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## **NYT: Town Meetings Can Have Prayer, Justices Decide.**

WASHINGTON — In a major decision on the role of religion in government, the Supreme Court on Monday [ruled](#) that the Constitution allows town boards to start their sessions with sectarian prayers. The ruling, by a 5-to-4 vote, divided the court's more conservative members from its liberal ones, and their combative opinions reflected very different views of the role of faith in public life, in contemporary society and in the founding of the Republic.

Justice Anthony M. Kennedy, writing for the majority, said that a town in upstate New York had not violated the Constitution by starting its public meetings with a prayer from a "chaplain of the month" who was almost always Christian and who sometimes used distinctly sectarian language. The prayers were ceremonial, Justice Kennedy wrote, and served to signal the solemnity of the occasion.

The ruling cleared the way for sectarian prayers before meetings of local governments around the nation with only the lightest judicial supervision.

The decision built on one from 1983 that allowed prayers at the start of legislative sessions. The two sides on Monday disagreed about whether town board meetings, which include not only lawmakers and spectators but also citizens seeking to do business with the government, are meaningfully different from legislative sessions.

Justice Kennedy said the prayers in both settings were "meant to lend gravity to the occasion and reflect values long part of the nation's heritage."

Justice Elena Kagan said in dissent that the town's practices could not be reconciled "with the First Amendment's promise that every citizen, irrespective of her religion, owns an equal share in her government."

She said the important difference between the 1983 case and the new one was that "town meetings involve participation by ordinary citizens."

She did not propose banning prayer, Justice Kagan said, but only requiring officials to take steps to ensure "that opening prayers are inclusive of different faiths, rather than always identified with a single religion."

Town officials in [Greece, N.Y.](#), near Rochester, said members of all faiths, and atheists, were welcome to give the opening prayer. In practice, however, almost all of the chaplains were Christian. Some prayers were explicitly sectarian, with references, for instance, to "the saving sacrifice of Jesus Christ on the cross."

Two town residents sued, saying the prayers ran afoul of the First Amendment's prohibition of government establishment of religion. They said the prayers offended them and, in Justice Kennedy's words, "made them feel excluded and disrespected."

But Justice Kennedy said the relevant constitutional question was not whether they were offended.

"Adults often encounter speech they find disagreeable," he wrote. "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."

Justice Kennedy said traditions starting with the first Congress supported the constitutionality of ceremonial prayers at the start of legislative sessions. Both Houses of Congress, he said, have appointed and paid for official chaplains almost without interruption ever since. Legislative prayer, he said, is "a practice that was accepted by the framers and has withstood the critical scrutiny of time and political change."

In a long footnote, Justice Kagan disputed that assertion, saying some of the most prominent members of the founding generation — George Washington, Thomas Jefferson and James Madison — took pains to keep sectarian language away from public life. "The demand for neutrality among religions is not a product of 21st century 'political correctness,' " she wrote, "but of the 18th century view."

But Justice Kennedy said legislative prayers may have sectarian content and need not "be addressed only to a generic God." He added that it would be perilous for courts to decide when prayers crossed a constitutional line and became impermissibly sectarian.

"To hold that invocations must be nonsectarian," he wrote, "would force the legislatures that sponsor prayers and the courts that are asked to decide these cases to act as supervisors and censors of religious speech, a rule that would involve government in religious matters to a far greater degree than is the case under the town's current practice of neither editing or approving prayers in advance nor criticizing their content after the fact."

Chief Justice John G. Roberts Jr. and Justice Samuel A. Alito Jr. joined all of Justice Kennedy's opinion, and Justices Antonin Scalia and Clarence Thomas most of it.

Justice Kennedy did suggest that some prayers may be unacceptable if offered consistently, including ones that "denigrate nonbelievers or religious minorities, threaten damnation or preach conversion." But without proof of "a pattern of prayers that over time denigrate, proselytize or betray an impermissible government purpose," he wrote, "a challenge based solely on the content of a prayer will not likely establish a constitutional violation."

Town officials had tried, he said, to recruit members of various faiths to offer prayers.

In dissent, Justice Kagan said they had not tried hard enough. "So month in and month out for over a decade," she wrote, "prayers steeped in only one faith, addressed toward members of the public, commenced meetings to discuss local affairs and distribute government benefits."

In 1983, in [Marsh v. Chambers](#), the Supreme Court upheld the Nebraska Legislature's practice of opening its legislative sessions with an invocation from a paid Presbyterian minister, saying that such ceremonies were "deeply embedded in the history and tradition of this country."

Justice Kagan, joined by Justices Ruth Bader Ginsburg, Stephen G. Breyer and Sonia Sotomayor, said the case from Greece, N.Y., was different. The prayers at the town board meetings were often explicitly sectarian, they said, and residents were forced to listen to them in order to participate in government.

"No one can fairly read the prayers from Greece's town meetings as anything other than explicitly Christian — constantly and exclusively so," Justice Kagan wrote in her dissent in the case, *Town of*

Greece v. Galloway, No. 12-696.

Moreover, she said, the clergy “put some residents to the unenviable choice of either pretending to pray like the majority or declining to join its communal activity, at the very moment of petitioning their elected leaders.”

In a concurrence with the majority opinion, Justice Alito called the dissent’s qualms “really quite niggling.”

That comment, Justice Kagan responded, “says all there is to say about the difference between our respective views.”

By [ADAM LIPTAK](#) MAY 5, 2014

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