



Iowa General Assembly

2014 Legal Updates

Legislative Services Agency – Legal Services Division

http://www.supremecourt.gov/opinions/13pdf/12-696_bpm1.pdf

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LEGISLATIVE PRAYER - CONSTITUTIONALITY

Filed by the United States Supreme Court
May 5, 2014

Town of Greece, New York v. Galloway
No. 12-696

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Factual Background. The town of Greece, New York, opened up the monthly town meetings with a prayer given by clergy selected from the congregations listed in a local directory. The local congregations in and around Greece, New York, were nearly all Christian but the prayer program was open to prayers from all faiths. Some residents filed suit claiming that the town violated the First Amendment's Establishment Clause by preferring Christian prayers over the prayers of other faiths. The residents also sought to limit the town to "nonsectarian prayers" that referred to only a "generic" God.

Procedural Background. The United States District Court for the Western District of New York (District Court) upheld the legislative prayer program of Greece, New York, by concluding that the town's prayer practice did not support an impermissible preference for Christianity because the town is comprised of predominately Christian congregations. The District Court further concluded that the First Amendment's Establishment Clause does not require the town to invite clergy from beyond its borders in order to achieve religious diversity, and also rejected the claim that the legislative prayer be nonsectarian. The Second Circuit Court of Appeals held that the legislative prayer program viewed in totality by a reasonable observer, conveyed a message that the town was endorsing Christianity and thus violated the Establishment Clause of the First Amendment to the Constitution of the United States.

Issue. Whether the legislative prayer practice at the opening of town meetings of Greece, New York, violate the Establishment Clause of the First Amendment to the Constitution of the United States.

Holding. The Supreme Court of the United States (Court) reversed the judgment of the Second Circuit Court of Appeals and held that the town's legislative prayer program did not violate the Establishment Clause of the First Amendment to the Constitution of the United States.

Majority Opinion by Justice Kennedy. Multiple opinions were issued in the case but the majority concluded that a fact-sensitive inquiry considering both the setting in which the prayer arises and the audience to whom it is directed proves that Greece, New York, is not coercing its citizens to engage in religious observance. The Court stated that the Congress that drafted the First Amendment would have been accustomed to prayers containing explicitly religious themes that the persons who brought the suit in this case would find objectionable. The Court further stated that the prayer program should not limit the prayer to nonsectarian content but should encourage and welcome ministers of many creeds. The Court concluded that if the Court upholds the right to pray but requires the prayers to be nonsectarian, that such a ruling would require persons to act as censors of religious speech to a far greater degree than the town's current practice of neither editing nor approving prayers in advance. However, in rejecting the argument that the prayers must be nonsectarian, the Court stated that constraints may be placed on the content of the prayers. A violation of the First Amendment would likely occur, if over time the prayer develops into a prayer used to denigrate nonbelievers or religious minorities, or preaches conversion rather than a prayer used to unite people in a common effort. Furthermore, the Court concluded that the prayer program did not coerce the citizens to support or participate in religion because the principal audience of the prayer was the town board members themselves and not the citizens in the audience. The Court also stated taking offense to a prayer by a citizen does not equate to coercion especially

where any member of the public is welcome to offer or propose a prayer.

Justice Alito and Justice Scalia Concurrence. This concurring opinion emphasized two principles. First, there is no historical support for the proposition that only a nonsectarian legislative prayer program be allowed and, as our country has become more diverse, composing a nonsectarian prayer that is acceptable to all members of the community becomes almost impossible. Second, requiring the town to rotate prayer givers among different faiths at each meeting would most likely prohibit towns from instituting a legislative prayer out of fear of not using the best practices for choosing the faiths to present the prayer. The concurrence concluded that the town's practice of choosing the faiths to present the legislative prayer from the town directory was sufficient.

Justice Thomas Concurrence joined by Justice Scalia in part. This concurrence proposed that the Establishment Clause of the First Amendment should not be used against the states because the Establishment Clause provides protection for the states against interference by the federal government in religious matters. The concurrence concluded there must be actual "legal coercion to support or participate in religion", not subtle coercive pressures noting that adults frequent encountering of disagreeable speech and peer pressure, unpleasant as it may be, is not coercion.

Dissenting Opinion by Justice Breyer. Justice Breyer acknowledged that a legislative prayer case is a fact-sensitive case. Justice Breyer's dissent emphasized five principles. First, Greece, New York, is a predominately Christian town, but it is not exclusively so, yet only four prayers were delivered by non-Christians and all such prayers occurred after the residents complained about the prayer program. Second, the town made no effort to inform the area's non-Christian faiths about the possibility of delivering an opening prayer. Third, the prayers given reflected a single denomination's take on the significance of inclusion of religious minorities. Fourth, the fact that the town meetings included citizens with business to conduct contributes to the importance of making more of an effort to include members of other faiths. Fifth, the Constitution does not forbid legislative prayer but the Constitution also does not prevent efforts to promote an inclusive prayer program by those giving the prayers.

Dissenting Opinion by Justice Kagan joined by Justice Ginsburg, Justice Breyer, and Justice Sotomayor. Justice Kagan stated the town of Greece, New York's prayer program violated the norm of religious equality and the "breath-takingly generous constitutional idea" that our public institutions do not belong to any specific religious faith. Justice Kagan noted that the town meeting does not need to become a religious-free zone but certain constitutional requirements must be met. First, the town meetings involve participation by ordinary citizens and the town did nothing to recognize the religious diversity of the town, which does not square with the promise of the First Amendment that every citizen, irrespective of religion, owns an equal share in the government. Second, the town meetings are different than a true legislative body like Congress because ordinary citizens come before the meeting to engage and petition their government often with highly individualized matters. This difference requires the town to exercise special care to ensure that prayers are inclusive. Third, the evidence that special care was not given includes the fact that the minister providing the prayer faced the audience and not the town board members, Christian ministers were the only ministers invited to provide the opening prayer in the first nine years the prayer program was in existence, and many of those prayers involved specific Christian doctrine. Justice Kagan concluded that the town prayers were more sectarian and less inclusive than previous cases before the Court and thus violated the Establishment Clause of the First Amendment to the Constitution of the United States.

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