

May 21, 2014

TECHNICAL BULLETIN

To: County Council Chairmen
Chief Administrative Officers
County Attorneys
Clerks to Council

From: SCAC Staff

Re: US Supreme Court Opinion on Public Meeting Invocations

This *Technical Bulletin* outlines a recent opinion of the US Supreme Court relating to invocations at public body meetings. A copy of the Court's syllabus opinion in the case *Town of Greece New York v. Galloway et al.*, is attached for your convenience. The full opinion is available online at www.supremecourtus.gov.

On May 5, 2014, the United States Supreme Court narrowed the scope of legal challenges that may be brought against a public body's invocation policies based on the content of the prayers. In this particular case the Town of Greece, New York had a policy of opening meetings with a prayer/invocation. The Town's policy was open to clergy of all creeds, however, nearly all of the local congregations were Christian. As a result nearly all of the prayers at town meetings were Christian in nature. The plaintiffs, who were all citizens attending various meetings, challenged the policy arguing that the prayers preferred Christianity over all other beliefs. They sought to limit the town to "inclusive and ecumenical" invocations that referred only to a "generic god." The Court's opinion held that the first amendment to the Constitution requires public bodies to maintain a policy of nondiscrimination, and may not intentionally create a pattern that over time denigrates, proselytizes, or betrays an impermissible government purpose. However, the Court held that the first amendment did not require the public body to search outside of its borders in order to achieve religious diversity. The Court also rejected the argument that individual prayers had to be nonsectarian. To hold such, the Court said, would require the public body to act as a supervisor or censor of religious speech.

The Court further pointed to the fact that the audience to whom the prayers are directed are the lawmakers themselves and not the public. The prayers are meant to lend gravity to public proceedings, and not to coerce citizens to engage in a religious observance. The public attending these meetings may leave the room or otherwise not participate.

Public bodies should also look to § 6-1-160 of the SC Code of Laws for guidance concerning public invocation policies. The South Carolina Legislature enacted the Public Invocations Act in 2008, to provide a procedure for state and local governments to enact policies for an invocation to open a public meeting. The Act's requirements apply to most public bodies, and includes many of those issues addressed by the Supreme Court in *Galloway*.

Pursuant to § 6-1-160(B) public bodies may enact an invocation policy by one of three methods: (1) the members of the body offer an invocation on an objective and rotating basis; (2) the body may elect a chaplain; or (3) the body may allow invocation speakers from the community of religious leaders where the body is located. If the body allows speakers from the community, to ensure objectivity, the body annually shall compile a list of all known, established religious congregations and assemblies by reference to local telephone books or similar sources.

Please consult your county attorney if you have specific questions about this opinion and its application to the SC Public Invocations Act. The SCAC staff is also available at 1-800-922-6081 to address general questions.