

Judge dismisses courtroom prayer lawsuit against Montgomery County

By Catherine Dominguez, Staff writer Updated 3:51 p.m. CDT, Tuesday, October 2, 2018

A federal judge has dismissed a lawsuit against Montgomery County that claimed Precinct 1 Judge Wayne Mack's courtroom prayer by volunteer chaplains violated part of the First Amendment. The lawsuit was filed by the Freedom From Religion Foundation in March 2017. The judgment was filed Sept. 27. The FFRF does have the option to appeal the court's decision.

"The dismissal order came in response to the motion for judgment on the pleadings filed by Baker Botts and our office on behalf of the county under Federal Rule of Civil Procedure 13," said Assistant County Attorney B. D. Griffin, noting Baker Botts joined the county in February pro bono to defend the suit. "The basis of the motion to dismiss was that the Plaintiffs did not have standing (and the Court therefore did not have jurisdiction) because there was nothing that the Commissioners Court could do to alter Judge's Mack's practice due to the constitutional separation of powers between Judge Mack and Commissioners Court."

In January, Mack was dismissed from the suit after the plaintiffs with the FFRF clarified their intentions stating they were suing Mack in his official capacity as a justice of the peace.

According to Griffin, by suing Mack in his official capacity, the plaintiffs effectively sue the county. "We filed a motion to dismiss because of Mack's judicial immunity," said Hiram Sasser, deputy general counsel with First Liberty Institute, which represented Mack, in a previous Courier article. "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."

In the suit, two attorneys and another person who were 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 Mack initiated in his court violates the Establishment Clause of the First Amendment to the U.S. Constitution. However, one of the plaintiffs was dismissed because there was no standing.

In his courtroom, Mack allows for voluntary chaplains to open ceremonies with an invocation and the Pledge of Allegiance. The volunteer chaplaincy program includes leaders from multiple faiths, such as Christian, Buddhist, Hindu and Mormon religious leaders.

"Judge Mack is grateful that this portion of the litigation has come to an end," said Hiram Sasser, General Counsel to First Liberty. "We don't know what FFRF plans to do next, but the best thing to do would be to just leave everyone in Montgomery County alone. "In the meantime, we will continue to defend Judge Mack and his multi-faith chaplain program."