

Courtroom prayer lawsuit targets Montgomery County, too

By Jay R. Jordan, jjordan@hcnonline.com Published 7:57 pm, Tuesday, June 27, 2017



Photo: Michael Minasi, Staff Photographer

Judge Wayne Mack gives the invocation during the Memorial Day Ceremony on Monday, May 29, 2017, at Montgomery County War Memorial Park in Conroe.



Photo: Jason Fochtman, Staff Photographer

Montgomery County Attorney JD Lambright speaks during Montgomery County Commissioners Court at the Alan B. Sadler Commissioners Court Building, Tuesday, June 13, 2017, in Conroe.



Photo: Jason Fochtman, Staff Photographer

Montgomery County First Assistant County Attorney B.D. Griffin addresses members of the Montgomery County Commissioners Court at the Alan B. Sadler Commissioners Court Building, Tuesday, June 13, 2017, in Conroe. |

Montgomery County is now a defendant in the Freedom From Religion Foundation's lawsuit against courtroom prayer in a justice of the peace court. The county was served in the suit last week, according to Montgomery County Attorney J D Lambright. The county will be defending itself and will not seek outside counsel as commissioners approved a resolution stating such Tuesday.

In March, Wisconsin-based Freedom from Religion Foundation, which advocates for strict separate of church and state, sued Precinct 1 Justice of the Peace Wayne Mack in federal court claiming the chaplain-led, pre-docket prayer is unconstitutional. In the suit, two attorneys and another person who was in Mack's court on official business claim they felt prejudiced by Mack during separate dockets in 2014. Freedom from Religion Foundation believes the religious prayer practice violates the Establishment Clause of the First Amendment to the U.S. Constitution.

The three plaintiffs - a Christian, an atheist and one who is not affiliated with any religion - say in the lawsuit that Mack locks the courtroom door when the prayer begins and then personally monitors who gets up to leave or knocks to re-enter.

Mack filed a response to the lawsuit earlier this month in U.S. District Court, asking U.S. District Judge Ewing Werlein Jr. to toss out the suit because the JP believes the prayer is constitutional. Mack's motion to dismiss also states that the plaintiffs cannot bring the suit based on being "offended observers," court documents show.

The county was added because it is Mack's employer. Lambright believes it's because the county has money in case of monetary damages.

"The County Attorney's Office will be representing just Montgomery County as the entity," First Assistant County Attorney BD Griffin said during Commissioners Court Tuesday. "There are, without getting in too much, differences in the defenses that Judge Mack may have as opposed to the defenses the county will have in this lawsuit."

Mack will be defended by his own counsel from Plano-based First Liberty Institute.

The foundation's suit asks a federal court to rule that Mack's courtroom prayer violates the U.S. Constitution and to force him to stop praying before court. The suit came after Texas Attorney General Ken Paxton's office issued an opinion in August 2016 claiming Mack's practice of opening each court session with a prayer and his chaplain program are both constitutional.

Mack started the practice shortly after being sworn in just over three years ago, on May 1, 2014. He has asked religious leaders of various faiths - Christian, Jewish, Muslim, Hindu, Mormon and Church of Christian Science - to give the invocation. An atheist asked to participate but did not show up for training, according to a previous statement from the First Liberty Institute.

Paxton's 2016 opinion stemmed from a separate grievance filed against Mack with the Texas Commission on Judicial Conduct in 2015 regarding his courtroom prayer and chaplaincy program. The grievance ultimately was dismissed, but not without a strong word of caution from the commission about continuing with the Justice Court Chaplaincy Program and his current courtroom prayer practice.

Since the hearing before the judicial commission, Mack has added a sign outside the courtroom to clarify that people who do not want to participate in the pledges of allegiance or prayer do not have to remain in the room, and that the justice now keeps his eyes closed and head down during the prayer.

After the commission sent the letter to Mack, the justice's attorneys with First Liberty Institute said the letter was confusing and provided few answers. The commission's executive director, Seana Willing, and Texas Lt. Gov. Dan Patrick then asked Paxton to offer his opinion on Mack's religious courtroom practices to settle the issue.

But by the time Paxton's 2016 opinion was published, two people listed in the federal lawsuit already had reached out to the Freedom From Religion Foundation about Mack's courtroom prayer.