

## UNITED STATES SUPREME COURT UPHOLDS PRAYER BEFORE PUBLIC MEETINGS

The United States Supreme Court recently issued its opinion in the case of *Town of Greece v. Galloway* (2014) 572 U.S. \_\_\_ (Docket No. 12-696; Decided May 5, 2014) in which it held that a city's practice of opening its public meetings with a prayer or invocation did not violate the Establishment Clause.

Like many public agencies, the Town of Greece adopted a practice of opening each public meeting with an invocation. The invocation was given by clergy selected from the congregations listed in a local directory. While the prayer program was open to all religious beliefs, for years nearly all of the local congregations were Christian, and thus nearly all of the participating prayer givers were Christian as well. However, in response to complaints from representatives of the plaintiffs regarding the predominately Christian-themed prayers, the City invited individuals from other faiths, such as a Jewish layman, the chairman of the local Baha'i temple, and a wiccan priestess to deliver the respective invocations. The City did not review the prayers in advance of the meeting or provide any type of guidance in the tone or content of the invocations. Some of the prayers delivered were generic or nonsectarian in nature (*i.e.*, they did not specifically refer to any one faith), and others were sectarian (and generally, Christian) in nature and made references to "Jesus Christ" and contained other statements that included themes associated with specific religious doctrines.

Plaintiffs filed suit alleging that the City's prayer program violated the Establishment Clause because (1) it allowed individuals to give expressly religious, sectarian prayers, rather than only permitting those with a more generic, nonsectarian tone; and (2) the setting and conduct of the meetings created social pressures that coerced non-adherents to participate in (or feign participation in) the prayer or invocation.

The Supreme Court rejected these claims and held that the practice of allowing prayers or invocations before public meetings—even if the prayer is sectarian in nature and makes reference to tenants of a specific creed or faith—was permissible as long as the invocations, over time, are not "exploited to proselytize or advance any one, or to disparage any other, faith or belief."<sup>1</sup> The Court likewise rejected the plaintiffs claims of "coercion" after finding that there was no evidence to suggest that the town leaders ever directed members of the public to participate in the prayer, or singled out dissidents for not participating, or indicated that their decisions might be influenced by a person's acquiescence (or lack thereof) in the prayer opportunity.

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<sup>1</sup> In so holding, the Court overruled the decision issued by the Second District Court of Appeal and overruled, in part, its prior decision in *County of Allegheny v. American Civil Liberties Union, Greater Pittsburg Chapter* (1989) 492 U.S. 573 which interpreted *Marsh v. Chambers* (1983) 463 U.S. 783 to stand for the proposition that legislative prayers were only constitutionally permissible if they were nonsectarian and generic in nature.

In sum, *Town of Greece* clarifies that public entities may (but are not required to) allow individuals to give a sectarian prayer or invocation at the opening of their public meetings. However, based on the Court’s reasoning, public entities desiring to permit invocations should keep in mind the following in order to best avoid running afoul of Constitutional principles:

- Religious congregations of all kinds (including atheists, wiccans, etc) should be permitted to participate in giving the invocation. In order to ensure that no religion is discriminated against, public entities may want to consider adopting “invocation policies” to state that all belief systems are welcome to participate, and setting forth objective criteria by which prayer-givers are selected (whether volunteer, first come-first served, or a random selection program.)
- Public entities should avoid censoring, editing, or pre-approving the content of any type of prayer beforehand. In other words, a prayer should not be required to be “non-sectarian” as to do so could violate other Constitutionally protected rights. As the Court recognized in *Town of Greece*, “Our Government is prohibited from prescribing prayers to be recited in our public institutions . . . . It would be but a few steps removed from that prohibition to require chaplains to redact the religious content from their messages in order to make it acceptable for the public sphere. Government may not mandate a civil religion that stifles any but the most generic reference to the sacred any more than it may prescribe a religious orthodoxy.” (*Supra*, 572 U.S. at \*27.)
- Public entities should also advise those presenting invocations that the point of their participation is ceremonial and designed to remind legislative bodies of the significance of their work, and to encourage them to reflect upon shared ideas and common goals before embarking on the fractious business of governing; and, that invocations should not be used as a time to proselytize or advance any one, or disparage any other, faith or belief.
- Public officials should avoid even the slightest indication that their decisions are influenced in any way by the content of the invocation or the participation (or lack thereof) of any particular member of the public. In this regard, while opening a meeting with a prayer is permissible, it would likely be a violation of the Establishment Clause if a prayer were to occur during the business portion of meeting (such as by asking for divine guidance after closing a public hearing and before voting on a land use application.)
- Finally, please note that *Town of Greece v. Galloway* dealt with federal claims under the Establishment Clause of the United States Constitution. While it appears to dispose of the issue, there are nonetheless arguments now being made that it is not binding with respect to claims brought under the California Constitution. Even if this argument is correct, the case is instructive as to how claims brought under the California Constitution would likely fare given the similar legal analysis a California court would apply under the California Constitution.

If you would like further information, please contact your Rutan attorney.

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