

## **Local Government and Legislative Prayer Can They Pray or Not?—Contrasting Decisions**

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Two recent decisions on invitational prayer before local government Board meetings, filed in March of 2013, came out in opposite directions, but give some insight into the legal principles involved in determining whether Boards can properly sponsor a formal prayer before meetings. In *Hudson v. Pittsylvania County*, the federal district court for the Western District of Virginia issued an injunction against the prayers being offered. In *Atheists of Florida v. City of Lakeland*, the Eleventh Circuit found no constitutional violation. Different courts on different days, or consistent underlying principles?

In Virginia, Ms. Hudson asked for a permanent injunction because the Board consistently opened each of its meetings with a Christian prayer, which offended her and made her feel like an outsider. As a side note, more relevant to the personal than the legal conflict, Ms. Hudson has repeatedly criticized and opposed the Board on many issues. The court first concluded she had standing to bring her grievance. The court then considered the prayer issue and pointed out that specifically sectarian prayers (such as always praying in Jesus' name), that advance a particular religious faith, are an Establishment Clause violation. The court did not say the Board could not use prayers, but that it could not repeatedly open its meetings with prayers associated with any one religion.

In Lakeland, the Atheists of Florida originally objected to the Protestant nature of the prayers, and prayer in Jesus' name. The City responded by considerably broadening its list of potential speakers, to include other religions and many denominations. They were still mostly Christian (reflecting the existing religious organizations). AOF then filed the lawsuit. The City passed a formal resolution defining its legislative prayers. The resolution included points like use of a general database, having no members of the City Commission pray, and not having the prayer be on the official agenda. The Eleventh Circuit agreed that: (1) the current prayers did not advance a single faith; (2) the selection process was broad; and (3) the nature of the prayers did not seem to intend to exploit the opportunity to proselytize. The Court found no Establishment Clause violation.

Between them, these cases and the courts' discussion suggest some principles for invitational prayer. Such prayer is less likely to be a violation if it does not advance a particular faith or religion, is brought by a broad variety of potential speakers, and is not carried out by the members of the local government. On May 22, 2013, the U.S. Supreme Court agreed to hear a federal case challenging the constitutionality of opening prayers at the town council meetings in Greece, New York, so there should be further guidance before long.