

# Supreme Court wrestles with how 'religious' prayer should be at public meetings

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WASHINGTON (RNS) The Supreme Court struggled Wednesday (Nov. 6) with a case that asks whether government bodies can open with prayers that some people find overly religious and excluding.

From their lines of questioning, it's unclear whether the court is ready to write new rules on what sort of prayer falls outside constitutional bounds. And more than one of the justices noted that just before they took their seats, a court officer declared: "God save the United States and this honorable court."

Few court watchers believe the justices will rule all civic prayers unconstitutional — the nation has a long history of convening legislative bodies with such language.

Rather, the question raised by *Town of Greece v. Galloway* is how sectarian these prayers can get.

Justice Elena Kagan brought the issue into focus by asking what should happen if the court had opened with a different religious reference, one offered by a minister called up by the chief justice who asked everyone to bow their heads and said:

"We acknowledge the saving sacrifice of Jesus Christ on the cross. We draw strength from his resurrection. Blessed are you who has raised up the Lord Jesus. You who will raise us in our turn and put us by His side."

Many of the prayers offered at the opening of town council meetings in Greece, N.Y., outside Rochester, have been similarly worded. For eight years, they were delivered

only by Christian clergy, who sometime asked attendees to stand and bow their heads, and frequently invoked Jesus and the Holy Spirit.

Two town residents — Susan Galloway, who is Jewish, and Linda Stephens, an atheist — sued over the prayers and lost in federal court in 2011, arguing that the town had violated the Constitution's Establishment Clause, which prohibits government-sponsored religion.

But they won in 2012 at the 2nd U.S. Circuit Court of Appeals, which ruled that the town's approach to public prayer amounted to an endorsement of Christianity.

When the Supreme Court took the case, First Amendment experts hoped the justices would help clean up an especially messy area of law. Courts across the country have come up with rulings on so-called legislative prayer that are at odds with each other, and apply different tests to determine what passes constitutional muster.

At the Supreme Court on Wednesday, the lawyer for the town, Thomas G. Hungar, argued that the 2nd Circuit erred in using an endorsement test to decide whether Greece officials had violated the First Amendment.

"American are not bigots, and we can stand to hear a prayer delivered in a legislative forum by someone whose views we do not agree with," said Hungar. "That is the tradition of this country and that is why it doesn't violate the Establishment Clause."

Justice Antonin Scalia, a defender of the presence of religion in public life, also made the case for a standard that allows people to pray before they embark upon the business of government.

"These people perhaps invoke the deity at meals," Scalia said. "They should not be able to invoke it before they undertake a serious governmental task such as enacting laws or ordinances?"

The United States in this case, represented by Deputy Solicitor General Ian H. Gershengorn, took the town's side, arguing that it's not government's job to parse the language of prayer and that the nation has a long history of legislative prayer.

Douglas Laycock, representing the women who filed suit against the town, proposed a different approach to such prayer. Government should ask clergy to stay away from themes on which believers disagree, refrain from asking for audience

participation and separate the prayer from the part of the meeting where the legislative body makes decisions or enacts law.

“We’re saying you cannot have sectarian prayer,” Laycock said.

His proposal did not seem to please Justice Anthony Kennedy, known as the court’s swing vote, who expressed discomfort with any solution that assumed the government would or should have a say in the content of an invocation.

It “involves the state very heavily in the censorship, and the approval or disapproval of prayers,” Kennedy said.

Other justices, known to be sympathetic to arguments that would allow people to pray as they wish, also took Laycock to task.

“Give me an example of a prayer that would be acceptable to Christians, Jews, Muslims, Buddhists,” Justice Samuel Alito asked Laycock. “Hindus. Give me an example of a prayer. Wiccans, Baha’i.”

“And atheists,” added Chief Justice John Roberts.

“And atheists,” echoed Scalia. “Throw in the atheists too.”

Laycock said there were many such prayers acceptable to people of different faiths, and many examples even from Greece town council meetings.

As for atheists, Laycock continued, legal precedent implies that “atheists cannot get full relief in this context.”

A decision in the case is expected by the end of June.