WILLIAMSON V. BREVARD COUNTY AND THE GOLDILOCKS PRAYER RULE

William Burkett*

In *Williamson v. Brevard County*, the Eleventh Circuit held that the commissioners of Brevard County unconstitutionally exercised their unfettered discretion to select opening invocation speakers based on religion.[1] In addition, the court clarified requirements for cities that wish to open city council meetings or legislative sessions with sectarian prayer.[2]

The commissioners of Brevard County Florida (the "Commissioners"), like many local governments, chose to open official meetings with religious invocations.[3] In selecting speakers, the Commissioners rotated sending invitations to religious leaders.[4] The county had no formal requirements or process governing the selection of speakers.[5] In other words, the Commissioners had unfettered discretion to select speakers based on any criteria.[6]

In May and July of 2014, Plaintiff David Williamson sent two letters to the Commissioners, both on letterhead from the Central Florida Freethought Community ("CFFC").[7] The first letter explained the mission of the CFFC and requested to offer invocations at meetings.[8] The second noted the Commissioner's nonresponse and "demand[ed] that Brevard County permit a member of [the CFFC] to deliver an invocation."[9] In August 2014, the Commissioner's responded that the opening invocation is meant to "reflect values long part of the County's heritage and to acknowledge the place religion holds in the lives of private citizens," that CFFC did not share the beliefs or values of the county's faith community, and that the public comment portion of meetings is open for CFFC members to speak.[10] After

* Online Research Editor, *Cumberland Law Review*; *Juris Doctor*, Cumberland School of Law; Bachelor of Science, Auburn University.

[1] Williamson v. Brevard Cty., 928 F.3d 1297, 1314–16 (11th Cir. 2019).
[2] *Id.* at 1309.
[3] *Id.* at 1298.
[4] *Id.* at 1299.
[5] *Id.* at 1311.
[6] *See id.*
[7] *Williamson*, 928 F.3d at 1300.
[8] *Id.* at 1300–01.
[9] *Id.* at 1301.
[10] *Id.*

Williamson's exchange with the Commissioners, several other humanists, atheists, and outside groups contacted with offers to give invocations.[11]

In July 2015, the Commissioner's adopted resolution 2015-101.[12] The resolution included findings, conclusions, and an amendment governing opening invocations.[13] The amendment specified that secular invocations should be relegated to the secular business portion of meetings and "invocations shall continue to be delivered by persons from the faith-based community in perpetuation" of the county's long tradition.[14] In other words, the Commissioners disallowed plaintiffs from participating in a faith-based activity because the board viewed plaintiffs as faithless.[15]

Plaintiffs sued for violations of the First Amendment's Establishment, Free Exercise, and Free Speech clauses; the Fourteenth Amendment's Equal Protection Clause; and the Equal Protection and Establishment Clauses of the Florida Constitution.[16] Plaintiffs sought declaratory and injunctive relief with damages, fees, and costs.[17] The district court granted summary judgment for the plaintiffs on the theory that the county engaged in religious discrimination.[18] It also found the Commissioners violated the plaintiffs' free exercise rights by creating a "religious test for participation in government affairs."[19] "The district court entered a declaratory judgment that the county's policy violated the Establishment, Free Exercise, Free Speech, and Equal Protection Clauses of the U.S. Constitution and the Establishment and Equal Protection Clauses of the Florida Constitution."[20] Finally, the court issued a permanent injunction against enforcement of Resolution 2015-101 and forcing the county to adopt a new policy allowing each plaintiff to offer an invocation within fifteen months.[21]

The Eleventh Circuit affirmed in part the trial court's decision that the county's process for selecting speakers violated the establishment clause.[22] Consequently, the court stated it need not decide other constitutional issues, including the question of "whether atheists and secular humanists must be

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[11] *Id.*
[12] *Id.* at 1301–02.
[13] *Williamson*, 928 F.3d at 1302.
[14] *Id.*
[15] *See id.*
[16] *Id.* at 1303.
[17] *Williamson*, 928 F.3d at 1303.
[18] *Id.*
[19] *Id.*
[20] *Id.* at 1303–04.
[21] *Id.* at 1304.
[22] *Id.* at 1299.

allowed to deliver non-theistic invocations."[23] The court began analysis with a survey of relevant Establishment Clause case law.[24]

The court applied the new Supreme Court ruling in *American Legion v. American Humanist Ass'n.*, stating that Establishment Clause doctrine has "moved away from attempting to divine 'a grand unified theory' of the clause, in favor of 'a more modest approach that focuses on the particular issue at hand and looks to history for guidance.'"[25] Next, the court explained that the Establishment Clause requires "denominational neutrality."[26] In other words, governments must be neutral between religious sects.[27] The court also found significant the decisions of *Marsh v. Chambers*[28] and *Town of Greece v. Galloway*.[29] Under both decisions, legislative prayer—even sectarian prayer—is permitted; however, selection procedures may not exclude a faith based on content of beliefs.[30] Finally, the court noted local governments have broad freedom to conduct prayers and may constitutionally select a single speaker; yet, the court emphasized the importance of nondiscrimination.[31]

After *Williamson*, government entities who wish to open meetings with prayer should adopt a set of non-discriminatory guidelines for selecting speakers from the community.[32] Government leaders likely may establish a system requiring prayer to be theistic but, should avoid any indication of discrimination during selection procedures.[33] Any statements made by decision makers are probative as to whether improper discrimination influenced speaker selections.[34] Finally, prayers must not be used to "denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion." [35]

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[23] Williamson, 928 F.3d at 1299. The Third Circuit recently held that state legislatures wishing to open with prayer may bar non-theistic prayers. *Fields v. Speaker of the Pa. House of Representatives*, No. 18-2974, 2019 WL 3979588, *10 (3rd Cir. Aug. 23, 2019).
[24] *Williamson*, 928 F.3d at 1305–1310.
[25] *Id.* at 1305 (quoting Am. Legion v. Am. Humanist Ass'n., 139 S. Ct. 2067, 2071 (2019)).
[26] *Williamson*, 928 F.3d at 1305.
[27] *Id.*
[28] *Id.* Marsh v. Chambers, 463 U.S. 783, 783 (1983).
[29] Town of Greece v. Galloway, 572 U.S. 565, 565 (2014).
[30] *See Williamson*, 928 F.3d at 1305–10.
[31] *Id.* at 1310.
[32] *See id.*
[33] *See id.*; *see also Fields*, 2019 WL 3979588 at *20.
[34] *See Williamson*, 928 F.3d at 1310–11.
[35] *Id.* at 1310.