

May 18, 2021

via email: clerk@leelanau.gov

Leelanau County Board of Commissioners
8527 E. Government Center Dr.
Suttons Bay, MI 49682

**RE: Policy Regarding Prayer Before Meetings of the Leelanau County
Board of Commissioners**

Dear Leelanau County Board of Commissioners:

The undersigned—as attorneys who reside in, or have familial connections to, Leelanau County—collectively submit this letter to express our deep concern regarding the proposed Policy Regarding Prayer Before Meetings of the Leelanau County Board of Commissioners. As strong proponents of the separation of church and state, as enunciated in the First Amendment of the U.S. Constitution, we believe that religion does not rightfully belong in the government context and should be observed reverently according to one’s own religious or spiritual practice. In addition, including religious practice in the governmental setting constitutes an enormous misuse of taxpayer resources that could be better spent attending to the needs of all county residents.

We are also gravely concerned about the stark limitations in the proposed resolution as to whom is eligible to offer such formal prayer or invocation. Although we acknowledge that the U.S. Supreme Court in *Town of Greece v. Galloway* upheld a county’s right to include a prayer or invocation at the beginning of a formal meeting, the court stated that the government may not coerce its citizens to support or participate in any religion or its exercise. Furthermore, as you state in the final Whereas Clause of the proposed resolution, prayer during government meetings shall not proselytize or advance any particular faith, denigrate nonbelievers or religious minorities, threaten damnation, preach conversion, or show any purposeful preference of one religious view to the exclusion of others.

The eligible participants you have proposed—namely, clergy from congregations with an established presence in Leelanau County—exclude adherents of numerous religions, faiths, and spiritual practices. In particular, certain religious or spiritual practices do not have designated “clergy” or formal “congregations,” such as Native American spirituality, Buddhism, paganism, and others. In addition, some participants in certain religions have established congregations in Traverse City or other locations, but those congregations may not have “an established presence in Leelanau County,” such as Judaism, Greek Orthodox, Muslim, and others. The policy analyzed in *Town of Greece* specifically included laypersons, in addition to clergy, as eligible participants.

Your policy, as currently written, seems clearly to show a purposeful preference of one religious view to the exclusion of others, given that the majority of—if not the only—established congregations in Leelanau County are of the Christian persuasion. Given this fact, your policy appears to be inconsistent with the guidance provided in *Town of Greece* and therefore is potentially violative of the Establishment Clause, putting the county at risk of expensive and time-consuming litigation. By excluding participation by members of minority religions, the policy also perpetuates structural racism and discrimination in violation of your stated policy of inclusion, equality, and equity in Leelanau County Resolution 2020-014.

If you insist on including a prayer or invocation as part of your formal meetings, we strongly encourage you to reconsider the criteria used to determine eligibility to participate in such prayer or invocation so as to allow broad and inclusive participation from all residents of the county. Better yet, we suggest you reconsider reverting solely to a moment of silence before each meeting, which allows everyone to reflect according to their own beliefs and saves countless county time and resources.

Respectfully,

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Ellen A. Fred, Esq., Solon Township

Douglas Fierberg, Esq., Leelanau County

Jay Johnson, Esq., Empire

Barry L. Levine, Esq., Elmwood Township

Peter Raphael, Esq., Kasson Township