

**Religion and the First Amendment:  
A March, 2005, presentation to the League of Women Voters**

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This year a bill in the Virginia General Assembly would have changed state law on religious liberty. In support of the bill, "Jack Knapp, executive director of the Virginia Assembly of Independent Baptists, said he believed court decisions have made the amendment necessary. 'We've come to the place now where the Christian religion is not even treated as an equal partner in religious liberty. We've come to the place where to express anything Christian is now against the law in the public forum,' he said." *Virginian-Pilot* 2/9/05, p.20

The First Amendment has two clauses on religious liberty - Establishment and Free Exercise. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These two clauses are in tension, creating a sort of tightrope for government to tread. Minority religions have protested infringements on their free exercise and recently, as in the Virginia bill, so have Christians. Civil liberties groups have protested funding plans that verged on Establishment, and viewed the Virginia bill as too close to an Establishment of religion.

Courts, in debating how to keep government balanced on the high wire, have come up with the Lemon Test. Government action violates the Establishment Clause unless it:

1. Has a significant secular (i.e., non-religious) purpose,
2. Does not have the primary effect of advancing or inhibiting religion, and
3. Does not foster excessive entanglement between government and religion.

<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/lemonetest.html>

You have various background documents you can refer to as we discuss the following questions.

- o Has time changed interpretation of the First Amendment<sup>2</sup> and the Virginia Statute on Religious Freedom<sup>3</sup>?
- o Do these laws still meet our needs?
- o Does "free exercise" or Virginia's "freedom to profess" include speaking to students in a public school?
- o Would the bill be better if modified in some way? If so, how?
- o Is this bill different from the Ten Commandments monument case now before the Supreme Court?
- o How can we best explain our understanding of the tension between "establishment" and "free exercise?"

Resources:

1. The LWV National Position says, "The League of Women Voters of the United States believes in the individual liberties guaranteed by the Constitution of the United States.

The League is convinced that individual rights now protected by the Constitution should not be weakened or abridged." Announced by the National Board, March 1982.

## 2. US Constitution, Amendment I:

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.

<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/estabinto.htm>

<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/freeexercise.htm>

Also, US Constitution, Article VI: "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

[http://www.archives.gov/national\\_archives\\_experience/charters/constitution.html](http://www.archives.gov/national_archives_experience/charters/constitution.html)

## 3. Virginia Statute for Religious Freedom

Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as it was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course

judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them:

Be it enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish enlarge, or affect their civil capacities.

And though we well know that this assembly elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies, constituted with powers equal to our own, and that therefore to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act shall be an infringement of natural right.

Source: *W.W. Hening, ed., Statutes at Large of Virginia, vol. 12 (1823): 84-86.*  
<http://usinfo.state.gov/usa/infousa/facts/democrac/42.htm>

#### 4.HOUSE JOINT RESOLUTION NO. 537

Offered January 12, 2005

Prefiled October 15, 2004

*Proposing an amendment to Section 16 of Article I of the Constitution of Virginia, relating to free exercise of religion.*

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Patrons-- Carrico, Abbitt, Armstrong, Athey, Black, Bryant, Byron, Cole, Cosgrove, Cox, Dudley, Hargrove, Hogan, Hugo, Hurt, Ingram, Janis, Johnson, Jones, S.C., Kilgore, Landes, Lingamfelter, McDonnell, McDougle, Nutter, Parrish, Saxman, Sherwood, Ware, R.L., Weatherholtz and Welch; Senator: Puckett

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Referred to Committee on Privileges and Elections

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RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 16 of Article I of the Constitution of Virginia as follows:

## ARTICLE I

Section 16. Free exercise of religion; no establishment of religion.

That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities.

*To secure further the people's right to acknowledge their faith according to the dictates of conscience, neither the Commonwealth nor its political subdivisions shall establish any official religion, but the people's right to exercise their religious beliefs, heritage, and traditions on public property, including public schools, shall not be infringed; however, the Commonwealth and its political subdivisions, including public school divisions, shall not compose school prayers, nor require any person to join in prayer or other religious activity.*

And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

8.Amended: To secure further the people's right to acknowledge *God* according to the dictates of conscience, neither the Commonwealth nor its political subdivisions shall establish any official religion, but the people's right to *pray and to recognize* their religious beliefs, heritage, and traditions on public property, including public schools, shall not be infringed; however, the Commonwealth and its political subdivisions, including public school divisions, shall not compose school prayers, nor require any person to join in prayer or other religious activity.