

In The
Supreme Court of the United States

—◆—
TOWN OF GREECE, PETITIONER,

v.

SUSAN GALLOWAY, ET AL.
—◆—

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
—◆—

**BRIEF FOR UNITARIAN UNIVERSALIST
ASSOCIATION OF CONGREGATIONS,
UNION FOR REFORM JUDAISM,
MUSLIM ADVOCATES, HINDU AMERICAN
FOUNDATION, NATIONAL COUNCIL OF
JEWISH WOMEN, CENTRAL CONFERENCE
OF AMERICAN RABBIS, WOMEN OF
REFORM JUDAISM, BLUE MOUNTAIN LOTUS
SOCIETY, AND RABBI SIMEON KOLKO AS
AMICI CURIAE SUPPORTING RESPONDENTS**
—◆—

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AMICI CURIAE SUPPORTING RESPONDENTS**

The Unitarian Universalist Association of Congregations, Muslim Advocates, the Union for Reform Judaism, the National Council of Jewish Women, the Central Conference of American Rabbis, Women of Reform Judaism, the Hindu American Foundation, the Blue Mountain Lotus Society, and Rabbi Simeon Kolko respectfully submit this brief as amici curiae in support of respondents.¹

INTEREST OF AMICI CURIAE

The **Unitarian Universalist Association of Congregations** is a religious organization that combines two traditions: the Universalists and the

¹ Letters from the parties granting blanket consent to the filing of amicus curiae briefs have been filed with the Clerk of the Court. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than amici curiae, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

Unitarians. Both groups trace their roots in North America to the early Massachusetts settlers and to the founders of the Republic. Unitarian Universalism is a liberal religion with Jewish-Christian roots. It has no creed. It affirms the worth of human beings, advocates freedom of belief and the search for advancing truth, and tries to provide a warm, open, supportive community for people who believe that ethical living is the supreme witness of religion.

The **Union for Reform Judaism**, whose 900 congregations across North America include 1.3 million Reform Jews, the **Central Conference of American Rabbis**, whose membership includes more than 2,000 Reform rabbis, and the **Women of Reform Judaism**, which represents more than 65,000 women in nearly 500 women's groups in North America and around the world, come to this issue out of our longstanding commitment to the principle of separation of church and state, believing that the First Amendment to the Constitution is the bulwark of religious freedom and interfaith amity. The concept of separation of church and state has lifted up American Jewry, as well as other religious minorities, providing more protections, rights and opportunities than have been known anywhere else throughout history.

Muslim Advocates works on the frontlines of civil rights to guarantee freedom and justice for Americans of all faiths. Muslim Advocates envisions a world in which equality, liberty, and justice are guaranteed for all, regardless of faith, and in which

the Muslim American legal community is vital to promoting and protecting these values. In pursuit of this vision, Muslim Advocates' mission is to promote equality, liberty, and justice for all by providing leadership through legal advocacy, policy engagement, and civic education, and by serving as a legal resource to promote the full and meaningful participation of Muslims in American public life.

The **National Council of Jewish Women** is a grassroots organization of volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, the National Council of Jewish Women strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms.

The **Hindu American Foundation** (HAF) is an advocacy organization for the Hindu American community. The Foundation educates the public about Hinduism, speaks out about issues affecting Hindus worldwide, and builds bridges with institutions and individuals whose work aligns with HAF's objectives. HAF focuses on human and civil rights, public policy, media, academia, and interfaith relations. Through its advocacy efforts, HAF seeks to cultivate leaders and empower future generations of Hindu Americans. Since its inception, HAF has made legal advocacy one of its main areas of focus. From issues of religious accommodation and religious discrimination to defending fundamental constitutional rights of free exercise and the separation of church and state, HAF has educated Americans at large and the courts about

various aspects of Hindu belief and practice in the context of religious liberty, either as a party to the case or an amicus curiae.

The **Blue Mountain Lotus Society** offers a unique and dynamic approach to an engaged contemporary Buddhist community. The primary service of the Blue Mountain Lotus Society is to educate and facilitate individual practitioners and communities in the Dharma, the way of Mindful Living.

Simeon Kolko is a Rabbi, educator, and diversity consultant living in Rochester, New York, in the vicinity of the Town of Greece. During recent years, Rabbi Kolko has counseled several families living in Greece, New York about their sense of estrangement from the majority culture. He is currently serving as the Rabbi of the Jewish Center of Jackson Heights. Rabbi Kolko was ordained by the Jewish Theological Seminary in 1998. He has long been involved in interfaith dialogue and is deeply committed to bringing together those of disparate beliefs around a set of core values.

INTRODUCTION AND SUMMARY OF ARGUMENT

One's religious belief, or nonbelief, should be irrelevant to one's access to the political process. But if petitioner's arguments were accepted, citizens who wish to participate in their local governments could be forced to accede to overtly sectarian prayers that are not a part of their own faith tradition. Nothing would prevent local governments across the country from sponsoring prayers that ostracize religious minorities. It would be acceptable for local governments to invite prayer givers to offer prayers invoking specific Christian names for God, asking for forgiveness for sins, and proselytizing. Attendees could be asked to stand and participate in the religious ceremony by bowing their heads and saying "amen." But members of minority religious faiths should not be forced to participate in another faith's religious observance just to attend a local-government meeting.

Overtly sectarian prayers at local-government meetings sends an unmistakable message that adherents to minority faiths are outsiders, not full participants in the political sphere. These prayers ostracize citizens from their own communities. Indeed, members of minority faiths have experienced significant harassment, property damage, and even threats of violence simply for opposing participation in overtly Christian invocations sponsored by the local government.

Moreover, although the opportunities to offer sectarian prayers theoretically may be open to all religions, it is not that way in practice. When adherents to minority faiths have tried to take advantage of purportedly open forums for sectarian prayer at local-government meetings, they often have been harassed or their requests have been denied for fear of offending the religious majority. In other words, sectarian prayer is not even-handed and open to all; in reality, it often is good for one group only, and that group is the religious majority.

A rule prohibiting sectarian prayer before local-government meetings would preclude these harms. But not only would such a rule protect religious minorities, it also would protect members of the majority faith. Demographic changes indicate that today's religious majority, Christians, may not always be the majority. Indeed, demographic data confirm that minority religious faiths and adherents to no religion are growing rapidly, while Christian adherents are aging and their share of the population is declining. There are communities within the United States today with a majority or plurality population of Jewish or Muslim adherents. The rule proffered by respondents protects the national religious majority in those areas where they are minorities—areas that will grow over time.

Finally, contrary to the arguments of one amicus, there is no sound legal basis to challenge respondents' standing to sue. Respondents are personally and directly affected by the challenged conduct.

ARGUMENT

I. **OVERTLY SECTARIAN PRAYER BEFORE LOCAL-GOVERNMENT MEETINGS HARMS MEMBERS OF MINORITY RELIGIOUS FAITHS**

A. **Sectarian Legislative Prayer At Local-Government Meetings Forces Religious Participation On Citizens Wishing Only To Participate In Democracy**

1. Members of minority religious faiths are not supposed to be second-class citizens. Jews, Muslims, Hindus, Buddhists, and other followers of minority religious faiths have the same rights and civic duties as Christians to participate in government at all levels. Nor are religious minorities niche groups. Members of minority faiths or individuals of no faith now account for approximately a quarter of the population. *Infra* pp. 17-19.

But in state- and local-government meetings preceded by sectarian prayer, individuals' rights of participation in the government are not unconditional. Rather, those rights are conditioned on participants' willingness to abide an overtly sectarian message—nearly always Christian—at the behest of a government official.

Consider, for example, a Jewish man wearing a yarmulke, or a Muslim woman wearing a hijab, who might wish to be heard about consumer utility rates at the July 17, 2013 meeting of the Alabama Public Service Commission. To participate at that public

meeting, the citizen would have had to endure several minutes of a Commission-endorsed prayer effectively telling the citizen that his or her faith was false.

The prayer is documented in a video posted on the Alabama Public Service Commission's website. Alabama Public Service Commission, *APCO July 2013* (July 17, 2013), <http://www.psc.state.al.us/administrative/Jul172013.htm>. It begins with Commission President Twinkle Andress Cavanaugh explaining that "as is customary," the meeting will begin with a prayer from a member of a local church or a friend of a commissioner. In a lengthy introduction, President Cavanaugh introduced the prayer giver, John Delwin Jordan, as "a dear friend" and "role model," who "will be leading us in prayer." She explained that Mr. Jordan is an active member of a local Baptist church and of Promise Keepers and has gone on 10 mission trips. She gave the audience Mr. Jordan's email address and encouraged the audience members to sign up for Mr. Jordan's weekly emails, which she said "will challenge you to walk closer with our creator." She then asked everyone to "stand and join us in prayer," and turned the floor over to Mr. Jordan.

Mr. Jordan had the floor for over four minutes. He began by asking "for a show of hands to see how many people believe in prayer" and "believe that God answers prayers." Each person visible in the video raised his or her hand. After the audience collectively bowed their heads, Mr. Jordan's prayer began. He "pray[ed], Holy Spirit, that you will fall fresh on us"

and “Father, that you will send spiritual rain upon each one of us.” Mr. Jordan’s prayer continued: “Father, your word says that if any of us thirst, let us drink of the water, and, Jesus, we know that you’re the living water, and if we drink of you, we will not thirst again.” At one point, the prayer turned political: “Father, we’ve turned so far from you. We’ve sinned against you and you alone. * * * God, we’ve taken you out of our schools. * * * We’ve murdered your children. We’ve said it’s okay to have same-sex marriage, God. We have sinned. And we ask once again that you’ll forgive us of our sins.” The prayer concluded by invoking Jesus’ name: “the powerful, most mighty name, the name that’s above all names, and that’s Jesus.” Mr. Jordan then asked the audience to assent to the prayer by saying “amen.”

Amici’s members wishing to participate in the political process in Alabama or in Greece, New York should not be forced to sit through or participate in the observance of another faith. Their religious beliefs should be irrelevant to their participation in government meetings.

2. Sectarian prayer at local-government meetings may be more deleterious than at national or state legislature sessions. Social pressure to participate in or otherwise respect the prayer is much greater at local meetings than when the prayer is given before a national or state legislature. Local-government meetings often are very small and attended by one’s neighbors, friends, and business associates. Remaining seated while everyone else

stands and participates in the Christian prayer singles out and subjects oneself to being ostracized by one's neighbors. The pressure that individuals feel to stand and participate in the Christian observance thus may be overwhelming. Indeed, many individuals who have dissented from the majority prayer have faced threats of physical violence. *See infra* pp. 11-13.

It is not an answer to say that by standing and remaining silent during the prayer, minority-faith adherents are not actually participating in the religious observance. "What to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices * * * may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy." *Lee v. Weisman*, 505 U.S. 577, 592 (1992).

Nor is it adequate to say that attendance at such meetings is voluntary, and that the prayers may be avoided by not attending the meeting. As a factual matter, that is untrue. Unlike in national legislatures, individual citizens often have to participate directly in city or town council meetings to conduct important business. For example, in Greece, residents seeking to open many types of businesses such as restaurants must, by law, appear in person at one or more Board meetings. Resp'ts' Br. 5-6.

In any event, citizens who adhere to a different faith should not have to choose between, on the one

hand, participating at the public government meeting that includes an overtly Christian observance and, on the other, not participating in the government meeting at all. As Thomas Jefferson insisted, “our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry,” and “opinions in matters of religion * * * shall in no-wise diminish, enlarge, or affect [our] civil capacities.” Thomas Jefferson, *A Bill for Establishing Religious Freedom* (1779), reprinted in *Epoch-Making Liberty Documents* 103 (David Wuntch ed., 1936).

B. Religious Minorities Face Ostracism And Harassment For Not Participating In The Majority’s Sectarian Prayer

1. Not only are members of minority religious faiths ostracized from the political process by overtly sectarian legislative prayer, they also face enormous backlash for speaking out or refusing to participate. Indeed, many individuals have been met with derision, exclusion, threats, and actual violence.

One need only consider the harassment and vitriol unleashed on respondents here. After instituting this suit, the respondents received anonymous, threatening letters warning them to “be careful.” Greg Stohr, “*Let Us Pray*” Before Town Council Becomes High Court Case, Bloomberg News (July 26, 2013).² As the suit continued, respondent Linda

² <http://www.bloomberg.com/news/2013-07-26/let-us-pray-before-town-council-begins-is-high-court-case.html>.

Stephens awoke one morning to discover that her mailbox had been pulled out of the ground, smashed, and placed on top of her car. *Ibid.*

Other individuals who have dared to question Greece's public-prayer practice have been greeted by similar harassment. Nancy Braiman, who filed a complaint with the American Civil Liberties Union after encountering overtly sectarian Christian prayer at a Greece Town Board meeting, was targeted with an anti-Semitic letter. That letter, sent anonymously, "basically said (Adolf) Hitler should have finished the job exterminating the Jews, and it used a variety of racial slurs and profanity to describe" Braiman. Colleen M. Farrell, *Brighton Police Investigating Hate Mail*, Messenger Post, Feb. 21, 2007, at A1.

Members of the community seeking to intimidate respondents and their supporters also have exploited public forums to make their message plain. One letter to the editor of a local newspaper said that the respondents should, "[w]hen in Rome, do as the Romans." Letter to the Editor, *Saddened by Legal Challenge to Prayer*, Democrat and Chronicle, May 21, 2013.³ Another letter to the editor described respondents as "God haters" who "demand their 'rights' at the expense of everyone else's." Letter to the Editor, *God Haters Have Invaded Greece*, Democrat and Chronicle, Mar. 30, 2008. This writer explained

³ <http://www.democratandchronicle.com/article/20130521/OPINION03/305210039/Letter-Saddened-by-legal-challenge-prayer>.

that “those who want to pray should be allowed their right to do so, and those who do not, don’t have to.” *Ibid.*

These instances are not isolated to Greece. Darla Wynne, of Great Falls, South Carolina, objected to her town council’s practice of opening meetings with appeals to Jesus Christ. *Wynne v. Town of Great Falls*, 376 F.3d 292, 295 (4th Cir. 2004). In response, Wynne was told that she “wasn’t wanted” and that she “should leave town” because she “could possibly be burned out.” *Ibid.*

2. One argument often made to support petitioner’s position is that sectarian prayer may be offered not only by Christians but by members of minority faiths. While that might be true in theory, it is not in practice. In instances when members of minority faiths have been permitted to give invocations at legislative assemblies, the result often is further ostracism.

Considerable backlash followed the Town of Greece’s single prayer by a Wiccan priestess. For example, one citizen urged the Town to abandon legislative prayer altogether, rather than having “to yield the floor to individuals who would make a mockery of [American] history, our culture, and our faith.” Letter to the Editor, *Prayers Better Left Unsaid*, Greece Post, May 15, 2008. According to that individual, allowing a Wiccan priestess to lead prayer before the Town Board meeting was “an embarrassment and an outrage to the citizens in the town of Greece.”

Ibid. With utter confidence “that our country was founded on a faith in one true God,” the individual explained that “it is customary for governmental agencies” to pray to the Christian God, and no other. *Ibid.*

Similar backlash has occurred in other communities. In Hartford, Connecticut, city leaders decided—for just one month—to invite local Muslim imams to perform invocations at the start of city council meetings. See Everton Bailey, Jr., *Connecticut Muslims Ask for Equality from City Council*, Associated Press, Sept. 14, 2010; Stephen Clark, *Hartford’s Inclusion of Muslim Prayers in Council Meetings Sparks Outrage*, FoxNews.com (Sept. 8, 2010).⁴ The city council intended the invitation to Muslim religious leaders to be a “break from the typical start of meetings with Christian prayers, or occasionally an invocation by a rabbi.” Clark, *supra*.

But the invitation caused so great an uproar that the city council “cancel[ed] the scheduled prayer in favor of a moment of silence.” Bailey, *supra*. One commentator remarked, “If they check their history, we’re a Christian nation. * * * I think opening with Islamic prayer is opening up for more people to go straight to hell.” Clark, *supra*. And while the city council opted for a more inclusive “moment of silence” for the month of September 2010, the city council

⁴ <http://www.foxnews.com/politics/2010/09/08/hartford-councils-inclusion-muslim-prayers-sparks-outrage/>.

president “said the plan is to return to the prayer rotation in October.” Bailey, *supra*.

Muslim leaders in Connecticut explained that canceling their opportunity to lead public prayer “unfairly singles out state residents who practice Islam.” *Ibid.* “We are not asking for special treatment,” one leader remarked. *Ibid.* “We are just asking for equal treatment, just like everyone else.” *Ibid.* But equal treatment is not a reality for religious minorities, who often face harassment and vitriol when they seek to express that faith in local government life.

An atheist Arizona legislator whose turn it was to give the daily prayer at the Arizona House of Representatives recently took another tack. Representative Juan Mendez asked members not to bow their heads while he spoke about his secular humanist tradition and quoted Carl Sagan. Matthew Hendley, *Atheist State Lawmaker Quotes Carl Sagan Instead of Doing Prayer Before House Session*, Phoenix New Times (May 21, 2013).⁵ He later said: “I wanted to find a way * * * where I could convey some message and take advantage of the opportunity that people have when they offer these prayers. * * * If my lack of religion doesn’t give me the same opportunity to engage in this platform then I feel kind of disenfranchised.” Bob Christie, *Arizona House Non-Prayer*

⁵ http://blogs.phoenixnewtimes.com/valleyfever/2013/05/atheist_carl_sagan_juan_mendez_state_lawmaker_quotes_carl_sagan_instead_of_doing_prayer_before_house_session.php.

Sparks Christian Re-do, KTAR (May 22, 2013).⁶ The next day, however, another lawmaker asked other members to join him in a second daily prayer in “repentance.” *Ibid.* That lawmaker chided: “if you are a non-believer, don’t ask for time to pray.” *Ibid.*

3. Overtly sectarian prayer at local-government meetings pits the religious majority against religious minorities. Such prayer marginalizes minority faiths, sending the unmistakable “message to nonadherents that they are outsiders, not full members of the political community.” *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring).

As a result, an enormous toll is exacted on communities’ social fabric. In a community setting, individuals ostracized because of their religious beliefs may lose the sense of belonging that binds them to their community in the first place. *See* Daniel O. Conkle, *Toward a General Theory of the Establishment Clause*, 82 Nw. U. L. Rev. 1113, 1167-1168 (1988) (exclusion restricts community membership and/or reduces members’ loyalty). This is especially so when the exclusion relates to religious beliefs. “[B]ecause these beliefs define the person’s very sense of being, the community’s action may be viewed as an assault not merely on the person’s beliefs, but on the person himself.” *Id.* at 1168. As a result, “[h]is loyalty to the community will be weakened, perhaps

⁶ <http://ktar.com/?sid=1636340&nid=23>.

dramatically, and he may even withdraw from the community altogether.” *Ibid.*

That brings about the risk of serious damage to American democracy, particularly at the local level. When religious minorities “banish themselves from the political arena to avoid spiritual stain, they no longer participate in the republican discourse concerning the common good.” Timothy L. Hall, *Sacred Solemnity: Civic Prayer, Civil Communion, and the Establishment Clause*, 79 Iowa L. Rev. 35, 81 (1993). “[T]he ostracism that befalls plaintiffs who challenge cherished governmental endorsements of religion is so extreme that most who are offended by these practices bite their tongues and go about their lives.” Steven B. Epstein, *Rethinking the Constitutionality of Ceremonial Deism*, 96 Colum. L. Rev. 2083, 2171 (1996). Yet when fewer citizens participate in the political process, republican government is necessarily less representative.

C. A Rule Prohibiting Sectarian Prayer Before Local-Government Meetings Protects Both The Religious Majority And Religious Minorities

A rule prohibiting sectarian prayer at local-government meetings not only protects members of minority religious faiths, it also protects the current religious majority.

1. The current religious majority is dwindling. Demographic data show that while Christian adherents today constitute a clear majority of Americans, their

share of the total U.S. population has declined in recent decades. Between 1990 and 2008, the share of Americans identifying as Christians dropped from eighty-six percent to seventy-six percent. Barry A. Kosmin & Ariela Keysar, *American Religious Identification Survey: Summary Report 3* (2009).⁷ In California, non-Catholic Christians decreased from nearly fifty percent of the population in 1990 to just thirty-five percent of the population in 2008. *Id.* at 17. “The historic Mainline Christian churches have consistently lost market share since the 1950s, but since 2001 there has been a significant fall in numbers.” *Id.* at 6. The population of American Muslims has doubled in size over the 1990-2008 period. *Id.* at 5. Meanwhile, individuals identifying no religious affiliation grew from eight percent to fifteen percent of the population over the same period. *Id.* at 3. Nearly a quarter of Americans now reject the idea of a personal God. *Id.* at 8.

Age compositions of various religious groups indicate that the trend toward a less dominantly Christian population is likely to continue. American adherents of Islam and Eastern religions are likely to be young. More than forty percent of Muslims are between the ages of 18 and 29, and thirty-seven percent of adherents of Eastern religions fall in that age range. *Id.* at 12. Only one percent of Muslims

⁷ Available at http://commons.trincoll.edu/aris/files/2011/08/ARIS_Report_2008.pdf.

and three percent of Eastern religion adherents are older than 70. *Ibid.*

Christians, meanwhile, tend to be significantly older. Only about twenty-five percent of Christians are between the ages of 18 and 29. *Ibid.* Between nine and fourteen percent of the faithful in most Christian denominations are older than 70. *Ibid.* Baptists are the most likely to be seniors; more than one fifth of Baptists are over 70 years of age. *Ibid.*

These demographic data indicate that Americans are becoming less Christian over time, and less religious overall. All Americans, including the current religious majority, are thus best protected by a rule recognizing that sectarian prayer at government meetings is not constitutionally permissible simply because it reflects the religious affiliation of the majority at any point in time.

2. Moreover, a rule prohibiting sectarian prayer at local-government meetings protects the nationwide religious majority because that group is not the religious majority in every community.

For instance, Muslims now constitute nearly half the population of Hamtramck, Michigan. Nargis Rahman, *A Model Muslim City (Politically): Hamtramick* [sic], *Michigan*, *The Muslim Observer* (Mar. 23, 2011).⁸ Muslims also account for about forty

⁸ <http://tmofoundation.weebly.com/2/post/2011/03/first-post.html>.

percent of the population in nearby Dearborn, Michigan. Dan Bryan, *American Islam in Dearborn: A Portrait*, Religion in American History (Apr. 24, 2012).⁹ And “Ultra-Orthodox Satmar Hasidic Jews predominate in” the village of Kiryas Joel, New York. Sam Roberts, *A Village With the Numbers, Not the Image, of the Poorest Place*, N.Y. Times, Apr. 21, 2011, at A1.¹⁰

Like the Board in the Town of Greece, the local religious majorities have sometimes expressed their faiths in public forums. The Hamtramck city council has permitted Hamtramck mosques to broadcast the Muslim call to prayer at appropriate times of the day. John Leland, *Tension in a Michigan City Over Muslims’ Call to Prayer*, N.Y. Times (May 5, 2004).¹¹

⁹ <http://usreligion.blogspot.com/2012/04/american-islam-in-dearborn-portrait.html>.

¹⁰ Particular groups that are minority sects within Christianity nationally also have much greater influence in particular regions or localities. For instance, members of the Church of Jesus Christ of Latter Day Saints constitute only 1.4% of the total U.S. population. Kosmin & Keysar, *supra*, at 5. But Mormons also make up more than 60% of Utah’s population. Matt Canham, *Census: Share of Utah’s Mormon Residents Holds Steady*, Salt Lake Tribune (Apr. 17, 2012), <http://www.sltrib.com/sltrib/home3/53909710-200/population-lds-county-utah.html.csp>. And Catholics now account for about a third of the population of California and Texas. Kosmin & Keysar, *supra*, at 17.

¹¹ <http://www.nytimes.com/2004/05/05/us/tension-in-a-michigan-city-over-muslims-call-to-prayer.html>.

One Christian resident objecting to that practice explained, “My main objection is simple[.] I don’t want to be told that Allah is the true and only God five times a day, 365 days a year. It’s against my constitutional rights to have to listen to another religion evangelize in my ear.” *Ibid.* (internal quotation marks omitted).

But if sectarian legislative prayer is permitted, it cannot be for Christian prayer only. A rule that permits only non-sectarian prayers at local-government meetings thus serves to protect the national religious majority in the growing number of places where the national majority actually is a local minority.

3. Indeed, these demographic changes indicate that even historically grounded justifications for legislative prayer are becoming an ill fit. To the extent this Nation’s history of legislative prayer could have been deemed acceptable because it reflected the historical Christian or Judeo-Christian beliefs of its populace, that history has less purchase in modern times. It simply is no longer the case that invocations like the ones at issue here are “conduct whose effect harmonized with the tenets of some or all religions.” *Marsh v. Chambers*, 463 U.S. 783, 792 (1983) (internal quotation marks and alterations omitted). A growing diversity of faiths casts doubt on the fit between historical practice and modern reality.

Moreover, certain amici supporting petitioner emphasize the importance of *Christian* prayer in particular.¹² But a majority-rules approach undermines, rather than serves, an interest in promoting Christian devotion in the growing number of communities that are not majority Christian. Indeed, if prayer “in the name of Jesus Christ” is uniquely in accord with this Nation’s “Godly foundation,” as one amicus claims (Br. of Foundation for Moral Law at 1, 9), then sectarian prayer of other faiths might well undermine that history. Non-sectarian prayer, by contrast, would preserve it in a manner inclusive to adherents of all faiths.

II. RESPONDENTS HAVE ARTICLE III STANDING TO CHALLENGE THE PRAYERS BEFORE THE TOWN BOARD MEETINGS

Although petitioner does not contest respondents’ standing to challenge the prayers at the Town Board meetings, petitioner’s amicus American Center for Law and Justice (“ACLJ”) does so. ACLJ Br. 8-16. Contrary to ACLJ’s arguments, respondents have

¹² For example, amicus Nathan Lewin emphasizes that “Jewish law and tradition encourages meaningful Christian prayer.” Br. of Nathan Lewin as Amicus Curiae in Support of Pet’r at 6. The Foundation for Moral Law observes that those who pray in the name of Jesus Christ “do so out of obedience to God and His commands as they understand them.” Br. of Foundation for Moral Law as Amicus Curiae in Support of Pet’r at 9. The Foundation more generally advocates education about “the Godly foundation of this country’s laws and justice system.” *Id.* at 1.

more than sufficient injury to establish Article III standing.

ACLJ's arguments are based on the wrong legal standard. Standing does not turn on whether the challengers are "offended observer[s]." *Id.* at 11. Rather, the question is whether respondents "are *directly* affected by the laws and practices against which their complaints are directed." *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 224 n.9 (1963) (emphasis added). Standing requires simply that the plaintiff "*personally* has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982) (emphasis added).

There is no question that respondents here directly have suffered, and will continue to suffer, injury because of the Greece Town Board's practices. Respondents regularly have attended Town Board meetings at which overtly Christian prayers were given at the invitation of the Board. Respondents also plan to continue attending Board meetings. But they cannot do so without being "subjected to unwelcome religious exercises or * * * forced to assume special burdens to avoid them." *Id.* at 486 n.22.

For example, prayer givers at the Board meetings regularly request that all present join in the prayer, stand, and/or bow their heads. Resp'ts' Br. 11. Board members make similar requests. *Ibid.*

Respondents are then forced personally to decide whether to participate in the exercise of another faith, stand in silence, or remain seated and thereby single themselves out for further ostracism beyond what they already have had to endure, *see supra* pp. 7-11. Each of these is an injury. *See, e.g., Lee*, 505 U.S. at 593 (“the act of standing or remaining silent” during public prayer, “for many, if not most” is “an expression of participation”).

Sectarian prayers at local-government meetings thus injure the conscience of adherents to minority faiths. Members of minority faiths who must attend local-government meetings where overtly Christian prayers are offered suffer more than mere “offense.” They must choose between their religious conscience and their right to participate in government proceedings. Having to forgo either is an injury in fact.

Unlike the plaintiffs in *Valley Forge*, respondents here have “a personal stake” in this controversy. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009) (citation omitted); *contra* ACLJ Br. 11. The plaintiffs in *Valley Forge* lacked standing because they learned about the challenged practices secondhand and were never directly affected. The plaintiffs were residents of Maryland and Virginia who complained about a transfer of property from the federal government to a religious institution in Chester County, Pennsylvania, after learning about the transfer from a news release. *Valley Forge*, 454 U.S. at 486-487. There was no allegation or evidence that the plaintiffs had ever seen the transferred property,

had any desire to visit it, or suffered any “personal injury” from the transfer apart from “the psychological consequence presumably produced by observation of conduct with which one disagrees.” *Id.* at 485 (emphasis added).

Respondents here, by contrast, are not mere bystanders disapproving of remote government conduct for purely ideological reasons. They did not “roam the country in search of governmental wrongdoing,” nor did they learn of the challenged prayers by reading the news. *Id.* at 487. They have attended Town Board meetings and have been personally affected by the sectarian prayers. Respondents’ injury thus is more akin to that of the plaintiff in *Lee*. There, this Court held there was a “live and justiciable controversy” where “it appear[ed] likely, if not certain” that the plaintiff would endure “an invocation and benediction * * * at her high school graduation.” *Lee*, 505 U.S. at 584.

Finally, ACLJ is wrong to suggest that recognizing respondents’ standing in this case “would render irrelevant the entire body of taxpayer standing precedents.” ACLJ Br. 11. This case does not involve a government expenditure, and so taxpayer standing simply is not at play here. Moreover, respondents have a personal stake in the outcome of this controversy; they need not rely on their status as taxpayers. The taxpayer-standing doctrine thus will continue to have robust application in cases where plaintiffs are not personally affected by the allegedly unconstitutional government expenditure apart from their

status as taxpayers. *See, e.g., Bowen v. Kendrick*, 487 U.S. 589, 618-620 (1988).

CONCLUSION

For the reasons set forth above and in respondents' brief, the judgment should be affirmed.

Respectfully submitted,

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