LESSONS IN LIBERTY

A Guide to Religion and Constitutional Law for North Carolina Government

Dedicated to Natalie Fiess

This booklet is dedicated in loving memory to Natalie Zilboorg Fiess (pictured above with her granddaughter Lydia), with a special thanks to the late Shirley and Doug Johnson of Oberlin, Ohio, longtime ACLU members whose support created the Natalie Fiess Fund for the Preservation of Civil Liberties and Religious Freedom (the "Fiess Fund"). The Fiess Fund has supported the publication and dissemination of four informational booklets to North Carolina government officials, school board members, and the attorneys who advise them.

Please note: The information provided in this booklet is current as of April 2013. This booklet is designed as a reference tool on a variety of civil liberties issues. It is not intended to be a substitute for legal advice from an attorney.

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RELIGIOUS SPEECH BY PRIVATE INDIVIDUALS

STREET PREACHING

SCENARIO: *On the famous Speech Street, in the Town of Rocker, many people often speak out or distribute literature promoting different religious, political, or other beliefs. Since the founding of Rocker, the town officials have allowed this practice and have never prevented anyone from expressing his or her views. Recently, Mr. Dock moved to Rocker, and he has been expressing his religious views and handing out pamphlets on Speech Street that many consider to be both anti-Semitic and homophobic. Mr. Dock sincerely believes that these views are part of his religious faith and that sharing his faith with others is a requirement of his religion. Some of Mr. Dock's pamphlets have deeply offended other townspeople. Mr. Dock does not shout his views loudly or force anyone to take a pamphlet from him. He does not block traffic or impede pedestrians on the street, and his presence poses no safety hazard. However, due to complaints from residents of Rocker, the mayor has ordered Mr. Dock to stop preaching and handing out his pamphlets on the street.*

Question: *May the Town of Rocker prevent Mr. Dock from expressing his views in this manner?*

Quick Answer: *No, the mere fact that townspeople find Mr. Dock's views offensive is not a compelling reason for the Town to censor his activities.*

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech..."

-The "Establishment," "Free Exercise," and "Free Speech" clauses of the First Amendment to the U.S. Constitution.

EXPLANATION:

The First Amendment to the United States Constitution provides in relevant part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . ."[1] The Free Exercise Clause of the First Amendment has been interpreted as "protecting the rights of individuals or groups to practice any religious doctrine or faith they choose, no matter how implausible, dangerous, or morally objectionable their beliefs may seem in relation to prevailing community standards. Thus, "[t]he government may not compel affirmation of religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one or the other side in controversies over religious authority or dogma."[2] However, while the protection afforded religious belief is essentially absolute, the right to *profess* one's religious beliefs is not. As with the First Amendment right to express one's political beliefs, the government may, under certain circumstances, restrict speech about matters of religion without violating the First Amendment.

Under the Free Speech Clause of the First Amendment, the degree to which the government may place restrictions on free speech activity depends in part on where the speech is taking place and whether that location is the type of location, or forum, typically used for expressive activity. The Supreme Court has recognized three types of public fora for First Amendment purposes: the traditional public forum, the designated public forum, and the nonpublic forum.[3] A traditional public forum is a place of open public access that has, by history and tradition, been dedicated to the "free exchange of ideas."[4] Examples of public fora include streets, sidewalks, and parks.[5] A designated public forum is one which the state or local government has intentionally opened to the public for the expression of ideas, such as a public university campus or a municipal auditorium. Finally, public property in which some expressive activity occurs but which is neither a traditional nor a designated forum is, by definition, a nonpublic forum, such as a high school.

Because Speech Street is characterized by unfettered public access,[6] and has been, by history and tradition, open and used for expressive activity,[7] it is a traditional public forum. Accordingly, all persons have an equal right to engage in speech on that street, and the Town may not prohibit the expression of speech it dislikes based on the views expressed or the identity of the speaker.[8]

Furthermore, under the Free Exercise Clause of the First Amendment, the government may not enact a law—even one that is generally applicable to all citizens[9]—if the true purpose behind the law's enactment is to target religious conduct.[10] Suppose the Town passed an ordinance banning the distribution of leaflets or pamphlets on Speech Street. Because Mr. Dock's speech is compelled by his sincere religious beliefs, his activity on Speech Street falls under the protection of the Free Exercise Clause.[11] Thus, for example, if Town officials had denounced Mr. Dock's activity before enacting the ban, or if the ban did not actually affect anyone's activity other than Mr. Dock's, this might serve as evidence that the Town's real reason for enacting the ban was to target Mr. Dock's religious activity. Laws enacted to target religious activity[12] are unconstitutional regardless of whether they appear to apply to all citizens, and therefore the Town's ban would violate Mr. Dock's rights under the Free Exercise Clause.[13]

Finally, allowing religious expression does not violate the Establishment Clause if the speaker is purely private and the speech occurs in a traditional or designated public forum that is "publicly announced and *open to all on equal terms*."[14] Rocker may only place restrictions on speech in a traditional public forum when the restrictions apply to all speech regardless of content; when they are reasonable restrictions on the time, place, and manner in which people may express their views; and when the Town has a compelling reason for imposing such restrictions.[15] Because Rocker does not sponsor Mr. Dock's speech, because Speech Street is open to all members of the public on equal terms, and because Mr. Dock's speech is compelled by his religious faith, Mr. Dock's rights under both the Free Speech Clause and the Free Exercise Clause would be violated if the Town prevented him from speaking.[16]

RELIGIOUS DISPLAYS ERECTED BY PRIVATE INDIVIDUALS IN PUBLIC SQUARES

SCENARIO: *In a popular town square in the Town of Capitol, a private religious group would like to erect a Christmas display that includes a Nativity scene, also known as a crèche. Some members of the community object, arguing that the Town should not be promoting a religious display.*

Question: *Can the religious group erect its display?*

Quick Answer: *Probably, as long as other private groups have equal access to the town square for putting up their own religious, political, or other displays.*

EXPLANATION:

Assuming that the religious group complies with any constitutional permit requirements, it has a Free Speech and Free Exercise right to erect its display in a public square. Further, such a display would probably not violate the Establishment Clause. According to the United States Supreme Court,[17] providing access to a private religious group on the same basis as that provided to other groups does not constitute governmental endorsement of religion in violation of the Establishment Clause: "We find it peculiar to say that government 'promotes or favors' a religious display by giving it the same access to a public forum that all other displays enjoy."[18] To exclude religious displays but allow other displays would constitute impermissible content discrimination against religious speech.[19]

Accordingly, the Supreme Court held that the Ku Klux Klan's request to erect a cross next door to the Ohio statehouse did not violate the Establishment Clause, since it was private expression in a public forum. The Court held that it made no difference that the display was right next door to the statehouse because, even if some "*might* leap to the erroneous conclusion of state endorsement..., given an open forum and private sponsorship, erroneous conclusions do not count."[20] Additionally, the Court reiterated its earlier holdings that incidental benefits to religion do not constitute endorsement.[21]

Furthermore, it is not permissible to require religious speech alone to disclaim public sponsorship, since that would constitute content discrimination.[22] Consequently, the private religious group would not be required to erect a sign disclaiming private ownership of the nativity scene.

However, "one can conceive of a case in which a government entity manipulates its administration of a public forum … in such a manner that only certain religious groups take advantage of it, creating an impression of endorsement *that is in fact accurate*."[23] If the City of Capitol were only giving access to the town square to certain groups – either religious groups or non-religious groups or only to some religious groups and not others – there might be an Establishment Clause violation.

Notably, a private group may even be able to erect a *permanent*, religiously-based monument in a public park without violating the Free Speech Clause or the Establishment Clause.[24] The Supreme Court has held that a city (1) could erect a permanent Ten Commandments monument donated by a private party for display in a public park, and (2) could reject a display from another religious group, all without violating the Constitution.[25] While the Establishment Clause still places some restraints on government speech,[26] the Court noted that a city does not violate the Establishment Clause by erecting the Ten Commandments statue if there are already many other monuments in the park where the statue is displayed and the donor had a secular reason for donating the statue.[27] More information about religious monuments erected by local governments can be found in the next section.

RELIGIOUS SPEECH SPONSORED BY THE GOVERNMENT

RELIGIOUS DISPLAYS AND MONUMENTS

SCENARIO: *The City of Cityville decorates the town square, where the Grand Old Courthouse is located, for the holiday season in December. Since there is a large population of Christians in Cityville, the City erects a Nativity scene (crèche) with no other surrounding items on display.*

Question: *Should Cityville be allowed to continue this practice?*

Quick Answer: *No, a city-sponsored crèche, unaccompanied by other, non-religious symbols is unconstitutional.*

Because Cityville's holiday display does not include both religious and secular symbols, it has the effect of sending a message that the city officially supports Christianity.

EXPLANATION:

In 1971, the United States Supreme Court decided *Lemon v. Kurtzman*,[28] which set forth a three-part test for courts to use when evaluating most Establishment Clause claims. Under the *Lemon* test, the policy or practice at issue (1) must have a secular (i.e., nonreligious) purpose; (2) must neither advance nor inhibit religion in its primary effect; and (3) must not foster an excessive entanglement between government and religion.[29] Although the *Lemon* test has generated some controversy, courts have continued to apply it in cases involving holiday displays.[30]

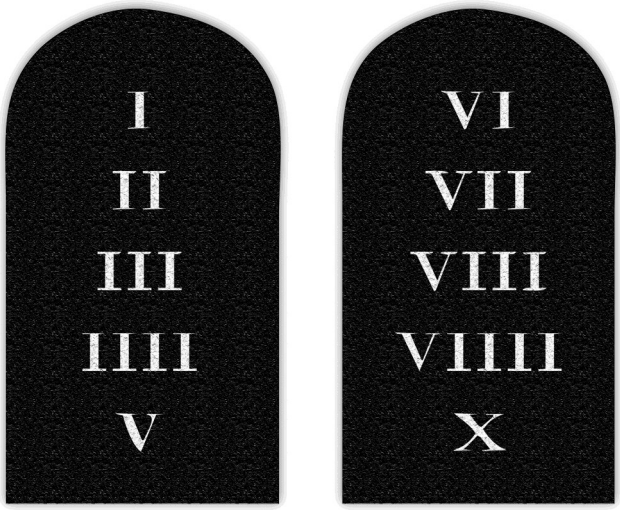
Applying the *Lemon* test in this case, Cityville is clearly violating the Establishment Clause. While the City may believe its purpose in erecting the crèche – to celebrate Christmas – is constitutional, there is nothing secular about a display consisting solely of Christian symbols. Because Cityville's holiday display does not include secular symbols, it can be seen as sending a message that the city officially supports Christianity.[31] Additionally, because the Grand Old Courthouse is a "highly visible location" and a prominent government building, and because the crèche is displayed throughout the month of December, the visual association of government with Christianity is hard to sever.[32]

In contrast, when a crèche display is located in an area that does not openly house government or city buildings and is surrounded by other, secular displays of Christmas, such as trees, Santa Claus, or reindeer, that display may not be a violation of the Establishment Clause.[33] Courts still scrutinize such displays, however, to ensure that the government maintains a position of neutrality with respect to religion.[34]

SCENARIO: *In the City of Brecksville, there is a five-mile-long public park. The elected city officials have ordered a stone display of the Ten Commandments to be erected in the middle of the park. Brecksville officials believe that the Ten Commandments are an important part of our country's history and formation.*

Question: *Is Brecksville within its rights to move forward on the building plans for this monument?*

Quick Answer: *Probably not. While Ten Commandments displays may be permissible in some contexts, the facts presented here would not support the constitutionality of this proposed monument.*



EXPLANATION:

The Establishment Clause has been interpreted to prohibit the government from favoring any particular religion or group of religions, or from conveying a preference for religion over nonreligion.[35]

While the *Lemon* test has been the principal test used to evaluate potential Establishment Clause violations, the Supreme Court declared this standard inappropriate in the context of passive displays of the Ten Commandments on government property.[36] The Court reasoned that the nature of the monument and our Nation's history are more helpful signposts in this context.[37] While the "Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths,"[38] the Court has recognized that they have an undeniable historical meaning as well.[39] Thus, a Ten Commandments monument that has long existed as part of a group of structures having both historical and religious significance will not violate the Establishment Clause.[40]

Importantly, however, "[t]here are ... limits to the [government's] display of religious messages or symbols."[41] That the Ten Commandments speak to our cultural heritage will not justify all such displays on government property; the context of the display is crucial. For example, the Supreme Court held that a Ten Commandments display on public school grounds — where, given the impressionability of children, the government must be particularly careful to maintain a position of neutrality — violates the Establishment Clause.[42] Also, displays that are new and sectarian-driven are more likely to be deemed unconstitutional than long-standing monuments that serve both a religious and historical purpose.[43]

In this case, the City of Brecksville's effort to construct the Ten Commandments monument is unlikely to survive legal attack. While there is no evidence that the City has an improper, religious purpose in erecting the stone display, Brecksville has chosen to commemorate a single religious influence to the exclusion of all other religious and historical influences. In so doing, the City sends a message to a reasonable observer that it endorses religion. Moreover, unlike a Texas monument which had stood, unchallenged, for decades and which the Supreme Court found constitutional, Brecksville's Ten Commandments display would be new.

For these reasons, Brecksville would risk violating the Establishment Clause if it continued with its plan to erect the Ten Commandments monument.

RELIGIOUS DISPLAYS AND MONUMENTS, CONT.

SCENARIO: *The City of Plumville's courthouse has a large display of historical monuments on its front lawn that have been there since the inception of the building in 1942. Included in this display is a bald eagle, the Ten Commandments, the Bill of Rights, and the state flag.*

Question: *Does Supreme Court precedent permit this type of display?*

Quick Answer: *Probably.*

EXPLANATION:

As noted previously, a public display of the Ten Commandments on government property is not necessarily unconstitutional.[44] "Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause."[45] Thus, an inquiry into the context of the display is useful in determining whether the government is violating the principle of neutrality with respect to religion.[46]

In this case, because the Ten Commandments monument has stood for more than half a century as part of a larger historical display that includes other nonreligious structures, this memorial will likely pass constitutional muster. Because the Ten Commandments are in the company of other, secular symbols, there is little risk that the display would induce viewers to venerate and observe the Decalogue[47] or that an objective observer would perceive the monument as advancing a state religion.

Yet the inclusion of secular symbols along with the Ten Commandments will not save an otherwise unconstitutional display. Adding other historical items as an afterthought suggests that the government has acted with the improper purpose of celebrating the Commandments' religious message.[48] Moreover, when a display of the Ten Commandments "physically dwarfs" all other secular markers around it, this "implies that they are secondary in importance to the Ten Commandments and suggests that the Commandments, and their religious message, are the primary focus of the display."[49]

It is important to note that while the Ten Commandments have played and continue to play an important role in the lives of many Americans, the government should not be deciding whose religious texts and symbols should be featured on governmental property and whose should not. When the government takes sides with respect to religion, it undermines the fundamental freedom of every American to practice his or her own religion, or no religion at all.

LEGISLATIVE PRAYER

SCENARIO: *The Town of Birdston always opens all town meetings with an invocation. The Town invites various local clergy members to the meetings to offer the opening prayer, so long as the prayer given is nonsectarian.*

Question: *Does this practice violate the First Amendment?*

Quick Answer: *Most likely, no. Nonsectarian legislative prayer generally does not violate the Establishment Clause.*

EXPLANATION:

Legislative prayer is its own "field of Establishment Clause jurisprudence with its own set of boundaries and guidelines."[50] The *Lemon* test does not apply in this context; instead, courts have looked to tradition and historical practice to determine that legislative prayer has "become part of the fabric of our society."[51] The rationale behind this approach is that the Establishment Clause should not be interpreted to entirely invalidate practices that, since the days of our nation's founding, have been accepted as part of our social customs.[52]

Yet, this does not mean that all invocations will be constitutionally permissible. In order to avoid any appearance of governmental preference for one religion over others, invocations should be nonsectarian.[53] Specifically, the local government should have a policy in place that alerts invited prayer-givers to the requirement that their prayers should not include sectarian references. A sectarian prayer references a particular deity or "specif[ies] details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)."[54] The invocation cannot be used to "exploit" the prayer and "affiliate" the government "with one specific faith or belief in preference to others."[55]

Furthermore, the prohibition against sectarian prayer in government meetings does not violate the Establishment Clause and/or a prayer-giver's own rights under the Free Exercise Clause of the First Amendment. The Fourth Circuit Court of Appeals, which has jurisdiction over North Carolina and four other states, has rejected both of those arguments, regardless of whether the prayers are offered by government officials or by private citizens.[56] The courts have held that these prayers constitute government speech rather than private speech because the purpose of the invocation "is simply that of a brief pronouncement of simple values presumably intended to solemnize the occasion . . . . [and] is not intended for the exchange of views or other public discourse . . . . [or] for the exercise of one's religion."[57] Since an opening legislative prayer is government speech, the First Amendment guarantees with respect to free expression and freedom of religion are not implicated because "[n]o individual has a First Amendment right to offer an official prayer reflecting his personal beliefs."[58] Consequently, because legislative prayers are government speech rather than private speech, local governments can — and must, to comply with the Establishment Clause — exercise editorial control over the speech's content.[59]

In sum, because legislative prayer is a long-standing tradition, as long as the clergy members invited by the Town are not invoking or promulgating specific references to any one sect, the practice will most likely be held constitutional.

JUDICIAL PRAYER

SCENARIO: *Judge Prescott opens his court every morning with a prayer in which he prays to "O Lord, our God, our Father in Heaven." He has been doing this for the four years that he has been a judge and only recites the prayer at the beginning of the morning session. A Hindu citizen who had a case in Judge Prescott's courtroom felt uncomfortable about this prayer because it led him to believe that Judge Prescott was partial to the Christian religion and would be prejudiced against someone who practiced Hinduism.*

Citizens of all faiths and no faith have the right to an impartial courtroom, one that does not give the appearance of endorsing religion.

Question: *Does this private citizen have a claim under the Establishment Clause against Judge Prescott?*

Quick Answer: *Yes. When acting in their official capacities, judges may not engage in religious speech.*

EXPLANATION:

Because there is no "long-standing tradition of opening courts with prayer," the Fourth Circuit has used the *Lemon* test to analyze this type of invocation, rather than the analysis used in *Marsh v. Chambers* for legislative prayer.[60] Under the *Lemon* test, Judge Prescott's prayer violates the Establishment Clause because it does not serve a secular purpose and has the effect of advancing religion.[61] By praying only before the morning session, Judge Prescott is not merely opening court in his own formal way; rather, he is engaging in a religious act. Because he is speaking from the bench in an official court proceeding, Judge Prescott's prayer conveys a message of endorsement. Finally, because judges are supposed to be "neutral arbiters," Judge Prescott's prayer constitutes an "excessive entanglement of the court with religion."[62] The prayer makes those in Judge Prescott's courtroom feel as though he may only be supportive of the Christian religion and, therefore, may offend others that do not share his beliefs.

Citizens of all faiths and no faith have the right to an impartial courtroom, one that does not give the appearance of endorsing religion. While the Constitution "does not require a person to surrender his or her religious beliefs upon the assumption of judicial office," it will not condone a judge who announces his or her personal sense of religiosity.[63]

END NOTES

1. U.S. CONST. amend. I.
2. Emp't Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872, 877 (1990) (citations omitted), *superseded in part by statute,* Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, §2, 107 Stat. 1488, 1488 (1993) (codified as amended at 42 U.S.C. §§ 2000bb to 2000bb-4 (2006)), *as recognized in* Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 424 (2006).
3. Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45–46 (1983).
4. Cornelius v. NAACP Legal Def. & Educ. Fund, 473 U.S. 788, 800 (1985).
5. *See* Frisby v. Shultz, 487 U.S. 474, 480–81 (1988); Carey v. Brown, 447 U.S. 455, 460 (1980); Hague v. Comm. for Indus. Org., 307 U.S. 496, 515–16 (1939); Edwards v. South Carolina, 372 U.S. 229, 235 (1963).
6. *See* Ark. Educ. Television Comm'n. v. Forbes, 523 U.S. 666, 678 (1998).
7. *See Cornelius*, 473 U.S. at 802.
8. *See* Warren v. Fairfax Cnty., 196 F.3d 186, 192 (4th Cir. 1999) (addendum to majority opinion reprinting Parts II and III of Judge Murnaghan's dissent from the vacated majority opinion in *Warren v. Fairfax Cnty.*, 169 F.3d 190 (4th Cir. 1999)).
9. The Fourth Circuit has ruled that restricting speakers on the basis of residency is not a compelling state interest. *Id.* at 190.
10. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 534 (1993), *superseded in part by statute,* Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, §2, 107 Stat. 1488, 1488 (1993) (codified as amended at 42 U.S.C. §§ 2000bb to 2000bb-4 (2006)), *as recognized in* Francis v. Keane, 888 F. Supp. 568, 573 (S.D.N.Y. 1995).
11. *Id.* at 531–32.
12. *See id.* at 542.
13. *Id.* at 534.
14. Capitol Square Review & Advisory Bd. v. Pinette, 515 U.S. 753, 770 (1995) (plurality opinion by Scalia, J., joined by Rehnquist, C.J., and Kennedy and Thomas, J.J.) (emphasis added).
15. Warren v. Fairfax Cnty., 196 F.3d 186, 190 (4th Cir. 1999).
16. *See Pinette*, 515 U.S. at 765–66.
17. *Id.* at 770.
18. *Id.* at 763–64.
19. *Id.* at 761. The Court in *Pinette* distinguished its earlier holding in *County of Allegheny* by stressing that the display in that case (of a privately sponsored crèche on the Grand Staircase of the courthouse) was unconstitutional because the staircase was not open to all on an equal basis. Therefore, the government was favoring sectarian religious expression. *Id.* at 764.
20. *Id*. at 765.
21. *Id.* at 768.
22. *Id.* at 769.
23. *Id.* at 766.
24. Pleasant Grove City v. Summum, 555 U.S. 460 (2009).
25. *Id*. at 480.
26. *Id.* at 468.
27. *Id.* at 483 (Scalia, J., concurring) (discussing Van Orden v. Perry, 545 U.S. 677 (2005)).
28. 403 U.S. 602 (1971).
29. *Id.* at 612–13.
30. *See* Cnty. of Allegheny v. ACLU, 492 U.S. 573, 620 (1989).
31. Smith v. Cnty. of Albemarle, 895 F.2d 953, 957–58 (4th Cir. 1990).
32. *Id.* at 955–59.
33. Lynch v. Donnelly, 465 U.S. 668, 691 (1984) (O'Connor, J., concurring); *Smith*, 895 F.2d at 956. *See also* Pleasant Grove City v. Summum, 555 U.S. 460, 483 (2009) (Scalia, J., concurring) (stating that a local government did not violate the Establishment Clause by erecting a privately donated statue of the Ten Commandments in a public park when the statue "conveyed a permissible secular message," as evidenced by the facts that it was surrounded by several other permanent monuments and donated for a secular purpose).
34. *See, e.g.*, *Lynch*, 465 U.S. at 685.
35. Wallace v. Jaffree, 472 U.S. 38, 53–55 (1985); *see generally* Levitt v. Comm. for Pub. Educ. & Religious Liberty, 413 U.S. 472 (1973) (finding unconstitutional a New York statutory program of aid for nonpublic schools on the ground that aid devoted to secular functions was not distinguishable from aid to sectarian activities); Lemon v. Kurtzman, 403 U.S. 602 (1971) (finding unconstitutional Pennsylvania and Rhode Island statutory programs of aid for nonpublic schools on the ground that they involved impermissible entanglement of church and state).
36. Van Orden v. Perry, 545 U.S. 677, 686 (2005).
37. *Id.*
38. Stone v. Graham, 449 U.S. 39, 41 (1980) (per curiam).
39. *Van Orden*, 545 U.S. at 690.
40. *Id.* at 691–92.
41. *Id.* at 690.
42. *Cf. Stone*, 449 U.S. at 42.
43. *Van Orden*, 545 U.S. at 703 (Breyer, J., concurring).
44. *See id.* at 688 (majority opinion).
45. *Id.* at 690.

46. *Id.* at 700–03 (Breyer, J., concurring). *See also* Pleasant Grove City v. Summum, 555 U.S. 460, 483 (2009) (Scalia, J., concurring).
47. ACLU of Tenn. v. Hamilton Cnty., 202 F. Supp. 2d 757, 764–65 (E.D. Tenn. 2002); *see also* Suhre v. Haywood Cnty., N.C., 55 F. Supp. 2d 384, 395–96 (W.D.N.C. 1999).
48. McCreary Cnty. v. ACLU of Ky., 545 U.S. 844 (2005).
49. Adlund v. Russ, 307 F.3d 471, 482 (6th Cir. 2002).
50. Simpson v. Chesterfield Bd. of Supervisors, 404 F.3d 276, 281 (4th Cir. 2005).
51. Marsh v. Chambers, 463 U.S. 783, 792 (1983).
52. *Id.* at 793–95.
53. Joyner v. Forsyth Cnty. Bd. of Comm'rs, 653 F.3d 341 (4th Cir. 2011) *cert denied*, Forsyth Cnty., N.C. v. Joyner, 132 S. Ct. 1097 (2012); Wynne v. Town of Great Falls, 376 F.3d 292, 298 (4th Cir. 2004).
54. Wynne, 376 F.3d at 299 (quoting Lee v. Weisman, 505 U.S. 577, 641 (1992) (Scalia, J., dissenting)).
55. *Id.* at 298.
56. Simpson v. Chesterfield Bd. of Supervisors, 404 F.3d 276, 287–88 (4th Cir. 2005).
57. *Id.* (quoting Simpson v. Chesterfield Cnty. Bd. of Supervisors, 292 F. Supp. 2d 805, 819 (E.D. Va. 2003) (quoting Rosenberger v. Rector, 515 U.S. 819, 833 (1995))); *see also* Turner v. City Council of Fredericksburg, 534 F.3d 352, 356 (4th Cir. 2008).
58. Turner v. City Council of Fredericksburg, No. 3:06CV23, 2006 WL 2375715, at *2 (E.D. Va. Aug. 14, 2006) (citation omitted), *aff'd*, 534 F.3d 352 (4th Cir. 2008).
59. Joyner v. Forsyth Cnty. Bd. of Comm'rs, 653 F.3d at 348–50; *Turner*, 534 F.3d at 356.
60. N.C. Civil Liberties Union Legal Found. v. Constangy, 947 F.2d 1145, 1148 (4th Cir. 1991) (discussing Marsh v. Chambers, 463 U.S. 783 (1983)).
61. Lemon v. Kurtzman, 403 U.S. 602, 612–13.
62. *Constangy*, 947 F.2d at 1151.
63. *See* United States v. Bakker, 925 F.2d 728, 740–41 (4th Cir. 1991) (holding that when a sentencing judge states " '*those of us who do have a religion are ridiculed as being saps from money-grubbing preachers or priests*,' " the sentencing verdict should be remanded because the lengthy prison term may have reflected the court's "own sense of religious propriety") (quoting trial judge's sentence).

North Carolina Council of Churches

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This booklet is sponsored by the above organizations and intended for government officials in North Carolina and others who wish to learn about existing constitutional law related to various issues concerning religion and government throughout the state.