



ARLEN H. SIEGFREID
HOUSE MAJORITY LEADER

February 29, 2012

House Bill 2694
House Federal and State Affairs Committee

Mr. Chairman and members of the committee,

First Amendment to the United States Bill of Rights

"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."

Seventh Amendment to the Kansas Bill of Rights

"The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of or interference with the rights of conscience be permitted, nor any preference be given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any elections, nor shall any person be incompetent to testify on account of religious belief."

I thought it appropriate to begin this testimony with a reading of the respective amendments to the United States and the State of Kansas Constitutions that refer directly to religious liberties. The bill before you proposes a room in the capitol be set aside for the purposes of meditation, spiritual reflection, prayer, worship or simply intellectual rest from the pressures of governing, legislating or the struggles and pressures that accompany the pursuit of happiness for all citizens.

I have attached for your edification an excellent memorandum drafted by Assistant Revisor of Statutes, Tamera Lawrence, on the subject of a capitol meditation room. As it states, an interfaith room was created in 1960 and functioned in the capital until sometime in the 1970's. That room was remodeled and decorated according to available appropriations. However, it is my opinion the purposed room should be decorated and furnished with private funds. I believe the use of state funds would unnecessarily complicate the issue. The state contribution would be the room only, and would not require new space.

The United States Capitol has had a prayer room since 1954. Six or seven other state capitols operate with prayer or meditation rooms. The prayer room in at least one other state was

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Attachment # 1

adjudicated in state and appeals courts, and was finally affirmed in the cases of *Lemon vs. Kurtzman* and *Marsh vs. Chambers*.

In light of these precedents and in order to avoid running afoul of a constitutional challenge, I believe we must make certain we adhere to the three-step "Lemon Test" outlined in *Lemon vs. Kurtzman*, which is included in the memo I've provided. I do not view "tests" 2 or 3 as a problem. However, in regard to "test" 1, I want to provide an obvious standard in demonstrating the room has a secular or nonreligious legal purpose. Clearly meditation or reflective thought can be entirely secular--by naming this the Capitol Meditation Room and leaving it devoid of religious symbols or words quoted from the holy books of the various religions, we avoid confronting a person using the room with any particular religion.

For this space to function as intended, rules will need to be established. This is a room for meditation, reflection, rest, prayer, and worship. Those activities are not to be joined to loud discussion or noisy interruption. It would be the responsibility of the LCC to establish those rules under the authority of the Legislature.

Clearly at both the federal and the state level, legislators begin their day with public prayer, usually presented by a chaplain paid a stipend from public funds, or a guest who is a religious leader. This right to prayer is clearly established. It is supported by court decisions based upon long-established traditions in this country. This proposal simply initiates the process for considering this possibility in the most fair and transparent way possible.

I have attached two other documents. One is a list of statements by some well-known founding fathers, as well as some less well-known historic leaders of our country. These statements help establish religion as a deeply embedded and accepted tradition in this country.

I have lived in Kansas for 65 years. Every community in Kansas has a religious tradition that is alive and well. Dedicating a small, existing space for constituents, legislators, and staff to find a moment of peace is most certainly not meant to represent yet another point of division. This is why I've initiated the process in bill form, and remain open to your suggestions throughout the process.

The second document I have attached for your review is the discussion of the separation of the church and state, which makes a strong case for the original interpretation of the Constitution. That interpretation supports the position it is government which is limited--not religion.

As you know I sponsor a prayer breakfast along with Rep. Jan Pauls in the Docking State Office Building and participate in the Capitol Commission Bible Study held on the first floor of the Capitol Building. These activities attract many legislative and staff participants. For many people who work in this building and our constituents a spiritual life is very important. The location of a room dedicated to meditation, prayer, and spiritual rest is appropriate and would elevate the level of thought in addressing the actions of governing.

With this in mind, I'd ask for your cooperation in developing this proposal, and would greatly appreciate your support for this bill.

Samuel Adams

Father of the American Revolution, Signer of the Declaration of Independence
I . . . recommend my Soul to that Almighty Being who gave it, and my body I commit to the dust, relying upon the merits of Jesus Christ for a pardon of all my sins.

Will of Samuel Adams

Charles Carroll

Signer of the Declaration of Independence

On the mercy of my Redeemer I rely for salvation and on His merits; not on the works I have done in obedience to His precepts.

From an autographed letter in our possession written by Charles Carroll to Charles W. Wharton, Esq., on September 27, 1825, from Doughoragen, Maryland.

William Cushing

First Associate Justice Appointed by George Washington to the Supreme Court
Sensible of my mortality, but being of sound mind, after recommending my soul to Almighty God through the merits of my Redeemer and my body to the earth . . .

Will of William Cushing

John Dickinson

Signer of the Constitution

Rendering thanks to my Creator for my existence and station among His works, for my birth in a country enlightened by the Gospel and enjoying freedom, and for all His other kindnesses, to Him I resign myself, humbly confiding in His goodness and in His mercy through Jesus Christ for the events of eternity.

Will of John Dickinson

John Hancock

Signer of the Declaration of Independence

I John Hancock, . . . being advanced in years and being of perfect mind and memory-thanks be given to God-therefore calling to mind the mortality of my body and knowing it is appointed for all men once to die [Hebrews 9:27], do make and ordain this my last will and testament..Principally and first of all, I give and recommend my soul into the hands of God that gave it: and my body I recommend to the earth . . . nothing doubting but at the general resurrection I shall receive the same again by the mercy and power of God. . .

Will of John Hancock

Patrick Henry

Governor of Virginia, Patriot

This is all the inheritance I can give to my dear family. The religion of Christ can give them one which will make them rich indeed.

Will of Patrick Henry

John Jay

First Chief Justice of the US Supreme Court

Unto Him who is the author and giver of all good, I render sincere and humble thanks for His manifold and unmerited blessings, and especially for our redemption and salvation by His beloved son. He has been pleased to bless me with excellent parents, with a virtuous wife, and with worthy children. His protection has companied me through many eventful years, faithfully employed in the service of my country; His providence has not only conducted me to this tranquil situation but also given me abundant reason to be contented and thankful. Blessed be His holy name!

Will of John Jay

Daniel St. Thomas Jenifer

Signer of the Constitution

In the name of God, Amen. I, Daniel of Saint Thomas Jenifer . . . of disposing mind and memory, commend my soul to my blessed Redeemer. . .

Will of Daniel St. Thomas Jenifer

Henry Knox

Revolutionary War General, Secretary of War

First, I think it proper to express my unshaken opinion of the immortality of my soul or mind; and to dedicate and devote the same to the supreme head of the Universe – to that great and tremendous Jehovah, – Who created the universal frame of nature, worlds, and systems in number infinite . . . To this awfully sublime Being do I resign my spirit with unlimited confidence of His mercy and protection . . .

Will of Henry Knox

John Langdon

Signer of the Constitution

In the name of God, Amen. I, John Langdon, . . . considering the uncertainty of life and that it is appointed unto all men once to die [Hebrews 9:27], do make, ordain and publish this my last will and testament in manner following, that is to say-First: I commend my soul to the infinite mercies of God in Christ Jesus, the beloved Son of the Father, who died and rose again that He might be the Lord

of the dead and of the living . . . professing to believe and hope in the joyful Scripture doctrine of a resurrection to eternal life . . .

Will of John Langdon

John Morton

Signer of the Declaration of Independence

With an awful reverence to the great Almighty God, Creator of all mankind, I, John Morton . . . being sick and weak in body but of sound mind and memory—thanks be given to Almighty God for the same, for all His mercies and favors—and considering the certainty of death and the uncertainty of the times thereof, do, for the settling of such temporal estate as it hath pleased God to bless me with in this life . . .

Will of John Morton

Robert Treat Paine

Signer of the Declaration of Independence

I desire to bless and praise the name of God most high for appointing me my birth in a land of Gospel Light where the glorious tidings of a Savior and of pardon and salvation through Him have been continually sounding in mine ears.

Robert Treat Paine, *The Papers of Robert Treat Paine*, Stephen Riley and Edward Hanson, editors (Boston: Massachusetts Historical Society, 1992), Vol. I, p. 48, March/April, 1749.

[W]hen I consider that this instrument contemplates my departure from this life and all earthly enjoyments and my entrance on another state of existence, I am constrained to express my adoration of the Supreme Being, the Author of my existence, in full belief of his providential goodness and his forgiving mercy revealed to the world through Jesus Christ, through whom I hope for never ending happiness in a future state, acknowledging with grateful remembrance the happiness I have enjoyed in my passage through a long life. . .

Will of Robert Treat Paine

Charles Cotesworth Pinckney

Signer of the Constitution

To the eternal, immutable, and only true God be all honor and glory, now and forever, Amen! . . .

Will of Charles Cotesworth Pinckney

Rufus Putnam

Revolutionary War General, First Surveyor General of the United States

[F]irst, I give my soul to a holy, sovereign God Who gave it in humble hope of a blessed immortality through the atonement and righteousness of Jesus Christ and the sanctifying grace of the Holy Spirit. My body I commit to the earth to be

buried in a decent Christian manner. I fully believe that this body shall, by the mighty power of God, be raised to life at the last day; 'for this corruptible (sic) must put on incorruption and this mortal must put on immortality.' [I Corinthians 15:53]

Will of Rufus Putnam

Benjamin Rush

Signer of the Declaration of Independence

My only hope of salvation is in the infinite, transcendent love of God manifested to the world by the death of His Son upon the cross. Nothing but His blood will wash away my sins. I rely exclusively upon it. Come, Lord Jesus! Come quickly!

Benjamin Rush, *The Autobiography of Benjamin Rush*, George Corner, editor (Princeton: Princeton University Press for the American Philosophical Society, 1948), p. 166, *Travels Through Life, An Account of Sundry Incidents & Events in the Life of Benjamin Rush*.

Roger Sherman

Signer of the Declaration of Independence, Signer of the Constitution

I believe that there is one only living and true God, existing in three persons, the Father, the Son, and the Holy Ghost. . . . that the Scriptures of the Old and New Testaments are a revelation from God. . . . that God did send His own Son to become man, die in the room and stead of sinners, and thus to lay a foundation for the offer of pardon and salvation to all mankind so as all may be saved who are willing to accept the Gospel offer.

Lewis Henry Boutell, *The Life of Roger Sherman* (Chicago: A. C. McClurg and Company, 1896), pp. 272-273.

Richard Stockton

Signer of the Declaration of Independence

I think it proper here not only to subscribe to the entire belief of the great and leading doctrines of the Christian religion, such as the Being of God, the universal defection and depravity of human nature, the divinity of the person and the completeness of the redemption purchased by the blessed Savior, the necessity of the operations of the Divine Spirit, of Divine Faith, accompanied with an habitual virtuous life, and the universality of the divine Providence, but also . . . that the fear of God is the beginning of wisdom; that the way of life held up in the Christian system is calculated for the most complete happiness that can be enjoyed in this mortal state; that all occasions of vice and immorality is injurious either immediately or consequentially, even in this life; that as Almighty God hath not been pleased in the Holy Scriptures to prescribe any precise mode in which He is to be publicly worshiped, all contention about it generally arises from want of knowledge or want of virtue.

Will of Richard Stockton

Jonathan Trumbull Sr.

Governor of Connecticut, Patriot

Principally and first of all, I bequeath my soul to God the Creator and Giver thereof, and body to the Earth . . . nothing doubting but that I shall receive the same again at the General Resurrection thro the power of Almighty God; believing and hoping for eternal life thro the merits of my dear, exalted Redeemer Jesus Christ.

Will of Jonathan Trumbull

John Witherspoon

Signer of the Declaration of Independence

I entreat you in the most earnest manner to believe in Jesus Christ, for there is no salvation in any other [Acts 4:12]. . . . [I]f you are not reconciled to God through Jesus Christ, if you are not clothed with the spotless robe of His righteousness, you must forever perish.

John Witherspoon, *The Works of John Witherspoon* (Edinburgh: J. Ogle, 1815), Vol. V, pp. 276, 278, *The Absolute Necessity of Salvation Through Christ*, January 2, 1758.

Separation of Church and State

In 1947, in the case *Everson v. Board of Education*, the Supreme Court declared, "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach." The "separation of church and state" phrase which they invoked, and which has today become so familiar, was taken from an exchange of letters between President Thomas Jefferson and the Baptist Association of Danbury, Connecticut, shortly after Jefferson became President.

The election of Jefferson – America's first Anti-Federalist President – elated many Baptists since that denomination, by-and-large, was also strongly Anti-Federalist. This political disposition of the Baptists was understandable, for from the early settlement of Rhode Island in the 1630s to the time of the federal Constitution in the 1780s, the Baptists had often found themselves suffering from the centralization of power.

Consequently, now having a President who not only had championed the rights of Baptists in Virginia but who also had advocated clear limits on the centralization of government powers, the Danbury Baptists wrote Jefferson a letter of praise on October 7, 1801, telling him:

Among the many millions in America and Europe who rejoice in your election to office, we embrace the first opportunity . . . to express our great satisfaction in your appointment to the Chief Magistracy in the United States. . . . [W]e have reason to believe that America's God has raised you up to fill the Chair of State out of that goodwill which He bears to the millions which you preside over. May God strengthen you for the arduous task which providence and the voice of the people have called you. . . . And may the Lord preserve you safe from every evil and bring you at last to his Heavenly Kingdom through Jesus Christ our Glorious Mediator. ^[1]

However, in that same letter of congratulations, the Baptists also expressed to Jefferson their grave concern over the entire concept of the First Amendment, including of its guarantee for "the free exercise of religion":

Our sentiments are uniformly on the side of religious liberty: that religion is at all times and places a matter between God and individuals, that no man ought to suffer in name, person, or effects on account of his religious opinions, [and] that the legitimate power of civil government extends no further than to punish the man who works ill to his neighbor. But sir, our constitution of government is not specific. . . . [T]herefore what religious privileges we enjoy (as a minor part of the State) we enjoy as favors granted, and not as inalienable rights. ^[2]

In short, the inclusion of protection for the "free exercise of religion" in the constitution suggested to the Danbury Baptists that the right of religious expression was government-given (thus alienable) rather than God-given (hence inalienable), and that therefore the government might someday attempt to regulate religious expression. This was a possibility to which they strenuously objected-unless, as they had explained, someone's religious practice caused him to "work ill to his neighbor."

Jefferson understood their concern; it was also his own. In fact, he made numerous declarations about the constitutional inability of the federal government to regulate, restrict, or interfere with religious expression. For example:

[N]o power over the freedom of religion . . . [is] delegated to the United States by the Constitution. *Kentucky Resolution, 1798* ^[3]

In matters of religion, I have considered that its free exercise is placed by the Constitution independent of the powers of the general [federal] government. *Second Inaugural Address, 1805* ^[4]

[O]ur excellent Constitution . . . has not placed our religious rights under the power of any public functionary. *Letter to the Methodist Episcopal Church, 1808* ^[5]

I consider the government of the United States as interdicted [prohibited] by the Constitution from intermeddling with religious institutions . . . or exercises. *Letter to Samuel Millar, 1808* ^[6]

Jefferson believed that the government was to be powerless to interfere with religious expressions for a very simple reason: he had long witnessed the unhealthy tendency of government to encroach upon the free exercise of religion. As he explained to Noah Webster:

It had become an universal and almost uncontroverted position in the several States that the purposes of society do not require a surrender of all our rights to our ordinary governors . . . and which experience has nevertheless proved they [the government] will be constantly encroaching on if submitted to them; that there are also certain fences which experience has proved peculiarly efficacious [effective] against wrong and rarely obstructive of right, which yet the governing powers have ever shown a disposition to weaken and remove. Of the first kind, for instance, is freedom of religion. ^[7]

Thomas Jefferson had no intention of allowing the government to limit, restrict, regulate, or interfere with public religious practices. He believed, along with the other Founders, that the First Amendment had been enacted *only* to prevent the federal establishment of a national denomination – a fact he made clear in a letter to fellow-signer of the Declaration of Independence Benjamin Rush:

[T]he clause of the Constitution which, while it secured the freedom of the press, covered also the freedom of religion, had given to the clergy a very favorite hope of obtaining an establishment of a particular form of Christianity through the United States; and as every sect believes its own form the true one, every one perhaps hoped for his own, but especially the Episcopalians and Congregationalists. The returning good sense of our country threatens abortion to their hopes and they believe that any portion of power confided to me will be exerted in opposition to their schemes. And they believe rightly. ^[8]

Jefferson had committed himself as President to pursuing the purpose of the First Amendment: preventing the "establishment of a particular form of Christianity" by the Episcopalians, Congregationalists, or any other denomination.

Since this was Jefferson's view concerning religious expression, in his short and polite reply to the Danbury Baptists on January 1, 1802, he assured them that they need not fear; that the free exercise of religion would *never* be interfered with by the federal government. As he explained:

Gentlemen, – The affectionate sentiments of esteem and approbation which you are so good as to express towards me on behalf of the Danbury Baptist Association give me the highest satisfaction. . . . Believing with you that religion is a matter which lies solely between man and his God; that he

owes account to none other for his faith or his worship; that the legislative powers of government reach actions only and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion or prohibiting the free exercise thereof," thus building a wall of separation between Church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties. I reciprocate your kind prayers for the protection and blessing of the common Father and Creator of man, and tender you for yourselves and your religious association assurances of my high respect and esteem. ^[9]

Jefferson's reference to "natural rights" invoked an important legal phrase which was part of the rhetoric of that day and which reaffirmed his belief that religious liberties were inalienable rights. While the phrase "natural rights" communicated much to people then, to most citizens today those words mean little.

By definition, "natural rights" included "that which the Books of the Law and the Gospel do contain." ^[10] That is, "natural rights" incorporated what God Himself had guaranteed to man in the Scriptures. Thus, when Jefferson assured the Baptists that by following their "natural rights" they would violate *no* social duty, he was affirming to them that the free exercise of religion was their inalienable God-given right and therefore was protected from federal regulation or interference.

So clearly did Jefferson understand the Source of America's inalienable rights that he even doubted whether America could survive if we ever lost that knowledge. He queried:

And can the liberties of a nation be thought secure if we have lost the only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with His wrath? ^[11]

Jefferson believed that God, not government, was the Author and Source of our rights and that the government, therefore, was to be prevented from interference with those rights. Very simply, the "fence" of the Webster letter and the "wall" of the Danbury letter were *not* to limit religious activities in public; rather they were to limit the power of the government to prohibit or interfere with those expressions.

Earlier courts long understood Jefferson's intent. In fact, when Jefferson's letter was invoked by the Supreme Court (only twice prior to the 1947 *Everson* case – the *Reynolds v. United States* case in 1878), unlike today's Courts which publish only his eight-word separation phrase, that earlier Court published Jefferson's entire letter and then concluded:

Coming as this does from an acknowledged leader of the advocates of the measure, it [Jefferson's letter] may be accepted almost as an authoritative declaration of the scope and effect of the Amendment thus secured. *Congress* was deprived of all *legislative power* over mere [religious] opinion, but was left free to *reach actions which were in violation of social duties or subversive of good order.* (emphasis added) ^[12]

That Court then succinctly summarized Jefferson's intent for "separation of church and state":

[T]he rightful purposes of civil government are for its officers to interfere when principles break out into overt acts against peace and good order. In th[is] . . . is found the true distinction between what properly belongs to the church and what to the State. ^[13]

With this even the Baptists had agreed; for while wanting to see the government prohibited from interfering with or limiting religious activities, they also had declared it a legitimate function of government "to punish the man who works ill to his neighbor."

That Court, therefore, and others (for example, *Commonwealth v. Nesbit* and *Lindenmuller v. The People*), identified actions into which – if perpetrated in the name of religion – the government *did* have legitimate reason to intrude. Those activities included human sacrifice, polygamy, bigamy, concubinage, incest, infanticide, parricide, advocacy and promotion of immorality, etc.

Such acts, even if perpetrated in the name of religion, would be stopped by the government since, as the Court had explained, they were "subversive of good order" and were "overt acts against peace." However, the government was *never* to interfere with *traditional* religious practices outlined in "the Books of the Law and the Gospel" – whether public prayer, the use of the Scriptures, public acknowledgements of God, etc.

Therefore, if Jefferson's letter is to be used today, let its context be clearly given – as in previous years. Furthermore, earlier Courts had always viewed Jefferson's Danbury letter for just what it was: a *personal, private* letter to a specific group. There is probably no other instance in America's history where words spoken by a single individual in a private letter – words clearly divorced from their context – have become the sole authorization for a national policy. Finally, Jefferson's Danbury letter should never be invoked as a stand-alone document. A proper analysis of Jefferson's views must include his numerous other statements on the First Amendment.

For example, in addition to his other statements previously noted, Jefferson also declared that the "power to prescribe any religious exercise. . . . *must rest with the States*" (emphasis added). Nevertheless, the federal courts ignore this succinct declaration and choose rather to misuse his separation phrase to strike down scores of State laws which encourage or facilitate public religious expressions. Such rulings against State laws are a direct violation of the words and intent of the very one from whom the courts claim to derive their policy.

One further note should be made about the now infamous "separation" dogma. The *Congressional Records* from June 7 to September 25, 1789, record the months of discussions and debates of the ninety Founding Fathers who framed the First Amendment. Significantly, not only was Thomas Jefferson not one of those ninety who framed the First Amendment, but also, during those debates not one of those ninety Framers ever mentioned the phrase "separation of church and state." It seems logical that if this had been the intent for the First Amendment – as is so frequently asserted-then at least one of those ninety who framed the Amendment would have mentioned that phrase; none did.

In summary, the "separation" phrase so frequently invoked today was rarely mentioned by any of the Founders; and even Jefferson's explanation of his phrase is diametrically opposed to the manner in which courts apply it today. "Separation of church and state" currently means almost exactly the opposite of what it originally meant.

Endnotes 1. Letter of October 7, 1801, from Danbury (CT) Baptist Association to Thomas Jefferson, from the Thomas Jefferson Papers Manuscript Division, Library of Congress, Washington, D. C. (Return) 2. *Id.* (Return) 3. *The Jeffersonian Cyclopedia*, John P. Foley, editor (New York: Funk & Wagnalls, 1900), p. 977; see also *Documents of American History*, Henry S. Cummager, editor (NY: Appleton-Century-Crofts, Inc., 1948), p. 179. (Return) 4. *Annals of the Congress of the United States* (Washington: Gales and Seaton, 1852, Eighth Congress, Second Session, p. 78, March 4, 1805; see also James D. Richardson, *A Compilation of the Messages and Papers of the Presidents, 1789-1897* (Published by Authority of Congress, 1899), Vol. I, p. 379, March 4, 1805. (Return) 5. Thomas Jefferson, *Writings of Thomas Jefferson*, Albert Ellery Bergh, editor (Washington D. C.: The Thomas Jefferson Memorial Association, 1904), Vol. I, p. 379, March 4, 1805. (Return) 6. Thomas Jefferson, *Memoir, Correspondence, and Miscellanies, From the Papers of Thomas Jefferson*, Thomas Jefferson Randolph, editor (Boston: Gray and Bowen, 1830), Vol. IV, pp. 103-104, to the Rev. Samuel Millar on January 23, 1808. (Return) 7. Jefferson, *Writings*, Vol. VIII, p. 112-113, to Noah Webster on December 4, 1790. (Return) 8. Jefferson, *Writings*, Vol. III, p. 441, to Benjamin Rush on September 23, 1800. (Return) 9. Jefferson, *Writings*, Vol. XVI, pp. 281-282, to the Danbury Baptist Association on January 1, 1802. (Return) 10. Richard Hooker, *The Works of Richard Hooker* (Oxford: University Press, 1845), Vol. I, p. 207. (Return) 11. Thomas Jefferson, *Notes on the State of Virginia* (Philadelphia: Matthew Carey, 1794), Query XVIII, p. 237. (Return) 12. *Reynolds v. U. S.*, 98 U. S. 145, 164 (1878). (Return) 13. *Reynolds* at 163. (Return)

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MEMORANDUM

To: Representative Siegfried, Majority Leader
From: Tamera Lawrence, Assistant Revisor of Statutes
Date: July 20, 2011
Subject: Capitol Meditation Room

KANSAS HISTORY

The idea of a statehouse meditation room is not new to Kansas. In 1960, the Kansas legislature authorized the creation of an interfaith meditation room in the capitol through Senate Concurrent Resolution No. 11. The resolution directed the state executive council (now abolished) to designate room 503 as the meditation room. It also authorized the legislative remodeling committee to decorate and refurnish the room accordingly from available appropriations.

According to Barry Gries, the statehouse architect, the room did, in fact, operate as a meditation room for a period of time. At present, it is unclear when the room was re-designated and no longer used as a meditation room.

HISTORY OF OTHER CAPITOLS

Meditation rooms or chapels in capitol buildings are uncommon, but not unheard of. A prayer room was established in the U.S. Capitol in 1954. In *Van Zandt v. Johnson*, the Illinois district court stated that seven states have established a prayer or meditation room in their state capitol or other legislative buildings.¹ However, only six states have independently confirmed the existence of such rooms in their state capitol buildings. Those states are Arkansas, Florida, Indiana, Illinois, Kentucky and Texas.

¹ 649 F. Supp. 583 at 592 (Arkansas, Florida, Indiana, Kentucky, North Carolina, South Carolina and Texas).

LEGAL PRECEDENT

The First Amendment of the U.S. Constitution states, "Congress shall make no law respecting an establishment of religion..." This is known as the "Establishment Clause." The Supreme Court in *Everson v. Board of Education* stated:

"The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'"²

Van Zandt v. Johnson

Of those states with a meditation room, only Illinois saw the matter go to court. In 1985, the Illinois legislature adopted House Resolution No. 408 (HR 408) which authorized and made plans for the conversion of a hearing room in the Illinois state capitol building into a prayer room. In 1986, Stephen Van Zandt and the Freedom From Religion Foundation, Inc. filed a lawsuit against state officials, including James R. Thompson, the then-governor of Illinois challenging the constitutionality of the enactment and execution of HR 408.

The United States District Court, Northern District of Illinois found that the creation of a prayer room in the state capitol was a violation of the Establishment Clause of the first

² 330 U.S. 1, 15-16 (1947).

amendment of the U.S. Constitution.³ That ruling was overturned by the United States Court of Appeals, Seventh Circuit.⁴ The district court and the circuit court found the plaintiffs had standing to sue. Both courts also relied on the legal principles set forth in the U.S. Supreme Court cases *Lemon v. Kurtzman*⁵ and *Marsh v. Chambers*⁶ in making their decisions.

Lemon v. Kurtzman

The Supreme Court in *Lemon* established a three-part analysis of religion-related law. The “Lemon Test” is still used by the Court today to determine whether or not laws violate the Establishment Clause of the Constitution. For any law to satisfy the Lemon Test, it must:

1. Have some secular or non-religious legal purpose;
2. neither promote nor inhibit any practice of religion; and
3. not foster “an excessive government entanglement with religion.”

If “a statute violates any of these three principles, it must be struck down under the Establishment Clause.”⁷

As applied in *Van Zandt*

In its decision in *Van Zandt*, the circuit court applied the Lemon Test to HR 408, even though it thought *Marsh v. Chambers* provided a more appropriate analysis. The court ultimately concluded that HR 408 and the prayer room pass the Lemon Test and do not violate the Establishment Clause.

First, the purpose of the prayer room was secular. The resolution refers to “meditation” as well as prayer, which demonstrates a secular purpose because “‘meditation’ may run the gamut from clearly religious phenomena to spiritual exercise having little ‘religious’ content to quiet thought about how things are going.”⁸ Second, it does not have the purpose of advancing religion. The court stated for a body that opens its daily sessions with prayer, having a “subsequent opportunity for legislators to pray or meditate individually seems at most a *de minimis* advancement of or benefit to religion.”⁹ Third, the court found no excessive government

³ *Van Zandt v. Johnson*, 649 F. Supp. 583 (1986).

⁴ *Van Zandt v. Johnson*, 839 F.2d 1215 (1988).

⁵ 403 U.S. 602 (1971).

⁶ 463 U.S. 783 (1983).

⁷ *Stone v. Graham*, 449 U.S. 39 at 40-41 (1980).

⁸ 839 F.2d 1215 at 1221.

⁹ *Id.* at 1222.

entanglement because it was “merely allowing the legislature to set aside a room in which individual legislators may engage in private prayer or meditation as they choose, and presumably in the interests of a saner legislative process.”¹⁰ Therefore, all three of the Lemon criteria are satisfied.

Marsh v. Chambers

The Supreme Court in *Marsh* departed from the Lemon Test and instead looked at the historical significance of the use of prayer and a chaplain in legislative sessions and other similar gatherings. In *Marsh*, the Court examined the constitutionality of opening daily state legislative sessions with a prayer and employing a chaplain paid from public funds. The Court concluded that the use of prayer and a chaplain was embedded in the nation’s history and tradition. It also found that the Establishment Clause does not always bar a state from regulating conduct simply because it harmonizes with religious concerns.

As applied in *Van Zandt*

The circuit court in *Van Zandt* stated that the *Marsh* decision properly governed the issue at hand. The court first found that though the historical significance of a prayer room was weaker than the historical significance of legislative prayer, there is a broader tradition of legislatures acknowledging “in relatively modest and nonintrusive ways, some role for spiritual values in their work.”¹¹

The court also examined other non-historical features of the prayer room. First, it looked at legislative deference. It stated that legislative deference in handling its own internal affairs was stronger in this case than in *Marsh*, because in *Marsh* any legislator or observer who wished to avoid legislative prayer had to leave the chamber, whereas here, it was much easier for someone to simply avoid the prayer room.¹² Second, it examined public expense. HR 408 stated no public expense would be incurred because its renovation, operation and maintenance would all be funded through private donations.¹³

¹⁰ Id. at 1223.

¹¹ Id. at 1219.

¹² Id.

¹³ Id. at 1220.

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STATUTORY AUTHORITY

In Kansas, the Legislative Coordinating Council is responsible for designating space in the capitol for specific uses pursuant to K.S.A. 75-3765a. It is also the authority if a space requires renovation or construction under K.S.A. 75-2262.

ATTACHMENTS (6)

Kansas Senate Concurrent Resolution No. 11 (1960)
Illinois House Resolution No. 408 (1985)
Van Zandt v. Johnson, 649 F.Supp. 583 (1986)
Van Zandt v. Johnson, 839 F.2d 1215 (1988)
K.S.A. 75-3765a
K.S.A. 75-2262

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