INQUIRING MINDS – October 1, 2021

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First Amendment- "Separation of Church and State"

Questions

1. Why do you think the founders included the "separation of church and state" into the first amendment in the first place? What were they trying to prevent?
2. What did you think the "separation of church and state" meant before you read this paper? Has the information changed your thinking? If yes, how?
3. The Supreme Court over the years has struggled with the interpretation of the "separation of church and state". Do you think they are getting it right or wrong in the recent cases cited and why?
4. I was surprised at the list of many mentions of "God" in our early history and their continuation up to the present time. Is (are) there anything(s) on the list that you think should be eliminated in the future?

The constitution states, "**Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."** Both the free exercise clause and the establishment clause place restrictions on the government concerning laws they pass on interfering with religion. No restrictions are placed on religions except perhaps that a religious denomination cannot become the state religion.

Separation of Church and State - The Metaphor and the Constitution

"Separation of church and state" is a common metaphor that is well recognized. Equally well recognized is the metaphorical meaning of the church staying out of the state's business and the state staying out of the church's business. Because of the very common usage of the "separation of church and state" phrase, most people incorrectly think the phrase is in the constitution. **The phrase "wall of separation between the church and the state" was originally coined by Thomas Jefferson in a letter to the Danbury Baptists on January 1, 1802.** His purpose in this letter was to assuage the fears of the Danbury Connecticut Baptists, and so he told them **that this wall had been erected to protect them**. **The metaphor was used exclusively to keep the state out of the church's business, not to keep the church out of the state's business.**

Separation of Church and State - Constitution Framers Historical Context

The Supreme Court thoroughly studied this issue, and in 1892 gave what is known as the **Trinity Decision**. In that decision the Supreme Court declared, "this is a Christian nation." John Quincy Adams said, "The highest glory of the American Revolution was, it connected in one indissoluble bond, the principles of civil government with the principles of Christianity." The additional supporting evidence below show conclusively that the concern that motivated the framers to include the establishment clause in the constitution was definitely **NOT** fear of the Christian Theism.

- Emblazoned over the Speaker of the House in the US Capitol are the words "In God We Trust."
- The Supreme Court building built in the 1930's has carvings of Moses and the Ten Commandments.
- God is mentioned in stone all over Washington D.C., on its monuments and buildings.
- Oaths in courtrooms have invoked God from the beginning.
- The founding fathers often quoted the Bible in their writings.
- Every president that has given an inaugural address has mentioned God in that speech.
- Prayers have been said at the swearing in of each president.
- Each president was sworn in on the Bible, saying the words, "So help me God."
- Our national anthem mentions God.
- The liberty bell has a Bible verse engraved on it.
- The original constitution of all 50 states mentions God.
- Chaplains have been in the public payroll from the very beginning.
- Our nations birth certificate, the Declaration of Independence, mentions God four times.
- "In God we Trust" is on all US coins and paper money

NOTE: The cases below can be found on supremecourt.gov/opinions

Reynolds v. United States **(1878)** This Supreme court case tested the limits of religious liberty by upholding a federal law banning polygamy. The Supreme Court ruled that the First Amendment forbids government from regulating belief but not from actions such as marriage.

In *Everson v. Board of Education,* (1947), the Supreme Court **ruled as constitutional** a New Jersey statute allocating taxpayer funds to bus children to religious schools — because it did not breach the "wall of separation" between church and state — and held that the establishment clause of the First Amendment applied to state and local governments as well as to the federal government. Despite the Court's narrow 5-4 decision, the mix of separationist reasoning and accommodationist outcome has made the case a popular precedent for liberals as well as conservatives. The commonly used phrase "separation of church and state" is derived from the "wall" metaphor in this case; the Court in turn borrowed it from Roger Williams and Thomas Jefferson.

Braunfeld v. Brown **(1961)**: The Supreme Court **upheld** a Pennsylvania law requiring stores to close on Sundays, even though Orthodox Jews argued the law was unfair to them since their religion required them to close their stores on Saturdays.

Sherbert v. Verner **(1963)**: The Supreme Court ruled that a state **could not** require a person to abandon their religious beliefs in order to receive benefits. In

this case, Adell Sherbert, a Seventh-day Adventist, worked in a textile mill. When her employer switched from a five-day to six-day workweek, she was fired for refusing to work on Saturdays. When she applied for unemployment compensation, a South Carolina court had denied her claim.

Lemon v. Kurtzman **(1971**): This Supreme Court decision **struck down** a Pennsylvania law allowing the state to reimburse Catholic schools for the salaries of teachers who taught in those schools. This Supreme Court case established the "Lemon Test" for determining when a state or federal law violates the Establishment Clause—that's the part of the First Amendment that prohibits the government from declaring or financially supporting a state religion.

Ten Commandments Cases (2005): In 2005, the Supreme Court came to seemingly contradictory decisions in two cases involving the display of the Ten Commandments on public property. In the **first case**, *Van Orden v. Perry*, the Supreme Court ruled that the **display of a six-foot Ten Commandments** monument at the Texas State Capital was **constitutional**. In *McCreary County v. ACLU*, the U.S. Supreme Court ruled that the two large, **framed copies of the Ten Commandments** in Kentucky courthouses **violated the First Amendment**.

Christian Legal Society vs Martinez 2010 The Court considered whether Hastings College of the Law (Hastings), a school within the University of California public-school system, violates the First Amendment by refusing to officially recognize a student organization unless it allows all students to join the group, even if that requires a religious organization to admit gay students who do not adhere to the group's core beliefs. Hastings officially recognizes student groups through a "Registered Student Organization" (RSO) program. Having this status confers valuable benefits to a group, such as use of school funds, facilities, and channels of communication, and use of Hastings's name and logo. In exchange, RSOs must abide by certain conditions, including Hastings's nondiscrimination policy, which follows state law barring discrimination on a number of bases, including religion and sexual orientation. Under this, RSOs must follow an "all comers" policy, allowing any student to participate, become a member, or seek leadership positions, regardless of her status or beliefs. In a 5-4 decision, the Supreme Court held that Hastings's all-comers policy "is a reasonable, viewpoint-neutral condition on access to the RSO forum" and "therefore does not transgress First Amendment limitations

In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, (2017), the U.S. Supreme Court relied on the free exercise clause of the First Amendment in order to rule that Missouri had improperly excluded the Trinity Lutheran Church Child Learning Center from a grant that would have enabled it to replace the pea gravel on its playground with a pour-in-place rubber surface provided under its Scrap Tire Program. The Court said state discriminated against church by not including it in the subsidy program In writing the Court's 7-2 decision, Chief

Justice John Roberts observed that the free exercise clause was designed to shield religious institutions from discrimination and that any such discrimination required strict judicial scrutiny. Roberts relied on *Church of Lukumi Babalu Aye, Inc. v. Hialeah* (1993) [invalidating laws that affected animal sacrifice], *Everson v. Board of Education* (1947) [public provision of bus transportation to parochial schools], and *McDaniel v. Paty* (1978) [no exclusion of pastors from state constitutional provisions], to establish this principle. He further distinguished such cases from those that involved free exercise claims that violated state laws. He further argued that Trinity Lutheran was "not claiming any entitlement to a subsidy" but simply asserting "a right to participate in a government benefit program without having to disavow its religious character."

Espinaza v Montana Department of Revenue 2020 The Supreme Court's 5-4 decision as Justice Sonia Sotomayor writes in dissent, "weakens this country's longstanding commitment to a separation of church and state." Yet Chief Justice John Roberts' majority opinion, which held that Montana **may not** exclude religious institutions from a program that provides scholarships to private schools, Roberts argues in his opinion, the result in Espinoz*a v* Montana flows from the Court's previous decision in **Trinity Lutheran Church v Comer (2017)** which held that the state of Missouri **could not** exclude religious organizations from a state program that offered "grants to help public and private schools, nonprofit daycare centers, and other nonprofit entities purchase rubber playground surfaces made from recycled tires."

California v church covid restrictions 2020 The Supreme Court **sided with a California church** challenging Governor Gavin Newsom's restrictions on indoor worship services amid the spike in coronavirus infections, ordering a federal district court to revisit an earlier ruling against the religious institution. In a brief unsigned order with no noted dissents, the high court tossed out an order from the federal trial court in the Central District of California, which had upheld Newsom's restrictions. The justices sent the dispute back to the lower court for further consideration in light of its decision last week in a similar challenge to New York Governor Andrew Cuomo's restrictions on houses of worship. In that case, the **Supreme Court ruled 5-4 in favor of churches and synagogues that argued the limitations on religious institutions in coronavirus hotspots were unconstitutional.**

Fulton v City of Philadelphia 2021 Philadelphia's refusal to contract with Catholic Social Services for the provision of foster care services unless CSS agrees to certify same-sex couples as foster parents violated the free exercise clause of the First Amendment. **Judgment**: **Reversed and remanded the State decision**, 9-0, in an opinion by Chief Justice Roberts on June 17, 2021. Chief Justice Roberts delivered the opinion of the court, in which Justices Breyer, Sotomayor, Kagan, Kavanaugh and Barrett joined. Justice Barrett filed a concurring opinion, in which Justice Kavanaugh joined, and in which Justice Breyer joined as to all but the first paragraph.

Reference: Thomas Jefferson and the Wall of Separation between Church and State by Dan Driesbach, New York University Press. 2002