9253/9803

ALAN WILSON
ATTORNEY GENERAL

September 3, 2014

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Dear Mr. Halligan:

Your letter indicates that your firm "represents the School District of Pickens County and its Board of Trustees ("Board")." By way of background, you state:

> [t]he Board is a 'deliberative public body' as defined in § 6-1-160(A)(2) of the Code of Laws of South Carolina. The board currently has policies which authorize public invocation opening the Board's ten annual regular public meetings. Board Policies BE (School Board Meetings) and BEDB (Agenda), copies of which are attached, implement the procedures by § 6-1-160(B)(1) of having the invocation offered on a rotating basis by members of the Board.
>
> The Board is considering changing its policy to allow the invocation to be offered by an invocation speaker selected on the rotating basis set forth in § 6-1-160(b)(3).
>
> On behalf of the Board, we request that your office "prepare a statement, of the applicable constitutional law" concerning public invocations as provided in § 6-1-160(C). We ask especially that you consider the effect, if any, of the recent decision of the Supreme Court of the United States, decided May 5, 2014, captioned Town of Greece v. Galloway, No. 12-696, 572 U.S. _____(2014) on the method of selecting an invocation speaker on a rotating basis under § 6-1-160(B)(3).

Law/Analysis

In Town of Greece v. Galloway, _____ U.S. _____, 134 S. Ct. 1811 (2014), the United States Supreme Court upheld the opening prayer practices which the Town of Greece used to open its Board meetings.

The Second Circuit Court of Appeals had previously held that some aspects of the Board's prayer practices were unconstitutional in violation of the First Amendment's Establishment Clause. However, the Supreme Court reversed the Second Circuit's decision, concluding that "consistent with the Court's opinion in Marsh v. Chambers, 46 U.S. 783 (1983), no violation of the Constitution has been shown."

By way of background, according to the Supreme Court, the Town had altered its Board's opening prayer practices in 1999. Such practices, as modified, were brought about by the town supervisor, who sought to replicate the prayer practice he had found meaningful while serving in the

county legislature described in the Supreme Court's opinion. The Supreme Court practices were as follows:

> [f]ollowing the roll call and recitation of the Pledge of Allegiance, Auberger (supervisor) would invite a local clergyman to the front of the room to deliver an invocation. After the prayer, Auberger would thank the minister for serving as the board's "chaplain of the month" and present him with a commemorative plaque. The prayer was intended to place town board members in a solemn and deliberative frame of mind, invoke divine guidance in town affairs, and follow a tradition practiced by Congress and dozens of state legislatures.
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> . . . .
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> The town followed an informal method for selecting prayer givers, all of whom were unpaid volunteers. A town employee would call the congregations listed in a local directory, until she found a minister available for that month's meeting. The town eventually compiled a list of willing 'board chaplains" who had accepted invitations and agreed to return in the future. The town at no point excluded or denied an opportunity to a would-be prayer giver. Its leaders maintained that a minister or layperson of any persuasion, including an atheist, could give the invocation but nearly all of the congregations in town were Christian; and from 1999 to 2007, all of the participating ministers were too.
>
> Greece neither reviewed the prayers in advance of the meetings nor provided guidance as to their tone or content, in the belief that exercising any degree of control over the prayers would infringe both the free exercise and speech rights of the ministers.
>
> . . . .
>
> The town instead left the guest clergy free to compose their own devotions. The resulting prayers often sounded both civic and religious themes. Typical were invocations that asked the divinity to abide at the meeting and bestow blessings on the community:
>
> > "Lord we ask you to send your spirit of servanthood upon all of us gathered here this evening to do your work for the benefit of all in our community. We ask you to bless our elected and appointed officials so they may deliberate with wisdom and act with courage. Bless the members of our community who come here to speak before the board so they may state their cause with honesty and humility. . . .
> >
> > Lord we ask you to bless us all, that everything we do here tonight will move you to welcome us one day into your Kingdom as good and faithful servants. We ask this in the name of our brother Jesus. Amen." . . . .
> >
> > Some of the ministers spoke in a distinctly Christian idiom; and a minority invoked religious holidays, scripture, or doctrine, as in the following prayer:

> "Lord, God of all creation, we give you thanks and praise for your presence and action in the world. We look with anticipation to the celebration of Holy Week and Easter. It is in the solemn events of next week that we find the very heart and center of our Christian faith. We acknowledge the saving sacrifice of Jesus Christ on the cross. We draw strength, vitality, and confidence from his resurrection at Easter. . . . We pray for peace in the world, an end to terrorism, violence, conflict, and war. We pray for stability, democracy, and good government in those countries in which our armed forces are now serving, especially in Iraq and Afghanistan. . . . Praise and glory be yours, O Lord, now and forever more. Amen. . . .

134 S. Ct. at 1816.

Suit was brought, challenging the prayer policy, contending that "the town violated the First Amendment's Establishment Clause by preferring Christians over other prayer givers and by sponsoring sectarian prayers such as those given 'in Jesus' name.'" Id. at 1817. On summary judgment, the District Court upheld the prayer practice as valid under the First Amendment. According to the District Court, the First Amendment did not require the Town to invite clergy from congregations beyond its borders to achieve a minimum level of religious diversity. Moreover, relying upon Marsh, so long as the prayer opportunity was not "exploited to proselytize or advance any one or to disparage any other, faith or belief," legislative prayer need not be nonsectarian. Id., quoting Marsh, 463 U.S. at 794-95. According to the District Court, the Town, by welcoming many viewpoints, would be unlikely to give the impression that it was affiliating itself with any one religion.

The Second Circuit reversed. See 681 F.3d 20 (2d Cir. 2012). The Court of Appeals applied the so-called "endorsement" test, finding that the prayer program, in its totality, conveyed to a reasonable observer that Greece was endorsing Christianity. In the opinion of the Second Circuit, the failure to promote the prayer opportunity to the public, or invite ministers from congregations outside the town, "'all, but ensured a Christian view-point.'" 681 F.3d at 30-31. There was, according to the Court of Appeals, a "'steady drumbeat'" of Christian prayer. The Second Circuit also took issue with the practice of many guest clergy who opened their prayers with words such as "let us pray." This, according to the Court of Appeals, the Town's policy placed non-Christians or those who are non-religious "'in the awkward position of either participating in prayers invoking beliefs they did not share, or appearing to show disrespect for the invocation.'" Id.

The United States Supreme Court reversed the Second Circuit, reaffirming its decision in Marsh. The majority opinion, was authored by Justice Kennedy, and joined by Chief Justice Roberts, and Justices Scalia, Thomas and Alito. According to the majority, legislative prayer is, as Marsh recognized, "compatible with the Establishment Clause" even though "religious in nature. . . ." As Marsh concluded, the practice of legislative prayer, employed in this country by Congress "since the framing of the Constitution . . . lends gravity to public's business, reminds lawmakers to transcend petty differences in pursuit of a higher purpose, and expresses a common aspiration to a just and peaceful society." Town of

Greece, 134 S. Ct. at 1818. As the Supreme Court noted, "[w]hen Marsh was decided, in 1983, legislative prayer had persisted in the Nebraska Legislature for more than a century, and the majority of states had the same, consistent practice." Id. at 1819, citing Marsh, 463 U.S. at 788-789 and n. 11.

Consistent with Marsh, the Court in Town of Greece rejected the imposition of any judicial test which might undermine the proposition that from the very first, legislative prayer was considered to be compatible with the Establishment Clause. According to the Court, as Marsh had recognized:

> The First Congress provided for the appointment of a chaplain only days after approving language for the First Amendment demonstrates that the Framers considered legislative prayer a benign acknowledgment of religion's role in society.... A test that would sweep away what had been so long settled would create new controversy and begin anew the very divisions along religious lines that the Establishment Clause seeks to prevent.

Id.

The Court then noted that Respondents had misread Marsh in concluding that "prayer must be nonsectarian or not identifiable with any one religion. . . ." According to the majority,

> [a]n insistence on nonsectarian or ecumenical prayer as a single, fixed standard is not consistent with the traditions of legislative prayer outlined in the Court's cases. The Court found the prayers in Marsh consistent with the First Amendment not because they espoused only a generic theism but because our history and tradition have shown that prayer in this limited context could "coexis[t] with the principles of disestablishment and religious freedom." 463 U.S. at 786. The Congress that drafted the First Amendment would have been accustomed to invocations containing explicitly religious themes on the sort respondents find objectionable. . . .
>
> The decidedly Christian nature of these prayers must not be dismissed as the relic of time when our Nation was less pluralistic than it is today.

134 S. Ct. at 1820 (citing examples).

A majority of the Supreme Court also rejected the argument, derived from dictum in County of Allegheny v. ACLU, Greater Pittsburgh Chapter, 492 U.S. 573, 603 (1989) purportedly requiring nonsectarian prayer. According to the Court, Allegheny mandated no such thing and was "disputed when written and repudiated by later cases." Slip Op. at 11. In the majority's view, in Allegheny,

> . . . the Court held that a crèche placed on the steps of the county courthouse to celebrate the Christmas season violated the Establishment Clause because it had "the effect of endorsing a patently Christian message." Id. at 605. Four dissenting Justices disputed that endorsement could be the proper test, as it would likely condemn a host of traditional practices that recognize the role that religion plays in our society, among them legislative prayer and the "forthrightly religious" Thanksgiving proclamations issued by nearly every president since Washington.

Id. at 1821. The Town of Greece Court further noted that Allegheny had attempted to revise Marsh to eliminate the thought that Marsh had permitted "overtly Christian references." To this end, in Allegheny, the Court had stated that "[t]he legislative prayers involved in Marsh did not violate this principle [of use of Christian references] because the particular chaplain had 'removed all references to Christ.'" Id. at 1821 (quoting Allegheny).

Such a reading of Marsh by the Allegheny Court was in no uncertain terms, incorrect, according to the majority in Town of Greece:

> Marsh nowhere suggested that the constitutionality of legislative prayer turns on the neutrality of its content. . . . Marsh did not suggest that Nebraska prayer practice would have failed had the chaplain not acceded to the legislator's request. Nor did the Court imply the rule that prayer violates the Establishment Clause any time it is given in the name of a figure deified by only one faith or creed. See, Van Orden [v. Perry], 545 U.S. [677], . . . 688, n. 8 (recognizing that the prayers in Marsh were "often explicitly Christian" and rejecting the view that this gives rise to an establishment violation). To the contrary, the Court instructed that the "content of the prayer is not of concern to judges," provided "there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other faction or belief." 463 U.S. at 794-795.

Id. Thus, the Court in Town of Greece concluded that "[t]o hold that invocations must be nonsectarian 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 greater degree than is the case order the town's current practice of neither editing or approving prayers in advance nor criticizing their content after the fact." Id. at 1822. In the words of the Court,

> [o]ur Government is prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior. . . . It would be but a few steps removed from that prohibition for legislatures to require chaplains to redact the religious content from their message to make it acceptable for the public sphere. Government may not mandate a civic religion that stifles any but the most generic reference to the sacred any more than it can prescribe a religious orthodoxy.

Id. According to the Court's majority,

> [t]he First Amendment is not a majority rule, and government may not seek to define permissible categories or religious speech. Once it invites prayer into the public sphere, government must permit a prayer giver to address his or her own God or gods as conscience dictates, unfettered by what an administrator or judge considers to be nonsectarian.

Id.

The Supreme Court, while reaffirming that the Establishment Clause did not require that legislative prayer be nonsectarian, also cautioned that "the Court does not imply that no constraints remain on its content." Outlining those "constraints," the Court said this:

> [t]he 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 saves that legislative 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.

134 S. Ct. at 1823. The Court emphasized that "the tradition reflected in Marsh permits chaplains to ask their own God for blessings of peace, justice and freedom that find appreciation among people of all faiths. . . ." and that the fact that "a prayer is given in the name of Jesus, Allah, or Jehovah, or that it makes passing reference to religious doctrines, does not remove it from that tradition." Id. The first prayer by the Reverend Jacob Duché to the Continental Congress in 1774 was cited by the Court as an example of these values. The fact that Reverend Duché ended the prayer in the name of "Jesus Christ, Thy Son and our Savior" was found by the Court as constitutionally insignificant. What was instead important was that:

> [f]rom the earliest days of the Nation, these invocations have been addressed to assemblies comprising many different creeds. These ceremonial prayers strive for the idea that people of many faiths may be united in a community of tolerance and devotion. Even those who disagree as to religious doctrine may find common ground in the desire to show respect for the divine in all aspects of their lives and being. Our tradition assumes that adult citizens, firm in their own beliefs, can tolerate and perhaps appreciate a ceremonial prayer delivered by a person of a different faith.

Id.

Applying these principles, the Supreme Court majority concluded that the prayers offered by the Town of Greece, "do not fall outside the tradition this Court has recognized." While the Court acknowledged that a "number of the prayers did involve the name of Jesus," they "also invoked universal themes, as by celebrating the changing of the seasons or calling for a 'spirit of cooperation' among town leaders." Id. Thus, the rule set forth by the Court as follows:

> [a]bsent 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. Marsh, indeed, requires an inquiry into prayer opportunity as a whole, rather than into the contents of a single prayer.

Id. at 1824.

Nor was the Establishment Clause violated by the fact that the Town invited "a predominantly Christian set of ministers to lead the prayer." According to the Court,

> [t]he town made reasonable efforts to identify all of the congregations within its borders and represented that it would welcome a prayer by any minister or layman who wished to give one. That nearly all of the congregations in town turned out to be Christian does not reflect an aversion or bias on the part of town leaders against minority faiths. So long as the town maintains a policy of nondiscrimination the Constitution does not require it to search beyond the borders for non-Christian prayer givers in an effort to achieve religious balancing. The quest to promote "a 'diversity' of religious views" would require the town "to make wholly inappropriate judgments about the number of religions [it] should sponsor and the relative frequency with which it should sponsor each," Lee [v.Weisman], 505 U.S. [577] at 617 (Souter, J., concurring), a form of governmental entanglement with religion that is far more troublesome than the current approach.

Id.

Additionally, the Court rejected the argument that the town's prayer practice "coerces participation by nonadherents." Id. Such an inquiry "remains a fact-sensitive one." Id. at 1825 In the Court's view,

> [t]he principal audience for these invocations is not, indeed the public but lawmakers themselves, who may find that a moment of prayer or quiet reflection sets the mind to a higher purpose and thereby eases the task of governing. . . . To be sure, many members of the public find these prayers meaningful and, wish to join them. But their purpose is largely to accommodate the spiritual needs of lawmakers and connect them to a tradition dating to the time of the Framers. For members of the town boards and commissions, who often serve part-time and as volunteers, ceremonial prayer may also reflect the values they hold as private citizens. The prayer is an opportunity for them to show who and what they are without denying the right to dissent by those who disagree.

Id. at 1825-1826. Respondents argued that the prayers of the Town of Greece "give them offense and, made them feel excluded and disrespected . . .," but the majority emphasized that "[o]ffense, however, does not equate to coercion. . . . [A]n Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views in a legislative forum, especially where, as here any member of the public is welcome in turn to offer an invocation reflecting his or her own convictions." Id. at 1826.

The majority then proceeded to contrast the situation in Town of Greece from "the conclusions and holding of Lee v. Weisman, 505 U.S. 577. According to the Court, in Lee, it was found as follows:

> . . . in the context of a graduation where school authorities maintained close supervision over the conduct of the students and the substance of the ceremony, a religious invocation was coercive as to an objecting student. Id. at 592-594; see also

> Santa Fe Independent School Dist., 530 U.S. at 312. Four Justices dissented in Lee, but the circumstances the Court confronted there are not present in this case and do not control its outcome. Nothing in the record suggest that members of the public are dissuaded from leaving the meeting room during the prayer, arriving late, or eve, as happened here, making a later protest. In this case, as in Marsh, board members and constituents are "free to enter and leave with little comment and for any number of reasons." Lee, supra, at 597. Should nonbelievers choose to exit the room during a prayer they find distasteful, their absence will not stand out as disrespectful or even noteworthy. And should they remain, their quiet acquiescence will not, in light of our traditions, be interpreted as an agreement with the words or ideas expressed.

Id. at 1827.

Finally, the majority in Town of Greece noted that "the prayer is delivered during the ceremonial portion of the town's meeting." In this regard,

> [b]oard members are not engaged in policymaking at this time, but in more general functions, such as swearing in new police officers, inducting high school athletes into the town hall of fame, and presenting proclamations to volunteers, civic groups, and senior citizens. It is a moment for town leaders to recognize the achievements of their constituents and the aspects of community life that are worth celebrating. By inviting ministers to serve as chaplain for the month, and welcoming them to the front of the room alongside civic leaders, the town is acknowledging the central place that religion and religious institutions, hold in the lives of those present.

Id.

Justice Alito, who signed the majority opinion, also separately concurred, principally to answer the dissent of Justice Kagan, who was joined in her dissent by Justices Ginsberg, Breyer and Sotomayor. Justice Alito viewed the Town's prayers as not involving an adjudicatory proceeding. Instead, the prayers were given at a Town Board, which was "essentially legislative." Concurring opinion of Alito, J. at 1829. Alito's concurrence rejected the dissent's argument that the prayers should have been nonsectarian, stating in reply that "any argument that nonsectarian prayer is constitutionally required runs headlong into a long history of congressional practice." Id. at 1829-1830. He noted that the increasing diversity of this country made it "harder and harder" to compose a prayer acceptable to all members of the community. Id. at 1830.

Moreover, with respect to the Town's supposed lack of diversity of faiths, according to Justice Alito, the Town had sought "in good faith to emulate the congressional practice on which our holding in Marsh v. Chambers, 463 U.S. 783 (1983) was largely based. . . ." Thus, the Town "should not be held to have violated the Constitution simply because its method of recruiting guest chaplains lacks the demographic exactitude that might be regarded as optimal." Id. at 1831.

In essence, Justice Alito was critical of the dissent on the basis that "the logical thrust of many of its arguments is that prayer is never permissible prior to meetings of local legislative bodies." (emphasis in original). The Town's meetings were "by no means unusual" including the fact that "there was the occasional attendance of students." Id. at 1831-1832. Based upon the record, "if prayer is not allowed at

meetings with those characteristics, local government legislative bodies, unlike their national and state counterparts, cannot begin their meetings with a prayer. I see no sound basis for drawing such a distinction." Id. at 1832.

Justices Thomas and Scalia also separately concurred. In their opinion, they emphasized that the purpose of the Establishment Clause initially was to prohibit "Congress from establishing a national religion." Id. at 1835 (concurring opinion of Thomas and Scalia, J.J.). In their view, "the states are the particular beneficiaries of the Clause." Id. at 1836.

Importantly, Justices Thomas and Alito concluded that,

> [e]ven if the Establishment Clause were properly incorporated against the states, the municipal prayers at issue in this case bear no resemblance to the coercive state establishment that existed at the founding.

Id. at 1837. For purposes of the analysis of Justices Thomas and Scalia, for purposes of the Establishment Clause, "it is actual legal coercion that counts – not the 'subtle coercive pressures' allegedly felt by respondents in this case." In their words,

> [t]he majority properly concludes that "[o]ffense . . . does not equate to coercion," since "[a]dults often encounter speech they find disagreeable[,] and an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of central, religious views in a legislative forum." Ante at 21. I would simply add, in eight of the foregoing history of the Establishment Clause, that "[p]eer pressure, unpleasant as it may be, is not coercion" either. [citing Elk Grove Unified School Dist. v. Newdow, 542 U.S. 1, 49 (2004) (opinion of Thomas, J.).

Id. at 1838.

Conclusion

1. In an opinion dated January 28, 2013 (2013 WL 482679), we found that "a court would likely conclude that the Marsh exception for deliberative bodies applies to a school board." In our opinion, "a school district in South Carolina possesses such powers and authority to qualify it as a 'deliberative' or 'legislative body' for purposes of Marsh. Accordingly, a school board "may constitutionally employ an opening prayer or invocation if it so desires."

2. We reaffirm that conclusion today. In our judgment, the Town of Greece decision, which reaffirmed Marsh, strongly reinforces our earlier conclusion. The majority in Town of Greece made reference to the "policymaking" functions of the Town Board, which would certainly apply to a school board such as the Pickens Board. 134 S. Ct. at 1827. Justice Alito, in his concurring opinion, described the Board's functions as "essentially legislative." 134 S. Ct. at 1829. Again, we believe such a description would also apply to a school board in South Carolina, such as the Pickens Board, so as to make the Pickens Board a "deliberative body" for purposes of Marsh. The majority noted that even though children were occasionally present at the meetings, "[t]he principal audience for these

invocations is not, indeed, the public but lawmakers themselves, who may find that a moment of prayer or quiet reflection sets the mind to a higher purpose. . . ."

3. Town of Greece also made it clear that prayers delivered by deliberative bodies need not be "nonsectarian." Indeed, the Supreme Court concluded that "[a]n insistence on nonsectarian or ecumenical prayer as a single, fixed standard is not consistent with the tradition of legislative prayer outlined in the Court's cases." According to the Court, "[t]o hold that invocations must be nonsectarian 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."

4. Town of Greece recognized, however, that there were certain "constraints" on the content of legislative prayers of the Town. In the Court's view, "[t]he relevant constraint derives from its place at the opening of the legislative sessions, [in the "ceremonial" portion of the meeting] 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 factious business of governing, serves that legitimate function. [However,] [i]f the course and practice over time shows that invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversions, many present may consider the prayer to fall short of the purpose to elevate the occasion and to unite lawmakers in their common effort." This line of demarcation, between "solemn and respectful" tone and the denigration of those with different religious views, is very important in upholding a prayer policy.

5. Town of Greece rejected the "endorsement" test previously employed in other Supreme Court decisions and utilized instead the "coercion" test. Thus, the Court recognized that merely because the prayers might give offense to some of those present, "[o]ffense . . . does not equate to coercion. . . . [A]n Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views in a legislative forum, especially where, as here, any member of the public is welcome in turn to offer an invocation reflecting his or her convictions. . . . If circumstances arise in which the pattern or practice of ceremonial legislative prayer is alleged to be a means to coerce or intimidate others, the objection can be addressed in the regular course."

   The Town of Greece Court thus emphasized that "[a]bsent a pattern of prayers that over time denigrate, proselytize, or betray an impermissible government purpose, a challenge based solely on the content of the prayer will not likely establish a constitutional violation." Again, note the line between what makes a valid prayer practice as contrasted with an invalid one.

6. It should also be noted that the Court distinguished the Town of Greece situation from the school setting. Unlike the school environment, members of the public were free to leave the meeting room during the prayer. In Town of Greece, "board members and

constituents 'are free to enter and leave with little comment and for any number of reasons.'"

The Court recognized this important distinction from the school setting even though it also acknowledged that some children were present at some of the board meetings. Thus, our reading of Town of Greece is that the presence of children or students at a meeting where the primary function was "policymaking" did not prevent a legislative prayer during the "ceremonial" portion of the meeting prior to business being undertaken. It should be emphasized again that Town of Greece made clear that any legislative prayer be held during the "ceremonial" part of the meeting. The Court validated the prayer policy of the Town at least in part because "[b]oard members are not engaged in policymaking at this time, but in more general functions, such as swearing in new police officers, inducting high school athletes into the hall of fame, and presenting proclamations to volunteers, civic groups, and senior citizens."

7. The Court, in Town of Greece also strongly disagreed "with the view taken by the Court of Appeals that the Town contravened the Establishment Clause by inviting a predominantly Christian set of ministers to lead the prayer." The standard applied by the Court instead was that "[t]he town made reasonable efforts to identify all of the congregations located within its borders and represented that it would welcome a prayer by any minister or layman who wished to give one." In the Court's view, "[s]o long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing." This same standard would, in our opinion, apply to the borders of a school district. In short, so long as there is a policy of nondiscrimination, and the school district makes a "reasonable effort[] to identify all of the congregations within its borders" and would "welcome a prayer by any minister or layman who wished to give one," it has complied with the Constitution, according to the Supreme Court.

8. While Section 6-1-160(B) offers various alternatives for invocations of "deliberative bodies," the method approved by the Supreme Court in Town of Greece appears to closely resemble that specified in § 6-1-160(B)(3). Since that method has been approved by the High Court, it is strongly suggested that such method be followed in order to ensure the constitutionality of the prayer practice.

9. In summary, we believe the Town of Greece decision provides a "road map" for a local deliberative body, such as a school board, to use in order to uphold as constitutional its prayer policy. The Court, in that case, offers detailed guidance to a local body attempting to formulate a constitutional policy. Thus, we recommend to any local deliberative body, such as the Pickens School Board, that the Town of Greece decision be closely followed and adhered to.

Sincerely,

Robert D. Cook
Solicitor General