

JP Mack dropped from federal suit over prayer; case continues against county

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Photo: Michael Minas, Staff Photographer

Judge Wayne Mack, Precinct 1 Justice of the Peace, presides on Tuesday, Jan. 30, 2018, at the Montgomery County West Annex

The lawsuit against Montgomery County concerning invocation in the courtroom will continue as planned as plaintiffs recently clarified the defendants. The case is set to be heard by a federal judge in January 2019. Plaintiffs with the Freedom of Religion Foundation originally filed suit against Precinct 1 Justice of the Peace Wayne Mack in March 2017 before clarifying their intentions, stating they were suing Mack in his official capacity as a justice of the peace.

"We filed a motion to dismiss because of Mack's judicial immunity," said Hiram Sasser, deputy general counsel with First Liberty Institute, which is representing Mack. "He was dismissed from the suit in a personal capacity. The main issue with this suit is whether it is under or not under the Supreme Court ruling in a previous case that an authority can order Mack to alter his policy on how he runs the courtroom."

According to information provided by First Liberty Institute, "First Liberty Institute represented Mack in this lawsuit in his personal capacity until he was dismissed from the suit in that capacity on Jan. 10, 2018. On Friday, Jan. 19, 2018, a federal district judge permitted the lawsuit to continue against Montgomery County, Texas."

Montgomery County will represent itself throughout the proceedings. "We will always represent Montgomery County and Mack in his official capacity to the county," Montgomery County Attorney J D Lambright said.

In the suit, two attorneys and another person who was in Mack's courtroom on official business claim they felt prejudiced by Mack during separate dockets in 2014. The Freedom from Religion Foundation believes the religious prayer practice in which Mack initiated in his court violates the Establishment Clause of the First Amendment to the U.S. Constitution. In his courtroom, Mack allows for voluntary chaplains to open ceremonies with an invocation and the Pledge of Allegiance. The volunteer chaplaincy program included leaders from multiple faiths, such as Christian, Buddhist, Hindu and Mormon religious leaders.

Texas Attorney General Ken Paxton issued a legal opinion affirming that Mack's practices are well within the bounds of Texas law and the U.S. Constitution in 2016 which is why the lawsuit was surprising for some.

Mack could not respond to requests for comment due to ongoing litigation and at the request of the First Liberty Institute, but issued this statement in a previous press release, "I was stunned to learn that I had been sued because I provide the opportunity for chaplains from all faith traditions to offer an invocation. I thought the Attorney General's opinion settled this issue."

"Mack has a connection with the voluntary chaplains he invites into his courtroom through his work as a Justice of the Peace where he pronounces the deceased and many times, those chaplains are there," Sasser said. "I think this is something that should be applauded since he includes all faiths, even those that are not as commonplace."

In two separate cases – Marsh v. Chambers (1983) and Town of Greece v. Galloway (2014) – the Supreme Court found that invocations before government meetings are fully consistent with the Constitution and an important part of America's history and tradition.

As the case progresses, the Montgomery County Attorney's Office will proceed to discovery and file a motion for summary judgments to provide additional information and in hopes of the case being dismissed against the county before they are in front of a judge the beginning of next year.