UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Case No. 15-1869

PETER BORMUTH,

Appellant

v.

COUNTY OF JACKSON,

Appellee

On Appeal from United States District Court, Eastern District of Michigan,

Southern Division, Case No. 13-cv-13726

District Judge, Hon. Marianne O. Battani

APPELLANT'S REPLY BRIEF

Peter Bormuth, Appellant
In Pro Per
142 West Pearl St.
Jackson, MI 49201
(517) 787-8097
earthprayer@hotmail.com

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CONSTITUTIONAL PROVISIONS

U.S. Constitution, Article 2, Section 3 in pertinent part holds:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;...

U.S. Constitution, Article 6, Section 2 in pertinent part holds:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;...

U.S. Constitution, Article 6, Section 3 in pertinent part holds:

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

U.S. Constitution, Amendment 1 in pertinent part holds:

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

U.S. Constitution, Amendment 14 in pertinent part holds:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS

Title 42 U.S.C. Section 1983 in pertinent part holds:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

TREATIES

Treaty of Tripoli, Article 11 (1797) in pertinent part holds:

As the Government of the United States is not, in any sense, founded on the Christian religion;

LEGAL ARGUMENT

I. REPLY TO APPELLEE ARGUMENT # I: THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING APPELLANT THE BASIC RIGHT TO GATHER EVIDENCE.

Federal R. Civ. P. 30(a) provides: "After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination." Under Federal Rule of Evidence 401, relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." And Discovery is not limited to relevant evidence, but to matters "reasonably calculated to lead to discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1).

The Defendant wishes to stretch the separation of powers doctrine and the deliberate process privilege doctrine to apply to this case. They do not apply.

First, County Commissioners are not legislators. They do not make laws. They are not a separate municipal government. As an agency of State government, they follow the laws passed by the Michigan Legislature.

Second, this case does not involve a law passed by the Commissioners or the State legislators. It involves a practice. An unconstitutional practice which violates the Establishment Clause of the U.S. Constitution and the Treaty of Tripoli which this Court is obliged to uphold.

Third, the case law the Defendant cites involves Michigan case law. (*Sheffield Development Co. v. City of Troy*, 99 Mich. App. 527, 298 N.W. 2d 23 (1980)). But since it is the U.S. Constitution which the Plaintiff seeks to enforce, not state law, Michigan case law does not apply to this action.

Federal Rule of Evidence 501 provides that federally evolved rules on privilege apply. Federal Rule of Evidence 601 specifically allows an inquiry into religious beliefs for the purpose of showing interest or bias because of them. The federal approach rarely grants recognition of new privileges that would impede access to probative evidence. Federal Courts have stated that "privileges are disfavored." See *In re Grand Jury*, 103 F.3d 1140 (3d Cir. 1997) at 1149; see also *United States v. Nixon*, 418 U.S. 683 (1974) at 710 (cautioning that privileges "are not lightly created nor expansively construed").

Fourth, the Commissioner's comments from the Personnel & Finance Committee meeting on November 12, 2013 regarding Administrator Overton's proposed Policy for prayer/invocations clearly demonstrate that the Commissioners prayer practice is deliberately designed to prevent the expression of minority beliefs. The Commissioners asserted that the discussion was "a waste of time" and "politically correct nonsense" raised by a "nitwit." (see Brief of *Amicus Curiae* Americans United for Separation of Church and State, County of Jackson, *Personnel & Finance Committee, November 12, 2013*, YouTube (Dec. 19, 2013) http:tinyurl.com/2013nov12 (38:56, 43:11-43:32). They declined to create a policy allowing guest chaplains to give invocations because "if someone from the public wants to come before us and say they are an ordained minister, we will have to allow them." County of Jackson, *Personnel & Finance Committee, November 12, 2013*, YouTube (Dec. 19, 2013) http:tinyurl.com/2013nov12 (37:54). This succinct statement proves that the Jackson County prayer practice is not open to all creeds. Inquiry as to motive is therefore warranted.

Fifth, the County Commissioners operate under the Michigan Open Meeting Act, Public Act 267 of 1976.[1] The County Commissioners already give their personal opinions during open public deliberations. The Appellant clearly has the right to depose the Commissioners on their public statements.

Sixth, the Commissioners often elaborate on their reasoning when asked by the news media. In an example pertinent to this case the Commissioners discussed Administrator Overton's proposed Draft Policy No. 4035 in an 11-19-13 article in the Brooklyn Exponent by Brad Flory. Commissioner Duckham is quoted as saying, "There was no support to approve this policy" (Draft Policy No. 4035). Commissioner Carl Rice is quoted as saying, "Bormuth is attacking us, and from my perspective, my Lord and savior, Jesus Christ", and aggressively affirmed that "We commissioners...have a right to pray as we believe." Commissioner Duckham is quoted as saying, "All this political correctness, after a while I get sick of it." These public statements are clearly relevant to the Appellant's claims.

Seventh, the Appellant sought information of bias or prejudice with regard to the failure of the Commissioners to appoint him to the Solid Waste Planning Committee. The Commissioners have established a policy of religious conformity or silence with regard to governmental

[1] Section 3 of the Michigan Open Meeting Act Public Act 267 of 1976 provides that: (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting...(2) All decisions of a public body shall be made at a meeting open to the public. (3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.

appointments in direct violation of the United States Constitution, Article VI, paragraph 3.[2] Clearly the Appellant had a legitimate interest in deposing the Commissioners.

Eighth, Honorable Magistrate Hluchaniuk and Honorable Judge Battani made clearly erroneous findings of fact. Magistrate Hluchaniuk held that the Plaintiff was proceeding under F.R.C.P. 56(d) rather than Rule 26(b)(1) and Judge Battani held that the Appellant was seeking employment. The District Court abused its discretion when it relied on clearly erroneous findings of fact and misapplied the law. (see *United States v. Baldwin*, 418 F.3d 575, 579 (6th Cir. 2005)).

II. REPLY TO APPELLEE ARGUMENT # II: THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED THE APPELLANT'S SECOND MOTION TO SUPPLEMENT

The Appellant feels further argument is unnecessary. There is nothing frivolous about seeking to supplement the Appellant's complaint with a second violation by the Defendants of the United States Constitution, Article VI, paragraph 3. The Defendant's also violated the standard cited by the Supreme Court in *Town of Greece* on which their argument depends ("the standard would be different if town board members...indicated that their decisions might be influenced by a person's acquiescence in the prayer opportunity....Nothing in the record indicated 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. In no

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[2] United States Constitution, Article VI, paragraph 3 states: The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but **no religious test shall ever be required as a qualification to any office or public trust under the United States.** (bold emphasis added).

instance did town leaders signal disfavor towards non-participants or suggest that their stature in the community was in any way diminished.") 134 S. Ct. at 1826. This Court must reverse.

III. REPLY TO APPELLEE'S ARGUMENT # III, A, B, & C: THE PRAYER PRACTICE OF THE DEFENDANTS VIOLATES THE ESTABLISHMENT CLAUSE AND FALLS OUTSIDE THE *MARSH/GREECE* EXCEPTION.

A. ELECTED OFFICIALS INHERENTLY DIFFER FROM PAID CHAPLAINS, GUEST CHAPLAINS, OR THE GENERAL PUBLIC.

The Defendant's argument that the identity of the prayer giver does not matter is absurd. An elected official passes laws or ordinances. An elected official votes on creating governmental programs and determines appropriations. An elected governmental official recommends individuals for governmental service and makes appointments. An elected official, in composing prayers, dictates content and entangles the government with religion. An elected official represents all of the voters in their district or ward, including the citizens who disagree with their personal religion, the citizens who voted against them, and the citizens who did not vote. The Commissioners do not seem to understand this important point. After the gavel sounds opening a public meeting, they are not just individual citizens with a right to pray as they please. They are governmental officials formally representing all of their constituents including Pagans, Wiccans, Hindus, Buddhists, Muslims, Jews, and all non-believers (atheists, agnostics, secular humanists) and they cannot exclusively pray in the tradition of the Christian religion. This is precisely the evil that the Establishment Clause was designed to prevent. A chaplain or private person has none of these qualities and performs none of these functions. They differ intrinsically from an elected official. As the Appellant has argued, it is a *per se* violation of the Establishment Clause for an elected official to offer Christian prayers.

B. JACKSON COUNTY'S PRACTICE FALLS OUTSIDE THE HISTORICAL TRADITION TEST OF *MARSH/GREECE*.

The Defendant's falsely assert that their prayer tradition falls within the *Marsh/Greece* exception. As the Court in *Town of Greece* held: "*Marsh* teaches that the establishment Clause must be interpreted "by reference to historical practices and understandings."" (quoting *County of Allegheny v. American Civil Liberties Union, Greater PIttsburgh Chapter,* 492 U.S. 573 670 (opinion of KENNEDY, J.)). The Greece Court noted that "*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." *Marsh v. Chambers*, 463 U.S. 783 (1983) at 796, 813 (BRENNAN, J., dissenting). Like Honorable Judge Battani, who stated her preference that no prayers be allowed (Dkt. 61, p. 17), the Appellant feels that Judge Brennan's eloquent dissent should have become law. The insidious process of carving out exceptions, started in 1983, is being used in the instant case to completely overthrow the Establishment Clause, just as Honorable Justice Brennan feared. However the Appellant, the Defendants, and this Honorable Court must follow the ruling in *Marsh.* The *Marsh* Court limited their analysis to the practice of opening legislative sessions with prayers by a state-employed clergyman and found the practice constitutional because of its unique history. The *Marsh* Court noted that "The states' practices differ widely. Like Nebraska, several states choose a chaplain who serves for the entire legislative session. In other states, the prayer is offered by a different clergyman each day. Under either system, some states pay their chaplains, and others do not." *Marsh* 463 at footnote 18. Clearly the *Marsh* Court never contemplated that their ruling would be applied to elected governmental

officials like the legislators themselves. The ruling was specific to the historical practice of having chaplains open legislative sessions with a prayer. The limited exception to the Establishment Clause that *Marsh* created was based on the identity of the speaker within that historical practice: a chaplain.

The Defendant's attempt to claim a historical tradition for their practice is completely meritless. The historical test utilized by the Court in *Marsh/Greece* looked to the Founders and the period immediately following the ratification of the Constitution for historical legitimacy of chaplain offered prayers. As the Appellant pointed out, the Founders explicitly rejected the establishment of Christianity and the worship of jesus christ. Defendant's fail to provide any evidence for support of a historical practice involving legislative prayer by elected government officials. The Appellee cites the National Conference of State Legislature's publication, *Inside the Legislative Process*, claiming historical legitimacy for their practice. Since 1983, apparently thirty one states now allow legislators to offer invocations. This recent departure from historical practice is a deliberate modern attempt to destroy the Establishment Clause does not constitute a historical tradition under the *Marsh/Greece* standard. After the election of Ronald Reagan in 1980, Christian Conservative Tim LaHaye founded the Council for National Policy, an organization with the specific agenda of promoting and establishing the Christian religion in our national life. For several decades the CNP has stealthily and vigorously pursued their agenda to establish the christian religion.[3] CNP members control Christian think tanks, Christian direct mail organizations,

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[3] The Religious Freedom Restoration Act, originally passed by Congress to protect minority religions, is being used by the CNP and their allies to establish Christian morality and belief. The Courts have moved Establishment Clause jurisprudence in the direction favored by the CNP with rulings in cases like *Good News Club v. Milford Central School,* 533 U.S. 98 (2001) (Christian groups that proselytize school children

Christian radio and other news media including newspapers and television, and play a significant role in funding conservative Christian candidates. One of the early efforts of the CNP during the Reagan years was to encourage state-level candidates to utilize non-offensive prayers for God, County, our troops, and law enforcement when they were elected. Obviously their efforts have been successful, but that does not make this practice historical under the *Marsh/Greece* standard. As the *Town of Greece* Court stated in quoting *School District of Abington Township v. Schempp,* 374 U.S. 203 (1963) at 294 (BRENNAN, J. concurring) ("[T]he line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers"). It is incumbent on this Court to prohibit this insidious and impermissible practice. The defendant's assertion that the ruling in *Town of Greece* did not consider the identity of the speakers is meritless. The *Greece* Court specifically noted that it was not the town officials who gave the prayers or requested that the audience participate. *Town of Greece*, 134 S. Ct. at 1816, 1826. As the Court wrote in *Town of Greece,*

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may meet on public school property after school hours); *Hein v. Freedom From Religion Foundation*, 551 U.S. 587 (2007) (the creation of the White House Office of Faith-based and Community Initiatives, as well as eight Cabinet-level offices of faith-based initiatives was legal because federal taxpayers do not have the right to challenge executive branch violations not explicitly authorized by the legislative branch); *Spencer v. World Vision,* 2010 WL 3293706 (9th Cir. 2010) (religious organizations can fire non-believing employees); *Sebelius v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 678 (2013) (allowing for-profit corporations to restrict employees' access to contraceptives or abortion); *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811 (2014) (allowing sectarian legislative prayers by chaplains or lay persons). The courts have allowed religious proselytizing in schools. The courts have allowed federal funds to be given to Christian organizations. The courts are granting Christians special exemptions from our laws setting up a separate ecclesiastical jurisprudence in this country. Now the defendants seek to allow elected governmental officials to pray to jesus christ. The Plaintiff argues that these cases cumulatively establish the Christian religion and if this Court is going to allow elected officials to pray to jesus, the Establishment Clause possesses no legal meaning what-so-ever.

***"...Marsh* must not be understood as permitting a practice that would amount to a constitutional violation."** (bold emphasis added). *Id*

C. CONTRARY TO DEFENDANT'S CLAIMS, JACKSON COUNTY'S PRACTICE ALSO FAILS THE OTHER TESTS THAT *TOWN OF GREECE* IMPOSED.

1. The Court in *Town of Greece N.Y. v. Galloway* 134 S. Ct. 1811 (2014) ruled that prayers (by guest chaplains) did not have to be nonsectarian to comply with the Establishment Clause provided that: **"there is no indication that the prayer opportunity has been exploited to proselytize or advance any one,...faith or belief."** (quoting *Marsh* 463 U.S. at 794-795) (bold emphasis added). It is undeniable that the prayer opportunity in this case has been exploited to advance the christian faith. Every single prayer offered is christian because every commissioner is christian. This is majority rule in religion, exactly what the Establishment Clause was designed to prevent.

2. The Court in *Town of Greece* ruled that the government must "maintain...a policy of nondiscrimination." *Town of Greece,* 134 S. Ct. at 1824. The Town of Greece policy allowed "that a minister or layperson of any persuasion, including an atheist, could give the invocation." *Id* at 1816. A Wiccan priestess was allowed to give the invocation. Honorable Judge Alito made it clear in his concurring opinion that the Court would have viewed *Town of Greece* differently if minority faiths and nonbeliever were intentionally excluded. *Id* at 1829, 1831 (ALITO, J., concurring). But the County of Jackson has gone on the record deliberately stating that the intention of their practice is to exclude diversity of belief. (see Brief of *Amicus Curiae* Americans United for Separation of Church and State, p. 13, 14, 15). As one Commissioner acknowledged: "every board

member here who gets up there and says a prayer during invocation, we end our invocation in the name of jesus christ." County of Jackson, *Personnel & Finance Committee November 12, 2013*, YouTube (Dec. 19, 2013), http://tinyurl.com/2013nov13 (33:14). The facts show a policy of discrimination by the Defendant.

3. The Court in *Town of Greece* ruled that coercion, or its absence, was a decisive consideration. "The analysis would be different if town board members directed the public to participate in the prayers,...Although board members themselves stood, bowed their heads, or made the sign of the cross, they at no point solicited similar gestures by the public." *Town of Greece*, 134 S. Ct at 1826. In the instant case the County Commissioners have commanded the public to participate. The factual record clearly indicates that the Jackson County Commissioners coerce citizens into standing, bowing their heads, and professing a belief in Jesus Christ when they come to participate in official governmental meetings. The "primary effect" of having an elected governmental official give the invocation while demanding that the audience participate is clearly an effort to promote a preferred system of belief and code of moral behavior. They are coercing citizens to pray to jesus christ and violating the Constitution.

4. The Court in *Town of Greece* ruled that town officials could not single out dissidents for opprobrium. *Id* at 1826. But two Commissioners have turned their backs on the Appellant while he was politely speaking during public comment. (Dkt. 10, p. 9, ¶ 31) (Dkt. 57, p. 2, ¶ 10; Affidavit 5 of Peter Bormuth, ¶ 12, 13, 14). The Appellant believes that it is an undisputed fact in this case that the Jackson County Commissioners have clearly "singled out a dissident for opprobrium." They called the Appellant a "nitwit" because he believes that the Earth is a living conscious being and because he feels the New Testament is a children's story. County of Jackson, *Personnel &*

Finance Committee November 12, 2013, YouTube (Dec. 19, 2013), http://tinyurl.com/2013nov13 (43:11-43:32). If that is not "signaling disfavor" and "diminishing stature within the community" based on religious beliefs and convictions, then the Appellant does not know what actions would be required to meet the Court's standard in *Town of Greece*. *Town of Greece*, 134 S. Ct at 1826, 1830.

5. The Court in *Town of Greece* ruled that a practice that allocated benefits and burdens based on a citizen's participation in the christian prayer would be unconstitutional. *Id* at 1826, 1830. The town board of Greece did not violate this standard. But the record in the instant case clearly shows that the Defendants denied the Appellant appointment to the Solid Waste Planning Committee immediately after his public comment challenge to their prayer practice. (Dkt. 10, p. 9, ¶ 33, 34). The Appellant's second motion to supplement provides a second example of the Jackson County Commissioners allocating or denying benefits based on the Appellant's religious beliefs, should this Honorable Court reverse and GRANT the Appellant's motion.

6. The Court in *Town of Greece* specifically found that Legislatures and Courts should not "act as supervisors and censors of religious speech." *Town of Greece,* 134 S. Ct at 1822. But the Jackson County Commissioners are dictating and delivering the content of the prayers in the instant case, thus acting as supervisors and censors of religious speech. Thus, in contrast to Town of Greece, where the town government had no role in determining the content of opening invocations at its board meetings, Jackson County itself, embodied in its elected Board members, dictated the content of the prayers opening their official Board meetings and that content was consistently grounded in the tenets of one faith. Further, because the Jackson County Board members themselves serve as exclusive prayer providers, persons of other faith traditions and

nonbelievers have no opportunity to offer invocations. Put simply, the Jackson County involves itself "in religious matters to a far greater degree" than was the case in *Town of Greece*. *Id* at 1822.

7. Despite violating all six of these standards established by the Supreme Court ruling in *Town of Greece* the Defendants claim that their practice is constitutional because it did not violate the seventh standard the Supreme Court upheld: that prayers should not "denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion." The Appellant is challenging the defendant's practice based on the preceding six issues he already raised, not on content, but notes that the prayer of Commissioner Phil Duckham on Tuesday October 21, 2014 denigrates all nonbelievers and minority faiths.

> **Please bow your heads, please. Heavenly father,** we gather here tonight under your watchful eye to do the business of Jackson County. Please grant us the wisdom and guidance to make intelligent and proper decisions that benefit the citizens of Jackson County. Bless our troops. **Bless the Christians worldwide who seem to be the targets of killers and extremists. Lord we ask this in your holy name. Amen.**
>
> (Dkt. 42, Exhibit L, Affidavit 3 of Peter Bormuth, ¶ 3)

This elected governmental official expresses concern only for christians. He does not express concern for the Muslims of Bosnia who were subjected to genocide by Christian killers and extremists. He does not express concern for the Pagan Mayans of Guatemala who have been subjected to genocide by Christian killers and extremists. He does not express concern for the European Jews who were subjected to genocide by the Christian Nazis. He does not express concern for the trade unionists, environmentalists, and intellectuals kidnapped, tortured and

murdered by the Christian military junta that ruled Argentina from 1976 to 1983. Catholic priests were directly involved in the repression, with military chaplains going so far as to bless the drugged bodies of subversives marked for execution as they were loaded onto military planes, from which they were then thrown to their deaths over the ocean while still alive. No, this Commissioner only invokes the concern of the government of the United States for his fellow believers in jesus christ. That is denigrating to every non-christian citizen of the United States.

The Appellant also notes that the generic and superficially inoffensive prayers advocated by the Council for National Policy and utilized by the Jackson County Commissioners ("Bless our troops"; "Bless our men and women in uniform"; "Bless our police and firefighters"; "Bless all our citizens, born and unborn") contain deliberately understated political positions. When given by elected governmental officials, such prayers do not serve to uplift and focus the minds of legislators, but to advance one party's political advantage. Down here on the ground in Jackson County everyone knows that 'Bless our troops' is code for continuing the policy of continuous war and military involvement in the Middle East.[4] Similarly, 'Bless our police' is code for the policies of law and order, including the war on drugs, which have incarcerated so many of our poor and minority citizens and specifically states opposition to the Black Lives Matter

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[4] James Madison understood that "of all the enemies to public liberty, war is, perhaps, the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies; from these proceed debt and taxes; and armies, and debts, and taxes are the known instruments for bringing the many under the dominion of the few." – "Political Observations" (1795-04-20); also in Letters and Other Writings of James Madison (1865), Vol. IV, p. 491. Madison was a keen observer of history and his maxims may be regarded as prophetic.

movement.[5] 'Bless all our citizens, born and unborn' is code for the pro-life, anti-abortion movement and their goal of giving unborn fetuses constitutional and civil rights. The Christian pro-life Right was just deliberately mobilized for the 2016 Presidential race by the release of edited tapes pretending to show that Planned Parenthood was illegally engaged in the sale of fetal tissue. And obviously, governmental prayers in the name of jesus christ promote the goal of establishing Christian religion and morality in our law. Obviously, the Appellant also supports our troops and our police officers (Blue Lives Matter!) and hopes that all our citizens are blessed. The Appellant simply asks this Honorable Court to understand that these superficially benign prayers are not content neutral. The Defendants are using the prayer opportunity to advance a partisan agenda.

D. APPELLEE'S RELIANCE ON *JOYNER V. FORSYTH COUNTY, NC.* IS MISPLACED. 4TH CIRCUIT PRECEDENT ACTUALLY SUPPORTS THE APPELLANT

The case in *Joyner v. Forsyth County, N.C.* 653 F.3d 341 (4th Cir. 2011), like *Town of Greece* dealt with invocations by guest chaplains. In the citation quoted by the Defendant, the 4th Circuit was simply clarifying the basis of its ruling in *Wynne*. Honorable Judge Battani correctly disposed of the Defendants reliance on Joyner in her Opinion and Order by holding:

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[5] The most intelligent comment on this issue the Appellant has seen was made by Baltimore Orioles Team executive John Angelos, son of owner Peter Angelos with regard to the 'riot' in Baltimore: "[m]y greater source of personal concern, outrage and sympathy beyond this particular case is focused neither upon one night's property damage nor upon the acts, but is focused rather upon the past four-decade period during which an American political elite have shipped middle class and working class jobs away from Baltimore and cities and towns around the U.S. to third-world dictatorships like China and others, plunged tens of millions of good, hard-working Americans into economic devastation, and then followed that action around the nation by diminishing every American's civil rights protections in order to control an unfairly impoverished population living under an ever-declining standard of living and suffering at the butt end of an ever-more militarized and aggressive surveillance state."

> Language from Joyner v. Forsyth County, relied on by_Jackson County for the proposition that the identity of the speaker is immaterial, is taken out of context. In that case, the Fourth Circuit stated, "With respect to *Wynne,* the Board is right to observe that the prayers were delivered by members of the town council. But that fact was not dispositive. It was the government setting for the delivery of sectarian prayers that courted constitutional difficulty, not those who actually gave the invocation." See 653 F.3d at 350 (citations omitted). That excerpt simply notes that the basis for the decision in Wynne v. Town of Great Falls 376 F.3d 292, rested on the sectarian references included in the prayer and not on the fact that the prayers were delivered by government officials. Id It does not follow, however, that the identity of the speaker is never pertinent. (Dkt # 61, p. 10)

Clearly this clarification by the Court of the basis for its ruling is not the same as a decision in favor of the defendant's position. Nowhere in *Joyner* did the Court rule that governmental officials could offer sectarian prayers in a governmental setting. As the Appellant has pointed out numerous times, no Court has ever issued a ruling that embraces the Defendant's position. However, the Court in *Joyner v. Forsyth County, N.C.* 653 F.3d 341 (4th Cir. 2011) did rule that:

> The proximity of prayer to official government business can create an environment in which the government prefers...particular sects of creeds at the expense of others. Such preferences violate "[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 (1982). After all, "[w]hatever else the Establishment Clause may mean...it certainly means at the very least that government may not demonstrate a preference for one particular sect of creed." *Allegheny*, 492 U.S. at 605."

This analysis is equally applicable to the case at hand. The Court in *Joyner* also specifically noted that:

> ...policies that do not discourage sectarian prayer will inevitably favor the majoritarian faith in the community at the expense of religious minorities living therein. *Id* at p. 25.

The 4th Circuit's analysis actually supports the Appellant. As the Appellant argued, Jackson County's practice undeniably prefers Christianity and establishes majority religion under the guise of legislative prayer.

IV. REPLY TO APPELLEE ARGUMENT # IV: THE SUPREME COURT IN *TOWN OF GREECE* CONSIDERED THE ARGUMENT BROUGHT BY PLAINTIFF'S GALLOWAY & STEPHENS WITH REGARD TO THE EXPOUSE OF UNRELATED CHILDREN TO THE TOWN'S PRAYER PRACTICE.

Since the Supreme Court granted standing and considered (before rejecting) the argument by Plaintiff's Galloway and Stephens that children were adversely and unconstitutionally affected by the Town of Greece's invocation/prayer practice, this Court is obligated consider the far more serious implications that the County of Jackson's prayer practice poses. The Appellant stands on an equal footing with Plaintiff's Galloway and Stephens. With regard to standing, there is no legal difference between *Town of Greece* and the instant case.

V. APPELLEE FAILED TO RESPOND TO THE APPELLANT'S ARGUMENT THAT THE DISTRICT COURT ERRED BY FAILING TO APPLY ARTICLE 2, § 3 & ARTICLE VI, § 2 OF THE U.S. CONSTITUTION & THE TREATY OF TRIPOLI (ARTICLE 11) TO THIS CASE, THUS CONCEEDING THE ARGUMENT TO THE APPELLANT.

The Appellee failed to respond to the Appellant's argument that the United States Constitution requires that the Treaty of Tripoli, Article 11, be applied to this case, thus conceding the argument to the Appellant. Christian prayer by a governmental official to open a governmental meeting creates a formal alliance between the State and the christian religion that directly violates Article 11. Should this Court choose to apply the *Marsh/Greece* standard to this case, rather than the *Lemon* standard, it must take into account the clear expression of the intent of our Founders that exists in the Treaty of Tripoli. As the *Town of Greece* Court stated in quoting *School District of*

Abington Township v. Schempp, 374 U.S. 203 (1963) at 294 (BRENNAN, J. concurring) "[T]he line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers."

CONCLUSION

WHEREFORE, for the forgoing reasons cited in his Appellant's brief and this Reply brief, the Appellant Peter Bormuth, respectfully requests that this Honorable Court **REVERSE.**

Respectfully submitted,

Peter Bormuth
In Pro Per
142 West Pearl St.
Jackson, MI 49201
(517) 787-8097
earthprayer@hotmail.com

Dated: October 26, 2015

CERTIFICATE OF COMPLIANCE

In accordance with F.R.A.P. 32(a)(C)(i) Appellant Peter Bormuth, does hereby certify that his Appellant's Reply Brief contains 6060 words according to the Microsoft Word program used to compose it.

Peter Bormuth
In Pro Per
142 West Pearl St.
Jackson, MI 49201
(517) 787-8097
Dated: October 26, 2015
earthprayer@hotmail.com

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2015, I mailed a copy of my Appellant's Brief to Richard McNutty, 601 N. Capital Avenue, Lansing, MI 48933 by regular mail.

Peter Bormuth
In Pro Per
142 West Pearl St.
Jackson, MI 49201
(517) 787-8097
earthprayer@hotmail.com

Dated: October 26, 2015

Bormuth
142 W. Pearl St
Jackson, MI 49201
RE: # 15-1869

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