Written by **Dave Bohon** on January 18, 2012

Supreme Court Refuses to Hear Pair of "Jesus' Name" Prayer Cases

In rejecting a case involving the invocation policy of Forsyth County, North Carolina, the Supreme Court left in place a decision by the U.S. Court of Appeals for the 4th Circuit, which ruled that while prayers can be offered by local pastors and religious leaders, the county must severely limit the inclusion of specifically Christian appeals.

"No federal court has ruled that prayers cannot be offered before public meetings," said attorney David Cortman of the Alliance Defense Fund (ADF), the conservative legal advocacy group that represented the county in the case. He added, however, that the Supreme Court had "missed an opportunity to clear up the differing opinions among the various circuits about the content of the prayers. This means that, for the time being, the standard for prayer policies in the 4th Circuit will be different from the standard held by the rest of the country."

As reported by *The New American*, in 2007 the ACLU sued the Forsyth County Commission on behalf of a group of individuals who complained that the invocations offered at the Commission's meetings were heavy on Christian vernacular. As an example they cited a meeting in December of that year during which a local pastor "thanked God for allowing the birth of His Son to forgive us for our sins and closed by making the prayer in the name of Jesus," according to the Associated Press.

In July the 4th Circuit ruled against the county, noting that fully three-quarters of the prayers at the Commission meetings between May 2007 and December 2008 had been offered by Christian clergy, whose prayers were peppered with such Christian-themed names as "Jesus," "Jesus Christ," and "Savior."

Writing for the majority in the two-to-one court decision, Judge J. Harvie Wilkinson III explained that "in order to survive constitutional scrutiny, invocations must consist of the type of non-sectarian prayers that solemnize the legislative task and seek to unite rather than divide. Sectarian prayers must not serve as the gateway to citizen participation in the affairs of local government. To have them do so runs afoul of the promise of public neutrality among faiths that resides at the heart of the First Amendment's religion clauses."

In his dissenting opinion in the case, 4th Circuit Judge Paul Niemeyer pointed out that the county had opened up the prayers to a variety of religious traditions, and no faith was given precedent. That the

prayers heavily favored Christianity was merely a reflection of the majority religious tradition within the county. "I respectfully submit that we must maintain a sacred respect of each religion," he wrote, "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."

In appealing the decision to the Supreme Court in October 2011, Cortman noted that "America's founders opened public meetings with prayer. This county simply wants to allow its citizens to do the same. We trust the U.S. Supreme Court will want to review this case because of the long history in America of offering prayers before public meetings."

The High Court's refusal to review the lower court ruling was met with cheers by Katy Parker, legal director for the ACLU's North Carolina franchise, who declared that the "law is now settled, and we are very happy that nobody in Forsyth County will feel like a second-class citizen because of what they believe."

ADF attorney Mike Johnson, who had presented Forsyth County's case before the appeals court, told the *Winston-Salem Journal* that he was "surprised and disappointed" by the High Court's refusal to review the case. "We really were expecting that the court would want to take a look at the case," he said. "I think that this leaves a very important constitutional law issue essentially unresolved."

Cortman pointed out that "America's founders never shied away from referencing the God to whom they were praying when offering public invocations." While expressing his disappointment over the High Court's refusal, he emphasized that the Alliance Defense Fund would "continue to litigate in favor of the historical standard until the Supreme Court eventually hears a case that will clear up the confusion" over what, precisely, is permitted in public prayer.

The Supreme Court also refused to hear another prayer case, this one involving a school district in Delaware. As reported by *The New American*, in August the 3rd Circuit Court of Appeals ruled that prayer, with which Delaware's Indian River School Board had begun their meetings since 1969, was unconstitutional and must stop. The district's policy, formalized in 2004, stipulated that the prayers may be either sectarian or non-sectarian, and could included "the name of a Supreme Being, Jehovah, Jesus Christ, Buddha, Allah" — or some other religious personage.

But in 2005, reported the Associated Baptist Press (ABP), a Jewish couple sued the school district, saying that "they were harassed after speaking out against religious practices including prayers at graduations and board meetings. They claimed their daughter's graduation was ruined when she, the only Jewish person in her class, had to listen to a minister pray in Jesus' name." The couple also claimed that their 11-year-old son had been targeted at school, called a "Jew boy," and told he was responsible for Christ's death. They said the harassment forced them to sell their home and move away.

While most of the suit was settled in 2008, reported ABP News, "the issue of the school board's prayer policy was left unresolved for a second set of parents who joined the case after it was originally filed."

It was that element the 3rd Circuit Court of Appeals addressed, reversing a lower federal court decision in favor of the Indian River school board and ruling that the district's policy violated the First Amendment's supposed separation of church and state.

The school district had argued that the constitutionality of its prayer policy fell under the Supreme Court's ruling in *Marsh v. Chambers*, which allows for deliberative or legislative bodies to begin their meetings with a prayer. But the appeals court ruled that because the school board's focus was public

education, and because children were often present at the meetings, the prayers were more like clergy-led invocations at graduation ceremonies, which courts have ruled are unconstitutional because students feel compelled to participate.

The court said that the First Amendment "does not require students to give up their right to participate in their educational system or be rewarded for their school-related achievements as a price for dissenting from a state-sponsored religious practice."

To buttress its decision against the district, the appeals court cited the Supreme Court's notorious 1962 *Engel v. Vitale* decision, one of a handful of cases which have been used over the past 50 years to reinforce a collective prayer ban in America's public school classrooms. In that case the High Court declared that "it is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves."

Apparently satisfied that their predecessors had had their judicial say on the matter, the present-day Supreme Court justices refused to hear an appeal of the Indian River ruling.