In the United States Court of Appeals for the District of Columbia Circuit

DANIEL BARKER, Plaintiff-Appellant, vs. PATRICK CONROY, Chaplain, *et al.*, Defendants-Appellees.	Case No. 17-5278

On Appeal from a Final Order of the U.S. District Court for the District of Columbia (No. 16-cv-00850) (Rosemary M. Collyer, U.S. District Judge)

BRIEF OF THE STATES OF OKLAHOMA, ALABAMA, ARKANSAS, ARIZONA, COLORADO, GEORGIA, IDAHO, INDIANA, KANSAS, LOUISIANA, MAINE, BY AND THROUGH GOVERNOR PAUL R. LEPAGE, MICHIGAN, MONTANA, NEBRASKA, OHIO, SOUTH CAROLINA, TEXAS, UTAH, WEST VIRGINIA, AND WISCONSIN AS AMICI CURIAE IN SUPPORT OF APPELLEES

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Parties and Amici

All parties, intervenors, and *amici* appearing before the district court and in this Court are listed in the Brief for Appellees, except for the following: the States of Oklahoma, Alabama, Arkansas, Arizona, Colorado, Georgia, Idaho, Indiana, Kansas, Louisiana, Maine, by and through Governor Paul R. LePage, Michigan, Montana, Nebraska, Ohio, South Carolina, Texas, Utah, West Virginia, and Wisconsin

Rulings Under Review

References to the rulings at issue appear in the Brief for Appellant.

Related Cases

To Amici's knowledge, this case has not previously been before this Court or any other court, and there are no related cases pending in this Court or in any other court.

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INTERESTS OF AMICI CURIAE

Pursuant to Fed. R. App. P. 29(a)(2), the States of Oklahoma, Alabama, Arkansas, Arizona, Colorado, Georgia, Idaho, Indiana, Kansas, Louisiana, Maine, by and through Governor Paul R. LePage, Michigan, Montana, Nebraska, Ohio, South Carolina, Texas, Utah, West Virginia, and Wisconsin respectfully submit this brief as Amici Curiae in support of Defendants-Appellees. Like the U.S. Congress, state legislatures and many local governmental bodies have developed detailed rules to structure their internal proceedings. And like the Rules of the U.S. House of Representatives, most state legislative rules call for the legislative body to commence each session with a prayer. The Amici States therefore have a direct interest in preserving the constitutional latitude that courts typically afford legislative bodies in regulating their internal affairs, and they also have an interest in protecting the longstanding practice of legislative prayer.

SUMMARY OF THE ARGUMENT

Since its inception in 1789, the U.S. Congress has maintained the unbroken tradition of opening each legislative session with a prayer to a deity—a practice since codified and now required by the Rules of the U.S. House of Representatives. Similarly, many state and local legislative bodies throughout the country offer a prayer to commence each day of legislative session pursuant to legislative rules, and these practices were upheld by the U.S. Supreme Court in both *Marsh v. Chambers*, 463 U.S. 783 (1983), and *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014).

A necessary corollary to the Supreme Court's cases approving a legislature's decision to set aside time for prayer is that the legislature may also specify that this time is for prayer—and not other activities. Appellant Daniel Barker nonetheless alleges that he has a constitutional right to force the House of Representatives to provide him the opportunity to give a secular invocation—not a prayer—at the time that legislative rules have set apart for a "prayer." But the Supreme Court's and this Court's cases make clear that the legislature may dedicate a time for prayer as a religious exercise seeking divine guidance. Cases from state courts confirm that the prayer that is attendant to public functions is specifically an appeal to the Almighty, not some purely secular discourse. In view of this, a holding that Barker can forcibly co-opt this time of prayer for non-prayer activities would effectively amount to a ruling that legislatures *cannot* devote a time exclusively to prayer. Barker's challenge is thus a not-so-subtle attempt to attack

the constitutionality of legislative prayer itself, in contravention of *Marsh*, *Galloway*, and many other decisions from federal and state courts.

To the extent that Barker argues that Father Patrick Conroy has misapplied House rules, respect for the separation of powers requires that complaint to be lodged with the House, not the courts. The U.S. Constitution and almost all state constitutions require the separation of powers *and* specifically vest legislative bodies with the power to determine their own rules. Interpretation and application of those rules should rest with those bodies, along with the responsibility to discipline members or officers who misapply those rules. Judicial interference with a legislature's internal matters would seriously compromise the separation of powers.

In short, Barker's attempt to force the House to allow something other than a prayer to open the legislative session would disregard the history of legislative prayer, Supreme Court precedent, and the very notion of legislative prayer itself.

I. State and local legislatures commonly promulgate rules requiring legislative sessions to begin with prayer.

The practice of legislative prayer dates back to time out of mind. Both Houses of British Parliament have begun every session with a prayer since at least the 16th century. Martin Lanouette, *Prayer in the Legislature: Tradition Meets Secularization*, 32(4) CAN. PARL. REV. 2, 2 (2009). The U.S. Congress has included a prayer uninterrupted since the first Congress under the Constitution in 1789. *See Lynch v. Donnelly*, 465 U.S. 668, 674 (1984). Unsurprisingly, the practice is widespread across the several states.

"Almost all state legislatures still use an opening prayer as part of their tradition and procedure." *Inside the Legislative Process*, National Conference of State Legislatures, at 5-145 (Jan. 2010) (hereinafter "NCSL").[1] And in *Marsh* itself, the U.S. Supreme Court upheld the Nebraska Legislature's practice of beginning each session with a prayer offered by a paid legislative chaplain. 463 U.S. at 784-86.

As it is in the U.S. House of Representatives, prayer in state legislatures is often conducted pursuant to internal legislative rules. *See, e.g.*, Okla. House Rules, Rule 3.5 (2017-18) ("A Chaplain shall attend the commencement of each day's session of the House, open the same with prayer and may be allotted five (5) minutes during the Thursday session for the purpose of delivering remarks to the House."); *see also* Appendix I (collecting citations).

True to the federalist nature of our country, there is significant variation in how the state legislatures administer legislative prayers. *See, e.g.*, Jeremy G. Mallory, *"An Officer of the House Which Chooses Him, and Nothing More": How Should* Marsh v. Chambers *Apply to Rotating Chaplains?,* 73 U. CHI. L. REV. 1421, 1427-30 (2006) (surveying state legislative practices). Most hold the prayer immediately after the session has been called to order; but other chambers—like the Colorado House and Nebraska Legislature—give the prayer before the floor sessions are officially called to order. NCSL, *supra*, at 5-

[1] *Available at* http://www.ncsl.org/documents/legismgt/ilp/02tab5pt7.pdf (detailing results of survey taken in 2002 and reported in all subsequent issues of the publication).

145. Some legislatures employ a full-time chaplain; others employ an individual part-time; and some have no permanent chaplain at all, choosing instead to operate on a rotating basis. *Id.* at 5-147. In some chambers, the chaplain is charged with offering the prayer; in others, individual legislators are tasked with discharging the duty; and in still others, guests are permitted to offer the prayer. *Id.* at 5-145.

Indeed, "[f]orty-seven chambers allow people other than the designated legislative chaplain or a visiting chaplain to offer the opening prayer." *Id.* States select these guest supplicants by diverse methods. *See, e.g.*, *Simpson v. Chesterfield Cnty. Bd. of Supervisors*, 404 F.3d 276, 279 (4th Cir. 2005) (County Board: by local phone book); *Hinrichs v. Speaker of House of Reps. of Ind. Gen. Assembly*, 506 F.3d 584, 586 (7th Cir. 2007) (Indiana House: by invitation of the Speaker of the House, with nominations from individual legislators); *cf. Turner v. City Council of Fredericksburg*, 534 F.3d 352, 353-54 (4th Cir. 2008) (prayers offered by city council members directly); *Wynne v. Town of Great Falls*, 376 F.3d 292, 294 (4th Cir. 2004) (same). Some legislative chambers do not provide any codified guidelines for these prayers, but in 37 chambers such documentation has been "developed by legislative leadership, the clerk or secretary, or a rules or management committee." NSCL, *supra*, at 5-145.[2] Some chambers require that

[2] *See, e.g.*, Maryland Senate Rules, Rule 5 (2004) (requiring that "a prayer shall be offered pursuant to the guidelines approved by the Senate Rules Committee"). *Compare* Hawaii House Rules, Part VI, Rule 29.2 (2017-18) ("Any invocation shall be limited to two minutes, and should not be used to proselytize, advance, or disparage any religion or point of view. Attendance at and participation in the invocation shall be voluntary for all persons."), *with* Tenn. Senate Rules, Rule 19 (2017) ("The person delivering the

guest prayers be reviewed for their content before their presentation: the Florida House, for instance, has required review at least one-hour beforehand and the Puerto Rico House one week in advance. *Id.* at 5-146.

But though States may vary in the details of how they administer their legislative prayers, there is one commonality that runs through them all: a legislative prayer is presumed to be religious in nature. For example, the "Basic Guidelines" developed by the National Conference of State Legislatures begins by noting that "In giving an invocation or benediction one calls upon God's presence on behalf of the particular public gathered." *Id.* Occasional exceptions to prayer as an act seeking divine guidance only tend to prove the more general rule. In 2017, for instance, an Arizona legislator used the opportunity to offer the legislative prayer to instead give a non-theistic invocation that did not mention a higher power. Several of her colleagues took issue with this omission, and so the next day they insisted on giving two prayers to make up for the alleged breach of protocol. *See* Ray Stern, *Whose Higher Power? Atheist Legislator Draws Support After GOP Lawmakers Rebuke Her Prayer*, PHOENIX NEW TIMES (April 20, 2017). Regardless of who is right in that debate, this example demonstrates the strong conviction of many legislators that prayer requires an acknowledgment of a divinity, a

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invocation may offer prayer according to the beliefs and practices of his faith but shall be informed that the citizens of the State of Tennessee and its elected Senators are of a variety of faiths and beliefs that prayer in the Senate should respect that diversity, and if, within the constraints and conscience of the prayer leader, the prayer should be ecumenical.").

higher power, or a supreme being. Lawmaking bodies have the discretion to begin their sessions in a variety of ways, but at the very least it is permissible and reasonable for such a body to begin with "prayer," defined exclusively as a call directed toward a higher power. And the state-by-state debate on this matter illustrates how these disputes are best resolved: by recourse to internal procedures, rather than courts.

II. Like the federal courts, State courts consistently contemplate "prayer" as invoking the Divine, and legislatures may lawfully set aside time for that specific activity.

In this case, Barker concedes that rules providing for legislative prayer are constitutional, Aplt. Br. 17, but alleges that the Constitution requires that a legislature must permit prayer times to be used for speakers to give non-prayer, secular invocations as well, Aplt. Br. 19, 26-27, 34-35; *see also* Aple. Br. 9-10. But when the U.S. Supreme Court and other courts have upheld the constitutionality of legislative prayer, they have done so in recognition that prayer is religious in nature, invoking guidance of the Divine. *See, e.g.*, *Marsh*, 463 U.S. at 792 (characterizing legislative prayer as the invoking of "divine guidance on a public body entrusted with making the laws"). A necessary result of holding that legislatures may appropriately designate a time exclusively for prayer is that the legislature may also ensure that other, non-prayer speeches are not being made during that appointed time. If the opposite were true, legislative choice to begin sessions with a prayer could quickly become a nullity.

As the House Chaplain persuasively argues, both the Supreme Court's and this Court's cases consistently recognize legislative prayer as being religious in nature. *See*

Aple. Br. 23, 39-55. Cases from the Supreme Court in other contexts echo the fundamental characteristic of prayer as a spiritual act directed at the Creator.[3] The Supreme Court tacitly recognized legislative prayer as an act appealing to the divine well before *Marsh* when it endorsed the notion that "[p]rayers in our legislative halls"—along with "other references to the Almighty that run through our laws" such as "the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; 'so help me God' in our courtroom oaths"—do not violate the First Amendment. *Zorach v. Clauson*, 343 U.S. 306, 312-13 (1952). Most recently, the Supreme Court has said that "Prayer unquestionably constitutes the exercise of religion." *Sause v. Bauer*, 138 S. Ct. 2561, 2562 (2018) (internal marks omitted).

Decisions from state courts on issues of prayer in government provide guidance and confirm the universal understanding of prayer in this context as a spiritual exercise directed at a supernatural power or being. *Cf. A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 258-59 (5th Cir. 2010) (noting that, given the common history

[3] *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 109-112 (2001) (indicating that prayer is a "quintessentially religious" activity); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000) (discussing "the particular religious practice of prayer"); *Lee v. Weisman*, 505 U.S. 577, 593 (1992) (characterizing "rabbi's prayer" as "religious exercise"); *Lynch*, 465 U.S. at 685 (referencing the "prayer invoking Divine guidance in Congress"); *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 212-13 (1963) (giving legislative prayer as an example of "religion [being] closely identified with our history and government" and quoting James Madison as saying Americans are a people who are "earnestly praying … that the Supreme Lawgiver of the Universe guide them into every measure which may be worthy of his blessing" (cleaned up)).

underlying state and federal versions of the Religious Freedom Restoration Act, court decisions interpreting the federal act can inform cases interpreting the state acts). As the California Supreme Court succinctly explains, "prayer is religious." *Sands v. Morongo Unified Sch. Dist.,* 809 P.2d 809, 815 (Cal. 1991). In so concluding, that court followed the Fifth Circuit, which had said that "Prayer is perhaps the quintessential religious practice for many of the world's faiths. … Prayer is an address of entreaty, supplication, praise, or thanksgiving directed to some sacred or divine spirit, being, or object. That it may contemplate some wholly secular objective cannot alter the inherently religious character of the exercise." *Karen B. v. Treen*, 653 F.2d 897, 901 (5th Cir. 1981), *aff'd*, 455 U.S. 913 (1982). And the California court in *Sands* also relied upon the U.S. Supreme Court's guidance in *Engel v. Vitale*, where it said:

> There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious, none of the respondents has denied this and the trial court expressly so found.

370 U.S. 421, 424-25 (1962).

Similarly, the Utah Supreme Court upheld legislative prayer by members of the Salt Lake City Council under the Utah Constitution. *Soc'y of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 917-18 (Utah 1993). In that case, the plaintiffs argued "that prayer, by its very nature, is religious worship or exercise." *Id.* at 931. The court acknowledged that the legislative prayer in question seemed "undeniably religious" and agreed that the council's prayers "w[ere] directed to a divinity." *Id.* The court ultimately

"conclude[d] that the prayerful address of a deity, by its very nature, is a 'religious exercise.'" *Id.* at 932. But it nevertheless upheld the practice as constitutional, noting that a contrary result "would produce consequences unintended by the framers and unheralded by our history." *Id.* at 939.

Other state court cases echo these sentiments. *See, e.g.*, *Opinions of Justices to House of Reps.*, 440 N.E.2d 1159, 1162 (Mass. 1982) (noting in context of school prayer statute that prayer "is a religious ceremony"); *Lincoln v. Page*, 241 A.2d 799, 800 (N.H. 1968) (characterizing local clergymen opening town meetings with a prayer or invocation as a practice making "reference to the Deity"); *Kay v. David Douglas Sch. Dist. No. 40*, 719 P.2d 875, 880 (Ore. App. 1986), *rev'd on other grounds*, 738 P.2d 1389 (Or. 1987) (stating that "prayer by its nature is religious" and distinguishing prayer from "some other appropriate non-religious statement or reading").

Federal courts outside of this circuit agree. The Ninth Circuit has characterized prayer as "presumably as religious an activity as one can imagine." *Love Korean Church v. Chertoff*, 549 F.3d 749, 759 (9th Cir. 2008). And one federal district court justified its finding that a Christian prayer delivered at a high school ceremony served a Christian religious purpose, rather than a secular purpose, as follows: "This finding and conclusion is supported not only by the great weight of the evidence in this case, but by the undeniable truth that prayer is inherently religious." *Graham v. C. Cmty. Sch. Dist. of Decatur Cnty.*, 608 F. Supp. 531, 535 (S.D. Iowa 1985). Federal courts have also cited dictionaries that are consistent with this universal understanding. *See, e.g.*, *Gaines v.*

Anderson, 421 F. Supp. 337, 343 & n.8 (D. Mass. 1976) (citing 1966 Webster's Third New International Dictionary definition of "prayer" as "a solemn and humble approach to Divinity in word or thought"). Against this backdrop, the Tenth Circuit has upheld the legislative judgment that a non-prayer, secular invocation "falls outside the long-accepted genre of legislative prayer." *Snyder v. Murray City Corp.*, 159 F.3d 1227, 1229 n.4 & 1234 (10th Cir. 1998) (en banc).[4]

[4] For more federal court acknowledgment of the spiritual nature of prayer, see *Holloman v. Harland*, 370 F.3d 1252, 1285 (11th Cir. 2004) ("prayer is 'a primary religious activity in itself'" (citation omitted)); *Mellen v. Bunting,* 327 F.3d 355, 374 (4th Cir. 2003) ("[T]he purpose of an official school prayer 'is plainly religious in nature.'" (quoting *Stone v. Graham,* 449 U.S. 39, 41 (1980) (per curiam)); *Child Evangelism Fellowship of Maryland, Inc. v. Montgomery Cnty. Pub. Sch.*, 373 F.3d 589, 597 (4th Cir. 2004) (characterizing "prayer" as an "inherently religious activity"); *Coles v. Cleve. Bd. of Educ.*, 171 F.3d 369, 384 (6th Cir. 1999) (discussing "the intrinsically religious practice of prayer"); *N. Car. Civ. Liberties Union Legal Found. v. Constangy*, 947 F.2d 1145, 1150 (4th Cir. 1991) (characterizing prayer as "an act so intrinsically religious"); *Jager v. Douglas Cnty. Sch. Dist.*, 862 F.2d 824, 838 (11th Cir. 1989) (discussing the "intrinsically religious nature of prayer"); *Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff'd*, 472 U.S. 38 (1985) ("prayer is the quintessential religious practice"); *Hall v. Bradshaw*, 630 F.2d 1018, 1020 (4th Cir. 1980) ("A prayer, however, is undeniably religious and has, by its nature, both a religious purpose and effect."); *Hunter v. Corr. Corp. of Am.*, No. CV 314-035, 2017 WL 6029617, at *3 (S.D. Ga. Dec. 5, 2017) (describing program "involv[ing] scripture memorization, prayer, and Christian praise and worship" as "intrinsically religious"); *Moore v. City of Van*, 238 F. Supp. 2d 837, 847 (E.D. Tex. 2003) ("Certain activities Plaintiffs seek to engage in are 'quintessentially religious', *e.g.,* prayer."); *Campbell v. St. Tammany Parish Sch. Bd.*, No. CIV.A.98-2605, 2003 WL 21783317, at *10 (E.D. La. July 30, 2003) (describing "proposed prayer meeting" as "quintessentially religious"); *Bronx Household of Faith v. Bd. of Educ. of New York*, 226 F. Supp. 2d 401, 414 (S.D.N.Y. 2002), *aff'd*, 331 F.3d 342 (2d Cir. 2003) (characterizing "prayer" as "quintessentially religious"); *Chandler v. James*, 985 F. Supp. 1094, 1100 (M.D. Ala. 1997) (it is a "truism that prayer is a quintessentially religious act"); *Bauchman v. W. High Sch.*, 900 F. Supp. 254, 270 n.21 (D. Utah 1995) (describing "graduation prayer" as "inherently religious in nature").

Atheists and other plaintiffs in Establishment Clause cases have specifically based their arguments and allegations on the premise that prayer is inherently religious.[5] This concept of prayer should thus come as no surprise to Barker—who, in fact, filed this suit on the National Day of Prayer, Aple. Br. 9, which Congress has designated by statute as a day "on which the people of the United States may turn to God in prayer and meditation at churches, in groups, and as individuals." 36 U.S.C. § 119. "Since the founding of the Republic, Congress has requested Presidents to call on citizens to pray. Every President except [one] … has complied." *Freedom From Religion Found., Inc. v. Obama*, 641 F.3d 803, 804-05 (7th Cir. 2011) (citing *Lynch*, 465 U.S. at 674-78). "Today, most states recognize statewide days of prayer that coincide with the National Day of Prayer." *Hickenlooper v. Freedom from Religion Found., Inc.*, 338 P.3d 1002, 1004 (Colo.

[5] *See, e.g.*, *Stein v. Plainwell Cmty. Sch.*, 822 F.2d 1406, 1417 (6th Cir. 1987) (Wellford, J., dissenting) (noting that plaintiffs "emphasize that prayer is inherently religious"); *Minor I Doe v. Sch. Bd. for Santa Rosa Cnty.*, 264 F.R.D. 670, 680 n.17 (N.D. Fla. 2010) (noting that "Prayer" is defined in the consent decree as "a *communication with a deity*, including, but not limited to, a devotional, benediction, invocation, the Lord's Prayer, blessing, reading from a sacred text (unless done as part of an authorized curriculum), sermon, or otherwise calling upon a deity to offer guidance, assistance, or a blessing"); *Hickenlooper v. Freedom from Religion Found., Inc.*, 338 P.3d 1002, 1009 (Colo. 2014) (addressing "nonbelievers'" allegations that the state's day of prayer "amount[ed] to '[e]xhortations to pray' that promote and endorse religion in violation of the state constitution"); *Ex parte State ex rel. James*, 711 So.2d 952, 971 (Ala. 1998) ("[T]he ACLUA argues that prayer is inherently religious"); *Marsa v. Wernik*, 430 A.2d 888, 896 (N.J. 1981) (alleging that "opening municipal council meetings constitutes prayer or invocations or meditations which is inherently religious").

2014); *see id.* 1004 n.3 (noting that "in 2007, 2008, and 2009, the governors of all fifty states issued honorary proclamations or letters acknowledging days of prayer").

With this inherently religious view of legislative prayer in mind, it is clear that because a legislature may constitutionally set apart time in its session for such prayer, it must have the authority to require that this time must be used for public prayer, and not any other speech-making (including secular invocations). As one scholar explains:

> There are two important corollaries to the government's right to select religious speakers. First, given the government's control over its message, it also must have the right to exclude other would-be speakers, such as atheists and agnostics, without infringing the Establishment Clause. That is, because *Marsh* permits the government to advance religion over nonreligion by allowing prayer at the beginning of its meetings, the government must be able to exclude nonreligious or anti-religious speakers under the model policy. Otherwise, a third party could demand the right to speak at the opening of a meeting, forcing the government as speaker to relinquish the protection afforded by the First Amendment.

Scott Gaylord, *When the Exception Becomes the Rule:* Marsh *and Sectarian Legislative Prayer Post*-Summum, 79 U. CIN. L. REV. 1017, 1065-66 (2011) (citations omitted). And the Tenth Circuit has held that a legislative body does not violate the Establishment Clause when it restricts the agents it chooses to deliver a prayer by requiring them to give an address within the genre that legislatures have used since the founding of the country:

> It is clear under *Marsh* that there is no "impermissible motive" when a legislative body or its agent chooses to reject a government-sanctioned speaker because the tendered prayer falls outside the long-accepted genre of legislative prayer. The genre approved in *Marsh* is a kind of ecumenical activity that seeks to bind peoples of varying faiths together in a common purpose. That genre, although often taking the form of invocations that reflect a Judeo-Christian ethic, typically involves nonsectarian requests for wisdom and solemnity, as well as calls for divine blessing on the work of

> the legislative body. When a legislative body prevents its agents from reciting a prayer that falls outside this genre, the legislators are merely enforcing the principle in *Marsh* that a legislative prayer is constitutional if it is "simply a tolerable acknowledgment of beliefs widely held among the people of this country."

Snyder, 159 F.3d at 1234 & n.11 (quoting *Marsh*, 463 U.S. at 792).[6] In short, the well-established legislative prerogative to begin the legislative session with prayer necessarily includes the prerogative to decide that time should not be used for other speeches, such as the secular invocation Barker demands.

III. The separation of powers requires that any complaint about the application of a House rule be made to the House, not the courts.

Barker also alleges that the Chaplain misapplied, misinterpreted, or otherwise unlawfully implemented the underlying House Rule, which (in Barker's view) requires the Chaplain to allow him to give a non-prayer at the time set aside for "prayer." Aplt. Br. 18, 24-27. Not only is this interpretation of the House rule wrong as a matter of law, *see supra* Part II, but such allegations improperly urge the Court to infringe the separation of powers by interfering with the internal rules of a distinct branch of government. *See* Aple. Br. 28-32 & n.8; *United States v. Rostenkowski*, 59 F.3d 1291, 1306 (D.C. Cir. 1995) ("[T]he Rulemaking Clause of Article I clearly reserves to each House of the Congress the authority to make its own rules, and judicial interpretation of an

[6] *Cf. Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 573 (1995) ("Under this approach any contingent of protected individuals with a message would have the right to participate in [the organizers'] speech . . . [which would] violate[] the fundamental rule of protection under the First Amendment that a speaker has the autonomy to choose the content of his own message.").

ambiguous House Rule runs the risk of the court intruding into the sphere of influence reserved to the legislative branch under the Constitution.").[7] Claims that members or officers of the House are misapplying House rules such as the one at issue here should be directed to the House and the appropriate organs therein—not to the courts.

The federal Constitution textually commits to each legislative house the ability to "determine the Rules of its proceedings." U.S. CONST. art. I, § 5, cl. 2. The same provision goes on to specify that "Each House"—not any other branch—may "punish its Members for disorderly Behavior." *Id.* Virtually all state Constitutions have similar or identical provisions, which can shed light on the scope of the federal constitutional provision.[8] The Alabama Constitution, for example, states that "Each house shall have power to determine the rules of its proceedings and to punish its members and other persons, for contempt or disorderly behavior in its presence," *and* "to enforce obedience to its processes." ALA. CONST. art. IV, § 53; *see also* ARK. CONST. art. V, § 12 (same as Alabama); COLO. CONST. art. V, § 12 (similar plus "shall have all other powers necessary for the legislature of a free state"); PA. CONST. art. II, § 11 (same as Colorado).

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[7] *See also United States v. Ballin*, 144 U.S. 1, 5 (1892) ("The constitution empowers each house to determine its rules of proceedings. … It is a continuous power, always subject to be exercised by the house, and, within the limitations suggested, absolute and beyond the challenge of any other body or tribunal."); *Leach v. Resolution Trust Corp.*, 860 F. Supp. 868, 876 (D.D.C. 1994) (abstaining from exercising jurisdiction where legislator's "real dispute appears to be primarily with his fellow legislators and he has available a number of formal and informal 'in-house' remedies through which to directly seek production of the documents in question").

[8] The lone exception appears to be North Carolina.

And the Indiana Constitution, like others, holds that "Each House . . . shall choose its own officers" and "determine its rules of proceeding," IND. CONST. art. IV, § 10, and that either House "may punish . . . any person not a member, who shall have been guilty of disrespect to the House, by disorderly or contemptuous behavior." *Id.* § 15.

The U.S. Constitution also implicitly endorses the separation of powers as a fundamental feature of our government. *See, e.g.*, *I.N.S. v. Chadha*, 462 U.S. 919, 946 (1983). Many state constitutions make this structural blessing explicit. *See Schisler v. State*, 907 A.2d 175, 199-200 & nn.33-37 (Md. 2006) (listing 40 States with constitutions that make an "express statement that governmental powers shall be separated" (citation omitted)). The Massachusetts Constitution, for instance, spells out that in order to achieve "a government of laws and not of men," it is necessary that "the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them." MASS. CONST. Pt. I, art. XXX. The combination of these two principles—the separation of powers and the designation by the Constitution to the legislative branch the power over its internal rules—should lead to rejection of Barker's claims for at least three reasons.

First, just as the "[t]he Judicial Branch does not censor a President's speech," *Freedom from Religion Found.*, 641 F.3d at 806, nor even government speech enacted by law, *see Johanns v. Livestock Marketing Ass'n*, 544 U.S. 550 (2005), neither should courts

endeavor to dictate to a legislature the choice of whom the legislature must allow to address its deliberative body. Many state legislatures have decided to commence their own proceedings with religious exercise. *See, e.g.*, Georgia House Rules, Rule 31(2) (2017-18) (requiring a "Scripture reading and prayer by the chaplain"); Maine House Rules, Rule 101 (2017) ("Every morning the House on assembling shall join with the Chaplains in religious service."); Michigan House Rules, Rule 16 (2017-18) (titled "Conduct of Religious Exercises"). To be sure, perhaps some state legislatures or municipal councils may wish to experiment with solemn invocations of a non-religious nature to achieve its purposes. *See, e.g.*, Oregon House Rules, Rule 4.01(1)(b) (2017-18) (opting to require an "Opening Ceremony, prayer and/or inspirational message" at "the opening session of the day"); *Town of Greece*, 134 S. Ct. at 1816 ("[The town board's] leaders maintained that a minister or layperson of any persuasion, including an atheist, could give the invocation."); *Rubin v. City of Lancaster*, 710 F.3d 1087, 1090 (9th Cir. 2013) (guest prayer given by a metaphysicist).[9] But the separation of powers counsels in favor allowing legislatures the discretion to decide on such matters and to determine for *themselves* how to define (or redefine) prayer and whether such statements fall into that category or achieve the same effect.

[9] At least 14 legislative chambers call for an "invocation," rather than a "prayer"; one calls for a "prayer and/or inspirational message"; and one calls for a "prayer … or time for a brief meditation." *See* Appendix I (collecting citations).

Second, courts should refrain from taking actions that would interfere with the pastoral relationship between the legislative chaplain and the members of that chamber. *See, e.g.*, Cong. Globe, 36th Cong., 1st Sess. 98 (1859) (Statement of Sen. Henry Wilson) (calling for the Senate to elect "a Chaplain who would become acquainted with us, and who would know the interests and wants of the body"). After all, "[t]he principal audience for these invocations is not, indeed, the public but lawmakers themselves, who may find that a moment of prayer or quiet reflection sets the mind to a higher purpose and thereby eases the task of governing." *Town of Greece*, 134 S. Ct. at 1825.

Third, the Constitution contemplates alternative channels to resolve these disputes other than the courts—namely, by recourse to the legislative House empowered to create and administer its own rules. For example, in *Kurtz v. Baker*, a secular humanist brought a similar challenge against then-Chaplain Halverson; rather than intruding upon the legislature's internal sphere, the court noted how the two were able to exchange letters to gain a better understanding of each side's perspective and so amicably resolve their differences without the need for judicial resolution. 644 F. Supp. 613, 616-17, 622-25 (D.D.C. 1986). Indeed, in *Marsh* itself the Court noted how Robert Palmer, the Nebraska legislative chaplain, changed his prayers in response to a complaint from a Jewish legislator. *Marsh*, 463 U.S. at 793 n.14. Here, by contrast, it does not appear that Barker has made much of an effort to engage, or have his representative in the House engage, in a dialogue with the House about the interpretation and application of its own rules. Rather, he at most contends that it can

be inferred from his Complaint that the House "acquiesced" to the Chaplain's decision. Aplt. Br. 29. Courts should pause when asked by litigants to interfere with the internal operations of another branch of government, especially when the Constitution so explicitly vests that other branch with the power to decide such matters. The Indiana Supreme Court put it well in 2013, when it was asked to intervene in a disciplinary matter in its Legislature:

> The separation of powers doctrine prevents the courts from reviewing political, social, and economic actions within the exclusive province of coordinate branches of government. The purpose of this doctrine is to rid each separate department of government from any influence or control by the other department. Courts should be very careful not to invade the authority of the legislature. Nor should anxiety to maintain the constitution, laudable as that must ever be esteemed, lessen their caution in that particular; for if they overstep the authority which belongs to them, and assume that which pertains to the legislature, they violate the very constitution which they thereby seek to preserve and maintain.

Berry v. Crawford, 990 N.E.2d 410, 413 (Ind. 2013) (internal marks and citations omitted).

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(6)(B) because, excluding the parts of the brief exempted by Rule 32(f), it contains 5,475 words.

This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Word 2016 in 14-point Garamond font.

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I certify that on July 19, 2018, I filed this brief through the Court's CM/ECF system, which caused the brief to be electronically served on all parties.

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Appendix I

List of Legislative Rules Concerning Prayer

Chamber	Provision
U.S. House (2017)	Rule II, cl. 5 ("The Chaplain shall offer a prayer at the commencement of each day's sitting of the House.")
U.S. Senate (2013)	Rule IV, § 2 ("During a session of the Senate when that body is in continuous session, the Presiding Officer shall temporarily suspend the business of the Senate at noon each day for the purpose of having the customary daily prayer by the Chaplain.")
Alabama House (Current)	Rule 6, § 1 ("The order of business shall be: (1) Prayer . . . .")
Alabama Senate (Current)	Rule 1(a) ("[T]he Presiding Officer shall call the Senate to order and call for a prayer to be delivered by the Chaplain of the Day.")
Alaska House & Senate (Uniform) (2012)	Rule 17(2) ("Daily Order of Business … is as follows: (1) Roll Call (2) Invocation or meditation . . . .")
Arizona House (2017-18)	Rule 7.A.2 ("The daily Order of Business shall be as follows: 1. Roll Call 2. Prayer . . . .")
Arizona Senate (2017-18)	Rule 16.A ("Unless otherwise ordered, the Senate shall convene every legislative day at a time certain as determined by the President, receive a prayer by the chaplain, recite the pledge of allegiance and continue in session until recess or adjournment.")
Arkansas House (2018)	Rule 33(a) ("The daily order of business shall be: (a) Prayer . . . .")
Calif. Assembly (2017-18)	Rule V.40(a) ("The order of business of the Assembly shall be as follows: … (2) Prayer by the Chaplain")
California Senate (2018)	Rule 4(2) ("The order of business shall be as follows: (1) Rollcall. (2) Prayer by the Chaplain. . . . ")
Connecticut House (2017-18)	Rule 1 ("The speaker shall take the chair . . . and shall immediately call the House to order and, after prayer and recitation of the pledge of allegiance, proceed to business if a quorum is present.")
Connecticut Senate (2017-18)	Rule 1 ("The President shall thereupon call the Senate to order and after prayer and recitation of the pledge of allegiance, if a quorum is present, proceed to business.")
Florida House (2016-18)	Rule 10.3 ("A chaplain shall attend at the beginning of each day's sitting of the House and open the same with prayer. In the absence of a chaplain, the Speaker may designate someone else to offer prayer.")

Florida Senate (2016-18)	Rule 4.3(1)(b) ("The Daily Order of Business shall be as follows: (a) Roll Call (b) Prayer . . . .")
Georgia House (2017-18)	Rule 31(2) ("The following shall be the order of business: (1) Call of the roll. (2) Scripture reading and prayer by the chaplain.")
Georgia Senate (2017-18)	Rule 4-2.1(a)(13) ("The following shall be the daily Order of Business . . . 13. Prayer of the chaplain.")
Hawaii House (2017-18)	Part VI, Rule 29.2 ("At the option of the Speaker, prior to the convening of any session, there shall be an invocation. Any invocation shall be limited to two minutes, and should not be used to proselytize, advance, or disparage any religion or point of view. Attendance at and participation in the invocation shall be voluntary for all persons.")
Idaho House (Current)	Rule 2 ("The Speaker shall take the Chair at the time to which the House stands adjourned, and after the call to order, the roll of members shall be taken and the names of absentees entered on the Journal of the House, after which there shall be prayer by the Chaplain.")
Idaho Senate (Current)	Rule 7(B) ("It shall be the duty of the Chaplain to open the proceedings of the Senate with prayer.")
Illinois House (2017)	Rule 31(a)(1) ("[T]he standing daily order of business of the House is as follows: (1) Call to Order, Invocation, Pledge of Allegiance, and Roll Call.")
Illinois Senate (2017)	Rule 4-4(1) ("[T]he daily order of business of the Senate shall be as follows: (1) Call to Order, Invocation, and Pledge of Allegiance.")
Indiana Senate (Current)	Rule 5(a)(3) ("The regular order of transacting business shall be as follows: . . . (3) Prayer.")
Kansas House (2017-18)	Rule 103 ("The first business each legislative day shall be the taking of the roll, the taking of roll shall be followed by prayer and the prayer shall be followed by the recitation of the pledge of allegiance . . . .")
Kansas Senate (2017-20)	Rule 4 ("Order of Business and Session Proforma. The order of business, following the roll call and prayer by the Chaplain, shall be as follows . . . .")
Kentucky House (2018)	Rule 4.1 ("The order of business shall be as follows: 1. Invocation.")
Kentucky Senate (2018)	Rule 4.1 ("The order of business shall be as follows: 1. Invocation.")

Louisiana House (Current)	Rule 8.1.A(2) ("The order of business during the Morning Hour shall be as follows: (1) Roll Call (2) Prayer . . . .")
Louisiana Senate (2018)	Rule 10.1(2) ("If a quorum is in attendance, he shall proceed with the order of business for the Morning Hour, which shall be as follows: 1. Roll Call 2. Prayer . . . .")
Maine House (2017)	Rule 101 ("Every morning the House on assembling shall join with the Chaplains in religious service.")
Maryland Senate (2004)	Rule 5 ("The President shall take the Chair everyday precisely at the hour to which the Senate has adjourned, and immediately call the Senate to order, and commence an initial roll call of the members, to be taken in alphabetical order, after which a prayer shall be offered pursuant to the guidelines approved by the Senate Rules Committee.")
Massachusetts Senate (2017)	Rule 1A ("Every formal session of the Senate may open with a prayer . . . .")
Michigan House (2017-18)	Rule 16 ("Conduct of Religious Exercises. Rule 16. The Clerk shall arrange for a Member to offer an invocation which will not exceed 2 minutes in length at the opening of each session of the House. This invocation shall be general in nature…")
Michigan Senate (Current)	Rule 1.102(b) ("[F]ollowing the invocation and Pledge of Allegiance, the presiding officer shall instruct the Secretary of the Senate to record the attendance."); Rule 3.102 ("The order of business of the Senate shall be as follows: . . . 2. Invocation . . . .")
Minnesota House (2017-18)	Rule 1.01 ("The call to order is followed by a prayer by the Chaplain or time for a brief meditation . . . .")
Minnesota Senate (2017-18)	Rule 15.6 ("The President may designate and personally admit the person who will provide the prayer and the person who will lead the Pledge of Allegiance.")
Mississippi Senate (Current)	Rule 25(2) ("The order of business shall be: (1) Roll Call (2) Invocation . . . .")
Missouri House (2017)	Rule 2(1)(a) ("The first of each day, after the House is called to order, shall be employed as follows . . . (a) Prayer."); Rule 20(c) ("It shall be the duty of the Chaplain, or a person designated by the Speaker, to attend at the commencement of each day's sitting of the House, to open the sessions thereof with a prayer, visit any member who may be sick, and to preach in the Hall of the House of Representatives whenever requested by a vote of the House.")
Missouri Senate (2017)	Rule 2 ("The president shall take the chair every day at the hour to which the senate has previously adjourned and shall call the

	senate to order, and after prayer by the chaplain, shall cause the journal of the preceding day to be read unless dispensed with by consent of the senate.")
Montana House (2017)	Rule H10-90(1) ("The Speaker . . . may appoint a Chaplain, subject to confirmation of the House."); Rule H50-60 ("The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call.")
Montana Senate (2017)	Rule S50-20 ("Orders of business. After prayer, roll call, and report on the journal, the order of business of the Senate is as follows . . . .")
Nebraska Unicameral Legislature (2018)	Rule 1.E, § 22 ("Opening Prayer. The Clerk's office shall arrange for prayer at the beginning of each day of the legislative session."); Rule 7.A, § 1(b) ("The order of business of the Legislature shall be as follows . . . a. Prayer by the Chaplain . . . .")
Nevada Senate (2005)	Rule No. 120 ("Order of Business. 1. Roll Call. 2. Prayer and Pledge of Allegiance to the Flag.")
New Hampshire House (2017-18)	Rule 57(a)(1) ("The order of business in the early session shall be as follows: 1. Prayer by the Chaplain or a substitute designated by the Speaker, pledge of allegiance and leaves of absence if received before the start of the legislative day.")
New Jersey General Assembly (2018-19)	Rule 9:1(a) ("The order of business, unless the Speaker determines otherwise, shall be as follows: a. Prayer.")
New Jersey Senate (2018-19)	Rule 11:1(a) ("The order of business, unless the President determines otherwise, shall be as follows: a. Prayer.")
New Mexico House (Current)	Rule 8-1(1) ("The speaker shall take the chair each day at the hour to which the house shall have adjourned and shall call the house to order, after which he shall direct the roll of the members to be called, and if there be a quorum present, he shall call up the business of the day as follows: Order of Business (1) prayer."); Rule 23-8-1(b) ("[D]uring the prayer . . . the live video image shall be of the entire chamber or the rostrum from the perspective of the rear of the chamber . . . .")
New Mexico Senate (Current)	Rule 1-2(b) ("The other officers of the senate shall be: . . . (b) one chaplain . . . ."); Rule 8-1(1) ("The president shall take the chair at the hour to which the senate shall have adjourned, and a quorum being present, the order of business shall be as follows: . . . (1) prayer . . . ."); Rule 23-8-1(b) ("[D]uring the prayer . . . the live video image shall be of the entire chamber or the rostrum from the perspective of the rear of the chamber . . . .")

New York Assembly (2017-18)	Rule VI, § 2(b) ("A member of the clergy shall offer prayer.")
New York Senate (2017-18)	Rule X, § 4(a) ("Prior to the order of business, the Presiding Officer shall ask those in the chamber to rise and pledge allegiance to the flag. Those in attendance shall remain standing during the daily invocation and until asked to take their seats by the Presiding Officer.")
North Carolina House (2017)	Rule 2 ("At the convening hour on each legislative day, the Speaker shall call the members to order and shall have the session opened with prayer."); Rule 47(a) ("The Speaker may appoint . . . a Chaplain of the House . . . .")
North Carolina Senate (2017)	Rule 3 ("The Presiding Officer shall, upon order being obtained, have the sessions of the Senate opened with prayer.")
North Dakota House (2017-18)	Rule 101 ("After prayer by the chaplain, the roll of members must be called and the names of the absentees entered in the journal of the House."); Rule 301(1) ("The order of business is as follows: 1. Prayer by the Chaplain and Pledge of Allegiance.")
North Dakota Senate (2017-18)	Rule 101 ("After prayer by the chaplain, the roll of members must be called and the names of the absentees entered in the journal of the Senate."); Rule 301(1) ("The order of business is as follows: 1. Prayer by the Chaplain and Pledge of Allegiance.")
Ohio House (Current)	Rule 2 ("Prayer may be offered …")
Ohio Senate (Current)	Rule 6 ("(Daily Order, Prayer, Pledge of Allegiance, and Reading of Journal.) As soon as the Senate is called to order prayer may be offered, the pledge of allegiance to the flag may be said, and, a quorum being present, the Journal of the preceding legislative day shall be read by the Clerk.")
Oklahoma House (2017-18)	Rule 3.5 ("A Chaplain shall attend the commencement of each day's session of the House, open the same with prayer and may be allotted five (5) minutes during the Thursday session for the purpose of delivering remarks to the House."); Rule 9.1 ("The following Order of Business shall be followed each day: 1. Roll Call; 2. Prayer, the timing of which shall be left to the discretion of the Majority Floor Leader; 3. Inspirational Message by Chaplain on Thursday mornings, the timing of which shall be left to the discretion of the Majority Floor Leader . . . .")

Oklahoma Senate (2017-18)	Rule 8-5 ("The Order of Business for each daily session of the Senate shall be determined by the Majority Floor Leader and shall include: Prayer . . . .")
Oregon House (2017-18)	Rule 4.01(1)(b) ("Opening ceremony, prayer and/or inspirational message. (At the opening session of the day only.)")
Oregon Senate (2017)	Rule 4.01(1)(c) ("The general order of business shall be: (a) Roll Call (b) Honors to the Colors and the Pledge of Allegiance (c) Invocation . . . .")
Pennsylvania House (2017)	Rule 17 ("The daily order of business shall be: (1) Prayer by the Chaplain . . . . The Chaplain offering the prayer shall be a member of a regularly established church or religious organization or shall be a member of the House of Representatives.")
Pennsylvania Senate (2017-18)	Rule 9(a) ("The Order of Business to be observed in taking up business shall be as follows: First - Call to order. Second - Prayer by the Chaplain and Pledge of Allegiance . . . .")
South Carolina House (2017)	Rule 1.1 ("The Speaker shall take the chair on every legislative day precisely at the hour to which the House adjourned at the last sitting, immediately call the members to order, cause prayer to be said, the Journal of the previous proceedings to be corrected, and if a quorum be present, proceed to other business."); Rule 2.11 ("The Chaplain shall be elected by the membership of the House for a term of two years. This election will take place on the opening day of the organizational session."); Rule 2.12 ("The Chaplain shall provide spiritual guidance for the membership of the House."); Rule 6.3 ("The following order of business shall be enforced every day by the Speaker . . . 1. a. prayer . . . .")
South Carolina Senate (2016)	Rule 32.A(2) ("Order of Business 1. Called to Order by the President 2. Prayer by the Chaplain . . . .")
South Dakota House & Senate (Joint Rules) (2018)	Rule 1-2 ("Order of business. Each house shall begin each session as follows: call to order, prayer by the chaplain . . . ."); Rule 3-5 ("Chaplains. The chief chaplain shall schedule a chaplain to serve in each house for each legislative day. The duty of the chaplain of each house is to open each day's session with a prayer."); Rule 4-1(1) ("After call to order, the daily order of business shall be as follows: (1) Prayer by the chaplain and pledge of allegiance . . . .")
Tennessee Senate (2017)	Rule 1 ("The Speaker shall take the chair every day at the hour to which the Senate has adjourned; he or she shall immediately call the Senate to order and, after prayers, the Pledge of Allegiance of the United States, and the first official salute to the flag of Tennessee, if a quorum is present, proceed to business."); Rule 19

	("The person delivering the invocation may offer prayer according to the beliefs and practices of his faith but shall be informed that the citizens of the State of Tennessee and its elected Senators are of a variety of faiths and beliefs that prayer in the Senate should respect that diversity, and if, within the constraints and conscience of the prayer leader, the prayer should be ecumenical.")
Texas House (2017)	Rule 2, § 6 ("The chaplain shall open the first session on each calendar day with a prayer and shall perform such other duties as directed by the Committee on House Administration."); Rule 6, § 1 (When the house convenes on a new legislative day, the daily order of business shall be as follows: . . . (3) Prayer by chaplain, unless the invocation has been given previously on the particular calendar day.")
Texas Senate (2017)	Rule 1.04 ("A . . . Chaplain, and such other officers as a majority vote may determine to be necessary shall be elected at the opening of the session of the Legislature to continue in office until discharged by the Senate and shall perform such duties as may be incumbent on them in their respective offices, under the direction of the Senate. Such officers may not be related to any current member of the Texas Legislature nor may any employee of the Senate be related to any current member of the Texas Legislature."); Rule 5.06 ("When there is a quorum present, prayer shall be offered by the Chaplain or other person designated by the President of the Senate.")
Utah House (Current)	Rule HR1-5-103 ("(1) The daily order of business is: (a) call to order by the presiding officer; (b) prayer and Pledge of Allegiance . . . .")
Utah Senate (Current)	Rule SR1-5-103 ("(1) The daily order of business is: (a) call to order by the president or the president's designee; (b) prayer and pledge of allegiance . . . .")
Washington House (2017-18)	Rule 14(A) ("Business of the house shall be disposed of in the following order: First: Roll call, presentation of colors, prayer and approval of the journal of the proceeding day.")
West Virginia House (2018)	Rule 3 ("The Speaker shall take the chair on each legislative day at the hour to which the House shall have adjourned; call the members to order and, after prayer and the Pledge of Allegiance, if a quorum is present, proceed to the order of business.")
Wisconsin Assembly (2017)	Rule 5(i) ("The assembly chief clerk shall . . . (i) Arrange for the opening prayer at any daily session."); Rule 26(8)(b) ("In addition, without limitation because of enumeration, no individual may do

	any of the following in the visitor galleries: . . . 3. Stand except for prayer or pledge of allegiance . . . .”); Rule 31 “Following any opening prayer and salute to the flag, the regular orders of business are as follows …”)
Wisconsin Senate (2017)	Rule 11(9) (“A person who delivers the opening prayer may be admitted by the presiding officer to the floor of the senate, but only for the purpose of delivering the opening prayer.”); Rule 17 (“The order of business in the senate, including any opening prayer and the pledge of allegiance, is as follows . . . .”)
Wyoming House (2018)	Rule 3-4(b) (“The following shall be the usual order of business but the order may be changed as necessary for the efficient management of business: a. Roll call b. Prayer by the chaplain . . . .”)
Wyoming Senate (Current)	Rule 3-5 (“The following shall be the usual order of business, however the order may be changed as necessary for the efficient management of business: (a) Roll call (b) Prayer by the chaplain . . . .”)