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## Supreme Court Wrestles with Prayer at Public Meetings

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# Supreme Court wrestles with prayer at public meetings

Got your No. 2 pencil ready? Please answer the following question:

Greece is a small town in upstate New York. Its Town Board likes to begin meetings with a short prayer. Which of the following practices should be constitutional?



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(1) The board may use whatever prayer ritual it wants, even if the chaplains are all from same faith, use clearly sectarian prayers ("In Jesus' name we pray"), and openly proselytize;

(2) The board meetings may begin with prayers even if the chaplains are from the same faith and use sectarian prayers as long as the chaplains do not proselytize;

(3) The board meetings may begin with sectarian prayers as long as the board invites chaplains from many different faiths (April a Catholic, May a

Muslim, June a Wiccan);

(4) The board meetings may begin with prayers only if the prayers are nondenominational ("God bless our leaders with wisdom");

(5) The board meetings may not begin with a prayer, but may begin with a moment of silence or secular remarks to solemnize the occasion

On Wednesday, the Supreme Court will confront this multiple choice question as it considers the prayer practice used by the real Greece Town Board.

From 1999 to 2010, the board opened its meetings with short prayers. The board welcomed requests from anyone who wanted to offer a prayer but it never publicized this to town residents.

Instead, township employees contacted houses of worship located in Greece to find prayer leaders, but the only ones they could find were Christian (even though not all township residents are Christian).

Not surprisingly, the prayers at board meetings from

1999 to 2010 were virtually always given by Christian leaders and most had explicit Christian references. Indeed, the only exceptions occurred in 2008 after the plaintiffs in this case complained. During that year, prayers were offered by non-Christians at four board meetings.

This case forces the Supreme Court to wrestle with the meaning of the "Establishment Clause."

That clause says that "Congress shall make no law respecting an establishment of religion," but the Court has said that the clause also restrains state and local governments.

The trick is to figure out what this restraint entails.

All the justices agree that it bars the country from having a national church like the Church of England. But beyond that, the consensus breaks down.

One approach, advocated by former Justice Sandra Day O'Connor, says that the Establishment Clause prohibits the government from endorsing a

particular religion or even religion over non-religion.

That's because such endorsements make nonadherents of the endorsed faith feel like outsiders.

Under this approach, the Greece prayer practice would be unconstitutional. Had the Town Board actively sought out prayer leaders from a variety of faiths, including, as the board said, welcoming atheists, the practice would have been constitutional.

Such a broadly inclusive practice would have indicated that the board was not endorsing any particular faith.

But the board's actual practice – of not informing citizens that all faith leaders were welcome and of looking for leaders from only local churches – ensured that the prayers would virtually always come from Christian chaplains. The board thus appeared to favor Christianity.

Nevertheless, the board could point to a different approach used by the Supreme Court in a 30 year-old decision.

In that case, the court up-

held the Nebraska state legislature's practice of opening its sessions with Judeo-Christian prayers delivered by the same Presbyterian minister for 16 straight years.

Certainly, it's possible that the court's five conservative justices will reaffirm this precedent and uphold Greece's prayer practice. But it would be unfortunate if they did.

The justices would be wiser to follow Justice O'Connor and insist upon either a wide variety of prayer leaders or, more simply, a moment of silence or inspiring secular remarks.

Americans can pray in their houses of worship and their homes or privately to themselves. But at official government meetings, no American should feel excluded because of his or her faith.

By being inclusive, we ensure that each of us is a full-fledged member of "We the People."

And none of us should take that privilege for granted.

Alan Garfield is a professor at Widener University School of Law.