



Limits on Legislative Prayer after *Town of Greece v. Galloway*

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Although the Supreme Court has ruled that local governments may open their meetings with ceremonial prayers, and that those prayers may include religion-specific references, the Court made clear that the First Amendment still imposes important limits on legislative-prayer practices

Speakers must be given access without regard to religion:

IN THE COURT'S WORDS: Government must "maintain ... a policy of nondiscrimination." It must "represent ... that it would welcome a prayer by any minister or layman who wished to give one."

BOTTOM LINE: Government cannot exclude potential speakers on the basis of religion; if it relies on outsiders to deliver a solemnizing message to open meetings, it must allow monotheists, polytheists, and nonbelievers to do so as well.

Government officials may not ask citizens to join in the prayers:

IN THE COURT'S WORDS: "The principal audience for these invocations" must be "lawmakers themselves," not members of "the public." The Constitution would be violated if legislators "directed the public to participate in the prayers."

BOTTOM LINE: Speakers should deliver their remarks to the members of the legislative body. Government officials cannot ask audience members to stand, to bow their heads, or otherwise to participate in the invocation, whether the invocation is delivered by an outsider or by a government official.

Invocations may not proselytize or disparage religious minorities or nonbelievers:

IN THE COURT'S WORDS: "If the course and practice over time shows that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion, many present may consider the prayer to fall short of the desire to elevate the purpose of the occasion and to unite lawmakers in their common effort." The Constitution would be violated if legislators "singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person's acquiescence in the prayer opportunity."

BOTTOM LINE: Government officials need to step in when and if outside speakers make statements that are hostile to religious minorities or nonbelievers. It likewise would be unconstitutional for government officials themselves to open every meeting by delivering the Lord's Prayer or any other prayer specific to one faith tradition.



Prayers must be divorced from policy-making:

IN THE COURT'S WORDS: "In the town of Greece, the prayer is delivered during the ceremonial portion of the town's meeting. Board members are not engaged in policymaking at this time.... It is a moment for town leaders to recognize the achievements of their constituents and the aspects of the community life that are worth celebrating."

BOTTOM LINE: Legislative bodies should ensure that any prayer is divorced from policymaking activity, so that those who wish to avoid the prayer can do so without missing the legislative portion of meetings. As a result, zoning boards, and other local bodies that engage in policymaking alone, should be wary about continuing to engage in prayer at all.

School Boards still can't open with prayer:

IN THE COURT'S WORDS: The ruling applies to the "limited context" of legislative prayers, where a history dating back to the country's founding shows a longstanding practice of opening meetings with ceremonial prayers.

BOTTOM LINE: Public schools did not exist at the time of the founding, so there is no historical justification for prayers at school-board meetings. Indeed, every court to consider the question has held that the Constitution prohibits school boards from opening their meetings with prayers. Those decisions remain in effect.

Finally, nothing in the decision requires local legislative bodies to open with prayers. Countless municipalities have discontinued the practice in the view that all invocations—no matter how inclusive—will inevitably favor some points of view over others. For those municipalities that choose to continue offering opening invocations, it would be advisable to follow the practice of the U.S. Congress, which asks invocation-givers to be mindful of religious diversity.