

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM**#10**Date: 12-1-2017Weekly Agenda Date: 12-5-2017**ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN:** Supervisor Matthew Ung**WORDING FOR AGENDA ITEM:**

Approval of a resolution for solemnizing board meetings

ACTION REQUIRED:Approve Ordinance ☐Approve Resolution ☒Approve Motion ☐Public Hearing ☐Other: Informational ☐Attachments ☒**EXECUTIVE SUMMARY:**

This resolution gives my fellow supervisors the individual freedom to choose to either solemnize the board meetings with a moment of silence or a spoken prayer. In our representative republic, we are elected because of our personal beliefs, not in spite of them. For some of us, those beliefs are informed by our faith. I know that is true for most--if not all--of my fellow supervisors.

As the Supreme Court said in its 1952 decision in *Zorach v. Clauson*, Americans "are a religious people whose institutions presuppose a Supreme Being." As such, government "respects the best of our traditions" when it "respects the religious nature of our people and accommodates the public service to their spiritual needs."

Politicians too often fulfill the stigma of viewing themselves above the law and not being willing to humble themselves. Prayers shall primarily be for the benefit of the board, but members of the public have the freedom to observe the prayer opportunity if they so choose. At no time shall the board coerce any member of the public to participate or approve of the prayer practice, or criticize or take any adverse action against any person because of their disapproval of the prayers.

BACKGROUND:

During last week's board meeting, I disclosed that I was a client of First Liberty Institute (FLI). I wanted my fellow board members to hear some information for themselves, and was greatly appreciative of their Senior Counsel, Ken Klukowski, flying from Washington, D.C. to inform fellow board members. Unfortunately, my colleagues refused to engage in an attorney-client relationship for even a moment. Contrary to a corrected error in the *Sioux City Journal*, neither the motion nor the vote that failed 1-4 was to go into closed session, but was "to accept the pro bono services of First Liberty Institute to provide a confidential assessment of the legality of the Board's solemnizing practices." Supervisor Taylor called seeking outside advice now "putting the cart before the horse." It actually puts the horse before the cart, and is the reason I believe the board should be confident of the attached resolution.

FLI is counsel on two cases at the en banc level in federal appellate courts on this issue, and a pending Supreme Court case. There are no better subject matter experts in the entire nation.

Wanting to minimize the county's liability of having no existing policy/resolution on this matter, while introducing a prayer opportunity, I asked FLI for input, and subsequently drafted the attached resolution.

The resolution allows legislator/supervisor-led prayer rather than prayer led by members of the public or the clergy on very reasonable grounds: Legislator-led prayer involves the least time, least difficulty, and most importantly, the least government involvement. The legal risk of the government officially selecting an eligible "pool" of public volunteers should be obvious. In fact, when local governments are sued on this issue, it is predominately driven by an accusation that the government's selection process is unfair or even unintentionally discriminating--in other words, imperfect. Therefore, rather than have the government officially give this privilege to those unaccountable to voters, it makes most sense for the legislators themselves to exercise the option.

FINANCIAL IMPACT:

In Wallace v Jaffree (1985), the Supreme Court struck down a moment of silence held in Alabama public schools on the basis that it violated the Establishment Clause of the U.S. Constitution. Let that fact sink in.

The west face of the courthouse has engraved "JUSTICE AND PEACE HAVE MET TOGETHER. TRUTH HATH SPRUNG OUT OF THE EARTH." This just so happens to be Psalm 85:10b-11a. No one is forced to read it or believe that it alludes to the person of Jesus Christ. Similarly, this prayer opportunity will not force anyone to pray anything.

However, in today's politicized age, where fellow Americans actually sue to remove a cross set as a war memorial in the remote Mojave Desert, we could be sued to remove that Bible verse on our courthouse because it supposedly establishes a state religion. Yet the members of this board are willing to stand by it, are they not? The interesting thing is that puts Woodbury County on shakier legal ground than having a written policy/resolution on solemnizing meetings does. Furthermore, Supreme Court cases on legislative prayer are even more solid than ones regarding a moment of silence.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes ☐ No ☐

RECOMMENDATION:

Even if every other supervisor decides to never offer a prayer, but only a moment of silence, I would hate to think that we are scared to adopt this resolution to endorse a choice exercised by Congress, 98% of states, and most counties nationwide.

ACTION REQUIRED / PROPOSED MOTION:

Motion to approve the resolution

WOODBURY COUNTY, IOWA

RESOLUTION NO. _____

A RESOLUTION FOR SOLEMNIZING BOARD MEETINGS

WHEREAS, the Congress of the United States, as many as 49 out of 50 States of the Union, and the vast majority of local governments open their sessions with an invocation called legislative prayer; and

WHEREAS, the Supreme Court of the United States in *Marsh v. Chambers* held that legislative prayer is consistent with the Establishment Clause of the Constitution of the United States, given its “unambiguous and unbroken history of more than 200 years;” and

WHEREAS, the Supreme Court in *Town of Greece v. Galloway* held that local governments may allow such prayers, that the Constitution permits prayer givers “to ask their own God for blessings of peace, justice, and freedom,” and that prayers reflecting specific “creeds can still serve to solemnize the occasion” of a legislative session; and

WHEREAS, in recent years the Board has observed a moment of silence in conjunction with reciting the Pledge of Allegiance,

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Woodbury County, Iowa, that at each meeting of the Board, once the meeting has been called to order, an opportunity for legislative prayer shall be held in conjunction with reciting the Pledge of Allegiance.

This opportunity shall consist either of a legislative prayer or of a moment of silence. The opportunity shall be exercised by one individual Supervisor, one per Board meeting, on an equal rotating basis. Each supervisor shall have full discretion on whether the opportunity shall be used for a prayer or a moment of silence, and that decision shall not be reviewable by the Board or any other entity. If a Supervisor elects to offer a prayer, that prayer may reflect the individual Supervisor’s specific beliefs, according to the dictates of individual conscience, as determined by the sole discretion of that Supervisor.

The opportunity shall be extended equally to all Supervisors regardless of each Supervisor’s individual faith, and each Supervisor shall respect the prerogative of each of the other Supervisors as a policymaker elected by, and answerable to, the people to exercise the same individual freedom in the choice of how to exercise the prayer opportunity to the same degree that each Supervisor exercises that individual discretion in other parts of the Board meeting.

BE IT SO RESOLVED this 5th day of December, 2017.

WOODBURY COUNTY BOARD OF SUPERVISORS

Matthew A. Ung, Chairman

ATTEST:

Patrick F. Gill, Woodbury County Auditor