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Obama administration backs prayer at local government meetings

In a potentially far-reaching case on separation of church and state, the Obama administration and Republican lawmakers tell the Supreme Court they support easing limits on prayers at meetings.

By David G. Savage

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WASHINGTON — The Obama administration and congressional Republicans have found something to agree on: Town councils should be allowed to open their meetings with a Christian prayer.

Lawyers for the administration and two groups of lawmakers from the House and Senate, nearly all Republicans, separately made that argument in briefs to the Supreme Court this week. The high court should relax the constitutional limits on religious invocations at government meetings, they argued.

The case could lead to a major change in the law on religion that would go well beyond prayers at council meetings.

Last year, a federal appeals court ruled that the town of Greece, N.Y., near Rochester, had crossed the line and violated the 1st Amendment's ban on an "establishment of religion." For years, the town supervisor had invited a local minister to deliver an opening prayer at the council's monthly meeting. Members of the audience were encouraged to join in the prayers.

Two residents, one Jewish and one an atheist, had complained for several years that the prayers were offensive and inappropriate. Until they sued in 2008, only Christians had been invited to lead the prayers.

Looked at through the eyes of a "reasonable observer," the town's prayer policy "must be viewed as an endorsement of … a Christian viewpoint," the U.S. 2nd Circuit Court of Appeals said in ruling against the town.

The justices agreed in May to hear the town's appeal this fall.

The case has drawn attention because it could provide the court's conservative majority an opportunity to alter a legal rule that dates to the 1980s and a set of opinions by then-Justice Sandra Day O'Connor. Her decisions said government actions would violate the 1st Amendment if they appeared to "endorse" religion. That rule has been followed in cases saying that government agencies cannot display the Ten Commandments in their buildings or host Nativity scenes at Christmas.

But O'Connor's "endorsement" standard, which remains the law, can be difficult to interpret. Part of the difficulty is that what one person perceives as endorsement of religion might seem completely benign to someone else. The

standard has often led to disputed rulings and widely differing decisions among lower courts.

In the current case, the Obama administration has told the court that Greece's practice should not be considered an endorsement. The town council's opening of its meetings with a Christian prayer "does not amount to an unconstitutional establishment of religion merely because most prayer-givers are Christian and many or most of their prayers contain sectarian references," wrote U.S. Solicitor Gen. Donald Verrilli Jr.

He noted that the House and Senate had official chaplains and that the court in 1983 upheld opening prayers in state legislatures. If local councils may have religious invocations, the law should not require them to "closely police the content of prayers," he said.

Eighty-five House members and 34 senators joined two friend-of-the-court briefs that also urged the court to make clear that prayers and religious invocations are constitutional. They had not expected the administration would weigh in as well.

The administration's filing was "a surprisingly conservative brief, and it came as a pleasant surprise," said Ken Klukowski, a lawyer for the Family Research Council, who filed the brief for the House members. "It's gratifying that even the Obama administration recognizes that courts are not qualified to censor prayers."

Administration lawyers may hope that by siding with the town, they can head off a more sweeping ruling. The court's conservatives have long wanted to scrap the endorsement standard. They would prefer a rule that schools and local governments may invoke religion and Christianity so long as no unwilling person is forced to join in.

Lawyers refer to this as the "coercion" standard, and Klukowski's brief urges the court to adopt it in the New York case.

Several of the justices have clearly been looking for a case that would test the issue. For weeks this spring they debated whether to take up an appeal from the Elmbrook, Wis., School District, which had been sued for holding its graduation ceremonies in an evangelical Christian church. The U.S. 7th Circuit Court of Appeals in Chicago had decided that practice was unconstitutional.

The appeal from Greece raised much the same issue, but in the context of a town council meeting rather than a public school. Putting the Wisconsin case on hold, the court agreed to decide the case from New York.

"This is a big deal of a case because of what it could mean. And it makes the administration's position doubly disappointing," said the Rev. Barry Lynn, executive director of Americans United for Separation of Church and State, which represented the two women in the New York case. "A town council meeting is not like a church service, and it shouldn't be treated like it is."

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