US Supreme Court backs prayer at town meetings

Ed Hightower
6 May 2014

On Monday, the Supreme Court of the United States upheld a town's practice of beginning each of its monthly public meetings—that is, all but four such meetings in a period spanning more than a decade—with a Christian prayer, marking a new milestone in the court's attack on democratic rights and generally rightward trajectory. *Town of Greece v. Galloway*, as Monday's case is titled, prepares the way for further dismantling the principle of separation of church and state.

A 5-4 plurality opinion written by the supposedly moderate justice Anthony Kennedy found that the town's practice over ten years gave "no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief."

Monday's ruling overturns the opinion below, coming from the US Court of Appeals for the Second Circuit. The Second Circuit had previously overturned the trial court, which initially ruled for the town on a motion for summary judgment.

(In federal courts in the United States a motion for summary judgment is a conclusion by the court that the plaintiff's case cannot prevail under established legal precedent, even if it proves all of the facts which the other side disputes. Thus, if this author were to sue the *New York Times* for failing to print a letter to the editor, a federal court could dismiss the case on summary judgment, as there is no legal obligation that the *Times* should publish any given letter to the editor).

In overturning the trial court's ruling, the Second Circuit found that the town of Greece's prayer program would convey to any reasonable outside observer that the town was endorsing Christianity and "ensured a Christian viewpoint." In that opinion, the court considered the number of Christian ministers who were invited to be "chaplain of the month" and the frequency with which they referred to uniquely Christian doctrines. The chaplains asked that those present at the town meetings to participate in the prayers, asking them to bow their heads or join in prayer, or otherwise made the religious act seem like an integral, government-approved part of the public meetings.

The Second Circuit went out of its way to strictly limit its ruling in *Town of Greece* to the specific circumstances of that case, where a mountain of undisputed facts tended to show a governmental preference for Christianity at official proceedings, i.e., an establishment of religion. The ruling did not challenge the prevailing legal precedent that governing bodies, including state legislatures and even the US Congress itself, could commence proceedings with a prayer, even a Christian one and, in the case of the Congress, could even pay for this religious service without offending the 1st Amendment of the US Constitution.

That great bulwark against religious and governmental tyranny, the law of the land since 1789, reads in pertinent part:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;"

This sentence is known as the Establishment Clause. Since the time of its drafting and into the present, the Establishment Clause has garnered the ire of bigots and obscurantists of every stripe. Perhaps no other sentence in the US Constitution has been more misinterpreted, downplayed, and emasculated by the federal courts, including the US Supreme Court.

Justice Kennedy's decision in *Town of Greece* was supported in full by chief justice John Roberts, and in part by Justices Antonin Scalia, Clarence Thomas and

Samuel Alito. The latter four justices comprise a vociferous and reactionary block which frequently finds a willing partner in its ravings in the "moderate" Kennedy. Justices Ruth Bader Ginsburg and Sonya Sotomayor joined in the dissenting opinion written by Elena Kagan. Justice Stephen Breyer wrote his own concurring opinion that offers support for Kagan's opinion.

The Supreme Court justices, all of them, fundamentally agreed that opening governmental proceedings with a religious prayer, even an overtly sectarian one, was constitutional, if not desirable. In that regard, the opinions, dissents and concurrences ranged from openly pro-establishment of religion (Scalia and Thomas) to reactionary (Alito) and far right (Kennedy and Roberts) to conservative (Breyer, Kagan, Ginsburg and Sotomayor). Nothing that can be described even as "liberal" came from the pen of any justice sitting on the court.

The right-wing justices exploited the conflicted and contradictory history of the Establishment Clause to claim that the prayer in legislative or municipal meetings was an entrenched and time-honored American tradition. Kennedy made the specious argument that the town's prayer procedure passed constitutional muster under the prevailing case *Marsh v. Chambers*, which upheld the Nebraska state legislature's practice of paying a chaplain to give nondenominational prayers each morning.

Kagan's dissenting opinion, while refuting Kennedy's claim, engages in cowardly hairsplitting, suggesting that the law must apply differently to town meetings than it does to a legislative session. It is clear that the erstwhile liberals feel that the reactionaries are pushing things too far, too fast, too obviously, but they offer no serious opposition.

A principled approach to the issue would find that the mixing of government and religion, no matter how seemingly mild or historically tolerated, is repugnant to Establishment Clause. As a matter of historical fact, the separation of church and state has been on the banner of every modern democratic revolution. This principle takes aim at the privileges of the aristocracy and insists that the basis for government is not the divine right claimed by kings, but the will of the people.

One shudders to dwell on the concurrence by Thomas and Scalia. "As an initial matter, the Clause probably prohibits Congress from establishing a national religion," it begins. The remainder is a pseudo-scholarly and historically bogus argument that the Establishment Clause does not apply to religion established by *state* governments. Under this "theory" every state in the union could establish a religion in perfect accordance with the federal constitution, and only the federal Congress would be prohibited from doing likewise, or probably anyway.

As maniacal as it sounds, this line of reasoning has a certain predictive value, pointing at what certain sections of the US ruling class believe would best serve their interest: a federalized theocracy.

As we have commented previously, it is profoundly significant that the Obama administration intervened in this case in support of the Town of Greece. The administration's position in no way diverges from its general and thorough attack on democratic rights, regarding domestic spying, drone assassinations, opposition to contraception, criminalization of journalism and the like. It likewise is in sync with the administration's continuous efforts to politically placate and encourage the most right-wing influences in American political life.

The high court ruling provides one more verification that the social chasm between the rich and poor in American society, its defining feature, is rapidly exploding the official democratic legal trappings of an earlier era.