

Authored By:

Scott Uhler

[sfuhler@ktjlaw.com](mailto:sfuhler@ktjlaw.com)

312-984-6421

## LEGAL ALERT

# Federal Court of Appeals Upholds Student-Led Prayer at School Board Meetings

A federal court of appeals has upheld the practice of a public school district in Texas allowing student-led prayer at the opening of the school board meetings. The Court found the practice of a brief student invocation, which frequently took the form of prayer, sometimes introduced by statements such as “let us pray” or “stand for the prayer,” with references to “Jesus” or “Christ”, to be consistent with First Amendment doctrine. In reaching its decision, the Appeals Court relied on the recent U.S. Supreme Court decision in *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), which concluded that the longstanding “legislative-prayer” exception recognized by the Supreme Court, extended to certain prayers delivered at the meeting of a town board.

A detailed summary of this decision is available herein.

A full copy of the decision is available at:

[American Humanist Association v. Birdville Independent School District](#)



### Inside This Issue

*American Humanist Association v. Birdville Independent School District*

15-1106 (5th Cir. 2017)

Full Decision.....1

Summary of Decision.....2-3

*School Prayer at School Board Meeting Not Allowed*.....2

***School Prayer at School Board Meeting Not Allowed***

The 6<sup>th</sup> Circuit Court of Appeals previously considered the issue of school prayer at school board meetings. That Court concluded that the “legislative-prayer” exception did not apply to invocations delivered at school-board meetings. That Court reasoned that while school board meetings could be considered a different class of activity than other school-related matters, that they remained in the same class as such school activities because they occurred on school property and were an integral part of the public school system. The school board also had a student member. *Coles ex rel. Coles v. Cleveland Board of Education*, 171 F.3d 369, 383 (6th Cir. 1999)(Court noted that the resolution of the question was a difficult one: “This case puts the court squarely between the proverbial rock and a hard place.” *Id.* at 371.)

***School Prayer at School Board Meeting Not Allowed***

The 3rd Circuit Court of Appeals also previously considered the issue of school prayer at school board meetings. It concluded that school and municipal bodies and boards were not comparable for these purposes. The Court stated that the purpose of a school board was clear and was dedicated to public school education. The Court did note that its school board meetings included the attendance of student representatives in their formal role as elected student government representatives. *Doe v. Indian River School District*, 653 F.3d 256 (3d Cir. 2011)

**SUMMARY OF DECISION**

*American Humanist Association v Birdville Independent School District*  
15-11067 (5<sup>th</sup> Cir. 2017)

**Facts:**

Birdville Independent School District is a public school district in Texas. Since 1997, at the outset of its board meetings, the District had a practice of having two students open each meeting; one to lead the Pledge of Allegiance and the other to offer an invocation, which could include secular statements, poems or prayer. The students were typically elementary or middle-school students, with the invocation to be approximately one minute. School officials do not dictate to the students what to say, but limit inappropriate or obscene material. In addition to non-religious statements, students say prayers, beginning by stating “let us pray”, “stand for the prayer” or “bow your heads”. The prayers at times are directed to “Jesus” and “Christ”. In 2015 the board of education changed the reference to the student statements from “invocations” to “student expressions”. A resident of the District sued the District over this practice claiming that the District had a policy, practice and custom of permitting, promoting and endorsing prayers delivered by school-selected students at board meetings.

**Analysis by Court**

In reviewing this practice, the Court examined the Supreme Court analysis in its 2014 decision in *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014). The Supreme Court in *Town of Greece* concluded that the “legislative-prayer” exception it previously established in *Marsh v Chambers*, 463 U.S. 783 (1983) could also be applied to municipal board meetings. In *Marsh v Chambers*, the Supreme Court found that the practice of using a state-selected chaplain delivering prayer upon opening of Nebraska assembly was simply historical custom, noting that prayer by taxpayer funded legislative chaplains extended back in time to the First Continental Congress and the initial Congress establishing the Bill of Rights. For that reason, the chaplaincy practice was found to be “part of the fabric of our society.” Such an invocation for spiritual guidance was not an establishment of religion but “simply a tolerable acknowledgment of beliefs widely held among the people of this country.” In its more recent 2014 decision in *Town of Greece*, the Supreme Court found that the First Amendment Establishment Clause was not violated when a municipal board begins their meetings with a sectarian prayer, provided the municipality does not discriminate against minority religions in determining who may deliver such prayers. The Supreme Court in *Town of Greece* did make a point of noting that as for the municipal meetings involved and the prayer practice, “[t]he principal audience for these invocations is not . . . the public but lawmakers themselves, who may find that a moment of prayer or quiet reflection sets the mind to a higher purpose and thereby eases the task of governing.”

In examining Supreme Court doctrine involving state-sponsored prayer in school environments, the Court has used a different analysis than that used for “legislative-prayer” cases. The frequent concerns raised in the

school context is that “prayer exercises” in a public school context carries the specific risk of “unconstitutional coercion”, even where such pressure is subtle. The Supreme Court distinguished certain of its school decisions from its *Chambers* decision, by noting that the legislative-prayer exception does not apply in the public school context and that state-sponsored prayer in the public schools violates the First Amendment.

The question then considered by the Court in *Birdville Independent School District*, was whether the circumstances in the case reflected a “legislative-prayer” or a “school-prayer” matter. The Court noted that while the dispute in *Birdville Independent School District* did involve school district sanctioned “prayer” delivered by students on school property, it was about the constitutionality of permitting religious invocations at the opening, ceremonial phase of a local deliberative body’s public meetings, not a graduation ceremony or a student athletic activity.

The Court then closely examined the nature to the “school” and “student” connections. The meetings of the Board of Education included sessions open to the public. The members of the public are free to attend and leave at any time. No students or members of the public are required to attend. Most meeting attendees are adults, though students frequently voluntarily attend the board meetings for various reasons, such as to receive awards or for brief performances by school bands, choirs or other groups. The Court concluded that a school board meeting is more like a legislature than a school classroom or event, since the school board is a deliberative body (like the body in *Town of Greece*), charged with managing the district’s schools, budgets, expenditures, hiring, borrowing, and other tasks that were clearly legislative. The Court noted the student “invocations” were solemn and respectful in tone, delivered at the opening, ceremonial portion of the meeting. The Court found no element of coercion regarding the participation in any prayer.

As for the Supreme Court conclusion that that legislative prayers must be actions intended for the benefit of the elected board members, these invocations intended to benefit students, audience members and the board members. The Court here concluded that while others may benefit from the invocations, the board members remain the principal intended beneficiaries of the “invocations”. The Court also found this practice to be consistent with longstanding tradition in the United States, noting that dating from the early nineteenth century, at least eight states had some history of opening prayers at school-board meetings and that as a legislative board, the school board was acting consistently with the general well-established practice of opening meetings of deliberative bodies with invocations, whether school-related or not. Finally, the *Birdville Independent School District* Court found that the mere presence of students at the board meetings did not transform the case into a school-prayer case, emphasizing that there were children present at the town-board meetings in *Town of Greece*.

For any questions or comments you might have regarding this newsletter, please feel free to contact:

#### Chicago Office

20 N. Wacker Drive, Ste. 1660 Chicago, IL 60606

T: (312) 984-6400

F: (312) 984-6444

#### Orland Park Office

15010 S. Ravinia Ave., Ste. 10 Orland Park, IL 60462

T: (708) 349-3888

This newsletter is not to be construed as legal advice or a legal opinion under any circumstance. The contents are solely intended for general informative purposes, and the readers of this newsletter are strongly urged to contact their attorney with regard to any concepts discussed herein.

This newsletter may be deemed advertising under the laws of the Supreme Court of Illinois.

© 2017 Klein, Thorpe and Jenkins, Ltd.

**KTJ**

KLEIN, THORPE & JENKINS, LTD.  
Attorneys at Law