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## **NYT: Justices Weigh Constitutionality of New York Town's Prayers.**

WASHINGTON — The Supreme Court, which begins its sessions with an invocation to God, considered on Wednesday whether a town in upstate New York had crossed a constitutional line in opening its Town Board meetings with mostly Christian prayers. The justices seemed to find the issue unusually difficult, with several of them suggesting there was no satisfactory principled answer.

Justice Elena Kagan, asking the first question, wanted to know whether the Supreme Court could open its sessions with an explicitly Christian prayer from a minister, one acknowledging, for instance, “the saving sacrifice of Jesus Christ on the cross.” Such prayers were offered before Town Board meetings in Greece, N.Y., near Rochester.

Thomas G. Hungar, a lawyer for the town, said a 1983 Supreme Court decision allowed Christian prayers in legislative settings, though perhaps not in judicial ones. The decision, *Marsh v. Chambers*, upheld the Nebraska Legislature’s practice of opening its sessions with an invocation from a paid Presbyterian minister, saying such ceremonies were “deeply embedded in the history and tradition of this country.”

Justice Anthony M. Kennedy seemed frustrated with Mr. Hungar’s argument, which relied almost exclusively on the *Marsh* decision and the history it reflected. “The essence of the argument is that we’ve always done it this way, which has some force to it,” Justice Kennedy said. “But it seems to me that your argument begins and ends there.”

At the same time, Justice Kennedy appeared reluctant to have judges or other government officials decide what prayers are acceptable. Such a practice, he said, “involves the state very heavily in the censorship and the approval or disapproval of prayer.”

Justice Antonin Scalia said prayers in a legislative setting were different from the hypothetical ones in court that Justice Kagan had asked about. “People who have religious beliefs,” he said, “ought to be able to invoke the deity when they are acting as citizens and not as judges.”

Douglas Laycock, representing two women who challenged the prayers in New York as a violation of the First Amendment’s ban on government establishment of religion, said there were important differences between the Nebraska case and the new one. The prayers in New York were often explicitly sectarian, he said, and town residents were forced to listen to them in order to participate in local government.

Justice Samuel A. Alito Jr. asked Mr. Laycock for an example of a prayer that would be acceptable to people of all faiths.

Mr. Laycock said “prayers to the Almighty” and “prayers to the Creator” would be all right.

“What about devil worshipers?” Justice Scalia asked.

Mr. Laycock said that “if devil worshipers believe the devil is the almighty, they might be O.K.”

Justice Kagan said the wide-ranging discussion, which included questions about polytheism and atheism, missed the key point. “Isn’t the question mostly here in most communities,” she said, “whether the kind of language that I began with, which refers repeatedly to Jesus Christ, which is language that is accepted and admired and incredibly important to the majority members of a community, but is not accepted by a minority, whether that language will be allowed in a public town session like this one?”

But Chief Justice John G. Roberts Jr., like several of the justices, seemed wary of the government distinguishing acceptable prayers from unacceptable ones. “Who was supposed to make these determinations?” he asked.

Mr. Laycock said town officials could simply tell those offering prayers to avoid discussing “points on which believers are known to disagree.”

Ian H. Gershengorn, a deputy solicitor general, argued on behalf of the federal government in support of the town, saying the prayers there were permitted by “our nation’s long history of opening legislative sessions not only with a prayer, but a prayer given in the prayer giver’s own religious idiom.”

That position seemed to trouble Justice Kagan. A resident attending a town meeting was, she said, “forced to identify whether she believes in the things that most of the people in the room believe in.”

Mr. Gershengorn acknowledged that “the strongest argument for the other side” was “that there is an element of coercion.”

The case, *Town of Greece v. Galloway*, No. 12-696, arose from the Town Board’s practice of starting its public meetings with a prayer from a “chaplain of the month.” Town officials said that members of all faiths and atheists were welcome to give the opening prayer.

In practice, the federal appeals court in New York said in ruling against the town that almost all of the chaplains were Christian.

“A substantial majority of the prayers in the record contained uniquely Christian language,” Judge Guido Calabresi wrote for a unanimous three-judge panel of the court, the United States Court of Appeals for the Second Circuit. “Roughly two-thirds contained references to ‘Jesus Christ,’ ‘Jesus,’ ‘Your Son’ or the ‘Holy Spirit.’”

“The town’s prayer practice must be viewed as an endorsement of a particular religious viewpoint,” Judge Calabresi wrote.

On Wednesday, Justice Stephen G. Breyer suggested ways in which the conflicting interests in the case might be accommodated, including with an effort to invite chaplains of many faiths. He said the House of Representatives, which starts its sessions with a prayer, told chaplains to bear in mind that the House was “comprised of members of many different faith traditions.”

Justice Kennedy suggested that the court might make such suggestions but in a nonbinding way. “Should we write that in a concurring opinion?” he asked.

Some justices worried that any ruling from the court could do more harm than good. “It’s hard,” Justice Kagan said, “because the court lays down these rules and everybody thinks that the court is being hostile to religion and people get unhappy and angry and agitated in various kinds of ways.”

Justice Scalia wondered where a ruling from the court would leave nonbelievers. “What is the equivalent of prayer for somebody who is not religious?” he asked Mr. Hungar, who had no answer.

But Justice Breyer suggested he might have one, though he did not give it. “Perhaps he’s asking me that question,” he said of his colleague, “and I can answer it later.”

By ADAM LIPTAK

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