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Indicates New Matter

COMMITTEE REPORT

May 24, 2016

**S. 233**

Introduced by Senators Campsen, Hembree and Grooms

S. Printed 5/24/16--H.

Read the first time April 12, 2016.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 233) to amend Section 6-1-160 of the 1976 Code, relating to invocations to open meetings of deliberative bodies, to provide that public prayer means a prayer or invocation, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 6-1-160 OF THE 1976 CODE, RELATING TO INVOCATIONS TO OPEN MEETINGS OF DELIBERATIVE BODIES, TO PROVIDE THAT PUBLIC PRAYER MEANS A PRAYER OR INVOCATION; TO PROVIDE THAT DELIBERATIVE PUBLIC BODY INCLUDES A SCHOOL DISTRICT BOARD; TO PROVIDE THAT PUBLIC INVOCATIONS SHALL NOT PROSELYTIZE OR ADVANCE ANY ONE FAITH OR BELIEF, OR COERCE PARTICIPATION BY OBSERVERS; AND TO BROADEN THE ITEMS THAT MAY BE INCLUDED IN A POLICY TO PERMIT PUBLIC INVOCATIONS ADOPTED BY THE PUBLIC BODY.

Whereas, state and local governing bodies across the nation have long maintained a tradition of solemnizing their proceedings by allowing for an opening invocation before each meeting for the benefit and blessing of those public bodies; and

Whereas, such invocations before deliberative public bodies have been consistently upheld as constitutional by American courts, including the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit; and

Whereas, in *Marsh v. Chambers*, 463 U.S. 783, 786 (1983), the United States Supreme Court rejected a challenge to the Nebraska Legislature’s practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars, and specifically concluded, “The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom”; and

Whereas, the United States Supreme Court clarified in *Marsh*, 463 U.S. at 794‑795, “The content of [such] prayer is not of concern to judges where . . . there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief”; and

Whereas, in *Simpson v. Chesterfield County Board of Supervisors*, 404 F.3d 276 (4th Cir. 2004), cert. denied, the United States Court of Appeals for the Fourth Circuit reviewed and specifically approved the policy of a county board in which various clergy in the county’s religious community were invited to present invocations before meetings of the board; and

Whereas, the Fourth Circuit’s ruling in *Simpson* can be distinguished from its earlier decision in *Wynne v. Town of Great Falls*, 376 F.3d 292, 298 (4th Cir. 2004, cert. denied) (citing *Marsh*, 463 U.S. at 794), where the court found a town council “improperly ‘exploited’ a ‘prayer opportunity’ to ‘advance’ one religion over others”; and

Whereas, in *Town of Greece v. Galloway*¸ 134 S.Ct. 1811 (2014), the United States Supreme Court subsequently held a town’s practice of opening its town board meetings with sectarian prayers by guest religious leaders expressing the beliefs of one faith did not violate the Establishment Clause; and

Whereas, the *Galloway* Court rejected an argument that the Establishment Clause requires nonsectarian or ecumenical prayer, holding the explicitly sectarian nature of the prayers was not outside the tradition recognized in *Marsh* and reasoning a rule that requires prayers to be nonsectarian would force the legislatures and courts to act impermissibly as “supervisors and censors of religious speech”; and

Whereas, the *Galloway* Court held that prayer practice is permissible so long as it is consistent with the tradition of lending “gravity to public business”; “there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief”; the town does not discriminate against minority faiths in determining who may offer a prayer; and the prayer does not coerce participation by non‑adherents; and

Whereas, the *Galloway* Court explained that “[a]bsent a pattern of prayers that over time denigrate, proselytize, or betray an impermissible government purpose, a challenge based solely on the content of a prayer will not likely establish a constitutional violation”; and

Whereas, the General Assembly passed Act 241 of 2008 before the United States Supreme Court issued *Galloway* and now wishes to amend the act to incorporate *Galloway*’s holding; and

Whereas, this act signifies the General Assembly’s belief that deliberate public bodies in this State may adopt policies that will permit public invocations in a constitutionally permissible fashion. This act does not signify the General Assembly’s belief in the limits of constitutional law, nor preempt the deliberative public body from exercising a constitutional right to permit public invocations pursuant to a policy other than that set forth in this act. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “South Carolina Public Prayer and Invocation Act”.

SECTION 2. Section 6-1-160 of the 1976 Code is amended to read:

“Section 6‑1‑160. (A) For purposes of this section:

(1) ‘Public invocation’ means ~~an~~ a prayer or invocation delivered in a method provided pursuant to subsection (B) to open the public meeting of a deliberative public body. In order to comply with applicable constitutional law, a public invocation must not:

(i) be exploited to proselytize or advance any one, or to disparage any other faith or belief; or

(ii) coerce participation by observers of the invocation.

(2) ‘Deliberative public body’ ~~means~~ includes, but is not limited to, a state board or commission~~,~~; the governing body of a county or municipal government~~,~~; a school district~~,~~ board; a branch or division of a county or municipal government~~, or~~; and a special purpose or public service district.

(B) A deliberative public body~~, by ordinance, resolution, or written policy statement,~~ may adopt a policy to permit a public invocation as defined in subsection (A)(1) before each meeting of the public body, for the benefit of the public body. The policy may allow for ~~an~~ a public invocation to be offered on a voluntary basis, at the beginning of the meeting, by:

(1) one of the public officials, elected or appointed to the deliberative public body~~, so long as the opportunity for invocation duty is regularly and objectively rotated among all of that deliberative public body’s public officials~~;

(2) a chaplain elected by the public officials of the deliberative public body; or

(3) an invocation speaker selected on an objective ~~and rotating~~ basis from among a wide pool of ~~the~~ religious leaders serving established religious congregations in the local community in which the deliberative public body meets. To ensure objectivity in the selection, the deliberative public body ~~on an annual basis shall~~ may, but is not required to, compile a list of ~~all~~ known, established religious congregations and assemblies ~~by reference to local telephone books or similar sources, or both~~, and ~~on an annual basis shall mail an invitation addressed to the~~ invite a ‘religious leader’ ~~of~~ from each congregation and assembly to give a public invocation on a first‑come, first‑served basis. The invitation ~~must~~ may contain, in addition to scheduling and other general information, the following statement: ‘A religious leader is free to offer ~~an~~ a public invocation according to the dictates of his own conscience, but, in order to comply with applicable constitutional law, the [name of deliberative public body issuing the invitation] requests that the public invocation opportunity not be exploited to proselytize or advance any one, or to disparage any other faith or belief; or coerce participation by observers of the invocation’. ~~Each respondent who accepts the invitation to deliver an invocation at an upcoming meeting of the deliberative public body shall be scheduled to deliver an invocation on a first‑come, first‑served basis.~~

(C) In order that deliberative public bodies may have access to advice on the current status of the law concerning public invocations, the Attorney General’s office shall prepare a statement of the applicable constitutional law and, upon request, make that statement available to a member of the General Assembly or a deliberative public body. As necessary, the Attorney General’s office shall update this statement to reflect any changes made in the law. The Attorney General’s office may make the statement available through the most economical and convenient method including, but not limited to, posting the statement on a website.

(D) The Attorney General shall defend any deliberative public body against a facial challenge to the constitutionality of this act.

(E) Nothing in this section prohibits a deliberative public body from developing its own policy on public invocations based upon advice from legal counsel.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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