



The Establishment Clause and *Marsh v. Chambers*

Overview

In this lesson, students will consider the implications of the Establishment Clause in the First Amendment by learning about the landmark Supreme Court case *Marsh v. Chambers*. Through the documentary of *Marsh v. Chambers*, students will begin to examine whether a prayer offered by a Protestant minister to open a legislative session violates the U.S. Constitution. Students will continue their exploration of the issue by creating news broadcasts related to the controversy.

Grade

9-12

Course

Civics and Economics

North Carolina Standard Course of Study for Civics and Economics

- Objective 1.07: Evaluate the extent to which the Bill of Rights extended the Constitution
- Objective 2.03: Explain how the United States Constitution grants and limits the authority of public officials and government agencies.
- Objective 2.05: Analyze court cases that illustrate that the United States Constitution is the supreme law of the land.
- Objective 2.06: Analyze court cases that demonstrate how the United States Constitution and the Bill of Rights protect the rights of individuals.

North Carolina Standard Course of Study for US History

- Objective 12.02: Evaluate the impact of recent constitutional amendments, court rulings, and federal legislation on United States' citizens.
- Objective 12.04: Identify and assess the impact of social, political, and cultural changes in the United States.

Essential Questions

- How does the Bill of Rights offer protection for citizens? (specifically, protection of religious freedom)
- How are the rights granted in the Bill of Rights limited by interpretation of the judiciary branch?
- In what ways does the U.S. Constitution limit the power of public officials?
- How do laws impact people's lives?
- How can an individual's choices affect the liberty and happiness of others?

Materials

- Visual of Ten Commandments at Courthouse, attached
- Documentary of *Marsh v. Chambers* (Voices of American Law DVD; available at www.voicesofamericanlaw.org)
- *Marsh v. Chambers* Viewer's Guide and Answer Key
- News Broadcast Description and Instructions, attached
- *Lee v. Weisman/Abington v. Schempp* handout
- Edited Opinion of *Marsh v. Chambers*
- Tip Sheets for Committee Hearing

Duration

1 or 1 ½ block periods

Procedure

Warm-Up: Religion in Public Life.

1. Project the picture of the Ten Commandments at the Courthouse. Ask the students what they see in the picture, and what thoughts they have regarding seeing two things together (a religious symbol and a government building). Have the students consider what role religion has in public life. Give a few other times that religion does exist in the public arena to encourage discussion. Examples:
 - A teacher in a public school, or other public official, leads a group in the Pledge of Allegiance which states "One Nation, Under God . . ."
 - "In God We Trust" is printed on U.S. currency by the federal government

- A public school graduation or sporting event which begins with a prayer
- The Ten Commandments are posted on government property such as schools, court houses, and city buildings
- Courts begin with a government employee stating: “God save this Court”
- Federal and state governments give tax exemptions to religious groups
- Federal, state, and local government legislative sessions are opened with a prayer given by a chaplain
- The federal government employs chaplains to give guidance to members of the armed forces
- Public high school bands, led by a teacher or other school official, play religious songs or songs in which religion is the central theme (such as Amazing Grace)
- Nativity scenes are placed on public school grounds or government property, or in public school plays
- Christmas trees are displayed on public schools grounds or other government property
- Witnesses in court are sworn in on the Bible

The First Amendment

2. Project the text from the First Amendment, underlining the phrase “Congress shall make no law respecting an establishment of religion...” Explain that these 10 words are referred to as the **Establishment Clause**. Ask the class, based only on these 10 words, what their interpretation of the clause is. Ensure students come to the understanding that Congress cannot establish an official church, such as the Church of the United States

Explain to the class that through a series of Supreme Court decisions, the Establishment Clause has been extended to apply not only to Congress, but also to state governments through a process known as incorporation. This concept does not need to be thoroughly explained to the class, but make sure they understand that the Establishment Clause applies to both the federal and state governments and government actors.

Documentary: *Marsh v. Chambers*

3. Tell students that they are now going to watch a documentary which discusses the Establishment Clause of the First Amendment. Tell them that they should pay close attention to the facts of the case and the arguments being presented. No further introduction is necessary for the documentary. The following basic facts are provided for your convenience and below are three options for how you may present the documentary.

- **Teacher Reference - Synopsis of the Case**

Ernie Chambers was a member of the Nebraska legislature who represented Omaha for a number of years. The legislature had a practice of opening each session with a prayer, given by a state-selected chaplain who was paid with government funds. Senator Chambers was vocal in his opposition to the inclusion of this religious activity and eventually filed a lawsuit challenging the practice as a violation of the Establishment Clause of the First Amendment.

- **Viewing Options**

There are several ways you can choose to have the class view the documentary.

- You may choose to have the class watch the video with no pauses and have students work on the attached Viewer’s Guide while watching
- *Suggested Viewing:* You may choose to pause the video at the times outlined below and ask the class to discuss the questions listed. Students may complete the questions below in addition to or instead of the questions on the Viewer’s Guide.
 - **Discussion Point #1:** (*Pause at 3:30; after the voiceover of Palmer’s prayer*) Ask students what they think about this prayer that was delivered by Revered Palmer. Does it endorse religion? Does it endorse a specific religion or kind of religion? Is this what the First Amendment was meant to prohibit or is this allowable?
 - **Discussion Point #2:** (*Pause at 7:30; after Senator Chambers discusses that others claim it won’t hurt him to be present for the prayer*) Senator Chambers went to great lengths to avoid being present for the prayer. What does this tell you? (This might present an example of how uncomfortable religion can make those people who are not of the same religion; or, perhaps he is taking offense to something which the Constitution was not meant to prohibit.) Does the First Amendment protect individuals like Ernie Chambers from forced, minimal exposure to religion by the government? Explain.
 - **Discussion Point #3:** (*Pause at 11:20; after Senator Chambers says that it does not matter to him whether a different religion was represented everyday*) Should it matter that only mainstream Protestants had been selected to serve in the chaplain position? Does this fact say that the Nebraska legislature endorses Protestant views in your opinion? Would it be different if there was a rotation of clergymen that included priests, ministers, rabbis, monks, and other religious leaders? Or is the problem that religion is being funded and presented by state government?

- **Discussion Point #4:** (*Pause at 14:39; after the discussion of the tradition argument that was expounded by Nebraska*): Is an argument based on tradition something that should be given weight when deciding constitutional issues? Does the fact that the drafters of an amendment did something provide an authoritative interpretation of what that text means? What possible positives and negatives are there with arguments based on tradition?

Tonight, on the 6:00 News!

4. Explain to students that they will prepare and present a newscast that covers the controversy of Chambers suing the state for abridging his right to freedom of religion. Divide students into groups based on class size: there are seven news stations with suggestions for 11 roles for each station. Adjust the number of news stations and number of students for each station based on classroom needs. Provide each group with a news station handout and the *Lee v. Weisman/Abington v. Schempp* handout. Review group-work expectations and allow 15-20 minutes for students to plan their news broadcast. Inform students that their broadcast should be 5 minutes long and that the broadcast must reference *Lee v. Weisman and Abington v. Schempp* regarding the US Supreme Court's upcoming decision. Once students have completed their newscasts, review class expectations for being a responsible audience member and allow students to present their broadcast to the class. After each broadcast, ask the remainder of the class what they learned from the presentation and discuss any important points that came up.

Court's Decision: Marsh v. Chambers

5. After newscast presentation (or on the following day of class), allow the class to discuss, as a whole, whether or not they believe that this practice of the Nebraska legislature violates the Establishment Clause. Inform the class that the Supreme Court decided this issue with a 6-3 vote so, so no matter which side they choose, there are plausible arguments to support their conclusion.
6. Hand out the attached outline of the Court's decision for students to read, and/or summarize and explain the Court's decision to the class and allow students to comment:
 - **Supreme Court's Ruling:** "We do not doubt the sincerity of those, who like respondent, believe that to have prayer in this context risks the beginning of the establishment the Founding Fathers feared. But this concern is not well founded, for as Justice Goldberg, aptly observed in his concurring opinion in Abington: "It is of course true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow." The unbroken practice for two centuries in the National Congress, for more than a century in Nebraska and in many other states, gives abundant assurance that there is no real threat "while this Court sits.""
 - Reasoning of the Majority:
 - On the issue of prayer in general in the legislature (nothing specific to Nebraska per se), the importance of tradition was an overriding principle. which the majority chose to focus on throughout the opinion:
 - "The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country."
 - Also, the Court gives weight to the fact that three days after Congress agreed to appoint and pay chaplains, they agreed to the language that was adopted in the Bill of Rights.
 - This, combined with the unbroken tradition of the Congress and state legislatures, provided an authoritative interpretation of the meaning of the Establishment Clause on this issue.
 - The Court also rejected several arguments that Chambers raised specifically against the practice in the Nebraska legislature
 - The Court stated that selecting a clergyman from a particular faith did not, in this case, serve to advance that ministers particular religion
 - The Court also articulated that the paying of the chaplain with government funds was acceptable because the group of Congressmen that adopted the First Amendment approved of this practice
 - Finally, the Court stated that the content of the prayers, which Chambers alleged was specifically Judeo-Christian, was not something that could be looked at by this or any other Court. So, essentially, the content was irrelevant for purposes of determining constitutionality.
7. To culminate the lesson, or as a homework activity, tell students that citizens from around Nebraska, on both sides of this issue, have gathered outside of the Nebraska legislature on the day of the committee meeting. Instruct each student to create a poster either supporting or denouncing the practice. The posters could include drawings, slogans, symbols, and anything else that students believe would be persuasive.

Additional Activities

- **Analysis of North Carolina Law and Practice:** You may also choose to allow students to look at North Carolina law on this issue.
 - The North Carolina Constitution addresses religious freedom in Article I, Section 13: “All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.”
 - Ask students if they believe this language, that would govern the North Carolina legislature in addition to the Establishment Clause, is more or less restrictive than the First Amendment. In other words, do they believe you would have a better or worse argument in North Carolina than Senator Chambers had in Nebraska?
- Both the House and Senate of the North Carolina Legislature have a chaplain and begin legislative sessions with a prayer. There appear to be no cases that have challenged this practice. The rules adopted for the 2007 Legislative Session are attached.
- **Optional Senate Committee Exercise:** Divide the class into two groups. These two groups will independently conduct two senate committee hearings.
 - The Nebraska Senate has decided that before *Marsh v. Chambers* is decided by the Supreme Court, it will create a Special Committee on Prayer in the Legislature, hold a committee meeting, and request that the committee articulate a recommendation on the issue of continuing the practice of opening legislative sessions with a prayer to the full Senate.
 - Roles:
 - Four students to serve as Senators on the Special Committee that outwardly support abolishing of the chaplain position and the practice of prayer (herein Coalition 1).
 - One student will give opening remarks that outline this position
 - One student will be responsible for questioning Senator Chambers
 - One student will conduct an examination of Reverend Palmer
 - One student will give a summary of this position at the close of the committee hearing, before the final vote.
 - Four students to serve as Senators on the Special Committee that outwardly support the tradition and want to maintain this practice (herein Coalition 2).
 - One student will give an opening speech to support maintaining the practice
 - One student will examine Senator Chambers
 - One student will question Reverend Palmer
 - One student will give a closing statement which summarizes the position of these Senators
 - One student to play the role of Senator Chambers
 - One student to play the role of Reverend Palmer
 - One student to serve as the Committee Chairman (who will remain neutral throughout the meeting)
 - The remaining students should serve as undecided Senators on the Special Committee
 - Attached to the end of the lesson plan, there are tip sheets for the people in each of these roles. Before starting the trial, give the students time to study their tip sheets and prepare for their part in the committee hearing.
 - During this time, the undecided members of the committee should elect one student to take notes during the opening statement of the of the anti-chaplain group, a different student to take notes during the opening statement of the pro-chaplain group, one to take notes during the anti-chaplain questioning of Senator Chambers, one to take notes during the pro-chaplain questioning of Senator Chambers, etc.
 - Procedure for Committee meeting and tips for roles attached.

Differentiation

Students with Special Needs

- Ensure that students are placed in mixed ability groups.
- Alter group size to meet diverse needs of students. Assign roles in groups that struggle with planning and have them write part in smaller groups and then coalesce for final discussions.

AIG

- Have students break into groups and choose one of optional additional activities to participate in.

Warm-Up Visual



Name: _____

Marsh v. Chambers Viewer's Guide

1. What did Reverend Palmer believe his role was as chaplain?
2. What was Senator Ernie Chambers' view on government and religion?
3. What did Senator Chambers attempt to do before the prayer was given?
4. How did Senator Chambers attempt to stop the prayer before filing a lawsuit?
5. Who is "Marsh" in the name of this case and why was he listed in the lawsuit?
6. In the history of the Nebraska chaplain position, what religion(s) had been represented by that post (not including occasional guest clergymen)?
7. What did Chambers and his attorneys focus on during the lawsuit?
8. How did the State attempt to defend the prayers?
9. What did the district court decide?
10. How did the Eighth Circuit rule?

Marsh v. Chambers Viewer's Guide

1. What did Reverend Palmer believe his role was as chaplain?
He believed his role was to influence legislators who were deciding the future of Nebraska.
2. What was Senator Ernie Chambers' view on government and religion?
Senator Chambers believed in strict separation of church and state.
3. What did Senator Chambers attempt to do before the prayer was given?
He attempted to leave the chambers before the prayer was given.
4. How did Senator Chambers attempt to stop the prayer before filing a lawsuit?
He expressed his concerns on the floor of the legislature and even went to the Executive Committee in an attempt to stop the practice.
5. Who is "Marsh" in the name of this case and why was he listed in the lawsuit?
He was the State Treasurer and authorized the payment of Palmer's stipend.
6. In the history of the Nebraska chaplain position, what religion(s) had been represented by that post (not including occasional guest clergymen)?
Every chaplain had been a mainstream Protestant.
7. What did Chambers and his attorneys focus on during the lawsuit?
Reverend Palmer was paid a \$300 monthly stipend.
8. How did the State attempt to defend the prayers?
They said this practice was part a long standing, American tradition that had continued since the founding of the country.
9. What did the district court decide?
The court declared that opening the session with a prayer was constitutional. However, it also held that it is unconstitutional for the chaplain to be paid with government money.
10. How did the Eighth Circuit rule?
Held that not only was paying the chaplain unconstitutional, the general practice of opening the sessions with a prayer violated the First Amendment.



Your Group: KETV 7 Omaha News

The biggest news story in Nebraska is the upcoming Supreme Court case Marsh v. Chambers. Ernest Chambers, a member of the Nebraska legislature, has challenged the legislature's chaplaincy practice in federal court. This practice involves the offering of a prayer at the beginning of each legislative session by a chaplain chosen by the state and paid out of public funds. The district court supported Chambers on the use of public funds. The appeals court supported Chambers on the prayer practice. Both parties appealed to the U.S. Supreme Court.

You must plan and present tonight's newscast informing the citizens of Nebraska about the case and previewing the legal arguments that will be presented to the Supreme Court. Choose from the roles described below and plan your newscast. Remember, you will be competing with other news channel to win tonight's rating game, so make it creative with plenty of dialogue and props!

_____ **1-2 anchors in the studio:** these students will serve as the journalists who introduce the story and give some context to viewers at the beginning of the broadcast. Also, they can serve to ask questions of the field reporters who are at the Senate.

_____ **1-2 field reporters:** these students will serve as journalists at the legislative chambers who interview Senator Chambers, Reverend Palmer, and anyone else they believe could provide insight.

_____ **Ernie Chambers:** a member of the Nebraska Legislature and a taxpayer of Nebraska. He is suing the state claiming that the Nebraska Legislature's chaplaincy practice violates the Establishment Clause of the First Amendment.

_____ **Reverend Palmer:** the chaplain of the Nebraska legislature that is paid by Nebraska state government to give a short prayer.

_____ **1 Pro-chaplain Nebraska Legislator:** this role will represent a member of the Nebraska Unicameral that supported having a Chaplain give a daily prayer before the beginning of each daily session.

_____ **1-2 Nebraska citizens:** the field reporters can also interview a few Nebraska citizens who would provide their own opinions on issues such as the role of religion in government, how they feel about their tax dollars being spent to pay a chaplain and produce a book of religious prayers, etc. Ideally, you would have one student who would support the use of public funds to infuse religion into the legislative process and one student who would oppose this practice

_____ **1 Legal expert:** the anchors can also interview a professor from the University of Nebraska Law School about other Supreme Court case related to the First Amendment right to freedom of religion. See *Lee v. Weisman* and *Abington v. Schempp* handout.

Your Group: WOWT 6 Omaha News

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Your Group: KPTM Fox Omaha News 42

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Breaking News. First Warning Weather.

Your Group: KM Action 3 Omaha News

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Your Group: Nebraska Educational Telecommunications (NET) (PBS affiliate)

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Your Group: KXVO WB 15 Omaha News

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Your Group: KLNK ABC Lincoln News

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Lee v. Weisman

- **Facts of the Case:**
In keeping with the practice of several other public middle and high school principals in Providence, Rhode Island, Robert E. Lee, a middle school principal, invited a rabbi to speak at his school's graduation ceremony. Daniel Weisman's daughter, Deborah, was among the graduates. Hoping to stop the rabbi from speaking at his daughter's graduation, Weisman sought a temporary restraining order in District Court - but was denied. After the ceremony, where prayers were recited, Weisman filed for a permanent injunction barring Lee and other Providence public school officials from inviting clergy to deliver invocations and benedictions at their schools' ceremonies. When the Court of Appeals affirmed a District Court ruling against the schools, Lee appealed to the Supreme Court and was granted certiorari.
- **Constitutional Question:**
Does the inclusion of clergy who offer prayers at official public school ceremonies violate the Establishment Clause of the First Amendment?
- **Court Decision**
Yes. In a 5-to-4 decision, the Court held that government involvement in this case creates "a state-sponsored and state-directed religious exercise in a public school." Such conduct conflicts with settled rules proscribing prayer for students. The school's rule creates subtle and indirect coercion (students must stand respectfully and silently), forcing students to act in ways which establish a state religion. The cornerstone principle of the Establishment Clause is that government may not compose official prayers to recite as part of a religious program carried on by government.

The Oyez Project, *Lee v. Weisman*, 505 U.S. 577 (1992), available at: http://www.oyez.org/cases/1990-1999/1991/1991_90_1014/ (last visited Tuesday, August 5, 2008).

Abington School District v. Schempp

- **Facts of the Case**
The Abington case concerns Bible-reading in Pennsylvania public schools. At the beginning of the school day, students who attended public schools in the state of Pennsylvania were required to read at least ten verses from the Bible. After completing these readings, school authorities required all Abington Township students to recite the Lord's Prayer. Students could be excluded from these exercises by a written note from their parents to the school. In a related case -- *Murray v. Curlett* -- a Baltimore statute required Bible-reading or the recitation of the Lord's Prayer at open exercises in public schools. Murray and his mother, professed atheists -- challenged the prayer requirement.
- **Question**
Did the Pennsylvania law and Abington's policy, requiring public school students to participate in classroom religious exercises, violate the religious freedom of students as protected by the First and Fourteenth Amendments?
- **Conclusion**
The Court found such a violation. The required activities encroached on both the Free Exercise Clause and the Establishment Clause of the First Amendment since the readings and recitations were essentially religious ceremonies and were "intended by the State to be so." Furthermore, argued Justice Clark, the ability of a parent to excuse a child from these ceremonies by a written note was irrelevant since it did not prevent the school's actions from violating the Establishment Clause.

The Oyez Project, *Abington School District v. Schempp*, 374 U.S. 203 (1963), available at: http://www.oyez.org/cases/1960-1969/1962/1962_142/ (last visited Tuesday, August 5, 2008).

Marsh v. Chambers Supreme Court Decision

Decided: 1983 - 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019

Chief Justice Burger delivered the opinion of the Court.

The question presented is whether the Nebraska Legislature's practice of opening each legislative day with a prayer by a chaplain paid by the State violates the Establishment Clause of the First Amendment.

I

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. 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, . . .

On the merits of the chaplaincy issue, the [Court of Appeals for the Eight Circuit] refused to treat respondent's challenges as separable issues as the District Court had done. Instead, the Court of Appeals assessed the practice as a whole because “[p]arsing out [the] elements” would lead to “an incongruous result.”

Applying the three-part test of *Lemon v. Kurtzman*, . . . the court held that the chaplaincy practice violated all three elements of the test: the purpose and primary effect of selecting the same minister for 16 years and publishing his prayers was to promote a particular religious expression; use of state money for compensation and publication led to entanglement. Accordingly, the Court of Appeals modified the District Court's injunction and prohibited the State from engaging in any aspect of its established chaplaincy practice.

We granted certiorari limited to the challenge to the practice of opening sessions with prayers by a State-employed clergyman and we reverse.

II

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. In the very courtrooms in which the United States District Judge and later three Circuit Judges heard and decided this case, the proceedings opened with an announcement that concluded, “God save the United States and this Honorable Court.” The same invocation occurs at all sessions of this Court. . .

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, J. of the Sen. 88; J. of the H.R. 121. 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. .

Standing alone, historical patterns cannot justify contemporary violations of constitutional guarantees, but there is far more here than simply historical patterns. In this context, historical evidence sheds light not only on what the draftsmen intended the Establishment Clause to mean, but also on how they thought that Clause applied to the practice authorized by the First Congress—their actions reveal their intent. An act “passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, ... is contemporaneous and weighty evidence of its true meaning” . . .

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.” . . .

III

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. Weighed against the historical background, these factors do not serve to invalidate Nebraska’s practice.

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. . .

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, ante, at 3333-3334, by the same Congress that adopted the Establishment Clause of the First Amendment. . .

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

We do not doubt the sincerity of those, who like respondent, believe that to have prayer in this context risks the beginning of the establishment the Founding Fathers feared. But this concern is not well founded, for as Justice Goldberg, aptly observed in his concurring opinion in *Abington*:

“It is of course true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow.”

The unbroken practice for two centuries in the National Congress, for more than a century in Nebraska and in many other states, gives abundant assurance that there is no real threat “while this Court sits.”

The judgment of the Court of Appeals is reversed.

[This opinion has been edited for pedagogical purposes and internal citations, footnotes, and page numbers have been omitted.]

North Carolina and Legislative Chaplains

Article I, Section 13 of the North Carolina Constitution:

"All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience."

"A HOUSE RESOLUTION ADOPTING THE PERMANENT RULES OF THE HOUSE OF REPRESENTATIVES FOR THE 2007 REGULAR SESSIONS. . .

RULE 2. Opening the Session. – At the convening hour on each legislative day, the Speaker shall call the members to order and shall have the session opened with prayer. At the convening hour on the first day of each legislative week, the Speaker, or the Speaker's designee, shall lead the members in the Pledge of Allegiance to the American Flag. . .

RULE 47. Speaker's Staff; Chaplain; and Pages. – (a) The Speaker may
42 appoint one or more staff members to the Speaker, a Chaplain of the House, and pages
43 to wait upon the sessions of the House. . .

RULE 49. Compensation of Legislative Assistants. – No clerk, committee assistant, legislative assistant, office assistant, or other person employed or appointed under Rules 46, 47, and 48 hereof shall receive during such employment, appointment, or service any compensation from any department of the State government, and there shall not be voted, paid, or awarded any additional pay, bonus, or gratuity to any of them; but they shall receive only the pay now provided by law for such duties and services. This rule shall not apply to employment, appointment, or service or to the receipt of compensation or additional pay, bonus, or gratuity from another department of State government between regular sessions of the General Assembly."

Chaplain James H. Harry is considered an "Officer of the House."

"PERMANENT RULES OF
THE REGULAR SESSIONS OF THE SENATE
2007 GENERAL ASSEMBLY OF NORTH CAROLINA

...
RULE 3. Opening the session. – The Presiding Officer shall, upon order being obtained, have the sessions of the Senate opened with prayer."

Chaplain Mike Morris is considered an "Officer of the Senate."

Nothing in the senate rules speaks to the appointment of a chaplain or whether he is paid.

Tip Sheet for Coalition 1: Those Senators that are supporting Senator Chambers and want to eliminate the prayer and position of chaplain in the Nebraska Legislature

- There are four distinct responsibilities that you have as a group in this Special Committee hearing. Each of you should take one of these tasks and prepare to complete it during the committee meeting.
 - Deliver Opening Remarks which outline the argument you are going to present to the Special Committee
 - Question Senator Chambers about the prayers that take place in the legislative chambers
 - Question Reverend Palmer about the position of chaplain and his actions
 - Summarize your position with closing remarks that emphasize your strongest arguments for eliminating the prayer and the position of chaplain.
- Helpful Tips:
 - Think about the arguments that Senator Chambers and his attorneys discussed in the video. Here is one way in which you might present your case to the Special Committee:
 - Begin by arguing that in general, prayer to open any legislature should be unconstitutional because this practice, at the very least, endorses some religion over no religion at all and this is inconsistent with the First Amendment.
 - Furthermore, even if these prayers are not unconstitutional in general, there are specific facts in this case which make it unconstitutional such as:
 - Reverend Palmer, who is a Protestant minister, has been selected as chaplain for 16 consecutive years. Also, there has never been a chaplain in the Nebraska Legislature who was not a mainstream Protestant. This shows a type of endorsement of this specific religion.
 - The fact that Reverend Palmer was paid with government funds and his prayers were printed at government expense shows that the state is funding religion and this is what the First Amendment was meant to prevent.
 - His prayers (which you may want to distribute to the Special Committee) endorse Christian values over other religions and this is Nebraska expressing a preference for Christianity over other religions, which violates the First Amendment.
 - When questioning Senator Chambers, try to elicit how the prayer makes him feel and that in his mind it shows an endorsement of religion.
 - When questioning Reverend Palmer, attempt to find out what he thinks his role is and how he views religion in the legislature. Was he trying to be religious?
 - When presenting the closing remarks, be brief and quickly summarize your main arguments which favor eliminating the position of chaplain and beginning legislative sessions with a prayer.

Procedure of the committee meeting:

- The Committee Chairman (who will also serve as the time keeper) should call the meeting to order, explain the purpose of the meeting, and proceed in the following order:
 - Opening statement of Coalition 1 (Three minute limit)
 - Opening statement of Coalition 2 (Three minute limit)
 - Questioning of Senator Chambers by Coalition 1 (Five minute limit)
 - Questioning of Senator Chambers by Coalition 2 (Five minute limit)
 - Questioning of Reverend Palmer by Coalition 1 (Five minute limit)
 - Questioning of Reverend Palmer by Coalition 2 (Five minute limit)
 - Closing remarks of Coalition 1 (Five minute limit)
 - Closing remarks of Coalition 2 (Five minute limit)
- After the closing remarks, the members of the Committee, including the Chairman and those Senators who advocated on both sides, should have a discussion about what recommendation they will give to the full Senate. This should conclude with a vote in which each member votes to recommend either keeping the chaplain and prayer or abolishing the practice.

Tip Sheet for Coalition 2: Those Senators that are supporting Reverend Palmer and want to keep the prayer and position of chaplain in the Nebraska Legislature

- There are four distinct responsibilities that you have as a group in this Special Committee hearing. Each of you should take one of these tasks and prepare to complete it during the committee meeting:
 - Deliver Opening Remarks which outline the argument you are going to present to the Special Committee
 - Question Senator Chambers about the prayers that take place in the legislative chambers
 - Question Reverend Palmer about the position of chaplain and his actions
 - Summarize your position with closing remarks that emphasize your strongest arguments for eliminating the prayer and the position of chaplain.
- Helpful Tips:
 - Think about the arguments that the attorneys representing Nebraska discussed in the video. Here is one way in which you might present your case to the Special Committee:
 - Begin by arguing that prayers which open the legislative session are not what the First Amendment was written to prohibit. Tradition demonstrates this fact. The Founding Fathers that wrote and adopted the First Amendment paid chaplains and began sessions with prayer and it has continued unbroken for two centuries in the United States Congress and since statehood in Nebraska.
 - Furthermore, there is nothing specific to Nebraska's practice which would make it unconstitutional:
 - The fact that Reverend Palmer was repeatedly appointed as chaplain had nothing to do with his Protestant faith. He was good at his job and the legislature rewarded this by repeatedly offering him the post.
 - The government funds in question, which were spent on printing the book of prayers, are minuscule. No more than 200 were ever printed at one time. Also, the stipend given to Reverend Palmer was slightly more than \$300 per month, and only given while the legislature was in session.
 - The content of the prayers was neutral and attempted to articulate values that not only Christians believe in, but all Americans.
 - When questioning Senator Chambers, try to point out that this didn't hurt him. He had the option of leaving for the prayers and this was a tradition that existed long before he was in the Senate.
 - When questioning Reverend Palmer, try to emphasize principles which would help all Senators, regardless of their specific religion. Also, ask about the tradition of the position in American history.
 - When presenting the closing remarks, be brief and quickly summarize your main arguments which favor keeping the position of chaplain and beginning legislative sessions with a prayer.

Procedure of the committee meeting:

- The Committee Chairman (who will also serve as the time keeper) should call the meeting to order, explain the purpose of the meeting, and proceed in the following order:
 - Opening statement of Coalition 1 (Three minute limit)
 - Opening statement of Coalition 2 (Three minute limit)
 - Questioning of Senator Chambers by Coalition 1 (Five minute limit)
 - Questioning of Senator Chambers by Coalition 2 (Five minute limit)
 - Questioning of Reverend Palmer by Coalition 1 (Five minute limit)
 - Questioning of Reverend Palmer by Coalition 2 (Five minute limit)
 - Closing remarks of Coalition 1 (Five minute limit)
 - Closing remarks of Coalition 2 (Five minute limit)
- After the closing remarks, the members of the Committee, including the Chairman and those Senators who advocated on both sides, should have a discussion about what recommendation they will give to the full Senate. This should conclude with a vote in which each member votes to recommend either keeping the chaplain and prayer or abolishing the practice.

Tip Sheet for Senator Chambers

- You will be playing the role of Senator Ernie Chambers during the Special Committee hearing. Try to recreate the Senator's colorful personality and attitude that you witnessed in the documentary.
- Answer the questions asked to you by the Special Committee based upon what you learned about Senator Chambers from the documentary. Here are some quotes from Senator Chambers to help you in your preparation to testify:
 - "Religion was supposed to stay over there, and government was supposed to stay over here, and never the twain should meet. That was my view."
 - "So I first would try to explain to them why we shouldn't have a prayer, because this guy up there giving it belonged to a particular church and even other Protestant groups didn't agree with his particular church. He always ended the prayer with "in the name of Jesus," words to that effect, sometimes he might even say "Father, Son and Holy Ghost," so I told them he would do better to say, In the name of Mickey Mouse, Donald Duck, and Porky Pig, because it would be less offensive."
 - "When they would get close to announcing the beginning of the prayer, I would try to get out of the chamber because I didn't believe in what they were saying, and my mantra at that time was, we're here to deal with legislation, not salvation."
 - "They would say, it's not going to hurt you to be in here. You don't even have to pay attention. And I'd say to them, then what value is it?"
 - "It rocked on like that with me expressing my view and their being offended, till it reached the point where I said, I'm going to ask the Executive Board, of which I was a member, to get rid of the chaplain and if not, don't pay him."
 - "I don't care if they had a different chaplain every day, a different religion, sect, or cult represented, it made me no difference. My belief was then and is now, that nothing of a religious nature should transpire on that legislative floor."
 - "I remember there was a little bantering between me and the Assistant Attorney General. But he could not shake me in anything that I said because all of mine was on my genuine belief and I just wanted the record to be an honest reflection of what I thought and why I was there."

Procedure of the committee meeting:

- The Committee Chairman (who will also serve as the time keeper) should call the meeting to order, explain the purpose of the meeting, and proceed in the following order:
 - Opening statement of Coalition 1 (Three minute limit)
 - Opening statement of Coalition 2 (Three minute limit)
 - Questioning of Senator Chambers by Coalition 1 (Five minute limit)
 - Questioning of Senator Chambers by Coalition 2 (Five minute limit)
 - Questioning of Reverend Palmer by Coalition 1 (Five minute limit)
 - Questioning of Reverend Palmer by Coalition 2 (Five minute limit)
 - Closing remarks of Coalition 1 (Five minute limit)
 - Closing remarks of Coalition 2 (Five minute limit)
- After the closing remarks, the members of the Committee, including the Chairman and those Senators who advocated on both sides, should have a discussion about what recommendation they will give to the full Senate. This should conclude with a vote in which each member votes to recommend either keeping the chaplain and prayer or abolishing the practice.

Tip Sheet for Reverend Palmer

- You will be playing the role of Reverend Palmer, the chaplain of the Nebraska legislature, during the Special Committee hearing. Try to recreate his serious nature and devout faith in God and his duty as chaplain.
- Answer the questions asked to you by the Special Committee based upon what you learned about Reverend Palmer from the documentary. Here are some quotes from the Reverend to help you in your preparation to testify:
 - “What I hoped, as a chaplain I might have some influence on the legislators who were determining much of the future life of the whole state of Nebraska.”
 - “I’d talk with some of the senators, always get there early, and then at 9:00 the lieutenant governor would gavel the body to order, and then I would offer a prayer.”
 - “As far as the substance of my prayers, I would try to gear them to what might be current in terms of their voting that day, or the issues that they might be discussing at that time, or perhaps something that was happening in the world.”
 - “Ernie and I became acquainted almost from the beginning. But he and I had a basic disagreement. He felt that I should just not be there, that there should be no influence of anything that bordered on religion in politics.
 - “I tried to be general in the sense that America is in general believers in God. I prayed to God, but I didn’t define whose God it was. I tried to stay away from Jesus Christ. It was difficult not to make some reference to him. When they hired me, they knew that I was a Christian minister, by definition I believed in Jesus Christ, He was the reason for my faith and the reason for my life.
 - “I did want them to know that God was in the audience listening to their deliberations. To let them know that somehow or other, what they do there has eternal and wider spiritual repercussions than simply pleasing a particular faction of their constituency.”
 - “I would invite other clergy in the community rabbis, priests, representatives of other denominations to be present and offer prayers. I was trying to show, intentionally, that we had a diverse community with different religious interests.”
 - “They [the prayers] had a ceremonial dimension, similar to saying the pledge of allegiance to the flag. To me, it was something very different. It always remained for me a spiritual experience in which I was imploring the almighty to listen in on what was going on and to have an influence for the good of the body.”
 - “They asked me a number of questions about my understanding of it. And what I said is, that historically religion had been a part of American values, from my understanding going back to the Constitution, and beyond B the founding fathers referred to the deity, they had chaplains in the Continental Army, they offered prayers before the Continental Congress, they would all consider themselves men of God, and felt that religion was a necessary part of American life.

Procedure of the committee meeting:

- The Committee Chairman (who will also serve as the time keeper) should call the meeting to order, explain the purpose of the meeting, and proceed in the following order:
 - Opening statement of Coalition 1 (Three minute limit)
 - Opening statement of Coalition 2 (Three minute limit)
 - Questioning of Senator Chambers by Coalition 1 (Five minute limit)
 - Questioning of Senator Chambers by Coalition 2 (Five minute limit)
 - Questioning of Reverend Palmer by Coalition 1 (Five minute limit)
 - Questioning of Reverend Palmer by Coalition 2 (Five minute limit)
 - Closing remarks of Coalition 1 (Five minute limit)
 - Closing remarks of Coalition 2 (Five minute limit)
- After the closing remarks, the members of the Committee, including the Chairman and those Senators who advocated on both sides, should have a discussion about what recommendation they will give to the full Senate. This should conclude with a vote in which each member votes to recommend either keeping the chaplain and prayer or abolishing the practice.

Tip Sheet for Committee Chairman

- You will serve as the Committee Chairman for the Special Committee on Prayer in the Legislature. Your role will be to make sure the meeting is run smoothly and on time.
- You will begin by calling the meeting to order when everyone is present. Use a watch to make sure all time limits are obeyed. When there is one minute left at the end of any given portion of the meeting, tell the committee members that you will indicate this to them by holding up a piece of paper.
- The committee meeting will proceed as follows:
 - You should call the meeting to order and explain the purpose of the meeting.
 - When describing the purpose of the meeting, make a statement that includes that the committee has been formed and called to order so that they may make a recommendation to the full Senate as to whether the opening prayer and position of chaplain should be eliminated. Tell the committee members to remember that the Establishment Clause, as interpreted by the Supreme Court, would make this practice of the Senate unconstitutional if it:
 - Establishes a religion; or
 - Advances the beliefs of a particular church or religion or promotes excessive entanglement between government and religion.
 - Proceed in the following order, beginning each portion of the hearing with something like the phrase: “Senator representing Coalition 1, please proceed with your opening statement/call your next witness” etc.
 - Opening statement of Coalition 1 (Three minute limit)
 - Opening statement of Coalition 2 (Three minute limit)
 - Questioning of Senator Chambers by Coalition 1 (Five minute limit)
 - Questioning of Senator Chambers by Coalition 2 (Five minute limit)
 - Questioning of Reverend Palmer by Coalition 1 (Five minute limit)
 - Questioning of Reverend Palmer by Coalition 2 (Five minute limit)
 - Closing remarks of Coalition 1 (Five minute limit)
 - Closing remarks of Coalition 2 (Five minute limit)
 - During the questioning of the two witnesses, undecided members of the Committee should feel free to ask questions, but not inappropriately interrupt, to help them reach a conclusion about the practice of opening legislative sessions with prayer.
 - After the closing remarks, the members of the Committee, including you and those Senators who advocated on both sides, should have a discussion about what recommendation they will give to the full Senate. This should conclude with a vote in which each member, individually, votes to recommend to the full Senate either to keep the chaplain and the prayer or eliminate both.

Tip Sheet for Undecided Committee Members

- Each of you will be playing the role of an undecided committee member on the Special Committee on Prayer in the Legislature. The purpose of this particular hearing is to hear testimony on both sides of the issue and then, as a committee, provide a recommendation to the full Senate as to whether or not the practice of opening session with a prayer and paying a chaplain should be continued.
- Remember that the Establishment Clause, as interpreted by the Supreme Court, would make this practice of the Senate unconstitutional if it:
 - Establishes a religion; or
 - Advances the beliefs of a particular church or religion or promotes excessive entanglement between government and religion.
- During the questioning of Senator Chambers and Reverend Palmer, feel free to ask any questions of them that you may have in order to better understand and decide the issue before the committee.
- Different members of your group should be selected to perform the following tasks during the meeting:
 - Take notes during the opening remarks of Coalition 1
 - Take notes during the opening remarks of Coalition 2
 - Take notes during the examination of Senator Chambers while he is being questioned by Coalition 1
 - Take notes during the examination of Senator Chambers while he is being questioned by Coalition 2
 - Take notes during the examination of Reverend Palmer while he is being questioned by Coalition 1
 - Take notes during the examination of Reverend Palmer while he is being questioned by Coalition 2
 - Take notes during the closing remarks of Coalition 1
 - Take notes during the closing remarks of Coalition 2
- Use these notes during the discussion at the close of the hearing to make sure that all important points are brought up and discussed.
- At the conclusion of the discussion, each member of the committee will be asked to vote either in support of eliminating the position of chaplain and the prayer or in support of keeping the position and opening prayer. This vote will determine what recommendation is given to the full Senate and what course it will most likely take.

Procedure of the committee meeting:

- The Committee Chairman (who will also serve as the time keeper) should call the meeting to order, explain the purpose of the meeting, and proceed in the following order:
 - Opening statement of Coalition 1 (Three minute limit)
 - Opening statement of Coalition 2 (Three minute limit)
 - Questioning of Senator Chambers by Coalition 1 (Five minute limit)
 - Questioning of Senator Chambers by Coalition 2 (Five minute limit)
 - Questioning of Reverend Palmer by Coalition 1 (Five minute limit)
 - Questioning of Reverend Palmer by Coalition 2 (Five minute limit)
 - Closing remarks of Coalition 1 (Five minute limit)
 - Closing remarks of Coalition 2 (Five minute limit)
- After the closing remarks, the members of the Committee, including the Chairman and those Senators who advocated on both sides, should have a discussion about what recommendation they will give to the full Senate. This should conclude with a vote in which each member votes to recommend either keeping the chaplain and prayer or abolishing the practice.