



## Greece v. Galloway: Why We Should Care About Legislative Prayer

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The Town of Greece, New York, located just eight miles east of Rochester, has a population close to 100,000 people and includes residents who are Jewish, Muslim, Buddhist, Pagan, and Baha'i, as well as many who do not subscribe to any faith.<sup>1</sup> But despite the town's religious diversity, since 1999, residents attending town board meetings have first had to sit through a Christian prayer.

Two town residents, after asking the board to change its practice several times, filed a lawsuit against the town board in 2008 because they were offended by the "town board's alignment with Christianity through the board's persistent presentation of Christian prayers."<sup>2</sup> The board, they argue in their complaint, "sends the message to non-Christians that they are unwelcome at Board meetings and that the Board does not represent non-Christians' concerns."<sup>3</sup>

A district court upheld the town board's practice, but on appeal, the 2nd U.S. Circuit Court of Appeals, in a unanimous 2011 decision,<sup>4</sup> said that the Greece town board's prayer practice was unconstitutional. The town then appealed the decision to the U.S. Supreme Court, which agreed to hear the case. *Town of Greece v. Galloway* will be argued before the Court November 6.

Since our nation's beginning, our federal courts have played a crucial role in preserving the religious freedom of all Americans, which can only be done if the government does not favor religion over nonreligion or one belief over others. The outcome of *Greece v. Galloway* could determine whether religious liberty in the United States remains strong or is seriously limited.

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## Confusion in the law

The last time the U.S. Supreme Court explored the topic of legislative prayer at public meetings was in *Marsh v. Chambers* in 1983. That case examined whether it was constitutional for the Nebraska Legislature to open each legislative day with a prayer offered by a chaplain paid by the state. A majority of the Court said the practice was constitutional and not a violation of the First Amendment.

In its decision upholding the practice of legislative prayer, the Supreme Court pointed to the country's long history and tradition of opening public and legislative meetings with prayer. The decision cited the First Continental Congress in 1774, which opened its sessions with a prayer offered by a paid chaplain.<sup>5</sup>

In 1989, however, six years after the *Marsh* decision, the Supreme Court heard *County of Allegheny v. American Civil Liberties Union*, in which the Court ruled unconstitutional a nativity scene on government-owned property. The Court majority cited *Marsh* in its opinion, highlighting that the Nebraskan chaplain's prayers in *Marsh* were not sectarian, which made all the difference. The Court said, "However history may affect the constitutionality of nonsectarian references to religion by the government, history cannot legitimate practices that demonstrate the government's allegiance to a particular sect or creed."<sup>6</sup>

The Supreme Court made clear in *Allegheny* that although legislative prayer is part of our country's history, public bodies do not have blanket permission to open meetings with sectarian prayers because doing so would align the government with a particular religion.

Since 1989, lower federal courts have interpreted these Supreme Court decisions in a variety of ways, upholding certain legislative prayer practices while striking down others. The cases have turned sometimes on the facts, such as whether the prayers were sectarian or nonsectarian, or whether only one faith group or a variety of faiths were invited to participate. But the opinions have also differed in their legal analyses.

In July 2011, for example, the 4th U.S. Circuit Court of Appeals struck down a North Carolina county's practice of opening its board of commissioners' meetings with Christian-only sectarian prayers. The facts in that case, *Joyner v. Forsyth County, North Carolina*, are very similar to those in the *Greece* case.<sup>7</sup> In March of this year, in *Rubin v. City of Lancaster*, the 9th U.S. Circuit Court of Appeals upheld Lancaster, California's, city council practice in which prayers are delivered by randomly chosen clergy from a variety of faiths, with no restrictions placed on the content of invocations.<sup>8</sup>

Both cases applied different legal tests. In the 4th Circuit opinion, the court considered whether a reasonable person attending the meetings would feel the government favored

one particular faith. In the 9th Circuit opinion, the court considered whether the city had actually aligned itself with Christianity, rather than how someone attending the meetings would perceive the government's actions.<sup>9</sup>

The Supreme Court's decision in *Greece* will serve as the basis for what is and is not permitted when it comes to prayers before official public meetings—guidance that could also be applied in cases involving all aspects of religion in the public sphere.

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## Coercive, sectarian prayers

The plaintiffs state in their brief in *Greece* that they are not trying to overturn or change the Supreme Court's decision in *Marsh* or get rid of all prayer before Congress or state legislatures.<sup>10</sup> The Court said the prayers in *Marsh* were constitutional because there was “no indication that the prayer opportunity ha[d] been exploited to proselytize or advance any one, or to disparage any other, faith or belief.”<sup>11</sup> The chaplain in *Marsh* had “removed all references to Christ,” ensuring that the prayers were inclusive.<sup>12</sup> This is not the case in *Greece*.

The prayers in *Greece* are different than those in *Marsh* for the two following reasons.<sup>13</sup>

### The prayers in *Greece* are sectarian

For 10 years, Christian clergy have offered virtually every prayer that has opened the town board meetings in Greece. Two-thirds of their 120 recorded prayers contain specific references to “Jesus Christ,” “Jesus,” “Your Son,” or the “Holy Spirit.”<sup>14</sup> In 10 years of the board meeting once per month, only four non-Christian prayers have been given, including two prayers from a Jewish layman, one prayer from a Wiccan priestess, and another from the chairman of the local Baha'i congregation.<sup>15</sup>

### The prayers in *Greece* occurred in a coercive environment

The town board meetings in *Greece* are different from sessions in a state legislature or Congress. In state legislatures or Congress, citizens only visit once or twice in a lifetime to observe from the gallery. But the Greece town board meetings are the only place residents can go to participate in their local government. The town board meetings serve a legislative, executive, and administrative function.

Approximately 40 percent of the meetings include award ceremonies, where those in the community receive public honors. The awards are given out immediately following the prayer. A women's choir, for example, was honored for its achievements and invited

to sing at the board meeting. Also, a group of individuals was honored for founding a local little league team.<sup>16</sup> Other town residents attend the meetings to take oaths of office before beginning jobs as police officers or town employees.<sup>17</sup>

The town's board meetings also serve as the only chance residents have to petition the board to take action on matters that directly impact their lives. A man in a wheelchair attended to ask for better accommodations for the disabled, others attended to oppose the opening of a Wal-Mart, and some came to ask the board to help prevent criminal activity in their neighborhood.<sup>18</sup> High school students even attend meetings as part of their schoolwork, receiving credit hours in government class. Younger children regularly give the pledge of allegiance and receive youth honors and awards.<sup>19</sup>

The reality is that residents in the Town of Greece are essentially required to participate in sectarian Christian prayers in order to participate in their local government. That goes beyond anything the Supreme Court has allowed before.

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## What's at stake

For decades, the Supreme Court has made it clear that the government cannot endorse or favor a particular religious view.<sup>20</sup> The Town of Greece has asked that the Court move away from this precedent by permitting the board to continue its sectarian Christian prayers before every monthly meeting. The result would be that government bodies would have a “blank check to pray in a whole community’s name with language drawn from a particular faith.”<sup>21</sup>

Such a decision could also impact other areas of the law regarding religion in the public sphere because it would essentially allow the government to engage in sectarian proselytizing in any setting. A ruling for the Town of Greece would permit the government to endorse Christianity above other faiths.

It would also mean, as the plaintiffs’ brief points out, that the anti-gay, military-funeral-picketing Westboro Baptist Church would be free to “open government meetings by denouncing homosexuality as a sin against God.” Similarly, the brief continues, “nothing would preclude the Dearborn City Council from opening its meetings with a steady stream of Imams who lead participants in Koranic recitation,” while “[o]ther cities could open meetings with Catholic mass or evangelical prayer.”<sup>22</sup>

There would be no limit on what the government could do or how far it could go to align itself with a particular faith. This would begin to divide our country and send the message to other faiths—or those who choose to practice no religion—that they are not welcome in this nation.

The founding fathers warned against exactly that, and it was their reason for the First Amendment. George Washington wrote in a letter in 1792 that “[r]eligious controversies are always productive of more acrimony and irreconcilable hatreds than those which spring from any other cause.”<sup>23</sup>

While countries across the world engage in war over religion, people in the United States of all different faiths continue to live peacefully side by side. A large part of why our country has been so successful in this regard is because of the First Amendment’s promise to separate religion and government, which in turn has allowed religion to flourish.

Sectarian prayers in governmental settings can threaten this balance. As 4th Circuit Judge J. Harvie Wilkinson III, a President Ronald Reagan appointee, wrote in his 2011 legislative prayer decision, “to plant sectarian prayers at the heart of local government is a prescription for religious discord.”<sup>24</sup> It is a warning the justices of the Supreme Court should take seriously.

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## Endnotes

- 1 Complaint at 5, *Galloway v. Town of Greece*, 732 F. Supp. 2d 195 (W.D.N.Y. 2010) (No. 6:08cv6088).
- 2 *Ibid.*, p. 1.
- 3 *Ibid.*
- 4 *Galloway v. Town of Greece*, 681 F.3d 20 (2d Cir. 2012).
- 5 *Marsh v. Chambers*, 463 U.S. 783 (1983).
- 6 *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989).
- 7 *Joyner v. Forsyth County, North Carolina*, 653 F.3d 341 (4th Cir. 2011).
- 8 *Rubin v. City of Lancaster*, 710 F.3d 1087 (9th Cir. 2013).
- 9 Don Byrd, “9th Circuit Upholds Lancaster (CA) Prayer Policy Despite Sectarian Invocations,” Baptist Joint Committee for Religious Liberty, March 26, 2013, available at [http://www.bjconline.org/index.php?option=com\\_content&task=view&id=5524&Itemid=134](http://www.bjconline.org/index.php?option=com_content&task=view&id=5524&Itemid=134).
- 10 Brief for Respondents at 1, *Town of Greece v. Galloway*, 133 S. Ct. 2388 (2013) (No. 12-696).
- 11 *Marsh*, 463 U.S. at 795.
- 12 *Ibid.*, p. 793, n. 14.
- 13 Brief for Respondents at 17, *Town of Greece v. Galloway*, 133 S. Ct. 2388 (2013) (No. 12-696).
- 14 Simon Brown, “Greece Is The Word,” *Church & State*, July/August 2013, available at <https://www.au.org/church-state/julyaugust-2013-church-state/featured/greece-is-the-word>.
- 15 *Galloway v. Town of Greece*, 681 F.3d 20 (2d Cir. 2012).
- 16 Brief for Respondents at 3-4, *Town of Greece v. Galloway*, 133 S. Ct. 2388 (2013) (No. 12-696).
- 17 *Ibid.*
- 18 *Ibid.*, p. 5.
- 19 *Ibid.*, p. 6.
- 20 *Lynch v. Donnelly*, 465 U.S. 668 (1984) (O’Connor concurring). See also *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *McCreary County v. American Civil Liberties Union*, 545 U.S. 844 (2005).
- 21 The Times Editorial Board, “Please, justices, no blank check for public prayer,” *Los Angeles Times*, August 19, 2013, available at <http://articles.latimes.com/2013/aug/19/opinion/la-ed-prayer-20130819>.
- 22 Brief for Respondents at 58-60, *Town of Greece v. Galloway*, 133 S. Ct. 2388 (2013) (No. 12-696).
- 23 Letter from President George Washington to Edward Newenham, June 22, 1792.
- 24 *Joyner v. Forsyth County, North Carolina*, 653 F.3d at 27.

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