QUESTIONS PRESENTED

The petition for a writ of certiorari before judgment presents the same issues that Petitioners presented in their District Court suit:

1. Are the Central Perk Town Council's legislative prayer policy and practices constitutional when the Town Council Members either deliver their invocations themselves or select their own personal clergy to do so, and the invocations have been theologically varied but exclusively theistic?
2. Are the Central Perk Town Council's prayer policy and practices unconstitutionally coercive of
    a) All citizens in attendance where several invocations included language implying the supremacy of sectarian dogma, or
    b) High school students who were awarded academic credit for presenting at meetings where their teacher also was a Council member who gave an invocation?

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STATEMENT OF THE CASE

Ross Geller, Dr. Richard Burke, Lisa Kudrow, and Phoebe Buffay, (collectively, Plaintiffs) are residents of Central Perk Township. R. at 1. Plaintiffs initiated this action under 42 U.S.C. § 1983, seeking a permanent injunction against the Central Perk Town Council's (Council) practice of prayer before its monthly meetings. Id.

Central Perk Township is governed by a Council consisting of seven members. Id. When the present issues arose the Council Members included Joey Tribbiani (Tribbiani), Rachel Green (Green), Monica Geller-Bing (Geller-Bing), Chandler Bing (Bing), Gunther Geffroy (Geffroy), Janice Hosenstein (Hosenstein), and Carol Willick (Willick). Id. Tribbiani was Chairman of the Council. Id.

Green, in addition to being a Council member, is also a teacher at Central Perk High School. R. at 4. The classes taught by Green, American history and a seminar in American Government. Id. While not a required class, the seminar in American Government is very popular among students. Id. Green offers her students a single method of extra credit: if there is an election campaign underway, students are awarded five extra credit points to their final grade for volunteering for the political candidate of their choice for a minimum of fifteen hours. Id. However, in the absence of an election campaign, students may earn the five extra credit points by writing a three-page letter to their federal or state representatives, setting forth their issue on a current political issue. Id.

In September 2014, the Council adopted a policy allowing for prayer invocations before the commencement of each meeting. R. at 2. The policy contained the following preamble:

> Whereas the Supreme Court of the United States has held that legislative prayer for municipal legislative bodies is constitutional;
> Whereas the Central Perk Town Council agrees that invoking divine guidance for its proceedings would be helpful and beneficial

> to Council members, all of whom seek to make decisions that are in the best interest of the Town of Central Perk; and, Whereas praying before Town Council meetings is for the primary benefit of the Town Council Members, the following policy is adopted.

Id. This policy would be conducted by writing all of the Council member names, with the exception of Geffroy, on slips of paper to be placed in an envelope. Id. At each meeting, a slip would be chosen from the envelope. Id. The selected Council member may then either offer the prayer or invocation personally or select a minister from the community to offer the invocation on their behalf. Id. Members may choose to omit any invocation. Id. If a selected Council member opts for a minister from the community to give the invocation, the Council member may not review or provide guidance on the minister's choice of invocation. Id. The invocations given represented the Church of Jesus Christ of Latter-Day Saints, the Muslim faith, the Baha'I faith, and the Evangelical Christian faith. R. at 3.

In November 2014, a second policy was adopted. R. at 4. This policy provided that at each monthly Council meeting, three of Green's students would make five-minute presentations advocating against or for measures currently under the Council's consideration. Id. Students were not required to give these presentations, however this followed Green's singular method of extra credit in the absence of an underway election campaign.

During the 2015-2016 academic year, four students from Green's class who chose to give presentations to the Council were sons or daughters of the individual Plaintiffs. Id. During the October 6, 2015 Council meeting, Ben Geller, son of Plaintiff Ross Geller, made one such presentation. Id. For this meeting, Green's name had been selected to give the invocation. Id. Green's invocation involved a prayer to Buddha, acknowledging his "infinite wisdom." R. at 5. Plaintiff Geller, a member of the evangelical Christian church of New Life Community Chapel (New Life), became upset at Green's invocation. Id. Plaintiff Geller believed Green's invocation

to support a "fake god," while at the same time making "a mockery of the purpose of legislative prayer." Id.

Following the October 6, 2015 meeting, the three other Plaintiffs, Dr. Burke, Lisa Kudra, and Phoebe Buffay (Atheist Plaintiffs) had sons or daughters give presentations to the council. Id. The Atheist Plaintiffs are all members of the Central Perk Freethinkers Society. Id. Dr. Burke's son, Timothy, presented to the Council on November 4, 2015. Id. President Minsk, the Branch President of the Church of Jesus Christ of Latter-Day Saints, gave the invocation. Id. President Minsk prayed that none in attendance would reject the "Heavenly Father." Id.

At the February 5, 2016 Council meeting, Buffay's daughter, Leslie, gave a presentation to the Council. Id. President Minsk also gave the invocation at this meeting, praying and asking for the restoration of New Jerusalem. Id. Finally, at the May 8, 2016 Council meeting, Kudrow's son, Frank Jr., presented to the Council. Id. The invocation at this meeting was given by a New Life pastor. Id.

Geller filed a complaint on July 2, 2016, alleging that Green's invocation violated the Establishment Clause as a coercive endorsement of religion. Id. In addition, Geller's son felt forced to pray to a Baha'I divinity against his conscious. Id. Geller further alleged that Green, in her role as a teacher, was required to abstain from either coercing students in her class to attend Council meetings or offering an invocation publicly endorsing the Baha'i religion. Id.

Furthermore, the Atheist Plaintiffs filed a separate lawsuit on August 30, 2016, alleging that the Council's legislative prayer policy violated the Establishment Clause due to the Council's practice of giving invocations themselves or selecting their own personal clergy. Id. Their suit further alleged that in having exclusive control over the invocations, the Council member's actions resulted in discrimination against non-theistic faiths. Id.

In addition, the Atheist Plaintiffs also alleged that the prayers made at the Council meetings were unconstitutionally coercive of citizens in attendance at the meetings. R. at 6. Finally, Atheist Plaintiffs also alleged that the legislative prayers given at the Council meetings unconstitutionally coerced their children into religious activity, as this was the exclusive means of extra credit offered to Green's American Government class. Id.

All Plaintiffs sought injunctive and declaratory relief of their respective claims. Id.

STATEMENT OF JURISDICTION

The judgment of the district court was entered on February 17, 2017. A notice of appeal was filed on March 15, 2017 and the case was docketed in the court of appeals on January 21, 2018 (13th Cir., No. 17-143). Petitioners filed a petition for a writ of certiorari after judgment on August 1, 2018. 28 U.S.C. § 210(e). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

SUMMARY OF THE ARGUMENT

First, Central Perk's invocation policy and practices violate the Establishment Clause because they have created a pattern of proselytizing and advancement of theistic religions over others. While the lawmakers in the present case are more often selecting invited clergy to give invocations, the opportunity to give invocations is just as narrowly controlled as was the case in *Lund*. There is a clear pattern of proselytizing.

Second, the Council's prayer policy violates the Establishment clause in that it is unconstitutionally coercive of not only students attending Council meetings for extra class credit, but of all members in attendance. Through a practice that constantly asserts religious superiority over other, minority religions, as well as subjecting young students to indirect coercive

behaviors, the Council has overstepped its authority. For these reasons, the Council's prayer policy violates the Establishment Clause and should be held unconstitutional.

ISSUES

1. Are the Central Perk Town Council's legislative prayer policy and practices constitutional when the Town Council Members either deliver their invocations themselves or select their own personal clergy to do so, and the invocations have been theologically varied but exclusively theistic?
2. Are the Central Perk Town Council's prayer policy and practices unconstitutionally coercive of
    a) All citizens in attendance where several invocations included language implying the supremacy of sectarian dogma, or
    b) High school students who were awarded academic credit for presenting at meetings where their teacher also was a Council member who gave an invocation?

ARGUMENT

I. THE CENTRAL PERK'S LEGISLATIVE PRAYER POLICY AND PRACTICES ARE NOT CONSTITUTIONAL BECAUSE THE LEGISLATORS RETAIN TOO MUCH CONTROL OVER THE CONTENT OF THE PRAYERS USED PRECEDING THE OFFICIAL BUSINESS OF THE CENTRAL PERK LEGISLATURE

Long has the Establishment Clause of the First Amendment prevented "government [from resembling] a house of worship." *Lund v. Rowan Ct., N.C.*, 863 F.3d, 268, 280 (4th Cir. 2017). This case is an example of a blurring of the line between these two different, but important buildings. The Central Perk Legislature's policy for invocations before official business does not comply with the holding of *Town of Greece v. Galloway*. The Supreme Court

held that legislative prayer is not prohibited by the Establishment Clause as long as, "there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief." *Town of Greece v. Galloway,* 134 S.Ct. 1811, 1814 (2014) (citing *Marsh v. Chambers*, 463 U.S. 783, 794-95, 103 S.Ct. 3330 (1983)). The facts of this case are distinguishable from those in *Galloway* as well as other precedent cases because the legislators have exercised personal control over the content of the prayers through personal selection of the guest speakers or providing the prayer personally, the content of the majority of prayers is proselytizing and advancing the position of Christianity, even those which have been invited to give the invocation.

A. Central Perk Legislature's absolute control over the content of the prayers given by members of the legislature and invited guests is violative of the Establishment Clause because it discriminates against all religions that are not represented by a member on the Central Perk Town Council.

The prayer policy and practices of Central Perk's town council is violative of the Establishment Clause because the council has too much control over the content of prayers and invocations given before official legislative work. This case is distinguishable from *Galloway* because the legislators give the invocation or choose the minister who will stand in their place. This has caused discrimination against religions that are not represented by a town council member who follows that particular faith. The control over content of the prayers and the discrimination against unrepresented faiths is evident primarily by the fact that every randomly selected member of the town council has selected a minister of their faith or given an invocation in line with their own faith every single time an invocation has been given.

The prayer policy for Central Perk's town council allows for members of the council, or an invited guest to lead the assembly in an invocation before it begins its business. R. at 2. The

member is selected randomly and, once selected, the member can elect to invite, "a minister from the community to offer the invocation in his or her stead [or] omit any invocation." Id.

The Establishment Clause at its core requires that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." USCS Const. Amend. 1. That requires that governmental bodies not adopt policies that, "'affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.' Second, the government 'may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or religious faith, or tends to do so.'" *Lund*, 863 F.3d 268, 275 (4th Cir. 2017) (citing *Lynch v. Donnelly*, 465 U.S. 668, 673, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984) & *Lee v. Weisman*, 505 U.S. 577, 587, 112 S. Ct. 2649, 120 L. Ed. 2d 467 (1992)).

The United States Supreme Court has adopted several tests for assessing whether a particular policy or law has violated the Establishment Clause. *Lund* and *Marsh v. Chambers*, present the holdings that guide a court's analysis when examining issues regarding legislative prayer under facts similar to the present case.

Marsh noted that, "The First Congress made it an early item of business to appoint and pay official chaplains, and both the House and Senate have Maintained the office virtually uninterrupted since that time." *Galloway*, 134 S.Ct. 1811, 1818 (2014). This has been interpreted by later courts to mean that, "'[t]o invoke Divine guidance' before engaging in the important work of public governance is not establishment of religion but 'a tolerable acknowledgement of beliefs widely held' among citizens." *Fields v. Speaker of the Pa. House of Representatives*, 251 F. Supp. 3d 772, 785 (M.D. Pa. 2017). However, "history and tradition cannot save an otherwise unconstitutional practice." Id. at 786.

Lund reiterated the holding of *Galloway* that, "our Government is prohibited from prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior." *Lund*, 863 F.3d 268, 281 (4th Cir. 2017). The *Lund* court held that when law-makers, "maintain exclusive and complete control over the content of the prayers . . . [they are] 'elbow-deep in the activities banned by the Establishment Clause.'" Id.

The facts from *Lund* are admittedly a clearer example of a constitutional violation. However, they are similar enough to draw a comparison between the precedent case and the present one because the focus of the court was upon whether the lawmakers, "maintain[ed] exclusive and complete control over the content of the prayers." Id. at 274. The Central Perk town council has made the same error as the lawmakers in *Lund* by limiting the opportunities to lead the council in prayer to, "a closed-universe of prayer-givers . . . who favored religious beliefs believed to be common to the majority of voters." Id.

In *Lund*,

> the elected members of the county's Board of Commissioners composed and delivered pointedly sectarian invocations. They rotated the prayer opportunity amongst themselves; no one else was permitted to offer an invocation. The prayers referenced one and only one faith and veered from time to time into overt proselytization. Before each invocation, attendees were requested to rise and often asked to pray with the commissioners. The prayers served to open meetings of our most basic unit of government and directly preceded the business session of the meeting.

Id. at 272. The *Lund* court compared this to the facts in *Galloway* to see if the legislature was, "prescribing prayers to be recited in our public institutions in order to promote a preferred system of belief or code of moral behavior Id. at 281. The court took notice of the fact that, "in *Town of Greece*, the prayer-giver was invited by the state. But in Rowan County, the prayer-giver was the state itself. The Board was thus "elbow-deep in the activities banned by the Establishment Clause—selecting and prescribing sectarian prayers." Id. The court recognized

that the prayers may be more likely to be from faiths with more followers, but the analysis for control should be focused on, "the prayer opportunity as a whole." Id. at 289 (citing *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1824 (2014)).

The opportunity to give the invocation at a Central Perk town council meeting is, "dependent solely on election outcomes." Id. at 282. Each Central Perk council member, "exclusively either gave the prayers themselves or selected clergy only from their own houses of worship." R. at 7. While the lawmakers in the present case are more often selecting invited clergy to give invocations, the opportunity to give invocations is just as narrowly controlled as was the case in *Lund*.

Therefore, Central Perk's policy and practices of giving invocations before official meetings is violative of the Establishment Clause of the First Amendment of the United States Constitution because it discriminates against all religions who are not represented by a lawmaker that shares their faith.

B. The prayer policy and practices of Central Perk's legislature are violative of the Establishment Clause because there is a pattern of proselytizing, disparagement of other faiths, and advancement of theistic religions over others, especially Christianity.

Central Perk's invocation policy and practices violate the Establishment Clause because they have created a pattern of proselytizing and advancement of theistic religions over others. This is seen in the content of approximately half of the offered invocations from October 2014 to July 2016. The messages contained in those invocations include statements such as: "we pray that … all will submit to Christ's reign," "none in attendance would reject Jesus Christ," "requests for salvation for all those 'who do not yet know Jesus,' for blinders to be removed from the eyes of those who deny God,' and for 'every Central Perk citizen's knee to bend before King Jesus." R. at 3.

Marsh v. Chambers put forward the rule that, "The content of the prayer is not of concern to judges where, . . . there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief." *Marsh v. Chambers*, 463 U.S. 783, 794-95, 103 S. Ct. 3330, 3337-38 (1983). The *Marsh* court did not have an opportunity to analyze whether the content of invocations in that case violated that rule. However, it was also discussed by the *Galloway* court, but this case also was decided on different grounds because two remarks that, "strayed from the rationale set out in *Marsh* . . . do not despoil a practice that on the whole reflects and embraces our tradition." *Galloway*, 134 S. Ct. 1811, 1824 (2014). *Lund* sheds some light upon what would be considered proselytizing or advancement of a faith over others via legislative prayer. They note, "multiple occasions [where] the invocations crossed the line from, 'reflecting upon shared ideals and common ends,' to, 'promot[ing] a preferred system of belief." *Lund*, 863 F.3d 268, 284 (4th Cir. 2017).

In *Lund*, lawmakers had a policy where only elected members of the legislative body could deliver invocations preceding normal business. Those invocations included statements such as, "as we pick up the Cross, we will proclaim His name above all names as the only way to eternal life," and "Father, I pray that all may be one as you, Father, are in Jesus, and He in you. I pray that they may be one in you, that the world may believe that you sent Jesus to save us from our sins." Id. at 285. The court considered, "proclaiming the spiritual and moral supremacy of Christianity, characterizing the political community as a Christian one, and urging adherents of other religions to embrace Christianity as the sole path to salvation, the Board in its prayer practice stepped over the line." Id. at 286. The court considered "multiple occasions," to constitute a pattern that causes the court to analyze the content of the invocations for their tendency to proselytize or advance one faith over others.

Fifty percent of the invocations offered at Central Perk's town council meetings. Contained similar if not, more strongly worded statements that urge for conversion of non-believers and advance Christianity as the one true faith. This is a clear pattern of proselytizing that is more substantial than that seen in *Galloway*.

Therefore, the court should find that the content of the prayers constitutes a pattern of proselytizing and advancing of the Christian faith that violates the Establishment Clause of the First Amendment.

For the foregoing reasons plaintiffs ask this court to find that Central Perk's invocation policy and practices are violative of the Establishment Clause of the First Amendment.

II. THE CENTRAL PERK TOWN COUNCIL'S PRAYER POLICY AND PRACTICES ARE UNCONSTITUTIONALLY COERCIVE

Whether a legislative prayer practice rises to the level of coercion "remains a fact-sensitive one that considers both the setting in which the prayer arises and the audience to whom it is directed." *Galloway*, 134 S. Ct. 1811, 1825 (2014). The prayer opportunity must be "evaluated against the backdrop of a historical practice." Id. In addition, the "'coercion test' under the Establishment Clause reflects that the government violates the Constitution if it compels religious participation." *County of Allegheny v. ACLU Pittsburgh Charter*, 429 U.S. 573, 660 (1989) (Kennedy, J., concurring in judgment in part and dissenting in part).

A. Circuit Court Split Between the Sixth and Fourth Circuits

Currently, there exists a split between U.S. Court of Appeals for the Sixth Circuit and the Fourth Circuit on the issue of whether or not legislative led-prayer is constitutional. In the case of *Bormuth v. Jackson County*, 870 F.3d 494, 519 (6th Cir. 2017), the court held that Jackson

County's invocation practice was consistent with *Marsh v. Chambers* and *Town of Greece v. Galloway* and did not violate the Establishment Clause.

The Jackson County Board of Commissioners opens its public meetings with a commission-lead prayer. Id. at 498. Those in attendance are asked to assume a "reverent position" or to stand and "bow your heads." Id. Through a rotating process, each elected Jackson County Commissioner is presented with the opportunity to open each meeting with an invocation of their choosing. Id. This invocation is not reviewed by either the selected Commissioner or the Board as a whole. Id. Generally, the prayers are of a Christian nature. Id.

The Plaintiff, Bormuth, was a Pagan and Animist. Id. While he admits to not standing during these invocations when requested, overall, he felt "forced to worship Jesus Christ in order to participate in the business of County Government." Id. Bormuth voiced his concerns regarding the invocation policy and was swiftly met with the back of one Commissioner. Id. Ultimately, the court held that "offense . . . does not equate to coercion" and upheld the Jackson County invocation practice. Id. at 519.

The Fourth Circuit reached a different conclusion in the case of *Lund v. Rowan County*. The five-member County Board meets twice a month and each meeting begins in the same manner: "with a prayer composed and delivered by one of the commissioners." *Lund*, 863 F.3d at 272. This procedure begins with all five Board members standing and bowing their heads, where the selected Board member then asks the community to "join him in worship." Id. Board members typically use phrases such as "Let us pray," "Let's pray together," or "Please pray with me." Id. Custom has the Board members rotate the pray opportunity amongst themselves. Id. Furthermore, the content of the prayer is "entirely at the discretion of the commissioner." Id.

The court determined that over five-and-a-half years for which video evidence is available, 97% of the Board's prayers are Christian. Id. 273. Prayers consistently mentioned "Jesus," "Christ," or "Savior." Id. "Other prayers implied that Christianity was superior to other faiths." Id. Board members would also occasionally implore those in attendance to accept Christianity. Id.

The court held the prayer practice unconstitutional, concluding that the Establishment Clause "does not permit a seat of government to wrap itself in a single faith." Id. at 290. "Ruling in the county's favor would send us down a rancorous road," resulting in "unfortunate consequences for American pluralism." Id. at 291. "By proclaiming the spiritual and moral supremacy of Christianity, characterizing the political community as a Christian one, and urging adherents of other religions to embrace Christianity as the sole path to salvation, the Board in its prayer practice stepped over the line." Id. at 286. Through requests to rise and invitations to pray, the Board members "press[ed] religious observances upon their citizens. Id. at 268 (quoting *Van Orden v. Perry*, 545 U.S. 677, 683 (2005)).

The plurality opinion of Justice Kennedy in *Town of Greece* "advises courts to assess whether the 'principal audience' for the invocations is the lawmakers or the public." Id. "An internally-focused prayer practice 'accommodate[s] the spiritual needs of lawmakers,' while an externally-oriented one attempts 'to promote religious observance among the public.'" Id. Since the invocations here "placed Christianity on a higher plane than other faiths and urged attendees to embrace that religion, the requests to participate in those prayers are clear indicators of an effort 'to promote religious observance among the public.'" *Galloway*, 134 S.Ct. at 1825 (plurality opinion). When phrases such as "Let us pray" are spoken by elected representatives

acting in their official capacity, "they become requests on behalf of the state." *Lund*, 863 F.3d at 287 (2017).

Justice Kennedy further instructed courts to "consider 'the setting in which the prayer arises.'" Id. In this instance, the prayers were offered at public meetings of a local government body. Id. This level of intimacy may compel attendees to participate in the prayer practice in order to avoid repercussions within their community. Id. at 288. In one instance, a community member present who did not stand was "booed and jeered" by fellow citizens. Id.

It was for these combined reasons that the court held the prayer policy to be unconstitutional under the Establishment Clause.

B. Noteworthy Authority

Despite the circuit split, this Court is not lacking in guidance on this issue. A similar issue was discussed in *Engle v. Vitale*, 370 U.S. 421 (1962). The respondent, the Board of Education of Union Free School District No. 9, directed the School District's principal to institute the following prayer said at the beginning of school each day: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country." Id. at 422. This prayer policy was adopted based upon the recommendation of the State Board of Regents. Id. Shortly after this policy was instituted, parents of ten children brought an action in a New York State Court, alleging that the official prayer in the public school was "contrary to the beliefs, religions, or religious practices of both themselves and their children." Id. at 423.

The Court in *Engle* understood that at the birth of our country's Constitution, "there was a widespread awareness among many Americans of the dangers of a union of Church and State." Id. at 429. "One of the greatest dangers to the freedom of the individual to worship in his own

way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services." Id. The Court held that it is unconstitutional for state officials to compose an official school prayer and encourage its recitation in public schools. The Establishment Clause "does not depend on any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not." Id. at 431.

This issue was further discussed in *Doe v. Indian River School Dist.*, 653 F.3d 256 (3rd Cir. 2011). The Indian River School Board had a policy of praying at regularly-scheduled meetings. Id. at 260. These meetings are "routinely attended by students from the local school district." Id. The policy in question states that the prayer is "voluntary" and "among only the adult members of the Board." Id. at 262. However, in practice a volunteer is selected and it is the Board President's responsibility to keep track of which member gave a prayer, ensuring other volunteers have an opportunity to present the prayer. Id. The prayers given are almost exclusively Christian. Id. 265. One Board member acknowledged that "he could not recall a spoken prayer being given that did not refer to '[a] religious deity other than Jesus or the Christian God.'" Id. at 266.

As mentioned above, students were often in attendance at these meetings. Reasons for attendance included disciplinary action, enrollment in the school's Junior Reserve Officer's Training Corps program, attending as a student government representative, performing music, recognize a particular achievement, or to speak during a public comment section. Id. at 264-65.

This suit was brought by parents of children attending schools in the Indian River School District, alleging that the prayer policy was unconstitutional under the Establishment Clause

through the "enactment of laws which establish official religion whether those laws operate directly to coerce nonobserving individuals or not." Id. at 271.

The court analyzed similar cases and determined that "a fundamental guarantee of the First Amendment" lies in the governments inability to coerce anyone to support or participate in religion or its exercise. Id. at 275. In addition, the court acknowledged that "the risk of coercion is heightened in the public-school context" because prayer in this setting carries a risk of indirect coercion. Id. While attendance is not mandatory, the meetings bear "several markings of 'involuntariness' and the implied coercion that the Court has acknowledged elsewhere." Id. at 276. "For at least some students, attendance at the Board meetings is more formally *part* of their extracurricular activities, and thus is closer to compulsory." Id. at 277.

Furthermore, "the Board's responsibilities serve to further highlight the compulsory nature of student attendance at Board meetings." Id. at 279. If a student wants to comment on school policies or perhaps participate in the decision-making process that effects their education, they *must* attend the meetings. Id. Thus, while the message conveyed is "these meetings are voluntary," they are far from it in practice.

The court held that the Indian River School District's prayer policy was unconstitutional based on this reasoning.

C. The Central Perk Town Council's prayer policy and practices are unconstitutionally coercive of all citizens in attendance because of the continuous dogma of superiority expressed by the invocations

Central Perk's Town Council's prayer policy is unconstitutionally coercive because of the continual acceptance religious superiority expressed by those giving the invocation. The government "may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or religious faith, or tends to do so."

Lynch v. Donnelly, 465 U.S. 668, 673 (1984). "When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." *Engle*, 370 U.S. at 431. In addition, the coercion inquiry is "a fact-sensitive one that considers both the setting in which the prayer arises and the audience to whom it is directed." *Lund*, 863 F.3d at 305.

President Minsk, of the Church of Jesus Christ of Latter-Day Saints, demonstrated this first when he gave the following prayer: "Heavenly Father, we thank thee for this day and all our many blessings. Thou are our *sole provider*, and we praise They power and mercy." R. at 3 (emphasis added). Following this meeting, President Minsk established a pattern of expressing the beliefs of the Church of Jesus Christ of the Latter-Day Saints as superior to all other faiths. On not one but five occasions, President Minsk prayed the following: "Heavenly Father, we pray for the literal gathering of Israel and restoration of the ten tribes. We pray that New Jerusalem will be built here and that *all will submit to Christ's reign*." Id. (emphasis added). However, six demonstrations of religious superiority were not enough for President Minsk. At three more Town Council meetings President Minsk asked that "*none in attendance* would reject Jesus Christ or commit grievous sins against the Heavenly Father." Id. (emphasis added).

The Church of Jesus Christ of the Latter-Day Saints did not stand alone. Council member Green gave an invocation herself in which she acknowledged the "infinite wisdom" of Buddha. Id.

Not wanting to be left out, New Life pastors of the Evangelical Christian faith prayed "explicitly Christian prayers," always ending with "in the name of *our Lord and Savior*." Id. (emphasis added). The New Life pastors were not content with merely asserting the superiority

of the Evangelical Christian faith, but felt the need to push their religion on those not of their faith. This was expressed when the New Life pastors requested "the salvation for all those 'who do not yet know Jesus,' for '*blinders to be removed from the eyes of those who deny God*.'" Id. (emphasis added). This message concluded with the command "for '*every Central Perk citizen's knee to bend before King Jesus*.'" Id. (emphasis added).

In "'[p]airing the Free Exercise Clause with the Establishment Clause,' the Framers sought to prevent government from choosing sides on matters of faith and to protect religious minorities from exclusion or punishment at the hands of the state." *Lund*, 863 F.3d at 275. The prayer policy adopted by the Council created a breeding ground for the exclusion and punishment of religious minorities. Members of minority religions or non-believers were constantly reminded of the inferiority of their beliefs by not one, but three different religions.

The similarities to *Lund* do not end there. Plaintiffs in this case were continuously urged to participate in religious practices which they did not hold themselves. On numerous occasions, Plaintiffs felt coerced to stand, out of the very real fear of ridicule and resentment from their fellow community members. Afterall, these public meetings were intimate affairs, attended by students, the Council, and other members of the community.

Because the Central Perk Town Council's prayer policy prayer policy and practices have displayed a pattern as establishing certain regions as superior to others and have coerced non-believers into participation in these invocations, the Council's prayer policy is unconstitutional.

D. The Central Perk Town Council's prayer policy and practices are unconstitutionally coercive of high school students who were awarded academic credit for presenting at meetings because of their involuntary nature and the source of the invocations.

Despite the "voluntary" appearance of the opportunity for extra credit offered by Green in her American Government class, the Council meetings are anything but. Absent an election

campaign, students have extremely limited options in the pursuit of extra credit. When you consider the popularity of Green, there is but one option: present at the Council meetings. This is exactly what Geller's son Ben felt when he decided to pursue this extra credit opportunity.

Risk of coercion is heightened in the context of public schools. *Doe,* 653 F.3d at 275. Much like *Doe*, this "extracurricular" activity becomes something completely different when viewed in the above context. It becomes compulsory. What do you image is going through Ben's mind when a popular teacher and Council member is giving an invocation acknowledging Buddha's infinite wisdom? The record answers this question for us: Ben prays to a Baha'i divinity against his conscious. R. at 5. Ben was coerced into participating in a religious prayer that goes against his own beliefs.

This is further compounded by Green's constant encouragement for her students to become engaged in the political process as much as possible. These Council meetings present students with a rare opportunity to discuss their opinions on actual issues before the Council. These meetings represent the intersection of an extra credit opportunity and a rare chance at impacting local policy. When viewing the totality of the setting, circumstances, and source, these meetings become *mandatory* for students. Afterall, attending these meetings ultimately impacts a student's education.

It is this indirect coercion that that violates the Establishment Clause. The Establishment Clause "does not depend on any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not." *Engle*, 370 U.S. at 431. This fact-sensitive inquiry results in only one outcome, the Council's prayer policy is unconstitutionally coercive of the students who attend its meetings "voluntarily."

III. CONCLUSION

For the foregoing reasons, the Central Perk Town Council's prayer policy should be held unconstitutional under the Establishment Clause.

Charles Draeger
Joseph Turner

Attorney's for the Petitioners, Ross Geller
Dr. Richard Burke, Lisa Kudrow,
and Phoebe Buffay