

FREEDOM OF SPEECH AND FREEDOM OF RELIGION

AS REASONS FOR REVERSING THE DECISION

IN GUINN VS. THE COLLINSVILLE

CHURCH OF CHRIST

by

Flavil R. Yeakley, Jr., Ph.D.

Abilene Christian University

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The First Amendment to the Constitution of the United States of America--the beginning of the "Bill of Rights"--sets forth some of the most important protections of citizens in this nation: "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." Several of these important constitutional protections will be seriously weakened if the decision is not reversed in the recent case of Guinn vs. the Collinsville Church of Christ. In this case, the elders of the Collinsville Church of Christ told the members of the congregation that they must have no further association with Marian Guinn because she had refused to repent of the sin of fornication. Marian Guinn sued the church as a non-profit corporation, and each of its three elders individually. The suit charged invasion of privacy and intentional infliction of emotional distress. The case was heard by a jury in the District Court of Tulsa County, Oklahoma, with the honorable Tony Graham, Judge, presiding. The jury returned a verdict in favor of Marian Guinn and awarded her \$390,000 in actual and punitive damages. The case has been appealed to the Oklahoma Supreme Court and will likely be further appealed, by one side or the other, to the United States Supreme Court.

In light of the current interest in this case, the purposes of this paper are: 1) to explain the facts of the case; 2) to set forth arguments for reversing the decision; and, 3) to discuss significant implications of this case.

Background

Marian Guinn

The plaintiff/appellee in this case is a divorced mother with four children. After her divorce, she and her children survived on welfare. As a high school drop-out, Marian found it difficult to find employment. Marian's sister, Sue Hibbard, was a member of the Collinsville Church of Christ. Sue told the elders of the congregation about her sister's situation. They offered to help. Ron Whitten, one of the three elders of the congregation, along with several other members, helped move Marian and her four children to Collinsville, a small rural community on the northeast side of Tulsa, Oklahoma, where they lived with the Hibbards.¹ Marian attended school at night in Owasso to obtain a GED.² Members of the Collinsville Church of Christ gave her rides to school until she got a car.³ Church members gave her that car.⁴ Church members paid her car insurance.⁵ They set up an account for gasoline and paid for it.⁶ After she had an accident, Ron Whitten and another member picked her up and helped her fix the car.⁷ Church members babysat so she could study.⁸ When she earned her GED, church members gave her a graduation party and a gift.⁹ After obtaining her GED in 1976, Marian enrolled in college at Claremore, Oklahoma. Then she entered the RN¹⁰ program at Tulsa Junior College. A church member then presented her with another car. When Marian graduated from Tulsa Junior College, church members gave her another party and a cash gift.¹¹ During this period, the church bought a coat for Marian and clothing for her four children; church members bought coats for her children; she was given food from

the church pantry; and the church paid her bills.¹² Members of the congregation helped Marian by providing character references in her child custody suit.¹³ Ron Whitten took care of her remaining children when one was hospitalized.¹⁴ In the context of these relationships, Marian was taught the fundamentals of the faith.¹⁵ Ron Whitten taught her and then baptized her.¹⁶ For some time, Marian was a faithful and active member of the Collinsville Church of Christ. However, after her graduation from the Tulsa Junior College nursing program, Marian took a job at a hospital where she voluntarily accepted weekend duty. After that, her church attendance diminished.

The Collinsville Church of Christ

The defendant/appellant Collinsville Church of Christ is an autonomous congregation with around 125 members. The church teaches that the Bible must be interpreted literally unless something within the Biblical text itself indicates that a figurative meaning was intended. The church teaches strict obedience to the Bible. Following what they believe to be the essential New Testament pattern, the congregation is led by a plurality of men who are selected by the congregation to serve as elders, overseers, and pastors. Like most of the congregations of the Churches of Christ, the Collinsville congregation has a preacher who is supported by the members so that he can devote full time to his work. Churches of Christ, however, do not typically have preachers function in the role of elder, overseer, and pastor. The three men selected by the Collinsville Church of Christ to serve as elders, overseers, and pastors, at the particular time in question, were Allen Cash, Ted Moody, and Ron Whitten. Churches of Christ teach that the elders are responsible for the souls of the members. Their function is to teach, admonish, counsel, and correct the members. They are obligated by their religious belief to approach any member who is not living according to the Scriptures and discuss the problem.

The Collinsville Church of Christ, though autonomous, is in fellowship with other Churches of Christ throughout the world. The Collinsville congregation maintains especially close relations with four neighboring congregations: the Churches of Christ in Oolagah, Skiatook, Ramona, and Owasso. The Collinsville congregation helped establish some of these other congregations and supported their works financially. Members of the Collinsville congregation frequently attend meetings at these neighboring churches. Members of the Church of Christ in Collinsville have moved to these neighboring communities and have become members of these four other congregations. In the same way, members of these other congregations who have moved to Collinsville have become members of the Collinsville Church of Christ. In such a situation, it is a common practice among Churches of Christ for a congregation withdrawing fellowship from a member to notify neighboring congregations of their action so that they will respect that action and not accept such a disciplined member into their fellowship as a member in good standing.

The Doctrine of Church Discipline

The Collinsville Church of Christ shares with other Churches of Christ the belief that a Christian must live a disciplined life in strict obedience to the teaching of the Bible. As a part of that belief, Churches of Christ insist on a strict moral code. That moral code includes the belief that sexual intercourse between two people who are not lawfully married to each other--

what the Bible calls "fornication"--is immoral. Churches of Christ teach that the Bible is clear in its instructions telling Christians how they should deal with a church member who becomes immoral. In I Corinthians 5:1, the Apostle Paul wrote concerning a church member who was guilty of fornication. The original Greek text uses the word porneia, which means "sexual immorality" and includes any and all sexual intercourse between people who are not lawfully married to each other. In the case in I Corinthians 5, the man was having sexual intercourse with his father's wife, but such incest is not the only meaning of porneia, or even its most common meaning. In I Corinthians 5:2, Paul told the Christians in Corinth that the man who was guilty of this sexual immorality should be taken away from among them. In I Corinthians 5:3, Paul said that he had already judged concerning this man. In I Corinthians 5:6, Paul warned, "Do you not know that a little leaven leavens the whole lump?" Then in the next verse, I Corinthians 5:7, Paul said, "Cleanse out the old leaven." Finally, Paul concludes in I Corinthians 5:13, "Drive out the wicked person from among you."

Churches of Christ teach that there is a difference set forth in the Bible between the way Christians are to relate to immoral people in the world and immoral people in the church. In I Corinthians 5:9-12, Paul said, "I wrote to you in my letter not to associate with immoral men; not at all meaning the immoral of this world, or the greedy and robbers, or idolaters, since then you would need to go out of the world. But rather I wrote to you not to associate with any one who bears the name of brother if he is guilty of immorality or greed, or is an idolater, reviler, drunkard, or robber--not even to eat with such a one. For what have I to do with judging outsiders? Is it not those inside the church whom you are to judge?"

Churches of Christ regard the Bible as being very clear in its instructions on how Christians should relate to members of the church who sin and refuse to repent. In Matthew 18:15-17, Jesus said, "If your brother sins against you, go and tell him his fault, between you and him alone. If he listens to you, you have gained your brother. But if he does not listen, take one or two others along with you, that every word may be confirmed by the evidence of two or three witnesses. If he refuses to listen to them, tell it to the church; and if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector." Since the Jews Jesus addressed in this passage had nothing to do with Gentiles or tax collectors, they understood that Jesus was telling them to have no association at all with a member of the church who sins and refuses to repent.

Churches of Christ teach that the command of Romans 16:17 must be strictly obeyed: "Take note of those who create dissensions and difficulties, in opposition to the doctrine which you have been taught; avoid them." Other translations say to "mark" such people and "turn away from them."

Churches of Christ insist that the command of II Thessalonians 3:6 must also be obeyed: "Now we command you, brethren, in the name of our Lord Jesus Christ, that you withdraw yourselves from every brother who walks disorderly, and not after the tradition which he received of us." The specific reference here, according to verses 7-11, is to church members who stop working, become idle, live off the welfare of the church, and become busybodies.

Churches of Christ regard the teaching of II Thessalonians 3:14-15 as being perfectly applicable in the church today: "If any man obey not our word by this epistle, note that man and have no company with him, that he may be ashamed. Yet count him not as an enemy, but admonish him as a brother."

Churches of Christ teach that there are three reasons for Christians to withdraw their fellowship from a member of the church who sins and refuses to repent. One reason is the hope that such action may bring the sinner to repentance (II Thessalonians 3:14). Another reason is to protect the church from the evil influence of such a person (I Corinthians 5:6; II Corinthians 7:12). Still another reason is to protect the influence of the church in the community (I Corinthians 5:7-8).

When Churches of Christ withdraw their fellowship from a member who sins and refuses to repent, they do not see this action as a removal of their approval. They do not believe that they are supposed to be in the approving or disapproving business. What is withdrawn is fellowship. In the original Greek text of the New Testament, the word is koinonia. This word means sharing, association, companionship, participation, partnership, and communication. That is what is withdrawn from a member who sins and refuses to repent. Such action is not taken by individuals acting on their own. Rather, it is taken by all the members of a local congregation under the guidance of their elders, overseers, and pastors. A withdrawal of fellowship is a last resort taken only when all efforts have failed to bring about the repentance of the member involved. This drastic action is not taken lightly or without sufficient reason. In the New Testament pattern which Churches of Christ seek to follow, withdrawal of fellowship was associated with the teaching of a false doctrine or the living of an immoral life--something of such a serious nature as to threaten the purity and the influence of the church.

The Events

While Marian Guinn was attending services as a member of the Collinsville Church of Christ, she was taught that members of the church have a responsibility to a fellow member who sins to warn that person and urge repentance.¹⁷ She learned that members of the Church of Christ believe that they have a right and even a duty to talk to another member about anything they are doing wrong--even including fornication.¹⁸ She learned that the conduct of a member bears upon the reputation of the church.¹⁹ She learned that fornication could harm the reputation of the church.²⁰

In this time when Marian Guinn was attending services as a member of the Church of Christ in Collinsville, she participated in the selection of Allen Cash, Ted Moody, and Ron Whitten to serve as the elders, overseers, and pastors of the congregation.²¹ On several occasions she commended them for their work.²²

Prior to the events at issue here, Marian Guinn had witnessed a withdrawal of fellowship in the Collinsville Church of Christ. In the case that she witnessed, a man was disfellowshipped for non-attendance. Churches of Christ do not usually withdraw fellowship from non-attenders because generally there is nothing to withdraw and no real reason for such action. In some cases, however, the non-attender still claims to be a faithful member, is still thought of by people in the community as being a faithful member, and still has association with members of the congregation. In those cases there is something to withdraw and there are reasons for the withdrawal of fellowship. Marian Guinn had seen a withdrawal of fellowship from a non-attending member and she knew that fornication was worse than non-attendance.²³

While Marian Guinn was a member of the Collinsville Church of Christ, she had an affair with Pat Sharp, the owner of a Collinsville drug store and the town's former mayor. At that time, Collinsville had a population of around 2,200 people.²⁴ Pat Sharp was well known in the small town.²⁵ During a good portion of 1980 and 1981, Mr. Sharp's car was frequently seen at Marian Guinn's house.²⁶ Because of this, gossip spread throughout the small town.²⁷ Also contributing to the gossip was the fact that Marian Guinn often visited Pat Sharp at his drug store where they were seen together by a large number of people.²⁸ During the trial, Marian Guinn admitted that her affair was rumored around town.²⁹

Pat Sharp divorced his wife in August of 1979. One of the rumors in Collinsville was that Marian Guinn broke up the Sharp marriage. Pat Sharp's former wife accused Marian Guinn of being the cause of that divorce. She testified that she overheard on an extension telephone a conversation in which Pat Sharp and Marian Guinn each said that they loved the other.³⁰ In 1980, the Collinsville City Clerk, who was also a member of the Church of Christ, called one of the elders and reported the rumor.³¹ The elders discussed the matter and decided that they needed to meet with Marian Guinn. They went to her home and found that she had gone to a laundromat. They went to the laundromat and asked Marian to leave her younger children in the care of her teenagers and come with them to the church building. In the meeting at the church office, the elders told Marian of the rumors they were hearing. Marian denied the truth of the rumors. The elders then told Marian that they thought it best for her to stop seeing Pat Sharp.

In late summer of 1981, Pat Sharp and Marian Guinn had a fight and broke up. Mr. Sharp started dating someone else over the objections of Marian Guinn. Pat Sharp then called Ron Whitten, one of the elders of the Collinsville Church of Christ. He called to ask Ron Whitten to keep Marian Guinn from bothering him and his new girlfriend. In that conversation, Pat Sharp admitted that he and Marian had engaged in sexual intercourse frequently before their relationship turned sour.³²

The next morning, Ron Whitten and Allen Cash met with Marian Guinn at the church building. The other elder, Ted Moody, was out of town. In that meeting, the elders confronted Marian with Mr. Sharp's statement. Faced with this evidence, Marian admitted that she had been guilty of the sin of fornication. She said that she was going to come back to the church and not see Pat Sharp again.³³ The elders told her that if they saw her with Pat Sharp again they would assume that the relationship was continuing.³⁴

On September 16, 1981, Pat Sharp took Marian Guinn and two of her children to Tulsa. One of Marian's other children was attending the Wednesday evening services at the Church of Christ in Collinsville. When asked at church where her mother was, the child said that she had gone to Tulsa with Pat Sharp. When the elders learned about this and learned that Marian was expected back around 10:00 PM, they went to her house. When Pat Sharp and Marian Guinn drove in, the elders said that they needed to talk to Marian. The children who were with them in the car went to the house. The elders talked to Marian as she remained seated in the car with Pat Sharp. They told Marian that her sin had become so much a matter of public knowledge that it had harmed the influence and reputation of the church. They said that a sin against the church as a whole, like hers, demanded a public confession. They told her that if she did not repent, confess her sins, and ask for the prayers of the church, they would have to tell the members to withdraw their fellowship from her because of her refusal to repent of the sin of fornication. Marian told the elders to leave.³⁵

On September 21, 1981, the elders wrote a letter to Marian again urging her to repent. In that letter they told Marian that the fellowship of the church would be withdrawn from her on Sunday, September 27, 1981, if by that time she still had not repented, publically acknowledged her sin to the congregation, and asked for the prayers of the members. Marian took that letter to her lawyer on September 24, 1981. On his instructions, she wrote a letter resigning her membership in the Collinsville Church of Christ on September 25, 1981.³⁶ The elders believed that Marian's last-minute resignation did not change what they had to do. In their view, Marian did not become a non-Christian when she withdrew her membership from the Collinsville Church of Christ. They viewed her as being in error and in need of repentance, but they still regarded her as a child in the family of God--a citizen in the kingdom of God. They believed that they were still required by the teaching of I Corinthians 5:9-13 and Matthew 18:15-17 to instruct the members of the Collinsville Church of Christ to have no further association with Marian Guinn because of her refusal to repent of the sin of fornication.

On Sunday, September 27, 1981, the withdrawal of fellowship began as the elders told the congregation of their concern for Marian's spiritual condition. They said that members who knew Marian should contact her and urge her to repent. They asked all the members to pray for Marian. But the elders said that if this action did not bring Marian to repentance, the fellowship of the church would finally and formally be withdrawn from her the following Sunday, October 4, 1981. On that date, since Marian still had not indicated repentance, the elders made a statement to the congregation in the Sunday morning worship service. That statement instructed the members to have no further association with Marian Guinn. That statement identified the Scriptures violated and those instructing the members now to withdraw their fellowship from her. Then on October 7, 1981, the elders of the Collinsville Church of Christ sent letters to four neighboring congregations--the Churches of Christ in Owasso, Oolagah, Ramona, and Skiatook--informing them of the action taken.

Briefly summarizing the events--when the elders of the Collinsville Church of Christ heard about Marian Guinn's affair with Pat Sharp, they went to her privately on three occasions; when the facts were known, the elders urged Marian to repent; when Marian refused, the elders instructed the congregation to have no further association with her because of her refusal to repent of the sin of fornication and they notified four neighboring congregations of the action so that they would not accept Marian into their fellowship as a member in good standing. At the trial, Marian admitted that every time the elders visited her, they treated her with kindness.³⁷ Also at the trial, Marian stated that she was unaware of anyone outside the church who heard from anyone in the Collinsville Church of Christ about the withdrawal of fellowship or the reasons for the action.³⁸

The Trial

Marian Guinn first sued the Collinsville Church of Christ and its three elders individually for defamation. She amended her petition by dropping the defamation claim since the facts stated were true. She then claimed actual and punitive damages for invasion of privacy and intentional infliction of emotional distress.

The Collinsville Church of Christ challenged the court's jurisdiction on First Amendment grounds. The trial court, however, exercised jurisdiction in spite of this objection. In so doing, the court determined that it had jurisdiction to determine the propriety of forms of religious belief and discipline--the First Amendment notwithstanding.

The case for the plaintiff, Marian Guinn, attacked religious doctrines and practices of the Collinsville Church of Christ in several significant ways. The charge of intentional infliction of emotional distress related to the statement the elders made when they told Marian that if she did not repent, they would have to tell the members of the congregation to withdraw their fellowship from her--and explain why. Marian's attorney called that "emotional blackmail" and said that no church should be permitted to make such a statement to a member. The case for the plaintiff charged invasion of privacy by intrusion upon seclusion and by publication of private facts. The charge of intrusion upon seclusion related to the three times that the elders went to see Marian privately to ask her about the rumors, to confront her with the evidence, and then to admonish her to repent. Mrs. Guinn's attorney claimed that those elders had no right to talk to Marian about her private sex life -- or to talk to any other member about such a personal matter. Marian's attorney also attacked the strict moral code of the Collinsville Church of Christ that defined sexual intercourse between single people as being immoral. He said, "Those two people were single and this is America!" He argued that in America today sexual intercourse between single people is not regarded as being immoral. Thus he objected to the moral code of the Collinsville Church of Christ, to its doctrine concerning the counseling/teaching role of its elders, and to its doctrine concerning a withdrawal of fellowship from members who sin and refuse to repent.

The charge of invasion of privacy by publication of private facts was the only charge that had anything at all to do with any action taken after Marian Guinn wrote a letter resigning her membership in the Collinsville Church of Christ. This charge related to the statement the elders made when they explained to the congregation why they must have no further association with Marian Guinn and when they wrote letters to four neighboring congregations telling them of this action. The attorney for the Collinsville Church of Christ argued that there was no publication of private facts. He argued that the facts concerning the fornication were made public by the actions of Marian Guinn and Pat Sharp, by the statements of Pat Sharp, and then by the lawsuit initiated by Marian Guinn--not by the statement the elders made to members of their congregation and to four neighboring congregations. He further argued that a statement from the elders to the members of the congregation on this matter--and the statement from the elders to the four neighboring congregations came under the heading of "qualified privilege" as defined in the laws on libel and slander which relate to the charge of publication of private facts. The judge, however, refused to include in his instructions to the jury anything pertaining to qualified privilege.

The attorney for the plaintiff attacked the beliefs of the Collinsville Church of Christ on one remaining point: the issue of a member's right to resign membership. This point has been greatly distorted in media coverage of this trial. The concern of the Collinsville elders was with the teaching of Paul in I Corinthians 5:9-13. Paul said that Christians must not have any association with another Christian who sins and refuses to repent--specifically with one who is guilty of sexual immorality and refuses to repent. Paul said, however, that Christians could not refuse to associate with non-Christians who are guilty of sexual immorality since that would require going out of the world. The question the elders in Collinsville had to ponder when Marian Guinn resigned her membership in the Collinsville Church of Christ was whether to consider her as a non-Christian or as a rebellious Christian. Churches of Christ teach that God has given two laws of pardon. One of these is for the alien sinner--the person who has never obeyed the gospel and become a Christian. The other is for Christians who fall away from God's grace through their rebellion. According to Churches of Christ, a sinner who

has not yet become a Christian must be baptized for the remission of sin upon a confession of faith in Jesus Christ following that person's repentance. Churches of Christ teach, however, that a different law of pardon applies once a person has become a Christian. According to this doctrine, a Christian who sins in such a manner as to fall away from God's grace does not need to be baptized again. That person is already viewed as being a child in the family of God--although in rebellion; a citizen in the kingdom of God--although now unfaithful to the duties of that citizenship; and a member of God's church--although not now in good standing. The law of pardon for such a Christian who has fallen away involves repentance and prayer. As a part of the repentance, a Christian who has sinned is expected to confess his sins to those involved and the confession is expected to be as broad as the sin. As a part of prayer, a Christian who has fallen away is expected to confess his or her sins to God--and in cases where the sin is public and the confession is public, to ask for the prayers of the other members of the church. If Marian Guinn were to repent and come to any Church of Christ in any community, she would be accepted without any requirement that she be baptized again because she has already been baptized and thus is already a member of the church. Once a person has been born into the family of God, that person cannot be unborn, according to the doctrine taught by Churches of Christ.

Even after Marian Guinn wrote a letter resigning her membership in the Collinsville Church of Christ, the elders still regarded her as being a member of God's church, a citizen of God's kingdom, and a child in the family of God. Because of this belief, the elders felt compelled by the teaching of I Corinthians 5:9-13 to treat her as a rebellious Christian and not as a non-Christian. Given that interpretation, they were required by their conscience to instruct the other members of the congregation to have no further association with Marian Guinn.

Churches of Christ do not deny the right of a member to withdraw his or her membership from a local congregation. It happens all the time. When a person places membership with another congregation, that automatically withdraws his or her membership from the former church home. Furthermore, if a person simply says that he or she no longer wants to be regarded as being a member of a particular local congregation--even without placing membership with another congregation--that person's name is typically removed from the congregation's membership list. Furthermore, there are former members of various local congregations of the Churches of Christ who are now affiliated with other religious groups and some who now have no religious affiliation at all--just as there are many members in various local congregations of the Churches of Christ who were previously affiliated with other religious groups or who previously had no religious affiliation at all. No one denies the civil right of a person to withdraw membership from a local congregation of the Churches of Christ or even to renounce any affiliation with the Churches of Christ.

One of the principle issues in this trial was the conduct of the elders of the Collinsville Church of Christ after Marian Guinn withdrew her membership from the congregation. The record shows, however, that after that action the elders never went to see Marian Guinn again. They did not talk to her any more. She said that she wanted to be left alone and that is exactly what the elders told the other members of the congregation to do. They told them that because of Marian's refusal to repent of the sin of fornication, they must not have any further association with her.

The instructions the judge gave to the jury left little doubt as to the outcome. He allowed the jury to consider all issues raised in the plaintiff's case--the objections to: 1) the strict moral code of the Churches of Christ that regards sexual intercourse between single people as being immoral; 2) the counseling/teaching role of elders who are required to go to any member who is living in a sinful manner to discuss the matter; 3) the discipline practiced by Churches of Christ in withdrawing fellowship from a member who sins and refuses to repent; and, 4) the doctrine of the Church of Christ that regards a person who withdraws membership as being a member in rebellion rather than as being a non-member. Marian Guinn had originally sued for \$1,300,000 in actual and punitive damages. The jury awarded her both actual and punitive damages on all charges, but the judge told them that under the law only the largest of the awards would be granted. The largest of the awards by the jury for actual damages and punitive damages was for \$390,000. The decision by the jury was unanimous.

The Collinsville Church of Christ and its elders individually have appealed the decision by the trial court in Tulsa. The appeal should be considered by the Oklahoma Supreme Court perhaps as early as 1986. The basis of the appeal are the freedom of speech and freedom of religion issues presented below-- along with some related issues.

Reasons for Reversing the Trial Court's Decision in Guinn vs. the Collinsville Church of Christ

There are several important reasons for reversing the trial court's decision in the case of Guinn vs. the Collinsville Church of Christ. Some of these are rather technical and deal with reversible errors committed by the judge in the conduct of the trial. Those that will be considered here deal with the general issues of freedom of speech, freedom of religion, and related matters.

The District Court's Judgment Unconstitutionally Violates the Religion Clauses of the First Amendment

The actions of the elders of the Collinsville Church of Christ occurred in their roles as religious leaders fulfilling a religious function in accordance with expressed Biblical directions. Their conduct, for which the court entered a judgment, constitutes the exercise of religion. The judgment for punitive damages punishes the church and its elders for that exercise of religion and serves as an example to inhibit others from a similar exercise of religion. That state action constitutes not only interference with the exercise of a particular form of religion, but it also constitutes the inhibition of that exercise and imposes a chilling effect totally out of keeping with the First Amendment.

The Constitution requires the separation of church and state.³⁹ Bosmajian concludes a recent article in Religious Communication Today on "The 'Wall of Separation' Metaphor in Supreme Court Church-State Decisions" by saying, "While the 'wall of separation' has, on occasions, been in disrepair, it is a valuable metaphor and as Justice Stevens has suggested, we need to 'resurrect the high and impregnable wall between church and state constructed by the Framers of the First Amendment.'"⁴⁰ The First Amendment commands that government maintain strict neutrality, neither aiding nor opposing religion.⁴¹ In Everson vs. Board of Education, the Court warned state governments that "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."⁴²

There have, of course, been some limitations placed on this freedom of religious expression, but only when the state has shown a compelling public interest. Jehovah's Witnesses do not believe in having blood transfusions. Several Holiness groups do not believe in the use of any drug or medical treatment. Courts, however, have found a compelling public interest in requiring medical treatment for the children of parents who hold such views. This limitation of freedom of religious expression, however, is judged necessary to save lives. In a similar way, courts have ruled as constitutional state laws prohibiting the use of poisonous snakes in religious services conducted by various "snake handling" cults. These people believe that the teaching of Mark 16:18 applies to them and not just to the apostles and a few others in the early church (Acts 28:1-6), but when the snakes bite them, as they often do, these people die. Courts have ruled that the state has a compelling interest in saving human life that justifies the limitation of these people's freedom of religious expression. Such limitations, however, cannot be justified without a specific showing of a compelling public interest. In the case being considered at this time, there was no such showing of any compelling public interest that would justify this limitation on the freedom of religious expression of those who believe the same way as the elders of the Collinsville Church of Christ.

The free exercise clause of 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. Ecclesiastical matters include many things. From the beginning of its consideration of the religion clauses, the United States Supreme Court has included church discipline in conformity to the church's moral code as ecclesiastical matters off limits to civil courts.⁴³

Even in church property disputes, the United States Supreme Court has held that civil court interference is constitutionally impermissible when determination of the dispute requires judicial review of church decisions in ecclesiastical matters. Even in the rare cases when determination of church property disputes by civil courts are appropriate, the civil court's review begins by accepting the church's disciplinary decision as correct. Even in those special cases, the First Amendment, applied to the states by the Fourteenth Amendment, precludes state civil courts from interpreting or determining church doctrine.⁴⁴

In its effort to protect religion from state interference, the Supreme Court, over twenty years ago, specifically stated that the contents of sermons are off limits for state courts. In Fowler v. Rhode Island, the Court noted in a unanimous decision: "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."⁴⁵

The Fifth Circuit Court followed the Supreme Court's lead by holding that words said in church are not actionable in civil cases.⁴⁶ In the judgment of this court, "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."⁴⁷

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 the religious society. Thus, the law is clear: civil courts are barred by the First Amendment from determining ecclesiastical questions."⁴⁸

The New Jersey Supreme Court has held that the First Amendment prohibits state judicial intrusion into church disciplinary affairs. In Chavis v. Rowe, a former deacon was awarded damages by a trial court against a pastor and other deacons who had removed him from his post. The Supreme 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 was prohibited by the First Amendment.⁴⁹

In Oklahoma District Council v. New Hope Assembly of God Church, the Oklahoma Supreme Court recognized the importance of separation of church and state.⁵⁰ In this decision, the Court stated, "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 doctrine or precepts."⁵¹

In the case of Allen v. Morten, the District of Columbia Circuit Court went so far as to say, ". . . there should be avoided not only that actual interference, but also the potential for and appearance of interference with religion."⁵²

Against this backdrop of constitutional law forbidding interference of state courts in church disciplinary and doctrinal matters, the trial court's judgment in this case must be reviewed. The conduct of the elders, upon which the judgment was entered, was grounded in religious doctrine. The church's belief and practice, in obedience to their understanding of the Bible, called for discipline of members. The conduct of the elders in this matter pertained exclusively to church discipline. The trial court had no right to assume jurisdiction in such a case.

The charge of invasion of privacy by publication of private fact related to the conduct of the elders in a church service. The civil action was based on words spoken in church in the nature of a sermon. Because of this exercise of religious freedom, the state court imposed judgment for actual and punitive damages. That judgment violates the free exercise clause of the First Amendment. It is an unconstitutional interference in an ecclesiastical matter forbidden by the United States Supreme Court cases discussed earlier. The facts adjudicated pertain to church discipline and doctrine. The moral code of the church was at issue. The manner of imposing discipline was at issue in the lawsuit. The allowability of that discipline by the state, through its civil courts, was one of the ultimate issues resolved in the action for actual and punitive damages. As a result of this litigation, the judgment determined those matters of church discipline and doctrine to be not only unlawful, which determination is unconstitutional in and of itself, but sufficiently unlawful as to require state enforced punishment. The judgment, particularly the punitive damage aspect, constitutes prior restraint and a chilling effect on religious practices condemned by the Supreme Court in early cases applying

the free exercise clause to the states.⁵³ The prior restraint and chilling effect are obvious. One of the fundamental purposes of any organized religion is to impose discipline on its members. Included in such discipline is enforcing conformity with the church's moral code. Punishment has been one manner of achieving that conformity. Excommunication, whether it be a denial of sacraments, expulsion from fellowship, or shunning, has been and remains a traditional manner of enforcing church discipline. To accomplish such excommunication, the decision must be communicated to the members involved and they must be told how they are expected to relate to the one who has been excommunicated. If the discipline is to serve as a deterrent to others, they need to know the reasons for the action so that they will know what to expect if they engage in similar unacceptable behavior. Now, however, because of the imposition of the court's judgment for actual and punitive damages, churches practicing similar forms of discipline through excommunication, shunning, or disfellowshipping, will be subject to state enforced punishment for doing what their religion requires. Clearly, the judgment here chills that religious discipline and constitutes a prior restraint.

Some limitations have been imposed on the free exercise clause of the First Amendment, but before the right to freely exercise religion can be limited or overcome, 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 v. Yoder.⁵⁴ A Wisconsin law required mandatory education through high school or until the age of eighteen. The Amish religion prohibits formal education beyond the eighth grade. 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 particular matter. The Court 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 Court rulings had limited the conditions. "The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace, or order."⁵⁵

The Supreme Court also found state interest insufficient to overcome the constitutional right to free exercise of religion in Sherbert v. Verner.⁵⁶ In this case a woman was fired because she refused to work on Saturday in violation of her faith as a Seventh Day Adventist. She was denied state unemployment compensation because she would not accept a job offer if it required working on Saturday. The state argued that it had a significant interest in protecting the unemployment compensation program. If they allowed her to collect unemployment compensation in spite of refusing to work on Saturday, others might collect in spite of refusing to work for a wide variety of other religious objections. The United States Supreme Court found no compelling state interest sufficient to justify punishing (by denial of state unemployment compensation) a Seventh Day Adventist who refused 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.'"⁵⁷

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.⁵⁸

Before religious freedom can be limited, a clear public interest must be presently threatened in a grave way, according to a ruling by the Oklahoma Supreme Court.⁵⁹ "Accordingly, whatever occasion would restrain orderly discussion and persuasion, at an appropriate time and place, must have clear support in public danger. Only the gravest of abuses endangering paramount interests give occasion for limiting legislation. It is therefore our tradition to allow the widest latitude for discussion and the narrowest range for its restriction."⁶⁰

In the case presently under consideration, however, there is no compelling state interest which overcomes 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 interests, as required by the Supreme Court in Sherbert v. Verner. No substantial threat to public safety, peace, or order is present, as required by the Supreme Court in Wisconsin vs. Yoder. 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 prohibiting the use of dangerous drugs and that was found to be constitutionally insufficient to overcome the First Amendment in the peyote cases. 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 trial court's judgment in this case not only violated the free exercise clause of the First Amendment. It also violated the establishment clause. As construed by the Supreme Court, governmental action which has the effect of inhibiting religion violates the establishment clause just as does government action advancing religion.⁶¹ In Lemon v. Kurtzman, the 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 principal or primary effect must be one that neither advances nor inhibits religion . . . finally, the statute must not foster an excessive government entanglement with religion."⁶² Although this decision specifically mentions statutes, any governmental action could be substituted for statute, since the establishment clause, as applied to the states, proscribes governmental interference. When the Lemon tests are applied to the case presently under consideration, the judgment of the trial court fails the last two parts of the three-part test. The principle effect of the judgment for actual and punitive damages against the Collinsville Church of Christ and its elders inhibits religion. 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 Lemon in that it fosters an excessive government 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 government entanglement with religion. In Widmar v. Vincent, the Supreme Court specifically condemns court inquiry into the significance of religious practices. "Such inquiry would tend inevitably to entangle the State with religion in a manner forbidden by our cases."⁶³

The fact that the inhibition of religion and the excessive governmental entanglement with religion arises, in this case, from the state's effort to perform a nominally secular task--the adjudication of a 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.⁶⁴

The United States Supreme Court in Roemer v. Maryland Public Works Board indicated a judicial bias in favor of the establishment clause and a concurrent prejudice against any government interference with religion.⁶⁵ The Court proscribed state action which even appears to excessively interfere with religion. "The state's efforts 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."⁶⁶

In the case presently under consideration, 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. Likewise, it is greater than the chance that tests administered by a church school might inculcate religion in the students tested, as in Levitt. The entanglement 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. As the Supreme Court announced in Roemer, the state constitutionally cannot give that appearance. That patent violation of the establishment clause--along with the violation of the free exercise clause--by the trial court's judgment requires that this decision be reversed.

The District Court's Judgment Unconstitutionally Violates the Freedom of Speech Clause of the First Amendment

In addition to protecting religion through the establishment clause and the free exercise clause, the First Amendment protects religious speech through its more general statement that "Congress shall make no law . . . abridging the freedom of speech."

The recent case of Widmar v. Vincent clearly demonstrates the view of the Supreme Court in regard to the importance of free speech.⁶⁷ This case concerned a student religious group at the University of Missouri at Kansas City. This state university denied the religious group use of the buildings for their meetings, although non-religious student groups were allowed to use the buildings for their activities. The religious group argued that its right to free speech and association prohibited the University from denying the use. The University also based its case on the First Amendment. They claimed that because of the separation of church and state, they could not allow religious groups to use the buildings at a state university. The Court, however, agreed with the student religious group. The Court said, "Here, UMKC has discriminated against student groups and speakers based on their desire to use a generally open forum to engage in religious worship and discussion. These are forms of speech and association protected by the First Amendment."⁶⁸ The Court went on to explain specifically that reading Scripture and teaching Biblical principles are protected as religious speech.⁶⁹

Marian Guinn's case against the Collinsville Church of Christ was based totally on her objections to religious speech. When the elders, overseers, and pastors of the congregation went to Marian on three occasions to talk to her about her fornication and when they wrote a letter to her, this communication between spiritual leaders and a wayward member clearly constituted religious speech and as such is not actionable in civil courts. The message the elders read to the congregation was in the form of a sermon consisting of Scripture reading and Biblical teaching. The speech occurred in church. All of the speech involved internal religious discipline. In the case of Heffrom v. International Society for Krishna Consciousness, Inc., the Court found that the distribution of religious views to and solicitation of money from non-believers at a public fair constituted religious speech.⁷⁰ Surely then, what was said by the elders of the Collinsville Church of Christ in this case constituted religious speech protected by the First Amendment.

The constitutional protection of free speech is subject to governmental limitation in only very narrow instances. To limit the protected speech, the state must show a compelling governmental interest in the limitation. The burden of that obligation is crushing. In Widmar v. Vincent, the State based its claim on the First Amendment doctrine requiring separation of church and state, while the plaintiff's case was based on the free speech clause and the effect of the Court's ruling in this case is to show that the separation of church and state is not as important constitutionally as is freedom of speech. If that vital principle in the First Amendment is not weighty enough to overcome freedom of speech--then surely Marian Guinn's interests in this matter would not be sufficient to justify limiting freedom of speech as this judgment clearly does.

In a part of the trial and in much of the publicity following the trial, the focus has been on whether the elders of the Collinsville Church of Christ had any right to say anything about Marian Guinn after she resigned her membership. The argument has been that no matter what right the elders had to say things to or about Marian Guinn while she was still a member of the Collinsville Church of Christ, they had no right to say anything at all about her after she resigned her membership. Those making this argument have typically been lawyers. As such, they belong to some state bar association. These bar associations exist, at least in part, to discipline their members by enforcing conformity to a code of conduct. When a member of a bar association violates that code, that member is expelled from the bar association. The bar association journals in the various states typically publish in each issue a list of those lawyers who have been disbarred along with a brief statement of the reason for the disbarment. Frequently these lawyers resign from the bar association--but the disbarment is still announced along with the reasons for the action. When President Richard M. Nixon resigned from the presidency because of the charges involved in the Watergate affair, he also resigned from the California state bar association, but the bar association did not simply announce his resignation from the bar--they printed the announcement of his disbarment along with the reason for the action, the charge of obstructing justice. If a state bar association has the right to make such a statement about a lawyer who resigns, how could the elders of a church be prohibited from making a similar statement about a wayward member who resigned membership in the congregations just hours before the previously announced withdrawal of fellowship was to be announced.

The conduct for which the elders of the Collinsville Church of Christ have been punished was simply an exercise of their freedom of speech. Their speech, religious speech, is protected. The District Court's judgment infringes on that freedom and chills the type of speech at issue here. Because of that infringement of the protected religious speech, the judgment is unconstitutional and must be reversed.

The District Court's Judgment Unconstitutionally Violates
the Constitutionally Protected Freedom to Associate

The First and Fourteenth Amendments protect the freedom to associate for religious purposes. In NAACP v. Alabama, the Supreme Court recognized the constitutional right to associate for the advancement of beliefs.⁷¹ In Widmar v. Vincent, discussed earlier, the Supreme Court clearly stated that gathering to engage in religious worship and discussion is a form of association protected by the First Amendment clause guaranteeing the right of the people "peaceably to assemble" In the Collinsville case, the members of the congregation came together as a religious assembly withdrawing the fellowship of the church from a member who refused to repent of her fornication. Although this action took place at the time of a regular Sunday morning worship service, the action is viewed by Churches of Christ as being separate from worship. They believe that the teaching of I Corinthians 5:4 suggests an assembly called for the purpose of withdrawing fellowship from a rebellious member, rather than a regular assembly called for the purpose of worship.

The effect of the District Court's decision in this matter is to impose a chilling effect that would discourage congregations from having similar assemblies called for the purpose of withdrawing fellowship from a rebellious member. The association, or gathering of a congregation, is necessary to advance and effect beliefs concerning church discipline. A withdrawal of fellowship is not possible if the congregation is not notified of the decision so that they can act accordingly. The elders of the Collinsville Church of Christ believe that the statement of Matthew 18:17, "tell it to the church," requires an explanation of the reason when a congregation has to withdraw fellowship from a rebellious member.

Implications

Because of the unchecked review by a civil court of the mode and manner of religious discipline in the case of Guinn vs. the Collinsville Church of Christ, the floodgates appear to be open as wide as the courthouse doors. Unless this judgment is reversed, the potential exists for review by civil courts of Roman Catholic excommunication for the multitude of grounds contained in canon law. The potential also exists for civil courts to review theological disputes arises in seminaries, divinity schools, universities, and colleges. Church-related schools are allowed, under current federal law, to discriminate in the hiring and retention of faculty in a manner that insures conformity with the church's doctrines and its moral code. That kind of action could now be subject to review by civil courts. The potential exists, if this decision is not reversed, for civil courts to review the meaning and application of Biblical commands. The religious problems which would be capable of vicil judicial review are endless. The judgment opens a boundless Pandora's box.

The chilling effect of this judgment tends to inhibit several forms of religious communication. It tends to put the church into a passive role in regard to counseling wayward members since active pastoral counseling in this case was judged to be an invasion of privacy by intrusion upon seclusion. This judgment inhibits any practice of church discipline--whether in churches practicing a withdrawal of fellowship, as in this case, or in churches practicing shunning as the Mennonites do, or excommunication as the Roman Catholics do. Clearly, this judgment inhibits the kind of religious communication that threatens withdrawal of fellowship and the kind that announced such action.

If the judgment is not reversed in this case, the precedent could be used to sue religious teachers who warn sinners that they will go to hell if they do not repent. That could be defined as intentional infliction of emotional distress. Religious teachers could be called into civil court to defend their theology--as was the case in the Collinsville trial and the plaintiff's objection to the strict moral code and the discipline taught by the Collinsville Church of Christ.

This case involves more than one small conservative religious group upholding an unpopular religious doctrine and practice. Public opinion was clearly on the side of Marian Guinn in this case. The idea of active pastoral counseling that seeks out wayward members to admonish them is not popular with most non-Christians and even with some Christians. Most denominations in America no longer follow the practice of withdrawing fellowship from members who sin and refuse to repent, although this practice was a part of the heritage of virtually all denominations. But as Chaffee points out in his monumental work on freedom of speech, it is only the unpopular views that need protection since no effort is made to restrict the expression of popular views.⁷²

In his book on the constitutional powers of the people, Professor Alexander Meiklejohn wrote--on a totally different matter--what I believe to be a fitting conclusion in the present appeal for reversal in the case of Guinn v. Collinsville Church of Christ. He wrote, "In the course of the long struggle against suppressions, individual freedom has won great victories. Both the churches and the universities have fought for and have secured decisive limitations of the jurisdiction of legislative and other governing agencies. The greatest of all among those victories is recorded in the First Amendment to our Constitution by which our own government forbids its Congress to take any action which would abridge the freedom of religion, speech, press, assembly, or petition. The basic meaning of that enactment is that all citizens, scholars or non-scholars, as they deal with the issues of religion or of politics, shall be unhindered by the intimidation of any governing agency. They must be free to follow the truth wherever it may seem to them to lead."⁷³ The judgment of the district court in this case constitutes a hindrance and an intimidation of those who would follow the example of the elders of the Collinsville Church of Christ as they sought to learn from the Bible what they should do in regard to a wayward member who refused to repent of her fornication. They followed what they believed to be the truth. Unless this decision is reversed, others will not have the same freedom.

NOTES

In these notes, citations to the trial transcript are given as T. page/line. The arguments presented for reversing the decision in this case are essentially the same as those that appear 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, an 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.

¹T. 237/20, T. 58/22, T. 59/17

²T. 59/21

³T. 238/12

⁴T. 107/17

⁵T. 110/10

⁶T. 110/13

⁷T. 110/20

⁸T. 239/2-25

⁹T. 238/12

¹⁰T. 113/11

¹¹T. 115/18-20

¹²T. 238/12-240/15

¹³T. 272/1

¹⁴T. 114/22

¹⁵T. 272/6

¹⁶T. 65/12, T. 271/14

¹⁷T. 21/12

¹⁸T. 126/4

¹⁹T. 124/25

²⁰T. 138/6

²¹T. 269/3-9

²²T. 269/3-9

²³T. 165/7

²⁴T. 147/15

²⁵T. 147/11

²⁶T. 167/24

²⁷T. 168/15

²⁸T. 168/25-169/13

²⁹T. 147/22-24

³⁰T. 227/4

³¹T. 137/5-11

³²T. 287/8-24

³³T. 291/2-3

³⁴T. 292/1-4

³⁵T. 344/25, 346/8, 345/3, 294/5-295/24

³⁶T. 93/10

³⁷T. 173/6

³⁸T. 171/4-172/24

³⁹Zorach v. Clauson, 346 U.S. 306, 72 S. Ct. 679, 96 L. Ed. 954 (1952)

⁴⁰Haig Bosmajian, "The 'Wall of Separation' Metaphor in Supreme Court Church-State Decisions," Religious Communication Today 8 (1985):1-7

⁴¹Abington School District v. Schempp, 374 U.S. 203, 225, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963)

⁴²Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1946)

⁴³Watson v. Jones, 13 Wall. 679, 733, 20 L.Ed. 666, 678 (1872); Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 698, 713, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); See also, Metropolitan Baptist Church of Richmond, Inc. v. Younger, 121 Cal. Rptr. 899, 903 (Cal.App. 1975)

⁴⁴Presbyterian Church v. Hull Church, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969)

⁴⁵Fowler v. Rhode Island, 345 U.S. 67, 70, 73 S.Ct. 526, 97 L.Ed.828 (1953)

⁴⁶Simpson v. Wells Lamont Corporation, 494 F.2d 490 (5th Cir. 1974)

⁴⁷949 F.2d at 492

⁴⁸Ibid.

⁴⁹Chavis v. Rowe, 459 A.2d 674 (N.J. 1983)

⁵⁰Oklahoma District Council v. New Hope Assembly of God Church, 548 P.2d 1092 (Okla. 1976)

⁵¹548 P.2d at 1030

⁵²Allen v. Morton, 495 F.2d 65, 75 (D.C. Cir. 1973)

⁵³Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1943)

⁵⁴Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972)

⁵⁵406 U.S. 230

⁵⁶Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963)

⁵⁷374 U.S. at 406, the quoted reference being to Thomas V. Collins, 323 U.S. 516, 530, 89 L.Ed. 430, 440, 65 S.Ct. 315

⁵⁸Whitehorn v. State, 561 P.2d 539 (Okla. 1977); People v. Woody, 394 P.2d 813 (Cal. 1964); State v. Whittingham, 504 P.2d 950 (Ariz.App. 1973)

⁵⁹State ex. rel. Dept. of Transp. v. Pile, 603 P.2d 337 (Okla. 1979)

⁶⁰603 P.2d at 340

⁶¹Lemon v. Kurtzman, 403 U.S. 602, 612, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971). See also, Chess v. Widmar, 635 F.2d 1310 (8th Cir. 1980), affirmed as Widmar v. Vincent, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981)

⁶²403 U.S. at 612

⁶³454 U.S. 269, n.6

⁶⁴Meek v. Pittenger, 421 U.S. 349, 95 S.Ct. 1753, 44 L.Ed.2d 217 (1975); Committee for Public Education v. Nyquist, 413 U.S. 756, 93 S.Ct. 2955, 37 L.Ed.2d 948 (1976); Levitt v. Committee for Public Education, 413 U.S. 472, 93 S.Ct. 2814, 37 L.Ed.2d (1973)

⁶⁵Roemer v. Maryland Public Works Board, 426 U.S. 736, 747, 96 S.Ct. 2337, 49 L.Ed.2d 179 (1976)

⁶⁶426 U.S. at 747

⁶⁷Widmar v. Vincent, 454 U.S. 263, 269, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981)

⁶⁸454 U.S. at 269

⁶⁹454 U.S. 269 n.6

⁷⁰Heffron v. International Society for Krishna Consciousness, Inc., 452 U.S. 640, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981)

⁷¹NAACP v. Alabama, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958)

⁷²Zechariah Chaffee, Jr., Free Speech in the United States (New York: Athenum, 1969)
p.4.

⁷³Alexander Meiklejohn, Political Freedom: The Constitutional Powers of the People
(New York: Oxford University Press, 1965), pp. 142-143