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THE FIRST AMENDMENT: RELIGIONS FREEDOM?

A Research Paper

On September 25, 1789, the United States congress proposed series of ten amendments to the constitution, the first of which would guarantee individuals specific rights and liberties. Congress agreed upon these ten amendments, now known as the Bill of Rights, and enacted them on December 15, 1791. The First Amendment guarantees religious freedom: it states, “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.”¹ Does this nation today follow the original idea and intent of the First Amendment, or have we developed our own interpretation?

To understand the original idea and intent of the First Amendment better, the motives driving the writers to amend the Constitution in such a way must be considered. When the constitution was first proposed, Patrick Henry from Virginia led a fight against it because it did not include a list of individual rights. Only after Congress promised to add the Bill of Rights to the Constitution did several states vote to adopt the Constitution.² Our Founding Fathers wanted to prevent what had originally caused many colonial Americans to immigrate to this country – an official, state religion. Also, they sought, through the free exercise clause, to guarantee to all Americans the freedom to worship God without government interference or

¹ “United States Constitution,” *Compton’s Interactive Encyclopedia*, CD-ROM, (Compton’s NewMedia, 1995).

² *Ibid*

restraint.³ They also remembered that England had supported the Anglican Church, and this government support led to the persecution of members of other religions. The Fathers recalled that whether Englishmen were Anglican or not, their taxes went to pay for the Anglican Church. Many Englishmen had fought this practice, and the Americans wanted no part of it.⁴

Not only did Englishmen have to deal with religious persecution and taxes to run the “State Church,” they also had to deal with threats to their physical well being if they did not belong to the “State Church.” When Edward VI ascended to the throne in 1547 following the death of Henry VIII, he passed an act that wiped out all forms of treason except those forms contained in the statute of Edward III. The act then made it treason for any person to affirm “by open preaching, express words or saying” that the new king “is not or ought not to be the supreme head on earth of the Church of England.” It was also treason to say that Edward VI was not or ought not to be king. King Edward graded the punishment – jail and confiscation for the first such remarks, life imprisonment for the second and death for the third time they said it. If writing, printing or an overt deed expressed similar opinions, the action was high treason from the start.⁵

To deal with the Catholics, Elizabeth I and her Parliament created many new treasons. They imposed the death penalty upon “Romish priests,” upon anybody who sheltered a Jesuit, and upon anybody who should defect from the Anglican to the Roman church.⁶

³ Steven Anzovin and Janet Podell, ed., *The U.S. Constitution and the Supreme Court* (New York: The H.W. Wilson company, 1988), 137.

⁴ William Loren Katz and Bernard Gaughran, *The Constitutional Amendments* (New York: Franklin Watts, 1974), 7.

⁵ Irving Brant, *The Bill of Rights: Its Origin and Meaning* (New York: Bobbs-Merrill, 1965), 26.

⁶ *Ibid.*, 27

In England in the 1680's, less than a hundred years before the American Revolution, it was a crime not to go to the Protestant Church of England. It was also a crime not to receive the sacrament, or Holy Communion. Most Protestants rejoiced; Catholics and Puritans suffered.⁷

The First Amendment broke with the tradition in many countries that made one religion the established, or official, church, and then having that church supported with government funds. The First Amendment forbids Congress from setting up, or in any way provide for, an established church. Congress also may not pass laws that limit the right to worship.⁸ These were precisely the rights that the new Americans were demanding: Rights that would keep them free from the type of religions tyranny that England had practiced in the past.

Until 1962, the Courts generally understood that the Founding Fathers designed the establishment clause of the First Amendment only to prohibit the national government from officially approving, or holding in special favor, any particular religious faith or denomination. This was the practice in European countries when our nation was founded. Yet in 1962, the U.S. Supreme Court, in the Engel Vs. Vitale case, banned prayers and devotional Bible readings from the public schools. Why did the Court interpret the First Amendment to mean that public school prayers were unconstitutional? Their reasoning was that the taxes of all Americans pay for public schools, whether they belong to "this" religion, or "that" religion, or to no particular religion at all. Scheduling any prayer in public schools would mean government support of that prayer. The children whose religion did not permit them to say that prayer would have to sit or

⁷ Ira Glasser, *Visions of Liberty – The Bill of Rights for All Americans* (New York: Arcade Publishing, 1991), 70.

⁸ Commission of the Bicentennial of the United States Constitution, *The bill of Rights and Beyond* (Washington D.C.: government Printing Office, 1990), 10.

stand in silence, or leave then room, during that prayer. The children who did not belong to any particular religion would have to do the same thing. Meanwhile, the other students would recite the “government-supported” prayer, or, in effect, participate in a kind of “government-supported” religion. The court felt that this would violate the First Amendment which forbids the government establishment of a religion.⁹

The religious world when up in arms over this decision; all except for a few liberal churchmen who saw the decision as a significant move to upgrade religion by dissociating it from what they termed “a meaningless ritualistic ceremony.” These men saw the court drawing defensible lines that energetically endorsed freedom of conscience in religions matters.¹⁰

Consider for moment Benjamin Franklin, one of the Founding Fathers of our Constitution. Mr. Franklin was not a member of any church. In fact, he was one of the most liberal members of the Constitutional Convention in his views on religion. No one could have had a stronger conviction about separation of church and state as expressed in the First Amendment than Mr. Franklin. The following is his proposal concerning prayer in the Constitutional Convention in Philadelphia:

Mr. President: The small progress we have made, after four or five weeks’ close attendance and continual reasoning with each other, our different sentiments on almost ever question, several of the last producing as many noes and ayes, is, methinks, a melancholy proof of the imperfection of the human understanding. We indeed seem to feel our own want of political wisdom, since we have been running all about in search of it. We have gone back to ancient history for models of government, and examined the different forms of those republics which, having been originally formed with the seeds of their own dissolution,

⁹ William Loren Katz and Bernard Gaughran, *The Constitutional Amendments* (New York: Franklin Watts, 1974), 9.

¹⁰ Paul L. Murphy, *The constitution in Crisis Times, 1918-1969* (New York: Harper & Row, 1972), 394.

now no longer exist; and we have viewed modern States all round Europe, but find none of their constitutions suitable to our circumstances.

In this situation of this assembly, groping, as it were in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, sir, that we have not hitherto once thought of humbly applying to the Father of Lights to illuminate our understandings? In the beginning of the contest with Britain, we were sensible of danger, and had daily prayers in this room for the Divine protection. Our prayers, sir, were heard; -- and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of superintending Providence in our favor. To that kind of Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful Friend? Or do we imagine we no longer need its assistance? I have lived, sir, a long time; and the longer I live the more convincing proofs I see of this truth, that God governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice is it probable that an empire can rise without his aid? We have been assured, sir, in the Sacred Writings, that "except the Lord build his house, they labor in vain that build it." I firmly believe this; and I also believe, that, without his concurring aid, we shall succeed in this political building no better than the builders of Babel; we shall be divided by our little partial, local interests, our projects will be confounded, and we ourselves shall become a reproach and a by-word down to future ages. And what is worse, mankind may hereafter, from this unfortunate instance, despair of establishing government by human wisdom, and leave it to chance, war, and conquest. I therefore beg leave to move, --

Than henceforth prayers, imploring the assistance of Heaven and its blessing on our deliberations, be held in this assembly every morning before we proceed to business; and that one or more of the clergy of this city be requested to officiate in that service.¹¹

If the original intent of the establishment clause of the First Amendment was to completely ban any type of religious activity from all aspects of government and government supported programs, they why was one of the Founding Fathers advocating such a practice? Mr. Franklin, more than anyone today, would have known that the true purpose of the

¹¹ Fred B. Walker, "Benjamin Franklin's Views on Opening the Assembly with Prayer," *Gospel Advocate* 108, no. 37 (15 September 1966): 581.

establishment clause was to ban government control over religion, not to ban God from government.

The disturbing part about the Supreme Court's decision is that the ban on prayer and religions activity is not universal. It centers squarely on our public schools; and even then it is not complete. The Pledge of Allegiance that our children recite every school day states that we are "one Nation under God." The currency which we carry in our pockets each day bears the motto "In God We Trust." The Courts use the Bible to swear in our President and other elected officials. It is also still used in some of our court rooms to swear in witnesses. Our Nation observed Christmas and Easter, two "Christian" observances, as national holidays. Even our U.S. Senate opens with prayer each morning. Senator Strom Thurmond, during the May 5, 1984 Senate debate over Senate Joint Resolution 73 (a resolution to reinstate prayer in public schools) remarked that

It is really inconsistent to say we cannot have prayer in our schools. After all, the people look to Washington for guidance. They look to Washington to be a model somewhat. And it ought to be. Every morning that this Senate meets, as President pro tempore of the Senate, I walk up those steps and walk up to the desk where the President pro tempore sits. Before I sit down, the first thing I do is rap for order. The next thing I do is call upon the Chaplain of the U.S. Senate to lead us in prayer. If the U.S. Senate can open its day with prayer, then why cannot the schools of this Nation open their day with prayer if they car to do it?¹²

Banning in educational institutions what which they practice themselves is hypocritical for a government.

¹² Steven Anzovin and Janet Podell, ed., *The U.S. Constitution and the Supreme Court* (New York: The H.W. Wilson company, 1988), 139.

Throughout the years following the Court's 1962 ruling, people have attempted to restore prayer in public schools. In 1964, the Becker amendment sought to restore prayer and Bible reading only to be thrown out by the Supreme Court.¹³ Unfortunately, when major religions leaders support these types of rulings, it makes it even harder to get the next attempt passed. This support is exactly what the executive director of the Baptist Joint Committee on Public Affairs gave regarding the Becker amendment.¹⁴

Later, in 1980, the Supreme Court threw out the attempt by Kentucky to require posting a copy of the Ten Commandments in each classroom. Again, in 1985, twenty-five states were involved in a moment of silence that was also thrown out by the Supreme Court. In 1990 the tide turned, however, when the Courts interpreted the Equal Access Acts of 1984 to mean that students could start prayer clubs on school premises.¹⁵

By banning prayer from public schools, the courts have, by that very action, violated the constitution which they were sworn to uphold. Granted, no government or state should impose structured prayer on either unwilling students, or on students whose parents are unwilling: The First Amendment has guaranteed this much. Those who are willing, however, should not have their freedom of speech and freedom of religious expression rights trampled while trying to protect the rights of those who are not willing.

The First Amendment originally guaranteed *freedom of religion*. Unfortunately, for our public schools, it has taken on a new meaning: *Freedom From Religion*.

¹³ "Becker Amendment Would Imperial True Religion [Constitutional Amendment to Restore Prayer and Bible Reading in Public Schools; Editorial]," *Christian Century* 81 (13 May 1964): 629-30

¹⁴ "The Becker Amendment [U.S. Constitutional Amendment to Permit Prayer and Bible Readings in Public Schools; Editorial]," *Christian Century* 81 (15 April 1964): 475.

¹⁵ "Religion Returns to Public Schools," *Newsweek*, 10 June 1991, 56-57; quoted in "Prayer – Public School," (Overton Memorial Library Vertical File).