

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF ROANOKE COUNTY, VIRGINIA, HELD AT THE ROANOKE COUNTY ADMINISTRATION CENTER ON TUESDAY, NOVEMBER 13, 2012

RESOLUTION 111312-3 ESTABLISHING A POLICY REGARDING OPENING INVOCATIONS BEFORE MEETINGS OF THE BOARD OF SUPERVISORS OF ROANOKE COUNTY

WHEREAS, the Board of Supervisors (“the Board”) is an elected legislative and deliberative public body, serving the citizens of Roanoke County, Virginia; and

WHEREAS, the Board wishes to solemnize its proceedings by allowing for an opening invocation before each meeting, for the benefit and blessing of the Board; and

WHEREAS, the Board now desires to adopt this formal, written policy to clarify and codify its invocation practices; and

WHEREAS, our country’s Founders recognized that we possess certain rights that cannot be awarded, surrendered, nor corrupted by human power, and the Founders explicitly attributed the origin of these, our inalienable rights, to a Creator. These rights ultimately ensure the self-government manifest in our deliberative bodies, upon which we desire to invoke divine guidance and blessing; and

WHEREAS, in *Marsh v. Chambers*, 463 U.S. 783 (1983), the United States Supreme Court validated the Nebraska Legislature’s practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars, and specifically concluded, “The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom.” *Id.*, at 786; and

WHEREAS, the Board desires to avail itself of the Supreme Court's recognition that it is constitutionally permissible for a public body to "invoke divine guidance" on its work. *Id.*, at 792. Such invocation "is not, in these circumstances, an 'establishment' of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country." *Id.*; and

WHEREAS, the Supreme Court also famously observed in *Zorach v. Clauson*, 343 U.S. 306, (1952), "We are a religious people whose institutions presuppose a Supreme Being." *Id.*, at 313-14; and

WHEREAS, the Supreme Court acknowledged in *Holy Trinity Church v. United States*, 143 U.S. 457 (1892), that the American people have long followed a "custom of opening sessions of all deliberative bodies and most conventions with prayer..." *Id.*, at 471; and

WHEREAS, the Supreme Court has determined, "The content of [such] prayer is not of concern to judges where . . . 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." *Marsh*, 463 U.S. at 794-795; and

WHEREAS, the Supreme Court also proclaimed that it is not the job of the courts or deliberative public bodies "to embark on a sensitive evaluation or to parse the content of a particular prayer" offered before a deliberative public body. *Id.*; and

WHEREAS, this Board is not establishing a policy that defines the Constitutional limits for permissible public invocations, this Board intends to adopt guidelines that are

consistent with the guidance provided by the several courts that have considered the validity of public invocations; and

WHEREAS, this Board is only bound by the decisions of the United States Court of Appeals for the Fourth Circuit, the United States Court of Appeals in several federal circuits have provided general guidance to help ensure that policies concerning public invocations are consistent with the Constitution; and

WHEREAS, in *Simpson v. Chesterfield County Bd. of Supervisors*, 404 F.3d 276 (4th Cir. 2004), *cert. denied*, the United States Court of Appeals for the Fourth Circuit specifically approved as constitutional the invocation policy of a county board making a number of key findings, including the facts that the *Simpson* policy:

- (1) Established a practice of compiling a list of local monotheistic congregations, “with addresses taken primarily from the phone book,” whereto the county clerk would send an invitation each December addressed to the “religious leader” of each congregation, *Id.*, at 279; and
- (2) Required the county clerk to schedule respondents to the invitation “to give the invocation on a first-come, first-serve basis,” *Id.*; and
- (3) Thus, “made plain that [the county board] was not affiliated with any one specific faith by opening its doors to a wide pool of clergy.” *Id.*, at 286; and

WHEREAS, the Fourth Circuit showed little concern that the invocations before Board meetings in *Simpson* included prayers that were “traditionally made to a divinity that is consistent with the Judeo-Christian tradition,” *Id.*, at 280, because *Marsh* also considered, and found constitutionally acceptable, the fact that the prayers in question

fit broadly within ‘the Judeo-Christian tradition.’” *Id.*, at 283 (quoting *Marsh*, 463 U.S. at 793); and

WHEREAS, the Fourth Circuit’s ruling in *Simpson* can be distinguished from its earlier decision in *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2002), *cert. denied*, where a town Board “improperly ‘exploited’ a ‘prayer opportunity’ to ‘advance’ one religion over others.” *Id.*, at 298 (quoting *Marsh*, 463 U.S. at 794); and

WHEREAS, the Board intends to avoid the unique circumstances that rendered the practices at issue in *Wynne* unconstitutional, including the facts that:

- (1) The Town Council “steadfastly refused” to allow any “deity associated with any specific faith other than Christianity” to be invoked, *Id.*, at 300, n.5; and
- (2) Town Council members publicly chided and “ostracized” those who refused to participate in their prayers, *Id.*, at 295; and
- (3) The refusal to participate in prayers “adversely affected [a citizens] right to participate in the Council meetings.” *Id.*, at 299, n.4; and

WHEREAS, The Fourth Circuit’s ruling in *Joyner v. Forsyth County*, 653 F.3d. 341 (4th Cir. 2011), approved the practice of following a neutral policy that invites religious leaders from diverse religious institutions serving the local community to voluntarily offer an invocation before public meetings, but required the council to proactively discourage “sectarian references” while finding that “occasional sectarian references” do not violate the Constitution; and

WHEREAS, the Board intends, and has intended in past practice, to adopt a policy that does not proselytize or advance any particular faith, or show any purposeful preference of one religious view to the exclusion of others; and

WHEREAS, the Board intends to adopt a policy that will not show a purposeful preference of one religious view over another by not permitting the faith of the person offering the invocation to be considered when extending an invitation; and

WHEREAS, the Supreme Court recognized in *Marsh v. Chambers*, 463 U.S. at 786, this country's history and tradition of opening sessions of deliberative public bodies with an invocation and affirmed in *Lynch v. Donnelly*, 465 U.S. 668 (1984), that "Our history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders." *Id.*, at 675, and the Board believes that clergy that serve the local community are peculiarly suited through training, tradition, and public service to petition for divine guidance upon the deliberations of the Board, and to accomplish the Board's objective to solemnize public occasions, express confidence in the future, and to encourage the recognition of what is worthy of appreciation in society. See *Lynch*, 465 U.S. at 693 (O'Connor concurring); and

WHEREAS, the Board accepts as binding the applicability of general principles of law and all the rights and obligations afforded under the United States and Virginia Constitutions and statutes.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Roanoke County, Virginia, that the Board hereby adopts the following written policy regarding opening invocations before meetings of the Board, to wit:

1. It is the intent of the Board to allow a private citizen to solemnize the proceedings of the Board of Supervisors. It is the policy of the Board to allow for an invocation, which may include a prayer, a reflective moment of silence, or a short solemnizing message, to be offered before its meetings for the benefit of the Board.

2. Although the invocation may be listed in the program or schedule of events on a separate introduction page, it shall not be considered an agenda item for the meeting or part of the public business.

3. No member or employee of the Board or any other person in attendance at the meeting shall be required to participate in any prayer that is offered.

4. The prayer shall be voluntarily delivered by an eligible member of the clergy in the County of Roanoke, the Counties of Montgomery, Botetourt, Bedford and Franklin, the Town of Vinton, and the Cities of Roanoke and Salem. To ensure that such person (the "invocation speaker") is selected from among a wide pool of the region's clergy, on a rotating basis, the invocation speaker shall be selected according to the following procedure:

- a. The Clerk to the Board (the "Clerk") shall compile and maintain a database (the "Invocations List") of the religious congregations with an established presence in the County of Roanoke, the Counties of Montgomery, Botetourt, Bedford and Franklin, the Town of Vinton, and the Cities of Roanoke and Salem.

- b. The Invocations List shall be compiled by referencing the listing for “churches,” “congregations,” or other religious assemblies in the annual phonebook publication distributed by the company that holds the telecommunication franchise for the Roanoke Valley, research from the Internet, and consultation with local chambers of commerce. All religious congregations with an established presence in the local communities of the County of Roanoke, the Counties of Montgomery, Botetourt, Bedford and Franklin, the Town of Vinton, and the Cities of Roanoke and Salem are eligible to be included in the Invocations List, and any such congregation can confirm its inclusion by specific written request to the Clerk. In addition, the County shall solicit the participation of any private citizen or religious congregation through the County’s website and on Roanoke Valley Television (RVTV).
- c. The policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious congregation in the County of Roanoke, the Counties of Montgomery, Botetourt, Bedford and Franklin, the Town of Vinton, and the Cities of Roanoke and Salem. The Invocations List is compiled and used for purposes of logistics, efficiency, and equal opportunity for all of the community’s religious leaders, who may themselves choose whether to respond to the Board’s invitation and participate. Should a question arise as to the authenticity of a religious congregation, the Clerk shall refer to

criteria used by the Internal Revenue Service in its determination of those religious organizations that would legitimately qualify for I.R.C. § 501(c)(3) tax-exempt status.

- d. The Invocations List shall also include the name and contact information of any chaplain who may serve one or more of the fire departments or law enforcement agencies of County of Roanoke, the Counties of Montgomery, Botetourt, Bedford and Franklin, the Town of Vinton, and the Cities of Roanoke and Salem.
- e. The Invocations List shall also include the name and contact information of any religious congregation located outside the region if such religious congregation is attended by at least one resident of the County and such resident requests the inclusion of said religious congregation by specific written communication to the Clerk.
- f. The Invocations List shall be updated, by reasonable efforts of the Clerk, in November of each calendar year.
- g. Within thirty (30) days of the effective date of this policy, and on or about December 1 of each calendar year thereafter, the Clerk shall mail an invitation addressed to the “religious leader” of each congregation listed on the Invocations List, as well as to the individual chaplains included on the Invocations List.

- h. The invitation shall be dated at the top of the page, signed by the Clerk at the bottom of the page, and read as follows:

Dear Religious leader,

The Board of Supervisors of Roanoke County makes it a policy to invite members of the clergy in our region to voluntarily offer an invocation before the beginning of its meetings, for the benefit and blessing of the Board. As the leader of one of the religious congregations with an established presence in the local community, or in your capacity as a chaplain for one of the local fire departments or law enforcement agencies, you are eligible to offer this important service at an upcoming meeting of the Board.

If you are willing to assist the Board in this regard, please send a written reply at your earliest convenience to the Clerk to the Board at the address included on this letterhead. Clergy are scheduled on a first-come, first-serve basis. The dates of the Board's scheduled meetings for the upcoming year are listed on the following, attached page. If you have a preference among the dates, please state that request in your written reply.

*This opportunity is voluntary, and you are free to offer the invocation according to the dictates of your own conscience. To maintain a spirit of respect and ecumenism, the Board requests 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. The U.S. Court of Appeals for the Fourth Circuit opined in *Joyner v. Forsyth County*, 653 F.3d. 341, 349 (4th Cir. 2011), that prayers at the opening of legislative sessions “must strive to be nondenominational so long as it is reasonably possible [;] should send a signal of welcome rather than exclusion [;] should not reject the tenets of other faiths in favor of just one [; ... and may not] repeatedly suggest the government has put its weight behind a particular faith.” The Court further instructed the deliberative body to “be proactive in discouraging sectarian references” to avoid “occasional” references from becoming too “frequent” when the invocations are viewed as a collective. The County requests that you comply with these court guidelines accordingly.*

On behalf of the Board of Supervisors, I thank you in advance for considering this invitation.

*Sincerely,
Clerk to the Board*

- i. As the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-serve basis to deliver the invocation.
 - j. In the event an eligible member of the clergy believes that the clerk has not complied with the terms of this policy, the clergy member has the right to have the matter reviewed by the Board.
 - k. Any private citizen, including those who do not belong to religious congregation may request the Clerk to be added to the list of persons delivering invocations.
5. No invocation speaker shall receive compensation for his or her service.
6. No guidelines or limitations shall be issued regarding an invocation's content, except that the Board shall request by the language of this policy that invocations in the form of a prayer, when considered collectively, should avoid having "sectarian references" become too frequent and no invocation should proselytize or advance any faith, or disparage the religious faith or non-religious views of others.
7. The Clerk shall make every reasonable effort to ensure that a variety of eligible invocation speakers are scheduled for the Board meetings. In any event, no invocation speaker shall be scheduled to offer an invocation at consecutive meetings of the Board, or at more than three (3) Board meetings in any calendar year. If the

scheduled invocation speaker fails to appear, then the Board shall solemnize the proceedings with a reflective moment of silence.

8. Neither the Board nor the Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any invocation to be offered by an invocation speaker.

9. To clarify the Board's intentions, as stated herein above, the following disclaimer shall be included in at least ten (10) point font at the bottom of any printed program or schedule of events on the separate introduction page published by the Board:

"Any invocation that may be offered before the official start of the Board meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Board. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Board and do not necessarily represent the religious beliefs or views of the Board in part or as a whole. No member of the community is required to attend or participate in the invocation and such decision will have no impact on their right to actively participate in the business of the Board."

10. Shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Chairperson of the Board shall introduce the invocation speaker and invite those who wish to show respect for the traditional observances and/or the Board to stand.

11. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Board with, nor express the Board's preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the

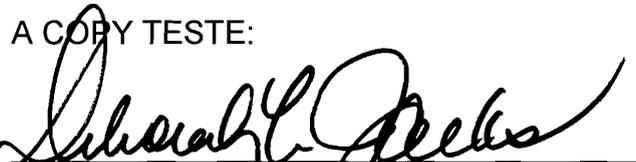
Board's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of Roanoke County.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this policy shall become effective from and after January 1, 2013.

On motion of Supervisor Moore to adopt the resolution, and carried by the following roll call and recorded vote:

AYES: Supervisors Moore, Altizer, Church, Elswick, Flora

NAYS: None

A COPY TESTE:

Deborah C. Jacks
Clerk to the Board of Supervisors

cc: Paul M. Mahoney, County Attorney