



## **CITY COUNCILS CAN HAVE PRAYER, JUSTICES DECIDE**

### **Justices ease restrictions, ruling that it's OK if invocation clearly favors a specific religion**

By Robert Barnes The Washington Post May 6, 2014

WASHINGTON

A divided Supreme Court ruled Monday that legislative bodies such as city councils can begin their meetings with prayer, even if it plainly favors a specific religion.

The court ruled 5 to 4 that Christian prayers given before meetings of an upstate New York town council did not violate the constitutional prohibition against government establishment of religion, citing history and tradition.

“Ceremonial prayer is but recognition that, since this nation was founded and until the present day, many Americans deem that their own existence must be understood by precepts far beyond the authority of government,” Justice Anthony Kennedy wrote for the court’s majority.

The ruling reflected a court that has become more lenient of how government may accommodate religion in civic life without crossing the line into an endorsement of a particular faith. All nine justices endorsed the concept of legislative prayer, with the four dissenters agreeing that the public forum “need not become a religion-free zone,” in the words of Justice Elena Kagan.

But there was sharp disagreement after that, and the majority ruling could encourage public bodies to give more leeway to religious expression in their ceremonial prayers and less deference to the objections of religious minorities.

The court’s five conservatives said legislative prayers need not be stripped of references to a specific religion — the prayers at issue often invoked Jesus Christ and the resurrection — and said those given the opportunity to pray before legislative meetings should be “unfettered” by what government officials find appropriate.

“Absent a pattern of prayers that over time denigrate, proselytize or betray an impermissible government purpose, a challenge based solely on the content of a prayer will not likely establish a constitutional violation,” Kennedy wrote.

He was joined by Chief Justice John Roberts and Justices Antonin Scalia, Clarence Thomas and Samuel Alito.

Kagan's dissent was both narrow — the town could have remedied its problems by finding more religious diversity in its prayer-givers, she said — and broad. The First Amendment's promise, she wrote, is that "every citizen, irrespective of her religion, owns an equal share in her government."

Justices Ruth Bader Ginsburg, Stephen Breyer and Sonia Sotomayor joined her.

**Glenn Smith**, a constitutional law professor at California Western School of Law, said San Diego is likely to remain largely unaffected by the ruling because it's a large urban area with a variety of religions, and a place where diversity is respected.

"What this will do is presumably allow small towns and burghs where there is a predominant religion — and where Christianity is the predominant religion and maybe some towns in New York that are predominantly Jewish — to not be as careful and inclusive as they would have been if the court had gone the other way.

The decision split the court along its usual ideological divide and, to a lesser extent, by religion. All members of the majority are Catholic, as is Sotomayor. The other dissenters are Jewish.

The case involved Greece, N.Y., where the council regularly opened its meeting with a prayer delivered by someone in the community. The speakers were recruited from the town's houses of worship, which happened to be overwhelmingly Christian.

In fact, every meeting from 1999 to 2007 in the Rochester suburb opened with a Christian prayer, and even after two of the town's residents filed a lawsuit, only a handful of non-Christians have delivered the invocation.

A panel of the 2nd U.S. Circuit Court of Appeals found that "the town's prayer practice must be viewed as an endorsement of a particular religious viewpoint" because the town had not reached out to a more diverse group of prayer-givers or made clear that the prayers did not represent the town's beliefs.

The Supreme Court decided 30 years ago that state legislatures may begin sessions with an invocation. But the new case asked whether there might need to be different rules for a local council meeting.

The town residents who objected to the prayer practice argued that the court's 1983 decision in *Marsh v. Chambers* authorized only inclusive, nonsectarian prayers to a "generic God."

Devereaux Lloyd, educator and a pastor at South Bay United Pentecostal Church in Chula Vista, said the ruling comes as a relief.

“I’m puzzled when one wants to muzzle the mouths of people wanting to pray,” he said. Obscenity on television and the radio “has not been suppressed, but prayer, which is in no way negative — someone trying to do better, imploring God for his help and blessing” is suppressed, in an instance of governmental overreach, he said.

*Staff writer Roxana Popescu contributed to this report.*

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