



Posted Nov. 4, 2013

UVA Law's Laycock to Argue *Town of Greece* Prayer Case Before Supreme Court



University of Virginia law professor Douglas Laycock took part in a moot court session Monday in preparation for Wednesday's oral arguments in *Town of Greece v. Galloway* at the U.S. Supreme Court.

[Storify of Media Coverage](#)

University of Virginia law professor [Douglas Laycock](#) will argue *Town of Greece v. Galloway* on Wednesday before the U.S. Supreme Court, a case that may clarify the legal limits on public prayer in government meetings across the country.

Laycock, one of the nation's leading authorities on the law of religious liberty, will argue that an upstate New York town's practice of opening its town board meetings with a sectarian prayer runs afoul of the First Amendment's prohibition against establishment of religion.

"We are not asking the court to say that local government meetings cannot have a prayer," Laycock

said. "This is a case about what kind of prayer they can have and how it is presented."

Laycock will argue on behalf of two residents of Greece — Susan Galloway, who is Jewish, and Linda Stephens, an atheist — who attended town board meetings to voice concerns about parks and the local public access cable TV channel. [More: [Brief of Galloway and Stephens](#)]

At the meetings, Laycock said, the board opens the proceedings with a prayer by an invited member of the clergy, whom they call the "chaplain of the month."

"Some of the prayers are nonsectarian prayers, asking for divine guidance for the board as it does its work," he said. "But a large majority of these prayers are explicitly Christian — and many of them are heavy-handedly Christian. They're talking about the saving grace of Jesus Christ on the cross and other elements of Christian theology."

Members of the public attending the meetings feel they have little choice but to participate in the prayer, Laycock said. Few people typically attend the meetings, so there is no anonymity. Stepping outside during the prayer only draws attention to the fact that the person is a religious dissenter trying to avoid the prayer, he said. "And in just a few minutes, they have to stand before the board and ask it to do something discretionary," he said.

"There are many people who don't object to the prayer," Laycock said. "But those who do object have to go through the motions of participating. Those who are strong-willed enough not to participate report being embarrassed and humiliated by the hostile reaction."

Laycock said the town's prayer practice — which often involves a chaplain asking members of the public to "join" him in prayer, or stand or bow their heads — amounts to coercion, because of the social pressure and because those citizens know that they will soon be asking the board for discretionary action, from requests about the parks or cable TV up to votes on business permits and zoning variances.

In addition to the coercion, Laycock said, the prayers are also "deeply sectarian."

"The conservatives on the Supreme Court have repeatedly joined opinions that say you've got to be able to have public prayer in some form but the tradition is that it's nonsectarian and it stays away from points on which believers in a benevolent God are known to disagree. We think both sides of the court have endorsed these two principles — that government can't coerce people and that government prayers need to be nonsectarian."

In its 1983 decision *Marsh v. Chambers*, the Supreme Court upheld the practice of starting legislative sessions with a religious invocation, saying there has been an "unambiguous and unbroken history" of legislative prayer dating back to the First Congress.

Marsh — which arose out of complaints about prayers in the Nebraska legislature — does not really

apply to local government, Laycock said.

"We assume [the court] will permit some form of prayer at town board meetings," Laycock said. "But *Marsh* did not deal with the issues here."

First, he said, there was no coercion in *Marsh* because there is no citizen interaction on the floor of a state legislature or of Congress. If members of the public are present, they are observing from a gallery and are therefore anonymous.

Additionally, *Marsh* did not permit governments to open meetings with sectarian prayers, Laycock said.

"The prayers in *Marsh v. Chambers*, by the time the case got to the Supreme Court, were non-sectarian," he said. "There was a Jewish legislator who had complained three years earlier about Christian references in the prayers. And it was a permanent chaplain, not a rotating system like this, so he was more responsive to the diverse religious views among the legislators. So he had already dropped all those explicitly Christian references."

Laycock says the Town of Greece has argued that *Marsh* approved legislative prayer, and that that means any form of legislative prayer is allowed. [More: [Brief of Town of Greece](#)]

"The town's argument is really that they can do anything," he said. "There are no limits. It doesn't matter how sectarian the prayers are. And that adults can't be coerced, so no matter how much pressure citizens experience, it's still OK."

The U.S. Solicitor General has filed a [brief](#) siding with the town and arguing that an appeals court ruling striking down the town's prayer practices should be overturned.

Laycock argues that the Town of Greece could take steps to make its prayer practices less coercive. For example, he said, the town could adopt a policy instructing the chaplains that they cannot ask citizens to participate in the prayer. The town could also issue a disclaimer that explains that the prayer is principally about seeking divine guidance for the board and that anyone who does not wish to participate does not need to.

"To some extent, coercion is inherent in the structure of the meetings. You're going to stand up and ask these people for a favor in a minute," Laycock said. "They can't eliminate the coercion, but they could do things to reduce it and we think they ought to."

The town must also instruct the chaplains to keep their prayers interfaith and nonsectarian, he added.

UVA law professor [Micah Schwartzman](#), an expert on the First Amendment's religion clauses, has [written about *Town of Greece v. Galloway*](#) and is assisting with preparations for Wednesday's oral argument.

"In *Town of Greece*, the Supreme Court has the opportunity to clarify the limits of legislative prayer, especially as it is practiced by local governments," he said. "Legislative prayer is constitutionally anomalous. Usually the government is not allowed to assert religious views. When it does so in a sectarian manner and in a context in which citizens are likely to feel pressure to conform, we should be concerned about that."

Schwartzman added that he does not think anyone has expressed that concern more forcefully than Laycock.

"The respondents in *Town of Greece* are very fortunate to have him representing their views in the Supreme Court," he said.

Laycock is best known for defending the free exercise rights of churches, having argued three cases before the Supreme Court on behalf of a Lutheran church, the Catholic archbishop of San Antonio and an Afro-Caribbean religious group. ([Hosanna-Tabor Evangelical Church and School v. EEOC](#); *City of Boerne v. Flores*; and *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, respectively.)

Yet he also wrote the briefs on behalf of the plaintiffs in *Santa Fe Independent School Dist. v. Doe*, a case involving high school football prayers.

Laycock said he is committed to religious liberty for believers and non-believers alike.

"I think we have to take both of the religion clauses — Establishment and Free Exercise — very seriously, enforce them both, and protect the rights of religious minorities and nonbelievers, just as carefully as we protect the rights of Lutheran churches and Catholic archbishops."

Media Coverage

by University of Virginia School of Law 22 days ago

Professor Douglas Laycock Argues Public Prayer Case at the Supreme Court

University of Virginia law professor Douglas Laycock argued *Town of Greece v. Galloway* today before the U.S. Supreme Court. The case may clarify the legal limits on public prayer in government meetings across the country.



Legislative prayer gets Supreme Court review

FILE - This Oct. 7, 2013 file photo shows people wait in line to