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Information Alert: Court Rules Public Prayer Unconstitutional

The U.S. Court of Appeals for the Fourth Circuit (in Richmond) recently upheld a lower court's ban on prayers by clergy that may mention the name of a particular deity at a public meeting. The ruling contradicts decades of Supreme Court precedent and is in conflict with several other circuit court opinions on the same issue. It invites government censorship of public prayer.

The Family Foundation joined with several other family policy councils in an amicus brief to the court and was in the audience when oral arguments were made.

Mike Johnson, an Alliance Defense Fund-allied attorney and founding dean of Louisiana College's Pressler School of Law who argued before the Fourth Circuit in May said in response to the court's ruling, "America's founders opened public meetings with prayer. There's no reason that today's public officials should be forced to censor the prayers of those invited to offer them simply because secularist groups don't like people praying according to their own conscience."

The Forsyth, North Carolina County board involved in the case has voted to appeal the decision to the U.S. Supreme Court.

Throughout his majority opinion, Judge Harvey Wilkinson seeks to recognize the "legitimacy of legislative prayer" while at the same time requiring that "prayer" to be void of any religious, or specifically Christian, references. It ridicules sectarian prayer as denying "invocations their inclusive aspect" and renders all faiths equal, stating that "those of different creeds are in the end kindred spirits." This position exposes the idea of government "neutrality" toward religion for what it is – pure censorship and hostility toward public exercise of faith. In a frightening opinion fraught with contradiction and illogic, the majority reduces religious expression to a place deserving less protection than other speech stating, "...the First Amendment teaches that religious faith stands on a different footing from other forms of speech and observance." (Note they include "observance" and not just speech!) Essentially, the majority argues that simply uttering the name of Christ at a public meeting "advances" Christianity, offends people of other faiths, and therefore cannot be tolerated, unless there is an arbitrary number of other deities recognized as well.

Judge Paul V. Niemeyer strongly dissented from the 2-1 ruling, writing that "the majority has dared to step in and regulate the language of prayer--the sacred dialogue between humankind and God. Such a decision treats prayer agnostically; reduces it to civil nicety; hardly accommodates the Supreme Court's jurisprudence in *Marsh v. Chambers*...; and creates a circuit split [with the 11th Circuit].... Most frightfully, it will require secular legislative and judicial bodies to evaluate and parse particular religious prayers under an array of criteria.... I respectfully submit that we must maintain a sacred respect of each religion, and when a group of citizens comes together, as does the Forsyth County Board of Commissioners, and manifests that sacred respect--*allowing the prayers of each to*

be spoken in the religion's own voice--we must be glad to let it be."

Other federal courts have upheld the ADF model invocation policy on which Forsyth County's policy is based, including a very recent July 11 decision that upheld the invocation policy of Lancaster, Calif. Each of the four other federal courts to review similar invocation policies since 2009 has found them to be constitutional.

The details of this case date back to March of 2007 when the ACLU and Americans United for Separation of Church and State (AU) filed suit against North Carolina's Forsyth County Board of Supervisors stating, "[the Board] does not have a policy which discourages or prohibits those whom [the Board] has invited to deliver prayers from including references to Jesus Christ, or any other sectarian deity, as part of their prayers." The two plaintiffs represented by the ACLU complained that a prayer offered at one specific meeting in December of 2007 that mentioned the "Cross of Calvary," the "Virgin Birth" and "Jesus" made them feel "distinctly unwelcome and 'coerced by [their] government into endorsing a Christian prayer.'"

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