

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

Bruce A. Hake, et al.

Plaintiffs,

v.

Carroll County, Maryland, by its Board of
County Commissioners, et al.

Defendants.

Case No. 1:13-cv-01312-WDQ

**PLAINTIFFS' SUPPLEMENTAL MEMORANDUM (OR SUR REPLY) IN SUPPORT OF
THEIR CROSS-MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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Plaintiffs offer the following Supplemental Memorandum to support their Summary Judgment Motion.¹ The purpose of this Memorandum is twofold: (1) to alert the Court to a recent decision that distinguishes the prayer practice in *Town of Greece* from the type of prayer practice challenged in this case and (2) to summarize newly discovered evidence that reinforces Plaintiffs' arguments.

I. THE FIRST COURT TO RULE ON LEGISLATIVE PRAYER SINCE *TOWN OF GREECE* HELD THAT PRAYERS DELIVERED BY LEGISLATORS ARE UNCONSTITUTIONAL.

A. The *Hudson* court held that prayers by legislators are unconstitutional under *Town of Greece*.

Plaintiffs call the Court's attention to a recent decision that was issued after the last brief was filed on the summary judgment motions: *Hudson v. Pittsylvania County*, 2014 U.S. Dist. LEXIS 106401 (W.D. Va. Aug. 4, 2014). In *Hudson*, the county filed a motion to dissolve the injunction prohibiting board members from delivering sectarian prayers in light of *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014). While the court agreed to a *very* limited modification, it refused to dissolve it entirely, finding the county's practice of allowing board members to deliver prayers was unconstitutional. *Id.* at *4 ("the court is inclined to grant defendants' motion to modify the Permanent Injunction Order in this case to a **very limited extent**, i.e., to make it clear, consistent with *Town of Greece*, that opening prayers . . . need not be generic or nonsectarian. The court would deny defendants' request to dissolve the injunction") (emphasis added). The decision is highly noteworthy for a number of reasons.

First and most importantly, the court (like the Court in *Town of Greece*) distinguished prayers delivered by local legislators from those delivered by clergy or outsiders, finding the former practice to be unconstitutional. Indeed, the court interpreted *Town of Greece* in the exact same way the same the Plaintiffs do, *viz.*: "Central to the Court's decision in *Town of Greece* is the principle that the government, whether county officials or courts, **ought not dictate the content of prayers offered at local government meetings.**" *Id.* at *4. In refusing to dissolve the injunction, the court explained:

¹ This Memorandum incorporates by reference all of the arguments, evidence, grounds, and authorities previously filed herein, including Plaintiffs' Statement of Undisputed Facts and the Memoranda in Support of Plaintiffs' Cross-Motion for Summary Judgment. It also incorporates by reference the Supplemental Statement of Undisputed Facts ("SSUF") and exhibits attached thereto.

The Court in *Town of Greece* recognized that “[t]he inquiry [concerning the proper scope of legislative prayer] remains a fact-sensitive one that considers both the setting in which the prayer arises and the audience to whom it is directed.” *Id.* at 1825. Considering the facts of this case, which stand in stark contrast to those in *Town of Greece*, the court remains convinced that a modified injunction is appropriate and necessary to remedy a violation of the Establishment Clause.

Id. at *4-5. The court in *Hudson* found that there were “several critical points of distinction between the facts of *Town of Greece* and the prayer practice of the Board of Supervisors of Pittsylvania County.” *Id.*

“First and foremost, unlike in *Town of Greece*, where invited clergy and laypersons offered the invocations, **the Board members themselves led the prayers** in Pittsylvania County.” *Id.* (emphasis added). Thus, “in contrast to *Town of Greece*, where the town government had no role in determining the content of the opening invocations at its board meetings, **the government of Pittsylvania County itself, embodied in its elected Board members, dictated the content of the prayers opening official Board meetings.**” *Id.* (emphasis added). The same is true with Carroll County’s practice.

Relatedly, the court found the selection process unconstitutional, observing as is relevant here: “because the Pittsylvania County Board members themselves served as exclusive prayer providers, **persons of other faith traditions had no opportunity to offer invocations.** Put simply, the Pittsylvania County Board of Supervisors involved itself ‘in religious matters to a far greater degree’ than was the case in *Town of Greece.*” *Id.* (citing *Town of Greece*, 134 S. Ct. at 1822). In this case, as in *Hudson*, persons of other faith traditions have had no formal opportunity to offer invocations.

Second, the *Hudson* court made it clear that a prayer practice is unconstitutional when the prayers are directed to, or are for the benefit of, the public, rather than the legislature itself. To that end, the court explained: “Not only did the Pittsylvania County Board members determine the content of the opening prayers at Board meetings, the Board members often directed the assembled citizens to participate in the prayers by asking them to stand.” *Id.* Just as Plaintiffs argued in their briefs, the *Hudson* court stressed that “[i]n *Town of Greece*, the majority opinion noted that such a request from the government makes a difference.” *Id.* (citing 134 S. Ct. at 1826).

For these two reasons – the fact that the prayers were delivered by board members and that the prayers were directed at citizens – *and only these two reasons*, the court concluded that the prayer practice was unconstitutional. “In sum, the active role of the Pittsylvania County Board of Supervisors in leading the prayers, and, importantly, dictating their content, is of constitutional dimension and falls outside of the prayer practices approved in *Town of Greece*.” *Id.* at *6-7.

Finally, the *Hudson* case clarified that *Allegheny* marked a *change in the law*, thus supporting Plaintiffs’ claim for nominal damages. The court agreed that the Supreme Court in *Town of Greece* “**disavowed** reliance on dicta in *County of Allegheny v. ACLU*” for “the proposition that legislative prayer must be generic or nonsectarian.” *Id.* at *3-4 (emphasis added). This reinforces Plaintiffs’ argument that they are, *at a minimum*, entitled to nominal damages for Defendants’ unconstitutional actions prior to *Town of Greece*. (See Plaintiffs’ Reply Mem. S.J. ECF Dkt. 54 pp. 19-21).

B. Carroll County’s prayer practice is considerably more problematic than the one in *Hudson*.

Carroll County’s prayer practice is more egregiously unconstitutional than the practice found unconstitutional in *Hudson*. Most notably, in *Hudson*, there appears to have been no evidence of particular prayers that were proselytizing, denigrating, or that “preached conversion.” It was enough that the prayers were delivered by the board members and were sometimes directed to the public, *supra*. Yet here, not only are the prayers delivered by the Commissioners (who dictate their content), and are directed to the public, but there is *also* a record of many proselytizing and even denigrating prayers, which clearly fall outside the tradition upheld in *Marsh* and *Town of Greece*. See *Marsh v. Chambers*, 463 U.S. 783, 793-95 (1983) (prayer must not be “exploited to proselytize or advance any one, or to disparage any other, faith or belief”); *Town of Greece*, 134 S. Ct. at 1823 (same); *id.* at 1821-22 (same).²

There is also more evidence of impermissible citizen involvement in the Carroll County case (and even more with the new evidence disclosed through discovery, as described in more detail below).

² To avoid repetition, Plaintiffs refer the Court to the examples set forth in Plaintiffs’ Memorandum in Support of Summary Judgment (ECF Dkt. 51-1; pp. 29-34), their Reply Memorandum (ECF Dkt. 54; pp.5-8) and Statement of Undisputed Facts (ECF Dkt. 51-3) for a sample of such prayers.

Here, we have Commissioners sending press releases, emails, and writing posts on social media (Twitter, Facebook, etc.) to encourage the public to support the Board's practice of delivering Christian prayers. They have also written articles on conservative-religious websites and have appeared on national television to "take a stand" for *Christian* prayers. These efforts to garner public support for the prayer practice and to engage the citizenry in the controversy span from 2011 until present. The evidence also shows many meetings in which citizens were asked to stand, to bow their heads, or to otherwise participate in the prayer with the Commissioners. (See P. Mem. S.J. ECF 5-1, pp. 16-25).

Furthermore, there is strong evidence that Carroll County's prayer practice betrays an impermissible governmental purpose and that the Commissioners have "signaled disfavor toward nonparticipants." (*Id.* at pp. 34-38). Plaintiffs are unaware of such evidence in the *Hudson* case.

For the foregoing reasons, Carroll County's prayer practice is clearly distinguishable from the practice upheld in *Town of Greece* and is far more problematic than the practice found unconstitutional in *Hudson*. *A fortiori*, Carroll County's practice is unconstitutional must be enjoined.

II. NEWLY DISCOVERED EVIDENCE FURTHERS THE CONCLUSION THAT DEFENDANTS' PRAYER PRACTICE IS UNCONSTITUTIONAL.

Below, Plaintiffs summarize newly discovered evidence that lends further support to the assertion that Defendants' prayer practice is unconstitutional.³ Plaintiffs maintain that the undisputed facts established prior to discovery are sufficient to find the practice unconstitutional. This is especially true in light of *Hudson*, which held the prayer practice unconstitutional almost exclusively because the prayers were delivered by board members. Indeed, the court deemed this to be a "critical point[] of distinction" – the "first and foremost" one at that – which in turn, validates Plaintiffs' position that the identity of the speaker is highly relevant, almost to a point of per se unconstitutionality. Nevertheless, the new evidence is relevant insofar as it augments Plaintiffs' arguments that the prayer practice, *inter alia*, is directed to the public, advances Christianity, and lacks the required solemnizing purpose.

³ Citations are made to the SSUF rather than to the Exhibits attached thereto.

A. Additional Evidence of Citizen Involvement

In their previous memoranda, Plaintiffs pointed to numerous examples of the Commissioners impermissibly directing their prayers to the public, asking citizens to participate in their prayers, and going out of their way to engage the citizenry in the prayer controversy. Both *Town of Greece* and *Hudson* confirm that such actions can render a prayer practice unconstitutional. Through discovery, Plaintiffs found additional instances of such impermissible efforts, some of which are discussed below.

1. **Press Releases and Media Efforts**

In May 2013, the Commissioners drafted a press release to publicize their stance on the prayer lawsuit. (SSUF ¶20). After the Board issued the press release, the Commissioners received numerous letters in support of their sectarian prayer practice. (*Id.* at ¶¶21-24).

On April 9, 2014, Amy Gilford, the Board's "Research Analyst," emailed another Board employee asking him the best way to publicize the letters in support of the Board's Christian prayers. (SSUF ¶66). Specifically, she wrote: "Commissioner Frazier has asked me to look into the best way to share some of the hundreds of letters, calls, cards, etc. that she is receiving on the prayer issue. . . . She was wondering about scanning them and putting them on the county website. Could we add a link and an inside page for that?" (*Id.*). On May 8, Frazier drafted and sent to Ms. Gilford, a letter to "Supporters" of the Prayer Practice. (SSUF ¶80). The letter told citizens that because the case is still pending, their "prayers are still appreciated." (*Id.*). The letter was captioned "Commissioner prayer response to supporters." (*Id.*). Frazier signed the letter in a letter dated June 17, 2014, and which stated in part:

Thank you so much for your recent kind words of encouragement and support on the topic of praying and reading historical prayers before our meetings. . . . I cannot believe how quickly our country and state are marching away from the principles and values upon which our country was founded. . . .

The Maryland judge in our case immediately, without request from our attorneys, lifted the ban on praying in Jesus' or our Savior's name. And, in mid-May, the same judge then denied the plaintiffs claim (American Humanists) of contempt against the Board and me. The complainants, having lost on the central issue of their case, are now arguing that, because our Board prayed, rather than invited clergy, the Greece case does not apply. We expect a ruling on this by summer's end, and we think they don't have much of a prayer.

The greater story though, is that the Supreme Court ruling has affirmed Americans' 1st Amendment rights of freedom of speech and freedom Of religion, not From religion, citing the intent of our Founding Fathers, and the tradition of legislatures as the heritage of our country. . . . I was deeply moved and troubled as I pondered the fact that our 1st Amendment rights were even being challenged in America, much less right here in Carroll County. We ARE one Nation Under God. When we cease to acknowledge that, we will no longer be America, the home of the free. We must be ever vigilant and willing to take a stand when our freedoms and the freedoms of future generations are threatened.

After the letter was publicized and shared on social media at the behest of Commissioner Frazier, citizens contacted Defendants to thank them for the Prayer Letter and to express their support for Christian prayer. (SSUF ¶83). Citizens also sent letters and posted on Frazier's Facebook page. (*Id.*).

On May 5, 2014, Roberta Windham, a Board employee, sent the Commissioners a draft press release regarding *Town of Greece*. (SSUF ¶73). Frazier responded: "I think we should name the folks that filed the suit." (*Id.*). Ms. Windham replied: "I discussed your idea with Ken K. and he agrees that taking the high road by not naming names sets the proper tone for the county's arguments before the judge." (*Id.*). The Board approved the press release, which was sent out to the public and stated in part:

The Galloway decision is of particular interest to Carroll County since SEVERAL citizens filed suit last year in Federal District Court alleging the Commissioners' practice of opening their meetings with a legislative prayer violated the First Amendment. Recently, United States District Judge William D. Quarles enjoined the county from using sectarian language while praying, bound by what was at the time controlling precedent by a federal Appeals court. . . . The Board is very pleased with the Galloway decision and expects to obtain a similar judgment before the Federal District Court.

(*Id.*). After the Press Release was issued, Defendants received numerous emails, letters, and social media posts support of their prayer practice and Christian prayers specifically. (*Id.* at ¶74). Several citizens also wrote to Defendants to voice their disapproval of the practice. (*Id.* at ¶¶75-78).

On May 6, 2014, Rothschild sent a copy of his article "The Dangerous Slippery Slope of Prayer Restrictions" along with the sectarian speech he delivered at a Board meeting, to the press. (*Id.* at ¶79).

On May 15, 2014, the Commissioners drafted a press release to notify the public of the contempt motion ruling. (SSUF ¶84). An alert was also sent out on the County's email system. (*Id.*). Before it was sent out, Frazier emailed Roberta Windham, stating: "Was the motion against the Board? I thought it

was against me? Don't want to mention my name? Don't want a statement from me?" (*Id.*)⁴ That day, Frazier posted the following message on her Twitter page: "The motion for contempt against me for reading an historic prayer has been denied! #freedom" (*Id.* at ¶85). The "Tweet" was re-posted by others. (*Id.*) In response to the press release, citizens wrote Defendants to express their support for Christian prayers or to voice their objection to the County's prayer practice. (*Id.* at ¶86).

On May 28, 2014, Commissioner Frazier accepted an invitation to speak at the Maryland Association of Counties (MACo) Summer Conference to discuss her legislative prayers. (SSUF ¶89). In August 2014, the Board issued a press release using Carroll County letterhead to announce Frazier's participation in the MACo conference on the subject of prayer. (*Id.*).

In April 2014, Commissioner Frazier was asked by a reporter from Christian Broadcasting Network ("CBN") to do an interview on the prayer controversy. (SSUF ¶93). Frazier responded to the reporter in an email dated May 4, 2014, in part: "This is a great day for America! The Supreme Court affirmed our 1st Amendment rights of freedom of speech and freedom OF religion, not FROM religion for which brave men and women before us were willing to do. . . . I am still accused of being in contempt of Court for reading the historic prayer that contained the words Jesus, Christ, and Savior. Though I have peace about it, your prayers are appreciated. Further, I believe Americans must take a stand against all violations of our constitutional rights and we will see more victories if, as our currency says, 'In God We Trust'. God Bless America!" (*Id.*).

After Frazier did an interview with CBN, the reporter sent Frazier and Amy Gilford (a Board employee) links to the published article. Frazier sent an email on July 8, 2014, to Ms. Gilford stating: "Can you help me spread [sic] the word? Please send to Don and my stop-emp email. Thanks! Thank you for helping Katherine too." (*Id.* at ¶94). Ms. Gilford responded: "absolutely. I already sent to Don. I will post to my twitter and tag you so you don't have to feel odd about posting it yourself. It will automatically show up on your twitter and facebook. I can also post it to your blog. I will temporarily be

⁴ Such statements evidence Frazier's desire to be in the media and garner support for Christian prayer.

on your twitter also, but if you start getting replies I will let you handle those.” (*Id.*). The article was posted and shared on Twitter. (*Id.*). On July 9, 2014, Frazier emailed Ms. Gilford to confirm the story was shared on “both facebook.” (*Id.*).⁵ After the CBN article was publicized and shared on social media, citizens wrote to Commissioner Frazier to voice their support of her stance on Christian prayer, and posted messages on her Facebook page to the same effect. (*Id.* at ¶¶95-96).

On August 26, 2014, Amy Gilford sent a draft of an announcement promoting a “Liberty Works Radio Network” show featuring Commissioners Frazier and Rothschild to the Commissioners for their final approval. (SSUF ¶99). The announcement, which was publicized to citizens, stated in part:

Carroll County Commissioners Fraizer and Rothschild to air "Carroll Confidential" on Liberty Works Radio Network!! CLEAR YOUR SCHEDULE - Beginning Tuesday August 26th, Commissioners Robin Fraizer and Richard Rothschild will host an hour-long radio show on Liberty Works Radio Network. Their show will be broadcast from 5 PM to 6 PM Eastern on Tuesdays and Thursdays. . . . Robin is nationally known for opposing the Baltimore Federal District Court's injunction against the Board of Commissioners praying in Jesus' name to open public meetings. We encourage you to tune in and find out what's really going on in Carroll . . .!!!

An advertisement for the radio show was publicized in a conservative Newsletter entitled “Liberty Tree.” (SSUF ¶100). The advertisement included photographs of Commissioner Rothschild and Frazier and stated in part: “Both are Christian Warriors for God, and for the Cause of Liberty!!!” (*Id.*).⁶

In June 2014, a documentary was released entitled “In Jesus’ Name” which featured Frazier and several of the Plaintiffs. (SSUF ¶90). Frazier posted a link to the documentary on her Facebook, and several citizens responded to the post, supporting Frazier for her prayers in Jesus’ name. (*Id.*) She also received letters in support of her Christian prayer. (*Id.*). For instance, on June 2, 2014, Frazier received an email from Pastor Mike Floyd, who wrote in part: “I want to thank you for your strong stand in many areas including praying in Jesus name. The Sunday after you defied the court order I played the video in church. We at Calvary Bible Church are all thankful for you and your example.” (*Id.* at ¶91).

⁵ A similar article was posted in “Christian Today,” which was also posted and shared on Twitter. (*Id.*).

⁶ John K., who is affiliated with the “Liberty Tree” Newsletter, had previously sent an email to “[o]rganize support for Frazier and Rothschild on the prayer issue” in April 2014. (*Id.*).

2. Responses to Prayer Supporters

As an intended consequence of their ongoing efforts to engage the citizenry in the prayer controversy, Defendants have received numerous calls, letters, and emails from citizens who wrote in support of their Christian prayers. In their responses to some of these supporters, the Commissioners further evidenced their intent to promote Christianity through their governmental activity, *infra*. The record already reveals many examples of such correspondences, and discovery produced even more.⁷

For instance, on April 10, 2014, a Terry Mader emailed Frazier to support her Christian prayers. (SSUF ¶69). Frazier responded: “Thanks Terry for sharing. Last time I served as a Commissioner, late 1990's, the WWJD - what would Jesus do? Was still popular. I agree, how things have changed in one decade. We need to stand firm today or we will lose our country. I will pray for you and put your name on our church prayer list. May God give you strength and peace in the midst of the storm!” (*Id.*).

On April 7, 2014, a citizen named Steve Barwick sent Frazier an email, which stated: “May God bless you, Robin. Stand your ground. It is unfathomable the depths this country has sunk to in the past 20 years, particularly when you can't even pray publicly for the very country you live in. And always remember: If they won't let you pray out loud, they certainly can't stop you from praying silently. Our heavenly Father hears, and knows. That's what I tell the kids who want to pray in school. No one can stop them from praying. We don't have to be disruptive about it. But we can pray wherever and whenever we want. Regards in Christ Jesus, Steve” (SSUF ¶65). About an hour later, Frazier responded to the citizen: “Thanks. That's true. One of the greatest challenges as a Christian elected official is discerning when to speak up and when to shut up. Sometimes one is certain and with confidence that comes from Him, boldly speaks. I appreciate you taking the time to share that thought. God bless.” (*Id.*).

On April 15, 2014, a citizen named Jeff sent Frazier an email, writing in part: “There are 240+ million Christians in America. Over 75% of people in US say they are Christian. They can't send us all

⁷ The Commissioners have also received many letters from those who object to the prayer practice but predictably, such letters either went ignored or were met with rude or evasive responses (thus lending support to the notion that the Commissioners have “signaled” disfavor towards those non-participants).

to jail. We the People WILL support you. You are right - - this country was founded on Christian Biblical principles and we are still a Christian nation. Our Christian heritage and foundation is (exactly) why this nation was so strong and successful from the get-go. They are weakening us. Our homeland security depends primarily (solely) on our relationship with God Almighty. Shame on these godless people trying to undermine our Holy heritage. Our allegiance to Jesus Christ!" (SSUF ¶70). Frazier responded: "Thank you so much for your encouraging words and prayers." (*Id.*).

Jeff wrote to Frazier again that day, stating in part: "Robin, If good Christian people don't start taking a stand (Right Now! –like you are—God Bless You again!) for what they know in their hearts is right – America is doomed. We were asleep at the wheel when we let them take the Bible out of our schools, and now we are asleep at the wheel letting them remove prayer and crosses and force gay marriage, etc." (*Id.* at ¶71). Frazier responded: "I will pray for you Jeff. You continue to speak out and inspire others. We are not alone. We are on the winning side. We have not for we ask not! Let us all ask for courage and personal revival. God will do the rest. God bless." (*Id.*).

On March 30, 2014, Frazier received an email from a citizen who supported her Christian prayer. (SSUF ¶58). Frazier responded: "Thanks for those comments and for your service! God bless you and God bless America." (*Id.*). On April 17, 2014, a citizen named Charles Cole sent Frazier an email in support of her Christian prayers. Frazier responded: "Thank you Charles. May I share your story?; without mentioning names of course. Have a wonderful Easter! God bless." (*Id.* at ¶72).

On May 1, 2013, a citizen, Larry Robinson, wrote to the Board as follows: "Dear Commissioners, I am writing to give my support on your prayers at the beginning of the government meetings. People must start to understand the First Amendment gives us freedom of religion not from religion. Larry Robinson." (SSUF ¶22) Commissioner Howard responded: "Well said. Thank you!" (*Id.*).

On July 10, 2014, Commissioner Frazier received an email from a citizen who supported her prayers to Jesus, with the subject line: "IN JESUS NAME, AMEN." (SSUF ¶96). The email stated as follows: "Dear Ms. Frazier, thank you for standing up and praying in the Name of Jesus. I pray that we,

as Americans can once again make The Lord our primary source. We need to rededicate this country back to the Lord. Just wanted to say thanks, Ms. Frazier for standing up for what is right. God bless you, Connie Nielsen Brick, NJ” (*Id.*). On July 12, Frazier responded: “Amen. We owe to those who have sacrificed before us and we want it for our children and grandchildren.” (*Id.*). The citizen replied: “absolutely, positively~we also owe it to the Lord.” (*Id.*). Frazier responded: “Yes indeed!” (*Id.*). The citizen wrote back: “Well, Ms. Frazier, if you ever want to run here in NJ/Ocean County, let me know. I will vote for you!” (*Id.*). Frazier replied that day: “Thanks! If I can’t win the battle to save my county located in this very liberal sate, I will have to find a new home. Have a blessed week.” (*Id.*).

On March 30, 2014, Commissioner Frazier received an email from a citizen named David Campbell, who wrote to support the Christian prayers. (SSUF ¶59). Frazier responded in an email that day as follows: “Thanks for taking your time to send these words of encouragement. God bless!” (*Id.*).

On April 3, 2014, a citizen named Bob VanWingerden sent Frazier an email stating: “Robin, I saw the controversy you are involved in on the news. It is unfortunate that liberals want to take God out of the public square but given the current political climate they may succeed . Is the issue generically God or the specific mention of Jesus? We both know that Jesus is the only true God and that ‘ in Him all the fullness of God was pleased to dwell’ Col 1:19 ESV. I understand you have been charged for defying a court order and I wish you well with that. I was wondering if we could meet on a somewhat related issue, perhaps over lunch? Keep up the good fight. Bob” (SSUF ¶64). On April 7, 2014, Frazier responded: “Hi Bob. I'm sorry, I missed this in the sea of emails I'm receiving. Overwhelming support, by the way. Do you have a couple of dates? And where would you like to meet?” (*Id.*).

On April 9, 2014, a citizen named Harold Ford sent an email to the Commissioners, stating in part: “I know I speak for hundreds of millions of Americans, when I say, ‘THANK YOU for defending Americans’ Constitutional rights to freedom of speech and religion! We are so very proud of you for daring to pray publicly in accordance with your conscience, as American government officials have done for hundreds of years. If you are imprisoned by the activist judge who would deny us our

Constitutional rights, Americans everywhere will join together to set you free!’ Please do **forward this message to U.S. District Judge William D. Quarles Jr. - and tell him the whole country is watching him and his ilk!**” (SSUF ¶68) (bold in original). Frazier responded: “Thank you. God bless.” (*Id.*).

On December 26, 2012, a citizen named Herbert Meade sent an email to Commissioner Rothschild voicing his support for Rothschild’s political stance on various issues. (SSUF ¶14). Rothschild responded in part: “Stay in touch...and pray for America and Maryland.” (*Id.*).

On January 8, 2014, Frazier responded to a representative of Fellowship of Christian Athletes after a meeting they had earlier that day. (SSUF ¶36). She wrote: “Wonderful job! Thank you for your bold stance for Christ and using this opportunity to give your testimony. I will do what I can to support your work and look forward to staying connected. Let me know if there is anything I can do for you. May God Bless your work. I will be praying for you! Have a fantastic 2014. Robin. 443 867 6807” (*Id.*).

3. Responses to objectors

It has already been established that Defendants disfavor atheists and others who oppose their prayers. As further evidence of this, consider Frazier’s response to a citizen who emailed her on July 11, 2014, voicing disapproval of the Board’s Christian prayers. On July 13, Frazier responded as follows:

I pledge allegiance to the flag of the United States of America; and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all. Our currency still states "In God we trust", the legislature opens in prayer, Congress opens in prayer and has prayer rooms available in government buildings, scripture is engraved all over our nations' Capitol, and I took an oath to uphold the US and Maryland constitutions. The US Constitution in the First Amendment lists our freedom of speech and of religion. The Supreme Court just upheld in a broad ruling concerning the First Amendment that elected officials have the right to ask for guidance by praying to the Deity of their choice. The MD Constitution in article 36 states in one sentence, "Nothing shall prohibit or require the making reference to belief in, reliance upon, or invoking the aid of God or a Supreme Being in any governmental or public document, proceeding, activity, ceremony, school, institution, or place." It is because elected officials don't have enough guts to stand up for what's right and for what's constitutional that we have drifted so far from the law that many folks don't know what the law is. I thank God that elected officials across America can continue to pray for guidance to serve the people who have placed in them their trust. Blessed is the nation whose God is the Lord. [(SSUF ¶97)].

In discussing AHA’s cease and desist letter on March 8, 2012, Commissioner Rothschild

referred to those who opposed to prayer as the “enemies.” (SSUF ¶8). Rothschild, Roush and Howard all agreed that the letter was not “worthy” of a response. (*Id.*). Rothschild also alluded to those in favor of separation of church and state as “village idiots.” (*Id.*). Likewise, in supporting Commissioner Frazier’s attempts to hold prayer meetings in the government buildings, Rothschild told the other Commissioners in a May 2012 email: “We are not a Godless government.” (SSUF ¶10).

4. Defiance of Preliminary Injunction and Public Involvement

Discovery confirmed Plaintiffs’ assertion that Defendants intentionally subverted the preliminary injunction by delivering a sectarian Christian prayer. The evidence further shows that their intent was not to actually read a historically accurate document, but was instead to read *any* purported historical document (accuracy aside) that included a Christian prayer. In addition, the communications between Commissioner Rothschild and Frazier evidence a clear intent to promote and proselytize Christianity *to the public* and to deliver prayers for reasons other than to solemnize the meetings.⁸

On March 26, 2014, Commissioner Rothschild sent an email to Frazier with the subject line: “DRAFT response to injunction.” (SSUF ¶47). In the email to Frazier, Rothschild included a link to the website of USA Christian Ministries for “quotes about god and the bible.” (*Id.*). Included in the email was a draft of a letter written by Rothschild and addressed to “Citizens.” The letter stated in part:

Dear Citizens,

On March 25, 2014 Judge William Quarrels issued an injunction censoring our prayers. Reducing his 25 page opinion down to a bottom line may best be summarized as follows:

We can pray all we want, but we are prohibited from making any reference to Jesus, Christ, or our savior. . . . We believe this opinion amounts to nothing less than censorship. We can pray but only if we pray to the deity determined acceptable by a federal judge and members of the Democratic Central Committee of Carroll County. We will not be censored.

However, at the request of one or more of our colleagues, we will not (at least today) violate the the judge's unconstitutional injunction. Nor, will we allow the name of our lord to be censored. Effective immediately, each time Commissioner Frazier or I is given

⁸ Indeed, Frazier signed a declaration stating: “Rather than offering a prayer of my own, I decided to use my allotted time to provide the Board **and the public** some historical perspective by reading a prayer attributed to George Washington.” (ECF 39-1) (emphasis added).

the opportunity to pray, we will read historical reports of words or utterances of our founding fathers that demonstrate America was founded on Judea-Christian Principles. Today, Commissioner Robin Frazier will not pray. But she and I will take a stand for freedom, and a stand for Judea-Christian Values by reading historical reports of the FIRST PRAYER of the Continental Congress in 1774 . . .

PRAYERS:

The rights of the colonists as Christians...may be best understood by reading and carefully studying the institutes of the Great Law Giver and Head of the Christian Church, which are to be found clearly written and promulgated in the New Testament. - Samuel Adams - See more at: <http://www.usachristianministries.com/us-history-quotes-about-god-and-the-bible/#sthash.dE62USOS.dpuf> . . .

In discovery, Defendants furnished to Plaintiffs a document entitled “George Washington Prayer.” (SSUF ¶48). Below the title are the words: “CBN.com –Tuesday Morning Prayer.” The prayer was taken from the “Christian Broadcasting Network” website. (*Id.*) It is apparent that Defendants took the prayer from Christian-based websites instead of doing any independent historical analysis to confirm that the prayer was in fact attributed to George Washington.⁹ It is thus evident from the above that the Commissioners intended to deliver a Christian prayer following the injunction.

As expected, the citizen response to the Christian prayer was overwhelming. In addition to the evidence already on the record, on March 27, 2014, Defendants received numerous emails, phone calls, Facebook messages, in support of the Christian prayer. (SSUF ¶49). Defendants continued to receive hundreds of such communications throughout the better half of April (SSUF ¶¶50-53; 57-60; 62-66). Commissioner Frazier also received Facebook posts and messages, Tweets and LinkedIn requests in response to her Christian prayer. (*Id.*)¹⁰ Defendants also received numerous letters, Facebook posts and emails from citizens who objected to the Board’s prayer practice. (*Id.* at ¶54).

The Board’s employees helped promote Defendants’ publicity surrounding Christian prayers. (SSUF ¶55). For instance, on March 28, 2014, Kathy Fuller sent an email to citizens stating as follows: “The Carroll County Republican Central Committee voted tonight in support of Commissioner Frazier

⁹ The University of Virginia, which houses the Papers of George Washington, and the Smithsonian Institution have concluded, based on the handwriting, that it was not written by Washington.

¹⁰ On March 31, she had at least 53 voice messages from citizens. (SSUF ¶60). She continued to receive phone calls and voice mail regarding her prayer through at least April 7, 2014. (*Id.*).

and the Board of Carroll County Commissioners' right to pray as they each see fit under the protections of the United States Constitution and the Maryland Constitution. I urge you to join us in supporting Commissioner Frazier and our Board. RFrazier@ccg.carr.org Commissioners@ccg.carr.org Thank you, Kathy Fuller" (*Id.*). On March 28, a citizen responded to Ms. Fuller's email and emailed Commissioner Frazier, stating: "Commissioner Frazier: Please keep your strength and let us know how we can help you. Your fight is noble. With much respect, Patrick" (*Id.*)

After watching Frazier's interview on Fox News in March 2014, many citizens wrote to Frazier thanking her for her Christian prayer. (SSUF ¶61). Between April 1 and April 29, the Commissioners continued to receive phone calls, emails and letters from citizens in support of the Board's Christian prayer. (*Id.* at ¶62). Frazier also received messages and posts on Facebook. (*Id.* at ¶63).

In April, after Commissioner Rothschild delivered a sectarian Christian speech in opposition to the Board's Resolution to codify the preliminary injunction order, he also received letters both in support and in opposition to his speech. (*Id.* at ¶67).

Discovery also confirmed that the Commissioners were notified in advance that Bruce Holstein and other citizens would deliver sectarian Christian prayers at subsequent meetings. (SSUF ¶56).¹¹ On March 28, 2014, Bruce Holstein sent Commissioner Frazier an email stating: "Robin, Thanks for standing up against an unjust ruling from a liberal judge. I want to suggest that you let us say the opening prayer from now on. We need you on duty. I will be at the next open meeting and will use my 3 minutes to pray to Jesus for you and the other commissioners. I have a feeling some other concerned citizens will be going the same until this unjust ruling is overturned. Bruce Holstein". (*Id.*).

5. Defendants' Actions Caused Sharp Religious Division in the Community

While the Commissioners have undoubtedly received support (that they sought out) for their Christian prayers from their political and religious allies, it is relevant that they have been on notice that

¹¹ Incidentally, Bruce Holstein spoke to Kathy Fuller, a Board employee, on the day Commissioner Frazier delivered a sectarian prayer in defiance of the injunction. (*Id.*).

their practice has had a stigmatizing and alienating effect on non-adherents. Indeed, many members of the public have interpreted the Commissioners' actions as being hostile to non-Christians and to Christians who support separation of church and state (such as Plaintiff Hake).

Defendants' legislative prayer practice has been controversial from the start. For instance, in May 2011 a citizen who identified as a "non-believer" wrote to the Commissioners informing them that their sectarian Christian prayers made him feel excluded from the community. (SSUF ¶1).

On April 8, 2014, Commissioner Rothschild received an email from a citizen, Mickey Tevelow, who wrote, in part: "I am writing to let you know that, as one citizen whom you represent, I have no interest at all in having commissioners bring their own religious leanings into the practice of county business. Each commissioner has a responsibility to address the stated purpose of scheduled meetings as efficiently and with as much focus as possible." (SSUF ¶67).

On May 9, 2014, a citizen named Brad G. Brown posted the following message on Frazier's Facebook: "Commissioner Robin Bartlett Frazier, I would like to address your stance on sectarian prayer which mentions only Jesus Christ, before each meeting. I personally disagree with the Commissioners allow the recognition of one religion. Although it may be difficult to believe, our county is rather diverse in religious beliefs. We do have Jewish, Islamic, Catholic and other religions amongst the Christian faith. Personally it would be better if a Chaplain opens each meeting with a prayer, o my knowledge none of the Commissioners are ordained clergy." (SSUF ¶78). On May 25, 2013, a citizen emailed the Commissioners stating, in part:

Also, given Mr. Rothschild's interest in invoking a deity (to help the Commissioners decide on how to spend tax monies) I am also interested in each Commissioner's religious affiliation. . . . Please confirm: Commissioner Howard is a member of Holy Family Catholic Church. Commissioner Roush is a member of Westminster United Methodist Church. Commissioner Shoemaker is a member of Westminster Baptist Church. Commissioner Frazier is a member of Church of the Open Door. Commissioner Rothschild's biography does not indicate a membership to any church. Please provide. These church and religious affiliations have become increasingly important in voters' decisions in electing our officials. The personal has become political. The Commissioners personal religious views, since they increasingly impact on the decisions of how taxpayer

monies are to be used, must be part of the political conversation. That is regrettable but apparently now the case in Carroll County. [(SSUF ¶24)].

On July 11, 2014, Frazier received an email from a citizen named Trig Jones who wrote in part: “...if we cease to believe that our rights come from God... How would this apply to a immigrant that followed Islam or Buddhism? Did their rights come from their God or yours? Are they expected to realize someday that they will go to hell and be punished for not understanding their creator was really your creator? There are lots of agnostic people that merely believe in a ‘live and let live’ philosophy, they simply want to lead happy lives and be kind to their neighbors and feel included in their community, if you expect people to tolerate your beliefs its expected you tolerate ours.” (SSUF ¶98).

On May 8, 2014, a Romeo Valianti emailed Defendants in part: “This decision [*Town of Greece*], was based upon the clergy who delvers prayers at the openings of Greece Council meetings. In Carroll County, it seems like the Commissioners are trying to take the credit for what Greece City Council in New York did many months ago. I would like to give a respectful suggestion, that since none of you are licensed clergy, may I suggest, since you five were elected County Commissioners and were not elected as Religious Leaders. In both roles that as a Commissioners and preacher, there are may clergy representing all dominations [sic] of religion in Carroll County or Maryland be called upon the majority of Commissioners to deliver opening prayers at Carroll County meetings as such on the decision adopted by the United State Supreme Court for Greece, New York City Council meetings.” (SSUF ¶76).

On May 9, 2014, a citizen named Terry wrote the Commissioners in part: “My husband and I are both lawyers and we value education as the path to success. When we see reports of our county commissioners spending valuable time debating whether opening meetings with prayer is appropriate or whether English should be the official language of the county we are appalled at the lack of concern for attracting and maintaining educated affluent residents.” (*Id.* at ¶77).

B. Additional Evidence of Advancing and Proselytizing Christianity

The Court in *Town of Greece* instructed courts to take into account the complete context in which legislative prayers are delivered. 134 S. Ct. at 1825 (“The inquiry remains a fact-sensitive one

that considers both the setting in which the prayer arises and the audience to whom it is directed.”). The relevant context and setting includes other efforts by the County to advance religion and Christianity in particular. Such instances of the County promoting Christianity in this case are numerous and serve to further Plaintiffs’ arguments that the prayers are directed to the public (as with these other endeavors) and that the purpose of the prayer practice is to proselytize Christianity rather than to merely “solemnize meetings.” A summary of these efforts is provided below and discussed in further detail in the SSUF.

1. 9/11 Ceremony. On September 9, 2011, the Board organized and sponsored a “9-11 Remembrance Ceremony.” (SSUF ¶2).¹² The ceremony opened with a sectarian prayer from Psalm 46:1-3, which was printed on the official program. (*Id.* at ¶3). A Christian Chaplain also delivered a prayer at the ceremony, the words of which were printed on the program as well. (*Id.* at ¶4). The program explicitly directed citizens to participate in the Christian prayer. The Chaplain prayer was followed by “Scripture Readings” from “2 Corinthians 4: 1,5-10.; Psalm 23- (together); Saint John 8:31-36.” Following the Scripture readings was a “Unison Prayer,” which concluded: “the strong name of Jesus our Christ. Amen.” (*Id.*) The Unison Prayer was followed by “Amazing Grace” a “Closing Blessing,” which was a Christian prayer. (*Id.*)

2. Christmas Tree Lighting Ceremonies. Since at least 2011, the Board has hosted official “Tree Lighting” ceremonies in December. (SSUF ¶27). On May 18, 2012, Commissioner Howard confirmed that the annual tree lighting ceremony is hosted by the Board as official County business. (*Id.*) The ceremonies have included Christian remarks and prayers by the Commissioners.

2011 Tree Lighting. On December 21, 2011, Commissioner Frazier sent an email to “Everyone” using the County’s email system, stating: “Good afternoon! May each of you and your families have a very Merry Christmas, Happy Holidays, and a blessed New Year! Below is a copy of Ronald Reagan’s Christmas address, which I read at the tree lighting. Thought it may be encouraging to you, as it was to

¹² Commissioners Howard, Shoemaker and Frazier delivered remarks at the ceremony. The Ceremony was held in the Carroll County Office Building on September 11, 2011.

me. I look forward to working with you all in 2012! Commissioner Robin Frazier.” (*Id.* at ¶27-a). The speech Frazier quoted in her letter and which she read at the ceremony included the following language:

I have always believed that the message of Jesus is one of hope and joy. I know there are those who recognize Christmas Day as the birthday of a great and good man, a wise teacher who gave us principles to live by. And then there are others of us who believe that he was the Son of God, that he was divine. If we live our lives for truth, for love, and for God, we never need be afraid. God will be with us, and He will be part of something much larger, much more powerful and enduring than any force here on Earth.

2012 Tree Lighting. On December 11, 2012, Commissioner Frazier emailed herself a speech to deliver at the 2012 Tree Lighting ceremony. (*Id.* at ¶27-c). Her speech provided in part:

I believe that this is no less true for all of us in all of our regions of our land today. There is a turning away from things which are false and things which are small, and things which are shallow. There is a turning toward those things which are true, those things which are profound, and those things which are eternal. . . . Our need for such faith was never greater, for we are the heirs of a great trust. In these last 200 years we have guided the building of our Nation and our society by those principles and precepts brought to earth nearly 2,000 years ago on that first Christmas. . . .

2013 Tree Lighting. In December 2013, the Commissioners organized a “Tree Lighting Ceremony” and created a program for the ceremony. Commissioner Roush gave the welcoming and performed the lighting of the tree. The ceremony began with the singing of “Silent Night,” the words of which are printed on the program, including: “Jesus, Lord at thy birth, Jesus, Lord at thy birth!” The program states: “Everyone is invited to sing along with Silent Night” (*Id.* at ¶27-d).

Commissioner Frazier told County employees in an email she sent on December 19, 2013, that she delivered the following speech at the ceremony, which provided in part:

“But the angel said to her, 'Do not be afraid, Mary, you have found favor with God. You will be with child and give birth to a son, and you are to give him the name Jesus. He will be great and will be called the Son of the Most High...his kingdom will never end.’” Luke 1:30-33

During the Christmas season, our thoughts turn to the source of joy and hope born in a humble manger on a holy night more than 2,000 years ago. Each year, Christians everywhere celebrate this single life that changed the world and continues to change hearts today. The simple and inspiring story of the birth of Jesus fills our souls with gratitude for the many blessings in our lives and promises that God's purpose is justice and His plan is peace.

At this special time of year, we give thanks for Christ's message of love and mercy, and we are reminded of our responsibility to serve. . . . We honor their sacrifice, ask God to watch over them and their families, and pray for their safe return. Christmas is a time to rejoice and remember the birth of Jesus Christ. . . . [(*Id.* at ¶27-e)].

3. National Day of Prayer 2013. On April 30, 2013, a Board employee asked the Commissioners to schedule a proclamation for the National Day of Prayer, and the Commissioners strongly agreed. (SSUF ¶16). A prayer proclamation was read in session to the public the following day. On May 2, 2013, Commissioner Frazier sent an email using the County email system (addressed to “Everyone”) with the subject “National Day of Prayer.” (*Id.* at ¶17). Her email stated in part, as follows:

On this National Day of Prayer designed to pray for our nation, military, police officers, fire fighters and first responders, elected officials and communities, I make available for you the following national proclamation and thank you for your prayers: . . .

All of us have the freedom to pray and exercise our faiths openly. Our laws protect these God-given liberties, and rightly so. Today and every day, prayers will be offered in houses of worship, at community gatherings , in our homes, and in neighborhoods all across our country. Let us give thanks for the freedom to practice our faith as we see fit, whether individually or in fellowship.

On this day, let us remember in our thoughts and prayers all those affected by recent events, such as the Boston Marathon bombings, the Newtown, Connecticut shootings, and the explosion in West, Texas. . . .Let us come together to pray for peace and goodwill today and in the days ahead as we work to meet the great challenges of our time. . . .

4. Marriage Week. In January 2012, the Commissioners signed a proclamation for “Marriage Week” for the week of February 7-14. (SSUF ¶5). They also issued a press release announcing the proclamation, which informed citizens that it was a direct response to the Maryland legislature proposing a bill to legalize same-sex marriage. The press release stated in part: “This bill would eliminate the current definition of marriage as a union between one man and one woman. The Commissioners always welcome the input and feedback of all citizens. At the same time, wish to assure the citizens that this proclamation is not an attack on anyone, but rather defense of an institution that has come under attack.” In the press release, the Commissioners urged citizens to write to their State representatives to let them know that the definition of marriage should be “a union between one man and

one woman.” (*Id.*). As Commissioner Frazier’s husband put it, the Commissioners were attempting to preserve “Biblical” marriage. (SSUF ¶6).

5. Lincoln Reagan Dinner. On September 24, 2013, a citizen named Larry emailed Frazier with the subject line “Prayer” and the body of the email reading: “Robin: We are counting on you to say the prayer at the Lincoln Reagan dinner. Is that OK with you? Larry”. (SSUF ¶25). According to the Board’s September 23, 2013, official Agenda, the dinner was attended by Commissioners Shoemaker, Frazier and Rothschild. (*Id.*).

6. Sheriff’s Prayer Breakfast. In 2014, the Board worked with the Carroll County Sheriff’s office to plan a “Sheriff’s Prayer Breakfast” to be held in May. (SSUF ¶39). Commissioner Howard was listed as an “organizer” of the Prayer Breakfast. (*Id.*). On January 30, a Chaplain Bob Kimmel emailed Commissioner Frazier regarding the Sheriff’s Prayer breakfast. (*Id.* at ¶40). His email stated in part:

It looks like Good News Jail and Prison Ministry will be hosting the Sheriffs Prayer Breakfast this year on May 1st, the National Day of Prayer. I have the Sheriffs go ahead on this. I am forming the Task Force now. Would you be willing to assist? We can talk soon. Thank you. Blessings, Bob

Frazier forwarded Bob Kimmel’s email to Kathy Fuller. (*Id.*). In the email, Frazier wrote: “Hi. Did you have a chance to send some email lists to the Chaplain? Details below. Thanks” (*Id.*). Ms. Fuller responded: “I remember talking to you about this event, but I cannot remember any lists that I am to send him. When they have a flyer or an announcement for the event we can have it go out via the govdelivery system as a press release. He can also send it to me and I can put it out to my own email list and ask others to do the same.” (*Id.*). On March 3, 2014, the County Sheriff’s office sent a letter signed by Chaplain Kimmel, using Carroll County letterhead, to Commissioner Roush, which stated in part:

Since the birth of our great Nation, prayer has been the essential ingredient in the lives of our people, in acknowledging our Creator and trusting in His benevolent hand upon us as one nation under God. . . .

On this National Day of Prayer, Sheriff Ken Tregoning would like to invite you to join with him and other members of Law Enforcement, Government and the Justice System at the Carroll County Sheriff’s Prayer Breakfast. We will be gathering at Best Western

Catering and Conference Center located at 451 WMC Drive, Westminster MD 21158 on Thursday, May 1, 2014, at 7:00 a.m., and will conclude promptly at 8:30 a.m.

Sheriff Ken Tregoning recently shared these thoughts about this annual event: "The Sheriff's Prayer Breakfast is a celebration of Christian fellowship that embraces prayer and music that nourishes the soul and motivates recognition of our Creator as the source of all blessings bestowed upon us. It is a time of reflection and rejuvenation that energizes the mind and body to perform our daily duties and responsibilities in a true Christian spirit." [(SSUF ¶41)].

On March 19, 2014, Amy Gilford, the Board's research analyst, sent an email to Chaplain Kimmel to RSVP to the prayer breakfast. She wrote in part: "I know that Commissioner Frazier is already working with you on the event." (*Id.* at ¶42). On June 5, 2014, Rothschild received an email from a Chaplain Wayne Gadow with the subject line: "Chaplain Training." (*Id.* at ¶43). The email stated in part:

Reference our conversation at the CC Sheriffs Prayer breakfast, I am writing to confirm your welcoming the people taking the Practical Chaplaincy Class at the CC non-profit on Tuesday morning, June 17th 2014. Please arrive as close to 8:00 AM as possible. You will have up to 10 minutes to speak which will include any questions from the class. Please refrain from saying anything to do with the election or campaign.

7. Legislative Prayer Breakfast. On February 25, 2014, Commissioner Frazier received an email from a Larry Helminiak regarding a "Legislative Breakfast" to be held on March 1, 2014. (SSUF ¶44). The email stated: "Robin: The Legislative Breakfast is this Saturday, from 8 til 10, at Best Western [.] As yet, I have not heard that you are attending [.] If you are, would you please say the prayer? Let me know Larry Helminiak" (*Id.*). Frazier responded: "Yes we are. Yes I can. Thanks!" (*Id.*).

8. Prayer Rally. On March 24, 2014, Frazier was invited to attend a "Prayer and Rally at the Supreme Court for Religious Freedom" on March 25, 2014. (SSUF ¶46). The Facebook invitation indicated that Commissioner Rothschild along with several citizens would be attending the event. (*Id.*).

9. May 13, 2014, Prayer Breakfast. On May 13, 2014, Frazier and Board staff attended a prayer breakfast. (SSUF ¶88). Later that day, a citizen named Angie Davis Wantz sent Frazier a Facebook message: "It was great to meet you at the Breakfast, you are my hero for standing up in prayer... Glad I got to tell you that at the Breakfast.." (*Id.*). On May 14, a County employee sent Amy Gilford (the Board's Research Analyst) an email with the subject "Prayer Breakfast Picture" and the

body stating in part: “Amy, It was nice to ‘officially’ meet you yesterday. I would love a copy of that picture of my daughter and I at the Prayer Breakfast.” (*Id.*).

10. June 7, 2014, Prayer Breakfast. On June 7, 2014, Commissioner Frazier attended another prayer breakfast, which was publicized on her Facebook page. (SSUF ¶92). On June 7, Angie Davis Wantz posted on Frazier’s Facebook page, stating: “I will be at the prayer breakfast just running late” (*Id.*). Another citizen named Carmen Amedori posted a message below a post Frazier wrote, stating: “A very nice prayer event and breakfast. God Bless and praying the Conservatives keep fighting with a turnout at the polls. We can do this.” (*Id.*).

11. Commissioner Frazier Thanksgiving Email. On November 27, 2013, Commissioner Frazier emailed her assistant, Shawn Reese, stating: “Hi. Can you please send out a message to all employees: Have a Safe and Happy Thanksgiving! I encourage you to take a moment and do as the old song says: ‘Count your blessings, name them one by one. Count your many blessings see what God has done!’ I know the Fraziers have much to be Thankful for this year, including all the prayers and concern of many of you. Enjoy your time off! Commissioner Robin Frazier” (SSUF ¶30). Ms. Reese agreed to send the email, and did so shortly thereafter. (*Id.*).

12. Commissioner Rothschild Thanksgiving Email. On November 28, 2013, Rothschild sent an email to all County employees with the subject line “Re: Thanksgiving Proclamation by George Washington.” (*Id.* at ¶31). His email stated in part: “George Washington reminds us from where our blessings devolve. Happy Thanksgiving Day to all. –Rich” (*Id.*). Below that text was the purported proclamation delivered by George Washington, which began with the words: “Whereas it is the duty of all Nations to acknowledge the providence of Almighty God, to obey his will . . .” (*Id.*).

13. Commissioner Frazier Christmas Email. On December 19, 2013, Frazier sent an email to all County employees (“Everyone”), which provided in part:

I wanted to share with you President George Bush's Christmas message for 2007. I shared this with everyone at the Christmas Tree Lighting in case you missed it. The words are still apropro for today. "But the angel said to her, 'Do not be afraid, Mary, you have found

favor with God. You will be with child and give birth to a son, and you are to give him the name Jesus. He will be great and will be called the Son of the Most High...his kingdom will never end." Luke 1:30-33 During the Christmas season, our thoughts turn to the source of joy and hope born in a humble manger on a holy night more than 2,000 years ago. Each year, Christians everywhere celebrate this single life that changed the world and continues to change hearts today. The simple and inspiring story of the birth of Jesus fills our souls with gratitude for the many blessings in our lives and promises that God's purpose is justice and His plan is peace. At this special time of year, we give thanks for Christ's message of love and mercy, and we are reminded of our responsibility to serve. America is blessed to have fine citizens who reach out with a compassionate hand to help brothers and sisters in need. . . .

(SSUF ¶32). Employees responded to Frazier regarding her Christmas email. (*Id.*).

14. Commissioner Rothschild Christmas Email. On December 25, 2013, Rothschild sent an email to the public with the subject "Merry Christmas from Commissioner Richard Rothschild & Joni." (SSUF ¶33). The email provided in part:

Merry Christ-mas to everyone from Joni and Rich.. During this Christ-mas season, we pray that America may move back in the direction of Christ; We pray that the season of Christ-mas will bring you love and happiness; and, most importantly... We pray that the knowledge of Christ will bring you peace, comfort, salvation, and blessings. With affection to all of our friends, and with respect to our opponents; to our non-Christian friends, we wish you Happy Holidays and a blessed New Year. -Rich and Joni

15. Other Prayers. On October 18, 2013, a citizen emailed Commissioner Frazier thanking her for "praying with me." (SSUF ¶28). He also wrote: "This is the first I have a strong woman of God and someone in authority of the law pray with me. Yes there is a lot I needed to learn from all this. I thank you again, and may the lord bless you and keep you in Jesus Name Amen." (*Id.*). On November 13, 2013, Rothschild sent an email to Kathy Fuller, attaching two press releases on the "Rain Tax." (SSUF ¶29). The end of the first press release provided: "The Board is confident the majority of citizens in Carroll County will support the Board in this endeavor, and asks for your prayers. Board of Carroll County Commissioners." The end of the second release stated: "I am confident most citizens in Carroll County understand the importance of standing strong on this issue, and ask for your prayers." (*Id.*).

On December 29, 2013, Rothschild sent an email to all County employees in regards to his criticism of climate change science. (SSUF ¶35). At the end of the email, he prayed for the County employees and asked for “blessings from God.” (*Id.*).

C. Unconstitutional Purpose

As discussed above, Defendants’ prayer practice appears to be motivated almost entirely by an interest to proselytize religion and Christianity to the public. Absent from the record is any evidence that the Commissioners are genuinely using prayer to “solemnize” their meetings. When Frazier responded to a prayer-supporter in April 10, 2014, she made this point clear by stating: “Last time I served as a Commissioner, late 1990's, the WWJD - what would Jesus do? Was still popular. I agree, how things have changed in one decade. We need to stand firm today or we will lose our country.” (SSUF ¶69). In other words, Commissioners are delivering sectarian Christian prayers to make Christianity “popular” again and to promote Christianity as opposed to solemnizing meetings.

III. CONCLUSION

The record, which includes the evidence filed prior to the motions for summary judgment and the evidence attached hereto, conclusively demonstrates that Defendants’ prayer practice falls far outside of the permissible prayer tradition upheld in *Marsh* and *Town of Greece*. While Plaintiffs are clearly entitled to at least nominal damages for Defendants’ pre-*Town of Greece* sectarian prayer practice, they are also entitled to injunctive relief. As in *Hudson*, this Court may tailor such relief to meet the exigencies of this case. Indeed, once “a constitutional violation has been found, a district court has broad discretion to fashion an appropriate remedy.” *Karcher v. Daggett*, 466 U.S. 910 (1984) (Stevens, J., concurring).¹³ In view of the above, Plaintiffs respectfully request that the Court grant their Cross-Motion for Summary Judgment and deny Defendants’ Motion for Summary Judgment.

¹³ See *Hecht Co. v. Bowles*, 321 U.S. 321, 329-330 (1944) (“The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it”); see also *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).

Respectfully submitted,
November 10, 2014

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