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SEPARATION OF CHURCH AND STATE

Protecting Religious Liberty in America Today

THE AMERICAN JEWISH COMMITTEE

The American Jewish Committee protects the rights and freedoms of Jews the world over; combats bigotry and anti-Semitism and promotes human rights for all; works for the security of Israel and deepened understanding between Americans and Israelis; advocates public policy positions rooted in American democratic values and the perspectives of the Jewish heritage; and enhances the creative vitality of the Jewish people. Founded in 1906, it is the pioneer human-relations agency in the United States.

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THE AMERICAN JEWISH COMMITTEE

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Foreword

The American Jewish Committee (AJC) was founded with a mandate to protect the civil and religious rights of Jews. It is the conviction of AJC that those rights will be secure only when the rights of all Americans are equally secure. Thus AJC has been a vigorous proponent of these rights, not only for Jews, but for people of all faiths whose religious beliefs or practices are threatened. From its inception in 1906 as the pioneer human relations agency in the United States, the American Jewish Committee has been committed to the protection of religious liberty encompassed in both of the religion clauses found in the First Amendment to the Constitution.

The First Amendment guarantees the freedom to practice one's religion without interference from the state, and at the same time, forbids state establishment of religion. Together, these clauses provide the basis for, in Thomas Jefferson's well-worn phrase, a "wall of separation between church and state," which has been crucial to the flourishing of religious diversity in this nation. AJC believes that these twin constitutional guarantees are crucial to the freedom and security of Jews, and therefore of all Americans. Thus, the assertion that the United States is a Christian country marginalizes those of other or no religion and undermines the First Amendment.

This publication will explore the relationship between the state and organized religion and the importance of religious freedom, central issues to AJC since it was founded almost one hundred years ago.

Separation of Church and State: Protecting Religious Liberty in America Today

Introduction

The separation of church and state was enshrined in the Constitution by the First Amendment, which states that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...." These clauses prevent the government from endorsing a particular religion, or religion in general, while at the same time, prohibit it from interfering with its practice. While these concepts appear to be straightforward, exactly how to accommodate religious freedom and practice while avoiding the appearance of government endorsement, especially in a nation with so many thriving communities of faith, has proven especially contentious.

To paraphrase the U.S. Supreme Court in *Everson v. Board of Education* (1947), if the principle of separation of church and state is to have substance in America, it should mean at least this: The state must not behave as if it were a church or a synagogue. Nor may it serve as an agent for any religion. The state must not do for citizens things which, in their rightful free exercise of religion, they are perfectly capable of doing for themselves. For government to intrude itself into religious practices, or to seek to impose particular religious values or beliefs on citizens who do not share them, constitutes a danger to Americans of all faiths. The state must be neutral, not partisan, in matters of religion, and while there has never been absolute separation of church and state in America, many religions have thrived here, in large measure, because of general adherence to the principle.

The debate over church-state separation has often focused upon the issues of government aid to parochial schools, religious practices in the public schools, and the placement of religious symbols on public property, among others. While some argue for the infusion of government aid to religious charities and schools, separation of church and state ensures that people can make their own voluntary decisions as to which religions to support, and to what degree, rather than having their taxes distributed to religious institutions. Similarly, rather than subjecting children to religious values and practices that may differ from those espoused by their families, church-state separation ensures that families can make their own decisions regarding religious practice, and that they do not have to worry about religious instruction in public schools that is inconsistent with their beliefs. When it comes to the display of religious symbols, from the Ten Commandments to menorahs, from Christmas trees to crèches, symbols that are plainly religious are usually prohibited, while those that have a more secular meaning are permissible for display on public property. While the First Amendment strictly limits the state's ability to endorse or support religion, at the same time, it provides for accommodations of religion by allowing all Americans to freely practice the religion of their choice (or no religion at all) without fear of discrimination or persecution.

History has demonstrated that in a pluralistic society, religion fares best when government keeps its hands off. The intrusion of government into religious institutions—even for beneficial purposes—may lead to standards and regulations that will tend to weaken the religious content of those institutions. Moreover, government support of religion can easily lead to the favoring of one faith over another, not to mention improperly favoring religions generally over nonreligion. Countries that maintain strict separation of church and state are likely to have populations that are more religious, not less. Religions and religious practices that depend on government support and endorsement become weaker because of their dependence, while those that rely on voluntary participation and contribution are more likely to flourish. The greater the adherence to separation of church and state, and the fewer the departures, the better it will be for all people of all faiths.

The History of Church-State Separation in America

It is no accident that the entire body of the Constitution of the United States contains no mention of Jesus. In fact, it contains no mention of God. The Founders, led by James Madison and Thomas Jefferson, were painfully aware of the bitter fruits of church and state entanglement, and sought to avert religious oppression and conflict by separating religion and government. They knew that this country had been settled, in large measure, by Christians—Puritans, Quakers, Mennonites, Baptists, Catholics, Lutherans, Huguenots, and many others—fleeing persecution at the hands of other Christians who controlled the machinery of the state, who had studied the Gospels, and were absolutely certain that they were doing the Lord's will in oppressing minority sects, both Christian and Jewish. The Pilgrims came here on the Mayflower seeking religious freedom, and their heroic journey forever marked this country as a place that would welcome those who sought to express their own religion, in their own way.

Repeating Old World Mistakes in the New World

Those who favor prayer in the schools, government aid for church-supported schools, and an expanded right for religious groups to participate in the use of public space remind us that this country was founded by religious groups, and those groups had extensive rights and powers in our early civil society. The Puritans, who never broke with the Church of England but whose goal was to purify it, established the Massachusetts Bay Colony in 1630, and the Pilgrim colony subsequently merged into the larger Puritan colony. There was no separation of church and state in colonial Massachusetts. The Puritans imposed on their new colony the same religious order and discipline that caused them to leave England. Only Puritans

could vote or serve in the colonial assembly, and all citizens were taxed to support religion and the clergy.

But just as the Puritans could not abide by the rule of the Church of England, other Protestant groups could not abide the Puritan theocracy of Massachusetts. Baptists in Massachusetts were only a negligible minority, but they were denounced as "the incendiaries of the commonwealth and the infectors of persons in matters of religion." For refusing tribute to the state religion, Baptists were fined, flogged, and exiled. Roger Williams, banished from Massachusetts for denying Puritan authority over his conscience, founded Rhode Island in 1635, offering full religious and political freedom to all who settled there—even to Quakers, whose religious views he despised.

Since religious liberty as a concept barely existed in colonial America, there are certainly authoritative historical precedents for those who oppose the degree of church-state separation that currently exists in America. At the time of the Revolutionary War, the Church of England was the established church in Maryland, Virginia, North Carolina, South Carolina, and Georgia. The Congregational Church, successor to the Puritans, officially established in Massachusetts, New Hampshire, and Connecticut. Pennsylvania, Delaware, and Rhode Island, provided relatively equal privileges to all Protestants, but discriminated in varying degrees against Catholics. As the Supreme Court noted in *Engel v. Vitale* (1962), "It is an unfortunate fact of history that when some of the very groups that most strenuously opposed the established Church of England found themselves sufficiently in control of colonial governments in this country to write their own prayers into law, they passed laws making their own religion the official religion of their respective colonies."

The Founding of the Nation

The religious conflict and persecution of the colonial period led directly to the growing belief that the new nation must develop a system different from Europe's regarding the role of religion in society. James Madison, with the support of Thomas Jefferson, led the successful effort to disestablish the Anglican Church in Virginia. They were opposed by Governor Patrick Henry, whose immortal fame rests on his great Revolutionary War declaration, "Give me liberty or give me death." But his definition of liberty was limited, and he strongly favored taxation for the support of Christian religions.

In Article VI of the Constitution, in a provision that was revolutionary for its time, the framers stipulated that there shall be no religious test for national public office. In the First Amendment, as well we know, they barred Congress from establishing religion or prohibiting the free exercise thereof. It is vital to bear in mind that the very purpose of the Establishment Clause was to guarantee the free exercise of religion for everyone.

The religion clauses of the First Amendment have been a blessing for freedom of conscience in general, and for American Jews and other religious minorities in particular. Because of these clauses, for example, the U.S. Supreme Court has ruled that it is not a proper role of government either to compose prayers or to orchestrate prayers for American children to recite. Nor, the Court has held, is it the function of government to pay for schools whose chief reason for being is to propagate a religious faith—whether that faith be Protestant, Catholic, Jewish, Hare Krishna, or whatever. This is not to suggest, however, that there have been no problems of interpretation. Indeed, there have been many, the letter and spirit of the Constitution notwithstanding.

Testing the First Amendment

It is instructive to review how the First Amendment religion clauses have been tested and enforced over the years. In 1843, in New York City, religion was part of the public school curriculum. When a group of Jewish parents took issue with the use of a particular textbook for religious instruction, *American Popular Lessons*, the Board of Education appointed a committee to look into the matter. The committee rejected the protest, reporting to the Board that it had

"examined the several passages and lessons alluded to and had been unable to discover any possible ground of objection, even by the Jews, except what may arise from the fact that they are chiefly derived from the New Testament and inculcate the general principles of Christianity." That some American citizens might reasonably object to having their children indoctrinated with "the general principles of Christianity" evidently did not enter the minds of the committee members.

In 1844 in Philadelphia, a major riot erupted in which thirty people were killed and two Roman Catholic churches burned to the ground; it took Federal troops using cannon to quell the rioters. What was the controversy all about? It was about whether Catholic pupils in public schools would be allowed to read from the Catholic Douay Bible rather than from the Protestant King James version. In fact, a major factor in the establishment of Catholic parochial schools in America during the last century was the quite accurate perception on the part of many Catholics, both clergy and laity, that the public schools were Protestant-dominated and that textbooks often referred to Catholicism in the most disparaging terms, such as "popery" or "Romanism."

Protestant-Catholic conflicts over education have persisted. For example, the case of *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary*, for which the American Jewish Committee filed an amicus brief on behalf of the Catholic defendants, arose because in 1922 the Oregon state legislature, influenced by the Ku Klux Klan, passed a law requiring all children to attend public schools. The main objective was to close down Catholic schools. The U.S. Supreme Court unanimously struck down that law, under the Fourteenth Amendment, holding that it interfered with the liberty of parents to educate their children as they chose. This decision has been termed the "Magna Carta of parochial schools."

The point in all this history is to demonstrate the deep connection between civil authority and religion throughout our earliest history, and the conflict it created. These historical realities provide compelling guidance for us today to maintain the reality of separation of church and state. The increasing religious freedom and toleration of all religions that have developed over the last 200 years in America have not only provided great strength to this country, but have also provided great strength to religion and to all communities of faith in a pluralistic country with an ever-increasing diversity in religion and ethnicity.

By almost any measure, the United States is the most religiously developed nation in the world, with numerous vibrant religions, denominations, and churches competing for members, money, and success. Surely this is not because of establishment, or state support through funding, or use of the public schools or other public venues to spread the word or witness. Religion in the United States is strong today, in the form of many faiths, because of the very freedom and separation that have existed for 200 years, not in spite of them. We have created a free-market system of religion in America, the equivalent of religious capitalism. Like any other institution, when a religion is supported by the state and protected from competition, it becomes complacent, ingrown, and unresponsive to developing and changing trends in society. Has establishment made Protestant observance more vibrant in Northern Europe than in the U.S.? Do religions play as significant a role in the life of societies in Germany, France, and England as they do here?

While there are reasons for the growth and success of individual communities of faith in America that are internal to those faiths, our society's history and philosophy of religious freedom, separation, and competition is a source of strength for all religions and all faiths.

Religion in the Public Schools

The issue of what degree of state participation in religion is constitutionally permissible, if any, is nowhere more heatedly debated than in the context of the public schools. The role of religion in public schools has been a subject of controversy for quite some time. Even though the Supreme Court has decided a number of

cases involving religion in the public schools, confusion remains.

There is no reason for any and all references to religion to be absent from the public school classroom. Students should feel free, when appropriate, to follow their own religious practices. The inclusion of religious instruction in public school curricula, however, risks giving the impression of endorsement of that religion, and of religion generally. This is an important concern, as children in the classroom are a young and captive audience. While there is educational value in courses on comparative religion, there is an important difference between teaching about religion in order to educate, which is permissible, and the teaching of religion so as to indoctrinate, which is not.

Teaching Religion

Religious indoctrination is not permissible in public school curricula. Rather, the maintenance and furtherance of religion are the responsibilities of houses of worship and families, not of the public schools. To be sure, there is nothing unconstitutional in teaching *about* religion objectively, for example, informing students of an appropriate age level about the basic tenets of Buddhism, Hinduism, Islam, and Christianity in a course on comparative religion. Pertinent references to religion and holy books, even references to doctrinal differences, may be included in the teaching of social studies, literature, art, music, and history (e.g., the Crusades, the Inquisition, the Holocaust). The Supreme Court has acknowledged that "one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization."[1]

Still, any instruction on religion should be careful to be neutral toward the subject. For instance, literature courses that study the Bible should take care to use a neutral text that does not promote any single denomination. Additionally, one should bear in mind that instruction about religion should always be conducted in an age-appropriate manner. Elementary education, in particular, is not the place for in-depth treatment of religion.

The prohibition on religious instruction in public schools does not mean that schools cannot teach about democratic, civic, and moral values that are shared by people of all faiths and no faith. There is nothing unconstitutional about public schools teaching the core ethical values regarding which there is consensus without reference to religion, such as honesty, decency, sportsmanship, civility, self-discipline, love of country, and concern for rights, freedoms, and feelings of others. These principles must not be taught however, in a manner that indicates they are necessarily based in religion, nor should teachers insinuate that those not religiously affiliated are morally suspect.

The Origins of Life

Creationism, or "creation science," is the belief that the origin of the world and the development of life were due to Divine intervention. Similarly, an alternate theory called "intelligent design" also rejects evolution as the explanation for the origin of the human species, and instead posits that certain features of the universe and of living things are best explained by an "intelligent" cause rather than an undirected process such as natural selection. Neither of these are scientific theories, but rather matters of religious faith. Thus, while public schools may allow instruction about the biblical account of creation in an elective course on comparative religion at an age-appropriate level, that account may not be taught as though it were the explanation for the origin of the world, since to do so would be unconstitutionally to promote a particular religious belief, and present the biblical account of creation as scientific fact.

Teachers are free to teach the theory of evolution, even though some religious believers may object, because while evolution may be contrary to the religious beliefs of some, it is not a religious theory. Creationism and intelligent design, on the other hand, are theories that represent a religious approach to a natural phenomenon, presented in the language, but not the methodology, of science. Religious doctrine is debased and trivialized when it is presented for laboratory testing on the same basis as other classroom presentations.

The debate surrounding the teaching of evolution has been ongoing since the Scopes "Monkey Trial" of 1925, when a teacher was found guilty of violating a state statute that criminalized the teaching of evolution (later reversed), and the Supreme Court has long since come down squarely on the side of proponents of such teaching. Several states have attempted to circumvent such court decisions by passing laws that require public school textbooks to give "balanced treatment" to the theories of evolution and "creation science." However, these laws have not withstood legal challenge. In review of one such law, the Supreme Court in *Edwards v. Aguillard* (1987) declared it a violation of the Establishment Clause for a school board to mandate that the teaching of creation science be given equal time, since the purpose of such a law was not secular, but rather to promote a particular religious belief.

Similarly, some states have tried to evade court decisions by adopting legislation that requires that evolution be taught as an unproven theory. Some states have mandated that science textbooks with instruction on evolution contain disclaimer stickers stating that evolution is a theory, not a fact, and asking students to examine the theory critically. These disclaimers play on the confusion between the popular understanding of the term "theory" (synonymous with an assumption or an educated guess) and the scientific use of the term (meaning a scientifically acceptable general principle offered to explain natural phenomena). Thus, in scientific parlance, the "theory of evolution" is demonstrable and proven, with no serious scientists debating the fact of evolution, only the mechanism of how it occurs. In a recent decision, a federal court in Georgia held that such disclaimers are unconstitutional, despite the fact that they do not mention any religious theories, because a reasonable observer would understand the implication of the disclaimer's message to be an endorsement of religion.[2]

School Prayer

The question of school-sponsored organized prayer and Bible readings has been a dramatic illustration of the church-state separation

controversy, with major Jewish organizations having supported the challenge to these practices, which were traditional in many states (though not in others). While individuals have the right to pray anywhere, even in school, such prayer must be truly voluntary and not coerced in any way.

In its 1962 decision in *Engel v. Vitale*, the Supreme Court declared unconstitutional a New York statute instituting in public schools a nondenominational prayer that had been prepared by the New York Board of Regents. One year later, in *Abington v. Schempp* (1963), the Court held that a Pennsylvania statute mandating that "at least 10 verses from the Holy Bible be read, without comment, at the opening of each public school each school day" was a violation of the Establishment Clause. The decisions in these cases signify that it is not the business of government to compose or sponsor prayers for American children to recite. The Court stated in *Engel* that "[w]hen the power, prestige, and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." Furthermore, as the Court explained more recently in *Lee v. Wiseman* (1992), students in elementary and secondary schools are impressionable and must be protected from the coercive power of government.

Although *Engel* and *Schempp* caused a furor at the time and were widely denounced as being anti-religious, anti-Christian, and un-American, they have since gained at least a measure of public acceptance. Thus far, repeated efforts by Congress to amend the First Amendment to permit organized school prayer have not been successful; advocates of such an amendment have not been able to muster the necessary two-thirds majority in either, much less both houses of Congress. Recently, a federal appeals court ruled in *Mellen v. Bunting* that the Virginia Military Institute's (VMI) practice of holding daily organized supper prayers violated the First Amendment.[3] The court found that despite the fact that the cadets were college students, they were "plainly coerced in participating in a religious exercise." The U.S. Supreme Court declined to consider

the case on appeal, allowing the decision to stand.

It must be stressed that there is nothing in any U.S. Supreme Court ruling to stop a pupil from saying a prayer, either spoken or silent, anytime the spirit moves him or her to do so, provided only that normal school activity is not disrupted. Parents for whom it is important that their children pray while in school are free to instruct them accordingly. What is really sought by school-prayer advocates is to induce other people's children to pray, whether or not this is desired by the parents of those children.

Teacher Participation in Student Religious Activities

Just as public school teachers must steer clear of giving religious instruction in the classroom, their behavior inside—and to some extent outside—the classroom with regard to religion is also limited. Teachers are representatives of the state, and as such they violate the Establishment Clause by placing their imprimatur on religious activities. Although they may not express their religious views to students in school settings, nor may they pray in front of their class, they may involve themselves with students at functions unrelated to their duties as public school teachers.

While inside the classroom, public school teachers may not direct students to pray or to observe a moment of silence if the purpose of the direction is to encourage the children to pray. In 1985, the Supreme Court in *Wallace v. Jaffree* held that an Alabama statute mandating silent prayer in the classroom violated the Establishment Clause because its sole purpose was to promote religion in the public schools. While moments of silence can be constitutional, they must have a legitimate secular purpose. Furthermore, if the students are given suggestions as to what they may do during a moment of silence, prayer cannot be the sole suggested activity.

Outside the classroom, the prohibition remains the same. Public school teachers may not initiate, lead, or participate in any student religious activities, if they are a part of school activities or functions. For example, a music teacher could not ask the marching band to join in prayer prior to a performance. Though the band

members may initiate their own prayer, the teacher could not participate. Similarly, public school teachers may not participate in student-initiated religious clubs, although they may monitor or intervene in such meetings for the purpose of guarding against any impermissible activities.[4]

Prayer at Graduation, Athletic Events, and other Ceremonies

One of the more muddled areas of church-state separation law deals with the issue of prayer at graduation ceremonies, athletic events, and other ceremonies. There is more to the meaning of religious liberty than simply the right to hold one's own religious ceremonies and participate in one's own prayers. This is particularly true for ceremonies held in school settings, as students are more vulnerable than adults and therefore deserving of greater protection. Thus, the inclusion of prayer at school-sponsored events, whether initiated and led by faculty, clergy, or students themselves, should be confined to private events where attendance is voluntary and the specter of government approval nonexistent. As Roger Williams, founder of Rhode Island, once said, "Forced worship stinks in God's nostrils!"

With regard to assemblies and school-sponsored athletic events, school officials may not invite or encourage students to engage in vocal prayer. The Supreme Court held in *Santa Fe Independent School District v. Doe* (2000) that student-led group prayer at an athletic event is not constitutional. The Court stated that even if nonparticipating students are not harassed or coerced, and there is no official school participation or supervision, the delivery of a religious message on school-owned athletic fields cannot be properly characterized as private speech and is therefore not constitutionally protected. The Court also noted the fact that the school's policy for choosing a speaker indicated that the purpose of the speaker's message was "solemnization," which impermissibly encouraged students to engage in religious messages.

The Court has also let stand a number of lower court decisions that struck down school policies permitting truly voluntary student

prayer at school assemblies and school-sponsored athletic events, even when attendance at those events was voluntary, and even when the prayer was nonsectarian and not proselytizing.

With respect to graduation ceremonies, while the Supreme Court has not ruled on *student*-initiated and delivered invocations, the Court did hold in *Lee* that a clergyman's benediction at a public school graduation violates the Establishment Clause, as attendance at these ceremonies is essentially mandatory. In part, as a consequence of this ruling, many schools now delegate the decision-making authority over the content of graduation addresses to students, and federal courts have reached different conclusions on the issue of *student*-initiated and *student*-led prayer in this context. The permissibility of such prayer varies by jurisdiction, and consequently a student in Pennsylvania chosen to deliver a speech at graduation may not call on those attending to join her in prayer, whereas a student in Texas may.

As another response to these proscriptions, some communities have chosen to mark the completion of their studies with a religiously oriented ceremony, known as a baccalaureate service, that is separate from and supplemental to the official, school-sponsored graduation ceremony. Though there is no definitive federal case law on this issue, it is likely that these ceremonies are constitutional so long as certain factors are not present, such as endorsement by school officials through official announcements, participation, or attendance; use of school facilities as premises for the ceremony; and performance by school groups, such as bands or choirs, whose participation is mandatory.

Equal Access

In the early 1980s, supporters of school prayer, unable to attain passage of a prayer amendment to the Constitution, threw their support behind an alternative legislative measure. The federal Equal Access Act of 1984 (EAA) provides that when public secondary schools allow "non-curriculum related student groups" to meet on school premises during "non-instructional time" (thereby creating what the Act defines as a "limited open forum"), they may not deny "equal access" to other students who wish to meet on the basis of the religious, political, philosophical, or other content of speech at those meetings.

The Act raised concern because parents who enroll their children in public secondary schools for the secular education mandated by the state have a right to expect that their children will not be proselytized away from their own cherished faith and into another while under the roof of the public school. Children in public schools are a captive audience, and as such, it is simply not right that they be spiritually seduced, even by sincere and well-meaning fellow students. In addition, the fact that the Act allows adult clergy to enter the public schools and attend student religious club meetings—provided they do not attend "regularly" or control the meetings—seems to have left the Act open to misuse by missionary churches or religious cults that would use student surrogates to, in effect, open branches in public schools.

Nevertheless, the Supreme Court upheld the EAA in *Board of Education of Westside Community Schools v. Mergens* (1990). In *Mergens*, the school had chess, scuba-diving, and other clubs, but denied a request from a group of Christians to form a group for Bible study, prayer, and fellowship. In upholding the EAA's constitutionality, the Court ruled that the school had created a limited open forum by allowing other student groups, and therefore could not bar the creation of new groups based on religion.

With the Equal Access Act upheld as constitutional and therefore still in effect, school officials should implement the law in a fashion that seeks to avoid the abuses that had been feared would follow. Indeed, following the court's decision in *Mergens*, a number of groups with varying positions on the constitutionality of the EAA came together to prepare a joint statement on how schools could implement the EAA in a fashion that was consistent with the Act's terms and sensitive to religious liberty issues.

Though the Act does not apply to elementary schools, in 2001 the Supreme Court upheld the right of the Good News Club, a pri-

vate Christian organization, to meet regularly on the grounds of an elementary school immediately following the school day.[5] School officials had denied the group's request, although they allowed other community organizations to use the space, as they were concerned that the frequency of the club's meetings and the seamlessness between the regular school day and the club's activities would lead children to perceive school endorsement of the club, especially given their vulnerability as young children. The Court, ignoring concerns about the proselytization of young children immediately following the school day, found that the school's restriction violated the club's free speech rights, and that there was no valid Establishment Clause interest identified by the school that justified the violation.

University Funding of Student Religious Activity

In 1995, the Supreme Court heard the case of *Rosenberger v. Rector and Visitors of University of Virginia*, which involved a challenge to UVA's decision to deny a request for funds to publish a student magazine, intended to promote "biblical Christianity." The Supreme Court found for the Christian group, holding that the denial of funds constituted impermissible "viewpoint discrimination" that was not outweighed by Establishment Clause concerns. However, despite the Court's ruling, the provision by public universities of financial support for student religious activities should be viewed as problematic because public universities are instrumentalities of the state.

Government Aid to Parochial Schools

There is no doubt that providing children with a quality education is one of the most important duties of government. At the same time, providing children with a quality education should not lead to the diversion of funds from public to parochial schools, as such disbursements violate the spirit, if not the letter, of the Establishment Clause. Although courts have in some cases found constitutional the direction of public funds to assist religious schools (such as the provision of school busing), such expenditures are problematic as a matter of public policy because they represent a governmental subsidy of religious institutions. A distinction should be made, however, between circumstances where the provision of public funds constitutes a welfare benefit to students and circumstances where the provision of such funds benefits the religious institutions they attend.

Vouchers

Vouchers for sectarian education are a violation of church-state separation, have the effect of a direct, unrestricted subsidy of religious education, and are a danger to the public school system. While carefully thought-out plans enabling families to choose which school their child shall attend may improve the quality of public education, promote greater equity in the education of the affluent and the poor, and strengthen diversity, such choice plans must apply only to public schools.

The use of public funds to provide vouchers with which students may attend primary and secondary parochial schools has been a controversial subject of constitutional debate. In the case of *Zelman v. Simmons-Harris* (2002), the Supreme Court reviewed an Establishment Clause challenge to Cleveland's school voucher program, which gave vouchers to parents to use for private schools or tutors. In a 5-4 decision, the Court upheld the program on federal constitutional grounds, holding that parents exercised their own independent choice in selecting religious schools for their children, despite the fact that no local public schools participated in the program, and the majority of participants were religious schools.

Many state constitutions have been interpreted more strictly, so as to bar such funding as a matter of state law. The Court has upheld a state's right to maintain a stricter separation than that required by the federal Constitution. For example, the Court's decision in *Locke v. Davey* (2004) upheld Washington State's refusal to provide public scholarship funds to students wishing to pursue

degrees in theology. Thus, while someone may have a constitutional right to study theology, a state is under no constitutional obligation to fund that pursuit.

Tax Credits, Textbooks, and Other Indirect Aid

Programs loaning state-approved textbooks in secular subjects and providing public funding for computers have been upheld by the courts, even when they are directed to religious school students. However, these programs could constitute impermissible aid to religious schools because such equipment is easily diverted to religious purposes. Thus, despite rulings in this area, on balance sound public policy mitigates against government funding or loans to parochial schools for textbooks or instructional materials such as computers, lab equipment, or maps.

Conversely, publicly funded benefits, such as lunches and medical and dental services, provided directly to all children, including those in private schools, are acceptable because such aid constitutes a direct welfare benefit to children and not aid to the schools they attend. Such aid often goes to the poorest children; thus the programs are meant to combat poverty rather than to aid religion.

Likewise, public funding of remedial education services, such as guidance, counseling, and testing services, should be provided to all children in need of them, regardless of the schools they attend, provided such programs are administered by public agencies in public facilities. It is also advisable that these remedial services, provided at public expense, be administered outside of parochial school grounds.

In 1983, the Supreme Court in *Mueller v. Allen* upheld the constitutionality of a Minnesota statute that allowed parents to take a tax deduction for expenses incurred for their children's schooling, including tuition, transportation, and textbooks—whether at public, private, or religious schools—reasoning that the funds reached the schools as a result of the independent choices of the parents. Since few public school parents incur any such expenses, it appears that the real objective of the law was to aid private school parents,

ninety-six percent of whom had their children enrolled in religious schools. "This statute," said Justice Thurgood Marshall, dissenting, "is little more than a subsidy of private school tuition, masquerading as a subsidy of general educational expenses." The majority of the Court, however, declined to pierce this seeming fiction.

Earlier, the Court dealt with other types of aid to religious schools, both direct and indirect. In *Everson v. Board of Education* (1947), the Court upheld a program that provided reimbursement to parents for school bus transportation to and from school for their children. While this program made it easier for parents to send their children to religious schools, and thus could be seen as a government benefit to religion, the Court reasoned that parents should not be prevented from receiving a public benefit available to all solely because of their religious beliefs. The Court held that withholding such aid on the basis of religion would be an imposition on free exercise. Nonetheless, many states have wisely interpreted their own constitutions to prohibit such funding or have declined to provide the funding as a matter of public policy, as this type of assistance is a diversion of public funds to the advantage of religious institutions.

Religious Displays on Public Property

Respecting the First Amendment's twin guarantees of religious freedom and the separation of church and state does not mean that the public square must be a religion-free zone. Religion can and does have a place in the public arena. The Supreme Court, however, in examining the constitutionality of religious rituals and displays on public property, has concluded that they are constitutional only if they have a legitimate secular purpose, such as acknowledging aspects of America's cultural heritage, or are "celebrating the winter-holiday season" in a context with religiously neutral holiday decorations. Creating an environment that is respectful of believers of various faiths as well as those of no faith takes a degree of thoughtfulness and balancing, as religious displays often send a message of

exclusion to those who do not adhere to the religious beliefs reflected by the display. There is no religious need, however, for government to sponsor sacred symbols of any faith, or even to allow them to be placed in public buildings or other public property. Various types of private property are available—churches, synagogues, religious schools, private homes, lawns, and storefronts—for public display of religious symbols.

Mutual respect is at the heart of our nation's religious freedom, and while Americans are free to believe or not as we wish, we are not free to impose our religious beliefs on others. In order for our system to thrive, it is imperative that our communities remain welcome places for people of all backgrounds. Ensuring that religious displays on public property represent the very best of our democratic tradition, which insists on a respect for religious pluralism and our Constitution, is crucial to the attainment of this goal.

Holiday Displays

The winter holiday season is a time of joy, celebration, and giving for many Americans. It also presents an opportunity to bring us closer together through a common spirit of sensitivity and inclusiveness toward people of all faiths and ethnicities. Holiday displays should strive to achieve these goals. In order to be constitutional, the Supreme Court requires religious displays to have a legitimate secular purpose. Thus, symbols that depict religious holidays can be constitutional, so long as they are accompanied by symbols from other religions or secular displays. For example, in *County of Allegheny v. ACLU* (1989), the Court found that a nativity scene (or "crèche") in the county courthouse accompanied by a religious message had no secular purpose and therefore violated the Establishment Clause. A few years earlier, however, a nativity scene in *Lynch v. Donnelly* (1984) was held to be constitutional because it was included within a town's larger winter holiday display, which included symbols such as a Santa Claus house, reindeer pulling Santa's sleigh, candy-striped poles, and a Christmas tree. The Court found that, in context, the display had a legitimate secular purpose

of portraying the origins of Christmas, despite the religious nature of the crèche.

Similarly, while stand-alone nativity scenes are not permissible, a Christmas tree, which is commonly viewed as a secular symbol of the winter holiday season, is constitutional. The Court has also held that a Hanukkah menorah is a symbol with both secular and religious meanings, and may, therefore, only be displayed on public property if it is within the context of a secular display celebrating the season.[6] Still, it is important to keep in mind that by secularizing holiday displays, there is a risk of offending those who believe in their religious meaning.

Religious holiday displays and celebrations are more restricted in public schools than in other public venues. The Supreme Court has indicated that even displays that have a secular purpose may be unconstitutional when placed in public schools, given the "special sensitivity of that context."[7] Schools are, however, allowed to celebrate the secular aspects of holidays. Thus, the display of religious symbols that are arguably imbued with secular meaning is likely permissible. With regard to schools actually celebrating religious holidays, the Court has indicated that activities whose purpose is to provide secular instruction about religious traditions rather than to promote the particular religion involved may be constitutional. The Supreme Court has previously declined to review (and thereby let stand) *Florey v. Sioux Falls School District*, a case where a federal appeals court concluded that a school's holiday observance that consisted of the use of music, art, literature, and symbols having a religious theme or base, for historical and cultural reasons, was constitutional because it did not have a religious purpose or a primary effect of advancing religion and did not foster excessive government entanglement.[8]

The Ten Commandments

A great deal of controversy has been engendered by the public display of the Ten Commandments, or the Decalogue, in courthouses and public school classrooms. In addition to violating the constitu-

tional principle of separation of church and state, such displays have the effect of sending the message to nonadherents that they are outsiders in their own communities. Specifically, the public display of the Ten Commandments in these places is inappropriate, as citizens of many faiths and of no faith convene there daily to seek justice, an audience for their concerns, and services from their government.

The U.S. Supreme Court held in *Stone v. Graham* (1978) that a state statute requiring the posting of a copy of the Ten Commandments, purchased by private contributions, on the wall of every public classroom in the state, violated the Establishment Clause. According to the Court, the "pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature." The Court acknowledged the religious nature of the Ten Commandments, stating: "[t]he Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of supposed secular purpose can blind us to that fact." Similarly, a granite monument displaying the Ten Commandments placed by Alabama's Chief Justice Roy Moore in the rotunda of the State Judicial Building was recently found unconstitutional by a federal appeals court in *Glassroth v. Moore*.[9]

Those who wish to display the Ten Commandments argue that it is part of the foundation of the American legal system, and therefore its secular history outweighs any concerns about its religious nature. Yet other than the Decalogue's prohibitions on theft, murder, and adultery, which can be found as well in other early sources, American law does not reflect the principles contained in the Ten Commandments. Many of the Ten Commandments contain statements of faith rather than legal pronouncements, such as the requirements of monotheism and avoidance of idolatry. Moreover, there are numerous variations in the text and the translation of the Ten Commandments, and therefore the choice to display any particular one means that a single religion's interpretation is displayed. Meanwhile, those who ascribe to some other version are left to conclude that the government prefers another religion to their own.

While there certainly are instances in which the study of the Ten Commandments, like the study of the Bible or any other religious text, may be constitutionally permitted in an appropriate study of history, civilization, ethics, or comparative religion, the public display of religious texts serves no such function.

Government Funding of Faith-Based Initiatives

The concept of "charitable choice," initially embodied in the Welfare Reform Act of 1996 and subsequently incorporated in a variety of legislative enactments and proposals, inappropriately seeks to expand the terms under which governmental funds are made available to faith-based social service providers. Charitable choice sanctions the funding of religious institutions, even where their social service programs are permeated by a religious message, thereby violating the Establishment Clause of the First Amendment to the Constitution. It represents a forced taxpayer subsidization of religion, pits religious groups against one another in an effort to obtain funds, and could lead to government regulation of religious institutions in order to hold them accountable for the funds they receive. Furthermore, "charitable choice," in effect, allows for government-funded discrimination because it allows religious institutions to make hiring and other employment decisions on the basis of religion with respect to persons who provide publicly funded services. Religious liberty is also undermined by pressuring poor families to participate religiously.

At the same time, it should be recognized that, for many decades, religious institutions and their affiliates have been among the major providers of social services on the American scene, both for their faith communities and for the larger society. A distinction should be made between pervasively religious institutions (e.g., churches, synagogues, etc.) and religiously affiliated institutions (e.g., hospitals), as the provision of government funds to the latter is often necessary. A distinction should also be made between the concern that employment decisions not be made on the basis of

religion with respect to government-funded positions, and the entirely appropriate exemption that religious organizations have been afforded to make employment decisions on the basis of religion when hiring for privately funded positions.

While government should not abdicate its responsibilities to provide social services, both the government and the public are best served by the utilization of a wide variety of providers. Accordingly, the governmental funding of secular social service programs operated by religiously affiliated organizations, where effective church-state separation safeguards are in place, is acceptable and proper.

Accommodations

Implicit in the decision of the Founding Fathers to disestablish religion was a profound belief in the free exercise of religion, which was set forth in the Free Exercise Clause of the First Amendment. AJC has historically been a strong advocate on behalf of religious liberty and has participated in many cases and supported numerous legislative proposals designed to protect the constitutional guarantee of the free exercise of religion. Its first amicus brief, filed in *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary* (1922) against Oregon's requirement that all children attend public schools, led to the Supreme Court's decision guaranteeing the right of all Americans to educate their children in religious schools, if they choose to do so.

Issues currently being debated in the accommodations area include zoning practices, religious rights of prisoners, religious practice in the workplace, and conscience clause exemptions that attempt to balance accommodation of religious liberty with other fundamental rights.

Legislative Protections of Free Exercise

The religious freedoms of all Americans have been strengthened by the campaign against unjustly restrictive local zoning policies. These policies have prevented the establishment of religious assemblies and houses of worship in residential areas or have otherwise made it impossible for religious groups to practice their faith. Likewise, legislative action to accommodate the religious exercise rights of prisoners is not only constitutional, but commendable. In accordance with these principles, in 2000 Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA), a federal bill that protects religious groups from discriminatory land use laws that encroach on the free exercise of their faith, and secures the religious liberties of institutionalized persons. The Act applies to programs or activities that receive federal financial assistance or when "the substantial burden affects, or removal of that burden would affect ... commerce ... among the several states."

RLUIPA was enacted, in part, as a response to the Supreme Court's 1997 decision in *Boerne v. Flores*, declaring that Congress had exceeded its authority in applying the Religious Freedom Restoration Act of 1993 (RFRA) to the states. RFRA itself had been enacted in response to the Court's ruling in *Employment Division v. Smith* (1990), which allowed government to restrict religious freedom so long as the restriction applied equally to all religions. Prior to 1990, when examining the constitutionality of a governmental action that substantially burdened a religious practice, courts used a "strict scrutiny" test to determine if the action was justified by a compelling governmental interest, requiring the most searching inquiry by judges. In *Smith*, the Supreme Court ruled that this test is not applicable to "an across-the-board criminal prohibition on a particular form of conduct." It held that the Constitution permits neutral and generally applicable laws to be applied in ways that burden religious practices, despite the absence of compelling governmental interests justifying such burdens—a standard that is much more deferential to the government's position than the test used before the *Smith* decision. Proponents of the pre-*Smith* standard have been working actively in the courts, in the halls of Congress, and in state legislatures toward its restoration.

As *Boerne* did not address the issue of RFRA's applicability to the federal government, the Act remains binding on the federal

level. In addition, some states, reacting to *Boerne*, have enacted their own RFRAs. Thus the pre-*Smith* standard is applicable to government restrictions on religious freedom in those states. RLUIPA is a more limited response to *Smith*, in that it is directed solely at religious exercise in the zoning and prison contexts, and is applicable only in cases where Congress has the authority to act.

Specifically, RLUIPA combats discriminatory zoning by requiring the state to show a "compelling state interest" before implementing any land use regulation that impacts the use of property for religious observance. RLUIPA also prevents the government from imposing substantial burdens on the religious exercise rights of institutionalized persons, even if the burden results from a generally applicable rule, unless the government has a compelling interest for imposing that burden.

Critics of the Act assert that RLUIPA is an unconstitutional use of Congressional power. However, RLUIPA's purpose—accommodation of the free exercise of religion—is secular; it does not impermissibly advance religion or entangle the government in religious practices, and is not an endorsement of religion, but rather an endorsement of the value and importance of the basic constitutional rights found in the First Amendment. Nor does the law exceed Congress's authority under the Commerce and Spending Clauses of the Constitution. The Commerce Clause gives Congress the exclusive authority to regulate activities within states where the activity has a substantial effect on interstate commerce, while the Spending Clause allows Congress to attach conditions on the receipt of federal funds to further broad policy objectives that benefit the general welfare.[10]

Workplace Religious Freedom Act

The Workplace Religious Freedom Act (WRFA), reintroduced into Congress in 2005, is legislation that would protect the rights of employees to practice their religion without the fear of losing their jobs or being passed over for promotion. Title VII of the Civil Rights Act of 1964 requires that employers reasonably accommodate their employees' religious practices, unless doing so would cause undue hardship. Unfortunately, the courts have read this requirement in a fashion that vitiates the protection Congress intended to afford against religious discrimination, stemming from the Supreme Court's 1977 decision in *TWA v. Hardison* interpreting anything more than a *de minimis* expense or difficulty as an "undue hardship."

No employee should arbitrarily be forced to choose between obedience to his or her faith and keeping a job. WRFA would ensure that Title VII is interpreted to provide the protection against religious discrimination that Congress intended, by clarifying that the expense or difficulty must be significant to be considered an "undue hardship." Under WRFA, an employer is not required to provide an accommodation that will result in an inability of an employee to perform the essential functions of the job. Under WRFA, an employer is not required to provide an accommodation that will result in the inability of an employee to perform the essential functions of the job. The WRFA balancing test affords crucial civil rights protection for religiously observant employees while assuring that accommodation of those employees will not trample the rights of others in the workplace.

Conscience Clause Exemptions

In response to concerns about the lack of insurance coverage for prescription contraceptive methods, California and other states have sought to eliminate what they found to be discriminatory insurance practices that undermine the welfare of women. For example, the California Women's Contraception Equity Act (WCEA) requires that if employers provide group and individual insurance policies with prescription drug benefits to their employees, they must also provide coverage for prescription contraceptive methods. Addressing concerns that the Act would impermissibly burden the religious freedom of employers opposed to contraception on religious grounds, the legislature enacted a narrow exemption (a "conscience clause"). To qualify for the exemption, an

organization must satisfy the following criteria: (1) the inculcation of religious values is the purpose of the entity; (2) the entity primarily employs persons who share the religious tenets of the entity; (3) the entity serves primarily persons who share the religious tenets of the entity; and (4) the entity is a specific type of nonprofit organization.

In 2000, Catholic Charities of Sacramento, Inc., a California public benefit corporation that provides "social services to the poor, disabled, elderly, and otherwise vulnerable members of society, regardless of their religious beliefs," challenged the constitutionality of WCEA. While Catholic Charities admitted that it does not meet the criteria for a statutory exemption, it sought relief from the Act stating it required Catholic Charities to "facilitate financially the sin of contraception," violating its free exercise rights. The Supreme Court of California ruled against Catholic Charities, finding WCEA to be a constitutional burden on religious exercise, permissibly balancing the imposition on employers' free exercise rights with the valid purpose of combating gender discrimination. The U.S. Supreme Court declined to consider the case on appeal, allowing the California decision to stand.[11]

The Act demonstrates that women's equality and religious free exercise are compatible concerns and that it is possible for states to address compelling societal needs while at the same time limiting any burden on free exercise. While a pervasively religious institution should not be forced to take actions that go against a principle of its faith, other employers, including religiously affiliated ones, may not infringe on a woman's right to choose family planning methods. Further, the WCEA does not discriminate among religions, and the conscience clause exemption alleviates any governmentally created burden on religious exercise.

Conclusion

In honor of America's bicentennial year, a group of political leaders, academics, and individuals representing the main religious faiths in

the U.S.—including Presidents Gerald Ford and Jimmy Carter, Chief Justice William Rehnquist and the late Chief Justice Warren Burger, Coretta Scott King and Reverend James Dobson—issued a statement on religious liberty entitled the "Williamsburg Charter." Its eloquent words stated that "[f]ar from denigrating religion as a social or political 'problem,' the separation of Church and State is both the saving of religion from the temptation of political power and an achievement inspired in large part by religion itself. Far from weakening religion, disestablishment has, as an historical fact, enabled it to flourish." In keeping with these principles, since its founding nearly one hundred years ago, AJC has been involved in many of the landmark free-exercise and religious-rights cases in American jurisprudence, including most described in this publication.

We believe that no religion should be beholden to government, but rather should be free to bear prophetic witness against government if events so require. This is not possible when religious institutions rely on the government for funding in order to survive. Religions can better impart their teaching if government keeps its hands off, neither hindering nor helping them, and a thriving religion should be able to properly educate its youth without governmental assistance. For these reasons, AJC participated as amicus curiae in cases such as *Zelman* and *Locke*, arguing that funding religious education amounts to an impermissible government subsidy of religion.

Nor should government behave as if it is a church or a synagogue, performing functions for its citizens that, in their rightful free exercise of religion, they are perfectly capable of performing for themselves without involving the machinery, the property, or the tax dollars of government. That is why AJC opposed the religious indoctrination of children in public schools in cases such as *Aguillard*, which involved the teaching of creationism; the coerced participation of Air Force cadets in communal prayer in *Mellen*; and prayer at public school-sponsored events such as the athletic competitions in *Santa Fe*.

Similarly, AJC opposed passage of the Equal Access Act because it facilitates the encroachment of religion into the public schools, a stance that inspired the briefs we filed in *Mergens* and *Good News Club*. It is likewise inappropriate for government to support religion by displaying sacred religious symbols in schools, courthouses, and other public venues, and AJC has always stood firmly against such displays, in cases such as *Stone*, *Glassroth*, and more recently, *Van Orden* and *McCreary*.

Against this backdrop, the American Jewish Committee, like other groups that uphold the separation principle, has sometimes been accused of being "ambivalent" toward religion, when in reality it is among its staunchest supporters. From our first amicus brief in *Pierce*, advocating the right of Catholic parents to educate their children in religious schools, to recent efforts to facilitate passage of legislation like RLUIPA (and to defend it in cases like *Cutter*), AJC has consistently striven to prevent the government from encumbering the religious rights of American citizens. AJC continues these efforts today, for example, in its current support of the enactment of federal protections for religiously observant employees through WRFA.

In conclusion, as our dedication to the First Amendment's twin guarantees demonstrates, AJC has always been a dynamic advocate of the free exercise of religion for Christians, Jews, Muslims, and people of all faiths. At the same time, we recognize that America is one of the world's most religiously vibrant countries because of the separation principle, rather than in spite of it. Thus, as AJC enters its second century, we will continue to strive for the ideal of a nation that offers full religious liberty for citizens of all faiths while it upholds the precious wall of separation between church and state.

Notes

1. *Abington v. Schempp* (1963).

2. As of this writing, that case, *Selman v. Cobb County*, 2005 WL 83829 (N.D. Ga. 2005), was on appeal to the Eleventh Circuit Court of Appeals.

3. *Mellen v. Bunting* (4th Cir. 2003).

4. The Equal Access Act specifically prohibits any school official from sponsoring, organizing, or participating in the meetings of noncurricular student religious organizations. (See discussion of the act on pages 14-16.)

5. *Good News Club v. Milford Central School* (2001).

6. *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter* (1989).

7. *Edwards v. Aguillard* (1987).

8. *Florey v. Sioux Falls School District* (8th Cir. 1980).

9. *Glassroth v. Moore* (11th Cir. 2003) (cert. denied Nov. 3, 2003). Additionally, the Supreme Court is set to rule in two cases involving the public display of the Ten Commandments, with a decision due shortly after the publication date of this report. *Van Orden v. Perry* involves the display of the Ten Commandments on the grounds of the state capitol in Texas, and *McCreary County v. American Civil Liberties Union of Kentucky* involves its display in courthouses.

10. As of this writing, the U.S. Supreme Court is set to rule in *Cutter v. Wilkinson*, an Ohio case dealing with complaints from prisoners that their religious beliefs and practices are not being accommodated in accordance with the RLUIPA. One of the issues before the Court is the question of RLUIPA's constitutionality.

11. As of this writing, the constitutionality of a similar New York statute is being litigated in *Catholic Charities, et al. v. Serio*.

The section entitled "The History of Church-State Separation in America" is excerpted from "Church-State Separation in the United States: Myths and Realities" by Martin S. Kaplan, originally published in AJC's *Religion and Politics: Three Perspectives* (1997).

For Additional Information

If you need assistance in resolving a dispute in your community about government funding of faith-based initiatives, religion in the public schools, religious displays on public property, or any other separation of church and state issue, the American Jewish Committee would like to help. When necessary, AJC, through its thirty-three local chapters and national offices in New York and Washington, can respond in several ways. AJC can write letters to relevant school officials, pursue contacts with local civic leaders, seek legal remedies, advocate legislative change, and write op-ed articles. For more information about these and other options, please contact your local chapter, AJC's national offices, or visit our Web site (www.ajc.org).

The following AJC publications are available for further reading on these issues:

AJC in the Courts (annual)

Religion in the Public Schools: A Primer for Students, Parents, Teachers and School Administrators (2003)

A Shared Vision: Religious Liberty in the 21st Century (2002) (copublished with the Baptist Joint Committee on Public Affairs, The Interfaith Alliance Foundation, the National Council of Churches of Christ in the U.S.A., and the Religious Action Center for Reform Judaism)

Statement on Church-State Relations (2001)

Religion and Politics: Three Perspectives by Martin S. Kaplan, Raphael J. Sonenshein, and A. James Rudin (1997)

American Jews and Church-State Relations: The Search for "Equal Footing," by Jonathan D. Sarna (1989)

Religious Rights and Freedoms: What They Mean for Jews, by Samuel Rabinove (1988)