically-elected legislators from offering any prayer, regardless of content, because

of the exclusive fact that they are legislators. The holding in *Greece* is that legislative prayers are unconstitutional only if they coerce non-adherents. *Greece* at 1824–27.

Far from a blanket prohibition of prayers by government officials, when the Court in *Greece* reaffirmed *Marsh* in its entirety, it reiterated that Nebraska's practice was consistent with the Establishment Clause. The sole prayer-giver for the 16 years in *Marsh,* Reverend Robert Palmer, held "a permanent, appointed position in a legislature." *Id.* at 1821. If 16 years of exclusively Christian prayers by a single Christian minister is acceptable under the Establishment Clause, then the practice of the Jackson County Board of Commissioners must also be constitutional. Support for this conclusion comes from the fact that the government appointed chaplain method used by Congress and approved in *Marsh* and *Greece* will, to a greater degree, have the effect of excluding various faiths more than the County of Jackson's current prayer practice.

The Court went on to hold the Establishment Clause was not violated by such prayers because "[o]ur 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." *Greece* at 1923. Those who do not share a particular prayer giver's faith might be offended by those prayers. "Offense, however, does not equate to coercion. Adults often encounter speech they find disagreeable[.]" *Id.* at 1826. The Establishment Clause is not violated when a dissenter is offended, or "feel[s] excluded or disrespected." *Id.* "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. Today's practices

tend to be far more heterogeneous than those seen at the Framing. The Constitution was not violated by any of those early practices any more than it is by the modern practices seen in the town of Greece or in the County of Jackson.

There is no reliable method to remove politics from political venues. It is self-evident that in choosing a chaplain, a governing body or its presiding officer is selecting a person they believe is somehow representative of the body or its constituency, and necessarily are not choosing adherents of any number of other faiths. For that matter, people with disparate (or no) religious beliefs are more likely to be elected to the Jackson County Board of Commissioners then have a representative of their belief structure selected to lead a legislative prayer, making it more likely they will have the opportunity to then participate in a practice like Jackson County's, where prayers are offered by the legislators themselves.

After the Supreme Court's holding in *Greece*, the underlying principle in all Establishment Clause case turns on whether legislative prayers are used to "coerce or intimidate" *Id.* at 1826, in a way that is a "real and substantial likelihood," *Id.* "But in 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. The prayers in this case are the words of individual legislators, stated according to that legislator's faith or understanding; such prayers may "reflect the values they hold as private citizens." *Id. at* 1826. The Plaintiff's argument, contrary to the specifically articulated standards established by the Supreme Court to evaluate legislative prayer, finds that every prayer given by a legislator violates the Establishment Clause. This

position is unsupported by controlling Establishment Clause jurisprudence and violates the letter and intent of the relevant standards put forth in *Greece*.

B. The prayers offered by County Commissioners do not show a "course and practice" that denigrate non-believers or religious minorities, threaten damnation, or preach conversion and thus the prayer practice is constitutional as supported by Establishment Clause jurisprudence.

The Plaintiff fails to demonstrate one example where the specific prayers offered by the Jackson County Commissioners preach conversion, denigrate nonbelievers or religious minorities, or threaten damnation to those who do not share the faith of whichever legislator is offering the prayer. Plaintiff's Complaint is based upon 7 invocations (R #10: ID #5-11)[11] The specific invocations cover themes approved by *Greece.* These invocations

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1. January 15, 2013 (R #10: ID #5-6):
Heavenly Father I just thank you for everybody in this room. Lord we have a lot of difficult and tough decisions to address. Lord I just appreciate everyone showing up tonight and I just ask that you provide them wisdom as they get up and speak. I just thank you for the blessings that you've given us. Lord, to paraphrase you Lord, you tell us too much is given, too much is expected, and you Lord you mean that in more than just a monetary way. Us as leaders, people who, us who serve others, Lord you expect us to truly look to you and your will as we move about our business and make decisions for the best interest of the people in this County. Lord, I just ask that you be with us all and that you just help us do your will. In Jesus's name I pray, Amen.

2. April 16, 2013 (R #10: ID #6):
Dear Heavenly Father, we humbly thank you for our many blessings. We are blessed as individuals as a community and as a Nation. As it is easy to overlook and take for granted the gifts you've bestowed on us, we take this moment to give you thanks and praise. We also ask for your presence in the hearts of those that are suffering and mourning in Massachusetts. We ask for your continued guidance and presence on those that serve including those that protect us here and abroad. We ask in your holy name, Amen.

3. May 21, 2013 (R #10: ID #6):
If you will bow your heads with me for word of prayer. Lord we thank you for this day. Lord we thank you because you said in your word that in all things we are to give thanks because that is your will concerning us and Lord we ask that you be with us tonight as we conduct the business of Jackson County. Help us with the decisions that we are about to make. Now Father, I ask that you would look over this Country, you see the condition, you see the tragedies that's happened. Father we ask that you will be with those families during this time when loved ones are missing and loved ones have died. Lord I ask that you will touch them, the grieving hearts and give them strength. Now Lord we ask that you would bless our armed forces that protect us and give them the courage and the strength they need. We ask that you would bless the families Lord that have loved ones that are protecting us on this soil and abroad be with them also. Now Lord we ask that you will be with us in the furtherance of this meeting that we might conduct business in a way that would be reverence to you. In your name son Jesus's name we pray, Amen.

4. June 18, 2013 (R #10: ID #6):
Lord we come before you tonight asking for your guidance and support. We face many challenges but we can overcome them if we work together towards a common goal and remember we are here to serve your will. Also Lord watch over our military personnel and all those in uniform, and protect them as they serve our Country and may this great Nation continue to be in your grace, In your name, Amen.

5. July 23, 2013 (R #10: ID #6-7):
Bow your heads with me please. Heavenly Father we thank you for this day and for this time that we have come together. Lord we ask that you be with us as while we conduct the business of Jackson County. Lord help us to make decisions that will be best for generations to come. We ask that you will bless our troops that protect us near and far, be with them and their families. Now Lord we want to give you all the thanks and all the praise for all that you do. Lord I want to remember [indecipherable] family tonight that you would be with them and take them through difficult times. We ask these things in your son Jesus's name, Amen.

6. August 20, 2013 (R #10: ID #9):
Please bow our heads. Our Heavenly Father, we thank you for allowing us to gather here in your presence tonight. We ask that you

are consistent with the tradition recognized in *Greece* to be constitutional. *Id.* at 1822-23. The invocations were solemn and respectful in tone, invited lawmakers to reflect upon shared ideals, make good decisions in the interest of the County residents, and sought protection for troops, County residents, and law enforcement. Compare to *Greece* at 1823.

What is wholly absent from these specific invocations (much less the prohibited "course and practice" from *Greece*) are invocations which denigrate nonbelievers or religious minorities, threats of damnation, or preach conversion. To the contrary, numerous invocations express inclusiveness. Because the prayers at the opening of County board meetings do not compel Plaintiff or any other citizen to engage in a religious observance, there is no violation of the Establishment Clause.

C. The Plaintiff's request for an injunction of the County's prayer practice, absent a course or practice by the Defendant which denigrate nonbelievers or religious minorities, threats of damnation, or preach conversion, seeks to create a *per se* violation of the Establishment Clause on the sole basis that the individual offering the prayer is a legislator.

The Plaintiff is unable to demonstrate a constitutional violation through the content of the invocations at issue. Plaintiff's only remaining argument is that by stating "all rise" or

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watch over us and keep your guiding hand on our shoulder as we deliberate tonight. Please protect and watch over the men and woman serving this great Nation, whether at home or abroad, as well as our police officers and firefighters. In this we pray in Jesus's name Amen.

7. October 15, 2013 (R #10: ID #11):
Our Heavenly Father watch over us tonight. Help us to make the best decisions for the total population of the city, or the County of Jackson. And I know your tough so give all those guys in Washington a (sound effect made from mouth) 2X4 upside the head and tell them to start working together. In Jesus's name we pray, Amen.

"assume a reverent position" the County's practice is unconstitutionally coercive. In *Greece*, Justice Kennedy's plurality opinion discussed how legislators could (but did not there) coerce the plaintiffs in that case, and how such coercion would have crossed the constitutional line. The plurality opinion indicated that public leaders should not direct the public to participate in the prayers, single out dissidents for opprobrium, or indicate that their decisions might be influenced by a person's acquiescence in the prayer opportunity. *Greece* at 1826.

There is no evidence that the statements by the County Commissioners were directed to the public where a legislative prayer began with "all rise" or "please bow your heads." In each of those instances, there is no reason to suppose the Commissioner was not directing this statement to his or her fellow Commissioners, rather than the public. Prior to *Greece* there was no direction on this matter. However, it is undisputed that the Commissioners did not single out dissidents for opprobrium, or indicate that their decisions might be influenced by a person's acquiescence (or lack thereof) in the prayer opportunity.

Now that the Supreme Court has ruled in *Greece* the County of Jackson has stopped directing anyone to do anything at the start of the invocation. The Commissioners simply stand and begin the invocation.

The County's invocation practice is not unique. The National Conference of State Legislatures publishes *Inside the Legislative Process*, comprised of survey results from a large number of legislative bodies. One such survey involved the prayer practices of state legislatures. (R #53-2: ID #1-34) The survey revealed the following:

1. Opening prayers are offered each session day in the Michigan Senate and House, along with 48 other state legislative chambers. (R #53-2:

ID #5)

2. Prayers are offered after the floor session is called to order, but before the opening roll call is taken for the Michigan Senate and House, along with at least one legislative chamber in 30 other states. (R #53-2: ID #6-7)
3. A member of the Michigan House delivers the prayer, as does a member of at least one legislative chamber in 31 other states. (*emphasis added*) (R #53-2: ID #8-9)
4. Michigan's Senate and House have established guidelines for the delivery of an opening prayer; however, at least one legislative chamber in 30 other states does not have guideline for the delivery of an opening prayer. (R #53-2: ID #10)
5. Opening prayers are not reviewed prior to their presentation in the Michigan Senate and House, consistent with at least one legislative chamber in 45 other states. (R #53-2: ID #14)

It is clear that the County's practice of a Commissioner opening a meeting with an invocation, after the meeting is called to order, on a rotating basis is consistent with the practice in Michigan's legislature (and many other states) and does not violate the Establishment Clause, consistent with the holding in *Greece*.

The *Greece* Court found sectarian invocations constitutional 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. Prayer 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 that legitimate function. *Id.* at 1823. The Supreme Court also indicated that the leaders of a legislative prayer should not direct the public to participate in the prayers. *Id*. at 1826. In light of *Greece*, the Defendant has discontinued any statements that could be construed as directing the public to participate.

IV. THE DISTRICT COURT CORRECTLY FOUND THAT THE PLAINTIFF LACKED STANDING TO ASSERT A CLAIM ON BEHALF OF UNRELATED CHILDREN ATTENDING THE JACKSON COUNTY BOARD OF COMMISSIONERS MEETINGS.

The Constitution does not vest the federal judiciary with "an unconditioned authority to determine the constitutionality of legislative or executive acts." *Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464, 471 (1982). Rather, Article III of the Constitution confines the judicial power to the resolution of actual "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1. Standing "is the threshold question in every federal case, determining the power of the court to entertain the suit." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). If a plaintiff lacks standing, the federal court has no subject matter jurisdiction and no business deciding the case or expounding the law. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 at 341 (2006); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). "The requisite elements of Article III standing are well established: 'A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *Hein v. Freedom From Religion Found., Inc.*, 127 S. Ct. 2553, 2562 (2007) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)).

Plaintiff argues, absent the standing to do so, that the invocation in the presence of children constitutes, "deliberate religious coercion." Plaintiff's asserts this injury to children for whom he is neither the legal parent nor guardian. Plaintiff's feeling that these children are being harmed does not, establish the kind of "concrete and particularized" injury that Article III requires. *See, e.g., Lujan*, 504 U.S. at 560.

The Supreme Court has held that "the psychological consequence presumably produced by observation of conduct with which one disagrees . . . is not an injury sufficient to confer standing under Art. III, even though the disagreement is phrased in constitutional

terms." *Valley Forge Christian*, 454 U.S. at 485-486. Article III injury "is not measured by the intensity of the litigant's interest or the fervor of his advocacy." *Id.* at 486. In general, when plaintiffs allege as injury something with which they disagree, the courts refuse to allow standing precisely because it turns the courts into a super-legislature to review generalized grievances with the executive and legislative branches of government.[12]

The District Court correctly found as follows:

> Here, Bormuth's claim rests on the constitutional rights of the children leading the Pledge of Allegiance. There is no indication anywhere in the record that he had any relationship whatsoever with these children, let alone a "close" relationship. Moreover, there is no indication that the children's ability – or rather their parents' ability – to protect their own rights is hindered in any way. Accordingly, Bormuth lacks standing to assert his Establishment Clause and coercion claims on these grounds. (R #61: ID #17)

In order to have standing to argue on behalf of any children, the Plaintiff must not only allege a particularized injury, but also that the injury can be redressed by a favorable court decision; neither of which he can accomplish. *See Valley Forge Christian College*, 454 U.S. at 472. Here, the remedy Plaintiff requests is unconstitutional - to require the County to become excessively entangled in church doctrine in order to determine if a prayer is sectarian or not. *See Pelphrey v. Cobb County, Georgia*, 547 F.3d 1263 (11th Cir. 2008).

CONCLUSION

For all of the above and foregoing reasons, this Honorable Court should affirm the District Court's Judgment in favor of Defendant and against Plaintiff; affirm the orders

[12] *See, e.g., Allen v. Wright*, 468 U.S. 737, 755-756 (1984) (no Article III injury in fact for mere "abstract stigmatic injury"); *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 223 n.13 (1974) (Article III burden not met for "abstract injury in nonobservance of the Constitution" so no standing to challenge military reserve membership of Members of Congress as violating the Incompatibility Clause of Art. I, § 6, cl. 2, of the Constitution).

granting Defendant's Motion to Quash and denying Plaintiff's Second Motion to Supplement; and affirm the District Court's holding that Plaintiff lacked standing to assert a claim on behalf of unrelated children attending Jackson County Board of Commissioners meetings.

Respectfully submitted,

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Dated: October 13, 2015

ADDENDUM
DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

R #1, ID #1-32	Complaint
R #10, ID #1-33	Amended Complaint
R #11, ID #2	Defendant's Answer to Amended Complaint
R #14, ID #1-43	Plaintiff's First Motion for Summary Judgment
R #25, ID #1-21	Defendant's Motion for Summary Judgment
R #25-1, ID #1	Defendant's Motion for Summary Judgment, Index of Exhibits
R #25-2, ID #1-9	Defendant's Motion for Summary Judgment, Exhibit A
R #25-3, ID #1-3	Defendant's Motion for Summary Judgment, Exhibit B
R #25-4, ID #1-4	Defendant's Motion for Summary Judgment, Exhibit C
R #25-5, ID #1-4	Defendant's Motion for Summary Judgment, Exhibit D
R #26, ID #1-16	Plaintiff's Response to Defendant's Motion for Protective Order to Quash Depositions
R #32, ID #1-3	Magistrate Hluchaniuk's Order Terminating Plaintiff's First Motion for Summary Judgment
R #37, ID #1-100	Plaintiff's Second Motion for Summary Judgment
R #50, ID #1-40	Magistrate Hluchaniuk's Report and Recommendation Cross-Motions for Summary Judgment
R #51, ID #1-15	Plaintiff's Objection to Magistrate Hluchaniuk's Report and Recommendation Cross-Motions for Summary Judgment
R #52, ID #1-15	Plaintiff's Second Motion to Supplement
R #53, ID #1-22	Defendant's Objection to Magistrate Hluchaniuk's Report and Recommendation Cross-Motions for Summary Judgment

R #53-1, ID #1	Defendant's Objection to Magistrate Hluchaniuk's Report and Recommendation Cross-Motions for Summary Judgment, Index of Exhibits
R #53-2, ID #1-34	Defendant's Objection to Magistrate Hluchaniuk's Report and Recommendation Cross-Motions for Summary Judgment, Exhibit A
R #59, ID #1-3	Judge Battani's July, 22, 2015 Order Overruling in Part and Adopting in Part the Magistrate Judge's Order which granted Defendant's motion to quash
R #60, ID #1-4	Judge Battani's July, 22, 2015 Order Overruling in Part and Adopting in Part the Magistrate Judge's Order which denied Plaintiff's second motion to supplement
R #61, ID #1-18	Judge Battani's July 22, 2015 Opinion and Order Overruling the Plaintiffs Objections, Overruling in Part and Sustaining in Part Defendants Objections, Adopting in Part the Report and Recommendation, Granting Defendants Motion for Summary Judgment, and Denying Plaintiffs Motion for Summary Judgment
R #62, ID #1	Judgment in Favor of Defendant Against Plaintiff, signed by Judge Battani on July 23, 2015
R #63, ID #1	Plaintiff's Notice of Appeal, filed July 27, 2015
R #65, ID #1	Plaintiff's Notice of Appeal [Corrected], filed July 28, 2015

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)

1. This Brief complies with the page limitation of Fed. R. App. P. 32(a)(7)(B) because this Brief contains 30 pages, excluding the parts of the Brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), as counted by Microsoft Word 2010, and contains 8,365 words.

2. This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), because the Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 12-point Arial.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that on October 13, 2015, I electronically filed Defendant/Appellee County of Jackson's Brief on Appeal with the Clerk of the Court using the ECF system, and I hereby certify that I have mailed by United States Postal Service the same to the following non-ECF participant:

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