

Chapter 14 – Freedom of Religion

A. A Biblical Basis and Constitutional Background (More fully explained in ch. 3 of PABT, pp. 99-100)

1. *Matt. 22:21* - religious convictions and religious activities should be free from gov't control
2. Peter and other apostles refuse to submit to gov't restriction on their freedom of religion (Ac 4:20, 5:29)
3. Government should not compel religion (see chap. 1)
4. *1st Amendment* – protects free exercise of religion and prohibits gov't from establishing religion:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

5. *1st Amendment* does not prohibit individuals from expressing their own religious beliefs in public or at gov't functions. Original intent, 1787. Many examples of Christian beliefs expressed in public, government-sponsored events:
Christian worship service allow by Congress to be conducted in the Capitol
 - a. Church services held during Jefferson administration w/Marine band playing
 - b. Services held in Supreme Court building
 - c. Gospel preached in Supreme Court chambers
 - d. First Congregational Church of Washington: held service in House of Rep.s after Civil War.
 - e. Numerous Presidential proclamations appeal to God. Example: national day of Thanksgiving
 - f. 1863, US Senate asks President Lincoln to set apart a day of national prayer and humiliation, Lincoln complied
 - g. 1944, Pres. Roosevelt – on national radio offered prayer for soldiers who commenced D-Day operations
6. Supreme Ct decisions that exclude religious expression from public square: not justified according to original meaning of First Amendment
7. Myth of “Separation of Church and State” is repeated endlessly today, but no sound basis in original meaning
8. “Separation of Church and State” imposed by Supreme Court: *Everson v. Board of Education* (1947), *Lemon v. Kurtzman* (1971)

B. Religious Expression in the Public Square

1. *Chaplains in the Armed Forces* – does not establish or compel, but does give support to religious expression.
2. *City Council* – opening prayers for meeting do not compel religion, or choosing not to open meeting in prayer also ok.
3. *ADF* – model constitutional prayer policies for State and local Gov's in all 50 states.
4. *Christmas displays on public property (or Jewish, other faiths, etc. during specific times of year reflecting a community's values)*
5. *Three Reindeer Rule* (Lynch v. Donnelly (1984) County of Allegheny v. ACLU Greater Pittsburgh Chapter (1989))
6. *ACLU and Ten Commandments displays on public property*
 - a. US Court of Appeals, 6th circuit – Ten Commandments monument, Mercer County, KY – constitutionality affirmed
 - b. Haskell County, OK Ten Commandments Monument, order to move let stand, refused to hear case.
7. *Prayer in public schools*
 - a. *Engel v. Vitale* (62) and *School District of Abington Township v. Schempp* (63)
 - b. Various studies not destructive trends since public school prayer ceased.
 - c. *America: To Pray or Not to Pray?* by David Barton: 7 most common probs in schools compared 1940 vs. 1990.
[see list at end of this outline]
 - d. Teaching of God and His moral standards vs. non-theistic “Character Development” as emphasized today.
 - e. Prayer in public schools: should be decided by individual public school districts who are accountable to voters
 - (1) Possible options: Nonsectarian prayers, Representative of various religious groups, moment silence in which students are encouraged to pray in their own way
 - (2) 1985, *Wallace v. Jaffree*, US Supreme Court: moment of silence is unconstitutional.
 - f. Gov't = unconditional restrictions in prohibiting the free exercise of religion in schools; right of free speech also violated.
 - g. No Constitutional or moral right not to feel offended by religion.
 - h. “*Freedom from Religion Foundation*” suit against Shirley Dobson and Pres. Obama, National Day of Prayer

D. “Faith-Based” Programs

1. *White House Office of Faith-Based and Community Initiatives*
 - a. My view (though I understand others, Democrats and Conservative Republicans alike, may disagree):
→ *Everybody wins* from such a program—government, the society, the ministry, and the people receiving aid
 - Gov't funding carries danger of gov't control – must be guarded against, yet not significant enough for groups to refuse to participate
 - b. Funds should be used for social welfare initiatives, not to finance worship; a matter of honoring donor intent.

- c. If funds are kept strictly separate from other church funds, Gov't money could be easily returned in the event that gov't desire for control is perceived.
- d. Social services are voluntary, therefore no compelling of religion
- e. Gov't aid should be available to any religious or non-religious group that is carrying out social services
- f. Gov't should not be used as a tool to require religious groups to refrain from religious activities or conversations, because this would be unconstitutional prohibition of free exercise of religion

E. Political Advocacy by Churches and their Tax Exempt Status

1. "Johnson Amendment," Internal Revenue Code §501(c)(3), 1954 – US Congress amended w/o debate or analysis, Amendment offered by Sen. Lyndon Johnson.
 - a. Restricts the speech of nonprofit tax-exempt entities, including churches, requiring that they refrain from any advocacy of or opposition to any specific political candidates by name. – under penalty of revocation of tax exempt status.
 - b. Prior to amendment, no restrictions on what churches could do re. speech about gov't or voting.
2. *Is it right for the Internal Revenue Service to prohibit all recommendations for or against specific candidates in all elections in all circumstances? – a decision for Gov't or a decision for individual Pastors and churches?*
 - a. ADF attorneys believe Johnson Amendment is a violation of freedom of Speech and Religion.
 - (1) Violates Establishment Clause: requires gov't to decide when religious speech is permissible or politically impermissible.
 - (2) Violates Free Speech Clause: require gov't to discriminate against speech based solely on content; some speech is allow, other speech deemed impermissible is not.
 - (3) Again, violates Free Speech Clause: conditions receipt of tax exempt status on refraining from certain speech.
 - (4) Violates Free Exercise Clause: substantially burdens a church's exercise of religion
 - b. ADF is not advocating that all churches should become a political force. Is advocating that pastors and churches should have the freedom to speak out on various candidates when they deem it wise and necessary to do so.
 - c. ADF initiative – Pastors publicly endorsing or opposing specific candidates from the pulpit and IRS purposely informed, 2008-09 elections.
3. *Prior to 1954 Johnson Amendment Pastors and churches has often made statements for or against specific candidates*
 - a. 1800, Rev. William Linn of Pennsylvania opposes Thomas Jefferson
 - b. 1864, Pastor O. T. Lanphear endorses Abraham Lincoln
4. *Decisions about what is preached from the pulpit should not be made by gov't, but by pastors and churches.*

Most common disciplinary problems in public schools (from B.g.5 above, book by David Barton):

1940	1990
Talking out of turn	Drug Abuse
Chewing Gum	Alcohol Abuse
Making noise	Pregnancy
Running in the halls	Suicide
Line Cutting	Rape
Dress Code Violations	Robbery
Littering	Assault ¹⁶

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