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FIRST AMENDMENT - TENNESSEE

Jones v. Hamilton County Government, Tenn.

United States Court of Appeals, Sixth Circuit - July 19, 2013 - Fed.Appx. - 2013 WL 3766656

At issue here was whether the Hamilton County Commission's formal written policy of commencing meetings with a prayer invocation led by a private citizen violates the First Amendment's Establishment Clause.

The Supreme Court in *Marsh* permitted legislative prayer as long as "there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief. " Unless there is an indication that the prayer opportunity has been exploited to advance one faith or belief over another, the Supreme Court cautioned that courts should not "embark on a sensitive evaluation or ... parse the content of a particular prayer."

When applying the Marsh standard to the facts here, the court deemed it evident that the Commission's Policy is facially constitutional. The Policy allows for three different types of invocations: (1) a reflective moment of silence; (2) a short solemnizing message; or (3) a prayer. The County's procedures for selecting potential invocation speakers are not discriminatory and allow any bonafide religious organization to participate. The Policy calls for a list of religious assemblies in the County to be compiled on a yearly basis, and, if a specific religious assembly in the County is not on the list, it can write to the County to be included. Further, the Policy allows religious assemblies from outside the County to give the opening invocation if a resident of the County requests their inclusion. The Policy expressly states that it is "intended to acknowledge and express the Commission's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of Hamilton County."

In addition, the Policy states that invocation speakers will be notified: "To maintain a spirit of respect for all, the Commission requests only that the opportunity not be exploited as an effort to convert others to the particular faith of the invocation speaker, nor to disparage any faith or belief different than that of the invocation speaker." On its face, the Policy is tailored to comply with Marsh and it does not advance any one faith or belief over another.