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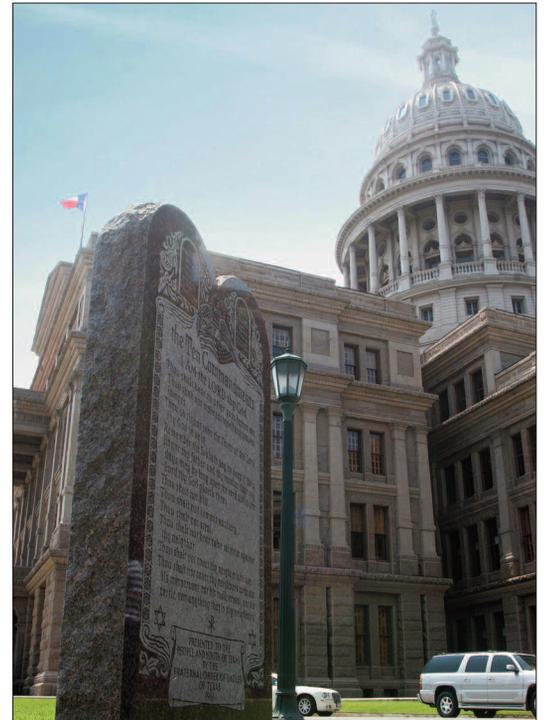
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## Government and Religion

*Was the United States founded as a “Christian nation?”*

A decades-long culture war over the relationship between government and religion and the role of faith in civil society shows no sign of abating. New cases are coming before the Supreme Court, and fresh conflicts are arising over the placement of religious displays on public property and the use of government money to support faith-based social-service programs. At the heart of the battle lies the question of whether the United States was formed as a “Christian nation” — as many conservatives contend — or whether the Founding Fathers meant to build a high wall of separation between church and state. President Obama outraged conservatives when he declared, “we do not consider ourselves a Christian nation or a Jewish nation or Muslim nation” but a “nation of citizens who are bound by ideals and a set of values.” Still, the share of Americans who profess to be Christians has been shrinking, while the percentage who claim no religious preference has nearly doubled since 1990.



*The decades-old Ten Commandments monument on the Texas capitol grounds does not violate the Establishment Clause of the Constitution, the U.S. Supreme Court has ruled. But the court held that displays of the Commandments inside two courthouses in Kentucky did violate the First Amendment’s prohibition against government establishment of religion.*

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# Government and Religion

BY THOMAS J. BILLITERI

## THE ISSUES

In Chambersburg, Pa., this past holiday season the borough council removed a Nativity scene from the town square rather than bow to a non-believer's request to display an atheist symbol nearby. Protesters urged the council to reconsider. "This country was founded on Christian ethics," a pastor declared, adding, "I don't want our rights taken away as Americans."<sup>1</sup>

The crèche conflict was a small skirmish in a big, decades-long culture war over government and religion and the role of faith in civil society. The fighting shows no sign of abating as new cases come before the U.S. Supreme Court and fresh disputes arise over the use of government money for faith-based social-service programs. At the heart of the battle lies the question of whether the United States was formed as a Christian nation, as many conservatives contend, or whether the Founders meant to build a high wall of separation between church and state. (See box on First Amendment, p. 30.)

As unrelenting as the controversies remain, the search for common ground continues. On Jan. 12 a diverse group of secular and religious leaders — including Jews, Muslims and Christian evangelicals — released what was billed as "the most comprehensive joint statement of current law to date on legal issues dividing church and state." Produced by Wake Forest University's Center for Religion and Public Affairs, the 32-page document addresses issues ranging from whether elected officials may discuss their personal religious beliefs while operating in their official capacities to



PA Nonbelievers Inc.

*A Nativity scene in the town square in Chambersburg, Pa., during the 2009 holiday season was ordered removed by city officials. Conflicts over government and religion are as old as the nation itself, and new religion cases are coming before the U.S. Supreme Court.*

whether government property can be used for religious events.<sup>2</sup>

Among recent church-state battles:

- The Freedom From Religion Foundation, which represents atheists and agnostics, has sued to block a congressionally approved "In God We Trust" inscription above the entrance to the new visitor center at the U.S. Capitol.

The foundation's co-president, Annie Laurie Gaylor, called the engraving "an affront to the 15 percent of Americans who do not believe in God," adding, "Imagine if it said, 'In Allah We Trust,' how many Americans would be offended, and rightly so."<sup>3</sup>

But Sen. Jim DeMint, R-S.C., who pushed for the inscription, said, "The Founders based the Constitution and our laws on religious faith and principles that clear the way for individual freedom."<sup>4</sup>

- Efforts by Catholic bishops to block expansion of federal subsidies for abortion under new health-care legislation have sparked recriminations from liberal Democrats. "To limit our teaching or governing to what the state is not interested in would be to betray both the Constitution . . . and, much more importantly, the Lord Himself," said Cardinal Francis George, president of the U.S. Conference of Catholic Bishops.<sup>5</sup> But Rep. Lynn Woolsey, D-Calif., co-chair of the Congressional Progressive Caucus, suggested the bishops' "political hardball" was cause to question the church's tax-exempt status.<sup>6</sup>

- Intelligence reports written for former Defense Secretary Donald Rumsfeld and other officials contained cover sheets with biblical quotations, according to *GQ* magazine, which suggested that some in the Pentagon worried that if the covers were leaked, they could reinforce perceptions that the United States was fighting a war against Islam.<sup>7</sup> More broadly, publication of the cover sheets "may raise more questions about the proper role of religion in the military, and whether a Christian-influenced culture, rather than a neutral one, permeated some corners of the military," *The New York Times* noted. It cited earlier incidents including posting of a "Team Jesus" locker-room banner by an Air Force Academy coach and appearances by an Army general before evangelicals in which he compared the war against Islamic militants to a fight against Satan.<sup>8</sup>

The divide over religion and government is set against a shifting landscape of beliefs and religious affiliations among Americans. A 2007 survey

**Many Americans Don't Identify With Any Religion**

*The number of Americans who are non-theists or do not identify themselves with a religious group (collectively known as "Nones") more than doubled since 1990, to 34 million in 2008. When Americans who either don't know their religious identification or refuse to answer the question (and who resemble "Nones" in their beliefs) were included, the number rises to 46 million, or one in five adults, compared with one in 10 in 1990. The percentage of Christians dropped 10 points, to 76 percent, though the total number of Christians rose due to population increases and immigration.*

**Religious Self-Identification of the U.S. Adult Population, 1990-2008**  
(in millions)

|                    | 1990                    |              | 2001                    |              | 2008                    |              |
|--------------------|-------------------------|--------------|-------------------------|--------------|-------------------------|--------------|
|                    | Estimated No. of People | %            | Estimated No. of People | %            | Estimated No. of People | %            |
| Total Christians   | 151.2                   | 86.2         | 159.5                   | 76.7         | 173.4                   | 76.0         |
| Other Religions    | 5.8                     | 3.3          | 7.7                     | 3.7          | 8.8                     | 3.9          |
| Nones              | 14.3                    | 8.2          | 29.5                    | 14.1         | 34.2                    | 15.0         |
| Don't know/Refused | 4.0                     | 2.3          | 11.2                    | 5.4          | 11.8                    | 5.2          |
| <b>TOTAL</b>       | <b>175.4</b>            | <b>100.0</b> | <b>207.9</b>            | <b>100.0</b> | <b>228.2</b>            | <b>100.0</b> |

\* Percentages may not add to 100 due to rounding.

Source: American Religious Identification Survey, Trinity College, March 2009

by the First Amendment Center found that 65 percent of Americans believe the Founders intended the United States to be a Christian nation and that 55 percent think the Constitution establishes a Christian nation.<sup>9</sup>

Yet the share of Americans who profess to be Christians has been shrinking. The latest American Religious Identification Survey, conducted at Trinity College, found that 76 percent identified themselves as Christian in 2008, compared with 86 percent in 1990, and that 15 percent claimed no religious preference, up from 8 percent in 1990.<sup>10</sup>

The debate over the nation's ideological and religious roots often turns on hotly contested historical words and writings that include statements from the Founders, the Supreme Court and the French thinker Alexis de Tocqueville. For instance, those who say the Founders intentionally built a high wall between church and state often cite a 1797 U.S. anti-piracy treaty with Tripoli stating that "the government of the United States of America is not in any sense founded on the Christian Religion."<sup>11</sup> Those on the other side of the church-state divide often point to Supreme Court Justice

David J. Brewer's comment in an 1892 decision that "this is a Christian nation."<sup>12</sup> (See "At Issue," p. 41.)

While history provides ammunition in the culture wars, however, it is policy issues such as gay marriage and stem-cell research, constitutional decisions by the courts and the actions of elected officials that keep new battles brewing.

When President Obama declared in Turkey last year that "we do not consider ourselves a Christian nation or a Jewish nation or Muslim nation" but a "nation of citizens who are bound by ideals and a set of values," outrage erupted in conservative circles.<sup>13</sup> Obama "was fundamentally misleading about the nature of America," former Republican House Speaker Newt Gingrich, R-Ga., said on Fox News. Sean Hannity, a co-host on the conservative network, said Obama is "out of touch with the principles that have made this country great."<sup>14</sup>

And when Republican Sen. John McCain, R-Ariz., declared during his recent White House bid that "since this nation was founded primarily on Christian principles, personally, I prefer someone who has a grounding in my faith" to be president, conservatives praised him while the left exploded in fury. "How can we trust someone to uphold the Constitution who doesn't even know what is in it?" declared Ira N. Forman, executive director of the National Jewish Democratic Council.<sup>15</sup>

The Supreme Court remains the final arbiter of the Constitution's meaning, but over the years the court has decided church-state cases in ways that sometimes have sown confusion. For example, in a pair of 2005 cases the court ruled that Ten Commandment displays in two Kentucky courthouses violated the First Amendment's prohibition against government establishment of religion but that a 40-year-old display of the Commandments at the Texas capitol did not.

The two decisions are “difficult to reconcile,” says Robert W. Tuttle, a professor of law and religion at the George Washington University Law School. Indeed, he says, “the opinions in those cases show the wide diversity of views on the court about the appropriate relationship between religion and civil government. It’s often very hard to predict how a particular case will be decided.”

That dynamic could well play out this year in two church-state cases before the court. In *Christian Legal Society v. Martinez*, the court must decide whether a public law school can deny student-funded meeting space and other benefits to a Christian student organization that requires members to affirm its core religious beliefs on homosexuality and other issues.<sup>16</sup> And in *Salazar v. Buono*, the court must decide whether an individual has legal standing to challenge the display of a cross on federal land as a violation of the Establishment Clause against government endorsement of religion and whether a congressional act directing that the property be transferred to a private party was a satisfactory remedy.<sup>17</sup>

As controversy continues over the relationship between government and religion, here are some of the issues being debated:

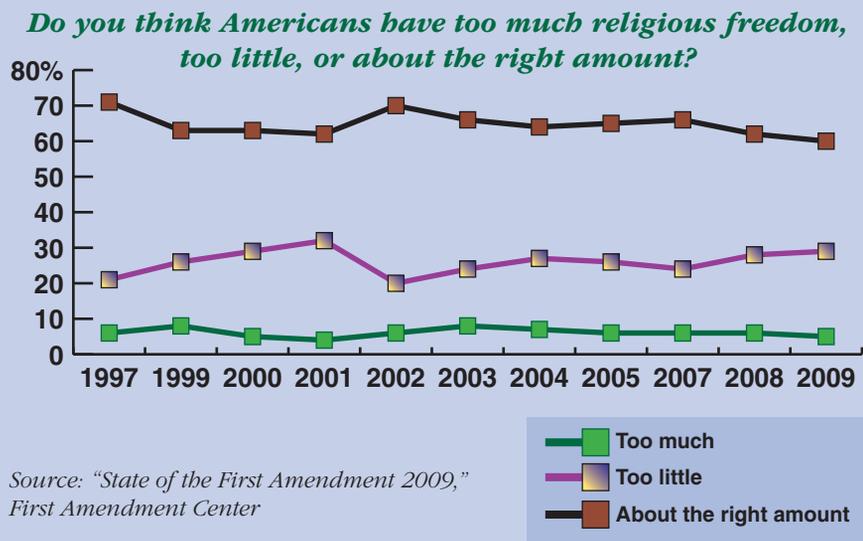
### **Is the United States a “Christian nation”?**

E. Ray Moore Jr., president of Frontline Ministries in Columbia, S.C., and a retired U.S. Army Reserve chaplain, has no doubts about the nation’s religious roots. To buttress his case, he points to, among other things, Justice Brewer’s 19th-century “Christian nation” words, the Constitution’s reference to “in the Year of our Lord” and its exemption of Sundays for presidential action on bills.

“We were definitely founded as a Christian nation,” says Moore, a Citadel graduate whose main focus these days is the Exodus Mandate Project, which

## **Satisfaction With Religious Freedom Dropped**

*A majority of Americans feel the amount of religious freedom they have is “about right,” but the percentage has dropped by 11 percentage points since 1997.*



urges Christians to withdraw their children from the public-school system and place them in Christian schools or home school them with a Christian emphasis. The public-school system, Moore argues, is “theologically and morally wrong, and it’s failing academically.”

Moore says the nation’s Christian founding is “indisputable, incontrovertible and clear,” though he notes that “elements of the Enlightenment”—an 18th-century philosophical movement that promoted rationalism—“were mixed in around the time of the Constitution.”

Moore quotes the Old Testament book of Isaiah in arguing that church and state “need to be administratively separate,” but he sees “no reason Christian values and beliefs cannot permeate public policy and law.

“We don’t want the church as a body dictating to the government as an official body,” he says. “But Christian principles and Christian morality should permeate government. The Ten Commandments should be foundational to all of our law.”

Such views are anathema to those who advocate a high wall between religion and government. “There is absolutely no historical evidence for the view that we were formed as a Christian nation, and there’s vast evidence to the contrary,” says the Rev. Barry Lynn, executive director of Americans United for Separation of Church and State, a Washington-based advocacy group.

Lynn cites the Tripoli treaty as one bit of evidence, along with opposition to a failed bid by patriot Patrick Henry to provide tax support for Christian churches. Lynn points out, too, that the Constitution has no references to God other than the “Year of our Lord” phrase, which he says was “grammatical” for the times and not “theological.”

While the philosophical chords of the current church-state debate stretch back centuries, “it never gets settled because we don’t have the kind of quality history education we ought to have in this country,” Lynn argues. “New generations grow up willing to believe any nonsense that is promoted that fits in with their vague sense that

somehow religion is the cornerstone of the founding of the country.”

But some scholars argue that both the Religious Right and secular left are sometimes at fault for oversimplifying history.

“I write as a Christian, and I teach at a church-related Christian school,” says John Fea, an associate professor of American history at Messiah College, in Grantham, Pa., “but I don’t think the

rians who are playing fast and loose with the historical record.”

Still, Fea says, “If you say the United States was founded at a time when a Christian culture dominated the British colonies or the new republic, you would be hard to argue with. There are many on the [secular left] who simply will not look at the historical record to see that all of these Founding Fathers believed religion

argues that while “we are not a Christian nation, the history, the founding, the ethos of the nation is infused with Christianity, and that’s not a bad thing. The Founders and those who have been important in American history have often been practicing Christians, and it’s only natural that Christianity have an impact on our national experience in the same way a Muslim-majority nation is impacted by Islam — maybe not to that extent, but in the same general direction.”

Still, Hooper says, “It’s a stretch to go from saying that we have a historical base in Christianity to saying that theology has to impact our nation’s policies. I wouldn’t say that for Christianity or Islam or Judaism or any faith. We’re a secular nation, and while people who make laws might draw inspiration from their spiritual beliefs, I don’t think it’s appropriate that the laws themselves would have a religious base.”

Galen Carey, director of government affairs at the National Association of Evangelicals, a conservative group representing over 45,000 local churches in more than 40 denominations, says that although “a substantial majority” of U.S. citizens “are Christians and have been throughout our history, that doesn’t make the country Christian.”

Adds Carey, “The country has been shaped to a significant extent by people who are Christian, and many of the ideals and values of our nation can be derived from Christian sources, though many others can be derived from other [sources]. We would say the people are Christians, nations are not Christian. People can participate in the political process and should try to contribute to the public discourse. But it’s quite important that all people have religious freedom.”

Tuttle, the George Washington University law professor, says that while the United States is predominantly a Christian nation from a demographic point of reference, it is “implausible” to claim the nation is Christian “in the sense of a system of government.

## Understanding the First Amendment

*The first 10 amendments to the U.S. Constitution are known as the Bill of Rights. The First Amendment includes two “religion clauses” — the so-called “Establishment Clause” limiting government promotion of religion and the “Free Exercise Clause” limiting the government’s power to interfere with expressions of religious belief.*

*Experts say the two clauses are in tension with each other and that the U.S. Supreme Court has charted an uncertain course in applying each clause to specific situations.*

*The Bill of Rights was submitted to the states for ratification on Sept. 25, 1789, and adopted on Dec. 15, 1791, after ratification by three-fourths of the states.*

### **The First Amendment**

**“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.”**

evidence is there to suggest [the United States was founded] as a uniquely Christian nation. Most of the Constitution does not mention God at all, and when it does it talks about religious freedom or the Establishment Clause. So to suggest that in some ways [the Founders] were trying to create a republic that somehow uniquely privileged Christianity is simply ahistorical. There is simply no solid evidence to support that. There are many on the Christian right who claim to be histo-

needed to play a dominant role in the republic in order for it to survive. If you’re going to create a republic of virtuous citizens — people who are willing to sacrifice their own self-interest for some greater good — the best system that teaches those principles is religion, in some cases particularly Christianity.”

Ibrahim Hooper, national communications director for the Council on American-Islamic Relations, a Washington-based civil rights and advocacy group,

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“The federal government was specifically not designed as a community of the saints or anything like that,” he says. “It was designed to fulfill a very specific and secular purpose, which is governance of a diverse political community.” It wasn’t designed to be a government “that would have responsibility for all aspects of citizens’ lives, including their religious lives.”

Even so, Tuttle says, it is important to distinguish between the early philosophical foundation of the federal government and that of the states. When it comes to discussing religion and state government, he says, “it’s a more complicated story.” Well into the 19th century, Tuttle says, many states lacked constitutional provisions barring government establishment of religion, and some states imposed religious tests to determine who could hold office well into the 20th century.

It was only in the 1940s that the Supreme Court declared that the First Amendment’s Free Exercise and Establishment clauses apply to the states. Even so, religious tests for public office persisted. A Maryland law requiring officeholders to declare a belief in God survived until 1961, when, in *Torcaso v. Watkins*, the U.S. Supreme Court struck it down.<sup>18</sup>

### ***Should religious displays be allowed on public land?***

Despite the Constitution’s prohibition against government “establishment of religion,” most Americans don’t seem bothered when crèches, menorahs and other such religious symbols appear on public property. A 2008 Rasmussen poll found that 74 percent of adults thought such displays should be allowed.<sup>19</sup> The Pew Research Center has found similar popular support.<sup>20</sup>

Yet, the presence of religious symbols on government property has a long and sometimes conflicted history in the courts.

In 1980 the Supreme Court ruled that a Kentucky law requiring public schools

to post a copy of the Ten Commandments in all classrooms was a violation of the Establishment Clause.<sup>21</sup> But in 1984, the court said it was constitutional for a Nativity scene to be displayed in a Rhode Island town square.<sup>22</sup>

“Since these two decisions in the 1980s, the Supreme Court and lower federal courts have issued somewhat unpredictable rulings, approving some religious displays while ordering others to be removed,” the Pew Forum on Religion & Public Life noted in a 2007 review of religious display cases. (See “*Background*” for a discussion of other key cases, p. 34.)

Added Pew, “[t]he lack of clear guidelines reflects deep divisions within the Supreme Court itself. Some justices are committed to strict church-state separation and tend to rule that any government-sponsored religious display violates the Establishment Clause. These same justices also believe that, in some circumstances, the Establishment Clause may forbid private citizens from placing religious displays on public property.” But “[o]ther members of the court read the Establishment Clause far more narrowly, arguing that it leaves ample room for religion in the public square.” Meanwhile, other justices have taken a middle path, arguing that “a religious display placed in a public space violates the Establishment Clause only when it conveys the message that the government is endorsing a religious truth.”<sup>23</sup>

Some activists firmly oppose religious displays. Lynn of Americans United for Separation of Church and State, for example, argues that “a bright-line rule would make sense: If it’s a government-sponsored event, icon or symbol, it should not be religious. When you put up a manger scene at Christmas and it’s the government that owns it, it looks like the government is endorsing that religion,” he argues.

Hooper, the Council on American-Islamic Relations spokesman, takes a broader view, arguing that “as long as

everyone has equal access” to a site, “we’re not opposed to it.”

“It’s really up to each religious community to make sure it has equal access,” he adds. “We’ve dealt with this in the past as an organization. If a local library has a Christmas display, we don’t ask people to go and tell them to take down the Christmas display. We say, ‘Look, reserve it for the next time Ramadan comes along.’ It’s in our court, really.”

Carey of the National Association of Evangelicals says that while the group is “not overly concerned about most of these issues,” many cases concerning religious displays “do raise constitutional issues and need to be carefully studied on their merits.

“So much depends on context,” says Carey, “There’s a difference between ‘In God We Trust’ on our money or having a Nativity scene at city hall. You look at the context in the community.”

What’s needed is a “common sense” approach to the issue of religious displays, Carey argues. “We don’t want the government to be in the position of establishing or favoring a particular religion.” Many displays don’t do much to do that, Carey says, “but if something were endorsing and furthering a particular religion, we would not be in favor of that.”

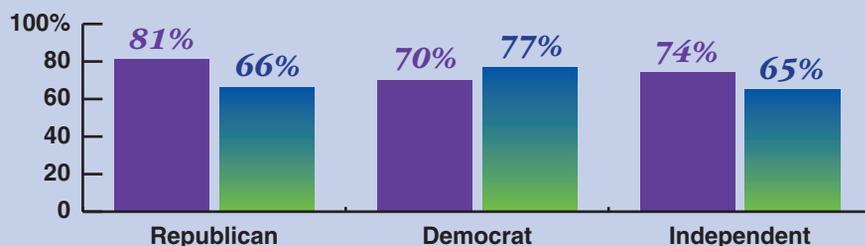
In the crèche conflict in Chambersburg, Pa., the Nativity scene had been displayed for years in the town’s Memorial Square, and some residents believe that’s where it should have remained. “Jesus is the reason for the season,” resident Kelly Spinner told a local media outlet. “They’re taking that reminder away from us. I don’t think it’s fair. What’s next? Santa Claus? A Christmas tree?”<sup>24</sup>

The council president, Bill McLaughlin, argued that Chambersburg was “a victim of the tyranny of the minority,” adding that “the Constitution guarantees ‘freedom of religion’ ” but says nothing about “freedom from religion.”<sup>25</sup>

## GOP Support for Faith-Based Funding Drops

*In a philosophical role reversal, the percentage of Republicans who now favor government funding for faith-based groups has dropped over the past eight years while support has increased among Democrats, who were once less enthusiastic about government support.*

**Do you favor allowing faith-based groups to apply for government funding?**



Source: "Faith-Based Programs Still Popular, Less Visible," Pew Forum on Religion & Public Life, November 2009

March 2001  
August 2009

But a local Jewish resident noted that council members let him put a "Seasons Greetings" sign incorporating religious symbols from a variety of backgrounds on the town square in 1996. "You really can't pick and choose what goes up there," he said. "Once you let one group in, whether it's Christians, Jews, Muslims, then you have to let other groups in also."<sup>26</sup>

Lynn, commenting broadly on the issue of religious displays and not the Chambersburg flap, says that "if you truly say 'this courthouse lawn is open to everybody' — if you're really willing to do that — that I think the Constitution does permit, but I think that's a dopey idea." In places that have opened public spaces to displays of all persuasion, he says, "you get a cluttered lawn. People trip over stuff on their way to pay their parking tickets."

Among the most contentious religious-display issues in recent years has been the placement of religious mottoes on automobile license plates.<sup>27</sup> The Indiana legislature approved state-issued plates

bearing the motto "In God We Trust" in 2006, and Florida followed suit in 2008.

In November, a federal judge ruled that South Carolina couldn't issue plates showing the image of a cross in front of a stained-glass window and bearing the words "I believe." U.S. District Judge Cameron Currie said a law approving the plates amounted to a "state endorsement not only of religion in general, but of a specific sect in particular."

Lt. Gov. André Bauer, who had advocated the bill approving the plates, called the ruling "another attack on Christianity" and said Currie was a "liberal judge appointed by [President] Bill Clinton."<sup>28</sup>

But Currie ruled correctly in an "absolutely clear-cut" case," said Thomas Crocker, an assistant professor at the University of South Carolina Law School. Her decision was "not out to denigrate religion, but it's out of a historical understanding that problems for both politics and religion can flow from the state's entanglement with religious practices."<sup>29</sup>

## Does government funding of faith-based programs violate the Constitution?

In 2001 President George W. Bush formed his "Faith-Based Initiative," designed to funnel federal taxpayer dollars to religious groups that provide social services ranging from homeless shelters to teen sex education.<sup>30</sup> Critics argued that the program threatened church-state separation, but defenders maintained that nothing in the Constitution prohibits church-sponsored social services from competing on a level playing field for government money.

Obama has vowed to build on the Bush program, saying during his 2008 campaign that "a partnership between the White House and grassroots groups — both faith-based and secular" — remained "a good idea." But Obama vowed to end one of the most controversial aspects of the Bush faith-based program: allowing religious organizations receiving government grants and contracts to hire workers on the basis of religion.

"If you get a federal grant, you can't use that grant money to proselytize to the people you help, and you can't discriminate against them — or against the people you hire — on the basis of their religion," Obama told an Ohio audience in 2008.<sup>31</sup>

But a year after taking office, Obama's own Office of Faith-Based and Neighborhood Partnerships has had a low profile. The president has not formally disavowed a 2002 Bush-era White House directive and a 2007 Justice Department memo arguing that hiring can be based on belief, though an Obama executive order says the head of the faith-based office may seek the Justice Department's opinion on individual cases.

The issue has led to a heated debate within religious and legal circles.

"[T]his issue has been controversial because it raises a direct conflict between two opposing viewpoints on church-state relations," Ira Lupu, a professor at the George Washington Uni-

versity Law School, told the Pew Research Center. “One viewpoint is that hiring on the basis of religion is discriminatory and that the government should never subsidize such discrimination. The opposing viewpoint, held by many faith-based groups, is that to maintain the distinctive character and nature of their respective religious missions, these groups must take religion into account when hiring employees.”<sup>32</sup>

A group of 58 religious, educational, civil rights, labor and health groups has urged U.S. Attorney General Eric Holder to direct the Office of Legal Counsel to review and withdraw the 2007 memo, arguing that the document is based on an “erroneous” interpretation of the 1993 Religious Freedom Restoration Act “and threatens core civil rights and religious-freedom protections.”<sup>33</sup> The 1993 act says the government may not “substantially burden” a person’s free exercise of religion “without compelling justification.”

Some religious groups argue that without the ability to hire according to beliefs, their social-service work will be undermined.

If organizations can’t hire staff that share their mission, they will quickly lose their identity, says Carey of the National Association of Evangelicals, who worked in faith-based social-service programs for more than 25 years. He adds, “Nobody is telling Planned Parenthood they should have to hire staff that don’t believe in contraception, so nobody should tell a religious group that they shouldn’t



*A long-running legal fight over the so-called Mojave Cross honoring World War I veterans will be decided by the U.S. Supreme Court. The cross was originally erected in the Mojave National Preserve in a remote part of California in 1934 by the Veterans of Foreign Wars and replaced several times by private parties.*

AP Photo/Liberty Legal Institute/Henry and Wanda Sandoz

and there is no reason to discriminate on the basis of religion. In fact, since such salaries are paid with tax dollars, there is every reason not to discriminate.”

George Washington University’s Tuttle said he would be surprised if the Obama administration tackles the hiring question. “Why step in that one?” he asks rhetorically. The issue’s complex and controversial nature “more than anything else explains the incredibly low profile” of Obama’s faith-based program, Tuttle says. “What they’ve said is that the Justice Department is going to look at this and make decisions on a case-by-case basis.”

Lupu, in an interview, said a strong political aspect of the debate over faith-based hiring has to do with some religious groups’ beliefs about homosexuality.

“One of the deep undercurrents [of the issue] is a gay-rights question,” Lupu says. “That’s what’s been driving the more heated politics of it, because part of what faith-based groups — some of them — don’t want to do is have to hire without regard to sexual orientation. That is sort of the political undercurrent to this and has been all along.”

Alongside the hiring question is the issue of how far religious groups receiving government funds can go in mixing religious activity or symbols into government-funded social-service programs. Critics argue that regulations on proselytizing that were issued by the Bush administration are unclear and ambiguous. An advisory task force composed of people with diverse views on church-state matters

also hire people who share” its religious beliefs.

Writing this fall on a *National Catholic Reporter* blog site, Michael Sean Winters, author of *Left at the Altar: How the Democrats Lost the Catholics and How the Catholics Can Save the Democrats*, argued that “if the government chooses to give funds to a Catholic organization because of the services it provides, that does not mean the government should be entitled to tell us whom we can hire. . . . A Catholic social-service provider may be efficient, it may be effective, it may alleviate suffering and do a lot of good, but unless its work springs from a shared faith commitment, it is not meaningfully Catholic.”

But fellow blogger Maureen Fiedler, host of the public radio show “Interfaith Voices” and a member of the Sisters of Loretto religious community, argued that “if one is hiring a drug counselor, or someone to run a soup kitchen or a job-training office, it’s a neutral job — religiously speaking —

is reviewing the regulations and is expected to offer clarifications to Obama's Faith-Based and Neighborhood Partnerships program in mid-February, though it remains unclear whether the president will adopt the task force's recommendations.

Still, says Melissa Rogers, director of the Center for Religion and Public Affairs at the Wake Forest University School of Divinity and a task force member, "So far as I know, this is the first time a president or any governmental body has brought people together who have serious differences on certain church-state issues and asked them to try to find some common ground in this area."

ernment." Moreover, the delegates thought introducing religion into the Constitution would be a "tactical mistake" because of religion's "politically controversial" nature, the library says.

Even so, many of the Founders embraced religious expression. For instance, George Washington, an Episcopal vestryman, said in his 1796 Farewell Address that "of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. . . . It is substantially true that virtue or morality is a necessary spring of popular government." <sup>35</sup> Benjamin Franklin, in a 1787 speech asking the constitutional convention to begin each daily session with prayers, argued "that God governs in the Affairs of Men." <sup>36</sup>

Ratification in 1791 of the Bill of Rights — and its First Amendment stating that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" — placed religion front and center in the national psyche. With the Bill of Rights, "the opportunity for conflict between federal and state religion policies expanded considerably," law professors Lupu and Tuttle noted in a 2006 scholarly article. <sup>37</sup>

That conflict came to full fruition after the 1868 ratification of the Fourteenth Amendment, which applied the Bill of Rights to the states.

"With the Fourteenth Amendment in place, and a new national understanding of the role and the authority of the federal government in preserving national unity and individual freedom, the stage was set for the ensuing struggle over federal limitations on state power to formulate religion policy," Lupu and Tuttle wrote. <sup>38</sup>

Even before the Fourteenth Amendment's passage, though, church-state conflicts roiled the nation.

Some of the conflicts arose as part of "a complicated story in relation to the Civil War about religion and totalitarianism," Tuttle explained in an inter-

view. "The South was identifying itself more strongly as Christian, over and against the particular 'godless North,' and some in the North were characterizing the South as being absolutists," accusing the South of a "lack of religious liberty."

A swelling tide of Catholic migration from Europe in the 19th century also spurred religious tensions. "In some states, the separation of church and state as a concept came to the forefront in response to Roman Catholic immigration," Tuttle says. "Nativists embraced this because they saw themselves losing out demographically, and the idea of the separation of church and state was a way to make sure that they didn't live in Catholic-run communities."

In 1875, James G. Blaine, speaker of the U.S. House of Representatives, proposed a constitutional amendment that would have barred states from providing funds for religious education — notably Catholic schools. The proposal, denounced by Catholics, failed, but some three dozen states passed their own constitutional amendments prohibiting state funding of religious groups, including religious schools. <sup>39</sup>

Meanwhile, passage of the Fourteenth Amendment had set the stage for bitter battles over the First Amendment's religion provisions, though it took many years for those conflicts to be fully realized in the Supreme Court. At first, the Fourteenth Amendment's application of the Bill of Rights to the states focused mainly on economic rights and corporate issues, not religious and other civil liberties. In fact, only two cases involving the religious Establishment Clause — one in 1899 involving federal funding of a religiously owned and run hospital, the other in 1908 involving federal funding of a Catholic school serving Sioux Indians — came before the high court before the mid-20th century. <sup>40</sup>

*Continued on p. 36*

## BACKGROUND

### Early Conflict

Conflict over the relationship between religion and government is as old as the nation itself.

"When the Constitution was submitted to the American public, 'many pious people' complained that the document had slighted God, for it contained 'no recognition of his mercies to us . . . or even of his existence,'" the Library of Congress noted in an online presentation of documents related to religion and the founding of the republic. <sup>34</sup>

While Article VI bars religious tests for federal officeholders, the Constitution (not including the Bill of Rights) is otherwise silent on religion. One reason, the Library of Congress notes, is that "many delegates [to the Constitutional Convention] were committed federalists, who believed that the power to legislate on religion, if it existed at all, lay within the domain of the state, not the national, gov-

# Chronology

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## 1600s-1800s

**Religious-freedom policies take shape as the colonies break away from Britain.**

**1644** Roger Williams, theologian and Rhode Island founder, declares a “wall of separation” exists “between the garden of the church and the wilderness of the world.”

**1787** Benjamin Franklin asks Constitutional Convention to begin daily sessions with prayer.

**1791** Bill of Rights ratified, including First Amendment.

**1797** U.S. anti-piracy treaty with Tripoli states “the government of the United States of America is not in any sense founded on the Christian Religion.”

**1892** Supreme Court Justice David J. Brewer writes “this is a Christian nation.”

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## 1940s-1950s

**First Amendment’s religious guarantees applied to the states even as religion becomes more prevalent in public domain.**

**1940** Supreme Court rules in *Cantwell v. Connecticut* that First Amendment’s “Free Exercise Clause” applies to the states.

**1947** Supreme Court applies “Establishment Clause” to state and local governments (*Everson v. Board of Education*).

**1954** Congress inserts “under God” into Pledge of Allegiance.

**1956** “E Pluribus Unum” is

replaced as national motto with “In God We Trust.”

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## 1960s-1980s

**Key Supreme Court decisions shape intersection of government and religion; Religious Right gains prominence in politics.**

**1961** Supreme Court strikes down Maryland law requiring office-holders to declare a belief in God.

**1962** Landmark Supreme Court ruling (*Engel v. Vitale*) holds it is unconstitutional for state officials to require an official prayer to be recited daily in public school classes.

**1971** Supreme Court establishes three-part test to decide Establishment Clause conflicts.

**1979** Televangelist Jerry Falwell forms Moral Majority, rallying evangelicals to political activism.

**1980** Supreme Court strikes down Kentucky law requiring posting of Ten Commandments in public classrooms.

**1984** Supreme Court rules that a Christmas display in a Rhode Island shopping district has a legitimate “secular purpose.”

**1988** Christian Coalition founder Pat Robertson unsuccessfully seeks Republican presidential nomination.

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## 1990s-2008

**Influence of Religious Right grows in national politics.**

**1992** Christian Coalition produces

voter guides for conservative Christians.

**1997** Supreme Court allows federal program under which public school teachers offer secular remedial instruction inside parochial schools.

**2001** George W. Bush elected president with help from evangelical voters. . . . Bush forms “Faith-Based Initiative.”

**2005** Supreme Court rules in *McCreary County v. ACLU of Kentucky* that display of Ten Commandments in Kentucky courthouses is unconstitutional but says in *Van Orden v. Perry* that a Texas monument inscribed with the Commandments is not.

**2008** Presidential candidate Barack Obama endorses government funding for faith-based social services but promises changes to Bush-era initiative.

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## 2009-Present

**New government/religion cases come before Supreme Court.**

**2009** President Obama says “we do not consider ourselves a Christian nation or a Jewish nation or a Muslim nation.” . . . Catholic bishops oppose abortion funding in health-care overhaul. . . . Supreme Court rules the placement of a permanent religious monument in a public park is protected government speech (*Pleasant Grove City v. Summum*).

**2010** Texas education board votes on textbook proposals shaped with help of religious conservatives. . . . Supreme Court hears cases on cross on public land, Christian student group at public law school.

## As Texas Textbooks Go, So May Go the Nation

*Conservatives seek more treatment of religion in government and history classes.*

While the Supreme Court is the most high-profile venue for deliberations on religion and government, conflicts in the states also can be significant.

In Texas, for example, the Board of Education is revising the statewide K-12 social studies curriculum amid debates among board members and outside reviewers, including several prominent religious conservatives, over how big a role religion should play in the teaching of history.

The action follows the board's adoption last March of new science-curriculum standards that validated the teaching of evolution but opened the way for teachers to critically assess aspects of evolutionary theory.

Curriculum decisions in Texas are significant because of the influence the state — the nation's biggest textbook market — has on teaching materials elsewhere. Publishers often use Texas standards, revised every decade, to shape textbooks they sell nationwide.

For the social studies curriculum, moderate or liberal members of the 15-member Texas education board appointed three so-called "expert reviewers" to make individual recommendations on the proposed curriculum, and three such reviewers were named by social conservatives on the board.

Reviewers named by moderate or liberal board members are professors of history or education at universities in Texas, including former state historian Jesus F. de la Teja, chairman of the Texas State University history department.

Conservative reviewers include David Barton, former vice

chairman of the Texas Republican Party and founder of Wall-Builders, a Texas group whose stated goals include "educating the nation concerning the Godly foundation of our country."<sup>1</sup>

Another is Massachusetts-based Presbyterian minister Peter Marshall, who describes his ministry as "dedicated to helping to restore America to its Bible-based foundations."<sup>2</sup>

Groups of teachers and academics finished drafts of the social studies standards in November, and a public hearing on the drafts was held on Jan. 13, 2010. Some, but not all, of the reviewers' suggestions were adopted in the drafts, though the board has final say over the curriculum content, a board spokeswoman said. The board is to take a first vote on the standards after the public hearing. New textbooks are scheduled to be adopted in Texas in 2012.

At least three conservatives on the education board have pushed for more treatment of religion in government and history classes. For example, former Chairman Don McLeroy has sought a new standard "that describes the Judeo-Christian Bible influence on the founding documents." And Chairwoman Gail Lowe, along with board member Barbara Cargill, want U.S. history classes to cover the Great Awakening, a time of religious fervor in colonial America that some conservatives contend helped spur the colonies to seek independence.<sup>3</sup>

In an early recommendation advocating coverage of the Great Awakening, Marshall, the Presbyterian minister and curriculum reviewer, wrote that "the leveling effect of the Gospel preaching . . . created a revulsion against the su-

*Continued from p. 34*

### Religion's New Role

But beginning in 1940 the conflict over government and religion began to escalate in the courts. In a landmark decision that year in *Cantwell v. Connecticut*, a case involving free-speech rights of Jehovah's Witnesses, the Supreme Court ruled 9-0 that the First Amendment's Free Exercise Clause applies to the states.<sup>41</sup>

Then, in 1947, in *Everson v. Board of Education*, the court applied the Establishment Clause to state and local governments, upholding a New Jersey law allowing local school boards to reimburse parents for the cost of sending their children to public or

private schools — including religious ones — on buses operated by a public transportation system.<sup>42</sup> Significantly, all the justices agreed that the Establishment Clause erected a high barrier between church and state, though a 5-4 majority concluded that reimbursement for busing to religious schools was allowed.

Notably, the court in *Everson* resurrected a central image from the early days of the republic that lies at the center of today's debate over religion and government: "In the words of [Thomas] Jefferson," Justice Hugo Black wrote, "the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state.'" Black added: "The First Amendment has

erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach."<sup>43</sup>

Jefferson's phrase "is as familiar in today's political and judicial circles as the lyrics of a hit tune," noted James Hutson, chief of the Library of Congress Manuscript Division. "This phrase has become well-known because it is considered to explain (many would say, distort) the 'religion clause' of the First Amendment."<sup>44</sup>

Meanwhile, just as the *Cantwell* and *Everson* decisions helped thrust religion into the forefront of the debate over the meaning of the Constitution and Bill of Rights, post-World War II cultural and political trends elevated the role of religion in civil society.

perior attitudes of British aristocracy and a revolt against British tyranny.”

“You can’t properly tell American history unless you teach the biblical motivations of the people who discovered the country, like Christopher Columbus; the people that settled it, like the Pilgrims and Puritans; the people who formed government, like the Founding Fathers,” Marshall said. “My point in all of this is that children of this nation need to be taught the truth about the biblical worldview. The influence of the Bible and the Christian faith is absolutely gigantic in American history.”<sup>4</sup>

But critics lambasted the curriculum-review process. The Texas Freedom Network, which describes itself as “a mainstream voice to counter the Religious Right,” accused the board of education of including on the curriculum-review panel “absurdly unqualified ideologues who are hostile to public education and argue that laws and public policies should be based on their narrow interpretations of the Bible.”<sup>5</sup>

John Fea, an associate professor of American history at Messiah College, also expressed concern. “Some of these Christian-right people have political power. As long as they



Conservative curriculum reviewer David Barton is founder of WallBuilders.

TIME/Lee Blankenship Emmert

use the past to promote their political agendas — and to me to not be very good historians in the process — this kind of stuff is going to find its way into textbooks, and it’s going to be an ongoing debate. I worry about historians just maybe getting too tired and just giving in.”

—Thomas J. Billitteri

<sup>1</sup> Barton is well-known in evangelical circles for speeches and books arguing that America was founded as a Christian nation, and his online biography, at [www.wallbuilders.com/ABTBioDB.asp](http://www.wallbuilders.com/ABTBioDB.asp), describes him as an “expert in historical and constitutional issues.” However, his work has been sharply criticized by some mainstream scholars. See, for example, Mark Lilla, “Essay: Church Meets State,” *The New York Times*, May 15, 2005, <http://query.nytimes.com/gst/fullpage.html?res=9403E1D91730F936A25756C0A9639C8B63>.

<sup>2</sup> Peter Marshall Ministries, <http://petermarshallministries.com>.

<sup>3</sup> Terrence Stutz, “3 take issue with social studies proposal; conservatives want greater mention of religion in classes,” *Dallas Morning News*, Oct. 16, 2009.

<sup>4</sup> Quoted in Gary Scharer, “What did Founding Fathers believe?” *Houston Chronicle*, Sept. 28, 2009, [www.chron.com/disp/story.mpl/metropolitan/6640410.html](http://www.chron.com/disp/story.mpl/metropolitan/6640410.html).

<sup>5</sup> “SBOE-Appointed Social Studies ‘Experts’ Lack Credentials, Denounce Public Education, Support,” press release, Texas Freedom Network, April 30, 2009, [www.tfn.org/site/News2?page=NewsArticle&id=5778](http://www.tfn.org/site/News2?page=NewsArticle&id=5778).

In 1953, President Dwight D. Eisenhower helped inaugurate the Presidential Prayer Breakfast, a controversial annual political event that continues today under the name of the National Prayer Breakfast.<sup>45</sup> In 1954, during the darkest days of McCarthy-era anti-communist fervor, Congress inserted “under God” into the Pledge of Allegiance.<sup>46</sup> In 1955 Congress added “In God We Trust” to paper currency, and the following year it made those words the official national motto, replacing “E Pluribus Unum” (Out of Many, One).<sup>47</sup>

In 1960, Democratic presidential candidate John F. Kennedy sought to reassure conservative ministers and other Protestants that his Roman Catholic faith would not ham-

per his ability to run the country, saying that presidential decisions should not be “limited or conditioned by any religious oath, ritual or obligation.”

“I believe in an America where the separation of church and state is absolute — where no Catholic prelate would tell the president (should he be Catholic) how to act, and no Protestant minister would tell his parishioners for whom to vote . . . and where no man is denied public office merely because his religion differs from the president who might appoint him or the people who might elect him,” Kennedy said.<sup>48</sup>

Issues surrounding politicians’ and presidents’ views of religion continue today.

## Supreme Court Decisions

Another Kennedy — Rep. Patrick J. Kennedy, D-R.I., son of the late Sen. Edward M. Kennedy — said in November he had been instructed by the Catholic bishop of Providence to refrain from receiving Communion because of his position on abortion.<sup>49</sup>

And Obama, the first president to refer to “non-believers” in an inaugural speech, this year chose not to have a National Day of Prayer service in the White House, drawing criticism from religious conservatives.

“President [Harry S.] Truman signed the first National Prayer Day proclamation, and President [Ronald] Reagan made it a permanent occasion,” a *Los*

# The Family: “What they want is government by God.”

Author Jeff Sharlet talks about the secretive Christian group.

**J**eff Sharlet is the author of the book *The Family: The Secret Fundamentalism at the Heart of American Power*, which examines a secretive Christian group known as *The Family*, founded in 1935 to oppose union activity and whose members and associates include lawmakers and prominent businessmen. The group runs a house in Washington, D.C., known as *C Street*, which has served as a meeting place and residence for politicians such as South Carolina Gov. Mark Sanford, Nevada Sen. John Ensign and former Rep. Chip Pickering of Mississippi, all of whom have been in the news over accusations of extramarital affairs. Sharlet is a contributing editor for *Harper's* and *Rolling Stone* and since 2003 has been an associate research scholar at New York University's Center for Religion and Media. He spoke by phone with CQ Researcher contributing writer Barbara Mantel.

## **CQ: What is “The Family?”**

**JS:** It's the oldest and most influential religious organization in Washington, D.C. It is not partisan, in that it includes both Republicans and Democrats, although it is 90 percent Republicans, but it is political.

## **CQ: What is its mission?**

**JS:** What they want is government by God. It doesn't mean theocracy, and it doesn't mean conspiracy. Rather, it refers to a government by God-chosen elites. These people may still be elected, but they are to seek authority for all their deci-

sions, not just on social issues but on every issue, through the filter of a theology *The Family* describes as “Jesus plus nothing.” What this amounts to in the real world is religion behind closed doors, the closed doors of C Street, the closed doors of the Cedars, its headquarters in Arlington, Va., the closed doors of its “prayer cells” — that is *The Family's* term — around the world.

## **CQ: How is *The Family* organized?**

**JS:** *The Family* is different from other religious organizations in that they are only interested in elites. At the heart of it is a core group, like a board of directors, and at the center of that is a man called Doug Coe, said to be closer to Jesus and thus to the heart of power than anyone else in the world.

## **CQ: *The Family* openly organizes the annual National Prayer Breakfast and weekly fellowship groups for members of Congress.**

**JS:** Those are fairly innocuous, but they are seen within the group as recruiting tools to bring men into closer relationships with *The Family*, the spiritual tutelage of Doug Coe or another senior leader and eventually into active political work towards *The Family's* goals. The next level would be a prayer cell, which is a small, gender- and oftentimes class-segregated group that meets on a much more frequent basis to review every aspect of members' lives. The prayer cells are not to take political action as prayer cells, but action is expected to grow

*Angeles Times* blog noted. Under President George W. Bush, it added, the day — the first Thursday of May — “was a political event, confirming a conviction that religion was a core tenet of Republican politics.”<sup>50</sup>

“At this time in our country's history, we would hope our president would recognize more fully the importance of prayer,” said Shirley Dobson, chairman of the National Day of Prayer Task Force and wife of James Dobson, founder of the conservative group Focus on the Family.<sup>51</sup>

But White House press secretary Robert Gibbs said that while Obama would sign a proclamation to recognize the day, “Prayer is something that the president does every day. I think the president understands, in his own

life and in his family's life, the role that prayer plays.”<sup>52</sup>

While public actions — a president's words or actions, say, or the content of the Pledge of Allegiance — often draw controversy, many of the most momentous moves on the relationship between government and religion have continued to occur in the Supreme Court.

Over the past 50 years a long string of decisions has shaped the boundaries of government involvement in religion and the rights of citizens to express their beliefs in public settings and on public property. Among the most controversial have been school-prayer cases. In 1962, in *Engel v. Vitale*, the Supreme Court ruled that a state could not compose an official prayer — even a voluntary, nondenominational one — for recita-

tion at the start of the school day. The next year, in *Abington School District v. Schempp*, it held that a public school district cannot require students to start the school day with Bible reading and prayer. Many other cases have followed.

In terms of the Establishment Clause and government support for faith-based organizations, one of the most important rulings came in 1971 in *Lemon v. Kurtzman*, in which the court struck down programs in two states that subsidized teacher salaries and provided other aid for instruction in secular subjects in parochial and other private schools.<sup>53</sup>

In *Lemon*, the court established a three-part test, known as the “*Lemon* test,” to decide conflicts over the Establishment Clause. The court said that

out of the relationships forged in these private meetings.

**CQ: Who are members of The Family?**

**JS:** Sen. Jim Inhofe, Sen. John Ensign, Sen. Sam Brownback, Sen. Bill Nelson, a Democrat, Congressmen Joe Pitts and Zach Wamp. And in business, I don't want to say they are members but people who are very involved are Dennis Bakke [CEO of Imagine Schools, a company that operates charter schools in 10 states] and Thomas Phillips, former head of Raytheon. Overseas, probably the most prominent member in the news today is Yoweri Museveni [the president of Uganda].

**CQ: Does The Family have a political agenda?**

**JS:** They say they have no political agenda other than putting all nations on a Jesus footing. But when we look at what they've done and what they do, we see a 75-year project that has tended toward economic privatization, deregulation, free markets at any cost and all with Washington as, what the founder [Abraham Vereide] called, the world's Christian capital.

**CQ: Can you give some examples?**

**JS:** The Family's first project was to break the spine of or-



Author Jeff Sbarlet.

Jeff Sbarlet

ganized labor in the Northwest, where they began. In 1959, they designated a young Haitian leader and began organizing U.S. support for him. That was Papa Doc [Duvalier]. When Suharto came to power in Indonesia, killing hundreds of thousands of his own citizens in a coup, The Family called it a spiritual revolution and sent delegations of congressmen who became his champions in Washington. They have functioned like a lobby without registering as a lobby, and whether you think they

are of concern depends on whether you value transparency and accountability in government.

**CQ: The Family's house on C Street, known as the C Street Center, had been registered as a church but lost its tax-exempt status last fall. What happened?**

**JS:** For years, The Family was using the tax-exempt status of the C Street Center to subsidize congressmen with below-market rents and to bring them into an intense community for spiritual counseling, policy talk and biblical-worldview discipline. The problem with the C Street house is that they were financially helping these congressmen and not acknowledging it.

— Barbara Mantel

to be in compliance, a statute “must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . [and] finally, the statute must not foster ‘an excessive government entanglement with religion.’ ”

“The *Lemon* test would become an extremely influential legal doctrine, governing not only cases involving government funding of religious institutions but also cases in which the government promoted religious messages,” a 2009 report by the Pew Forum on Religion & Public Life noted. “Over the years, however, many justices have criticized the test because the court has often applied it to require a strict separation between church and state.”<sup>54</sup>

Through the years, various Supreme Court justices have proposed alternative standards for Establishment Clause cases, including an “endorsement test” put forth by Justice Sandra Day O’Connor under which courts would determine “whether the government intends to convey a message of endorsement or disapproval of religion.”<sup>55</sup>

And some have scorned the *Lemon* test, none more colorfully than Justice Antonin Scalia. “Like some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried, *Lemon* stalks our Establishment Clause jurisprudence once again,” he wrote in a 1993 concurring opinion. “I agree with the long list of constitutional scholars who have criticized *Lemon*

and bemoaned the strange Establishment Clause geometry of crooked lines and wavering shapes its intermittent use has produced.”<sup>56</sup>

In recent years, the Supreme Court has softened the strict church-state separation standards set down in the *Lemon* case. In 1997, in *Agostini v. Felton*, the court, with O’Connor writing the 5-4 majority opinion, overturned an earlier ruling and determined that a federal program under which public school teachers offered secular remedial instruction inside parochial schools did not violate the Establishment Clause.<sup>57</sup> “More generally,” the decision “held that the government may directly provide aid to religious institutions when the aid is secular and the government provides

safeguards to ensure that recipients use the aid for secular purposes,” the Pew Forum on Religion & Public Life said.<sup>58</sup>

In 2000, the court upheld a federal program that allocated money for instructional material and equipment to public and private schools, including Catholic and other religiously affiliated ones.<sup>59</sup> And in 2002, with the late conservative Chief Justice William H. Rehnquist writing for a 5-4 majority, the court upheld an Ohio school-voucher program allowing low-income parents to send their children to participating public or private schools, most of them religious institutions.<sup>60</sup>

The picture of what is and isn't constitutional became cloudier still in 2005 when the court issued a pair of contrasting decisions on displays of the Commandments. In one 5-4 decision, the justices said a decades-old six-foot-tall Ten Commandments monument on the Texas Capitol grounds did not violate the Establishment Clause.<sup>64</sup> In a companion 5-4 ruling, they said displays of the Commandments at two courthouses in Kentucky did violate the clause.<sup>65</sup>

“To the extent that the decisions provided guidelines for the further cases that are all but certain to follow,” Linda Greenhouse of *The New York Times* wrote, “it appeared to be

Scalia voiced similar views in a long interview last fall with *Hamodia*, which bills itself as “the newspaper of Torah Jewry.”

“It has not been our American constitutional tradition, nor our social or legal tradition, to exclude religion from the public sphere,” Scalia said. “Whatever the Establishment Clause means, it certainly does not mean that government cannot accommodate religion, and indeed favor religion. My court has a series of opinions that say that the Constitution requires neutrality on the part of the government, not just between denominations, not just between Protestants, Jews and Catholics, but neutrality between religion and non-religion. I do not believe that. That is not the American tradition.”<sup>67</sup> ■

**The picture of what is and isn't constitutional became cloudier still in 2005 when the court issued a pair of contrasting decisions on displays of the Ten Commandments.**

## CURRENT SITUATION

### Clarification or Confusion?

Meanwhile, in cases involving religious displays on public property, the court has rendered what many scholars say have been inconsistent rulings over the years.

In 1980 it ruled that a Kentucky law requiring the posting of the Ten Commandments in each public classroom violated the Establishment Clause.<sup>61</sup> But in 1984 it ruled that a Christmas display in a Rhode Island city's shopping district had a legitimate “secular purpose” despite inclusion of a Nativity scene alongside a Santa house and Christmas tree because the display portrayed the historical origins of the Christmas holiday.<sup>62</sup> Five years later the court said a stand-alone Nativity scene inside a Pittsburgh courthouse, bearing a banner declaring “Gloria in Excelsis Deo” (Glory to God in the Highest), violated the Establishment Clause.<sup>63</sup>

that religious symbols that have been on display for many years, with little controversy, are likely to be upheld, while newer displays intended to advance a modern religious agenda will be met with suspicion and disfavor from the court.”<sup>66</sup>

Significantly, Scalia — among the court's most conservative justices and one likely to figure prominently in the *Salazar v. Buono* and *Christian Legal Society* cases now before the court — used the 2005 cases to expand on his views of religion and government.

“[T]here is nothing unconstitutional in a State's favoring religion generally, honoring God through public prayer and acknowledgement, or, in a non-proselytizing manner, venerating the Ten Commandments,” Scalia wrote in a concurring opinion in the Texas case.

**T**wo cases before the Supreme Court this year could help clarify the court's overall direction in issues involving religion — or perhaps leave the legal waters as murky as ever.

In December the court agreed to decide whether a public law school can deny formal recognition to a Christian student group that denies voting membership to homosexuals and requires its members to subscribe to its core religious beliefs.<sup>68</sup>

The case, *Christian Legal Society v. Martinez*, sets questions of religious freedom and freedom of association against the ability of a state-funded university to impose policies barring discrimination on the basis of religion and sexual orientation, among other grounds. As noted in the *Los Angeles Times*, “the case could set new rules for campus

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# At Issue:

## Is the United States a Christian nation?



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**PRESIDENT, EXODUSMANDATE.ORG**

WRITTEN FOR *CQ RESEARCHER*, JANUARY 2010

**W**as America founded as a Christian nation? The answer was once self-evident and a resounding “Yes!” If you had posed this question to Americans 40 years ago, they would have said, “Of course,” and looked askance at anyone who suggested otherwise. The fact that the question meets with doubt today proves that the secular revolution to “de-Christianize” America is succeeding.

The indisputable historic fact is that America’s culture, laws and civil institutions were founded on Christian principles. The vast majority of the Founders professed the Christian faith. *The Church of the Holy Trinity v. United States*, decided by the Supreme Court in 1892, confirms this. It has faded from public memory and has been expunged from federal jurisprudence. Those who would know whether America was a Christian nation should revisit this case.

The Supreme Court’s unanimous decision in *Holy Trinity* stated that the government could not prosecute the church for hiring a foreign pastor, even though federal law expressly forbade hiring immigrants. The court said blocking the hiring would restrict the freedom of the Christian Church and religion in general and would violate the First Amendment. Moreover, Justice David Brewer wrote that to do so would pit the federal government “against religion.”

Brewer stated, “Churches and church organizations . . . abound. . . . A multitude of charitable organizations exist . . . under Christian auspices. . . . These add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation.” Brewer concluded the American people had established civil orders in accord with the laws of God, including the right to promote the Christian religion without interference from civil government.

Christianity teaches, and most Christians support, a jurisdictional separation between church and state, but not separation of God and government. A secular state is not American, not Christian, nor wise. Civil government must obey God’s laws.

The meaning of the First Amendment has been upended. Often the term “separation of church and state” is used to bludgeon people of religious faith. The First Amendment was adopted, however, to block the federal government from over-reaching into the religious realm, not to control the church. The “wall of separation” concept meant keeping the federal government out of the church, not keeping Christian values out of government.

Christian America gave us religious liberty and freedom of conscience. When the secular revolution is complete, that liberty will no longer exist.



**HERB SILVERMAN**  
**PRESIDENT, SECULAR COALITION FOR**  
**AMERICA**

WRITTEN FOR *CQ RESEARCHER*, JANUARY 2010

**A**merica is a Christian nation in the same way it is a white nation. The majority of Americans are white and Christian, but we are not now nor have we ever officially been a white or Christian nation. Those who believe otherwise might be harkening back to the first Europeans who settled here.

Unlike our 18th-century Founders like Washington, Jefferson and Madison, the Pilgrims and Puritans were religious dissenters from Europe who sought freedom of worship for their own versions of Christianity, but not for religious freedom of others. Most of our early colonies also made blasphemy a crime, an offense that could be punishable by death.

In the American Revolution of 1776, political leaders in the soon-to-be United States not only declared independence from England but also declared something even more radical — that “Governments are instituted among men deriving their just powers from the consent of the governed.” Americans rejected kings with a God-given authority to rule through “divine right.”

In coming up with this new federal government, a minority faction in the Constitutional Convention of 1787 sought some recognition of Christianity, but more enlightened Founders disagreed. That’s why there are only three references to religion in the Constitution. Article 6 says no religious test shall ever be required as a qualification to any office; the First Amendment says Congress shall make no law respecting an establishment of religion and limits the government’s power to interfere with expressions of religious belief.

Our Founders did not want the new federal government to meddle in religion. They wisely established a secular nation whose authority rests with “We the People” (the first three words of the U.S. Constitution) and not with “Thou the Deity.” We the people are free to worship one, many or no gods.

Unambiguous language from our Founders really should settle this debate over whether America is a Christian nation. In 1797 the Treaty of Tripoli was negotiated by George Washington, signed by John Adams and ratified unanimously by the Senate. It stated in part: “The government of the United States is not in any sense founded on the Christian religion.” I wonder what part of “not” that Christian-nation advocates don’t understand.

There have always been people who erroneously believe the Founders intended to establish a Christian nation. But the Framers were careful and thoughtful writers. Had they wanted a Christian republic, it seems highly unlikely that they would somehow have forgotten to include their Christian intentions in the supreme law of the land. And I defy anyone to find the words “God” or “Jesus” in the Constitution.

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groups that receive funding through fees paid by the students.”<sup>69</sup>

A student chapter of the Christian Legal Society (CLS), which bills itself as “a nationwide association of Christian attorneys, law students, law professors and judges,” was denied recognition by the University of California’s Hastings College of the Law in San Francisco.

CLS “says it welcomes all students to participate in its activities,” *The New York Times* reported, but it bars students from voting membership or leadership roles “unless they affirm what the group calls orthodox Christian beliefs and disavow ‘unrepentant participation in or advocacy of a sexually immoral lifestyle,’ ” including “ ‘sexual conduct outside of marriage between a man and a woman.’ ”<sup>70</sup>

Hastings officially recognizes roughly 60 student groups, which must agree to the school’s antidiscrimination policy.<sup>71</sup> In losing formal recognition, CLS lost, among other things, the right to use reserved meeting rooms and school-funded travel costs for CLS leaders to attend national meetings, according to the *Los Angeles Times*.<sup>72</sup>

In March 2009, the 9th U.S. Circuit Court of Appeals supported Hastings, declaring that the law school “imposes an open-membership rule on all student groups — all groups must accept all comers as voting members even if those individuals disagree with the mission of the group. The conditions on recognition are therefore viewpoint neutral and reasonable.”<sup>73</sup>

But in 2006, the 7th U.S. Circuit Court of Appeals came to an opposite conclusion in a case dealing with a CLS chapter at the University of Southern Illinois law school. “One of [CLS’s] beliefs is that sexual conduct outside of a traditional marriage is immoral,” Judge Diane S. Sykes wrote for the court. “It would be difficult for CLS to sincerely and effectively convey a message of disapproval of certain types of conduct if, at the same time, it must accept mem-

bers who engage in that conduct. CLS’s beliefs about sexual morality are among its defining values; forcing it to accept as members those who engage in or approve of homosexual conduct would cause the group as it currently identifies itself to cease to exist.”<sup>74</sup>

In the *Hastings* case, Kim Colby, senior counsel with the Center for Law & Religious Freedom, CLS’s advocacy division, said “public universities shouldn’t single out Christian student groups for discrimination. All student groups have the right to associate with people of like mind and interest. We trust the Supreme Court will not allow Hastings to continue to deprive CLS of this right by forcing the group to abandon its identity as a Christian student organization.”<sup>75</sup>

But Ethan P. Schulman, a San Francisco lawyer for Hastings, said the Christian students are free to meet informally on campus, “The real question,” Schulman said, “is whether a law school is obliged to subsidize a group with student fees that is committed to discriminating against some students. If their position is accepted by the court, it could force universities across the country to subsidize discriminatory organizations, including possibly hate groups or extremist groups.”<sup>76</sup>

Oral arguments in the case will likely occur in March, with a decision due by the end of June.

## Site of the Cross

Separately, in *Salazar v. Buono*, the justices are considering a cross originally erected in the Mojave National Preserve in 1934 by the Veterans of Foreign Wars (VFW) and replaced several times by private parties. Frank Buono, a former Park Service employee and a Roman Catholic, claimed the cross violated the Establishment Clause. While not objecting to the cross’ presence on government property, Buono expressed offense at its display on federal land not made available for groups and individuals to put up other religious displays. In 1999

the Park Service turned down a request to build a Buddhist shrine near the cross.

A federal court agreed with Buono’s constitutional claim, and the cross was covered, but that wasn’t the end of the controversy. While the case was pending in federal district court, Congress designated the site a national memorial and prohibited the cross from being taken apart using federal funds. A year later, Congress transferred the parcel on which the cross sits to the VFW in exchange for a nearby piece of privately owned land. Buono sought to enforce the federal court order and block the property swap. More legal action followed, culminating in the case moving to the Supreme Court.

The court’s decision is unlikely to rest on whether the cross is a violation of the Establishment Clause, many legal experts say. Instead, they say it may rest on whether Buono had standing to sue — in other words, whether he was legally entitled to bring his case in the first place — or whether the land swap was a proper remedy to the constitutional issue posed by the presence of the cross on federal land.

Either approach could pose challenges to the court. Some legal analysts say they hope the justices don’t use the case to wade into the standing-to-sue doctrine because that area of the law already is muddled and difficult to parse. On the other hand, if the court rules that the land transfer solved the constitutional problems posed by the cross, the justices will need to reconcile its reasoning with past Supreme Court action, observers say.

The court “will at the very least have to explain how its decision is not overly formalistic and how it takes account of how people who visit the area are likely to interpret things,” Vikram David Amar, associate dean for academic affairs at the University of California, Davis, law school, wrote in a column for FindLaw.

Amar noted that in 1985, in *Wallace v. Jaffree*, the court struck down an Alabama statute allowing a moment of silent prayer in public schools.<sup>77</sup> The

court invalidated the law, Amar wrote, “in part because many observers plausibly understood the statute to be a substitute for the state-sponsored prayer statutes” struck down by federal courts in prior years. If the court viewed the Alabama law as “an impermissible circumvention of constitutional principle,” Amar continued, “then at least the court will have to explain why the transfer of land in the *Buono* case should not be understood similarly.”<sup>78</sup> ■

## OUTLOOK

### Continuing Battles

Conflicts over government and religion, many experts say, are unlikely to end anytime soon, if ever.

“As long as this debate remains politicized, we’re going to continue to do battle in the culture wars,” says Messiah College’s Fea.

Those battles are raging on a variety of fronts, from gay-marriage laws to the moral implications of climate-change policy. One of the most visible and recent battles has occurred over Washington’s efforts to overhaul the health-care system. The nation’s Roman Catholic bishops have fought to prevent federal funds from being used for abortions, and critics have accused the bishops of undermining health-care reform.

“Why is it that the bishops are more concerned with restricting millions of American women from making health-care decisions that are best for them and their families than they are with ensuring that millions of Americans — women, men, children, immigrants, the poor, the middle class — get much-needed health insurance?” former Maryland Lt. Gov. Kathleen Kennedy Townsend wrote in *Politico* in December. “As a Catholic, I dare say it’s because the Conference of Catholic Bishops has lost its way.”<sup>79</sup>

But Carey, at the National Association of Evangelicals, declared in a *Washington Post* column, “Bravo to the Catholic bishops for their heroic efforts to protect immigrants, the poor, the sick, the elderly and the unborn as the current health-care debate unfolds. Their unflagging support for a consistent ethic of life is a powerful witness to a nation which too often seems to have lost its moral compass.”<sup>80</sup>

Along with battles over abortion and health care, the culture wars may well feature more conflict over government funding for programs provided by religious organizations. The Supreme Court could wind up deciding whether federal policies on faith-based funding allow government to pay directly for services that have religious content, such as rescue-mission soup kitchens or church-run homeless shelters that include group prayer or religious tracts as part of their services.

How the court would rule in such a case is “very hard to predict,” given its ideological diversity, Tuttle of George Washington law school says. A big question, he says, is how Justice Anthony Kennedy, who is often viewed as a swing vote on highly controversial cases, would vote.

Perhaps the most worrisome dimension of the culture wars comes at the intersection of religion, foreign policy and national security.

Some worry, for example, that efforts to cast the United States as a “Christian nation” will fuel perceptions among the world’s Muslims that anti-terrorism campaigns in Iraq, Afghanistan and elsewhere are aimed at suppressing Islam. And after Army psychiatrist Nidal Malik Hasan, a Muslim, allegedly killed 13 and wounded dozens at Fort Hood, Texas, in November, commanders expressed concern about a backlash against U.S. soldiers who are Muslim.

“[W]hat happened at Fort Hood was a tragedy, but I believe it would be an even greater tragedy if our diversity becomes a casualty here,” said Gen. George Casey, chief of staff of the

Army. “And it’s not just about Muslims. We have a very diverse army. We have a very diverse society. And that gives us all strength.”<sup>81</sup> ■

### Notes

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<sup>2</sup> “Religious Expression in American Public Life: A Joint Statement of Current Law,” Center for Religion and Public Affairs, Wake Forest University Divinity School, Jan. 12, 2010, <http://divinity.wfu.edu/tpa/>. For background, see the following *CQ Researcher* reports: David Masci, “Religion and Politics,” July 30, 2004, pp. 637-660; Brian Hansen, “Religion in the Workplace,” Aug. 23, 2002, pp. 649-672, and Patrick Marshall, “Religion in Schools,” Jan. 12, 2001, pp. 1-24.

<sup>3</sup> Peter Urban, “GOP defends ‘God’ at Capitol Visitor Center,” Gannett Washington Bureau, Nov. 17, 2009, [www.azcentral.com/news/articles/2009/11/17/20091117gan-visitorcenter-ON.html](http://www.azcentral.com/news/articles/2009/11/17/20091117gan-visitorcenter-ON.html).

<sup>4</sup> Quoted in Lindsay Perna, “Atheists sue to stop ‘In God We Trust’ in Capitol visitor’s center,” *USA Today*, July 17, 2009, [www.usatoday.com/news/religion/2009-07-17-atheist-capitol\\_N.htm](http://www.usatoday.com/news/religion/2009-07-17-atheist-capitol_N.htm).

<sup>5</sup> Julia Duijn, “Cardinal: lobbying health reform is duty,” *Washington Times*, Nov. 17, 2009, [www.washingtontimes.com/news/2009/nov/17/cardinal-sees-health-care-stance-as-a-duty/](http://www.washingtontimes.com/news/2009/nov/17/cardinal-sees-health-care-stance-as-a-duty/).

<sup>6</sup> Rep. Lynn Woolsey, “Woolsey: IRS should scrutinize bishops,” *Politico*, Nov. 9, 2009, [www.politico.com/news/stories/1109/29336.html](http://www.politico.com/news/stories/1109/29336.html).

<sup>7</sup> Robert Draper, “And He Shall Be Judged,” *GQ*, June 2009, [www.gq.com/news-politics/newsmakers/200905/donald-rumsfeld-administration-peers-detractors](http://www.gq.com/news-politics/newsmakers/200905/donald-rumsfeld-administration-peers-detractors).

<sup>8</sup> David E. Sanger, “Biblical Quotes Said to Adorn Pentagon Reports,” *The New York Times*, May 18, 2009, [www.nytimes.com/2009/05/18/us/18rumsfeld.html?scp=1&sq=biblical%20quotes%20said%20to%20adorn%20pentagon&st=cse](http://www.nytimes.com/2009/05/18/us/18rumsfeld.html?scp=1&sq=biblical%20quotes%20said%20to%20adorn%20pentagon&st=cse).

<sup>9</sup> “’07 survey shows Americans’ views mixed on basic freedoms,” First Amendment Center, Sept. 24, 2007, [www.firstamendmentcenter.org/news.aspx?id=19031](http://www.firstamendmentcenter.org/news.aspx?id=19031).

<sup>10</sup> “American Religious Identification Survey 2008,” March 2009, [www.americanreligionsurvey.org/2009/03/catholics\\_on\\_the\\_move\\_non-religious\\_on\\_the\\_rise.html](http://www.americanreligionsurvey.org/2009/03/catholics_on_the_move_non-religious_on_the_rise.html).

<sup>11</sup> "Treaty of Peace and Friendship," 1796, accessed at [http://avalon.law.yale.edu/18th\\_century/bar1796.asp](http://avalon.law.yale.edu/18th_century/bar1796.asp).

<sup>12</sup> *Church of the Holy Trinity v. United States*, 143 U.S. 457.

<sup>13</sup> "Joint Press Availability with President Obama and President Gul of Turkey," White House, April 6, 2009, [www.whitehouse.gov/the\\_press\\_office/Joint-Press-Availability-With-President-Obama-And-President-Gul-Of-Turkey/](http://www.whitehouse.gov/the_press_office/Joint-Press-Availability-With-President-Obama-And-President-Gul-Of-Turkey/).

<sup>14</sup> "Age of Obama Threatening America's Safety?" Fox News, April 9, 2009, [www.foxnews.com/story/0,2933,513599,00.html](http://www.foxnews.com/story/0,2933,513599,00.html).

<sup>15</sup> "Groups criticize McCain for calling U.S. 'Christian nation,'" CNN, Oct. 1, 2007, [www.cnn.com/2007/POLITICS/10/01/mccain.christian.nation/](http://www.cnn.com/2007/POLITICS/10/01/mccain.christian.nation/).

<sup>16</sup> *Christian Legal Society v. Martinez*, Docket No. 08-1371.

<sup>17</sup> *Salazar v. Buono*, Docket No. 08-472.

<sup>18</sup> *Torcaso v. Watkins*, 367 U.S. 488 (1961).

<sup>19</sup> "74% Support Religious Displays on Public Property," *Rasmussen Reports*, Dec. 24, 2008, [www.rasmussenreports.com/public\\_content/life\\_style/holidays/december\\_2008/74\\_support\\_religious\\_displays\\_on\\_public\\_property](http://www.rasmussenreports.com/public_content/life_style/holidays/december_2008/74_support_religious_displays_on_public_property).

<sup>20</sup> Ira C. Lupu, David Masci and Robert W. Tuttle, "Religious Displays and the Courts," Pew Forum on Religion & Public Life, June 2007, <http://pewforum.org/assets/files/religious-displays.pdf>. According to the report, a 2005 survey by the Pew Research Center found that 83 percent of Americans said displays of Christmas symbols should be allowed on government property, and another 2005 Pew poll found that 74 percent said they believed it was proper to display the Ten Commandments in government buildings.

<sup>21</sup> *Stone v. Graham*, 449 U.S. 39.

<sup>22</sup> *Lynch v. Donnelly*, 465 U.S. 668.

<sup>23</sup> Lupu, *et al.*, *op. cit.*, pp. 2-3.

<sup>24</sup> "Chambersburg Council Votes to Remove Nativity Scene," WHAG-TV, MSNBC.com, Nov. 24, 2009, <http://your4state.com/content/fulltext/?cid=89441>.

<sup>25</sup> Quoted in *ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> In South Carolina, state law allows private groups to have license tags bearing their own message, and the CEO of a group called the Palmetto Family Council filed a request with the state motor vehicles department to have an "I Believe" plate issued. See John Monk, " 'I Believe' tag might be resurrected," *The State*, Nov. 27, 2009, [www.thestate.com/154/v-mobile/story/1045682.html](http://www.thestate.com/154/v-mobile/story/1045682.html).

<sup>28</sup> John Monk, "Judge strikes down plate," *The State*, Nov. 11, 2009, [www.thestate.com/513/story/1022683.html](http://www.thestate.com/513/story/1022683.html).

<sup>29</sup> Quoted in *ibid.*

<sup>30</sup> For background see Sarah Glazer, "Faith-Based Initiatives," *CQ Researcher*, May 4, 2001, pp. 377-400.

<sup>31</sup> "Obama Delivers Speech on Faith in America," *The New York Times*, July 1, 2008, [www.nytimes.com/2008/07/01/us/politics/01obama-text.html?scp=1&sq=obama%20delivers%20speech%20on%20faith%20in%20america&st=cse](http://www.nytimes.com/2008/07/01/us/politics/01obama-text.html?scp=1&sq=obama%20delivers%20speech%20on%20faith%20in%20america&st=cse).

<sup>32</sup> "Higher Law: Faith-Based Hiring and the Obama Administration," Pew Research Center, Feb. 2, 2009, <http://pewresearch.org/pubs/1101/faith-based-hiring-obama-administration>.

<sup>33</sup> "Interfaith Alliance and Others Call on Attorney General to Review and Withdraw Memo That Threatens Crucial Religious Freedom Protections," news release, Interfaith Alliance, Sept. 17, 2009, [www.interfaithalliance.org/news/320-interfaith-alliance-calls-on-attorney-general-to-review-and-withdraw-memo-that-threatens-crucial-religious-freedom-protections](http://www.interfaithalliance.org/news/320-interfaith-alliance-calls-on-attorney-general-to-review-and-withdraw-memo-that-threatens-crucial-religious-freedom-protections).

<sup>34</sup> "Religion and the Founding of the American Republic," VI, "Religion and the Federal Government," Part 1, Library of Congress, [www.loc.gov/exhibits/religion/rel06.html](http://www.loc.gov/exhibits/religion/rel06.html).

<sup>35</sup> Washington's Farewell Address, 1796, accessed at [http://avalon.law.yale.edu/18th\\_century/washington.asp](http://avalon.law.yale.edu/18th_century/washington.asp). Source of Washington being an Episcopal vestryman is Library of Congress, *ibid.*

<sup>36</sup> Library of Congress, *op. cit.*

<sup>37</sup> Ira C. Lupu and Robert W. Tuttle, "Federal-

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<sup>38</sup> *Ibid.*

<sup>39</sup> "The Blaine Game: Controversy Over the Blaine Amendments and Public Funding of Religion," Pew Forum on Religion & Public Life, July 24, 2008, <http://pewforum.org/events/?EventID=194>. For further discussion and analysis of the Blaine Amendments, see Akhil Reed Amar, *The Bill of Rights* (1998), pp. 254-255.

<sup>40</sup> In *Bradfield v. Roberts* (1899), the court said federal funding of a Catholic hospital was constitutional because the facility's main purpose was to provide secular care. In *Quick Bear v. Leupp* (1908) the court upheld federal support of a Catholic school serving a Sioux reservation because the money came from a Sioux trust fund. For background, see Ira C. Lupu, David Masci, Jesse Merriam and Robert W. Tuttle, "Shifting Boundaries: The Establishment Clause and Government Funding of Religious Schools and Other Faith-Based Organizations," Pew Forum on Religion & Public Life, May 2009, <http://pewforum.org/newassets/images/reports/funding/funding.pdf>.

<sup>41</sup> *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

<sup>42</sup> *Everson v. Board of Education*, 330 U.S. 1 (1947).

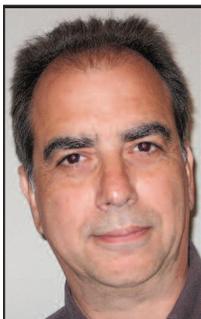
<sup>43</sup> The phrase "wall of separation" was coined by Roger Williams, a 17th-century Baptist theologian and founder of Rhode Island, who declared that a "wall of separation" existed "between the garden of the church and the wilderness of the world." Jefferson, in an 1802 letter to the Danbury [Conn.] Baptist association suggesting that religious minorities need not worry about persecution, said the First Amendment builds "a wall of separation between church and state." See Lupu, *et al.*, footnote 40. In *Reynolds v. United States* (1878), in upholding a federal anti-bigamy statute in a case involving a Mormon leader, the Supreme Court alluded to Jefferson's "wall of separation" phrase, adding that "it may be accepted almost as an authoritative declaration of the scope and effect of the [First] amendment."

<sup>44</sup> James Hutson, " 'A Wall of Separation,' " *Library of Congress Information Bulletin*, June 1998, [www.loc.gov/loc/lcib/9806/danbury.html](http://www.loc.gov/loc/lcib/9806/danbury.html).

<sup>45</sup> See, for example, Jeff Sharlet, *The Family* (2009), p. 195.

<sup>46</sup> David Greenberg, "The Pledge of Allegiance," *Slate*, June 28, 2002, [www.slate.com/?id=2067499](http://www.slate.com/?id=2067499).

<sup>47</sup> *Ibid.*



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<sup>48</sup> "Address of Sen. John F. Kennedy to the Greater Houston Ministerial Association," John F. Kennedy Presidential Library and Museum, Sept. 12, 1960, [www.jfklibrary.org/Historical+Resources/Archives/Reference+Desk/Speeches/JFK/JFK+Pre-Pres/1960/Address+of+Senator+John+F.+Kennedy+to+the+Greater+Houston+Ministerial+Association.htm](http://www.jfklibrary.org/Historical+Resources/Archives/Reference+Desk/Speeches/JFK/JFK+Pre-Pres/1960/Address+of+Senator+John+F.+Kennedy+to+the+Greater+Houston+Ministerial+Association.htm).

<sup>49</sup> Ian Urbina, "Kennedy Discouraged from Communion by Bishop," *The New York Times*, Nov. 23, 2009, [www.nytimes.com/2009/11/23/us/23kenedy.html?scp=1&sq=patrick%20kenedy&st=cse](http://www.nytimes.com/2009/11/23/us/23kenedy.html?scp=1&sq=patrick%20kenedy&st=cse).

<sup>50</sup> Johanna Neuman, "Obama ends Bush-era National Prayer Day service at White House," Top of the Ticket blog, *Los Angeles Times*, May 7, 2009, <http://latimesblogs.latimes.com/washington/2009/05/obama-cancels-national-prayer-day-service.html>.

<sup>51</sup> Statement by Shirley Dobson quoted in *ibid*.  
<sup>52</sup> Quoted in *ibid*.

<sup>53</sup> *Lemon v. Kurtzman*, 403 U.S. 602 (1971). See Lupu, Masci, Merriam and Tuttle, *op. cit.*, p. 5; and Kermit L. Hall, ed., *The Oxford Companion to the Supreme Court of the United States* (1992), p. 500.

<sup>54</sup> Lupu, Masci, Merriam and Tuttle, *op. cit.*, p. 9.

<sup>55</sup> *Lynch v. Donnelly*, 465 U.S. 668 (1984).

<sup>56</sup> *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993).

<sup>57</sup> *Agostini v. Felton*, 521 U.S. 203 (1997).

<sup>58</sup> Lupu, Masci, Merriam and Tuttle, *op. cit.*, p. 5.

<sup>59</sup> *Mitchell v. Helms*, 530 U.S. 793 (2000).

<sup>60</sup> *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

<sup>61</sup> *Stone v. Graham*, 449 U.S. 39 (1980).

<sup>62</sup> *Lynch v. Donnelly*, 465 U.S. 668 (1984).

<sup>63</sup> *County of Allegheny v. ACLU*, 492 U.S. 573 (1989).

<sup>64</sup> *Van Orden v. Perry*, 545 U.S. 677 (2005).

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## FOR MORE INFORMATION

**Americans United for Separation of Church and State**, 518 C St., N.E., Washington, DC 20002; (202) 466-3234; [www.au.org](http://www.au.org). Advocacy group that supports separation of church and state.

**Christian Legal Society**, 8001 Braddock Road, Suite 300, Springfield, VA 22151; (703) 642-1070; [www.clsnet.org](http://www.clsnet.org). Nationwide association of Christian attorneys, law students, law professors and judges.

**Council on American-Islamic Relations**, 453 New Jersey Ave., S.E., Washington, DC 20003; (202) 488-8787; [www.cair.com](http://www.cair.com). Works to enhance understanding of Islam.

**Exodus Mandate**, P.O. Box 12072, Columbia, S.C. 29211; (803) 714-1744; [www.exodusmandate.org](http://www.exodusmandate.org). Urges Christians to withdraw their children from the public-school system and place them in Christian schools or home school them with a Christian emphasis.

**First Amendment Center at Vanderbilt University**, 1207 18th Ave. S., Nashville, TN 37212; (615) 727-1600; and First Amendment Center/Washington, 555 Pennsylvania Ave., N.W., Washington, DC 20001; (202) 292-6288; [www.firstamendmentcenter.org](http://www.firstamendmentcenter.org). Supports the First Amendment through education, research and other activities.

**Freedom From Religion Foundation**, P.O. Box 750, Madison, WI 53701; (608) 256-8900; [www.ffrf.org](http://www.ffrf.org). Advocacy group that supports separation of church and state.

**National Association of Evangelicals**, P.O. Box 23269, Washington, DC 20026; (202) 789-1011; [www.nae.net](http://www.nae.net). Represents more than 45,000 evangelical churches from more than 40 denominations.

**Pew Forum on Religion & Public Life**, 1615 L St., N.W., Suite 700, Washington, DC 20036-5610; (202) 419-4550; <http://pewforum.org>. Research group focusing on intersection of religion and politics, law, domestic policy and world affairs.

**Secular Coalition for America**, P.O. Box 66096, Washington, DC 20035-6096; (202) 299-1091; [www.secular.org](http://www.secular.org). Advocates church-state separation and greater inclusion of atheists, agnostics and other "non-theistic Americans."

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