

U.S. Supreme Court Will Decide Constitutionality of Prayer at Government Meetings

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The United States Supreme Court will decide whether the practice of opening a government meeting with a prayer violates the Establishment Clause of the United States Constitution. Many jurisdictions follow the tradition of allowing local representatives of religious groups to offer invocations at the start of public meetings. The Court's decision to hear *Town of Greece v. Galloway, et al.* (USSC docket no. 12-296) will likely resolve a conflict between the opinions of various circuits of the federal appellate courts regarding the constitutionality of legislative prayer.

The Town of Greece, in upstate New York, had for years permitted local volunteers to open meetings of the Town Council with a prayer. The Town did not regulate the content of the prayers, was not alleged to have discriminated in choosing prayer-givers, and permitted followers of any faith to volunteer. In a challenge to the practice brought by two local residents, the United States Court of Appeals for the Second Circuit overturned a federal trial court decision and held that the practice violated the Establishment Clause. The Second Circuit found the Town of Greece's opening prayers to be unconstitutional because the disproportionate number of Christian prayers as compared to non-Christian prayers could have been perceived as the Town's "endorsement" of Christianity over other religions.

Whether opening a government meeting with a prayer violates the United States Constitution, and the legal test that should be used in making that determination, are questions about which federal appellate courts are divided. Decisions of the Second and Fourth Circuits conflict with a decision of the Ninth Circuit earlier this year in *Rubin v. City of Lancaster*, which expressly held that the practice of opening a city council meeting with a volunteer prayer **did not** violate the Establishment Clause. The Court's decision in *Town of Greece* should resolve that conflict, and may be informed by the Court's own decision thirty years ago in *Marsh v. Chambers*, 463 U.S. 783 (1983), in which the Court upheld the practice of opening sessions of the Nebraska Legislature with prayers. In *Marsh*, the Court held that those opening prayers did not constitute the "establishment" of a particular religion by the government, but rather represented "tolerable acknowledgment of beliefs widely held among the people of this country." The Court will hear the *Town of Greece* case in its next term, which begins in October of 2013, and will likely issue its decision by the summer of 2014.

For advice regarding *Town of Greece v. Galloway, et al.* or any Establishment Clause matter, please contact Craig A. Steele at csteele@rwglaw.com or any of the members of the Firm's Public Law Department.