

Ninth Circuit Upholds City Council Meeting Invocation Policy

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ATTORNEYS

The City of Lancaster's city council meeting invocation policy, and a single reference to Jesus in a particular invocation, have been upheld against a First Amendment challenge.

In the case of *Rubin v. City of Lancaster*, the plaintiffs challenged the legality of the city's policy of permitting invocations that mention Jesus, arguing that both the invocations and the city's invocation policy amounted to an unconstitutional establishment of religion. The plaintiffs sued the city after a person providing an invocation concluded with these words: "Bring our minds to know you and in the precious, holy and righteous and matchless name of Jesus I pray this prayer. Amen and Amen. God bless you."

For years, Lancaster began its city council meetings with a citizen-led invocation pursuant to an informal policy. In 2009, the city adopted an official written policy that solicited volunteers from local congregations to lead the invocations regardless of the faith, denomination or other religious belief of the congregation. The city's solicitations invited volunteers to offer invocations according to the dictates of their own conscience, but requested that the prayer opportunities not be exploited as an effort to convert others or to disparage a different faith or belief.

In upholding the policy and the invocation, the federal Ninth Circuit Court of Appeals reasoned that unless legislative prayer proselytizes, advances or disparages a particular faith, it does not violate the First Amendment simply because it contains sectarian references. The court found that volunteers of numerous faiths are invited to and have given invocations before Lancaster's city council meetings and the city's selection process does not discriminate against any faith. Further, the court emphasized that the city, in an effort to avoid a violation of the First Amendment, had declined to regulate the content of the prayers, requesting only that volunteers not use the opportunity to proselytize or disparage.

The Ninth Circuit found that United States Supreme Court's First Amendment cases do not forbid sectarian references in legislative prayer, nor do they hold that a single denominational prayer may have the prohibited effect of affiliating the government with any one faith. In the *Lancaster* case, the court focused on

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the invocation policy's neutrality and the principle of private choice, not on the number of volunteers from a particular sect, and the court saw nothing in the record or in the invocation policy to indicate that the city had affiliated itself with Christianity.

The *Lancaster* case is a reminder for those local agencies with formal or informal invocation policies to review those policies to make sure they are content neutral; applicable to all denominations and faiths; and invite invocations led by citizens or public officials, whether sectarian or not, that do not proselytize, advance or disparage one religion or affiliate the local agency with a particular faith.

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For advice regarding *Rubin v. City of Lancaster* or any Establishment Clause matter, please contact Serita R. Young at syoung@rwglaw.com or any of the members of the Firm's Public Law Department.