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Series: Card, Andrew, Files
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OA/ID Number: 05215
Folder ID Number: 05215-013b

Folder Title:
Office of White House Chaplain [2]

Stack:	Row:	Section:	Shelf:	Position:
G	15	22	1	

THE RUTHERFORD INSTITUTE

January 17, 1991

AC HAS SEEN
I'll talk to JHS

Mr. Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff
The White House
Washington, D.C. 20500

Leigh Anne is
handling
JHS

Dear Mr. Card:

attached

Thank you for your January 11 letter.

If we can be of any further assistance concerning the establishment of a chaplain in the White House, feel free to contact me.

With best regards, I remain,

Sincerely yours,



John W. Whitehead

JWW/sm

THE WHITE HOUSE

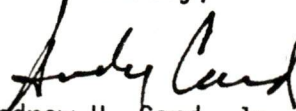
WASHINGTON

January 11, 1991

Dear Mr. Whitehead:

Governor Sununu appreciates your letter and the memorandum you submitted on behalf of The Rutherford Institute regarding the proposal submitted by the Fellowship of Legislative Chaplains to establish an office of White House Chaplain. We are giving this proposal careful consideration and appreciate the Institute's valuable input. Thank you for your interest in writing.

Sincerely,



Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff

Mr. John W. Whitehead
President
The Rutherford Institute
Post Office Box 7482
Charlottesville, Virginia 22906-7482

THE WHITE HOUSE

WASHINGTON

March 11, 1991

MEMORANDUM FOR ANDY CARD

FROM: LEIGH ANN METZGER *lam*
SUBJECT: White House Chaplaincy proposal

There is a proposal floating around regarding the establishment of a White House Chaplain Office. The Fellowship of Legislative Chaplains has circulated a proposal both inside the White House and among various religious/evangelical leaders to garner support.

In my opinion the proposal has several problems and I have advised folks to proceed with caution in dealing with Mr. Rick Grubbs, the Chairman of the Fellowship. I received a copy of a letter he sent to both the Vice President and you requesting a meeting with him to discuss this proposal. I would like to talk with you about this before you consider such a meeting.

Set up mtg w/
Leigh Ann.
week of 3/18

Document Originally
Attached to
Following Page

3-7

AC HAS SEEN

AC:

Back to you -- he passed on "no" to
you, correct?

k

right - No
I'll handle

THE WHITE HOUSE
WASHINGTON

THE CHIEF of STAFF
has seen

DATE: 3-5-91

TO: Gov. S.

FROM: ANDY CARD *Andy*

Help!

We have no money
and no available
personnel slots. Could
we be creative with
rotating "guest chaplains?"

AC HAS SEEN

Fellowship of Legislative Chaplains

9085 SE Morning Street
Hobe Sound FL 33455
(407) 546-3300



Fellowship of Legislative Chaplains



Rick Grubbs
Chairman

March 4, 1991

(407) 546-3300

9085 SE Morning St.
Hobe Sound FL 33455

Dear Mr. Card:

Let me say how much I appreciate the many long hours that you, Gov. Sununu, and all the staff, have so unselfishly given in the service of our country during the past few weeks. I cannot express how deeply I was moved as the scenario unfolded and the victory became ours. May God bless each member of this Administration for your faithfulness.

Because of your increased work load brought on by the war, I have not followed-up on our previous correspondence regarding the White House Chaplaincy Proposal. Recently however, I have received calls from key supporters wondering about the progress of the proposal. I thought it might be a good idea therefore to drop you a line to see if we might arrange a meeting between Gov. Sununu and myself to discuss the possibilities of such a chaplaincy program.

I have been in touch with Mrs. Vonette Bright, Chairman of the National Day of Prayer Committee, about the possibility of the President announcing the Chaplaincy program, and / or signing the Executive Order, on the National Day of Prayer. Since this is only eight weeks away, I felt I should bring this to your attention so that we might begin the necessary procedures to prepare the document for final consideration.

I have also included a partial list of supporters of the proposal along with their comments for the President. Others, such as Paul Weyrich and Ed McAteer, have given their full support but have not yet been added to the current list.

I thank you for taking time out of your busy schedule to attend to this matter. If you could contact me at the number above, or by fax # (407) 546-9379, at your earliest convenience, I would greatly appreciate it. Until then, may God give you a calm in the wake of the storm.

In His Service,

Rick Grubbs

Rick Grubbs
Chairman

THE WHITE HOUSE
WASHINGTON

January 11, 1991

Dear Mr. Grubbs:

Governor Sununu appreciates very much your letter of December 21 and the proposal of the Fellowship of Legislative Chaplains to establish an office of White House Chaplain. We are giving your offer careful attention and will be in touch with you again to discuss it further with you.

In the meantime, Governor Sununu asked me to thank you for your interest and to pass along his very best wishes for the new year.

Sincerely,



Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff

Mr. Rick Grubbs
Chairman
Fellowship of Legislative Chaplains
9085 SE Morning Street
Hobe Sound, Florida 33455

The following list provides a sample of the overwhelmingly favorable response of religious leaders to the idea of a White House Chaplain:

The proposal of establishing a chaplaincy at the White House is an idea whose time has come. I can think of no better way to uplift the faith and enrich the family lives of the dedicated men and women who serve our President and our nation. The chaplaincy would be one more affirmation that our hope, faith and trust should continue to be placed in God.

DR. JAMES C. DOBSON
FOCUS ON THE FAMILY

I feel this is a wonderful approach to the President and would shore up our spiritual roots as a nation. Your proposal is superbly prepared... The case for a chaplain is clearly stated and the benefits are clearly indicated. Personally, I support the proposal wholeheartedly and trust it will find a ready acceptance on the part of the President and his staff. I am very much impressed with what you are proposing and would be glad to know how it "flays" as it is presented in Washington.

DR. TED ENGSTROM
WORLD VISION

I enthusiastically endorse the proposal to establish the office of White House Chaplain. I can envision this person becoming a great encourager to the President and a caring counselor to the White House staff. The position would serve as a reminder to all Americans that we are "one nation under God."

DR. MORRIS CHAPMAN
PRESIDENT
SOUTHERN BAPTIST CONVENTION

Dear Mr. President: I would like to encourage you to establish the position of White House Chaplain as proposed by the Fellowship of Legislative Chaplains. A person in this office would be able to offer immeasurable help to your staff and set a very positive example for the nation. In this time of budget crisis, this is an opportunity to add a positive position without placing any new expenditures in the budget. At this time when our country faces such a time of crisis at home and abroad, we need to return to the faith of our fathers and seek the face of God. A White House Chaplain would be a great step in this direction.

DR. TIM LAHAYE
FAMILY LIFE SEMINARS

I would encourage the President to approve the White House Chaplaincy proposal presented by the Fellowship of Legislative Chaplains.

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The counseling component to the Presidential and cabinet families appeals to me. The proposal has potential to impact families positively. I recommend that it be created to provide spiritual direction, especially for cabinet families.

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We at Intercessors for America endorse the initiative to establish a White House Chaplaincy program as proposed by the Fellowship of Legislative Chaplains.

GARY BERGEL
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Dear Mr. President: The proposal to establish the office of White House Chaplain is an idea which has met with widespread approval from our American Religious Leaders. The religious community and our nation will recognize this move as a wise decision. Your approval will show a sensitivity to the religious needs of those in governmental authority and will set an example for Americans to seek the wisdom and guidance of the Almighty. Given the current crisis we face, I feel swift approval of the chaplaincy proposal would be in order. As you know, most of the supporters of the proposal will attend the NRB convention later this month. Many will follow your address by radio and TV, an ideal time to work in such a tangible means to show your spiritual sensitivity. I urge you to affirm the White House Chaplaincy Proposal as proposed by the Fellowship of Legislative Chaplains. After all we are "one nation under God," an excellent time and means to reaffirm this. Wouldn't this initiative be fully in line with your thinking, George? And the time appears right.

DR. BEN ARMSTRONG
FORMER EXECUTIVE DIRECTOR
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"There is nothing more powerful than an idea whose time has come." I think this bit of wisdom applies very appropriately to the white House Chaplaincy. One can only ask "Why didn't someone think of it before?" Surely administrators need prayer as much as legislators...a White House Chaplaincy is almost an irresistible idea. May God in His wisdom bring it to pass.

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The Christian Life Commission of the Southern Baptist Convention supports the Fellowship of Legislative Chaplains plan to initiate a White House Chaplaincy program.

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I heartily and enthusiastically support Rick Grubbs' proposal for the establishment of a chaplaincy to the White House. If members of Congress deserve a man of God to assist them in their personal needs and devotions to our Lord, how much more does the Chief Executive of the United States and his staff. The chaplain's very presence would be a constant reminder to our President and Commander-in-Chief, as well as those with whom he serves our great country, of his need to depend upon the God of creation, the one to whom this nation was dedicated by our Founding Fathers. I would sincerely refer the President and his staff to Deuteronomy, Chapters 8 and 28, and Amos 4 as a reminder of the need for strong spiritual leadership in the Executive Branch of our government. Our founding President, George Washington, began and ended every day on his knees reading the Bible and praying--a wonderful practice to be followed by every individual whom God appoints to be the leader of this great country.

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Assistant to the President
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Mr. Rick Grubbs
Chairman
Fellowship of Legislative Chaplains
9085 SE Morning Street
Hobe Sound, Florida 33455

BEFORE WEDDING



INCLUDED AT
NO EXTRA
CHARGE!

Rick

AFTER WEDDING

Fellowship of Legislative Chaplains



9085 SE Morning Street
Hobe Sound FL 33455
(407) 546-3300

WHITE HOUSE CHAPLAINCY LEGAL REVIEW

Prepared by

THE RUTHERFORD INSTITUTE

and

FREE CONGRESS FOUNDATION

THE RUTHERFORD INSTITUTE

MEMORANDUM

DATE: December 20, 1990
TO: Interested Parties
FROM: John Whitehead, Esq., President*
RE: White House Chaplaincy Proposal

I. SUMMARY OF PROPOSAL

A. Proposal

The Fellowship of Legislative Chaplains has proposed a privately-funded chaplaincy for the President and the White House staff. The program would be instituted through an Executive Order and would be implemented through an office in the White House.

B. Proposed Duties

Duties proposed for the White House Chaplain include:

1. Providing enrichment and support to White House staff and their families through staff seminars and retreats;
2. Ministering to hospitalized White House staff; coordinating Presidential expressions of sympathy;

*Mr. Whitehead is an attorney, author and serves as president of The Rutherford Institute. The Rutherford Institute is a civil liberties organization that concerns itself primarily with religious liberty and free speech issues. The Rutherford Institute is located at P.O. Box 7482, Charlottesville, Virginia 22906; (804) 978-3888.

3. Counseling individual White House staff members and the President;

4. Providing devotionals;

5. Performing general pastoral functions such as conducting weddings and funerals as requested;

6. Participating as requested in national religious and patriotic holidays;

7. Offering prayer and encouragement at cabinet meetings;

8. Returning thanks at staff luncheons and state dinners;

9. Leading the nation in prayer during times of national crisis;

10. Conveying the President's condolences as requested;

11. Performing as the President's personal religious envoy to U.S. troops abroad;

12. Providing White House staff motivation and development assistance;

13. Providing religious liaison for White House to clergy;

14. Assisting with White House visitor public relations;

15. Coordinating special religious services such as those held on religious holidays and at Camp David;

16. Performing other assigned duties as requested by the President.

C. Financial Support

The White House Chaplaincy would be supported by private funds provided by the Fellowship of Legislative Chaplains. Funds would not be solicited from the White House staff or the general public.

The federal government would be requested to provide basic office amenities, such as a telephone and a small office in the White House, at the federal government's expense.

D. Professional Requirements

Professional requirements proposed for the White House Chaplain include government chaplaincy experience, a knowledge of church-state issues involving chaplaincies, a non-denominational ecclesiastical identity, and a familiarity with the security and confidentiality concerns of such an office. Professional recognition by peers is also thought to be desirable.

E. Term

Nothing is mentioned in the proposal regarding term of service, termination of the services of any incumbent White House Chaplain, or the selection process.

II. HISTORY AND CONSTITUTIONAL ISSUES

A. Historical Background

One of the earliest acts of the first United States House of Representatives was to elect a chaplain. On May 1, 1789, the House elected its chaplain and five hundred dollars was appropriated from the federal treasury to pay his salary.¹ The United States Supreme Court has noted that this salary compared favorably with the congressmen's own salaries of \$6.00 for each day of attendance.²

The Supreme Court has recognized that the Continental Congress, "beginning in 1774, adopted the traditional procedure of opening its sessions with a prayer offered by a paid chaplain."³

According to the Supreme Court:

The opening of sessions of legislative and other deliberative public bodies with prayer is deeply imbedded 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.⁴

James Madison, one of the principal advocates of religious freedom and a drafter of the Establishment Clause, was a member of the congressional committee that recommended the chaplain system.⁵

As the Supreme Court has observed:

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...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...⁶

B. Constitutional Setting

The First Amendment to the United States Constitution contains two clauses that deal with the subject of religion and religious activities where there is any governmental interaction with such.⁷ The Amendment proclaims: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."⁸ The first clause is known as the "Establishment Clause"⁹ and the second is known as the "Free Exercise Clause."¹⁰

The framers of the Constitution did not intend to seal religion hermetically from governmental functions or public life with this amendment. In fact, Thomas Jefferson referred to the Religion Clauses as an "expression of the supreme will of the nation on behalf of the rights of conscience."¹¹ Jefferson was

for the freedom to exercise one's religion. As interpreted by the Supreme Court, this means the state must remain neutral in matters of religion so that it does not prefer one religion over other religions or exhibit hostility toward all religions or any particular religion.

Instead of taking a position of strict neutrality (the absolute separation of religion and state), the United States Supreme Court has taken the approach of "accommodating neutrality." This means that the First Amendment was intended to maintain a proper relationship between the government and religion. As a consequence, not all relationships between government and religion are unconstitutional. The Supreme Court made this clear in 1984 in Lynch v. Donnelly:¹²

[T]he Constitution [does not] require complete separation of church and state; it affirmatively mandates accommodation, not mere tolerance, of all religions, and forbids hostility toward any....Anything less would require the "callous indifference" we have said was never intended by the Establishment Clause....Indeed, we have observed such hostility would bring us into "war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion."¹³

Governmental indifference toward religion does not conform to the Court's definition of neutrality. Regarding governmental indifference to the religious element in American society, former

Supreme Court Justice William O. Douglas wrote:

That would be preferring those who believe in no religion over those who do believe....But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.¹⁴

The accommodating neutrality approach (or what the Supreme Court has referred to as "mandated accommodation") has been referenced by the Supreme Court in numerous decisions.¹⁵

Concerning the supposed separation of church and state, Justice Blackmun wrote in Roemer v. Board of Public Works of Maryland¹⁶ that the "Court has enforced a scrupulous neutrality by the State, as among religions and also as between religious and other activities, but a hermetic separation of the two is an impossibility it has never required."¹⁷

The Supreme Court has warned that what may appear to be an indifferent neutrality in some instances may actually be a form of impermissible hostility toward religion. Justice Arthur Goldberg noted:

[U]ntutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it.¹⁸

Therefore, governmental actions which are "simply a tolerable acknowledgement of beliefs widely held among the people of this country," are not per se an unconstitutional establishment of

religion.¹⁹

Thus, it appears that Supreme Court decisions may require White House decisionmakers thoughtfully to consider the White House Chaplaincy proposal as part of its duty to accommodate religion neutrally within constitutional guidelines.

C. State-Paid Chaplain Is Constitutional

When the Nebraska Legislature's practice of beginning each session with a prayer by a state-paid chaplain was challenged as unconstitutional, the Supreme Court referred to the actions of the first United States House of Representatives and the long history of legislative chaplains in finding the practice constitutional.²⁰

While admitting that historical patterns standing alone cannot justify contemporary violations of constitutional guarantees, the Supreme Court pointed out:

It can hardly be thought that in the same week Members of the First Congress voted to appoint and to pay a chaplain for each House and also voted to approve the draft of the First Amendment for submission to the states, they intended the Establishment Clause of the Amendment to forbid what they had just declared acceptable.²¹

The Court proceeded to say that, with the incorporation of the First Amendment to the states through the Fourteenth Amendment, "it would be incongruous to interpret that Clause as imposing more stringent First Amendment limits on the states than the draftsmen imposed on the Federal Government."²²

In Marsh²³, the Supreme Court carefully considered the facts that for 16 years the legislative chaplain had been of only one denomination, the chaplain was paid at public expense, and that the

prayers given at the commencement of the legislative session were in the Judeo-Christian tradition.²⁴ The Court did not believe that "choosing a clergyman of one denomination advances the beliefs of a particular church."²⁵ The Court noted that the evidence indicated the chaplain was appointed to a long tenure because "his performance and personal qualities were acceptable to the body appointing him"²⁶ and "[a]bsent proof that the chaplain's reappointment stemmed from an impermissible motive, we conclude that his long tenure does not in itself conflict with the Establishment Clause."²⁷ The Supreme Court held that the compensation of the Nebraska Legislature's chaplain from public funds was not a reason to invalidate the chaplaincy.²⁸ The Court indicated that public remuneration is "grounded in historic practice initiated...by the same Congress that adopted the Establishment Clause of the First Amendment."²⁹ Finally, the Court stated:

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.³⁰

Other courts have held or suggested that military³¹, prison³², and hospital³³ chaplaincies are constitutionally permissible as well.

D. Supreme Court Requirements for Constitutionality

1. Lemon Test. In its landmark decision in Lemon v. Kurtzman,³⁴ the Supreme Court held that governmental actions affecting religion or the exercise of religion must pass a three-part test in order to avoid violation of the Establishment Clause.³⁵ Such action must (1) have a secular purpose; (2) have a primary

effect which neither advances nor inhibits religion; and (3) not involve the government in excessive entanglement with religion.³⁶

In establishing the Lemon test, the Supreme Court acknowledged that some governmental involvement with religion is acceptable under the Establishment Clause and that "total separation [of church and state] is not possible in an absolute sense."³⁷ The Court also recognized that "the line of separation, far from being a wall, is a blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship."³⁸

(a) Secular Purpose. This test is ultimately a question of fact. As set forth in the proposal, institution of the White House Chaplaincy would appear to meet the secular purpose requirement of the Lemon test. For example, the White House Chaplain could (i) provide counseling and emotional support for staff members and their families, thereby promoting efficiency and dedication of staff employees; (ii) boost staff morale during times of stress, death, sickness or injury, thereby reducing staff burnout and turnover; (iii) alleviate stress on the staff and presidential schedules by serving as the President's representative (e.g., at state funerals); and (iv) facilitate relations between the White House and outside clergy, thereby promoting efficient and smooth functioning of the President and White House staff.

Indeed, a federal court has recognized that a hospital chaplain "fulfilled some strictly secular duties, 'including grief counseling and other patient counseling.'"³⁹

(b) Primary Effect Which Neither Advances Nor Inhibits

Religion. The Supreme Court has noted that "Lemon's 'purpose' requirement aims at preventing the relevant governmental decision maker ... from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters."⁴⁰ In applying this test to a particular religious practice, if that practice no more than "incidentally" benefits religion, it passes the Supreme Court's muster. As Justice Blackmun stated in the Roemer decision:

Everson and Allen put to rest any argument that the State may never act in such a way that has the incidental effect of facilitating religious activity.... If this were impermissible ... a church could not be protected by the police and fire department, or have its public sidewalk kept in repair: The Court never has held that religious activities must be discriminated against in this way.⁴¹

For example, in affirming the constitutional rights to student-initiated religious expression in a public school, the Supreme Court noted that although religious groups would benefit from such expression, the benefit was merely "incidental," not primary.⁴² On its face, the effects test is simply a requirement of neutrality.

The Supreme Court has made it clear that active participation by the government is necessary in order for an impermissible "primary effect" of advancing religion to be found:

To have forbidden "effects" under Lemon, it must be fair to say that the government itself has advanced religion through its own activities and influence. As the Court observed in Walz, "[F]or the men who wrote the Religion Clauses of the First Amendment, the 'establishment' of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity."⁴³

Under the White House Chaplaincy proposal, there would seem to be no active involvement with or official sponsorship of religion. The President would merely allow a privately-funded chaplain to perform certain authorized activities on White House premises and at state functions. The government would not direct or endorse such activities, nor would it require White House staff or others to attend such activities or endorse the content of such activities.

It should be noted in passing that the Lemon "effects" test has two aspects. It is unconstitutional as a "primary effect" for the government to advance religion, but it is equally unconstitutional for the government to inhibit religion. Nonetheless, the argument that the failure of the government to permit a privately-funded White House chaplaincy has the primary effect of inhibiting religion is not substantial.

(c) Avoidance of Excessive Governmental Involvement.
Analysis of the entanglement requirement may be unnecessary. Justice White asserted in his concurring opinion in Roemer v. Board of Public Works:⁴⁴

As long as there is a secular legislative purpose, and as long as the primary effect of the legislation is neither to advance nor inhibit religion, I see no reason -- particularly in light of the 'sparse language of the Establishment Clause,' -- to take the constitutional inquiry farther.⁴⁵

Nonetheless, the matter of "entanglement" has been considered and construed by one federal district court to refer not only to the day-to-day interaction between government and religion, but

also to refer to the effect of state policies toward religion.⁴⁶ Ultimately, the question is one of degree⁴⁷ as to whether or not government policy necessitates "official and continuing surveillance" of or excessive government involvement in the affairs of religious organizations.⁴⁸

Since the selection of the White House Chaplain as well as the funding of the chaplaincy would be performed by a private citizens organization, it would appear that the government would not be excessively entangled in the institution of the chaplaincy. Moreover, the government would not be involved in the supervision or direction of chaplaincy duties.

Provision of incidental services, such as electricity, telephone and office space would probably not constitute impermissible "excessive involvement." In deciding a tax exemption case, the Supreme Court wrote that:

Granting tax exemptions to churches necessarily operates to afford an indirect economic benefit and also gives rise to some, but yet a lesser, involvement than taxing them....There is no genuine nexus between tax exemption and establishment of religion.⁴⁹

As the Court explained, an exemption would preclude tax valuations of church property, tax liens, tax foreclosures, and the "direct confrontations and conflicts that follow in the train of those legal processes."⁵⁰ This rationale applies equally to the provision of incidental services which are provided to the White House premises as a whole.

Thus, as written, the proposal appears to conform to the requirements of the Supreme Court's Lemon test.

2. Endorsement Test. In recent years, the Supreme Court has increasingly utilized another test to determine when government action contravenes upon the First Amendment Establishment Clause. Referred to as the "endorsement test," it was first formulated in Lynch v. Donnelly⁵¹ by Justice Sandra Day O'Connor. In Lynch, Justice O'Connor proposed the endorsement test as an alternative to or refinement of the Lemon test.

According to the endorsement test, if a government action creates the perception that the government is endorsing or disapproving a religion, it is unconstitutional.⁵² The fundamental concern is whether the challenged governmental activity conveys "a message to non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community."⁵³

According to this test, a governmental action which does not create a perception of endorsement could be constitutionally permissible even though it actually has a primary effect of advancing or inhibiting religion.⁵⁴ On the other hand, a government action or law which creates a perception of endorsement would be unconstitutional even though it neither advances nor inhibits religion.⁵⁵ The relevant perception under Justice O'Connor's test is that of an informed, objective observer familiar with the text, legislative history, and the implementation of the governmental action in question.⁵⁶

The White House Chaplaincy proposal includes opportunities for

various religions to conduct chaplaincy duties for the White House staff and the President at the invitation of the White House Chaplain. Presumably, this would provide opportunities for all religious organizations to participate in the White House Chaplaincy program and would appear to mitigate the perception of governmental endorsement of, for example, the Christian religion or any particular Christian denomination.

The proposal for a White House Chaplain does not appear to provide such opportunities for groups who endorse or support no religion at all. It would most likely be these groups which would assert that the "endorsement" test renders the chaplaincy proposal unconstitutional. However, Justice Tom Clark, speaking for the Supreme Court, observed in Schempp that:

[T]he State may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe."⁵⁷

To elevate the demands of those who advocate a purely secular government that is completely void of any involvement with religion over those who believe such involvement is appropriate would constitute a form of governmental hostility which is contrary to Supreme Court mandates.

3. Limited Public Forum Considerations

One final consideration is that of whether the status of a chaplaincy in the White House would create an open public forum which would force the White House to permit all other forms of expressive activities on its grounds.

There are various types of forums. One type of public forum consists of public property that is not traditionally a public forum, but which has been opened by the government for use by the public as a place for expressive activity.⁵⁸ These forums must be opened by intentional government action, not merely by inaction or by permitting limited discourse.⁵⁹ "Intentional" governmental action is determined by reference to (1) government policy, (2) government practice, (3) the nature of the property, and (4) the compatibility of the forum with the expressive activity to be conducted there.⁶⁰

Unlike the traditional public forums, the government is not required to open the limited public forum in the first place but does so on its own discretion.⁶¹ Once, however, the government has opened a forum for expressive activity, government officials are "bound by the same exacting standards as apply in a traditional public forum."⁶²

The government is not required to retain the character of the designated or limited public forum indefinitely.⁶³ Although the government is proscribed from exercising its authority to close the limited public forum merely to censor certain views, the government can redefine a limited public forum and close it. As one federal appellate court has held: "Once the state has created a forum, it may not ... close the forum solely because it disagrees with the message being communicated in it."⁶⁴

Thus, it appears that the government, in permitting a White House Chaplain, will not be making an irrevocable commitment. The

government could dismantle the White House Chaplaincy and close its forum for constitutionally permissible reasons.

4. Management Considerations

The government, in permitting a White House Chaplain, will not be required to open the White House floodgate to all sorts of groups in unrestrained chaos. The government may constitutionally create a forum for specific purposes.⁶⁵ For example, the forum may be limited to the discussions of certain subjects or to certain speakers.⁶⁶ This means that the White House could create a chaplaincy program with the specific duties proposed, for example, by the Fellowship of Legislative Chaplains.

The Supreme Court has previously addressed such concerns and has responded:

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, 374 U.S., at 308...

"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."⁶⁷

Moreover, the government may impose reasonable regulations concerning time, place and manner of expression, provided such regulations are content-neutral, narrowly tailored to serve a compelling state interest, and leave open alternative channels of communication.⁶⁸

III. CONCLUSION

The proposal by the Fellowship of Legislative Chaplains for a White House Chaplaincy appears to meet current requirements for constitutionality as promulgated by the United States Supreme Court.

IV. SUGGESTIONS

A. Role of the Chaplain

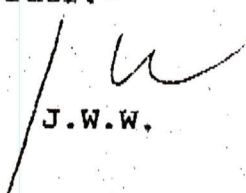
In order to minimize further any implication of excessive Presidential involvement in the duties of the White House Chaplain, consideration should be given to providing services which are agreed to in advance and not as a "menu from which the President may choose." Neither the President nor the White House staff should be involved in organizing, executing or otherwise directing any duties of the White House Chaplain. Rather, the services should be as regularly scheduled as logic permits with attendance not being a factor in whether the services are scheduled. Receipt of and attendance at services should be absolutely discretionary.

B. Funding of the Chaplaincy Program

Although constitutionally permissible, consideration should be given to private compensation to the government for the telephone, electricity, office space and other services provided to the chaplaincy. This would provide further evidence that the government is not excessively entangled in the affairs of the chaplaincy and that the government is not favoring one religion over another.

C. Appointment of the Chaplain

Details should be added to the Executive Order regarding precisely how the chaplain will be selected, what the tenure will be, terms and conditions for removal, etc. Moreover, consideration should be given to designation of the preferred chaplaincy candidate in the Executive Order.*


J.W.W.

*This memorandum is not intended to be, and does not constitute, the giving of legal advice. Particular court decisions may not apply to particular factual situations, or may not be legally binding in particular jurisdictions. The existence of unfavorable decisions indicates that reliance should not be placed on the favorable decisions as necessarily dispositive or assuring success. This memorandum is not intended to substitute for reliance on privately retained legal counsel.

Notes

1. Marsh v. Chambers, 463 U.S. 783, 788 n.7 (1983).
2. Marsh, 463 U.S. 783.
3. Id. at 787.
4. Id. at 786.
5. Id. at 788 n.8.
6. Id. at 788.
7. U.S. Const. amend. I.
8. Id.
9. See, e.g., McGowan v. Maryland, 366 U.S. 420, 442 (1961); Everson v. Board of Educ., 330 U.S. 1, 15-16 (1947).
10. See, e.g., Committee for Pub. Educ. and Religious Liberty v. Nyquist, 413 U.S. 756, 786 (1972); Engel v. Vitale, 370 U.S. 421, 430 (1962).
11. As quoted in Adrienne Koch and William Peden, eds., The Life and Selected Writings of Thomas Jefferson (New York: Random House, 1944), p. 332 (emphasis supplied).
12. 104 S. Ct. 1355 (1984).
13. Id. at 1359 (emphasis supplied; footnotes omitted).
14. Zorach v. Clauson, 343 U.S. 306, 314 (1952).
15. See, e.g., Zorach, 343 U.S. 306; Engel, 370 U.S. 421; School District of Abington Township, Pa. v. Schempp, 374 U.S. 203 (1963); Walz v. Tax Commission, 397 U.S. 664 (1970); and, Roemer v. Board of Public Works of Maryland, 426 U.S. 736 (1976).
16. 426 U.S. 736 (1976).
17. Id. at 745-46 (emphasis supplied).
18. School District of Abington Township, 374 U.S. at 306 (Goldberg, J., concurring).
19. Marsh, 463 U.S. at 792.
20. Id. at 787-88.

21. Id. at 790. The Supreme Court did not apply the requirements of Lemon v. Kurtzman, 403 U.S. 602 (1971), in Marsh. Rather, the Court may have carved out a special exception for legislative chaplaincies in light of the historical record. See Note, Does The Wall Still Stand?: Separation Of Church and State In The United States, 37 Baylor Law Review 755, 768 (1985).
22. March, 463 U.S. at 790-91.
23. 463 U.S. 783 (1983).
24. Id. at 793.
25. Id.
26. Id.
27. Id.
28. Id.
29. Id.
30. Id. at 794-95.
31. Katcoff v. Marsh, 755, F.2d 223 (2d Cir. 1985); see School District of Abington Township, 374 U.S. at 296. See also Note, The United States Military Chaplaincy Program: Another Seam in the Fabric of our Society?, 59 Notre Dame Law Review 181 (1983-84).
32. Theriault v. Carlson, 339 F. Supp. 375, 380-81 (N.D. Ga. 1972), vacated on other grounds, 495 F.2d 390 (5th Cir.), cert. denied, 419 U.S. 1003 (1974); see School District of Abington Township, 374 U.S. at 296.
33. Carter v. Broadlawns Medical Center, 857 F.2d 448 (8th Cir. 1988).
34. 403 U.S. 602 (1971).
35. Id. at 612-13.
36. Id.
37. Id. at 614.
38. Id.
39. Carter, 857 F.2d at 454.
40. Corporation of Presiding Bishop v. Amos, 107 S.Ct. 2862, 2868 (1987).

41. Roemer, 426 U.S. at 747 (emphasis supplied).
42. Widmar v. Vincent, 454 U.S. 263, 273-75 (1981). For a detailed discussion of the public school issue, see John W. Whitehead, The Rights of Religious Persons in Public Education (Westchester, Ill.: Crossway Books, 1991).
43. Corporation of Presiding Bishop v. Amos, 107 S. Ct. at 2868-69 [quoting Walz v. Tax Commission, 397 U.S. 664, 668 (1970) (latter emphasis added)].
44. 426 U.S. 736 (1976) (White, J., concurring).
45. Id. at 768.
46. Country Hills Christian Church v. Unified School District No. 512, 560 F. Supp. 1207, 1219 (D. Kan. 1983).
47. Id.
48. Walz, 397 U.S. at 675.
49. Id. at 674-75.
50. Id. at 674.
51. 465 U.S. 668 (1984).
52. 465 U.S. at 688-92 (O'Connor, J., concurring).
53. Id. at 688.
54. Id. at 691-92.
55. Id.
56. See Wallace v. Jaffree, 472 U.S. 38, 76 (1985) (O'Connor, J., concurring).
57. School District of Abington Township, 374 U.S. at 225 (quoting Zorach, 343 U.S. at 314). See Crockett v. Sorenson, 568 F. Supp. 1422, 1425-26 (W.D. Va. 1983); Jaffree v. Board of School Commissioners of Mobile County, 554 F. Supp. 1104, 1108 (S.D. Ala. 1983).
58. Perry Education Association v. Perry Local Educators' Association, 460 U.S. 37, 44 (1983).
59. Hazlewood School District v. Kuhlmeier, 108 S. Ct. 562, 568 (1988), quoting Cornelius v. NAACP Legal Defense and Educational Fund, Inc., 473 U.S. 788, 802 (1985).

60. Cornelius, 473 U.S. at 802.
61. Perry, 460 U.S. at 46.
62. Id. at 46.
63. Id. at 47.
64. See Government Association v. Board of Trustees of the University of Massachusetts, 868 F.2d 473, 480 (1st Cir. 1989).
65. Perry, 460 U.S. at 46.
66. See Widmar, 454 U.S. 263.
67. Marsh, 463 U.S. at 795.
68. Perry, 460 U.S. at 44.



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December 19, 1990

Leigh Ann Metzger
Assistant to the President
The White House
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

Dear Leigh Ann:

Rick Grubbs, Chairman of the Fellowship of Legislative Chaplains (FLC), asked that I review FLC's proposal for an Executive Order establishing the Office of White House Chaplain and to send the results to you.

The United States has a long tradition of recognizing God through our public institutions. The Declaration of Independence adopts "the laws of nature and of nature's God" as the basis for the nation's character. Our money and national Pledge of Allegiance declare trust and dependence on God. Public officials take their oath of office on the Bible and invoke God's help. Legislative and judicial sessions frequently open with prayer and Presidents have long declared national days of prayer.

At the 10th Annual Presidential Prayer Breakfast on March 1, 1962, President John F. Kennedy said prayer is "much a part of our American heritage." Upon declaring the National Day of Prayer for 1965, President Lyndon B. Johnson observed that the words "in God is our trust" truly reflects "the very soul of our great Nation: our purpose as well as our source of greatness." At the 1970 Presidential Prayer Breakfast, President Richard M. Nixon recognized that "this Nation is a nation under God."

The Supreme Court concluded in 1892 that "this is a religious people...a Christian nation." Justice William O. Douglas wrote for the Court in 1952 that "we are a religious people and our institutions presuppose a Supreme Being." Indeed, the Ten Commandments are posted in stone above the head of the Chief Justice of the United States.

Several states acknowledge God in their official mottos. Arizona, for example, proclaims that "God Enriches"; Colorado affirms "Nothing Without Providence"; Florida declares "In God We Trust"; Ohio states that "With God, All Things Are Possible"; and South Dakota acknowledges that "Under God the People Rule."

Chaplains have been part of public life since the founding of the Republic. This fact stems from the public and general recognition of God and the need for His help. Perhaps more importantly, it is one way in which the personal or individual spiritual needs of our public officials may be met.

As did the Founding Fathers, I believe strongly that to lead us properly, public officials must themselves be led by God. Proverbs 29:18 tells us that "where there is no vision, the people perish." Proverbs 14:34 reminds us that "righteousness exalteth a nation." The nation benefits when our leaders are spiritually nurtured.

Recognizing this, the same Congress that passed the First Amendment's prohibition against establishing religion created a chaplain system to serve the Congress and declared a day of public thanksgiving and prayer. State legislatures across the country are also served by chaplains. Establishing an Office of the White House Chaplain fits squarely within our nation's historical tradition of recognizing God and of providing for the spiritual needs of those in public office.

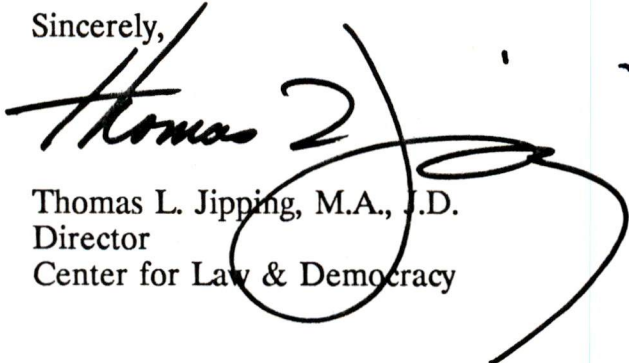
Rick Grubbs' excellent proposal describes the potential duties and roles of a White House Chaplain. The remaining point I wish to address is broadly constitutional. As you know, since the 1940s some forces within our society have aggressively pursued, with the goal of eliminating, any public expression or recognition of religion, supposedly in the name of a "separation of church and state" which they claim the Constitution mandates. In my opinion, establishing an Office of the White House Chaplain - especially in the manner outlined in the FLC proposal - is fully consistent with the constitutional prohibition against establishing religion. No legal barrier exists to implementing this proposal.

In *Marsh v. Chambers* (1983), the Supreme Court held that a legislature's practice of employing a chaplain whose primary duty was to open each legislative with prayer did not violate the non-establishment clause of the First Amendment to the U.S. Constitution. In doing so, the Court specifically noted the "unambiguous and unbroken history of more than two hundred years" of legislative prayer.

The Court did not apply the three-part test it established in *Lemon v. Kurtzman* (1971). Under that test, the Court will determine whether a government action involving religion has a secular purpose, whether its primary effect is to promote or inhibit religion, and whether there is excessive government entanglement with religion. It appears that an action with such obvious and deep historical roots as establishing a White House chaplaincy may not warrant the rigid *Lemon* test. At least one constitutional law treatise agrees. See J. Nowak, R. Rotunda & J. Young, *Constitutional Law* 3rd ed. (St. Paul, MN: West Publishing Co., 1986), at 1035, 1061 n.1, 1064 n.16. The existence of a U.S. Senate chaplain further supports this argument.

I see no constitutional barrier to implementing the FLC proposal and offer my further assistance in the event such an issue is seriously raised.

Sincerely,



Thomas L. Jipping, M.A., J.D.
Director
Center for Law & Democracy

Fellowship of Legislative Chaplains



9085 SE Morning Street
Hobe Sound FL 33455
(407) 546-3300

WHITE HOUSE CHAPLAINCY PROPOSAL

SPECIALLY PREPARED FOR

GOV. JOHN SUNUNU

● Interdenominational

● Serving America's Leaders

PROPOSAL CONTENTS

Letter to the President

Roles of the Chaplain

Funding for the Chaplaincy

Constitutional Concerns

Draft Executive Order

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Fellowship of Legislative Chaplains



9085 SE Morning Street
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(407) 546-3300

Dear Mr. President:

As Chairman of FLC, which is the professional association for government chaplains, I am pleased to present to you a proposal which will uplift the faith and enrich the family lives of your dedicated staff!

For over 200 years, we have provided prayer, counsel, motivation, and encouragement to state and federal legislators, and their staffs. Now, after months of planning and prayer, in conjunction with national religious leaders and your staff, an executive order has been prepared which would make available to the members of this Administration these same chaplaincy services.

We respectfully request your consideration of the attached proposal to establish the office of White House Chaplain. We believe the chaplaincy will be well received among your staff. In fact, the proposal lists nine areas in which a Chaplain could serve your Administration. It will also symbolize to all Americans, our need to recognize the Almighty and to seek His Wisdom in our national and personal lives.

The chaplaincy will provide for the busy staff of this current Administration and for many future administrations to come, a means whereby those of its number may be helped in their seeking God, the Consciousness of His Presence, the Light of His Guiding, and the Strength of His Love.

We believe your approval of this constitutionally-sound, privately-funded chaplaincy will be a great encouragement to your staff. It will also demonstrate to the American people your recognition of the need for Divine Guidance during the complex era in which we live. We therefore urge your thoughtful and prayerful authorization of this popular Executive Order creating the office of White House Chaplain.

Very Respectfully Yours,

Rick Grubbs
Chairman

ROLES OF THE CHAPLAIN

The job description of the Chaplain would be to serve at the pleasure of the President in whatever capacity he deems appropriate. The following suggested duties, based largely on other current government chaplaincies, serve as a menu from which the President may choose.

1. STAFF PASTOR/COUNSELOR

(a). Family Enrichment

The Chaplain could schedule weekend family life seminars for staff and their families to focus on maintaining a dynamic marriage while working in such a demanding career. Weekend retreats and marriage counseling could also be offered to the staff. If only one marriage were saved from the tragedy of divorce through this ministry of the Chaplain, the program would be considered a success.

(b). Ministry to the Hurting

The Chaplain would regularly visit hospitalized employees and their families on behalf of the President. The Chaplain could also coordinate the sending of flowers and expressions of sympathy to employees experiencing a death in their immediate family or other tragic circumstances.

(c). Individual Counseling

In recent years "Industrial Chaplains" have become part of a growing number of employee benefit packages. This has occurred as industry has realized how periodic chaplain visits to the work site can save company resources. When problems such as emotional burnout or alcohol dependency are recognized and dealt with effectively, everyone wins.

(d). Pastoral Functions

The Chaplain would provide clergy services such as performing weddings and funerals for those who do not have a pastor or who would like to supplement their ceremony. He would also lead voluntary prayer and Scripture-study groups before working hours or during lunch.

The moral and ethical influence of an effective chaplain's ministry could be felt throughout the Administration. It could help set the tone for a kinder, gentler administration.

2. CHAPLAIN AS PUBLIC PRAYER LEADER

(a). Religious and Patriotic Holidays

Opportunities abound on these occasions for a Presidential envoy to add inspiration to the many public observances both in Washington and throughout the Nation.

(b). Cabinet Meetings

At the pleasure of the President the Chaplain would either offer, or secure a guest minister to offer, a brief (10-30 seconds), uplifting prayer or word of encouragement at the beginning of Cabinet Meetings.

Opening prayer was once standard at all Cabinet Meetings. President Eisenhower received significant positive review from various religious groups for instituting this practice during his Administration.

(c). Grace Before Meals

From staff luncheons to state dinners, opportunities exist for a

chaplain to return thanks for the providence of God to our Nation. The Chaplain would also invite guest clergy in for this function. Care would be taken to insure a balanced representation of faiths in all such practices involving outside clergy.

(d). Times of National Crisis

During the first days of the Gulf crisis, the President wisely called for our nation to pray. In an event such as this, the call to prayer could be coordinated by the Chaplain. The Chaplain could not only lead in prayer but could also call upon religious leaders around the country to join in prayer as requested by the President.

3. COORDINATOR OF STAFF CHARITY EFFORTS

The Chaplain could coordinate and promote charitable giving as requested by the Administration. This could include one-time projects, such as relief for victims of tragedy, or ongoing efforts, such as helping the homeless or the United Way. Volunteer service, as well as financial relief, could be coordinated by the chaplain.

The President could also demonstrate his support for various volunteer efforts by commissioning the Chaplain to short term assignments with different charitable agencies on his behalf.

4. PRESIDENTIAL REPRESENTATIVE

(a). Messenger of Condolences

While provisions currently exist for the conveyance of Presidential condolences, the frequency of these expressions could be increased and their effectiveness enhanced, by the inclusion of a clergyman. At the pleasure of the President, the Chaplain would express the President's

sympathy via mail, phone, or personal visit.

On occasion, the Chaplain could accompany other White House officials to funerals to reinforce the President's concern. At other times the availability of the Chaplain to attend such functions in their stead would free other White House personnel for their regular duties.

(b). Envoy to U.S. Troops Abroad

As Commander-in-Chief, one of the President's most weighty responsibilities is to maintain the morale of his troops especially during times of crisis. A personal religious envoy from the President could be a tremendous inspiration to the resolve of these troops.

5. STAFF MOTIVATION / DEVELOPMENT

A well-trained chaplain could motivate clerical and other personnel by being a "goodfinder," noting positive performances and writing notes of encouragement and recognition. He could also conduct specialized training seminars for the staff in professional development areas such as overcoming procrastination or remembering names and faces. The Fellowship of Legislative Chaplains will provide the Chaplain with a cassette and videotape library of motivational material for staff use.

6. RELIGIOUS LIAISON

While the chaplaincy is not to become a "political" post, there may be occasions when it would be appropriate for the Chaplain to assist the Religious Liaison in certain duties. As a clergyman, the Chaplain could address fellow clergy on a minister-to-minister basis.

7. WHITE HOUSE VISITOR PUBLIC RELATIONS

The delight of many Washington tourists is a visit to the White House. During his free moments, the Chaplain would interact with White House guests on a one-to-one basis, extending greetings and answering visitor questions. This would add to the excitement of their White House adventure by allowing them to meet someone "official."

The Chaplain could also conduct special tours for religious leaders, churches, and other religious groups visiting the White House. Special emphasis could be given to the spiritual heritage of the Presidency and the need to pray for our President.

8. COORDINATOR OF SPECIAL RELIGIOUS SERVICES

Special occasions such as religious holidays could lend themselves to special religious services. These services could be geared to meet the needs, as well as the time constraints, of the First Family and their guests.

The White House Chaplain would facilitate such services by the minister of the President's choosing or on a moment's notice administer such a service himself.

9. OTHER ASSIGNED DUTIES

The Chaplain would be available to the President and his staff for any assigned duties which might otherwise "fall through the cracks."

SUGGESTED FINANCIAL ARRANGEMENT

FUNDING OF THE CHAPLAINCY PROGRAM

The chaplaincy would be privately supported by the Fellowship of Legislative Chaplains fund designated for the White House Chaplaincy. The Fellowship is the singular professional association for government chaplains. Funds would never be solicited from White House staff or the general public in any way. A full accounting of all funds would be presented regularly to the White House comptroller and regular audits would be conducted by outside agencies.

The Chaplain would have a preestablished, very moderate income which would never exceed that of his counterparts in the Congress.

FINANCIAL IMPACT OF CHAPLAINCY PROGRAM

In an era of budget deficits and cost-cutting, the Chaplaincy program makes good sense. As a prime example of one of the "Thousand Points of Light" which the President has called for, the Chaplain will help reduce federal spending by providing the President with a volunteer staff member who would save this Administration funds by creating a more welcoming, and thus more creative and productive, workplace.

CONSTITUTIONAL CONCERNS

It should be noted that as recent as 1983, the Supreme Court upheld the practice of government sponsored chaplains, quoting earlier Supreme Court language by Justice Douglas that:

"We are a religious people whose institutions presuppose a Supreme Being."

--Marsh v. Chambers,

463 U.S. 783, 792 (1983)

In upholding the chaplaincy practice, the Court observed that the Federal Government has traditionally sanctioned such programs, noting in fact, that Congress authorized the appointment of its own official, paid chaplain only three days before it reached final agreement on the language of the Bill of Rights. Ibid., at 788.

The Court ruled that chaplaincies had become "part of the fabric of our society" and that they were not an "establishment of religion or a step toward establishment; [but] simply a tolerable acknowledgement of beliefs widely held among the people of this country." Ibid., at 791.

The court concluded their opinion by noting "the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow." The Court found "abundance assurance" that such chaplaincies present "no real threat". Ibid., at 791.

DRAFT EXECUTIVE ORDER

PRESIDENT OF THE UNITED STATES

The White House

Executive Order No. _____ - Establishment of a permanent White House Chaplaincy

February 1, 1991

This order authorizes the establishment of the permanent office of White House Chaplain.

As a moral leader of the free world, the President and his staff must rely on God through prayer for spiritual guidance. Since the days of the founding fathers our legislative leaders have sought this same spiritual guidance with the assistance of a staff chaplain. Other nations of the free world have long had chaplains for their heads of state as well. The time has now come for the American Executive Branch to be afforded a regular staff chaplain.

Because of a favorable climate of recent executive, legislative, and judicial support, it is time to establish a White House Chaplaincy. An example of this favorable climate is the recent legislation by our U.S. Congress declaring 1991 "The International Year of Bible Reading". Also, our Judeo-Christian historical roots confirm this Chaplaincy concept given the example of chaplains found in the Senate, House of Representatives, and Armed Services.

The major duty of this Chaplain would be to be available as a spiritual advisor and counselor to all those involved in the Executive Branch of the government. A secondary role would be to perform other pastoral duties as assigned by the President, such as representing the President at religious functions, funerals, and special occasions requiring a public invocation.

This chaplaincy would serve the current White House staff and future Administrations. Having a chaplaincy would acknowledge our hope, faith, and trust in the Almighty God, the Sovereign Protector of these United States of America.

Now, therefore, by virtue of the authority vested in me as President of the United States of America, I hereby establish the Office of White House Chaplain to be effective immediately.

PRESIDENT GEORGE BUSH

PRESIDENT OF THE UNITED STATES

The White House

Executive Order No. _____ - Establishment of a permanent White House Chaplaincy

February 1, 1991

Fact Sheet

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered as follows:

Section 1. It is important that the needs and general welfare of the staff of the entire Executive Branch be met. This would include meeting the spiritual, emotional, and family needs of the staff.

Section 2. As a moral leader of the free world, the President, along with his staff, must rely on God through prayer for spiritual guidance. A staff chaplain will not only serve as a reminder of this fact but will facilitate prayer and counsel for those who seek such.

Section 3. Popular Executive, Legislative, and Judicial Developments. Executive, legislative, and judicial developments in recent years manifest popular, timely support for establishing a White

House Chaplaincy.

(a) On December 7, 1989 President Bush signed into law S.J. 164, proclaiming 1990 "The International Year of Bible Reading." This was followed by the President's example to all Americans as he later publicly read from the Holy Scriptures on the steps of the Capitol.

(b) During the 98th Congress a proposal was made to create a White House Chapel. A Joint Resolution, S.J. 179 (to provide a White House Chapel) was read twice in the United States Senate. It was then referred to the Committee on Governmental Affairs. The Committee then requested Executive Comment from the White House.

(c) As recently as 1983, the Supreme Court upheld the practice of official chaplains in state legislatures, quoting earlier Supreme Court language penned by Justice Douglas that:

"We are a religious people whose institutions presuppose a Supreme Being."

--Marsh v. Chambers

463 U.S. 783, 792 (1983)

In upholding the State Chaplaincy Program, the Supreme Court observed that Congress has traditionally recognized and even funded similar Chaplaincy Programs, noting in fact, that Congress authorized the appointment of a paid Chaplain only three days before it reached final agreement on the language of the Bill of Rights. Ibid., at 788.

Section 4. Judeo-Christian Historical Roots. Because our nation is rooted in Judeo-Christian heritage it is important that the White House have a Chaplaincy Program.

(a) Currently, chaplains are found in the Legislative Branch of the Federal Government as well as many state legislatures. All 50 state legislatures regularly open with prayer as do many judicial and municipal functions. Police departments, state hospitals, state and federal prisons all employ official chaplains.

(b) The practice of chaplains in our Federal Government found its roots during the heated debates of the Philadelphia Constitutional Convention in 1787. Here, Benjamin Franklin said:

"We have been assured, Sir, in the Sacred Writings, 'except the Lord build the house, they labor in vain that build it'...I, therefore, beg leave to move that, henceforth, prayers imploring the assistance of Heaven and its deliberation be held in our assembly every morning before we proceed with business."

(c) The Presidency as a focal point of the National Faith can be traced to the first official act of a U.S. President. George Washington, in his first inaugural address declared:

"It would be particularly improper to omit in this first official Act, my fervent supplications to that Almighty Being who rules over the Universe....In tendering this homage to the Great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own."

Section 5. Issue of Church-State Relations. "Congress shall make no law respecting an establishment of religion..." So reads the First Amendment to the Constitution. Designed not to discourage religion, but to assure an equal freedom to all its various groups, this clause

has under the interpretation of the court come to be the basis for separation of church and state. Only in such fashion did it appear that the various faiths which made up our people could live together in friendliness and understanding. (Excerpt from U.S. Capitol Prayer Chapel Booklet).

Yet prayer was offered at the great Convention which framed our Constitution. By prayer Congress opens all its sessions. Through the ministry of chaplains of the great faiths, the men in our Armed Services are daily strengthened in will and life. Our coinage, our Pledge of Allegiance, many of our postage stamps all witness our faith in Divine Providence. A long and glorious company of our national leaders down through the years have born witness to their personal trust in God. (Ibid).

It is in this same tradition that this White House Chaplaincy will provide recognition of the place of religion in our public life, while enhancing Executive involvement with the religious community. The chaplaincy will provide for the busy staff of this current Administration and for many future administrations to come, a means whereby those of its number may be helped in their seeking God, the Consciousness of His Presence, the Light of His Guiding, and the Strength of His Love.

Section 6. Selection of the Chaplain. In order for the Chaplain to remain politically neutral, it is essential that the selection of the Chaplain be made as apolitical and nonsectarian as possible. Selection of the Chaplain by virtue of office rather than by individual appointment will relieve the President of the inherently awkward task of selecting the Chaplain's religious affiliation. It will also assure the integrity of the selection procedure.

The Chaplaincy program will require a Chaplain with government chaplaincy experience, a knowledge of church-state issues involving chaplaincies, and a familiarity with the security and confidentiality concerns of such an office. Professional peer recognition would also be desirable.

The preferred candidate to meet these criteria would be the Chairman of the Fellowship of Legislative Chaplains, the only professional association for government chaplains, and the financial sponsor of the White House chaplaincy. The Fellowship maintains no doctrinal statement for its members. It also maintains a perpetual balance of faiths as reflected in the appointments of chaplains to the legislatures and Congress.

Section 7. Summary. This chaplaincy would serve the current White House staff and future Administrations. Its goal would be to help meet the spiritual needs and strengthen the families of the President and his staff, while providing the President with a clerical representative to the public. Having a chaplaincy would acknowledge our hope, faith, and trust in the Almighty God, the Sovereign Protector of these United States of America.

Section 8. Authorization. Now therefore, by virtue of the authority vested in me as President of the United States of America, I, GEORGE BUSH, do hereby establish the permanent Office of the White House Chaplain to be effective immediately.

PRESIDENT GEORGE BUSH

February 1, 1991

PROFILE OF CURRENT FELLOWSHIP OF
LEGISLATIVE CHAPLAINS CHAIRMAN

Chaplain Rick Grubbs has served as a chaplain for the Jupiter Island, FL Police Dept., the Florida House of Representatives, and the Florida Department of Corrections. He has an M.A. in Counseling, a B.S. in Speech Communications, and an A.A. in Bible.

Chaplain Grubbs regularly preaches and conducts motivational seminars in churches of many different denominations.

He is ordained by the Florida Evangelistic Association, a nondenominational interchurch group. In January 1985 the President spoke at services of the Association's main church, which his mother has visited periodically for several years. This is also Chaplain Grubbs' home church. On that occasion the President commended the Association's ministries and "what [they] stand for."