

Religion in Public Life

Dallin H. Oaks, "Religion in Public Life," *Ensign*, July 1990, 7

On 25 June 1988, in Williamsburg, Virginia, I signed the Williamsburg Charter on behalf of The Church of Jesus Christ of Latter-day Saints. ¹ Written by a group of farsighted U.S. religious, political, and community leaders, that charter celebrates and reaffirms religious liberty as the foremost freedom of the First Amendment of the United States Constitution. The sponsors' invitation to participate explains that they were seeking "a fresh articulation of the ground rules for relating religion and public life in our time."

Our church was one of six "prominent American faith communities" whose representatives were invited to make brief statements as they signed the Charter. This is what I said on that occasion:

"The people called Mormons have known the sting of official repression and the lash of popular fury. We endorse the need and join in this celebration and reaffirmation of religious liberty.

"The Declaration of Independence had posited these truths to be 'self-evident': that all men 'are endowed by their Creator with certain inalienable rights' and that governments are instituted 'to secure these rights.'

"The first words of the Bill of Rights provide the dual guarantees of religious liberty. The subsequent words that guarantee the freedoms of speech, press, and assembly provide the means to make our liberties secure, but it is the initial guarantee of religious freedom that explains why all these other liberties are desired.

"In our nation's founding and in our Constitutional order, religious liberty is the motivating and basic civil liberty.

"In its Articles of Faith, The Church of Jesus Christ of Latter-day Saints declares: 'We claim the privilege of worshiping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may.' " ([A of F 1:11](#).)

Freedom of Religion: The Basic Civil Liberty

The Williamsburg Charter declares: "The First Amendment Religious Liberty provisions have both a logical and historical priority in the Bill of Rights." Indeed, religious liberty is the oldest of the internationally recognized "human

rights,” providing motivation, precedent, and support for the growth of other freedoms, such as the freedoms of speech, the press, and assembly. For many of the Founding Fathers, and for many Americans today, religious liberty is the basic civil liberty because faith in God and his teachings and the active practice of religion are the most fundamental guiding realities of life. Thus, for many citizens, religious liberty provides the reason all other civil liberties are desired.

The Declaration of Independence affirms that governments are instituted to secure the inalienable rights with which men and women are endowed by their Creator. The United States Constitution was established to provide a practical and official guarantee of those rights. Its provision securing religious liberty was divinely inspired, not only to bless the inhabitants of this nation but also to stand as an example to all the nations of the world.

Though a fervent believer in these things, I am certainly not naive about the realities of constitutional law. As a law clerk in the United States Supreme Court, I saw its nine justices grapple with the task of interpreting the First Amendment. Later, as a lawyer and law professor for more than twenty years, I did some of that grappling myself. As legal counsel, I helped draft the Bill of Rights for the Illinois Constitutional Convention of 1970. As a Justice of the Utah Supreme Court for three and a half years, I had the sworn duty to uphold and interpret the constitutions of our state and nation. What I have to say about the subject of religious liberty draws upon those experiences.

Restoring Religion to an Honorable Place in Public Life

The Williamsburg Charter reminds us that despite our constitutional prohibition against establishing a state religion, in many areas of the United States during the nineteenth century there was “a *de facto* semi-establishment of one religion in the United States: a generalized Protestantism given dominant status in national institutions, especially in the public schools.” In contrast, the Charter continues, “In more recent times, and partly in reaction, constitutional jurisprudence has tended, in the view of many, to move toward the *de facto* semi-establishment of a wholly secular understanding of the origin, nature, and destiny of humankind and of the American nation.”

Over time, these “wholly secular understandings” have attained “a dominant status,” until there is a “striking absence today of any national consensus about religious liberty as a positive good.” The Charter concludes: “The renewal of religious liberty is crucial to sustain a free people that would remain free.”

Support for the Williamsburg Charter is not a renunciation of the secular or a

suggestion that one must choose between religion on the one hand and the whole body of secular learning on the other. That is a false dichotomy.

The hundreds of signers of the Williamsburg Charter, who come from every segment of life in the United States, are seeking to offset the symbol and pattern of hostility to religion and indifference to religious liberty that have characterized many court decisions, much media publicity, and some public understandings for more than a quarter of a century. They seek to restore religion to an honorable place in public life.

To “Live with Each Other’s Deepest Differences”

That task is nicely characterized by the question posed in the Charter, “How do we live with each other’s deepest differences?” In the United States, we have seen what the Charter calls “a breakdown in understanding of how personal and communal beliefs should be related to public life.” Recapturing that understanding is a task that will require a high order of intelligence, tolerance, and goodwill, but it is vital that we do so.

Learning how to “live with each other’s deepest differences” is very important for Latter-day Saints, whose mission requires them to be gracious in the few areas where they are in the majority and welcomed as considerate and productive in the rest of the world, where they are in the minority.

The Law: Hostile or Neutral toward Religion?

In my view, our current condition is rooted in the 1962 United States Supreme Court decision that the New York State Board of Regents could not require public school children to recite a prayer authored by the Regents. The essence of that decision was expressed in this sentence from the Court’s opinion:

“It is neither sacrilegious nor anti-religious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave the purely religious function to the people themselves, and to those the people choose to look to for religious guidance.” [2](#)

Elsewhere in its opinion the Court explained: “Government in this country, be it state or federal, is without power to prescribe by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity.” [3](#)

When the school prayer cases were decided, I interpreted them to forbid state-authored and state-required prayers. As such, the cases, I thought, were correctly

decided. What I did not foresee, but what was sensed by persons whose vision was far greater than my own, was that these decisions—defensible and probably even essential as rulings on the facts before the Court—would set in motion a chain of legal and public and educational actions that would bring us to our current circumstance, in which we must reaffirm and even contend for religious liberty.

In short, many understand the law today as being hostile rather than neutral toward religion—as forbidding all public prayers rather than simply prohibiting state-authored and state-required prayers in public schools. Instead of just preventing instances of state-sponsored religion in the public schools, the school prayer cases have unleashed forces that have sometimes been used to prevent the free exercise of religion.

At the time the first school prayer cases were decided, President David O. McKay saw the direction of those decisions with prophetic vision. In December 1962, he said: “By making that [New York Regents’ prayer] unconstitutional, **the Supreme Court of the United States severs the connecting cord between the public schools of the United States and the source of divine intelligence, the Creator himself.**”

Then, he offered this farsighted caution: “By law, the public schools of the United States must be non-denominational. They can have no part in securing acceptance of any one of the numerous systems of belief regarding God and the relation of mankind thereto. Now let us remember and emphasize *that restriction applies to the atheist as well as to the believer in God.*” [4](#)

Six months later, just after the Supreme Court’s decision forbidding Bible-reading in the schools, [5](#) President McKay said:

“Recent rulings of the Supreme Court would have all reference to a Creator eliminated from our public schools and public offices.

“It is a sad day when the Supreme Court of the United States would discourage all reference in our schools to the influence of the phrase ‘divine providence’ as used by our founders of the Declaration of Independence.

“Evidently the Supreme Court misinterprets the true meaning of the First Amendment, and are now leading a Christian nation down the road to atheism.” [6](#)

It is clear from President McKay’s references that he was concerned about the direction and long-range effect of these decisions. History shows that his

concern was well founded.

A Developing Gulf between Religion and Public Life

In the beginning, eminent legal scholars like Dean Erwin N. Griswold of the Harvard Law School ridiculed the idea that the Supreme Court's school prayer decisions would lead to a great gulf between religion and public life. In a notable lecture published in the *University of Utah Law Review*, Dean Griswold said: "To say that [these great provisions of the First Amendment] require that all trace of religion be kept out of any sort of public activity is sheer invention."

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However, as time went by, the combatants on both sides of this debate took more and more extreme positions. They joined issue on controversies that compelled the courts to rule on ever-more-technical details on the offering of prayers or the use of religious symbols in public places.

What the legal scholars did not foresee is the extent to which the school-prayer and Bible-reading decisions would shift the burden of proof with respect to religious practices in public life. In the past, religion had been an accepted part of public life in the American tradition; it now became something that had to prove its right to remain in the public square. The principles first announced in the early 1960s had by the 1970s hardened into mechanical constitutional formulas that could be interpreted in ways that were hostile to religion. Too many of the lawyers trained during this period have come to accept these wooden formulas as axioms, with the result that constitutional notions of religious liberty have been impoverished.

For example, the observance of a moment of silence as an alternative to school prayer was first suggested in a United States Supreme Court opinion. Twenty years later, after legislatures in nearly half of the states had passed laws authorizing a moment of silence in the public schools, the Supreme Court held one such law unconstitutional. 8

Gradually, what had been a supportive relationship between church and state (and at times excessively so) has become what many perceive as a hostile one. Now many see religion as suspect, while many others see government as repressive toward religion. It is now essential that a wise and public-spirited group like the Williamsburg Charter Foundation come forward for a purpose that would have seemed remarkable a century ago—to remind us of our religious heritage and to declare the value of religious liberty to a nation that was, in truth, founded to protect it.

The Need for Education on the Role of Religion in a Pluralistic Society

The Williamsburg Charter Foundation has wisely begun its effort by focusing on public education. Affirming that education is incomplete if it does not give attention to the role of religious liberty in American life, the Foundation has called for the public schools to teach about religious liberty in a pluralistic society and has prepared materials for doing so.

The need for such teaching should be obvious. As a result of misunderstanding the importance of religious liberty in our Constitutional order, many citizens and even some educators have come to consider it bad taste or even illegal for public school teachers even to mention religious influences or commitments. No wonder we suffer an appalling ignorance of our political and cultural origins.

In a study done for the Department of Education, New York University psychologist Paul Vitz documented the extent to which textbook authors have avoided references to God or to religion. Vitz concluded that many students could never learn from reading their history textbooks “that religion has played a significant role in American history.” For example:

- One American history textbook defines pilgrims as “people who make long trips.” Another text lists three hundred important events in American history, and only three of the three hundred have anything to do with religion. No religious event is listed after 1775—an apparent judgment that each of the other items, including the appearance of an electric streetcar on the streets of Richmond, Virginia, in 1886, was more important than any religious event in America since 1775.
- A reader for sixth-graders includes an Isaac Singer story in which a boy with a problem prays to God for himself and his goat, and when the problem is resolved, the boy thanks God. But the public school text omits the name of God and declares that the boy thanks “goodness.”
- Textbook discussions of pre-Civil War abolitionism and the recent civil rights movement commonly skim over or totally omit the religious origins of these great forces and the religious motivations of many who furthered them. [9](#)

Removing the name of God and ignoring the influence of religious motivations distort facts and cloud understanding. If gold were someone’s God (and there are such people), could you give an accurate account of the western U.S. settlements attributable to the Gold Rush without mentioning the word *gold*?

The Williamsburg Charter Foundation is not the first group to call for more

public school study about religion. In a 1986 editorial, the *Washington Post* called attention to a study by People for the American Way, which showed that American history textbooks hardly mention religion as a force in U.S. history. The *Post* observed: “The absence of any discussion of a subject that has motivated, inspired, and, at times, torn apart important elements of the population is ridiculous. . . . A student who has no curiosity about the beliefs of others will never be an educated person.” [10](#)

In 1987 the Association for Supervision and Curriculum Development, an influential public education group, called for action by educators, textbook publishers, and civic leaders to halt what they called the “rigorous exclusion” of religion from school textbooks and curricula. [11](#)

I have been gratified at the rapidity with which a supportive consensus has developed on this subject. It has caused me to wonder whether this consensus just grew rapidly in the last few years or whether it was always there—hidden, but too shy to emerge in an atmosphere of hostility and distrust.

I prefer to believe that individuals have always had the good sense to understand that a person cannot be educated without understanding religious traditions and conflicts. One cannot understand the great music of the Western world, such as music composed for the mass or Handel’s *Messiah*, and one cannot understand the great art of the Western world, such as the religious themes of the masters of the Middle Ages, without understanding the religious beliefs and traditions of the people by whom and for whom those works of art were created. It is surely true that a reader cannot understand the language and imagery of the great literature of the Western world without understanding the Bible.

The Williamsburg Charter Foundation proposes a public school curriculum titled “Living with Our Deepest Differences—Religious Liberty in a Pluralistic Society.” In this course of study, (1) the curriculum approach to religion is academic, not devotional; (2) the school strives for student awareness but does not press for student acceptance of religion; (3) the school sponsors *study* about, not *practice* of, religion; (4) the school exposes students to a diversity of religious views but does not impose any particular one; (5) the school educates about all religions but does not promote or denigrate any of them; and (6) the school may inform about various beliefs but does not seek to conform the student to any particular one. In my opinion, this is an appropriate program. It would serve the interests of the United States and its citizens.

Misunderstandings about Prayer in Public Settings

I conclude by referring to a current controversy that I think exemplifies the public misunderstanding from which we need to be liberated by educational efforts such as those of the Williamsburg Charter Foundation.

Initially, the United States Supreme Court's school prayer decision outlawed only state-authored and state-required prayers. Later, the courts forbade any prayers in public school classrooms, even those that were privately composed or optional. The courts were concerned with the possibility that impressionable young students would be coerced by such publicly sponsored religious exercises. In contrast, the Supreme Court has clearly held that prayers at the beginning of a state legislative assembly are not forbidden. The Court reasoned that, unlike school children, legislators are adults, "presumably not readily susceptible to 'religious indoctrination.'" [12](#)

Despite the absence of coercion from prayers in adult settings, and despite the fact that prayers are frequently offered in legislative and other public meetings in every state in the union, [13](#) some have continued their efforts to force the abolition of prayers at government or other public meetings. As a consequence, immense resources of time and money have been devoted to thrashing out the constitutional limits on prayer in public places.

The Williamsburg Charter contains an insight that should help resolve such controversies: "It is false to equate 'public' and 'government.' In a society that sets store by the necessary limits on government, there are many spheres of life that are public but non-governmental."

Similarly, I believe that much of the controversy over prayer in public places suffers from a failure to distinguish between governmental action and accommodation of private expression in a public place. The fact that prayer or other religious expression occurs in a public setting does not mean that the government is endorsing religion. It only means that public officials recognize the reality that many citizens have religious beliefs and care about religious matters.

A decision outlawing prayers in public school classrooms, which are tax-supported government institutions responsible for instructing impressionable youth, does not forbid prayers by and for adults in settings that are merely public, such as town meetings, patriotic programs, Parent-Teacher Association functions, and the like. Though offered in a public place, such prayers are personal—not governmental—devotions.

Some Recent Controversies

That distinction has been overlooked in some recent controversies in Utah.

A little more than two years ago, the American Civil Liberties Union pressed for the elimination of prayers at the beginning of Salt Lake County Commission meetings. The A.C.L.U. objected to the fact that most of the people who offered such prayers concluded them “in the name of Jesus Christ.” They claimed that this prayer language constituted an official government endorsement of the majority faith in Utah, The Church of Jesus Christ of Latter-day Saints, whose members pray in that way. In what many interpreted as a generous and appropriate response to that concern, the county commission enlarged its list to invite representatives of every religious organization in the county to take a turn, in rotation, in offering prayers at commission meetings. This apparently settled the issue. [14](#)

More recently, similar controversies have arisen over prayers offered in Utah high school graduation exercises. A suit filed on behalf of two students in one school district objected that the prayers were “denominational,” since they mentioned the name of Jesus Christ. The suit asked that such prayers be “non-denominational.” [15](#)

Interpreting this as a plea for a court order requiring that the name of Jesus Christ not be used in prayers offered at a public high school graduation exercise, I thought of the first school prayer decision. In that case, the Supreme Court said government had no power to author prayers to be offered by its citizens. Before we acquiesce in the use of judicial power to indicate what words cannot be included in a prayer, we should remember that if it is no part of the business of government to *write* a prayer, then it is no part of the business of a court to *cancel* a prayer.

The United States Supreme Court voiced that principle just six years ago in rejecting an argument that the prayers in a state legislative assembly were illegal because they were always offered by a chaplain of one religious denomination. The Court said: “The content of the prayer is not of concern to judges where, as here, there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief.” [16](#)

Using this reasoning, I concluded that the attempt in Utah to have a court dictate what could not be included in a prayer would not succeed. But even a winning case can be expensive to defend, and in the graduation-exercise case, economic pressure forced a decision upon the school board. They evaluated the

costs of resisting what would likely be a long court battle and concluded that it was not in the best interests of the school district to use its scarce resources in that way. Consequently, they announced that the high schools of that district will no longer have prayers as part of their graduation exercises. [17](#)

A neighboring district announced that they would retain prayers in their schools' graduation exercises, but they said they would be more careful to request "non-denominational prayers." Similarly, the first district announced that they would continue to open their board meetings with prayer, but opened that particular session with what they called "a generic prayer." [18](#)

It is no part of the business of government to prescribe prayers or to censor them. Prayer is too sacred for its content to be the subject of a lawsuit. When the threat of a lawsuit causes someone to modify the content of a prayer, we are in desperate need of a Williamsburg Charter to remind us of the importance of religious liberty.

Tolerating Each Other's Differences

If citizens of the United States cannot tolerate differences in the way others pray, we have suffered a tragic loss in the vitality of religious liberty. I am disappointed that anyone of any faith would abandon his or her chosen manner of prayer and offer a so-called "generic" prayer because someone threatened a lawsuit. Despite my own strong preferences, I would not even consider trying to influence a person of another faith to change the content of a public prayer, and I object to any use of legal pressures to accomplish such changes by anyone.

After I expressed this opinion in a speech last year in Boise, Idaho, a friend sent me a publication reporting a related opinion by a respected Protestant theologian. The newly-appointed chaplain (and former dean) of the Harvard Divinity School, Krister Stendahl, reportedly observed that in his school, with its tradition of pluralism, "it wasn't quite kosher to mention Jesus [in a prayer]. You become so conscious of using a language which would be for everybody, so nobody was at home." He reacted by stating his intent to "guard fiercely the freedom of every person to pray and speak in ways important to him or her—lest the specter of 'pluralism' mute authentic expression of devotion." [19](#)

Chaplain Stendahl made the following suggestion, which I believe is an appropriate procedure for one invited to offer a prayer in a public meeting containing persons of various faiths:

"It can never be wrong to pray in the presence of people of other faiths. But when one does that, one cannot use the word 'we' in an absolute sense, because

that would mean that I surmise that only those who think like me are with me.”

Instead, he said, when preaching among those of other faiths—in a synagogue, for example, as he sometimes does—he is careful to speak in the first person. “I might say, ‘and this I pray, in the name of Jesus, who brought me into communion with the God of Abraham, Isaac and Jacob.’ I think it’s quite fair to mention my Jesus in the synagogue, but I should speak my own language and not *we* it.” [20](#)

The Legality of Graduation Prayers

Appellate court opinions issued in the last several years have split on the legality of prayers at high school graduation exercises. [21](#) Judges are divided on the question, and the United States Supreme Court has not yet ruled on the controversy.

I am hopeful that the United States Supreme Court will reaffirm the attitude of accommodation voiced in its decision sustaining the constitutionality of released time for public school students to attend religious classes. In that case, decided in 1952, the Court said:

“We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, 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.” [22](#)

Some Possible Solutions

As the law stands today, school boards who are challenged on the legality of prayers offered on public ceremonial occasions have several alternatives.

They might continue to have such prayers and risk the possibility of expensive litigation, though the costs might be shared with other districts similarly

situated.

They might abandon a long-standing practice of having such prayers and risk being seen as having been manipulated by a litigation strategy rooted in the reality that lawsuits are cheap to begin but expensive to defend. A small but determined minority can use the cost of litigation as an instrument of intimidation to coerce a majority to accept minority social, cultural, or even religious standards that could not or at least should not be imposed by legal process in a fully litigated case.

A school district might substitute a moment of silence in which all are invited to offer private devotions, but this could be seen as a compromise unacceptable to anyone.

In my view, the one alternative that is entirely unacceptable is for a school district to attempt to prescribe or censor prayers to be offered at any function in the district.

I close in the spirit of the Williamsburg Charter, by quoting the First Presidency in a statement made more than ten years ago:

“Those who oppose all references to God in our public life have set themselves the task of rooting out historical facts and ceremonial tributes and symbols so ingrained in our national consciousness that their elimination could only be interpreted as an official act of hostility toward religion. Our constitutional law forbids that.

“As the ruling principle of conduct in the lives of many millions of our citizens, religion should have an honorable place in the public life of our nation, and the name of Almighty God should have sacred use in its public expressions.” [23](#)

May it always be so!

Notes

1. The text of the Williamsburg Charter is reproduced in the appendix (pp. 127–45) of *Articles of Faith, Articles of Peace, the Religious Liberty Clauses and the American Public Philosophy*. (James Davison Hunter and Os Guinness, eds., Brookings Books, Washington, D.C., 1990). Professor W. Cole Durham, Jr., of the BYU J. Reuben Clark Law School gave excellent suggestions in the preparation of this manuscript.
2. *Engle v. Vitale*, 370 U.S. 421, 435 (1962).
3. *Ibid.*, at 430.
4. “Parental Responsibility,” *Relief Society Magazine*, Dec. 1962, p. 878.
5. *Abington School District v. Schempp*, 374 U.S. 203 (1963).

6. *Church News*, 22 June 1963, p. 2.
7. 8 *Utah Law Review* 167, 174 (1963).
8. *Wallace v. Jaffree*, 472 U.S. 38 (1985), discussed in Rodney K. Smith, *Public Prayer and the Constitution*, pp. 191–92 (Wilmington, Del.: Scholarly Resources, 1987).
9. These examples are taken from the *Washington Post National Weekly Edition*, 21 July 1986, p. 23, and from William J. Bennett's Payne Lecture, "Religious Belief and the Constitutional Order," University of Missouri, 17 Sept. 1986, pp. 12–14. See also Warren A. Nord, "Liberals Should Want Religion Taught in Public Schools," *Washington Post National Weekly Edition*, 21 July 1986, p. 23.
10. *Washington Post* editorial, 27 Dec. 1986; see also *Washington Post*, 22 Oct. 1988, p. A22.
11. Report, "Religion in the Curriculum," described in *Religious News Service*, 6 July 1987, p. 4.
12. *Marsh v. Chambers*, 463 U.S. 783, 792 (1983).
13. Rodney K. Smith, *Public Prayer and the Constitution*, (Wilmington, Del.: Scholarly Resources, 1987), p. 237.
14. See generally, Patrick A. Shea, "Prayer Is Appropriate to Start County Commission Meetings," *Salt Lake Tribune*, 9 Apr. 1988, p. A11.
15. "Jordan District Bans Graduation Prayer," *Deseret News*, 27 Sep. 1989, p. B1.
16. *Marsh v. Chambers*, 463 U.S. 783, 794 (1983).
17. *Deseret News*, 27 Sep. 1989, p. B1.
18. *Deseret News*, 27 Sep. 1989, p. B2.
19. "Kristen Stendahl Named HDS Chaplain," *Harvard Divinity Bulletin*, vol. XIX (winter 1990):17.
20. *Ibid.*
21. *Stein v. Plainwell Community Schools*, 822 F.2d 1406 (CA 6, 1987) (2–1 decision against); *Jager v. Douglas County School District*, 862 F. 2d. 824 (CA 11, 1989) (2–1 decision against); *Sands v. Morongo Unified School District*, 362 Cal. Rptr. 452, 214 Cal. App. 3d 45 (1989) (3–0 decision in favor). For a criticism of the "no endorsement test" that some judges apply to hold such prayers illegal, see Steven D. Smith, "Symbols, Perceptions, and Doctrinal Illusions," 86 *Mich. L. Rev.* 266 (1987).
22. *Zorach v. Clawson*, 343 U.S. 306, 313–14 (1952).
23. First Presidency Statement, "America's Religious Heritage," 9 March 1979.