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YOUR VIEW

Religion in the Federal Courts: Is our Thanksgiving holiday at risk?

By JOHN MROSEK

(The following are excerpts from a speech given by John Mrosek, a Fayetteville attorney and part-time judge.)

In 1791 when James Madison drafted the religion clause of the First Amendment he was concerned about another Church of England. One could ask whether with the expanding number of federal cases removing any reference to

God and religion from our public affairs whether or not we are establishing atheism as the national religion. After the Federal Court in Atlanta removed the Ten Commandments from the Alabama Courthouse they tried to reassure us: "We do not say that all recognitions of God by government are per se impermissible." Amusingly, the first authors of the feder-



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al income tax promised that our income taxes would never exceed 10%.

Recent cases in the Federal Courts prohibited the public recognition of the Ten Commandments and the Pledge of Allegiance as violative of the First Amendment to the United States Constitution.

These cases are part of a 50 year trend. We need to resolve the disagreement over

Religion and the First Amendment. Otherwise, God and religion will be completely removed from our public lives. Examples: God on our currency and our Motto of "In God We Trust." Consider a soldier dying on the battlefield and calling for a chaplain. Wouldn't it be shameful to consider this to be a prohibited use of tax dollars? Perhaps Thanksgiving (in which we give thanks to the Almighty) is at risk.

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Legal scholars and judges on both sides of the issue agree that the religion clause in the First Amendment is unclear. It reads that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." (See also the 10th and 14th Amendments for reference).

The First Amendment is ambiguous, in part, due to the word "respecting." In 1791, (four years after creating our Constitution) Congress adopted the First Ten Amendments, known as the "Bill of Rights. Madison's first version of the First Amendment read "Congress shall not establish a national religion..." Congress passed a fourth version of the First Amendment adding the troubling word "respecting." In 1971 in *Lemon v. Kurtzman* Chief Justice Warren Burger described the First Amendment as "a blurred, indistinct and a variable barrier." We need to clarify what role religion should have in our public lives and also to reaffirm our constitutional rule of law.

The role of religion in early America is abundantly clear. Thirty-four (34%) percent of all materials of our early historical docu-

ments came from Bible scripture. Our Declaration of Independence refers to the "laws of nature and of nature's God" and that government is formed "with a reliance on the protection of divine providence." Our Constitution was undertaken to "secure the blessings" of the Almighty and was dated as 1787 in "the year of our Lord." In *Zorach v. Clausen* (1952), U.S. Supreme Court Justice William O. Douglas emphasized that we are a nation of believers. While many remember America in 1776 as a legal miracle, America was also a religious miracle.

The early Supreme Court cases removing religion from our public affairs began with *Everson v. Board of Education* (1947), commencing a review of state laws regarding religion and the public schools. Everson relied upon the First and Fourteenth Amendments and announced a troubling metaphor which has become the battle cry of the secular/atheist movement: "Separation of church and state." This phrase previously existed nowhere in any case, statute, or legal source but simply in a letter from Thomas Jefferson to a church in Connecticut reassuring them that Congress would not bother them.

The prominent case of *Engel v. Vitale* followed in 1962. The Engel court shielded New York school students from the following 22 word prayer: "Almighty God, we

acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country." Query — if the U.S. Supreme Court was so troubled by this prayer why, to this day, does it open court with the prayer "God save the United States and God save this honorable court?"

A big player in this drama has been the secular/atheist movement, inspired in the mid 1800's by British atheist G.J. Holyoake. They believe that morality comes not from the Almighty, the Eternal or the Spiritual but solely from the temporal human perspective. The book *Treason*, by Ann Coulter, details the political rise of secularism.

The recent Pledge of Allegiance case was initiated by an atheist father who convinced the Ninth Circuit Court of Appeals to ban the Pledge of Allegiance by California school children. The U.S. Supreme Court has agreed to hear the Pledge case and may provide guidance on the law.

In The Ten Commandments case, Alabama Chief Justice Roy Moore's non-taxpayer funded attempts to erect a display which included the Ten Commandments was struck down by an Atlanta federal appeals court. Moore unsuccessfully argued that the Alabama Constitution seeks "the favor of Almighty God." A poll indicated that 78% of America favors the dis-

play of the Ten Commandments in public courthouses.

Yes, there is disagreement. But Justice Douglas warned us of a preference for non-believers over believers. One could certainly ask, have we now become a nation devoted to atheism? Have we now violated the establishment of religion that Madison and the Founding Fathers feared by making atheism our national religion? Will all good things we do give way to the fear of an expensive law suit?

One proposal to resolve this ambiguity is federal legislation to restrict the jurisdiction of federal judges (which would probably be "stop gap" at best). Or we can scrutinize candidates for federal judgeships. Unless The Pledge of Allegiance case answers everything, maybe the only way to resolve this issue is through a constitutional amendment. Maybe we should amend the First Amendment to the United States Constitution.

Wow! Too big a job for America? We did it for the Prohibition against alcohol. And then we did it again to repeal Prohibition. As central as religion was to our Founding Fathers doesn't this current debate warrant our efforts? Tell your Senators and members of Congress that you think this is important. John Mrosek can be reached at P.O. Box 1168 Fayetteville, GA 30214 (Copyright)