



Why President Bush's "New" Emphasis on Religion Is Hardly New: A Look Back at the Clinton Administration and Religion

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There is no question that President Bush has placed religion front and center in his Administration. Recent press coverage would seem to indicate that this is a new approach - one that is specific to this Republican Administration, and that is part of a conspiracy of fundamentalists to gain political power. In fact, nothing could be further from the truth.

Virtually all of President Bush's initiatives, when it comes to religion, were presaged by Clinton Administration policies and attitudes. Indeed, a strong case can be made that Clinton set the stage, and Bush is doing no more than following in his footsteps.

That shouldn't surprise anyone. It's very likely that Bush's successor will do the same. There is little in the culture to change this course - except the Constitution and its separation of church and state. But sadly, the Constitution alone is rarely enough to stop any politician from enacting his chosen agenda, religious or not.

Clinton and Religion: Both a Personal and a Policy Issue

Clinton's personal religious belief, of course, was no secret. It was widely reported that Clinton met with a series of prominent religious leaders during his scandal-plagued tenure - some of them fundamentalists. In particular, after the Monica Lewinsky debacle, Clinton met repeatedly with several religious leaders for counsel.

He also attended weekly prayer breakfasts, consulted religious advisors in the Oval Office, and sat for a Yale Law School portrait holding a copy of Yale Law professor Stephen L. Carter's Culture of Disbelief - a work criticizing the diminution of religious belief in American life.

What was less widely remarked upon, however, was the Clinton Administration's more general push to advance religious interests. Setting aside President Grant, who attempted to use (willing) religious groups to "Christianize the Indians," I defy anyone to

show me a more religious President, both personally and politically, than William Jefferson Clinton.

The examples below depict a President who not only personally was a believer, but who also did everything he could to secure policy advantages for religious institutions - even when it was unconstitutional, or simply unfair, to do so.

The Clinton Administration's Religion-Related Legislation

Clinton signed a number of bills that directly furthered particular religious groups' interests. For example, he righteously backed the Religious Freedom Restoration Act of 1993 (RFRA). As I discussed in [a previous column](#), RFRA was Congress's ill-conceived and unconstitutional attempt to permit religious individuals and institutions to avoid the rule of law in every circumstance. In *Boerne v. Flores*, the Supreme Court wisely struck RFRA down.

Later, in 1999, Clinton signed an amendment to the Medicare and Medicaid laws permitting federal funds to cover "nonmedical health care" and "nonmedical nursing items and services." If these terms sound like oxymorons, that's because they are. The amendment permitted those who do not believe in medical care - such as Christian Science practitioners - to get federal medical funds. Tragically, it thus took funds away from genuine health care providers at a time when there is a crisis in health care coverage.

Clinton also signed the Religious Liberty and Charitable Donation Protection Act of 1998, which protects churches from bankruptcy trustees. To understand how the Act works, it's important first to know a basic bankruptcy law principle: Funds that the bankrupt entity has paid out in the year prior to recovery can often be recovered back into the bankruptcy estate. In this way, the bankruptcy court can ensure that it is the court - not the bankrupt entity itself - who decides who will get the limited funds that remain.

The Act changes this basic principle. If the bankrupt entity donated money to a church during the year before its bankruptcy, that donation is off limits; it cannot be brought back into the bankruptcy estate.

Clinton also signed the International Religious Freedom Act, and proclaimed National Religious Freedom Day. During his tenure, an Advisory Committee on Religious Freedom and an International Religious Freedom Commission were both established. These initiatives might sound beneficial - religious freedom, after all, is an indubitably good thing - until one examines the way in which the Commission has been misused, as I noted in [a prior column](#).

Clinton also signed the law, backed by Senators Santorum and Kennedy that directed the financially ailing Old Soldier's and Airmen's Home to sell its property to Catholic University at whatever price CU desired.

(Later, the law was repealed, due to its obviously unconstitutional intent to financially

benefit a single church - perhaps the most blatant church/state violation one could imagine.)

Despite intense lobbying by numerous interests, Clinton also signed the misbegotten Religious Land Use and Institutionalized Persons Act. RLUIPA, which gives religious landowners unfair exemptions from zoning and land-use measures that apply to all, has caused trouble across the country, as I have discussed in [previous columns](#). (I have represented local governments and homeowners challenging the application of RLUIPA to neighborhoods, lawsuits intended to ensure that all landowners respect agreed-upon zoning and land-use restrictions.)

In sum, Clinton was a master at mixing politics and religion. Any charges made against Bush should be measured against the platform that Clinton created.

Faith-Based Initiatives Began with Clinton, Not Bush

Perhaps the greatest misimpression the media has fostered about the Bush Administration is this one: The Bush Administration marked the advent of the "faith-based initiative."

Not so. It was the Clinton Administration that opened the portals for federal money to flow directly into religious coffers for their mission work with troubled youth, drug addicts, and alcoholics. It was Clinton who opened this Pandora's box, not Bush.

Bush is only continuing the Clinton tradition. Like Clinton, he frequently refers to the Almighty, including in his speeches. And, more substantively, the Bush Administration has mounted an active defense of RLUIPA in courts across the country. In addition, it has made persistent attempts to extend what is, in effect, a federal welfare system for churches - the so-called faith-based initiatives system that Clinton already had signed into law by the time Bush took his first oath of office.

Recent Supreme Court Decisions Have Only Aided Presidents' Religious Agendas

Meanwhile, when the Supreme Court might have been drawing a line in the sand, it has seemed happy instead to cede the whole territory of religion to the Executive Branch.

In a series of cases, the Court has charted a theory under which religious entities not only can, but often must, be equally treated when it comes to benefiting from the government income stream. Prominent examples are [Rosenberger v. Rectors and Visitors of the University of Virginia](#), [Mitchell v. Helms](#), and [Zelman v. Simmons-Harris](#).

Cases like this have made certain rules clear. If a university pays for student activities as in *Rosenberger*, it cannot exclude the religious activities. If the federal government gives computers to schools as in *Mitchell*, it can, if it chooses, include parochial schools. If a state gives parents vouchers for their children's elementary education as in *Zelman*, it can make those vouchers valid for use at private religious schools, not only public schools and secular private schools.

A Case the Supreme Court Will Soon Review May Only Worsen the Problem

Recently, the Supreme Court has granted review in another case, *Davey v. Locke*, that is likely to further exemplify the close ties between the American Presidency and religious interests.

The case arose because the state of Washington provides college scholarships, but excludes theology studies. That choice follows state law provisions as well as a provision of their state constitution that forbids the payment of state money for sectarian education. (The latter such provisions are often nicknamed "mini-Blaine Amendments.")

Is that Washington State constitutional provision consistent with the federal Constitution's Religion Clauses? That is what the Supreme Court will have to decide. If its past cases are any predictor, it could strike down the state constitutional provision, and not only allow, but compel, equal funding for theology studies. When the Solicitor General's office weighs in, the Bush Administration is likely to support a similar view; it will be interesting, in any event, to see where it believes the constitutional line should be drawn.

Framer and First Amendment drafter James Madison would have been perfectly comfortable with such a restriction. Unfortunately, his warnings about the dangers of state support of religious education have been lost in the prevailing political winds in recent decades.

There is at present an irresistible attraction between the American President and religious interests. It did not begin with the Bush Administration, as the media would have it. Rather, it has continued in force through the most recent three presidential terms.

Like President Clinton, President Bush has so far been unable to distinguish the national good from his own attachment to certain religious interests and goals.

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