Constitutional Issues In The Appeal Of The Collinsville Church of Christ

Part 2: Religious Freedom Issues

By FLAVIL R. YEAKLEY, JR.

If a woman resigned her membership in a congregation just two days before she was to be disfellowshipped on grounds of her admitted and unrepented fornication, would the elders of that congregation have the right to go ahead and explain to the members of the congregation why they must have no further association with her? Previous comments by various writers in *Mission* have generally suggested a negative answer to this question. These comments in *Mission* have generally been critical of the actions taken by the elders of the Collinsville Church of Christ in the events that led up to the case of *Guinn vs. the Collinsville Church of Christ.* There are, however, some broader issues to consider.

If a member of some organization other than a local church resigned membership just before being expelled on grounds of violating the organization's code of conduct, would that organization have the right to go ahead and announce the expulsion to its members and explain the grounds for the expulsion? Lawyers evidently believe that their state bar associations have such a right. If a lawyer resigns membership in a bar association just before being disbarred, the bar association goes ahead and announces the disbarment and the grounds for the disbarment in its state bar association journal. When Richard Nixon resigned the Presidency, he also resigned from the state bar association of California. His resignation, however, did not end the matter. The next issue of the state's bar association journal published his name along with others who were disbarred and announced "obstruction of justice" as the grounds for the disbarment. However, while claiming this right for themselves, some lawyers would deny this right to churches. So, it seems, would some who have commented in *Mission* on the case of *Guinn vs. the Collinsville Church of Christ.*

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Part 1 of this article in the last issue of *Mission* presented the facts of this case. The remainder of this article presents the constitutional issues raised in the appeal.

Separation of Church and State

It was unconstitutional for a state civil court to assume jurisdiction in such a case as this. The Constitution requires the separation of church and state according to the Supreme Court's ruling in *Zorach vs. Clauson.*[1] The Court, in *Everson vs. Board of Education,*[2] warned state governments that the First Amendment erected a high and impregnable wall between church and state that must not be breached in the slightest way.

The First Amendment forbids government involvement in ecclesiastical matters. The Supreme Court and other courts have uniformly taught that state courts have no jurisdiction in ecclesiastical matters. From the beginning of its consideration of the religion clauses, the Supreme Court has included church discipline in the list of ecclesiastical matters off limits to civil courts. This point is made especially clear in *Watson vs. Jones,*[3] *Serbian Orthodox Diocese vs. Milivojevich,* [4] and *Metropolitan Baptist Church of Richmond, Inc. vs. Younger.*[5] Yet in the Collinsville case, a state court assumed jurisdiction in an ecclesiastic matter—specifically a matter of church discipline.

According to the Supreme Court's ruling in *Presbyterian Church vs. Hull Church,*[6] state civil courts are precluded from interpreting or determining church doctrine. Yet in the Collinsville case, the judge allowed the jury to consider attacks on four specific doctrines of the church and then to punish the church for these doctrines. These four doctrines are (1) the congregation's strict view of sexual morality; (2) its requirement that members withdraw their association from Christians who sin and refuse

to repent; (3) its doctrine concerning the active counseling role of its elders; and (4) its teaching that a member who resigns from the congregation, as Marian Guinn did, must still be regarded by the church as being a child of God and must not be classified as a non-Christian.

The Fifth Circuit Court followed the Supreme Court's lead by holding, in *Simpson vs. Wells Lamont Corporation,*[7] that words said in church are not actionable in civil cases. In this judgment, the court said, "No matter how one may look at this dispute, it had to do with the substance and content of the very words uttered within the church itself, going right to the heart of the doctrine and beliefs and type of sermons that are delivered in churches. Now the church is a sanctuary, if one exists anywhere, immune from the rule or subjection to the authority of the civil courts, either state or federal, by virtue of the First Amendment."[8]

Before the right to freely exercise religion can be limited, the state must show a compelling public interest. That interest must be extremely significant.

In following the Supreme Court's direction to refrain from deciding ecclesiastical questions, the Circuit Court noted, "The First Amendment language that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . .' historically has stood for the strict prohibition of governmental interference in ecclesiastical matters. Only on rare occasions where there existed a compelling governmental interest in the regulation of public health, safety, and general welfare have the courts ventured into this protected area. Such incursions have been cautiously made so as not to interfere with the doctrinal beliefs and internal decisions of religious societies. Thus, the law is clear: civil courts are barred by the First Amendment from determining ecclesiastical questions."[9] But this is exactly what the District Court of Tulsa County, Oklahoma, did in the case against the Collinsville Church of Christ.

As previous comments in *Mission* illustrate, there are differences among members of the Church of Christ regarding the doctrine of church discipline and how it should be applied. But it is not proper for civil courts to decide such issues. The New Jersey Supreme Court has held that the First Amendment prohibits state judicial intrusion into church disciplinary affairs. A former deacon who had been removed from his post was awarded damages by a trial court against the pastor and the other deacons who had removed him from office. In this case of *Chavis vs. Rowe,*[10] the court reversed the judgment by holding that judicial inquiry into the propriety of removal procedures of that church officer would have impermissibly intruded on matters of church doctrine and that was prohibited by the First Amendment.

The Oklahoma Supreme Court, in *Oklahoma District Council vs. New Hope Assembly of God Church,*[11] stated that "Recent decisions of the United States Supreme Court have left no doubt that except in the most limited of circumstances it is an abridgment of those fundamental constitutional rights for the courts of civil jurisdiction to adjudicate any controversy involving religious doctrines or precepts."[12] The District of Columbia Circuit Court, in *Allen vs. Morton,*[13] went so far as to say that the courts should not only avoid actual interference with religion but also must avoid the potential for and the appearance of such interference with religion. Given this background, it was clearly unconstitutional for the judge to allow the jury to consider the attacks on the religious doctrines and practices of the Collinsville Church of Christ.

A local congregation is obviously a legal entity. As such, it can commit a tort. Courts have constitutionally assumed jurisdiction in some cases involving churches. In the Collinsville case, however, the trial court clearly breached the wall of separation between church and state by assuming jurisdiction in a case of this nature, by allowing attacks on religious doctrines and practices to go to the jury, and by imposing a state enforced punishment on the church for its religious beliefs and practices.

The religion clauses of the First Amendment require the reversal of the decision in Guinn vs. the Collinsville Church of Christ." That judgment violates the constitutionally mandated separation of church and state.

The Free Exercise Clause

The First Amendment requires that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . ." The trial court's judgment against the Collinsville Church of Christ and its elders violates the free exercise clause of the First Amendment.

There have, of course, been some limitations of religious freedom—but only when the state has shown a compelling public interest. Jehovah's Witnesses do not believe in having blood transfusions.

Several religious groups object to using any drugs or medical treatment. Courts, however, have found a compelling public interest in requiring medical treatment for children of those who hold such views. This limitation of the parents' religious freedom is judged necessary to save the lives of their children. In a similar way, courts have ruled as constitutional various state laws prohibiting the use of poisonous snakes in religious services of the "snake handling" cults. The state has a compelling interest in saving lives and that justifies this limitation of these people's religious freedom. Such limitations, however, cannot be justified without a specific showing of a compelling interest.

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In the Collinsville case, however, there was no showing of any compelling public interest that would justify limiting the religious freedom of the congregation and its elders to practice their religion. The First Amendment, as interpreted by the court in *Abington School District vs. Schempp,*[14] commands that government maintain strict neutrality, neither aiding nor opposing any particular religion or religion in general. The judgment in the Collinsville case puts the state in the business of opposing a particular set of religious beliefs and practices.

The judgment in this case punished the Collinsville Church of Christ and its elders for the sermon the elders preached in a Sunday morning worship assembly when they explained to the congregation, with many Biblical references, why they must have no further association with Marian Guinn. That sermon was judged to be "invasion of privacy by publication of private facts." However, the Supreme Court specifically stated in *Fowler vs. Rhode Island*[15] that the content of sermons is off limits for state courts. In a unanimous decision, the Court noted: "Nor is it in the competence of courts under our constitutional scheme to approve, disapprove, classify, regulate, or in any manner control sermons delivered at religious meetings. . . . To call the words which one minister speaks to his congregation a sermon, immune from regulation, and the words from another minister an address, subject to regulation, is merely an indirect way of preferring one religion over another."[16]

The punitive damages awarded in the Collinsville case serve not only to punish the Collinsville Church of Christ and its elders for exercising their religious freedoms in the four areas contested in this case, but also constitute a warning to keep others from exercising their religious freedoms in the same ways. But this constitutes prior restraint and it imposes a chilling effect on these religious practices and that is clearly condemned by the Supreme Court in *Cantwell vs. Connecticut.*[17]

Before the right to freely exercise religion can be limited, the state must show a compelling public interest. That interest must be extremely significant. There is a judicial prejudice against finding a state interest to be sufficiently compelling to overcome the constitutional right to freely exercise one's religion.

The pre-eminent case in this matter is *Wisconsin vs. Yoder.*[18] The Amish religion prohibits formal education beyond the eighth grade. A Wisconsin law required formal education through high school or until the age of 18. The state claimed that its interest in having educated citizens was enough to outweigh the freedom of the Amish to practice their religion in this matter. The Court, however, held that the state had not shown how its admittedly strong interest in compulsory education was sufficiently compelling to overcome the constitutional right of the Amish to practice their religion. The Court concluded that before religiously grounded conduct could be controlled by the state, previous courts had limited the conditions to those where there was some substantial threat to public safety, peace or order.

Another case to consider on this issue is *Sherbert vs. Verner.*[19] A woman was fired because she refused to work on Saturday in violation of her faith as a Seventh Day Adventist. She was then denied state unemployment compensation because of her refusal to accept any job that required working on Saturday. The state argued that it had a significant interest in protecting the unemployment compensation program from claims that might be offered from a wide variety of religious objections. But the Supreme Court found that the state's interest was not strong enough to overcome the right of a Seventh Day Ad-

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ventist to refuse to work on Saturday. The Court noted: "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice: in this highly sensitive constitutional area, 'only the gravest abuses, endangering paramount interests give occasion for permissible limitation.'"[20] The Court, thus, based its ruling on the earlier case of *Thomas vs. Collins*..

In several state criminal courts of last resort, the state interest in prohibiting the use of dangerous hallucinogenic drugs has been found to be insufficient to outweigh the constitutional right of members of the Native American Church to freely exercise their religion by the use of peyote. This was the ruling in *Whitehorn vs. State,*[22] *People vs. Woody,*[23] and *State vs. Whittingham.*[24] Furthermore, the Oklahoma Supreme Court has ruled that before religious freedom can be limited, a clear public interest must be presently threatened in a grave way.[25]

In the Collinsville case, however, there is no compelling state interest to overcome the constitutional right of the Collinsville Church of Christ and its elders to freely practice their religion. There exists in this case no grave abuse or endangering of paramount interest. No substantial threat to public safety, peace, or order is present. Marian Guinn's case is based on recently developed common law torts concerning invasion of privacy and intentional infliction of emotional distress. These do not equal the level of state interest in compulsory education, protecting the unemployment compensation program, or prohibiting the use of dangerous drugs—all of which were ruled insufficient to outweigh religious freedom. The absence of any compelling state interest prohibits the state from lawfully infringing on the constitutional rights of the Collinsville Church of Christ and its elders to freely exercise their religion.

The Establishment Clause

As construed by the Supreme Court, governmental action which has the effect of inhibiting religion violates the establishment clause just as much as governmental action advancing religion.[26] In *Lemon vs. Kurtzman*,[27] the Supreme Court announced three tests to be applied to governmental conduct to determine if it violates the establishment clause. "First, the statute must have a secular legislative purpose; second, its principle or primary effect must be one that neither advances nor inhibits religion. . . finally, the statute must not foster an excessive government entanglement with religion."[28] Although this decision specifically mentions statutes, any governmental action could be substituted for statute, since the establishment clause proscribes any governmental interference.

When the three tests from *Lemon vs. Kurtzman* are applied to the Collinsville case, the judgment of the trial court fails the last two of the tests. The principle effect of the judgment is to inhibit a particular expression of religious freedom. The judgment, in effect, determines that the doctrines and practices contested in this case are unlawful and deserving of punishment by state process. The very purpose of punitive damages is inhibitory. Furthermore, the judgment of the trial court fails the third test in that it fosters an excessive governmental entanglement with religion. By exercising jurisdiction to enter a judgment on the merits, the district court has placed the state court system in the business of evaluating methods of internal church discipline and their manner of application. Such evaluations, per se, constitute an excessive governmental entanglement with religion. In *Widmar vs. Vincent*, the Supreme Court specifically condemned court inquiry into the significance of religious practices by saying, "Such inquiry would tend inevitably to entangle the State with religion in a manner forbidden by our cases."[29]

The fact that the inhibition of religion and the excessive governmental entanglement with religion arise, in this case, from the state's effort to perform a nominally secular task—the adjudication of purported civil lawsuit—does not cure the constitutional violation. In several cases involving state aid to church-related schools, the Supreme Court has explained that even though an apparently secular purpose was involved, the mere potential for state entanglement in religion renders the governmental action unconstitutional.[30]

In *Roemer vs. Maryland Public Works Board,*[31] the Supreme Court indicated a judicial bias in favor of the establishment clause and concurrent prejudice against any governmental interference with religion. The Court proscribed state action which even *appears* to involve the state with religion. "The state's effort to perform a secular task, and at the same time aiding in the performance of a religious one, may not lead it into such an intimate relationship with religious authority that it appears either to be sponsoring or to be excessively interfering with that authority."

In the Collinsville case, however, the impact of inhibition on religion is clear. It is certainly greater than the possibility that public school teachers performing secular tasks at a church school might allow religion to seep into their work or that tests administered by a church school might inculcate religion in the students tested—as in the cases cited. The entanglement in this case is unavoidable. Even in the arguably secular task of adjudicating a civil action on the merits, the state is giving the appearance

of excessively interfering with religion and the Supreme Court has ruled that unconstitutional.

The religion clauses of the First Amendment require the reversal of the decision in *Guinn vs. the Collinsville Church of Christ.* That judgment violates the constitutionally mandated separation of church and state. It violates the free exercise clause. It also violates the establishment claues.

Religious freedoms, however, are not the only constitutional issues in this case. Part 3 will conclude this series with an explanation of the other issues raised in the appeal by the Collinsville Church of Christ and a general discussion of the implications of the trial court's decision in this case.

NOTES

The arguments presented here are essentially those found in the appeal, No. 62,154, in the Supreme Court of the State of Oklahoma, the Church of Christ of Collinsville, Oklahoma, a non-profit corporation; Allen Cash, Ted Moody, and Ron Whitten, Appellants, vs. Marian Guinn, Appellee, and appeal from the District Court of Tulsa County, Oklahoma, Honorable Tony Graham, Judge, with the Collinsville Church of Christ and its elders represented by Deryl L. Gotcher, Roy C. Breedlove, and Graydon Dean Luthey, Jr.

[1]346 U.S. 306, 72 S. Ct. 679, 96 L.Ed. 954 (1952). [2]330 U.S. 1, 67 S. Ct. 504, 91 L.Ed. 711 (1946). [3]13 Wall. 679, 733, 20 L.Ed. 666, 678 (1972. [4]426 U.S. 698, 713, 96 S.Ct. 2372, 49 L.Ed. 2d 151 (1976). [5]121 Cal. Rptr. 899, 903 (Cal. App. 1975). [6]393 U.S. 440, 89 S.Ct. 601, 21 L.Ed. 2d 658 (1969).[7]494 F. 2d 490 (5th Cir. 1974). [8]494 F. 2d at 492. [9]Ibid. [10]459 A. 2d 674 (N.J. 1983). [11]584 P. 2d 1092 (Okla. 1976). [12]548 P. 2dat 1030. [13]495 F. 2d 65, 75 (D.C. Cir. 1973). [14]374 U.S. 203, 225, 83 S.Ct. 1560, 10 L.Ed. 2d 844 (1963). [15]345 U.S. 67, 70, 73 S.Ct. 601, 21 L.Ed. 2d 658 (1969). [16]345 U.S. at 983. [17]310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1943). [18]406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed. 2d 15 (1972).[19]374 U.S. 398, 82 S.Ct. 1790, 10 L.Ed. 2d 965 (1963). [20]374 U.S. at 406. [21]323 U.S. 516, 530, 89 L.Ed. 430, 440, 65 S.Ct. 315. [22]561 P. 2d 539 (Okla. 1977). [23]394 P. 2d 813 (Cal. 1964). [24]504 P. 2d 950 (Ariz. App. 1973). [25] *State ex. rel. Dept. of Transp. vs. Pile,* 603 P. 2d 337 (Okla. 1979). [26]*Chess vs. Widmar,* 635 F. 2d 1310 (8th Cir. 1980), affirmed as *Widmar vs. Vincent,* 454 U.S. 263, 102 S. Ct. 269 70 L.Ed. 2d 440 (1981). [27]403 U.S. 602, 612, 91 S.Ct. 2105, 29 L.Ed. 2d 745 (1971). [28]403 U.S. at 612.[29]454 U.S. 269, n.6. [30]*Meek vs. Pittenger,* 421 U.S. 349, 95 S.Ct. 1753, 44 L.Ed. 2d 217 (1975); *Committee for public Education vs. Nyquist,* 413 U.S. 756, 93 S Ct. 2955, 37 L.Ed. 2d 948 (1976); *Levitt c. Committee for Publication Education,* 413 U.S. 472, 93 S.Ct. 2814, 37 L.Ed. 2d (1973). [31]426 U.S. 736, 747, 96 S.Ct. 2337, 49 L.Ed. 2d 179 (1976). [32]426 U.S. at 747. ***MISSION***

The Task of *Mission*

"Translation" is an appropriate image to use in describing the mission of the church. The church has no new message to proclaim. Her message is as old as the church itself. But this old message must be translated if it is to be understood and related effectively to modern man. The church is committed to the fact that the old message is, in fact, relevant in the modern world and in every culture of the modern world. *But that relevance can be hidden* and obscured unless the church translates it in a fresh and transparent way. Translating the divine message into the human situation is what proclamation is all about. This is the church's mission in every age and in every culture.

Mission will take as its guiding light the message of Christ to the world.

Mission will strive to be conscious of the changing world about it.

Mission will seek to confront all the challenges of life with the biblical faith.

Mission will be concerned with the total life of the church.

Mission will be dedicated to the renewal and expansion of the church so that she may more nearly attain her identity as set forth in the Scriptures.

The life of the church is its mission. It is the life of the individual Christian in his or her day-to-day activity and the life of the corporate church. It is the life of proclamation—sending forth or taking to the world the good news of faith. *Mission,* therefore, will strive to be biblical, forthright, and evangelistic—ever striving to discover and apply the truth of God's Word.

The underlying intention of *Mission* may thus be stated "There is a Christian faith, out of this faith comes a mission, and in this mission the faith is confronted with a world." Its concept of the church will be that of a fellowship—sharing of common faith, sharing a common hope, sharing a common love, and sharing a common mission.

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