

No. 15-1591

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**In the United States Court Of Appeals  
for the Fourth Circuit**

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Nancy Lund, Liesa Montag-Siegal,  
and Robert Voelker,

*Plaintiffs-Appellees,*

v.

Rowan County,

*Defendant-Appellant.*

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On Appeal from United States District Court,  
Middle District of North Carolina, Judge James A. Beaty, Jr.

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**Brief of *Amici Curiae* Religious Liberty Organizations  
In Support of Appellees and Affirmance**

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Gregory M. Lipper (lipper@au.org)  
AMERICANS UNITED FOR SEPARATION  
OF CHURCH AND STATE  
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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 15-1591          Caption: Nancy Lund v. Rowan County, North Carolina

Pursuant to FRAP 26.1 and Local Rule 26.1,

Americans United for Separation of Church and State  
(name of party/amicus)

who is \_\_\_\_\_ amicus \_\_\_\_\_, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

- 1.    Is party/amicus a publicly held corporation or other publicly held entity?     YES  NO
  
- 2.    Does party/amicus have any parent corporations?     YES  NO  
       If yes, identify all parent corporations, including all generations of parent corporations:
  
  
  
  
- 3.    Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?     YES  NO  
       If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Gregory M. Lipper

Date: October 7, 2015

Counsel for: Americans United

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I certify that on October 7, 2015 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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(date)

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No. 15-1591 Caption: Nancy Lund v. Rowan County, North Carolina

Pursuant to FRAP 26.1 and Local Rule 26.1,

American Humanist Association  
(name of party/amicus)

who is amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO

2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
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Signature: /s/ Gregory M. Lipper

Date: October 7, 2015

Counsel for: American Humanist Association

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No. 15-1591 Caption: Nancy Lund v. Rowan County, North Carolina

Pursuant to FRAP 26.1 and Local Rule 26.1,

Anti-Defamation League
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

- 1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO
2. Does party/amicus have any parent corporations? YES NO
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
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Signature: /s/ Gregory M. Lipper

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Counsel for: Anti-Defamation League

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No. 15-1591 Caption: Nancy Lund v. Rowan County, North Carolina

Pursuant to FRAP 26.1 and Local Rule 26.1,

Center for Inquiry  
(name of party/amicus)

who is                      amicus                     , makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

- 1. Is party/amicus a publicly held corporation or other publicly held entity?     YES  NO
  
- 2. Does party/amicus have any parent corporations?     YES  NO  
If yes, identify all parent corporations, including all generations of parent corporations:
  
- 3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?     YES  NO  
If yes, identify all such owners:



4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
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If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Gregory M. Lipper

Date: October 7, 2015

Counsel for: Center for Inquiry

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No. 15-1591                      Caption: Nancy Lund v. Rowan County, North Carolina

Pursuant to FRAP 26.1 and Local Rule 26.1,

Freedom From Religion Foundation  
(name of party/amicus)

who is \_\_\_\_\_ amicus \_\_\_\_\_, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO

2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?  YES  NO  
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
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If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Gregory M. Lipper

Date: October 7, 2015

Counsel for: Freedom From Religion Foundation

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No. 15-1591 Caption: Nancy Lund v. Rowan County, North Carolina

Pursuant to FRAP 26.1 and Local Rule 26.1,

Interfaith Alliance Foundation
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?  YES  NO  
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If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Gregory M. Lipper

Date: October 7, 2015

Counsel for: Interfaith Alliance Foundation

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Pursuant to FRAP 26.1 and Local Rule 26.1,

Sikh Coalition  
(name of party/amicus)

who is          amicus         , makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

- 1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
- 2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including all generations of parent corporations:
  
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Date: October 7, 2015

Counsel for: Sikh Coalition

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No. 15-1591 Caption: Nancy Lund v. Rowan County, North Carolina

Pursuant to FRAP 26.1 and Local Rule 26.1,

Union for Reform Judaism  
(name of party/amicus)

who is amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
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Signature: /s/ Gregory M. Lipper

Date: October 7, 2015

Counsel for: Union for Reform Judaism

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No. 15-1591 Caption: Nancy Lund v. Rowan County, North Carolina

Pursuant to FRAP 26.1 and Local Rule 26.1,

Women of Reform Judaism  
(name of party/amicus)

who is                      amicus                     , makes the following disclosure:  
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1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
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Signature: /s/ Gregory M. Lipper

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Counsel for: Women of Reform Judaism

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**Table of Contents**

Table of Authorities .....ii

Interests of *Amici Curiae* ..... 1

Introduction ..... 6

Background ..... 8

Argument ..... 11

    A. Commissioners direct citizens to participate in Christian prayers ..... 12

    B. After directing citizens to participate in Christian prayers, the Commissioners make decisions directly affecting those citizens ..... 16

    C. The meetings’ setting intensifies pressure on citizens to participate in unwanted prayers ..... 22

Conclusion..... 25

Certificate of Compliance

Certificate of Service

## Table of Authorities

### Cases

<i>Marsh v. Chambers</i> , 463 U.S. 783 (1983) .....	6
<i>Town of Greece v. Galloway</i> , 134 S. Ct. 1811 (2014) .....	1, 6, 8, 11, 12

### Other

<i>Board of Commissioners, Rowan County</i> , <a href="http://tinyurl.com/rowancommission">http://tinyurl.com/rowancommission</a> .....	8
Brian E. Adams, <i>Citizen Lobbyists: Local Efforts to Influence Public Policy</i> (2007).....	17
Brian E. Adams, <i>Public Meetings and the Democratic Process</i> , 64 Pub. Admin. Rev. 43 (2004) .....	16, 20
William H. Baker et al., <i>Critical Factors for Enhancing Municipal Public Hearings</i> , 65 Pub. Admin. Rev. 490 (2005) .....	16
William Barnes & Bonnie Mann, National League of Cities, <i>Making Local Democracy Work: Municipal Officials' Views About Public Engagement</i> (2010) .....	16–17
Jeffrey M. Berry, et al., <i>The Rebirth of Urban Democracy</i> (1993).....	16
Jeffrey M. Berry, <i>Urban Interest Groups</i> , in <i>The Oxford Handbook of American Political Parties and Interest Groups</i> (L. Sandy Maisel & Jeffrey M. Berry eds., 2010) .....	20
Thomas Blass, <i>Understanding Behavior in the Milgram Obedience Experiment: the Role of Personality, Situations, and Their Interactions</i> , 60 J. Personality & Soc. Psychol. 398 (1991) .....	23
Frank M. Bryan, <i>Real Democracy: The New England Town Meeting and How it Works</i> (2004) .....	24

<i>Commissioner Meeting—Apr. 6, 2015</i> , Rowan County, <a href="http://tinyurl.com/rowan2015apr6">http://tinyurl.com/rowan2015apr6</a> .....	9, 13, 18
<i>Commissioner Meeting—Apr. 15, 2013</i> , Rowan County, <a href="http://tinyurl.com/rowan2013apr15">http://tinyurl.com/rowan2013apr15</a> .....	10, 15, 22
<i>Commissioner Meeting—Apr. 20, 2015</i> , Rowan County, <a href="http://tinyurl.com/rowan2015apr20">http://tinyurl.com/rowan2015apr20</a> .....	10, 13, 17
<i>Commissioner Meeting—Dec. 3, 2012</i> , Rowan County, <a href="http://tinyurl.com/rowan2012dec3">http://tinyurl.com/rowan2012dec3</a> .....	9, 14, 25
<i>Commissioner Meeting—Dec. 15, 2014</i> , Rowan County, <a href="http://tinyurl.com/rowan2014dec15">http://tinyurl.com/rowan2014dec15</a> .....	19
<i>Commissioner Meeting—Dec. 17, 2007</i> , Rowan County, <a href="http://tinyurl.com/rowan2007dec17">http://tinyurl.com/rowan2007dec17</a> .....	13
<i>Commissioner Meeting—Feb. 5, 2015</i> , Rowan County, <a href="http://tinyurl.com/rowan2015feb5">http://tinyurl.com/rowan2015feb5</a> .....	13
<i>Commissioner Meeting—Feb. 16, 2015</i> , Rowan County, <a href="http://tinyurl.com/rowan2015feb16">http://tinyurl.com/rowan2015feb16</a> .....	18–19
<i>Commissioner Meeting—Feb. 18, 2013</i> , Rowan County, <a href="http://tinyurl.com/rowan2013feb18">http://tinyurl.com/rowan2013feb18</a> .....	24
<i>Commissioner Meeting—Jan. 5, 2015</i> , Rowan County, <a href="http://tinyurl.com/rowan2015jan5">http://tinyurl.com/rowan2015jan5</a> .....	18
<i>Commissioner Meeting—Jan. 20, 2015</i> , Rowan County, <a href="http://tinyurl.com/rowan2015jan20">http://tinyurl.com/rowan2015jan20</a> .....	13–14, 17
<i>Commissioner Meeting—July 6, 2015</i> , Rowan County, <a href="http://tinyurl.com/2015july6">http://tinyurl.com/2015july6</a> .....	19
<i>Commissioner Meeting—June 1, 2015</i> , Rowan County, <a href="http://tinyurl.com/rowan2015june1">http://tinyurl.com/rowan2015june1</a> .....	17, 18

<i>Commissioner Meeting—June 15, 2015, Rowan County,</i> <a href="http://tinyurl.com/2015june15">http://tinyurl.com/2015june15</a> .....	19
<i>Commissioner Meeting—Mar. 2, 2015, Rowan County,</i> <a href="http://tinyurl.com/rowan2015march2">http://tinyurl.com/rowan2015march2</a> .....	19, 20
<i>Commissioner Meeting—Mar. 5, 2012, Rowan County,</i> <a href="http://tinyurl.com/rowan2012mar5">http://tinyurl.com/rowan2012mar5</a> .....	9, 10, 13, 14, 15
<i>Commissioner Meeting—Mar. 20, 2015, Rowan County,</i> <a href="http://tinyurl.com/rowan2015mar20">http://tinyurl.com/rowan2015mar20</a> .....	13
<i>Commissioner Meeting—May 20, 2013, Rowan County,</i> <a href="http://tinyurl.com/rowan2013May20">http://tinyurl.com/rowan2013May20</a> .....	24
<i>Commissioner Meeting—Oct. 6, 2014, Rowan County,</i> <a href="http://tinyurl.com/rowan2014oct6">http://tinyurl.com/rowan2014oct6</a> .....	17
<i>Commissioner Meeting—Sept. 15, 2014, Rowan County,</i> <a href="http://tinyurl.com/rowan2014sept15">http://tinyurl.com/rowan2014sept15</a> .....	14
<i>In Jesus’ Name, Amen? This Afternoon Will Tell for Rowan Co.</i> <i>Commission, Crime in Charlotte (Aug. 5, 2013),</i> <a href="http://tinyurl.com/CommissionerStatement">http://tinyurl.com/CommissionerStatement</a> .....	15
Judith E. Innes & David E. Booher, <i>Reframing Public</i> <i>Participation: Strategies for the 21st Century,</i> 5 <i>Plan. Theory &amp; Prac.</i> 419 (2004) .....	20, 21
Jane J. Mansbridge, <i>Beyond Adversary Democracy</i> (1980) .....	16
Katherine A. McComas, et al., <i>Why Citizens Do and Do Not Attend</i> <i>Public Meetings About Local Cancer Cluster Investigations,</i> 34 <i>Pol. Stud. J.</i> 671 (2006) .....	20–21
Katherine A. McComas, <i>Trivial Pursuits: Participant Views of</i> <i>Public Meetings,</i> 15 <i>J. Pub. Relations Research</i> 91 (2003) .....	24

Jeffrey G. Noel et al., <i>Peripheral Ingroup Membership Status and Public Negativity Towards Outgroups</i> , 68 J. Personality & Soc. Psychol. 127 (1995).....	22
Cecilia L. Ridgeway, <i>Conformity, Group-Oriented Motivation, and Status Attainment in Small Groups</i> , 41 Soc. Psychol. 175 (1978).....	21–22
Karen Tracy & Margaret Durfy, <i>Speaking Out in Public: Citizen Participation in Contentious School Board Meetings</i> , 1 Discourse & Comm. 223 (2007) .....	23
David Yamane, <i>Faith and Access: Personal Religiosity and Religious Group Advocacy in a State Legislature</i> , 38 J. Sci. Study Religion 543 (1999).....	21



### Interests of *Amici Curiae*

*Amici* are religious-liberty organizations seeking to ensure that all Americans—regardless of their religious beliefs, or lack thereof—can participate fully in civic life without violating their conscience.\*

Americans United for Separation of Church and State is a national, nonsectarian public-interest organization. Its mission is twofold: (1) to advance the free-exercise rights of individuals and religious communities to worship as they see fit, and (2) to preserve the separation of church and state as a vital component of democratic governance. Founded in 1947, Americans United has more than 120,000 members and supporters throughout the nation. Americans United has participated as counsel or *amicus curiae* in legislative-prayer cases across the country, including representing Respondents in *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014). Consistent with Supreme Court precedent, Americans United seeks to ensure that governmental bodies that open their meetings with prayers do not exploit the

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\* Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *amici* state that no party's counsel authored this brief in whole or in part and that no party, party's counsel, or person other than *amici*, their members, or their counsel contributed money intended to fund the preparation or submission of this brief. The parties have consented to the filing of this brief.

opportunity to advance a particular religion, discriminate against religious minorities, or coerce citizens to participate in unwanted prayers.

The American Humanist Association has a long history of supporting the constitutional principle of church-state separation and defending the rights of religious minorities (including the nonreligious) to be free from governmental promotion of majoritarian religious views. As the nation's oldest and largest humanist organization, with almost 200 chapters and affiliates across the country, AHA gives voice to an important and growing demographic sector. These Americans are marginalized when divisive religious elements pervade governmental activity, and AHA advocates to ensure secular government on their behalf.

The Anti-Defamation League was organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races and to combat racial, ethnic, and religious prejudice in the United States. Today, ADL is one of the world's leading organizations fighting hatred, bigotry, discrimination, and anti-Semitism. Among ADL's core beliefs is strict adherence to the separation of church and state. ADL

emphatically rejects the notion that the separation principle is inimical to religion, and holds, to the contrary, that a high wall of separation is essential to the continued flourishing of religious practice and belief in America, and to the protection of minority religions and their adherents.

The Center for Inquiry is a nonprofit educational organization dedicated to promoting and defending science, reason, freedom of inquiry, and humanist values. CFI currently represents over 45,000 members located across the United States and the world. Through education, research, publishing, social services, and other activities, including litigation, CFI encourages evidence-based inquiry into science, pseudoscience, medicine and health, religion, and ethics. CFI believes that the separation of church and state is vital to the maintenance of a free society that allows for a reasoned exchange of ideas about public policy.

Freedom From Religion Foundation is a national nonprofit organization representing the largest association of freethinkers, including more than 23,000 atheists and agnostics. The Foundation has members in every state, the District of Columbia, and Puerto Rico. The

Foundation's two purposes are to educate the public about nontheism and to defend the constitutional separation of state and church. The Foundation was originally formed in 1976 to protest prayers at the Madison, Wisconsin Common Council.

The Interfaith Alliance Foundation is a 501(c)(3) nonprofit organization that celebrates religious freedom by championing individual rights, promoting policies that protect both religion and democracy, and uniting diverse voices to challenge extremism. Founded in 1994, Interfaith Alliance Foundation's members across the country belong to 75 different faith traditions as well as no faith tradition. Interfaith Alliance Foundation has a long history of working to ensure the religious freedom of all Americans, especially when receiving government services or participating in government functions.

The Sikh Coalition was founded on September 11, 2001, to defend civil rights and liberties for all people, promote community empowerment and civic engagement within the Sikh community, create an environment where Sikhs can lead a dignified life unhindered by bias and discrimination, and educate the broader community about Sikhism in order to promote cultural understanding and create bridges

across communities. Ensuring religious liberty for all people is a cornerstone of the Sikh Coalition's work, and the Sikh Coalition believes that the Establishment Clause is an indispensable safeguard for religious minority communities. In addition, Sikh Americans have a vital interest in participating in legislative sessions without having to participate in majoritarian religious practices.

The Union for Reform Judaism represents 900 congregations, which include 1.5 million Reform Jews, across North America. The Women of Reform Judaism represents more than 65,000 women in nearly 500 women's groups in North America and around the world. Both organizations come to this case due to their longstanding commitment to the separation of church and state, and their belief that the First Amendment is the bulwark of religious freedom and interfaith amity. The separation of church and state has lifted up American Jewry, as well as other religious minorities, providing more protections, rights, and opportunities than have been known anywhere else throughout history.

## Introduction

In *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), the Supreme Court concluded that local governments may invite outside speakers to deliver prayers before legislative meetings, *id.* at 1815, but the Court did not write those governments a blank check to impose religion on unwilling citizens. Prayers, the Court made clear, must not “afford government an opportunity to proselytize or force truant constituents into the pews.” *Id.* at 1825. Both *Town of Greece* and its predecessor, *Marsh v. Chambers*, 463 U.S. 783 (1983), involved prayers delivered for the benefit of legislators. *See Town of Greece*, 134 S. Ct. at 1825. The Supreme Court upheld the prayer practices in those cases because the legislators did not determine the content of the prayers, evince a discriminatory purpose, or attempt to impose the prayers on citizens in attendance. *See id.* at 1825–26; *Marsh*, 463 U.S. at 794–95.

Things are different in Rowan County. As the district court explained, the County sponsors “prayers adhering to the [Christian] faiths of five elected Commissioners,” and these Commissioners “maintain[ ] exclusive and complete control over the content of the prayers.” JA 360–61. In so doing, the Commissioners prevent anyone

else, including anyone with different religious beliefs, from participating in the process. And unlike in *Marsh* or *Town of Greece*, the Commissioners direct members of the public to participate in the prayers.

These practices put intolerable pressure on citizens—including religious minorities and nonbelievers—to violate their conscience by participating in Christian religious exercises. Because citizens attend Board meetings to petition their government and obtain assistance or relief from the Board, the Commissioners exercise power over the lives of citizens that a guest chaplain does not. Citizens will reasonably fear that refusing to participate in the prayers, delivered by the very officials who are about to hear and decide their pleas, will jeopardize their chances of obtaining a favorable decision. The Board's decisions, moreover, are often vital to the citizen petitioners—affecting their community, their property, and even their livelihood. With stakes this high, citizens have little choice but to participate in the Commissioners' prayers, no matter what the cost to their conscience.

The County thus flouts the “elemental First Amendment principle that government may not coerce its citizens to support or participate in

any religion or its exercise.” *Town of Greece*, 134 S. Ct. at 1825 (controlling plurality). The district court correctly halted the County’s coercive religious practices.

### **Background**

The Board of Commissioners in Rowan County, North Carolina, holds two public meetings each month to address issues important to the County and its citizens. The Board is responsible for, among other things, “maintain[ing] fiscal responsibility,” “setting policies, goals and objectives to direct the County’s growth,” “and providing for ordinances, rules and regulations as necessary for the general welfare of County citizens.” *Board of Commissioners, Rowan County*, <http://tinyurl.com/rowancommission> (all websites last visited Oct. 6, 2015).

Each meeting opens with a prayer that is composed and delivered by a member of the Board of Commissioners. After calling the meeting to order, the Board Chair introduces the Commissioner who will be giving the prayer, and then instructs the audience members to stand for the prayer and the Pledge of Allegiance. JA 323–24. The Commissioner giving the prayer often states, “let us pray” or “please pray with me.” *Id.* at 324. The Commissioner delivers the prayer from the dais, facing the



citizens in the audience. *See, e.g., Commissioner Meeting—Dec. 3, 2012, Rowan County, <http://tinyurl.com/rowan2012dec3> (0:15); Commissioner Meeting—Apr. 6, 2015, Rowan County, <http://tinyurl.com/rowan2015apr6> (0:30).*

Almost every prayer contains a specific reference to Christianity, and none of the prayers since at least November 2007 has referred to any other religion. JA 325. The Commissioners often invoke Jesus Christ, sometimes referring to him as the “name above all names” and “the only way to eternal life.” *See, e.g., Commissioner Meeting—Mar. 5, 2012, Rowan County, <http://tinyurl.com/rowan2012mar5> (0:24).*

Commissioners have stated, “We can’t be defeated, we can’t be destroyed, and we can’t be denied, because we’re going to live forever with you, through the salvation of Jesus Christ.” *Id.* They have called upon Rowan County residents to embrace Jesus Christ: “I pray that the citizens of Rowan County will love you lord and put you first.”

*Commissioner Meeting—Dec. 3, 2012, Rowan County, <http://tinyurl.com/rowan2012dec3> (0:15).* And they have linked their legislative decisions to Christ’s views: “We pray the decisions we make would honor and

please you.” *Commissioner Meeting—Apr. 15, 2013*, Rowan County, <http://tinyurl.com/rowan2013apr15> (0:16).

After the prayer, the Pledge of Allegiance, and administrative tasks related to the meeting minutes and agenda, the Board hears comments from the public. This part of the meeting often starts within a few minutes of the prayer. *See* JA 27–224 (meeting agendas); *see also* *Commissioner Meeting—Mar. 5, 2012*, Rowan County, <http://tinyurl.com/rowan2012mar5> (1:02). After hearing public comments, the Board usually holds scheduled hearings on particular proposals. *See, e.g.,* *Commissioner Meeting—Apr. 20, 2015*, Rowan County, <http://tinyurl.com/rowan2015apr20> (6:40). During these hearings, the Board hears a presentation on a proposal, members of the public may present supporting or opposing views, and the Board then votes to approve or deny the proposal. *See id.*

The plaintiffs are Rowan County residents who attend Board meetings and object to the Commissioners’ attempts to coerce religious participation from members of the audience. The district court granted summary judgment to the plaintiffs, concluding that the County’s prayer practices violate the Establishment Clause. JA 323. Relying on

the Supreme Court’s decision in *Town of Greece*, the court reasoned that because the Commissioners who deliver the prayers are all Christian, the County represents only one religion—Christianity—and thus “inherently discriminates and disfavors religious minorities.” JA 342. Moreover, by writing and delivering the invocations, the Commissioners impermissibly act as “‘supervisors’ of the prayers, and are ... ‘editing [and] approving prayers’ as they simultaneously deliver those prayers.” JA 341 (citing *Town of Greece* 134 S. Ct. at 1821–22) (brackets in original). Finally, unlike in *Town of Greece*, the Commissioners direct attendees to participate in the prayers, thus coercing citizens to participate in religious exercises. JA 350–51.

### Argument

When citizens petition the Rowan County Board of Commissioners on issues important to their lives or livelihoods, “maintaining the [Commissioners’] respect [is] of utmost importance.” JA 360. Yet at these meetings, the Commissioners direct the residents in attendance to join in overtly Christian prayers, which the Commissioners themselves then lead. The Commissioners lead these Christian prayers from the dais while facing the audience. When instructed by the Commissioners

to stand and join in a prayer delivered by a Commissioner, county residents are likely to feel substantial pressure to participate, even if doing so would violate their conscience.

*A. Commissioners direct citizens to participate in Christian prayers.*

Instructions to participate in a prayer are especially coercive when, as here, they come from the government officials leading the legislative meeting. In *Town of Greece*, the challenged prayers were delivered by outside guests, not by the legislators themselves. *See* 134 S. Ct. at 1816. Moreover, “[a]lthough board members themselves stood, bowed their heads, or made the sign of the cross during the prayer, they at no point solicited similar gestures by the public,” and any requests for the audience to stand or otherwise participate “came not from town leaders but from the guest ministers....” *Id.* at 1826. As a result, the Court concluded that citizens were unlikely to feel coerced to participate in unwanted religious exercises. *Id.* at 1826–27.

In Rowan County, however, the prayers and pressure to participate come directly from the Commissioners themselves. The Commissioners compose the Christian prayers, deliver the Christian prayers, instruct the audience to participate in the Christian prayers,

link the Christian prayers to their legislative decisions, and ostracize citizens who object to the Christian prayers.

First, either the Chairman or the Commissioner leading the prayer will typically ask the audience to stand. *See Commissioner Meeting—Apr. 20, 2015*, Rowan County, <http://tinyurl.com/rowan2015apr20> (0:21) (“if we’d all stand, our invocation will be led by Commissioner Caskey”); *Commissioner Meeting—Apr. 6, 2015*, Rowan County, <http://tinyurl.com/rowan2015apr6> (0:22) (“tonight’s prayer will be led by Commissioner Pierce, if you’d stand please”); *Commissioner Meeting—Mar. 20, 2015*, Rowan County, <http://tinyurl.com/rowan2015mar20> (0:07) (“stand for the invocation and pledge”); *Commissioner Meeting—Mar. 5, 2012*, Rowan County, <http://tinyurl.com/rowan2012mar5> (0:24) (“please stand”); *Commissioner Meeting—Dec. 17, 2007*, Rowan County, <http://tinyurl.com/rowan2007dec17> (0:10) (“let’s all stand together”).

In addition to asking the audience to stand, the Commissioners often instruct attendees to join in the prayers. *See Commissioner Meeting—Feb. 5, 2015*, Rowan County, <http://tinyurl.com/rowan2015feb5> (0:48) (“please pray with me”); *Commissioner Meeting—*

*Jan. 20, 2015*, Rowan County, <http://tinyurl.com/rowan2015jan20> (0:20) (“We will begin our evening with a prayer and a pledge, so if you’d join”); *Commissioner Meeting—Sept. 15, 2014*, Rowan County, <http://tinyurl.com/rowan2014sept15> (0:15) (“let us pray”); *Commissioner Meeting—Mar. 5, 2012*, Rowan County, <http://tinyurl.com/rowan2012mar5> (0:30) (“let us pray”).

The Commissioners then deliver prayers that they themselves have composed—prayers that almost always include specific references to Christianity and never invoke any other religious tradition. In addition, these prayers make clear that the Commissioners want attendees to embrace Christianity. At one meeting, a Commissioner asked the audience to embrace Jesus Christ, “pray[ing] that the citizens of Rowan County will love you lord and put you first.” *Commissioner Meeting—Dec. 3, 2012*, Rowan County, <http://tinyurl.com/rowan2012dec3> (0:15). Another prayer stated that “there is only one way to salvation and that is Jesus Christ.” JA 16. Commissioners have even linked their legislative decisions to their Christian faith, praying to God—“in Jesus’ name”—that “the decisions

we make would honor and please you.” *Commissioner Meeting—Apr. 15, 2013*, Rowan County, <http://tinyurl.com/rowan2013apr15> (0:16).

Lest anyone feel free to refrain from participating in the prayers, the Commissioners and other citizens have ostracized those who object to the prayer practices. Soon after the plaintiffs’ counsel wrote to the County to express concerns about the Board’s practices, a Commissioner prayed using combative language: “We can’t be defeated, we can’t be destroyed, and we can’t be denied, because we’re going to live forever with you, through the salvation of Jesus Christ.” *Commissioner Meeting—Mar. 5, 2012*, Rowan County, <http://tinyurl.com/rowan2012mar5> (0:24). At the same meeting, a citizen was “jeered by audience members for expressing opposition to” the prayer practices. JA 19 ¶ 32. And after the plaintiffs filed suit, a Commissioner stated, “God will lead me through this persecution and I will be His instrument.” Pls. Mem. Supp. Mot. Summ. J. [Doc. #53] at 9 (citing *In Jesus’ Name, Amen? This Afternoon Will Tell for Rowan Co. Commission*, Crime in Charlotte (Aug. 5, 2013), <http://tinyurl.com/CommissionerStatement>).

*B. After directing citizens to participate in Christian prayers, the Commissioners make decisions directly affecting those citizens.*

Citizens who decline to join in the prayers not only risk drawing the Commissioners' ire, but also may imperil the approval of their requests to the Board. Local governments like Rowan County "carry out many of the functions from education to police protection to road repair, that directly affect [citizens'] quality of life." Jeffrey M. Berry, et al., *The Rebirth of Urban Democracy* 236 (1993). They address land use, zoning, crime prevention, local budgets, garbage collection, school governance, upkeep of local parks and recreational areas, and other issues directly affecting local residents. *See, e.g.*, Jane J. Mansbridge, *Beyond Adversary Democracy* 44–45 (1980); *see generally* Brian E. Adams, *Public Meetings and the Democratic Process*, 64 *Pub. Admin. Rev.* 43, 44–45 (2004) (97% of cities hold public hearings to seek citizen comment about local issues). These topics dominate local-government meetings and produce the most citizen participation. *See* William H. Baker et al., *Critical Factors for Enhancing Municipal Public Hearings*, 65 *Pub. Admin. Rev.* 490, 493 (2005); William Barnes & Bonnie Mann, National League of Cities, *Making Local Democracy Work: Municipal Officials'*



*Views About Public Engagement* 17 (2010); Brian E. Adams, *Citizen Lobbyists: Local Efforts to Influence Public Policy* 46–53 (2007).

Rowan County is no different. Citizens regularly petition the Board in high-stakes hearings on issues of significant personal and economic interest, such as requests for easements or business licenses. In a typical hearing, a County representative describes the proposal at issue, the Commissioners have the opportunity to question the petitioner, and they then solicit comments from supporters or opponents. *See, e.g., Commissioner Meeting—Jan. 20, 2015*, Rowan County, <http://tinyurl.com/rowan2015jan20> (3:55) (hearing on request for permit to build a solar-energy system). Many of these requests involve citizens' property or business interests. *See, e.g., Commissioner Meeting—Apr. 20, 2015*, Rowan County, <http://tinyurl.com/rowan2015apr20> (6:40) (requesting a zoning variance from rural to commercial in order to open a business); *Commissioner Meeting—Oct. 6, 2014*, Rowan County, <http://tinyurl.com/rowan2014oct6> (9:42) (requesting financial incentives to open local brewery); *Commissioner Meeting—June 1, 2015*, Rowan County, <http://tinyurl.com/rowan2015june1> (1:39:17) (requesting conditional use permit to operate

commercial horse stable on residential property). The Commissioners' decisions on these requests can determine whether a resident can use her property productively or whether her new business will succeed.

Other requests involve fiscal questions of substantial public concern, such as a request to increase county supplements to teachers' salaries. *Commissioner Meeting—June 1, 2015*, Rowan County, <http://tinyurl.com/rowan2015june1> (2:27:18). Some citizens have sought permits to exceed the noise ordinances at a local fundraiser, requiring the Commissioners to balance the petitioners' interests against those of neighbors with competing desires for quiet. *See Commissioner Meeting—Apr. 6, 2015*, Rowan County, <http://tinyurl.com/rowan2015apr6> (22:38). Others have petitioned the Board on behalf of their governmental agencies, including requesting funds to hire additional child-protective-services employees. *See Commissioner Meeting—Jan. 5, 2015*, Rowan County, <http://tinyurl.com/rowan2015jan5> (30:18) (child services hiring).

During the public-comment period, Rowan County residents have asked for more services from the County's Veteran Services Office. *See Commissioner Meeting—Feb. 16, 2015*, Rowan County,

<http://tinyurl.com/rowan2015feb16> (2:50). They have requested more educational and economic opportunities for County youth. *See Commissioner Meeting—Mar. 2, 2015*, Rowan County, <http://tinyurl.com/rowan2015march2> (2:48). And they have sought regulations on the sale or consumption of alcohol. *See Commissioner Meeting—June 15, 2015*, Rowan County, <http://tinyurl.com/2015june15> (6:04). Citizens have also urged the Commissioners to support specific projects, such as the reopening of a local bridge. *Commissioner Meeting—Dec. 15, 2014*, Rowan County, <http://tinyurl.com/rowan2014dec15> (17:36).

Even requests that seem less important at first may be crucial to the citizens who make them. One Rowan County resident asked the Commissioners to build a bike trail because cycling was part of his therapy for post-traumatic stress disorder. *See Commissioner Meeting—July 6, 2015*, Rowan County, <http://tinyurl.com/2015july6> (24:33). And the citizen who sought more opportunities for local youth did so because he had spent eighteen years in prison and felt compelled to help those who might otherwise end up in the same place. *See Commissioner*

*Meeting—Mar. 2, 2015*, Rowan County, <http://tinyurl.com/rowan2015march2> (2:48).

Decisions made at these meetings, in sum, affect citizens personally and profoundly. The “fights are often over what is going to happen to a particular place and these experiential facts are forcefully articulated by those who live or work in that particular place.” Jeffrey M. Berry, *Urban Interest Groups*, in *The Oxford Handbook of American Political Parties and Interest Groups* 502, 505 (L. Sandy Maisel & Jeffrey M. Berry eds., 2010). And citizens often frame their arguments “in the form of ‘this is what will happen to my home,’ ‘my neighborhood,’ [or] ‘my business....’” *Id.* at 505.

In addition, the people most likely to attend a public meeting are those with the greatest interest in the topics on the agenda. Meetings “typically are attended primarily, if not uniquely, by avid proponents and opponents of a measure affecting them personally....” Judith E. Innes & David E. Booher, *Reframing Public Participation: Strategies for the 21st Century*, 5 *Plan. Theory & Prac.* 419, 424 (2004); *see also* Adams, *Public Meetings*, *supra*, at 44; Katherine A. McComas, et al., *Why Citizens Do and Do Not Attend Public Meetings About Local Cancer*

*Cluster Investigations*, 34 Pol. Stud. J. 671, 675 (2006). These individuals are also most likely to speak at the meetings. Innes & Booher, *supra*, at 424.

Because the Commissioners can grant (or deny) citizens' important requests, and because these decisions often involve significant discretion, those with a stake in the Board's upcoming decisions can hardly risk disobeying the Commissioners' religious instructions. Many of those attending the meetings will petition the Board within minutes of the prayer, and the Board's decisions may profoundly affect the lives and livelihoods of those who are seeking relief. So the safest choice is to follow the Commissioners' instructions and participate in the Commissioners' prayers.

Unsurprisingly, research confirms what attendees already understand: policymakers are more receptive to groups who adhere to their faith. See David Yamane, *Faith and Access: Personal Religiosity and Religious Group Advocacy in a State Legislature*, 38 J. Sci. Study Religion 543, 548–49 (1999). When an individual is perceived to be part of a minority or a member of an “outgroup,” the majority will be more inclined to suspect the individual's motives. See Cecilia L. Ridgeway,

*Conformity, Group-Oriented Motivation, and Status Attainment in Small Groups*, 41 Soc. Psychol. 175, 187 (1978) (“[Nonconformity] attracts the group’s attention, but it also predisposes the group to negatively assess the nonconformer’s motivation.”). These suspicions are exacerbated in public settings. Jeffrey G. Noel et al., *Peripheral Ingroup Membership Status and Public Negativity Towards Outgroups*, 68 J. Personality & Soc. Psychol. 127, 134–35 (1995).

The pressure on citizens is even greater because the Commissioners have linked their legislative decisions to their faith in Christ, “pray[ing that] the decisions we make would honor and please you.” *Commissioner Meeting—Apr. 15, 2013*, Rowan County, <http://tinyurl.com/rowan2013apr15> (0:16). Those who hear these kinds of pronouncements are likely to feel compelled to follow the Commissioners’ instructions to participate in the prayers. And the more important the policy issue is to attendees, the greater the pressure to participate, even if doing so violates their conscience.

*C. The meetings’ setting intensifies pressure on citizens to participate in unwanted prayers.*

The pressure to follow the Commissioners’ prayer instructions is amplified by the meetings’ setting. The Commissioners can easily

determine which audience members are standing for their prayers (or not) and joining in the prayers (or not).

Officials sitting on local legislative bodies are often familiar with members of the communities that they govern. Local officials and local citizens “frequently have ongoing relationships with each other”; they are “not just unknown ‘authorities’ and ‘public audiences.’” Karen Tracy & Margaret Durfy, *Speaking Out in Public: Citizen Participation in Contentious School Board Meetings*, 1 *Discourse & Comm.* 223, 225 (2007).

In addition, because local government officials will often know the audience members and can easily determine who is following their prayer instructions and who is not, the pressure on citizens to participate may be especially intense. Indeed, the “[c]loseness of the authority to the subject...ha[s] a pronounced effect” on the Commissioners’ ability to influence attendees actions. See Thomas Blass, *Understanding Behavior in the Milgram Obedience Experiment: the Role of Personality, Situations, and Their Interactions*, 60 *J. Personality & Soc. Psychol.* 398, 399 (1991).

The physical setting intensifies these pressures further. Local government meetings often take place in small, intimate spaces. See Frank M. Bryan, *Real Democracy: The New England Town Meeting and How it Works* 93 (2004). Attendees, including those in Rowan County, usually sit facing the panel of officials conducting the meeting. See *Commissioner Meeting—May 20, 2013*, Rowan County, <http://tinyurl.com/rowan2013May20> (0:05); see generally Katherine A. McComas, *Trivial Pursuits: Participant Views of Public Meetings*, 15 J. Pub. Relations Research 91, 95 (2003). Unlike audience members sitting in a secluded legislative gallery, attendees at Rowan County meetings know that the Commissioners can easily determine who is joining in their prayers and who is sitting them out.

The setting also leads the Commissioners to treat citizens as worshippers rather than passive audience members. The Commissioners face the audience; they often instruct the audience along the lines of, “[i]f you would, please stand,” *Commissioner Meeting—Feb. 18, 2013, Rowan County, NC*, <http://tinyurl.com/rowan2013feb18> (0:11); and they continue to face the public as they are delivering the prayer. Sometimes they even call upon the audience to



embrace Jesus Christ, “pray[ing] that the citizens of Rowan County will love you lord and put you first.” *Commissioner Meeting—Dec. 3, 2012*, Rowan County, <http://tinyurl.com/rowan2012dec3> (0:15).

When a citizen visibly participates in a Commissioner’s prayer—or visibly does not—and then stands up just a few minutes later to request a business license, a zoning variance, or improvements to an important public service, the Commissioners will know whether or not that citizen is an insider who shares the Commissioners’ faith and participates in the Commissioners’ religious rituals. Citizens thus have two options: (1) participate in a prayer that violates their conscience, or (2) risk the Commissioners’ disfavor. The Establishment Clause prohibits Rowan County from putting citizens to that choice.

### **Conclusion**

The decision of the district court should be affirmed.

Respectfully submitted,

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### **Certificate of Compliance**

This brief complies with the type-volume limitation in Rules 29(d) and 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 4,373 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii). The brief complies with Rules 32(a)(5) and 32(a)(6) of the Federal Rules of Appellate Procedure because it was prepared in Microsoft Word using Century Schoolbook, a proportionally-spaced typeface, in 14-point font.

/s/ Gregory M. Lipper  
Gregory M. Lipper

**Certificate of Service**

On October 7, 2015, I electronically filed this brief of *amici curiae* with the Clerk of this Court through the Court's CM/ECF system, and I will mail one physical copy of the brief to the Clerk of Court using Federal Express.

All participants in this case are registered CM/ECF users, and service will be accomplished through the appellate CM/ECF system.

/s/ Gregory M. Lipper  
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