

## Religion in the News: January 2003

by Mister Thorne  
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January was a busy month for religion in the news. Six public school students – suspended from school for distributing candy canes before last month's Christmas break – filed a federal lawsuit to defend their right to distribute the sugary treats and the sacred message they convey. Bills were introduced to require public school students to recite the Pledge of Allegiance. Still more bills were introduced to require that a religious slogan be posted in public places. And that's not all: saying grace before supper was prohibited in state-supported schools and so was declaring love for God; a court ruled that freedom of speech was allowed on sidewalks; Religious Freedom Day was celebrated; and a Supreme Court Justice said that the rest of us could do his job. It was one busy month.

### The Candy Cane Lawsuit

Since 1940, there has been no more enduring battlefield for First Amendment squabbles than the public school. And the battle wages no more fiercely than during the holiday season.

This past holiday season, one notable battle began at Westfield High School in Massachusetts. Before the Christmas break, members of the school's bible club asked the school's principal for permission to distribute candy canes – and accompanying Christian tracts – to the school's 1,500 students, almost all of whom are Christian. The tracts contained Bible verses and explained, among other things, that candy canes are shaped for the 'J' in Jesus, and that the red and white stripes stand for Christ's blood and purity. The principal said, "No!" He told the students that such proselytizing might offend some students.

They did it anyway. Why? According to 16-year-old Stephen Grabowski, leader of the bible club, "Everyone needs to know about Jesus Christ, and everyone needs to have the opportunity to come to grips with the fact that he is truth." He added, "We're not going to stop preaching. The message needs to get out, and people need to hear it."

When they returned to school on 2 January, the students were informed that they were in for some discipline: a one day suspension. And then the lawyers got into it. On 13 January, Liberty Counsel, a firm based in Florida that defends the rights of religious groups, filed suit in federal court against the school district, the district's superintendent, and the school's principal.

According to school superintendent Thomas McDowell, the discipline had, "nothing to do with religion." He added, "We don't allow any student or group of students to distribute anything that's unrelated to school activities or the school curriculum." But according to Mathew Staver, president of Liberty Counsel, "This case underscores the blatant hostility by some government officials toward the Christian message."

Some of the students are concerned about the impact this affair might ultimately have on them. One student – a member of the National Honor Society – is worried that she could lose her membership in the honor society and that could hurt her prospects for college. Another student who hopes to attend the U.S. Air Force Academy worries that it might hurt his prospects. Maybe he's right. If his religious beliefs obligate him to defy the rules, the Air Force might not want him.

### Say the Pledge or Else (or Else What?)

In 1940, the Supreme Court ruled that public school students *could* be required to recite the Pledge of Allegiance, but that caused some problems for some students. It conflicted with their religious beliefs. In 1943, after numerous people had been subject to physical and verbal abuse because they refused to recite the Pledge, the Supreme Court revisited the matter and decided that students *could not* be required to recite the Pledge.

Whatever. An informal study recently revealed that some public schools in Texas – high schools in particular – had gotten away from the time-honored tradition of reciting the Pledge. So on 15 January, a state representative introduced a bill in the Texas legislature that would, “require each student to recite the pledge of allegiance to the United States flag at the beginning of each school day.” In deference to the Supreme Court, the bill provides that students can be excused from the Pledge if their parents make such a request in writing.

Under existing law in Utah, the Pledge *must* be recited each day in elementary schools. Students can be excused from the Pledge if their parents make such a request in writing. And a notice must be posted advising students that they have a *right* not to participate in reciting the Pledge.

On 20 January, a state senator in Utah introduced a bill extending the Pledge requirement to middle schools and high schools. The bill requires that the Pledge be recited once a week in each secondary school. As with primary school students, secondary school students are excused from reciting the Pledge if their parents make such a request in writing.

Both proposed laws – the one in Texas and the one in Utah – are laws without teeth. They do not prescribe a penalty for students who don’t recite the Pledge, or for schools that don’t enforce the Pledge requirement.

Also, on 17 January, a bill was introduced requiring the Colorado state senate to recite the Pledge of Allegiance whenever it meets. Again, no penalty was set for those who don’t adhere to the law.

## Posting Religious Slogans in Public Places

The American Family Association (AFA) started it. It got Mississippi to go along with it, and then several other states signed up. Now the United States Postal Service is on board, and other states are giving it serious consideration. What is it? Why . . . it’s a movement to post our national slogan in every public building and in every public school classroom.

And what’s our national slogan? No . . . it’s not *E Pluribus Unum*. That’s old hat. Our slogan is *In God We Trust*. That’s the official slogan of the US of A. And it’s coming to a post office near you soon. That’s right. As a consequence of the very diligent efforts of the AFA (which happens to sell posters bearing the slogan), each and every branch of the post office in the US of A (all 38,000 of them) will soon display a patriotic poster reminding us where we *all* put our trust.

On 13 January, a law was introduced in Colorado that requires the national slogan to be posted in all public buildings and in all classrooms in that state. The law provides that any taxpayer in Colorado can file suit if he/she discovers a public building or classroom without the slogan. The legislation provides no funding to satisfy the law. Perhaps money for the posters can be taken from the funds allocated to pay for teachers or textbooks.

## No More Grace Before Supper

On 21 January, the 4th U.S. Circuit Court of Appeals heard arguments about the constitutionality of saying grace before supper. At issue is a tradition at the Virginia Military Institute, a state supported college. The tradition, which goes back to the 1950s, is that before supper, one of the Institute’s students says grace. Last year, the tradition was considered in court after two students complained of the practice. The ACLU filed a lawsuit on the students’ behalf, and a district court ruled the tradition unconstitutional. Since the evening grace is drafted and recited at the direction of the Institute’s superintendent, the practice amounts to a “state-sponsored religious exercise” according to the court.

Dissatisfied with the ruling, Virginia appealed. On behalf of the state, solicitor William Hurd told the court that, “prayer serves an important purpose in the military.” He said that, “we have prayers in the military because commanders believe it helps develop spiritual fitness, which is an undeniable component of military readiness.”

The appeals court is expected to rule on the matter in a few months.

## **McKinley’s Love of God Erased**

McKinley High School in Hawaii has an honor code that calls for “love for God and all mankind.” McKinley’s had the honor code since 1927. But on 28 January, the phrase “love for God” was removed. Why? Because a student at McKinley claimed that it violated his freedom to form his own religious beliefs. The ACLU filed a lawsuit on the student’s behalf. The lawsuit claimed that the phrase amounts to government endorsement of “the monotheistic concept of the Christian or Jewish God.” Rather than slug it out with the ACLU, the school agreed to remove the offending phrase.

## **Talking on Sidewalks Ruled OK**

Downtown Salt Lake City. Main Street. A bustling place; a tourist attraction. On one side of the street, Temple Square, home of the Mormon Tabernacle Choir. On the other side, the administrative offices of the Church of Jesus Christ of Latter-Day Saints (LDS). Main Street: the focus of a feud.

The feuding has to do with whether or not the people who visit this part of Main Street can speak their minds, whether they can smoke cigarettes, play their radios, hand out literature, collect signatures or wear tank tops and hot pants. The church and the city say that people cannot do such things; the 10th U.S. Circuit Court of Appeals says they can. Last October, the court ruled that the First Amendment is in effect all along Main Street.

What’s all the fuss about? It’s about a deal LDS struck with the city back in 1999. The city sold one block of Main Street to the church, but the city kept an easement to allow the public to walk along that block. The church made substantial improvements to the block at considerable cost. It also enforced the terms of the easement which prohibited the public from all sorts of activities, including their First Amendment rights of freedom of speech and assembly. So the ACLU (and a host of others, including the Unitarian Church) filed a lawsuit. The District Court in Utah upheld the church’s right to restrict the public’s freedom despite the easement. So the ACLU (and the host of others) brought the matter to the Court of Appeals. They won. LDS and the city lost.

Well, LDS isn’t comfortable with the evangelists and the protestors that this one block of Main Street now attracts. It wants to be rid of them, along with the cigarette smokers and the folks playing radios. So it has come up with a deal, and the Mayor proposed it at a city council meeting on 7 January. Here’s the deal: the city gives up its easement and LDS gives the city two acres of property on the outskirts of town. To win public support, the city promises to build a community center on the two acres. LDS gets to impose its restrictions on Main Street.

Sweet, huh?

LDS carries some weight in Salt Lake City. All seven members of the city council belong to the church, so it’s not too surprising that the council wants to see the church get its way. The Mayor belongs to the church, but he also belongs to the ACLU.

LDS carries some weight throughout the state. For example, 90% of the state legislature belongs to the church. Perhaps that explains why a bill revamping the state's liquor laws was reviewed and approved by the church in January, even though it will not be available for public review (or for review by other churches) until 5 February.

## Religious Freedom Day

Religious Freedom Day commemorates the adoption of the Virginia Statute for Religious Freedom, the first law ever to guarantee religious freedom to citizens. The statute was written by Thomas Jefferson, sponsored by James Madison, and adopted by the Virginia General Assembly on 16 January 1786. This year, as in so many years past, it was celebrated in Fredericksburg, Virginia not far from where the general assembly met in 1786. And the main speaker was one Antonin Scalia, Associate Justice of the U.S. Supreme Court.

Remember that, last June, the 9th Circuit Court of Appeals in San Francisco issued a controversial ruling. The court ruled that when Congress added the phrase 'under God' to the Pledge of Allegiance, it violated the First Amendment. Why? Because by doing that, the Congress was endorsing a particular religious belief: a belief in only one god. According to the court, "To recite the Pledge is not to describe the United States; instead, it is to swear allegiance to the values for which the flag stands: unity, indivisibility, liberty, justice, and – since 1954 – monotheism."

With the court's ruling, the phrase 'under God' in the Pledge was headed down the same path as teachers leading public school students in prayer: forbidden.

In his speech, Justice Scalia offered a novel idea. He suggested that issues like whether the phrase 'under God' should be in the Pledge of Allegiance could be settled by popular vote rather than some court.

What sparked this comment was a lone protestor at the rally with a sign that read, "Get religion out of government." Justice Scalia brought the protestor and his sign to the crowd's attention. "The sign back here which says 'Get religion out of government' can be imposed on the whole country," Scalia said. "I have no problem with that philosophy being adopted democratically. If the gentleman holding the sign would persuade all of you of that, then we could eliminate 'under God' from the Pledge of Allegiance. That could be democratically done."

Imagine that. Rather than tie up the Supreme Court with such issues, we could decide them in a general election. Come November 2004, we could vote for president and the wording of the Pledge.

## Commentary

What's the effect of repeatedly reminding a child to say *please* and *thank you*? What's the effect of having a child – beginning at age five – recite a pledge day after day that says there's only one god? Does repetition have an effect, especially on the young and impressionable?

Now, what about posting a slogan in every public building and classroom that implies there's only one god? Is this not testimony to the government's preference for monotheism over other beliefs? Does the first amendment give the government a license to promote belief in the existence of just one god? Is that what the Founding Fathers intended: for the government to promote a particular religious belief, to post signs to that effect all over the country?

Consider what Thomas Jefferson wrote in his autobiography about the drafting of the Virginia Statute for Religious Freedom:

*Where the preamble declares, that coercion is a departure from the plan of the holy author of our religion, an amendment was proposed by inserting 'Jesus Christ,' so that it would read 'A departure from the plan of Jesus Christ, the holy author of our religion;' the insertion was rejected by the great majority, in proof that they meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and Mohammedan, the Hindoo and Infidel of every denomination.*

There's a recurring battle that engages not only the First Amendment but the First Commandment as well. In modern English, the First Commandment amounts to this: *do not worship any other gods but me*. Does that not imply that there are other gods? Then why is it that those who believe that Yahweh gave Moses a set of stone tablets engraved with ten commandments – why is it that they almost uniformly believe in only one god? It's pretty obvious from reading the Old Testament that Yahweh acknowledges the existence of other gods. It even mentions some of them by name.

Or consider the first sentence in the Bible. According to the King James version, it goes like this:

*In the beginning God created the heaven and the earth.*

According to the most ancient Hebrew scriptures, the term in that first sentence is not singular *God*; it's *Elohim*, a plural form meaning the Mighty Ones, or, in more common parlance, the gods.

The point is this: anyone can read the Old Testament and conclude that there are many gods, and not just one. Like hundreds of millions of Hindus and Buddhists, any Christian or Jew is free to believe there are many gods. That so few do is testimony to the lingering effects of a powerful few.

According to the Supreme Court, if the government wants to advance a belief in just one god that's just fine. It's *ceremonial deism*, a phrase that was introduced in 1962 by one Eugene Rostow, Dean of Yale University Law School. The phrase refers to *activities considered so conventional and uncontroversial as to be constitutional*.

Justice Brennan introduced the phrase to the Supreme Court in 1984 in *Lynch v. Donnelley*, a case that determined that it was OK for a city to erect a nativity scene as part of its annual Christmas display. In his decision, Brennan wrote:

*Finally, we have noted that government cannot be completely prohibited from recognizing in its public actions the religious beliefs and practices of the American people as an aspect of our national history and culture. While I remain uncertain about these questions, I would suggest that such practices as the designation of 'In God We Trust' as our national motto, or the references to God contained in the Pledge of Allegiance to the flag can best be understood, in Dean Rostow's apt phrase, as a form of 'ceremonial deism,' protected from Establishment Clause scrutiny chiefly because they have lost through rote repetition any significant religious content.*

The Supreme Court is not entirely consistent in its thinking when it comes to the First Amendment. On the one hand, it finds that the government may not show a preference for one religion or religious belief over some other. Consider the following quotes from Supreme Court decisions:

*It [the endorsement test] does preclude government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred. Such an endorsement infringes the religious liberty of the non-adherent, for "[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." (Justice O'Connor in Wallace v. Jaffrey, 1985)*

*What to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy. (Justice Kennedy in Lee v. Weisman, 1992)*

*. . . it is only by wholly isolating the state from the religious sphere and compelling it to be completely neutral, that the freedom of each and every denomination and of all nonbelievers can be maintained. (Justice Black in Zorach v. Clauson, 1952)*

*Neither [state or federal govt.] can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs. (Justice Black in Torcaso v. Watkins, 1961)*

*Precisely because of the religious diversity that is our national heritage, the Founders added to the Constitution a Bill of Rights, the very first words of which declare: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." Perhaps in the early days of the Republic these words were understood to protect only the diversity within Christianity, but today they are recognized as guaranteeing religious liberty and equality to "the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism." [Justice Blackmun in Allegheny County v. ACLU, 1989]*

*Third, our religious composition makes us a vastly more diverse people than were our forefathers. They knew differences chiefly among Protestant sects. Today the Nation is far more heterogeneous religiously, including as it does substantial minorities not only of Catholics and Jews but as well of those who worship according to no version of the Bible and those who worship no God at all. In the face of such profound changes, practices which may have been objectionable to no one in the time of Jefferson and Madison may today be highly offensive to many persons, the deeply devout and the nonbelievers alike. (Justice Brennan in Abington School Dist. V. Schempp, 1963)*

*The First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State. The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere, which itself is promised freedom to pursue that mission. (Justice Kennedy in Lee v. Weisman, 1992)*

On the other hand, there are numerous decisions that show a prejudice in favor of a particular religious belief: monotheism. This is not surprising, as membership in the Court has so far been reserved for those who hold to the most prevalent Judeo-Christian belief: one god and one god only. (Last year, President Bush vowed that he would not nominate a polytheist to the bench. See *Religion in the News : June 2002.*)

Consider the following quotes from Supreme Court decisions:

*We are a religious people whose institutions presuppose a **Supreme Being**. (Justice Douglas in *Zorach v. Clauson*, 1952)*

*Prayers in our legislative halls; the appeals to **the Almighty** in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; “so help me God” in our courtroom oaths – these and all other references to **the Almighty** that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: “**God** save the United States and this Honorable Court.” (Justice Douglas in *Zorach v. Clauson*, 1952)*

*There can, of course, be no doubt that New York’s program of daily classroom invocation of **God’s** blessings as prescribed in the Regents’ prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of **the Almighty**. (Justice Black in *Engel v. Vitale*, 1962)*

*At the opening of each day’s Session of this Court we stand, while one of our officials invokes the protection of **God**. (Justice Stewart in *Engel v. Vitale*, 1962)*

*If school facilities may be used to discuss anticlerical doctrine, it seems to me that comparable use by a group desiring to express a belief in **God** must also be permitted. (Justice Stevens in *Widmar v. Vincent*, 1981)*

*The Alabama Legislature has no more “endorsed” religion than a state or the Congress does when it provides for legislative chaplains, or than this Court does when it opens each session with an invocation to **God**. (Chief Justice Burger in *Wallace v. Jaffrey*, 1985)*

*A government cannot be premised on the belief that all persons are created equal when it asserts that **God** prefers some. (Justice Blackmun in *Lee v. Weisman*, 1992)*

*I must add one final observation: the Founders of our Republic knew the fearsome potential of sectarian religious belief to generate civil dissension and civil strife. And they also knew that nothing, absolutely nothing, is so inclined to foster among religious believers of various faiths a toleration – no, an affection – for one another than voluntarily joining in prayer together, to **the God whom they all worship and seek**. (Justice Scalia in *Lee v. Weisman*, 1992)*

*“There is just one god.” That is a controversial belief, even if it is held by the vast majority of us. It is entirely speculative, and any expression of it is certainly not lacking *significant religious content*.*

Now, imagine . . . just imagine the uproar that would arise if Congress did the most improbable thing. Imagine the public reaction if it changed the phrase ‘*under God*’ in the Pledge of Allegiance to the phrase ‘*under the gods*.’

Why . . . the public would be more riled than it was when the 9th Circuit Court issued its ruling on the Pledge of Allegiance last June: testimony that such phrases *do* have significant religious content.

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