In 1983 the United States Supreme Court, in *Marsh v. Chambers*, upheld the Nebraska state legislature’s practice of opening sessions with a prayer. In the three decades since *Marsh*, courts have heard many challenges to prayers offered at local government meetings. These cases raised the issue of whether the practices approved in *Marsh* were also lawful when undertaken by local governments. Many litigants and judges assumed that the holding and reasoning in *Marsh* applied equally to meetings of local government boards. For example, in a case arising in Forsyth County, North Carolina, the federal court held that the county could legally open its meetings with prayer, but that the prayers must be nonsectarian, or must represent diverse religions so as to avoid the effect of affiliating the government with a particular belief. See *Joyner v. Forsyth County*, citing *Turner v. City Council of the City of Fredericksburg*, 534 F.3d 352, 356 (4th Cir. 2008), *Simpson v. Chesterfield County Board of Supervisors*, 404 F.3d 276 (4th Cir. 2005), and *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004). This week, the Supreme Court directly addressed the constitutionality of prayer at local government meetings, and clarified the scope and meaning of its earlier opinion in *Marsh*. This blog post summarizes the basic holding in *Town of Greece v. Galloway* (go here for a more detailed summary of the majority and dissenting opinions in the case), and suggests answers to some questions that remain in the wake of the decision.

The Town of Greece, New York opened its board meetings with a prayer offered by clergy from various local churches. The town initially solicited participation from multiple congregations, but over time, they came to rely on a list of potential participants that included only Christian clergy. Although the program was open to any religion, a majority of the town’s congregations were Christian, and the prayers were predominately and explicitly Christian. Several citizens challenged the town’s practice, arguing that the predominance of Christian prayers violated the Establishment clause because it created an impression that the town endorsed a particular religion. The federal trial court upheld the town’s practice, arguing that the predominance of Christian prayers violated the Establishment clause because it created an impression that the town endorsed a particular religion. The federal trial court upheld the town’s practice, but the court of appeals reversed, holding that the overall effect of the prayer program could lead a reasonable person to conclude that the town endorsed Christianity over other religions.

The Supreme Court held that prayer at local government meetings, if conducted appropriately, “fits within the tradition long followed in Congress and the state legislatures,” as upheld in *Marsh*, resolving without reservation the question of whether *Marsh* applies in a local government setting. The Court also dispelled the notion that the constitution as interpreted in *Marsh* allows only nonsectarian prayer. Finally, the Court rejected the claim that the prayers were coercive to citizens attending the meetings. The Court held that the principal audience for the opening prayer is the legislative body itself, and that “in the general course legislative bodies do not engage in impermissible coercion merely by exposing constituents to prayer they would rather not hear and in which they need not participate.” Slip op. at 22.

The dissent disagreed with the Court’s conclusion that a prayer in the local government setting is consistent with the history and tradition of prayer in Congress and state legislatures, and insisted that only nonsectarian prayers are permitted. The dissenting justices identified differences in the local government setting that they deemed to be legally significant, including the difference in the nature and purpose between prayers at state and local proceedings. As characterized in the dissent, the prayer upheld in *Marsh* was addressed to legislators alone, in a proceeding in which citizens had no role. Town meetings, according to the dissent, are “occasions for ordinary citizens to engage with and petition their government, often on highly individualized matters.” Slip op. at 9. The dissent also stressed the importance, under *Marsh*, that prayers be nonsectarian, highlighting through hypothetical examples the chilling effect of sectarian prayers on those of different faiths who have specific matters pending before local governmental boards and officials.

I’ve set out below some answers to questions about the effect and meaning of the Supreme Court’s decision in *Town of Greece*.

**What is the effect of this decision on the holding in the Forsyth County case mentioned in the introduction?** That
case is no longer good law because of its reliance on the overall effect of predominately Christian prayers. Local
governments will now have to evaluate their prayer practices against the standard enunciated in *Town of Greece*.

**What are the key aspects of the program in the Town of Greece that were held to be acceptable?** The key aspects
are found in the specific facts of the case, which the justices considered to be important to the outcome, and are also
gleaned from the holding itself. I would summarize them as follows: 1) the program was open to all religions, 2) the
prayers were delivered by invited clergy, 3) prayers were offered at the beginning of the meeting and met the purpose of
solemnizing the work of the governing body, 4) the prayers did not proselytize or coerce participation by those attending
the meeting, and 5) there was no evidence that attendees were or would be treated differently if they declined to attend or
participate in the prayer portion of the meeting.

**Must all prayers at local government meetings be nonsectarian?** No. The Court rejected the notion that the
constitution requires only nonsectarian prayers. Indeed, the court notes that such a standard would require judges to
become “censors,” undertaking the difficult task of determining which types of religious references are sufficiently broad to
meet a nonsectarian standard. See Slip op at 13

**Is there any limitation on the types of prayers that may be offered?** Yes. Prayers must not proselytize, and they must
be consistent with the purpose of setting – that is – the opening of a meeting. The court noted:

> The relevant constraint derives from its place at the opening of legislative sessions, where it is meant to lend
> gravity to the occasion and reflect values long part of the Nation’s heritage. Prayer that is solemn and
> respectful in tone, that invites lawmakers to reflect upon shared ideals and common ends before they embark
> on the fractious business of governing, serves that legitimate function. 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. That circumstance would present a different case than
> the one presently before the Court.

Slip op. at 15.

**Did the Court hold that board members have a First Amendment right to offer prayer at meetings?** No. Although
some responses to the holding have framed the issue in terms of a First Amendment right to pray, that issue was not
raised in the case and was not discussed in the decision. The case involved an allegation that the town’s prayer practices
violated the Establishment Clause in the First Amendment, and the Court held that they did not.

**Are board members free to offer prayers themselves?** The case did not address this question, so it remains an open
question of law. *Marsh* and *Town of Greece* involved prayers offered by invited guests or paid chaplains. It may be
permissible for board members themselves to offer an opening prayer, but such a practice could raise new and different
allegations of endorsement of religion, especially if the practice does not accommodate prayers from multiple
denominations.

**Does this decision mean that prayers may be offered in other settings, such as graduation exercises or quasi-
judicial hearings?** No. The case is limited to the setting in the Town of Greece, which was a general meeting of the
legislative body. The holding in this case does not necessarily apply to other kinds of local government meetings or
functions. The Court noted that other settings may create a more coercive environment, such as the graduation setting.
The Court did not overrule or even question its earlier ruling in *Lee v. Weisman* (505 U. S. 577 (1992)), which held that
prayer at a high school graduation was unconstitutional. See slip op. at 22.

**Does a local government have an obligation to regularly seek representatives from a diverse mixture of religions
to offer prayers?** Not necessarily. A key aspect of the holding is that the program in the Town of Greece was open to any
and all religions. So it’s clear that a local government cannot restrict particular religions from participating in its prayer
program. The Court did not find fault, however, with the fact that the town initially sought out multiple participants but
eventually stopped doing so. As such, the case does not appear to require the government to engage in ongoing efforts to
obtain a representative of multiple faiths. In addition, the Court specifically held that there was no obligation to reach out to
congregations outside of the town (even if citizens of the town worship there).

**Does the case hold that it’s legally acceptable to invite participation only from the religious faith that is practiced
by a majority of the population?** No. The Court noted that a majority of the population in the Town of Greece is
Christian, but only in the context of observing that it was reasonable and not surprising that the congregations that participated in the meeting prayers were all Christian. As already noted, an important feature of the program was that it was open to any faith, and that the town did, at least initially, reach out to all congregations.

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