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When is an invocation by legislative body acceptable under Establishment Clause?

FACTS:

The Jackson County, Michigan Board of Commissioners opened its monthly meetings with a prayer by one of the commissioners. All the commissioners are Christian. Everyone attending the meeting is asked to “rise” and “assume a reverent position” during the prayer.

Peter Bormuth, a resident of Jackson County and self-described pagan and animist, began attending the Board meetings because of his concern that the county was releasing pollutants into a local river. At two of the meetings, prayer was offered and attendees were asked to rise. Bormuth did not stand but was concerned that the Board would hold against him his decision to stay seated. At one of the meetings, a commissioner “made faces expressing his disgust” while Bormuth was speaking and turned his chair around, refusing to look at Bormuth. Bormuth subsequently filed suit alleging that the prayer practice violates the First Amendment’s Establishment Clause. During the course of the action, Bormuth (with three years of experience on related issues) applied to serve on the county’s Solid Waste Planning Committee. The Board did not nominate him for the position.

QUESTIONS:

Did the Board of Commissioners’ prayer practice violate the Establishment Clause of the federal Constitution?

No. The Court concluded that, although the prayers were “exclusively Christian,” they were composed of only “benign religious references.” The Court acknowledged evidence of lack of respect by the Board toward Bormuth, but stated that such conduct “does not demonstrate that the Board was prejudiced against him because he declined to participate in the prayer.”

ANSWER ACCORDING TO THE SIXTH CIRCUIT COURT APPEALS:

Yes. The Sixth Circuit noted that the U.S. Supreme Court has only addressed the issue of legislative prayers in two decisions—*Marsh v Chambers* and *Town of Greece v Galloway*. In *Marsh*, the Supreme Court bypassed previously constructed tests for Establishment Clause violations, reasoning that “the practice of legislative prayer” had co-existed with the principle of religious freedom from colonial times. *Town of Greece* confirmed that *Marsh* does not require defining the “precise boundary of the Establishment Clause where history shows that the specific practice is permitted.” *Town of Greece* outlined practices, however, that might stray from traditional purposes, including, “if town board members directed the public to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person’s acquiescence in the prayer opportunity.” In this case, the Court found that the identity of the prayer givers i.e, the commissioners themselves, the exclusion of other prayer givers, and the direction of the public to participate not only resulted in a deviation from traditional purposes of legislative prayer but also coerced the public to participate in the exercise of religion, in violation of the Establishment Clause. The Court also found that the Board attempted to silence Bormuth and insulted him for criticizing their prayer practice.

Bormuth v County of Jackson, No. 15-1869
(February 15, 2017)