The Lie of "Separation of Church and State" & the U.S. Supreme Court's Usurpations of Power.

By Publius Huldah.

1. How did it happen that our country became a land where Christian children are forbidden to use the word, "God", in the public schools; public school students are forbidden to say prayers at football games; and Christian religious speech is banned from the public square? Read on, and I will show you how judges on the supreme Court perverted our Constitution, prohibited the Free Exercise of Religion, and abridged our Freedom of Speech.

2. We must begin by learning what our Constitution says – and doesn't say – about "religion" and "speech". The three branches of federal government: Legislative Branch (Art I), Executive Branch (Art II), and Judicial Branch (Art III), have only the enumerated powers delegated to them in the Constitution. All "legislative" powers granted in the Constitution are vested in Congress (Art I, §1). This means that no other branch may make law. Since the **legislative powers of Congress are enumerated**, Congress may make laws *only* on those specific subjects listed in the Constitution as proper objects of legislation. Since "religion" & "speech" are not among the listed powers, **Congress may not make any laws about religion or speech.**

3. Furthermore, the First Amendment to the Constitution says:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech…

What is an "established religion"? I will show you how judges on the supreme Court ***changed the historical definition of that term*** so that they could eradicate the Christian religion from our public square and eliminate speech *they* don't like. We will begin by finding out what "establishment of religion" actually meant when the Constitution was ratified. To do so, we must consult English history, American colonial history, and writings of our Founders.

Established Religion in England.

4. Queen Mary I ("Bloody Mary"), who reigned between 1553-1558, deposed The Church of England which her Father, Henry VIII, had established; re-established the Roman Catholic Church, and burned

approximately 300 Protestant dissenters at stake.

Elizabeth I, who reigned between 1558-1603, restored the Church of England. **Elizabeth's Act of Uniformity** (1559), imposed fines, forfeitures, and imprisonment on church officials who did not conform to approved doctrine & practice; and imposed fines on all persons who, without sufficient excuse, did not attend services of the Church of England. Additional laws illustrative of English Church History from 1558-1640 are **here**.

During the reign of Charles II (1661-1685), the Puritan John Bunyan, author of Pilgrim's Progress, was imprisoned for 11 years because he *refused* to attend services of the established Church of England, and he *refused* to obtain a license to preach as a "nonconformist".

5. The established religions in England, first Roman Catholic, and then Church of England, were supported by "tithes" – mandatory payments of a percentage of the produce of the land, payable by those living within the parish (regardless of their religious preferences) to the parish church, to support it and its clergy:

> **The payment of tithes** was a cause of endless dispute between the tithe owners and the tithe payers – between clergy and parishioners – … In addition, Quakers and other non-conformists objected to paying any tithes to support the established church. Almost every agricultural process and product attracted controversy over its tithe value. By the eighteenth century the complex legislation surrounding the tithe began to have a detrimental effect … Tithing was seen as increasingly irrelevant to the needs of the community and the developing agricultural industry.

6. So! The essential characteristic of "established religion" in England up to the time of the founding of our country was *coercion by the civil government*: The people were **forced** to practice the established denomination under pain of death, imprisonment & fines, and were **forced** to financially support the established church.

Established Religions in the AmericanColonies.

7. English settlers in the colonies promptly established *their* religions. In **Massachusetts**, where they established the Congregational Church, only church members could vote between 1631-1664; dissenters (Roger Williams, etc.) were banished; and between 1650-1670, Quakers were whipped, imprisoned, banished, and put to death. In **Virginia**, where they established the Church of England, penalties for

failure to attend services during the early 1600's included death, prison, and fines. [1] In **Maryland**, where they established the Church of England, between 1704-1775, Roman Catholic ("RC") services could be held only in private homes, RCs could not teach school, inheritance of property by RCs was restricted, and RCs who would not take a certain oath were disfranchised and subject to additional taxes, as well as being forced to contribute to the established church. In Virginia at this time, RCs were forbidden to possess arms, give evidence in court, or hold office unless they took certain oaths. **New York** and Massachusetts made laws which stayed on the books until the Revolution directing all RCs to leave the realm. **Rhode Island's** laws between 1719-1783 prohibited RCs from being freeman or office holders. Not until 1783 were RC's given full political rights in Rhode Island. In Virginia, no marriage was legal unless performed by a minister of the Church of England. [2]

Everyone in Virginia, Maryland, and **North & South Carolina** was required to contribute to the support of the established Church of England, to maintain the building, pay the minister's salary, and provide him with a house and plot of land. New York required each county to hire a "good sufficient" Protestant minister and to levy taxes for his support. By 1760, the Congregational Church was still established in Massachusetts and **Connecticut**; but Episcopalians, Baptists and Quakers were now tolerated, and no longer required to support of the Congregational Church. [3] Presbyterians of Chester, **N.H**. objected to being taxed to support the Congregational minister, and in 1740 won the right to be taxed only for their own denomination. Even so, **in 1807**, the Presbyterians in Chester sold a Quaker's cow for non-payment of the Minister's Tax!

Writings of Our Founders.

8. As the Spirit of Toleration grew in England and colonial America, criminal penalties for dissenting from the tax-supported established religions were abolished. By 1776, the essential characteristic of "established religions", as opposed to "tolerated religions", was that the former were supported by tax money (or tithes assessed & collected by law); whereas the latter were supported by voluntary contributions alone. **Benjamin Franklin** wrote in *The London Packet*, June 3, 1772 of colonial Americans:

> They went from England to establish a new country ... where they might enjoy the free exercise of religion ... they granted the lands out in townships, requiring ... **that the freeholders should forever support a gospel minister (meaning probably one of the then governing sects)** ... T**hus, what is commonly called Presbyterianism became the *established religion* of that country**. All went on well in this way while the same religious opinions were

> general, **the support of minister ... being raised by a proportionate tax on the lands**. But in process of time, some becoming Quakers, some Baptists, and ... some returning to the Church of England ... objections were made to the payment of a tax appropriated to the support of a church they ... had forsaken. The civil magistrates, however, continued for a time to collect and apply the tax according to the original laws which remained in force ... a payment which it was thought no honest man ought to avoid under the pretense of his having changed his religious persuasion. ... But the practice being clamoured against by the episcopalians as persecution, the legislature of the Province of the Massachusets-Bay, near thirty years since, passed an act for their relief, **requiring indeed the tax to be paid as usual**, but **directing that the ... sums levied from members of the Church of England, should be paid over to the Minister of that Church**, with whom such members usually attended divine worship, which Minister had power given him to receive and on occasion *to recover the same by law*. [emphasis in boldface added; italics in original]

Alexander Hamilton wrote in 1775 in his "Remarks on the Quebec Bill" (No. 11):

> **The characteristic difference between a tolerated and established religion, consists in this:** With respect to the support of the former, the law is passive and improvident, leaving it to those who profess it, to make as much, or as little, provision as they ... judge expedient; and to vary and alter that provision, as their circumstances may require. In this manner, the Presbyterians, and other sects, are tolerated in England. They are allowed to exercise their religion without molestation, and to maintain their clergy as they think proper. These are wholly dependent upon their congregations, and can exact no more than they stipulate and are satisfied to contribute. But with respect to the support of the latter, the law is active and provident. Certain precise dues, (tithes &c.,) are legally annexed to the clerical office, independent on the liberal contributions of the people ...While tithes were the free ... gift of the people ... the Roman church was only in a state of toleration; but when the law came to take cognizance of them, and, by determining their permanent existence, destroyed the free agency of the people, it then resumed the nature of an establishment. [emphasis added]

James Madison wrote in his letter of 1832 to Rev. Adams:

> In the Colonial State of the Country, there were four examples, R.I., N.J., Penna. and Delaware, & the greater part of N.Y. where there were no religious Establishments; the support of Religion being left to the voluntary associations & contributions of individuals...

9. So! **The essential characteristic of an "established religion" by 1789 was that an "established" denomination was supported by mandatory taxes or tithes, but "tolerated" denominations were supported by voluntary offerings of their adherents**. Benjamin Franklin's fascinating letter of 1772 shows that the hot topic of the time was the forcing of dissenters to financially support established religion: In England, dissenters from the Church of England were forced to pay tithes to the clergy of that Church. The English supporters of the Church of England responded that the "dissenters" in America had no room to complain because they compelled American Anglicans to pay taxes to support the Presbyterian worship!

> Whose Powers Are Restricted By The First Amendment?

10. Before we look at supreme Court opinions banning the free exercise of religion & abridging free speech, we must consider: ***Whose*** powers are restricted by The First Amendment? It reads:

> **Congress** shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech...

The plain language shows that the First Amendment restricts *only Congress'* powers! The People of the States are free to establish (or dis-establish) any religion they want – this is one of the powers retained by the States or the People! Several States did retain their established religions after ratification of the U.S. Constitution in 1789. We saw that in 1807, Presbyterians in Chester, N.H. sold a Quaker's cow for non-payment of the Minister's Tax. Not until the **Toleration Act of 1819** did the Legislature of N.H. make it illegal for towns, as corporate bodies, to raise money for the support of the gospel. Connecticut did not dis-establish the Congregational Church until they adopted their **Constitution of 1818** (see Article Seventh). **Massachusetts** did not dis-establish the Congregational Church until 1833.

11. So! The First Amendment (1) **prohibits *Congress*** from establishing a national denominational religion, (2) **prohibits *Congress*** from interfering in the States' establishments of the religions of their choice, or dis-establishments thereof, and (3) **prohibits *Congress*** from abridging the Peoples' freedom of speech. Everyone understood that **no one** in the federal government had any authority to cancel, abridge, restrain or modify rights of any denomination or the States' essential rights of liberty of conscience. The People of Virginia said, when they ratified the U.S. Constitution:

> **We the Delegates of the People of Virginia** ... having ... investigated and discussed the proceedings of the Federal Convention ... Do in the name ... of the People of Virginia declare and

> make known that the powers granted under the Constitution being derived from the People of the United States may be resumed by them whensoever the same shall be perverted to their injury or oppression and **that every power not granted thereby remains with them and at their will: that therefore no right of any denomination can be cancelled abridgedrestrained or modified by the Congress by the Senate or House of Representatives acting in any Capacity by the President or any Department or Officer of the United States except in those instances in which power is given by the Constitution for those purposes: & that among other essential rights *the liberty of Conscience* and of the Press *cannot be cancelled abridged restrained or modified by ANY authority of the United States***. With these impressions with a solemn appeal to the Searcher of hearts for the purity of our intentions …We … in the name … of the People of Virginia … ratify the Constitution recommended on the seventeenth day of September one thousand seven hundred and eighty seven by the Federal Convention for the Government of the United States… [emphasis added]

12. But in **Gitlow v. People** (1925), judges on the supreme Court *asserted* – without any justification in Law or Fact – that the 14th Amendment (which applies to the States) [4] ***incorporates*** the First Amendment so that the First Amendment now restricts the powers of the States! They said:

> …**we may and do assume that freedom of speech and of the press which are protected by the First Amendment from abridgment by Congress are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States**. We do not regard the incidental statement in *Prudential Ins. Co. v. Cheek* [5] ….that the Fourteenth Amendment imposes ***no restrictions*** on the States concerning freedom of speech, as determinative of this question. (p. 666) [emphasis added]

The judges' **new interpretation**of the 14th Amendment became the weapon the Court has used **to silence Christians and to seize Power over States & local governments.** By claiming that the First Amendment **restricts the powers of the *States & local governments*,** the Court set itself up as policeman over the States, over counties, over cities & towns, and even over football fields & court-house lawns! In this way, the Bill of Rights, which was intended to be the States' and The Peoples' ***protection*** against usurpations of power by the federal government, became the weapon the supreme Court used to usurp power and force ***their wills*** on all People in Our Land.

How the Supreme Court Re-defined the Historic Term, "Establishment of Religion".

13. We have seen that Benjamin Franklin, Alexander Hamilton, and James Madison said **the distinguishing characteristic of an "established religion" was that the "established" denomination was supported by *mandatory* taxes or tithes, whereas "tolerated" denominations were supported by voluntary offerings of their adherents.**

14. Now let us see how judges on the supreme Court ***re-defined*** "establishment of religion" in order to ban prayer in public schools. **Engel v. Vitale** (1962), is the case where six men outlawed non-denominational prayer in the public schools. A public school board in New York had directed that the following prayer be said at school:

> Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.

Any student was free to remain seated or leave the room, without any comments by the teacher one way or the other.

But six men on the supreme Court said this short, non-denominational and voluntary prayer constituted an "establishment of religion" in violation of the First Amendment! They (Hugo Black [6] Warren, Clark, Harlan, Brennan, and Douglas) ***admitted*** that allowing school children to say this prayer did not ***really*** "establish" a "religion"! They ***admitted*** that the prayer:

> ...does not amount to a total establishment of one particular religious sect to the exclusion of all others — that, indeed, the governmental endorsement of that prayer seems relatively insignificant when compared to the governmental encroachments upon religion which were commonplace 200 years ago...(p.436)

Douglas wrote in his concurring opinion:

> I cannot say that to authorize this prayer is to establish a religion in the strictly historic meaning of those words. A religion is not established in the usual sense merely by letting those who choose to do so say the prayer that the public school teacher leads. (p.442)

But these six men didn't want children praying in school. So, they just redefined "establishment of religion" to mean, "*a religious activity*", "*a prayer*" (p.424), having public school children hear or recite *a prayer that "somebody in government composed*" (pp.425-427), "*writing or sanctioning official*

prayers"(p.435), and "government *endorsement* of a prayer" (p.436).

These six men also admitted that even though no coercion was present, and even though the prayer was "denominationally neutral", it still constituted an unlawful "establishment of religion":

> The Establishment Clause ... does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not. (p.430)

Douglas said in his concurring opinion:

> There is no element of compulsion or coercion in New York's regulation requiring that public schools be opened each day with the ... prayer (p.438); there is ... no effort at indoctrination, and no attempt at exposition ... New York's prayer ... does not involve any element of proselytizing ... (p.439).

15. They thus *redefined* "established religion" to describe what the N.Y. public schools were doing so that they could then outlaw it. They don't have that right! We have quoted Benjamin Franklin, Alexander Hamilton & James Madison as showing that **the essence of an "established religion" i**s that **the civil government selects a particular religious denomination** (Roman Catholic **or** Church of England **or** Congregational **or** Presbyterian, etc., **and forces everybody to financially support that particular denomination with taxes or tithes.** [7]

16. Well! Since the evil from which the supreme Court in Engel v. Vitale pretended it sought to protect our public school children was having them recite or hear (if they wanted to) a one-sentence non-denominational prayer which "***somebody in government composed***"; that monstrous evil can be avoided if the children write their own prayers, right?

17. Oh no!, said six judges on the supreme Court in **Santa Fe Independent School Dist. v. Doe** (2000). Here, a public school district permitted, but did not require, student-initiated, student-led, nonsectarian, non-proselytizing prayer at home football games. But Justices Stevens, Ginsberg, Souter, Breyer, O'Connor, & Kennedy said this constituted an "establishment of religion" in violation of the First Amendment, because the prayers were "public speech" authorized by "government policy" taking place on "government property" at government sponsored school events, and the policy involved "perceived" and "actual" "***government endorsement of prayer.***"

The six also said on page 309-310 of their opinion:

> ...School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents "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" *Lynch*, 465 U.S. at 688 ...

Do you see? ***They cite themselves*** – their earlier opinion in Lynch – ***as authority!*** [8]Furthermore, making "nonadherents" feel like "outsiders" is not a *constitutional* standard; it is the judges' own *silly* standard.

The six said on page 310:

> ...We explained in *Lee* that the "preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." 505 U.S. at 589...

Again, they cite themselves - their opinion in Lee – **as authority!** Furthermore, the Constitution does not restrict religion to the "private sphere" – ***it forbids Congress from prohibiting its free exercise ANYWHERE!***

18. Again, the six judges in Santa Fe *re-defined* "establishment of religion" to describe what the Santa Fe School District was doing so that they could then outlaw it.

19. In his dissenting opinion, Rehnquist, joined by Scalia & Thomas, said the majority opinion:

> ...bristles with hostility to all things religious in public life. Neither the holding nor the tone of the opinion is faithful to the meaning of the Establishment Clause, when it is recalled that **George Washington himself, at the request of the very Congress which passed the Bill of Rights, proclaimed a day of "public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many and signal favors of Almighty God."**... (p. 318) [emphasis added]

The One-Way Only "Wall of Separation" Between Church and State.

20. We have all heard the chant, mindlessly recited, "separation of church and state". Many believe this phrase is in the Constitution, and that it forbids any Christian influence in the public square. But that is false. The phrase is nowhere in the Constitution, and it is not a constitutional principle. The First Amendment says Congress may ***not*** "legally establish one [religious] creed as official truth and support it with its full financial and coercive powers"; [9] ***and it may not prohibit the free exercise of religion***

or religious speech ANYWHERE.

21. We saw that in Connecticut, the Congregational Church was the established religion until Connecticut dis-established that Church with it's Constitution of 1818. Earlier, on October 7, 1801, **Baptists in Danbury, Connecticut** wrote a letter to President Thomas Jefferson in which they expressed their distress that in Connecticut, where they were a religious minority,

> ...religion is considered as the first object of legislation; and therefore what religious privileges we enjoy (as a minor part of the state) we enjoy as favors granted, and not as inalienable rights; and these favors we receive at the expense of such degrading acknowledgements as are inconsistent with the rights of freemen...
>
> *****
>
> Sir, we are sensible that the president of the United States is not the national legislator, and also sensible that the national government cannot destroy the laws of each state; but our hopes are strong that the sentiments of our beloved president, which have had such genial effect already, like the radiant beams of the sun, will shine and prevail through all these states...till...tyranny be destroyed from the earth...

These Baptists thus expressed their hope that the People of Connecticut would be influenced by Jefferson's sentiments and dis-establish the Congregational Church in Connecticut.

22. **In his response dated January 2, 1802**, Jefferson indicated that he hoped the People of Connecticut would follow the example of the "whole American people":

> ...Believing with you that religion is a matter which lies solely between man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & 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 & 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...

Jefferson agreed that civil government ought not dictate to People in matters of religious belief, and pointed out that the First Amendment prevents Congressfrom doing this. He

did not say that religion must be relegated to the private sphere! He used the First Amendment as his model – and it restricts *only Congress*, not religion.

Jefferson and the Danbury Baptists both knew the federal government had no authority to dis-establish Connecticut's official Church.

23. An earlier **Draft of Jefferson's letter with recently discovered text** reads:

> ...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 eternal separation between Church & State. **Congress thus inhibited from acts respecting religion**, and the Executive authorized only to execute their acts... [emphasis added]

24. **Dr. Hutson's article** shows that on Sunday, Jan 3, 1802, right after Jefferson wrote the letter to the Danbury Baptists, he attended worship services in the House of Representatives, where John Leland, a Baptist minister and well known advocate of religious liberty, preached. During the remainder of Jefferson's two administrations, he attended religious services conducted in the House "constantly". Jefferson granted "permission to various denominations to worship in executive office buildings, where four-hour communion services were held..."

Jefferson had no problem with sectarian praying, preaching & communion serving on public property! **It could be said that he "endorsed" *Christianity!*** Those who are so determined to eradicate Christianity from our Country walk on a slender reed when they claim Jefferson as an ally.

25. In Engel v. Vitale, Hugo Black said the reading of the prayer ["Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country"] before children in the N.Y. public schools who chose to hear it:

> breaches the constitutional wall of separation between Church and State (p.425).

Even though this metaphor of "wall of separation between church and state" is **nowhere in the Constitution**, this Klansman turned supreme Court justice *misrepresented* it as a "constitutional" principle! [10]

Furthermore, Hugo Black misapplied the metaphor: The "wall of separation" metaphor doesn't apply to what the N.Y. public schools were doing because The State of New York isn't "Congress"; and New York,

with it's one sentence non-denominational prayer, wasn't "establishing a religion" . What Jefferson's metaphor applied to was an Act of ***Congress*** selecting a particular **denomination** (Roman Catholic **or** Episcopalian **or** Congregational **or** Presbyterian, **or** Baptist, etc., **and forcing everybody to financially support that particular denomination with taxes or tithes.**

Congress may not prohibit the "free exercise" of religion *anywhere* - neither may the supreme Court; and **that Jefferson thought "religion" should influence those in civil government is clear from all those church services & celebrations of communion which were "constantly" held in the House of Representatives and the Executive Office Building!**

Lawlessness on the Court.

26. Let us summarize what the supreme Court has done to free speech and the free exercise of religion throughout our Land. They have violated the First Amendment in four ways:

a) Even though the First Amendment expressly restricts only the law-making powers of Congress, and thus was intended to be the States' and the Peoples' protection from Congress; the supreme Court reversed the purpose of the First Amendment so that it became the tool the Court uses to silence speech ***they*** don't like and to suppress the free exercise of a religion ***they*** don't like, all throughout the States, counties, towns & villages, all the way down to football fields & county courthouse lawns.

b) Even though the First Amendment says, "an establishment of religion", a phrase which has a distinct historical meaning, the Court from time to time ***re-defines the term*** so as to describe the circumstances surrounding religious speech ***they*** don't like so that they can declare it "unconstitutional". In effect, they claim the right to sit as a continuing constitutional convention amending the words in the U.S. Constitution to elevate into "Law" their own WILLS.

c) They outlawed the free exercise of religion; and they outlawed free speech – when the subject is "religious" – because ***they*** *don't like it*. They took away from their Sovereign – their Creators – a right expressly reserved by us in the U.S. Constitution. Congress may not stop people from praying anywhere, or posting The Ten Commandments anywhere, or preaching in any public areas. **Neither may the Supreme Court**. But those lawless usurpers took away OUR religions and replaced them with THEIR humanist & statist religion which they seek to force on us.

d) By claiming that their opinions have the effect of "law", they made "laws" respecting religion, and "laws" abridging speech ***they*** don't like, even though the federal government has no authority to act in this area. When Congress is prohibited from making laws in an area, the supreme Court certainly may not

make laws in that area! The only way "religion" or "speech" could ever properly get before the supreme Court would be if CONGRESS VIOLATED the First Amendment and Art. I., § 8 by making a law "respecting" the establishment of religion or prohibiting the free exercise thereof, or by making a law abridging the freedom of speech. The States and political subdivisions retained the rights to make whatever laws they please "respecting" religion (subject only to any limitations imposed by their own State Constitutions), **and the U.S. Supreme Court has no constitutional authority whatsoever to interfere.**

27. **Note this well**: Federal judges do not have "lifetime appointments". They serve during "good Behaviour" only (Art. III, §1). The constitutional remedy for usurping federal judges is impeachment, trial, conviction & removal. **Federalist No. 81** (8th para), A. Hamilton.

In the Year of our Lord, October 24, 2010 [11]

Publius Huldah.

Notes: (Read them – they are interesting – you'll see!)

[1] A History of the Congregational Churches in the United States, Williston Walker (1894), pp 114-149; Google digitized book.

[2] A History of the United States: A Century of Colonial History, 1660-1760, Edward Channing (1908), pp 423- 454; Google digitized book.

[3] Id.

[4] The 14th Amendment (ratified 1868) says, "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws..."

Professor Raoul Berger's meticulously researched book, **Government by Judiciary: The Transformation of the Fourteenth Amendment**, ***proves*** that the purpose of the 14th Amendment was to protect freed slaves from southern Black Codes which denied them basic rights of citizenship. ***The 14th Amendment has nothing to do with silencing Christians!***

John Whitehead's essay, "The Fading Constitution", in The Second American Revolution, Crossway Books

(1982), shows how the supreme Court turned the Bill of Rights, "which was once a source of freedom against federal governmental interference [into] a source of intervention by the federal government into the very heart of the state governments." PH highly recommends Whitehead's book to lawyers & laymen alike.

[5] Just three years earlier, the supreme Court said i*n **Prudential Ins. Co. v. Cheek** (1922):*

> But, as we have stated, **neither the Fourteenth Amendment nor any other provision of the Constitution of the United States imposes upon the states any restrictions about "freedom of speech" ...** nor ... does it confer any right of privacy upon either persons or corporations. (page 543) [emphasis added]

Do you see? First it doesn't; then, three years later – it does!

[6] Hugo Black, who wrote the majority opinion in Engel v. Vitale, was a New Deal Democrat, a former ***Ku Klux Klan*** member, a supporter of FDR's court-packing scheme, & FDR's first appointment to the supreme Court.

[7] The majority opinion in Engel v. Vitale is also silly. Between the time Hugo Black changed his white robe for a black robe, he apparently didn't study Logic: On pp. 425-427, Black discussed the 16th century Established Church of England and its Book of Common Prayer which was approved by Parliament during 1548 & 1549. From that, Black concluded that when somebody "in government" composes a prayer, such constitutes an "establishment of religion", even if the prayer is non-denominational & voluntary! This is the form of Black's argument:

1st Premise: An established religion wrote a Book of Common Prayer for the public that Parliament approved.

2nd Premise: People in NY State government wrote a one-sentence prayer for the public.

Conclusion: When people in government write a one-sentence prayer for the public, they "establish a religion".

Oh my! Black made several errors in Logic, among which are:

(a) The dreaded "**Fallacy of Four Terms**": ***The Premises*** don't connect "establish a religion" ***with*** "people in government writing a prayer", so the reasoning is invalid. There are four terms in Black's

argument – and the fourth term, "establish a religion", is introduced in the conclusion!!

(b) Black selected one of many activities engaged in by established religions – writing prayers – & concluded that anytime government performs that same activity, such constitutes an "establishment of religion". But established religions do many things – you can't pick one of the things & say that if government does it, government "establishes a religion"! That's ridiculous!

(c) **Our Founders said the defining characteristic of "established religion" is that a particular denomination selected by civil government exists on taxes & tithes extracted from the People by force!** But Black ***redefined*** the term to mean "people in government writing a prayer for the public", so as to enable him to rule in the case then before him, that N.Y. "established a religion". This is the fallacy of "Victory by Definition": one ***redefines the terms*** so that one "wins". It is intellectually dishonest.

[8] They insert their personal views into their opinions and then, in later cases, cite those earlier personal views as *authority*! This is ***preposterous*** and a classic example of the **Rule of Men**! The judges' *sole authority* is to decide cases properly before them; their decisions affect *only* the parties to the cases, and do *not* have the force & effect of "law" on anybody. **The Federalist No. 78**, A. Hamilton.

[9] **"A Wall of Separation"**, by James Hutson. The quote is in the next to the last paragraph.

[10] Justice Stewart, who dissented, said in Engel v. Vitale:

> Moreover, I think that the Court's task, in this as in all areas of constitutional adjudication is not responsibly aided by the uncritical invocation of metaphors like the "wall of separation," a phrase nowhere to be found in the Constitution...(pp.445-446)

[11] Art. VII, clause 2, U.S. Constitution, contains an express recognition of the Lordship of Jesus Christ. Is that "unconstitutional"? I think not – It is, after all, "in the Constitution".

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June 19, 2009 - Posted by **Publius Huldah** | **1st Amendment**, **Danbury Baptists**, **Engel v. Vitale**, **establishment clause**, **free exercise clause**, **Hugo Black and the KKK**, **prayer in public schools**, **Separation of Church and State?** | **Danbury Baptists**, **Engle v. Vitale**, **establishment**

clause, **free exercise clause**, **prayer in public schools**, **separation of church and state**