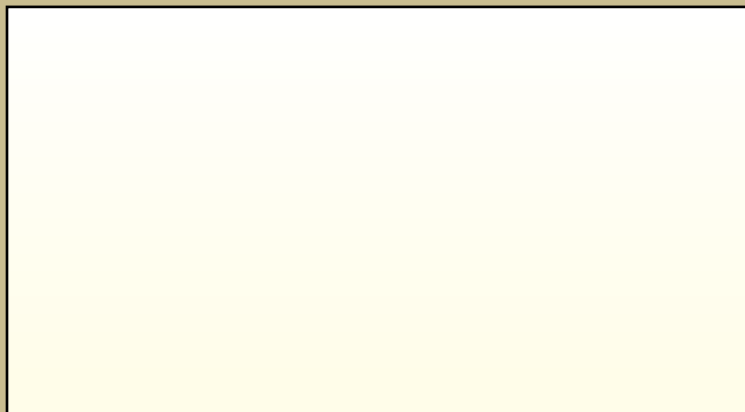
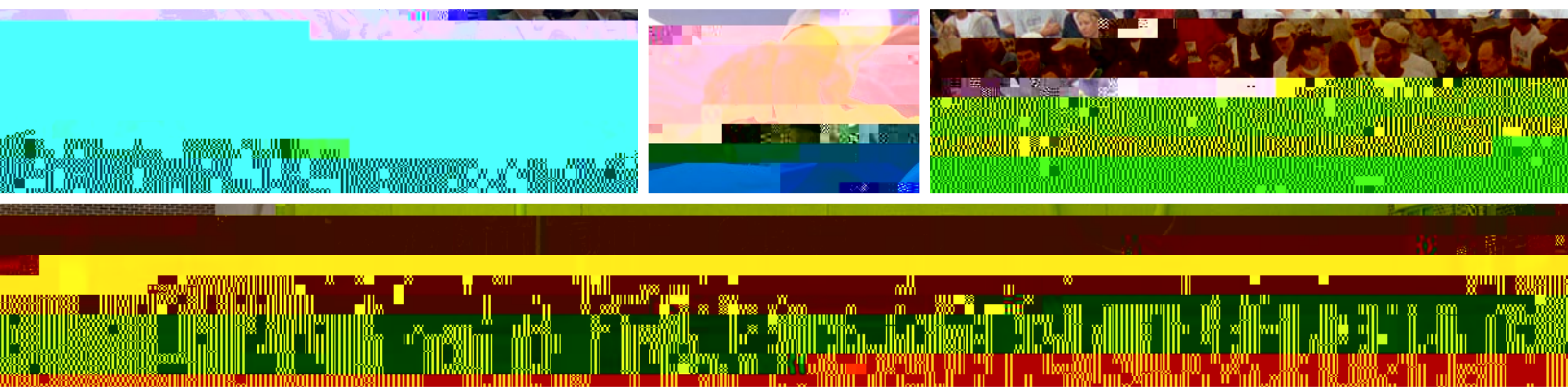


RELIGIOUS EXPRESSION IN AMERICAN PUBLIC LIFE:

A J i S a e e f C e L a w



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2010
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6. Are persons elected or nominated to serve as government officials required to place their hands on the Bible when making oaths or affirmations?

Q. Are persons elected or nominated to serve as government officials required to place their hands on the Bible when making oaths or affirmations?

A. Yes.

Q. Are persons elected or nominated to serve as government officials required to place their hands on the Bible when making oaths or affirmations?

A. No.

7. May elected officials

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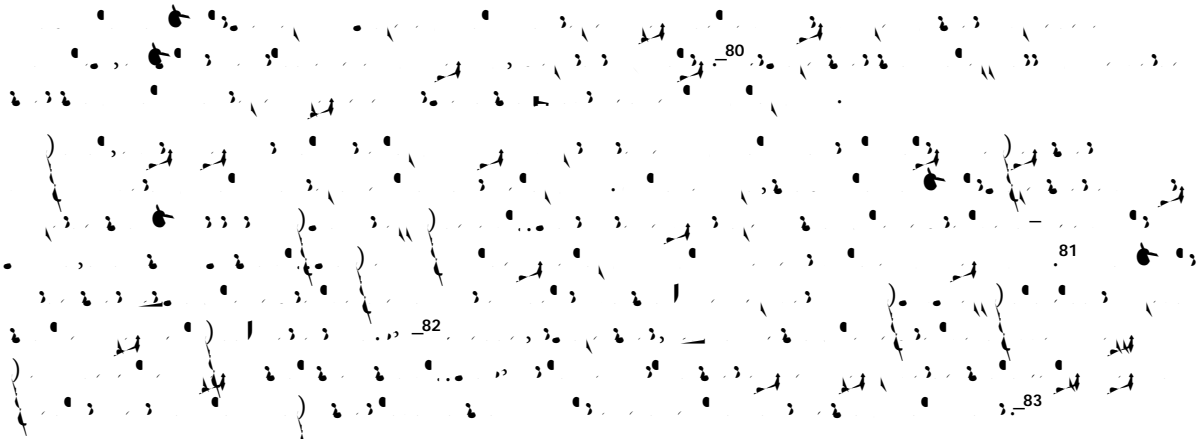
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20. Outside the holiday context, may the government post passages from sacred scripture or religious images, and may it erect monuments that feature such scripture or imagery?

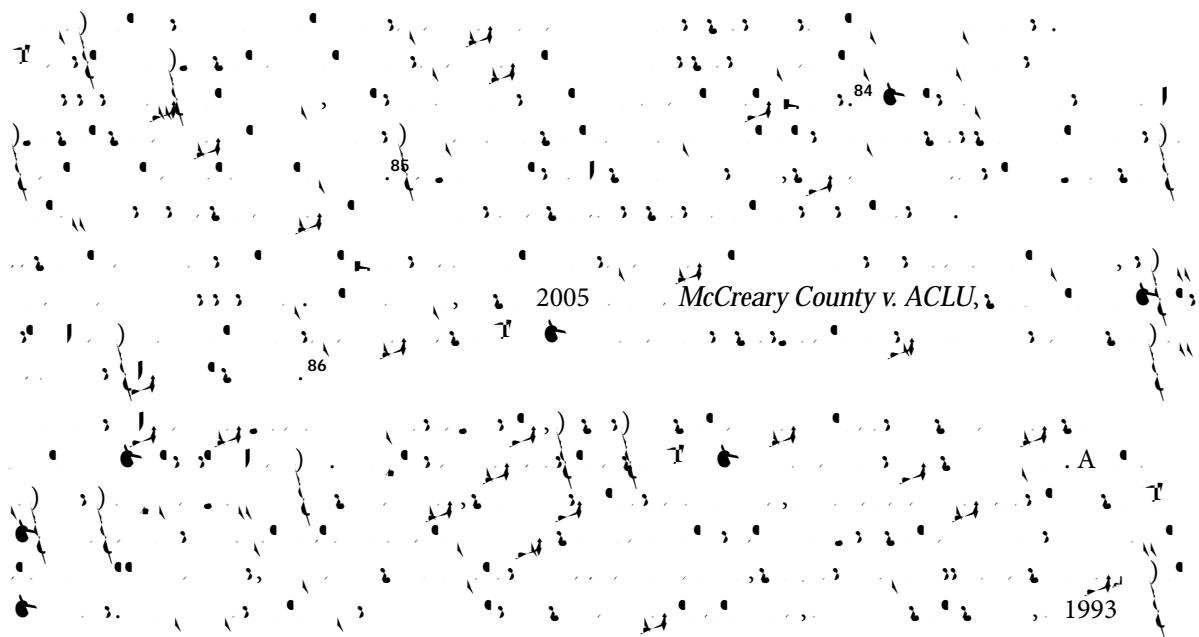


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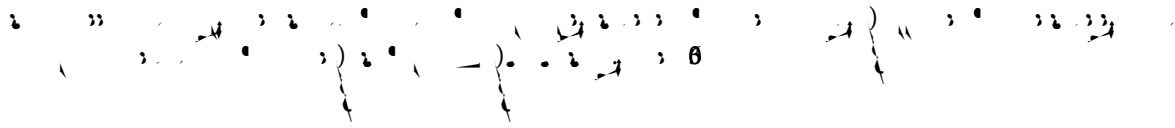


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31. What are some of the ways in which constitutional prohibitions on governmental establishments of religion apply to the governmental workplace?

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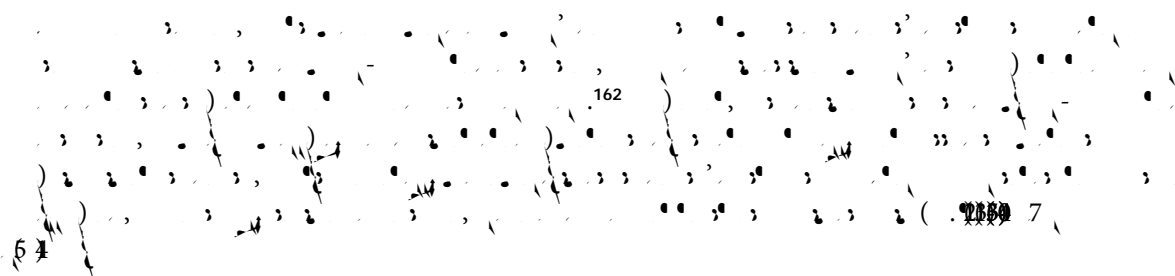


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1. The final clause of Article VI of the Constitution reads:

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

2. This provision applies to the executive and judicial as well as the legislative branches of government. *See*, Bowen v. Kendrick, 487 U.S. 589 (1988) (executive); North Carolina Civil Liberties Union v. Constangy, 947 F.2d 1145 (4th Cir. 1991)(judicial). By virtue of the due process clause of the Fourteenth Amendment, it applies to state and local government as well as to the federal government. *See*, Cantwell v. Connecticut, 310 U.S. 296 (1940); Everson v. Bd. of Educ., 330 U.S. 1 (1947) and Gitlow v. New

30. 26 U.S.C. Section 501(c)(3) (2010). The exempt purposes set forth in Section 501(c)(3) include "charitable, religious, educational, scientific, literary,



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105. *Newdow v. Bush*, 355 F. Supp. 2d. at 287.
106. . . at 290 n.31.
107. . . at 288-89.
108. *Marsh v. Chambers*, 463 U.S. 783 (1983).
109. . . at 792.
110. . . at 791.
111. . . at 793 n.14. The chaplain explained that some of his earlier prayers had contained explicit Christian references, but that he had “removed all references to Christ” from his prayers after he received a complaint from a Jewish legislator. . .
112. . . at 794-95. Thus, the Supreme Court explained, “it is not for us to embark on a sensitive evaluation or to parse the content of a particular prayer.” . . at 795.
113. *County of Allegheny v. ACLU*, 492 U.S. at 603.
114. . .
115. Compare *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004); *Hinrichs v. Bosma*, 400 F. Supp. 2d 1103 (S.D. Ind. 2005) . . . , 506 F.3d 584 (7th Cir. 2007); *Rubin v. City of Burbank*, 101 Cal. App. 4th 1194 (2002) with *Pelphrey v. Cobb County*, 547 F.3d 1263 (11th Cir. 2008).
116. the documents referred to in **questions and answers 30 through 32** of this document.
117. The leading case is . . . , 755 F.2d 223 (2d Cir. 1985), which recognizes that the government may hire chaplains to serve in military settings in which individuals would not otherwise have access to religious counsel and services. The U.S. Supreme Court cited the . . . case approvingly in C . . . , 544 U.S. 709, 722 (2005).
118. *Abington Township v. Schempp*, 374 U.S. 203, 297-98 (1963) (Brennan, J., concurring)(“Since government has deprived [members of the Armed Forces and prisoners] of the opportunity to practice their faith at places of their choice, the argument runs, government may, in order to avoid infringing the free exercise guarantees, provide substitutes where it requires such persons to be.”).
119. 10 U.S.C. Section 6031 (2010).
120. For more information about these and other disputed matters relating to religion and the military, please contact the **members of the drafting committee**.
121. . . , *Rudd v. Ray*, 248 N.W.2d 125 (Iowa 1976) (concluding that “there is no violation of the First Amendment to the United States Constitution by the action of the state in providing chaplains and religious facilities to prisoners.”).
122. **supra n.118**.
123. **questions and answers 27 through 29** of this statement.
124. In rare instances, courts have held that nongovernmental entities are “state actors” and thus have all the constitutional obligations of the state in those cases. . . , *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961).
125. This federal obligation applies to employers with 15 or more employees. 42 U.S.C. Sections 2000e(b) and (j)(2010). This statement focuses on federal civil rights law, specifically Title VII of the 1964 Civil Rights Act. 42 U.S.C. Section 2000e . . . It is important to note, however, that state and local civil rights laws may be applicable to questions involving religion and the secular workplace. Interested parties should consult state and local law for other applicable rules, and they should be aware that these laws may be triggered by thresholds different from the one that triggers Title VII.
126. *Religious Discrimination*, a publication of the Equal Employment Opportunity Commission; . . . *E . . . E . . . I . . . Cl i s s . . . Compliance Manual Section Regarding Religious Discrimination* (July 22, 2008). The accommodations listed in this document and on the Equal Employment Opportunity Commission’s Web site are illustrative, not exhaustive.
127. . . , *Wilson v. US West*, 58 F.3d 1337 (8th Cir. 1995) (upholding nongovernmental employer’s decision to forbid wearing of uncovered fetus pin by religious employee).
128. *Kent Greenawalt*, . . . , 33 Loy. U. Chi. L.J. 1 (2001); . . . *TransWorld Airlines v. Hardison*, 432 U.S. 63 (1977); *Religious Discrimination*, a publication of the Equal Employment Opportunity Commission.
129. *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60 (1986).
130. . .
131. . .
132. The White House, [Guidelines on Religious Exercise and Religious Expression in the Federal Workplace](#) (August 14, 1997).
133. 29 C.F.R. Section 1605.2(e)(1).
134. *Philbrook*, 479 U.S. 60.
135. In cases involving purely religious speech (e.g., a quote posted on the walls of worker’s cubicle), rather than religious conduct or a mix of religious speech and conduct (e.g., wearing a religious head covering), it is unclear whether the government may treat purely religious speech more favorably than nonreligious speech. Thomas C. Berg, . . . , *J. L. & Pub. Pol’y* 959 (1999).
136. *Religious Discrimination*, a publication of the Equal Employment Opportunity Commission.

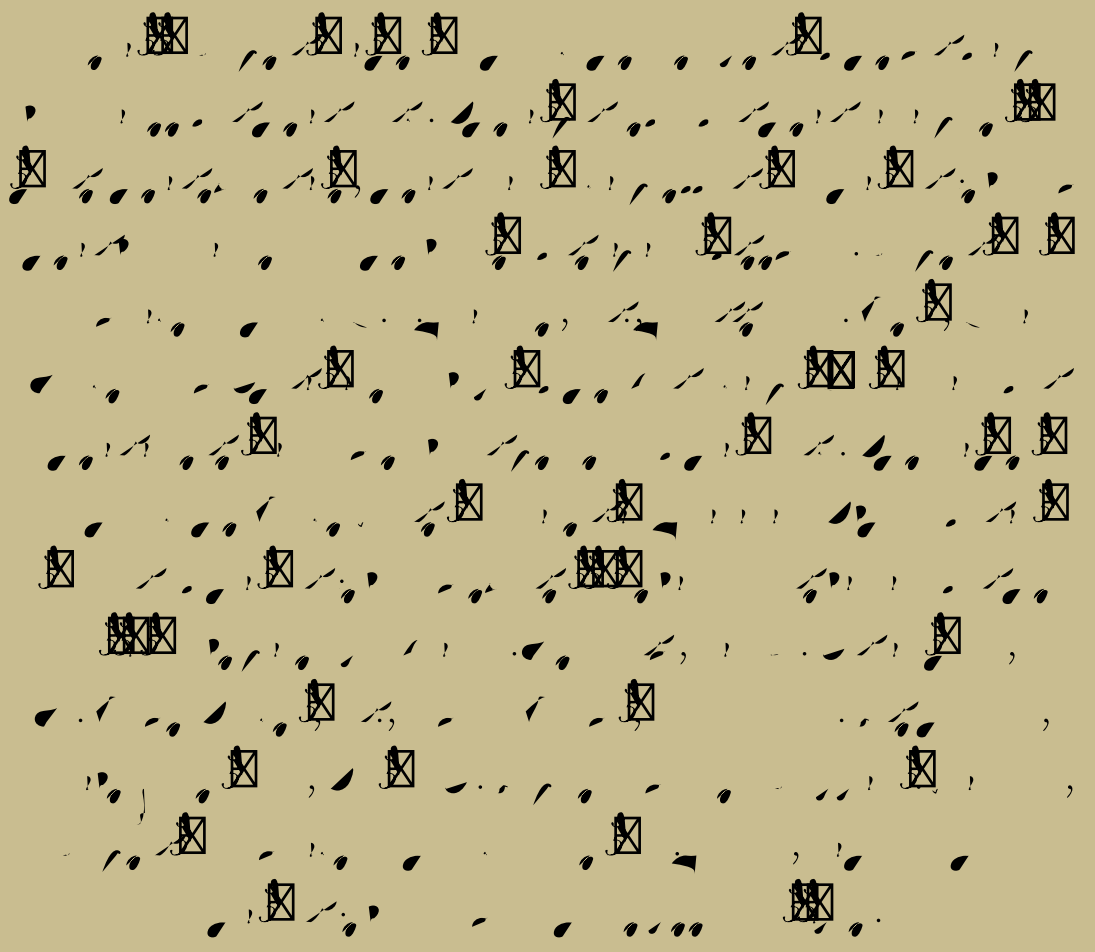
159. Some courts have held that Title VII provides the exclusive remedy for job-related claims of federal religious discrimination, and thus employees may not bring lawsuits in this area under laws such as the Religious Freedom Restoration Act (RFRA). *Francis v. Mineta*, 505 F.3d 266 (3rd Cir. 2007). The U.S. Supreme Court has not yet addressed this specific issue, but it has held that “the congressional intent [behind the 1972 amendments to the 1964 Civil Rights Act] was to create an exclusive, pre-emptive administrative and judicial scheme for the redress of federal employment discrimination.” *Brown v. General Services Administration*, 425 U.S. 820, 829 (1976).
160. 5 U.S.C. Section 5550a (2010) and associated regulations; *United States Department of Personnel Management’s Policy on Adjustment of Work Schedules for Religious Observances*.
161. 20 U.S.C. Section 4071 (2010)(the “Equal Access Act”).
162. For example, a court has deferred to a school’s judgment that it was inappropriate for an elementary school student to distribute candy canes with religious messages to classmates during an in-class winter holiday party. *Walz v. Egg Harbor Township Bd. of Educ.*, 342 F.3d 271 (3d Cir. 2003).
163. For example, in a case involving high school students who were members of a student-organized Bible club, a court issued a preliminary injunction protecting the students’ rights to distribute candy canes with religious messages on school property during non-instructional time. *Westfield High School L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98 (D. Mass. 2003).
164. American Jewish Congress, *Religion in the Public Schools: A Joint Statement of Current Law* (April 1995).
165. Freedom Forum First Amendment Center, *Religious Liberty, Public Education, and the Future of American Democracy*.
166. Freedom Forum First Amendment Center, *A Teacher’s Guide to Religion in the Public Schools*.
167. Bible Literacy Project, Society for Biblical Literature, Freedom Forum First Amendment Center, *The Bible and Public Schools: A First Amendment Guide*.
168. *Abington Township v. Schempp*, 374 U.S. 203, 225 (1963); *Edwards v. Aguillard*, 482 U.S. 578 (1987).
169. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004). The constitutionality of the statute that incorporates the words “under God” in the Pledge of Allegiance, 4 U.S.C. Section 4 (2010), has also been challenged. Although one lower court initially found the statute unconstitutional, it later issued an amended ruling that eliminated its prior discussion of this issue without expressing an opinion as to whether that earlier discussion was correct.

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