

## American Minute with Bill Federer

"'Wall of separation,' a phrase nowhere to be found in the Constitution"-Justice Potter Stewart

Italian socialist  
**Antonio Gramsci**  
wrote:

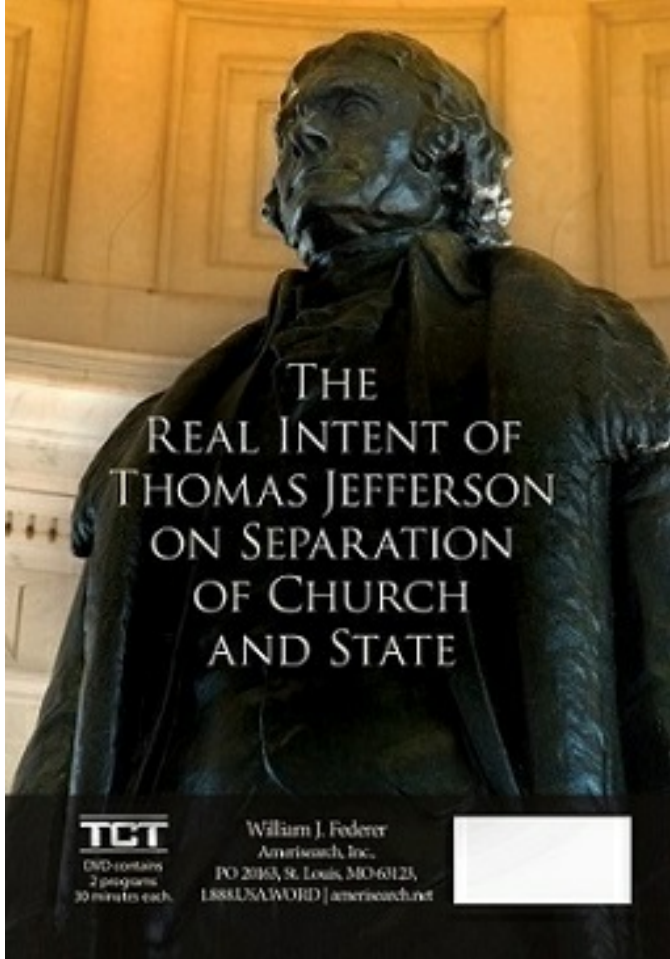
**"Socialism is precisely the religion that must overwhelm Christianity.**

**Socialism** will triumph by first capturing the culture via **infiltration** of **schools, universities, churches** and the **media** by transforming the consciousness of society."



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[The Real Intent of Jefferson on Separation of Church and State \(DVD\)](#)



**Gary North** explained  
(*Remnant Review*,  
March 14, 2013):

"**Gramsci** in the  
1930s  
acknowledged that  
**Western society**

was **deeply religious**, and that the only way to achieve a  
**proletarian revolution** would be to **break the faith** of  
the masses of Western voters in **Christianity** and the  
**moral system derived from Christianity**. He placed  
religion and culture at the base of the pyramid."



On January 10,  
1963, **Democrat**  
**Congressman**  
**Albert Sydney**  
**Herlong, Jr.** (FL-  
4th) read into the



Congressional Record the **45 Communist goals for America**, which included:

"17. Get control of the **schools**. Use them as transmission belts

for **socialism** and current **communist propaganda**. Soften the curriculum. Get control of **teachers' associations**. Put the **party line in textbooks**.

18. Gain control of all **student newspapers**.

19. Use **student riots** to foment public **protests** against programs or organizations which are under communist attack ...

25. **Break down cultural standards of morality** by promoting pornography and obscenity in books, magazines, motion pictures, radio, and TV.

26. Present homosexuality, degeneracy and promiscuity as 'normal, natural, healthy.'

27. Discredit the Bible and emphasize the need for intellectual maturity, which does not need a 'religious crutch' ...

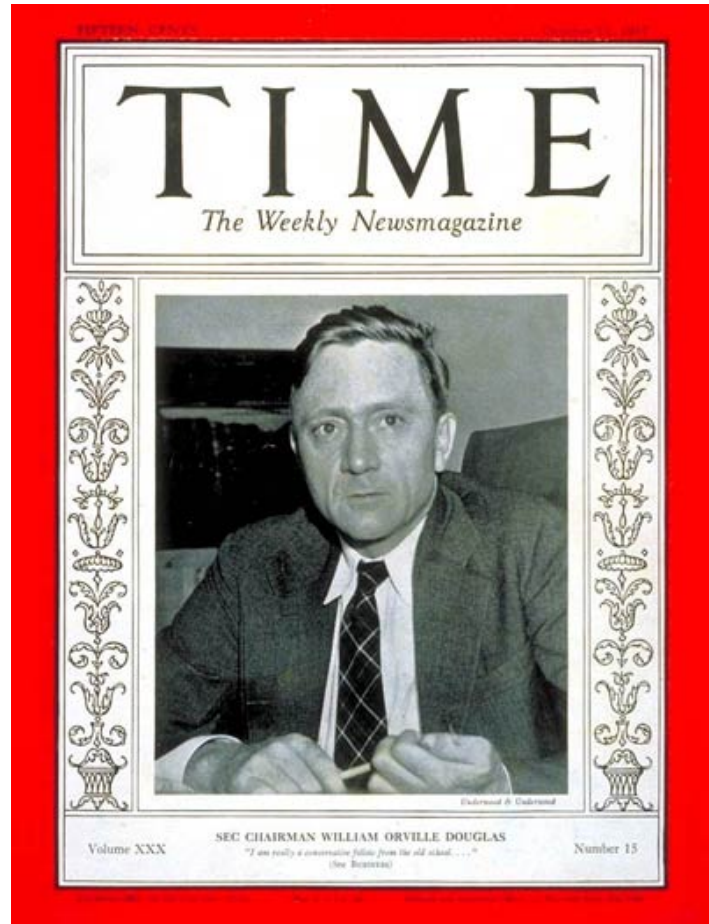
24. **Eliminate all laws** governing **obscenity** by calling them 'censorship' and a violation of free speech and free press ...

16. Use **technical decisions** of the **courts** to **weaken basic American institutions** by claiming their activities violate civil rights ...

28. **Eliminate prayer or any phase of religious expression in the schools** on the ground that it violates the principle of '**separation of church and state.**'"

With the stated goal of socialists to use the phrase "**wall of separation between church and state,**" it is helpful to review opinions regarding it by **past Supreme Court Justices.**

**Justice William Orville Douglas** served the longest term on the bench in the Supreme Court's history -- 36 years, until his death January 19, 1980.



He was one of the eight Supreme Court Justices nominated by **Democrat President Franklin D. Roosevelt.**

He previously taught law at Columbia Law School and Yale Law School, and served on the U.S. Securities and Exchange Commission.

**Justice William O. Douglas** wrote the majority decision in the 1952 case of *Zorach v. Clauson*:

"The **First Amendment**, however, **does not say**





that in every and all respects there shall be a **separation of church and state ...**

Otherwise the **state** and **religion** would be aliens to each other -- **hostile**, suspicious, and **even unfriendly ...**

Municipalities would not be permitted to render **police or fire protection to religious groups.**

- Policemen who helped parishioners into their **places of worship** would violate the Constitution.
- **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**  
continued:

**"We are a  
religious people  
whose institutions  
presuppose a  
Supreme Being ...  
When the state  
encourages  
religious  
instruction ... it  
follows the best of  
our traditions.**



For it then respects the **religious nature of our people**  
and accommodates the public service to their spiritual  
needs.

To hold that it may not would be to find in the  
Constitution a requirement that the government show a

callous indifference to religious groups. **That would be preferring those who believe in no religion over those who do believe ..."**

**Douglas** concluded:

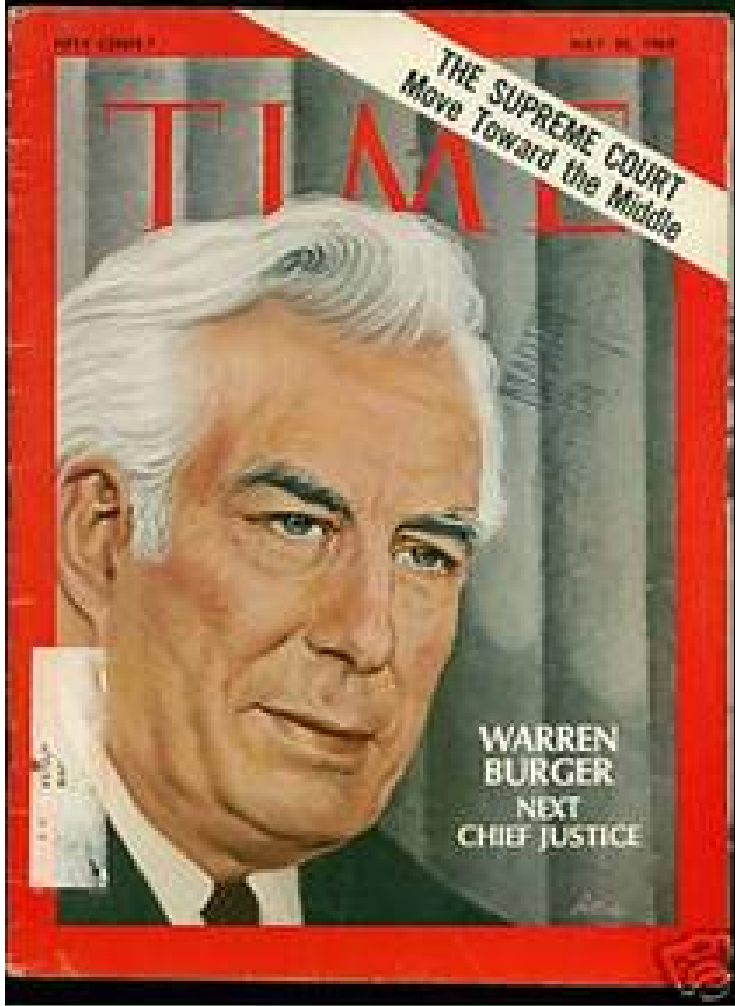
"We find **no constitutional requirement** which makes it necessary for **government to be hostile to religion** and to throw its weight against efforts to widen the effective scope of religious influence ...

**We cannot read into the Bill of Rights** such a philosophy of **hostility to religion.**"



**Chief Justice Warren E. Burger** cited Justice Douglas' *Zorach v. Clauson* opinion in the 1984 decision of *Lynch v Donnelly*:

"The concept of a **'wall' of separation between church and state** is a ... **figure of speech** ... but the **metaphor** itself is **not a wholly**



**accurate description** of the practical aspects of the relationship that in fact exists between **church and state**.

**The Constitution does not require complete separation of church and state;** it affirmatively mandates **accommodation**, not merely tolerance, of all religions, and **forbids hostility**

toward any.

Anything less would require the '**callous indifference**' (*Zorach v. Clauson*), that was **never intended by the Establishment Clause ...**

Indeed, we have observed, **such hostility** would bring us into 'war with **our national tradition** as embodied in the **First Amendment's guaranty** of the **free exercise of religion**. (*McCullum*) ..."

**Justice Stanley Reed** wrote in his dissent of *McCullum v Board of Education*, 1948:

**"Rule of law**



should **not** be drawn from a **figure of speech.**"



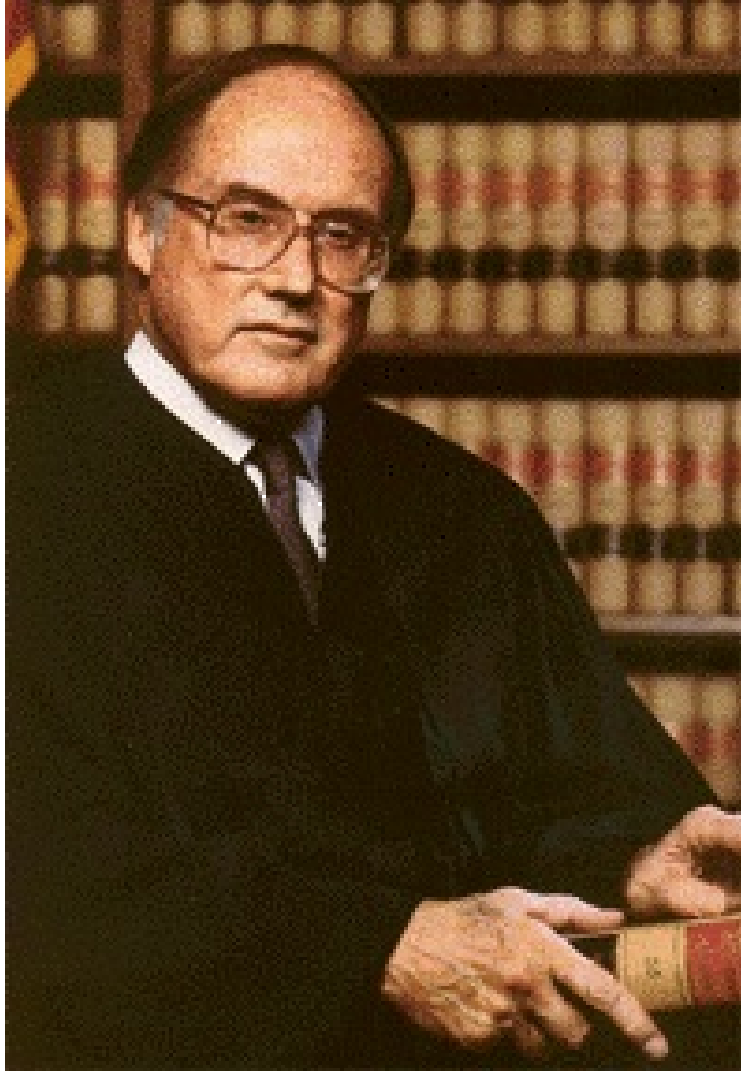
**Justice Potter Stewart** wrote in his dissent of *Engle v Vitale*, 1962:

"The Court ... is not aided ... by the ... invocation of **metaphors** like the '**wall of separation**,' a phrase nowhere to be found in the **Constitution.**"

**Justice William Rehnquist** wrote in his dissent of *Wallace v Jaffree*,

1984:

"The **'wall of separation between church and State'** is a **metaphor** based on **bad history**, a **metaphor** which has proved **useless** as a guide to judging. It should be frankly and **explicitly abandoned**.



It is impossible to build sound constitutional doctrine upon a **mistaken**

**understanding of Constitutional history ...**

The **establishment clause** had been expressly freighted with **Jefferson's misleading metaphor** for nearly forty years ...

There is simply **no historical foundation** for the proposition that the framers intended to build a **wall of separation ...**

The **recent court decisions** are **in no way** based on either the language or **intent of the framers ...** But the greatest injury of the **'wall' notion** is its **mischievous** diversion of judges from the actual intentions of the drafters of the Bill of Rights."

**Judge Richard  
Suhrheinrich**



wrote in *ACLU v Mercer County*, 2006:

"The ACLU makes repeated reference to **'the separation of church and state.'** This **extra-constitutional construct** has grown **tiresome.**

The **First Amendment** does **not** demand a **wall of separation**

**between church and state.** Our nation's history is replete with **governmental acknowledgment** and in some cases, **accommodation of religion."**

In *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756, 760 (1973), the Court stated:

"This Nation's history has **not** been one of entirely sanitized **separation between church and state.** It has **never** been thought either **possible** or desirable to enforce a regime of **total separation."**

**COMMITTEE FOR PUBLIC EDUCATION v. NYQUIST**

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United States Supreme Court

COMMITTEE FOR PUBLIC EDUCATION v. NYQUIST(1973)

No. 72-694

Argued: April 16, 1973 Decided: June 25, 1973

[ Footnote \* ] Together with No. 72-753, Anderson v. Committee for Public Education & Religious Liberty et al.; No. 72-791, Nyquist, Commissioner of Education of New York, et al. v. Committee for Public Education & Religious Liberty et al.; and No. 72-929, Cherry et al. v. Committee for Public Education & Religious Liberty et al., also on appeal from the same court.

Amendments to New York's Education and Tax Laws established three financial aid programs for nonpublic elementary and secondary schools. The first section provides for direct money grants to "qualifying" nonpublic schools to be used for "maintenance and repair" of facilities and equipment to ensure the students' "health, welfare and safety." A "qualifying" school is a nonpublic, nonprofit elementary or secondary school serving a high concentration of pupils from low-income families. The annual grant is \$30 per pupil, or \$40 if the facilities are more than 25 years old, which may not exceed 50% of the average per-pupil cost for equivalent services in the public schools. Legislative findings concluded that the State "has a primary responsibility to ensure the health, welfare and safety of children attending . . . nonpublic schools"; that the "fiscal crisis in

The Tennessee Supreme Court



stated in *Carden v. Bland*, March 9, 1956:

"Great stress is laid upon the need of maintaining the doctrine of

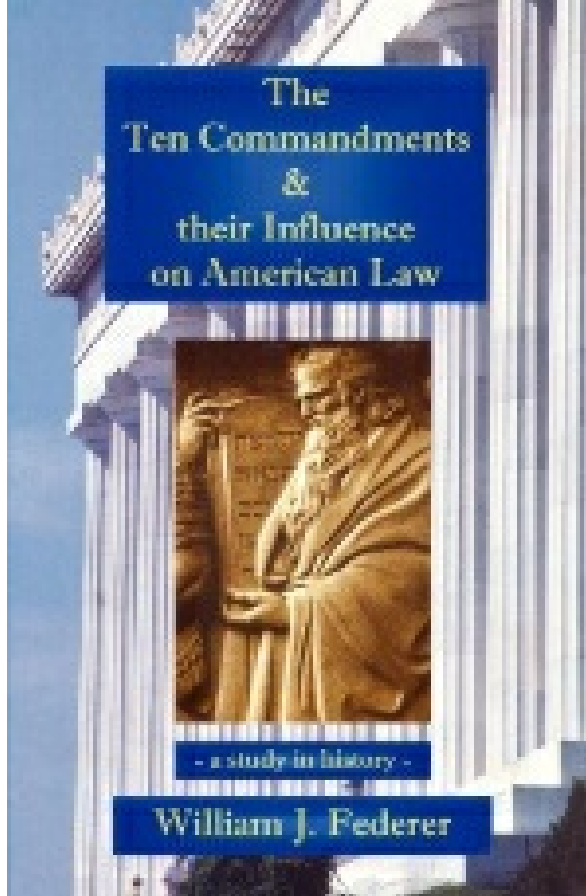
**'separation of church and state' ... but it should not be tortured into a meaning that was never intended by the Founders of this Republic, with the result that the public school system of the several states is to be made a godless institution."**

The U.S. Supreme Court stated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971):

"Our prior holdings **do not call for total separation between church and state; total separation is not possible** in an absolute sense."



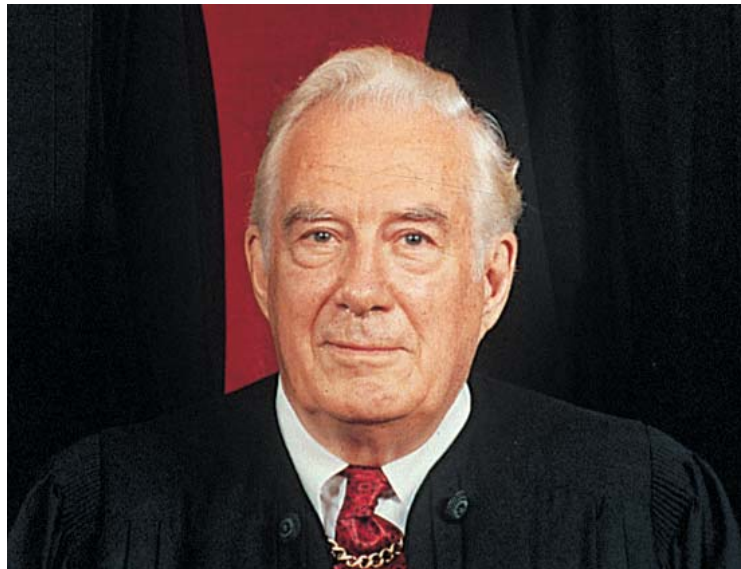
[The Ten Commandments and Their Influence on American Law](#)



**Chief Justice Warren E. Burger** continued in *Lynch v Donnelly*, 1984:

"That neither the draftsmen of the Constitution, who were **Members of the First**

**Congress**, nor the First Congress itself, saw any establishment problem in **employing Chaplains to offer daily prayers in the Congress** is a striking example of the **accommodation of religious beliefs intended by the Framers ...**



Our history is pervaded by **official acknowledgment of the role of religion** in American life, and equally pervasive is evidence of accommodation of all faiths and all forms of religious expression and **hostility toward none ...**



... It would be ironic if the inclusion of the **creche** in the display, as part of a celebration of **an event acknowledged in the Western World for 20 centuries**, and in this country by **the people, the Executive Branch, Congress, and the courts for 2 centuries**, would so 'taint' the exhibition as to render it violative of the Establishment Clause ...



**To forbid the use of this one passive symbol while hymns and carols are sung and played in public places including schools, and while Congress and state legislatures open public sessions with prayers, would be an overreaction contrary to this Nation's history and this Court's holdings ..."**



**Burger** continued in *Lynch v Donnelly*:

"A significant example of the contemporaneous understanding of that Clause is found in the

events of the first week of the First Session of the First Congress in 1789.

**In the very week that Congress approved the Establishment Clause as part of the Bill of Rights for submission to the states, it enacted legislation**

providing for paid Chaplains for the House and Senate ...

... It is clear that **neither the 17 draftsmen of the Constitution** who were **Members of the First Congress**, nor the **Congress of 1789**, saw any **establishment**



**problem** in the employment of **congressional Chaplains** to offer **daily prayers** in the Congress, a practice that has continued for nearly two centuries.

It would be difficult to identify **a more striking example of the accommodation of religious belief** intended by the Framers ..."

**Chief Justice Burger** continued:

"Our history is replete with **official references to the value and invocation of Divine guidance** in deliberations and pronouncements of the Founding Fathers and contemporary leaders.

Beginning in the



early colonial period long before Independence, a **day of Thanksgiving** was celebrated as a **religious holiday** to give thanks for the bounties of Nature as **gifts from God**.

**President Washington** and his successors proclaimed **Thanksgiving**, with all its **religious overtones**, a day of national

celebration and Congress made it a National Holiday more than a century ago ...

That holiday has not lost its theme of expressing **thanks for Divine aid** any more than has **Christmas** lost its **religious significance** ...

... **Executive Orders** and other official announcements of Presidents and of the Congress have proclaimed both **Christmas and Thanksgiving National Holidays**

in **religious terms.**

And, by **Acts of Congress**, it has long been the practice that federal employees are released from duties on these National Holidays, while being paid from the same public revenues that provide the compensation of the **Chaplains of the Senate and the House and the military services ...**



Thus, it is clear that Government has long recognized -- indeed it has subsidized -- **holidays with religious significance."**

**Burger** added:

"Other examples of reference to our religious heritage are found in the statutorily prescribed national motto '**In God We Trust,**' which Congress and the President mandated for **our**

**currency**, and in the language **'One nation under God,'** as part of the **Pledge of Allegiance** to the American flag. That pledge is recited by many thousands of public school children -- and adults -- every year.



... Art galleries supported by public revenues display religious paintings of the 15th and 16th centuries, predominantly **inspired by one religious faith.**

The **National Gallery in Washington**, maintained with Government support, for example, has long exhibited masterpieces with religious messages, notably **the Last Supper**, and paintings depicting **the Birth of Christ, the**





**Crucifixion, and the Resurrection**, among many others with explicit **Christian themes** and messages.

The very chamber in which oral arguments on this case were heard is decorated with a notable and permanent -- not seasonal -- **symbol of religion: Moses with the Ten Commandments**. Congress has long provided **chapels** in the Capitol for **religious worship** and meditation.

There are countless other illustrations of the **Government's acknowledgment of our religious heritage** and governmental sponsorship of graphic manifestations of that heritage ..."

**Burger** continued:

"Congress has directed the President to proclaim a **National Day of Prayer** each year 'on which (day) the people of the United States may turn to **God** in **prayer** and meditation at **churches**, in groups, and as individuals.'



Our Presidents have repeatedly issued such Proclamations. Presidential Proclamations and messages have also issued to commemorate **Jewish Heritage Week**, Presidential Proclamation No. 4844, 3 CFR 30 (1982), and the **Jewish High Holy Days**, 17 Weekly Comp. of Pres. Doc. 1058 (1981) ..."

**Chief Justice  
Warren E. Burger**



The Justices of the Supreme Court of the United States, seated left to right: Associate Justices Thurgood Marshall, William J. Brennan, Jr.; Chief Justice Warren E. Burger; Associate Justices Byron R. White, Harry A. Blackmun, Stanley J. Forster; to right: Associate Justices John Paul Stevens, Lewis F. Powell, Jr., William H. Rehnquist, Sandra Day O'Connor

*Warren E. Burger*  
*Thurgood Marshall*  
*William J. Brennan, Jr.*  
*Byron R. White*  
*Harry A. Blackmun*  
*Stanley J. Forster*  
*John Paul Stevens*  
*Lewis F. Powell, Jr.*  
*William H. Rehnquist*  
*Sandra Day O'Connor*

concluded the *Lynch v. Donnelly* decision:

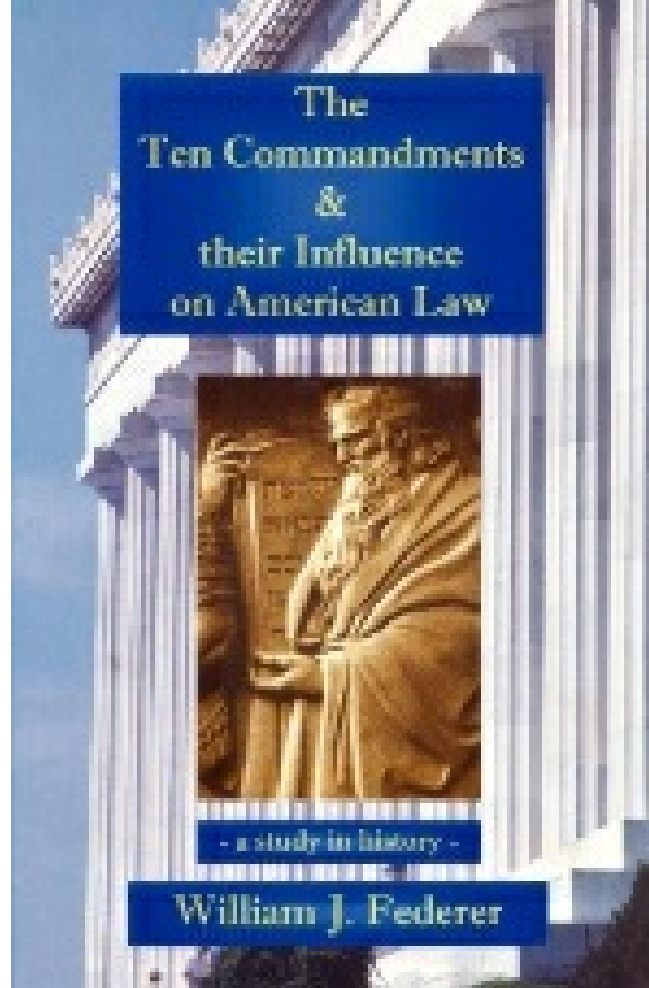
"One cannot look at even this brief resume without finding that **our history is pervaded by expressions of religious beliefs**

such as are found in *Zorach*.

Equally pervasive is the evidence of accommodation of all **faiths** and all forms of **religious expression**, and **hostility toward none**.

Through this accommodation, as **Justice Douglas** observed, governmental action has 'follow[ed] the **best of our traditions**' and 'respect[ed] the **religious nature of our people**.'"

[The Ten Commandments and Their Influence on American Law](#)



**Justice Anthony Kennedy** wrote in *Town of Greece v. Galloway*, May 5, 2014:

"In *Marsh v. Chambers*, 463 U. S. 783, the Court found **no First Amendment violation** in the Nebraska Legislature's practice of **opening its sessions with a prayer** delivered by a **chaplain** paid

from state funds.

The decision concluded that **legislative prayer**, while religious in nature, has long been understood as compatible with the Establishment Clause.

As practiced by Congress since the framing of the Constitution, **legislative prayer** lends gravity to public business, **reminds lawmakers** to transcend petty differences in **pursuit of a higher purpose**, and expresses a common aspiration to a just and peaceful society ...

**Legislative invocations** are compatible with the Establishment Clause.

... The **First Congress** made it an early item of business to appoint and **pay official chaplains**, and both the House and Senate have maintained the office virtually uninterrupted since that time ...



That the **First Congress** provided for the appointment of **chaplains** only days after approving language for the **First Amendment** demonstrates that the Framers considered **legislative prayer** a benign acknowledgment of **religion's role in society** ...

... In the 1850's, the judiciary committees in both the House and Senate reevaluated the



practice of **official chaplaincies** after receiving petitions to abolish the office. The committees concluded that the office **posed no threat of an establishment.**"

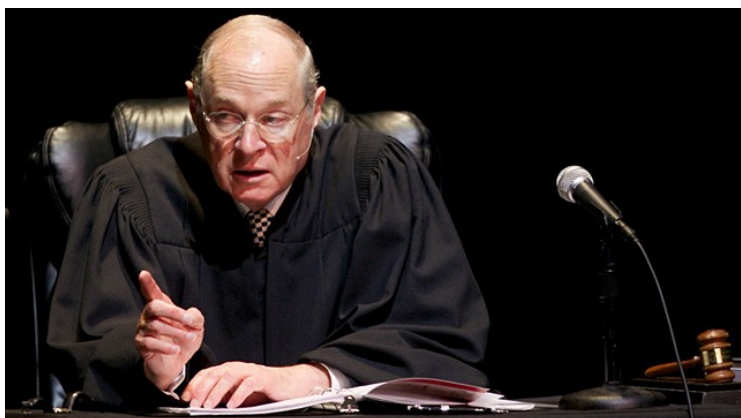


**Justice Kennedy** was referring to the **House Judiciary Committee Report of Congressman James Meacham of Vermont, March 27, 1854:**

"At the adoption of the Constitution, we believe **every State** -- certainly ten of the thirteen -- **provided** as regularly for the **support of the Church** as for the **support of the Government.**"

**Justice Kennedy** continued in *Greece v. Galloway*:

"Any test the Court adopts **must acknowledge a practice that was accepted by the Framers** and has withstood the critical scrutiny of time and political change ...



**An insistence on nonsectarian or ecumenical prayer**



as a single, fixed standard **is not consistent with the tradition of legislative prayer** outlined in the Court's cases ...

**The Congress that drafted the First Amendment** would have been accustomed to **invocations containing explicitly religious themes** of the sort respondents find objectionable ..."

**Kennedy** continued:

"One of the Senate's first chaplains, the **Rev. William White**, gave **prayers** in a series that included the **Lord's Prayer**, the Collect for Ash Wednesday, **prayers** for peace and grace, a general **thanksgiving**, **St. Chrysostom's Prayer**, and a prayer seeking 'the grace of our Lord Jesus Christ, &c' ...



The decidedly **Christian nature of these prayers must not be dismissed as the relic of a time** when our Nation was less pluralistic than it is today ..."



**Kennedy** added:

"The Court instructed that the '**content of the prayer is not of concern to judges**' ...

**To hold that invocations must be nonsectarian would**

force the legislatures that sponsor prayers and the **courts** that are asked to decide these cases to act as supervisors and **censors of religious speech**,

a rule that would **involve government in religious matters** to a far greater degree than is the case under the town's current practice of neither editing or approving prayers in advance nor criticizing their content after the fact ...

**It would be but a few steps removed** from that prohibition for legislatures to **require chaplains to redact the religious content** from their message in order to make it acceptable for the public sphere.

**... Government may not mandate a civic religion** that stifles any but the most generic reference to the sacred any more



than it may prescribe a religious orthodoxy ...

See *Lee v. Weisman*, 505 U.S. 577, 590 (1992) ('The suggestion that **government may establish an official or civic religion** as a means of avoiding the establishment of a religion with more specific creeds strikes us as a contradiction that **cannot be accepted**');

*Schempp*, 374 U. S., at 306 (Goldberg, J., concurring) (arguing that 'untutored devotion to the **concept of neutrality**' must not lead to 'a brooding and pervasive devotion to the secular') ..."

**Justice Kennedy**  
added:

**"The First Amendment is**

**not a majority rule, and government may not seek to define permissible categories of religious speech**

...

While these **prayers** vary in their **degree of religiosity**, they often seek peace for the Nation, wisdom for its lawmakers, and justice for its people, values that count as universal and that are embodied not only in **religious traditions**, but in our **founding documents and laws**.



... The **first prayer** delivered to the Continental Congress by the **Rev. Jacob Duché** on Sept. 7, 1774, provides an example:



'Be Thou present  
O **God of Wisdom** and direct the counsel of this Honorable Assembly; enable them to settle all things on the best and surest foundations; that the scene of blood may be speedily closed; that Order, Harmony, and Peace be effectually restored, and the **Truth and Justice, Religion and Piety, prevail** and flourish among the people.

Preserve the health of their bodies, and the vigor of their minds, shower down on them, and the millions they here represent, such temporal **Blessings as Thou seest expedient** for them in this world, and crown them with



everlasting Glory in the world to come.

All this we ask in the name and through the merits of **Jesus Christ, Thy Son and our Saviour**, Amen'. W. Federer, *America's God and Country* 137 (2000) ..."



**Justice Anthony Kennedy** concluded the *Town of Greece v. Galloway* decision, May 5, 2014:

"As a practice that has long endured, **legislative prayer**

has become **part of our heritage** and tradition, part of our expressive idiom, similar to the Pledge of Allegiance, inaugural prayer, or the recitation of '**God save the United States and this honorable Court**' at the opening of this Court's sessions ...

It is presumed that the reasonable observer is acquainted with this tradition ... Their purpose is largely to **accommodate the spiritual needs of lawmakers** and connect them to **a tradition dating to the time of the Framers ...**

**Ceremonial prayer** is but a recognition that, since this Nation was founded and until the present day, many Americans deem that their own existence must be understood by **precepts far beyond the authority of government to alter or define**

and that willing **participation in civic affairs** can be consistent with a brief acknowledgment of their **belief in a higher power**, always with due respect for those who adhere to other beliefs."

--

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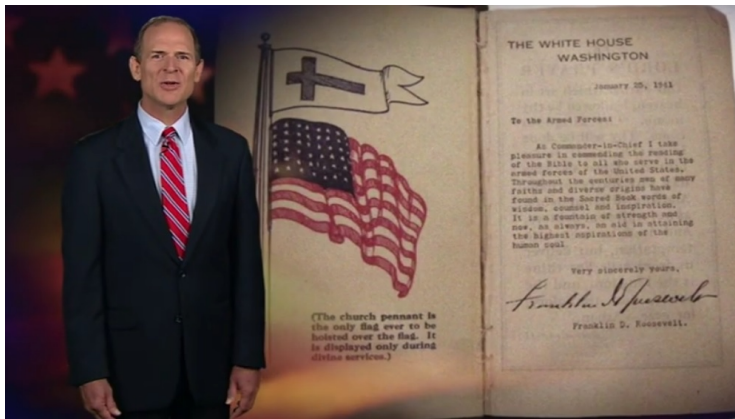
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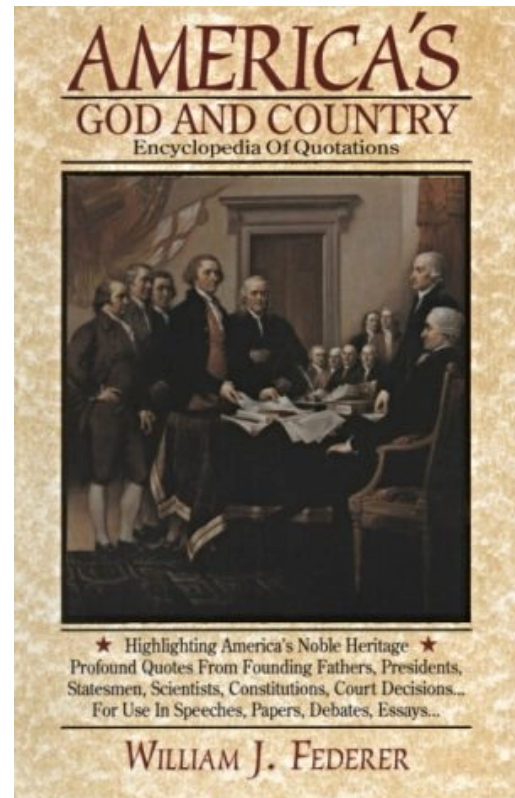
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