

## Pray Tell: Supreme Court Upholds Prayer at Council and Board Meetings

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In *Town of Greece, New York v. Galloway (Town of Greece)*, the Supreme Court of the United States upheld prayer at a town board meeting, but did not offer much guidance to public agencies such as city councils and school boards regarding the risks of their own current prayer practices. In a 5-4 decision, the Supreme Court ruled that the prayer practice at issue in the case, which included specific religious references, was constitutional and therefore allowable. The case signals a change from the Court's previous consensus on the issue, which had been that invocations at local government meetings had to be non-denominational. Unfortunately, however, the new ruling leaves many open questions.

The First Amendment's Establishment Clause prohibits government agencies from promoting or appearing to endorse religion. Yet throughout American history, legislative bodies (including the U.S. Congress) have engaged in prayer, and from time to time constitutional challenges have ensued. The Supreme Court's last major ruling on legislative prayer came in 1989, when the Court ruled, in *County of Allegheny v. American Civil Liberties Union (Allegheny)*, that legislative prayers are not per se unconstitutional, but that they cannot have the effect of affiliating the government with any one specific faith or belief. Many, including some California courts, have interpreted *Allegheny* as articulating a bright-line rule, allowing local agencies such as city councils and school boards to engage only in nonsectarian prayer.

In *Town of Greece*, two residents of Greece, New York brought an action against the town challenging its policy on prayer at town board meetings. The prayers at those meetings regularly contained specific sectarian language and themes. The plaintiffs, one an atheist and the other Jewish, attended those meetings and felt that the prayers violated their religious and philosophical perspectives. They argued that the local nature of the meetings coerced non-adherents to participate in religious activities, because non-adherents would feel obliged to please governing board members from whom they sought a favorable ruling on issues.

In its ruling, the Supreme Court noted that within certain limitations, prayer has historically coexisted with the principle that government should not become involved with religion. The Court further held that the constitutionality of legislative prayer did not turn on its content, meaning that a prayer was not unconstitutional from the outset merely because it made specific religious references.

### Where Do Local Prayer Practices Stand In California?

While the establishment provision of the California constitution is similar to that of the federal constitution, the California constitution also contains a "no preference" clause which appears to provide greater restrictions than required by the federal constitution. Therefore, it is unclear whether the holding in *Town of Greece* would be controlling if a public agency is sued over prayer under the California constitution. Given the Supreme Court's lack of consensus (the



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justices were split 5-4 and did not issue a clear majority opinion), and the differences in the California constitution, a public agency which allows prayer at its meetings should seek a legal opinion regarding potential liability.

If you have questions about prayer at public meetings, please contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).