

2022

## How Prayer before Public Meetings affects Participation

Rebecca R. Gomez  
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# Walden University

College of Health Sciences and Public Policy

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Rebecca R. Gomez

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Walden University  
2022

Abstract

How Prayer before Public Meetings affects Participation

by

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MS, University of San Francisco, 2001

MA, Long Beach State University, 1986

BS, University of California, Los Angeles, 1978

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Public Policy and Administration

Walden University

May 2022

## Abstract

Over the past 50 years, there have been numerous lawsuits regarding religion and government. However, there has been little analysis of invocation practices. Other case studies examined invocations of one agency which identified the actions and phrases that led to claims of establishing religion. Therefore, city councils lacked direction to avoid invocation litigation and ensure public participation. Most city councils within Orange County, California, began their public meetings with an invocation. The remaining cities did not have a prayer, and one city had a moment of solemn expression. This qualitative study explored the impact of legislative prayer on meeting participants at city council meetings in one Southern California County and whether the words or actions of the legislative body violated the Establishment Clause. Secondly, the study examined the type of prayer or practices that would violate the Establishment Clause of the First Amendment of the U.S. Constitution. This multiple case study examined the invocation policies and practices of the County's 34 cities. A sample of seven council members from six towns and five community members representing four other cities were interviewed. The use of policy feedback provided the councils with public perception. All participants indicated that the invocation set the tone for the meetings. Therefore, the elected leaders must consider how their actions and words influence the meeting. The council members suggested that the prayer was routine, but the public believed that the prayers were divisive for a lack of diversity and should cease. This study may create positive social change through encouraging policymakers to examine recent court cases and obtain public feedback to determine whether and how invocations should continue.

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## Dedication

To my parents who instilled the value of education and a strong work ethic. I know that you are still watching. To my husband, children, family and friends for their continuous love and support through my academic, political, and professional journeys. You have made me the person that I am today.

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## Chapter 1: Introduction to the Study

Throughout history, prayers before legislative meetings have become routine. Since the early 1970s, there has been an increase in litigation regarding religion in the government sphere, including invocations before public meetings and primarily at the local level. The Founding Fathers of the United States believed that prayer created an atmosphere of seriousness to the proceedings before them to remind them of the significance of their deliberations (Marsh v. Chambers, 1983). The Founding Fathers believed in the freedom of religion, but they did not specify a religion. They supported a religious practice in the newfound government (Library of Congress, n.d.). Hearing no community objection, the Framers of the United States Constitution encouraged a nondenominational faith and proposed funding for a chaplain to provide a daily prayer before U.S. Congressional sessions.

As a matter of course, many city councils in Orange County, California, list an invocation on their agendas. This qualitative study explored the of impact of legislative prayer upon meeting participants at city council meetings in this Southern California County and whether the words or actions of the legislative body violate the Establishment Clause. Secondly, the study examined the type of prayer or practices that would violate the Establishment Clause of the First Amendment of the U.S. Constitution (U.S. Const. Amend. I.). This study will examine the invocation practices and policies of these cities within this county which has historically been tagged with a “national reputation for hard-line conservatism” (Monzingo, 2018) in liberal leaning California. Since 2009, numerous lawsuits throughout the United States were filed to oppose invocation

practices. This litigation raised questions as to how these policies and practices were implemented by other public agencies within the county.

Public agencies must be cognizant of the effect that invocations impose upon the citizenry. Some people welcome the calming effect of an invocation for the meeting participants. Others may see a prayer as a rejection of their beliefs and serves as a lightning rod to highlight the lack of connection between the elected officials and the community. Lawsuits were initiated by those who believe that the invocation was detrimental to their participation and engagement with their local officials.

This study examined several legal opinions that have challenged the legislative bodies' invocation policies and practices over the past 50 years and how these decisions have shaped the current legal and political landscape. The cases are very fact specific, and therefore, do not provide adequate legal guidance to agencies to ensure that their practice is within the scope of the courts' decisions. Because of the expense that litigation may bring to a community, it is inherent for leaders to be aware of these legal opinions and how to address policies and practices to be fiscally responsible as well as preserving open communication between the elected leaders and their constituents.

### **Background**

The Establishment Clause of the First Amendment of the United States Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." (U.S. Const. Amend. I.). The *Lemon v. Kurtzman* (1971) and *Marsh v. Chambers* (1983) cases are two seminal court decisions that provide analysis for spending public money for religious purposes which led to the

primary precedent for the convergence of religion and government. The cases of *Joyner v. Forsyth* (2011), *Freedom from Religion Foundation v. Chino Valley Unified School District* (2016), and *Lund v. Rowan County* (2017) were examined for their invocation practices, words, and actions of the lawmakers from the dais. In the *Rubin v. Lancaster* (2013), *Town of Greece v. Galloway* (2014), *Coleman v. Hamilton County* (2015) cases, the courts held that the agencies' policies did not endorse one religion over another nor did the policy specify the substance of the invocation. The court held that invocations could remain, provided that there was no proselytizing or disparaging of a particular faith and there was an effort by the body to be religiously diverse.

Ravishankar (2016), Wicks (2015), and Rohr (2012) attempted to identify the practices and circumstances that would satisfy the Courts' guidelines. Invocations raise the question as to whether the presence of students at council meetings create an extraordinary level of scrutiny for prayers. Kennedy (2013) examined whether prayer was considered constitutional and its effect on agencies and the Establishment Clause. Since the courts were not consistent in their holdings and various courts focused on specific facts, it is unreasonable for public bodies to comprehend which practices are legally acceptable or which words or practices would instigate or prevent a lawsuit.

Since this research topic hinges on public participation, articles on public meetings and developing trust between the government agency and the community were identified. Jarmon (2009) discussed the physical attributes of the room, such as the location of the speaker, the video and audio recordings, and who controlled the questions asked of the developers' group. Beard et al. (2014) discussed whether public participation

in a low-income, minority community could affect future redevelopment plans in their neighborhood. In their study, a coalition of nonprofits became the voice of the people because the council's actions did not create an effective mechanism for public participation. Their analysis also involved a city that is within the study population.

For many public policy issues, advocacy groups often attempt to provide legislators guidance as to the best practice on particular matters, such as housing or economic development. Creating awareness is often considered the first step in creating social and legislative change. However, the presence of prayer is an applied matter that is often practiced by rote on many councils. Long standing practices may prove to be problematic if elected leaders and city attorneys do not have an awareness or understanding of recent court decisions. Minimal research has been conducted on the invocation practices of local governments and whether they are subject to deterring public participation or creating violations of the Establishment Clause. Because so little information has been investigated, local leaders need to be knowledgeable to determine whether their conduct and policy meet the spirit and intent of the legal opinions. Many council members are not attorneys or well-versed in constitutional law and therefore rely on advice from their city attorneys who may be focused on other local matters. Elected officials must be acutely aware of their constituents' concerns when they protest the presence of prayer in the public space. Although some councils may not change their current policies or practices, these leaders must make informed decisions similar to any other legislative matter.

## **Problem Statement**

Since the formation of the United States, prayers have occurred before legislative meetings. Although the representatives of the British colonies of early America, known as the Continental Congress, did not sanction a specific faith, they encouraged the practice of religion in the new government (Library of Congress, n.d.). Since the public did not raise objections, the Framers advocated for a nondenominational faith and established appropriations for chaplains.

Despite the Framers' perspective, over the past 50 years, various litigation has called into question the custom of invocations before legislative meetings, which could create turmoil for local governments. Participants who do not practice a specific religion or espouse the prayer may feel uncomfortable or disenfranchised. They may not want to attend the meetings because of this discomfort and possibly limit their participation in the public discussion. The council may lose the benefit of public input on issues before them. In this study, 25 of the 34 cities in this county list an invocation on their agenda. This analysis examined how the delivery of an invocation before a public meeting impacts public participation. Public agencies must consider how the presence of prayer or religious behaviors enhance or deter participation for one who does not practice the religion of the prayer. A second consideration is whether these words or actions violate the Establishment Clause of the First Amendment. This inquiry examines invocation practices by obtaining the cities' invocation policies, and interviewing council members, and members of the public. Through the methods of policy feedback, councils could address these opinions in a constructive manner to create a more robust public dialogue.



### **Purpose of the Study**

The purpose of this qualitative study explored the of impact of legislative prayer upon meeting participants at city council meetings in this Southern California County and whether the words or actions of the legislative body violate the Establishment Clause. Secondly, the study examined the type of prayer or practices that would violate the Establishment Clause of the First Amendment of the U.S. Constitution (U.S. Const. Amend. I.) and is two-fold.

First, leaders should be aware as to whether prayer affects public participation in meetings and to what degree. Since the majority of city councils within the county provide a prayer before their meetings, it is imperative that councils examine their current practices and court holdings that could influence their invocation customs. Legislators should be conscious of their constituents' contributions in meetings. If prayer constrains public participation or citizens feel excluded, they may choose not to attend or believe that the councils do not value their feedback. Any mechanism or custom, such as prayer, that deters engagement should be scrutinized so that public feedback is not stymied. However, some viewed prayer as a method to set the tone of collegiality for the meeting.

Second, council members should have a general understanding how to avoid allegations of violations of the Establishment Clause (U.S. Const. Amend. I.). In addition, these practices may expose the agency to legal disputes. Many council members are not attorneys, but they should have a reasonable understanding of the legal quagmire that invocations may bring, based on previous court cases. Since local legislators are stewards

of public dollars, the practice of prayer must be thoroughly considered to avoid possible litigation and the wasteful spending of tax dollars.

The study included a sampling of city council members and members of the public to understand the effect of invocations on the meeting participants. The participants were interviewed and using policy feedback framework, the data was analyzed to provide the council members with information to address their invocation practices. The respondents were council members in this Southern California County who have served for at least two years, so that these members have sufficient context to participate. Although most of the previous analyses were focused on single agencies and the impact on the agencies and their respective citizens, there is a considerable lack of scrutiny of the effect on the council members or the staff. There is little inquiry whether a council member wants to participate in the solemnity of the prayer or whether the prayer is sectarian or nonsectarian.

### **Research Questions**

The two primary research questions are:

RQ1: How does the presence of prayer impact constituents' ability to participate in engaging their local elected leaders?

RQ2: How does and what type of prayer violate the Establishment Clause of the First Amendment of the U.S. Constitution?

### **Theoretical Framework**

The theoretical framework is a mechanism for organizing, structuring, and conducting the study (Anfara, 2008; Walden University, 2014). A multiple case study

approach and policy feedback theory were utilized to assess a sample of the 34 cities in the County and their invocation policies to compare and contrast the respective cities' practices and perceptions of its' council members. Purposeful sampling was applied to assess the practices of cities which provide an invocation and sample of cities that do not offer a prayer.

Policy feedback provides a new approach to policy analysis that allows for additional problem solving for social issues. Policy feedback can assess whether policies promote or deter civic engagement, promote the expansion of influential interest groups, and how they affect the policymakers' ability to govern (Mettler & Sorelle, 2018). Understanding this feedback can help policymakers and the public reach innovative solutions to create new policies. With this feedback, there is an attempt to reduce unintended consequences of the newly developed approaches.

Mettler and SoRelle (2018) discussed how policies often reshape politics and question how those policies affect later policymaking. Current policymakers may have a different lens than previous policymakers due to their experience and contemporary norms. Previously created policies are the polycscape and interpreted in the current climate. Over time, policies acquire durability and become more formalized.

Mettler and SoRelle (2018) explained that policies describe how social issues are understood and their place in the political sphere of influence. Policies will need review in light of new circumstances to ensure that the guidelines still meet the original intention of the policymakers. Present policies will shape how lawmakers view and consider updates to the current policies. When deliberating changes, policymakers may need to

reframe the changes to achieve public support, or specific interest groups may help modify current policy.

Established policies inform future alternatives when updating policies that determine the government's constraints, resource commitments, and actions. Existing policies may also influence the public and government officials' perception of what policies should be in the government's sphere of influence and the private sector (Mettler & SoRelle, 2018).

Organized public interest groups can help raise awareness of policy shortcomings and drive policy changes. Public policies can also influence the groups involved in crafting policy changes. Groups that may benefit from a policy change may be inclined to lobby and support transformations. If later policy proposals seek to reduce those benefits, the groups will likely rise to oppose any loss of benefits. Much of public policy feedback theory has centered on policies that entail benefits, such as Social Security which has empowered seniors, or the GI bill, which has mobilized veterans. Mandated collaboration local governments and nonprofit organizations may also be used by the federal government to acquire necessary funding to solve social issues (Hafer, 2018). Tangible monetary benefits are not related to the invocation policy. The invocation policy does not have the same financial effect as some policies on the public but may result in a more respectful view of the participants' perspective.

However, the invocation policy provides no tangible benefits or resources to the citizenry. Still, the invocation policy can shape norms or attitudes in public meetings. If

public opinion alters invocation policies, it will lead the public to believe that they can influence public policy (Mettler & SoRelle, 2018).

Skocpol (1992) opined that once policies become practice, they can influence subsequent policies over time. Understanding the policy feedback mechanism allows government officials to propose new policies and practices given social and historical precedents. The feedback effects on public policy can influence the government, producing certain behaviors, such as "lock-in" or interpretive impacts that can affect public policy (Pierson, 1993).

The current assessment of policy feedback indicates that this approach can lead to a greater understanding of citizen engagement and involvement. Researchers can examine policy feedback to determine how policy changes reshape politics, how groups influence policy changes, and which groups change or support policies.

The challenges to policy feedback may be the self-selection process by those who agreed to participate. Participants may already be predisposed to the topic, whether their stance is to retain the status quo or provide an impetus for change.

Case studies are the preferred research strategy to learn about practices and policies that have unique or ambiguous outcomes, and the participants' behavior is discretionary (O'Sullivan et al., 2017). Since there are numerous cities within the County, a multiple case study approach was used to compare and contrast the respective cities' policies. The literature on this topic utilized the case study approach to evaluate the effectiveness of the courts' guidance and the effect on the public body. Most of the case studies focused on a singular city or County's policy and customs. The emphasis on these

individual case studies has been on the legal holdings compared to the particular governing body. These extensive legal analyses were extremely helpful in understanding the legal implications for that individual agency, but there are no practical case studies that can provide a breakdown for policymakers. Since most agencies in the county list an invocation on their agenda, it is the applied approach to their policies that I scrutinized.

### **Nature of the Study**

The case study methodology is appropriate because this study explores in detail a current situation in a real-world context (Yin, 2018). This study examined the invocation policies and practices and the impact on public participation in a sample of the 34 cities in Southern California. Through observations and interviews, the second research question examines whether specific prayers, phrases, or actions violated the Establishment Clause.

City council members who have been seated for a minimum of two years, to allow for adequate experience, were contacted via e-mail to participate in an interview. The council members' names, e-mails, and their length of service was available on their respective city websites and verified through the County Registrar of Voters (OCVote.gov). The interview allowed the council members to discuss their invocation policy and the application of those practices. Due to the time constraints on the respondents, many of whom work full-time, in addition to their council commitments, a mixed methods study was not a reasonable option.

Researchers, such as sociologists and anthropologists, have used the case study approach to examine people's lives, experiences, and how they perceived their social and

cultural environment (Harrison et al., 2017). Case study methodology has been used to understand complex issues of human behavior and social interactions. The case study has been re-established as a credible, valid research design to probe complex issues (Harrison et al., 2017). Through the researcher's inquiry, the researcher will attempt to understand and present the participants' perspectives of the issue. The researcher will use sources of data, such as interviews and observations, to triangulate the information through thematic and content analysis to ensure the quality of the study (Harrison et al., 2017; Yin, 2018).

In this study, obtaining the agendas, video observation of the invocations, and personal interviews occurred. The majority of cities have an invocation on their agendas, but there is a small group of cities that did not list invocations on their regular agendas. Although the council members' viewpoint of invocation practices is the primary focus of the study, public opinion was also considered. Therefore, there was purposeful sampling to gather interviews from these groups for in-depth analysis (Patton, 2015).

The number of council members within the parameters of two years of services for the 34 cities is 134 members which was reduced to 123 members who had an individual email address. Of those cities that do not have an invocation on their agendas, there are 32 council members. In some cities, the entire council meets the criteria, but in other cities, only two members meet the criteria of service. A very large sample may call into question the quality of the interview and whether there was enough time spent with each respondent to sufficiently investigate the research question (Kindsiko et al., 2019). Galvin (2014) raised the question as to how many interviews are enough to gather "reliable information on the qualitative features of human attitude, practice or behavior"

(p. 2) that will elicit valuable information to address the research question. In this study, there are 34 cities with the majority of cities having an invocation on their agenda while the remaining cities do not have an invocation listed on their council agendas. Ideally, the sample size would have included at least one interviewee from each of the cities as well as some members of the public. However, limitations to time, scheduling, the global pandemic, and resources created logistical challenges and the question arises as to the number of respondents which would provide a representative sample of the relevant population (Galvin, 2015). However, if the information no longer provides new insights, then saturation has been achieved, and this is considered an adequate sample (Creswell et al., 2018). In contrast with quantitative data, there is no formal numerical scrutiny since the intent is to decipher the meaning of the respondents' viewpoint rather than a statistical response (Galvin, 2015). If elected officials perceived that this study is way to demean their reputation, they may be reluctant to participate (Rudestam et al., 2015). Therefore, the importance of confidentiality is paramount to obtaining meaningful data. The unwillingness of eligible participants affected the overall sample size.

### **Definitions**

An *invocation* can be defined as “act or process of petitioning for help or support: a prayer of entreaty (as at the beginning of a service of worship)” (Merriam-Webster, 2021) before public meetings. For the purpose of this study, an invocation is the prayer by the selected presenter guided by that city's policy before the council meeting.

An *elected official* is one who obtains an office by “appointment by vote, balloting, choosing by vote or selection for office by vote” (Burton, 2013) by the



constituents of that particular area. In this study, “council member” will be used to describe the local city leader.

Service: “Performance for the public benefit” (Burton, 2013) or is “performed for the greater good” or the “public benefit.”

Public meetings: City council meetings that are open to the public and have published agendas for the community members to view. Public meetings also allow for the public to comment on the issues before the legislative body.

Closed session: Meetings that permits legislative bodies to discuss certain matters without the public present, such as existing or anticipated litigation or labor and real estate negotiations.

### **Assumptions**

The assumptions of case study research include flexibility which can be an advantage and a disadvantage. Flexibility can be perceived as an advantage since its strategies can be used in various environments to address a series of questions but can also be interpreted as a lack of rigor (Farquhar, 2012). Farquhar (2012) noted that Kuhn suggested that researchers consider three ideas to develop a case study. First, the researcher should consider her ontological view as she sees the world. However, the participants bring their perceptions of government and religion into the study. As the researcher, my religious upbringing and beliefs shape my worldview and how it has intersected with my elected responsibilities and policy view. Secondly, epistemology explores how various ideas are adapted into knowledge. Participants shared their knowledge and insights based on their experiences throughout the study. This idea tasks

the researcher to develop a research design to measure the participants' opinions. The axiological assumptions will vary according to the researcher's worldview. Efforts must be made to produce value-free research and detached from their observations (Farquhar, 2012). As I developed my research questions, I was mindful of the wording of each question to avoid bias that would influence the responses. I also needed to be conscious of any body language or facial expressions that might affect the participants' answers to elicit their opinions and candid information. The interviews should exhibit objectivity and detachment to establish rigor and methodological soundness (Farquhar, 2012).

To initiate the interview, all elected officials were asked to confirm their length of service and to share why they ran for council. All of the council members expressed their passion for public service. Through my public service, I have observed some policymakers who desire the public recognition or see a local office as a means to higher office, but most wish to enhance their communities as noted by the participants. Many get involved because of a burning issue, such as freeway widening, extraordinary development, or excessive traffic. For this research and the evaluation of prayer in public meetings, most officials have kept the invocation tradition without question. They do not see the invocation as a mechanism to propagate or disparage a specific religion or belief. Prayer may be seen as a social norm because the council has had an invocation for many years and council members may tend to adhere to the norms and habits that are acquired through routine social expectations (Ravitch et al., 2016).

As an elected council member, it was routine for the council member to provide an invocation on a rotational basis. I did not invoke a prayer, but attempted to provide

words of inspiration. I was raised Catholic and prayer in public, outside of the Church, has always made me feel uncomfortable because I recognized that not everyone had the same religious beliefs. As a sitting council member, I did not see the need to pray in a different context. I did not reference these Catholic phrases or traditions. When writing the questions, I used the phrases and actions that were identified in the literature.

I also did not attempt to change the council's policy to respect the norms of the council. After the initiation of litigation in my second elected body, I excused myself from providing further city council prayers. Therefore, this research examined and questioned my city council colleagues to address an issue that I struggled to understand from the council practice and policy as well as the public perspective.

Further, I assessed whether the policymakers understood how their decisions impact themselves as well as their constituents, by evaluating the costs and benefits, and the subjective nature of prayer. Because invocations are a regular portion of most of the city agendas in the county, the city leaders can determine whether the invocations should continue in their existing format. Therefore, this research will give credence to people's lived experiences and examine their responses in the context of that experience (Ravitch et al., 2016).

If the invocations continue, do the prayers demonstrate the values of the community, and what type of prayer and religion is considered acceptable? This study explored the of impact of legislative prayer upon meeting participants at city council meetings in this Southern California County, and whether the words or actions of the legislative body violate the Establishment Clause. Secondly, the study examined the type

of prayer or practices that would violate the Establishment Clause of the First Amendment of the U.S. Constitution (U.S. Const. Amend. I.) which include the council members, constituents, and staff who are required to be present as required by their job description.

Although I was raised Catholic and familiar with Catholic phrases and traditions, I did not reference these in my questions. When developing the questions, I used the phrases and actions that were identified in the literature.

### **Scope and Delimitations**

When originally planned, the city council meetings of one County, comprised of 34 cities, were to be observed in person or on videotape. A sample of council members in the County were interviewed regarding their invocation practice. Council members who served at least two years were contacted through their official city e-mail address noted on the city websites. Two years of council experience provided enough experience with council meetings and the presence of an invocation as most city councils normally meet twice per month. Specific criteria for recruitment, whether the policy directs the conduct of the presenter, the content of the prayer or whether diversity is achieved, are concepts which were essential for the policy aspect of the study. The meeting observations and agendas were then focused on the participants' cities to determine whether the invocation rotated among the council members, local clergy, or whether it was given by the same person. The research design selection was essential to determine how and when to collect data, how to analyze the data, clarify the research questions, and whether the purpose of the study was met (O'Sullivan, et al., 2017). Further qualitative examination took place in

the interviews regarding the comfort level of the elected officials with the prayer tradition and their role. Interviews authenticated the observations and existing policies.

I reviewed a sample of agendas for all cities in the County to determine which cities had an invocation and which cities did not from 2018 through August 2019. Once interviews were scheduled, I reviewed approximately 20-25 recent agendas to identify any patterns of the invocation, invocators, and religion. Although the original research plan included an in-person observation, this was not feasible due to the lack of in-person meetings due to the COVID-19 pandemic. Therefore, I reviewed videotapes of the participants' city council meetings. However, the video often spotlighted only the speaker and not the audience to assess their reaction to the invocation. The videotapes were readily available on the city websites. The detailed review would assist with any potential follow-up questions that helped remind the participants of changes during their virtual meetings. The interview included invocation policy changes to determine if and why the invocation policy was changed. This study can be used to educate other public agencies to improve their policies and practices for more effective interaction with the public and within their own agency. Through policy diffusion, cities that are faced with similar dilemmas, often follow the successful lead of another city or chose to do the opposite to avoid a disastrous result experienced by another city. This study did not explore the invocation from the staff perspective.

### **Limitations**

The use of a case study methodology has its limitations in that the flexibility can be interpreted as a lack of rigor (Farquhar, 2012). Although I was raised Catholic and

within its traditions, along with my elected experience, I developed questions to avoid bias. When writing the questions, I attempted to elicit the participants' perceptions of invocations and their intersection with the government. I did not use any phrases or instructions found in the Catholic faith but used open-ended questions about the impact and purpose of the invocation. The terms for the invocation observations were taken from the literature. During the interviews, I was mindful of body language and facial expressions to minimize the influence of responses.

The study population was limited to the elected city council officials in this County of 34 cities. Only officials with a minimum of two years of experience with a public email were considered for the sample population since the two years included approximately 20 to 25 meetings, depending on the frequency of their meetings. With the 2018 election, new members were elected, and those newcomers were not included in the study due to the lack of two years' experience. The members were from agencies that had an invocation policy or one that had been revised or deleted since 2014. The year 2014 was selected because four years is the regular term of a council member which would have provided enough experience to be included for the data collection window. Secondly, the Supreme Court case, *Town of Greece v. Galloway* (2014) opined on invocations at city council meetings which would have allowed enough time for city councils to receive information on this holding.

Participants from cities with invocation policies were sought and compared with the much smaller number of city councils that did not have an invocation on their agendas. Since prayer was the focus of the study, it may have created some hesitation for

some who may see invocations as controversial and may perceive any discussion as a reflection of their standing with their constituents. This reluctance may have had a bearing on the participation for the study and obtaining respondents. This hesitation could hold true for those that originally agreed to participate but did not respond to subsequent follow-up. A few declined because their terms were expiring within a few months. Since council members represent their city on various county committees, often hold full-time jobs, and had to address their community needs during the COVID-19 pandemic, their time for interviews was limited. Therefore, scheduling was a challenge.

Members of the public who frequent public meetings were interviewed. Public records were used to identify these individuals and members the local Americans United for Separation of Church and State Orange County Chapter. Public members were identified through the snowball method of recruitment. The limitation was that many of these individuals seemed to be predisposed to eliminating the prayer at council meetings.

The agendas of all 34 city councils were examined to determine how and when invocations are placed on the agenda and conduct interviews for a multiple case study. Originally, it was anticipated that there would be representatives from each city. Each council has at least five members, but the total population was unwieldy for interviews. A sampling of council members for interviewing is reasonable. At the time of this study, the number of council members from cities with an invocation, that have served a minimum of two years was 134 members. The number of council members in cities without an invocation was 32 members. The sample was large enough to yield diverse opinions but

not too large as to generate redundant, excessive data (Mason, 2010). Study participants were sought from cities with and without an invocation.

Purposeful sampling affords a “context-rich and detailed count of specific populations and locations” (Ravitch et al., 2016, p. 128). Initially, the overall sample size could not be determined. Some research proposals may require the projected number of participants that challenge the researcher to estimate when the data saturation point will occur (Baker et al., 2012; Guest et al., 2006). Guest et al. (2006) expressed that saturation is the “gold standard” (p. 60), but there is little information on this topic in the literature to describe the saturation point or sample size. However, Rubin et al. (2012) indicated that a vast number of interviews is not necessary to “demonstrate balance and thoroughness” (p.63) provided that various viewpoints have been carefully examined. Theoretical saturation has been described when “all of the main variations of the phenomenon have been identified and incorporated into the emerging theory” (Guest et al., 2006, p. 65). Mason (2010) described the concept of saturation but acknowledges the limitations of “time, energy and the availability of participants” (p. 6). The data were analyzed on an ongoing basis to categorize themes to assess whether further insight was relevant.

The California Values Act (CVA, 2017) may have affected sample size that forced some cities to address undocumented people in their towns during 2018 (Carcamo, et al., 2018; Kopetman, 2018). The second issue that pitted city against city was the rise in homelessness and the complaints from local citizens. Some council members may have declined to participate because they perceived this invocation study as another



controversial issue that they did not want to encounter. However, none who refused stated that this was the specific reason for not participating.

## **Significance**

### **Significance to Theory**

Moynihan et al. (2014) claimed that the feedback viewpoint proposes that policy and administration can shape politics, which can create new political influences. Further, as organizations initiate a plan, they can transform the organizational culture and affect further policy measures. Policies can mold the political landscape by characterizing the elected leaders' identities and understandings. In studying responsiveness to reform values, is normative, and cannot be tested (Moynihan et al., 2012). However, the public often has perceptions as to how elected officials should act. Therefore, citizen feedback can result in new value sets and improved reforms (Moynihan et al., 2012, p. 596). In many cases, policy feedback can reinforce to the elected officials the effects of policies on their base of political support and may encourage the status quo. However, elected officials may be slow to champion change if they dread losing the votes of those who want to maintain the status quo (Jacobs et al., 2015).

### **Significance to Practice**

The Founding Fathers believed that prayer lent a sense of gravity to the decisions before the legislative body (Marsh, 1983). If political leaders understand the public perception of their policies and customs, they can be more mindful of how they conduct their meetings. Although the council members may have various perceptions of prayer before meetings, they must assess the diverse court opinions. Legislative bodies need

feedback and advice to weigh the tradition of worship, free speech, and avoid litigation.

If invocations remain on agendas, public officials may be challenged to represent the faiths of all their constituents or to delete the invocation from their agendas.

With prayer, some citizens may feel calm before a contentious meeting, but others may feel dismissed by public officials. The public may perceive prayer as a method to tamp down the public outcry. Other community members may protest any prayer in any public forum. Other agencies have religious displays, such as a menorah, during the holidays or signs such as “In God We Trust” in public meeting rooms. Recently, some citizens have challenged invocation practices because they do not believe that prayer or signs of religion should be present during a public meeting. Others rebuff the prayer because it does not reflect their particular religion or beliefs. Still, others believe that prayer is a vital aspect of the legislative process to set a tone of reflection before grueling decision-making. Therefore, the legislative body must determine how to balance the competing opinions of their constituents and their personal beliefs.

### **Significance to Social Change**

Prayer before meetings can be a potent influence on the elected leaders, citizens and staff, in attendance. Therefore, it is crucial to obtain information from various participants to further understand whether prayer improperly influences public participation in the democratic process. Because of personal religious beliefs, some legislators may refuse to change historical practice despite the threat of litigation or public backlash. Other officials may want to maintain invocations by attempting to be more inclusive and developing a mechanism to include more of the faiths in their

community. If citizens are embraced and valued in the legislative arena, they will continue to be active in the democratic process by attending meetings. Those citizens that object to prayer will still be displeased. Continuing prayers, against public opposition, may become a motivating factor for a citizen to pursue elected office with the intent to alter the tradition of legislative prayer.

### **Summary**

The purpose of this qualitative study explored the of impact of legislative prayer upon meeting participants at city council meetings in this Southern California County and whether the words or actions of the legislative body violate the Establishment Clause. Secondly, the study examined the type of prayer or practices that would violate the Establishment Clause of the First Amendment of the U.S. Constitution (U.S. Const. Amend. I.).

Secondly, this study discusses recent case law identifies the application of these holdings to various agencies. With this multiple case study, this author provides an analysis for other elected officials to determine the best method of implementing invocations or to remove invocations from their agendas to be mindful of their constituents' engagement and to minimize potential litigation.

This chapter outlines the impact of prayer on the legislative process in one Southern California County by examining the invocation policies and practices. By studying the policies and implementation of the prayers, one can determine if there are more inclusive practices that are perceived as welcoming without deterring others from participating. There is recognition that religion can be a sensitive subject for some

policymakers so that there may be a reluctance to participate in this study. With the 2018 election behind them, there may be less hesitation because they are not up for reelection and there may be those that are liberated to share their opinions as they are in their last term. However, not all of the respondents shared why they declined to participate. In addition to the inclusion of prayer, elected officials must be cognizant of the legal implications of their invocation practices. It is with this lens that the I recognize the limitations of this study.

Chapter 2 will examine the literature, which discusses several legal cases, reviews, and analyses to demonstrate the government's involvement in religion. Although the literature does not focus solely on prayer, the various court opinions exhibit the entanglement of government and religion. In addition, the literature discusses the words and actions of agencies that show how words and actions may be perceived as support for belief. The literature will discuss the influence of these leaders in their leadership roles and the physical setting of the chambers. By summarizing and identifying critical portions of the cases, these leaders can assess their current policies and practices and determine how their agency might benefit and apply the study findings to their respective agencies.

## Chapter 2: Literature Review

### **Introduction**

The purpose of this qualitative study explored the of impact of legislative prayer upon meeting participants at city council meetings in this Southern California County and whether the words or actions of the legislative body violate the Establishment Clause. Secondly, the study examined the type of prayer or practices that would violate the Establishment Clause of the First Amendment of the U.S. Constitution (U.S. Const. Amend. I.).

There is relatively little current research on the question of whether public participation is affected by the presence of prayer before a meeting. Numerous legal analyses of various court cases have been written since 2014, but they have focused on the rulings of the courts and not how legislative prayer affects the public or how local agencies can avoid Establishment Clause violations. Some law review articles examined one agency and the application of these legal rulings. However, the current exploration is focused on several cities in one county and whether those agencies' policies adhere to the court's findings or whether they are relying on historical practices. Many local lawmakers provide their own invocation and others have volunteer clergy participate. Due to the lack of considerable research, this author attempted to extrapolate the practices of one California County with a reputation for being a conservative stronghold (Morain, 2019) in liberal California. The invocation practices of a sample of these 34 cities were explored to determine if the patterns or policies and compare the findings with the small

number of case studies. Accordingly, an agency could identify the practice that suits their community.

Many legislative bodies list an invocation on their agendas and commence their meetings with a prayer. The long history of legislative prayer began with the Founding Fathers who advocated for religion in the new government (Library of Congress, n.d.). Since the 1970s, various U.S. government agencies have been sued because of the presence of religion in government affairs. These lawsuits have occurred in various regions of the United States at local and state levels. The First Amendment of the U.S. Constitution states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” (U.S. Const. Amend. I.). Many of these legal challenges were based upon whether the elected leaders violated this Clause by inserting religion into public meetings. Each agency has their unique perspective and traditions in their communities. These agencies must be aware of legal and community viewpoints that may create conflicts among their constituents.

To begin the literature search, the key search terms were “prayer,” “invocation,” “public meeting,” and “public participation.” Prayer and invocation were paired with public meeting. The search terms “public meeting” and “public participation” were very broad and resulted in thousands of results. Therefore, the terms needed to be paired with “invocation” or “prayer” to narrow the results. Initially, several different data bases, such as Policy and Public Administration, and Google Scholar were searched and then free and library legal databases, such as the Harvard Law School library. “Legislative prayer” was

added to the search process which identified some additional articles and cases. This term seemed to be more productive in other databases.

The public policy databases were helpful in locating general information on public participation and invocations. The ability to identify these types of cases was beneficial in framing the public participation aspects of legislative meetings. In addition, finding cases of city and county jurisdictions were particularly relevant.

During the initial searches, several free legal databases were used such as Cornell's Legal Information Institute, Findlaw, and Justia.com. These databases were a bit more user-friendly with the cases written in lay language which made it easier to read and understand the cases. A search of the Legal Trac data base, using "prayer," "public meeting," and "legislative prayer" revealed many other articles from law journals that were analyses of the implementation of various agency policies and its application to the Establishment Clause. Most of these articles were not case studies but allowed me to explore some of the legal ramifications for these policies.

Once a pertinent article or case was identified, then the primary data base LexisUni, was used to access the legal cases that were the primary drivers to prayer before legislative meetings. This data base was crucial in identifying the court holdings rather than the articles about the case results. Many articles surfaced because of the key words, prayer and meeting, so more refinement occurred. Throughout the review of the abstracts, it was determined whether the article was pertinent to the topic or had value for the research topic. In discussing my legal searches with law students, they encouraged

this researcher to review the case footnotes and references to other cases to identify other applicable cases.

LexisUni was the primary data base that was most often used in the Fundamentals of Law and Public Policy and the Supreme Court cases classes. LexisUni was used to identify those legal cases and legal analysis on the subject of public meetings and prayer. Because of the research required in those two classes, searching the database became very routine and easy to navigate. Law Review articles and court cases could be identified more quickly once the search mechanisms were mastered. Beyond identifying seminal Supreme Court cases, this database provided law review articles that examined these landmark cases or used case scenarios to examine the practices of specific agencies and their application to the court rulings. However, the search mechanism in the free databases was not very robust and one had to read most of the court case and holdings to identify whether the article was sufficient for research purposes. Understanding how the case holdings were organized was extremely helpful to identify the key facts and subsequent holdings. With LexisUni, the search mechanisms are more robust and are able to highlight the key search terms within the article. One can review these excerpts and highlighted terms more quickly to determine the relevance to the topic. Lexis Nexis, which is now known as LexisUni, was used to identify legal cases and legal analyses on the subject of public meetings and prayer. Subsequent searches identified subsequent appeals and decisions on cases that were previously identified at the beginning of the research. However, these appeals were analyzed further to compare what was summarized from the previous holdings. Later, I searched on the key cases to see if the



holding had been appealed or if there were further legal analyses that would be valuable to the research.

The literature search parameters included religion and government in the United States since the 1970s. Much of the literature is law review articles that focused upon a single agency's discrepancies between their practices and the lack of compliance with recent case law. The authors of these case studies focused on observation and not the workings of the council meeting or policy decisions. Therefore, it is crucial to thoroughly understand the case law as well as the city councils' practices. The examination of city council invocation protocols will help to inform the local policymakers of other cities' practices which may influence their tradition and citizens' participation.

This research takes a practical view of several cities to identify how various jurisdictions have met the spirit and intent of the law and the potential impact on the council and its citizens. The following literature review includes key legal cases that addresses the historical perspective with religion and government, so that the reader has a basis to understand the concept of legislative prayer. The literature is heavily focused on case studies since 2014 because the *Town of Greece* (2014) case provided new guidance to legislative bodies regarding invocations. The brief overview of the cases and analyses, provides an introduction of the current research on public engagement and how prayer can impact the citizens' sense of participation.

More law review articles have been written regarding the various legislative prayer cases to examine court holdings and the disparities among the results. Citations of some of the major cases and the law review articles were searched since these articles

often emphasized a landmark holding regarding legislative prayer or the intersection of government and religion.

### **Theoretical Foundations**

The theoretical framework is a method to organize, structure and conduct the study (Anfara, 2008; Walden University, 2014). To assess the invocation practices, I gathered some data by observing the council meetings via videotape. I attempted to capture the unique approach of each agency toward invocation practices, but did not intend to influence or manipulate the proceedings. In a qualitative design, the researcher establishes the framework for the research which allows for flexibility to change the design to pursue additional information that might lend value to the overall findings (O'Sullivan et al., 2017).

Policy feedback is a mechanism to obtain public input to evaluate policies to solve social issues. The intent of policy feedback is to determine whether certain policies advance or determine civic engagement, promote the interest of advocacy groups and affect how policymakers make decisions (Mettler & Sorelle, 2018). By assessing the public feedback, policymakers can achieve better policies with fewer unintended consequences. However, policies change over time depending on the social circumstances and the view of current policymakers based on their experience and current social expectations.

Since this study is attempting to understand current invocation practices, it would be relevant to obtain feedback from council members as well as the public. These responses would provide information to the councils as to whether the invocations should

continue or be changed in some manner. Mettler and SoRelle (2018) opined that policy changes often reshape politics and affect subsequent policymaking. In this study, recent court decisions have added some clarity to the policies and practices of legislative prayer. However, many of the decisions were focused on specific fact patterns that might not exist in the local jurisdiction. Therefore, the current policies shape the policymakers view and how they will consider future policies. These policies will influence the public and council viewpoints and what policies should be in the government's sphere of influence and the private sector (Mettler & SoRelle, 2018).

Pierson (1993) proposed that the increasing role of government stated that "public policies were not only outputs of but important inputs into the political process, often dramatically reshaping social, economic, and political conditions" (p. 595). Policy feedback can be described as a mechanism for policies to transform politics and potentially influence future policies (Moynihan et al., 2014). Policy feedback can also be described as the concept that political participation can be influenced by citizens' experience (Hern, 2017). The concept of policy feedback is that shifting economic and social conditions can stimulate policy actions. Jacobs et al. (2015) opined that policies can shift if the legislators "strategically bandwagon" with those groups that are creating awareness for change. How policies influence political involvement is considerably reliant upon the context of the citizens' viewpoints and experience (Hern, 2017). For example, if a family has a good experience in a public school, it is likely that the parents have a positive view of public education. In contrast, if a child who had previously attended that same school, transfers to a private or charter school, the parents are likely to

be supportive of those schools and have a negative view of the legislative body that oversees public schools. Further, negative or positive feedback can serve to reinforce, reshape, or change policies (Jacobs et al., 2015) depending on how those legislators view the power of those voices.

Pierson (1993) emphasized that policy feedback assists interest groups to affect policies and further influence others. If citizens see prayer and participation as associated, it may incite them to attend council meetings to express their displeasure or pleasure which can persuade the council to change their policy and practice. Changes in policy can be swift or in incremental attempts over the course of time (Moynihan et al., 2014). A relatively quick policy change has been observed in California when attorneys threaten legal action because a lack of diverse representation at the city council or school board level. This impending litigation has forced many cities and school boards to act relatively swift toward district rather than “at large” elections (Oreskes, 2019). These district elections have provided an opportunity for underrepresented groups or areas of a city to have a voice on their city council or school board. External pressure can force reforms or become a mechanism to “reinforce, disrupt, or reorder political relations” (Moynihan et al., 2014, p. 324). Pierson (1993) indicated that policies can provide incentives and resources that can alter the configuration of specific groups and who might be encouraged to rally based on the type of policy interventions whether they are perceived as positive or negative.

Policy feedback organizes constituents to bolster policy effectiveness and the government’s political agenda (Moynihan et al., 2014). Policymakers are often faced with

the economic and political realities of changing a particular practice or policy and whether the costs are beneficial or detrimental in achieving the desired results with fewer undesirable consequences. However, burdensome bureaucratic rules may create opposition to these policies and citizens may become more adversarial (Moynihan et al., 2014).

To maintain invocations, costs may be in the form of staff time to identify, solicit, and arrange for clergy throughout the jurisdiction to present an invocation. While the staff may be charged with this responsibility, it is the council who are taken to task for a lack of inclusivity or ignoring the will of the people. If public opinion deems that the council is indifferent to a specific issue, it may be perceived that the council and local government is unresponsive to all issues (Moynihan et al., 2014). For prayer, if the public believes that there is a failure to achieve diversity, the citizens may initiate litigation resulting in legal costs for a failure to include all congregations in the city. Public input may affect, not only the invocations, but future policy initiatives which may demonstrate considerable value to the policymakers and citizens to explain when and how policies change and the circumstances in which policies become “locked-in” and defiant to change (Weible et al., 2018).

The policy feedback theory can help assess how the policy affects others. Certain policies may fortify certain factions because they have access to the lawmakers, thus increasing their effectiveness (Pierson, 1993). Moynihan et al. (2014) indicated that if the public holds policymakers accountable, it may help implement reform. For invocations, there is ambiguity because not everyone, including the council, staff, and public are

affected by prayer in the same manner. Some may accept prayer as an act of tolerance. However, others' patience may not last because an increasing number of people do not align themselves with a particular religion (Roberts, 2015). Another question arises as to who is required to be in the room. Some jurisdictions have indicated that the solemnity of the prayer places lawmakers in a reflective mindset and that prayer is a long-standing tradition (Marsh, 1983).

In *Lund v. Rowan County* (2017), the court found that an internally focused prayer may meet the spiritual needs of the legislative body, but an externally focused prayer may be perceived as a way to promote religion to the public. Other participants may be offended if a Christian or other faith-based invocation does not take place. For others, non-secular words of inspiration could create some tranquility in the chamber, especially if there is a contentious issue. However, it may be a matter of opinion as to whether the secular or non-secular language would be appropriate (Rohr, 2012). Because the courts have delivered various holdings on legislative prayer, public agencies have been given mixed direction as to whether or how they should proceed with invocations before meetings or if they should take place at all. One may question whether allowing a member of a religious congregation to provide the invocation will insulate the legislator from promoting religion. This action may lead others to cry foul and claim that the council members are using the clergy to espouse religion.

Time constraints may hurry policy decisions due to impending litigation, an upcoming election, or public pressure. Legislators may have different viewpoints, based on their religious upbringing, type of religion, or current beliefs, by which they perceive

the invocation policy. Some policymakers may refuse to agendize legislative prayer in an attempt to stall a discussion or decision until after the next election cycle to avoid a controversial issue.

However, according to some court opinions, if an elected official, speaks a few errant prayers or phrases, those actions could place the entire elected body at risk (Rohr, 2012). An agency may have a policy that meets the legal criteria based on the holdings of recent court cases, but if the members fail to adhere to the policy, it can place the entire agency in jeopardy. If there is a lack of communication as the elected officials transition after an election, newly elected members may not be aware of the potential legal ramifications or public sentiment, and follow the historical practice. However, the lack of orientation and training of new council members may also create other issues for the agency, which affects decision-making, dealing with the public, transparency in deliberations, and the potential for closed door agreements.

The literature on this topic has typically utilized the case study approach to evaluate the effectiveness of court decisions and the public agency's response to invocations. Most of the case studies have focused on one city or one county's policy and customs compared to various court decisions. The literature has not fully examined a group of cities to assess a practical approach, but rather offer critiques of court opinions. Weible et al. (2018) indicated that the multiple case study approach has been used in multiple contexts and diverse policy domains for agenda setting and decision-making.

## Literature Review

The focus of this study is the presence of prayer before public meetings and the impact on public participation. Although there are numerous court cases that involve the government and religion, it is crucial to examine whether the presence of prayer affects decision-making and the interaction between the two groups. There are several key court decisions that drove this analysis along with several law review articles. In many law review articles, the author examined the implementation and application of the invocation policy in one agency. The authors examined the invocation practices against various court decisions which often focused on varying fact patterns to distinguish their case.

Early American history purports that early settlers came to the New World from England to avoid religious persecution. Of the early American colonies 12 of the 13 colonies established some type of religion. The 1606 charter that established the Virginia colony, commanded that all ministers preach Christianity, effectively the doctrines of the Church of England. There were strict religious mandates and harsh penalties for failure to faithfully observe, including death for the third offense of missing Sunday morning and afternoon services. The Quakers fled from religious persecution in England, only to find that they were persecuted by Virginia law and punished for not baptizing their children.

Understanding the Establishment Clause is the heart of this research and how the courts have justified their holdings over numerous cases since the 1970s. Many people believe that the doctrine of separation of Church and State is in the U.S. Constitution but, there is no Constitutional reference for this concept. However, Thomas Jefferson's most renowned interpretation of the First Amendment was in a letter to the Committee of the



Danbury, Connecticut Baptist Association when he rebuffed their request for a day of fasting to bring together the nation after the contentious 1800 presidential campaign (Perry, 2006). Jefferson reiterated that their legislature should “‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between Church and State” (Perry, 2006, p. 190; Library of Congress, n.d.). In his last year as President, Jefferson wrote to the Reverend Millar and expanded on his letter indicating that fasting and prayer are religious exercises and “everyone must act according to the dictates of his own reason” (Perry, 2006, p. 191). President Jefferson did not believe that he had appropriate authority to instruct the religious exercises of the citizens, but only had the civil powers of the Presidency.

Although Jefferson’s church records have not been located, he viewed “religion as a completely private domain for himself as well as all others” (Perry, 2006, p. 184). Jefferson described himself as a Christian, but showed his skepticism of the Christian Church and its authors by removing pages and passages to construct what is known as the Jefferson Bible. Jefferson often referenced John Locke’s views of religious tolerance. When Jefferson became governor of Virginia in 1779, he explained his perception of religion which indicated that God had created man with a free mind, attempts to influence may result in “hypocrisy and meanness,” propagation of faith should not be coerced, and men are fallible and should not impose their religious views on others (Perry, 2006, p. 188). Jefferson’s proposed legislation languished for many years before James Madison was able to guide the measure for Virginia. In 1787, after the authors of the new U.S. Constitution adjourned, Jefferson who was still in France, wrote to James Madison to

express his displeasure because the Framers did not provide rights for the freedom of religion. Madison proposed some language which was revised and finally became the First Amendment to the Constitution which is now known as “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...” (Perry, 2006, p. 190; U.S. Const. Amend. I.).

In numerous decisions, the courts subsequently refer to “the wall” analogy which became embedded in modern jurisprudence. The Supreme Court referenced Jefferson in an 1878 Free Exercise decision of *Reynolds v. United States* which upheld the “congressional ban on polygamy in the territories as a general secular regulation” (Perry, 2006, p. 191).

Later, Justice Hugo Black used “the wall” metaphor in the 1947 *Everson vs. Board of Education of Ewing Township* case which upheld New Jersey’s reimbursement of bus fare to parents of public and parochial school children. Justice Black was raised in a strict Baptist Congregation in rural Alabama where those that were accused of drunkenness or adultery were tried before the Congregation. The accused church members would beg for mercy, but Black declined to participate in these displays of remorse. Once he left Alabama, history shows that he did not take part in organized religious practices, but recognized the importance of regular religious rituals for others. In the majority 5-4 decision, Black writes a forceful justification of the separation of religion and government. He cited the long history of religious freedom by quoting Jefferson’s works against establishing a religion and that the law was intended to create “a wall of separation between church and state” (Perry, 2006, p. 190). Although Justice

Black heard more than a dozen religion and government cases, he voted in all but one to separate church and state. In these subsequent cases, “the wall” analogy was often used. Jefferson and Black were separated by history and other personal experiences and backgrounds, but they seemed to champion the right of individuals to determine how to practice their religion free from government interference or coercion. Justice Black retired from the Supreme Court in 1971 just before the *Lemon v. Kurtzman* (1971) case which subsequently developed the three-prong test. One could speculate that *Lemon* may have had a different outcome if Justice Black was on the bench.

Courts have interpreted the Establishment Clause in various ways. The cases of *Lemon v. Kurtzman* (1971) and *Marsh v. Chambers* (1983) are two essential court decisions that examined the use of taxpayer money for secular purposes which led to the fundamental precedent for the intersection of religion and government. During the 1970s and 1980s, there were cases that involved religion into the public sphere and not solely prayer. Taxpayers initiated the litigation in the *Lemon* (1971), *Marsh* (1983), and the *County of Allegheny* (1989) cases. They believed that public money used for religious purposes violated the Establishment Clause (U.S. Const. Amend. I.). Although the facts of each case vary considerably, the courts relied on whether there was an entanglement of religion with a public entity. However, new court challenges since the *Lemon* (1971) and *Marsh* (1983) landmark cases were decided re-examined how future cases are viewed.

Two cases involving the U.S. District Courts for the Eastern District of Pennsylvania and the District of Rhode Island challenged the government’s role and the use of taxpayer dollars for non-secular schools. The complaint alleged that the religious

schools benefited from public money and therefore were in violation of the Establishment Clause (U.S. Const. Amend. I.). The citizens of these two states challenged their respective state statutes that allowed taxpayer dollars to fund parochial elementary and secondary schools as violations of the Establishment Clause and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Pennsylvania law allowed public money to be used for teacher salaries, textbooks and supplies, but prohibited the use of public monies for any religious teachings. Under the law, designated recipient schools were required to maintain detailed accounting systems to identify and separate disbursements related to secular and non-secular subjects. The “public” funds could be used for science and math teacher salaries and supplies because the curriculum for the subjects was the same as in public schools. However, a teacher teaching religion classes could not be paid by taxpayer dollars. By statute, audits of the parochial schools would be conducted to assure that expenditures were separated to prohibit a comingling of public and private funds. Pennsylvania citizens asserted that these funds were used to promote a specific religion. Because these private schools were under the control of the religious organizations with their mission to promulgate their faith, it was not feasible to keep these expenditures distinct.

The Rhode Island statute allowed for an additional 15% percent in salary for teachers who taught in private religious schools provided that those teachers only taught secular subjects, using state approved resources. Rhode Island law provided the supplement to the teachers because the average per student expenditure for those in secular schools was less than the public-school average. The only teachers that took

advantage of the statute were teachers at Roman Catholic elementary schools. When applying for this salary supplement, the teachers signed an agreement that they would not be teaching any courses in religion. By law, the state could audit the private school's financial records to assure proper separation of funds for secular and non-secular subjects (Lemon, 1971). In Rhode Island, the parochial elementary schools were under the supervision of the Bishop and the Diocesan Superintendent of the Roman Catholic Church. At the time, all but two principals were nuns appointed by the Church. As the number of lay teachers increased and there were fewer nuns, those teacher contracts were signed by the parish priests.

In both state statute cases, public dollars were provided to religious educational organizations. The three-member District Court opined that religion was a crucial part of the parochial school system and the statute violated the Establishment Clause with these payments. The three-member District Court dismissed the complaint because of a "failure to state a claim for relief, holding that the statute did not violate the First Amendment" (Lemon, 1971).

Upon appeal, the U.S. Supreme Court combined the Pennsylvania and Rhode Island cases and found that the statutes of both states were "unconstitutional under the religion clauses of the First Amendment" (Lemon, 1971). Chief Justice Burger represented the 7-2 majority opinion. Other justices concurred in part and dissented in part. Items such as bus transportation, school lunches, health services, and secular textbooks that were provided to all students did not violate the Establishment Clause (Lemon, 1971). The majority opinion indicated that religion was promoted by the

cumulative effect with government involvement. Because of the religious operation of the schools, the religious indoctrination of the elementary age children, the government oversight for the expenditures and teacher assignments for non-secular subjects, the statutes benefitted a small group of religious organizations. The court dissected the First Amendment by stating that Founding Fathers did not prohibit the establishment of state church or religion by that there should be “no law respecting an establishment of religion” (Lemon, 1971). They wanted the government to avoid excessive government entanglement by the use of public money for religious purposes, including education. The justices drew the distinction between the prohibition and the respect for a religion that may lead to a promulgation which could violate the Establishment Clause. The court recognized the church-affiliated elementary and secondary schools’ mission was to propagate their faith and, therefore, it would be difficult for the teachers to separate themselves and their teaching methodology. After considering the collective opinions over numerous years, the justices affirmed some portions of the majority opinion and others dissented on other principles.

The statute may not “establish” certain religious teachings, but by “respecting” a specific religion, it could lead to promoting a religion, thus violating the Establishment Clause (Lemon, 1971). The Clause was intended as protection if the government does not offer sponsorship, monetary aid, or active participation in non-secular activity. As a result, the *Lemon* (1971) Court outlined a three-prong test which stated “First, the statute must have a secular legislative purpose; secondly, its principal or primary effect must be one that neither advances nor inhibits religion and, finally, the statute must not foster an

excessive government entanglement with religion.” The court recognized that the parochial school teachers, while attempting to separate their secular teachings, may have difficulty separating their personal beliefs while attempting to remain religiously neutral. Ultimately, the *Lemon* (1971) Court determined that parochial schools were an “integral part of the religious mission of the Catholic Church” which created the excessive involvement that the statutes were attempting to separate. Subsequently, the court determined that both state statutes were unconstitutional because of the cumulative nature of the affiliation between the states and the religious organizations.

Although *Lemon* (1971) is not specifically about invocations, it demonstrated the court’s assessment of entanglement between government and religion. This three-part test became the measuring stick for many subsequent cases that involved religion and the government. The court pondered the considerable religious influence that pervaded the public sphere.

In *Marsh v. Chambers* (1983), Ernest Chambers, a Nebraska state legislator and taxpayer, objected to the allocation of public funds for a chaplain who provided a prayer before each legislative session and sought injunctive relief. The Nebraska state legislature had an invocation before the session for over 100 years. For 16 years, the legislature employed the same chaplain to provide a prayer before each legislative session. Chambers claimed that the use of taxpayer monies for an invocation was a violation of the Establishment Clause because the prayers supported the Judeo-Christian faith. The District Court indicated that the Establishment Clause was not violated by the invocation practice, but through use of public funds to employ the chaplain. The District Court

enjoined the legislature from paying the chaplain. The District Court recognized that evaluating the historical patterns alone could not “justify contemporary violations of constitutional guarantees” (Marsh, 1983), but the long-standing practice could be assessed by the Framers’ intent when they authorized expenditures for a chaplain in the First Congress. The District Court considered the chaplain’s continuous employment and the content of the prayers but determined the prayers were not intended to proselytize or disparage any faith and therefore did not violate the Establishment Clause (U.S. Const. Amend. I.). However, the court held that the use of public money violated the Establishment Clause (U.S. Const. Amend. I.).

The U.S. Court of Appeals for the Eighth Circuit held that the employment of the chaplain with public funds was unconstitutional, but did not instruct on the practice of the opening prayer. The Court would not separate the two issues and held that the practice of invocations did violate the Establishment Clause (U.S. Const. Amend. I.) due to the Christian nature of the prayers. Upon appeal to the Supreme Court, the Court noted that the Framers had approved the first draft of the First Amendment and appointed a paid chaplain to provide a prayer for the Congress in the same week. The Justices cited the actions of the Founding Fathers who were so divided as to their religion that they could not agree or join in similar acts of worship. The court explained their decision as an example of their objective to allow such practices, not to forbid them. The court’s holding focused on the long history of providing a prayer and that the prayer was a “tolerable acknowledgement of beliefs held among people of this country” and that prayer had become “part of the fabric of society” (Marsh, 1983). The Court acknowledged that the



well-established, unbroken practice should not be easily cast aside and no one acquires a right to violate the Constitution. Although they recognized that the prayers were Christian in nature, the chaplain was of the Presbyterian faith, and the taxpayers paid his salary, they could not rule against Nebraska's practice given the long-standing history of legislative prayer.

In the dissenting opinion, Justice Brennan cited the three-prong *Lemon* (1971) test and reinforced that the primary effect must not advance or inhibit religion. The opinion explained that the purpose of the invocation is to "invoke Divine guidance on a public body entrusted with making the laws" and that the fundamental effect is obviously religious (Marsh, 1983). The record further indicated that after the chaplain's prayers, there were a series of incidents that divided the Nebraska legislature along religious lines which exhibited "excessive entanglement." The dissenting opinion indicated that the practice of legislative prayer can lead to excessive entanglement if the legislative body provided guidance on the prayer or limited clergy to "suitable or nonsectarian prayers" that would lead to the very type of oversight that the government should avoid (Marsh, 1983). Justices Brennan, Marshall and Stevens cited the practice of invocations as undermining the purpose of the Establishment Clause (U.S. Const. Amend. I.) and that the 16-year pattern was demonstrative of the preference of one faith over another.

Justice Brennan indicated that after careful reflection, he believed that he and the court erred in previous decisions regarding invocations and now opines that legislative prayer in Nebraska and other public bodies is unconstitutional. Later courts interpreted *Lemon* (1971) and *Marsh* (1983) holdings regarding the advancement of religion. While

the *Lemon* (1971) case considered the use of public money and established a three-part test, the *Marsh* (1983) Court considered the historical perspective of prayer in its guidance and did not consider the three-part test. These holdings set the precedents for challenging later religion and government cases.

In 1989, the County of Allegheny, Pennsylvania was sued by the American Civil Liberties Union (ACLU) because the County had permitted the Holy Name Society, a Roman Catholic organization, to display a nativity scene at the County courthouse each December for several years. A nearby plaque indicated that the display was donated by the Holy Name Society. In the government buildings, there were banners that proclaimed “Glory to God in the Highest!” Santa Claus, a Christmas tree, and other Christmas decorations. The County publicized a Christmas carol program near the nativity scene. During the Jewish holidays, the County erected an 18-foot menorah, stored at the County, and owned by a local Jewish organization. The ACLU and local citizens brought suit to challenge whether the County could store and display religious items such as a Nativity scene, the 18-foot menorah, and a 45-foot Christmas tree (*County of Allegheny et al. v. American Civil Liberties Union*, 1989). The plaintiffs sought an injunction to keep the County from promoting the sectarian displays.

The District Court denied injunctive relief because they did not believe that the religious displays violated the Establishment Clause. The Appeals Court held that the Christmas program and the displays sanctioned religion and overturned the District Court (*County of Allegheny*, 1989).

The Supreme Court majority held that by displaying the Christian religious creche on government property and through its advertisement, the County actively endorsed the Christian religion. The exhibition of the religious symbols of the holiday season violated the Establishment Clause. In dissent, the justices raised many issues regarding the display, the promotion of religious events, and that the government's accommodation should not be misconstrued. The dissent mentioned that the passive acknowledgment of religious symbols did not violate the Establishment Clause in the same way as employing a chaplain as part of the national heritage (County of Allegheny, 1989). The dissent indicated that although the menorah has a religious meaning, it did not have a purely secular message.

Therefore, the Court affirmed in part, reversed in part and remanded which further clouded the ability for local agencies to follow the interpretation of the court in relation to the Establishment Clause. If a council or board decided to recognize student artwork which contained religious symbols, this may be perceived as a violation of the Establishment Clause. Although Allegheny did not involve prayers before public meetings, it discussed how public agencies could interact with long-standing traditions regarding religious references or symbols. The court did not apply the *Lemon* (1971) test in these cases but relied narrowly on specific facts.

Beginning in 2009 and over the next several years, many public agencies throughout the country were being challenged in the courts by citizens over the presence of prayers before public meetings. These agencies had a long history of invocations, and the citizens brought forth various claims regarding the prayers. In Lancaster, California,

the ACLU attempted to cease and desist the prayers (*Rubin v City of Lancaster*, 2013). In Forsyth County, North Carolina, the residents alleged that prayers before the meetings promoted religion and sought to prevent prayers (*Joyner v. Forsyth*, 2011). In 2014, Susan Galloway sued the Town of Greece, New York, because the prayers were not inclusive of other religions and the prayers were primarily Christian (*Town of Greece v. Galloway*, 2014). In Hamilton County, Tennessee, the Commission began their meetings with a prayer, and Plaintiff Coleman wanted to provide a prayer but was refused (*Coleman v. Hamilton County*, 2015). The Freedom from Religion Foundation brought suit against the Chino Valley, California, school board because board members often cited or read Bible passages during the meetings and not solely during the invocation (*Freedom from Religion Foundation v. Chino Valley Unified School District*, 2016). In Rowan County, North Carolina, the citizens brought suit because they alleged that the commissioners' prayers provided during the meetings invoked or promoted Christianity (*Rowan County v. Lund*, 2018).

In 2011, the residents of Forsyth County, North Carolina objected to the County's historical practice of opening their meetings with a prayer and the Pledge of Allegiance (*Joyner v. Forsyth*, 2011). The Board did not have a formal written policy for the invocation, but had a traditional practice of searching for religious congregations in the community to deliver the invocation. The city clerk identified all houses of worships, formed a list, and then invited them to participate. The letter of invitation stated that the "Board requests only that the prayer opportunity not be exploited as an effort to convert others to the particular faith of the invocational speaker, nor to disparage any faith or

belief different than that of the invocational speaker” (Joyner, 2011). In March 2007, the plaintiffs alleged that the Board’s actions and inactions supported the prayers and sought relief to prevent prayers. The residents claimed that the Board advanced and promoted Christianity to the “exclusion of other faiths” (Joyner, 2011). According to the lawsuit, “no eligible congregation was excluded” but the facts are vague on the criteria for inclusion. Religious organizations could request to be included on a first come, first serve basis. The Board agreed that no clergy member would appear more than twice consecutively or twice within 12 months. Following the lawsuit, the Board formalized their long-standing practice with a policy that stated that no one should be forced to participate, the prayer would not be listed on the agenda, and the invocation would not show a preference for a particular religion. After the attempt to create a neutral policy and inclusivity, the Christian prayers persisted and continued to refer to “Jesus,” “Jesus Christ” or “Savior.” The Board attempted to distance themselves from the prayers, but about half of the prayers provided between January 2006 and February 2007 contained phrases such as “It is in Jesus’ name that we pray,” “we thank You,” we praise You,” and “we give Your name glory.” Through December of 2008, the prayers continued and about 80% referred to “Christ, Jesus Christ, or Savior” and encouraged prayer “in Jesus’ name.”

The plaintiffs amended their complaint and stated that the Board allowed and sponsored the religious prayers at the meetings and listed more examples of prayers. When present, the plaintiffs stated that they felt compelled to stand and bow their heads. The court found that the policy “resulted in Government-sponsored prayers that advance

a specific faith or belief and have the effect of affiliating the government with that particular faith or belief” (Joyner, 2011, p. 5). The court stated that invocations before legislative sessions can solemnize the proceedings, encourage participants to act honorably, and advocate for humility of a higher power. The court acknowledged the long-standing precedent of other legislative bodies to provide an invocation, and claimed that by its actions, the government appeared to favor one religion over another. When citizens attend meetings, they should be confident that the governing body does not favor one religion, but welcomes everyone to participate. The court held that the County Board’s objective was to be inclusive, but when implemented, the policy created the divisiveness that the Establishment Clause intended to avoid. Upon appeal, the judgment was affirmed. The Supreme Court denied certiorari.

The City Council of Lancaster, California had a historical practice of starting its council meetings with a citizen-led prayer. In 2009, Shelley Rubin who is Jewish and Maureen Feller, a Christian, claimed that the council should not provide prayers before meetings. The American Civil Liberties Union (ACLU) attempted to end the council’s prayers with a cease-and-desist letter. The council decided to establish an official invocation policy and directed the city clerk to identify all religious groups in the city. The clerk updated its policies to establish a database of all houses of worship within the city by searching for any churches, synagogues, congregations, temples and mosques, by consulting the telephone Yellow Pages and the Chamber of Commerce. The city did not ask about the faith, denomination, or other religious beliefs and planned to update the list annually. The clerk did not remove any congregation or refuse to include any group from

the list. Invitations were sent to all congregations on the list to present an invocation with the limitation that a congregation could only present a maximum of three times per year and that they were not consecutive. The only direction in the invitation was that their presence was voluntary, maintain a spirit of respect, and that the prayer not be used as an opportunity to convert the audience or disparage another faith. Shortly afterwards, the City prepared a nonbinding ballot measure to determine whether the council should continue its policy of allowing community religious leaders to deliver the council prayers. The Lancaster City attorney submitted an impartial analysis of the measure for the voters. The mayor and vice mayor prepared a ballot argument in favor of the measure that proposed that every individual has the right to pray according to his or her own beliefs and to pray to whichever deity an individual chooses. Although the citizens voted in opposition of the measure, it had no impact upon the city's procedures for the invocation. In their findings, the court examined *Marsh* (1983) and *Joyner* (2011). Upon appeal, the court affirmed the decision that the council had taken adequate measures to be impartial in the invocation practice by serving all religious groups (*Rubin v. City of Lancaster*, 2013).

Prior to 1999, the Town of Greece began their meetings with a moment of silence. In 1999, a newly elected town supervisor wanted to initiate the prayer practice that he had experienced in the county legislature. The Town Clerk began to call congregations in the city to find clergy who would be willing to provide the invocation for that month's meeting as an unpaid service. A list was compiled of willing clergy. The Town did not review the prayers or provide any guidance on the content or tone since doing so may be

perceived an infringing on their free speech rights (*Town of Greece v. Galloway*, 2014).

The prayers often had religious and civic ideas. Therefore, the Town of Greece, New York began their meetings with the roll call, the Pledge of Allegiance and prayer given by local clergy who were selected from the City's compiled list. Although the prayers were available for any congregation to deliver, most of the congregations were Christian.

Citizens Susan Galloway and Linda Stephens attended the meetings to discuss local issues, but were offended by the prayers and claimed that the prayers were an affront to a diverse community. In 2014, Galloway sued the Town of Greece, New York, because their practice of opening their town meetings with predominately Christian prayers were giving preference to Christianity over other religions. Although the Town had invited all of the Town's religious groups to participate, the majority of participants were from Christian congregations. The Town's citizens sought to restrict the prayers to "inclusive and ecumenical" and should only reference a generic God. The District Court upheld the prayer practice on summary judgment because it did not find that the prayers promulgated Christianity, but that the Town's congregations were mostly Christian. The Second Circuit reversed the District Court's findings, because they believed that the "totality of its prayers, when viewed by a reasonable observer, conveyed the message that Greece was endorsing Christianity" (*Town of Greece*, 2014).

The Supreme Court held that the Town's practice did not proselytize or disparage another faith, but had adopted the long-standing custom of legislative prayer. The court cited that the First Congress voted to appoint and pay an official chaplain soon after approving the content of the First Amendment. Justice Kennedy indicated that any test of



the Establishment Clause which was proposed by the Founding Fathers and many challenges have “withstood the critical scrutiny of time and political change” (Town of Greece, 2014). Further, the First Amendment did not require the invocation be nonsectarian nor did the Town need to reach beyond their city limits to achieve a diverse selection of religions. The court indicated that the tradition of legislative prayer was historical and did not violate the Establishment Clause because the intent was to set a serious tone to the legislative session and to demonstrate the values that are reflective of the Nation’s heritage (Town of Greece, 2014). Therefore, this opinion provided some guidance to local city leaders who wanted to maintain an invocation practice.

In July 2012, the Hamilton County, Tennessee Commission adopted a resolution to establish a prayer policy. The policy indicated that “an eligible member of the clergy” could give an invocation to open a Commission meeting (Coleman v. Hamilton County, 2015). The majority of religions within the county were represented by the Christian, Muslim, Jewish and Baha’i faiths who provided invocations to open the meetings of the Commission. The policy identified bona fide religious organizations by referencing the Internal Revenue Code’s tax-exempt status, having a presence in the County or residing within the County. The Commission’s policy provided little guidance for content except that the invocation should not “proselytize or advance any faith, disparage the religion faith or non-religious views of others, or exceed five minutes in length” (Coleman, 2015). After the list was created, plaintiff Coleman requested to be added to the invitation list and the County asked for the name of congregation to send the invitation. Coleman indicated that he did not have a tax-exempt status nor was he a clergyman. Despite

Coleman's request to provide a prayer, the County did not provide an invocation invitation. A statement on the County agendas that the invocations:

"do not necessarily represent the religious beliefs or views of the Commission... No member of the community is required to attend or participate in the invocation and such decision will have no impact on their right to actively participate in the business of the Commission" (Coleman, 2015, p. 2).

The Commission had a practice of only allowing public comments for ten minutes, no matter the number of speakers, but the speakers were limited to a maximum of three minutes. Coleman and Aaron Moyer who was not a party in the lawsuit, attended the meeting and attempted to speak during public comment. The video evidence indicated that Moyer was told to "wrap it up" after about four and a half minutes, but continued speaking. The Chair of the Commission, instructed a deputy to remove the men. At the time, Coleman and Meyer challenged the Commission's policy on legislative prayer. Coleman and Moyer later argued restraint of free speech but initially did not raise the issue. The court found that the County's policy did not endorse a religion nor did it control the substance of the prayer and that the legislative prayer policies have sustained scrutiny by numerous formal tests. Legislative agencies cannot discriminate against specific faiths, but they can require that the invocation givers have "some religious credentials" and the court held that the "prayer policy is constitutional as applied" (Coleman, 2015). The court affirmed the Commission's policy for prayers and indicated that public members are not prohibited from the meeting if one chooses not to participate

in the prayer. This holding assured that prayers were constitutional as long as they are given by a “bona fide” clergy member.

In 2016, The Freedom from Religion Foundation brought suit against the Chino Valley, California School Board because of their invocation practices before and during their meetings. The Board routinely opened their meetings with a prayer from local clergy, but occasionally a Board member provided the prayer. The Board members were known to recite and read Bible passages during the meetings. Parents of students complained and one stated that the prayers were “offensive to his personal beliefs” and did not want his children or himself to be exposed to these prayers. The court held that the prayers and Bible readings constituted proselytizing and were considered unconstitutional because the actions infringed upon the plaintiffs’ First Amendment rights (*Freedom from Religion Foundation v. Chino Valley Unified School District*, 2016). The court permitted the plaintiffs to recoup their costs, including attorney fees. The facts of this case were different than the other prayer cases because the Board members allegedly cited Bible passages during the meetings and not solely during the invocation at the start of the meetings. The court determined that the legislative exception did not apply and dismissed the claims against the defendant trustees serving in their official capacity. Although the court relieved the Board members of liability, they held that the recitation of Bible passages constituted proselytizing and infringed upon the plaintiff’s First Amendment rights. The result indicated that Boards and Councils could continue their invocations, but could not make statements from the dais during the course of the meeting that could be constituted as proselytizing. This case was slated to be heard

by the Supreme Court, then a new board majority was elected. The Chino Valley School Board voted against pursuing the Supreme Court case and stopped all work on the case citing the extensive use of resource and increasing divisiveness in the community (Yarbrough, 2019).

Three citizens of Rowan County sued the County because they were offended by the legislative, religious prayers and alleged that the prayers violated the Establishment Clause. The commissioners usually encouraged members of the audience and others present to join them in prayer. The District Court entered a summary judgment for the residents, but a split decision of the Fourth Circuit reversed that judgment. On an en banc rehearing, the complete Fourth Circuit affirmed the District Court's original finding. The en banc court compared this case against the findings in the *Town of Greece* (2014). They cited that the Town of Greece provided prayers by guest clergy but the Commissioners of Rowan County led the prayers. Similar to the Chino Valley Board members, the Rowan County Commissioners over many years, composed prayers and on occasion deviated toward clearly sectarian prayers. The Commissioners also directed the audience to stand and join them in worship by using phrases such as "Let us pray," or "Let's pray together," or "Please pray with me" (Rowan County v. Lund, 2018). The Fourth Circuit noted that prayers led by legislators became strongly identifiable with the government and religion and promotes the "constitutional risks posed by requests to participate and by sectarian prayers" (Rowan County, 2018). Therefore, the findings of the *Town of Greece* (2014) did not apply in this case. The Fourth Circuit cited four distinctions to Greece. First, only the Commissioners, not guest ministers, provided the prayer before

meetings. Second, of the 143 prayers analyzed by the court found that 139 “invoked” Christianity, 11 “promoted” Christianity and four were considered nonsectarian. Third, the Commissioners directed the audience to rise and invited them to join them in prayer. Lastly, the invocation occurred in the setting of a municipal board meeting where the Board has “quasi-judicial power” over local issues such as zoning, contract awards, and petitions. The Supreme Court denied a petition of certiorari to the U.S. Court of Appeals for the Fourth District. Justices Thomas and Gorsuch dissented from the denial of certiorari because they believed that “This Court’s Establishment Clause jurisprudence is in disarray” (Rowan County, 2018). The dissenting Supreme Justices indicated that the issues identified in *Rowan* (2018) were very similar to the *Town of Greece* (2014) with the exception of the person leading the prayers. The dissent indicated that the Circuit Court did not consider the long-standing traditions of legislator led prayer. They further cited *Bormuth v. County of Jackson* (2017), where the Sixth District Court recognized that they were in conflict with the Fourth District but found the Fourth District’s opinion “unpersuasive” (Rowan County, 2018). As a result, the District Court’s holdings indicate that legislator-led prayer is legal in Tennessee, Kentucky, Ohio and Michigan, but not in South Carolina, North Carolina, Virginia, Maryland or West Virginia. The dissenting Justices believed that the Supreme Court should have granted certiorari to resolve the discrepancy.

Plaintiffs have effectively opposed local lawmakers for their prayer practices and religious-leaning remarks from the dais (Freedom from Religion Foundation, 2016, Joyner, 2011, Rowan County, 2018). In other cases, the court opined that invocations

were permissible if there was no proselytizing or disparaging of a particular religion and there was a good faith attempt by the government to be religiously diverse (Rubin, 2013, Town of Greece, 2014). In another case of regular, distinct invocations, the court held that the County's policy does not advance one religion over another nor does the policy stipulate the subject of the invocation (Coleman, 2015). The *Coleman* (2015) Court determined that their "prayer policy is constitutional as applied" and indicated that a member of the public is not barred from the meeting if one chooses not to participate in the prayer.

In the *Town of Greece* (2014), the court weighed the setting and audience subject to the invocation rather than employing the *Lemon* (1971) test. Rohr (2012) analyzed the Cobb County Commission meetings which had a historical tradition of local volunteer clergy offering a prayer before the meeting. The Pickens County's long-standing practice of inviting students to give the invocation were examined in light of concerns of potential Establishment Clause violations and claims that students could be coerced into prayer (Wicks, 2015). Following the *Town of Greece* (2014) decision, the Pickens Board members eliminated the student-led prayer and provided a non-sectarian prayer on a rotating basis.

Ravishankar (2016) and Rohr (2012) examined the applicability of legal rulings where the *Lemon* (1971) test is disregarded or not deliberated in the same manner. Before *Lemon* (1971), in the *Everson v. the Board of Education of the Township of Ewing* (1947) case, the court found that reimbursement for bus transportation to and from

parochial schools was permissible since the primary reason was the public welfare of the children's education.

Ravishankar (2016) described several religion and government court cases that involved prayer in schools, tax exemptions for schools, religious symbols in public, the loan of textbooks by public schools to parochial schools, and legislative prayer. He asserts that nearly fifty years of complex Establishment Clause holdings have been culled down to the three-part *Lemon* (1971) test to resolve matters between religion and the government. Therefore, any statute that violated any of the three prongs would be considered unconstitutional. However, rather than resolving cases, more cases were brought forth with very fact-specific issues that deviated from the *Lemon* (1971) test, but the court declined to overrule the *Lemon* (1971) decision. Ravishankar (2016) claimed that the court rejected the *Lemon* (1971) test in *Marsh* (1983) when it determined that legislative prayers could be performed by a paid chaplain. The court claimed that a literal reading of *Lemon* (1971) would be in conflict with the history and custom of legislative prayer. The circuit courts did not employ *Lemon* (1971) to any further legislative prayer cases. However, in the *Town of Greece* (2014), a split court utilized the reasoning from *Marsh* (1983) by focusing on the venue of the prayer, the audience present, and not citing the *Lemon* (1971) test. Even though the Justices could not agree on what constituted coercion, they all agreed that the prayers were not promoting religion and that *Marsh* (1983), not *Lemon* (1971), controlled in legislative prayer cases (Ravishankar, 2016).

Rohr (2012) analyzed the prayer practices of the Cobb County Commission and the Cobb County Planning Commission which both had a long history of offering an

opening prayer by volunteer clergy or other community members before their meetings. Most of the prayers contained references to Jesus Christ and for prayers between January 2006 to January 2007, they often ended with phrases such as “We pray this all in the name under whom is all authority, the Lord Jesus Christ” (Rohr, 2012). Other prayers contained some sporadic references to the Jewish and Muslim faiths, such as Passover, Allah, Mohammed and Hebrew prayers. As a result, the courts determined that a local government entity can acknowledge a generic God through prayer, but was not clear whether the prayer could be directed to “our Lord, Jesus Christ.” If non-secular prayers are permissible, one could question which phrases or words could be characterized as a secular prayer and trigger a violation of the Establishment Clause. Many of the prayers made references such as “Lord Jesus Christ,” “In Jesus name we pray,” “Amen,” and “We thank You; we praise You and we give Your name glory” which are all specific references to Christianity (Rohr, 2012). In *Marsh* (1983), the Supreme Court rejected the *Lemon* (1971) test and relied upon the historical context of the Founding Fathers who paid for a chaplain. After the *Marsh* (1983) decision, Justice O’Connor claimed that when a prayer was provided, those who chose not to participate could be perceived as outsiders. Conversely, those who chose to participate with the legislative body may be perceived as “favored members of the political community” (Rohr, 2012). Justice O’Connor asserted that this belief would be the perception of an impartial observer. By using this lens, the government would, in fact, be endorsing religion. Rohr (2012) emphasized that the holding included the word “endorsement” and as a result a prayer was an endorsement of that particular religion (Marsh, 1983). With the reliance of



historical practice as noted in *Marsh* (1983), Rohr (2012) argued that local jurisdictions do not have the same history as the founding of our country. However, local agencies now presume that they could provide a prayer, but any citizen present would be exposed to that prayer. Those constituents seeking to speak to their representatives or appeal a planning decision, have little alternative but to appear before the body. Citizens may only appear sporadically or only once to participate in a meeting. For example, if one is of the Christian faith and a Rabbi is present to deliver the invocation or vice versa, the citizen may feel excluded from the proceedings. If a local entity assumes that prayers can be given, do they need to determine the limits on the content? Local governments may conclude that prayers are acceptable as long as they are not religious, but in Cobb County, the judge indicated that it would be difficult to establish the boundary between sectarian and non-sectarian language. In *Joyner* (2011), the court sought to decrease the risk of religious inclination by requiring prayers to support a non-sectarian belief. Although one can understand the term sectarian by definition, how would “non-sectarian” be categorized? Further, if religions were to be represented, how could a local jurisdiction determine how to fully represent the various congregations of the community? Rohr (2012) questioned whether a congregation must have minimum number of people, how the clergy are selected, and how frequently each faith must be represented. Monthly meetings may not allow enough religious diversity and therefore, how many different prayers from different religious would demonstrate the diversity sought by the court. Councils would determine how the policy could assure compliance by not promoting or proselytizing a particular religion.

As a deliberative body, Wicks (2015) claimed that the structure of school boards is similar in size to city councils and that the differences between school boards and city councils are indistinct and are not considered student-centered. Both are relatively small and present an opportunity for citizens to interact with their elected representatives. The councils and boards are deliberative in the sense that they make policy but also handle administrative functions. Although the councils and board are made up of adult elected officials, students may be present for recognition or for a school requirement which may lead to allegations of coercion. Since they can be considered a deliberative body by the courts, then they should be allowed to provide a prayer. Wicks (2015) indicated that the prayer is intended to place the board members in a reflective position for a higher purpose and to lessen the burden of decision-making.

Historically, the Pickens County School Board had invited students to give the invocations and the students regularly gave secular invocations. Wicks (2015) claimed that the practice of student-led invocations shifted the focus of the meeting toward students and not the legislative body. After the *Town of Greece* (2014) decision, the Pickens board became concerned over potential Establishment Clause violations. As a result, the Board altered its practice by having its members rotate and provide a non-sectarian prayer before the meetings. However, when minors, such as a student trustee is present on the dais, or an invited student is awaiting recognition by the Board, these students are now subject to the prayer and the religious beliefs of the Board member (Freedom of Religion, 2016). School board meetings raise different challenges when minors are giving a presentation or receiving recognition, as opposed to a meeting with

the majority of adults. Some people may argue that students are too susceptible to the practices of adults and should be in the company of a parent or other adult. Should students be barred from entering a meeting for the prayer and then admitted once the prayer is concluded? To avoid Establishment Clause claims, Pickens County changed their policy from student-led prayers to board members who provided the prayer. Participants can enter and exit the meetings with no consequences and are not perceived as nonconformists.

Wicks (2015) asserted that a student trustee on the dais for the prayer is now present for the potential religious teaching of the clergy presenting the prayer. As a safeguard, should the student trustee wait to enter the chamber until after the invocation to avoid coercion claims? Questions arise as to whether the prayer should be non-sectarian or whether a diverse group of clergy create credibility for the prayer practice. School board meetings raise additional issues with minors who may be more susceptible than adults to the words of an invocation or to follow instructions to assume a posture of reverence.

Although Wicks (2015) does not comment, it is likely that selected students had permission and assistance from their parents to attend the meeting, such as transportation to the meeting. Therefore, it may be unlikely that these parents would raise issues with their child being present or providing the invocation. Wicks (2015) raised many questions, but does not provide any practical solutions for the lawmakers.

The court stated that the prayers placed “lawmakers in a solemn and deliberate state of mind” and they focused on the nature and the historical traditions of legislative

bodies in the *Town of Greece* (2014) decision. The Supreme Court opined that prayers before a deliberative body are a “deeply embedded in the history and tradition” of the country and that prayer is accepted (Marsh, 1983, Wicks, 2015) because the Founding Fathers had appropriated funds for a chaplain to deliver prayers before the Congress. Justice Burger indicated that the authors did not have issues with prayer or perceive these prayers as a violation of the Establishment Clause. However, John Jay and John Rutledge both claimed that the delegates to the Continental Congress were so diverse that they could not possibly participate in the same pretense of worship.

Before the *Greece* (2014) decision, the courts in the Third and Sixth Circuits did not apply *Marsh* (1983) in two school prayer cases because of the unique make-up of the school boards and the history of prayer. However, the Fifth and Ninth Circuits applied *Marsh* (1983) and stated that the deliberative body could present non-sectarian prayers. Therefore, many school boards reinstated the prayers.

Because the Circuit Courts differed on the application of *Marsh* (1983), the *Town of Greece* (2014) decision created even more confusion for local boards and councils. In dissent, Justice Kagan claimed that the significant participation of the local citizens created a difference between legislative bodies at the state and federal level. In the majority opinion, Justice Kennedy countered that the local participation did not take away the intention to provide a solemn and reflective moment for the elected leaders. Because of the diverse nature of the holdings and the *Town of Greece* (2014) result which are all very fact-sensitive, councils must determine how best to avoid Establishment Clause minefields. The Solicitor General of South Carolina advised Pickens County to

follow the *Town of Greece* (2014) holding to escape Establishment Clause claims. This opinion offered that local jurisdictions provide diversity of prayers, but the variety only needs to extend within the limits of that jurisdiction and that agencies did not need to go beyond their borders to achieve diversity even though their citizens practiced various faiths. If the officials did not attempt to regulate the content of the prayers, allow adults to provide the prayers, strive to achieve diversity in the faith community and separate the student from the adult member, the body was relatively safe from violating the Establishment Clause. All of this assumes that the members of the deliberative body agree that prayer is a mechanism to place the officials in a reflective place for decision-making.

There are numerous recent cases that receive news coverage, but have not found their way into the court system. These cases are often local challenges by citizens who have difficulty with the prayer, the religious bent of the invocation, or even the lack of religion in the prayer. After weeks of debate over a Satanic Temple's planned invocation for the February 17, 2016 meeting, the Phoenix, Arizona City Council decided to change their long-standing practice of invocations for a moment of silence (Holley, 2016). A spokesperson claimed that the invocation was a city practice and as such, it could be changed by the council immediately. Therefore, the meeting that the Satanic Temple was scheduled to provide a prayer was being replaced by the moment of silence. The representative from the Satanic Temple threatened a lawsuit in response to the practice change.

Phoenix council members lead the meeting with a prayer. Everyone is directed to stand but some chose to remain seated. Those who choose not to participate sued with the Freedom From Religion Foundation claiming that "singling out the Satanic Temple would constitute a violation of the Establishment Clause of the First Amendment" (Wing, 2016). The lawsuit further alleges that the council's preference for citing a Christian prayer demonstrated that they could not favor one religion over another including favoring religion over non-religion (Wing, 2016).

In the United States, 58% of those that self-identified as actively religious, described as identifying with a religion and participate at least monthly in religious services, indicated that had other voluntary affiliations with other sports clubs, charity groups or labor unions (Pew Research, 2019). For those that stated that there were inactively religious who attended services at least once per month, they indicated that less than 40% had the same affiliations. Of the actively religious group, 69% indicated that they regularly vote in national elections as compared with the people that are either inactive, 59% or unaffiliated who do not identify with a particular religion 48% (Pew Research, 2019). The selection of the frequency of religious attendance was used to determine the categories even though some respondents did attend services more than once per month, but not weekly.

Although court cases have demonstrated the interpretation of the laws, it is also critical to examine how the public interacts with their elected leaders. Establishing an inviting environment to assure that people feel comfortable to present their concerns to

their local representatives is crucial to thoughtful leadership and decision-making (Beard et al., 2014; Jarmon, 2009).

Jarmon (2009) examined the North Omaha Development Project (NODP) meetings using a Conversational Analysis (CA) approach to study public meetings. Generally, the CA approach for meetings, determines how citizens participate and communicate in public meetings, and how decisions are made. The trust levels, an outgrowth of behavior and speech patterns, were analyzed. Jarmon (2009) described the location of the participants in the room. The public is in the audience area facing the decision-makers who are located on a raised dais which reflects the power structure. The developers, dressed in suits, are located in reserved front row seats which demonstrates their role in controlling the process. The public submitted question cards which the developers caucused and determined which questions to read. Not all questions were read nor were they presented in the order received. In some cases, the person reading the card began to make judgments about the question which muted the public feedback. The developers controlled the questions, the microphones, and occupied the center of the room from their front row seats. Some of the public members expressed frustration with outbursts or physical gestures. The public began to use pronouns such as “we” and “you” that further drew lines between the groups.

One developer representative, in shirt sleeves rather than a suit, was not seated with the others and did not participate in the question cards. Later, he took control of the microphone and began to walk through the aisles toward the back of the room among the audience. Jarmon (2009) indicated that trust can be developed by entering the physical

space of the audience. The citizens' utterances, situational actions, physical location, and laughter exhibit how trust can be collectively fashioned to inhibit or encourage group delineation (Jarmon, 2009). These actions can be used to cultivate a relationship of trust and respect. Coordinators of public hearings should be coached to assess procedural rules, ask for feedback, changes or other suggestions from the community to address any unanticipated expectations or outcomes (Jarmon, 2009). The physical space, such as the decision-makers on the raised platform of a dais gives the inference of power over the larger group. Rather than appearing defensive by answering questions with "Yes, but" and then offering an excuse or diminish the citizen's concern, organizers are encouraged to build on the question or idea by stating "Yes, and..." (Jarmon, 2009). Public speakers could generate more inclusiveness with this type of phrasing to build the public's confidence in the public participation process.

When the Santa Ana, California City Council began a revitalization project in a distressed 421-acre area of the city, they sought public input. The city of Santa Ana has over 300,000 residents with over 78% Hispanic. The areas of study were historic neighborhoods with a combination of new and established Mexican immigrants. Beard et al. (2014) examined the proceedings for these public hearings and the level of engagement of the community with a particular focus on the low-income community of color. In the U.S., citizens can vote for the elected leaders that represent their interests and who consider public opinion when making decisions. However, in areas with large immigrant populations, the residents must register to vote and must vote to have representation. The public influence may be blunted by special interest groups or



lobbyists who contribute to the political campaigns of the politicians. Beard et al. (2014) examined deliberate democracy, a method to transform individual preferences into a mechanism to aggregate these distinct preferences. However, some critics assert that the concept of deliberative democracy is slanted toward the powerful members in the community.

In 2007, the Santa Ana Council proposed the Renaissance Plan which included mixed-use zoning for residential, commercial, and retail uses. As the city proceeded with the Environmental Impact Report (EIR), local activists objected to the absence of community participation in the planning. Following a year of public outcry, the City embarked upon a much smaller plan for the 421 acres. This time, the city organized the meetings in the early evening as opposed to the daytime hours and had the community meetings in the affected neighborhoods. Although the council conducted several public hearings, the agenda and citizen contributions were tightly managed by the city which prohibited full public involvement in the planning process.

Beard et al. (2014) asserted that the local business owner who made campaign contributions to the current council members had greater sway than the affected citizens of the area. The authors believed that the public hearings were proforma rather than truly seeking citizen feedback to improve the blighted areas of the city. Hence, the council's decisions became perceived as political decision-making rather than citizen-driven decision-making. After much frustration, a coalition of non-profit organizations was born to support the collective concerns of the residents for affordable housing, open space, and

historic preservation. This coalition supported the low-income residents' interests rather than the council members championing the efforts for the neighborhood.

Therefore, the coalition implemented a series of corresponding meetings where they met with the residents, provided the information in English and Spanish, and arranged child care. As this coalition grew and gained more power, they were able to reach a consensus on “38 demands in five significant areas: housing, cultural and historic presentation, open space, support for small businesses and protection of works, and public safety” (Beard et al., 2014). Subsequently, they were able to meet with council members individually to discuss public concerns and gain the council members' support. The public pressure forced the developers to meet with members of the coalition.

The coalition identified that the council members had accepted contributions from the developers and since they were elected at large, there was no vested interest by the council in this portion of the city. Over 65% of the campaign contributions were given to the successful campaigns of the council and mayor with over 63% coming from real estate and construction industries. These contributions lead to public perception of conflicts of interest between the developers and the council.

Participation can be limited by the political processes and who wields the power to set the agenda for a potentially contentious issue (Beard et al., 2014; Jarmon, 2009,). The coalition assumed the council's responsibility for obtaining the citizens' concerns. Although the coalition's concerns were more organized and succinct, the council would not sign the community benefit agreement (CBA) which left the community without any mechanism to hold the developers or the council accountable to the citizens. The

developers' presence and political donations, underscored the disenfranchisement of the low-income communities of color. Further, this study demonstrated how easily projects can be influenced by outside campaign donations and the lack of representation when councils are elected at large, rather than by district. There was no council member that resided the neighborhood where this revitalization occurred to address the overwhelming concerns of the local residents. Although these cases are not a prayer cases, they demonstrate how public participation can be diminished by the council's actions and derailed by outside influences and political contributions.

The literature indicated that case studies helped examine the elected bodies and government agencies' actions in the invocations and other religious intersections. Other studies reviewed the interaction between the public and the elected leaders and policymakers' influence on public feedback. Therefore, case studies and policy feedback methods were central to the design and execution of this study.

### **Summary and Conclusions**

The current literature and case holdings identify many aspects of the invocation practice before public meetings and they are as diverse as the municipalities that they represent. Many citizens believe in the "separation of Church and State" and have a belief that these words are entrenched in the Constitution. Thomas Jefferson referenced this "wall of separation" in his early writings but not in legislation (Perry, 2006). However, the wall analogy has been cited by the courts. Some case holdings have focused on the long tradition of prayer, the content of the prayer, the audience, or that the Framers appropriated funds for a chaplain to deliver invocations shortly after approving the

content of the First Amendment and the Establishment Clause. History has indicated that early America was not tolerant of various religions and demanded faithful observance of the religious practices in that particular region. Jefferson did not believe that the government should guide how or when its citizens worshiped (Perry, 2006).

Many of the cases in this analysis are not strictly invocation cases, but cases that demonstrate how legislation has allowed a comingling of religious organizations and government policies and funding (Lemon, 1971). The *Lemon* (1971) court developed a three-prong test which provided some direction for other jurisdictions to avoid a violation of the Establishment Clause. Some of the court opinions disregarded the *Lemon* (1971) test and often embraced specific facts, such as the long-standing tradition or that “prayer lends gravity” to the proceedings (Marsh, 1983). Although one may argue that prayer places the legislators in a proper mindset, that also assumes that the lawmaker accepts the presence of the prayer. However, customs and public perception change over time. Will the lack of prayer or effusive prayer become a detriment, such as a lack of credibility, for that council member? Staff members are required to be present due to their job duties are also subject to the prayer. If a staff member does not want to be present, this could potentially result in disciplinary action.

Some of the literature focused on school boards and the presence of children. One might argue that minors should not be present for the prayer to avoid claims of coercion or propagating a particular faith. In many jurisdictions, many students in government or civics classes are required to attend a public meeting to gain an understanding of the practices of the deliberative body and not just prayer. Yet, if

students are present at the beginning of a meeting, they are subject to the opening prayer of that body. The question may be raised about the susceptibility of minors and whether they will be coerced to model adult behavior, such as assuming a posture of reverence.

These case holdings demonstrate that the courts did not consider the broader scope of the precedents but focused on specific facts of the case. A full reading of the cases will provide the reasoning and the fallibility of that reasoning in the dissenting arguments. In some instances, the Justices will indicate where they erred on previous cases and attempt to correct the guidance.

There are continuous challenges that are identified in the media, but many of these will not proceed through the court system or will take years to litigate. Therefore, local jurisdictions are left with a plethora of tests to determine whether their invocation practices will withstand the scrutiny of the courts. Attempts to fashion a policy to avoid Establishment Clause violations will continue to be a challenge for local lawmakers. Chapter 3 will discuss the research design and methodology, including participant recruitment and selection, data collection, and the data analysis plan. Following the research design, I will discuss the interview process and observations. The study will address the impact of social change and how this information could assist policymakers in assessing the presence of invocations. I will examine the ethical procedures of the study.

## Chapter 3: Research Method

### **Introduction**

The purpose of this qualitative study explored the of impact of legislative prayer upon meeting participants at city council meetings in this Southern California County and whether the words or actions of the legislative body violate the Establishment Clause. Secondly, the study examined the type of prayer or practices that would violate the Establishment Clause of the First Amendment of the U.S. Constitution (U.S. Const. Amend. I.).

The study purpose is twofold. The tradition of prayer before legislative meetings and the potential violations of the Establishment Clause (U.S. Const. Amend. I.) will be discussed. First, the invocation policies and practices prior to council meetings are examined. Elected officials must revisit existing policies periodically to determine if the current policies still meet the expectations of the organization and its constituents. Therefore, policies should be examined thoroughly before implementation, revision, or retention. Many city councils in this county list the Pledge of Allegiance and the invocation on their agendas and begin their meetings with the Pledge and an invocation. This county was selected since it is perceived as the last true bastion of conservatism (Staggs, 2019) within California.

To examine their practices, public officials can learn from the experiences of other cities (Butler & Pereira, 2018). There are previous studies that have demonstrated that politicians are more willing to implement policies enacted by other agencies if they “share more commonalities with that government” (Butler & Pereira, 2018). Therefore,

policy diffusion occurs through the experiences of other agencies and the “socially mediated spread of policies across and with political systems” (Weible et al., 2018, p. 333). Based on information from others, leaders can determine if they wish to maintain or revise the invocation tradition or help leaders identify whether the practice is sustainable with potential legal challenges in the future. Government policies have long term effects on its citizens (Prato, 2018).

This study will examine the research design and why the case study approach was appropriate. As the primary researcher, I will discuss my relationship with the participants, potential biases and assumptions, and ethical issues for the study. I will explain the participant selection and recruitment and the questionnaire development and the interview process, data collection, analysis, and data coding. To examine trustworthiness, I will explore the issues of credibility, transferability, dependability, and confirmability issues. Ethical procedures for recruitment, informed consent, the confidentiality of data, and privacy for the participants will be reviewed.

### **Research Design and Rationale**

The basis of the study discusses how the investigation is organized, structured and conducted (Anfara, 2008; Walden University, 2014). The qualitative nature of the study allows the data to be gathered in the setting of the council meeting via videotape and through the interview process. However, the qualitative design provided the researcher with the ability to adjust the model to gather information that might be valuable for the data collection (O’Sullivan et al., 2017).

The research design and rationale are presented along with the two primary research questions and a discussion of how the study was designed, the sample population, and participant selection. The research methodology is discussed and why a multiple case study approach is appropriate to analyze the policies and practices along with the council members and members of the public.

The two primary research questions revolved around citizens' ability to fully participate in a public meeting if prayer is present and if the presence of an invocation violates the Establishment Clause. Understanding the Establishment Clause is crucial because the First Amendment to the U.S. Constitution states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." (U.S. Const. Amend. I).

RQ1: How does the presence of prayer impact constituents' ability to participate in engaging their local elected leaders?

RQ2: How does and what type of prayer violate the Establishment Clause of the First Amendment of the U.S. Constitution?

Engagement would include the citizens feeling welcome at council meetings to fully participate by expressing their opinions, whether negative or positive. In return, the council should respectfully receive and respond to public feedback whether or not the meeting attendees participate in the invocation. A dismissive attitude would not be perceived well by their respective constituents.

Ravitch et al. (2016) strongly advocated that researchers should diligently refine their research questions, but allow for adaptability to the findings as they unfold which



may further pinpoint research questions (p. 67). The regular presence of a prayer before a council meeting raises the question as to whether prayer or a specific type of prayer violates the Establishment Clause (U.S. Const. Amend. I.). Necessary data about the various cities such as the presence of an invocation and current practices was collected. Individual demographics, such as self-identified political and religious preference, and length of service and will be verified with the participants. The participants' understanding and verbal responses to the questions will be the primary evidence (Yin, 2018).

Interview questions identified whether leaders had recently deliberated their existing invocation policies and practices and the presence of prayer at their meetings. Further discussion highlighted any revised practices based on legal opinions or whether the participants have recently altered practices. Although the organization of the questions provides a semi-structured interview, probing questions were used if the initial response is not clear or more information is needed to respond to the question (Burkholder et al., 2016).

Much of the literature addressing invocations and public participation is based on case studies of individual agencies. The case studies focused on how a particular agency implements their invocation practices and compared it to recent holdings in litigation across the country. The legal outcomes have often centered on specific facts or narrow results. Case studies grant the researcher the ability to explore the phenomena from a real-life perspective to analyze group behavior and organizational processes (Yin, 2018). This study discusses the invocation-related behaviors of the council members and how

the prayer may affect the public's ability to participate in city council meetings. Based on council members' actions, the public may feel disenfranchised by the presence of prayer or the encouragement to pray. A multiple case study approach is used to evaluate the numerous agencies in this county by examining their agendas, policies, and practices. The actions of the councils were observed via videotape during council meetings and the interview portion will provide background and decision-making on the practices.

### **Role of the Researcher**

The role of the researcher is how the researcher interacted with the study participants, possible influence and bias, and how the data was collected. I am an elected official within the county of the study population which was selected due to its proximity and its reputation as being a conservative stronghold (Staggs, 2019) in liberal California. Some of the participants are known to the researcher, and it was clear that the research is separate from any endorsements or donations that could be expected from either party in the future. The promise of confidentiality of all responses was emphasized to all study participants. The study provides a broad picture of invocation practices within the county and to provide an analysis for the reader and future elected leaders.

In comparison to other research designs, the qualitative methodology allows for the researcher to share her role and the thought process behind the qualitative approach that is used for the study (Creswell et al., 2018). Before the research began, I analyzed my role as a former council member, observer, participant, or a combination of these functions. Researchers are the primary element in qualitative research because they are the people who are gathering the data and interpreting the information (Creswell et al.,

2018; Ravitch et al., 2016). The council meetings were briefly viewed by examining videotapes of various sessions. Direct observation allows for the research to take place in a “live” setting which can add to the depth of the overall study (Yin, 2018). I did not participate in any meetings when invocations are given.

The concept of positionality and the relationship to the subjects must be considered. If the researcher is an employee of the organization that she wishes to explore, there needs to be an assessment of authority or power of the position. In this situation, the researcher is an elected official who is observing and interviewing other elected officials. During the data collection phase, I was an elected Trustee for the County Board of Education, but not a sitting council member.

The researcher must establish trust to recruit elected participants who are willing to share candid views. Trust is often built from previous relationships and becomes a joint activity based on mutual respect (Rubin et al., 2012). In this research, there was a possibility of bias because of previous relationships. Due to our prior knowledge, some participants agreed to participate, but other participants were responding to the invitation without any previous relationship. However, the interactions were professional and care was taken to assure that accurate information was provided. I was mindful to stay objective if the responses seem inconsistent with my prior knowledge of the council member. Anonymity and privacy were emphasized to assure the participant that their identity will be held in confidence and that I was the only person who will have full access to their comments. A professional transcriptionist was not used as a precaution to further preserve confidentiality.

Before undertaking the interview, necessary measures were taken to assure confidentiality. Although some elected officials may balk at being recorded, they are also well-versed in communicating with news reporters who frequently record their interviews. Elected officials are often cautious during any interview process, merely because they are worried that negative comments might be used against them in a subsequent election or place them in a poor light with constituents. Since most elected officials bristle when their words are taken out of context, the assurance of accuracy was critical in gaining trust (Rubin et al., 2012). Therefore, it was imperative that interviewees understood that the information would be recorded for accuracy and maintained safely. In the interview introduction, I explicitly stated that the interview would be recorded to “capture your thoughts and to assure that I have accurate information” which is intended to place the person at ease. The willingness to be recorded seems to be a departure from other people who prefer not to be recorded. Notetaking can be a distraction and could detract from careful observation of the interviewee’s tone or body language (Burkholder et al, 2016). Notetaking was minimized to assure careful listening. Therefore, it is imperative that this listening skill is practiced and the recording crucial to obtain the details that might be missed while notetaking (Ravitch et al., 2016). Zoom video technology was used to record the interviews to capture both the audio and video portions.

## **Methodology**

### **Participant Selection**

The methodology to identify potential research participants for the study, how the study participants were selected, and the saturation point was determined will be discussed. For elected officials, the minimum criteria were two years as a council member to assure that the council members had ample time to experience invocations at their agency. Public members were chosen by previous comments at public meetings, and members of an organization known to the researcher within this same county. This group is known as the Americans United for Separation of Church and State, Orange County Chapter whose purpose is “a nonpartisan educational organization dedicated to preserving the constitutional principle of church-state” (Americans United for Separation of Church and State, n.d.).

The participants are city council members within Orange County, California who have served a minimum of two years and possess familiarity with the current protocols and practices of their respective councils. City council websites were reviewed to determine election date and verified by the Orange County Registrar of Voters (OCVote.gov). This information was captured in an Excel spreadsheet by city and council member. The city councils generally meet at least two times per month but will occasionally have a dark meeting in the summer or during the winter holiday break and will only convene monthly. A few of the smaller cities have council meetings that only convene once per month. Within the county, there are 34 cities that have city councils, with large sections of unincorporated areas. Therefore, the city council participants have

been present for a minimum of approximately 20 to 40 meetings which should provide enough experience for invocations throughout that time.

The sampling included council members from cities that have invocations and council members from cities that do not include an invocation on their agenda. Another portion of the sampling consisted of members of the public who are a part of a local organization for the separation of Church and State or who have expressed an opinion about invocations. Each interviewee was asked questions about their political and religious self-perceptions to determine if any themes can be drawn from their answers. The discussion points were focused on council practices, such as who provides the invocation, the selection of presenters, and any guidance on the content or frequency of the invocation as described by their policy and practices.

There was purposeful sampling so that the research encompassed some cities that have an invocation and some cities that do not have an invocation. This cross section intended to provide some contrasting views and to understand why some cities maintain their invocation policies and why others have chosen to eliminate this item on their agenda. The public sampling was selected from a group that has generally espoused the separation of church and state to obtain a citizen's perspective of why they do not support an invocation on city council agendas. The intention was to provide viewpoints into this specific phenomenon that may not be found in the general public and which can bring value to the study (Burkholder et al., 2016, p. 232).

Council members elected in November 2018 election would not meet the two-year minimum of service time. All eligible council member participants who had an

individual public email were sent an e-mail identifying myself, the study, and asking them to participate in an interview regarding invocations which would entail approximately 40-50 minutes. The request was framed as a public policy issue that affects their citizens' ability to fully participate in their meetings. See Appendices A and B.

During the study design, it was anticipated that there would be 8-10 participants between the city council and public members from various cities throughout the county. All council members that agreed to participate and were willing to be interviewed, participated in the study. Five members of the public were contacted and agreed to participate for a total of 12 participants.

### **Instrumentation**

Each city was listed alphabetically on an Excel spreadsheet to determine whether an invocation was listed on the respective city council agenda. As of September 2019, 25 of the 34 cities placed an invocation on the agenda. The remaining cities did not list an invocation, and one noted a "moment of solemn expression." The city council agendas for 2018 through August 2019 were reviewed on the city websites to determine whether an invocation was listed and who provided the invocation. Some agendas listed the invocation at the outset of the meeting and some agendas also included the name of the person who was scheduled to deliver the invocation, which was usually a member of the council or a member of a local congregation. Since most city councils have video archives, the agenda and the videotape were reviewed, as needed, to determine the accuracy of the agenda item or to identify who provided the invocation, such as a council

member, clergy, or a member of the public. If the agenda did not list the invocation presenter, the presenter was verified by the videotape of the respective meetings. The accuracy of this information was validated against the city's current invocation practice.

This spreadsheet was used to gather the names and the individual, public emails of the current council members. The length of service information was collected from the biographies posted on their respective city websites or the Orange County Registrar of Voters. Due to the rotating elections for council seats, there were some members who had served the minimum of two years. Most cities have five members, but a few of the larger cities have seven members. All council members with two years of service and public email addresses were contacted. Follow-up calls were noted on the spreadsheet to assist with obtaining willing participants or those who did not respond or declined. This sheet was also used to schedule appointments. The main phone number and website for the city council was captured and listed on the spreadsheet. The mechanism for recording the meetings was documented to determine if there was audio or videotape for the meetings. The meeting days and times were also noted to organize the in-person observations to create efficiency and minimize the overall time to capture the observations. After the preliminary list was prepared, no city council meetings were held in person due to the 2020 global pandemic.

The interview instrument was primarily based on legal analysis and the outcome of that analysis. A pilot study was not conducted. There were structured interview questions, but the participants commented on their invocation practice which drew some follow-up questions. These probing questions increased the length of the interview and



resulted in additional information (Creswell et al., 2018). I conducted follow-up if more explanation or information was needed to respond to the inquiry.

The interview tool was constructed in a grid format with large areas for notes for responses. Ravitch et al. (2016) emphasized that interviews should provide focused perception into the participants' experiences and how their knowledge and viewpoint compare to others (p. 146). I noted significant phrases or information that might lead to other questions and relied heavily on the recording of the interviews. See Appendices C and D.

### **Researcher-developed instruments**

The interview questions were based on the legal analyses that were cited in the literature to identify which practices might be considered violations of the Establishment Clause (U.S. Const. Amend. I.) and how constituents might respond to the invocation practices. There were also two questions regarding political and religious beliefs that may be influencers on the respondents' views of the invocation practices. These questions were intended to draw similarities or differences between their religious and political opinions toward free speech and the practice of prayer. Because the legal cases cited specific phrases or the diversity of clergy, these issues were the basis of the interview questions. Some of the constitutional claims posed by the litigants were also used to craft the interview questions. Council members were asked whether they had provided invocations, if they were comfortable with giving the invocation, or if they deferred to others to present the prayer.

## **Procedures for Recruitment, Participation, and Data Collection**

The recruitment email was sent to the council members at their official city council email address. If there was no response, a follow-up email was sent within two weeks of the initial e-mail. Although council members could be contacted through their campaign websites, this was not a chosen method of contact. Due to prior knowledge and potential for bias, their personal e-mail addresses were not used. Only the official, public email addresses were used to contact the council members.

Although the entire council population of Orange County's 34 cities was considered, it is feasible that a sampling of these cities would yield reasonable results to examine the invocation practices. All 34 cities' websites were reviewed to determine which cities had invocations on their council agendas, who provided the invocations, and their policies for determining who presented the invocation, such as council members, citizens, or local clergy.

The total population of eligible council members who have served for at least two years was 134 from cities with invocations and 32 from cities without invocations. All eligible participants with an individual, public email address were contacted. Although some council members were eligible, they were not contacted if they did not have a public email or only a group email which reduced the eligible sample of council members to 122. All council member who responded to the invitation were interviewed. Initially, it was anticipated that there will be a total of 3-5 public members throughout the county that will be interviewed for the study. The public members were selected from those that have publicly expressed opinions regarding invocations and the Americans United for

Separation of Church & State organization in Orange County. Some participants suggested other members, but one could not be located and one declined. They were all contacted and all interested parties were interviewed.

I was the primary observer and completed all of the data collection for council members, dates of meetings and agenda gathering. The majority of data was gathered from public records listed on the respective city websites. Some agendas listed the invocation with the presenter of a local clergy member or organization and others noted the invocation but did not name the presenter. However, for those that did not list an invocation, this situation was addressed during the interview process. An inquiry was made to determine when the practice changed.

The duration of the video observations was limited to the invocation at the beginning of the meeting. Once the meeting began, the observation of the invocation was very brief since the prayer was typically at the beginning of the session and lasted only a few minutes. The observations were limited to verifying the presence of an invocation at to note if “In God We Trust” was present in the council chamber.

The confidentiality of the individual and the city must be assured. If the participant is known to me, there is trust that I will hold the information in strict confidence. Those council members who do not know me may be more skeptical about the confidentiality of the study. Once they agreed to participate, they were informed that there might be follow-up questions. Before and after the interview, they were advised that they can exit the study at any time.

## **Data Analysis Plan**

For the observation of council meetings, data regarding the person giving the invocation, such as council member, local clergy or a member of the public was captured from the agenda or the introduction. This information was confirmed with the video or audio tape of the meeting. Phrases to encourage people to pray, such as “let’s bow our heads” or “let us pray” were noted since these were phrases cited explicitly in the Cobb County holding that were deemed as proselytizing (Rohr, 2012). The video observations did not capture the audience, council member or staff reactions to determine if there is a perceptible reaction during the invocation. Due to the pandemic, no in-person meetings were held to determine whether the audience bowed their heads or that the chamber was quiet and observant of the prayer. The camera was focused on the invocation speaker and not the audience.

Before each interview, several council agendas from the respective city website were reviewed by the researcher. The council member interview questions started by asking why the elected leader decided to run for the council. The discussion began with some confirming questions regarding demographics and fundamental questions about the invocation policy. The interview questions regarding a self-assessment of political awareness ranging from very liberal to very conservative rather than a specific political party. Religious beliefs were also assessed on a scale of no religion to very religious. See Appendix C. In the interviews, council members were asked if they had heard similar phrases, such as “Let us bow our heads” or “Let us pray,” being used by the speaker to encourage a prayer or to assume a specific posture. Identifying whether the speaker was a

fellow council member or a clergy member was helpful. All cities were checked for the invocation and agendas from 2018 to August 2019 to verify consistency in theory and practice.

The observations of the invocation were confirmed by the interview process, such as the presence on the agenda, who regularly provided the invocation, whether there is an invocation policy, and the participant's familiarity with the policy as well as the implementation. Initially, each interview was hand-coded to identify keywords, phrases, or ideas. I documented observations of hand gestures that emphasized the interviewees' comments. After the hand-coding, I used NVIVO to determine if there were any additional themes.

### **The Interview Process**

The interview questions for the council members address the policy and practice of invocations and the functional and legal implications for local government. The questions and responses identify the knowledge of practices in various cities. Once the council member agreed to participate, a follow-up correspondence or phone call was made to confirm the details of the interview to include date, time and a link to connect to the Zoom technology. The consent for the research was forwarded for review and signature. At the time of the interview, a copy of the consent was emailed again if the participant forgot to sign and return. A verbal conversation was also held to discuss the consent and clarify any concerns.

Citizens who have openly commented on the prayers at various meetings or hold a belief that religion in public forums should not occur were interviewed to determine the

impact of prayer on their participation. Some members from the Americans United for Separation of Church & State, Orange County Chapter were interviewed to further understand their concerns. These interviews brought a community perspective of invocations during public meetings. Attempts were made to obtain a sampling of interviewees from numerous agencies, the data may be slanted towards those who have a strong belief that invocations should be present or those that have an idea that invocations should not be a part of a formal agenda. Therefore, there is a potential degree of self-selection for those who have a strong opinion one way or another on this topic.

With the combination of the interviews from the elected leaders and members of the public, this study provides insight into the practice of invocations at local meetings. Obtaining the opinions of council members who can change the method or initiate deliberation of the body and its policies would be extremely valuable to the larger community of cities. Although some council members may have experienced public outcry about prayers, some less tenured members may not have witnessed an upset citizen complaining about an invocation or those who support the prayers.

Since there is little literature located on this topic, it was important to analyze other case studies and how they examined their agencies against the current case law. The researcher must describe the complexity of the research by thoroughly and genuinely providing the contextual factors and participants so that the readers can obtain a detailed understanding of the information (Ravitch et al., 2016, p. 201). Therefore, a precise description presents the study findings which can be interpreted by the reader and the people under study.

The most challenging aspect of the study design was to assure the questions were not slanted toward a particular answer, but to provide enough information to create a dialogue rather than a simple “yes” or “no” answer. The questions were written and tweaked several times and were practiced aloud to appear more conversational and less confrontational. Before each interview, there was an introduction to the study purpose, to allow the respondent an opportunity to prepare themselves for the context of the questions. Yin (2018, p. 120) advocates that the researcher must reduce the methodological threat created by the conversational tone of the interview without compromising or biasing the responses. The questions should be as accurate as possible and allow for a natural transition from one subject to another. Therefore, questions often began with phrases such as “in your opinion” or “from your perspective” to allow for more natural dialogue. Before asking questions regarding the legal aspects of the Establishment Clause and the presence of minors, a brief script was read regarding these two topics to provide the participant with some context for the upcoming questions.

Before the interview, all participants were advised that their participation was voluntary and that they could remove themselves from the study at any time. All participants that were interviewed for the study, remained in the study population. At the time of the interview, each participant was reminded that the conversation will be recorded. All participants agreed to the recording of the interview. Although the preference was to conduct the interviews in person, due to the pandemic, the only option was the video conferencing technology. Upon interview confirmation, participants were advised that the conversation would be transcribed and they would be given the

opportunity to review the transcript. At the end of the interview, the participants were asked if the researcher could contact them again to clarify any points or if there were follow-up questions. All participants agreed to follow-up if needed. Because case study interviews can be a fluid process, later interviews could spark another line of questioning which was not pursued in earlier interviews. Beyond the formal initial interview, no follow-up questioning was necessary. However, there were follow-up emails and one conversation about gaps or clarification of the transcript. At the end of the formal interview and the opportunity to ask if there were any follow-up questions, the majority of the participants were very curious about the initial idea for the study. They were very interested in the findings and how and if other cities did invocations.

Some of the participants were known to me because of community activity or that I had served with them on county committees. During the time of the data collection, I was not serving as an elected council member. If I was still serving as a city council member, there might be a concern due to voting for certain council members to sit on various county committees with a stipend which may be perceived as an economic benefit. Since my city council term expired in December 2018 due to term limits, there was little potential for an economic conflict of interest. However, the participant should not expect some payback in the form of a donation or endorsement for a future election. There was still the potential for researcher bias if the participants' responses are different than what I expected due to previous knowledge. I was vigilant to assure objectivity.

Interview participants were offered a ten-dollar Starbucks card for their participation as a token for their time and effort in the study. The cost was minimal but



demonstrates appreciation for their time. Therefore, these cards were planned and budgeted before the interviews.

### **Observations**

When the study was designed, it was with the intention that I would be able to attend council meetings in person. These observations would allow me to watch the presenter of the prayer and any references or instructions to the meeting participants. These words could include directives to stand, bow their heads, or encourage people to join in prayer. The literature and court holdings cited these instructions as promoting religion. I could also note the prayer content or faith. I developed Appendix E to capture this information. Unfortunately, due to the 2020 global pandemic, the planned in-person meeting observations could not occur. Instead, I reviewed a sample of council meetings via videotape.

Almost all cities within the county had their meetings available on their websites. The convenience of the publicly available videotape was countered with the inability to view the other participants of the meeting.

The majority of the videotapes focused on the speaker providing the invocation rather than the broader view of the meeting to include the council, staff, and audience. However, almost all presenters began their comments with "Let us pray." The response of the audience could not be observed. The videotape review confirmed the speaker's presence and demonstrated the process that the council member participants cited. In person, scrutiny would have allowed me to observe the invocation and document the

council, staff, and audience behaviors. Although Appendix E was prepared, it was not used due to the inability of in-person observation.

### **Issues of Trustworthiness**

In qualitative research, the terms validity and trustworthiness are routinely cited to suggest the magnitude of “ensuring credibility and rigor” (Ravitch et al., 2016). One approach to validity is transactional validity to assure a high level of accuracy by checking “facts, feelings, experiences, and values or beliefs collected as interpreted” (Cho et al., 2006, p. 321). Transformational validity takes a “deeper, self-reflective, empathic understanding of the researcher while working with the researched” (Cho et al., 2006, p. 322). Validity is considered one of the critical strengths of qualitative research because the findings are crucial to capturing the experiences of the researcher, the participants and the readers of the information through the perspective of the participants (Creswell, 2014, p. 201). The basis for the interviews was to gather data on the current practice and the perceptions of invocations.

Further, it was critical to the accuracy and transferability of the study to verify different sources of data to assure consistency which occurred by examining agendas, videotapes, and the interviews to confirm the invocation practices. Member checking provided accuracy because the participants were afforded the opportunity to review the interview transcripts to verify that their perspectives were accurately captured. Any items that were not clear were confirmed with a brief follow-up phone call or e-mail. Detailed descriptions of the meetings and the invocation process added validity to the findings. To promote a valid study, all interviews, whether they are contradictory to other results, need

to be presented to provide a well-rounded approach to the research (Creswell, 2014).

Therefore, multiple sources of data were used to validate the findings rather than a reliance on a single source. Since the interview questions were open-ended questions, it allowed for more participant dialogue to share information that is limited by scales or instruments (Creswell et al., 2018). However, the researcher must capture the data for analysis, code the information, and create themes throughout the documentation to give the study meaning.

Researcher bias was carefully considered since this study represents my former colleagues throughout the county. My personal journey on this topic caused me to examine my perceptions which have changed throughout the pursuit of this research. My personal experience provided a lens to which this study is viewed. As a Catholic, I prayed regularly, but did not see the need to pray in public outside of the Church. Prior to my election, the invocation was a regular portion of my city council agenda for many years. The invocation process changed slightly depending on the appointed mayor's preference. In some cases, there were local clergy who were asked to present the invocation. During my tenure on the council, the invocation was rotated amongst the council members if there was no volunteer clergy scheduled. I was called upon to provide an occasional invocation. Because I did not pray in public, I often prepared words of inspiration rather than a prayer. However, this personal journey led to a heightened sense of awareness in public forums where prayers are given, such as police promotion ceremonies, chamber of commerce breakfasts, city celebrations, and a ribbon cutting for a Habitat for Humanity home built by a coalition of churches in our city. After being served with litigation with

the County School Board, this researcher contacted the City Council Attorney regarding the county litigation. I notified County Counsel that I would consult the city attorney since I held both elected seats simultaneously. After discussion, I informed the city attorney that I would no longer provide an invocation at the council meetings, in an attempt to insulate the city from potential litigation as a result of the county litigation. Since the middle of 2016 to the end of my council term in December 2018, I did not provide an invocation at a city council meeting.

As the interviews and the study progressed, I evaluated my views on the topic. Therefore, it was crucial that I continually assess my positionality, subjectiveness and assumptions to minimize the influence of the research (Ravitch et al., 2016, p. 386). Although a researcher attempts to be objective at all times, there may be responses that do not reflect the researcher's views which should not be reflected in body language or facial expressions during interviews. Yin (2018, p. 120) cautioned researchers to avoid a "mutual and subtle influence" between the interviewer and interviewee which may influence the "line of inquiry." Considerable preparation was crucial to this researcher's ability to consider the various influences that might be brought to the study. This preparation allowed the researcher to be more comfortable with the questions and be able to elicit detailed responses from the participants.

To achieve dependability, I reviewed agendas and videotapes of meetings prior to the interviews to assure that data collection was consistent and to draw out any inconsistencies in the interview process. By using these various data methods, one can follow the data collection and the interview themes. Although the interview was crucial

to the data gathering, it was only one data mechanism. The research questions were drawn from case studies that evaluated single agencies against court holdings. Because many of the court holdings outlined specific facts to reach their conclusions, there are comparisons to the findings and the court's determination of whether various agencies met their policies.

Quantitative researchers use the term confirmability to address their objectivity. Qualitative researchers acknowledge that they do not seek objectivity, but examine how their biases may influence their research and their interpretations of the data (Ravitch et al., 2016, p. 189). Depending on one's perspective, one could be more tolerant of prayer practices or take all measures to abolish legislative prayer. However, the various views are the very heart of this study. The study is not intended to find the perfect solutions for all agencies, but to provide information to allow elected leaders to examine their practices and its impact on others.

### **Ethical Procedures**

The study participants were selected by reviewing the city websites within the county and verified by the Orange County Registrar of Voters ([ocvote.gov](http://ocvote.gov)) to determine which council members would meet the criteria of at least two years of service.

The most critical, foreseeable issue for this study was confidentiality and the ability of the study participant to remain anonymous in the study findings. The interviews were recorded to ensure proper data capture of the responses. The participants were reassured that the recordings will be held in confidence and only be used for the study. Some council members may view prayer as a sensitive issue and may not be as

forthcoming or candid if they believe that their opinions would be available to their political opponents, constituents, or council colleagues. More likely, they would not want this discussion to become a campaign issue whether it is negative or positive. Others welcomed the opportunity to provide strong opinions to espouse prayer at meetings and others offered a strong belief that prayer did not belong in the public setting.

The University Institutional Review Board (IRB) approved the study process in August of 2020 prior to the data collection in the summer and fall of 2020. The IRB approval number for this study is 08-13-20-0598597.

A written consent outlined how the study data will be captured and how the information will be protected. The emphasis on confidentiality was crucial to obtain accurate and candid information which creates value for the study. Video conference interviews were conducted privately in the participants' home or office and I was in my home office. This privacy assured accurate recording, reduced distractions, and maintained the confidentiality of responses. Although in-person interviews were preferred, the 2020-21 pandemic limited the interviews to remote meetings with video conferencing and assisted with the participants' time constraints. Following the interview, the respondents were assured of confidentiality and provided guidance regarding their right to withdraw from the study. Although the respondents had the opportunity to withdraw, all participants remained in the study.

Data were stored on a flash drive with a routine backup and the files encrypted to assure the integrity of the information. A transcription service was initially planned, but I determined that I would personally transcribe the interviews to provide an additional

layer of confidentiality. Data will be retained throughout the study and then all digital information will be destroyed as per the Institutional Review Board requirements.

Another ethical consideration is whether the participants would expect a campaign donation or endorsement in a future election from me for their participation in this study. I confirmed with participants that there is no specific pay, endorsement, donation, or expected remuneration for their participation other than a gift card of a nominal value. An endorsement for an upcoming election should not be expected by the elected participant or me. However, the study involvement created a new connection that was not present between the participant and me.

Although council members are not expected to be constitutional scholars and many are not attorneys, they should consider the practical application of invocations in the context of their city council and their constituents' expectations. By ascertaining the successes and pitfalls from other cities, leaders can apply these lessons by policy diffusion. Gaining public perspectives allows for policy feedback to assist leaders in decision-making to "compare the same policies over time in different contexts" (Weible et al., 2018, p. 334).

Butler and Pereira (2018) indicated that there are reasons to believe that partisanship may be significant in policy diffusion. Acting similarly to other city councils may also provide cover for implementing an unpopular policy among the residents. Partisan-based diffusion may surface if leaders use partisanship to implement a certain policy because they lack expertise and time to do a full analysis for themselves (Butler & Pereira, 2018).

## Summary

This chapter discussed the presence of prayer and how it might affect the public's ability to fully participate. The ability of citizens to meaningfully address their leaders is a major tenet of our democracy. Secondly, this study examined whether the presence of prayer and the actions of elected leaders violate the Establishment Clause of the First Amendment. The essential methodology of the research has been discussed and how the study was conducted.

Based on the literature review of cases and legal analyses, the interview questions were crafted to obtain information about the invocation practices of the various cities within Orange County, California. The challenge was to write interview questions that were consistent with the findings in the literature and court holdings that examined the intersection of religion and government. Identifying the potential study participants was an additional challenge because the sample pool would be much broader if the selection and interviews had taken place before the November 2018 election.

The multiple case study methodology was employed to draw contrasts and similarities between the various cities and the council members who established, participated, and implemented the current practices. Obtaining the demographic data on political party and religious preference helped frame the perspectives of the respondents to draw themes. A few declined because they were leaving office due to term limits within the upcoming months. Since the study is confidential and the 2018 election was over, I thought the council members would be willing to share their views more readily. By interviewing members of the public, the reader will be able to understand how current



practices affect the public and give feedback to the elected leaders. Similarly, elected leaders can duplicate effective policies from others' experience to inform their own choices (Miller et al., 2018) rather than developing their policies in a vacuum.

The invocation policy was discussed but most were not well-versed in their policy but could explain their practices. The respective city agendas were reviewed to determine whether the invocation was on the agenda and who presented the prayer. The invocation information was confirmed by examining the videotape of the meeting and compared with the agenda. The interviewees' date of election was obtained through the respective city websites and the County Registrar of Voters then confirmed during the interview. Although in-person meetings were planned, due to the 2020 pandemic, the interviews were conducted via video conference technology to ensure the safety of the participants. Since the participants could be interviewed in the comfort of their home or office, this allowed for more flexible scheduling. Ethical considerations of prior knowledge of the participants and maintaining confidentiality were paramount in obtaining the respondents' trust and willing participation in this study. The participants were informed that they could remove themselves from the study at any point in time, but all participants remained in the study. Trust and willingness were crucial in obtaining candid responses. The only compensation for participating in the survey was a Starbucks gift card of nominal value. There were no promises of a future endorsement or donation for the participants to maintain the integrity of the study.

Chapter 4 will describe the council settings, the demographics of the participants, the data collection and data analysis. The purpose of this qualitative study explored the of

impact of legislative prayer upon meeting participants at city council meetings in this Southern California County and whether the words or actions of the legislative body violate the Establishment Clause. Secondly, the study examined the type of prayer or practices that would violate the Establishment Clause of the First Amendment of the U.S. Constitution (U.S. Const. Amend. I).

The data was analyzed to determine specific themes or whether there were any consistencies between demographics and viewpoints. The data was examined against the research question to draw upon any patterns or ideas.

## Chapter 4: Results

### **Introduction**

The purpose of this qualitative study explored the of impact of legislative prayer upon meeting participants at city council meetings in this Southern California County and whether the words or actions of the legislative body violate the Establishment Clause. Secondly, the study examined the type of prayer or practices that would violate the Establishment Clause of the First Amendment of the U.S. Constitution (U.S. Const. Amend. I.).

The public meetings were focused on city councils within the county area. The majority, 25 of the 34 cities within the county, have invocations on their agendas. Council members should be aware of how their practices and policies affect their residents and their ability to participate in public meetings. The councils should periodically examine any routine practices to ensure that the public feels welcome and has the ability to fully participate in meetings. All participants cited the presence of an invocation as a mechanism to establish the tenor of the meeting.

Although many council members are not attorneys, they should have a basic understanding of current laws to avoid any allegations of violating the Establishment Clause of the U.S. Constitution (U.S. Const. Amend. I.). Without that general understanding, their respective cities may be subject to disengaged residents, legal disputes, and accusations of squandering taxpayer dollars.

The two primary research questions are:

RQ1: How does the presence of prayer impact constituents' ability to participate in engaging their local elected leaders?

RQ2: How does and what type of prayer violate the Establishment Clause of the First Amendment of the U.S. Constitution?

This chapter will describe the sample of council members and public members who participated in the study and data collection methodologies. The study sample consisted of council members and community members throughout Orange County. They were interviewed regarding their perception of invocations before public meetings. The venue of the study, changed from in-person council to remote meetings due to the public health crisis of 2020. The data will be examined with an analysis of trustworthiness. Based on these interviews, specific themes emerged regarding the policies and practices of invocations. A discussion regarding how this information could be applied in the future will follow.

### **Setting**

The study setting is Orange County, California. Within the county, there are 34 cities with 34 city councils. During the original assessment of cities in August 2019, some cities had transitioned from "at large" Council elections to district elections to become more representative of the local population. Other cities continued with "at large" elections. Some cities have term limits, and other cities have long-standing council members due to the absence of term limits. According to their respective city websites, 16 council members have served more than ten years, including five who have served more than 20 years due to the lack of term limits. Between August 2019 and the

interviews beginning in late 2020, there was one death, two resignations, and one vacant seat.

In the county, 28 city councils had five council members and five cities, mainly the larger cities, had seven member councils. Most councils had scheduled meetings twice per month, with four cities having monthly meetings. The local cable stations broadcasted most sessions, and rebroadcasts were common. In addition, most city websites, except for two, had video archives of their meetings. The availability of video allowed city residents to view the meetings, but those without internet access or the technology could not view the meetings. However, during 2020, there were numerous special meetings for all cities that reflected the public health crisis of the COVID-19 virus in early 2020.

By March 2020, due to the COVID-19 pandemic, most council meetings transitioned from the traditional in-person format to a remote environment using video or audio technology due to the California Stay-at-Home order (Robinson, 2020). Therefore, I could not attend council meetings in person. However, as noted above many cities broadcast their meetings on local cable and replays were available. Some towns had several years of video archives of their meetings readily available, some had audio-only, and others only had agendas and minutes on their websites. I also reviewed the video archives to assess the in-person meeting structure for their early 2020 meetings. Ten cities had "In God We Trust" in their city council chamber, and nine of those cities listed invocations on their agendas.

One city listed an invocation in August of 2019, but by October 2019, the city council agenda did not reflect an invocation. Of the 34 cities, 25 cities listed "invocations" on their city council agendas. The remaining cities did not document a prayer on their agenda, although one city listed a "moment of solemn expression."

### **Demographics**

To assess the practice of invocations, city council members who had served at least two years at the time of data collection were asked to participate in the study. Most cities had two council meetings per month and four cities had monthly meetings, therefore, a minimum of two years of experience would be sufficient to obtain their viewpoints of the invocation practice. The council members' biographies determined years of service on their respective city websites. If the election year was not present, I consulted the Orange County Registrar of Voters ([ocvote.gov](http://ocvote.gov)) website for prior elections to determine the original election date. Throughout the county, 138 members served on councils that had invocations, and there were 32 members from cities without a prayer. Of those eligible members, 112 had publicly available emails and they were contacted to participate. All eligible participants who did not respond to the initial invitation were approached at least twice via their public email address. Some council members declined due to term limits in the November 2020 election or were running for re-election and did not have time in their schedules for the interview. In one case, the city clerk declined participation for the entire council. Other council members did not respond to the invitation. Three additional council members indicated that they would be willing to participate but did not respond to follow-up requests to schedule interviews.

Seven council members agreed to participate from six different cities within the county. Four cities of the represented cities had an invocation listed on their city council agenda, with two towns having no invocation listed. The council members consisted of three men and four women with experience ranging from four to 12 years with an average of six years. Their political beliefs ranged from "very liberal" to "very conservative." Their self-identified religious beliefs ranged from "some religion" to "very religious." None of the council members indicated that they had no religious beliefs. One council member explained that although she regularly attended church, she considered herself more spiritual than religious. Although a specific religion was an optional question, all council members responded with two identifying as Catholic, two as Protestant, one Presbyterian, one Christian, and one of the Jewish faith. Although I did not ask about occupation during the interview, three of the council members indicated that they were attorneys, one an educator, and one a small business owner. The others did not reveal their occupation or employment status.

Five members of the public agreed to participate. Four of the public members were from cities different than the council members. Only one public member was from the same city as one of the council members, representing one of the larger cities in the county. These members represented cities from the northern and southern portion of the county along with one beach city. The public participants were active in county issues and frequently attended council, school board, and other county meetings. The public members who accepted the invitation were all female and political beliefs ranged from "moderate" to "very liberal." Their religious beliefs ranged from "no religious beliefs" to

"religious." The three identified with religious beliefs included one Protestant and two of the Jewish faith. In the course of the interview, one indicated that she was an attorney and another an educator. One of the public participants was a former school board member. Other participants did not share their occupation. Overall, 10 cities were represented by either council or public members.

### **Data Collection**

The qualitative interviews took place between August 28 and November 27, 2020. There was a standard set of questions with prompts as needed (Appendix A, B). The public members had similar but slightly different questions due to their differing attendance roles (Appendix C). The original intent was to interview the participants in person with videoconferencing as an option for scheduling purposes. Due to the California public health COVID-19 restrictions, all participants were interviewed via Zoom videoconferencing by appointment rather than in person.

Scheduling proved to be a bit problematic due to the 2020 election being in full swing. Five of the seven council members were running for re-election or another office. In another case, the participant reached a term limitation. Of the five public members, some mentioned that they were also working on various political campaigns. With the great interest of the national and local elections, some participants were not always timely with their communication and follow-up for scheduling.

All interviewees were reminded that the conversation would be recorded for audio and video to capture the conversation. With the pandemic and the widespread use of teleconferencing, all participants were familiar with the Zoom technology and the ease of



a two-person conference. There were minor technical difficulties with internet connectivity that slightly impacted the sound or video quality. In those cases, I clarified the comments of the interviewee or asked them to repeat their responses. In one instance, one interviewee lost connectivity but quickly restored the connection.

The participants welcomed the opportunity to meet remotely. Since all interviews were conducted remotely via Zoom, this created consistency in the data capture. I conducted the videoconferencing from my home office and the participants' homes with no interruptions or additional people in the conference. The initial questions were demographic in nature such as religion and political leanings. The interview questions are listed in Appendices C and D. For each interview, I had the questions on a worksheet with space for notes, but my notetaking was minimal. Since the conversation was recorded, I could focus on specific gestures or facial expressions. Due to the remote nature of the interviews, I was not entirely privy to the participants' full body language during the interviews. However, the ability to review the Zoom videotape while capturing the audio helped identify hand gestures such as "air quotes" or a downward hand motion when she referenced a "slippery slope."

The interviews ranged from approximately 25 to 60 minutes, depending on the detail of the answers. The interviews were conducted via Zoom videoconferencing and recorded for both audio and video. Although the Zoom technology had voice recognition, it was not wholly accurate. After the interviews, the audio and video were reviewed and transcribed with no third-party transcription. Although there was voice recognition, each interview took several hours to transcribe to determine the accuracy of the conversation.

The time-stamped transcription was used to locate specific portions of the discussion on the videoconference. For the transcription, I documented the time for each question and response. The use of Zoom technology eliminated the need for additional audio recordings. In a few situations, the technology did not capture the correct person for one-word answers such as "yes" or "okay." These errors were corrected in the transcription to attribute the question or response to the correct person before sending to the participants.

The participants received the complete transcription for review and correction. After the first few participants asked whether they repeated themselves a few times, I began to tell subsequent participants that I would transcribe everything as said. I explained that when speaking, one doesn't always speak in complete sentences or might repeat themselves as they pondered the response to a question. This repetition of phrases or words was also present as I posed follow-up questions. Occasionally, I repeated myself, which was documented in the transcripts.

### **Data Analysis**

The study was designed in 2019 before the COVID-19 pandemic swept the United States in 2020. To prepare for the research, I reviewed the city websites to obtain the city council agendas of all 34 cities in Orange County. In December 2019, this list captured whether the agendas had an invocation, the days and times of the meetings, the list of council members' names, and email addresses. I modified the list to include the city website, whether the city had moved to district elections, and phone numbers. The links to the city websites were crucial as I confirmed participants and reviewed the presence of an invocation on the agendas. This spreadsheet allowed me to quickly access agendas and

council meeting audio and videotapes to verify information. I checked all city council agendas within the county, and there was a stable number of cities with prayers and those without prayers. However, when the pandemic reached the United States and California in March 2020, city councils moved to remote council meetings and limited or eliminated the public involvement.

When the questions were designed, they centered on the presence and practice policy aspects of the invocation, the impact and purpose of the invocation, litigation, diversity of the presenters, and the presence of minors. I expected to see more responses reflective of the politically conservative nature of Orange County (St. John et al., 2021). When asked about the invocations, I anticipated council members would discuss the impact of the prayers and why invocations were imperative to their proceedings. The council members generally expressed support for the invocation policies. However, the public members' response advocated for the "separation of church and state." When asked about potential litigation, most council members were not knowledgeable about previous court decisions. They did not openly ponder the use of taxpayer-funded litigation or the fiduciary responsibility for avoiding potential lawsuits.

After each interview, I reflected on the main ideas as phrases or ideas from each interview which was the first attempt at coding the responses. After transcription, I marked passages for phrases, names, or nouns that might identify the participant or the city to preserve anonymity as well as another attempt at coding the ideas. Each participant received the transcribed interviews for review and correction with highlighted portions of identifiable information that would be redacted. After the participants

confirmed the accuracy of the transcribed discussions, any changes to the main ideas were noted in the margins. I hand-coded all interviews and reviewed again for any missed ideas. Nearly 30 unique codes were organized into approximately 12 categories and then into six overarching themes. NVIVO software was used to cross-check for any missed ideas or themes. Although the software did not identify any additional themes, it did reinforce the identified themes.

Six major themes emerged from the interviews. The first theme revolved around the workings of the city council meetings, the invocation policy, and the meeting organization. Because of the global pandemic, many council meetings were adjusted to meet the California Governor's Executive Order (2020, March 19) guidelines. The second theme discussed the presence of prayer at the council meetings and how that was perceived by the participants. The presence of minors was considered in light of parental rights, educational opportunities, and whether children were coerced or influenced by prayers. Third, every participant noted that the invocation set the tone for the sessions. The tone became a separate theme from the meeting process because the various participants explained how the prayers impacted the manner of the meetings. Fourth, the positionality of the council will be discussed because of the physical setting of the council chamber. Usually, the council members sat on an elevated platform or dais, which projected a sense of authority since this elevation was higher than the other participants of the meeting. This raised platform was clearly visible in the videos. However, in meetings during the pandemic, the council was not on a dais because of the remote nature of the meetings. However, the council was usually in a panelist format that

only allowed the council and some staff to be visible. Fifth, the issue of diversity and how prayer created issues of inclusion and exclusion, the presence of various faiths, and how the faith community might recognize faith as city affiliated. Lastly, the issue of litigation was identified by the use of taxpayer dollars and the fiduciary responsibility of the council to avoid risk situations that may result in a financial loss to their city and constituents. However, many of the participants comments related to more than one theme.

A few issues surfaced when I asked the interviewees about any additional information they would add to the topic. Some examples included discussions at school functions, the presence of “In God We Trust” symbols in council chambers, and the addition of “one nation under God” in the Pledge of Allegiance.

### **Theme 1: The Routine Nature of Council Meetings**

Many council members cited the routine nature of meetings with the Pledge of Allegiance and the invocation. One council member described the Pledge and invocation as “routine and rote.” They mentioned that the invocation set the tone for the public portion of their meetings. Both council members and community members cited the issues of inclusion and exclusion factors from the prayer. Throughout the interviews, all the participants believed that invocations set the tone for the meetings. The primary theme of “tone” arose in both a positive and negative manner from both the council members and the public members.

One council member noted “I feel like acknowledging [the invocation] at the beginning of the meeting is similar to the flag salute and just out of respect and honor,

honor God and honor your country.” Another council member referred to the invocation presences is “very straightforward” and the “designated person to begin the meeting with an invocation.” Another council member indicated that the invocation “allows us to create a relationship and a network with the faith-based communities” as a benefit to the invocation as part of the council’s routine.

For most council meetings, closed session meetings usually preceded the open session of the council. Closed session meetings routinely include litigation, real estate, or labor negotiations, often leading to contentious discussions between council members. Policy and political differences elevated the discussion. From the council perspective, prayers helped manage the tone of the meeting, especially after particularly antagonistic closed session meetings. The tone was expected to carry over to the public session. One council member indicated his appreciation of the invocation “I think it calms us down and lets us hear some positive feedback.”

Most council members did not question the presence of prayer because it had been on the agenda before their election, and they accepted it as a routine portion of the meeting. One council member explained “I was elected and then sworn in, invocations were already a part of the council meeting, so I’m not sure how that started.” Another council member indicated “The invocation proceeds right after the Pledge of Allegiance and people are requested in advance remain standing after the Pledge, if able.”

In one city that did not have an invocation, the council member indicated “There’s never been an invocation before council meetings in the city.” She explained that she was “intrigued” by my request to participate since her city had only informal discussions

about an invocation. In Orange County, there are several county committees and commissions that council members are assigned to represent their city's interests. During the interviews, two council members from the cities without an invocation mentioned that they served on another county committee that had an invocation. According to the two interviewees, this committee listed the invocation on their agenda and rotated the prayer among the city representatives.

Generally, from the council member perspective the invocation was an accepted, routine matter for the agenda. There was little consideration of why the prayer was present. From the public viewpoint, they also believed that the invocation was a rote portion of the agenda and present by convention. They expressed that the prayer and Pledge of Allegiance were treated in tandem.

## **Theme 2: Presence of Prayer at Council Meetings**

To lay the foundation for the analysis, the process and presence of the invocation from the council members' and public members' points of view is vital to understand. The media has described Orange County as a historically conservative stronghold (Morain, 2019). Some of the council members attended council meetings before being elected so that they also had the perspective as a community member. In most cases, the sitting mayor selected the clergy, the frequency, and the presence of prayer. Some cities have a directly elected mayor, and others choose their mayor on an annual rotating basis among the council members. All of the council members with invocations on their agendas indicated there was nothing unusual about its presence. Everyone indicated that the gathering was asked to stand for the Pledge of Allegiance and remain standing for the

prayer or to stand for the invocation and remain standing for the Pledge of Allegiance. Most were unfamiliar with any policy relating to invocation, except for one council member from a town that did not have an invocation. She indicated that she agreed to participate in this study because her city did not have an invocation and was very interested in the topic. A few mentioned that they thought there was a time limit, and another indicated that he did not believe there was a time, but "no one has gone on very long." None of the council members could state the time limit for an invocation or guidance on the content.

Most council members indicated that they had not had any official conversations on the dais or their respective agendas about invocations. Some had private, informal discussions about whether the invocation should be on the agenda. For one city that did not have an invocation, one council member stated "Occasionally, different council members bring it up privately," but then stated "there's never been a [formal] council discussion about it." Two other council members stated that they had informally questioned the presence of the prayer on their city's agenda. However, none of the conversations resulted in a formal council discussion as an agenda item.

One council member indicated that the "invocation was already in place" when she was elected. One council member stated that he had attended council meetings before being elected, and there was always "someone of faith" present to give a prayer "in their respective traditions." That same routine continued after he was elected.

One council member described the invocation as "a fixture" when she was elected. During her term, the invocation transitioned from the council members to



members of the faith community but could not recall exactly when this change occurred. By mid-2020, the invocation was no longer present on the agenda, but she couldn't recall if there was an informal discussion about removing it or if it was the mayor's decision. However, she stated that the outgoing mayor was "very clear" about keeping the invocations on the agenda. After months of remote meetings, only recently was the invocation given by a sitting council member. Per the council member, the invocations were not formally discussed, but the mayor had made some changes to the practice.

In one city that didn't have the invocation on the council agenda, a council member indicated that a few council members had informally raised the question of having an invocation. During her tenure, the council did not place the issue on the agenda for a formal discussion. She indicated that there had been an occasional reference to the National Day of Prayer or a similar event, but that had been rare. She expressed that she appreciates a "well done" prayer and mentioned that her colleagues are of various religions. However, she stated that if her city's residents had thoughts one way or another, she would be "more inclined to go with what their view was if there was a big objection." One council member expressed that the content of prayer is essential. If someone says "Father," "God," or "Jesus Christ, we ask your blessing," she feels that would be "inappropriate for a group that represents the entire public," or comprised different faiths. She thought that an "ecumenical prayer" that refers to the "Eternal One" or "Creator of all things" is uplifting.

For another council member, the invocation is "just always part of the agenda." When he was the mayor, he would suggest a person for the invocation to the city clerk,

and she would contact them. As a previous planning commissioner, he asked for the invocation on the Planning Commission agenda. He stated that the invocation is "always something I wanted to be a part of the meetings." That request was accommodated by the city.

One council member noted that his city had recently changed from having an invocation to not having one, but thought it had something to do with remote meetings during the COVID-19 pandemic. As for the guidelines, he could not remember if there were any invocations that "stood out that have been offensive or gone too far." He could not recall any objections to prayer except that "maybe the state or somebody has objected to closing in Jesus' name, but I have heard that done."

Another council member who wanted a prayer stated, "hopefully, it's just a prayer that we're asking the Lord to give us wisdom and to have his hand on the meeting, not let it get out of control." His city has rotated the invocation between council members and clergy, and he shared that he has provided the invocation "many, many times." He indicated that other county committees had asked him to give a prayer because he doesn't have to prepare or write it down since "it's something that comes naturally."

When this council member attended council meetings before being elected, there was always clergy, such as Muslim, Jewish, Christian, Buddhist, or "someone of faith" present to give a prayer "in their respective traditions." Now elected, and under the current mayor, meetings were held remotely due to the COVID-19 restrictions, and the council members started a rotation to provide the invocation. He did not believe that the policy changed since there was always "someone of faith, a formal person for the

tradition." Still, he hoped that "there's always an effort to assure a representational effort of the various faiths that exist, more inclusivity." He further noted that once the meetings became remote and fully telephonic, the mayor did not want anyone outside of the council or staff on the phone calls. As he pondered the question of the invocation practice, he smiled, noting that it was "strange because not even God can come into our meeting or a formal representative from God."

One council member indicated that she would give a prayer from her religion if asked. Another council member stated that she had never given a prayer at a council meeting but has done so in other settings when someone didn't show up. She offered so "the event could have a prayer." In one city, the city's police or fire chaplains provided the invocations. There are no rules or policy "we really don't dictate that; we just allow that Chaplain to decide kind of what's on his heart that night."

The public members who were study participants were regular attendees at City Council, Board of Supervisors, and County and local school board meetings. Because of their experience at different meetings, they had a broader view of public meetings in the county, and their opinions and examples reflected various types of meetings. Their additional comments after the formal questions demonstrated their familiarity of the other county meetings, and community and school events. The public study participants also described the routine nature of the invocation and the Pledge of Allegiance at these meetings. While some of the respondents had strong objections to having invocations, others recognized the challenges of having guidelines for prayer. From the public participants' point of view, some indicated that the invocations were "merely

unnecessary" or that the invocations seem "both inappropriate and unnecessary." Another stated that the prayer is an "unnecessary part of the meeting" and "I just wouldn't do it."

When asked if they knew of any guidelines for the invocations, one responded that it could be "very hard to figure out exactly what is and what is not permissible." If there were guidelines, another stated, "you cannot restrict [the prayer], and you cannot tell them to include certain things because that would be the government writing the prayer."

For the council members, most did not see the prayers as an attempt to establish a religion. Most believed that they had enough variety of faiths represented, but some felt that their respective organization could be more intentional to obtain a more comprehensive mixture. Some cities had the "In God We Trust" logo in their chambers. Generally, they believed that prayers did not establish a religion because they did not control or direct the prayer. Yet, most did not know their invocation policy and therefore, could not be certain whether their policy or practice violated the Establishment Clause (U.S. Const. Amend. I.).

The public members perceived that the prayers were an establishment of religion. Some believed that any prayer associated with a particular religion was characterized as an attempt to establish a religion. Each of the public members believed that any prayer violates the Establishment Clause (U.S. Const. Amend. I.).

One public member indicated, "virtually every kind of prayer in my own view would violate the Establishment Clause." She noted that anyone could pray before or during the meeting or pray for the legislators. However, the idea of introducing prayer

into a governmental discussion should not happen. Another indicated, "Prayer in virtually every way in which I've ever seen it delivered generally violates the Establishment Clause." This perception can be "avoided just by having people getting themselves into the spiritual place they need to be on their own."

Another member acknowledged that many boards and councils try to "write policies that say the right things" and "set up a system that is intended to implement the right things" with the intent to be inclusive. However, there will be others that won't be satisfied. With prayers, there was a belief that this was an attempt to infuse religion when there should be a separation between church and state.

Most participants answered the question of free speech and tradition through the lens of public comments. One public member believed that free speech and the tradition of prayer "don't need to be balanced. People have free exercise in their religion; they have free speech. They can pray whenever they want. The religious exercise should not be on the agenda for [a] public body" and those who do will go "right down the slippery slope." She emphasized the words with a whistle and a downward hand motion. If the body starts to "edit or control what happens" and identify who to include and exclude, then the "government is establishing a religion." The use of the word "invocation" on the agenda "breaches the wall because invocation means to pray." She simply replied that "Prayer does not belong on a public agenda."

However, she acknowledges that councils may not remove religion from public meetings because it is "part of the [religious] culture of some organizations" emphasizing this religious aspect with air quotes. She explained that it is not the business of the

government to promote or prohibit religion because if you involve the government, it goes back to the wall of separation. She mentioned that some politicians have used "religion as a weapon" to hurt or help people, and then it "becomes discriminatory." Generally, most responded that public comment could be used for a prayer which would be free speech. However, once the invocation is on the agenda, that subjects the public in an entirely separate way.

When minors are present, prayer could be more influential since this act of worship comes from a position of authority. Children may participate in the prayer at the behest of the leader council member, but may not understand the significance of the prayer. Most council members did not believe that the invocation affected minors, primarily because they did not regularly have younger citizens in attendance. Many had experienced minors' presence briefly to get an award or high school students attending for a class requirement. Most council members did not have an issue with minors' attendance or did not believe that the presence of children should alter the invocation policy.

One indicated that [the invocation] was not "unduly influential on any minor." However, one council member stated, "we don't want certain children to feel isolated or indoctrinated in any way." The council should be "conducting its business in the most neutral, unbiased way," therefore, a child who might be Buddhist, Muslim, or comes from an atheist family "will immediately feel different once prayers are infused."

Some respondents considered this question from an educational perspective. The presence of minors "calls for a variety of prayer traditions to be presented" because they

"are learning about faith as they grow up" or "it is good for them to see that there is a variety [of faiths]."

Public participants expressed that adults' discomfort is just as crucial as the discomfort of minors. One noted that many people fled their countries due to religious persecution and "to ring the bell of religion and government...can wreak more trauma on those who have lived through that persecution." One explained that "Children are the least capable of understanding the subtleties of why something is being done." When instructed by adults to stand or bow their heads, it may appear "mandatory. It gives a certain cachet of acceptability and preferability if they hear a prayer from a certain religion and "don't really have the maturity to choose to participate or not." Another expressed "I think it's even more dangerous to have invocations in any setting where children might be unduly influenced."

### **Theme 3: The Invocation Sets the Tone**

The interview questions did not ask a specific question about how the invocation affects the "tone" of the meeting. However, every council and public member participant mentioned that the invocation set the tone for the meeting. Some council members indicated that prayer helped transition the contentious nature of the closed session to the open general session which is calmer and visible to the public. The invocation helped to comfort some participants, but the prayers created discomfort and a sense of divisiveness for others. The public members recognized the challenges of having a prayer during a public meeting.

Since the closed session can be antagonistic, the transition to the following open session may require a change in attitude or presentation by the council. The council participants described closed sessions as "serious" because the discussion topics may include litigation or labor negotiations. Council members expressed that closed session discussions can be "heated" or "feelings can be bruised," and the moment of prayer "allows everybody to kind of chill out, almost like a meditation, we can listen and let our hearts and minds cool down."

Another council member mentioned the transition from council closed session, which can be a "very tough meeting." The prayer and flag salute "gives me pause, and it gives me a moment to take a deep breath and remember why I'm there." She believes that it is "uplifting and centering and helps with the transition from closed to open session to do the "people's business." The transition gives her a "chance to kind of catch my breath and has that moment of just a reminder of the position that I am in."

One council member indicated that the invocation set a tone for "civility, for coming together" and can help the council consider the greater good and "set the tone and to create a spirit, or a sense of camaraderie without involving religion." For him, that tone-setting is the "goal of commencing an invocation." For another, the invocation is "tone-setting" and personally reminds him that "we are working on behalf of the community, despite political beliefs." However, some suggested other methods of uplifting and empowerment without using religion. "We are here to do the public's work," which is a "sacred obligation," but "if we can receive any guidance on what the right thing is, we should try to be open to it."



Another council member cited that the meeting commencement becomes "routine and rote." Therefore, it is easy to start the meeting with the Pledge of Allegiance, the invocation, and roll call to begin the session. As a result, it is "easy to forget what inspirational words may have been said in the beginning." One council member stated that she tries to internalize the words, and "even if I am not consciously aware of it as I go along, it'll carry me through."

One council member stated, "I think it is necessary" and "I think that it just sets a good tone for the meeting" a few different times during our conversation. When asked about the significance, this council member indicated that "we need all of the divine guidance we could get." He also believed that "we are in very trying times for the country" and "I think we ought to have an invocation and even a long prayer before every meeting. I don't think that we can overdo it." One council member indicated that he pays attention to the invocation and believes it sets a "good tone" and likes to have it. This same council member discussed his mother's insistence on church and his strong religious upbringing. He stated that he had never had issues with invocations, and having "invocations shows that we are heading in the right direction and we're certainly veering off from the right direction anymore with what's going on in the country." As a reflection of the current times, he indicated, "we need all the prayer we can get. I pray for the country like I've never done before because we're in deep trouble right now. We got to get things back on the right track."

While one council member believed that prayer could "engage one another in the spirit of the sisterhood." However, he thought that religion or the "illusion of a greater

good could be weaponized." In his opinion, the "value of the invocation is to start on a good note, a positive note, spiritually and mentally." Although, once his council meeting gets started, there is "no interest in reaching across" or "in discussion and conversation." He expressed concern that the beneficial tone of the invocation "rings hollow as the meeting plays out." He further expressed concern that the "[former]President [Trump] violates every evangelical principle known, and it's still a good word from God." He believed that the invocations could set a "good tone" and it was educational when many faiths would give the invocation. He also thought [prayer] was a reminder of inclusivity, faith, and "our place in the world." Although he stated that "it is hard to listen to the invocation when you just feel like the practice is sort of out of whack with the words being said." However, this council member indicated that the words could be an "inspiration and hopeful, and a reminder of a symbolic act does have and can be meaningful if one chooses to take it at its worth."

In another city, the council member indicated that her council changed the policy about ten years ago "to inject more religion into the ceremony of the city council." She believed that there were some parameters associated with the prayer but was not aware of specifics. "There doesn't seem to be any consistency with either an ecumenical or an inclusivity of prayers offered." She believes that the council meetings are an "opportunity to make people in our community uncomfortable" with the proceedings and is "used to include different religions from those in attendance, and it strikes a poor note in practice."

Even if various presenters were available, she indicated that "there is a clear bias toward Christianity, and it does not reflect the diversity of our community." Even if there

was a "broader range," she didn't believe that it would make people "who are not comfortable with religion and government feel welcome in our meetings." The council member shared that the invocation acts as a "statement of the ruling majority of Christianity over the proceedings and a call to invoke those principles within city government." As for the members and public present, an invocation "serves to really make a lot of people uncomfortable. I have not had a positive experience with the invocation."

Some council members believed that it was "very uncomfortable" to be in a meeting where "Jesus Christ is called upon to guide our thoughts" when other members of the council do "not ascribe to religions that include Jesus Christ as a deity." With a long history of persecution in other faiths, to bring "faith into government is an uncomfortable position" for the council.

Another council member reflected on the invocation, "I believe that higher power can give us strength and wisdom and guidance." The invocation "brings me comfort that we acknowledge that before our meeting, that it doesn't all rest on our shoulders, that there's something bigger going on in the world." She appreciated the chaplains' prayers and "just to listen and to tap into that still small voice and that wisdom that we can get."

One council member indicated that the invocation is an "acknowledgment and similar to our Constitution and our money and everything else, the acknowledgment that our nation is under God." For her, acknowledging the invocation is "similar to the flag salute and just out of respect and honor, honor God and honor your country."

Most of the members of the public discussed the tone that the invocation set for the meeting. The comments ranged from toleration to prohibition of the invocation. When asked if the invocation deterred people from coming to a public forum, one person noted that "the prayer doesn't belong there" but perceived that it did not "necessarily bother [her] tremendously." She explained that "they tolerate it." She also noted that she "can love and respect" those with deep religious faith who "wish to rise and be attentive and in a reverent mood." For some, "it is like music, and if the prayer is familiar, you will like it."

One participant who is an attorney cited some court cases which describe the purpose of the invocation to "create thoughtful moments to elevate, to inspire people to take an elevated position towards themselves in their relations to their community." She sees that some prayers can uplift, but when they take on a "denominational sort of signals," it can be hard to legislate and advocates to "stay away from prayer as an invocation."

For one, prayer could be perceived as "exploitation" or used as a "moment for political purposes." Another stated her personal preference is that "it isn't appropriate in the public square to have a prayer because I do believe in the separation of church and state." Another respondent stated that she does not like it if the prayer becomes political rather than a "meaningful, spiritual moment." Another simply said a religious invocation is "not appropriate." The public members recognized the value of the prayer for some people, but generally believed the prayers did not belong in a public meeting.

**Theme 4: The Positionality of Council Members**

Because the council members are elected, they are perceived as leaders in their respective communities. As leaders, most citizens will want to follow what the leader expects from the residents. Therefore, the position that the council member holds is respected by the citizens and the citizens will likely respond favorably when asked to perform a task. In this instance, the audience members will join in the prayer or a position of reverence if asked to participate in the invocation.

In Orange County, the city councils are a part-time model of government, and many juggle full-time jobs with their council responsibilities. There may be a concern that only those who can afford to serve or raise funds to campaign will get elected. In some cities, the elected council members do not reflect the community's diversity. In response to potential legal challenges, some cities have recently changed to district rather than "at-large" elections. Zale (2019) opined that a part-time city council has "less power – in terms of capacity, resources and political capital – than a full-time city council." If the constituents directly elect the mayor, the mayor may have more political power than if the mayor's role is rotated and may be reflective of the selection of the invocators. City councils can establish city policies through the enactment of local ordinances. Their duties may appear more political rather than legal, such as responding to the concerns of their constituents (Zale, 2019).

Several council members indicated that it was often the mayor's determination or selection of the invocator and that the other council members do not have the opportunity to invite other people of faith. Therefore, the mayor exercises more power regarding the

invocation. For prayers, one council member stated, "Anyone's experience, life experience or educational experience is going to have an impact on the emotional or intellectual reaction to the use of prayer." One council member recognized the discomfort that might result from the prayer, "Yes, some people might be more uncomfortable than others."

One member stated that she understood the "weight and the gravity that was expected of local leaders." In her opinion, the prayer may create some "assumptions about how the council feels on certain issues by the mere existence of an invocation." She recognized individual rights, but as "elected leaders, once we take the oath of office, you have a different responsibility to represent the voice of the public." When issues come before the council, there is a responsibility to study the issue and hear from the public. She acknowledged her role as a leader, and "we should be presenting ourselves as neutral, unbiased figures." If prayers are present, "we would either need to be very diligent in making sure that every religion is represented or removing the invocation so that we don't offend or isolate people." Still, she also noted that the absence of the invocation doesn't keep people from practicing their religion.

One council member appreciates a prayer and believes that it reminds the council of their "positions of leadership" and "fiduciary responsibility" and places the decision-making "obligation on our shoulders and our pledge to do the right thing."

Another council member mentioned that there was once a controversial issue on the agenda and the semi-regular invocator "prayed for it specifically." Afterward, the council asked him not to reference any specific agenda item because the council did not

want the invocation to become "a political statement." The council majority perceived that the invocation could be seen as injecting religion into their meeting. By these comments, the council members are acknowledging their leadership roles and influence on their constituency.

The public members were more straightforward in their opinions. Generally, they did not believe that prayer belonged in a public meeting, "it's imposing from a place of authority that religion belongs in public in a government discourse." If the public agency or board is "supported by taxpayer dollars" and lists an invocation on their agenda, "they are sending the message that "you're going to pray right now or sit quietly and listen to someone pray." Many public members did not have an issue with someone using their public comment time to say a prayer because they considered this free speech.

One would be appreciative of removing the invocations, but others might not. In her experience, there seemed to be a "bias from the board members about the prayers being offered and the need for them." Because the councils are the authority figures, they are not neutral; it "creates more establishment" even if a person of faith gives the prayer.

When asked if the prayers deterred the public from attending a meeting, one responded that she didn't believe that prayer kept people from attending but thought prayer was "inappropriate in that setting." She thought that the reason that people are at a meeting outweighs the knowledge that a prayer will be present. An invocation "just creates an atmosphere of putting religion out there, that's in a place that doesn't belong for people who don't necessarily believe in religion of any kind." One respondent noted that prayer "is imposing other people's beliefs upon you in a place where you shouldn't have

to deal with that." Another participant believed that prayer did keep people from attending because she thought that the elected leaders send "a message that [Christian prayer] is who we are and we're not interested in the rest of you." Another couldn't say that prayer deterred people but a "combination of things that deters people." She was not frustrated by the presence of prayer but did not know if it prevented others from attending. She had observed invocations that have been "very political and very inappropriate" which are "exploitive of a sacred moment."

When asked if there was a difference if a council or board member gave the invocation versus clergy, a participant indicated that "I don't think prayer belongs there at all." In her experience, there seemed to be a "bias towards certain religions coming from board members."

Several of the community participants did not have a favorable view of public prayer and described the presence of an invocation as a method to serve the "special interests of the people who are giving them, demanding them, and makes the council members feel pious and please their sponsors." Other comments indicated that the invocations served "no positive benefit," were "self-serving," and "it's exclusionary, and that is not the appropriate place. Religious institutions are the appropriate places for religious expression." Others suggested that prayers should take place "in your own home privately, but not in public government-sponsored areas." Another described prayer as anyone in the audience can "privately pray, and nobody knows who is, who isn't, when they are, when they aren't, but that's different from the invocation. You can't tell people what to believe, when to pray, or when not to pray." One participant mentioned that "the



invocation is a government body telling me that I should be exercising a religious activity which I find objectionable."

Another explained that the content makes her feel "discouraged" because people hear it and wonder how it applies to the community at large. She questioned whether people who are not of that religious persuasion would perceive the prayer. "I just don't think [the invocation] belongs in a public meeting." She once heard someone say, "I am going to be sick," and has heard "gasps" in response to the content of one invocation. Another observed "heads fly up and eyes open at something quite unexpected and, in my view, inappropriate coming during an invocation." When leaders ask the public to "all rise and bow your head," those are "inappropriate" actions that now "commands of a government official to actually participate in a religious exercise." Those actions are "inappropriate, and it should be stopped."

Regarding the invocation, she did not believe that government leaders should ask "one to stand and bow their heads" because it creates "an impetus for taking me in a direction I don't want to go. I feel conflicted." When the leaders use the prayer, it "becomes politicized, and it isn't uplifting, but rather demeaning." The use of prayer in legislative meetings becomes "insensitive and cruel" to ask people to stand and invade that space which can be "unguarded with political rhetoric." However, she also indicated that "the invocation is acceptable, so long as it is not exploitive." One participant believed that board or council members with "their stature in the community, they are on view, on an elevated dais with flags and all the trappings of the government behind them." These comments are consistent with the findings of Beard et al. (2014). Therefore, city leaders

should be aware of their role as community leaders and consider how their actions reflect the expectations of their constituents.

### **Theme 5: The Diversity of Religion and Prayers**

Another central theme centered on the diversity of invocators and the faiths represented. For those cities with a regular invocation, most council members believed that there was adequate diversity of invocators. Although the council members thought their particular city had various invocators, some noted that additional effort was needed to ensure that the invocators represented multiple faiths in the community. There was little questioning by council members whether an invocation should take place, and most just accepted the prayer since it appeared as routine. Those who did not have an invocation did not have any council discussion about placing invocations on the agenda. Although some informal conversations did occur, none of the council members initiated the invocation presence as a formal agenda item. Therefore, the lack of debate was to accept the status quo of that particular city. Some council members believed that there was a concern over racial and ethnic diversity rather than religious diversity. One council member indicated that a colleague "reacted in quite [a] defensive manner" and believed that any invocation removal would be interpreted as political. From her perspective, the other council member did not consider how the prayers "might make some people in our community feel uncomfortable and not recognizing the diversity in our community." She expressed concern that there was an assumption that most were of the same faith and "would not take offense to the governing body which [is] supposed to separate Church and State" by infusing a Christian prayer at every meeting.

When asked whether there was a lack of representation, one council member indicated that he did not believe that religion was an issue but did indicate that his city had changed to district elections to reflect the city's racial diversity. He further suggested that the presence of the faith community "allows [the city] to create a relationship and network within the faith-based communities." He appreciated the clergy because they often stated that they would say, "We're with you. We're praying for you." However, he also believed that the prayers should be as non-denominational as possible. For one council, the invocations had stopped for some time because of the concerns that the invocations were "not being inclusive enough," and there was a subsequent "effort to be more inclusive."

One council member believed that if there were community concerns about being offended, excluded, or "not being welcoming to all," the council "would need to take a hard look." She opined that this examination was needed "especially in the climate that we are in right now" where communities are divided based on race, religion, culture, and ethnicity. She believed that if constituents are offended, there should be consideration for eliminating the invocation as an equitable solution.

One council member, self-described as very religious, indicated that he makes the sign of the cross after an invocation as a personal expression but did not expect others to follow his lead. Another believed that invocations were fine as long as there was a variety of faiths. However, "I think that anybody that complains about an invocation being given is kind of on the wrong track anyway." He believed that the invocation was a "reflection of the person who is giving it," not of the council. He thought that the choice of words

was a "way to inspire thinking about higher powers and higher destinies." Another council member believed that the mayor attempted to contact faiths that represented the various people and faiths of the city. As we discussed the concept, he mentioned that "believing that you are being inclusive and actually being able to show that you are actually being inclusive may be two different things." He believed that there was "no rigid policy" on which faiths to include or not include, but he would like to see more "systemic intentionality to ensure representation."

A council member described the invocators as the same 3-5 pastors who cycled through the invocations in one city. She believes it was "meant to be more inclusive of diverse religions at the time of policy adoption, but it has not been" since it is the same group. She claimed that we are a country of diverse beliefs and cultures but that religious beliefs, customs, and practices should be separate from the operations of the government. If religion and government are combined, she believed that would be "antithetical to the founding principles of this country."

Most public participants disagreed with an invocation due to the lack of diversity, and primarily because they did not believe that government officials should advocate for prayer. Generally, if the invocation was present, they did not think that there was an equitable method to achieve the community's diversity. Many expressed concerns about the people in attendance who might be affected by the invocation.

When discussing the diversity issue, one simply described the presence of the invocation as "merely unnecessary." One public member stated, "Atheists are now being forced to sit through some sort of prayer that they don't believe in, no matter how generic

the prayer and how non-religious specific it is, it's still a prayer. Praying to something that not everyone believes in." Another stated, "People who are atheists or agnostics or who have had a bad experience with one particular religion, they are not going to feel welcome in that space, and our public spaces should be welcoming to everyone."

Some believed that diversity could not be readily achieved and described an invocation as "divisive because no matter what you say in that invocation." Another indicated "somebody is either included or excluded" and "we shouldn't be separating people that way." Another respondent stated that she was a "big fan of inclusion" and that "any kind of invocation that necessarily excludes people." Since there is an infinite number of religions within each city, there isn't an equitable way to represent all of them, so it is "virtually impossible to be inclusive of everybody."

Although there might be efforts to be inclusive, any policy would be challenging for a city to address. One indicated in her view, that there is "no way to write a policy that doesn't either promote religion or entangle a public board" because it might be interpreted as "giving direction." In her opinion, that guidance "loses the neutrality." She further indicated that the policy would result in the selection of the invocator and making assumptions about what they are going to say or not say, and with this, you "breach the wall of separation." Due to the history of religious persecution and concerns, elected leaders must be mindful of the concerns raised by its constituents.

### **Theme 6: The Potential for Litigation**

Prayers before a public meeting is a long-standing tradition in the U.S. Congress. Although most of the public does not see the routine nature of Congressional hearings,

the invocation was in full view by the people before the televised impeachment hearings of former President Donald J. Trump (PBS News Hour, 2021). Due to the historic nature of Congressional hearings, many elected leaders and the public might believe that the prayers are protected.

Many council members were not aware of legislative prayer litigation in other jurisdictions. When asked about invocation litigation or public discomfort or support, many answered the question hypothetically. Most had not encountered these situations during their council terms despite the participant requirement of a minimum of two years of service. Many council members did concede that more diversity of the faiths of the invocators might also deter litigation. Similar invocations, such as primarily Christian prayers, could be perceived as an establishment of religion. However, some mentioned that it would be challenging to seek presenters who represented all faiths in their respective communities.

A few public members cited the phrase "One nation under God," which was added to the Pledge of Allegiance as an infusion of religion into an aspect of government recognition. If members from the same faith frequently spoke at meetings, several council members indicated that that could be construed as an "establishment of religion." In terms of litigation, one council member would have a difficult time "spending tax dollars to litigate" if residents sued the city to keep the prayers.

One council member explained, "If [the council] cannot be diligent and guarantee that there's going to be diversity in invocations," then it "might be more streamlined not to have them." The council would have to commit resources and make an effort to ensure

the diversity rather than "just falling prey to whoever decides to sign up is, in my opinion, is not good enough."

Another agreed that the government should not show favoritism for one religion or another and believed that there should be a "separation of church and state." Although there might not be an intention to insert religion into council proceedings, one council member noted that the phrase "Thank you, Jesus" might be used to show appreciation or relief outside of the invocation or during council discussions. Furthermore, it might isolate others who may not have the same belief that "Jesus is their God." When spoken on the dais, it may be perceived differently by the public.

Another council member opined if there are prayers of several denominations, it will not establish a particular region. This diversity would allow "all religions to participate equally or if you have an ecumenical prayer that speaks only in global terms about a supreme being or higher power" so as not to favor one religion over another. This council member indicated that various prayers would be acceptable, but it would not mean "no religion to public life."

Suppose the council wanted to preserve or institute a prayer. One council member indicated that they could "establish a rotating panel of every religion we could find and just simply invite one of those people to come in and give us an invocation each time," and that would be appropriate. However, she acknowledged that if a representative of a smaller denomination spoke, the public might "find that troubling because they have never seen it before, heard it before." Therefore, it makes "good logical sense to have a panel of prayers from each denomination that you can find represented in your

community." He indicated that some people reference "the Constitution as a sacred document," therefore there are religious references to the Constitution. When asked about the litigation aspect, he indicated that he had not "explored it deeply."

One council member reacted strongly to the question regarding litigation. When the same faiths are consistently represented, it may give the appearance of condoning that religion and excluding some of their constituents. She believed that the government should not be establishing a religion or "intends to establish the primacy of the faith and values of a certain religion and ties it to the execution, or development, or discussion of communities' laws." When "other religions are excluded, they are deemed or intimidated to be less relevant, not applicable, not important." For those who "do not hold religion, they can feel disenfranchised and unwelcome if they do not ascribe to the prayers, or the beliefs, or the systems that are being propounded by the body."

In one's opinion, the public body cannot dictate how individuals choose their religious beliefs but found it acceptable for an individual who wanted to use their public comment time "to rise and speak of a prayer." However, a governing body should not be able to "select and elevate a religious practice," which she felt "goes too far." Suppose the governing body establishes an "ingraining of that practice" so it becomes routine such as the Pledge of Allegiance, which goes beyond what is permitted. She indicated when a clergy member calls for the assembly to be joined together under a deity, that request is a "clear establishment of religion." She further described how we try to provide equal protection under our laws and grant equality, yet we are also "striving to separate Church and State." Another explained that during council meetings, the chaplains focus on non-



denominational prayer, which she believed would deter the belief that the council intended to establish a particular religion and potentially avoid litigation.

The public members' responses were concrete in their belief that the presence of prayer violates the Constitution and gives rise to potential litigation. Most would prefer to eliminate prayers from the public sphere. Some believed that the Constitution embedded the separation of Church and State. Some expressed that education of various religions was important, but not in public meetings. However, some mentioned that the city seals or currency have "In God We Trust" as a reference to government and religion. This phrase was observed on the walls of ten council chambers when I reviewed videotapes of council meeting invocations.

One simply responded, "I think it violates the Constitution. There's no purpose in our society, under our Constitution, to have a sacred moment or religious aspect of a government public meeting." Another would like to see prayers abolished. Three community respondents believed that the Constitution references the separation of Church and State. One indicated that we should not "put prayer in public events that are paid for with taxpayer dollars" and that "prayer just doesn't belong there."

She indicated that the First Amendment "protects everyone in a country and allows them to freely exercise whatever faith they choose to have." One respondent believed that the boards and councils should be concerned and that it is "extremely irresponsible and fiscally unsound to run the risk of having this kind of litigation, because we, the taxpayers, are the ones who wind up paying for it." There was an emphasis "not to have this kind of mingling of Church and State." Further, she explained, "it is not the

business of government to be involved in religion, and praying is religion. It's pretty simple." Although the council expressed diverse views regarding litigation, the public members were adamant that no taxpayer dollars should be used to defend the practice.

### **Evidence of Trustworthiness**

#### **Credibility**

The first portion of the research involved reviewing a sample of agendas of each city within the county to determine which cities had an invocation and which did not. The result was that 25 of the 34 cities had an invocation listed on their agenda. One city had a "moment of solemn expression," and the others did not list an invocation. I verified the information on the agendas with the interviewees.

When I designed the study, in-person interviews were intended with videoconferencing as a backup for scheduling or other issues. Due to the global pandemic, all interviews were conducted by videoconferencing rather than in person. To demonstrate credibility, the data should reflect the participant's views, and the researcher should accurately interpret their opinions (Cope, 2014). The interview allowed the interviewee to explain the nature of their city's invocations and any exceptions to their practice. For those cities without a prayer listed on their agendas, the interviews confirmed the lack of prayer. The meeting videotapes confirmed the invocation and Pledge of Allegiance and the customary nature of the commencement of the meetings.

The videoconferencing limited the researcher's ability to capture the interviewee's body language, but the intimate nature of the recording did allow the researcher to identify facial expressions. I was able to view the video recording of the interviews and

clarify any words or phrases, which improved the interviews' transparency and credibility (Closa, 2021). The focused nature of the video allowed the researcher to capture hand gestures such as "air quotes" or a downward hand motion as the interviewee explained the concept of a slippery slope when discussing religion. The videos of the conversations also captured the thoughtful expressions or smiles when the participants were responding. The videos and transcript verified the invocation and the invocator to determine if it was a clergy member or council member. The meeting videotapes also confirmed what was listed on the agenda. The combination of the agendas, interviews, and documentation of the interviews helped confirm the accuracy of the responses.

### **Transferability**

This qualitative study takes place in one Southern California county with 34 cities and individual councils. Most council members ran for office because they wanted to better their communities. Generally, they did not question the presence of an invocation since this was a tradition before they were elected. As a group, they did not view the prayer as a method to promote or disparage a faith or religion. When serving as a council member and my religious upbringing, I did not see the need to pray in public. Although, this was the lens that I viewed the invocation, I wanted to understand how other sitting council members viewed the invocation practices. In addition, I was curious as to legal ramifications of prayer if there were objections by council members or the public.

Cope (2014, p. 89) described transferability when the results have meaning to others not involved in the study, but the results have value to their own experience. These findings would be valuable to council members, city managers, city attorneys, or

school board members who are contemplating the presence of an invocation or considering a change in policy or practice. With the possibility of future litigation, the results would be valuable to provide insight into other city practices, whether locally or more broadly. The public's view would be imperative in the examination of current or future policy changes and how the policy could be implemented. The feedback from the public would assist in building credibility with the public as new processes are applied.

With current technology, community polls or surveys could be used to obtain community feedback. However, those without internet access may be not be able to participate in these polls or surveys. Cities would need to develop a telephone or other mechanisms to obtain feedback. Secondly, the public may feel disenfranchised if the results were not heeded by the council.

### **Dependability**

Before each scheduled interview, I reviewed the agendas for that council member's city to determine whether the agenda had an invocation listed and who provided the prayer. I reviewed approximately 15-30 agendas for each of the respective council members' cities to determine any patterns, such as the presenters or if there was a particular religion. The patterns included the same presenter, a small rotation of presenters, the same council members, or the same faiths represented. In many situations, the agenda listed the invocation, but they did not always list the presenter. Because of the pandemic, many special meetings often did not include an invocation on the agenda and this was confirmed by the council members. In some cases, the council members were not sure whether the practice of invocations had changed during the pandemic until the

researcher shared her observations. The council interviewee then confirmed these changes and the approximate dates.

After each interview, I reviewed the notes that I took during the interview and identified the routine nature of the invocation and Pledge of Allegiance. During the interview and upon review of my notes, all participants mentioned how the invocation set the tone of the meeting. In some cases, the tone was cited as positive and in other situations, the tone was negative. This was noted on the initial, brief review and coding. These themes were gathered on a list.

Although the interviews were recorded, I used a worksheet with the questions to capture any reactions or something that might be missed in the recording. On the worksheet, I also noted the dates of the agendas reviewed to identify patterns, such as who gave the invocation, how often, and whether it was a routine occurrence. Once the conversations were transcribed, approximately 7-10 days after the interview, I made notes in the margins of the typed transcript. The ideas were coded on a spreadsheet. The interviews with council members were completed first and all transcripts were reviewed a second time to identify similar codes across all the council interviews. Once the transcripts were complete, I used the NVivo software to determine if there were other themes present that I had not identified through the hand coding. The software did not identify any additional themes. The transcripts were reviewed again to verify that any additional themes had emerged.

The second group of interviews were the public interviews. I followed the same pattern of review after each interview and the transcribed interview to be consistent with

the council interviews. Although, I had noted the routine nature of the invocation and the Pledge of Allegiance in the council interviews, I did not expect to hear similar comments from the public. However, those themes clearly emerged in public member interviews. The interviews took approximately three months to complete.

Once all transcribed interviews were completed and reviewed by the participant, I reviewed the transcripts an additional time. The study information could be replicated by another researcher who could review council agendas, meeting videotapes, and interviews, with other city council members (Cope, 2014). However, if there is a significant lapse in time, it would be important to compare my findings with more recent agendas to see if any changes occurred. Due to term limits, the original council members may no longer be in office and the new council members may have differing views.

### **Confirmability**

The researcher must accurately portray the participants' responses without the influence of the researcher's bias (Cope, 2014, p. 89). Although I did not see a need to pray in public, I developed this study to identify other cities' invocation policies to gain further understanding. I had served in two elected bodies in the county which had similar practices, but one agency was served with a lawsuit based on their invocation practices. I was very familiar with my council practices and changes in the invocation practices during my tenure. However, shortly after my election, the second body, was served with a lawsuit. The practices under scrutiny took place before I was seated on that Board. The litigation outlined words and actions that were at the center of the legal action. I did not have firsthand knowledge of the practices outlined in the lawsuit. During my elected

service at both organizations, there were a few constituents that came before the body to express concern about the presence of an invocation.

I developed the open-ended questions to provide the interviewee the ability to respond broadly and to provide an opportunity to give additional information. Although I knew some of the participants, the interviews were conducted in the same manner for all respondents.

Following the interviews, I reviewed the video of the interviews multiple times to correct the voice recognition from the video technology for the transcript. Per the research protocol and instructions given before the interviews, the interviewees were reminded that the interviews would be recorded, and the interview transcript would be provided to them for review. Once the recordings were examined and the transcript was prepared, I sent the transcript to the individual participant for review. In some cases, I asked the interviewee to review a particular sentence or phrase to verify the accuracy of the transcript. I highlighted any information that could identify the participant or the city so that the individual would know which information would be redacted from the research to protect their identity. If there were questions, follow-up was conducted via email or with brief conversations. Those corrections were noted in the final transcript and reflected in the responses used in the study.

Throughout the study and after each interview, I made notes regarding the interview. Coding was done initially by hand after the interviews and from the transcripts. After each interview, I noted that the prayers were explained more as a routine than a religious act. Without asking a specific question about “tone,” each

participant indicated that the invocation helped set the tone for the meeting. Throughout the coding process, I was surprised that all participants mentioned “tone” in response to many of the questions. For some council members, the invocation helped with the transition of a difficult closed session to the open, public session. The public members in the study did not tend to believe that the invocation set a good tone for the meeting.

Due to my personal experience with litigation on this topic, I had expected that the council members would be well-versed on the potential litigation of invocations. The attorney participants recognized the challenges with the presence of prayer. The council member participants who did not have a legal background, did not appear to be concerned about the potential litigation. Only one council member expressed concern about the citizens’ viewpoint on prayer. The public members emphasized the separation of Church and State as they discussed the presence of an invocation.

## **Results**

As each interview took place, I made notes about the general themes, which I placed in a table format to create consistency between interviews. The first research question, "How does the presence of prayer impact constituents' ability to participate in engaging their local leaders?" was the primary driver of the study. Although the focus was on the presence, purpose, and impact of the invocation, ideas were solicited around the policies and practices regarding invocations. As observed by all participants, the invocation set the tone of the meeting, but some perceived the tone as positive and others as negative.



One council member described the closed sessions as “really intense” and that the [invocation] “allows everybody to kind of chill out, almost like a meditation and we can listen, and let our kind of hearts and minds. Kind of cool down.” Another described the prayer as “it’s just a prayer that we’re asking the Lord to, to give us wisdom and to, to have His hand on the meeting, not a let it get out of control.” When serving as mayor, one stated “I wanted [the invocation] to be a part of the meetings. One council member who did not support invocations indicated “there doesn’t seem to be any consistency with either an ecumenical or an inclusivity of prayers offered.” She added “it is an opportunity to make people in our community uncomfortable with the attendance of the proceedings and an opportunity used to exclude different religions from attendance, and it strikes a poor note in practice.” One public member stated “The invocation is a government body telling me that I should be exercising a religious activity which I find objectionable” when she expressed concern about the presence of an invocation.

Overall, the council members did not see an issue with the presence of the invocation and accepted the prayer as a routine aspect of the meeting. Most believed that prayer helped the transition the council’s mindset from the closed to open session. If the prayers were to continue, most expressed that the diversity of faiths should be more intentional. One council member expressed “I do believe it’s because there were concerns that we were not being inclusive enough with a variation of faiths being represented in our invocations.” She further explained that there was a concern about “an effort to be more inclusive,” but there had been a temporary pause. She was unclear if the pause was due to the change in practice or the change to remote meetings during the pandemic.

The second research question: How does and what type of prayer violate the Establishment Clause of the First Amendment of the U.S. Constitution? was more difficult for the participants to articulate. Not all participants had a legal background, so this was question was more difficult for many. Most council members are not attorneys and could not fully respond to the Establishment Clause when it was read to them. For this question, I could have sent the language of the Establishment Clause before the interview or at a minimum place the information on the Zoom shared screen. However, the council responses focused on the routine nature of the meetings. When asked about the invocation policy, one stated “I don't think I've ever read that policy.” Another council response included “The invocation proceeds right after the Pledge of Allegiance and the mayor will call down the priest, or minister and request that they give their invocation. The invocation will move forward and people are requested in advance remain standing after the Pledge, if able.” The invocation practice was similarly described by most council members.

Because most council members had not been exposed to litigation or been questioned by the public or colleagues, there was a level of acceptance. They all recognized the need for diversity if this practice were to continue. When asked about the diversity of prayers, one council member responded, “I think the solution proposed was that we either do a much better job in reaching out to all people of faith and making sure that there is some type of intentionality between the scheduling of those people.”

Generally, the public responses thought that the prayers should not be present at public meetings. One public member expressed that the invocation:

just creates an atmosphere of putting religion out there, that's in a place that doesn't belong for people who don't necessarily believe in religion of any kind, necessarily. It's just imposing other people's beliefs upon you in a place where you shouldn't have to deal with that.”

There was also recognition that people should learn about other religions and to be tolerant, but public meetings were not the proper venue for this education. Many of the public members expressed concern about the meeting attendees being present for a prayer. One public member stated:

no matter how general or inclusive of religion, you want to make it because in our country, atheists are now being forced to sit through some sort of prayer that they don't believe in, no matter how generic the prayer and how nonreligious specific it is, it's still a prayer.”

When asked if she had ever heard of anyone expressing concern at a meeting, the public member stated “For them, it shouldn't be there, but it's not an issue they feel like they need to take up or get into or anything. They tolerate it.”

### **Summary**

Generally, the council members did not perceive the invocation as a concern for the public to participate in the meetings since the presence of prayer was a routine portion of the agenda. Some expressed that the invocation set a positive tone, especially when transitioning from a contentious closed session to the open, public session. Some council members expressed that the prayers should continue, and some indicated that if the public were to express trepidation that they might consider reviewing their policy and practice.

Most council members believed that their agency made an effort to seek a variety of faiths to provide the invocation. However, no council members suggested that the invocation was an active discussion item in recent years nor was there any strong opinion, except for one, to discontinue the practice.

The presence of prayer did not seem to keep the public members from participating, but in some instances, the prayers did not make the public feel comfortable or inclusive. In some cases, the presence of prayer and the related actions of the council members created a less favorable view of the council members. This sentiment was more apparent if the council members gave a direction to take a position of reverence, such as asking those present to bow their heads. For the public members interviewed, it provided more resolve to attend meetings as a watchdog instead of attending meetings for a particular issue or concern. However, none expressed that they would be willing to make a public comment to request that the council review their policy.

Most council members were not familiar with the specific content of the Establishment Clause, but understood the concept. Most had not experienced any dissatisfaction from their constituents or had been subjected to a lawsuit challenging their practice. The council members who had an invocation on their agenda were not aware of any phrases or actions that might violate the Establishment Clause. However, most had not considered the question on behalf of their constituents but indicated how the invocation affected them personally. All mentioned that the invocation set the tone for the meetings, especially in the transition from closed session to open session. In some cases, they believed that prayer should continue, given the current climate of world affairs.

In the public study participants' view, the simple presence of an invocation violated the Establishment Clause. The invocation practice further escalated their uneasiness, especially when the council members or a clergy member told them to join in prayer, bow their heads, or thank God for specific gifts. Those participants who are not of a Christian faith or who do not believe in any religion opined that government should not be directing them toward one religion or another or to assume a posture of reverence.

In Chapter 5, I will interpret the findings of the interviews given the limitations of the study population. I will discuss recommendations and implications for the possible impact of prayer on the councils and the public to provide insight to the council members for their consideration and public trust.

## Chapter 5: Discussion, Conclusions, and Recommendations

### **Introduction**

The study was designed to examine the policies and practices of the city council invocation practices in one southern California county well known as a Republican bastion (Morain, 2019). The study evaluates the legal and public impact of the invocation on the participants of a city council meeting. Given the number of lawsuits throughout the country regarding invocations at public meetings and the implications for the respective cities, the study assessed whether there was a significant influence on the meetings from the perspective of the council members and the public who attend these local meetings. Litigation could result in thousands of dollars of taxpayer funds to defend council practices. The council members may also face political ramifications if they do not appropriately represent the constituents of the various cities within the county.

In 2020, 25 of 34 cities in the county listed an invocation on their city council agendas. City council members who had served at least two years and had a public email address were asked via email to participate in the study. Council members would have attended at least 20 meetings and upward of 40 meetings to account for twice-monthly, canceled, and special meetings within that two-year mark. The research included interviews with a sample of city council members and a sample of public members for their interpretation of the invocation practices. The purpose of this qualitative study explored the of impact of legislative prayer upon meeting participants at city council meetings in this Southern California County and whether the words or actions of the legislative body violate the Establishment Clause. Secondly, the study examined the type

of prayer or practices that would violate the Establishment Clause of the First Amendment of the U.S. Constitution (U.S. Const. Amend. I).

The interviews took place in the late summer and fall of 2020, which was at the height of the social unrest following the May 2020 death of George Floyd at the hands of a Minneapolis police officer. The council members were aware of the racial reckoning that followed Mr. Floyd's death and were not very focused on the religious diversity but did discuss the racial diversity of their respective communities. Throughout the interviews, many council members seemed to be more reflective on the potential effort to become more inclusive of other religions. They understood the impact that it could have on their respective communities. The public members did not mention the social unrest, but their responses when discussing invocations were more wide-ranging, citing diversity and inclusion and educating people about various religions.

### **Interpretation of the Findings**

Supreme Court Justice Hugo Black used the “wall of separation” metaphor between government and religion in *Everson vs. Board of Education of Ewing Township* (1947). The “wall” was his reasoning when the court upheld bus transportation reimbursement for public and religious school children. Justice Black heard over a dozen cases involving government and religion, and he furthered the separation of Church and State in all but one lawsuit. However, Justice Black retired before the *Lemon* (1971) case, which developed a three-prong test to evaluate religion and government cases. Many subsequent cases challenged the use of taxpayer dollars for religious purposes or to subsidize education in religious schools. Later, constituents litigated whether government

agencies could house and display sacred objects and promote religious programs. During the 1970s and 1980s, several cases involved religion and public agencies and did not involve prayer. Taxpayers commenced litigation in the *Lemon* (1971), *Marsh* (1983), and the *County of Allegheny* (1989) cases because they believed that any taxpayer money spent for religious purposes violated the Establishment Clause (U.S. Const. Amend. I.). The facts of these cases were very different as the courts assessed whether there was an entanglement of religion with a public body.

In *Lemon* (1971), the court acknowledged that the state provided funding for teachers' salaries and supplies in parochial, primarily Catholic schools, similar to public schools. State statutes stipulated funding for secular purposes but not for any religious teaching. State statutes required that the government could perform audits to ensure that public funds were targeted for secular educational purposes. However, the court determined that promulgating the Catholic religion was crucial to the parochial schools, which could not be easily separated. As a result, the *Lemon* (1971) decision delineated a three-prong test which stated, "First, the statute must have a secular legislative purpose; secondly, its principal or primary effect must be one that neither advances nor inhibits religion and, finally, the statute must not foster an excessive government entanglement with religion."

In *Marsh* (1983), Chambers, a Nebraska state legislator, disputed the use of public funds for a chaplain who provided a prayer before each legislative session which Chambers believed was a violation of the Establishment Clause. The Nebraska legislature had a 100-year tradition of prayer and for the previous 16 years, they employed the same



chaplain to give an invocation before the legislative session. The lower courts found that the use of public money to employ the chaplain violated the Establishment Clause but that the prayers did not proselytize or disparage a faith that did not violate the Establishment Clause (U.S. Const. Amend. I.).

Upon appeal to the Supreme Court, the Justices referred to the long-standing practice of providing prayers with the inception by the Founding Fathers. The Court indicated that the legislative bodies could not easily discard the historical approach. In dissent, Justice William J. Brennan, Jr. referenced the three-prong *Lemon* (1971) test, which specified that public agencies could not use prayer to promote or inhibit religion which was not fully considered by the majority when making its decision.

In 1989, the County of Allegheny, Pennsylvania, had permitted religious organizations to store and, each December, display sacred objects, such as a nativity scene and a menorah, at the county courthouse for several years. The County also publicized a Christmas carol program. The American Civil Liberties Union (ACLU) and county citizens challenged the county on these actions. The District Court did not believe that the religious displays violated the Establishment Clause and denied injunctive relief. The Appeals Court held that the exhibitions and Christmas program sanctioned religion and overturned the District Court's decision (*County of Allegheny, 1989*). The Supreme Court majority holding stated that by displaying the religious articles and through its advertisement of the Christmas program, the County actively endorsed the Christian religion. The dissenting opinion highlighted concerns regarding the display and promotion of religious events. Still, the passive acknowledgment of religious symbols did

not violate the Establishment Clause to the same level as engaging a chaplain on a long-term basis. The court affirmed in part, reversed in part, and remanded the case. Although the Allegheny case involved religion, it did not specifically address whether prayers should be allowed before public meetings. The courts did not apply the *Lemon* (1971) test in these cases but relied narrowly on specific facts that further obscured public agencies' invocation policies. Although these cases were not specific to invocations, these cases served as a benchmark for other government and religious litigation for many years. Those cases that have risen through the courts have contested the use of public tax dollars for secular purposes (Marsh, 1983, Lemon, 1971), which helped to establish the vulnerabilities of combining religion and government. For many years, most challenges relied on the three-prong test *Lemon* (1971) test to determine whether there was a violation of the Establishment Clause.

The courts in *Joyner v. Forsyth* (2011), *Freedom from Religion Foundation v. Chino Valley Unified School District* (2016), and *Lund v. Rowan County* (1971) scrutinized the public agencies' invocation practices, works, and actions of the policymakers from the dais and the influence upon the participants.

The literature indicated that many subsequent cases were brought forth by constituents who challenged the government agencies on the presence and the diversity of invocations. Most of the defendant public agencies believed that they could provide prayers as the Founding Fathers launched when they appropriated funding for chaplains. The courts determined that the prayers lent a sense of gravity (Marsh, 1983) to the proceedings, consistent with the current council members' belief in reminding them of

their responsibilities. However, this understanding was grounded in their personal beliefs and not on the historic court holdings. The city council members were thoughtful in their responses to the purpose of the invocation.

The arguments for providing the prayer often begin with the historical note that the Founding Fathers appropriated funding for a chaplain to give an invocation to commence legislative sessions. The current practice of prayer at the national level was demonstrated during the impeachment hearings of former President Donald J. Trump (PBS News Hour, 2020) when the Congressional chaplain began the Congressional proceedings with a prayer. This contemporary example exemplified the sense of gravity described by the *Marsh* (1983) decision.

However, there are thousands of other jurisdictions, including Congress, as demonstrated during the Trump impeachment hearings (PBS News Hour, 2020) that have continued with the invocations on a routine basis. Although the presence of the prayer may be scrutinized, the challenges have not regularly risen to the courts.

Previous litigants believed that the presence of prayer infringed upon their rights not to be subjected to a religious exercise during a public meeting. Secondly, they believed that prayers, if allowed, could not adequately reflect the diverse citizenry of the local jurisdiction and, therefore, should not be provided. These findings were consistent with the opinions of the community participants.

The case study method was beneficial to examine individual city practices and contrast them with other cities within the county. The interview mechanism allowed a dialogue between the researcher and respondent to address collegiality among the council

members and the use and diversity of clergy. There was recognition that there were attempts to be inclusive of all religions, but this practice may be nearly impossible given the county's diversity of faiths represented. Some public participants acknowledged that educating others about various religions was significant, but that should occur in another setting when this practice is not forced upon the public.

The use of policy feedback from the public members can shed light on the impact of the invocations on the public and the required participants of the meetings. Public interviews were conducted as a policy feedback mechanism to provide public opinions since the citizens' experience can determine their political participation (Hern, 2017) in public meetings. Moynihan et al. (2014) indicated that public feedback could modify politics and policy for the future. As such, the public members firmly believed that there was a lack of purpose of the invocation at public meetings but indicated that there were other methods to create a collegial mindset among all the participants. Some suggested that the Pledge of Allegiance, a routine portion of the agenda, was one method to gain the crowd's attention to begin the meeting. Others suggested having children perform a song or a reading to create an uplifting experience. The public feedback on a policy or practice can positively reinforce a particular behavior or create a negative influence to change a policy or procedure. However, the positive or negative response is subject to the opinion of the council and the community.

The public members shared their experiences at the city council level as well as the County Board of Supervisors, and the County Board of Education. They expressed that if the majority of the councils or boards were conservative, the invocations leaned

more religious. Because of these actions, there were more concerns at the County Boards than they had experienced at the city council level. Although they may not be representative of the entire county, the public members interviewed expressed their opposition to the presence of an invocation at a public meeting. These public members self-identified their religious beliefs from little religion to religious. In this sample, their religious background did not necessarily reflect their opinion to eliminate the invocation.

Many council members did not question the existence of an invocation, especially if the invocation was present on the agenda before they assumed office. Few questioned changing the routine, explored removing the invocation, or considered adding an invocation for those cities that did not have an invocation. The council members and the community participants believed that the invocation was perceived as a routine portion of the council meetings, similar to the Pledge of Allegiance. The council members indicated that they did not have any specific or formal discussions regarding the presence of an invocation. However, a few indicated that informal talks had occurred, but none of the discussions resulted in a formal, agendized debate to determine whether or how the invocation should occur. Although the invocations were mostly Christian-based, most council members believed there was some effort to include other religions. Most council members did not know their respective invocation policies, except for a possible time limit or not promoting religion.

When asked about changes in practice, some council members noted that invocations did not happen at every meeting, or they could not remember when the pattern changed. Since I had reviewed the agendas before the interview, I reminded the

interviewees of the approximate date changes. Once I brought the changes to their attention, there was agreement about the timing of the practice changes. Since many special meetings were held to address COVID-19 issues or adjustments in city ordinances, many did not recall the invocation specifics of the meetings. Some meeting protocols changed because of meetings being held by video or teleconference rather than in person. One council member noted the lack of an invocator because the mayor had insisted that only council members be allowed into the teleconference, which barred clergy invocations. Only one council member researched her city's history on the invocation policy before the interview.

Many council members expressed a new appreciation for the invocation practice and how the citizenry might perceive it. Some pledged to consider how their city might be more inclusive and vowed to review their invocation policy. However, if these individuals are in the minority on their council, this policy might not get the full review they hoped to achieve. Although they did not promise to change the policy, they generally believed that our conversation shed light on a potentially divisive issue in the community. These council conversations may be received better due to the 2020 social and political unrest or the challenging Presidential election. Others may not want to consider the issue since this might be perceived as another divisive situation.

The analysis indicated that council member participants generally believed that prayer was appropriate in a public meeting to help direct and remind policymakers of their fiduciary and general responsibilities in their decision-making. Community participants opined that prayer and religion have no place in a public meeting since

government and religion should not coincide. In this study, the community members indicated that they did not believe that the prayers should be a part of government proceedings. Several referenced the separation of Church and State. Because the prayers they observed were primarily Christian, they believed those prayers excluded people of other faiths. For those who do not practice religion, the invocation was perceived as the government forcing them to behave in a certain way. They did not feel that they should be subjected to something that they or others did not believe.

For many council members, the prayer helped remind them of the solemn business of the meeting before them. Every council member mentioned that the invocation set the tone for the meetings to establish a mindset for the upcoming meeting. For some council members, the presence of the invocation was welcome and helpful as the council meeting transitioned from the often contentious closed session debate to the public session dialogue. Some council members described the closed session as serious or confrontational, and this respite allowed for a smoother shift in the meeting proceedings. However, one believed that the invocation, although inspirational, did not extend the collegiality of the council from the closed session into the open session. One council member was adamant that the effort did not always carry forward, demonstrated by a lack of cooperation and respect. However, political or policy disputes could contribute to this discrepancy. They noted the tone of the invocation and how it helped transition a potentially divisive closed session to create a sense of leadership and collegiality before the public session.

Like the council members, every public participant also mentioned that prayer set the tone for the meeting. In their view, the tone achieved by the invocation was negative. However, they recognized the solemn nature of the proceedings and offered suggestions to achieve that significance without a prayer.

The public members did not appreciate the instructions from the council leaders to “bow your heads” or to “join in prayer.” In their view, these actions seemed intrusive and inappropriate from the elected officials. They believed that most people would feel compelled to respond to the prayer because the directive came from the leadership. Therefore, even though they may not choose to worship or pray in public, they would probably respond to the request to participate. Policymakers need to establish an environment that is comfortable for citizens to express their opinions and develop thoughtful decision-making (Beard et al., 2014; Jarmon, 2009). As the public expresses discomfort, the council should consider this view to evaluate the invocation policy and practice. Similarly, if the public wishes the prayers to continue, the council could respond accordingly.

Many city council members believed that their respective cities did make an effort to be inclusive of all religions but could not describe the process of selecting invocators. In many cities, the current mayor determined the invocator selection whether the mayor was appointed by rotation or directly elected. Those council members that had served as a mayor noted that they worked with the City Clerk to invite clergy to participate but could not fully articulate how that invocator was selected. In some cities, the participating clergy was a small group that rotated regularly. In other agencies, the council members



rotate the invocation. One council member shared that the city only used fire or police chaplains associated with the city, and did not seek other representatives of other religions to provide their invocations. As described by the council participants, there was not a consistent, dedicated or thorough effort to seek all religions in the respective cities either by policy or practice.

However, the public members recognized that the community needs to be tolerant of religious diversity, even though prayer does not belong in a public meeting. Others believed those expressions of faith could not be diverse enough to reflect the community or that there were enough meetings to represent the various congregations within the city. They believed that people should learn about multiple religions, but a council meeting was not an appropriate setting for this education.

Several public members shared specific examples when the invocation was presented at public meetings and related how they or the audience members felt. In their opinion, the council members should be aware that the public members did not want prayer because it did not offer a welcoming atmosphere as they addressed their local council. Most community members believed that creating an understanding of various religions was valuable, but they did not think an invocation before a public meeting was the correct venue. There were strong opinions that people should be educated about various religions to be inclusive. They agreed that it would be challenging to adequately represent all of the religious factions in their respective cities. They offered suggestions, such as a poem or performance by children, to open the meeting and create a sense of community for the city council, staff, and public. One indicated that the prayer could get

people to settle down and gain their attention but offered that the Pledge of Allegiance could achieve the same result.

Almost all of the council members interviewed were not aware of recent court cases or the *Town of Greece* (2014) case, which recommended that the town council actively demonstrate their community outreach to include various religions in their invocation practices. However, the court held that the Town had mostly Christian congregations and did not need to exceed their city limits to achieve further diversity. If the town's congregations were more diverse, the town would need to seek various faith representation. Many of the council members were not in office when the *Town of Greece* (2014) decision was rendered and their city counselors may not have included this information in their council orientation. Also, other council members who were in office at that time have since been termed out. However, current council members should receive a briefing on litigation affecting city council practices.

Most council members were not aware of the history of litigation involving public agencies and invocation practices in other jurisdictions. One council member asked if there were public prayer cases in the literature because he had not heard of this type of litigation. He was the only respondent that asked about other litigation.

At the end of each interview, the participants were asked if they had other thoughts or information to add on this topic. In some cases, the additional conversation was longer than the prepared questions. Some council members shared their practice in other county committees or city commissions. They revealed their personal experience with providing an invocation in those meetings despite not providing an invocation at

their city council. They explained that they took time to prepare thoughtful remarks, and one researched the patron saint of travel for the Transportation Authority meeting. However, as we spoke, he realized that by invoking a Catholic saint during this invocation, he contradicted his earlier comments about having a non-denominational, inclusive expression during the invocation. He indicated that he would be more reflective if asked to present the invocation in the future. Another council member referenced this same commission and revealed that she researched writing and offering a non-denominational prayer. As a self-described religious person, she felt extremely comfortable giving an invocation at a committee meeting even though her city did not have an invocation or council members provide a prayer. Many cities have a winter tree lighting event, but one city contacted several congregations who came to celebrate in their respective religious holiday traditions. The council member indicated that the various congregations' presence at the event infused a community spirit in her city. Most of the participants deemed that a citizen could provide a prayer during the public comment period, which would be considered free speech. They did not believe that the prayer was an attempt to establish religion because it was a citizen's right to address the council.

The council participants believed that having minors in the audience was not an attempt to establish a religion for the young people. However, the community study participants thought that the children did not have the capacity or maturity to refuse to participate. Generally, they believed that the minors would respond to the requests from

the council to stand or assume a posture of reverence even if the minors did not believe in that faith or religious prayer.

### **Limitations of the Study**

The city council participants were limited to those that had served at least two years and a public email address. The data collection took place during the latter portion of an election year. Therefore, numerous council members had not served two years, which reduced the number of possible participants. Due to term limits in many cities, rotation of council members, and newly elected council members, the pool of potential respondents was further limited. Some council members who were eligible to participate decided not to join the study because their terms were due to expire in the fall of 2020. At the outset of the study, there was an expectation that the rotation of council member elections and term limits would affect the practices and policies of the individual city as new council members were elected. However, no policies changed in recent years, but some customs changed because of the COVID-19 pandemic and the number of special meetings. Several council members declined to participate because of the addition of special meetings, the impending election season, upcoming term expiration, and work commitments.

The request for study participants was challenging due to two controversial issues that impacted every city in Orange County. In 2017, the California State Legislature passed the California Values Act (CVA, 2017). This Act stated that local law enforcement was not required to notify Homeland Security when local police departments released undocumented immigrants, accused of a violation of a controlled

substance, from custody. In the spring of 2018, a small group of citizens attended city council meetings throughout California to demand that local officials denounce the California Values Act (CVA, 2017) which is often referred to as the “Sanctuary City law.” One small Orange County City, Los Alamitos, made national headlines when it refused to recognize CVA and initiated a lawsuit against the state of California (Carcamo et al., 2018). This vocal group became empowered by this victory and proceeded to visit numerous council meetings throughout the county. This group encouraged local residents to attend council meetings to urge local leaders to join in the lawsuit and denounce the law (Kopetman, 2018). These groups spoke during public comment, brought signs, and threatened to recall many of the local leaders unless they succumbed to the pressure and voted to oppose the measure along with Los Alamitos. Many cities did not want to contend with attorney fees in preparation for litigation, or actual attorney fees if the lawsuit proceeded. Several cities do not have jails and use the county jail, so there was little resistance from local law enforcement to notify Homeland Security. Although many council members believed that the group would grow weary, they did not (Kopetman, 2018). The vocal protests created considerable unrest among councils, citizens, and church groups.

The second issue that pitted city against city was the rise in homelessness and the complaints from local citizens. Some of the larger cities believed that they were bearing the weight to assist the unsheltered citizens. The town at the county seat demanded that three of its neighboring cities address the issue of their respective residents or face litigation (Kopetman, 2020). As municipalities were struggling to attend to the issue, a

federal judge, ordered that the county clear the homeless population from Santa Ana Riverbed. The judge further required that all cities within the county find solutions for their homeless residents, including making shelter beds available for at least 60% of their known unsheltered residents based on the last Point-in-Time (PIT) count taken in January of 2017 (Focus Strategies, 2017). The PIT count identifies the number of sheltered and unsheltered residents, including specific subpopulations, including families, those persons with disabilities, or chronic homelessness, every other year and is federally mandated for communities that accept Housing and Urban Development (HUD) funding (Focus Strategies, 2017). While some larger cities actively sought to create new shelters and develop city liaisons to connect the homeless with resources, other cities did not embrace the issue and declined to develop solutions. Because these two issues eroded the public's confidence of elected leaders, it was likely that these leaders did not want to become involved in another controversial issue.

Some council members may perceive prayer as a sensitive issue and declined to participate, although none specifically stated this reason. One city official declined for the entire council in her city but gave no reason. There was a relatively small population to draw upon, and after multiple attempts to contact prospective participants, these were the only council members willing to participate. Some council members did not respond to the invitation to decline or accept. The opinions of the small sample of public participants may not be fully reflective of the larger population, but these were active members in their cities and the county. Most had some affiliation with the Orange County Separation of Church and State group or had attended a meeting which may lead to their

predisposition of an opinion regarding public prayer. As an elected official, I have spoken to various community groups, including this Orange County group.

The data collection was challenging due to an election year and in the middle of the COVID-19 pandemic. Because so many council members were attending special meetings due to the pandemic or terming out, there was considerable difficulty obtaining participants. I wrote numerous follow-up emails to recruit participants. In a few cases, the council members agreed to participate but did not respond to subsequent email requests. The study was designed in late 2019, well before the global pandemic in the spring of 2020. The interviews were completed during the summer and fall of 2020. Although the participants had similar experiences and provided similar viewpoints, a larger sample of participants may have yielded different results. Participants would have more than two years of experience, and others would not be as close to the end of their terms. However, some participants would be lost since they would be relatively new and not have enough experience. Also, they might have more availability when they are not consumed with the pandemic. An anonymous survey with questions and responses could have produced more participants, and then subsequent interviews could have been utilized.

Once the council members agreed to participate, I randomly reviewed the agendas for their respective cities for the past 3-5 years, with a minimum of 20 agendas reviewed during this timeframe. The agenda review allowed for me to determine any patterns in the invocations. If there was any type of change, I reviewed more agendas to identify the timing of the changes. This pattern was very apparent in the one city that only used city-

affiliated chaplains, as their names appeared much more frequently. In some cases, they did not have their title or organization. During the interviews, the council member confirmed the regularity of participants and their relationship with the city. Other cities that had an invocation did not always list the invocators' names or their affiliation. Therefore, it was difficult to determine if there were patterns with the council members or clergy. For this aspect, the data relied on the council members' memory, which they admitted was not completely reliable.

The study design included in-person interviews with videoconferencing or phone interviews as a secondary method for qualitative interviews. The face-to-face interviews would allow for a comprehensive view of the respondent, including facial expressions and body language. However, due to the global pandemic the interviews were limited to teleconferencing, limiting the observations to facial expressions and the occasional hand gesture. The interviews were recorded via Zoom videoconferencing technology with voice recognition. Generally, the technology was smooth except for one interview, and the embedded voice recognition software was helpful in the transcription. However, the voice recognition was not very accurate, which required considerable time to review the videotape and the transcribed conversation notes. The interviews and the transcription were reviewed, and transcription was corrected from the voice recognition. Although some were familiar with the technology, others were not as well-versed, which created some barriers in communication, including building trust and rapport with the respondents. With a bit of coaching for those that were unfamiliar with the technology, the communication was successful.



Council members were able to describe the routine nature of the meetings, the invocation, and the general process for identifying invocators. Community respondents were asked to describe their meeting observation and their perception of the invocation process. Upon completion, all the participants reviewed the interview transcripts to verify that their responses were recorded accurately.

Due to the remote nature of the council meetings during the data collection period, no live sessions were available to attend. The original study parameters planned for live meeting observations, but this was impossible in the spring and summer of 2020 due to the pandemic and the public health lockdown in California (Executive Order, March 19, 2020).

### **Recommendations**

At the outset of the conversation, the council members perceived the invocations as routine and not a significant portion of the meeting. However, the public members perceived the invocations as divisive and not inclusive for the entire community.

Each group described the presence of the invocations from their point of view and how it affected them and were not very mindful of the other group. Only two council members expressed the need to take action if the public was dissatisfied or upset about the prayers. However, the other council members voiced thoughtfulness about the practice and how the public might comprehend it. Although there were some attorneys in the study population, they were not very familiar with court decisions related to invocations or the intersection of religion and government, nor was there an expectation that the council members would be constitutional scholars. However, council members

should be cognizant of the issues raised in other jurisdictions regarding litigation due to the presence of legislative prayer.

The intent of this qualitative study explored the of impact of legislative prayer upon meeting participants at city council meetings in this Southern California county and whether the words or actions of the legislative body violate the Establishment Clause. Secondly, the study examined the type of prayer or practices that would violate the Establishment Clause of the First Amendment of the U.S. Constitution (U.S. Const. Amend. I.).

Since there seemed to be gaps in knowledge of court decisions, it would be helpful if the council members were briefed by their city attorneys about the past litigation regarding prayer at council or school board meetings. With a more thorough understanding of recent court cases, they could examine their existing invocation policy and practices to determine whether they should continue with invocations or make any modifications. Subsequently, the council could take measures to ensure that they are welcoming public engagement and not deterring them from meeting participation due to the invocation. The invocation policy should consider the court opinion of the *Town of Greece* (2014) and how they might address their policy. This relatively recent case has the most relevant set of facts pertaining to council invocation practices. If the council elects to continue the invocations, they will be aware of any consequences and take appropriate steps to be more inclusive. The council could also seek public input on the invocation practices to identify improvements, such as increasing the diversity of the presenters or faiths represented.

Some practices may be determined when the respective cities return to in-person meetings once public health guidelines permit. However, there must be political will to consider public feedback on changing the invocation policy. Since the council participants perceived the invocation as routine, there may be no desire to change the policy or practice.

Suppose citizens or organizations sense that the city council is violating the Establishment Clause. In that case, they could instigate litigation, resulting in a court decision or settlement costing the taxpayers a significant sum. Not only would these litigation costs take away from local budgets, but the lawsuit could cost the council members credibility within their community. If residents do not wish to have an invocation, but the council determines that they want to continue prayers, these invocations could cause a rift with the community. Most citizens want to have confidence that their leaders hear their concerns. The invocation could be replaced by a moment of reflection or inspiration without a religious overtone, or a performance to create a harmonious atmosphere to begin each meeting as suggested by the public members. The council also needs to be aware of their surroundings and their positions of leadership toward the public. When giving direction from the dais for the prayer, this can be perceived as using their authority to encourage people to pray (Beard et al., 2014). For example, if the council asks the citizenry to stand for the invocation or join in prayer, those who do not wish to pray may feel compelled to comply. If they choose to remain seated, they could be uncomfortable or even ostracized by others in the meeting. Those

who are not frequent attendees may be taken aback by the instructions to pray since they do not know the routine of the meetings.

Further research could be conducted with additional city council members and perhaps further prepare them by asking them to review their invocation policy before the interview. Only one council member studied the history of her city's invocation policy before the interview. Many council participants could not explain or define their existing policy, which was further complicated by the numerous special meetings due to the pandemic. The special meetings and the change in routine for remote meetings presented a lack of clarity about the nature, presence and frequency of the invocations.

Additionally, the timing of the interviews followed a summer of social unrest due to the deaths of citizens during encounters with police. The council members expressed concern about racial equality and were not necessarily focused on religious equality. However, they believed that there was enough diversity of prayer. Some expressed that more effort was required to ensure diversity of religion in their community.

Beyond the council, there are many staff members who are required to be present for council meetings. Their perspective could be further explored to determine their view on the invocation and their comfort level. If they object to the prayers, their job may be jeopardy because their expertise is required to conduct the meeting, as is the case for the city clerk or department directors who must be present for an agenda item.

Cities could also consider surveying the public or placing the issue as a non-binding ballot measure as the city of Lancaster proposed (*Rubin v City of Lancaster*, 2013). If the council gives the option to the voters and the council does not respond to the

majority result, this may present credibility issues for the council. Considerable political will would be required for a council to pursue this option. Each city would need to explore the option to meet the needs of their respective constituency.

### **Implications**

#### **Social Change**

The scholar-practitioner model lends itself to social change because it requires the researcher to delve into a current dilemma, but yet allows "system thinking" to identify perceptions and influences that affect the issue (Callahan et al., 2012). The presence of prayer has long been beset by various court holdings, the actions, and beliefs of the current and past elected officials, and the appreciation of the political nature of prayer. This study required the cooperation of elected officials who were willing to participate, especially in an election year. The discussion created some consideration to change a view, practice or policy. Some council members believe that the prayer is appropriate for them, but may not have considered how the prayers may also impact those people in attendance, including staff and citizens. Most elected officials do not want to be at the forefront of a contentious issue, but if public opinion becomes a prevailing sentiment, then this advocacy may help to encourage leaders to consider a policy change or practice (Callahan et al., 2012). As such, this inquiry examined the current invocation practices in Orange County city councils to provide knowledge to council members regarding practices within the county and what might be consistent with their methods or to offer an alternative that might suit their agency and constituents more broadly and effectively. One city used other methods, such as a children's performance or words of inspiration to

inspire or provide reflection for the council and community prior to the meeting. If it would be difficult to obtain a cross-section of religious diversity within the city, the council could consider similar measures. However, if the council believes that invocations should continue, then they can be more mindful of community concerns. The public participants expressed the worthy educational aspects of a variety of prayers, but believed that attempts to be inclusive could not fully encompass the diversity in the community. Ultimately, citizens should feel empowered to attend council meetings and contribute to the democratic process without the distraction of a potential minefield of religion.

In light of the social unrest of 2020 and 2021, considering the inclusion of religion in the community may also lead to further discussion of racial and ethnic diversity and equity in the various cities within the county. These discussions can help establish mechanisms to achieve a greater understanding of different factions in the cities and celebrate the diversity in the respective communities.

The multiple case study approach allows for the council members to understand other cities' policies and practices. Given the unique nature of each city, each council can consider the approach for the invocation policy that meets the needs of their respective council. Through policy diffusion, the council can learn from the successful practices of others and avoid a calamitous consequence that another city may have suffered.

Policy feedback provides an approach to policy analysis that allows for problem solving for social issues. By interviewing members of the public, they offer feedback to assess whether policies promote or deter civic participation, promote the influence of

interest groups, and how they affect the policymakers' decision-making (Mettler & Sorelle, 2018).

Mettler and SoRelle (2018) opined that policies can modify the political landscape which can affect future policymaking. As a result of the study, the councils can assess the community feedback to integrate with their policy review and potential revision or embark on obtaining feedback within their community. With term limits in many cities, new council members may have different viewpoints than previous policymakers due to their experience and current norms.

In the conversations with the council members, some were not reflective of how their actions impact their community. However, these interviews opened the dialogue with city council members regarding invocations. Many were curious regarding the study and other cities' practices. Most council members were not aware of the court cases involving invocations. Therefore, they did not consider how the invocations might be perceived legally or the social impact on their community. Although not explicitly asked, some council members noted the race and ethnic makeup of their cities. They believed that their cities were addressing racial inequalities and differences but had not focused on religious diversity. One council participant mentioned her city's winter tree lighting ceremony which involved various religions sharing their holiday traditions. She believed that this was a method to share and embrace the religious diversity of her community.

The interviews took place in the late summer and early fall of 2020, shortly after George Floyd's death at the hands of law enforcement and the middle of the COVID-19 pandemic. The social unrest and uncertainty created by these two events were at the

forefront of Americans' daily lives. The barrage of news may have influenced some respondents to contemplate the diversity of religion due to the significant focus on racial equality in terms of police interaction, COVID testing, and the healthcare disparity for people of color. The focus on racial inequality can compel one to consider other forms of equity, such as religion. When people contemplate the challenges of equity, this mindset should consider the imbalance of power and fairness. Therefore, creating a council awareness of the participants' perception of the invocation process can be the gateway to positive social change and potential changes in practice. However, newly elected council members may not want to push for change while the experience council members may be satisfied with the status quo.

Beginning the dialogue about invocations and the intent of religious diversity to maintain the invocations can lead to policy and practice changes. Suppose residents feel as though the presence of prayers infringes upon their rights or have the perception that the invocation violates their understanding of the separation of Church and State. This potential negative opinion could damage the credibility of the council members in the eyes of the community. If that standing is lost, this could profoundly influence the residents' perception of sound decision-making and potentially motivate challengers in the next election.

The lack of diversity in the invocations or the clergy who presented the invocations is problematic from a legal and social viewpoint. Since many council members were unaware of the legal ramifications of the lack of diversity in the prayers or how that diversity would be achieved, they should obtain information through their city



manager or city attorney to educate them regarding invocations. However, the council may not be knowledgeable to ask about invocation, therefore, this information should be part of a council member orientation by the city manager or the city attorney. The invocation policy should reflect their process to achieve religious diversity or determine that the risk of providing an invocation that could have fiscal or reputational consequences.

### **Conclusion**

This study was valuable for establishing an understanding of various cities' invocation practices throughout the traditionally conservative county which was recently described as “red in the sea of blue [California]” (CNN Special Report, 2021). Generally, the council members who had an invocation perceived that the prayer was a routine portion of the agenda and did not sense this practice as an intrusion for the public. Although some council members provided their invocations, they did not see this as a significant issue but some did research to prepare for the prayer. Some indicated that prayer was comfortable for them and did not need to prepare because their thoughts were natural, based on their religious upbringings. Others did not have a role in the invocations since they routinely had clergy provide them. Most council participants indicated they had not received objections from the public and, therefore, had not considered changes. However, following the interviews, they were more reflective about the prayers and the practices at their meetings. Our conversations shed light on the potential pitfalls from a legal and community viewpoint. The lack of awareness of prayer litigation in government meetings indicated that their practices isolate local officials. Council members are not

expected to be constitutional scholars, but they should have a general awareness of the potential pitfalls of invocations. This awareness should also be heightened by information from their respective city attorneys, who should be responsive to inquiries by their council members regarding this issue.

During the community members' interviews, they had not voiced dissatisfaction to their local councils, but this small sample of public members were convinced that the invocations should cease. They cited the separation of church and state and the divisiveness of the prayers throughout their interviews. However, they indicated that it would be difficult for a council to obtain a representative group of invocators, but also stated that educating people about various religions would be valuable, the public meetings were not the proper venue.

Due to these obstacles, it was their opinion that all prayers should stop. There was a general belief that bringing the community together could be accomplished in ways other than prayer. Examples of poetry or a children's performance could elicit a sense of shared kinship before the meeting to set a positive rather than negative tone. Both groups were surprised that someone was studying the invocation aspect of city council meetings. The conversations regarding inclusivity and challenging the presence of an invocation is a battle that won't be addressed immediately, given the ongoing pandemic and social justice concerns in the forefront. Since the tone of the meeting was cited by everyone, the council must consider how the decorum, words and actions of the council members set the tone. However, there was a recognition and a sensitivity to diversity along racial lines that could lead to expression of various faiths in their communities.

In response to the first research question, for some council members, the invocation is perceived as routine and not a potential barrier for the public to attend or speak at their meetings. For those that are uncomfortable with the prayer, it does affect how they view the meetings and their respective council members. It does not appear as though the invocation is a deterrent, but the full measure of public participation may be stymied by the presence of the prayer. Similar to any policy issue, the council should receive a full briefing of practices and policies that resulted in litigation. With a full measure of resources, the council can have a meaningful discussion. The result would be a thoughtful decision-making process with appropriate background information. Therefore, it would be appropriate for the councils to fully consider public feedback on the prayer.

For the second research question, the phrases “bow your head” or “join in prayer” give the impression that there is an attempt to infuse or establish religion. However, the council members did not perceive these actions as an attempt to establish religion. The public members of the study wanted to see a clear separation of Church and State by their elected leaders. The public recognized the solemnity of the meeting, but suggested other ways to bring together the community without a prayer. The public members may be inclined to share their concerns with their local leaders to help information and provide another perspective. One public participant recently informed me that candidates sought her group’s endorsement, they included a question regarding legislative prayer. The advocacy group believed that public prayer was one valid measure to determine a political endorsement. Recognizing the perceptions of the council and the public

members, there is still space for further exploration of the prayers or other methods of community building to reinforce the serious business of the council while creating a sense of community among the residents. In light of the current political and social climate in the country, finding ways to unify a community by a prayer or words of inspiration could create more tolerance and openness of religion. For all of the participants, the opening of the meeting set the tone for the remainder of the meeting. Therefore, if the opening creates that sense of welcome, then the prayer, words of inspiration, or some type of performance can set a meaningful tone for the council and the public. Identifying the balance of the invocation or other mechanisms to open the meeting will be dependent upon the individual councils, their religious leanings, their desire to be more inclusive and political will to potentially change. Whether and how the councils engage the public in this policy will depend on their willingness to hear and possibly change the invocation. For those cities without an invocation, they might choose to initiate an invocation or other methods to open their meeting. As a result, this open process might lead the way to consider other methods of fairness and equity in local policies on housing, healthcare, economic and educational equality.

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## Appendix A: Council Member Recruitment E-mail

Dear Elected official:

My name is Rebecca Gomez, a graduate student in Law and Public Policy. I am writing today to ask for your participation in a study as part of my dissertation in Law and Public Policy. Many Orange County City Councils provide an invocation before their meetings. The study intends to provide an assessment of invocation policies to determine best practices, in light of recent court decisions. Your participation is vital in determining whether and how your invocation practice affects public participation in your meetings and to avoid litigation that has plagued other public agencies.

I am reaching out to several public officials with a minimum of two years of service, to elicit their cooperation in examining this issue. Your participation would require a forty to fifty-minute interview regarding your invocation policy which will be recorded via audiotape and transcribed. You will have an opportunity to review the transcription of your interview for accuracy. Your identity will be anonymous, and your city will not be identified. However, you may stop your participation at any time during the study.

If you are willing to participate or have additional questions, please respond to this e-mail with the best contact e-mail and phone so that we can arrange an interview. I can also be reached by cell phone XXX-XXX-XXXX. As a token of appreciation for your time and interview participation, a \$10 Starbucks card will be provided.

Thank you for consideration in this important public policy issue.

Respectfully,

Rebecca R. Gomez

## Appendix B: Community Member Recruitment E-mail

Dear Community Member:

My name is Rebecca Gomez, the former Mayor Pro Tem for the City of Tustin and Trustee for the Orange County Board of Education. I am writing today to ask for your participation in a study as part of my dissertation in Law and Public Policy. Many city Councils provide an invocation before their meetings. The study intends to provide an assessment of invocation policies to determine best practices, in light of recent court decisions. Your participation is vital in determining whether and how your invocation practice affects public participation in your meetings and to avoid litigation that has plagued other public agencies.

I am contacting community member to elicit their cooperation in examining this issue. Your participation would require a forty to fifty-minute interview regarding your invocation policy which will be recorded via audiotape and transcribed. You will have an opportunity to review the transcription of your interview for accuracy. Your identity will be anonymous. However, you may stop your participation at any time during the study.

If you are willing to participate or have additional questions, please respond to this e-mail with the best contact e-mail and phone so that we can arrange an interview. I can also be reached by cell phone XXX-XXX-XXXX. As a token of appreciation for your time and interview participation, a \$10 Starbucks card will be provided.

Thank you for consideration in this important public policy issue.

Respectfully,

Rebecca R. Gomez

## Appendix C: Council Member Interview Questions

### Interview Questions

1. Your biography indicates that you were elected in \_\_\_\_\_. Is that accurate? So that means that you have served \_\_\_ years, correct?
2. Could you briefly explain why you ran for office?
3. Would you describe yourself politically as Very conservative, conservative, moderate, liberal or very liberal?
4. Would you describe your religious views, very religious, religious, some religion, little religious or have no religious beliefs?
5. Do you identify yourself as practicing a particular religion? If so, which one (optional)
  
6. Your Council meeting agenda lists an invocation. Take me to your Council/Board meeting, could you describe how the invocation proceeds at your meeting?
  - a. Probes for clarification, if needed
    - i. How is the person who gives the invocation selected?
    - ii. How would you characterize the content of the invocation?
    - iii. Does the general content vary by speaker?
    - iv. Have you provided an invocation by either volunteering or by assignment? Tell me about that experience.
  
7. To the best of your knowledge, has the invocation *policy* changed in the recent past?
  - a. If so, could you describe the difference before the change and now?
  - b. Could you discuss why the policy was changed?
  - c. To the best of your knowledge, does the policy outline any parameters to the frequency, content, or presentation of the invocation?
  - d. In your opinion, should there be guidelines? If so, could you describe what guidelines you would like to see?
  
8. To the best of your knowledge, has the invocation *practice* changed in the recent past?
  - a. If so, could you describe the difference before the change and now?
  - b. Could you tell me why the practice changed?
  - c. To the best of your knowledge, does the *practice* provide any parameters to the frequency, content, or presentation of the invocation?
  - d. In your opinion, should there be guidelines? If so, could you describe what guidelines you would like to see?
  
9. What is your perspective on having an invocation before your meetings?
10. What significance do you believe the invocation serves on the agenda or before a public meeting?



11. I'd like to ask you about the impact of the invocation. Some participants have expressed that the invocation is very uplifting and others have expressed discomfort, depending on the content. How would you describe the impact for you?
12. In your opinion, do you believe that the policymakers' perceptions of prayer before meetings has an impact based on their religious beliefs?

Interviewer: Read the First Amendment of the U.S. Constitution: "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances* (U.S. Const. Amend. I)."

13. In your opinion, how does and what type of prayer violate the Establishment Clause of the First Amendment of the U.S. Constitution?
14. In your opinion, how does the public agency balance the tradition of prayer and free speech?
15. Do you believe that the presence of minors should alter the policy and practice of invocations? Why?
16. Is there anything that you would like to add or questions that I did not ask?

## Appendix D: Community Member Interview Questions

1. Could you tell me how you became involved in the Americans United for Separation of Church & State Organization?
2. Do you regularly attend city Council meetings, County meetings or any other legislative body? If yes, which ones? How often do you attend and why?
3. Would you describe yourself politically as Very conservative, conservative, moderate, liberal or very liberal?
4. Would you describe your religious views as very religious, religious, some religion, little religious or have no religious beliefs?
5. Do you identify yourself as practicing a particular religion? If so, which one (optional)?
6. What is your perspective on having an invocation before public meetings?
7. What significance do you believe the invocation serves on the agenda or before a public meeting?
8. I'd like to ask you about the impact of the invocation. Some participants have expressed that the invocation is very uplifting and others have expressed discomfort, depending on the content. How would you describe the impact for you?
9. In your opinion, do you believe that the presence of prayer inhibits or deters citizens from attending or participating in council/board meetings?
10. Have you heard any citizens express concern about the invocation on the agenda? If so, could you describe the basis for their concern?
11. How did the Council/board react to the concern?
12. Would you propose any changes to the policy or practice of the invocation?

Interviewer: Read the First Amendment of the U.S. Constitution: "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances* (U.S. Const. Amend. I)."

13. In your opinion, how does and what type of prayer violate the Establishment Clause of the First Amendment of the U.S. Constitution?
14. In your opinion, how should the public agency balance the traditions of prayer and free speech?
15. Some litigation has been brought forth because of the lack of representation of various faiths. Do you see this as an issue for public agencies? Why or why not?
16. Do you believe that the presence of children should alter the policy and practice of invocations?
17. Are you aware of any phrases or actions that might trigger a violation of the Establishment Clause of the U.S. Constitution? If so, could you describe them?
18. Is there anything that you would like to add or questions that I did not ask?

## Appendix E: Council Meeting Observations

Date:	Live	Video
Time:		
Presenter:		
Council member	Clergy/Faith	Community Member

## Introduction by Council/Mayor:

Reference to posture: stand, sit, bow

## Invocation

Reference to posture: stand, sit, bow

## Notes:

Let us Pray
Let us bow our heads
Please pray
References to a specific faith or God

Note: This observation tool was developed but was not used to its full extent since in person meetings could not be observed. However, videotapes of the meetings were reviewed to verify invocations and to confirm information from interviews.