



Written by [Dave Bohon](#) on August 30, 2019

## Atheists Can Be Blocked From Giving Invocation in Pennsylvania Legislature

A federal appeals court has overturned a lower court ruling that would have allowed atheists and agnostics to offer the invocation before Pennsylvania's House of Representatives.

A three-judge panel of the U.S. Court of Appeals for the Third Circuit in Philadelphia ruled August 23 that the state's nearly 340-year-old invocation policy was constitutional, overturning a 2017 decision to the contrary by a U.S. District Court judge. The policy requires that any individual offering the invocation be "a member of a regularly established church or religious organization" or "a member of the House of Representatives."



In 2016, a coalition of atheists and "non-theists" filed a federal lawsuit insisting that the policy violates the 14th Amendment's Equal Protection Clause, as well as the First Amendment's Free Speech, Free Exercise of Religion, and Establishment Clauses.

In his lower court ruling, U.S. District Judge Christopher Conner allowed the suit to proceed only on the plaintiff's argument that the policy violated the Establishment Clause.

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In explaining the Third Circuit Court's decision to overrule the lower court action, Judge Thomas Ambro wrote that with regard to the Establishment Clause, "we uphold the [state legislature's] policy because only theistic prayer can satisfy the historical purpose of appealing for divine guidance in lawmaking, the basis for the Supreme Court taking as a given that prayer presumes a higher power."

Ambro added that as for "the Free Exercise, Free Speech, and Equal Protection Clauses, we hold that legislative prayer is government speech not open to attack via those channels."

Ambro noted that on two occasions "the Supreme Court has drawn on early congressional practice to uphold legislative prayer. It emphasized that Congress approved the draft of the First Amendment in the same week it established paid congressional chaplains to provide opening prayers."

He added that "Congress approved theistic religious expression in other ways as well. A day after proposing the First Amendment, it urged President Washington to proclaim 'a day of public thanksgiving and prayer, to be observed by acknowledging with grateful hearts, the many and signal favors of Almighty God.'"

Concluded Ambro: "Instead of rocking the constitutional boat, today we merely observe what the Supreme Court has long taken as given: that prayer traditionally presumes a higher power. Because this notion flows from the historical understanding and practice of legislative prayer, it lends further



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support to the policy of the Pennsylvania House.”

In a statement following the decision, the secularist group Americans United for Separation of Church and State, which had represented the plaintiffs in the case, called the ruling “disappointing,” complaining that “while treating non-theists like second-class citizens may have been part of our nation’s history, it’s a shameful practice, hardly something we ought to uphold today. Yet rulings like the one in the Fields case do just that: They preference believers in god while sending a message of exclusion and even scorn to non-theists.”

In reporting on the ruling, ChristianNews.net noted that “according to the office of the chaplain of the U.S. House of Representatives, the first prayer of the Continental Congress was presented on Sept. 7, 1774 by Jacob Duche of Christ Church of Philadelphia, and was delivered in the name of Jesus.

The Christian news site recalled that the Reverend Duche prayed as follows: “O Lord our Heavenly Father, high and mighty King of kings, and Lord of lords, who dost from thy throne behold all the dwellers on earth and reignest with power supreme and uncontrolled over all the kingdoms, empires and governments, look down in mercy, we beseech Thee, on these our American States, who have fled to Thee from the rod of the oppressor and thrown themselves on Thy gracious protection, desiring to be henceforth dependent only on Thee.”

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