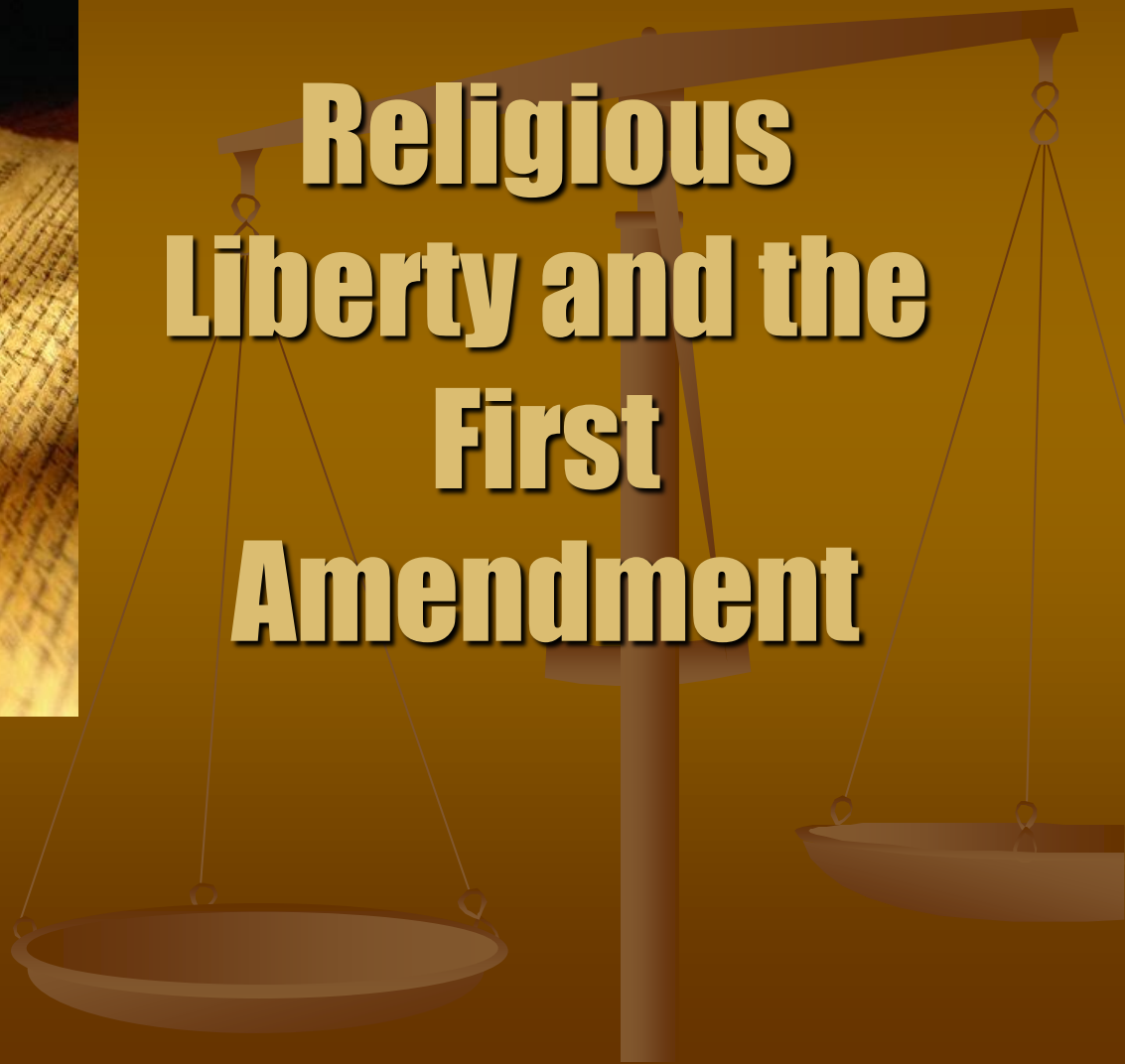


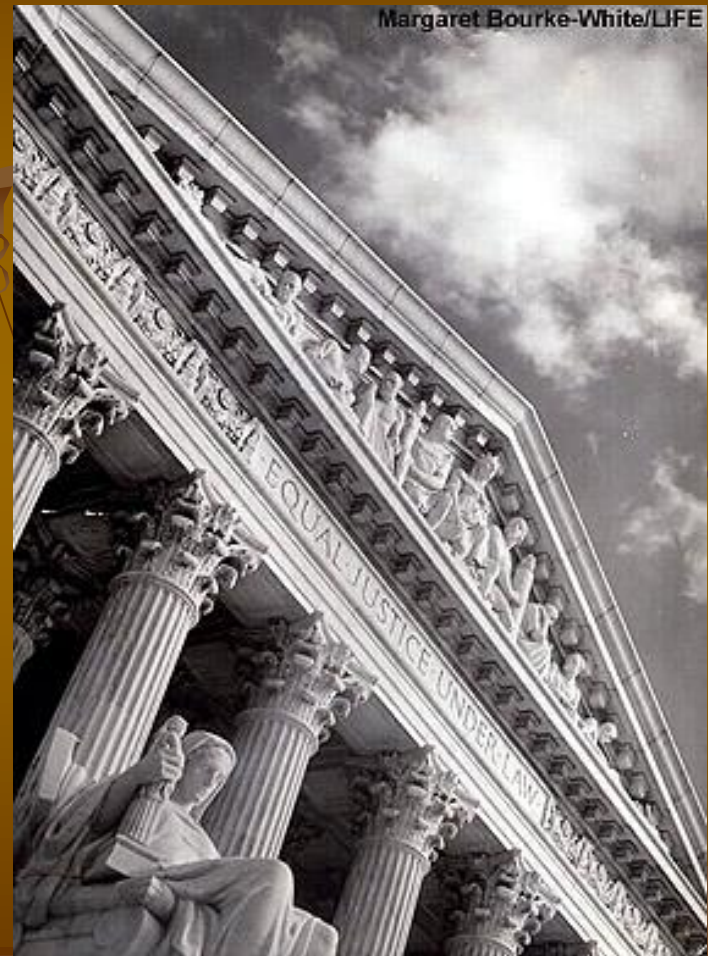
Religious Liberty and the First Amendment



The First Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

First Amendment
U.S. Constitution



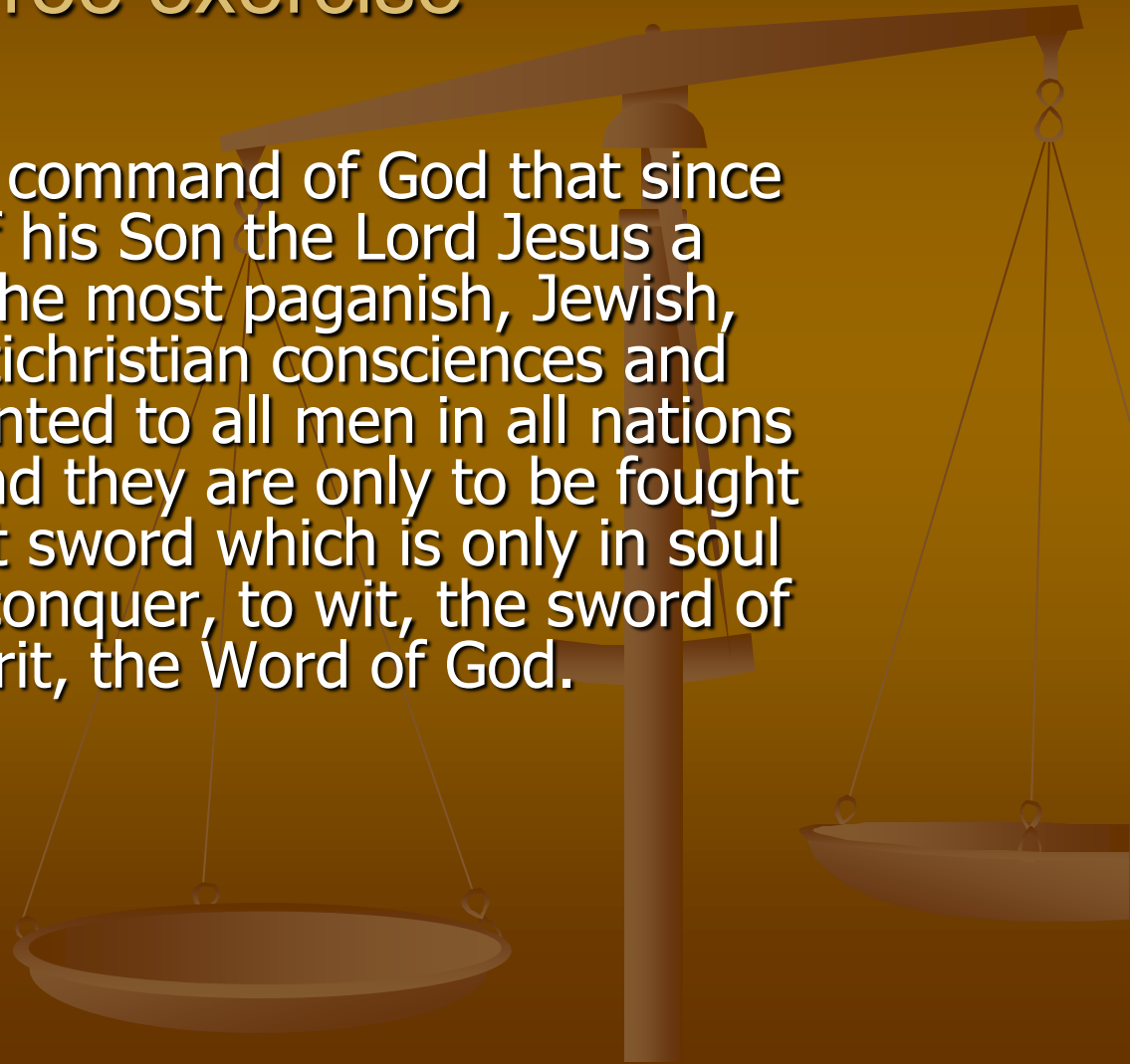
The “lively experiment” Roger Williams



CARRIED BY BOON'S MESSAGE.

Two principles, one freedom: Free exercise

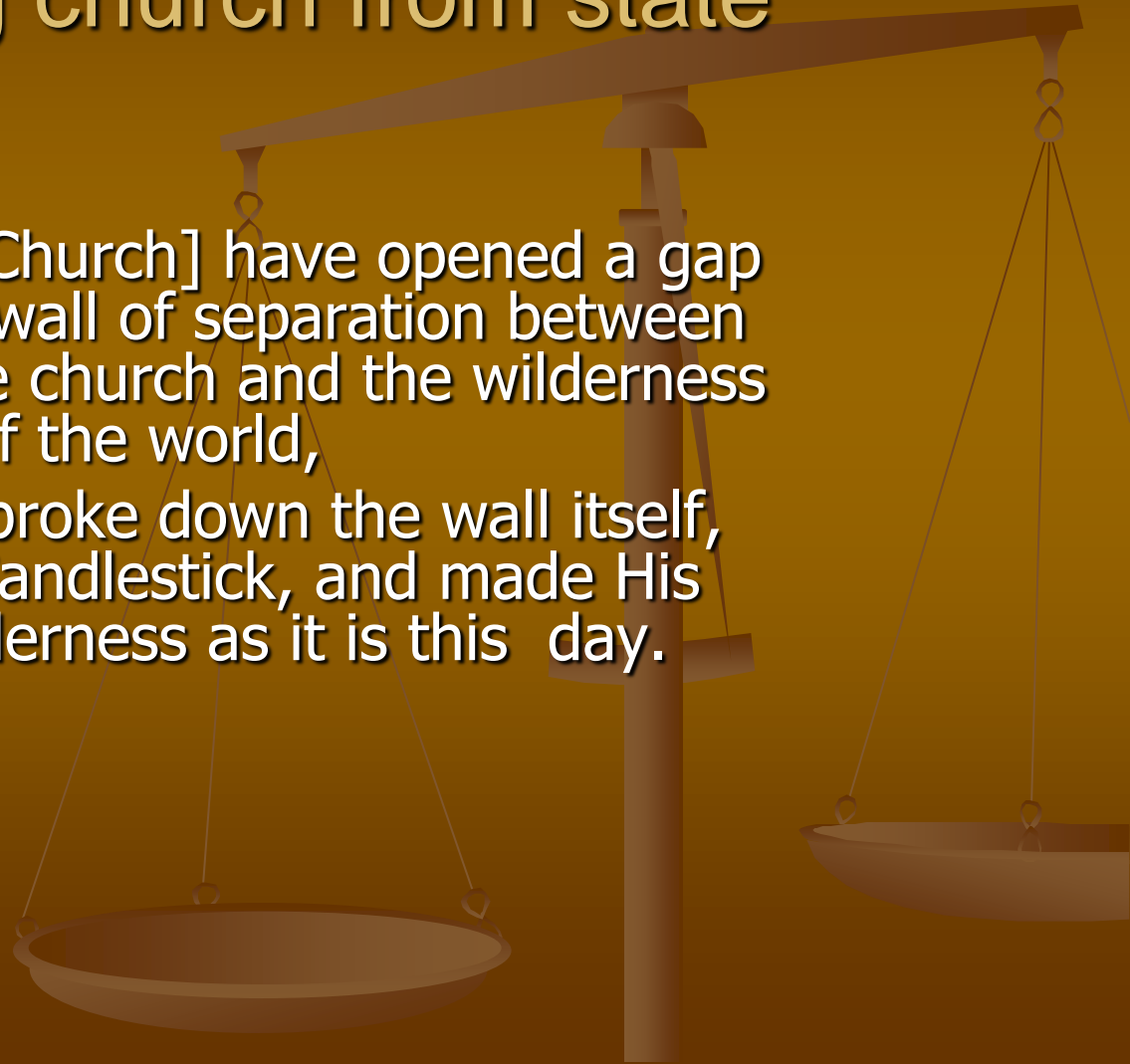
It is the will and command of God that since the coming of his Son the Lord Jesus a permission of the most paganish, Jewish, Turkish, or antichristian consciences and worships, be granted to all men in all nations and countries; and they are only to be fought against with that sword which is only in soul matters able to conquer, to wit, the sword of God's spirit, the Word of God.



No establishment: Separating church from state

When they [the Church] have opened a gap
in the hedge or wall of separation between
the garden of the church and the wilderness
of the world,

God hath ever broke down the wall itself,
removed the Candlestick, and made His
Garden a wilderness as it is this day.



Liberty of conscience

The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society.

--James Madison

Memorial and Remonstrance

Diverse from the beginning

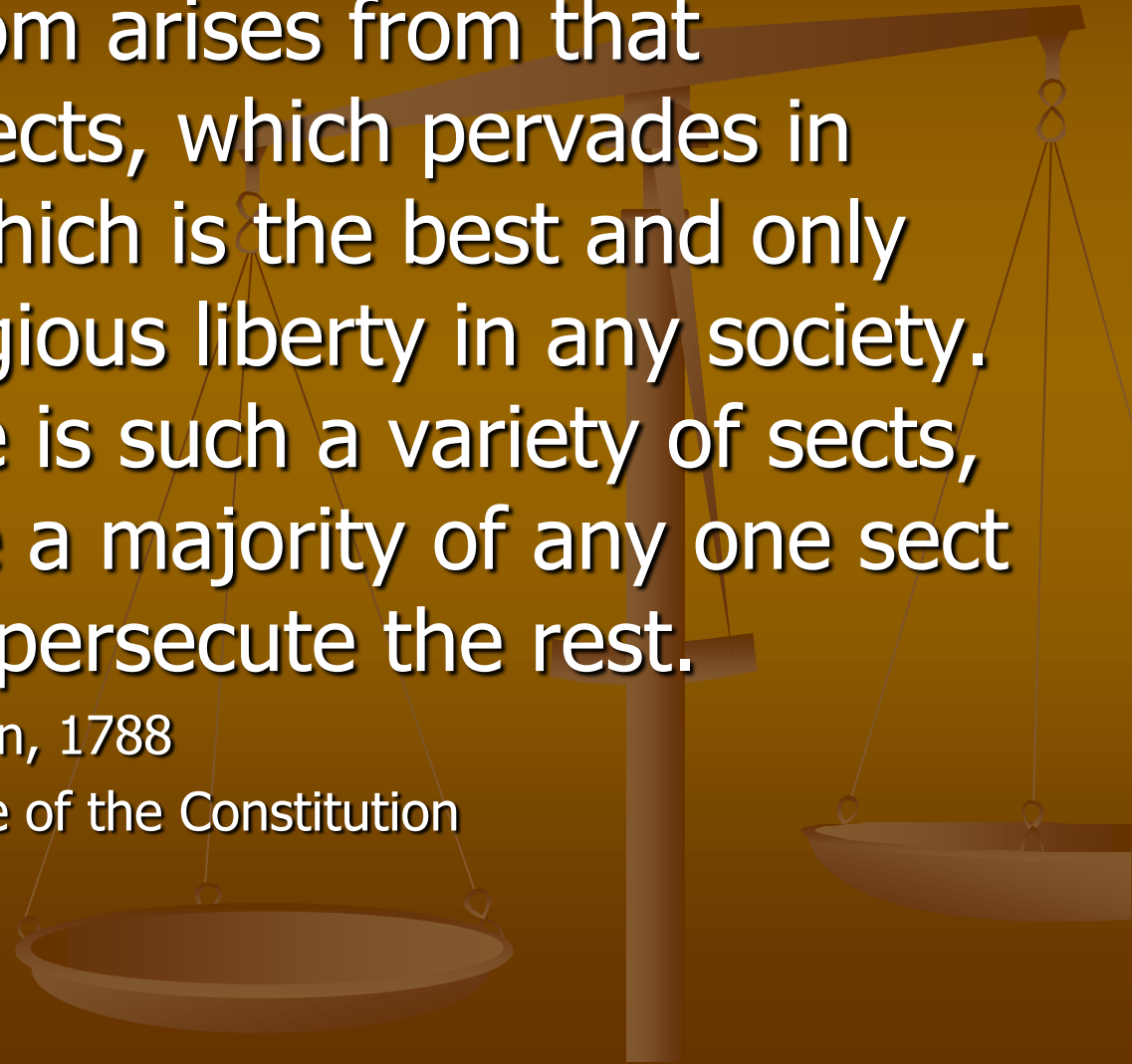
- All shades of Sectarians exist here in Pennsylvania down to open infidelity. Besides the English, Swedish, and German Lutherans, and the Scotch, Dutch and German Reformed, there are Baptists, Mennonites, Arians, Socinians, Schwenckfleders, German Old Tunkers, New Tunkers, New Lights, Inspired, Sabbatarians, Hermits, Independents, and Free Thinkers.
 - Ludwig von Zinzendorf, 1741

Religious diversity and religious freedom

- Religious freedom arises from that multiplicity of sects, which pervades in America, and which is the best and only security for religious liberty in any society. For where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest.

- James Madison, 1788

- General Defense of the Constitution

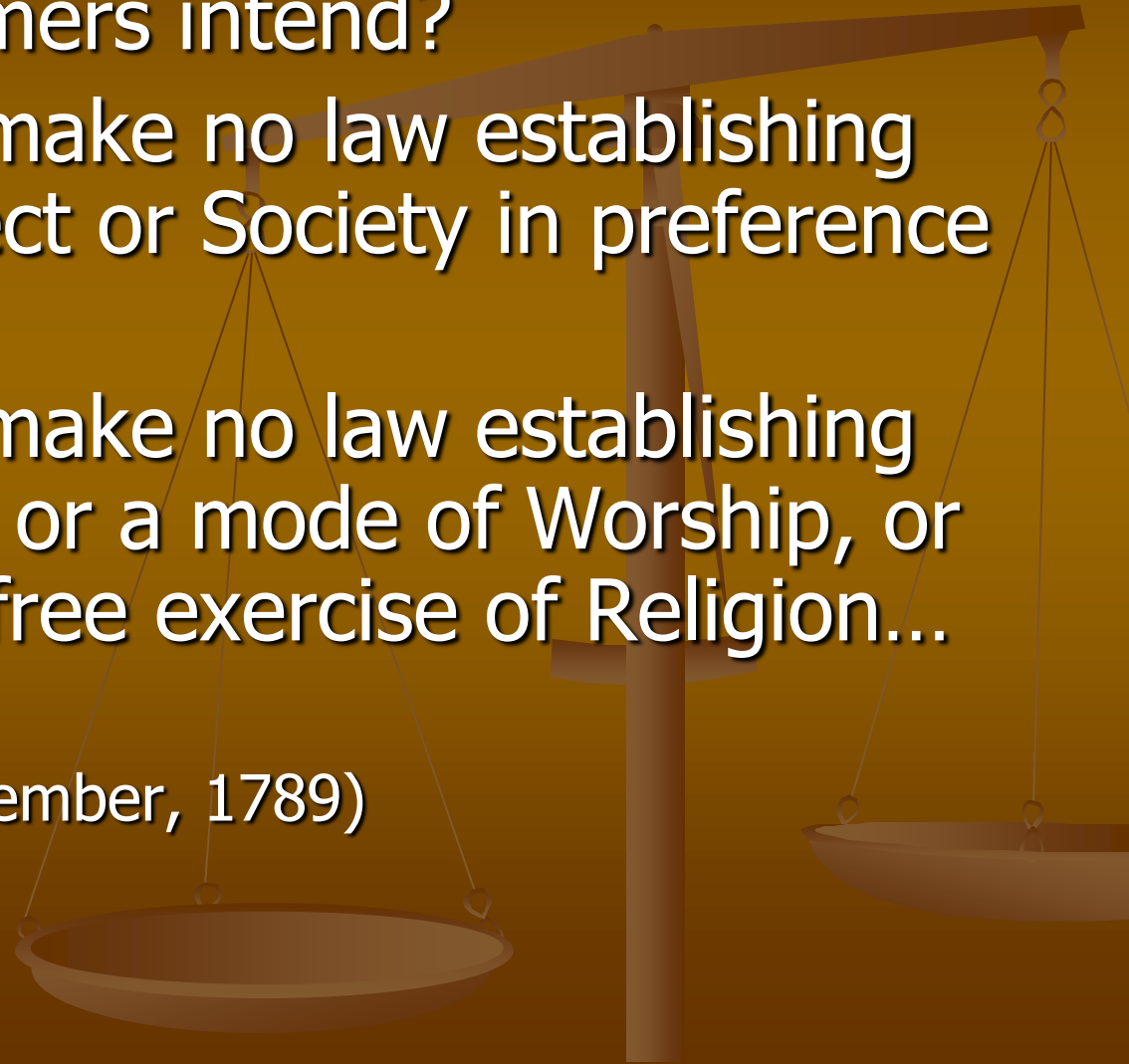


Congress shall make no law respecting an establishment of religion...

What did the Framers intend?

- Congress shall make no law establishing one religious Sect or Society in preference to others...
- Congress shall make no law establishing Articles of Faith or a mode of Worship, or prohibiting the free exercise of Religion...

Senate proposals (September, 1789)

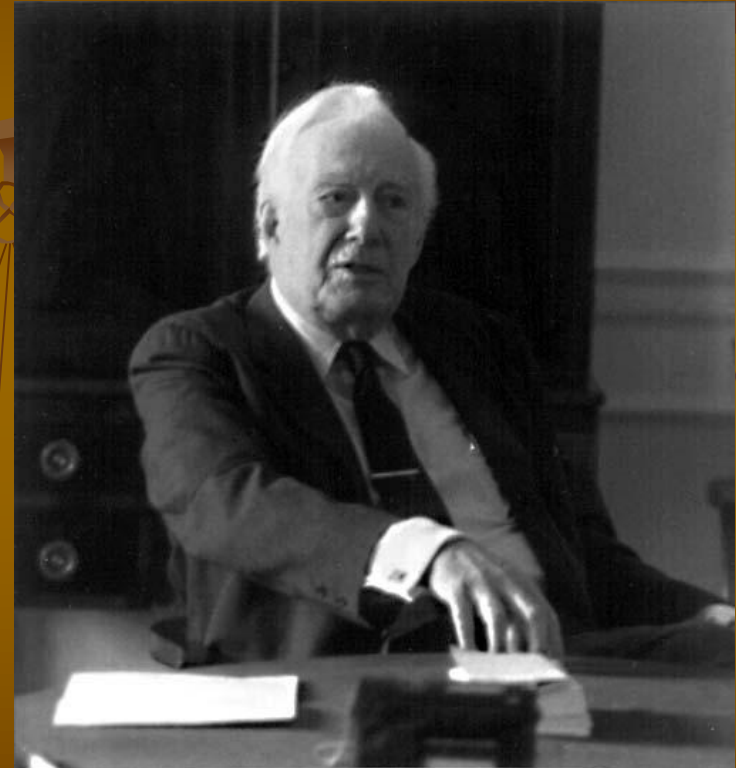


Establishment Clause:
**“Congress shall make no law respecting an
establishment of religion...”**

- Separation (*McCollum*, 1948)
 - Accommodation (*Zorach*, 1952)
 - Neutrality/Fairness (*Schempp*, 1963)
 - Strict Neutrality (*Lemon*, 1971)
 - Endorsement (*Mergens*, 1990)
 - Coercion (*Weisman*, 1992)
 - Equal Treatment (*Rosenberger*, 1995)
- 

The Lemon Test

- Does the law, or other government action, have a bona fide secular or civic purpose?
- Does the primary effect neither advance nor inhibit religion?
- Does the law avoid excessive governmental entanglement with religion?



The Endorsement Test



Former Justice O'Connor suggested that a government action is invalid if it creates a perception that the government is endorsing or disapproving a religion. The fundamental concern is whether the challenged governmental activity conveys, in Justice O'Connor's words, "a message to non adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community."

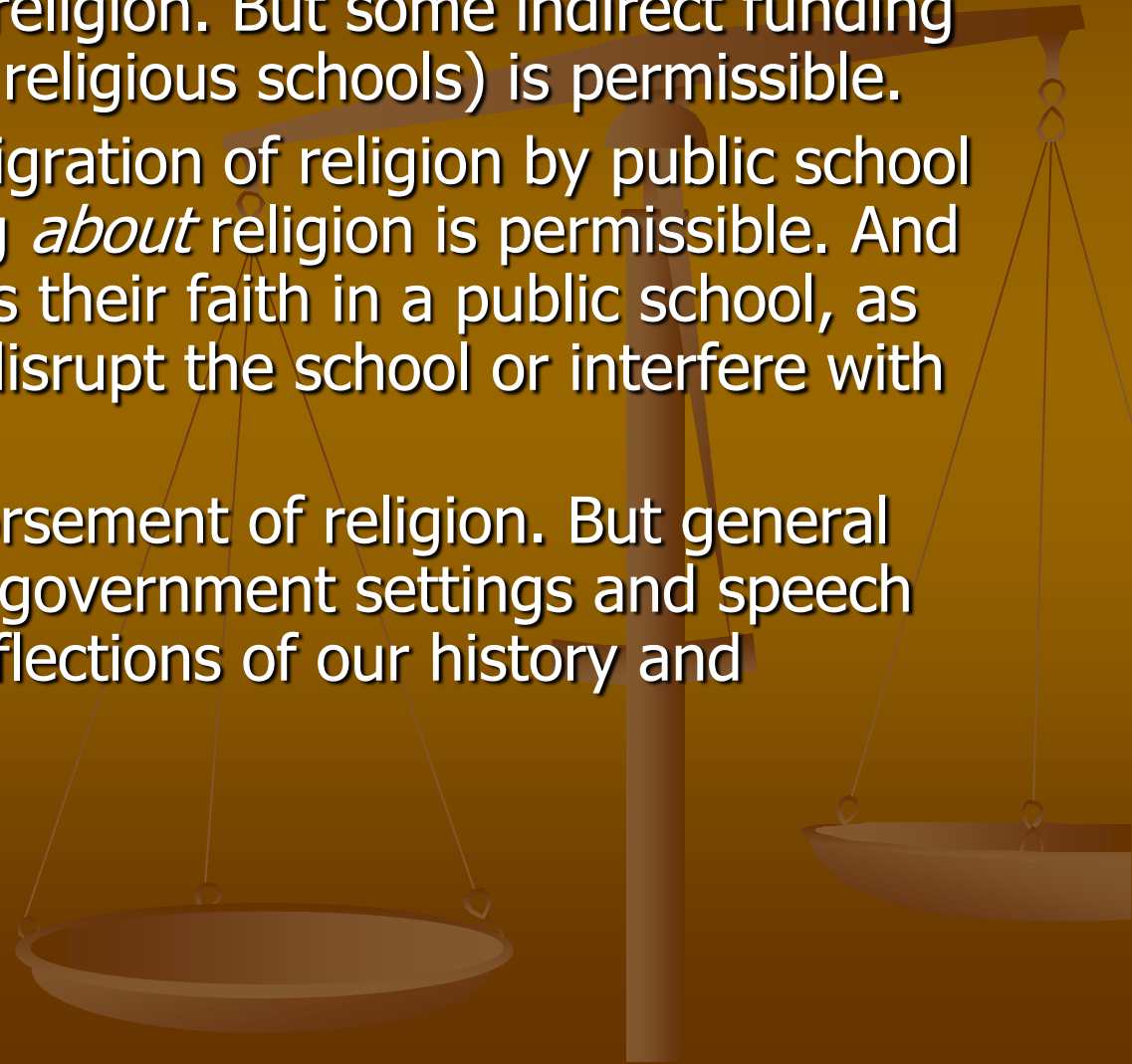
The Coercion Test

In the 1989 case *County of Allegheny v. ACLU*, Justice Kennedy proposed a test with two limiting principles: "government may not coerce anyone to support or participate in any religion or its exercise; and it may not, in the guise of avoiding hostility or callous indifference, give direct benefits to religion in such a degree that it in fact 'establishes a [state] religious faith, or tends to do so.' *Lynch v. Donnelly*."



Applying the separation of church and state in the U.S. today

- No direct funding of religion. But some indirect funding (such as vouchers for religious schools) is permissible.
- No promotion or denigration of religion by public school officials. But teaching *about* religion is permissible. And students may express their faith in a public school, as long as they do not disrupt the school or interfere with the rights of others.
- No government endorsement of religion. But general references to God in government settings and speech are permissible as reflections of our history and traditions.



Full liberty of conscience

- That diabolical Hell conceived principle of persecution rages among some and to their eternal Infamy the Clergy can furnish their quota of Imps for such business. This vexes me the most of any thing whatever. There are at this time in the adjacent County not less than 5 or 6 well meaning men in close Goal for publishing their religious Sentiments which in the main are very orthodox. I have neither patience to hear talk or think any thing relative to this matter, for I have squabbled and scolded abused and ridiculed so long about it, to so little purpose that I am without common patience. So I leave you to pity me and pray for Liberty of Conscience to revive among us.
 - James Madison, 1774

Beyond toleration to Free Exercise

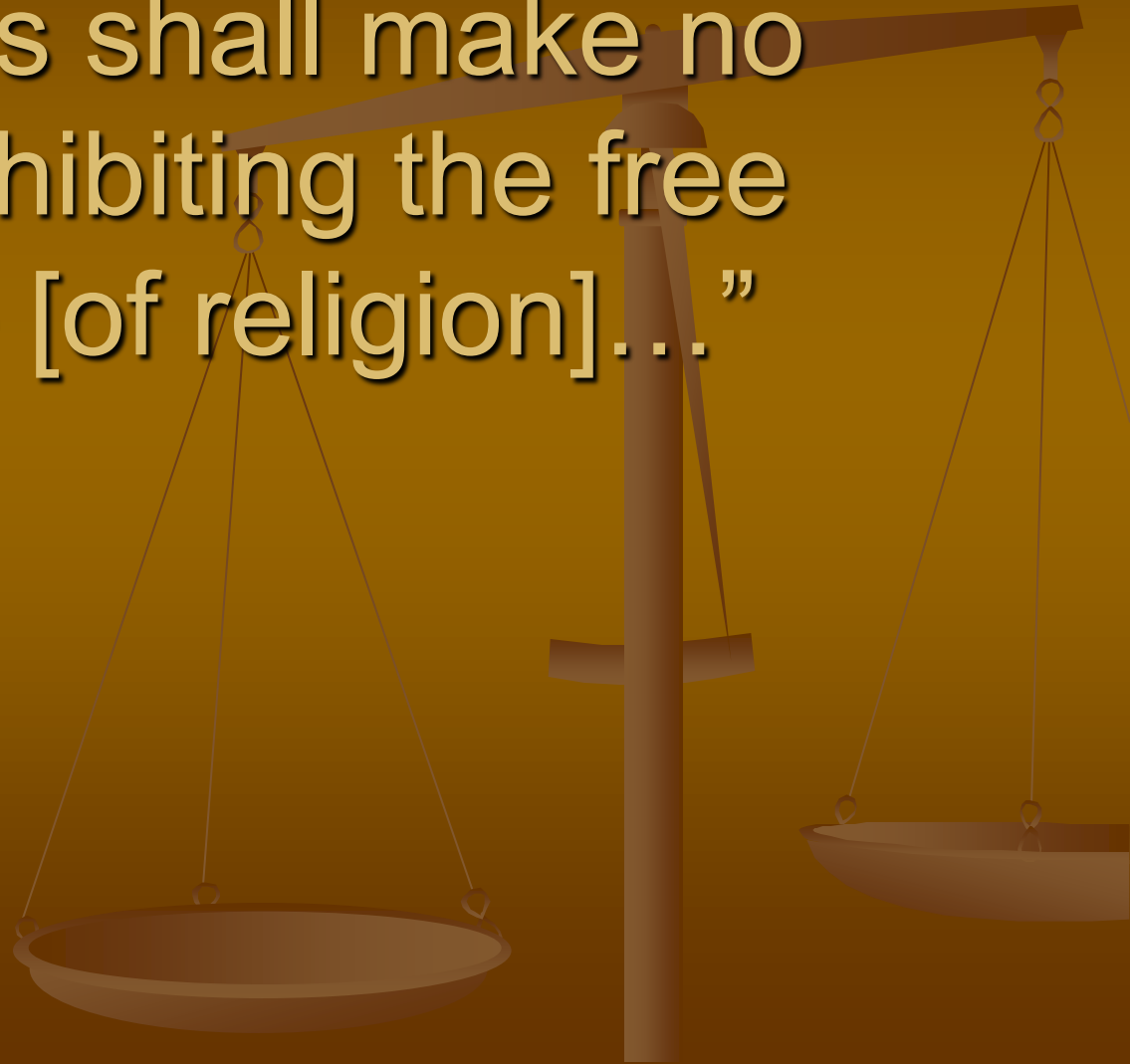


- That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience.
- That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience.
 - Virginia Declaration of Rights, 1776

- The citizens of the United States of America have a right to applaud themselves for having given to Mankind examples of an enlarged and liberal policy, a policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.

- George Washington, 1790, letter to the Hebrew Congregation of Newport, Rhode Island

Free Exercise Clause:
“Congress shall make no
law...prohibiting the free
exercise [of religion]...”



The Sherbert Test

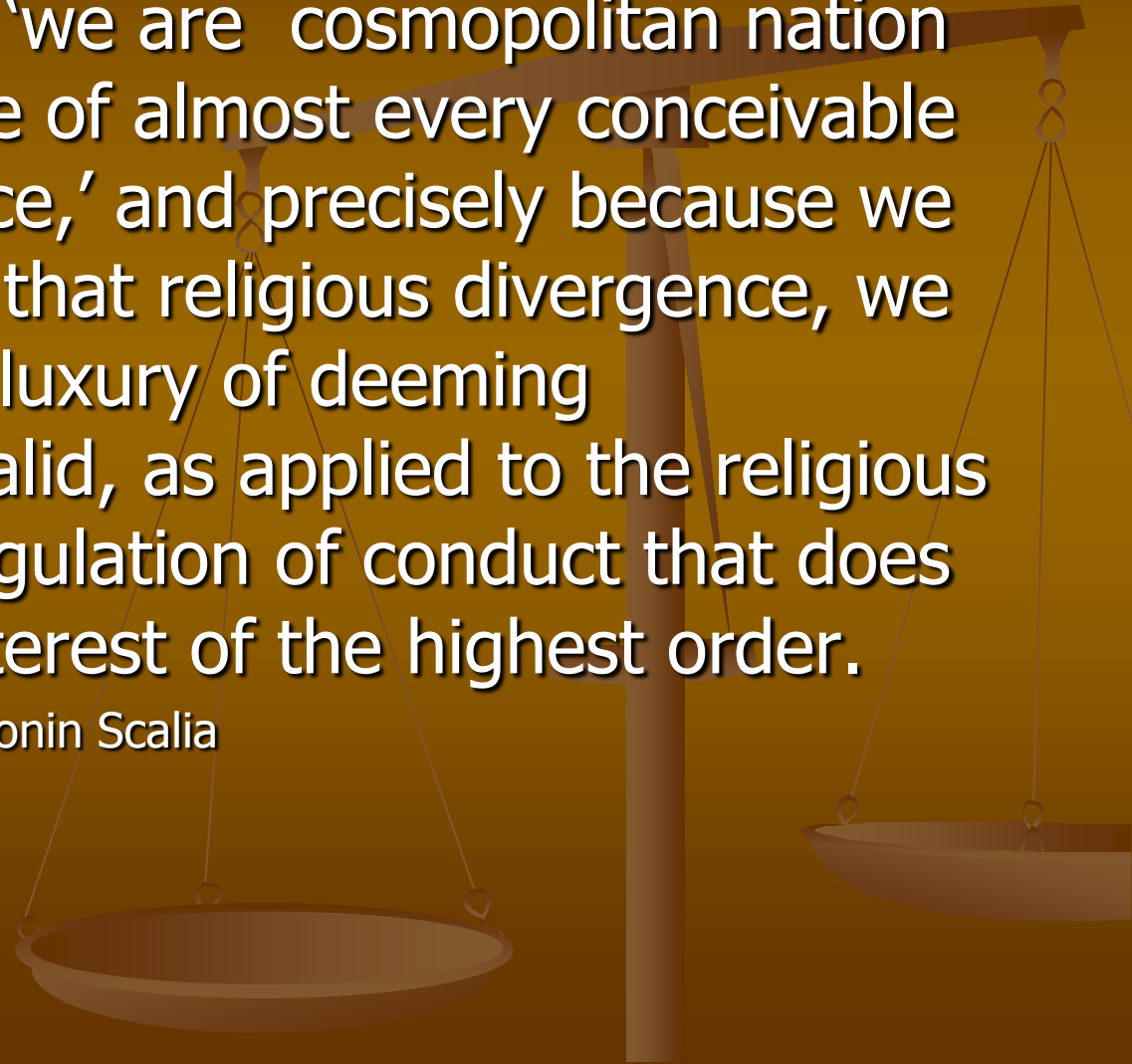


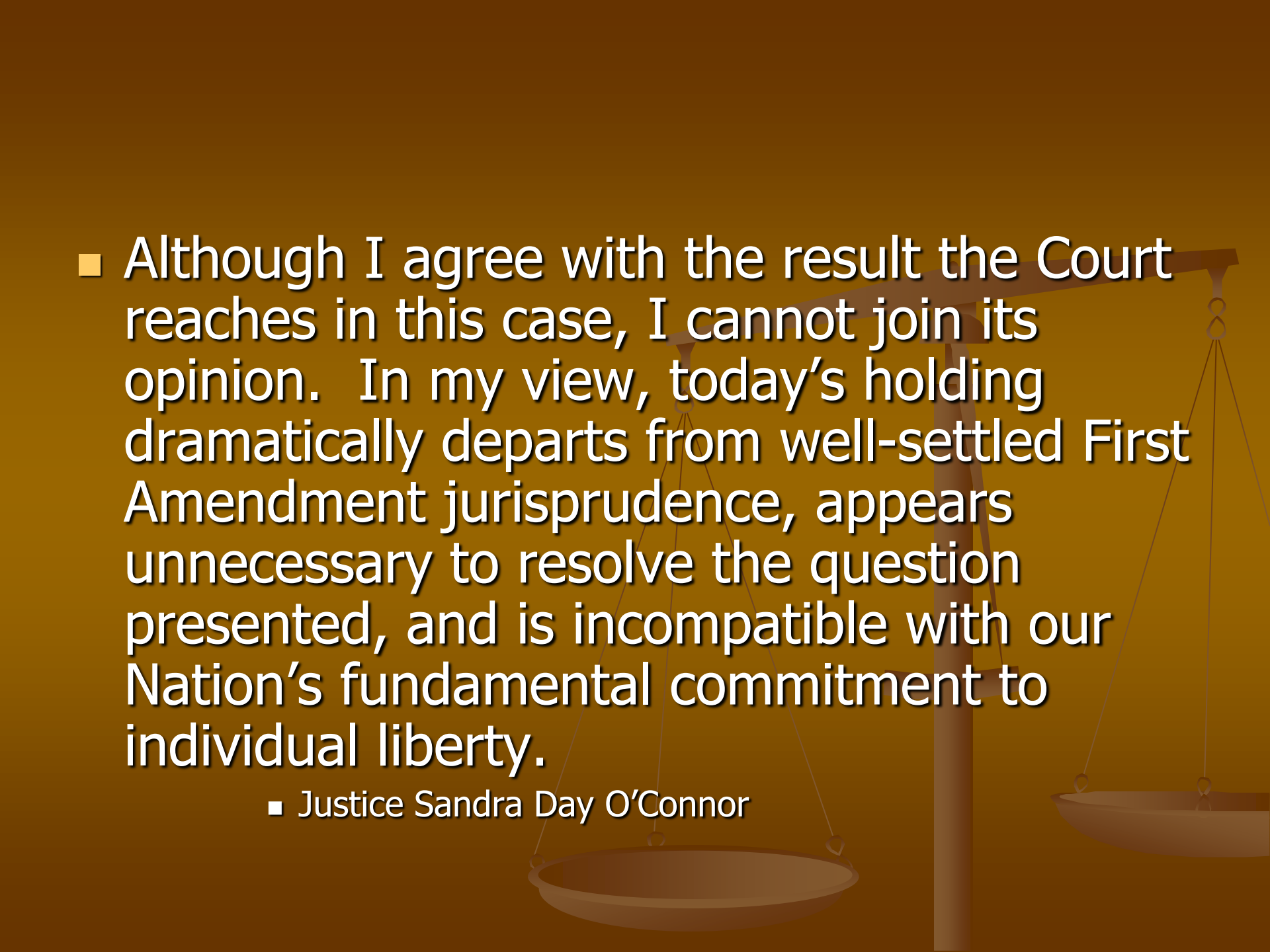
- Sincere religious belief
- Substantial burden
- Compelling state interest
- Least restrictive alternative



Employment Division v. Smith

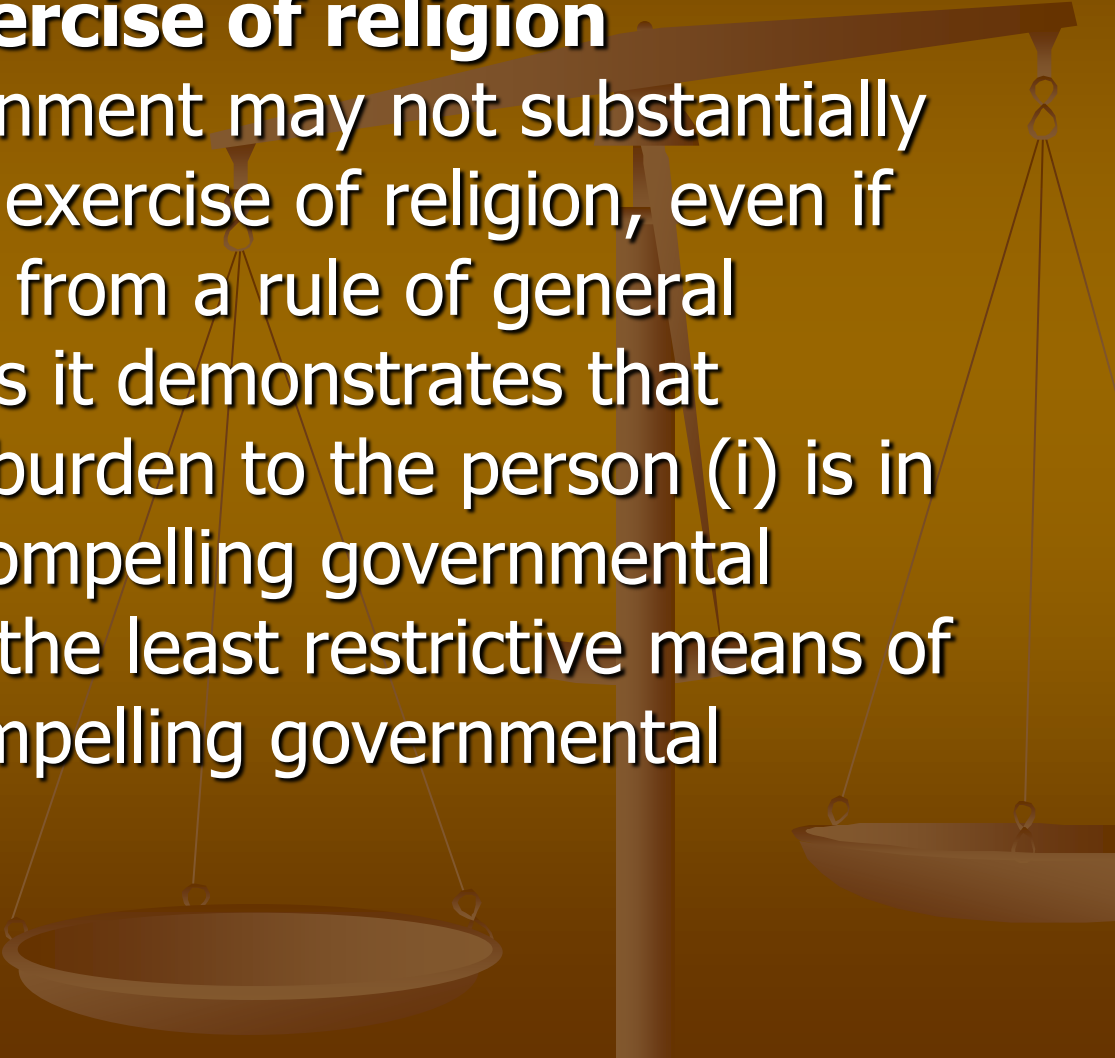
- Precisely because 'we are cosmopolitan nation made up of people of almost every conceivable religious preference,' and precisely because we value and protect that religious divergence, we cannot afford the luxury of deeming presumptively invalid, as applied to the religious objector, every regulation of conduct that does not protect the interest of the highest order.
 - Justice Antonin Scalia



- 
- Although I agree with the result the Court reaches in this case, I cannot join its opinion. In my view, today's holding dramatically departs from well-settled First Amendment jurisprudence, appears unnecessary to resolve the question presented, and is incompatible with our Nation's fundamental commitment to individual liberty.

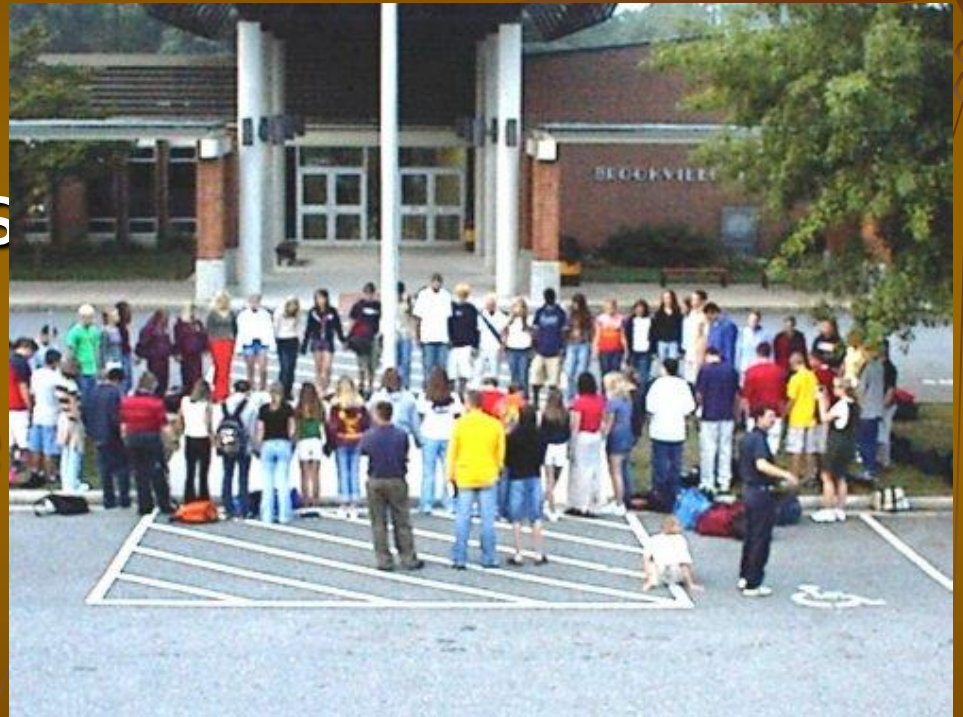
- Justice Sandra Day O'Connor

Illinois Religious Freedom Restoration Act

- **Sec. 15. Free exercise of religion protected.** Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.
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Religious liberty in public schools: Student Religious Expression

- Prayer
- Religious expression in class
- Distribution of religious literature
- Student religious clubs



Case studies

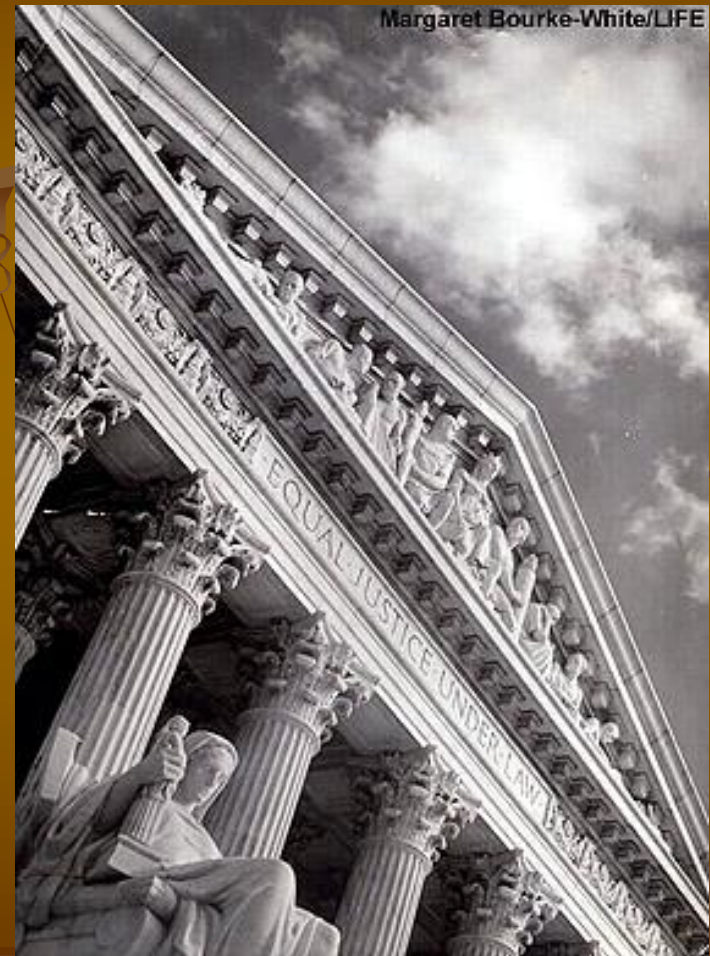


- What do you say to the coach who wants to pray with his team?
- A teacher wears a t-shirt with a Bible verse. Is that permissible? A student wears a similar shirt. Is that permissible?
- An elementary student asks to distribute fliers about the Good News Club that meets after school. Do you allow her to do so?
- Fifth-grader Sally tells Rachel that she must believe in Christ or suffer eternal damnation. Rachel goes home upset and the parents complain. What should the principal do?
- May high school students form a religious club? May a teacher participate in the activities of the club?

The First Amendment

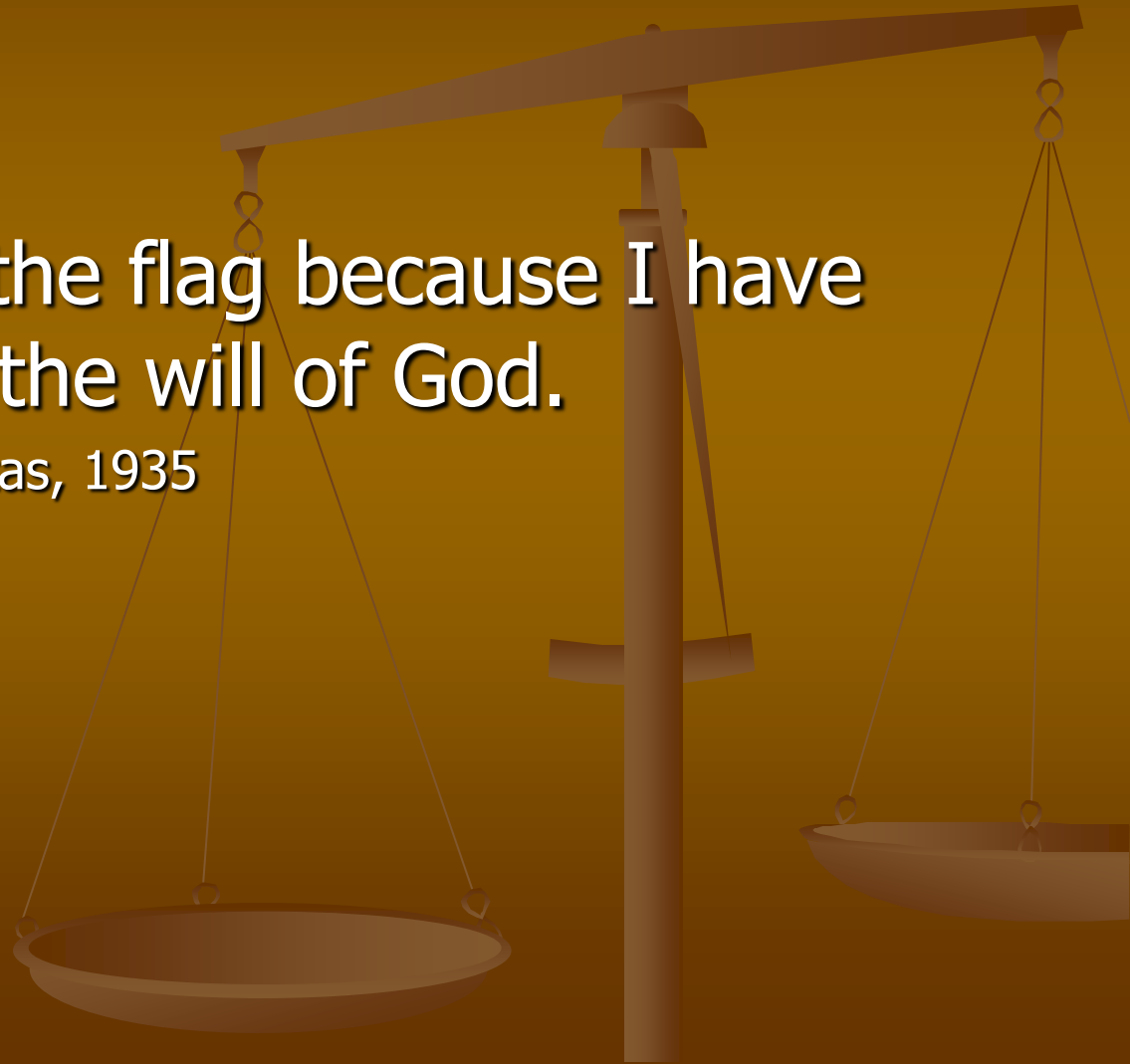
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First Amendment
U.S. Constitution



Flag Salute

- I do not salute the flag because I have promised to do the will of God.
 - Billy Gobitas, 1935

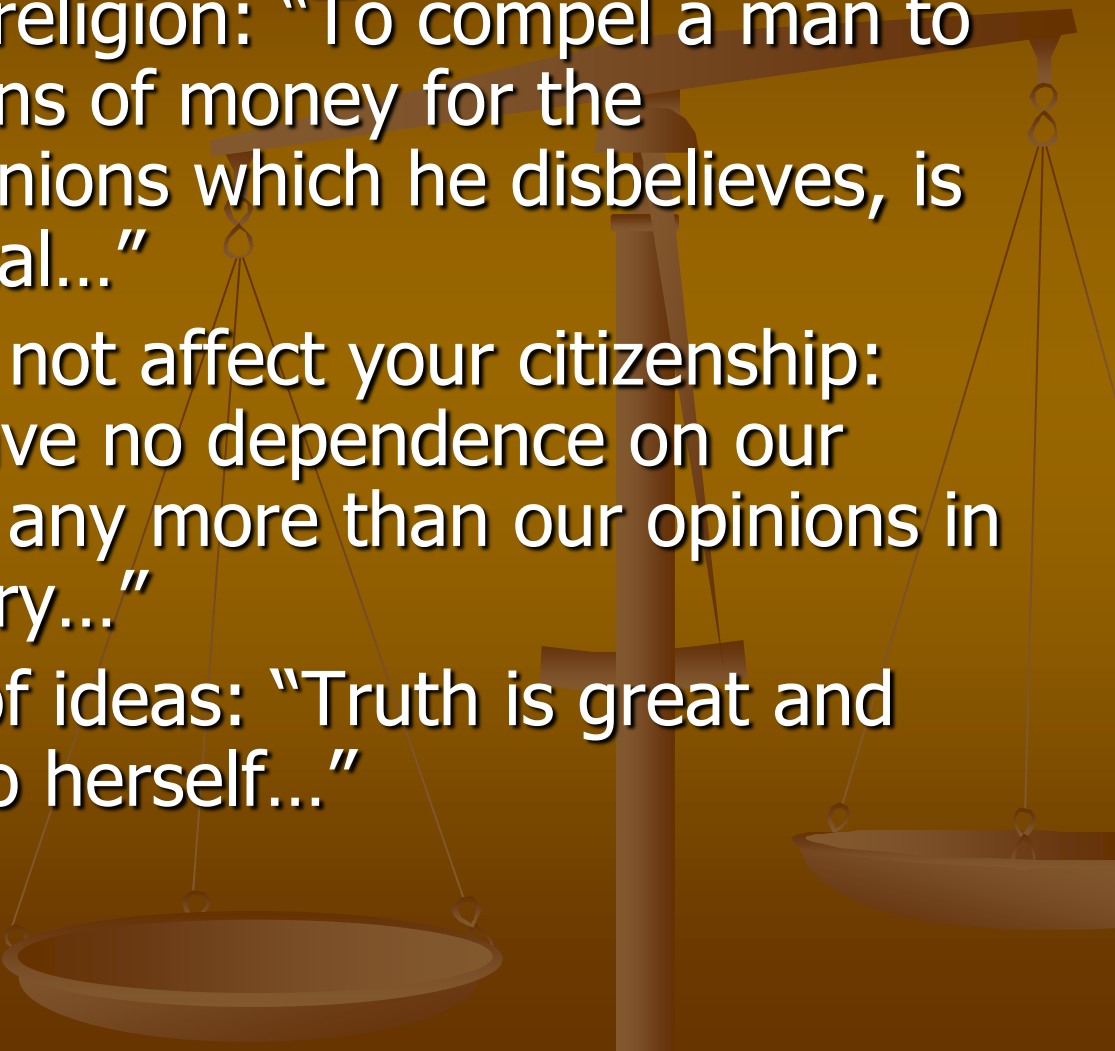


“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”

**--Robert H. Jackson,
U.S. Supreme Court justice, 1943**



Virginia Act for Establishing Religious Freedom, 1786

- No tax money for religion: “To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical...”
 - Your religion does not affect your citizenship: “Our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry...”
 - The marketplace of ideas: “Truth is great and will prevail if left to herself...”
- 

No establishment

- Be it enacted by the General Assembly, that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.
 - Virginia Act for Establishing Religious Freedom, 1786