

PRAAYER AT GOVERNMENT MEETINGS AND THE FIRST AMENDMENT

Picture yourself attending your local city or town council meeting. You want to speak to the council about an issue important to you. At the beginning of the session, the council invites a person to stand at the microphone and recite a prayer. The prayer comes from a religious belief different from your own beliefs. How would you feel?

The First Amendment begins with the words "Congress shall make no law respecting an establishment of religion" This is the Establishment Clause. It means the government cannot establish an official religion, either by creating one or by requiring all persons to adopt the same one. It also means that government cannot favor one religion over another.

Many interpret the clause to mean a "separation of church and state," to borrow Thomas Jefferson's phrase. Others interpret "establishment" more narrowly. They say the government can favor religion over non-religion as long as the government does not create a "national religion" or force people to be part of any particular religion.

In addition, despite the use of the word "Congress," the Establishment Clause today applies to state and local governments as well. In 1947, the Supreme Court held in *Everson v. Board of Education* that the Establishment Clause applied to the states through the 14th Amendment's Due Process Clause ("No State shall make or enforce any law which shall . . . deprive any person of life, liberty, or property, without due process of law . . ."). What happens when a small city government board meeting (town council) starts with a prayer?

Prayers in Greece

Town of Greece is a small town in upstate New York with a predominantly Catholic population of about 94,000. In 1999, the newly elected town supervisor, John Auberger, decided to open the monthly town board meeting with a roll call, Pledge of Allegiance, and a prayer. After all, Auberger thought, the county legislature had opened its sessions with prayer for years.

A local clergy member who would stand at the front facing the audience gave the prayer. Auberger would then thank the minister for serving as the board's "chaplain of the month" and present him or her with a commemorative plaque. Auberger intended the prayer to place the board members in a clear state of mind, invoke divine guidance, and follow a tradition practiced by several state legislatures and the United States Congress.

Susan Galloway and Linda Stephens, two women who regularly attended meetings, complained in 2007



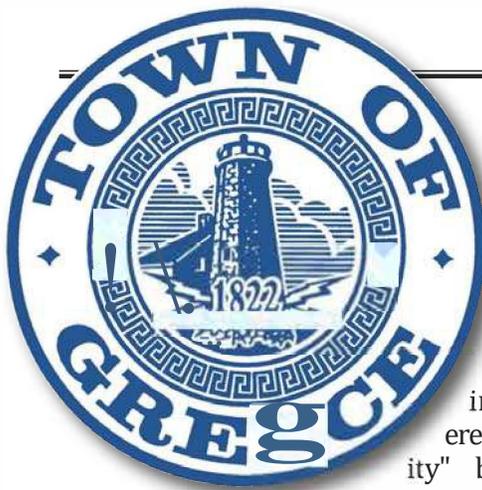
A priest offers a prayer in the Wisconsin State Senate, 2015. As you read, think about how this image compares to the facts of the *Marsh v. Chambers* and *Greece v. Galloway* cases.

that the prayers were all Christian. As non-Christians, they felt compelled to participate and felt isolated during the brief ceremony. Galloway is Jewish, and Stephens is an atheist.

The town used an informal method for choosing the prayer-givers, all of whom were unpaid volunteers. A town employee called congregations listed in the town directory until an available minister agreed to come and deliver the prayer. Employees created a list of those willing to return in the future. The town never denied an opportunity for someone to be a prayer-giver, but from 1999 to 2007, all the participating prayer-givers came from Christian sects.

The town left it up to the clergy member to create and deliver the prayer as they saw fit. One such prayer at a board meeting was "Lord we ask you to send your spirit of servanthood upon all of us gathered here this evening . . . in the name of our brother Jesus. Amen." Another was "Lord, God of all creation, we give you thanks and praise for your presence and action in the world We acknowledge the saving sacrifice of Jesus Christ on the cross"

After Galloway and Stephens objected to the prayer as a violation of their religious and philosophical views, the town invited a Jewish layman (non-clergy), a chairman of the local Baha'i temple, and a Wiccan priestess. (Baha'i is a monotheistic religion originating in 19th century Persia, which is now Iran. Wicca refers to contemporary "witchcraft" or paganism.) Galloway and Stephens filed a complaint in the district court for a violation of their First Amendment right against a government establishment of religion.



The federal district court in New York found the prayer practice consistent with the First Amendment. The court found "no impermissible preference for Christianity" because the town opened the program to all available prayer givers regardless of religion.

On appeal, the court of appeals reversed the lower court decision. It found the Town of Greece board meeting's practice to be an unconstitutional endorsement of religion. Judge Guido Calabresi wrote, "We do not hold that the town may not open its public meetings with prayer or invocation But when one creed dominates others-regardless of a town's intentions-constitutional concerns come to the fore."

Judge Calabresi noted that the town board made no attempt to let know the community know other religions were welcome.

Precedents

Town of Greece appealed the decision to the U.S. Supreme Court. The issue was whether Greece imposed an impermissible establishment of religion on its citizens by opening its monthly meetings with *sectarian* prayer, or prayer from one or another particular religious sect.

It was not the first time the Supreme Court had encountered these issues. In *Marsh v. Chambers* (1983), State Senator Ernest Chambers of Nebraska challenged the state legislature for having a chaplain offer prayer at the beginning of each session. The state paid the chaplains. Chambers sued the Nebraska legislature and State Treasurer Frank Marsh. The Court found Nebraska's practice was not a violation of the Establishment Clause, focusing on historical custom in its holding.

In *County of Allegheny v. American Civil Liberties Union* (1989), plaintiffs challenged two public-sponsored holiday displays in Pittsburgh. One display involved a Christian nativity scene inside the Allegheny County Courthouse, and the other was a Chanukah menorah outside the City-County Building.

The court decided the nativity scene sent a message that the county government was endorsing Christianity. The nativity scene appeared prominently inside the courthouse. The menorah in *Allegheny*, however, was acceptable because it was located outside the government building next to a large Christmas

tree. The mix of holiday symbols also was not an "endorsement" of any single religion.

In *Lee v. Weisman* (1992), a parent of a high school student challenged a middle school principal who invited a rabbi to speak at the school's graduation ceremony. The Court held the graduation prayer created a "state sponsored and state directed religious exercise in a public school." The court further found it did create a subtle and indirect *coercion*, or an action that forced the students to stand respectfully and silently for a prayer.

At the Supreme Court

In the *Town of Greece* case, Greece (Petitioners) argued the practice does not favor one denomination. Most prayers are Christian only because most people in the town are Christian. They also argued that history and tradition allow an acknowledgement of the religious belief of its citizens. The first Congress did this. Lastly, the city argued the lower court disregarded *Marsh* and wrongly applied the "endorsement test" from another case that prohibited government from endorsing religion and making anyone feel like a second-class citizen.

Galloway and Stephens (Respondents) contended their case was very different from *Marsh*. They argued, "*Marsh* did not approve prayers containing sectarian language or themes." The audience was effectively required to participate in the prayer.

They argued that the *Lee* decision made government coercion (the practice of persuading someone to do something through force or intimidation) unconstitutional. Respondents argued that in *Marsh*, the Nebraska legislature did not require attendance during the prayer as a condition for receiving the public benefit or service of the officials. The state lawmakers were free to come and go during the prayer. In Greece, however, the "intimate setting of a town board meeting" created "social pressure."

Lastly, Respondents argued that Greece's practice advanced Christianity. Respondents did not have a problem with prayer as long as it is *nonsectarian* (not favoring a specific religion), as in *Marsh*. The prayers offered in Greece were sectarian.

The Decision

Respondents' arguments did not persuade the Supreme Court. Justice Kennedy wrote the majority opinion for the court in a 5-4 decision. Relying heavily on *Marsh*, the Court found the policy of Greece "fits within the tradition long followed in Congress and the state legislatures" and did "not fall outside the tradition this Court has recognized" The fact that the first Congress provided for a chaplain only days after approving the First Amendment "demonstrates that

the [Founding Fathers] considered legislative prayer a benign acknowledgement of religion's role in society."

The court also found that the prayers do not have to be nonsectarian. "Once it invites prayer into the public sphere," Justice Kennedy wrote, "government must permit a prayer giver to address his or her own God or gods as conscience dictates, unfettered by what an administrator or judge considers to be nonsectarian." It is not proper for courts to "act as supervisors and censors of religious speech"

The court also found that the proper question is whether government coerces anyone to participate in the prayer, not whether government "endorsed" any religion. The "principal audience" for the prayers was not the public but the lawmakers themselves. The prayers gave the lawmakers "quiet reflection" to govern better.

Even if Respondents felt offended or excluded by the town board during the prayer, offense alone is not coercion as set forth in *Lee*. Galloway and Stephens suggested that people might feel pressured to join the prayer, or might worry they may be treated differently for not praying. The court found no evidence to support this claim.

Finally, the court disagreed with the lower court that the town violated the Establishment Clause by using mostly Christian prayers. "The town made reasonable efforts," wrote Justice Kennedy, "to identify all of the congregations located within its borders."

The Dissent

Justice Elena Kagan wrote a dissent, joined by Justices Ginsberg, Breyer, and Sotomayor. While Justice Kagan agreed with *Marsh*, this case differed because "Greece's town meetings involve participation by ordinary citizens, and the invocations given - directly to those citizens - were predominately sectarian in content."

A citizen of Greece's first interaction with the government in conducting official business is to "stand and pray with others in a way conflicting with her own religious beliefs." If she opts not to participate, the "public proceeding becomes . . . an instrument for dividing her from adherents to the community's major religion, and for altering the very nature of her relationship with her government."

Percentage of Americans Who Pray at Least Once a Day by . . .



What does this graph tell you about American views on prayer?

Justice Kagan also argued this case differs from *Marsh* because "the prayers given in Greece, addressed directly to the town's citizenry, were more sectarian, and less inclusive, than anything this Court sustained in *Marsh*." First, in Nebraska, prayer occurred during legislative sessions, and the public took no part in the proceedings. Second, the clergy in Nebraska spoke to the elected representatives, but in Greece the prayer giver spoke directly to the audience area with his or her back to the town board. Third, the prayers in Greece were almost exclusively Christian for eight years. Those three differences, taken together, make this case different from *Marsh*.

WRITING & DISCUSSION

1. What does the Establishment Clause say? Which interpretation provided in this article do you agree with? Why?
2. Describe the prayer policy of the Town of Greece's board meeting. What did Galloway and Stephens object to?
3. The Respondents did not object to all prayers at legislative meetings. They just argued that prayer should be nonsectarian, or inclusive, making no specific reference to Christianity or any other religion. Explain Justice Kennedy's opinion of Respondents' argument.
4. Do you agree with the majority decision or the dissent in this case? Why?

ACTIVITY: Graduation in a Church

1. Divide the class into small groups. (Each group works best with an odd number of members.) Each group is a group of justices on the Supreme Court. Here are the facts of the case:

In this case, a majority of students at a high school in Centerville School District voted to have their graduation ceremonies held in a local non-denominational Christian church. Graduations traditionally took place in the school's gymnasium. Students complained that the gymnasium was hot, stuffy, and uncomfortable. The church had air-conditioning, ample parking, and cushioned seats.

Christian religious symbols adorned the church's interior. One large cross hung over the place where school officials sat. In the lobby were tables filled with Christian literature addressed to children and teens, as well as Christian posters and banners.

The school-district superintendent, a member of the church, approved the high school's request to move graduation ceremonies to the church. The district rented the church space. During the graduation ceremonies, no one offered prayers or invocations (calling upon a divine power).

Several current and former non-Christian students and their parents sued the school district. They claimed they felt unwelcome, uncomfortable, upset, and/or angry because of the church setting. They also claimed there were alternative secular venues the district could have rented.

2. With your fellow justices, you must deliberate and reach a decision on the following question:
Did Centerville School District violate the Establishment Clause by holding graduation ceremonies in the church?
3. To deliberate with your fellow justices, apply the coercion test used in *Town of Greece v. Galloway*. Allow everyone on your court to speak and be heard. Finally, take a vote on your decision.
4. Choose a spokesperson who will report to the class your court's decision and reasons for your decision.
5. Debrief by answering this question: Would your court's decision be different if it had used the endorsement test of *County of Allegheny v. American Civil Liberties Union*? Why or why not?
6. Optional writing: As a justice, write your opinion in this case in a few well-developed paragraphs. (Facts of the case are based on *Doe v. Elmbrook School District*, No. 10-2922 (7th Cir. 2011), *cert. denied*, 573 U.S. (2014).)

Standards Addressed

Prayer at Government Meetings

National Civics Standard (18): Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights. **Middle:** (2) Knows historical and contemporary examples of the rule of law **High:** (2) Knows historical and contemporary practices that illustrate the central place of the rule of law (e.g., . . . higher court review of lower court compliance with the law . . .). (5) Understands how the individual's rights to life, liberty, and property are protected by the trial and appellate levels of the judicial process and by the principal varieties of law (e.g., constitutional, criminal, and civil law).

California HSS Standard 12.2: Students evaluate and take and defend positions on the scope and limits of rights and obligations as democratic citizens, the relationships among them, and how they are secured. (1) Discuss the meaning and importance of each of the rights guaranteed under the Bill of Rights and how each is secured (e.g., freedom of religion . . .).

California HSS Standard 12.5: Students summarize landmark U.S. Supreme Court interpretations of the Constitution and its amendments.

(1) Understand the changing interpretations of the Bill of Rights over time, including interpretations of the basic freedoms (religion, speech, press, petition, and assembly) articulated in the First Amendment

Common Core State Standards: SL.6-8/11-12.1, SL.6-8/11-12.3, RH.6-8/11-12.1, RH.6-8/11-12.2, RH.6-8/11-12.3, RH.6-8/11-12.4, RH.6-8/11-12.7, RH.6-8/11-12.10, WHST.6-8/11-12.1, WHST.6-8/11-12.2, WHST.6-8/11-12.9, WHST.6-8/11-12.10.

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Sources

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Chemerinsky, Erwin. "The Supreme Court's answer to a prayer." *ABA Journal*. 5/28/14. URL: abajournal.com. • *Doe v. Elmbrook School District*, No. 10-2922 (7th Cir. 2011). • "In Brief: Supreme Court Revisits Legislative Prayer in *Town of Greece v. Galloway*." Pew Research Center. 11/4/13. URL: pewforum.org. • O'Brien, Tim. "Supreme Court and Prayer at Government Meetings." *Religion & Ethics Newsweekly*. Public Broadcasting Service. 10/4/13. URL: pbs.org/wnet/religionandethics. • Schwartz, Yishai "The Separation of Church and State is Still Alive-for Children, Anyway." *New Republic*. 6/17/14. URL: newrepublic.com. • "Supreme Court may consider another religious case after prayer decision." *Constitution Daily*. National Constitution Center. 5/7/14. URL: blog.constitutioncenter.org. • *Town of Greece v. Galloway*, 572 U.S. (2014).

About Constitutional Rights Foundation

Constitutional Rights Foundation is a non-profit, non-partisan educational organization committed to helping our nation's young people to become active citizens and to understand the rule of law, the legal process, and their constitutional heritage. Established in 1962, CRF is guided by a dedicated board of directors drawn from the worlds of law, business, government, education, and the media. CRF's program areas include the California State Mock Trial, youth internship programs, youth leadership and civic participation programs, youth conferences, teacher professional development, and publications and curriculum materials.

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601 South Kingsley Drive, Los Angeles, CA 90005
213.487.5590 • Fax 213.386.0459
crf@crf-usa.org • www.crf-usa.org