Docket No. 17-1891

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2018

HENDERSONVILLE PARKS and RECREATION BOARD,

Petitioner,

v.

BARBARA PINTOK,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Thirteenth Circuit

BRIEF FOR PETITIONER

Team 2507
Counsel for Petitioner

Oral Argument Requested

QUESTIONS PRESENTED

I. Whether the Board's prayer practice comports with the history and tradition of legislative prayer authorized by *Marsh v. Chambers* and *Town of Greece v. Galloway*.

II. Whether the Board's prayer practice promotes the secular purpose of solemnizing public business and does not place coercive pressures on religious minorities.

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A Formal Statement of Jurisdiction has been omitted in accordance with the Rules of the Washington College of Law's Burton D. Wechsler First Amendment Moot Court Competition.

STATEMENT OF THE CASE

The Hendersonville Parks and Recreation Board (hereinafter the "Board"), is a local governmental body that is responsible for overseeing city-based operations including the cultural arts, greenways, golf courses, historical sites, outdoor recreation, permit rentals and reservations. J.A. at 8. The Board is currently comprised of five members from different sects of the Judeo-Christian faith and meets once a month to hear various issues, including a review of permit applications. *Id*. At the commencement of each meeting, a member of the Board asks everyone in the room to stand, listen to a short prayer, and recited the Pledge of Allegiance. *Id*. Traditionally, one member of the Board delivers the prayer which at times references the various religious teachings the invocator follows. *Id*. Notably, however, a Board member has never been prevented from delivering a prayer due to his or her personal religious beliefs. *Id*. In fact, the current Board members are in unanimous consent that the prayer is a means to solemnize business, not proselytize religion. *Id*. at 2–6. For example, Board members have delivered the following prayers:

> "Almighty God, we ask for thy blessings as we conduct our work. May we act in your spirit of benevolence and good will. We know that we need your spirit watching over us as we conduct the public's work. May you guide us to preside fairly and impartially over all petitions, grievances, and arguments brought before us." *Id*. at 9.
>
> "May we reflect on the awful violence and mass shootings in this country. May God place His Healing Hand on the hurt communities and families who suffered grievous losses. We know that evil exists in the world, but we humbly ask for peace and togetherness in this trying time. We ask for a moment of quiet reflection to allow all present in this room to reflect on the pressing moments of their day. We pray that we can all come together in a spirit of unity despite whatever differences we may have." *Id*.
>
> "Heavenly Father, we ask for your guidance as we conduct the public's business and serve all people – no matter what religion, faith, or lack thereof. May we conduct ourselves in the proper manner at all times. Father, the world seeks to divide often on the basis of race. Let us treat all persons with the dignity and respect that they deserve – no matter their race, sex, religion, sexual orientation, or gender identity. We are all God's people." *Id*.

> "Please bow your heads. Lord, help us to make good decisions. Bless our troops and their family members who are missing their loved ones who are making sacrifices for us all. Please bless our community with peace. We know that we are tasked with making decisions that impact the lives of members of our community. Please bless everyone that comes before us and give peace to them in their daily lives." *Id*.
>
> "We are all sinful but as the book of Isaiah reads, though our sins are like scarlet, they shall be as white as snow. We all fall short of the glory of God. We must strive to conduct our business in a way consistent with the careful hand of the Father and His son Jesus Christ." *Id*.

In light of the Board's practice of legislative prayer, Barbara Pintok (hereinafter "Ms. Pintok") filed suit against the Board claiming that she suffered indirect coercive pressure to conform to the religious beliefs of the Board. *Id*. at 7. Ms. Pintok is a follower of Wicca, a pagan religion, and has attended several board meetings. *Id*. When presenting in front of the Board in pursuit of a license to operate a paddleboat company she became "distraught and nervous" and could not enunciate her words. *Id*. at 1. Ms. Pintok claims that she responded this way because she felt intimidated and like an outsider in light of the Board's legislative prayers. *Id*. Ms. Pintok's lawsuit sought declaratory and injunctive relief, including a preliminary injunction against the Board's legislative prayer practice. *Id*. at 10. Both parties filed cross-motions for summary judgment in the United States District Court for the District of Caldon. *Id*.

The district court ruled in favor of the Board and found that the legislative prayer practice did not violate the Establishment Clause of the First Amendment. *Id*. at 11. In part, the court held that while the religious liberty clause means that no state or federal government shall pass a law that aids or prefers one religion over the other, the "Establishment Clause does not create religion-free zones." *Id*. To that end, "all branches of government recognize the importance of religion in American life," including the "time-honored practice of legislative prayer." *Id*. The district court, in making this ruling, did not apply the *Lemon* test *(see Lemon v. Kurtzman*, 403 U.S. 602 (1971)),

but rather based its protection of legislative prayer on the history and tradition of our country found in *Marsh v. Chambers*, 463 U.S. 783 (1983), and *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014). Moreover, the court held that the longstanding precedent affirming the practice of legislative prayer is not parsed by *who* is leading the prayer, rather, it is the environment surrounding the prayer that dictates its constitutionality. J.A. at 12-13. Lastly, the district court held that because the Board's prayer did not denigrate, mock, threaten, or try to convert any adherents of different religions, and any person from any religion was welcome to speak, Ms. Pintok's claims of coercion could not be substantiated, especially given that she is an adult. *Id*. at 13-15.

On appeal, the United States Court of Appeals for the Thirteenth Circuit reversed the grant of summary judgment finding that the Board's particular prayer practice differed from the prayer practices in *Marsh* and in *Town of Greece*. *Id*. at 17. In light of this finding, unlike the district court, the Thirteenth Circuit applied what it referred to as the "much maligned" *Lemon* test. J.A. at 21. In applying this test, the court found the "Board's gravity of purpose and providing a moment of quiet reflection are secular purposes." *Id*. at 22, citing *Bown v. Gwinnett Cty. Sch. Dist.*, 112 F.3d 1464 (11th Cir. 1997). However, because of the prayer's references to Christianity, the court found the Board's prayer practice "has a primary effect of advancing the Christian religion." J.A. at 22. These references were particularly troubling in the court's view due to "the intimate setting of a municipal board meeting [which] presents a heightened potential for coercion." *Id*. at 23, citing *Lund v. Rowan County*, 863 F.3d 268, 287 (4th Cir. 2017). Consequently, the Appellate Court held that the Board's prayer violated the Establishment Clause and reversed the grant of summary judgment. J.A. at 23. The Board petitioned for and the Supreme Court of the United States granted Writ of Certiorari.

SUMMARY OF THE ARGUMENT

Religion as a spectrum is not only tolerated, it is celebrated in this country as a right held by every American to be free to exercise the religion of his or her choice. This means that people of all religions alike enjoy equal protection to observe their particular faith, or lack thereof, free from persecution. In light of this, it has been established that restrictions on religious rights in the face of the First Amendment should only be placed as a matter of last resort. Accordingly, this Court has consistently held that the practice of legislative prayer is not a matter of last resort, but a constitutionally protected time-honored tradition that has been ingrained in this nation's institutions since its inception.

In the landmark case of *Marsh v. Chambers*, it was held that a state legislature does not violate the Establishment Clause of the First Amendment, as incorporated to the states by the Fourteenth Amendment, by having a chaplain administer a prayer at the commencement of each of its sessions. This Court came to that conclusion, in part, because legislative prayer has been a continued practice in this country since the Founders drafted the First Amendment. This unbroken practice and the concomitant history and tradition rooted therein could not simply be negated in the face of an establishment claim. This holding was recently expanded under *Town of Greece v. Galloway* to include legislative prayer that is administered at the local level by a town board. In both cases, this Court remained steadfast in preserving the tradition of legislative prayer in the face of claims that it violates the Establishment Clause. These holdings must also continue to be preserved in the wake of the present matter as this case does not present any issues that rebuke the well-established precedent governing legislative prayer.

Here, the Hendersonville Parks and Recreation Board begins each monthly meeting with a short prayer delivered by a member of the Board. The purpose of these prayers, which has been

uniformly accepted by all of the Board's members, is to solemnize public business, not to proselytize a particular religion. However, Ms. Pintok contends that she suffered indirect coercive pressure to conform to the religious beliefs of the Board due to the prayers held at each meeting's commencement.

The Board argues that Ms. Pintok is wrong for several reasons. First, this Court has held in *Marsh*, and reaffirmed in *Town of Greece*, that the practice of administering a prayer at the commencement of a legislative session is a time-honored tradition that does not run afoul of the Establishment Clause. Second, and by that same token, cases involving legislative prayer have consistently been adjudicated by reference to this history and tradition, and not under the *Lemon* test. Furthermore, *who* is delivering the prayer is a distinction without a difference that does not require this Court to apply a separate standard of review. Third, while some of the Board's prayers reference a particular deity, this, in and of itself, does not strip the practice of legislative prayer of its constitutional protection. Fourth, the fact that Ms. Pintok, as an adult, was exposed to legislator-led prayer she might not otherwise want to hear, and was not required to participate in, does not constitute coercion as measured under the Establishment Clause. Finally, as a matter of public policy, the doctrine of *stare decisis* is only to be superseded in the most drastic of cases – the degree for which is not found here.

In sum, the Board was adhering to longstanding precedent that protects the right of a governmental body to begin its sessions with a legislative prayer. Therefore, the Board humbly requests that this Court reverse the decision of the Appellate Court and find that the Board's prayer practice comports with the standards held in *Marsh* and *Town of Greece*. Furthermore, this Court should find that the purpose of the Board's prayer practice is non-coercive and promotes the secular goal of solemnizing public business.

ARGUMENT

The Thirteenth Circuit incorrectly held that the Board's prayer practice violated the Establishment Clause of the First Amendment. The First Amendment states in pertinent part that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." U.S. Const. amend. I. This language calls for the separation of church and state but does not prohibit certain religious-like practices in secular settings such as legislative prayer. In light of the circumstances present here, this Court should find that the Board's legislator-led prayer practice is protected under the Establishment Clause.

I. THE BOARD'S PRAYER PRACTICE COMPORTS WITH THE HISTORY AND TRADITION OF LEGISLATIVE PRAYER AUTHORIZED BY *MARSH v. CHAMBERS* AND TOWN OF *GREECE v. GALLOWAY*

In light of the well-established precedent that for decades has protected the centuries-long practice of legislative prayer, it is imperative this Court continue to honor the history and tradition thereof and adjudicate this matter accordingly. This Court has held that "the Establishment Clause must be interpreted 'by reference to historical practices and understandings.'" *Town of Greece*, 134 S. Ct. at 1813, quoting *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 670 (1983). This is because "[we] are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). Under this interpretation, "[t]he practice of opening sessions of Congress with prayer has continued without interruption for almost 200 years ever since the First Congress drafted the First Amendment" and continues to be protected today. *Marsh*, 463 U.S. at 784; *Town of Greece*, 134 S. Ct. at 1812.

A. The Drafters of the First Amendment Did Not Intend Legislative Prayer to Be A Violation of The Establishment Clause

The practice of legislative prayer dates back to the eighteenth century when the Continental

Congress adopted the traditional practice of opening its sessions with prayer. *Marsh*, 463 U.S. at 787. Congress first selected an Anglican minister to lead the prayer and later used prayers to form a common bond. *See generally* Lund, Christopher C., *The Congressional Chaplaincies*, William and Mary Bill of Rights Journal, vol. 17, no. 4 (2009). The First Congress continued to follow this practice when it authorized the appointment of paid chaplains. *Marsh*, 463 U.S. at 787. "On September 25, 1789, three days after [this appointment], a final agreement was reached on the language of the Bill of Rights." *Id*. In reaching this agreement, "the delegates did not consider opening prayers as a proselytizing activity or as symbolically placing the government's official seal of approval on one religious view." *Id*. at 792. Rather, "the Founding Fathers looked at invocations as 'conduct whose . . . effect . . . [harmonized] with the tenets of some or all religions.'" *Id*., quoting *McGowan v. Maryland*, 366 U.S. 420, 442 (1961). Axiomatically, then, a law "passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, . . . is contemporaneous and weighty evidence of its true meaning." *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 297 (1888).

To further this intent, the Founding Fathers decided that the House and the Senate would each appoint their own chaplains, that the chaplains would be of different religions, and that the chaplains would switch regularly between the two legislative bodies. *See Marsh*, 463 U.S. at 787-789; *Town of Greece*, 134 S. Ct. at 1818. The Senate's first elected chaplain was an Episcopalian bishop and the House's was a Presbyterian. *The Congressional Chaplaincies*, William and Mary Bill of Rights Journal, vol. 17, no. 4. From 1789 to 1803, the Senate carried on selecting eight more chaplains – all Episcopalian – while the House rotated through Presbyterians, Methodists, and Baptists. *Id*. at 1187. The House and the Senate also selected four Unitarian chaplains, one Universalist chaplain, and one Roman Catholic chaplain between 1821 and 1909. *Id*. at 1187, 1194.

As history shows, neither the Senate nor the House favored any particular religion and resisted promoting any one teaching. *Id*.

Opposition to congressional chaplains first came in the nineteenth century when their role and existence were placed in serious dispute. *Id*. at 1196. Those who objected the use of chaplains did so on the grounds that the position created unnecessary competition and influenced political decisions by way of religion. *Id*. at 1198. Congress' resolution was to invite unpaid local ministers to lead opening prayers. *Id*. Though this only lasted a few months, the diversity of institutional chaplains increased over time. *Id*. at 1202. This change was welcomed by the delegates of Congress since they "were so divided in religious sentiments … that [they] could not join in the same act of worship." *Marsh*, 463 U.S. at 791. To that extent, Congress' careful consideration and "action not taken thoughtlessly" when deciding the constitutionality of legislative prayer made clear the duty of the chaplain as a symbolic expression of tolerable beliefs. *Id*. at 792.

That duty and the practice of legislative prayer was not questioned again until a taxpayer contended that the employment of chaplains "constituted the promotion of religious views and the establishment of religious and sectarian institutions" and as such was a violation of the Establishment Clause. *Elliot v. White*, 23 F.2d 997, 998 (D.C. Cir. 1928). The D.C. Circuit relied on Supreme Court precedent, finding that lower courts had no power to "review and annul acts of Congress on the ground that they are unconstitutional." *Id*.; *see also Frothingham v. Mellon*, 262 U.S. 447 (1923). This meant that questions about the use of chaplains became immune from judicial challenge and the mere act of viewing or witnessing chaplain-led prayer did not constitute a violation of the Establishment Clause. *Elliot*, 23 F.2d at 998. In the 1960s, however, the Establishment Clause itself changed to allow a plaintiff's mere exposure to a governmental religious act to sometimes make out a constitutional violation. *See Sch. Dist. of Abington Twp. v.*

Schempp, 374 U.S. 203 (1963). These challenges came with warnings not applicable here and were rejected by the Supreme Court in *Marsh* and *Town of Greece*.

Hence, the unique history of legislative prayer allows for the interpretation that the draftsmen of the First Amendment "saw no real threat to the Establishment Clause arising from a practice of prayer" similar to the one at issue in the present case. *Marsh*, 463 U.S. 791. Throughout the entirety of legislative prayer's jurisprudence, this Court's reliance on history and tradition has paved the way for the general acceptance of such practices. Additionally, any test this Court adopts "must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Sch. Dist. of Abington Twp.*, 374 U.S. at 203. Legislative prayer has long been settled to meet that scrutiny and is protected by the Establishment Clause, which itself seeks to prevent new controversy and divisions along religious lines.

B. This Court Has Already Addressed the Issue of Legislative Prayer and Has Found No First Amendment Violation

In 1983, this Court was tasked with determining whether Nebraska's legislative practice of beginning its sessions with a prayer violated the Establishment Clause of the First Amendment. *Marsh*, 463 U.S. at 784. This Court relied on historical records of the Founding Fathers and held that Nebraska's legislature was not violative of the First Amendment. *Id*. at 792. This Court reasoned that the Establishment Clause did not always bar regulatory conduct simply because it "harmonized with religious canons." *Id*. Instead, the Establishment Clause barred conduct that furthered "religious indoctrination." *Id*.; *see Tilton v. Richardson*, 403 U.S. 672, 686 (1971); *see also Colo v. Treasurer & Receiver General*, 378 Mass. 550, 559 (1979). Consequently, this Court found that "to invoke Divine guidance on a public body entrusted in making the laws is not . . . an 'establishment' of religion or a step toward that establishment." *Marsh*, 463 U.S. at 792. Rather, it was simply "a tolerable acknowledgement of beliefs widely held by the people of

this country." *Id*.

More specifically, in addressing whether the Nebraskan practice of legislative prayer violated the Establishment Clause, this Court weighed three factors. *Id*. at 793. First, this Court looked at whether the legislature's decision to use a chaplain of only one faith – Presbyterian – for over sixteen years violated the Establishment Clause. *Id*. This Court did not "perceive any suggestion that choosing a clergyman of one denomination advances the beliefs of a particular church." *Id*. To the contrary, this Court held that "the evidence indicates that [the chaplain] was reappointed because his performance and personal qualities were acceptable to the body appointing him." *Id*. Additionally, there were no impermissible motives for the chaplain's reappointment. *Id*. Thus, the chaplain's long tenure did not in and of itself conflict with the Establishment Clause. *Id*. at 794.

Next, this Court looked at the way in which the chaplain was paid and found that although the chaplain was remunerated with public funds, this was not enough to constitute a violation of the Establishment Clause. *Id*. This was because Nebraska's payment process was in line with that of the Founding Fathers. *See* id. (finding that Nebraska's "remuneration is grounded in historic practice initiated, as we noted earlier, by the same Congress that drafted the Establishment Clause of the First Amendment"). Moreover, "Nebraska has paid its chaplain for well over a century." *Id*. The combination of this nation's history, along with Nebraska's own long-standing history, in paying chaplains to lead legislative prayers was not found to evince a valid establishment claim.

Finally, this Court looked at the content of the prayers which were all in the Judeo-Christian tradition. *Id*. This Court found that "the content of the prayers is not a concern to judges where, as here, there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief." *Id*. at 794-795. The reason for the legislature's

use of a chaplain and prayer practice was to solemnize the business of the day, a solely secular and acceptable reason for beginning its meetings with prayer. *Id*. at 795. It was not up to this Court to thoroughly evaluate or parse the content of any particular prayer. *Id*.

In *Town of Greece*, the town had an informal method for selecting prayer givers, all of whom were unpaid volunteers. *Town of Greece*, 134 S. Ct. at 1816. A town employee would call the congregations listed in a local directory until she found a minister available for that month's meeting. *Id*. The town did not exclude or deny anyone the opportunity to conduct a prayer, but nearly all the local congregations were Christian, and for some time the ministers were as well. *Id*. The town did not review nor control the content of the prayers offered at the meetings. *Id*. As a result, the prayers often sounded both civic and religious. *Id*. Nevertheless, some attendees objected to the prayer practice claiming that it was "offensive, intolerable, and affront to a diverse community." *Id*. at 1817.

In addressing whether the town's prayer practice violated the Establishment Clause, this Court looked at the reasoning in *Marsh* and acknowledged the lack of a "formal test" for this inquiry. *Id*. at 1818. However, this Court concluded that such tests were unnecessary because "history supported the conclusion that legislative invocations are compatible with the Establishment Clause" and any test created or adopted "must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Id*. at 1818-19. This Court further pointed out that legislative prayer had a long history in the United States and most people understood that those prayers were administered for the benefits of the lawmakers themselves rather than as a state-sponsored religion. *Id*. This Court also noted that the First Amendment did not require legislative prayer to be nonsectarian. *Id*. at 1822. Rather, prayers that reflected specific beliefs were permissible as long as the practice over time did not proselytize

or disparage any other faith or religion. *Id*.

Thus, this case does not stand for the proposition that legislative prayer can only be constitutional if it uses neutral language that refers only to a "generic God." *See Town of Greece*, 134 S. Ct. at 1822 (holding that "[t]he law and the Court could not draw this line for each specific prayer or seek to require ministers to set aside their nuanced and deeply personal beliefs for vague and artificial ones"). Accordingly, despite references to Christianity, "[t]he prayers delivered in the town of Greece do not fall outside the tradition this Court has recognized." *Id*. at 1824. Therefore, "[s]o long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing." *Id*. at 1824.

The facts in the present case should be afforded the same analysis as that in *Marsh* and *Town of Greece*. First, while the Board's invocations were delivered by members of the Judeo-Christian faith, there is no evidence showing that the prayers were impermissibly used to proselytize or advance one religion. J.A. at 9. A legislative body is permitted to reference a particular religion in its prayers without having every detail of those prayers scrutinized. *See Marsh*, 463 U.S. at 795 (finding that "it is not for us to embark on a sensitive evaluation or to parse the content of a particular prayer"). Moreover, the Board was not required to balance different religious faiths so long as the prayers did not discriminate. For example, one of the prayers stated "[l]et us treat all persons with the dignity and respect that they deserve no matter their race, sex, religion, sexual orientation, or gender identity." J.A. at 9. Conversely, the Board's references to Christianity adhere to the reasoning held in *Marsh* and *Town of Greece*. *See Town of Greece*, 134 S. Ct. at 1819 (holding that "[t]he Court's inquiry, then, must be to determine whether a legislative prayer practice fits within the tradition long followed in Congress and the state legislatures").

C. While A Circuit Split Exists, the History and Tradition Standard Is Not Upset By Who Administers the Prayer

As a result of *Marsh* and *Town of Greece*, municipal and state government bodies are free to begin legislative business with sectarian prayers even if those prayers are drawn exclusively from one religious tradition and directed at citizens who are present at the meetings. *See generally Marsh*, 463 U.S. 783; *Town of Greece*, 134 S. Ct. 1811. Sectarian references are permissible as long as the prayer opportunities do not get out of hand. *Id*. This means that "'the relevant constraint on faith-specific prayer 'derives from its place at the opening of legislative sessions, where it is meant to lend gravity to the occasion and reflect values long part of the Nation's heritage." *Town of Greece*, 134 S. Ct. at 1823. Prayer that "invites lawmakers to reflect upon shared ideals and common ends" before conducting business serve that purpose. *Id*. Despite these rulings, a circuit split has developed among the lower courts, most notably at the appellate level.

In *Lund*, a five-member board of commissioners, elected to govern Rowan County, North Carolina, had a practice of opening each bimonthly public meeting with an invocation. *Lund*, 863 F.3d at 272. The prayers were given exclusively by the commissioners and were Christian in nature. *Id*. at 273. Sectarian references appeared at the end of the prayer, which was always followed by the Pledge of Allegiance and the business of the meeting. *Id*. In response to growing controversy over the prayer practice, the board publicly announced their intent to continue delivering Christian invocations for the community's benefit. *Id*. The county informed the board that sectarian prayers violated the Establishment Clause. *Id*. The Fourth Circuit agreed with the county and attacked this Court's rulings in *Marsh* and *Town of Greece* by invalidating the legislative prayer practice. *Id*. at 276. The Fourth Circuit struggled to identify the precise boundary of the Establishment Clause but conceded that "legislator-led prayer is not inherently unconstitutional." *Id*. at 280. The Fourth Circuit's issue, then, was with the identity of the prayer

giver and not the prayer itself. *Id*. (the Fourth Circuit believed there was a difference between prayers given by board members and prayers given by chaplains hired by that board).

These facts are similar to those of *Bormuth v. City of Jackson*, 870 F.3d 494 (6th Cir. 2017), where two months after the decision in *Lund*, the Sixth Circuit reached the opposite conclusion. There, a nine-member board of commissioners, elected to represent the citizens of Jackson County, Michigan, had a practice of opening each monthly meeting with prayer. *Bormuth*, 870 F.3d at 498. The prayers were given exclusively by the commissioners and were Christian in nature. *Id*. A "self-proclaimed Pagan and Animist" objected to the practice claiming that the board retaliated against him by reciting "prayers [that] were unwelcome and severely offensive to him as a believer in the Pagan religion, which was destroyed by followers of Jesus Christ." *Id*. The Sixth Circuit rejected the idea that the board's practice insulted or offended any of the meeting-goers and upheld this Court's findings in *Marsh* and *Town of Greece*. *Id*. at 519. The Sixth Circuit addressed the issue of identity by concluding that if "the constitutionality of a legislative prayer is predicted on the identity of the speaker, potentially absurd results would ensue." *Id*. at 512.

Notably, neither *Marsh* nor *Town of Greece* restricted *who* may give prayers in order to comport to historical trends. *Id*. In fact, in *Town of Greece*, this Court laid out several instances beyond the facts of that case that could constitute an impermissible use of legislative prayer. *See Town of Greece*, 134 S. Ct. at 1826 (hypothesizing that legislative prayer could violate the Establishment Clause if "town board members directed the public to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person's acquiescence in the prayer opportunity"). However, none of these instances involved the use of legislator-led prayer. *Id*. Instead, the focus of the constitutionality of legislative prayer has always been on the length of time and the consistency with which the practice was administered.

Hence, the question of whether legislative prayer violates the Establishment Clause of the First Amendment is a complicated one but should continue to be guided by this Court's precedent. To that extent, the Sixth's Circuit's reasoning is better equipped to deal with constitutionality of legislative prayer. The reason for this is that the Sixth Circuit does not concern itself with limiting the prayer-giver to one identity. *Id*. Furthermore, "[i]t would be unsensical to permit legislative prayers but bar the legislative officers for whom they are being primarily recited from participating in the prayers in any way. *Id*; *see also Am. Humanist Ass'n v. McCarthy*, 851 F.3d 521, 529 (2017).

Notably, the record in the present case says nothing of whether the board members were paid or whether they were volunteers. *See generally* J.A. Neither does the record say whether meeting-goers can give invocations or offer suggestions on the prayer's content. *Id*. The record does, however, note that meeting-goers are allowed to abstain from participating or leave during the prayer. J.A. at 15. "The analysis would be different if town board members directed the public to participate in the prayers, signaled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person's acquiescence in the prayer opportunity." *Town of Greece*, 134 S. Ct. at 1823. That was not the case here.

In sum, the Board's legislative prayer practice adheres to the tenets set-forth in *Marsh* and *Town of Greece*. In commencing its legislative sessions with an invocation, the Board is simply complying with the time-honored practice of legislative prayer that is administered on the local, state, and federal level. Should this Court find that the Board's practice does violate the Establishment Clause, it would be undoing decades of precedent and centuries of tradition.

II. THE BOARD'S PRAYER PRACTICE PROMOTES THE SECULAR PURPOSE OF SOLEMNIZING PUBLIC BUSINESS AND DOES NOT PLACE COERCIVE PRESSURES ON RELIGIOUS MINORITIES

Due to the pervasive history that legislative prayer holds in this country, "there can be no

doubt that the practice of opening legislative sessions with prayer has become part of the fabric of our society." *Town of Greece*, 134 S. Ct. at 1819. These seams are woven into this nation's past and are protected in its present because "legislative prayer lends gravity to public business, reminds lawmakers to transcend petty differences in pursuit of a higher purpose, and expresses a common aspiration to a just and peaceful society." *Town of Greece*, 134 S. Ct. at 1818; *Am. Humanist Ass'n*, 851 F.3d at 529. While, "[s]tanding alone, historical patterns cannot justify contemporary violations of constitutional guarantees," as for legislative prayer, "an unbroken practice . . . is not something to be lightly cast aside." *Marsh v. Chambers*, 463 U.S. at 790, quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 678 (1970). Respectively, legislative prayer is "meant to lend gravity to the occasion and reflects values long part of the Nation's heritage." *Town of Greece*, 134 S. Ct. at 1814.

The Board's legislator-led prayer practice has fostered the secular purpose of solemnizing business and did not attempt to coerce listeners to conform to the prayers' religion. To demonstrate why it is the Board's prayer practice does not violate these standards, the Board will show that: (1) the fact that an invocation at a legislative session references a particular deity does not strip it of its constitutional protection; (2) Ms. Pintok's claims fail under the standards for coercion pursuant to the Establishment Clause; (3) this issue is correctly adjudicated under the history and tradition standard and not the *Lemon* test; and (4) even if the *Lemon* test is applied, the Board's prayer practice still passes constitutional muster.

A. A Legislative Body's Session That Commences with A Religious Invocation Directly Referencing A Particular Faith Does Not Violate the Establishment Clause

Despite references to a Judeo-Christian god, the Board's legislative prayer does not violate the Establishment Clause. This Court has held that in a claim for the establishment of a particular religion by means of legislative prayer, "[a]bsent a pattern of prayers that over time denigrate,

proselytize, or betray an impermissible government purpose, a challenge based solely on the content of a prayer will not likely establish a constitutional violation." *Town of Greece*, 134 S. Ct. at 1824. In determining whether a legislative bodies' prayer is impermissible, "the prayer opportunity as a whole" is what is considered and not "the contents of a single prayer." *Id*. Of course, a legislative body is not given an unfettered right to conduct legislative prayers in any manner it sees fit. *See Engel v. Vitale*, 370 U.S. 421, 430 (1962) (holding that "[o]ur Government is prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior"). Nevertheless, under the aforementioned standard by which legislative prayer has consistently been judged, the prayers themselves need not be ecumenical or ordained to a generic god. *See Town of Greece*, 134 S. Ct. at 1821 (holding that it is "nowhere suggested that the constitutionality of legislative prayer turns on the neutrality of its content"). Moreover, "the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing." *Id*. at 1814. This is because the "content of the prayer is not of concern to judges." *Marsh*, 463 U.S. at 794-795. Rather, the relevant inquiry is into whether the "prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief." *Id*.

Here, it has been confirmed in unanimity by the affidavits of Board's members that the purpose of the Board's prayer is to solemnize business, not to proselytize religion. J.A. at 2-6. Moreover, the Board does not seek to obfuscate the fact that some of its legislative prayers directly referenced the Judeo-Christian gospel. *Id*. at 9. However, Ms. Pintok cannot point to a single fact showing that these references were made in an attempt to proselytize those who heard the prayers or were done so to degrade those who adhere to different faiths. *See generally* id. The same can be said for the fact that the Board did not force participation in any of the prayers. *Id*. *A fortiori*, as

the district court pointed out, "there was no evidence the members of Board 'denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion.'" *Id*. at 13, 14, citing *Bormuth*, 870 F.3d at 512 (quoting *Town of Greece*, 134 S. Ct. at 1823−24). This is especially true given that the Board's legislative prayers must be considered on the whole, and not on an individual basis. *Town of Greece*, 134 S. Ct. at 1824.

However, Ms. Pintok alleges that the Board's legislative prayers made her "feel like an outsider, humiliated [her], and caused [her] significant distress." J.A. at 1. Consequently, Ms. Pintok "contends that she suffered indirect coercive pressure to conform to the religious beliefs of the Commissioners – namely Christianity." *Id*. at 14. While the Board is sympathetic to Ms. Pintok's reaction to the prayers, her complaint finds no bearing in precedent to substantiate a violation of the Establishment Clause. As this Court held in *Marsh*, "[w]e do not doubt the sincerity of those, who like Respondent, believe that to have prayer in this context risks the beginning of the establishment the Founding Fathers feared. But this concern is not well founded." *Marsh*, 463 U.S. at 795. As Justice Goldberg duly observed in his concurring opinion in *Sch. Dist. of Abington Twp.*, "[i]t is of course true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow. *Sch. Dist. of Abington Twp*., 374 U.S. at 308 (Goldberg, J., concurring). Under this measure, Ms. Pintok's claim is tantamount to 'mere shadow' because as a matter of law, this Court has never "impl[ied] the rule that prayer violates the Establishment Clause any time it is given in the name of a figure deified by only one faith or creed." *Town of Greece*, 134 S. Ct. at 1821; *see Van Orden v. Perry*, 545 U.S. 677, 688, n. 8 (2005) (recognizing that the prayers in *Marsh* were "often explicitly Christian" and rejecting the view that this gave rise to an establishment violation).

Here, the Board's prayers were not designed to "denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion." *Bormuth*, 870 F.3d at 512 (quoting *Town of Greece*, 134 S. Ct. at 1823−24). The purpose of the prayers was to solemnize its business through the use of legislative prayer, and while some of these prayers did not align with Ms. Pintok's particular faith, "not every governmental act which coincides with or conflicts with a particular religious belief is for that reason an establishment of religion." *Marsh*, 463 U.S. at 810; *see Harris v. McRae*, 448 U.S. 297, 319-320 (1980); *see also McGowan v. Maryland*, 366 U.S. 420, 431-445 (1961). Accordingly, "to invoke Divine guidance on a public body entrusted with making the laws is not, in these circumstances, an 'establishment' of religion or a step toward establishment." *Marsh*, 463 U.S. at 792. Rather, "it is simply a tolerable acknowledgment of beliefs widely held among the people of this country." *Id*.

This point is underscored by the fact that the Board's conduct is not tantamount to coercion. "[I]n the general course legislative bodies do not engage in impermissible coercion merely by exposing constituents to prayer they would rather not hear and in which they need not participate." *Town of Greece*, 134 S. Ct. at 1827; *see County of Allegheny*, 492 U.S. at 670 (Kennedy, J., concurring in judgment in part and dissenting in part). While Ms. Pintok alleges that the Board's prayers pressured her into conforming to the invocator's religion, as an overarching principle, "[t]he Establishment Clause does not always bar a state from regulating conduct simply because it 'harmonizes with religious canons.'" *Marsh*, 463 U.S. at 792, quoting *McGowan*, 366 U.S. at 462 (Frankfurter, J., concurring). More specifically, while some individuals may find such a harmonious relationship objectionable, this Court has never found that "every state action implicating religion is invalid if one or a few citizens find it offensive." *Lee v. Weisman*, 505 U.S. 577, 597 (1992). As applied to legislative prayer, the mere invocation of such does not coerce a

listener for several reasons.

First, "board members and constituents are 'free to enter and leave with little comment and for any number of reasons.'" *Town of Greece*, 134 S. Ct. at 1827, quoting *Lee*, 505 U.S. at 597. Of course, Ms. Pintok retained this right but chose not to exercise it. Second, "[s]hould non-believers choose to exit the room during a prayer they find distasteful, their absence will not stand out as disrespectful or even noteworthy." *Town of Greece,* 134 S. Ct. at 1827. Conversely, "should they remain, their quiet acquiescence will not, in light of our traditions, be interpreted as an agreement with the words or ideas expressed." *Id*. "Neither choice represents an unconstitutional imposition as to mature adults, who 'presumably' are 'not readily susceptible to religious indoctrination or peer pressure.'" *Id*., quoting *Marsh,* 463 U.S. at 792; *see Tilton*, 403 U.S. at 686; *see also Colo,* 378 Mass. at 559. Moreover, because the Board's prayer was "delivered during the opening ceremonial portion of the town's meeting, not the policymaking portion, also suggests that its purpose and effect are to acknowledge religious leaders and their institutions, not to exclude or coerce non-believers." *Town of Greece,* 134 S. Ct. at 1815.

Additionally, the fact that the Board's prayers were legislator-led does not change the judicial calculus. According to the Fourth Circuit, "[m]embers of Congress have occasionally delivered invocations in the Senate and House of Representatives." *Lund*, 863 F.3d at 279. Consequently, "[l]egislator-led prayer is not inherently unconstitutional." *Id*. at 280. Furthermore, as a matter of precedent, "neither *Marsh* nor *Town of Greece* restricts who may give prayers in order to be consistent with historical practice." *Bormuth*, 870 F.3d at 509. Instead, the Court has honored the tradition of legislator-led prayer by finding that it "invites lawmakers to reflect upon shared ideals and common ends before they embark on the fractious business of governing." *Town of Greece*, 134 S. Ct. at 1823. In sum, given that the Board's legislator-led invocations referenced

a specific deity and that Ms. Pintok is an adult, the Board's prayer practice does not violate the Establishment Clause or coerce religious minorities.

B. Legislative Prayer Is Correctly Adjudicated Under the History and Tradition Standard and Not the *Lemon* Test

Ms. Pintok argues, and the Appellate Court agreed, that the proper way in which the present issue should be decided is by applying the *Lemon* test. Respectfully, they are wrong. In the two seminal cases this Court has decided involving legislative prayer, both times, the issue was correctly reviewed in the context of its history and tradition, and not under the *Lemon* test. *See Marsh*, 463 U.S. 783; *see also Town of Greece*, 134 S. Ct. 1811. This precedent should stand and be applied in the present matter.

Under the *Lemon* test, a governmental practice must (1) have a secular governmental purpose; (2) have a primary effect that neither advances or inhibits religion; and (3) not create excessive entanglement between church and state. *Lemon*, 403 U.S. at 612−613. This Court, however, has restricted the use of the *Lemon* test to particular issues arising under the Establishment Clause involving the intertwinement of the state and religion. *See, e.g.*, *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (affirming the constitutionality of religious clubs at public schools); *Edwards v. Aguillard*, 482 U.S. 578 (1987) (rejecting teaching Creationism in public schools); *Lemon*, 403 U.S. 602 (rejecting governmental aid to church-related nonpublic schools); *Lynch v. Donnelly*, 465 U.S. 668 (1984) (accepting state-sponsored religious displays on national holidays).

Notably absent from these cases are those involving legislative prayer. Rather, in both *Marsh and Town of Greece* the history and tradition standard has been applied despite the fact that the *Lemon* test had been established years, or in the case of *Town of Greece*, decades prior. *See Marsh*, 463 U.S. 783; *see also Town of Greece*, 134 S. Ct. 1811. Moreover, this

standard of jurisprudence has not changed today. While currently a circuit split exists as to the practice of legislative prayer, again, neither case applied the *Lemon* test. *See Bormuth*, 870 F. 3d 494; *see also Lund*, 863 F. 3d 268

In *Lund*, while the court found that the practice of legislative prayer violated the Establishment Clause, it did so on the grounds that, *inter alia*, "[b]y portraying the failure to love Jesus or follow his teachings as spiritual defects, the prayers implicitly 'signal[ed] disfavor toward' non-Christians." *Lund*, 863 F.3d at 285. This led the court to find that the particular prayers advanced Christianity and denigrated other religions. *Id*. In *Bormuth*, the court held that if they were to apply the *Lemon* test "[it] would be rewriting thirty-plus years of Supreme Court jurisprudence—by applying *Lemon*'s endorsement rubric in lieu of looking through history's lens as dictated by *Marsh* and *Town of Greece*." *Bormuth*, 870 F.3d at 514.

Accordingly, the history and tradition standard has served as the lodestar of the law in legislative prayer cases since the matter was initially presented to this Court. *See Town of Greece*, 134 S. Ct. at 1813 (holding that "the Establishment Clause must be interpreted by reference to historical practices and understandings"). This is especially true when, like here, the prayers do not proselytize a particular or denigrate others. To that end, "*Marsh* stands for the proposition that it is not necessary to define the precise boundary of the Establishment Clause where history shows that the specific practice is permitted." *Town of Greece*, 134 S. Ct. at 1819. Rather, "[a]ny test the Court adopts must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Id*. Moreover, "the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers." *Sch. Dist. of Abington Twp.*, 374 U.S. at 294 (Brennan, J., concurring). "A test that would sweep away what has so long been settled would create new

controversy and begin anew the very divisions along religious lines that the Establishment Clause seeks to prevent." *Town of Greece*, 134 S. Ct. at 1819; *see Van Orden*, 545 U.S. at 702-704 (Breyer, J., concurring). Resultingly, "[w]hatever test we choose to apply must permit not only legitimate practices two centuries old but also any other practices with no greater potential for an establishment of religion." *County of Allegheny*, 492 U.S. at 670; *see Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756, 808 (1973) (Rehnquist, J., dissenting in part). The *Lemon* test is not apt to meet this criteria.

C. Even if This Court Does Apply the *Lemon* Test, Petitioner's Practice of Legislative Prayer Does Not Violate the Establishment Clause

Even if the Court does apply the *Lemon* test, the Board's prayer practice still does not run afoul of the Establishment Clause. As aforementioned, under the *Lemon* test, a governmental practice must (1) have a secular governmental purpose; (2) have a primary effect that neither advances or inhibits religion; and (3) not create excessive entanglement between church and state. *Lemon*, 403 U.S. at 612−13. This analysis is sequential, meaning that if the governmental practice violates either of the first two prongs of *Lemon*, there is no need to proceed further with the other prong(s) of the test. *Edwards*, 482 U.S. at 583−85. Moreover, the secular governmental purpose must "be genuine, not a sham." *McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844, 864 (2005). Under these standards, the Board's legislative prayer does not violate any of the tenets of this test.

First, the Board's prayer is held for a secular purpose – the solemnization of business. J.A. at 9. To this point, the Thirteenth Circuit agreed, finding that "the Board's gravity of purpose and providing a moment of quiet reflection are secular purposes." *Id*. at 22, citing *Bown*, 112 F.3d 1464 (finding that a Georgia moment of silence law called the "Moment of Quiet Reflection" passed the *Lemon* test). Moreover, the Board's prayers were held at the beginning of public legislative

sessions wherein all members of the community, including Ms. Pintok, were able to attend. J.A. at 8. This is important because a broad spectrum of groups lends credence to the prayer's secular nature. *Widmar v. Vincent*, 454 U.S. 263, 274 (1981); *Wolman v. Walter*, 433 U.S. 229, 240-241 (1977).

Under the second prong of the *Lemon* test, "a government practice can neither advance, nor inhibit religion . . . [t]his means that a challenged practice must not have the effect of communicating a message of government endorsement or disapproval of religion." *ACLU v. Black Horse Pike Reg'l Bd. of Educ.*, 84 F.3d 1471, 1485 (3d Cir. 1996) (internal citations omitted). To begin with whether a prayer practice disparages other religions, "[t]he question under endorsement analysis, in short, is whether a reasonable observer would view such longstanding practices as a disapproval of his or her particular religious choices." *County of Allegheny*, 492 U.S. at 631 (O'Connor, J., concurring).

Here, undoubtedly, the invocations that commenced the Board's legislative sessions never once carried a message that disapproved of any religion. J.A at 9. Rather, the Board's members, who all belong to different religious sects, were all able to provide prayers that espoused a message of solidarity. *Id*. at 8, 9. For example, one prayer stated "[w]e know that evil exists in the world, but we humbly ask for peace and togetherness in this trying time." *Id*. at 9. Another prayer was said to remind the board "that we can all come together in a spirit of unity despite whatever differences we may have." *Id*. Furthermore, while all the current board members belong to the Judeo-Christian faith, albeit different branches, there are no facts indicating that if a board member was a part of a separate theology he or she would not be able to say the prayer of his or her choice. *See generally* id. To the contrary, as one board member invocated, the Board was there to "serve all people no matter what religion, faith, or lack thereof." *Id*. at 9. Accordingly, there is no

reasonable observer who could find that these messages inhibited any particular form of faith.

The same can be said as to whether the Board's legislative prayer advanced religion as well. In making the determination of whether a governmental practice endorses a particular religion, courts look to the "totality of the circumstances" of the challenged practice. *ACLU*, 84 F.3d at 1486. Again, "the viewpoint of the reasonable observer (adherent or nonadherent) helps us to determine if the 'principal or primary effect [is] one that neither advances nor inhibits religion.'" *Id*., quoting *Lemon*, 404 U.S. at 612; *see also Sch. Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 390 (1985). In making this determination, "the history and ubiquity of a practice is relevant because it provides part of the context in which a reasonable observer evaluates whether a challenged governmental practice conveys a message of endorsement of religion." *Lemon*, 404 U.S. at 630.

Legislative prayer holds a unique and ubiquitous place in America's history that clearly demonstrates its constitutional acceptance. When the Framer's drafted the First Amendment, "the delegates did not consider opening prayers as a proselytizing activity or as symbolically placing the government's official seal of approval on one religious view." *Marsh*, 463 U.S. at 792. Moreover, in looking at the totality of the circumstances, the Board's prayer practice does not advance Christianity. This is because legislative prayer does not revolve on the "espousement of 'generic theism,' but rather on the 'history and tradition' showing prayer—even one that is explicitly Christian in tone—in this limited context could coexist with the principles of disestablishment and religious freedom." *Bormuth*, 870 F.3d at 506, quoting *Town of Greece* at 1820. Further, "legislative prayer presents no more potential for establishment than the provision of school transportation, *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947), beneficial grants for higher education, *Tilton*, 403 U.S. 672 (1971), or tax exemptions for religious organizations, *Walz*, 397

U.S. 664." *Marsh*, 463 U.S. at 791. Additionally, the members of the board have all testified that the purpose of the invocations was to solemnize business, not proselytize religion. J.A. at 9. Therefore, given the unique history and ubiquity legislative prayer has in this country, combined with the fact that the Board used legislative prayer as a means to solemnize business, the practice, on the whole, can only be found to promote a secular purpose that does not advance nor inhibit religion.

Finally, the third prong of the *Lemon* test – excessive entanglement of government with religion – is not upset by the Board's practice either. "The kind of excessive entanglement of government and religion precluded by *Lemon* is characterized by 'comprehensive, discriminating, and continuing state surveillance' of religious exercise." *Lambeth v. Bd. of Comm'rs*, 407 F.3d 266, 273 (4th Cir. 2005), quoting *Lemon*, 403 U.S. at 619. Here, the Board's invocations do not involve comprehensive entanglements with religion as the prayers, on the whole, do not speak to Christian values, but rather promote the solemnization of business. J.A. at 9. Moreover, the Board did not mandate participation with the prayers. *See Barghout v. Bureau of Kosher Meat & Food Control*, 66 F.3d 1337, 1340 (4th Cir. 1995) (finding a violation of the third prong of the *Lemon* test on the grounds that "the regulations impose[d] a wholly religious standard for compliance and required the excessive involvement of specific religious organizations and figures in interpreting and enforcing those standards"). As applied to the standards for 'excessive entanglement' defined in *Lemon*, the Board's prayer practice does not run afoul of what is permissible thereunder. Therefore, should the Court choose to apply the *Lemon* test, the facts of this case do not constitute a violation of the Establishment Clause of the First Amendment.

III. AS A MATTER OF PUBLIC POLICY, THE BOARD'S PRAYER PRACTICE DOES NOT PRESENT AN ISSUE THAT SHOULD LEAD THIS COURT TO REBUKE THE DOCTRINE OF *STARE DECISIS*

The doctrine of *stare decisis* imbues this Court to continue adjudicating legislative prayer through its unique historical framework and not precedent applied to extraneous Establishment Clause issues. It is well-established that the doctrine of *stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Pearson v. Callahan*, 555 U.S. 223, 233 (2009), citing *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). *Stare decisis* is not an "inexorable command," rather, it "is a principle of policy and not a mechanical formula of adherence to the latest decision." *Helvering v. Hallock*, 309 U.S. 106, 119 (1940). However, "[a]dhering to precedent 'is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right.'" *Id*., quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting).

Here, Ms. Pintok's claims do not require a rebuke of the doctrine of *stare decisis*. The canons of justice *stare decisis* promotes, i.e. "the evenhanded, predictable, and consistent development of legal principles," the "reliance on judicial decisions," and "the contribut[ions] to the actual and perceived integrity of the judicial process" (*Payne*, 501 U.S. at 827), are not outweighed by Ms. Pintok's claims. The present matter fits squarely within the prescribed review process of legislative prayer and should be adjudicated accordingly. Should the Court choose to cast aside the unbroken practice of not applying the *Lemon* test, decades of precedent and centuries of tradition would be cast along with it resulting in a new judicial landscape that would erode the history and tradition of legislative prayer.

CONCLUSION

Wherefore, the Hendersonville Parks and Recreation Board respectfully moves this Court to reverse the United States Court of Appeals for the Thirteenth Circuit decision and remand for further proceedings.

Respectfully submitted,

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