

Preserve, Protect,

and Defend

Constitutional Principles

We the People



Illustration by Christopher Bing

The first act of an incoming president is to "solemnly swear (or affirm)" that he will "preserve, protect, and defend the Constitution of the United States."

In judging prospective candidates for the presidency, it is therefore important to examine whether they interpret the Constitution properly. To help voters with this determination, *Policy Review: The Journal of American Citizenship* asked the following question of the principal presidential candidates still running as of November 1995: "Which parts of the Constitution are commonly misinterpreted or underappreciated, and therefore deserve more emphasis in political discourse?" We publish responses from Senators Bob Dole, Phil Gramm, and Dick Lugar; Governor Lamar Alexander, and Representative Robert Dornan. (President Bill Clinton, Patrick Buchanan, Steve Forbes, and Alan Keyes were invited to participate but did not respond by our deadline.)

I Promise to Uphold

By

Bob Dole,

Phil Gramm,

Dick Lugar,

Lamar Alexander

&

Robert Dornan

Senator Bob Dole *The Establishment Clause*

Perhaps no provision of the Constitution is more misunderstood today than the First Amendment as it applies to religion.

The most basic misunderstanding is that the Establishment Clause of the First Amendment demands that any reference to religion must be absolutely cleansed from our schools and other public institutions. A second misunderstanding is that anyone who wants our public institutions to show more respect for the religious faith of the American people is really plotting to impose a particular religious viewpoint on those with different beliefs.

The First Amendment was not designed to strip all religious expression from public institutions.
—Bob Dole

A good part of the blame for this confusion lies with the Supreme Court of the United States. Years ago, the Court cast aside the original meaning of the First Amendment's Establishment Clause, which forbids the establishment of an official state religion or policies favoring one religion over another. In its place, the Court has erected a variety of confusing formulas—the *Lemon* test, the endorsement test, and others—that invoke the Constitution to support the proposition that religion must be purged from public life. Using such tests, the Supreme Court has banned the display of the Ten Commandments in any public school, even for educational purposes.

Unfortunately, misguided school administrators and teachers in some areas of the country have also wrongly embraced the idea that all references to religion in school settings are unconstitutional. Among the results of this misreading of the First Amendment:

- Teachers have been disciplined for wearing a cross as personal jewelry and for reading their own Bible during break periods.
- Two Texas third-graders were prohibited from wearing T-shirts depicting Jesus—though Power Rangers and Barney were just fine.
- Many communities have banned holiday crèche displays from public buildings and parks, even where they have been set up by private civic groups.
- Some schools have banned religious songs at choir concerts, as well as Christmas carols, and even Christmas trees.

- Students have been told they may not talk about God to classmates, and teachers have rejected religious artwork and reports on “my hero” where the students took the politically incorrect decision to write about Jesus.

In fact, studies by the National Institute of Education, People for the American Way, and Americans United for the Separation of Church and State have all confirmed that references to religion's role in American life and history have been systematically stripped from textbooks and curricula.

A fair reading of the historical record, however, shows that the Establishment Clause of the First Amendment was designed to protect religious liberty, not strip religious expression from all public institutions. As Professor Stephen Carter writes: “[T]he metaphorical separation of church and state originated in an effort to protect religion from the state, not the state from religion. The religion clauses of the First Amendment were crafted to permit maximum freedom to the religious.”

After all, it was the first Congress—which passed the Bill of Rights and sent it for ratification to the states—that opened each day's session with a prayer led by a chaplain. This practice continues today. And 24 hours after it voted in favor of what is now the First Amendment, the Congress considered a resolution proclaiming a national day of thanksgiving. Indeed, if the Supreme Court itself really adhered to the view that the government must divorce itself from religion, then it would not open every one of its sessions with the appeal, “God save the United States and this Honorable Court.”

There are some hopeful signs that the confusion surrounding the First Amendment's Establishment Clause is now beginning to clear up. Earlier this year, in a close, 5-to-4 decision, the Supreme Court rejected the argument that a public university can deny funding to a Christian student newspaper while financing student publications generally. It now appears that there are at least five justices who believe that religious expression is entitled to the same constitutional protection as other forms of expression.

To say that our public institutions should accommodate religious speech is not to say that the state should impose official prayers and punish students who do not participate. That's certainly not my position. Nor is it the position of Jay Sekulow, Pat Robertson's counsel at the American Center for Law and Justice, who has said, “We don't want to see a return to the pre-1962 situation, with a teacher leading a class in prayer.”

At the same time, we simply do not accept the view that the Constitution commands that reli-

gion be erased from whatever government touches. This view misreads the First Amendment and distorts history.

Senator Phil Gramm *The Takings Clause*

When considering the most “underappreciated” element of the Constitution, anyone who sees what is going on everyday across this country as I do will respond immediately, “the Fifth Amendment.” Well known for its protection against self-incrimination, the Fifth Amendment also contains a clause that protects private property, a building block of the American foundation. The Takings Clause is a quintessential constitutional shield, artfully and specifically rejecting the idea that government officials can seize property without compensation, regardless of what public good they intend to accomplish.

Unfortunately, we are facing a threat to the right to own property that our Founding Fathers could never have imagined. In America in 1995, two consenting adults can engage in any kind of consensual behavior with total constitutional protection—except owning private property and engaging in commerce and business. Over and over again—every day all across America—people are having their private property taken without compensation by way of the Endangered Species Act, wetlands regulation, and a host of other “regulatory takings.” Property values are being reduced and land is effectively being taken to promote objectives that society considers good, but for which society refuses to pay. In fact, we have a president today whose interior secretary has suggested that private property may even be outdated in the modern world!

If government takes your property or restricts its use, you should be compensated. On this issue there can be no compromise. Private property is the foundation of our freedom, and I will

The most pressing constitutional issue facing our nation, however, involves a matter not actually enshrined in that great document. I am referring to the need for a Balanced Budget Amendment. I introduced a Balanced Budget Amendment to the Constitution on my first day in Congress and have worked hard to pass it ever since. But, as surprising as it may be to some of my colleagues, this debate did not begin with my tenure in Congress.

Through the course of American history, we have amended our Constitution 27 times, but haven’t yet had the political will to fix the only thing Thomas Jefferson found wrong with the document. Jefferson was this country’s Minister to France during the writing of the Constitution, and when he was first shown the document, he had a proposal for one change. In a subsequent letter to John Taylor, Jefferson recorded that proposal:

“I wish it were possible to obtain a single amendment to our Constitution. I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of its Constitution. I mean an additional article taking from the government the power of borrowing.”

So the present controversy is not just a debate over a balanced budget amendment, but a debate on the Jefferson amendment. It is also a debate about the future of America and a potential seed of its destruction. We need a contract between the government and the people that binds Congress with a chain that cannot be broken. The genius of the Constitution is that it rules out of bounds actions that the people have determined that they do not want Congress to take. Read the first words from the Bill of Rights in our Constitution: “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 redress of grievances.”

The American people were clear about the grievances they wanted redressed in November 1994. In the most decisive election since 1932, the people said to their government, “Stop the taxing. Stop the spending. Stop the regulating.” To do that, they supported the Contract With America, a key element of which is a balanced budget amendment. But we haven’t given the people what they want yet. We have not fulfilled a promise we made.

The Constitution was written because people did not trust the government. With Congress’s failure to honor its promises, act responsibly, and be accountable for its actions, there is much

P rivate property is the foundation of our freedom,
and I will defend it vigorously as president.
—Phil Gramm

defend it as vigorously as the freedom of speech and freedom of religion. As president, I will work hard to protect private-property rights and to bring the Fifth Amendment back into the family of the Bill of Rights on behalf of the people who own property, till the soil, and produce the goods and services in our country.