[NOTE: This opinion has been edited for use by students and teachers. For ease of reading, no indication has been made of deleted material and case citations. Any legal or scholarly use of this case should refer to the full opinion.]

MARSH v. CHAMBERS
463 U.S. 783 (1983)

Chief Justice BURGER delivered the opinion of the Court.

The Nebraska Legislature begins each of its sessions with a prayer offered by a chaplain who is chosen biennially by the Executive Board of the Legislative Council and paid out of public funds.[1] Robert E. Palmer, a Presbyterian minister, has served as chaplain since 1965 at a salary of $319.75 per month for each month the legislature is in session.

Ernest Chambers is a member of the Nebraska Legislature and a taxpayer of Nebraska. Claiming that the Nebraska Legislature's chaplaincy practice violates the Establishment Clause of the First Amendment, he brought this action seeking to enjoin enforcement of the practice.

The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom.

The Continental Congress, beginning in 1774, adopted the traditional procedure of opening its sessions with a prayer offered by a paid chaplain. The First Congress, as one of its early items of business, adopted the policy of selecting a chaplain to open each session with prayer.

On Sept. 25, 1789, three days after Congress authorized the appointment of paid chaplains, final agreement was reached on the language of the Bill of Rights.[9] Clearly the men who wrote the First Amendment Religion Clause did not view paid legislative chaplains and opening prayers as a violation of that Amendment, for the practice of opening sessions with prayer has continued without interruption ever since that early session of Congress. It has also been followed consistently in most of the states, including Nebraska, where the institution of opening legislative sessions with prayer was adopted even before the State attained statehood.

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[1] Rules of the Nebraska Unicameral, Rules 1, 2, and 21. These prayers are recorded in the Legislative Journal and, upon the vote of the Legislature, collected from time to time into prayerbooks, which are published at the public expense. In 1975, 200 copies were printed; prayerbooks were also published, in 1978 (200 copies), and 1979 (100 copies). In total, publication costs amounted to $458.56.

It can hardly be thought that in the same week Members of the First Congress voted to appoint and to pay a Chaplain for each House and also voted to approve the draft of the First Amendment for submission to the States, they intended the Establishment Clause of the Amendment to forbid what they had just declared acceptable. This unique history leads us to accept the interpretation of the First Amendment draftsmen who saw no real threat to the Establishment Clause arising from a practice of prayer similar to that now challenged.

In light of the unambiguous and unbroken history of more than 200 years, there can be no doubt that the practice of opening legislative sessions with prayer has become part of the fabric of our society. To invoke Divine guidance on a public body entrusted with making the laws is not, in these circumstances, an "establishment" of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country. As Justice Douglas observed, "[w]e are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson* (1952).

We turn then to the question of whether any features of the Nebraska practice violate the Establishment Clause. Beyond the bare fact that a prayer is offered, three points have been made: first, that a clergyman of only one denomination – Presbyterian – has been selected for 16 years; second, that the chaplain is paid at public expense; and third, that the prayers are in the Judeo-Christian tradition.[14] Weighed against the historical background, these factors do not serve to invalidate Nebraska's practice.

The Court of Appeals was concerned that Palmer's long tenure has the effect of giving preference to his religious views. We, no more than Members of the Congresses of this century, can perceive any suggestion that choosing a clergyman of one denomination advances the beliefs of a particular church. To the contrary, the evidence indicates that Palmer was reappointed because his performance and personal qualities were acceptable to the body appointing him. Palmer was not the only clergyman heard by the Legislature; guest chaplains have officiated at the request of various legislators and as substitutes during Palmer's absences. Absent proof that the chaplain's reappointment stemmed from an impermissible motive, we conclude that his long tenure does not in itself conflict with the Establishment Clause.

Nor is the compensation of the chaplain from public funds a reason to invalidate the Nebraska Legislature's chaplaincy; remuneration is grounded in historic practice initiated, as we noted earlier, by the same Congress that adopted the Establishment Clause of the First Amendment. Currently, many state legislatures and the United States Congress provide compensation for their chaplains. The content of the prayer is not of concern to judges where, as here, there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or

[14] Palmer characterizes his prayers as "nonsectarian," "Judeo Christian," and with "elements of the American civil religion." (Deposition of Robert E. Palmer). Although some of his earlier prayers were often explicitly Christian, Palmer removed all references to Christ after a 1980 complaint from a Jewish legislator.

belief. That being so, it is not for us to embark on a sensitive evaluation or to parse the content of a particular prayer. The judgment of the Court of Appeals is *reversed*.

Justice BRENNAN, with whom Justice MARSHALL joins, dissenting.

That the "purpose" of legislative prayer is preeminently religious rather than secular seems to me to be self-evident. "To invoke Divine guidance on a public body entrusted with making the laws," is nothing but a religious act. Moreover, whatever secular functions legislative prayer might play – formally opening the legislative session, getting the members of the body to quiet down, and imbuing them with a sense of seriousness and high purpose – could so plainly be performed in a purely nonreligious fashion that to claim a secular purpose for the prayer is an insult to the perfectly honorable individuals who instituted and continue the practice.

The "primary effect" of legislative prayer is also clearly religious. As we said in the context of officially sponsored prayers in the public schools, "prescribing a particular form of religious worship," even if the individuals involved have the choice not to participate, places "indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion ...." *Engel v. Vitale* (1962). More importantly, invocations in Nebraska's legislative halls explicitly link religious belief and observance to the power and prestige of the State.

Finally, there can be no doubt that the practice of legislative prayer leads to excessive "entanglement" between the State and religion. In the case of legislative prayer, the process of choosing a "suitable" chaplain, whether on a permanent or rotating basis, and insuring that the chaplain limits himself or herself to "suitable" prayers, involves precisely the sort of supervision that agencies of government should if at all possible avoid.

The record in this case also reports a series of instances, involving legislators other than Senator Chambers, in which invocations by Reverend Palmer and others led to controversy along religious lines.

Legislative prayer clearly violates the principles of neutrality and separation that are embedded within the Establishment Clause. It intrudes on the right to conscience by forcing some legislators either to participate in a "prayer opportunity," with which they are in basic disagreement, or to make their disagreement a matter of public comment by declining to participate. It forces all residents of the State to support a religious exercise that may be contrary to their own beliefs. It requires the State to commit itself on fundamental theological issues. And it injects religion into the political sphere by creating the potential that each and every selection of a chaplain, or consideration of a particular prayer, or even reconsideration of the practice itself, will provoke a political battle along religious lines and ultimately alienate some religiously identified group of citizens.

[T]he [historical] argument tendered by the Court is misguided because the Constitution is not a static document whose meaning on every detail is fixed for all time

by the life experience of the Framers. We have recognized in a wide variety of constitutional contexts that the practices that were in place at the time any particular guarantee was enacted into the Constitution do not necessarily fix forever the meaning of that guarantee. To be truly faithful to the Framers, "our use of the history of their time must limit itself to broad purposes, not specific practices." Our primary task must be to translate "the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century ...."

Prayer is serious business – serious theological business – and it is not a mere "acknowledgment of beliefs widely held among the people of this country" for the State to immerse itself in that business. Some religious individuals or groups find it theologically problematic to engage in joint religious exercises predominantly influenced by faiths not their own. Some might object even to the attempt to fashion a "non-sectarian" prayer. Some would find a prayer *not* invoking the name of Christ to represent a flawed view of the relationship between human beings and God. Some might find any petitionary prayer to be improper. [I]n this case, we are faced with potential religious objections to an activity at the very center of religious life, and it is simply beyond the competence of government, and inconsistent with our conceptions of liberty, for the state to take upon itself the role of ecclesiastical arbiter.

The argument is made occasionally that a strict separation of religion and state robs the nation of its spiritual identity. I believe quite the contrary. It may be true that individuals cannot be "neutral" on the question of religion. But the judgment of the Establishment Clause is that neutrality by the organs of *government* on questions of religion is both possible and imperative. If the Court had struck down legislative prayer today, it would likely have stimulated a furious reaction. But it would also, I am convinced, have invigorated both the "spirit of religion" and the "spirit of freedom." I respectfully dissent.

Justice STEVENS, dissenting.

In a democratically elected legislature, the religious beliefs of the chaplain tend to reflect the faith of the majority of the lawmakers' constituents. Prayers may be said by a Catholic priest in the Massachusetts Legislature and by a Presbyterian minister in the Nebraska Legislature, but I would not expect to find a Jehovah's Witness or a disciple of Mary Baker Eddy or the Reverend Moon serving as the official chaplain in any state legislature. Regardless of the motivation of the majority that exercises the power to appoint the chaplain, it seems plain to me that the designation of a member of one religious faith to serve as the sole official chaplain of a state legislature for a period of 16 years constitutes the preference of one faith over another in violation of the Establishment Clause of the First Amendment.

The Court declines to "embark on a sensitive evaluation or to parse the content of a particular prayer." Perhaps it does so because it would be unable to explain away the clearly sectarian content of some of the prayers given by Nebraska's chaplain. Or perhaps

the Court is unwilling to acknowledge that the tenure of the chaplain must inevitably be conditioned on the acceptability of that content to the silent majority. I would affirm the judgment of the Court of Appeals.