



MEMORANDUM

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NATIONAL DAY OF PRAYER

I. History of the National Day of Prayer

The National Day of Prayer is deeply rooted in the Nation’s history. At the end of the years 1777, 1781, and 1782, the Continental Congress recommended that the states set apart a day for prayer and thanksgiving.¹ On September 25, 1789, the same day Congress approved the First Amendment, it petitioned President George Washington to issue a proclamation of a national day of prayer and thanksgiving.² President Washington accordingly proclaimed November 26, 1789, the first official Thanksgiving holiday and exhorted all Americans to “unite in most humbly offering our prayers and supplications to the great Lord and Ruler of Nations, and beseech Him to pardon our national and other transgressions.”³ The overwhelming majority of presidents have followed suit in declaring a national Day of Thanksgiving.

At the Constitutional Convention itself, Benjamin Franklin urged that “prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business.”⁴ Beginning with George Washington, three of the four Founding Fathers who became President proclaimed at least one National Day of Prayer.⁵

On January 1, 1795, President Washington issued a proclamation calling for a “day of public thanksgiving and prayer” on February 19 of the same year.⁶ The proclamation declared that “it is

¹ The text of the Proclamation for a Day of Thanksgiving and Prayer, issued by President of Congress Thomas McKean on October 26, 1781, is available at <http://www.wallbuilders.com/LIBissuesArticles.asp?id=17940>.

² D. Dreisbach, *Real Threat and Mere Shadow: Religious Liberty and the First Amendment* 111 (1987).

³ *Id.*

⁴ *Franklin’s Appeal for Prayer at the Constitutional Convention of 1787*, WALLBUILDERS, <http://www.wallbuilders.com/LIBissuesArticles.asp?id=98>.

⁵ See John T. Woolley & Gerhard Peters, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws>.

⁶ George Washington, *Proclamation 6: Day of Public Thanksgiving*, January 1, 1795,

in an especial manner our duty as a people, with devout reverence and affectionate gratitude, to acknowledge our many and great obligations to Almighty God and to implore Him to continue and confirm the blessings we experience.”⁷

Similarly, John Adams issued two proclamations, in 1798 and 1799, calling the nation to days of “solemn humiliation, fasting, prayer.”⁸ The proclamations acknowledged that dependence on God was essential for the “promotion of that morality and piety without which social happiness cannot exist nor the blessings of a free government be enjoyed.”⁹

Perhaps most significantly, James Madison, the First Amendment’s drafter, issued four proclamations calling the nation to a day of prayer. Because the nation was at war, President Madison asked the nation to set aside a “day of public humiliation and prayer” in the years 1812, 1813, 1814, and 1815.¹⁰ In the 1812 proclamation, Madison exhorted the nation to render to

the Sovereign of the Universe and the Benefactor of Mankind the public homage due to His holy attributes; of acknowledging the transgressions which might justly provoke the manifestations of His divine displeasure; of seeking His merciful forgiveness and His assistance in the great duties of repentance and amendment, and especially of offering fervent supplications that in the present season of calamity and war He would take the American people under His peculiar care and protection; that He would guide their public councils, animate their patriotism, and bestow His blessing on their arms; that He would inspire all nations with a love of justice and of concord and with a reverence for the unerring precept of our holy religion to do to others as they would require that others should do to them; and, finally, that, turning the hearts of our enemies from the violence and injustice which sway their councils against us, He would hasten a restoration of the blessings of peace.¹¹

Since the founding era, nearly every president has issued proclamations calling the nation to pray for various purposes. The most common proclamation has been the call to observe a day of Thanksgiving with prayers of thanks to God.

The historical record establishes that the National Day of Prayer “is deeply embedded in the history and tradition of this country.” 463 U.S. at 786. In 1952, President Truman signed into law a

<http://www.presidency.ucsb.edu/ws/?pid=65500>.

⁷ *Id.*

⁸ John Adams, *Proclamation: Recommending a National Day of Humiliation, Fasting, and Prayer*, March 6, 1798, <http://www.presidency.ucsb.edu/ws/?pid=65661>; John Adams, *Proclamation: Recommending a National Day of Humiliation, Fasting, and Prayer*, March 6, 1799, <http://www.presidency.ucsb.edu/ws/?pid=65675>.

⁹ John Adams, *Proclamation 8: Recommending a National Day of Humiliation, Fasting, and Prayer*, March 23, 1798, <http://www.presidency.ucsb.edu/ws/?pid=65661>.

¹⁰ James Madison, *Proclamation: Recommending a Day of Prayer*, July 9, 1812, <http://www.presidency.ucsb.edu/ws/?pid=65944>; James Madison, *Proclamation: Recommending a Day of Prayer*, July 23, 1813, <http://www.presidency.ucsb.edu/ws/?pid=65959>; James Madison, *Proclamation 18: Recommending a Day of Public Humiliation, Fasting, and Prayer*, November 16, 1814, <http://www.presidency.ucsb.edu/ws/?pid=65981>; James Madison, *Proclamation 20: Recommending a Day of Public Thanksgiving for Peace*, March 4, 1815, <http://www.presidency.ucsb.edu/ws/?pid=65984>.

¹¹ James Madison, *Proclamation: Recommending a Day of Prayer*, July 9, 1812, <http://www.presidency.ucsb.edu/ws/?pid=65944> (quotations marks and citations omitted).

joint resolution by Congress declaring an annual National Day of Prayer. In 1988, President Reagan amended the law by permanently setting the day as the first Thursday of every May. *See* 36 U.S.C. § 119.

II. The Supreme Court of the United States' Recognition of the Nation's Religious Heritage.

The United States Supreme Court has repeatedly recognized that the Establishment Clause should not be interpreted to sever the American government from its own religious heritage. In *Lee v. Weisman*, 505 U.S. 577, 598-99 (1992), the Court warned against “[a] relentless and all-pervasive attempt to exclude religion from every aspect of public life.” The National Motto is a constitutional acknowledgement by the government of the nation’s religious heritage.

In *Zorach v. Clauson*, the Court said, “[w]e are a religious people whose institutions presuppose a Supreme Being.” 343 U.S. 306, 313 (1952). In *Abington Township v. Schempp*, 374 U.S. 203, 213 (1963), the Court cited several examples of the Nation’s religious heritage:

The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself. This background is evidenced today in our public life through the continuance in our oaths of office from the Presidency to the Alderman of the final supplication, “So help me God.” Likewise each House of the Congress provides through its Chaplain an opening prayer, and the sessions of this Court are declared open by the crier in a short ceremony, the final phrase of which invokes the grace of God. Again, there are such manifestations in our military forces, where those of our citizens who are under the restrictions of military service wish to engage in voluntary worship.

Over forty years later, the Court in *Lynch v. Donnelly* noted the “unbroken history of official acknowledgement by all three branches of government of the role of religion in American life from at least 1789,” as well as the many “official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders.” 465 U.S. 668, 674-75 (1984).

Beginning in the early colonial period long before Independence, a day of Thanksgiving was celebrated as a religious holiday to give thanks for the bounties of Nature as gifts from God. . . . Government has long recognized—indeed it has subsidized—holidays with religious significance. Other examples of reference to our religious heritage are found in the statutorily prescribed national motto “In God We Trust,” which Congress and the President mandated for our currency, and in the language “One nation under God,” as part of the Pledge of Allegiance to the American flag. . . . Art galleries supported by public revenues display religious paintings of the 15th and 16th centuries, predominantly inspired by one religious faith. . . . Congress has long provided chapels in the Capitol for religious worship and meditation. . . . [and] Congress has directed the President to proclaim a National Day of Prayer each year

Id. at 675–78 (citations omitted).

The Court stated that the close ties of religion to the nation’s history required the Court to reject an absolutist approach to the Establishment clause:

This history may help explain why the Court consistently has declined to take a rigid, absolutist view of the Establishment Clause. We have refused “to construe the Religion Clauses with a literalness that would undermine the ultimate constitutional objective *as illuminated by history.*” *Walz v. Tax Comm’n*, 397 U.S. 664, 671 (1970) (emphasis added). In our modern, complex society, whose traditions and constitutional underpinnings rest on and encourage diversity and pluralism in all areas, an absolutist approach in applying the Establishment Clause is simplistic and has been uniformly rejected by the Court.

Id. at 678.

Again in 2004, Chief Justice Rehnquist listed numerous examples of religion’s role in government, quoting passages from the speeches of great American Presidents throughout history that invoke the name of God and form official acknowledgments of religion’s role in United States history, including: (1) George Washington’s first inauguration and first Thanksgiving proclamation, (2) Thanksgiving proclamations given by many Presidents after Washington, (3) Abraham Lincoln’s Gettysburg Address and second inaugural address, (4) Woodrow Wilson’s appearance before Congress to declare war on Germany, (5) Franklin D. Roosevelt’s first inaugural address, (6) Dwight D. Eisenhower’s “Order of the Day” to the Allied Expeditionary Force on D-day, (7) The National Motto, “In God we Trust” and its appearance on currency, (8) The Supreme Court’s opening proclamation, “God save the United States and this honorable Court,” and (9) the National Anthem’s last verse that reads, “And this be our motto: ‘In God is our trust.’” *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 26–30 (2004).

III. The National Day of Prayer Is Constitutional under the Supreme Court’s Cases Upholding Legislative Prayer.

The Supreme Court has consistently held that the history and ubiquity of a governmental religious activity is an important factor in determining its constitutionality. In two landmark cases, the United States Supreme Court upheld the constitutionality of legislative prayer. In both *Marsh v. Chambers*, 463 U.S. 783 (1983), and *Town of Greece v. Galloway*, 572 U.S. 565 (2014), the fact that legislative prayer was “deeply embedded in the history and tradition of this country” was pivotal to the conclusion that the practice is constitutional. *Marsh*, 463 U.S. at 785; *Town of Greece*, 572 U.S. at 576 (“That the First Congress provided for the appointment of chaplains only days after approving language for the First Amendment demonstrates that the Framers considered legislative prayer a benign acknowledgment of religion’s role in society.”).

In *American Legion v. American Humanist Association*, 139 S. Ct. 2067 (2019), the Court reaffirmed the analytical framework adopted in *Town of Greece* and *Marsh*. The Court praised the “modest approach that focuses on the particular issue at hand and looks to history for guidance.” *Id.* at 2087. *See also id.* at 2022 (Kavanaugh, J., concurring) (“[T]he Court today applies a history and tradition test.”).

Most recently, in *Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407 (2022), the Supreme Court decisively held that “the Establishment Clause must be interpreted by ‘reference to historical practices and understandings.’” *Id.* at 2428 (citation omitted). As one court described the Court’s holding in *Kennedy*:

Kennedy makes clear that, under the Establishment Clause, historical analysis is “the rule rather than some exception.” So, in Establishment Clause cases, the plaintiff has the burden of proving a set of facts that would have historically been understood as an establishment of religion. That requires proving both a set of facts, like in all litigation, and proving that those facts align with a historically disfavored establishmentarian practice.

Firewalker-Fields v. Lee, 58 F.4th 104, 122 n.7 (4th Cir. 2023) (citations omitted).

Although the Supreme Court has not considered the constitutionality of the National Day of Prayer, the same reasoning adopted in its legislative prayer cases as well as in *American Legion* and *Kennedy* would almost certainly extend to any challenge to the National Day of Prayer. Just as the Court refused to read the “Establishment Clause of the Amendment to forbid what [its framers] had just declared acceptable,” *Marsh*, 463 U.S. at 790, National Day of Prayer proclamations enjoy the same historical status and therefore the same constitutional validity. As one court of appeals observed, the National Day of Prayer “has existed in various forms since the dawn of the country.” *Mayle v. United States*, 891 F.3d 680, 685 (7th Cir. 2018).

IV. Lower Court Decisions Addressing the National Day of Prayer

No lower court has addressed the constitutionality of the National Day of Prayer because in the few cases decided, the courts have dismissed the claims on the grounds that the plaintiffs lacked standing to challenge the National Day of Prayer. *See, e.g., Freedom from Religion Found., Inc. v. Obama*, 641 F.3d 803 (7th Cir. 2011) (National Day of Prayer); *Freedom from Religion Found., Inc. v. Brewer*, 2013 Ariz. App. Unpub. LEXIS 671 (June 11, 2013) (same); *Freedom from Religion Found., Inc. v. Perry*, 2011 U.S. Dist. LEXIS 82870 (S.D. Tex. 2011) (Texas day of prayer proclamation); *Hickenlooper v. Freedom from Religion Found., Inc.*, 338 P.2d 1002 (Co. 2014) (2014) (en banc) (Colorado day of prayer proclamation).

The concept of standing requires a plaintiff to show that he has suffered actual injury from the defendant’s action. In the context of a government action, the plaintiff’s disagreement with the government’s action is not enough to give the plaintiff standing to sue the government. *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464 (1982) (offense at a public official’s support of religion was inadequate to establish plaintiff’s standing). As the Seventh Circuit explained, the federal statute requiring the President to proclaim a National Day of Prayer “imposes duties on the President alone.” *Obama*, 641 F.3d at 805. The statute “does not require any private person to do anything—or for that matter to take any action in response to whatever the President proclaims. If anyone suffers injury, therefore, that person is the President, who is not complaining. No one has standing to object to a statute that imposes duties on strangers.” *Id.*

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