06.24.2014

"Greecing" the Wheels for Prayer

(Shorter, alternate version)

The United States Supreme Court, through Justice Anthony Kennedy, delivered its discussion in *Town of Greece, New York v. Galloway*, 134 S. Ct. 1811 (2014). According to the majority opinion, the Town of Greece, New York, did not impose an impermissible establishment of religion by opening its monthly board meetings with a prayer. The prayer in this case asked for blessings upon the community "in the name of our brother, Jesus." The Court noted that the minister spoke in a distinctly Christian idiom.

Reviewing prior case law, the majority opinion held that the Establishment Clause of the First Amendment of the United States Constitution must be interpreted by "reference to historical practices and understandings." 134 S. Ct. at 1819. Those opposing the prayer argue that a prayer must be nonsectarian or not identifiable with any religion. The Court swept this objection aside and found that invocations do not need to be nonsectarian. This would involve government in religious matters "to a far greater degree than is the case under the town's current practice of neither editing nor approving prayers in advance nor criticizing their content after the fact." 134 S. Ct. at 1822. It would be absurd, wrote Kennedy, to in effect require prayer to a "generic" God.

One of the more interesting components of the Opinion is whether the Court would ever step in to find an invocation at a town meeting violates the Constitution. "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, serves that legitimate function." 134 S. Ct. at 1823. However if an invocation over time denigrates nonbelievers or religious minorities, threatens damnation or preaches conversion, then the Court may take a different view of the matter. In other words, in spite of its admonition not to interfere with the content of the prayer, if the prayer is really mean spirited and often repeated then the Courts may jump into the fire pit.

The Town of Greece was said to have made reasonable efforts to identify congregations within its borders, nearly all of whom are Christian. What would the Court have decided if Greece was a diverse community with synagogues, Hindu shrines and mosques? The court does not address that question.

Justice Kennedy created a distinction between "ceremonial prayer" and religious prayer.

The dissenters, Breyer, Kagan, Ginsburg, and Sotomayor were equally emphatic. The dissenters opined that the Town of Greece failed to make reasonable efforts to include prayer givers of minority faiths and hence the prayers given were exclusively of a single faith. The debate between the minority

and the majority opinion reveals a deep rift within our nation with respect to the role of religion in government. The lengthy and thoughtful opinion by Justice Kagan, like one of the majority writers, is steeped in historic tradition and a review of the prior case law but arrives at a different conclusion. Kagan even went so far as to quote an exchange of correspondence between George Washington and Moses Seixas, a lay official of the Jewish Congregation in Newport, Rhode Island. Washington wrote to Seixas, "that toleration is spoken of, as if it was by the indulgence of one class of people" to another, lesser one. For "[a]ll possess alike...immunities of citizenship." 134 S. Ct. at 1854. Letter to Newport Hebrew Congregation (Aug. 18, 1790). The way Justice Kagan sees it, the First Amendment requires full and equal membership in the "polity" for members of every religious group.

Undoubtedly the argument will go on.

Clifford A. Rieders, Esquire
Rieders, Travis, Humphrey, Harris,
Waters, Waffenschmidt & Dohrmann
161 West Third Street
Williamsport, PA 17701
(570) 323-8711 (telephone)
(570) 323-4192 (facsimile)

Cliff Rieders, who practices law in Williamsport, is Past President of the Pennsylvania Trial Lawyers Association and a member of the Pennsylvania Patient Safety Authority. None of the opinions expressed necessarily represent the views of these organizations.