

**RELIGION IN
UNITED STATES
DOMESTIC POLICY**

FINAL REPORT FOR EDGE297A

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In a nation originating with settlers seeking asylum from religious persecution, the idea of “freedom of religion” stands as a cornerstone of U.S. ideology and perhaps appears most noticeably in U.S. foreign policy. For example, the Office of International Religious Freedom of the U.S. State Department posts the following mission statement [1]:

Given the U.S. commitment to religious freedom, and to the international covenants that guarantee it as the inalienable right of every human being, the United States seeks to:

- Promote freedom of religion and conscience throughout the world as a fundamental human right and as a source of stability for all countries;
- Assist newly formed democracies in implementing freedom of religion and conscience;
- Assist religious and human rights NGOs in promoting religious freedom;
- Identify and denounce regimes that are severe persecutors of their citizens or others on the basis of religious belief.

Religion has also always figured prominently in U.S. domestic policy. Even in the early days of the founding fathers, when the Constitution and Bill of Rights (first ten amendments) became the law of the land, freedom of religion appeared first and foremost among guaranteed rights in the first line of the first amendment—“...the First Freedom from which all others flow.” [2]

Yet despite the commitment to freedom of religion, specific government actions and occurrences within the U.S. have generated several troubling issues suggesting a possible hypocrisy concerning religious freedom in U.S. domestic policy. Indeed, U.S. politicians often include religion in their platforms, Christian lobby groups continue to push for U.S. legislation based on religious ideals, and the current Bush administration appears to be seeking more church-state collaboration. These trends bring into question the level of church-state separation existing in the U.S. Separation of church and state has grown to become an implied footnote to freedom of religion and inevitably arises as a key point when discussing religious liberties. For example, American public opinion polls addressing church-state issues such as the Pledge of Allegiance in schools and the public display of the Ten Commandments ask mainly if the issue in question violates “the principle of separation of church and state” [3]. The question remains whether or not the

intermixing of church and state affairs within the U.S. threatens the political and social health of the nation.

This report first reviews the history of U.S. law regarding separation of church and state and freedom of religion, starting from the Constitution and continuing through relevant Supreme Court cases in U.S. history. The discussion then briefly reviews the recent church-state issues of religion in schools, the Pledge of Allegiance, and the public display of the Ten Commandments. The focus of the paper then shifts to examining actions of the current administration and the Christian Right in the U.S. regarding church-state relations. A detailed overview of the new Faith-Based Initiative is discussed as an illustrative example of recent government and religion collaboration; while a review of Christian activist groups, their leaders, and Christianity within the Bush administration describes the strength and influence of the Christian Right in U.S. politics. Finally, the report summarizes public opinion regarding church-state issues, referring to recent polls and surveys. This report concludes with two conflicting arguments based on the information contained herein. One author argues that a healthy separation of church and state derives not from an external, absolute standard, but from the U.S. Constitution (which defines the government) and the American people (who elect the government). The other author argues that complete and absolute separation of church and state is necessary for a healthy democracy.

RELIGIOUS FREEDOM AND SEPARATION OF CHURCH AND STATE IN UNITED STATES LAW

Starting directly with the United States Constitution, the only explicit reference to religion in the original document is in the last line of Article VI [4]:

“The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.”

Article VI guarantees that any citizen seeking public office in the U.S. is not subject to a religious test as a qualification procedure. At the time of the Revolution, all thirteen states had religious tests for public offices, which were reserved primarily for Protestants; and at the time of the Constitutional Convention, Jews, Catholics, Unitarians, agnostics, freethinkers, and atheists were barred from holding public office in all thirteen states and could not even serve on juries in most states [5]. Thus, Article VI officially presented a clause implying a level of church-state separation. James Madison, a key founding father, believed that the wording of Article VI combined with the concept of religious freedom already implied within the Constitution made an explicit statement on religious freedom superfluous [6]. Given the context of the time period, the inclusion of Article VI in the Constitution represented a movement towards religious neutralism of the state. Most states matched the language of Article VI in their respective constitutions, however North Carolina and New Hampshire retained religious tests for public office until 1868 and 1946 respectively [7].

Even with Article VI, the ratification of the Constitution among the thirteen states was made only under a promise of a Bill of Rights. For example, ratification in Virginia came as a trade for the inclusion of a Bill of Rights, with a specific provision for religious liberty [8]. In fact, George Mason, who had written the Virginia Declaration of Rights and served as a delegate to the Constitutional Convention representing Virginia, strongly opposed the Constitution because “It has no declaration of rights.” [9] As a result, not long after the Constitution officially achieved ratification in the summer of 1788, the House and Senate proposed and passed a Bill of Rights by September 1789. By 1791, the Bill of Rights became an official part of the Constitution as the first ten amendments.

Freedom of religion appears in the first line of the First Amendment, which reads [10]:

“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.”

The amendment states that Congress, representing the government, cannot pass a law that favors any religion above another and also cannot prevent or force religion onto any person. The First Amendment is an explicit statement for religious freedom. However, by law, the Supreme Court holds the power to interpret and define “establishment” and “free exercise” on a case-by-case basis as issues concerning religious liberties arise. A key point is that separation of church and state, while implied in both Article VI and especially in the First Amendment, does not appear explicitly in the Constitution. The next section presents two definitions for the separation of church and state—a “wall” of separation and a “line” of separation. For completeness, the Fourteenth Amendment, ratified in July 1868, addresses the rights, privileges, and immunities of citizens, and the equal protection and due process clauses under the law [11]. In practice, as defined by the Supreme Court, the Fourteenth Amendment has become the Bill of Rights applied to the states since the first ten amendments of the Constitution apply only to the federal government.

JEFFERSON’S WALL AND MADISON’S LINE

As stated in the previous section, the language of the First Amendment, while defining the role of government in the arena of a citizen’s religious freedom, does not provide an explicit definition for the separation of church and state. However, in 1802, President Thomas Jefferson offered his view concerning the relationship of church and state as implied through the First Amendment [12]:

“...I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should make no law respecting an establishment of religion, or prohibiting the free exercise thereof; thus building a wall of separation between church and state.”

Note, in a preliminary draft of Jefferson’s letter to the Danbury’s Baptist Association, the word “eternal” was inked out between “wall of” and “separation” [13]. Jefferson’s “wall” presents a clear definition for the interaction between church and state. While the

First Amendment only addresses the role of Congress (state), Jefferson's "...wall, by contrast, is a bilateral barrier, a structure of unambiguous demarcation that inhibits the movement of traffic from one side to the other." [14] A wall of separation works in both directions—it ensures the religious liberties of the people and religious groups above state action, and also prevents meddling of religion in government policy.

In several cases, the Supreme Court adopts Jefferson's "wall of separation" in interpreting the First Amendment. Examples include Chief Justice Morrison Waite in *Reynolds v. United States* (1879) stating, "[Mr. Jefferson's reply to the Danbury Baptist Association] may be accepted almost as an authoritative declaration of the scope and effect of the [first] amendment thus secured." [15]; and Justice Hugo L. Black in *Everson v. Board of Education* (1947) stating, "In the words of Jefferson, the [First Amendment] clause against the establishment of religion by law was intended to erect 'a wall of separation between church and state.' ... That wall must be kept high and impregnable." [16] However, the Supreme Court only addresses issues as they arise in selected court cases at specific times in history. Thus, the ever-changing political and social environment (and Supreme Court Justices) results in varying interpretations of separation of church and state implied by the First Amendment.

An alternative interpretation to Jefferson's famous "wall" appears in James Madison's letter to Reverend Jasper Adams in 1833. Reverend Adams had asked about the relationship between Christianity and the federal government, and Madison's reply contained a key reference to separation of church and state [17]:

"I must admit, moreover, that it may not be easy in every possible case, to trace the line of separation, between the rights of Religion and the Civil authority, with such distinctness, as to avoid collisions and doubts on unessential points. The tendency to a usurpation on one side, or the other, or to a corrupting coalition or alliance between them, will be best guarded against by an entire abstinence of the Government from interference, in any way whatever, beyond the necessity of preserving public order, and protecting each sect against trespasses on its legal rights by others. "

While Madison remains in strong support of separation of church and state, he introduces an alternative to Jefferson's "wall" in the form of a "line of separation". Metaphorically, a line is less of a strict barrier than a wall, and perhaps can be adjusted or even crossed.

The Supreme Court, as with Jefferson's wall, has also referred to a "line of separation" in several cases involving religious liberties. Examples include Justice William Brennan in *Abington School District v. Schempp* (1963) stating, "...the line which separates the secular from the sectarian in American life is elusive." [18]; Justice Byron White in *Board of Education v. Allen* (1968) stating, "*Everson* and later cases have shown that the line between state neutrality to religion and state support of religion is not easy to locate." [19]; and Chief Justice Warren Burger in *Lemon v. Kurtzman* (1971) stating, "In the absence of precisely stated constitutional prohibitions, we must draw lines." [20]

Jefferson's wall and Madison's line provide two approaches among several possible interpretations facing the issue of freedom of religion and separation of church and state. Yet ultimately the Supreme Court determines the meaning, purpose, and direction of United States law; and through several important decisions, the Court established precedents that continue to shape U.S. policy on the relationship between church, state, and religious freedom.

SELECTED SUPREME COURT DECISIONS REGARDING RELIGIOUS FREEDOM AND CHURCH-STATE RELATIONS

While there have been several court cases that either directly or indirectly relate to freedom of religion and separation of church and state, this section examines a representative sample which helps illustrate the development of the Supreme Court's (and therefore the government's) approach to religion based issues. Knowledge of previous Court decisions aids in developing a framework to analyze the issues concerning the government-religion relationship that continue to exist today.

Reynolds v. United States (1878) was a highly significant case where the Court commented directly on separation of church and state, referencing Jefferson's wall (see previous section), and provided a framework for interpreting the First Amendment's protection of an individual from the government. In the Morrill Act of 1862, Congress made plural marriages illegal in any U.S. territory under its jurisdiction [21]. Mormons

believed in polygamy and in 1874, George Reynolds was indicted and later convicted under charges of polygamy enforced by the Morrill Act; the Utah Supreme Court reversed the conviction, but Reynolds was convicted again a year later [22]. Eventually the case went to the U.S. Supreme Court, where Reynolds asserted that the First Amendment’s “free exercise” clause protected his desire to engage in polygamy consistent with his Mormon belief system. This case represented the first time the Supreme Court confronted an issue directly calling on the “free exercise” clause of the First Amendment [23]. In a key decision, the Court upheld Reynold’s conviction, calling upon the “compelling state interest” doctrine—Congress held the power to pass legislation for the greater health of the state; and while Reynold’s had the freedom to any belief, he could not freely act on those beliefs if deemed detrimental to public good [24]. Thus, the freedom guaranteed to an individual cannot come at the expense of society’s health.

Note, concerning religious freedom and “compelling state interest,” the Court applied the same concept in *Jacobson v. Massachusetts* (1905), allowing the state of Massachusetts to enforce small pox vaccinations on all residents, despite the complaint that the shot violated some people’s religious beliefs. Later in *Sherbert v. Verner* (1963) the court returned to the “compelling state interest” doctrine requiring that the state show a “compelling state interest” to override a free exercise claim. In *Sherbert*, the Court decided in favor of the individual since the state (here, the South Carolina Employment Security Commission) had no “compelling state interest” in denying the woman unemployment benefits (the state refused benefits because the woman would not work “suitable” jobs that required work on Saturdays, her Sabbath day).

Bradford v. Roberts (1899) was an early example of a decision involving interaction between the government and a religious group for a community program. The District of Columbia entered a contract with Providence Hospital Corporation, operated by Catholic nuns, to build facilities on the hospital’s property to provide care for the poor. The case involved separation of church and state regarding government funds to a possibly religious institution. The Court upheld the contract on the grounds that the hospital itself had no religious purpose and existed to provide medical care to the population. The beliefs of the workers and officers did not make the hospital a religious

institution. Mainly, the government could give funds to an institution run by religious people, as long as the funds were directed towards a secular purpose.

Cochran v. Louisiana Board of Education (1930) addressed a Louisiana state law that used public taxpayer money to provide textbooks to private parochial schools. Citing the idea of “child benefit,” the Supreme Court upheld the law, saying that the state funds were not directed towards religion, but towards the education and growth of the schools’ children. The child benefit theory would remain a significant and controversial concept in decisions involving government funds given to children through religious institutions. The Court called upon similar reasoning in *Board of Education v. Allen* (1968). New York passed a law that would provide textbooks to all children in grades seven through twelve in all schools, public and private. The Court upheld the law saying that the money provided by the state was for a secular purpose and thus did not violate the establishment clause of the First Amendment. Justice Byron R. White in the majority opinion stated that the program benefited the children who borrowed and used the books, which still technically belonged to the state. “Thus, no funds or books are furnished to parochial schools and the financial benefit is to parents and children, not to schools.” [25] Even in recent times, such as in *Mitchell v. Helms* (2000), the Supreme Court continues to uphold state funded programs which provide schools (public or private, including parochial) funds for educational functions and supplies to children. In a related issue, in *Zelmon v. Simmons-Harris* (2002), the Court upheld an Ohio program that provides tuition aid in the form of vouchers to parents, who may choose where their children attend school.

Cantwell v. Connecticut (1940) was an important case where the Supreme Court utilized the Fourteenth Amendment as an extension of the First Amendment. Jesse Cantwell, a member of the Jehovah’s Witnesses, played a record for pedestrians on the streets of New Haven that openly criticized other religions, particularly Roman Catholicism. Cantwell was arrested and convicted for disturbing the peace, but the Supreme Court overturned the conviction claiming the arrest violated the individual’s right to free exercise of religion. Justice Owen J. Roberts in the majority opinion stated, “Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth.” [26] Thus, the Fourteenth Amendment held each state

(here Connecticut) answerable to the First Amendment guarantees. Thereafter, the Supreme Court would continue to use the “Fourteenth for the First” doctrine on many occasions [27].

Minersville School District v. Gobitis (1940) was another case involving Jehovah’s Witnesses. The children of Walter Gobitis, a Jehovah’s Witness, refused to salute the American flag and would not recite the pledge of allegiance for religious reasons. As a result, the children were expelled. Gobitis appealed to the federal courts, but the Supreme Court upheld the expulsion, stating that a general law aimed for a secular purpose (national unity in this case) should be obeyed regardless of religious beliefs. The Court also mentioned that the school did not force the children away from their religious beliefs, because ultimately, their parents would have a greater influence [28]. However, in *West Virginia State Board of Education v. Barnette* (1943), the Court reversed the Gobitis decision, referring to the free speech clause of the First Amendment rather than the free exercise of religion clause. The opinion in this case was that a citizen could not be coerced to participate in a particular event or act.

Everson v. Board of Education (1947) was a landmark case dealing with the highly controversial issue of government subsidies to religious institutions. A New Jersey law provided rebates for children on bus tickets purchased for transportation to their schools. The rebates had been extended to children attending parochial schools as well as public schools. The question arose on whether the rebates represented the government respecting the establishment of a religion. In a close 5-4 decision, the Court upheld the law, stating that the primary purpose of the program was to aid transportation of the children for their own safety. While the Court maintained that the case did not directly involve school aid, the majority opinion by Justice Hugo L. Black addressed the issue of separation of church and state with regard to government funds and the First Amendment’s reaches. Justice Black’s statement provided a definitive statement on church-state relations, interpreting the purpose and meaning of the First (and Fourteenth) Amendment [29]:

“The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all

religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief of any religion. . . . No tax in any amount, large or small, can be used to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.”

This statement that church schools could not be supported with government funds has been quoted and repeated in several Supreme Court decisions including *McCullom v. Board of Education* (1948), *Zorach v. Clauson* (1952), *Torcaso v. Watkins* (1961), *McGowan v. Maryland* (1961), and *Schempp v. Abington* (1963). In fact, “It may be that no single passage of any decision rendered by the Supreme Court of the United States has every been repeated in as many opinions as this one.” [30]

McCullom v. Board of Education (1948) came soon after *Everson* and involved a school program in Champaign, Illinois that taught religious subjects on public school property. Once a week for a specified period of the school day, students were divided into Jewish, Catholics, and Protestants, and given religious instruction in the public school classrooms. The Supreme Court found the program unconstitutional on the grounds of the “no establishment” clause of the First Amendment. The Court argued that the public school provided its facilities and worked closely with religious organizers, and thus the school board (representing government) promoted the establishment of religion. Interestingly, in *Zorach v. Clauson* (1952), the Court upheld a school program in New York City that allowed students to leave school premises for one hour per week for religious instruction. While in *McCullom* religious instruction on public school property was found unconstitutional, moving students off public school property for religious study was acceptable since refusal of the state to cooperate with religion on all grounds could be construed as hostility or support for non-religion [30]. Note, in the 6-3 decision, Justices Black, Robert H. Jackson, and Felix Frankfurter, wrote strong dissenting opinions and “Justice Jackson deplored the ‘warping’ and ‘twisting’ of the ‘wall of separation’ between church and state.”[31]

Engel v. Vitale (1962) began the high profile rulings regarding prayer in public schools. In 1951, the New York State Board of Regents suggested that school days begin with a selected prayer, which included “Almighty God”. Several school boards began instituting the prayer into their school programs. However, when brought before the

Supreme Court, the Court held the prayer unconstitutional under the establishment clause of the First Amendment. The prayer was more than a program of moral instruction, it was an act of religion. The Court viewed that initiating and encouraging a prescribed school prayer constituted establishment of religion by the state.

Abington School District v. Schempp (1963) continued on the idea of religious leaning programs in schools, this time regarding Bible readings in public schools. Here, the Supreme Court struck down a Pennsylvania law requiring a daily Bible reading, without comment, to begin the school day. Note the Supreme Court decided on the same issue in *Murray v. Curlett* (1963) at the same time, striking down a Baltimore school regulation that included a Bible reading to begin the school day. In both cases, the laws requiring Bible reading were found to violate the establishment clause of the First Amendment (via the Fourteenth Amendment).

Lemon v. Kurtzman (1971), *Early v. DiCenso* (1971), and *Robinson v. DiCenso* (1971) all involved state subsidies directed towards private schools, which included parochial schools. For *Lemon*, Pennsylvania had passed a law that would provide aid to private schools by paying teacher salaries and helping to supply textbooks. For the *DiCenso* cases, the state of Rhode Island instituted a program that paid 15% of teachers' salaries in private schools. The Supreme Court ruled both laws unconstitutional under the establishment clause of the First Amendment. Writing the decision, Chief Justice Warren Burger established what has become known as the Lemon Test when assessing legislation: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances or inhibits religion; finally, the statute must not foster an excessive government entanglement with religion." [32] The Court stated that the Pennsylvania and Rhode Island laws violated the third requirement.

Stone v. Graham (1980) involved a Kentucky state law that called for the posting of the Ten Commandments in every public classroom. The Supreme Court, in a narrow 5-4 decision, found the law unconstitutional, violating the establishment clause. According to the Court, the law failed the first part of the Lemon test. The Ten Commandments were of a religious nature and extended well beyond secular lessons (e.g. stealing, murder, etc.) with direct references to God and Sabbath.

Marsh v. Chambers (1983) was an intriguing decision involving the establishment clause where the Supreme Court, in a 6-3 decision, upheld the chaplainry practice before a session of a legislative body. The chaplainry practice is an offer of prayer at the beginning of a legislative session led by a chaplain paid by public funds. Contrary to previous decisions concerning the establishment clause, the Court did not apply the Lemon test and upheld the practice under the idea of historical custom. Prayers led by chaplains paid with tax dollars could be traced back to the First Continental Congress and the First Congress. Thus, the call for prayer under these circumstances did not violate the establishment clause and simply respected an old custom that had become part of American heritage.

In *Agostini v. Felton* (1997) the Court reversed an earlier decision in *Aguilar v. Felton* (1985) that had prevented public school teachers from teaching or tutoring in parochial schools. Under the old decision, any state supported tutoring program had to occur in public schools or in mobile units outside parochial schools, which amounted to heavy overhead and transportation costs. In the 1997 decision, the Court reversed its earlier decision and permitted public school teachers to tutor private school students at their private schools.

RELIGION IN SCHOOLS AND THE PLEDGE OF ALLEGIANCE

The Supreme Court has ruled in several cases involving religion in schools. In general, the Court has struck down religious teaching on public school grounds, posting of outright religious materials in classrooms, publicly funded and organized religious activities in the classroom (e.g. bible reading, prayer), and has set up the Lemon test to ensure that any religious initiated action has a clear secular purpose. Also, according to the Court, secular purpose, public health, and child benefit allow religious groups to work with and accept financial support from the state. For example, the Court has consistently upheld programs giving public aid to all schools (including parochial) where the students are the prime beneficiaries.

In terms of the teaching of religion to students in public schools, the Public Education Religion Studies Center at Wright State University offers these guidelines based on Supreme Court decisions [33]:

- The school may sponsor the study of religion but may not sponsor the practice of religion.
- The school may expose students to all religious views, but may not impose any particular view.
- The school's approach to religion is one of instruction, not one of indoctrination.
- The function of the school is to educate about all religions, not to convert to any one religion.

The list clearly stresses the need for a secular purpose in all religious teachings. Also note that the rulings on prayer in a public school only bar organized prayer sponsored by the school. Individual spontaneous prayer, for example in response to a tragedy such as September 11th, 2001, is not unconstitutional and the Courts have also allowed public schools to institute moments of silence [34].

Closely linked to the issues involving religion in schools is the ongoing debate over the Pledge of Allegiance, which has recently resurfaced as a high profile issue. The Court had already ruled, under the free speech clause of the First Amendment, that students could not be forced to recite the pledge of allegiance (*Barnette*, 1943). However, the old decisions (*Gobitis* and *Barnette*) involved Jehovah's Witnesses who viewed the flag as a "graven image." The controversy in modern times involves the phrase "under God" in the current Pledge of Allegiance.

Written in 1892 and adopted by Congress in 1942 as a wartime patriotic tribute, the Pledge did not originally include the phrase "under God". Rather, Congress added the phrase in 1954 in the context of the Cold War against "godless" communists. In *Newdow v. U.S. Congress* (2002), the 9th Circuit Appeals Court ruled, 2 to 1, that the phrase "under God" in the context of the Pledge of Allegiance violated the establishment clause of the First Amendment. Michael Newdow, an atheist, had challenged the constitutionality of requiring his daughter to watch and listen as her teacher and classmates recited the pledge every day, as required by the California Education Code [35]. The Appeals Court ruling in favor of Newdow caused an immediate uproar among both the American public and the government. Shortly after the 9th Circuit's ruling, the Senate, in a 99-0 vote, passed a resolution supporting the Pledge of Allegiance [36].

Senator Kit Bond (R-Missouri) commented colorfully, “Our Founding Fathers must be spinning in their graves. This is the worst kind of political correctness run amok. What’s next? Will the courts now strip ‘so help me God’ from the pledge taken by new presidents?” [37] Both Republicans and Democrats described the ruling as “stupid,” “outrageous,” and “nuts,”; and President Bush thought the decision was “ridiculous” [37].

In October 2003, the Supreme Court decided to accept and review the Pledge of Allegiance case. A final decision, expected by June 2004, will determine whether the Pledge of Allegiance represents a form of public prayer, instead of a strict patriotic oath. Justice Antonin Scalia, whose bias Newdow had challenged based on Scalia’s remarks at a Religious Freedom Day rally in January 2003, will not take part in the decision leaving the possibility of a 4-4 split. A tie vote would result in a ban of the Pledge in the schools under the 9th Circuit’s jurisdiction, which could potentially apply to the entire U.S. [38] For reference, a poll by the *First Amendment Center* and the *American Journalism Review* released in August 2003 revealed that [3]:

- 68 % of adults believed inclusion of “under God” in the Pledge of Allegiance does not violate separation of church and state.
- 26 % believed that the phrase violated separation of church and state.
- 76 % of respondents said the phrase “under God” is “primarily a statement related to the American political tradition.”
- 18 % said it was primarily a religious statement.

(based on survey of 1000 Americans between June 13-15. Margin of Error ~ 3.1%)

TEN COMMANDMENTS IN COURTHOUSES

Public display of the Ten Commandments remains an issue of continual debate, and has returned recently to the media spotlight. In July 2001, Alabama State Chief Justice Roy Moore secretly moved a 5280 pound monument of the Ten Commandments into the Alabama Judicial Building in the middle of the night [39]. Alabama attorneys

and three national civil rights groups sued Moore claiming the monument violated the establishment clause of the First Amendment. In 2002, a federal district court, under Judge Myra Thompson, ruled against Moore (*Moore v. Glasroth*) and ordered the monument's removal. In July 2003, the 11th Circuit Court of Appeals unanimously upheld the district court's decision and set a deadline for removal in August 2003. The case attracted significant media attention when Moore refused to obey the court order and his supporters crowded the steps of the Alabama building as well as the steps of the U.S. Supreme Court. Moore was suspended for refusing to obey the court order.

The article entitled, "In God I Trust: Why I'm standing up for the Ten Commandments in Alabama," by Roy Moore appears on several websites and other written media [40]. In this article, Moore claims that the Ten Commandments are the foundation of the judiciary process and law, and that "The Alabama Constitution specifically invokes 'the favor and guidance of Almighty God' as the basis for our laws and justice system." [41] In several strong statements, Moore speaks out against the direction and practices the nation has adopted regarding church-state issues:

"For half a century the fanciful tailors of revisionist jurisprudence have been working to strip the public sector naked of every vestige of God and morality. They have done so based on fake readings and inconsistent applications of the First Amendment. They have said it is all right for the U.S. Supreme Court to publicly place the Ten Commandments on its walls, for Congress to open in prayer and for state capitols to have chaplains--as long as the words and ideas communicated by such do not really mean what they purport to communicate. They have trotted out before the public using words never mentioned in the U.S. Constitution, like "separation of church and state," to advocate, not the legitimate jurisdictional separation between the church and state, but the illegitimate separation of God and state."

Finally, Moore concludes that as the Chief Justice of the Alabama Supreme Court, by oath he must uphold the laws of Alabama, which refer to the Almighty God. Moore closes by questioning the jurisdiction of the federal district court over the decisions of Alabama and its people based on the sovereignty guaranteed to the people and states by the Ninth and Tenth Amendments [41].

Moore appealed to the U.S. Supreme Court, which refused to hear the case. Previously, the Supreme Court had narrowly struck down a law posting the Ten

Commandments in school classrooms (*Stone v. Graham*, 1980) and in 2001 refused to hear a case concerning the display of the Ten Commandments outside a civic building. However, in the 2001 case, the justices were strongly divided on the issue and four justices delivered opinions despite the Court not hearing the case. Chief Justice William H. Rehnquist, writing for himself and Justices Antonin Scalia and Clarence Thomas, stated (similar to Moore's recent statements) that the Ten Commandments played a significant role in the development of the judiciary system and continues to be displayed publicly inside the Supreme Court building [42]. Justice John Paul Stevens, opposing the Commandments display, questioned how the direct references to "Almighty God" could not represent religious favoritism [42].

Moore's Ten Commandments monument was removed peacefully from the Alabama Judiciary building on August 27, 2003 and on November 13, 2003, the Alabama Court of the Judiciary voted unanimously to remove Moore as Chief Justice of the Alabama Supreme Court. Alabama Attorney General Bill Pryor (President Bush's nominee for the 11th Circuit, as detailed later in this paper), who publicly supported the display of the monument [43], prosecuted Moore on behalf of the state. For reference, a poll by the *First Amendment Center* and the *American Journalism Review* released in August 2003 revealed [3]:

- 62 % of respondents believe the government should be allowed to post the Ten Commandments in government buildings
- 35 % said the government should not be allowed.

(based on survey of 1000 Americans between June 13-15. Margin of Error ~ 3.1%)

THE FAITH-BASED INITIATIVE

In 1986, George Bush met with Christian evangelist Bill Graham and later commented that the meeting lit a religious "spark that...kindled into a flame". He soon stopped drinking, became heavily involved in Christian Bible study, and found God to be

of utmost importance in both his private and public life [44]. Largely because of this experience, Bush became a firm believer in the power of religion and faith to change and better peoples' lives, a belief that has culminated in his faith-based initiative.

Bush believes that less fortunate citizens require not only economic assistance, such as job training, welfare aid, and food programs, but also religious assistance--social programs must provide hope in addition to material survival goods. This "compassionate conservatism" implies that social services must emphasize personal responsibility and bring about moral change among the poor to have a lasting effect [44]. Though able to provide economically, Bush noted that government and secular agencies were unable to provide for the spiritual needs of their clients and thus were incomplete social providers. He felt that current social services focused only on financial assistance inevitably led to immoral behavior, noting that teen pregnancy and illegitimacy were made economically viable through welfare [44]. Bush believed that citizens and their churches were better aligned with the needs of their community and were thus better suited to providing social assistance [44]. Therefore, Bush sought to create a triangle of social networks involving the government, religious organizations, and secular charities to provide more complete social care.

With the belief that the government acting alone could not provide sufficient care to the poor, Bush began creating government partnerships with religious charities while governor of Texas in the 1990s. Under such arrangements, a religious group provides social services with funding assistance from the state. In Texas, two such programs were the Innerchange Freedom Initiative (IFI) and the Teen Challenge program. IFI is a prison bible study program created to reduce recidivism among participating inmates and will be discussed in detail as an illustrative example at the end of this section. The Teen Challenge program was designed to prevent drug and alcohol abuse through conversion to Christianity [45]. These programs tended to create collaboration rather than separation among church and state [44].

During the 2000 presidential election, government-funded religious social service programs were an integral component of Bush's platform [44]. He argued that religious groups should be allowed to compete fairly with secular charities for federal funding of social service providers and created the Faith-Based Initiative program. Indeed, a recent

Pew poll indicates that 73% of Americans believe faith-based funding is a good idea though at least that many fear such programs will result in inappropriate church-state relations [46]. The following sections investigate the formation of the faith-based initiative and its potential strengths and weaknesses.

Legal History of the Faith Based Initiative

Prior to 1996, charities affiliated with religious organizations had received substantial federal funding; such charities included the Salvation Army, Catholic Charities, and Jewish Family Services. However, these organizations were incorporated separately from their parent religion and thus provided the government with budgets detailing the use of the federal funds distinct from the religious organizations' activities budget. Furthermore, these charities were bound by the Civil Rights Act of 1964, forbidding them from personnel discrimination based on religious or sexual identity. The religious affiliates could not use government funding to directly or indirectly convert their clients nor could they deny service to potential clients on religious bases [44].

The welfare reforms of 1996 introduced the Charitable Choice provision [44]. The principles of this provision dictated that religious charities should be able to compete fairly with secular charities for federal funding, without federal discrimination among religions; that the religious charities shall retain their religious identity in governing boards and hiring practices; that clients must not be refused service based on their religious beliefs and that clients must have access to a non-secular service provider if desired; and that no direct government funding can be used for worship or proselytizing [47]. The significant difference between pre-1996 funding and Charitable Choice was that separate incorporation of the religious charity was no longer necessary. Under the new system, there was no easy means of examining budgets to monitor expenditures and thus no scrutiny to prevent abuse of government funding. Further, by recognizing the independence of the religious groups in providing social services, Charitable Choice allowed the religious providers to avoid Civil Rights hiring rules. Indeed, Charitable Choice seems to be virtually indistinguishable from the faith-based program envisioned by Bush.

Soon after Bush took office, he presented his proposal for the initiative to the government and the American public, prompting an immediate outcry from across the political spectrum. Many people saw the proposal as an attempt to reach out to the minority voters, especially African Americans and Hispanics communities that voted strongly against him in the election [44]. Liberals viewed the program as an attack on separation of church and state while conservatives and church leaders feared such funding would result in government interference in religious matters. Jewish organizations feared the anti-Semitic Nation of Islam would receive funding or that Baptists would receive funds to convert Jews [48] while many citizens feared funding sects such as the Branch Davidians or terrorist organizations [44]. This initial response began the controversy over the initiative that continues today.

To realize his new initiative, Bush created a faith-based office in the White House and in five cabinet agencies (Justice, Housing and Urban Development, Labor, Education, and Health and Human Services) [49]. In the summer of 2001, the bill was passed through the House but failed in the Senate largely because the proposal allowed religious charities to discriminate in their hiring practices [44]. In 2002, the bill was reintroduced as the CARE bill, with the adjustment that religious charities were no longer allowed to discriminate in their hiring. However, Congress members were still concerned about church-state issues and improper use of funds; these debates resulted in the death of the bill [44].

Frustrated by the lack of progress, on December 11, 2002, Bush signed an executive order enacting the faith-based initiative [50] and creating two more faith-based offices in Agriculture and the Agency for International Development [51]. In contrast to the CARE bill, Bush's model resembled Charitable Choice, allowing religious charities to discriminate in their hiring. Bush also emphasized the importance of providing funding to religious charities of all sizes, especially smaller inner city organizations better able to connect with their communities. He noted that the small organizations would require assistance from intermediary organizations to help them prepare grant proposals and administer their programs properly [44].

In February 2003, the CARE bill was reintroduced and passed in the Senate. The bill again prohibits religious charities from employment discrimination and is currently

being debated in the House [44]. Due to the conflicting proposals from the White House and the Senate, the future of the faith-based initiative remains uncertain, although government/religious charity alliances of some form will likely continue under the current administration.

Criticizing the Faith Based Initiative

Though well-intentioned, Bush's Faith-Based Initiative has many potential problems in theory and in practice, especially regarding inappropriate church-state relations.

Most prominently, the current form of the initiative allows religious charities to hire or fire employees according to their religious beliefs and apparent moral character. Title VII of the Civil Rights Act of 1964 includes a provision allowing religious groups to discriminate in their selection of ministers while a judiciary exemption rooted in an 1871 Supreme Court case allows churches complete independence in managing their internal affairs [44]. Although these exemptions apply strictly only to ministers or clergy of the church, recent Supreme Court cases have held that even church-sponsored affiliates can discriminate in purely secular positions [44]. Indeed, this discrimination issue was a main reason the CARE bill did not originally pass Congress, indicating that even Bush's fellow Republicans are uncomfortable with the current incarnation of the initiative.

Another problem with the current faith-based program is a lack of financial accountability of the religious charities receiving government funds. As noted above, religious charities receiving government funding before 1996 were necessarily separate corporate identities – thus, the funding was easily tracked. Under the current program, religious groups are not allowed to use government funding directly for worship or proselytizing. However, any religious group that provided a service before receiving federal funding will apply the funding directly to providing that social service; church money that was previously used to fund the social service can then be redirected to religious activities, thus allowing indirect funding of worship or proselytizing. With the introduction of a faith-based office in the Housing Development department, religious

groups can apply for government funding to construct new churches or maintain old ones if part of the church building is dedicated to providing a social service; the remainder of the building can then be used for traditional religious functions [44], [52]. By funding religious groups instead of corporations affiliated with religious groups, the faith-based initiative allows government funds to be used indirectly for religious functions, failing the Lemon Test described previously.

Though Bush claims otherwise, the initiative may not be an efficient means of providing social services. Because the new program emphasizes funding small, urban religious groups able to reach more troubled communities, these small groups will require training in the process of applying for and administering government grants [44]. Intermediary support companies will thus add another layer of bureaucracy to the system. Similarly, small religious centers may find it difficult to handle the initial influx of clients seeking services outside government agencies [44]. Additionally, the requirement that non-secular services be offered to clients who prefer non-religious providers essentially doubles the number of social service providers in the country, doubling costs for the same level of service.

Most relevant to the current report, the faith-based initiative violates the First Amendment in numerous ways. First, while Bush claims that no religions will be discriminated in contract decisions, he notes that he “cannot see how we can allow public dollars to fund programs where spite and hate is the core of the message” [44]. Unfortunately, such a declaration is extremely subjective; the Christian right may fear hate from Islam while Islam may fear persecution by Christians, thus each group would prefer to limit funding to the other based on Bush’s logic. Second, though the initiative requires that clients have access to secular services if preferred, clients in remote, rural locations will likely find alternative programs inaccessible (far away in distant centers). Those clients are thus forced to accept religious programs [44]. Third, polls indicate that many Americans prefer to fund larger traditional religious groups such as Catholic and evangelical Christian programs rather than less mainstream religions such as Buddhism or Nation of Islam [46]; therefore if the government is accountable to the citizens, certain religions will be preferred to others. Fourth, because the initiative emphasizes many small churches, monitoring service providers to ensure clients are not subject to

unwanted worship or conversion efforts will be extremely difficult [44]. Indeed, some government funded religious charities refuse to remove religious teaching from their programs: both Teen Challenge and the IFI prison program require their clients convert to Christianity to complete the programs. Finally, Bush's personal goals seem to be at odds with the claimed religious neutrality of the faith-based initiative [44], [53]. Bush claims that true, lasting change in life can only be brought about through religion and therefore he believes successful social services must introduce religion to the client's life; this belief is contradictory to the supposed religious neutrality of the initiative and clearly is not consistent with Justice Hugo Black's famous definition of the church-state relationship (*Everson*, 1947).

Bush's program also allows government interference in religions, resulting in government-religion entanglement that fails the Lemon Test. Many religions believe that proselytizing is a necessary part of their mission and that church members must adhere to similar beliefs and morals; by prohibiting a funded religious charity from proselytizing or hiring selectively, the government is prohibiting the free exercise of religion for those groups. Opponents of the faith-based initiative fear churches will no longer be free to speak out against the government for fear of losing their funding [44]. Similarly, religious groups fear that the overhead in applying for and administering government money will necessitate a shift in church operation from traditional religious activities to modern business practices [44]. Finally, with finite funding, competing religious groups will not cooperate but compete directly with each other, possibly creating inter-religion animosity.

A final criticism of the initiative is perhaps the most relevant: no evidence exists showing that religious sponsored social services are any more effective than secular programs [44], [53]. A recent study of job placement programs in Indiana showed that there was no difference in job placement rates or starting wages [54] between religious or secular programs. Rather, the purported efficacy of religious programs is based on the individual religious experiences of Bush and many of his advisors.

Innerchange Freedom Initiative – an Early Faith-Based Program

The efficacy of the new program instituting government and religious charity collaboration is difficult to judge, especially since the federal program has just begun. However, one of the programs Bush began in Texas was recently evaluated after five years of operation; as the only objectively evaluated program currently available, a review of this Innerchange Freedom Initiative (IFI) illustrates the problems with the faith-based initiative discussed above.

In 1997, the Prison Fellowship under Charles Colson (a close friend of then-governor Bush [48]) created the IFI in a prison near Houston Texas [55]. The IFI is a “Christ-centered” support program to reduce recidivism including education, job training, religious instruction, and counseling for inmates beginning approximately 2 years before release and ending approximately one year after release [55]. The many potential pitfalls of the faith-based initiative are brought to bear in this state program.

As part of the Prison Fellowship organization, employees and volunteers of the IFI must sign a “Statement of Faith”, certifying that they subscribe to traditional Christian beliefs and morals [56]: employees are thus subject to discrimination based on religion.

An essential component of the IFI program is that clients convert to Christianity before graduating. Though inmates of all religions are welcome to join, they must renounce their previous faith to succeed and remain in the program [55]. Indeed, Colson notes that the primary goal of the IFI program is to convert inmates to Christianity while the secondary goal is to reduce recidivism [55]. In this sense, the government funding is used directly to further Christianity.

The IFI program also coerces inmates to join the program by offering many advantages unavailable to ordinary inmates including special work-release and early release programs [57]. Under an identical program in Iowa, participants also enjoy bathroom privacy, keys to their cells, big-screen TVs, free phone calls, exemption from menial prison jobs, and access to art supplies and computers [48]. Clearly, prison life is improved in the IFI program relative to outside the program.

Regular prison programs also suffer because of the IFI program. Money generated in the prison through various inmate consumer sales (basic necessities) and work programs are redirected to funding the IFI program at the expense of other, secular activities [48].

In 2003, Texas reviewed the success of the IFI program for the first time [57]. Prison Fellowship claimed the review showed graduates of the program had an 8% recidivism rate [58], below the 20% rate of a similar control group. Unfortunately, a more detailed review of the report showed this was a gross misrepresentation of the facts. Graduation from the program requires convicts to hold a job for at least three consecutive months [59]; however, continual employment itself is perhaps the strongest factor in reducing recidivism [58]. In addition, Christian ministers were given the power to graduate inmates. Therefore, by selecting out poor performers, the IFI was able to pronounce a low recidivism rate of 8% (this rate was calculated by excluding over half of the inmates originally enrolled in the program). However, the progress report showed that the recidivism rate for inmates who participated in the program but did not graduate was over 30%. Thus, including all participants in IFI produces an overall recidivism rate of 24% for the program [58], which is higher than the control group.

The Prison Fellowship has now expanded the IFI program to include Texas, Iowa, Kansas, and Minnesota with plans to grow further. These social service programs practice discriminative hiring, coerce inmates into converting to Christianity, and operate at the expense of other secular prison programs, largely through government funding; and thus far, they have yet to show results exceeding any similar secular programs. These IFI programs highlight nearly all of the potential church-state problems associated with the current faith-based initiative.

THE CHRISTIAN RIGHT IN THE U.S.

Christian lobby groups play an important role in U.S. politics and have lately exercised increasing influence over domestic policy due to strong lobby efforts and a more receptive administration. In this section, the primary U.S. Christian activist

organizations are reviewed including their objectives and means. In addition, many of President Bush's political appointments and judicial nominations that are influenced by these groups or that align well with their ideals are discussed.

In addition to preaching Christianity to their followers, U.S. Christian groups have large legal departments to promote Christian rights and strong lobby groups dedicated to protecting and advancing Christian legislation in the United States government. Of the many Christian groups in the United States, the larger organizations are headed by Pat Robertson, Jerry Falwell, and James Dobson [60]; these groups are discussed next.

Pat Robertson

Marion Gordon "Pat" Robertson began building his Christian empire in 1960 when he created the Christian Broadcasting Network (CBN) [61]. The goal of the CBN is to prepare the U.S. for the coming of Jesus Christ and to establish the Kingdom of God on earth [62]. Currently, the CBN includes a variety of Christian-based programs including newscasts and Robertson's program, "The 700 Club". The network is found in over 180 nations in over 71 languages and "The 700 Club" reaches over 1 million viewers each day [62]. To further spread his gospel, Robertson founded Regents University in Virginia in 1977 as a Christian-centered graduate school [61]. According to Robertson, a regent is one who rules in the absence of a sovereign; therefore, the Regents University prepares students for the coming of the sovereign, Jesus Christ [63].

Besides these efforts to spread Christianity, Robertson founded a legal entity to defend Christian values in current legislation. His legal wing, the American Center for Law and Justice (ACLJ), was created in 1990 with the mission of defending Judeo-Christian values and protecting the First Amendment rights of religious peoples [61]; that is, to "undo the damage done by almost a century of liberal thinking and activism" [64]. The ACLJ actively files suits on behalf of Christians to defend man-woman marriage, anti-abortionist rights, church access to public facilities, and prayer and bible study in public schools. The ACLJ has also been involved in defending the public display of the Ten Commandments in various states and in defending the Pledge of Allegiance [64]. Most recently, the Center has supported President Bush's political nominations,

championing the rights of groups to discriminate against homosexuals, and attempting to revoke the ability of the Supreme Court to restrict public display of the Ten Commandments (jurisdiction stripping) [62]. The lead council for the ACLJ has written at least two books describing the rights of Christians and Christianity in the U.S. government [64].

Robertson also created a lobby group to change U.S. legislation to better reflect Christian ideals – the Christian Coalition is currently the largest religious lobby group attempting to reorder the U.S. under a Christian government [65]. In 1989, after his failed attempt at the Republican Presidential nomination, Robertson created the Christian Coalition [66] with the goal of bringing pro-life and pro-family Christian values to the U.S. government [67]. The Coalition regularly promotes conservative legislation in the House including a strictly heterosexual definition of marriage [68], support for public display of the Ten Commandments, and support for the preservation of the Pledge of Allegiance. Recently, the Coalition attempted to overturn a Florida law that banned discrimination against homosexuals, claiming that the case concerned “sin and Biblical morality” [69]. The Coalition also enjoys close ties with many leading Republicans who regularly speak at Coalition meetings including President Bush, U.S. Attorney General John Ashcroft, Trent Lott, Dick Armey, Tom DeLay, and Dennis Hastert [70], [71].

These different groups of Robertson’s empire have been extremely influential in U.S. politics, especially with the Republican Party. Through the Coalition and ACLJ, U.S. law is regularly being challenged to promote the creation and interpretation of Christian ideals in new and existing legislation. However, Robertson also uses the Coalition to promote various politicians during election campaigns through voter’s guides distributed to Christian churches throughout the country. In 1990, the Coalition sent out 750 000 guides during North Carolina elections; in 1992, they sent out 40 million guides to reelect President George Bush; in 1994, 30 million guides were sent to encourage voting Republican in Congressional elections; in 1996, 45 million guides were created for the Presidential election; in 1997, guides were sent out for the attorney general election in Virginia; in 1998, 36 million guides were created for Congressional elections [66]; in 2000, more guides were sent for the presidential election [69]; and just recently, 70 million guides were created for the November 2003 elections [67]. These guides are

created to favor conservative Republican candidates on the ballots and they are distributed to churches with instruction that the presiding pastor not only distribute the guides but also review them during church services [69]. The vice president of the Christian Coalition noted that the guides are “the most effective tool to educate voters about candidates who deserve Christian support” [69]. Interestingly, after numerous complaints, the tax-exempt status of the Coalition was revoked for providing these voter guides because such actions conflict with the requirement that tax-exempt organizations not engage in politics [69]. In response, the Coalition and ACLJ (in addition to other Christian legal and lobby groups) are currently encouraging several House Members to support a bill that would allow tax-exempt religious groups and churches to engage in politics without losing their tax-exempt status [72].

Finally, Robertson uses the CBN and his staff to encourage voters to support various government nominations and election candidates. Perhaps most famously, Robertson recently encouraged his CBN viewers to pray for the early deaths of three Supreme Court Justices after the Court overruled Texas’ sodomy laws. Robertson stated that “One justice is 83 years old, another has cancer, and another has a heart condition” [73]. By removing three liberal judges, the government would be able to appoint new conservative judges in their place. In the 2000 presidential primaries, Robertson met with Bush and regularly denounced Bush’s only Republican competitor, John McCain, for employing a campaign manager whom had once spoken against the Christian Right involvement in U.S. politics [70]. Robertson’s staff made many phone calls to voters in various states during the primaries, demonizing McCain and his campaign. Soon after Bush’s election in 2000, Robertson also urged the president and his followers to promote John Ashcroft (a devout Christian originally sponsored by Robertson for presidency) as attorney general [74].

In the 2000 presidential primaries, Bush won every state where more than 15% of the population identified themselves as members of the Religious Right [70]. According to Robertson, “Without us, I do not believe that George Bush would be sitting in the White House or that the Republican Party would be in control of the United States House of Representatives” [62]. Regardless of the truth of this statement, Robertson’s Christian

empire has regularly proved itself to be a strong political force in the United States, able to reach millions of conservative Christian Americans.

Jerry Falwell

Beginning in 1956 when he became a Baptist minister, Jerry Falwell has built the Jerry Falwell Ministry, another large Christian organization in the U.S. In addition to providing resources and services promoting Christianity, his ministries currently control the Liberty Channel. This channel is a Christian television network reaching millions of viewers that is dedicated to providing Christian programming for children and adults as well as airing Falwell's "Old Time Gospel Hour", the longest running televised church service [75], [76]. Falwell also created Liberty University, another Christian-based university requiring all students to adhere to conservative Christian ideals [77] and to serve God in their respective careers [75]. Bush spoke at the University during his presidential campaign in 2000 [78].

In addition to promoting Christianity among his followers, Jerry Falwell and his ministries attempt to affect change in U.S. legislation and politics. Similar to Robertson's Christian Coalition, Falwell created the Liberty Council, whose goal is to restore Christian values to American life [79]. As with Robertson's group, the Council regularly fights for church access to public facilities, opposes all forms of abortion, promotes prayer and bible study in public schools (allowing teachers to attend after school bible study programs), and fights to allow public display of the Ten commandments [79]. Additionally, Liberty Council challenges homosexual rights, fighting vehemently against same-sex unions and child custody for homosexuals. The council also objects to the establishment of any gay-themed clubs in school and especially protested the creation of the Harvey Milk school for gay students in New York [80]. The council has also fought strongly to allow students to proselytize in school and on campuses, assisting the Campus Crusade for Christ on several occasions. The lead counsel for Falwell's legal group is a devout Christian who regularly argues against separation of church and state. Indeed, the goals of Falwell's council and Robertson's Coalition align well enough that the two have combined forces on some cases [79].

Besides interpreting legislation, Falwell also uses his resources to influence politics in the U.S. From 1979 to 1984, Falwell headed the Moral Majority, registering 8.5 million Christian voters – the group claimed responsibility for electing Regan twice [81]. In 1997, Falwell preached to Virginian church-goers about various candidates in the Republican party who deserved the Christian vote and sent letters to congregations around the state, instructing pastors to do the same [82]. In March 2000, Falwell resurrected the Moral Majority in a new program: People of Faith 2000 [83]. The goal of this new initiative was to “reclaim the U.S. as one nation under God” by registering 10 million conservative religious church members to vote in the 2000 presidential election [81]. Falwell sent out 28 million voter packages to 200 000 churches around the country, instructing pastors to take time from their regular Sunday services to review the packages with their congregation [84] and reinforce the “Christian Duty” to vote [81]. Although officially non-partisan, Falwell admitted that the registration movement was to ensure Gore was defeated in November 2000 [84]. Finally, after the 2000 presidential election and during the Florida recount, Falwell called on his supporters to sign a petition to end the recount and declare Bush the victor [85].

Falwell has been investigated and fined by the IRS and Federal Election Committee for using his tax-exempt organizations to promote the Republican party [86]. Although of apparently less prominence than Robertson, Falwell has clearly created another large Christian group with significant influence in U.S. politics.

James Dobson

Although not officially a clergyman of any religion, James Dobson is perhaps the most prominent Christian figure in U.S. politics today. Dobson is a medical doctor specializing in child development who has written numerous books on child-rearing and family-planning [87]. He believes that the current poor state of U.S. families can only be remedied by a bible-based family; in 1977, Dobson created the group Focus on the Family to achieve that goal. Focus on the Family has grown to include 74 ministries and produces numerous magazines, radio programs, television programs, and video series, all seeking to spread the gospel of Jesus Christ while concentrating on traditional values and

building strong families [87]. Indeed, Dobson’s regular radio programs reach over 200 million listeners worldwide on over 6000 stations in the U.S. and 116 other countries. Through the Focus on the Family publications and productions, Dobson seeks to promote his views of family: allowing the Ten Commandments and prayer in public schools and buildings; claiming that homosexuality is “reversible” and “preventable”; asserting that marriage is between a man and woman only and gays should not be allowed unions of any sort; making all forms of abortion illegal; and many other sentiments echoed by the Christian Coalition, the Liberty council, and other conservative Christian groups [87], [88]. The Focus on the Family publications also regularly invite members to support various government bills, most recently bills in legislature to revoke the right of courts to rule in religious freedom cases (giving power to the states instead) and the Marriage Amendment Bill to restrict marriage to heterosexual couples [87]. To these political ends, Focus on the Family organizes rallies across the country in support of various Christian policy issues. Finally, Focus on the Family also includes a school, wherein students of U.S. universities are invited to study on the Family campus for one semester, learning how to incorporate Jesus into their lives and churches [89].

Beyond the Focus on the Family productions, Dobson also created the most prominent Religious Right lobby group in the country: the Family Research Council (FRC) [90]. The FRC was created in 1983 to “drive the debate on family issues” by linking conservative researchers working for the council with American politicians [91]. The council promotes the Judeo-Christian ideology as the only basis for a just and stable society, arguing against abortion, contraception, gay rights, the feminist movement, and arguing for religious presence in schools and public institutions among many other Christian conservative ideals [91]. Indeed, the clearly Christian bent of the group was evidenced in 2000 when, after a Hindu priest opened session in the House of Representatives, the FRC issued a statement claiming “Our Founders expected that Christianity – and no other religion – would receive support from the government” [90].

Clearly, Dobson’s actions are similar to those of Pat Robertson and Jerry Falwell regarding their ministries and lobby groups. However, except for pressing Bush to nominate John Ashcroft for the position of Attorney General [92], Dobson appears to refrain from assisting political campaigns. Rather, in 1997, Dobson opted to forego the

entire election process and solicit the help of politicians already elected into the U.S. government. In that year, Dobson criticized the Republican party, noting that they had not done enough to promote Dobson's family values agenda [93]. In response, the Values Action Team (VAT) was created in 1998 and run from Tom DeLay's office – the group currently includes approximately 20 Members of Congress [94]. The VAT was formed at the urging of the FRC to coordinate the efforts of external conservative religious groups such as the FRC and the Christian Coalition with like-minded Members of Congress [91], [95]. The goal of the group is to convert the ideas of the external groups into U.S. legislation. The VAT regularly introduces bills to ban abortion, restrict gay rights (especially unions), restrict birth control (especially to minors), fight pornography, and promote religion in life. Recently, the VAT has focused on stripping the courts of their ability to rule in religious freedom cases, allowing tax-exempt religious organizations to engage in politics, and supporting Bush's judicial nominations [95], [96]. With the VAT, Dobson is in a much more powerful position than Robertson or Falwell to translate his Christian ideals into U.S. legislation.

Although there are numerous other Christian groups in the U.S. including those of Charles Colson and Franklin and Bill Graham, the preceding discussion of organizations headed by Robertson, Falwell, and Dobson indicate the considerable influence the Christian Right wields in U.S. politics and government. In addition to preaching their Christian values to followers of their ministries, these Christian groups campaign on behalf of conservative candidates and even influence the actions of current Members of Congress. These groups are actively pursuing their goal of a wholly Christian United States.

Christianity in the Current Administration

The Bush Administration itself is currently promoting the inclusion of more conservative Christians in the highest levels of the U.S. government. President Bush recently nominated several controversial judges to various federal appeals courts. After the Pledge of Allegiance was ruled unconstitutional in 2002, Bush stated that “We need

common sense judges who understand that our rights were derived from God and those are the kind of judges I intend to put on the bench” [97].

Janice Rogers Brown was nominated by Bush for a seat on the DC Court of Appeals, an appointment that is often viewed as a precursor to a U.S. Supreme Court seat [98]. Brown has long criticized separation of church and state, noting that the Fourteenth Amendment does not apply the Bill of Rights to the states [99]--individual states are free to choose their own church-state relationship. Michael McConnell, a former law professor who published frequently in the church-state separation field [100], was nominated for a seat on the U.S. 10th Court of Appeals [101]. McConnell has argued to allow religious, government funded programs to discriminate in its hiring practices and for religious sales to be exempt from taxes. He has also argued against the Fourteenth Amendment, in addition to frequently attacking abortion legislation [102]. McConnell has also argued that taxpayers should pay for religious groups, that schools and public places should include prayer, and that religion is inseparable from other components of life [103]. He even promoted his own constitutional amendment to relax church-state separation [101]. Alabama Attorney General Bill Pryor was nominated by Bush for a seat on the 11th circuit court of appeals [104]. Pryor, in cooperation with Pat Robertson, has frequently attacked any restrictions on prayer in public schools [105], has fought gay rights (comparing gay relations to incest, pedophilia, and prostitution), has argued against separation of church and state, has used his public office to advance Catholicism, and has argued that “the challenge of [the 3rd millennium] will be to preserve the American experiment by restoring its Christian perspective” [106]. Indeed, many Democrats question Pryor’s ability to separate his strong Catholic views from a just application of the law [104]. These three judges illustrate that Bush is attempting to fill vacant court seats with conservative Christians – though McConnell’s nomination was approved, the Democratic party continues to block Brown and Pryor [107] for their extremely conservative ruling histories.

In addition to judicial nominations, President Bush has also promoted many conservative Christians to powerful positions in the government. Most notably, Bush nominated John Ashcroft for U.S. Attorney General soon after the 2000 presidential election. In 1998, Ashcroft was Pat Robertson’s favored presidential candidate and

appeared on “The 700 Club” to criticize the Supreme Court for upholding separation of church and state [74]. As a senator, Ashcroft helped draft the original Charitable Choice legislation and was praised by the Religious Right. In 1996, Ashcroft received the “Christian Statesman of the Year” award from TV preacher James Kennedy because Kennedy claimed Ashcroft allowed God to determine the legislation Ashcroft promoted [74]. Ashcroft is extremely anti-abortion, argues for school prayer, and believes the government should support and endorse religious activities [74]. In 1999, Ashcroft addressed the graduating class of Bob Jones University, stating that the U.S. has “no king but Jesus” [108]. Soon after Bush’s election, James Dobson began pressuring Bush to nominate Ashcroft for the Attorney General position while Pat Robertson and Jerry Falwell asked their followers to urge Congress to accept the nomination [92]; the effort eventually succeeded in Ashcroft attaining his current position.

In 2001, the White House nominated J. Robert Brame for a position on the National Labor Relations Board even though Brame was a member of American Vision and the Plymouth Rock Foundation. These extreme Christian organizations are dedicated to replacing the democracy in America with biblical rule, demanding women subordinate to men and that homosexuals suffer the death penalty [109]. Even after Brame withdrew from consideration amidst the resulting public outcry, the White House remained hopeful he would reconsider [110].

Finally, the current minister of education, Rod Paige, is a Baptist deacon who believes that public schools composed of students from all different faiths lack a strong value and moral system. Rather, Paige believes that public schools would be better if they adopted Judeo-Christian values [111].

Conversely, many in the Bush administration believe that the president himself has been chosen by God to lead the United States. While speaking at Falwell’s Liberty University, the Deputy Director of White House Public Liaison, Tim Goeglein, stated that “George Bush is God’s man at this hour” [112]. Similarly, after Bush’s September 20th, 2001 address to Congress, Bush’s speechwriter, Mike Gerson, told the President “God wanted you there.” [113].

A 2001 Washington Post article speculated that Robertson, Falwell, and Dobson have recently receded from public view because they believe the Christian Right is firmly

entrenched in the current administration and there is no longer any need to oppose the government [60]. Furthermore, the article asserts that many conservative Christians believe Bush’s presidency is part of a divine plan. Religious conservatives are clearly pleased with Bush’s judicial nominations and political appointments, which serve to increase the power and visibility of Christianity in the U.S. government throughout all three branches of government: the Religious Right’s dream of a Christian United States is being realized.

AMERICAN PUBLIC OPINION CONCERNING RELIGION AND THE STATE

A few informative surveys conducted by the Pew Forum on Religion & Public Life [44] provide useful insight into American public opinion concerning religion. Selected surveys are included below (based on registered voters):

It is important for the president to have strong religious beliefs [115]	
Agree	70 %
Disagree	27 %
Don’t Know	3 %

Expression of faith and prayer by political leaders [46]	
Too much	21 %
Too little	41 %
Right amount	29 %
Don’t Know	9 %

Government funding of faith-based organizations [116]	
Favor	75 %
Oppose	21 %
Don’t Know	4 %

Give government funding to religious organizations [115]	
Favor	54 %
Oppose	44 %
Don't Know	2 %

Allow religious organizations to apply for funding [115]	
Favor	67 %
Oppose	29 %
Don't Know	4 %

In general, the majority of voting Americans feel comfortable with political leaders who have and express publicly their religious faith. Also, voters favor making public aid available to religious organizations, and especially favor funding religious groups that provide community services. However, there is less support for aid towards non-Christian groups--only 38 % favor government funding to Muslim Mosques or Buddhist Temples [46]. Finally, in a March 2002 survey, 80 % of voting Americans feel that religious has an overall good influence on the world and 51 % say that there is too little religion in the world [117].

FIRST CONCLUDING OPINION: THE U.S. MAINTAINS A HEALTHY CHURCH-STATE RELATIONSHIP

The United States government is defined by the U.S. Constitution and derives its power from the American people. Article VI of the Constitution outlaws any religious test for public office and the First Amendment guarantees a person's freedom of religion in the establishment clause and free exercise clause. Interpreting the law, the Supreme Court has decided several cases based on the application of the First (and Fourteenth) Amendment. Whether holding tight to an absolute wall of separation of church and state or siding with permissible church-state interaction for child benefit, secular purpose, or compelling state interest, the Court has upheld the spirit of religious tolerance on which the nation was based. While Supreme Court decisions and government legislations have

been and remain controversial at times, disruptive effects from church-state intermixing are largely absent in American history. The desire for separation of church and state stems from corruption, wars, and general fanaticism illustrated in nations, past and present, where religion plays a strong role in state affairs. The U.S. has experienced internal conflict over issues such as state's rights and colonialism and has entered wars concerning issues such as trade, imperialism, and political agenda (e.g. communism); however the U.S. has not experienced serious internal violence stemming from religion nor entered a holy war promoting a religious cause. The concept of freedom of religion remains ingrained in the American way of life, and freedom of religion has and will always be "...the First Freedom from which all others flow." [2]

In terms of government practice and actions, the U.S. government is elected by, serves, and is answerable to the American people. An elected official must represent his or her constituency; and serving the ideas and beliefs of the people is the purpose of government. Thus, public officials, especially those elected from strongly religious constituencies, can be expected to express their religious faith publicly and to incorporate religious morals in their jobs. This scenario brings religion into the government arena, but in the form of serving a constituency, not religious discrimination. While President George W. Bush's public displays of his religious faith and his strong belief in Christianity's role for a more prosperous nation is disturbing to some, it does not eliminate the fact that the president was elected by the people. Christian leaders such as Pat Robertson, Jerry Falwell, and James Dobson have strong ties and influences within the government, however members of the government are still elected and answerable to the American public. In the end, the American people hold the power to remove those who become overzealous in their religious actions and their religious programs can be altered or terminated by newly elected officials.

Even if there exists a phase in which the people elect more religious leaning members into influential positions, the U.S. governmental system will still limit any action that does not gather diverse support. For example, despite strong party support of the Bush Administration and a Republican majority in the Senate, Democrats have successfully blocked several of President Bush's judiciary nominees deeming them far too conservative. A specific example related to religious issues is Alabama Attorney

General Bill Pryor's nomination to the 11th Circuit Court of Appeals. Pryor has ties to Pat Robertson and had previously supported the public display of the Ten Commandments. A filibuster by Democrat senators blocked Pryor's approval [107]. Pryor's story is particularly interesting because in his duty as Alabama's Attorney General, Pryor had to prosecute political ally Roy Moore for Moore's refusal to obey a court order to remove a Ten Commandments monument from the Alabama Judiciary Building. Pryor also had to organize the actual removal of the monument. Thus, even in Alabama where Moore was the State Court's Chief Justice and with Pryor as an Attorney General, where "God" is explicitly referenced in the state constitution, the controversial issue for public display of the Ten Commandments could not escape the reaches of the First Amendment.

Another concern is the activity of the Christians groups and the Christian Right. While the political influence exerted by Christian leaders such as Pat Robertson may be alarming, it is an inevitable part of the political process. Christian groups represent a large conservative Christian constituency and their broad efforts to educate voters about their candidates and religious ideology does not represent a catastrophic threat to healthy church state separation. Some voter's will find the Christian Right's political platform as morally correct, while others will look upon it as alarming fanaticism. The people retain their right to vote and the influence of Christian groups and people like Pat Robertson still derives from the American people.

A large majority of Americans today value religion as an important part of their lives, and most feel comfortable seeing similar expressions of faith in their political leaders. Not surprisingly, politicians will not hesitate in expressing publicly the role religion plays in their lives and careers. Religion is an integral part of the lives of many Americans, and thus will be a part of the government elected to represent the people. At the same time, the foundation of religious tolerance and freedom in the U.S. Constitution and Bill of Rights remains a centerpiece of American ideology. Religion in the lives of the people, the government elected by and representing the people, and U.S. law upholding freedom of religion has and will continue to maintain a healthy separation of church and state as defined by the American people.

SECOND CONCLUDING OPINION: THE U.S. DOES NOT MAINTAIN A HEALTHY SEPARATION OF CHURCH AND STATE

Although the United States was founded on the premise of religious freedom, the nation has struggled with appropriate church-state relations throughout its history. As evidenced by the recent controversy regarding public display of the Ten Commandments and continued battles over the Pledge of Allegiance, many politicians in the U.S. include religion in their platforms and attempt to integrate their religious beliefs into U.S. law. Strong Christian lobby groups affect U.S. politics through campaign efforts or by guiding legislation via sympathetic legislators. Indeed, the current administration appears to be changing the core of church-state relations from separation to collaboration, as seen in the recent faith-based initiative and the current administration's various political appointments and nominations. This continual erosion of the wall of separation of church and state in the United States will lead to disastrous consequences for the nation.

The most immediate and economically obvious result of government sponsorship of religion is unnecessary congestion of the judicial system. The faith-based initiative has already resulted in numerous lawsuits brought against the government alleging favoritism for religious social service providers versus secular programs and government favoritism for specific religious groups. In addition, controversial religious issues such as prayer in public school and public display of the Ten Commandments continually clog the court system. Increasing government-religion entanglement only exacerbates legal battles, loading down an already over-burdened judicial system.

Government involvement in religious operations will also have adverse effects on religious groups. When these groups accept government funding, they are at least partially accountable to the government; many religious leaders fear such relations will allow the government to indirectly influence churches, eliminating their freedom of operation. Furthermore, because the efficacy of religious-based social services has not been proven, sharing funding with those programs may ultimately reduce the quality of social care available in the country.

Religious involvement in politics is similarly undesirable. Religious lobby groups that align with an elected member of Congress and shape proposed legislation diminish the voices of citizens in the politician's constituency. Furthermore, religious groups should not attempt to influence their members' votes. Support for candidates during a religious service could potentially impart a sense of religious duty to voting, compromising the free choice of church members at the polls.

The most poignant argument against government-religion relations is simple: such actions alienate large numbers of Americans, preventing them from participating in their own government. As President Bush pushes Christianity in the U.S. government by frequently including Christian references in his speeches and nominating judges to support a Christian interpretation of U.S. law; and as Christian lobby groups succeed in including Christian ideals in U.S. legislation, non-Christians lose their voice in government. Indeed, even if the government does not favor one religion, sponsoring *any* religion alienates every American who feels they can fulfill their spiritual needs outside of an organized religion.

The negative effects of government sponsorship of religion and religious involvement in the political process are innumerable. Arguments over government favoritism, control of religion, discrimination by religious identity, and discrimination against non-religious citizens end when the government removes itself entirely from religious matters and religion refrains from politicking. As a supposed champion of plurality, the United States must encourage every citizen – regardless of his or her religious identity or lack thereof – to participate in governing their nation; the government and especially the current administration must reverse its trend of increasing government and religious entanglement.

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