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 RESPONDENT

Team 2516
Counsel for Respondent

QUESTIONS PRESENTED

1. Did the Christian prayers delivered by board members before public meetings comport with the history of legislative-prayer as explained by this Court's decisions in *Marsh* and *Town of Greece*, even though there is no long-standing history of commissioner-led prayer before parks and recreation meetings?

2. Did the Board's exclusively Christian prayer practice serve a clearly religious purpose, thereby entangling government officials in a position of public trust with the church, or does the Board place coercive pressures on the citizens of Hendersonville by asking for their participation in prayer at meetings that they are required to attend if they seek to appeal the Board's decision?

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STATEMENT OF JURISDICTION

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

Statement of Facts

Barbara Pintok ("Ms. Pintok"), a practicing Wiccan, is an active member of the Hendersonville community. J.A. at 1. Ms. Pintok lives in a primarily dominated Christian community and she is alert to Hendersonville's lack of tolerance for people who do not believe in Christianity. J.A. at 1. In spite of the hostility towards her religion, Ms. Pintok has made progress towards participating in Hendersonville's civic and business community. J.A. at 1. She has established a paddle boat company and regularly attends Hendersonsville's Parks and Recreation board meetings ("the Board"). J.A. at 1.

The Board is a five-member body, responsible for overseeing many recreational facets of the city, such as its cultural arts, golf courses, outdoor recreation, and permit rentals. J.A. at 8. The Board also meets once a month to review permit denials. J.A. at 8. If citizens are denied a permit from the Board, they are required to attend the monthly meeting to present an appeal to the Board. J.A. at 18. At the beginning of each meetings, the Board summons the citizen attendees to stand and participate in a Christian-based prayer. J.A. at 18. The prayers are exclusively selected, designed, and delivered by the Board. J.A. at 18. Every single board member is a practitioner of the Christian faith. J.A. at 18. All of the prayers delivered by the Board clearly portray a religious bent and they permeate these public meetings with clear references to the Christian Deity. J.A. at 18. They include the include the following:

> "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 away consistent with the careful hand of the Father and his son Jesus Christ."
>
> "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."
>
> "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."

J.A. at 9, 18-19.

Ms. Pintok felt both intimidated and humiliated by the Board's prayer practice. J.A. at 1. Indeed, she was so distraught and nervous after the Board's recitation of these Christian prayers that she could not enunciate her words properly during her presentation that she was required to give to the Board. J.A. at 1. These prayers reminded her of her youth, when she was a member of the Christian church, and hearing the Board's praise of a God that she does not believe in made her feel as if she was an outsider in her own community. J.A. 1. When Ms. Pintok told the Board how the prayers made her feel, the longest serving member of the Board told her that "this is a Christian country" and that she should "get over it." J.A. at 1. The Board member admitted that he also told Ms. Pintok that her complaint was "frivolous." J.A. at 6.

Summary of the Proceedings

The United States Court Appeals For the Thirteenth Circuit properly granted Ms. Pintok's motion for summary judgment. J.A. at 24. Ms. Pintok filed a suit in the United States District Court for the District of Caldon, against the Board, seeking both declaratory and injunctive relief, as well as a preliminary injunction to stop the Board's unconstitutional prayer practice. J.A. at 10. In response, the Board, through its members, filed affidavits asserting that its prayer practice is used to solemnize public business. J.A. at 10. Both parties filed cross-motions for summary judgment, and the district court found in favor of the Board. J.A. at 15.

On appeal, the United States Court of Appeals for the Thirteenth Circuit reversed the district court's decision, and further explained that there is a fundamental difference between government officials leading citizens in prayer and the prayer practice authorized by this Court in *Marsh* and *Greece*. J.A. at 24. In a unanimous decision, the Thirteenth Circuit correctly ruled that the Board's prayer practice violated the Establishment Clause because the practice sent the "undeniable signal" that the "government is endorsing Christianity." J.A. at 24. Accordingly, the Thirteenth Circuit ordered the district court to enter summary judgment in favor of Ms. Pintok.

The Board appealed the Thirteenth Circuit's decision, and this Court granted certiorari for its October 2018 Term.

STANDARD OF REVIEW

It is well settled that courts review questions of law *de novo*. *Ornelas v. U.S.*, 517 U.S. 690, 701 (1996). Because this case is about the interpretation of the First Amendment, a question of law, the correct standard of review is *de novo.*

SUMMARY OF THE ARGUMENT

The Framers of Constitution created the Establishment Clause to protect citizens from states-sponsored religious persecution. At the core of the First Amendment, lays the principle that government may not coerce its citizens to support or participate in any religion or its exercise. At bottom, the First Amendment provides an absolute shield against religious coercion. Ms. Pintok deserves such protection.

The Thirteenth Circuit properly held that the Board violated the Establishment for two principal reasons. First, the Board's prayer practice significantly departs from the history and tradition framework carved out by this Court in *Marsh* and *Greece.* Second, the Board's prayer practice fails the long-standing Establishment Clause analysis established in *Lemon* and unduly places coercive pressures on Hendersonville citizens.

The history and tradition exception, established in *Marsh* and extended by *Greece*, does not apply to the Board's prayer practice because there is no long-standing tradition of prayer before parks and recreation meetings. Further, while this Court has addressed the historical significance of chaplain-led prayers, it has never addressed the constitutionality of prayers led by government officials. Even if this Court expanded the history and tradition exception to include government official-led prayer, the Board's practice would still violate the Establishment Clause because it actively prioritizes, designs, and proclaims Christian prayers during public meetings.

The Thirteenth Circuit correctly utilized the *Lemon* test, the dominant test employed by courts when analyzing the constitutionality of government sponsored religious activity, holding that the Board's prayer practice unconstitutionally advanced Christianity at the expense of minority faiths. Under the *Lemon* test, in order to pass constitutional scrutiny, a governmental practice must (1) have a secular governmental purpose; (2) its principal effect must neither

inhibit nor advance religion; and (3) it must not foster an excessive entanglement with religion. State action violates the Establishment Clause if it fails *any* of these prongs. The Board's prayer practice serves a non-secular purpose because it exclusively promotes Christian values; it advances Christianity by directing the public to conduct business consistent with the Bible's teachings; and, it overtly seeks Christian-based guidance on how to conduct its meetings and handle public business, thereby entangling government with religion. As a result, the Board's prayer practice fails all three prongs of the *Lemon* test and is in violation of the Establishment Clause.

In addition to failing the *Lemon* test, the Board's prayer practice unduly coerces Hendersonville citizens into partaking in Christian prayer practices for two reasons. First, it indirectly pressures attendees to follow its prayer practice by requiring Hendersonville residents to attend meetings in order to appeal the Board's administrative decisions. At these meetings, the Board instructs the public to "bow their heads" in observation of prayer, to "reflect" upon their sins, and to acknowledge themselves as "God's people." Second, one of the Board's commissioners verbally berated a Hendersonville citizen who expressed her concern over the Christian-dominated prayer practice. In doing so, the commissioner emphasized that the citizen's concerns were unwarranted because America is a Christian country. The Board has placed direct and indirect coercive pressures on Hendersonville and its residents, therefore, this Court should affirm the Thirteenth Circuit's holding.

ARGUMENT

I. THE BOARD'S PRAYER PRACTICE VIOLATES THE ESTABLISHMENT CLAUSE BECAUSE IT DOES NOT FALL WITHIN THE TRADITION OF LEGISLATIVE PRAYER AUTHORIZED IN MARSH AND TOWN OF GREECE AND IT PROSELYTIZES CHRISTIANITY AT THE EXPENSE OF MINORITY RELIGIONS.

The First Amendment does not protect speech that would amount to a constitutional violation, if not for its historical foundation. *See Town of Greece, N.Y., v. Galloway*, 134 S. Ct. 1811, 1819 (2014). History is of no help to the Petitioner. Without the cloak of history and tradition, the Board's government-sponsored, government-composed, and government-directed prayers violate the Establishment Clause.

Even if this Court expanded the legislative-prayer exception to encompass government official led prayer, the Board's practice still violates the Establishment Clause because it proselytizes and prioritizes Christianity at the expense of religious freedom. Ms. Pintok is a victim of the Board's unconstitutional religious agenda that proselytizes and prioritizes Christianity. *Marsh* and *Town of Greece* do not permit such proselytization and victimization. *Marsh v. Chambers*, 463 U.S. 783, 794–95 (1983); *Town of Greece*, 134 S. Ct. at 1825. Therefore, the Board's prayer practice falls outside of the narrowly applied history and tradition exception, and is in violation of the Establishment Clause.

A. There is No Long-standing Tradition of Parks and Recreation Board Commissioner-Led Prayer Before Public Meetings.

The Establishment Clause of the First Amendment guarantees protection against the mixing of government and religion. U.S. Const. amend. I. When the government puts its stamp of approval on a particular religion, it conveys a message of exclusion to all those who do not adhere to the favored beliefs. *See Lee v. Weisman*, 505 U.S. 577, 606 (1992). This Court has

narrowly held that prayers at state legislative sessions and town board meetings, led by religious leaders of different religious faiths, correspond with the history and tradition of this nation and are not in violation of the Establishment Clause. *Marsh*, 463 U.S. at 795; *Town of Greece*, 134 S. Ct. at 1815.

The Board's prayers are not protected by the *Marsh-Greece* history and tradition exception for two principal reasons. First, a fact sensitive review reveals that board commissioner-led prayer before parks and recreation board meetings significantly departs from the tradition of legislative prayer. Second, there is a constitutional difference between prayers led by government officials, acting on behalf of the state itself, and prayers led by religious leaders. For these two reasons, the Board's prayers fall outside of the exception carved out in *Marsh* and *Town of Greece.*

1. Board commissioner-led prayer does not comport with the history and tradition of legislative-led prayer authorized by this Court in *Marsh* and *Greece.*

The tradition of legislative prayer approved by this Court in *Marsh* and *Greece* is incompatible with the Hendersonville Parks and Recreation Board's prayer practices. In *Marsh*, this Court considered the constitutionality of chaplain-led legislative-prayer claim before state legislative sessions. 463 U.S. at 784. A state representative brought an action challenging the state legislature of Nebraska's practice of opening its sessions with a prayer offered by a chaplain. *Id*. In holding that chaplain-led legislative prayer is constitutional, this Court noted that "the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom" from "colonial times through the founding of the Republic and ever since." *Id.* at 786. Bolstering the conclusion that history supports legislative prayer, this Court reasoned that, because this nation's First Congress "made it an early item of business to appoint and pay

official chaplains" only days after the approving the language of the First Amendment, the Framers must have understood the Establishment Clause to permit invocations by legislative chaplains. *Id.* at 788; *see Town of Greece*, 134 S. Ct. at 1819.

Thirty years after *Marsh*, this Court again confronted the constitutionality of legislative prayer, this time, within the context of town board meetings. *Town of Greece*, 134 S. Ct. at 1816. In *Town of Greece,* the board invited volunteer religious leaders and lay people from differing faiths to deliver the invocations before town board meetings. *Id.* at 1819. For example, the board invited a Jewish layman, a Baha'i practitioner, and a Wiccan priestess to deliver the invocation. *Id.* at 1817. The board carefully steered away from providing guidance on the content or tone of the prayers. *Id.* at 1816. This Court narrowly approved the town's prayer practices, explaining that in order for a practice to survive an Establishment Clause challenge, history must show that *specific* practice is permissible. *Id.* at 1819 (emphasis added); *see Edwards v. Aguillard*, 482 U.S. 578, 583 n.4 (1987) (explaining that a historical approach is not useful in determining the proper roles between church and state when the activity was virtually nonexistent at the time the Constitution was adopted).

To that end, when evaluating whether the identified historical tradition of legislative prayer includes a specific prayer practice, courts must undertake a "fact-sensitive" inquiry. *Town of Greece*, 134 S. Ct. at 1825. In doing so, they must take into account "the setting in which the prayer arises and the audience to whom it is directed," the content of the prayer, and "the backdrop of historical practice." *Freedom From Religion Found., Inc. v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132, 1144 (9th Cir. 2018) (quoting *Town of Greece*, 134 S. Ct. at 1825).

The Ninth Circuit determined that a school board's policy of opening board meetings with Christian prayers was inconsistent with the tradition of legislative prayer. *Chino Valley*, 896 F.3d at 1147. A key consideration to the court's analysis was that school board meetings are an adjudicative forum for student discipline, and not solely a venue for policy-making. *Id.* at 1145. School boards, as a form of local government, exercise a level of control and authority over its students that is unlike the power wielded by a legislator. *Id.* at 1146.

Here, the Board can point to no historical practice which has licensed prayers before Parks and Recreation Board meetings. Similar to the school board in *Chino Valley*, the Board is the sole administrative body responsible for adjudicating citizens' requests and appeals. J.A. at 18. The Hendersonville Board does not create legislation. Petitioner also fails to draw a nexus between the long-standing tradition of praying before legislative sessions and *any* historical prayer practice before parks and recreation board meetings. In *Town of Greece*, this Court used the terms "history" and "tradition" more than 30 times, stressing that a practice's historical acceptance is paramount. *Town of Greece*, 134 S. Ct. at 1819–41; *see Kondrat'yev v. City of Pensacola, Fla.*, No. 17-13025, 2018 WL 4278667, at *8 (11th Cir. Sept. 7, 2018) (analyzing the frequency in which the *Town of Greece* court used the terms "history" and "tradition" in order to emphasize the importance of these concepts when applying the legislative prayer exception). History is of no help to the Board and the *Marsh-Greece* exception should not be extended to local government meetings that have no resemblance to a legislative session.

2. This Court has never addressed the constitutionality of board commissioner-led prayers offered before deciding matters of public business.

Not once in *Marsh* or *Town of Greece* does this Court describe a situation in which legislators themselves deliver the invocation. Indeed, this Court has never addressed the

constitutionality of lawmaker-led prayer. *Lund v. Rowan Cnty.*, 863 F.3d 268, 278 (4th Cir. 2017) (en banc). As such, the Thirteenth Circuit properly determined that government officials leading and composing prayer is precisely the type of activity that the Establishment Clause prohibits. J.A. at 21.

In *Lund*, the Fourth Circuit struck down a prayer practice in which a county board of commissioners opened its meetings with commissioner-led prayers. 863 F.3d at 275. The court explained that the identity of the prayer-giver is constitutionally significant. *Id.* at 280; *see Town of Greece*, 134 S. Ct. at 1826 (recognizing that this analysis would be different if town board members directed the public to participate in the prayers). In *Lund*, the county commissioners had a practice of opening each bi-monthly board meeting with an invocation. 863 F.3d at 272. At these meetings, the elected members of board composed and delivered prayers that were invariably and unmistakably rooted in the Christian faith. *Id.* The court explained that commissioner-led prayer is constitutionally different than the tradition of legislative prayer authorized in *Town of Greece*, because when government officials lead citizens in prayer, there is no distinction between the government and the prayer giver: they are one in the same. *Id.* at 281. The government blurred the line between church and state "to a degree unimaginable" to this Court in *Town of Greece* when they exclusively reserved the right to give the invocation to board members, thereby creating a "closed-universe" of prayer-givers. *Id.* at 277, 281.

Here, just as in *Lund*, the Board, acting in their official capacity, composes and delivers Christian prayers during public meetings. J.A. at 18; *compare Town of Greece*, 134 S. Ct. at 1822 (explaining that a factor in the Court's analysis was that the board members "neither edit[ed] [n]or approv[ed] prayers offered by the guest ministers"). This difference is not

superficial. The Fourth Circuit explained, that when board commissioners are the *only* available prayer givers, the constitutional risk is heightened. *Lund*, 863 F.3d at 278. As explained by the court in *Lund*, this risk is intensified by the fact that the Board considered individual petitions on the heels of commissioner-led prayers. *Id.* at 288. If this Court sustains the Board's prayer practice, where decision-makers direct citizens to join them in prayer before deciding the merits of their individual claims, it is hard to tell what, if any, protections are left of the First Amendment. Therefore, this Court should affirm the Thirteenth Circuit's decision in favor of Ms. Pintok, because allowing government officials to lead and compose prayer is precisely the type of activity that the Establishment Clause seeks to prohibit.

B. Even if This Court Decided to Expand the Holdings of *Marsh* and *Town of Greece* to Include Prayers Lead by Parks and Recreation Board Members, the Board's Prayer Practice Still Violates the Establishment Clause Because the Prayers Promoted in Hendersonville Proselytize and Prioritize Christianity at the Expense of Minority Faiths.

The Establishment Clause prohibits governments from conducting prayers in a public setting in order to prevent the government from advancing a preferred system of belief or moral behavior. *See Engel v. Vitale,* 370 U.S. 421, 430 (1962). If this Court extends the history and tradition exception established by *Marsh* and *Greece* to include government-selected prayers, the Hendersonville Park and Recreation Board's practice would still violate this Court's prohibition against using prayer to proselytize or disparage any faith or belief.

Standing alone, historical patterns cannot justify contemporary violations of constitutional guarantees. *See Marsh v. Chambers*, 463 U.S. 783, 790 (1983). The Board's exclusive use of Christian-based prayers pressures attendees to bow their heads and seeks to conduct business in a manner that is consistent with Jesus Christ's teachings. J.A. at 9. Through the prayer practice, the Board prostelytizes religion by promoting Christian morals and

teachings. J.A. at 19. The Board's failure to incorporate the prayers of any other religions exemplifies its sole preference towards the Christian faith. Prioritizing Christianity, while disparaging other faiths, violates the Establishment Clause regardless of whether it receives the stamp of approval from this Court's history and tradition analysis.

1. The Board proselytizes Christianity by its active role in the promotion of prayers rooted in the Christian faith.

The Board's prayer practice runs afoul of the First Amendment, by allowing its Board members to choose prayers that proselytize Christian values and principles. Prayer practices that fall under the history and tradition exception still violate the Establishment clause if there is "indication that the prayer opportunity has been exploited to proselytize . . . or to disparage any other, faith or belief." *Marsh*, 463 U.S. at 794–95. Courts consider the totality of the circumstances when determining if a government official has unconstitutionally proselytized a particular religion. *Town of Greece, N.Y., v. Galloway*, 134 S. Ct. 1811, 1852 (2014). Circuit courts have consistently held that references to the bible, Christian ideologies, and a board's exclusion of other faiths indicate proselytization that violates the Establishment Clause. *See Joyner v. Forsyth Cnty.*, 653 F.3d 341, 355 (4th Cir. 2011); *see also, Freedom From Religion Found., Inc. v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132, 1137 (9th Cir. 2018).

The Ninth Circuit decided that regardless of whether a prayer falls within the history and tradition exception, a board's practice of legislative prayer violates the Establishment Clause if it promotes a particular religion. *See Chino Valley*, 896 at 1144; *see also Mullin v. Sussex Cnty., Del.*, 861 F. Supp. 2d 411, 430 (D. Del. 2012) (upholding an injunction against a county board that allowed a board member to recite Christian prayers at the opening of meetings because the prayers prostelytized Christianity).

In *Chino Valley*, a board's practice of opening public meetings with prayers violated the Establishment Clause because the board proselytized Christianity. 896 F.3d at 1137. One prayer stated, "So that with one mind and one voice you may glorify the God and Father of our Lord Jesus Christ." *Id.* at 1141. The prayers included bible references and affirmations of Christian values. *Id.* at 1150. As such, the court found that these references proselytized Christianity and struck down the board's prayer practice. *Id.* at 1150–51.

The Fourth Circuit decided that a county board violated the Establishment Clause when the board proselytized the Christian faith by beginning meetings with strictly Christian, board member-lead prayers, and the prayers included specific Christian symbols and ideologies. *Joyner v. Forsyth Cnty., N.C.*, 653 F.3d 341, 348 (4th Cir. 2011). The prayers at issue in *Joyner* explicitly referenced foundational Christian themes, such as the "Cross of Calvary," "Virgin Birth," and the "Gospel of the Lord Jesus Christ." *Id.* at 349. The court in *Joyner* analyzed all of the prayers recited by the board in order to determine the percentage in which Christian deities were mentioned; of these prayers, all were rooted in Christianity and four-fifths mentioned Jesus. *Id.* at 353.

The court emphasized that "plant[ing] sectarian prayers at the heart of local government is a prescription for religious discord." *Id.* at 355. When determining whether prayers violate the constitution, the Fourth Circuit emphasized that, Constitutional prayers "share a common characteristic: they recognize the rich religious heritage of our country in a fashion that [is] designed to include members of the community, rather than to proselytize." *Turner v. City Council of Fredericksburg, Va.*, 534 F.3d 352, 355 (4th Cir. 2008).

The prayers recited by Hendersonville's government ignore the rich religious heritage of our country, exclude members of the community, and proselytize Christianity. Similar to

Joyner, the Board uses biblical symbols that proselytize the Christian faith. J.A. at 9. The prayers in question expressly mention the prophet Isaiah, God's "Healing Hand," and God's glory. *Id*. Far exceeding the use of Christian deities in *Joyner*, here, every prayer delivered by the Board mentions a Christian deity. Both boards have allowed government representatives, who hold power over the people they govern, to choose prayers that proselytize Christianity, in clear violation of the Establishment Clause.

The Board's decision, as a government entity, to use specific biblical references and to affirm Christian practices in the prayers recited, illustrate the same conventional framework that the board in *Chino Valley* used to promote religion. Both Boards designed prayers that mention a Christian heavenly power, emphasize that citizens need God to reconcile their sins, and seek to instill fear of God's glory and power. J.A. at 6. The Board in Hendersonville took a step further by summoning the public to stand and bow their heads. J.A. at 9. The Board explicitly directs Hendersonville citizens to give up their personal religious beliefs, in order to conform in a manner consistent with a Christian lifestyle. Therefore, the Board violated this Court's prohibition against using prayer to proselytize religion.

2. The Board's prayer practice is not protected by the legislative prayer exception because it prioritizes Christian-based prayers and disparages minority religions.

The Board's prayer selection process creates a religious hierarchy that places Christianity above all others. Instead of remaining impartial, the Board prioritizes Christianity while it explicitly disparages minority religions. In *Greece*, the governing body accepted prayers and clergy from all denominations and never disparaged citizens who practiced faiths other than Christianity. *Town of Greece, N.Y., v. Galloway*, 134 S. Ct. 1811, 1817 (2014). The Board's prayers are inconsistent with the standards set forth in *Greece* and *Marsh*. *Greece* and *Marsh* do

not permit governments to continually prioritize one religion, while disparaging others, regardless of who recites the prayer. *Id.* at 1814; *Marsh v. Chambers,* 463 U.S. 783, 795 (1983).

The Fourth Circuit held that a town council violated the Establishment Clause when it opened council sessions with prayers that frequently contained references to Christian ideologies and prioritized Christianity. *Wynne v. Town of Great Falls, S.C.*, 376 F.3d 292, 201 (4th Cir. 2004). In *Wynne*, a practicing Wiccan was berated and humiliated by a local town council, after expressing concerns about the council's prioritization of Christian prayers. *Id.* at 295. When she objected to the continuous use of Christian prayers, and proposed prayers from other religions, the mayor ignored her grievance and responded by saying that "[t]his is the way we've always done things and we're not going to change." *Id.*

In *Wynne*, the court decided that the council members' opportunities to select prayers "does not . . . provide the Town Council, or any other legislative body, license to prioritize its own religious views in preference to all others." *Id.* at 301. The Fourth Circuit further held that "[t]he First Amendment bars such official preference for one religion, and corresponding official discrimination against all others." *Id.* The court determined that the council crossed the line between an acceptable invocation and a prayer by ostracizing the citizen and failing to acknowledge her concerns. *Id.* at 298.

A county board's practice of exclusively reciting Christian prayers at public board meetings violates the prohibition against disparaging other religions. *See Williamson v. Brevard Cnty.*, 276 F. Supp. 3d 1260, 1289 (M.D. Fla. 2017); *see also*, *Hudson v. Pittsylvania Cnty., Va.*, 107 F. Supp. 3d 524 (D. Va. 2015) (holding that a county board violated the Establishment Clause when it only recited prayers from the Christian faith). The Thirteenth Circuit correctly emphasized that there is a momentous risk when the government favors one religion over others.

J.A. at 23. By prioritizing a certain religion, the government send "a message to non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O'Connor, S., concurring).

The commissioners of Hendersonville's Parks and Recreation Board abused their power by prioritizing the Christian faith. Unlike in *Greece*, the Board only recites Christian prayers and has never broadened its practice to include other denominations. The ostracization that Ms. Pintok suffered is strikingly similar to the harm suffered by the citizen in *Wynne*. As in *Wynne*, Ms. Pintok, a member of a minority religion, expressed discontent with the Board's exclusive use of Christian-based prayers. J.A. at 1. In response to Ms. Pintok's concerns, the Board disregarded her worries, and further declared that "this is a Christian country" and that she should "get over it." J.A. at 1. The Board's message is clear to practitioners of minority religions: If you are not Christian, you do not belong here.

The unencumbered Christian references within the Board's prayers demonstrates that the Board has endorsed an unconstitutional hierarchy of religions. The Board prioritizes one religion, while it disparages others, thereby violating the Establishment Clause.

II. THE THIRTEENTH CIRCUIT CORRECTLY UTILIZED THE *LEMON* TEST, THE DOMINANT TEST EMPLOYED BY COURTS WHEN ANALYZING THE CONSTITUTIONALITY OF GOVERNMENT SPONSORED RELIGIOUS ACTIVITY, WHEN IT STRUCK DOWN THE BOARD'S UNDULY COERCIVE PRAYER PRACTICE.

Government sponsored political division among religious lines is one of principal evils from which the First Amendment was intended to protect. *Lemon v. Kurtzman*, 403 U.S. 602, 622 (1971). Since this Court's decision in *Greece*, almost every Circuit has continued to utilize the *Lemon* test in Establishment Clause challenges. Applying the *Lemon* test here, the Board's

prayer practice does not survive constitutional scrutiny for three reasons: (1) it serves a non-secular purpose because it exclusively promotes Christian values; (2) advances Christianity by directing the public to conduct business consistent with the Bible's teachings; and, (3) it overtly seeks Christian-based guidance on how to conduct its meetings and handle public business, thereby entangling government with religion.

Separate and apart from the *Lemon* test analysis, this Court has held that proof of coercive pressure, while not required is sufficient to demonstrate an Establishment Clause violation. *See Lee v. Weisman*, 505 U.S. 577, 604 (1992). In addition to failing the *Lemon* test, the Board's prayer practice directly and indirectly coerces Hendersonville citizens into partaking in Christian prayer practices in two ways. First, the Board indirectly pressures attendees to follow its prayer practice by requiring Hendersonville residents to attend meetings in order to appeal the Board's administrative decisions. Second, the Board verbally berates citizens who express concerns regarding the Christian-dominated prayer practice, thereby directly pressuring Hendersonville citizens to accept Christian values and participate in religious led decision-making. As such, the Board has placed direct and indirect coercive pressures on Hendersonville and its residents, therefore, this Court should affirm the Thirteenth Circuit's order of summary judgment in favor of Ms. Pintok.

A. Because the Legislative Prayer Exception Established in *Marsh* and *Town of Greece* is Inapplicable Here, this Court Should Consider the Thirteenth Circuit's Analysis Under the *Lemon* test.

Every analysis in this area must begin with consideration of the cumulative criteria developed by this Court over many years. *See Lemon*, 403 U.S. at 612. Under the *Lemon* test, in order to pass constitutional muster, a governmental practice must (1) have a secular governmental purpose; (2) its principal effect must neither inhibit nor advance religion; and (3) it

must not foster an excessive entanglement with religion. *Id*. State action violates the Establishment Clause if it fails *any* of these prongs. *See Edwards v. Aguillard*, 482 U.S. 578, 583–85 (1987). The Thirteenth Circuit properly recognized the dominance and reliability of the *Lemon* test when it struck down the Board's prayer practice because it failed to meet the standards set forth by this Court in *Lemon*. J.A. at 21-24. Because the Board's prayer practice fails to meet every element of the *Lemon* test, a standard that has remained dominant in courts' analyses of prayer practices, the Board violated the Establishment Clause.

1. The *Lemon* test remains dominant in Establishment Clause jurisprudence.

The *Lemon* test remains the principal method to analyze Establishment Clause challenges. *See Santa Monica Nativity Scenes Comm. v. City of Santa Monica*, 784 F.3d 1286, 1299 n.7 (9th Cir. 2015). Indeed, since this Court's decision in *Greece*, almost every Circuit has continued to utilize the *Lemon* test when analyzing an Establishment Clause challenge.[1] As the Thirteenth Circuit explained, when the legislative-prayer exception is inapplicable, courts should rely on this Court's leading Establishment Clause test. J.A. at 21.

In the wake of this Court's extension of the chaplain-led legislative prayer exception to town board meetings, courts have been hesitant to broaden this exception in areas where no long standing tradition of legislative prayer exists. *See Chino Valley*, 896 F.3d at 1145. For example, after explaining that there was no long-standing tradition of prayer before school board meetings, the Ninth Circuit applied the *Lemon* test to analyze an Establishment Clause challenge *instead* of the *Marsh-Greece* exception. *Id.* at 1148; *see Williamson v. Brevard Cnty.*, 276 F. Supp. 3d

[1] *See Am. Atheists, Inc., v. Port Authority of N.Y. and N.J*, 760 F.3d 227, 238 (2d Cir. 2014); *Tearpock-Martini v. Borough*, 674 Fed.Appx. 138, 141 (3d Cir. 2017); *Am. Humanist Ass'n v. Md.–Nat'l Capital Park & Planning Comm'n*, 874 F.3d 195, 204 (4th Cir. 2017); *Harkness v. Sec'y of Navy*, 858 F.3d 437, 447 (6th Cir. 2017); *Mayle v. United States*, 891 F.3d 680, 687 (7th Cir. 2018); *Freedom From Religion Found., Inc. v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132, 1148 (9th Cir. 2018); *Felix v. City of Bloomfield*, 841 F.3d 848, 856 (10th Cir. 2016); *Kondrat'yev v. City of Pensacola, Fla.*, No. 17-13025, 2018 WL 4278667, at *3 (11th Cir. Sept. 7, 2018).

1260, 1273 (M.D. Fla. 2017) (striking down a county board of commissioners' practice of delivering prayers before board meetings after determining that its practice violated the entanglement prong of the *Lemon* test).

Indeed, this Court has recognized that the legislative prayer exception needs to be applied narrowly. *Town of Greece, N.Y., v. Galloway*, 134 S. Ct. 1811, 1834 (2014). In *Greece*, Justice Alito concurred to address the principal dissent's concern that the majority's holding would result in a broad application of the legislative prayer exception. *Id.* To be sure, Justice Alito expressed that he was "concerned that at least some readers" might interpret that the Court's opinion as leading us to a "country in which religious minorities are denied equal benefits of citizenship." *Id.* In upholding the town's chaplain-led prayer practice this Court explained that "[n]othing could be further from the truth. All that the Court does today is to allow . . . a practice that we have previously held is permissible for *Congress* and *state legislatures*." *Id.* This Court's narrow approval of the specific prayer practice at issue in *Greece*, coupled with its focused concurrence addressing the potential ripple-effect of a broad application of the legislative prayer exception, supports the proposition that this exception should be reserved for instances in which a long-standing tradition exists. Therefore, in the absence of such a tradition, this Court should rely on the *Lemon* test to guide its analysis.

2. The Board's prayer practice serves a clearly religious purpose by its promotion of Christian values, its requests for citizens to conduct business consistent with the Bible's teachings, and its search for God's guidance on how to handle public business, leaving no separation between church and state.

Although the Board purports that the prayer practice solemnizes public business, in reality, the prayers advance Christianity and serve a non-secular purpose. The prayer practice fails the *Lemon* test because the Board entangles itself within the Christian church. The Board's

actions speak louder than its words. The Board fails *Lemon*'s three prong test reciting exclusively Christian prayers, encouraging the public to lead a Christian-based lifestyle, and using their positions of power to promote Christianity instead of focusing on administrative responsibilities.

a) The Board's prayer practice serves a clearly religious purpose because it exclusively promotes Christian values.

The circumstances that surround the Board's prayer practice illustrate a clearly religious, non-secular purpose. Governments violate the first prong of the *Lemon* test when its actions serve a non-secular purpose. *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971). Under the guise of a county board proceeding, the Board conducts itself as if it were presiding over a Christian congregation. The Board's actions overshadow the Board members' claims, that the prayer practice is intended to solemnize public business. J.A. at 2–6. The Board's solely focuses on Christian deities, customs, and ideologies, thereby

This Court held that a school's practice of providing time during the day to allow students to pray served a non-secular purpose. *Wallace v. Jaffree*, 472 U.S. 38, 65 (1985). Even though an individual's decision to pray during the moment of silence was voluntary, the practice served a non-secular purpose because school leaders encouraged students to participate. *Id.* at 84. The finding of a clearly religious purpose is "inescapable" when the government-official exhorts individuals to participate in the prayer. *Id.* at 73. While this Court has narrowly held that some religious governmental practices serve a secular purpose, the prayer practice in *Wallace* served a non-secular purpose because the school implemented the moment to specifically allow for a time of Christian-based prayer. *Id*.; *see also*, *Lynch v. Donnelly*, 465 U.S. 668, 685 (1984) (placing a Christmas créche in front of a city hall served a secular purpose because it was a "passive reminder" of the history of Christianity).

The Board's prayer practice exudes a non-secular purpose that significantly departs from Constitutionally approved, secular practices. The Board members claim that the purpose of its prayer practice is to solemnize business. J.A. at 2–6. However, prayers that direct citizens to bow their heads, reflect upon their sins, and act in conformity with the Christian deity are in sharp contrast from this alleged secular purpose. J.A. at 2–6. Further confirming the religious purpose of its practice, one of the Board's commissioners publicly degraded Ms. Pintok, after she raised concerns regarding the Christian bend to the Board's prayers. He was careful to make sure that Ms. Pintok knew that "this is a Christian country" and if she had an issue with it she ought to look elsewhere. J.A. at 1.

As in *Donnelly*, the Board members serve as advocates for the Christian faith and promote a non-secular purpose. The purpose of the prayers proclaimed by the Board significantly depart from the purpose of holiday nativity scenes. Instead of serving as a "passive reminder," the Boards' prayer practice actively encourages attendees to participate in the prayer. The Board's prayer practice does not serve a secular purpose, in fact the Board emphasized the importance of Christianity, and therefore, fails the first prong of the *Lemon* test.

b) The Board's prayer practice advances the Christian faith and inhibits minority religions because it directs the public to conduct business consistent with the Bible's teachings and encourages citizens to attempt to live up to the expectations of "the careful hand of the Father and his son Jesus Christ."

The Board has violated the Establishment Clause by exclusively endorsing Christian prayers, and by inhibiting members of minority religions. To pass Constitutional muster, a government practice must have a primary effect that neither advances nor inhibits religion. *See Lemon*, 403 U.S. at 612. A government practice that endorses religion violates the Establishment

Clause if a reasonable person could determine that the government's practice favors one religion. *Doe v. Beaumont Indep. Sch. Dist.*, 240 F.3d 462, 464 (5th Cir. 2001).

The Third Circuit ruled that a board's practice of opening public meetings with exclusively Christian prayers violated the second prong of the *Lemon* test. *Doe v. Indian River*, 653 F.3d 256 (3d Cir. 2011). In an attempt to avoid Constitutional challenges, the board in *Indian River* provided a disclaimer, within its prayer policy, stating that the prayer was not intended to advance a certain religion. *Id.* at 262. However, the Third Circuit explained that when the board asked Jesus to "to guide and direct us . . . in our decision-making" the board advanced and endorsed Christianity, even though their policy did not require the public to participate. *Id.* at 285. The Court held that the disclaimer did not excuse the board's violation of the Establishment Clause because a reasonable person would conclude that the primary effect of asking for the Lord's guidance and blessings was to endorse Christianity. *Id.* at 287.

The Board's prayer practice functions as more than a call for political harmony, the prayer practice summons the citizens of Hendersonville towards the Christian faith. Similar to *Indian River*, here, the Board asks for God's blessings and encourages the community to believe that God will be able to solve the community's problems. J.A. at 9. The Board Chairman claims that the prayer practice is intended to set a serious tone in which to conduct business; however, these claims are unable to reconcile with the fact that the prayers direct the public to conform to the Christian faith. J.A. at 2. The Board inhibited and instilled fear into Ms. Pintok, a member of a minority religion, from participating in public business. Therefore, the Board's prayer practice both endorses Christianity and inhibits community members of minority faiths, thereby violating the Establishment Clause.

c) The Board explicitly seeks Christian-based guidance on how to conduct its meetings and handle public business, thereby entangling government with religion.

The Board members entangle their Christian values in a position in which the public entrusts them to remain impartial. Prong three of *Lemon* establishes that a governmental practice is unconstitutional if it fosters an "excessive entanglement with religion." *Lemon*, 403 U.S. at 612. As this Court has held, there is no hard line at which a government has become entangled with religion, rather this line "is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship." *Id.* at 614; *see Lynch v. Donnelly*, 465 U.S. 668, 684 (1984) ("Entanglement is a question of kind and degree."). The Board has excessively entangled church-based values, with state decisions by strictly reciting Christian prayers that compel the Board and its attendees to "conduct business in a way consistent with" Christian teachings. J.A. at 19. Further, the Board looks to God to "guide" it as it presides over each meeting, thereby intertwining government decisions with God's guidance. J.A. at 19.

The Fourth Circuit found an excessive entanglement of church-and-state, when a military institute's composed, mandated, and monitored prayer practice constituted religious worship. *Mellen v. Bunting*, 327 F.3d 355, 375 (4th Cir. 2003). In *Mellen*, the Fourth Circuit determined that, by incorporating the terms "Almighty God," "Father God," and "Heavenly Father" in daily prayers, as well as by asking for God's blessing over the institute's students, the military institute had entangled Christian values with its governmental function as a military organization. *Id.* at 362–75. Even though the institute's students were not required to bow their heads, close their eyes, or recite the prayers in question, the *Mellen* court determined that instituting these Christian-based themes was sufficient to show an entanglement of religious values throughout what should have been a secular organization. *Id.*

The Sixth Circuit found that a school board had engaged in excessive entanglement by including prayers before its public meetings, and by having the board's president personally deliver prayers to the board's audience. *Coles ex rel. Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369, 385 (6th Cir. 1999). The board's meetings were open to the public and its prayers included references to fundamental Christian values and teachings. *Id.* at 372–73. Specifically, the board, through prayer, asked for God's "involvement in [their] proceedings" and to "give [their] leaders . . . [the] understanding . . . [and] knowledge . . . [to do their] best for [their] children and city." *Id.* at 373.

The Board, through its prayer practice, has excessively entangled Christian values and themes into what should otherwise be a secular governmental-group. Like in *Mellen*, the Board's prayers exclusively make references to "Jesus Christ," "Almighty God," and to biblical texts, such as the "book of Isaiah." J.A. at 9. The Board has not included references to any other religious themes or values, other than Christianity. Furthermore, the Board asks God to "help" it "make good decisions," and for God to bless it as it "conducts [its] work." J.A. at 9. These prayers far exceed the constitutional threshold of tradition-based prayer, entering into levels of entanglement that permeate through every facet of the Board's decision-making process.

The board members' exploitation of their position of power in *Cole* and here, combined with the Board's exclusive reliance on Christian ideologies throughout its prayer practice, demonstrate that the Board has interwoven Christianity with the core of its operation. As such, the Board's prayer practice oversteps the line of acceptable prayer, as laid out by this Court, and violates the Establishment Clause.

B. Separate and Apart from the *Lemon* Test Analysis, the Board's Prayer Practice Violates the Establishment Clause Because it Directly and Indirectly Coerces Hendersonville Citizens into Participating in Christian Prayer Immediately Before the Board Adjudicates their Request.

This Court has held that proof of coercive pressure, while not required, is sufficient to demonstrate an Establishment Clause violation. *Lee v. Weisman*, 505 U.S. 577, 604 (1992). When expanding on the notion of religious-based coercive pressure, this Court has established that "at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Id.* at 587. Further, courts have held that the "intimate setting" of a municipal board, much like the Board in question, presents a "heightened potential for coercion" when conducting prayers before their general body meetings. *Lund v. Rowan Cnty., N.C.*, 868 F.3d 268, 287 (4th Cir. 2017); *see Williamson v. Brevard Cnty.*, 276 F. Supp. 3d 1260, 1290–91 (M.D. Fla. 2017). The Board coerces its citizens to participate in prayer by: (1) indirectly pressuring attendees to follow its Christian-dominated prayer practice and explicitly requiring attendees to bow their heads for prayer purposes; and, (2) verbally harassing Hendersonville citizens who express concerns over the Board's prayer practice.

When narrowly defining what is not allowed in prayers conducted before government-led meetings or forums, this Court has held that prayers may not be used to praise the virtues of one faith and may not cast other faiths, or other believers, in a negative light. *Town of Greece, N.Y., v. Galloway*, 134 S. Ct. 1811, 1823 (2014). In a plurality opinion, Justice Kennedy established the leading test in which courts can measure coercion, explaining that coercion exists "if town board members direct[] the public to participate in the prayers, single[] out dissidents for opprobrium, or indicate[] that their decisions might be influenced by a person's acquiescence in the prayer opportunity." *Id.* at 1827. Although it has been held that courts have no role in judging whether individual prayers satisfy this test, they can examine a "a pattern of prayer" in

order to determine whether said prayers were coercervie enough to violate the Establishment Clause. *Id.*

Although *Town of Greece* resulted in a plurality opinion that proposed two primary tests for courts to apply when measuring coercive pressure, Justice Kennedy's opinion for the plurality is considered the controlling test. *See Smith v. Jefferson Cnty. Bd. of Sch. Comm'rs*, 788 F.3d 580, 602 n.9 (6th Cir. 2015) (concluding that Justice's Kennedy's coercion test "is controlling on the lower courts, as it is narrower than the accompanying two-justice concurring opinion"). Further demonstrating that Justice Kennedy's test prevails, this Court has held that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977).

1. The Board indirectly pressures attendees to follow its prayer practice by requiring Hendersonville residents to attend meetings in order to appeal the Board's administrative decisions.

By instituting an appeal process that requires Hendersonville citizens to attend the Board's public meetings, it inadvertently has required citizen attendance, thereby exposing them to indirect coercive religious pressures. As outlined by this Court, one way in which an individual can be exposed to indirect coercion is when the government "places subtle and indirect public and peer pressure on [attendees] . . . to stand as a group or maintain respectful silence during the invocation and benediction." *Lee v. Weisman*, 505 U.S. 577, 578 (1992); *see Myers v. Loudon Cnty. Pub. Sch.*, 418 F.3d 395, 406 (4th Cir. 2005) ("[I]ndirect coercion may be unconstitutional when government orchestrates the performance of a formal religious exercise in

a fashion that practically obliges the involvement of non-participants.") (internal quotations omitted).

In *Lee*, this Court held that implicit pressure rises when government officials require an individual to attend an event. *Lee*, 505 U.S. at 592. Although the *Lee* court focused on prayer within a public school setting, it noted that "prayer exercises in public schools carry a particular risk of indirect coercion[, however] . . . [this] concern *may not be limited to the context of schools*." *Id.* at 592 (emphasis added). Despite the school's "good faith . . . in attempting to make [a] prayer acceptable to most persons . . . by requiring attendance at an event at which there would be unwelcome prayers, the state was proselytizing and, perhaps, engaging in some form of religious coercion." *Id.* at 588–89.

When applying the holding in *Lee*, courts have consistently held that prayers conducted in environments where attendance is mandatory, or even "technically mandatory," can be indirectly coercive, thereby violating the Establishment Clause. *See Joyner v. Forsyth Cnty., N.C.*, 653 F.3d 341, 354 (4th Cir. 2011); *and Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 272 (3d 2011); *Wynne v. Town of Great Falls, S.C.*, 376 F.3d 292, 295 (4th Cir. 2004). As discussed herein, the Fourth Circuit found an Establishment Clause violation, as well as coercive pressures, when a city council engaged in an unconstitutional prayer practice. *Wynne*, 376 F.3d at 301. The citizen in protest stated that she felt "on the spot" and "wanted to show respect" during the council's prayers, out of fear that she would be singled out for not participating. *Id.* at 295.

This Court has held that "subtle coercive pressures exist . . . where [an individual] . . . had no real alternative which would have allowed [him or] her to avoid the fact or appearance of participation." *Lee*, 505 U.S. at 588. By requiring Hendersonville citizens to attend Board meetings in order to engage in the Parks-and-Recreation appeals process, and by requiring its

attendees to "bow [their] heads" in prayer, the Board indirectly coerces its attendees to participate in uninvited religious based activities. J.A. at 9.

Each meeting, the Board of commissioners takes turns reading prayers to its attendees. J.A. at 23. This practice incites indirect coercive pressure on citizens to participate in its prayer practice because the Board is the administrative body responsible for reviewing a citizen's requests or concerns. Despite its alleged good faith in conducting these prayers, the Board's authority over the citizens of Hendersonville subtly urges attendee participation. Much like in *Wynne*, by failing to comply, citizens face a fear of being singled out by the Board and are thereby unduly coerced into taking part in a extraneous religious exercise. Further, the Board explicitly requires attendees to bow their heads when beginning its prayer practice. J.A. at 19. Once again, when considering the Board of commissioners' administrative power, attendees inadvertently face a significant level of indirect pressure to participate, thereby violating the coercive standards established in *Lee*. Thus, this Court should affirm the Thirteenth Circuit's finding that the Board's prayer practice was coercive and in violation of the Establishment Clause.

2. The Board directly pressured Ms. Pintok to participate in its prayer practice when one of the Board's commissioners verbally berated her for expressing her concern over the Christian-dominated prayer practice.

Courts have found that government officials or representatives can directly coerce others through their words or actions. *See Wynne*, 376 F.3d at 300. In *Wynne*, aside from underlying indirect coercive pressures, the Fourth Circuit found that the council's response to a citizen's protest established direct coercive pressures. *Id*. When an attendee began to protest the city council's prayer practice, she was singled out by members of the council and other citizens. *Id*.

at 295. Council members said things such as "I guess some people aren't going to participate," she "wasn't wanted," and that she "should leave town." *Id.*

Similarly to *Wynne*, the Board has responded to Ms. Pintok's concerns over its prayer practice by verbally berating her and ostracizing her. After voicing her concerns about the Board's prayer practice, one of its commissioners told her that this is a "Christian country" and that she should "get over it." The Board's insensitive and unprofessional response to Ms. Pintok's concerns has created direct coercive pressure on her to either tolerate the Board's unconstitutional prayer practice, or to leave Hendersonville. This response, in combination with the overarching indirect coercive pressures created by the Board, render no other conclusion other than the fact that the Board has engaged in coercive behavior, in violation of the Establishment Clause.

CONCLUSION

Ms. Pintok was raised in the Christian faith, made the conscious decision to leave Christianity, and found solace in a new method of religious worship. The right of religious freedom is a fundamental right, one which runs deep through the foundation of our society. When Ms. Pintok raised concerns regarding the Board's unconstitutional prayer practice, the Board responded with vitriolic opposition. Because the Board's prayer practice is government-sponsored, government-composed, and government-directed, bearing no resemblance to the practices authorized by this Court in *Marsh* and *Greece*, Ms. Pintok respectfully asks this Court to affirm the entry of summary judgment in her favor.