

12-696 GREECE, NY V. GALLOWAY

DECISION BELOW: 681 F.3d 20

LOWER COURT CASE NUMBER: 10-3635

QUESTION PRESENTED:

In *Marsh v. Chambers*, 463 U.S. 783 (1983), this Court upheld the practice of starting legislative sessions with an invocation, based on an "unambiguous and unbroken history" of legislative prayer dating back to the First Congress. *Id.* At 792. The prayers in *Marsh* were offered for sixteen years by the same paid Presbyterian minister and frequently contained explicitly Christian themes. *See id.* at 785, 793 n.14. Nonetheless, this Court held that such prayers are "simply a tolerable acknowledgment of beliefs widely held among the people of this country," and constitutional unless the selection of prayer-givers "stem[s] from an impermissible motive" or "the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief." *Id.* at 792, 793, 794-95. The Court declined to apply the test from *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

In this case, the court of appeals held that the Town of Greece violated the Establishment Clause by allowing volunteer private citizens to open town board meetings with a prayer. Though the Town had never regulated the content of the prayers, had permitted any citizen from any religious tradition to volunteer to be a prayer-giver, and did not discriminate in selecting prayer-givers, the court struck down the Town's prayer practice, applying an "en-dorsement" test derived from *Lemon*. See App. 17a. The question presented is:

Whether the court of appeals erred in holding that a legislative prayer practice violates the Establishment Clause notwithstanding the absence of discrimination in the selection of prayer-givers or forbidden exploitation of the prayer opportunity.

CERT. GRANTED 5/20/2013