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Christian Legislative Prayers and Christian Nationalism

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Caroline Mala Corbin*

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I. Introduction

Asked whether the United States is a Christian nation, about half of Americans surveyed in 2014 answered yes.¹ Fifty-five percent from that same survey also responded either that “America is a Christian nation and that is a good thing” or that “[America]

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1. University of Minnesota—The American Mosaic Project, *Boundaries in the AMERICAN MOSAIC: PRELIMINARY FINDINGS REPORT 8* (2014), https://drive.google.com/file/d/0B1_-5jcLVxRdZ3ZzMVVZSU9ZOE0/view.

is not a Christian nation and that is a bad thing.”² Thus, the conclusion that America is a Christian nation is not descriptive but an aspirational, reflecting a “cultural preference for Christianity.”³ Not surprisingly, over half of Americans believe that being Christian is either “very” or “somewhat” important to being a good American.⁴

Support for a Christian America is a core component of Christian nationalism, which “envision[s] the boundaries of the religious and political communities to be as coterminous as possible.”⁵ That is, Christian nationalism conceives of religion and government as wholly overlapping rather than separate spheres.⁶ It also means the conflation of religious identity and national identity. In sum, Christian nationalism is the belief that the United States “has been and always should be distinctly Christian in its identity, values, sacred symbols and policies.”⁷

The proliferation of Christian legislative prayers at local governments around the country both reflects and strengthens

2. Penny Edgell, *An Agenda for Research on American Religion in Light of the 2016 Election*, 78 Soc. Relig.: Q. Rev. 1, 6 (2017).

3. *Id.*; see also Jeremy Brook Straughn & Scott L. Feld, *America as a ‘Christian Nation’? Understanding Religious Boundaries of National Identity in the United States*, 71 Soc. Relig. 280, 281 (2010) (“Rather than merely describing the demographic status quo, statements like ‘America is a Christian nation’ represents a discursive practice that seeks to align the boundaries of authentic national belonging with adherence to the dominant religious faith.”).

4. Edgell, *supra* note 2, at 6; see also Bruce Stokes, WHAT IT TAKES TO TRULY BE “ONE OF US”, PEW RES. CTR. 1, 6 (2017), <http://www.pewglobal.org/wp-content/uploads/sites/2/2017/02/Pew-Research-Center-National-Identity-Report-FINAL-February-1-2017.pdf> (asking about whether being Christian is important to being “truly American,” 32% responded it was “very important” and 19% “somewhat important”); Public Religion Research Institute, *PRRI/RNS June 2015 Survey* 4 (2015), <https://www.prri.org/wp-content/uploads/2015/06/June-PRRI-RNS-Religion-News-Survey-Topline.pdf> (reporting that in response to the same question, 33% answered being Christian was “very important” to being “truly American” and 20% answered “somewhat important”).

5. Samuel L. Perry & Andrew L. Whitehead, *Christian Nationalism and White Racial Boundaries: Examines Whites’ Opposition to Interracial Marriage*, 38 ETHNIC & RACIAL STUD. 1671, 1672 (2015).

6. See Joshua Davis, *Enforcing Christian Nationalism: Examining the Link Between Group Identity and Punitive Attitudes in the United States*, 57 J. FOR SCI. STUD. RELIGION 300, 301 (2018) (“This desire for a government a government that reflects not only the American interest, but the Christian interest as well, lead many to form an ideology of may be called, ‘Christian nationalism.’”).

7. Perry & Whitehead, *supra* note 5, at 1672.

Christian nationalism. "Legislative prayers" is the term used for the opening prayers that start many sessions of local government. In addition to a call to order, or a recitation of the national pledge, local political gatherings from state legislatures to town commissions to school boards begin their meetings with a prayer to God. At many, outside clergy are invited to conduct these brief acts of worship. At others, the lawmakers themselves give the prayer. With some frequency, these prayers have been overwhelmingly or exclusively Christian, leading to Establishment Clause challenges. The Establishment Clause, as the Supreme Court has repeatedly held, bars the government from favoring some religions over others.⁸

The Supreme Court has addressed the constitutionality of legislative prayers two times, upholding them each time. In *Marsh v. Chambers*,⁹ decided in 1983, the Supreme Court rejected an Establishment Clause challenge to Nebraska's policy of hiring a chaplain to open its legislative sessions with a nondenominational prayer. The Supreme Court held that legislative prayers do not violate the Establishment Clause because the original Congress did not find them unconstitutional¹⁰—the same Congress that approved the First Amendment also appointed its own legislative chaplain.¹¹ In *Town of Greece v. Galloway*,¹² decided in 2014, the

8. See, e.g., *Bd. of Educ. v. Grumet*, 512 U.S. 687, 703 (1994) ("[A] principle at the heart of the Establishment Clause [is] that government should not prefer one religion to another, or religion to irreligion."); *County of Allegheny v. ACLU*, 492 U.S. 573, 605 (1989) ("Whatever else the Establishment Clause may mean . . . it certainly means at the very least that government may not demonstrate a preference for one particular sect or creed . . ."); *Larson v. Valente*, 456 U.S. 228, 246 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.").

9. *Marsh v. Chambers*, 463 U.S. 783 (1983).

10. See *id.* at 790

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.

11. See *id.* at 788 ("On September 25, 1789, three days after Congress authorized the appointment of paid chaplains, final agreement was reached on the language of the Bill of Rights.").

12. 572 U.S. 565 (2014).

Supreme Court addressed a prayer practice at town board meetings where the vast majority of prayers given by invited local clergy were explicitly Christian rather than nonsectarian.¹³ Nevertheless, the Court considered them part of the legislative prayer tradition long allowed in the United States.¹⁴ After all, the Court argued, the predominantly Christian prayers were merely the result of a predominantly Christian town.¹⁵

The *Town of Greece* Court did not conclude that Christian legislative prayers could never violate the Establishment Clause. First, the Court suggested that their constitutionality might be in question had their overwhelmingly Christian nature been the result of a discriminatory intent to exclude non-Christians.¹⁶ Second, the Court drew the line at “prayers that over time denigrate, proselytize, or betray an impermissible government purpose.”¹⁷ Third, the prayers would be unconstitutionally coercive

13. See *id.* at 573 (acknowledging that “most of the prayer givers were Christian”); see also *id.* at 628 (Kagan, J., dissenting) (“[I]n the 18 months before the record closed, 85% included those references [to ‘Jesus,’ ‘Christ,’ ‘Your Son,’ or ‘the Holy Spirit’]. Many prayers contained elaborations of Christian doctrine or recitations of scripture.”); *id.* at 612 (Breyer, J., dissenting) (“[D]uring the more than 120 monthly meetings at which prayers were delivered during the record period (from 1999 to 2010), only four prayers were delivered by non-Christians.”).

14. See *id.* at 578

An insistence on nonsectarian or ecumenical prayer as a single, fixed standard is not consistent with the tradition of legislative prayer outlined in the Court’s cases. . . . The Congress that drafted the First Amendment would have been accustomed to invocations containing explicitly religious themes of the sort respondents find objectionable.

15. See *id.* at 573 (“Although most of the prayer givers were Christian, this fact reflected only the predominantly Christian identity of the town’s congregations, rather than an official policy or practice of discriminating against minority faiths.”).

16. See *id.* at 597 (Alito, J., concurring) (noting that failure to reach out to synagogues just over the town border “was not done with a discriminatory intent. (I would view this case very differently if the omission of these synagogues were intentional.)”); *id.* at 586–87 (majority opinion)

That nearly all of the congregations in town [were] Christian does not reflect an aversion or bias on the part of town leaders against minority faiths. So long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing.

17. See *id.* at 585 (majority opinion) (“Absent a pattern of prayers that over time denigrate, proselytize, or betray an impermissible government purpose, a challenge based solely on the content of a prayer will not likely establish a constitutional violation.”).

if it was proven that the government had punished those who opposed them.¹⁸ Notably, these are not bright-line inquiries and making these determinations is fact-intensive.¹⁹

The uncertainty has led to a circuit split in the lower courts.²⁰ Both the Fourth Circuit and the Sixth Circuit have ruled en banc on a legislative prayer practice where government officials were the exclusive prayer givers of exclusively Christian prayers.²¹ Relying on a four factor analysis, the Fourth Circuit Court of Appeals held that Christian prayers delivered by Rowan County's Board of Commissioners violated the Establishment Clause.²² In contrast, the Sixth Circuit Court of Appeals upheld an almost parallel practice²³ by Bormuth County's Board of Commissioners.²⁴ Addressing substantially the same legislative prayers, two circuits arrived at very different conclusions.

It should not be a close question whether government prayers that are mostly or entirely Christian violate the Establishment Clause. They should be automatically unconstitutional, full stop. One of the goals of the Establishment Clause was to stave off developments like Christian nationalism and its religious (and racial) hierarchies. Yet these legislative prayers, in addition to reflecting Christian nationalist beliefs, inevitably foster them as well. It would be more in keeping with

18. See *id.* at 588 ("The analysis would be different if town board members . . . singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person's acquiescence in the prayer opportunity. No such thing occurred in the town of Greece.").

19. See generally Mary Nobles Hancock, Note, *God Save the United States and this Honorable County Board of Commissioners: Lund, Bormuth, and the Fight over Legislative Prayers*, 76 WASH. & LEE L. REV. 399 (2019).

20. *Id.* at 403.

21. *Lund v. Rowan County*, 863 F.3d 268 (4th Cir. 2017) (en banc); *Bormuth v. Cty. of Jackson*, 870 F.3d 494 (6th Cir. 2017) (en banc).

22. See *Lund*, 863 F.3d at 272 ("We conclude that the Constitution does not allow what happened in Rowan County.").

23. See *Bormuth*, 870 F.3d at 498 ("Prayers offered by the Commissioners are generally Christian in tone."); *id.* at 525 (Moore, J., dissenting) ("The Commissioners, all of whom are Christian, refused to allow any non-Commissioners to give prayers, and did so in order to avoid hearing prayers they would not like."); *id.* at 530 ("A Commissioner characterized allowing anyone other than the Commissioners themselves to give prayers as 'opening a Pandora's Box.'").

24. See *id.* at 498 ("[W]e hold that Jackson County's invocation practice is consistent with the Supreme Court's legislative prayer decisions.").

the underlying values of Establishment Clause, and better for the United States, to eliminate legislative prayers entirely.

Part II explains Christian nationalism, and Part III argues that government sponsored Christian prayers reflect and exacerbate Christian nationalism. Part IV contends that to help curb Christian nationalism and its ill effects, legislative prayers ought to cease entirely. Such a result is most in keeping with the Establishment Clause goal of avoiding a caste system based on religious belief.

II. Christian Nationalism

Christian nationalism posits that the United States has always been, and should always remain, a Christian nation in both its culture and government. In fact, its defining characteristic is that religious identity and national identity overlap.²⁵ Moreover, “Christian nation” is usually understood to mean “white Christian nation.”²⁶ Christian nationalism is not a new phenomenon, but it has become more prominent at a time when white Christians have lost their position as a demographic majority.

Christian nationalists believe that the United States has a special relationship with God,²⁷ where “the United States is God’s chosen country, a ‘city on a hill.’”²⁸ In order to stay in God’s favor “the United States must uphold God’s commands and not break the covenant.”²⁹ A failure to obey God’s laws—and by that

25. See Andrew L. Whitehead, Samuel L. Perry & Joseph O. Baker, *Make America Christian Again: Christian Nationalism and Voting for Donald Trump in the 2016 Presidential Election*, 79 SOC. RELIGION 147, 165 (2018) (“Christian nationalism is a pervasive set of beliefs and ideals that merge American and Christian group memberships.”).

26. See *infra* notes 49–51 and accompanying text.

27. See Eric Leon McDaniel, Irfan Nooruddin & Allyson Faith Shortle, *Divine Boundaries: How Religion Shapes Citizens’ Attitudes Toward Immigrants*, 39 AM. POL. RES. 205, 212 (2011) (“[T]he American nation holds a special connection with God and has a central role in the divine plan.”).

28. Andrew L. Whitehead & Samuel L. Perry, *A More Perfect Union? Christian Nationalism and Support for Same-Sex Unions*, 58 SOC. PERSP. 422, 425 (2015).

29. *Id.*

Christian nationalists mean God's laws as they understand them—will lead to great national harm.³⁰

Consequently, Christian nationalism requires a Christian government to ensure that the United States abides by Christian principles. In fact, in evaluating how closely people hew to Christian nationalism, sociologists measure their level of agreement with the following statements:

- “[T]he success of the United States is part of God’s plan;”
- “[T]he federal government should declare the United States a Christian nation;”
- “[T]he federal government should advocate Christian values;”
- “[T]he federal government should allow the display of religious symbols in public spaces;”
- “[T]he federal government should allow prayer in public schools;” and
- “[T]he federal government should enforce strict separation of church and state.”³¹

The more strongly people agree with each of the first five statements (or disagree with the last statement), the stronger their alignment with Christian nationalism.³²

If a true America is Christian, it follows that true Americans are Christians.³³ “A person who views the United States as a Christian nation will likely believe (explicitly or implicitly) that to be a ‘true’ American, one must be Christian.”³⁴ The flip side is that non-Christians are not real Americans. “[B]y conditioning recognition as an authentic American on adherence to Christian faith, the idea of a Christian America tacitly reinforces the moral

30. See *id.* at 423 (defining Christian nationalism as “the belief that (1) God chose the United States and (2) the United States must follow God’s commands to flourish”).

31. *Id.* at 427; Whitehead et al., *supra* note 25, at 155; Davis, *supra* note 6, at 305.

32. Whitehead & Perry, *supra* note 28, at 427.

33. See Straughn & Feld, *supra* note 3, at 283 (“[T]he statement that ‘America is a Christian nation’ not only posits an intersection between religious and national boundaries; it also implies that the boundary between Christians and non-Christians helps regulate the threshold between more and less ‘prototypical’ Americans.”).

34. Whitehead & Perry, *supra* note 28, at 424.

prestige of the religious majority, even as it presents Americans of other faiths, or with no formal religion, with invisible barriers to symbolic inclusion.”³⁵ In short, Christian nationalism necessarily implies a hierarchy based on religion, with religious insiders who truly belong and religious outsiders who do not.³⁶

Notably, this hierarchy is not solely a religious one. Christian nationalism has a racial aspect to it, so that the mythical Christian America pictured is actually a white Christian America.³⁷ As one historian noted, “Christian nationalism has always been connected with whiteness. It has always been about [the idea of] America’s founding by white Christians.”³⁸ That is, “Christian nationalism contains a distinct ethno-racial component and suggests that white Christian nationalists’ reported desire to either ‘protect’ or ‘restore’ America’s ‘Christian heritage’ is laced with an implicit desire to maintain white supremacy and white racial purity.”³⁹ Not surprisingly, the vast majority of Christian nationalists are white.⁴⁰

Christian nationalism should not be confused with civil religion, which also imagines a special relationship between the United States and God. But civil religion envisions America’s responsibilities as promoting liberty and justice rather than

35. Straughn & Feld, *supra* note 3, at 281.

36. See Whitehead et al., *supra* note 25, at 150 (noting that Christian nationalism is not only explicitly Christian but is “often quite explicitly evangelical, and consequently, impl[ies] the exclusion of other religious faiths or cultures”).

37. See Rhys Williams, *Civil Religion and the Cultural Politics of National Identity in Obama’s America*, 52 J. FOR SCI. STUD. RELIGION 239, 243 (2013) (“There has long been a *sub rosa* association that made ‘white Christian American’ the baseline, default cultural understanding of this nation.”).

38. See Tara Isabella Burton, *What One Pastor’s Anti-Nike Protest Says About Religion and Nationalism in America*, VOX (Sept. 14, 2018, 12:50 PM), <https://www.vox.com/identities/2018/9/14/17855804/alabama-pastor-nike-protest-nfl-kaepernick-christian-nationalism> (last visited Feb. 15, 2019) (quoting historian Joe Fea) (on file with the Washington and Lee Law Review).

39. Perry & Whitehead, *supra* note 5, at 1685; see *id.* at 1672 (“Scholars point out that Christian nationalist ideology has historically had highly racialized . . . underpinnings; and some theorize that a resurgence of Christian nationalism in the public sphere will likely serve to buttress notions of white purity and systemic non-white exclusion in American social life.”).

40. See *id.* at 1685 (“The vast majority of Christian nationalists are white and likely envision America’s religious heritage through an Anglo-European, Protestant lens.”).

Christianity.⁴¹ Consequently, what “distinguishes Christian nationalism from ‘American civil religion’ [is] that civil religion views the religious and political spheres as ‘independent but interconnected’, while Christian nationalists ‘advocate a total fusion’ between the two spheres.”⁴² Crucially, too, civic religion is not explicitly Christian.⁴³

Nor should Christian nationalism be confused with personal religiosity, which is about “the commitment with which one practices one’s faith,”⁴⁴ as measured by criteria such as church attendance, private prayer, and reading of sacred text.⁴⁵ As opposed to centering on “personal religious commitments,”⁴⁶

Christian nationalism is focused on public religious expression (the expectation that religious beliefs will be “an integral part of public life”)⁴⁷ as well as an intertwined religious and national identity.

41. See Whitehead et al., *supra* note 25, at 150 (describing civic religion as including “a divine Creator who promises blessings for the nation for fulfilling its responsibility to defend liberty and justice”).

42. Perry & Whitehead, *supra* note 5, at 1672.

43. See Whitehead et al., *supra* note 25, at 150 (“While vaguely connected to Christianity, appeals to civil religion rarely refer to Jesus Christ or other explicitly Christian symbols.”); Samuel Perry, Andrew L. Whitehead & Joshua T. Davis, God’s Country in Black and Blue: How Christian Nationalism Shapes Americans’ View About Police (Mis)Treatment of Blacks, 5 Soc. Race & Ethnicity 130, 131–32 (2019), <https://journals.sagepub.com/doi/pdf/10.1177/2332649218790983> (“American civil religion has often prioritized ‘inclusiveness and ‘unity’ as core ideals, and thus can be reimagined to transcend ethnoracial boundaries . . . , Christian nationalism, from its inception, has been inextricably linked with white supremacy.”).

44. McDaniel et al., *supra* note 27, at 210.

45. *Id.* at 211; see also Perry et al., *supra* note 43, at 135–36 (describing measure of religious commitments as including “frequency of religious service attendance, scripture reading, and prayer”).

46. Evan Stewart, Penny Edgell & Jack Delehanty, *The Politics of Religious Prejudice and Tolerance for Cultural Others*, 59 Soc. Q. 17, 18 (2017).

47. *Id.*

Christian nationalism is not new.⁴⁸ Historians disagree about its origins, but the current era does not mark its first appearance.⁴⁹ The idea that the United States is a white Christian nation blessed by God motivated doctrines like Manifest Destiny and policies like the Chinese Exclusion Act.⁵⁰ The current version has its roots in the growth of the Christian Right, which is focused on enacting Christian principles (as opposed to saving Christian souls).⁵¹ As Jerry Falwell preached, “[i]f a nation or society lives by divine principles, even though the people personally don’t know the One

48. See Mark T. Edwards, *Christian Nationalism in the United States*, 8 RELIGIONS 1 (2017) (“[W]e should avoid ‘decline and revival’ narratives and understand Christian nationalism as a construction . . . that has arisen at various times in various places to accomplish a myriad of work.”); Gene Zubovich, *The Christian Nationalism of Donald Trump*, RELIGION & POL. (July 17, 2018), <https://religionandpolitics.org/2018/07/17/the-christian-nationalism-of-donald-trump/> (last visited Feb. 15, 2019) (“Christian Nationalism has taken many forms over the years . . .”) (on file with the Washington and Lee Law Review).

49. See, e.g., Daniel K. Williams, *Baptizing Uncle Sam: Tracing the Origins of Christian Nationalism*, 44 REV. AM. HIST. 391, 391 (2016) (reviewing two books on the subject). Per Williams’ review, Steven K. Green’s *Inventing a Christian America: The Myth of Religious Founding* suggests that Christian nationalism originated with evangelical Christians in the early nineteenth century. *Id.* at 391. In contrast, Kevin M. Kruse’s *One Nation Under God: How Corporate America Invented Christian America* argues that it dates to the New Deal era in the mid-twentieth century instead. *Id.* at 392. Williams himself writes, “[p]erhaps instead of looking for a single moment when the myth of the Christian nation emerged, we should accept the possibility that this mythology has always been part of the American fabric.” *Id.* at 395.

50. See Jason Wilson, *We’re at the End of White Christian America. What Will That Mean?*, GUARDIAN (Sept. 20, 2017, 6:00 AM), <https://www.theguardian.com/us-news/2017/sep/20/end-of-white-christian-america> (last visited Feb. 15, 2019) (“This faith informed the 19th-century doctrine of manifest destiny, which held that the spread of white settlement over the entire continent was not only inevitable, but just. The dispossession of native peoples . . . was carried out under an imprimatur with Christian roots.”) (on file with the Washington and Lee Law Review); Matthew Lyons, *Fragmented Nationalism: Right-Wing Responses to September 11 in Historical Context*, 127 PA. MAG. HIST. & BIOGRAPHY 377, 381 (2003) (“Racial nationalism . . . often portrayed the United States as a Christian nation sanctioned by God. These themes came together in the nineteenth-century doctrine of Manifest Destiny.”).

51. See Daniel Hummel, *Revivalist Nationalism Since WWII: From “Wake up, America!” to “Make America Great Again,”* 7 RELIGIONS 115, 116 (2016) (“[T]o win divine blessing God cared less about individual souls and more about the principles that society was based upon.”). This view contrasts with early evangelicals such as Billy Graham, who “prioritized individual spiritual regeneration over political actions to bring about social reform.” *Id.* at 118.

who taught and lived those principles, that society will be blessed.”⁵²

White Christian nationalism seems especially ascendant again. Perhaps it was sparked by the election of President Barack Obama, the first African-American president of the United States.⁵³ Perhaps it is a reaction to the demographic shift that made white Christians a numerical minority for the first time,⁵⁴ or the impending minority status of whites: white people, who were 85% of the U.S. population in 1965, are predicted to be 46% of the population in 2065.⁵⁵ Perhaps it is all of the above and several other reasons. Whatever its cause, we are at a point where many people openly proclaim their support for Christian nationalism.⁵⁶ Christian prayers by governmental entities both reflects and exacerbates this phenomenon.

III. Christian Prayers Reflect and Exacerbate Christian Nationalism

The relationship between Christian legislative prayers and Christian nationalism is not one way. The government’s Christian prayers both reflect Christian nationalism and help propagate it.

52. *Id.* at 125.

53. See Williams, *supra* note 37, at 253 (“As Barack Obama has literally embodied a disruption of the triangle of associations among religion, race, and national identity, these [Christian nationalist] understandings of who we are and our special character in the world are at risk.”); *id.* at 243 (“Obama’s election encapsulated for many people their fears regarding social changes that threaten those connections and their resentments over a potential redistribution of what Weber (1958) would call ‘social honor’ in American society.”).

54. Wilson, *supra* note 50.

55. *Id.*

56. Certainly Donald Trump has not been shy about “play[ing] to Christian nationalist sentiments.” Whitehead et al., *supra* note 25, at 151. For example, during a campaign stop at Liberty University, Trump told the crowd, “[b]ut we are going to protect Christianity. . . . Other religions, frankly, they’re banding together We have to band together. . . . Our country has to do that around Christianity.” *Id.* At a rally at Oral Roberts University, Trump claimed, “[t]here is an assault on Christianity. There is an assault on everything we stand for, and we’re going to stop the assault.” *Id.* Another time Trump said, “[n]ow, in these hard times for our country, let us turn again to our Christian heritage to lift up the soul of our nation.” *Id.* at 152. During his campaign, his catchphrase “Make America Great Again” was even set to a Christian hymn. *Id.*

A close examination of the *Bormuth* and *Lund* prayer practices reveals the influence of Christian nationalism. At the same time, the government's prayers also advance Christian nationalism. The government, after all, plays a major role in shaping social and political norms.⁵⁷ Unfortunately, Christian nationalism is linked to intolerance and, almost by definition, clashes with the religious equality the Establishment Clause is meant to guarantee. As Justice Blackmun once wrote, "[a] government cannot be premised on the belief that all persons are created equal when it asserts that God prefers some."⁵⁸

A. Christian Legislative Prayers as Embodying Christian Nationalism

It is easy to read the Christian legislative prayers as Christian nationalism in practice. Recall that Christian nationalism maintains that the United States is a Christian nation, and that the United States government must further Christian values.⁵⁹ The prayers given in *Bormuth*⁶⁰ and *Lund*⁶¹ align with this agenda. It is not just that the government permitted Christian prayers at government sessions, but that the government itself was wholly responsible for them:⁶² In both cases, the government officials

57. See William N. Eskridge, Jr., *No Promo Homo: The Sedimentation of Antigay Discourse and the Channeling Effect of Judicial Review*, 75 N.Y.U. L. REV. 1327, 1333 (2000) (Government "helps shape social power and norms by prefiguring preferences, prejudices, and interests."); Martha Minow, *Religious Exemptions, Stating Culture: Foreword to Religious Accommodation in the Age of Civil Rights*, 88 S. CAL. L. REV. 453, 456 (2015) ("[T]he government inevitably shapes cultural values . . ."); see also Danielle Keats Citron, *Law's Expressive Value in Combating Cyber Gender Harassment*, 108 MICH. L. REV. 373, 407 (2009) ("Because law creates and shapes social mores, it has an important cultural impact . . .").

58. *Lee v. Weisman*, 505 U.S. 577, 606–07 (1992) (Blackmun, J., concurring).

59. See Perry & Whitehead, *supra* note 5, at 1672 ("Christian nationalism . . . represent[s] a convergence of national and religious identities . . .").

60. 849 F.3d 266 (6th Cir. 2017).

61. 863 F.3d 268 (4th Cir. 2017).

62. See, e.g., *Lund v. Rowan County*, 837 F.3d 407, 434 (4th Cir. 2016), *rev'd en banc*, 863 F.3d 268 (4th Cir. 2017) (Wilkinson, J., dissenting) ("The Rowan County commissioners, when assembled in their regular public meetings, are the very embodiment of the state.").

wrote and delivered the prayers.⁶³ Moreover, the prayers, such as “We pray for the decisions that we will make tonight, that God, they will honor and glorify you,”⁶⁴ and “Lord, we represent you and we represent the taxpayers of Rowan County,”⁶⁵ explicitly link Christianity and the government.⁶⁶

In fact, the commissioners, all of whom were Christian,⁶⁷ opted to give the prayers themselves in order to guarantee that the prayers remain Christian.⁶⁸ As one Commissioner explained, limiting the prayer givers to ordained clergy would not suffice to keep out unwelcome prayers. “We all know that any one of us could go online and become an ordained minister in about ten minutes. Um, so if somebody from the public wants to come before us and say that they are an ordained minister we are going to have to allow them as well.”⁶⁹ Such a result would be akin to “opening a Pandora’s Box” with “certain people com[ing] up here” and giving unacceptable prayers.⁷⁰ That a government official would equate

63. See *Bormuth*, 849 F.3d at 290 (“To exclude prayers that Jackson County Commissioners did not want to hear, the Board of Commissioners forbade anyone but Commissioners from giving prayers.”); *Lund*, 863 F.3d at 272 (“For years on end, the elected members of the county’s Board of Commissioners composed and delivered pointedly sectarian invocations.”).

64. *Lund*, 837 F.3d at 422.

65. *Lund*, 837 F.3d at 434 (Wilkinson, J., dissenting).

66. There are many more prayers along these lines. See, e.g., *Lund v. Rowan County*, 863 F.3d 268, 284–85 (4th Cir. 2017) (“Although you are one, and the body of Christ is one, we fail to display that unity in our worship, our mission, and our fellowship.”).

67. See *Bormuth*, 849 F.3d at 269 (noting faith of the Commissioners); *Lund*, 863 F.3d at 282 (same).

68. See *id.* at 283 (“What is more, the prayer givers are exclusively Christian because of an intentional decision by the Board of Commissioners . . . at least one Jackson County Commissioner admitted that, in order to control the prayers’ content, he did not want to invite the public to give prayers.”); see also *id.* at 287 (“[T]he Jackson County Board of Commissioners affirmatively excluded non-Christian prayer givers, and did so in an effort to control the content of prayers.”); *Lund*, 863 F.3d at 280 (“[T]he elected members of Rowan County’s Board of Commissioners composed and delivered their own sectarian prayers featuring but a single faith. They prevented anyone else from offering invocations.”).

69. *Bormuth*, 849 F.3d at 283.

70. *Id.*; see also Brief of the Anti-Defamation League as Amicus Curiae Supporting Neither Party at 8, *Bormuth v. County of Jackson*, 849 F.3d 266 (6th Cir. 2017), 2017 WL 1315743 (C.A.6) (noting that “Commissioners also expressed concerns about a change in policy that might threaten their previously exclusively

non-Christian prayers with Pandora's Box is itself suggestive, given the Christian nationalist belief that America's failure to abide by Christian principles would lead to its downfall.⁷¹

So strong was the identification of the state with Christianity that the Board of Commissioners of Jackson County equated a legal challenge to the government's acts as an attack on Christianity. One commissioner told a reporter, "Bormuth 'is attacking us and, from my perspective, my Lord and savior Jesus Christ.'"⁷² Another Commissioner, during a public meeting, characterized Bormuth's lawsuit as an "attack on Christianity and Jesus Christ, period."⁷³ This inability to see the government and religion as separate entities also extends to characterizing themselves as "defenders of Christianity."⁷⁴ The Rowan County Commissioners had similar reactions.⁷⁵

The Commissioners responsible for the Christian prayers did not hide their support for a Christianity-based government. In justifying why he would not stop praying in Jesus's name, a Commissioner from Rowan County stated, "[A]sking for guidance for my decisions from Jesus, is the best I, and Rowan County, can ever hope for."⁷⁶ In response to a ruling that their prayers were unconstitutional, the Chair of the Jackson County Board of Commissioners essentially proclaimed the core Christian

Christian prayer practice: '[W]ill we tell them that they cannot mention Jesus Christ, or will we direct them that . . . they can only pray to Allah or, you know, a Buddhist God?').

71. See *McDaniel, et al.*, *supra* note 27, at 212 ("For the nation to retain this divine favor, it must hew to biblical principles, for the inability or unwillingness to adhere to biblical principles will cause the nation to face great harm.").

72. *Bormuth v. County of Jackson*, 849 F.3d 266, 271 (6th Cir. 2017).

73. *Id.* at 286.

74. See Brief of Americans United for Separation of Church and State as Amicus Curiae Supporting Appellant at 11, *Bormuth v. County of Jackson*, 849 F.3d 266 (6th Cir. 2017), 2015 WL 5896215 (C.A.6) ("[T]he Commissioners have stated that they viewed Mr. Bormuth's objections to the prayer practices, and his eventual court challenge, as assaults on Christianity itself, and they have portrayed themselves as defenders of Christianity.").

75. See, e.g., *Lund*, 863 F.3d at 273 ("After the district court enjoined the county prayer practice, a third commissioner issued a statement noting, 'I will always pray in the name of Jesus. . . God will lead me through this persecution and I will be His instrument.'").

76. *Id.*

nationalist belief on public radio: "We are a Christian nation, and I believe that we open our meetings correctly."⁷⁷

B. Christian Legislative Prayers Promote Christian Nationalism

The government's Christian prayers promotes Christian nationalism, with its ideal of a Christian state and its demarcation of who truly belongs to the polity and who does not.⁷⁸ That is, the state prayers create an in-group of Christians who accept Jesus Christ and an out-group of those who do not. This religious hierarchy has significant consequences for those at the bottom.

Many have argued, including the Sixth Circuit, that Christian prayers cause no harm, only offense: "At bottom, Bormuth has shown he was offended by the Christian nature of the Board's prayers. But '[o]ffense . . . does not equate to [unconstitutionality].'"⁷⁹ Indeed, the Sixth Circuit insinuated that Bormuth was immature to complain: "[O]ur tradition assumes that adult citizens, firm in their own beliefs, can tolerate and perhaps appreciate a ceremonial prayer delivered by a person of a different faith."⁸⁰

77. Rick Pluta, *Appeals Court Says Jackson County Commissioners Violated Constitution with Prayer*, MICH. PUB. RADIO NETWORK (Feb. 15, 2017), <http://www.wmuk.org/post/appeals-court-says-jackson-county-commissioners-violated-constitution-prayer> (last visited Feb. 17, 2019) (on file with the Washington and Lee Law Review). This sentiment was shared with at least some of the other county residents. At one meeting, a citizen advocated for more "Christian principles" to be taught in the public schools, arguing that many problems currently miring schools could be attributed to removing Christian prayer and Christian principles from the schools. Video Recording: Jackson County Board of Commissioners Meeting, JACKSON COUNTY, MICH. (Jan. 30, 2019), <https://www.co.jackson.mi.us/CivicMedia?VID=Board-of-Commission-Study-Session-Dec-4--71#player> (last visited Feb. 19, 2019) (on file with the Washington and Lee Law Review).

78. Cf. Sanford Levinson, *They Whisper: Reflections on Flags, Monuments, and State Holidays, and the Construction of Social Meaning in a Multicultural Society*, 70 CHI.-KENT L. REV. 1079, 1107 (1995) ("Symbols are an important part of the cultural exchange system that, among other things, establishes relationships of hierarchy and domination.").

79. *Bormuth*, 870 F.3d at 519.

80. *Id.* at 505.

The Sixth Circuit is wrong.⁸¹ If nothing else, the government's Christian prayers create a caste system based on religion. Christianity's primacy is overtly announced by the many prayers that declare Jesus is the sole path to salvation.⁸² But even without this open declaration, for the government to align itself with only and always one religion is to send a message that one, there is one true religion and that two, adherence to that religion is the approved way to be a true citizen of the polity. All those who do not bow their heads with the government do not belong in the same way (or at all). In short, the government's prayers⁸³ create an in-group (Christians) and an out-group (non-Christians). "Those who aren't Christian—or aren't the right kind of Christian—can never be full citizens of the country the Christian nationalists want to create."⁸⁴

Moreover, this in-group/out-group status has concrete consequences.⁸⁵ "Symbolic boundaries are regularly translated into social boundaries, and social boundaries influence which groups have access to resources and certain civil rights and to which groups these are denied."⁸⁶

81. At the very least, the counties' Christian prayers are divisive. As the Fourth Circuit observed when striking down Rowan County's prayer practice: "[A]llowing the county to restrict to one the number of faiths represented at Board meetings would warp our inclusive tradition of legislative prayer into a zero-sum game of competing religious factions." *Lund v. Rowan County*, 863 F.3d 268, 282 (4th Cir. 2017).

82. See, e.g., *id.* at 285 ("And as we pick up the Cross, we will proclaim His name above all names, as the only way to eternal life . . . We can't be defeated, we can't be destroyed, and we can't be denied because we are going to live forever with you through the salvation of Jesus Christ."); see also *Lund v. Rowan County*, 837 F.3d 407, 436 (4th Cir. 2016) ("Because we do believe that there is only one way to salvation, and that is Jesus Christ.").

83. See *Lund*, 863 F.3d at 284 ("When the state's representatives so emphatically evoke a single religion in nearly every prayer over a period of many years, that faith comes to be perceived as the one true faith, not merely of individual prayer-givers, but of government itself.").

84. MICHELLE GOLDBERG, *KINGDOM COMING: THE RISE OF CHRISTIAN NATIONALISM* 31 (2006).

85. See Straughn & Feld, *supra* note 3, at 283 ("Even if their immediate effects are largely 'imagined,' symbolic boundaries can also have material consequences, serving as 'an essential medium through which people acquire status and monopolize resources.'").

86. Andrew Whitehead & Christopher P. Scheitle, *We the (Christian) People: Christianity and American Identity from 1996 to 2014*, 5 SOC. CURRENTS 157, 169 (2018).

People think differently about out-groups. In fact, those with strong identification with Christian nationalism have more hostile attitudes towards out-groups, religious and otherwise. One study found that those who supported public religiosity⁸⁷—a hallmark of Christian nationalism—not only have “a significant and unique association with prejudicial attitudes towards religious out-groups” but they have “a significant association with intolerant attitudes towards out-groups in general, even after we control for a range of factors.”⁸⁸ That is, Christian nationalists are not only more antagonistic to non-Christians, they are more antagonistic to other outgroups, such as LGBT couples⁸⁹ and racial minorities.⁹⁰ For example, Christian nationalism is correlated with unwillingness to have one’s daughter marry someone who is non-white.⁹¹ It is also correlated with the belief that blacks are more violent than whites.⁹² This dovetails with the latent white

87. See Stewart, et al., *supra* note 46 (stating that public religiosity means that people “expect religious beliefs to be an integral part of public life and political deliberation”).

88. *Id.* Thus, in the study they found that the stronger the support for public religiosity, the less likely they were to agree that religious outsiders such as Muslims, Buddhists or atheists shared their vision of society, and the more unhappy they would be if children married someone belonging to one of these outsider groups. *Id.* at 32.

89. Whitehead & Perry, *supra* note 28, at 423

Using the concept of Christian nationalism, this study highlights how a particular religiopolitical social identity influences attitudes above and beyond the standard religion and politics measures. . . . [T]his research clearly shows that Christian nationalism is strongly associated with intolerance toward same-sex unions, despite some claims that beliefs about the Christian heritage of the United States is merely an attempt at creating and maintaining a collective identity.

90. See Perry & Whitehead, *supra* note 5, at 1683 (“[G]reater adherence to Christian nationalism . . . is strongly associated with whites’ discomfort at the thought of their daughters marrying non-whites, and especially African Americans.”); cf. GOLDBERG, *supra* note 84, at 70 (“A 2004 survey by the American Mosaic Project at the University of Minnesota found that 48.3% of white conservative Christians said they would disapprove if their child wanted to marry a black person, compared with 21.8% of white Americans as a whole.”).

91. See Perry & Whitehead, *supra* note 5, at 1683 (noting the Christian nationalist aversion to interracial marriage).

92. See Perry, et al., *supra* note 43, at 140 (“Americans who hold more strongly to Christian nationalist ideology were more likely to believe that the police treat white and black Americans equally and they are more likely to believe that the police shoot blacks more often than whites because they are more violent than whites. . . . Moreover, the effects of Christian nationalism hold even when

supremacist strain of Christian nationalism discussed earlier.⁹³ “Thus, our findings suggest that, for many white Americans, the idealized image of a Christian nation implies a nation where racial boundaries are fortified and white racial heritage is protected.”⁹⁴ Notably people who rated high on private religiosity as opposed to the public religiosity favored by Christian nationalists did not share these prejudicial attitudes towards out-groups.⁹⁵

This hostility to out-groups was evident at the county meetings, where the government treated those protesting state Christianity as unwelcome interlopers. When Bormuth stated his concerns about the Christian prayers, a Jackson County commissioner turned his back to him in disgust.⁹⁶ Indeed, non-Christians who oppose a Christian nation are not just

we control for a variety of measures for religious and political conservatism.”).

93. See *supra* notes 43–49 and accompanying text; see also Perry, et al., *supra* note 43, at 132 (“[W]hite dominance remains at the core of Christian nationalist ideology, and thus, for white Americans, adhering to Christian nationalist beliefs still implies the same desire for white racial purity and supremacy.”).

94. See Perry & Whitehead, *supra* note 5, at 1684–85 (“[O]ur findings demonstrate a clear and near-linear association between adherence to Christian nationalism and whites’ disapproval of white/non-white exogamy, even after controlling for political ideology, whites’ desire for religious heritage, their friendships with non-white racial groups and other social-demographic factors.”).

95. See Stewart, et al., *supra* note 46, at 31 (“Much of the field conceptualizes religiosity by the ‘3 Bs’—belief, belonging, and behavior. . . . We find that this conceptualization of private religiosity is not significantly associated with prejudicial views towards religious out-groups, net of controls.”); Whitehead & Perry, *supra* note 28, at 434 (“Those who do not perceive a large degree of overlap between their ‘American’ and ‘Christian’ identities are much less likely discriminate towards others, in this case gays and lesbians.”); Perry, et al., *supra* note 43, at 138 (finding that once controlled for Christian nationalism, “Americans who report higher levels of religious activity are actually *less* likely to agree that police treat blacks and whites equally” (emphasis added)); *id.* at 12 (“Americans who were more religious (measured in terms of worship attendance, prayer, and sacred text reading) were actually less likely to affirm our race and policing measures once we controlled for Christian nationalism.”).

96. See *Bormuth*, 870 F.3d 494, 527 (6th Cir. 2017) (Moore, J., dissenting) (“During the meeting’s public-comment period, Bormuth explained that he thought that the monthly prayers violated the Establishment Clause . . . While Bormuth was speaking, one of the Commissioners ‘made faces expressing his disgust’ and then turned his chair around, refusing to look at Bormuth while he spoke.” (citation omitted)).

outsiders,⁹⁷ they are dangerous outsiders.⁹⁸ “[Christian nationalists] will want to make sure that those who are part of the nation will not threaten its values or take it off its intended path.”⁹⁹ At a Rowan County meeting, the Chair characterized critics of Bible study in public schools not as mistaken or unreasonable but as “evil”: “I am sick and tired of being told by the minority what’s best for the majority. My friends, we’ve come a long way . . . We call evil good and good evil.”¹⁰⁰

Once people think differently about those in the outgroup, they are liable to treat them differently. Consequently, Christian nationalism does not simply lead to symbolic exclusion from the community and nation, it may lead to actual exclusion.¹⁰¹ Those decreed outsiders are more likely to be denied access to material benefits,¹⁰² and more likely to be deprived of civil rights.¹⁰³ Take immigrants. One study found that those who score higher on

97. Or as one plaintiff summarized, “[T]he prayers sent a message that the County and Board favors Christians and that non-Christians, like [her], are outsiders.” *Lund v. Rowan County*, 837 F.3d 407, 435 (4th Cir. 2016) (Wilkinson, J., dissenting).

98. Although founded as a Christian nation, the United States “ha[s] since lost it way, but through political means, the United States could once again hold up its end of the covenant by returning to biblical ideals and bring God’s blessing back on the country.” Whitehead & Perry, *supra* note 28, at 425.

99. McDaniel, et al., *supra* note 27, at 212 (“Individuals seek to protect their most salient identities by policing their boundaries against those who might undermine them.”).

100. *Lund*, 837 F.3d at 430.

101. See Straughn & Feld, *supra* note 3, at 283 (“By attributing contrasting degrees of social prestige to insiders and outsiders, symbolic boundaries can confer differential access to material benefits and other advantages.”); Ramsey Dahab & Marisa Omori, *Homegrown Foreigners: How Christian Nationalism and Nativist Attitudes Impact Muslim Civil Liberties*, *ETHNIC & RACIAL STUD.* 1, 5 (2018) (“[T]he conflation between White, Christian, and American identities suggests a boundary-making praxis that delineates between those provided access to power centres and those rebuffed.”).

102. See Kristen P. Williams, *Who Counts as an American? The Boundaries of National Identity*, 32 *POL. PSYCHOL.* 1089, 1095 (2011) (book review) (“How individuals conceive of who belongs determines whether members of the perceived community should receive benefits, and thus these conceptions of community and who is considered a ‘true American’ have policy implications.”).

103. See Stewart et al., *supra* note 46, at 32 (finding that those who supported public religiosity “also express a stronger willingness to revoke civil liberties for groups with which they disagree”).

Christian nationalism were more hostile towards immigrants:¹⁰⁴ immigrants in the United States, who are often non-white or non-Christian or both,¹⁰⁵ threaten the Christian nationalists by “alter[ing] their exclusive conceptions of what it means to be American.”¹⁰⁶ That hostility towards immigrants paves the way for hostile public policy, like drastically reduced refugee caps¹⁰⁷ and the Muslim ban.¹⁰⁸ “The Trump Administration’s repeated

104. See McDaniel et al., *supra* note 27, at 205 (“Christian nationalism is a robust determinant of immigrant animus, whereas religious affiliation only affects immigrant animus when Christian nationalism is excluded.”); *see also id.* at 224 (“[I]ncreases in adherence to Christian nationalism increased one’s negative attitudes towards immigrants.”).

105. According to the Pew Research Center, 76.8% of U.S. born residents identify as white as opposed to 46.1% of foreign born U.S. residents. Jynnah Radford & Abby Budiman, *Facts on U.S. Immigrants, 2016: Statistical Portrait of the Foreign-Born Population in the United States*, PEW RES. CTR.: HISPANIC TRENDS (Sept. 14, 2018), <http://www.pewhispanic.org/2018/09/14/facts-on-u-s-immigrants-current-data/> (last visited Feb. 1, 2019) (on file with the Washington and Lee Law Review).

106. See McDaniel et al., *supra* note 27, at 213 (“Because of the intertwining of religion and nationalism, immigration threatens their entire Christian national identity by permitting others to alter their exclusive conceptions of what it means to be American.”); *see also* Perry & Whitehead, *supra* note 5, at 1673 (“Because Christian nationalists believe that America’s ‘Christian heritage’ should be defended, they tend to oppose the immigration of non-Christians (e.g. Muslims), who also tend to be non-white.”).

107. See Zachary Cohen & Elise Labott, *Refugee Levels Are Surging Worldwide. Trump is Slashing the Number the U.S. Will Let In*, CNN, <https://www.cnn.com/2018/09/17/politics/pompeo-trump-refugee-asylum-levels/index.html> (last updated Sept. 18, 2018, 11:48 AM) (last visited Feb. 1, 2019) (explaining that the Trump Administration has capped the number of refugees at 30,000 for 2019, down from 110,000 President Obama had set in 2017) (on file with the Washington and Lee Law Review).

108. See Rick Gladstone & Satoshi Sugiyama, *Trump’s Travel Ban: How It Works and Who Is Affected*, N.Y. TIMES (July 1, 2018), <https://www.nytimes.com/2018/07/01/world/americas/travel-ban-trump-how-it-works.html> (last visited Feb. 1, 2019) (explaining that the ban “indefinitely suspends the issuance of immigrant and nonimmigrant visas to applicants from the Muslim-majority countries Libya, Iran, Somalia, Syria, and Yemen” plus North Korea, which does not let its citizens travel, and a few officials from Venezuela) (on file with the Washington and Lee Law Review); Todd Green, *By Any Other Name: Why the ‘Travel Ban’ Really Is a Muslim Ban*, RELIGION NEWS SERV. (July 3, 2018), <https://religionnews.com/2018/07/03/by-any-other-name-why-the-travel-ban-really-is-a-muslim-ban/> (last visited Feb. 1, 2019) (on file with the Washington and Lee Law Review); *see also* Trump v. Hawaii, 138 S. Ct. 2392, 2417 (2018).

At the heart of plaintiffs’ case is a series of statements by the President

attempts at instituting various travel bans, largely regarded as singling out Muslims, are one example of the symbolic being translated to reality.”¹⁰⁹ In fact, numerous studies have shown that “if taken to extremes, symbolic boundaries can have [dire] implications, as when restrictive definitions of nationhood serve as a pretext for depriving marginalized citizens of their civil rights or denying citizenship to outsiders on the basis of race, religion, or national origin.”¹¹⁰ In sum, prejudicial and hostile beliefs translate into prejudicial and hostile actions.

This effect of outsider status is so well-documented that the Supreme Court’s repeated demands that that plaintiffs in each Establishment Clause case prove that they personally had suffered material harms seems to disregard established social science.¹¹¹ As it happens, this evidence arguably exists in the legislative prayer cases. After Bormuth voiced his concerns about Jackson County’s

and his advisers casting doubt on the official objective of the Proclamation. For example, while a candidate on the campaign trail, the President published a “Statement on Preventing Muslim Immigration” that called for a “total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what is going on.” That statement remained on his campaign website until May 2017. Then-candidate Trump also stated that “Islam hates us” and asserted that the United States was “having problems with Muslims coming into the country.” . . . More recently, on November 29, 2017, the President retweeted links to three anti-Muslim propaganda videos.

(internal citations omitted).

109. Whitehead & Scheitle, *supra* note 86, at 169; see also Paul Brandeis Raushenbush, *New Religious Landscape Survey Explains A Lot about the Politics of White Christian Nationalism*, AUBURN SEMINARY, <https://auburnseminary.org/voices/new-religious-landscape-survey-explains-lot-politics-white-christian-nationalism/> (last visited Feb. 1, 2019) (“As many have noted, Trump’s ‘Make America Great Again’ slogan is being translated policy wise into: Make America White (and Christian) Again.”) (on file with the Washington and Lee Law Review).

110. Straughn & Feld, *supra* note 3, at 284; see also Dahab & Omori, *supra* note 101, at 10–11 (“Respondents who identified Christianity as a crucial aspect of being ‘truly’ American are more significantly likely to support the free-speech infringements of Muslims, atheists, [and] communists . . . than those who eschewed Christianity as a crucial aspect of national identity.”).

111. More specifically, without proof that the government had in fact punished someone for their refusal to join, the Supreme Court refuses to accept that attendees about to petition the government at these meetings might feel coerced into participating in order to avoid jeopardizing their chances of getting government approval.

Christian prayers, he twice sought, and was twice denied, a spot on local committees.¹¹² The Sixth Circuit worked hard to conclude that the Commissioners' turning their back (literally)¹¹³ or refusing to seat him proved nothing.¹¹⁴ However, that Bormuth suffered for his outsider status it is hardly a surprising inference given the social science. Moreover, as detailed above, it is not just Bormuth who becomes an outsider. The Christian prayers divide the community into insiders and outsiders, with all the negative consequences that flow.¹¹⁵ Indeed, by embracing the overlap between Christianity and government, and the equivalence of Christianity and citizenship, government Christian prayers further cement and empower Christian nationalism.

The Establishment Clause prohibits the government from favoring one religion above others for good reason. It is to ensure that the government does not create religious outsiders who are denied both equal citizenship and equal access to benefits, services, and power. Thus, it prevents much more than mere "offense." Moreover, the Christian legislative prayers do not create any hierarchy, they create precisely the one envisioned by Christian nationalists, with devout (white) Christians as the true citizen

112. See *Bormuth v. County of Jackson*, 870 F.3d 494, 518 (6th Cir. 2017) (stating that he was denied a seat on (1) the Solid Waste Planning Committee and (2) the Board of Public Works).

113. See, e.g., *id.* ("Moreover, nothing in the record suggests that the Commissioners who turned their backs on Bormuth or spoke out about him in public were expressing antagonism for his religious beliefs. Rather, the record reflects they reacted to his antagonism toward them."); *id.* ("The Establishment Clause might prevent government officials from making a practice of singl[ing] out dissidents for opprobrium . . . but it does not require them to keep their cool.") (internal citations omitted).

114. The Sixth Circuit declined to consider his second rejection and dismissed his first rejection as insufficiently supported: "Yet, other than Bormuth's attestation that he was 'the most qualified applicant,' there is nothing in the record linking the refusal to appoint Bormuth to the Board of Public Works to his objection to the prayer policy." *Id.* at 519.

115. See Whitehead & Scheitle, *supra* note 86, at 158

Social boundaries are "objectified forms of social differences" that limit certain groups from obtaining access to resources and other social opportunities. Symbolic boundaries precede social boundaries. . . . People are creative in their construction of symbolic boundaries, drawing on any multitude of characteristics to designate who is 'in' and who is 'out.'

insiders and non-Christians cast as the suspicious if not dangerous outsiders.

IV. Solution: End Legislative Prayers

The solution to the propagation of Christian nationalism wrought by Christian legislative prayers is simple: end legislative prayers. They are not needed and are too easily misused to advance Christian nationalist beliefs. Indeed, the religion-based hierarchy they create is exactly what the Establishment Clause was designed to prevent. Granted it would end an American tradition, but some traditions are not worth saving, especially since as practiced in these cases they undermine core constitutional values.

If their purpose is to call the government session to order and solemnize the proceedings,¹¹⁶ there is no shortage of other options.¹¹⁷ As local governments around the country demonstrate, solemnity can be induced by reciting the Pledge of Allegiance, or observing a moment of silence, or even reading part of the U.S. Constitution. If government officials wish to worship in their private capacity, they could do so privately, before they open the meeting to the public. (Despite their claimed religious needs,¹¹⁸ the one time the Commissioners met and did NOT pray was the one time the public was absent.¹¹⁹) The fact that so many solemnizing alternatives exist, combined with the Commissioners' willingness

116. See *Bormuth*, 870 F.3d at 505 (“[L]egislative prayer lends gravity to public business, reminds lawmakers to transcend petty differences in pursuit of a higher purpose, and expresses a common aspiration to a just and peaceful society.”) (quoting *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1818 (2014)).

117. See *Lund v. Rowan County*, 837 F.3d 407, 437 (4th Cir. 2016) (Wilkinson, J., dissenting) (“In board meetings, it fell to non-Christian attendees, facing their elected representatives and surrounded by bowed heads, to choose ‘between staying seated and unobservant, or acquiescing to the prayer practice.’ . . . The Rowan County board can solemnize its meetings without creating such tensions [on non-Christian attendees].”).

118. See *Bormuth*, 870 F.3d at 530 (Moore, J., dissenting) (noting “the argument that the prayers were intended for the Commissioners themselves, not the public”).

119. See *id.* (“[T]he videos reveal that during a two-year span, the Board of Commissioners prayed at every meeting except the one that no members of the public attended.”).

to forgo prayers sans audience, suggest that the prayers are more an excuse to exercise Christian dominance.¹²⁰

What about honoring the role of religion in United States history? As the Supreme Court, and Sixth Circuit, have held, legislative prayers “officially acknowledge[] religion’s role in American life.”¹²¹ No fuss is warranted when prayers are “simply a tolerable acknowledgment of beliefs widely held among the people of this country.”¹²² Moreover, there is a long tradition of this type of acknowledgment. Indeed, the Supreme Court upheld legislative prayers in large part because they date to the founding of the country.¹²³

Of course, prayers are not an acknowledgement of religious beliefs; instead, prayers are religious worship.¹²⁴ In any event, even the acknowledgment justification has an air of pretext. It is not clear why the beginning of lawmaking sessions is the appropriate time to impart a social studies lesson about religion in the United States, and to do it in such an oblique way. Moreover, many things have played and continue to play an important role in the country’s history, like the Equal Protection Clause, or the rule of law, or freedom of speech—why aren’t those acknowledged at the beginning of every legislative session? Especially since they have the added bonus of actually representing American values shared by everyone, unlike a single faith tradition, which does not

120. *Cf. Marsh v. Chambers*, 463 U.S. 783, 797 (1983) (Brennan, J., dissenting) (“Moreover, whatever secular functions legislative prayer might play—formally opening the legislative session, getting the members of the body to quiet down, and imbuing them with a sense of seriousness and high purpose—could . . . plainly be performed in a purely nonreligious fashion. . .”).

121. *Bormuth*, 870 F.3d at 503; *see also id.* (“Indeed, ‘the Framers considered legislative prayer a benign acknowledgment of religion’s role in society.’”).

122. *Id.* at 504 (quoting *Marsh v. Chambers*, 463 U.S. 783, 791–92 (1983)).

123. *See Bormuth v. County of Jackson*, 870 F.3d 494, 504 (6th Cir. 2017) (“[C]learly the men who wrote the First Amendment Religion Clause did not view paid legislative chaplains and opening prayers as a violation of that Amendment, for the practice of opening sessions with prayer has continued without interruption ever since that early session of Congress.”) (quoting *Marsh*, 463 U.S. at 788).

124. That prayers are an inherently religious act should not need a footnote. *But cf. Marsh*, 463 U.S. at 797 (Brennan, J., dissenting) (“To invoke Divine guidance on a public body entrusted with making the laws, is nothing but a religious act.”).

speak to other religious observers,¹²⁵ never mind those who live without religion.¹²⁶

The more honest argument is that this practice of religion is a tradition, and has lasted for centuries, so how bad could it be? The Supreme Court occasionally gestures towards this point. For example, the *Town of Greece* Court insisted that the Christian prayers “must be evaluated against the backdrop of historical practice. As a practice that has long endured, legislative prayer has become part of our heritage and tradition, part of our expressive idiom, . . . It is presumed that the reasonable observer is acquainted with this tradition”¹²⁷ Of course, powerful in-groups have enjoyed all kinds of traditions at the expense of

125. According to Gallup, in 2017, “6% of the population identifies with a non-Christian faith, including Judaism, Islam and others, while 21% do not have a formal religious identity.” Frank Newport, *2017 Update on Americans and Religion*, GALLUP (Dec. 22, 2017), <https://news.gallup.com/poll/224642/2017-update-americans-religion.aspx> (last visited Feb. 1, 2019) (on file with the Washington and Lee Law Review).

126. According to Gallup, 12% of Americans asked in May 2017, “Do you believe in God?” answered “No.” *Religion*, GALLUP, <https://news.gallup.com/poll/1690/religion.aspx> (last visited Feb. 1, 2019) (on file with the Washington and Lee Law Review); According to Pew Research Center on Religion and Public Life, 10% of Americans do not believe in God or a higher power of any kind, and another 23% believe in God, but not the God of the Bible. *When Americans Say They Believe in God, What do They Mean?*, PEW RES. CTR. (Apr. 25, 2018), <http://www.pewforum.org/2018/04/25/when-americans-say-they-believe-in-god-what-do-they-mean/> (last visited Feb. 1, 2019) (on file with the Washington and Lee Law Review); see also Daniel Cox, *Way More Americans May Be Atheist Than We Thought*, FIVETHIRTYEIGHT (May 18, 2017, 11:55 AM), <https://fivethirtyeight.com/features/way-more-americans-may-be-atheists-than-we-thought/> (last visited Feb. 1, 2019) (finding that when asked, “How many of these statements are true of you?” 26% replied, “I do not believe in God”) (on file with the Washington and Lee Law Review). The numbers are even higher for younger adults: Among millennials born between 1990–1996, 16% do not believe in God or a higher power of any kind. Indeed, only 43% of Americans between the ages of 18 and 29 years old believe in God as described in the Bible. *WHEN AMERICANS SAY THEY BELIEVE IN GOD, WHAT DO THEY MEAN?*, PEW RES. CTR. 16 (2018), <http://www.pewforum.org/wp-content/uploads/sites/7/2018/04/Beliefs-about-God-FOR-WEB-FULL-REPORT.pdf>.

127. See *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1825 (2014)

The prayer opportunity in this case must be evaluated against the backdrop of historical practice. As a practice that has long endured, legislative prayer has become part of our heritage and tradition, part of our expressive idiom. . . . It is presumed that the reasonable observer is acquainted with this tradition and understands that its purposes are to lend gravity to public proceedings and to acknowledge the place

out groups.¹²⁸ The reason some traditions persist is not because everyone welcomes them but because the powerless are not able to end them.¹²⁹ Those marginalized may simply have failed to convince, or calculated it was pointless to try to convince, the powers-that-be to stop. “[T]he quiescence of those opposed . . . may have reflected nothing more than their sense of futility in opposing the majority.”¹³⁰ But surely “what the powerless must tolerate” should not “become[] what the law defines as acceptable conduct.”¹³¹ In other words, the fact that governments have always prayed at the beginning of their sessions should not excuse a tradition if it undermines core Establishment Clause values. The tradition should be jettisoned, no matter how long standing.

One of the main goals of the Establishment Clause is to ensure that no one would be treated as a second-class citizen because of their religious beliefs.¹³² In other words, it operates as an Equal Protection Clause for religious minorities.¹³³ Government

religion holds in the lives of many private citizens, not to afford government an opportunity to proselytize or force truant constituents into the pews.

128. For example, sexual harassment long prevailed in the workplace not because women did not mind it, but because they were unable to stop it.

129. Cf. Williams, *supra* note 37, at 254 (“[W]hite Christians [] have unproblematically worn the mantle of American identity and have been the gatekeepers of which other groups to aspire to do likewise.”).

130. See *Lynch v. Donnelly*, 465 U.S. 668, 703 (1984) (Brennan, J., dissenting) (“[T]he quiescence of those opposed . . . may have reflected nothing more than their sense of futility in opposing the majority.”).

131. Susan Estrich, *Sex at Work*, 43 STAN. L. REV. 813, 847 (1991).

132. See Thomas B. Colby, *A Constitutional Hierarchy of Religions? Justice Scalia, the Ten Commandments, and the Future of the Establishment Clause*, 100 NW. U. L. REV. 1097, 1132–33 (2006) (“The historical evidence is overwhelming that one of the primary purposes of the First Amendment was the protection of minority religions through the guarantee that the government would treat all religions alike.”); Steven B. Epstein, *Rethinking the Constitutionality of Ceremonial Deism*, 96 COLUM. L. REV. 2083, 2171 (1996) (“The purpose of the Constitution generally, and the Establishment Clause specifically, is to protect minorities from raw majoritarian impulses.”); cf. Lynn A. Baker, *Constitutional Ambiguities and Originalism: Lessons from the Spending Power*, 103 NW. U. L. REV. 495, 510 (2009) (“[T]he very purpose of . . . the Bill of Rights, is to protect minorities from the majority. . . .”).

133. See Caroline Mala Corbin, *Nonbelievers and Government Speech*, 97 IOWA L. REV. 347, 379 (2012) (“[T]he Establishment Clause can be viewed as essentially functioning as an Equal Protection Clause for nonbelievers.”); Alan E. Brownstein, *Harmonizing the Heavenly and Earthly Spheres: The Fragmentation and Synthesis of Religion, Equality, and Speech in the Constitution*, 51 OHIO ST.

Christian prayer is incompatible with religious equality.¹³⁴ Although supporters contend that legislative prayers “strive for the idea that people of many faiths may be united in a community of tolerance and devotion,”¹³⁵ any claim to unity is belied by the government allowing only one faith’s tradition. Nor would a more nonsectarian prayer succeed, as any prayer will inevitably favor some religious traditions over others.¹³⁶ Prayers to God would exclude religions that do not center around God. Even the God-based religions may have “very different ways of understanding God and their relationship to the divine.”¹³⁷ In short, “[t]he search for a universally acceptable ‘non-sectarian’ prayer has been, and remains, the futile quest for a non-existent Holy Grail.”¹³⁸

Given the impossibility of constructing a fully inclusive legislative prayer, as well as the plethora of alternatives that do not create religious hierarchies, it is better to eliminate legislative prayers altogether. In fact, one team of sociologists who study public religiosity ultimately concluded that government “endorsement of religion *in general* may not lead to *general* religious tolerance”; instead, it may “be exclusionary for specific religious and nonreligious minorities.”¹³⁹ Thus, claims about the unifying tendencies of even “civic religion” are questionable.

L.J. 89, 103 (1990) (“[T]he establishment clause [sic] has become a de facto substitute for an independent equal protection analysis of the treatment of religious minorities by the state . . .”).

134. Cf. *Larson v. Valente*, 456 U.S. 228, 244 (1982) (“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”).

135. See *Bormuth v. County of Jackson*, 870 F.3d 494, 505 (6th Cir. 2017) (legislative prayers “strive for the idea that people of many faiths may be united in a community of tolerance and devotion”).

136. See Geoffrey R. Stone, *In Opposition to the School Prayer Amendment*, 50 U. CHI. L. REV. 823, 829 (1983) (“[T]he very concept of a ‘nondenominational prayer’ is self-contradictory.”).

137. Caroline Mala Corbin, *Ceremonial Deism and the Reasonable Religious Outsider*, 57 UCLA L. REV. 1545, 1577 (2010).

138. Robert J. Delahunty, “*Varied Carols*”: *Legislative Prayer in a Pluralist Polity*, 40 CREIGHTON L. REV. 517, 526 (2007).

139. Stewart, et al., *supra* note 46, at 34. In fact, one of the most interesting findings by social scientists is that “[c]ontrary to the expectations from the literature on civil religion, we find that support for public religious expression is strongly and consistently associated with a distinct and relatively narrow vision of religious belonging in American society.” *Id.* at 32.

Rather than fostering tolerance, it may merely placate those who are intolerant.¹⁴⁰

Even if there were some prayer that was not divisive, it is certainly not the exclusively Christian prayers of *Bormuth* or *Lund*. As detailed above, rather than unite, these prayers split communities into insiders and outsiders. “[W]hatever its symbolic function for self-described insiders, any talk of a Christian America is likely to have a dispiriting impact on those it implicitly marginalizes.”¹⁴¹ Such a result is not just dispiriting, it violates the core Establishment Clause value of equality among all religions. As the Fourth Circuit correctly concluded: “This evident an identification of the state with one and only one faith is not, we repeat, some marginal or peripheral constitutional violation that we can just shrug off and wish away. For to do so here would wish away the Establishment Clause itself.”¹⁴²

The union of religion and government can wreak havoc on religion as well. The Establishment Clause is meant to protect not only the equality of disfavored religions, but also the integrity of favored ones.¹⁴³ The union of church and state—a union that the Establishment Clause aims to avoid and a union that occurs with Christian legislative prayers—“tends to destroy government and degrade religion.”¹⁴⁴ For example, characterizing a prayer to God as nothing more than a history lesson or a means to quiet everyone down is insulting to religion.¹⁴⁵ The irony of Christian legislative prayers is that the Christian nationalism it embodies may be

140. As one study concluded: claims that these are “merely an attempt at creating and maintaining collective identity and is not overtly related to intolerance” is belied by “findings [that] suggest that single convergent social identities such as Christian nationalism strongly promote intolerance towards same-sex unions.” Whitehead & Perry, *supra* note 28, at 436.

141. Straughn & Feld, *supra* note 3, at 283.

142. *Lund v. Rowan County*, 863 F.3d 268, 283 (4th Cir. 2017).

143. See *Marsh v. Chambers*, 463 U.S. 783, 804 (1983) (Brennan, J., dissenting) (“The third purpose of separation and neutrality is to prevent the trivialization and degradation of religion by too close an attachment to the organs of government.”).

144. See *Engel v. Vitale*, 370 U.S. 421, 431 (1962) (“[A] union of government and religion tends to destroy government and to degrade religion.”).

145. See *Marsh*, 463 U.S. at 811 (Brennan, J., dissenting) (“If upholding the practice requires denial of this fact [that prayers are an act of religious worship], I suspect that many supporters of legislative prayer would feel that they had been handed a pyrrhic victory.”).

souring people on Christianity.¹⁴⁶ Many Americans, especially young ones, are abandoning religion: recent surveys find that nearly four in ten millennials are religiously unaffiliated.¹⁴⁷ Among the reasons they turn away is the mix of religion and politics/government.¹⁴⁸ In other words, the attempt to unite Christianity with the state, and its potentially corrupting influence on religion, may well drive people away.¹⁴⁹ As one

146. See Charles Mathewes, *White Christianity Is In Big Trouble. And It's Its Own Biggest Threat*, WASH. POST (Dec. 19, 2017), https://www.washingtonpost.com/news/posteverything/wp/2017/12/19/white-christianity-is-in-big-trouble-and-its-its-own-biggest-threat/?utm_term=.ad9b444f32e6 (last visited Feb. 16, 2019) (“[T]he alliance of white Christians with right-wing politics from the 1980s forward . . . has repelled many younger people from religion out of a distaste at seeing religion so eagerly bend the knee to short-term political gain.”) (on file with the Washington and Lee Law Review); E.J. Dionne Jr., *No Wonder There's an Exodus from Religion*, WASH. POST (May 6, 2018), https://www.washingtonpost.com/opinions/no-wonder-theres-an-exodus-from-religion/2018/05/06/4ad8c33a-4feb-11e8-84a0-458a1aa9ac0a_story.html?utm_term=.a19535e785d3 (last visited Feb. 16, 2019) (“In their landmark 2010 book, ‘American Grace,’ the scholars Robert Putnam and David Campbell found that the rise of the nones was driven by the increasing association of organized religion with conservative politics and a lean toward the right in the culture wars.”) (on file with the Washington and Lee Law Review); see also *id.* (“And when will those who advertise themselves as religion’s friends realize they can do far more damage to faith than all the atheists and agnostics put together?”).

147. See Betsy Cooper, Daniel Cox, Rachel Lienesch, & Robert P. Jones, *Exodus: Why Americans are Leaving Religion—and Why They’re Unlikely to Come Back* 3 (2016), <https://www.prri.org/wp-content/uploads/2016/09/PRRI-RNS-Unaffiliated-Report.pdf> (finding that 39% of millennials are religiously unaffiliated).

148. “[T]wo-thirds or more of the unaffiliated say that churches and other religious institutions are too concerned with money and power (70%) and too involved in politics (67%).” *“Nones” on the Rise*, Pew Res. Ctr. (Oct. 9, 2012), <http://www.pewforum.org/2012/10/09/nones-on-the-rise/#what-is-behind-the-growth-of-the-religiously-unaffiliated> (on file with the Washington and Lee Law Review); see also *id.* (“Several leading scholars contend that young adults, in particular, have turned away from organized religion because they perceive it as deeply entangled with conservative politics and do not want to have any association with it.”); Cooper, et al., *supra* note 147, at 10 (finding that among Americans who are unaffiliated, 66% agree that “religion causes more problems in society than it solves”).

149. When analyzing why people became unaffiliated, the Pew Research Center found that (1) 49% did not believe anymore or had become disenchanted, giving comments such as “Too many Christians doing un-Christian things” and “rational thought makes religion go out the window;” and (2) 20% disliked organized religion, giving comments such as “I see organized religious groups as more divisive than uniting” and “I think that more harm has been done in the name of religion than any other area.” Michael Lipka, *Why America’s Nones’ Left*

Christian commentator wrote about young religious people today, many “reject the label ‘evangelical’ or ‘Christian’ altogether today [because] we don’t want our faith identified with this weird Christian nationalism that’s swept the nation.”¹⁵⁰ For those who care about Christianity and not Christian nationalism, Christian legislative prayers are the wrong tack to take.

V. Conclusion

Christian nationalism is not about individual faith. Rather it is about the marriage of faith and nation.¹⁵¹ “What [Christian nationalists] are saying is that our laws and our regulations should be affirmatively guided by these Christian principles, not just that individuals [should be] guided by these beliefs.” Christian legislative prayers are one manifestation of Christian nationalism. Even if not specifically motivated by Christian nationalism, Christian legislative prayers nonetheless advance the Christian nationalist ideal that true Americans are Christian Americans. Everyone else is simply not accorded the same respect, benefits, or rights. This result is exactly what the Establishment Clause aims to prevent. Consequently, whether Christian legislative prayers violate the Establishment Clause is an easy question: Of course they do. It takes a certain amount of willful blindness not to

Religion Behind, Pew Res. Ctr. (Aug. 24, 2016), <http://www.pewresearch.org/fact-tank/2016/08/24/why-americas-nones-left-religion-behind/> (last visited Feb. 17, 2019) (on file with the Washington and Lee Law Review). More research is needed on the reasons why people, especially young people, are unaffiliated. In another study, the single biggest reason people cite for leaving their childhood religion, and the one that dwarfed all others, is that they stopped believing in the religion’s teachings, which 60% said was an important reason for their decision. Other reasons rated as very important were negative religious teachings about or treatment of gay and lesbian people (29%), the clergy sexual abuse scandal (19%), a traumatic event (18%), and their church or congregation became too focused on politics (16%). Cooper, et al., *supra* note 147.

150. Benjamin Sledge, *Christian Nationalism is on the Rise and a Growing Cancer*, MEDIUM (Dec. 18, 2017), <https://medium.com/@benjaminsledge/christian-nationalism-is-on-the-rise-and-a-growing-cancer-9a19b7f85dfb> (last visited Feb. 17, 2019) (on file with the Washington and Lee Law Review).

151. See Whitehead & Perry, *supra* note 28, at 423 (“Belief that the United States is a Christian nation is an instance where individuals perceive two different in-groups, one religious (Christians) and one political (U.S. citizens), as consisting of largely overlapping memberships.”).

recognize the obvious religious favoritism and the inevitable religious hierarchy created by Christian legislative prayers. The solution is also easy: eliminate legislative prayers. At the very least, the practice of exclusively or even predominantly Christian prayers should stop. They are unconstitutional, and frankly, un-American.

