No. 17-1891

In the Supreme Court of the United States

HENDERSONVILLE PARKS and RECREATION BOARD,

v.

BARBARA PINTOK

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

BRIEF OF THE PETITIONER

Team 2515

Counsel for Petitioner

QUESTION PRESENTED

I. Whether a short prayer with Christian references used to solemnize public business and offer citizens a chance to quietly reflect on the matters before the Hendersonville Parks and Recreation Board violates the Establishment Clause?

II. Whether the Hendersonville Parks and Recreation Board's practice of beginning public meetings with a short, member-led, prayer rooted in the Judeo-Christian tradition places coercive pressures on religious minorities?

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JURISDICTION STATEMENT

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

Petitioner, the Hendersonville Parks and Recreation Board (the "Board'), is a five-member body of local government, which oversees Hendersonville's cultural and recreational sites, including greenways, golf courses, and artistic venues. J.A. at 8. The Board meets once a month to hear from citizens on a range of issues. *Id.* Additionally, the Board is responsible for issuing or denying permits for sites that are under the Board's control. *Id.* Respondent, Barbra Pintok, is a resident of Hendersonville and a follower of Wicca, a pagan religion. *Id*. Before each meeting, a member of the Board asks everyone to stand, recite the Pledge of Allegiance, and listen to a short prayer. J.A. at 8. The prayer is offered by a Board member and tends to be rooted in the Judeo-Christian tradition. *Id.* All Board members are Christian, though they belong to different Christian sects. *Id*. The Board's intention, for offering the prayer, is to solemnize public business and lend gravity to the Board's proceedings. J.A. at 2, 4. The Board does not engage in any effort to proselytize or in any form of religious harassment. J.A. at 1. Additionally, Board members do not pressure or coerce members of the public to participate in the prayer. J.A. at 2-6.

Respondent filed this lawsuit, seeking declaratory and injunctive relief, alleging that the prayers made her "distraught" and "nervous" when she had to speak about a permit issue. J.A. at 1. Respondent also alleges that she felt "like and outsider" despite having been "exposed" to Christianity as a child and having attended "many" Board meetings. *Id*. On cross-motions for summary judgment, the district court entered judgment in favor of the Petitioner and found that

the prayers "did not denigrate or mock any religion or threat any adherent to other religions." J.A. at 13. Furthermore, the district court found no evidence of coercion and that the prayers were offered to "solemnize public business" as part of a "time-honored tradition across the United States of America." J.A. at 15. The appellate court reversed and held that the Board's prayer practices "send an undeniable signal that the government is endorsing Christianity." J.A. at 24. This Court has granted certiorari.

SUMMARY OF THE ARGUMENT

The appellate court erred when it held that the Board violated the Establishment Clause. Short, legislator-led, prayers at public meetings are not per se unconstitutional under the Establishment Clause. Furthermore, the Board's prayer practices directly follow the tradition set forth historically by legislatures across the United States.

Although the Board's prayers were consistently Christian themed, the Establishment Clause is not violated anytime a government entity harmonizes with a particular set of religious beliefs. Additionally, the Board had a legitimate purpose in beginning their meetings with a short respectful prayer, to solemnize public businesses and quietly reflect on the issues before the Board; thus, not violating the Establishment Clause.

Moreover, this Court held that prayer at a local government meeting is not coercive despite the smaller more intimate setting. Additionally, this Court also held that soliciting adult members of the public to assist in solemnizing the meeting by standing or bowing their heads is also not coercive. Therefore, the Board's prayer practices have a permissible ceremonial purpose and is not an unconstitutional establishment of religion. As a result, the judgment of the court of appeals should be reversed.

ARGUMENT

I. THE BOARD'S PRACTICE OF HAVING MEMBERS OFFER PRAYER BEFORE PUBLIC MEETINGS IS CONSTITUTIONAL UNDER THE ESTABLISHMENT CLAUSE BECAUSE: (1) IT COMPORTS WITH THE HISTORY AND TRADITION OF LEGISLATIVE PRAYER UNDER *MARSH* AND *TOWN OF GREECE*; (2) LEGISLATOR-LED PRAYER AT PUBLIC MEETINGS IS NOT PER SE UNCONSTITUTIONAL UNDER THE ESTABLISHMENT CLAUSE; AND (3) CREED-SPECIFIC PRAYERS ALONE DO NOT VIOLATE THE ESTABLISHMENT CLAUSE.

This Court should reverse the appellate court's decision because the Board did not violate the Establishment Clause when the Board began their monthly meetings with a short prayer because it comported with the history and tradition of the United States. Historically, along with determining if the prayer followed the history and tradition of our Nation, this Court has also analyzed the magnitude of government coercion. The government is found to exercise "true coercion," and in violation of the Establishment Clause," when coercing religious conformity "by threat or force of law." The Board did not coerce the Respondent, nor did it engage in religious harassment when they began their monthly meetings with a short prayer, in accordance with the history and tradition of the United States.

A. THE BOARD'S PRACTICE OF OPENING MEETINGS WITH A SHORT PRAYER IS IN ACCORDANCE WITH THE HISTORY AND TRADITION OF THE UNITED STATES.

The First Amendment of the United States Constitution forbids Congress from making a law "respecting the establishment of religion." U.S. Const. amend. 1. Known today as the Establishment Clause, it "prohibits the government from passing legislation to establish an official religion or preferring one religion over another." *Id.* Nonetheless, some governmental activity related to religion has been declared constitutional by the Supreme Court." *Id*. For instance, this Court previously has found that Nebraska's tradition of having chaplain-led prayer in the state

legislature did not violate the Establishment Clause because such practice was of "no real threat to the Establishment Clause." *Marsh v. Chambers*, 463 U.S. 783, 791 (1983). Furthermore, chaplain-led prayer comported with the "history and tradition" of our country. *Id*. For almost a decade, this Court used the *Lemon* test, derived from *Lemon v. Kurtzman*, 463 U.S. 602 (1971) when analyzing and determining if a government program or regulation was in violation of the Establishment Clause. The Lemon test consists of three tests: "First, the government program must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; and finally, the statute must not foster an excessive government entanglement with religion." *Lemon*, 403 U.S. at 612-13. However, this Court began focusing on the history and tradition of the program instead. . ." *Marsh*, 463 U.S. at 786. Accordingly, this Court recognized that this "unique, . . . unambiguous, and unbroken history" of opening a legislative session with a prayer had become "part of the fabric of our society," and therefore, did not violate of the Establishment clause. *Id*. at 792.

The opening of a legislative session or other deliberative public body with a prayer is deeply embedded in the history and tradition of this country. *Marsh*, 463 U.S. at 786. In *Marsh*, the respondent was a member of the Nebraska Legislature and sought injunctive relief, claiming that the legislature's practice of beginning each of its session with a prayer by a State-approved chaplain, violated the Establishment Clause of the First Amendment. *Id*. at 783. This Court reasoned that this practice dated back to 1774 when the Continental Congress adopted the traditional procedure of beginning each and every session with a prayer offered by a paid chaplain. *Id*. at 787. Shortly after Congress authorized the appointment of paid chaplains, the Bill of Rights was finalized. Therefore, the authors of the Establishment Clause did not view paid legislative chaplains and the opening of each session with a short prayer as a violation of the Amendment. *Id*.

at 788. This practice has been followed consistently in most states, including Nebraska, where the tradition of opening legislative sessions with a short prayer predates the State attaining statehood. *Id*. at 789. In addition to examining the long-standing tradition rationale, this Court analyzed the individual claiming injury. The respondent was an adult, and likely not easily susceptible to religious coercion, especially by simply being subjected and listening to a short prayer. *Id*. at 792. Furthermore, this Court reasoned that the government was not "establishing" religion, but rather, the government was invoking "Divine guidance" on a group of individuals entrusted with making laws for the betterment of society. *Id*. Justice Douglas acknowledged, "[w]e are a religious people whose institutions presuppose a Supreme Being." *Id*. (quoting *Zorach v. Clauson*, 72 S. Ct. 679, 683 (1952)). After taking into account the long-standing tradition of opening legislative sessions with a short prayer and the fact that the respondent was an adult who was unlikely to be coerced by simply being exposed to the prayer, this Court held that the practice of opening the legislatives sessions with a prayer, did not violate the Establishment Clause. *Marsh*, 463 U.S. at 783.

In *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), this Court maintained the position that no violation of the First Amendment occurred by the town opening its board meetings with prayer that comported with the history of the United States, as the purpose of the prayer is to call for a "spirit of cooperation" among town leaders. *Id*. at 1824. In *Town of Greece*, the citizens filed suit alleging the First Amendment's Establishment Clause was violated because Christians were preferred over other prayer givers at the meetings that local citizens would attend to speak on local issues. *Id*. at 1813. Although the prayer program was open to all creeds, nearly all of the local congregation was Christian, consequently, the prayers often mentioned Jesus and other Christian references. *Id*. The citizens sought to limit the town to "inclusive and ecumenical" prayers that referred only to a "generic God." *Id*. Ultimately, this Court found that the town's prayer practice

did not violate the Establishment Clause because the Nation's history and tradition have shown that prayer in context such as this could "coexis[t] with the principles of disestablishment and religious freedom." *Id*. at 1813-14. Furthermore, this Court reasoned a decision mandating nonsectarian invocations would appoint the legislatures sponsoring prayers as supervisors and censors of religious speech, thus causing a violation of the Establishment Clause because of the increased government involvement in religious matters. *Id*. at 814. Although, the prayers invoked Christian themes, such as the name of Jesus, they also invoked universal themes, such as a "spirit of cooperation." *Id*. For that reason, this Court concluded that so long as the town could maintain a policy of nondiscrimination, the First Amendment did not require it to go out of its way for non-Christian prayer givers in an effort to achieve religious balancing. *Id*.

Although not binding on this Court, but nonetheless persuasive, we urge this Court to look at *Bourmuth v. Cty. of Jackson*, 870 F.3d 494 (6th Cir. 2017). In *Bourmuth*, a county resident brought an action against the county seeking injunctive relief and nominal damages, asserting a violation of the Establishment Clause based on the county board of commissioners practice of opening its monthly public meetings with a prayer given by individual board members. *Id*. at 498. The board of commissioners would open its monthly meetings by asking the public to please "rise and assume a reverent position," and "please bow your heads and let us pray." *Id*. These prayers were generally Christian in tone and often used "God," "Lord," or "Heavenly Father" to provide commissioners with guidance as they go about their business. *Id*. The Plaintiff in that case was a "self-professed Pagan and Animist," and found the prayers unwelcoming and "severely offense to [him] as a believer in the Pagan religion, which was destroyed by followers of Jesus Christ." *Id*. Plaintiff went on to testify that the Christian prayers made him feel like "he [i]s being forced to worship Jesus Christ in order to participate in the business of County Government." *Id*. at 499.

The 6th Circuit ultimately found that the "invocation practice is consistent with the Supreme Court's legislative prayer decisions," citing both *Marsh* and *Town of Greece* and therefore, did not violate the Establishment Clause. *Id*. at 474.

This Court should adopt the reasoning in *Marsh* and reverse the appellate court's decision because the Board did not violate the Establishment Clause as their practice of beginning each monthly meeting with a short prayer, comported with the history and tradition of the United States. In *Marsh*, this Court held that the Establishment Clause was not violated because the opening of a legislative session or other deliberative public body with a prayer is deeply embedded in the history and tradition of this country. Furthermore, the unbroken practice for two centuries in the National Congress, gave abundant assurance that the practice gave no real threat to the Establishment Clause. The same can be said for the Board. The practice of beginning Board meetings with a prayer is deeply embedded with the history and tradition of the Board. The Respondent is a resident of Hendersonville, who regularly attend the Board's meetings. Before each meeting, the Respondent stood up and listened to a short prayer, along with the Pledge of Allegiance. Although, Respondent regularly attended the Board's monthly meetings, this lawsuit was not initiated until the Respondent had to address the Board regarding a permit issue. At this meeting, shortly after the Pledge of Allegiance and the prayer were recited, the Respondent alleges that she became "nervous" and could not enunciate her words. J.A. at 1. Again, this was not the first time that the Respondent had attended a Board meeting, however it was the first time she claimed to be disturbed and distraught over the short prayer. The facts in this case are similar to those in *Marsh*, where the recitation of a short prayer at the beginning of each meeting had been a long-standing tradition, and the Respondent had previously been exposed to the prayers without ever voicing concern.

The Board did not violate the Establishment Clause as the prayer was brief, solemn, and respectful and did not compel any citizen to engage in a religious observance. Similar to *Town of Greece*, the prayer in this case was being offered at a town meeting and the intention of the prayer was not to coerce anyone's religious belief. J.A. at 2. Instead, the prayer was offered to solemnize public business. Like in *Town of Greece*, the audience at the Board meetings were citizens interested in discussing the city's laws and activities, and presumably understood that a moment of prayer or quiet reflection sets the mind to a higher purpose and with that, eases the task of governing and decision making. This Court in *Town of Greece* noted that the purpose of the prayers was largely to accommodate the spiritual needs of lawmakers and connect them to the tradition dating to the time of the Framers. This reasoning is directly applicable to the Board as the evidence shows that the intent of the prayer was to solemnize public business and emphasize the gravity of the Board's mission. This the prayer was in accordance with the history and tradition of the United States.

Even though the Board members lead the prayers, the practice does not fall outside this Court's historically accepted tradition of upholding legislative-led prayer. This case is extraordinarily similar to *Bormuth*. Like in *Bormuth*, the Board invited the audience to stand for a short prayer, the prayers were Christian in nature, and were led by Board members, who happen to be Christians. Also, like *Bormuth*, the Respondent followed a pagan religion, but was never coerced or forced to recite the prayers along with the Board members. Like the Respondent, the plaintiff in *Bormuth*, was an adult, who presumably was capable of listening to a prayer without taking great offense or suffering from any emotional distress. Ultimately the 6th Circuit, in *Bormuth*, held that although the commissioners were all Christian, the prayers were generally Christian, and the board did not provide opportunities for persons of other faiths to offer

invocations; because there was no evidence of discriminatory intent or that the invocations denigration religious minorities of religious minorities, the practice did not violate the Establishment Clause. While we recognize that this Court is not bound by the 6th Circuit, we feel that the similarities cannot be ignored, and that is why we ask this Court to consider the ruling in *Bormuth* when finding that Hendersonville Parks and Recreation Board did not violate the Establishment Clause.

B. THE FACT THAT THE BOARD'S PRAYERS WERE CHRISTIAN LED AND CHRISTIAN THEMED DOES NOT ELICIT A VIOLATION OF THE ESTABLISHMENT CLAUSE.

The Establishment Clause will not always bar a state from regulating conduct simply because the conduct harmonizes with religious canons. *Marsh*, 463 U.S. at 792. A challenge based solely on the content of a prayer will not likely establish a constitutional violation, unless there is evidence of a pattern of prayers that "denigrate, proselytize, or betray and impermissible governmental practice." *Town of Greece*, 134 S. Ct. at 1824. Even when those leading the prayer are predominately Christian, as long as the government maintains a policy of nondiscrimination in inviting laymen to lead a prayer at its meetings, the Establishment Clause does not require the government to search beyond its borders for non-Christian prayer givers in a quest to promote "a 'diversity' of religious views." *Id*. Although the Establishment Clause prohibits true coercive pressure placed upon religious minorities, this Court held that the coercion test should only be applied to cases in which governmental authorities coerce religious conformity "by threat or force of law." *Id*. at 1837.

In *Town of Greece*, this Court maintained the position that no violation of the First Amendment occurred by the town opening its board meetings with prayer that comported with the history of the United States, as the purpose of the prayer is to call for a "spirit of cooperation"

among town leaders. *Town of Greece*, 134 S. Ct. at 1824. In *Town of Greece*, the citizens filed suit alleging the First Amendment's Establishment Clause was violated because Christians were preferred over other prayer givers at the meetings that local citizens would attend to speak on local issues. *Id*. at 1813. Although the prayer program was open to all creeds, nearly all of the local congregation was Christian, consequently, the prayers often mentioned Jesus and other Christian references. *Id*. The citizens sought to limit the town to "inclusive and ecumenical" prayers that referred only to a "generic God." *Id*. Ultimately, this Court found that the town's prayer practice did not violate the Establishment Clause because the Nation's history and tradition have shown that prayer in context such as this could "coexis[t] with the principles of disestablishment and religious freedom." *Id*. at 1813-14. Furthermore, this Court reasoned a decision mandating nonsectarian invocations would appoint the legislatures sponsoring prayers as supervisors and censors of religious speech, thus causing a violation of the Establishment Clause because of the increased government involvement in religious matters. *Id*. Although, the prayers invoked Christian themes, such as the name of Jesus, they also invoked universal themes, such as a "spirit of cooperation." *Id*. For that reason, this Court concluded that so long as the town could maintain a policy of nondiscrimination, the First Amendment did not require it to go out of its way for non-Christian prayer givers in an effort to achieve religious balancing. *Id*.

As previously stated, the Board's prayer did not compel or convert any citizen to engage in a particular religious observation. The practice of reciting a short prayer before meetings such as these assumes that adult citizens, holding their own personal beliefs, can tolerate a ceremonial prayer delivered by a person of a different faith. Here, the Respondent, an adult, is firm in her beliefs of the Pagan religion of Wicca. It was reasonable for the Board to assume that Hendersonville's adult citizens would be able to tolerate listening to a Christian prayer, especially

when taking into account that most citizens, like the Respondent, had heard the prayer at previous Board meetings. This Court in *Town of Greece* explained that "an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views in a legislative forum." *Town of Greece* 134 S. Ct. at 1826. This Court in *Town of Greece* noted, this would be different if the Board directed the audience to participate in the prayers, singled out anyone in the audience who opposed, or indicated that their decisions may be influenced based on those who participated in the prayer. But in this case, there is no evidence to suggest that occurred. As in *Town of Greece*, the Board's meetings began with the recitation of the Pledge of Allegiance and a short prayer used to reflect on the issues before the Board. Therefore, this Court should follow its reasoning from *Town of Greece*, and hold that short, respectful prayer recited before Board meetings was used as a time of reflection, did not coerce nonbelievers, and fits within the tradition long followed by Congress and other state legislatures.

In analyzing these cases, it is important to distinguish whether the individual claiming injury is an adult or a child, as adults presumably are not readily susceptible to "religious indoctrination." *Marsh*, 463 U.S. at 792. Although Respondent is a follower of Wicca, a pagan religion, she was exposed to Christianity as a child, even attending Christian church throughout her youth. Being that she was exposed to Christianity regularly as a child, Respondent would have no reason to be disturbed or intimidated simply when listening to a prayer. In addition, Respondent became aware of the Board's practice the first time she attended the Board meeting. Nevertheless, Respondent continued to attend "many meetings" throughout her adulthood, never bringing an issue forward or complaining of such a disturbance as a result of the prayer.

Furthermore, in *Marsh*, the respondent argued that the legislature was favoring a religious denomination, as the prayers were led by a chaplain paid with public funds, holding the position

for sixteen years. Absent proof that the chaplain's reappointment stemmed from an impermissible motive, his long tenure did not conflict with the Establishment Clause. *Marsh*, 463 U.S. at 794. When addressing the compensation of the chaplain from public funds, this Court referenced the fact that the Continental Congress paid its chaplain, as did other states. Again, referencing once again, the history and tradition of the United States as justification for its reasoning. In this case, the prayers are led by Board members which all happen to be Christian. There is no evidence that these Board members were chosen on the basis of an impermissible motive. Moreover, unlike *Marsh*, Board members are not paid to recite these prayers. Board members are voted into their position by the citizens of Hendersonville, unlike the chaplain in *Marsh* who was appointed by the legislature. Notwithstanding those facts, this Court in *Marsh* still found that this did not give rise to a violation of the Establishment Clause as it was in accordance with the history of Congressional practices and the fact that the prayers were Christian in nature, was immaterial.

This Court should reverse the appellate court's decision because the Board prayer practice does not violate the Establishment Clause as it is in accordance with the history and tradition of Congress. Because the practice follows the history and tradition of legislative prayer, like in *Marsh* and *Town of Greece*, this Court should not apply the Lemon test. For the foregoing reasons, the Board's practice did not violate the Establishment Clause and respectfully ask this Court to reverse the appellate court's decision.

II. THE BOARD'S PRACTICE OF BEGINNING PUBLIC MEETINGS WITH A PRAYER IS CONSTITUTIONAL BECAUSE: (1) WHEN EVALUATING WHETHER LEGISLATIVE PRAYER VIOLATED THE ESTABLISHMENT CLAUSE, THE COURT MAY NOT VIEW THE COERCIVE EFFECT OF PRAYER AT LOCAL GOVERNMENTAL MEETINGS DIFFERENTLY FROM THE EFFECT OF PRAYER AT LEGISLATIVE SESSIONS; (2) SOLICITING ADULT MEMBERS OF THE PUBLIC TO ASSIST IN SOLEMNIZING THE MEETING BY STANDING IS NOT COERCIVE; AND (3) NOTHING IN THE RECORD INDICATES THAT BOARD MEMBERS ALLOCATED BENEFITS AND BURDENS BASED ON WHETHER MEMBERS OF THE PUBLIC PARTICIPATED IN THE PRAYER.

The only concern here beyond the historical pedigree of legislator-led prayers is that the "government may not coerce its citizens to support or participate in any religion or its exercise." *Town of Greece*, 134 S. Ct. at 1825 (plurality opinion) (quoting *Cty. of Allegheny v. Am. Civil Liberties Union*, 492 U.S. 573, 659 (1989)). Importantly, mere "social pressure[] . . . to remain in the room or even feign participation in order to avoid offending" legislators falls short, however, of coercion. *Id.* at 1820 (majority opinion). Yet in the instant case, feeling "social pressure" is the very most that Respondent offers. See J.A. at 1.

Respondent contends that she felts "like an outsider." J.A. at 1. So, too, did the *Town of Greece* plaintiffs, who claimed to feel "excluded and disrespected" because of the prayers' sectarian content. 134 S. Ct. at 1826 (plurality opinion). But this Court held that these complaints did "not equate to coercion." *Id.* Neither does "exposing constituents to prayer they would rather not hear and in which they need not participate." *Id*. at 1827. Respondent may have used the word "intimidated" in her affidavit, but that does not make it so.

A. THERE IS NO DIFFERENCE BETWEEN A PRAYER OFFERED AT SMALLER MORE INITIATE LOCAL GOVERNMENT MEETINGS AND LEGISLATIVE SESSIONS.

Respondent seeks to distinguish the Board's prayer practices from the tradition upheld in *Marsh* on the grounds that it coerces participation by a nonadherent. She contends that prayer

conducted in the intimate setting of a town parks and recreation board meeting differs in fundamental ways from the invocations delivered in Congress and state legislatures, where the public remains segregated from legislative activity and may not address the body except by occasional invitation. Citizens attend town board meetings to a speak on matters of local importance and petition the board for action that may affect their economic interests, such as the granting of permits. Respondent argues that the public may feel subtle pressure to participate in prayers that violate their beliefs in order to please the board members from whom they are about to seek a favorable ruling. In her view the fact that board members in towns like Hendersonville know many of their constituents by name only increases the pressure to conform. To be sure, this difference was at the core of an opinion in *Town of Greece*: Justice Kagan's dissent. 134 S. Ct. at 1851-52 (Kagan, J., dissenting) ("The majority thus gives short shrift to the gap -- more like, the chasm -- between a legislative floor session involving only elected officials and a town hall revolving around ordinary citizens."). However, the five Justices in the *Town of Greece* majority did not adopt these distinctions. Moreover, in *Town of Greece*, the legislators were free to watch which individuals participated in the prayer and which ones did not. Yet this Court affirmed that, while people may well disagree with various sorts of prayer practices, "[o]ur tradition assumes that adult citizens, firm in their own beliefs, can tolerate and perhaps appreciate a ceremonial prayer delivered by a person of a different faith." *Id*. at 1823.

The prayer, in this case by the Board members, must be evaluated against the backdrop of historical practice. As a practice that has long endured, legislative prayer has become part of our heritage and tradition, part of our expressive idiom, similar to the Pledge of Allegiance or the recitation of "God save the United States and this honorable Court" at the opening of this Court's sessions. *Town of Greece*, 134 S. Ct. at 1825 (plurality opinion). See *Lynch v. Donnelly,* 465 U.S.

668, 693 (O'Connor, J., concurring). It is presumed that the reasonable observer is acquainted with this tradition and understands that its purposes are to lend gravity to public proceedings and to acknowledge the place religion holds in the lives of many private citizens, not to afford government an opportunity to proselytize or force truant constituents into the pews. *Town of Greece*, 134 S. Ct. at 1825 (plurality opinion). See *Salazar v. Buono,* 559 U.S. 700, 720-21 (2010) (plurality opinion); *Santa Fe Indep. Sch. Dist. v. Doe,* 530 U.S. 290, 308 (2000). That many appreciate these acknowledgments of the divine in our public institutions does not suggest that those who disagree are compelled to join the expression or approve its content. *Town of Greece*, 134 S. Ct. at 1825 (quoting *West Virginia State Bd. of Ed. v. Barnette,* 319 U.S. 624, 642 (1943)).

The principal audience for these invocations is not, indeed, the public but lawmakers themselves, who may find that a moment of prayer or quiet reflection sets the mind to a higher purpose and thereby eases the task of governing. *Town of Greece*, 134 S. Ct. at 1825 (plurality opinion). The district court in *Marsh* described the prayer exercise as "an internal act" directed at the Nebraska Legislature's "own members," *Chambers v. Marsh,* 504 F. Supp. 585, 588 (D. Neb. 1980), rather than an effort to promote religious observance among the public. See also *Lee v. Weisman*, 505 U.S. 577, 630, n. 8 (Souter, J., concurring) (describing *Marsh* as a case "in which government officials invoke[d] spiritual inspiration entirely for their own benefit"); *Atheists of Fla., Inc. v. Lakeland,* 713 F.3d 577, 583 (11th Cir. 2013) (quoting a city resolution providing for prayer "for the benefit and blessing of" elected leaders). Board members, in their affidavits, attested that: (1) the prayers were to "solemnize public business;" (2) they never "intended to coerce anyone;" and (3) the prayers were not an "effort to proselytize." J.A. at 2. See also J.A. at 3-6. Therefore, the evidence in the record shows that the principal audience for these prayers are the Board members and not necessarily members of the public.

The Hendersonville Parks and Recreation Board opens its monthly meeting with a short prayer. So did the Town of Greece. As this Court noted, Greece began its monthly town board meetings with a moment of silence "[f]or some years," transitioning to a clergy-delivered invocation in 1999. *Town of Greece*, 134 S. Ct. at 1816 (majority opinion). The practice continued for the better part of a decade, eventually leading to the *Town of Greece* litigation. *Id*. The Town of Greece included these invocations before every monthly board meeting -- that is, before the meeting of the "local governing body." An invocation's delivery before a local governing body does not raise special Establishment Clause concerns. Legislative prayer by definition is prayer before a governing body. And under the analysis required by *Town of Greece*, the governing body's status as *local* was immaterial. Not only was Greece a local governing body, but the Nation's legislative prayer traditions also clearly extend beyond States to their subunits. Any assessment based on the Nation's legislative prayer traditions, then, must include local governing bodies.

B. SOLICITING ADULT MEMBERS OF THE PUBLIC TO RISE OR BOW THEIR HEADS WHILE A PRAYER IS OFFERED IS NOT COERCIVE.

Soliciting members of the public to stand or a Board member's decision to open a prayer with words such as "please bow your heads" (J.A. at 9) poses no constitutional problem, either -- the *Town of Greece* chaplains regularly did the same. The chaplains in *Town of Greece* began each monthly prayer with some invitation to the assembled, such as by asking audience members to stand and bow their heads, or by beginning with "let us pray." 134 S. Ct. at 1818. Other "inclusive, not coercive" introductions to prayers included: "Would you bow your heads with me as we invite the Lord's presence here tonight?," "Those who are willing may join me now in prayer," and "Let us join our hearts and minds together in prayer." *Id*. at 1826 (plurality opinion).

Some of the Board's prayers similarly began with "please bow your heads." J.A. at 9. As a member of the *Town of Greece* plurality noted, these phrases are not only commonplace, but for public prayers are "almost reflexive." *Town of Greece*, 134 S. Ct. at 1832 (Alito, J., concurring). This Court saw no conflict between these introductions and the Establishment Clause. See *id*. at 1826 (plurality opinion). Furthermore, the prayers themselves are filled with directives and requests directly for the benefit of the legislators. See J.A. at 9 ("Lord help us to make good decisions."). The prayers were thus aimed primarily at the legislators themselves and align with the traditional purpose of the practice.

The *Town of Greece* plurality emphasized that the "let us pray" statements by the invited clergy reflected the reality that the clergy "[we]re accustomed to directing their congregations in this way and might have done so thinking the action was inclusive." 134 S. Ct. at 1826. Similarly here, there is no reason to doubt that the Board members thought this language was inclusive, not coercive, based upon their personal experiences with prayers at church or home. See also *id*. at 1832 (Alito, J., concurring) (noting that certain statements such as "let us pray" are "almost reflexive" in certain communal prayer traditions). There is a difference between a Board member speaking as a "free agent" when offering his or her own legislative prayer and ordering those present to participate in someone else's prayer. The *Town of Greece* plurality's admonition should not be stretched to capture inclusive statements that are hardly "directing" people to pray like the Hendersonville Board members. That cautionary point must be read in concert with the *Town of Greece* majority's holding that coercion cannot be mere discomfort at social pressure to participate. A polite invitation by the prayer giver is not the same as a government official directing citizens to pray.

This case can also be distinguished from the conclusions and holding of *Lee v. Weisman,* 505 U.S. 577 (1992). There this Court found that, in the context of a graduation where school authorities maintained close supervision over the conduct of the students and the substance of the ceremony, a religious invocation was coercive as to an objecting student. *Id.* at 592-94. See also *Santa Fe Ind. Sch. Dist.,* 530 U.S. at 312. Four Justices dissented in *Lee,* but the circumstances this Court confronted are not present in this case and do not control its outcome. Nothing in the record suggests that members of the public are dissuaded from leaving the meeting room during the prayer or arriving late. Should nonbelievers choose to exit the room during a prayer they find distasteful, their absence will not stand out as disrespectful or even noteworthy. And should they remain, their quiet acquiescence will not, in light of our traditions, be interpreted as an agreement with the words or ideas expressed. Neither choice represents an unconstitutional imposition as to mature adults, who "presumably" are "not readily susceptible to religious indoctrination or peer pressure." *Marsh,* 463 U.S. at 792.

C. NOTHING IN THE RECORD INDICATES THAT BOARD MEMBERS ALLOCATED BENEFITS AND BURDENS BASED ON WHETHER MEMBERS OF THE PUBLIC PARTICIPATED IN THE PRAYERS.

Just as in *Town of Greece*, "[n]othing in the record indicates that town leaders allocated benefits and burdens ***based on participation in the prayer***, or that citizens were received differently ***depending on whether they joined the invocation or quietly declined***." 134 S. Ct. at 1826 (plurality opinion) (emphases added). To contest this point, Respondent points to an instance where the Board denied her permit to operate a paddleboat company. Yet there is no evidence that the Board's decision was affected by Respondent's objection to prayer during the meetings -- as the *Town of Greece* plurality warned.

Additionally, the Board did not single Respondent out for opprobrium concerning her lack of participation in the legislative prayers. Although a Board member did express frustration when Respondent complained about the prayer this can hardly be considered opprobrium. Even if it was, it was a momentary lapse and not a pattern or practice over time that exploited the prayer opportunity as a whole. "Adults often encounter speech they find disagreeable; and an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views in a legislative forum . . . ." *Town of Greece*, 134 S. Ct. at 1826 (plurality opinion). In *Town of Greece*, this Court identified the same type of disparaging remarks but held that stray remarks like these do not rise to the level of a constitutional violation because they do not form a "pattern . . . over time." *Id*. at 1824 (majority opinion). The same is true here. The Board's prayer practices cannot be coercive when considered on the whole, and over time, as *Town of Greece* requires.

Finally, the elements of the prayer practices here cannot combine to create coercion where specific practices have been approved by this Court. That is why *Town of Greece* similarly rejected the argument that the "sectarian content of the prayers compound[ed] the subtle coercive pressures" that they had purported to experience. *Id*. at 1820 (majority opinion). Indeed, the Board's prayer practices share many of the features that the *Town of Greece* plurality found important in concluding that Greece's prayer practices coerced no one:

- "[T]he prayer is delivered during the ceremonial portion of the town's meeting," alongside the Pledge of Allegiance, and before the official business of policymaking. *Id*. at 1827 (plurality opinion). See also *id*. at 1816 (majority opinion).

- Anyone may arrive after the prayer or "exit the room during a prayer," and such an "absence will not stand out as disrespectful or even noteworthy." *Id*. at 1827 (plurality opinion).

In this, as in many other ways, the Board's prayer practices are materially identical to that in *Town of Greece* and thus no more coercive.

CONCLUSION

Ceremonial prayer is but a recognition that, since this Nation was founded and until the present day, many Americans deem that their own existence must be understood by precepts far beyond the authority of government. Therefore, a brief acknowledgment of this higher power, always with due respect for those who adhere to other beliefs, is consistent with this Nation's history and tradition. The Board's prayer practices, in this case, has a permissible ceremonial purpose and is not an unconstitutional establishment of religion. The judgment of the court of appeals should be reversed.

Respectfully Submitted,

Team 2515

Counsel for Petitioner