

## TALKING POINTS

### *Joyner, Blackmon and Mauck v. Forsyth County, North Carolina*

**BACKGROUND:** The ACLU – the premier religious censor in America – has declared war on the right of public officials and citizens to pray before government meetings without censorship. Using tactics of "fear, intimidation, and disinformation," ACLU chapters are cutting a swath through the southeastern United States, bullying public officials in hopes of forcing them to passively comply with the ACLU's secularist agenda by threatening lawsuits against bodies that permit sectarian prayer (prayer that is made specifically to a particular deity). In recent years, Tangipahoa Parish, Louisiana; Winston-Salem and Forsyth County, North Carolina; Raleigh, North Carolina; and Oconee County, South Carolina (among others) have found themselves to be the target of the ACLU and her religious censors.

Forsyth County, North Carolina has become a focal point for their efforts and a critical test of their tactics. The county, like many cities, towns and others counties received a letter threatening legal action if sectarian prayers were permitted to continue in late 2006. The county did not comply with the ACLU's demands. In March 2007, the ACLU filed a lawsuit on behalf of three citizens, alleging that the county's policy of allowing clergy members from all faiths in the community to offer prayers in accordance with their beliefs before public meetings is unconstitutional because it allows clergy members to pray to specific deities. In April, the county commissioners voted to fight the pending lawsuit and secured the legal services of The Alliance Defense Fund (ADF). In May 2007, the Forsyth County Board of Commissioners approved a model prayer policy drafted by ADF that allows clergy from the community to offer sectarian invocations at public meetings on a rotating basis. The case is pending in federal court. A first hearing and recommendation from a Magistrate Judge has been given. His recommendation to the District Judge (the Honorable James A. Beaty, Jr.) is that Forsyth County's policy be found unconstitutional.

**THE CORE ISSUE:** At the heart of this matter is religious liberty in America. Prayers offered freely and publicly by citizens at the opening of legislative sessions and in the inaugurations of US presidents and other officials have been part of American practice since the beginning. The demands which the ACLU is making is essentially that the government censor the content of such prayers or end them altogether because they amount to government approval of one faith. The NC Partnership for Religious Liberty (NCPRL) and the ADF maintain that public prayers offered by private individuals who are invited to give the invocation should not be censored. To do so would be a violation of the Free Exercise clause of the U.S. Constitution and would set up a dangerous precedent of government control and censorship of religious speech and practice in public life.

**THE IMPACT:** Because of the actions of the ACLU, we are witnessing a chilling effect on religious speech in public life in NC. Smaller cities and towns ended or restricted their prayers altogether after they were threatened with suits by the ACLU and when Forsyth County was sued. Many cite fear of the financial burden a lawsuit would mean for them. However, Forsyth County's willingness to pursue the matter has served to help keep the liberty to pray in North Carolina in place. When the recommendation of the Magistrate Judge came out against Forsyth County, the Buncombe County Commissioners initially determined to end their prayers altogether and to instead observe a moment of silence. However, the *Asheville Citizen Times* reported January 3, 2010 that because of an outcry from their own citizens and the case pending in Forsyth

County, the commissioners have decided by “**consensus to continue prayers at meetings while a legal challenge to prayers before meetings of the Forsyth County Board of Commissioners in Winston-Salem is undecided.**” Other counties and cities in North Carolina are waiting and watching, as well.

**THE CHALLENGE:** The Alliance Defense Fund is proving legal defense for the county at no cost. The remaining risk to the county comes in the form of an adverse judgment in which, should the case be lost, the county could be held liable for the legal costs incurred by the ACLU in the course of the case. This amount would be determined by the court. The North Carolina Partnership for Religious Liberty, in order to ensure that the county remains in the appeals process, has raised in excess of \$300,000 for the case as it will be heard in the 4<sup>th</sup> Circuit Court of Appeals. The prospects for this case to go to the Supreme Court are good; the total risk to the County if the case is appealed to that level has been estimated at between \$400,000 and \$700,000.

**THE PROSPECTS:** A three-judge panel of the U.S. Circuit Court of Appeals for the 11th Circuit (Georgia) has upheld the practice of allowing local clergy members to offer public prayers that invoke the name of Jesus or other religious deities at government meetings in Cobb County, Georgia. In the 2 to 1 decision on October 28, 2008 **the federal appeals court rejected a claim by the American Civil Liberties Union (ACLU) that the “sectarian” prayers are unconstitutional and should be censored.** The case, *Pelphrey v. Cobb County*, began in August 2005, when the ACLU filed a lawsuit against the county on behalf of seven residents, who objected to the county’s practice of allowing clergy from different religious traditions to open commission meetings with prayers that often included references to Jesus or other deities. The ACLU did not appeal.

North Carolina is under the jurisdiction of the 4<sup>th</sup> Circuit Court of Appeals. This Court seems to have reached a different conclusion over the issue of sectarian prayers at public meetings and ruled in 2008 that the Fredericksburg, Virginia City Council may prohibit its members from opening their meetings with a prayer in Jesus’ name. So, while the decision by Georgia’s 11th Circuit to uphold the practice of allowing sectarian prayers before public meetings is a victory for religious freedom, there is disagreement between the 4<sup>th</sup> Circuit and 11th Circuit on this issue. Consequently, we believe the U.S. Supreme Court is likely to take up a public prayer case to settle the law in this area. We believe *Joyner v. Forsyth County* is the most likely case to settle the matter and the best opportunity for religious liberty to be preserved.

**THE OPPORTUNITY:** The ultimate opportunity is to see to it that religious liberty and free religious speech and activity, pledged and protected by the First Amendment, will be preserved in the United States and that the bullying tactics of the ACLU in restricting the rights of people of faith will be thwarted.