

January 2008

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Recommended Citation

Stephen A. Newman, *From John F. Kennedy's 1960 Campaign Speech to Christian Supremacy: Religion in Modern Presidential Politics*, 53 N.Y.L. SCH. L. REV. 691 (2008-2009).

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STEPHEN A. NEWMAN

From John F. Kennedy's 1960 Campaign
Speech to Christian Supremacy: Religion in
Modern Presidential Politics

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At a time when we see around the world the violent consequences of the assumption of religious authority by government, Americans may count themselves fortunate: Our regard for constitutional boundaries has protected us from similar travails, while allowing private religious exercise to flourish. The well-known statement that “[w]e are a religious people,” has proved true. Americans attend their places of worship more often than do citizens of other developed nations, and describe religion as playing an especially important role in their lives. Those who would renegotiate the boundaries between church and state must therefore answer a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly?

—Justice Sandra Day O’Connor¹

There is a current belief, apparently widely shared, that the federal Constitution proclaims this to be a Christian nation.² Republican presidential candidate John McCain told an interviewer that he believed the U.S. should be governed by a Christian president, because this was a Christian nation.³ After other religious groups protested this statement, he later claimed all he meant to say was that the country was based on Judeo-Christian values.⁴

Calls for an explicitly Christian nation are part of our history.⁵ Attempts were made in the nineteenth and twentieth centuries to add a Christian amendment to the Constitution.⁶ The initial proposal in 1863 would have altered the Preamble to read:

We the people of the United States, humbly acknowledging Almighty God as the source of all authority and power in civil government, the Lord Jesus Christ as the Governor among the Nations, and His revealed will as of supreme authority, in order to constitute a Christian government . . . do ordain and establish this Constitution for the United States of America.⁷

The idea failed when the first Republican president, Abraham Lincoln, ignored it.⁸

Despite the fact that the Constitution does not endorse or even mention Christianity, many political contests for high public office feature a significant element of Christian religiosity. The mixing of religion and politics raises a distinct

1. *McCreary County v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844 (2005) (O’Connor, J., concurring) (internal citations omitted).
2. According to a recent poll, fifty-five percent of Americans believe this is a Christian nation. *Groups Criticize McCain for Calling U.S. ‘Christian Nation,’* CNN, Oct. 1, 2007, <http://www.cnn.com/2007/POLITICS/10/01/mccain.christian.nation/index.html>.
3. *Id.*
4. *Id.*
5. See Sanford Levinson, *Religious Language and Morality in American Politics*, 105 HARV. L. REV. 2061, 2062–63 (1991) (reviewing MICHAEL J. PERRY, *LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS* (1991)).
6. See ISSAC KRAMNICK & R. LAURENCE MOORE, *THE GODLESS CONSTITUTION: A MORAL DEFENSE OF THE SECULAR STATE* 144–49 (2005).
7. *Id.* at 146.
8. *Id.* at 147.

and thorny issue for a democracy that intends a significant degree of separation between religion and government. Article VI of the Constitution expressly bans religious tests for public office,⁹ and the First Amendment proscribes laws “respecting an establishment of religion, or prohibiting the free exercise thereof.”¹⁰ The separation of church and state, however difficult to define in practice, in principle keeps religious institutions and government officials at an appropriate distance from one another.

Campaigning for office, however, is different from governing in office. In contests for public office, modern candidates routinely choose to describe their commitment to their faith, to disclose personal details about the influence of religion on their lives, and to make promises in religious terms about how they will govern.¹¹ Campaigning politicians often try to show how close they are to the voters to promote rapport, foster a sense of identification, and create voter sympathy. Indeed, a principal way American politicians to minimize their distance from voters (with whom they may not share much in common, especially because American presidential candidates are often rich and live lavish lifestyles)¹² is to bring their religion into the public conversation. In recent times, appeals to the electorate based upon religious beliefs have played an important, perhaps decisive, role in determining who wins and who loses.¹³

Prominent scholars have debated whether religious arguments should, in theory, be excluded from our democracy’s public debate.¹⁴ Arguments based upon religious premises are suspect, it is sometimes said, because they are not subject to debate by non-believers in the particular religion. It seems fruitless to reply with reasoned argument to the claim of a speaker that he knows what God wants with respect to a particular public policy, or that it is divinely intended that a particular candidate win public office. Further, claims that derive from divine revelation or biblical prophesy

9. U.S. CONST. art. VI, cl. 3.

10. U.S. CONST. amend. I.

11. Religious participants in politics have the right to freely speak their views, advocate positions, and seek public office. *See, e.g.*, *McDaniel v. Paty*, 435 U.S. 618 (1978) (invalidating a state constitutional provision in Tennessee barring clergy from holding office in the legislature).

12. *See, e.g.*, Suzanne Smalley et al., *Mrs. McCain, San Diego County Would Like a Word*, NEWSWEEK, July 14, 2008, at 10 (“[John McCain’s wife] is a beer heiress with an estimated \$100 million fortune and, along with her husband, owns at least seven properties, including condos in California and Arizona.”); Editorial, *It’s Nice to Be Rich*, N.Y. TIMES, June 28, 2008, at A16 (“Millionaires are already wildly overrepresented in Congress.”).

13. There is considerable debate over just how important religion has been in recent elections, especially as compared to other factors such as class, race, and issues such as the war in Iraq. E.J. DIONNE, JR., *SOULED OUT: RECLAIMING FAITH AND POLITICS AFTER THE RELIGIOUS RIGHT* 56–67 (2008).

14. There are many participants in this debate with notable contributions. *See, e.g.*, KENT GREENAWALT, *PRIVATE CONSCIENCES AND PUBLIC REASONS* (1995); MICHAEL PERRY, *LOVE AND POWER: THE ROLE OF RELIGION IN AMERICAN POLITICS* (1991); Levinson, *supra* note 5, at 2064–66; Michael McConnell, *Five Reasons to Reject the Claim that Religious Arguments Should be Excluded from Democratic Deliberation*, 1999 UTAH L. REV. 639; Steven Shiffrin, *Religion and Democracy*, 74 NOTRE DAME L. REV. 1631 (1999); Kathleen Sullivan, *Religion and Liberal Democracy*, 59 U. CHI. L. REV. 195 (1992); Michael Walzer, *Drawing the Line: Religion and Politics*, 1999 UTAH L. REV. 619.

often produce an unduly contentious, sometimes hate-filled political climate.¹⁵ Religious zeal leads to the inclination to call disagreement apostasy and to brand opponents as godless or sinners, contrary to democratic aspirations for productive engagement in public debate. These concerns underlie suggestions that the public conversation about political choices should be nonsectarian, more or less free of religious advocacy.¹⁶

Other scholars have responded to these claims by asserting the important connection between religious values and political values, and the unfairness—amounting to censorship—of telling believers they must be silent about their values and motives when engaging in public debate.¹⁷ Further, in our history, religiously motivated citizens have made significant contributions to key public policy debates, particularly on matters of human rights. Religious figures provided leadership during the civil rights and anti-Vietnam War movements in the twentieth century and in the abolition movement in the nineteenth century.¹⁸

Attempting to separate religious from political tenets may be difficult even if the goal of separation is accepted.¹⁹ Caring for the poor or preserving the environment can be thought of as religiously neutral, purely political objectives by some citizens and as religious imperatives by others. Some religious voices are comfortable arguing from natural law premises, long regarded as a tenable source of public argument; if others rely only on the Bible, can they be dismissed from the public debate while other religious voices are accepted?

As some writers point out, this debate is not likely to affect the real world of politics in this country.²⁰ Those who are determined to put their ideas of God in play in the political arena are not likely to listen to those who say it is not appropriate according to some theory of proper democratic debate. They will just ignore the claims, or themselves claim victim status (sometimes acting as if Christianity were some repressed minority religion that has to fight to preserve itself or to have its Christmas holiday properly recognized).²¹ In any event, the citizenry is free to

15. See, e.g., *Storms v. Action Wis. Inc.*, 754 N.W.2d 480 (Wis. 2008).

16. See Levinson, *supra* note 5 (summarizing commentary by several writers). Not all writers who would limit debate to neutral arguments agree with one another about the proper limits.

17. *Id.* (reviewing this argument in the context of commenting on the book by Michael Perry, *Love and Power: The Role of Religion in American Politics*); see also GREENAWALT, *supra* note 14 (providing a detailed argument favoring broad participation in the public debate by religiously motivated citizens); McConnell, *supra* note 14 (writing from a conservative perspective); Walzer, *supra* note 14 (writing from a liberal perspective in support of the legitimacy of religious actors participating with sectarian arguments in political debate, despite hoping that they will be defeated in that debate).

18. Going further back, some religious advocates in the Revolutionary Era were also instrumental in adding the First Amendment to the Constitution. See McConnell, *supra* note 14, at 646–47. Religious proponents, it must be observed, are often found on both sides of such issues. *Id.*

19. GREENAWALT, *supra* note 14, at 7.

20. See, e.g., Shiffrin, *supra* note 14, at 1641–46.

21. See STEVEN GOLDBERG, BLEACHED FAITH: THE TRAGIC COST WHEN RELIGION IS FORCED INTO THE PUBLIC SQUARE 91–93 (2008) (for a convincing reply to the complaint about a “War on Christmas”); T. Jeremy Gunn, *A Fictional War on Christmas*, USA TODAY, Dec. 18, 2005, at 13A.

discuss faith and politics as it wishes. The First Amendment's Free Speech Clause would not permit actual censorship of the public debate.

It is quite obvious, of course, that the religiously inclined are in fact speaking out politically, and have done so with increasing intensity since the election of Jimmy Carter. The complaint of Richard J. Neuhaus that the public square is "naked" because of absence of religion is patently wrong.²² When Neuhaus first made the complaint in 1984, Ronald Reagan had already vigorously campaigned for the evangelical vote and Jerry Falwell's Moral Majority had an important, if not galvanizing, effect on political participation by religiously motivated citizens.²³ Falwell made his name synonymous with right wing conservative evangelical Republican politics.²⁴

Today, we can hardly get away from the pastors, reverends, televangelists, and mega-church moguls who crowd into the public square. What commentator Leon Wieseltier wrote in the 1980s is certainly true today: the public square is "gaudy with God's pols."²⁵ Religious activists have mastered the mass communications age through radio and television broadcasts that reach millions, mass mailings, and political organizing. The political arena is now honeycombed with a network of foundations, think tanks, lawyers, and others who fight for the causes of the religious right.²⁶ It appears some of the religious left as well as some religious centrists are intent on joining the political fray as well, often hoping to overcome the power of religious extremists.²⁷

The undeniable truth today, as succinctly stated by one political commentator, is that in America "we separate church and state, but not faith and politics."²⁸ But while this is our present political reality, we must keep in mind the real dangers and

22. See RICHARD J. NEUHAUS, *THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA* (2d ed. 1986).

23. JACQUES BERLINERBLAU, *THUMPIN' IT: THE USE AND ABUSE OF THE BIBLE IN TODAY'S PRESIDENTIAL POLITICS II* (2008).

24. Berlinerblau credits Falwell's efforts for having "precipitated 'the biggest voter realignment' in modern American history." *Id.*

25. David S. Douglas, *Holding America Together*, 21 HARV. C.R.-C.L. L. REV. 325, 330 (1986) (reviewing NEUHAUS, *supra* note 22) (quoting Leon Wieseltier, *Washington Diarist: God and Country*, THE NEW REPUBLIC, Sept. 2, 1985, at 43, col. 2).

26. Stephen A. Newman, *Evolution and the Holy Ghost of Scopes: Can Science Lose the Next Round?*, 8 RUTGERS J.L. & RELIGION 11, 19 nn.137-41 (2007) (describing groups organized to fight the teaching of evolution in public schools).

27. See, e.g., *United States v. Bichsel*, 395 F.3d 1053, 1054 (9th Cir. 2005) (relating to a Catholic priest and members of his congregation engaged in prayer vigil and demonstration against the Iraq war); DIONNE, *supra* note 13 (advocating a vigorous effort by religious liberals to speak out politically); DAVID P. GUSHEE, *THE FUTURE OF THE EVANGELICAL CENTER* 221 (2008) (supporting centrist evangelical politics, calls on evangelicals "to get past one-sided voting guides, political handicapping in the name of Christ, endorsements or quasi endorsements from the pulpit, and transparent 'moral advocacy' equaling political consulting").

28. Howard Fineman, *We the People of Faith*, ON FAITH, July 2, 2008, http://newsweek.washingtonpost.com/onfaith/guestvoices/2008/07/we_the_people_of_faith.html.

harms of too much stress on religion in political campaigns. Political talk creates pressure for political action. Too potent a mix of religion and politics can seriously weaken our constitutional commitment to creating distinct realms for church and state. The late Jerry Falwell once said, "The idea of separation of church and state was invented by the Devil to keep Christians from running their own country."²⁹ Therein lies the threat to some of our most fundamental national values.

What I intend to explore in this essay is the nature of the problem posed by a movement in current politics that I call Christian supremacy, and how our modern political campaigns have responded to it. The question of the appropriateness of religious appeals by candidates in presidential politics comes at a time when evangelical Christians have been prominent in the nation's political life, most notably in the presidential campaigns of 2000 and 2004 and in the administration of George W. Bush. But this issue is long standing; perhaps the most famous campaign statement about the relation between politics and religion in modern times was made in a speech by John F. Kennedy during the presidential campaign of 1960, in response to influential Protestant leaders asserting the illegitimacy of Catholics playing a role in national politics.

I will first explore the many inroads Christian supremacy has made in our political life, and the dangers it poses (Part I). I will then consider the Kennedy speech, and the context in which it was made (Part II), and contrast it with the approaches to religious politics of selected Republican and Democratic candidates who sought the presidency in 2008 (Part III). I will then assess the status of religious campaigning in 2008, with special attention to the innovative actions and proposals of Barack Obama (Part IV).

I. CHRISTIAN SUPREMACY

If faith is destined to be a significant part of our politics, it must be subject to the same robust, sometimes bruising, criticism that other political ideas are subject to, and those who espouse faith-based arguments must not be permitted to shield themselves from searching scrutiny because their religion is sacred. In fact, getting scorched in public debate is one way certain politically aggressive Christian supremacists can be defeated in their attempt to impose their religious values on the rest of us.

In recent years, we have had ample evidence of pro-Christian favoritism from elected or appointed leaders at all levels of the government. Too often, it appears that some of the nation's officials have been flirting with state theology. Consider the following examples, drawn from all three branches of government, from both state and federal officeholders, and from the nation's military. They demonstrate the interlacing of Christianity and governance that effectively endorses particular religious beliefs, confers special privileges on religious grounds, and consigns non-Christians to second class status in settings as diverse as the public school classroom and the state department of motor vehicles:

29. PETER IRONS, *GOD ON TRIAL* 191 (2007).

- A president of the United States, after promising at his inauguration that “church . . . synagogue and mosque . . . will have an honored place in our plans and in our laws,”³⁰ funneled taxpayer funds to “faith-based” organizations, and the Supreme Court denied standing to taxpayers who objected to these expenditures as unconstitutional.³¹
- A state-funded prison program in Iowa, ruled invalid on Establishment Clause grounds, illustrated the presence of undisguised Christian proselytizing and indoctrination of prisoners in faith-based programs.³²
- A Supreme Court justice said the state can engage in speech that privileges the views of religious believers over nonbelievers, and monotheistic religions over polytheistic and non-theistic religions.³³ Another justice thinks that state religious establishments are compatible with the Constitution because the First Amendment’s prohibition on laws “respecting an establishment of religion” should not be applied to the states.³⁴
- A judge of Alabama’s highest court, in a 2005 case, repeatedly cited and quoted scripture to justify his decision in a child custody case. He relied heavily upon two books of the Bible, Romans and Proverbs, for his views on the law of the state, and insisted the law must defer to the “ultimate source of all legitimate authority, God.”³⁵ Parental rights, he asserted, “are given by God, who as the Creator determines their nature and limits.”³⁶ God was not a casual reference; the word appeared seventeen times throughout the opinion. The father in the case had been woefully lax in his parental role, but the judge declared that God’s

30. Inaugural Address, 37 WEEKLY COMP. PRES. DOC. 209–11 (Jan. 20, 2001) (transcript of President George W. Bush’s Inaugural Address).

31. *Hein v. Freedom From Religion Foundation, Inc.*, 127 S. Ct. 2553 (2007).

32. *Ams. United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406 (8th Cir. 2007).

33. *McCreary County*, 545 U.S. at 907 (Scalia, J., dissenting). For a critical analysis (and thorough rejection) of Scalia’s view, see Thomas Colby, *A Constitutional Hierarchy of Religions? Justice Scalia, the Ten Commandments, and the Future of the Establishment Clause*, 100 NW. U. L. REV. 1097 (2006). Martha Nussbaum also persuasively rejects Scalia’s reasoning. See MARTHA NUSSBAUM, LIBERTY OF CONSCIENCE 268–69 (2008).

34. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 50 (2004) (Thomas, J., concurring) (stating that the Establishment Clause protects state establishments from congressional interference).

35. *Ex parte G.C., Jr.*, 924 So. 2d 651, 676 (Ala. 2005) (Parker, J., dissenting).

36. *Id.* at 678.

law would grant him custody anyway. Although the judge was writing in dissent and speaking only for himself, his judicial colleagues, in the course of six separate opinions in the case, did not criticize the dissent's invocation of God and the Bible, nor did they seem to mind the dissenter's evident willingness to be God's interpreter.³⁷

- A school board in Pennsylvania directed public schools to question the teaching of evolution because it undermined Christian beliefs. Though a federal judge found the board's policy unconstitutional,³⁸ the crusade against teaching Darwin's theory continues in proposals before school boards around the nation.³⁹ It is by no means clear that the current Supreme Court would strike down such proposals if they were adopted.⁴⁰
- A state governor, proclaimed as a champion of the Christian Right, is quoted as saying, "in my faith, you give a hundred percent of yourself to God."⁴¹ He was lauded as a potential vice-presidential candidate on the 2008 Republican Party ticket.
- Evangelical Christianity is close to an established religion at U.S. military academies. A scandal over officially sponsored Christian proselytizing of cadets, harassment, and anti-Semitism erupted at the Air Force Academy in 2005.⁴² West Point officers have repeatedly stressed the importance of religion to its cadets and read prayers at meetings where attendance is mandatory; the Naval

37. See, e.g., *id.* at 668 (Bolin, J., concurring). Judge Bolin agreed with the dissent that parental rights come from God, but argued that with these rights come responsibilities which the child's father in the case had failed to meet:

With parental rights, ordained by God, come parental responsibilities, just as much ordained by God. In fact, we can say that the more sacred the right, the more solemn the responsibility. The defaults of the father to his divinely appointed parental responsibilities throughout his child's life can only be described as egregious.

Id.

38. See *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707 (M.D. Pa. 2005).

39. See, e.g., Laura Beil, *Opponents of Evolution Are Adopting New Strategy*, N.Y. TIMES, June 4, 2008, at A14; Editorial, *Louisiana's Latest Assault on Darwin*, N.Y. TIMES, June 21, 2008, at A16.

40. See Newman, *supra* note 26, at 11.

41. Adam Nossiter, *In Louisiana, Inklings of a New (True) Champion of the Right*, N.Y. TIMES, June 2, 2008, at A12 (quoting Governor Bobby Jindal).

42. See Laurie Goodstein, *Air Force Chaplain Tells of Academy Proselytizing*, N.Y. TIMES, May 12, 2005, at A16; Jennifer Siegel & E.B. Solomont, *Scandal over Proselytizing Hits Air Force*, JEWISH DAILY FORWARD, May 20, 2005, at 3; Josh White, *Intolerance Found at Air Force Academy: Military Report Criticizes Religious Climate but Does Not Cite Overt Bias*, WASH. POST, June 23, 2005, at A02.

Academy has lunchtime prayers at its mandatory weekday lunch for midshipmen.⁴³

- A top Pentagon Army general, William G. Boykin, speaking regularly to Christian evangelical groups, called the nation's battle with Islamic militants a contest between Satan and Christianity and characterized a Muslim leader in Somalia as someone who worshiped "an idol" and not "a real God."⁴⁴
- A forty-three-foot tall concrete cross situated on publicly owned land in San Diego, California, honors the nation's armed forces. Defenders of the cross lost a seventeen-year-long litigation battle when the courts found the display violated the California Constitution. Then, local congressmen intervened and steered a bill through the U.S. Congress to save the cross. The first section designated the site as a national memorial; the second section authorized the purchase of the land by the federal government and provided for continued maintenance of the memorial.⁴⁵ Fresh litigation has begun over the cross. Jewish veterans challenged the laws as a violation of the Establishment Clause of the First Amendment.⁴⁶ In 2008, a federal district judge minimized the religious symbolism of the huge cross and denied their claim.⁴⁷ The challengers' appeal is pending.
- The Alliance Defense Fund ("ADF"), a Christian advocacy organization, told ministers around the nation to endorse candidates from their pulpits, despite a federal law that withdraws tax exempt status from churches that endorse political candidates. The ADF plans to challenge the law by provoking enforcement actions by the IRS. It claims that "[t]he Bible and scripture ap-

43. Neela Banerjee, *Religion and Its Role Are in Dispute at the Service Academies*, N.Y. TIMES, June 26, 2008, at A14; Press Release, Ams. United for Separation of Church and State, Army Base Cannot Coerce Soldier Trainees to Attend Church Services, Says Americans United (July 23, 2008), available at <http://www.au.org/site/News2?abbr=pr&page=NewsArticle&id=9965> (questioning a practice giving relief from training to soldiers at Fort Leonard Wood in Missouri if they agreed to attend local Christian church service).

44. Douglas Jehl, *Bush Says He Disagrees with General's Remarks on Religion*, N.Y. TIMES, Oct. 23, 2003, at A7. While President Bush said the comments "didn't reflect my opinion," the general, William G. Boykin, was not reassigned and the defense secretary ignored calls for the general's resignation. A later report indicated some Army rules were violated but no corrective action was made public. *Id.*

45. H.R. 5683, 109th Cong. (2006).

46. *Jewish War Veterans of the U.S., Inc. v. Gates*, 506 F. Supp. 2d 30 (D.D.C. 2007); *Paulson v. City of San Diego*, 294 F.3d 1124 (9th Cir. 2002) (en banc).

47. *Trunk v. City of San Diego*, 568 F. Supp. 2d 1199, 1202 (S.D. Cal. 2008); see also Randal C. Archibold, *Federal Judge Say Cross Can Stay on San Diego Hill*, N.Y. TIMES, Aug. 1, 2008, at A16.

plies to every aspect of life, including who we elect.” A Minnesota pastor, Gus Booth, deliberately violating the law, told his church members “if you are a Christian, you cannot support a candidate like Barack Obama or Hillary Clinton for president.”⁴⁸ He vowed to direct his congregants to vote for John McCain.

- The state of South Carolina decided to give its residents the opportunity to buy license plates with the words “I Believe,” together with an image of a cross set against the background of a stained glass window.⁴⁹ The legislature had previously allowed motorists to choose to display the message “Choose Life” on state-made license plates, but a federal appeals court ruled that unconstitutional.⁵⁰ Despite this history, both houses of the South Carolina legislature unanimously passed the new Christian license plate law.⁵¹
- Indiana citizens challenged the longstanding practice of the state’s House of Representatives of starting each session with a prayer which was often led by clergy of the Christian faith. A substantial number of the prayers were offered in the name of Jesus, Christ, the Savior, or the Son. Prayer leaders assumed to speak on behalf of all listening, both on the floor and in the public gallery. One reverend opened his prayer by saying, “Whatever you do in word or deed, do all in the name of Lord Jesus, giving thanks through Him to God the Father.” Another gave thanks to the Father “for our Lord and Savior Jesus Christ,” and then, at the Speaker’s invitation, sang “Just a Little Talk with Jesus.” A third said:

As a minister of the gospel, I exercise my right to declare this room a hallowed place. I invite into this room, into the proceedings of the day, . . . to each person, the mighty Holy Spirit of God. Holy Spirit, give these here the mind of Christ. . . . I ask this in the name of Jesus Christ.⁵²

Indiana citizens were denied standing to challenge the practice.⁵³

The modern Republican Party has seemed perfectly willing to jettison the concept of separation of church and state in order to energetically court religious

48. Russell Goldman, *Pastors Challenge Law, Endorse Candidates From Pulpit*, ABC NEWS, June 20, 2008, <http://abcnews.go.com/Politics/Vote2008/Story?id=5198068&page=1>.

49. Sean D. Hamill, *South Carolina to Offer Cross on Car Plates*, N.Y. TIMES, June 6, 2008, at A14.

50. *Planned Parenthood of S.C., Inc. v. Rose*, 361 F.3d 786 (4th Cir. 2004).

51. *See* Hamill, *supra* note 49.

52. *Hinrichs v. Speaker of House of Representatives of Ind. Gen. Assembly*, 506 F.3d 584, 604 (2007) (Wood, J., dissenting); *see also id.* at 603–04 (providing facts about the assembly’s prayers).

53. *Id.* at 585.

Christian evangelical voters. Openly religious politicking by Ronald Reagan characterized his campaign for president in 1980. When Reagan attended a meeting of 15,000 conservative church leaders in Dallas, he applauded the comments of television evangelist Rev. James Robison, whose speech included lines such as: “I’m sick and tired of hearing about all of the radicals and the perverts and the liberals and the leftists and the Communists coming out of the closet. . . . It’s time for God’s people to come out of the closet.”⁵⁴ Reagan’s own speech to the group questioned the principle of separation of religion and government, and he proclaimed his faith in the Bible, not merely as a spiritual guide, but as a policy guide: “Indeed, it is an incontrovertible fact . . . that all the complex and horrendous questions confronting us at home and worldwide have their answer in that single book.”⁵⁵

Reagan acknowledged that there might be something inappropriate about a formal endorsement of his candidacy from the pulpits of America, but he adeptly reversed the usual language of political sponsorship by saying, “I want you to know I endorse you and what you are doing.”⁵⁶ He complimented conservative Christian groups for creating “a new vitality in American politics.”⁵⁷ When accepting the Republican nomination, Reagan concluded his speech: “Can we begin our crusade joined together in a moment of silent prayer?”⁵⁸ Reagan succeeded in winning over Christian evangelicals, and they have constituted a key part of the Republican base ever since.

Perhaps no one played the religion card in national politics as successfully as George W. Bush and his principal strategist Karl Rove. As Garry Wills observes, Rove’s “real skill lay in finding how to use religion as a political tool,” and he expertly stirred up the resentments religious conservatives felt over abortion, homosexuality, Darwinism, woman’s liberation, pornography, and school prayer.⁵⁹ Bush signaled his religious focus early in his first presidential campaign during a debate among Republican candidates in December 1999 in Des Moines, Iowa. When the candidates were asked their favorite philosopher, Bush named Jesus. Bush operatives organized

54. Howell Raines, *Reagan Backs Evangelicals in Their Political Activities*, N.Y. TIMES, Aug. 23, 1980, § 1, at 8.

55. *Id.* Berlinerblau calls this statement “demagogic and ill-advised.” BERLINERBLAU, *supra* note 23, at 140. As president, Reagan issued a proclamation declaring 1983 the Year of the Bible. Proclamation, Proclamation No. 5018, 48 Fed. Reg. 5527 (Feb. 3, 1983). Reagan was himself expanding on the efforts of his Democratic party rival, Jimmy Carter, whose appeal to born-again Christians like himself helped Carter win the presidency in 1976. RANDALL BALMER, *GOD IN THE WHITE HOUSE: A HISTORY* 80 (2008).

56. Raines, *supra* note 54.

57. *Id.* As president, Reagan did not deliver on the major policy goals of his religious base. BALMER, *supra* note 55, at 124 (noting that the Religious Right did not get school prayer restored or abortion banned, and they were disappointed by the appointment of Sandra Day O’Connor to the Supreme Court).

58. BALMER, *supra* note 55, at 117. Political campaigns now routinely sound like religious crusades. HOWARD FINEMAN, *THE THIRTEEN AMERICAN ARGUMENTS: ENDURING DEBATES THAT DEFINE AND INSPIRE OUR COUNTRY* 65 (2008).

59. GARRY WILLS, *HEAD AND HEART: A HISTORY OF CHRISTIANITY IN AMERICA* 516 (2007).

churches and their pastors throughout the nation and actively instructed them on how to engage in political activities on behalf of the Republican Party.⁶⁰ During the Bush 2004 re-election campaign, some churches “conducted massive voter registration drives . . . handed out sermons and prayer pamphlets, put voting literature in their tract racks, and held weeks-long voter education programs with conservative speakers.”⁶¹

Bush spoke regularly of his faith and also mastered the art of speaking in religious code, making references in his remarks that religious voters would pick up but that others might easily miss.⁶² In an October 8, 2004, televised presidential campaign debate, Bush mentioned his support for judges who would not improperly decide cases, giving the example of the Supreme Court’s decision in *Dred Scott v. Sanford*.⁶³ Since *Dred Scott* was last an issue in the election of 1860, modern day viewers might well wonder why Bush was even raising the case. But conservative evangelicals would recognize Bush’s remark as a clear criticism of *Roe v. Wade*, which the religious right saw as similar to, and as wrong as, *Dred Scott*.⁶⁴ Through the use of such coded messages, politicians could appeal to religious voters while not alienating moderates who might reject direct appeals to the Christian Right. This sort of politicized surreptitious communication creates what commentator E.J. Dionne, Jr. calls “a strained, dysfunctional, and often dishonest political dialog.”⁶⁵

In office, Bush and Rove frankly promoted a faith-based government. Garry Wills concluded that “Rove made the executive branch of the United States more openly and avowedly religious than it had ever been.” Some federal offices were the site of religious services during lunch hours, and employees felt pressured to attend.⁶⁶ One commentator identified the times as the “American Disenlightenment” and said the “[e]ffects can be seen in science, climatology, federal drug approval, biological research, disease control, and, not least, in the tension between evolution theory and the religious alternatives—creationism and so-called intelligent design.”⁶⁷

60. See Deborah Caldwell, *A Small Town's 'Spiritual Battle' to Get Bush Reelected*, BELIEFNET, <http://www.beliefnet.com/News/Politics/2004/10/A-Small-Towns-Spiritual-Battle-To-Get-Bush-Reelected.aspx> (last visited Mar. 3, 2008); Jonathan Mahler, *The Soul of the New Exurb*, N.Y. TIMES, Mar. 27, 2005 § 6 (Magazine), at 30, 37.

61. Caldwell, *supra* note 60.

62. See DAVID KUO, TEMPTING FAITH 60 (2006).

63. 60 U.S. 393 (1857).

64. WILLS, *supra* note 59, at 524–25 (2007). A recent commentary links the two cases in this way: “The case of *Roe v. Wade*, which denies legal personhood to unborn human beings to clear the way for their destruction, follows in the tradition of *Dred Scott*.” Charles I. Lugosi, *How Secular Ideology Is Marginalizing the Rule of Law and Catholic Contributions to Law and Society II: The Ten Commandments and the Rejection of Divine Law in American Jurisprudence*, 47 J. CATH. LEGAL STUD. 145, 154 (2008).

65. DIONNE, *supra* note 13, at 50.

66. See Judy Keen, *White House Staffers Gather for Bible Study*, USA TODAY, Oct. 13, 2002, at 2A.

67. KEVIN PHILLIPS, AMERICAN THEOCRACY: THE PERIL AND POLITICS OF RADICAL RELIGION, OIL, AND BORROWED MONEY IN THE 21ST CENTURY 217 (2006).

Even some Republicans found the trend disturbing. Rep. Christopher Shays (R-Conn.) said bluntly: “This Republican Party of Lincoln has become a party of theocracy.”⁶⁸ Former Republican Senator John C. Danforth complained in a *New York Times* op-ed piece that “Republicans have transformed our party into the political arm of conservative Christians.”⁶⁹ Their remarks carried a distant echo from John F. Kennedy’s 1960 campaign speech in which he warned that the presidency must not “be humbled by making it the instrument of any one religious group.”⁷⁰

A political landscape where dedicated activists from the majority religion strive for domination will inevitably foster religious animosity. It is sometimes said that the First Amendment’s respect for religious liberty and prohibition on religious establishment saved America from the kinds of religious wars that bedeviled Europe.⁷¹ We may not have suffered religious warfare, but we have still experienced strife and religious persecution in communities across the nation, caused by the dangerous intensity that religious argument generates. Perhaps the most visible sites of the fight over Christian supremacy have been local public school systems. Parents seeking to assert a constitutional right to be free of religious impositions have generated stunningly abusive community reactions. In Delaware, for example, a school district settled a 2008 case brought by two Jewish families objecting to Christian prayers being conducted at a variety of events in their children’s school.⁷² Despite ample Supreme Court precedent disallowing the activity, a minister’s prayer invoking Jesus as the only path to truth was delivered at the high school graduation ceremony.⁷³ Indeed, the school board itself began its sessions with Christian prayer. The initiation of this lawsuit led the community to erupt in anti-Semitic outrage: “Anger spilled onto talk radio, in letters to the editor and at school board meetings attended by hundreds of people carrying signs praising Jesus.”⁷⁴ One Jewish family moved out of the area to avoid the vicious reaction, which included threats and the taunting of their child as a “Jew boy.”⁷⁵

High school cheerleaders in East Brunswick, New Jersey, were similarly victims of anti-Semitism when their parents complained about a football coach who led organized prayers for the team and the cheerleading squad. As described by Judge McKee of the U.S. Court of Appeals for the Third Circuit, the two Jewish cheerleaders at the school “were publicly ridiculed by other students at athletic events, and the cheerleading squad was taunted, bullied, and booed. The cheerleaders were

68. Adam Nagourney, *GOP Right Is Splintered on Schiavo Intervention*, N.Y. TIMES, Mar. 23, 2005, at A14.

69. John C. Danforth, Editorial, *In the Name of Politics*, N.Y. TIMES, Mar. 30, 2005, at A17.

70. John F. Kennedy, Address to the Greater Houston Ministerial Association (Sept. 12, 1960), <http://www.americanrhetoric.com/speeches/jfkhoustonministers.html> [hereinafter Kennedy Speech].

71. See, e.g., *Hinrichs*, 506 F.3d at 600–01 (Wood, J., dissenting); WILLS, *supra* note 59, at 6.

72. Neela Banerjee, *School Board to Pay in Jesus Prayer Suit*, N.Y. TIMES, Feb. 28, 2008, at A15.

73. *Id.* School graduation prayers were ruled unconstitutional in *Lee v. Weisman*, 505 U.S. 577 (1992).

74. Banerjee, *supra* note 72.

75. *Id.* Some schoolboys pointed out the plaintiff’s child as “that boy who’s suing Jesus.” *Id.*

even harassed and threatened on a student [I]nternet 'blog.'"⁷⁶ Judge McKee's opinion quoted some of the "disgusting" Internet comments, which included obscene references to Jews and praise for Hitler.⁷⁷

Religiously inspired hate, directed at those who protest religious impositions, is an American tradition. Plaintiffs asserting their constitutional rights under the First Amendment's Establishment Clause have always taken grave risks. The parties challenging school prayer in the 1962 case of *Engel v. Vitale*⁷⁸ suffered through vile hate mail, an endless series of harassing incidents including telephone calls day and night at their homes, and threats of arson, kidnapping, bodily harm, and death.⁷⁹ One family received 8000 telephone calls in the first week after the U.S. Supreme Court's decision vindicating their claim. Classmates cursed and shunned the plaintiffs' children, and adults refused to associate with the plaintiffs.⁸⁰ Anti-Semitic slurs were commonplace. Family members endured screamed insults and were denounced as communists and atheists. Before that, the plaintiff in *Illinois ex rel. McCollum v. Board of Education* challenged religious instruction in her son's school; she lost her job, had her home vandalized, was targeted as anti-God in the local newspaper, had rotten tomatoes thrown at her, and received unrelenting hate mail. She sent her son away to live with his grandparents and to attend a different school far from home.⁸¹

Teachers and principals have also been protagonists in these clashes. One Georgia middle school teacher battled administration, parents, teachers, and students who "sent [her] e-mail messages and letters, stopped her in the hall, called board members, demanded meetings, requested copies of the PBS videos that she showed in class," in a relentless effort to induce her to revise her science lessons on evolution.⁸² She finally prevailed after winning the support of former Governor and President Jimmy Carter, "but the stress of the confrontations led her to accelerate her planned retirement date."⁸³

A Florida public school principal initiated what a judge later termed an anti-gay "witch hunt" in his effort to convince students that the Bible condemned homosexuality.⁸⁴ A Tennessee principal and some teachers wore an "I prayed" sticker

76. *Borden v. Sch. Dist. Twp. East Brunswick*, 523 F.3d 153, 184 (3d Cir. 2008) (McKee, J., concurring).

77. *Id.*

78. 370 U.S. 421 (1962).

79. BRUCE J. DIERENFIELD, *THE BATTLE OVER SCHOOL PRAYER: HOW ENGEL V. VITALE CHANGED AMERICA* 107–08, 138–44 (2007).

80. *Id.* at 139.

81. See VASHTI CROMWELL MCCOLLUM, *ONE WOMAN'S FIGHT* 80 (1951) (plaintiff's autobiography).

82. Michael Winerip, *Evolution's Lonely Battle in a Georgia Classroom*, N.Y. TIMES, June 28, 2006, at B9.

83. *Id.* For other cases in which schools have sought to inject religion into science classes, see Newman, *supra* note 26.

84. *Gillman ex rel. Gillman v. School Bd.*, 567 F. Supp. 2d 1359, 1372 (N.D. Fla. 2008). The principal even questioned one student about her sexual orientation and then "outed" her to her parents. *Id.* at 1362.

in school after attending a religious event hosted on school property by a Christian group calling itself Praying Parents. The principal allowed the group numerous privileges at the school, and had posted a copy of the Ten Commandments in the school hallway. A federal judge found the principal's actions amounted to an endorsement of Christianity.⁸⁵

The most offensive religious supremacists are smugly self-righteous, lack all humility, and presume to speak for God. Barrett Duke, for example, an official of the Southern Baptist Convention's Ethics and Religious Liberty Commission, responded to the California Supreme Court's opinion recognizing gay marriage by saying:

These judges may think they know more about marriage than the rest of us, but I am confident they don't know more about marriage than God. Marriage is the union of one man and one woman. . . . That's not only my opinion and the opinion of most of the people in this country, it's God's opinion, and His opinion overrules the opinion of any judges.⁸⁶

Religious politics is most hypocritical when it justifies evil. Hate-filled religion should be a contradiction in terms. But what are we to make of a religious convention calling itself the "International Conference on Homo-Fascism," which met in Milwaukee under the auspices of a group known as Wisconsin Christians United?⁸⁷ An invited speaker, Grant E. Storms, who is a Louisiana pastor and radio talk show host, told the gathering that the homosexual movement was united in its desire "to trample us"; homosexuals, he said, felt "they have to eliminate us and the Word of God if they want to succeed." He declared that the two groups "can't peacefully co-exist."⁸⁸ He inveighed against "stinking wicked judges" and "bad legislators" and concluded that the only solution was to take the battle "to the streets."⁸⁹ He drew an analogy to a Bible story in which Jonathan kills the Philistines, and called the modern homosexual movement the Philistine Army.⁹⁰ He shouted "Wheew! Come on. Let's go. God has delivered them all into our hands. Hallelujah! Boom, boom, boom, boom, boom. There's twenty. Whew. Ca-Ching. Yes. Glory. Glory to God. Let's go through the drive-thru at McDonald's and come back and get the rest."⁹¹ His rant, and apparent call to violence, was reminiscent of Rev. Rod Parsely's

85. *Doe v. Wilson County Sch. Sys.*, 564 F. Supp. 2d 766, 794–95 (M.D. Tenn. 2008). Posting of the Ten Commandments in school has long been recognized as a constitutional violation. *Stone v. Graham*, 449 U.S. 39 (1980).

86. Michael Foust, *California Supreme Court Legalizes "Gay Marriage,"* BAPTIST PRESS, May 15, 2008, <http://www.bpnews.net/bpnews.asp?ID=28057>.

87. *See Storms*, 750 N.W.2d at 739.

88. *Id.* at 743.

89. *Id.*

90. *Id.* at 742–43.

91. *Id.* at 743.

comment: "We were built for battle! We were created for conflict! We get *off* on warfare!"⁹²

Vitriolic attacks have extended beyond schools, families, and homosexuals to the nation's judges, who have been a special target of the Christian supremacist movement. Few issues inflame the Christian supremacists more than high profile cases on school prayer, abortion, public display of the Ten Commandments, and homosexual rights. A prominent religious right conference in 2005 was convened to denounce what organizers called the judiciary's "War on Faith."⁹³ Taking up the theme of "judicial tyranny," some speakers targeted Justice Anthony Kennedy, in part because of his authorship of the majority decision in *Lawrence v. Texas* striking down state criminal sodomy laws.⁹⁴ A conference speaker, lawyer-author Edwin Vieira, approvingly quoted a statement of Joseph Stalin, which "worked very well for him, whenever he ran into difficulty: 'no man, no problem.'"⁹⁵ Vieira urged the impeachment of Justice Kennedy, but his choice of words and their murderous source demonstrate the fury and malice that never seems far from the surface in such advocacy.

Right to life cases particularly incense the Christian Right. A former president of the ABA, Robert J. Grey, Jr., observed that in the midst of the national focus on the Terri Schiavo case,⁹⁶

many commentators and observers . . . crossed the line in using this tragedy to needlessly, gratuitously, and viciously attack the dedicated men and women who serve as America's judges. . . . While it is appropriate . . . to debate the dilemmas brought to light by Terri Schiavo's case, there is no need for personal attacks on the judges in this case. They are not killers as some have called them, nor are they activists bent on pushing an ideological agenda.⁹⁷

Christian supremacists found willing allies in the Republican Party, whose officials joined in the attacks on judges, threatening to punish courts by restricting jurisdiction over specific cases, cutting budgets, and creating a new inspector general to oversee the federal judiciary.⁹⁸

92. Kimberly Kindy, *In Rebuking Minister, McCain May Have Alienated Evangelicals*, WASH. POST, May 29, 2008, at A08.

93. See Dana Milbank, *And the Verdict on Justice Kennedy Is: Guilty*, WASH. POST, Apr. 9, 2005, at A03.

94. *Id.* (discussing *Lawrence v. Texas*, 539 U.S. 558 (2003)).

95. *Id.*

96. *Schiavo ex rel. Schindler v. Schiavo*, 358 F. Supp. 2d 1161 (M.D. Fla. 2005). The Schiavo case involved a strenuous effort by religious activists to keep alive a woman in an irreversible vegetative state, against her previously stated wishes and the wishes of her husband. The Florida courts allowed feeding tubes to be removed, and federal courts refused to intervene to reverse the lower court's decision. See ARTHUR L. CAPLAN, JAMES J. MCCARTNEY & DOMINIC A. SISTI, *THE CASE OF TERRI SCHIAVO: ETHICS AT THE END OF LIFE* (2006).

97. Keith Maristuen, *Commentary, President's Message: Juries, Vigilantes & Terri Schiavo: We Need to Stop Tide Against Judicial System*, MONT. LAWYER, Apr. 2005, at 4 (quoting Robert J. Grey, Jr.).

98. See The Associated Press, *Bill Limits Pledge Rulings to State Courts*, N.Y. TIMES, July 20, 2006, at A17 (discussing a bill passed by the House of Representatives prohibiting federal courts from ruling on the

These threats and the strident rhetoric accompanying them led some in the legal profession to worry about the threat to the independence of the judiciary. At its 2005 annual meeting, the American Bar Association felt it imperative to respond by condemning the persistent harsh denunciation of judges. The ABA's House of Delegates unanimously adopted a State Bar of Texas resolution decrying "attacks on the independence of the judiciary that demean the judiciary as a separate and co-equal branch of government." A report submitted by the State Bar of Texas noted the "severe and unprecedented attacks" on judges whose decisions are unpopular. "Judges have been the target of unjustified criticism simply because decisions conflict with the personal philosophies and beliefs of those who attack them."⁹⁹

Shortly after her retirement from the Supreme Court, Justice Sandra Day O'Connor gave a speech at Georgetown University in which she warned of the danger posed by those in positions of power in this country who threaten the courts.¹⁰⁰ "We must be ever vigilant against those who would strong-arm the judiciary," she said.¹⁰¹ Destroying the independence of the judicial branch of government would have the most serious consequences: "It takes a lot of degeneration before a country falls into dictatorship, but we should avoid these ends by avoiding these beginnings."¹⁰² She noted the words of former Republican House leader Tom DeLay, who excoriated federal judges in the Terri Schiavo case and issued a warning to them: "The time will come for the men responsible for this to answer for their behaviour."¹⁰³ He later condemned "an arrogant, out-of-control, unaccountable judiciary that thumbed their nose at Congress and the president."¹⁰⁴

Justice O'Connor noted that federal judges had received death threats, and she criticized the statement of a Republican senator that linked violence against judges to their unpopular judicial decisions. The senator was John Cornyn of Texas, who said after the murder of a judge in Georgia and the killings of two members of another judge's family in Illinois: "I wonder whether there may be some connection between the perception in some quarters . . . where judges are making political decisions yet

constitutional validity of the Pledge of Allegiance); Maurice Possley, *Lawmaker Prods Court, Raises Brow; Demands Longer Term in Chicago Drug Case*, CHI. TRIB., July 10, 2005, at C1.

99. *ABA Leaders Counter Recent Assaults on Attorney-Client Privilege, Respect for Judges*, 74 U.S.L.W. (BNA) 2091, 2092 (Aug. 16, 2005) [hereinafter *Respect for Judges*].

100. Justice O'Connor's office did not release the text of her speech. A report on her speech was broadcast by National Public Radio and posted on its website under the title, *Justice O'Connor Decries Republican Attacks on Courts*. See NPR Transcripts, <http://npr.org> (select "transcripts" from pull down menu; select date range of March 2006). Reports of the speech also appeared in various newspapers. See, e.g., Julian Borger, *Former Top Judge Says US Risks Edging Near to Dictatorship*, GUARDIAN (London), Mar. 13, 2006, at 19.

101. Borger, *supra* note 100.

102. *Id.*

103. *Id.*

104. *Id.*

are unaccountable to the public, that it builds up and builds up to the point where some people engage in violence.”¹⁰⁵

As these religiously-fueled disputes illustrate, the increase in partisanship and bitterness in American political life is owed in no small measure to the Christian supremacy movement. The most virulent citizens see those who disagree with them as not merely political antagonists, but violators of the Christian word of God. These crusaders are rigid and uncompromising, prone to violent words and sometimes violent deeds. Their political stance imperils Americans not only domestically but in the international arena as well. Military leaders like General Boykin, who view Christianity as superior to Islam and see the Iraqi occupation as a mission for Christ, pose severe and obvious impediments to our efforts to engage with Muslim populations around the globe. Evangelical leaders like Franklin Graham and Rod Parsley, who fire insults at Islam in the press (Graham called Islam a “very evil and wicked religion”;¹⁰⁶ Parsley termed Islam “an anti-Christ religion” and said “America was founded in part to see this false religion destroyed”¹⁰⁷) create an image of Americans as belligerent, bigoted, and intolerant people.

As Christian supremacists, these actors are no more legitimate than white supremacists were in past political eras. How our political leaders, especially those who aspire to the presidency, deal with this problem will tell us important things about the future of this country. When candidates make their religion part of their appeal to the voting public, it becomes important to know how they might fuse their religious ideology with their political decision making. To what extent does the candidate see political office as an opportunity to impose her religious views, whether on abortion, homosexuality, or other matters? Does she agree with the idea, expressed by three justices in *Planned Parenthood v. Casey*, that “[o]ur obligation is to define the liberty of all, not to mandate our own moral code”?¹⁰⁸ How accepting is the candidate of contrary religious viewpoints, and of the tradition supporting the tolerance of religious differences among the diverse American population? In dealing with foreign policy matters, does the candidate categorize the nations of the world as either good or evil, founded upon a biblical view of the world as a struggle between God and evildoers? Does a belief in God’s plan or in biblical prophesy influence the candidate’s view of the policies this nation should adopt in addressing the ongoing conflicts in the Middle East?

While asking candidates these sorts of questions does risk inflaming religious tensions in our country, it seems necessary to enable the public to learn vital information about potential leaders. Interrogation of the candidates by the press on

105. *Id.* Not all Republicans joined in the attacks on the judiciary. Republican Senator Lindsey Graham of South Carolina decried the “poisonous political atmosphere” now surrounding the judiciary. See *Respect for Judges*, *supra* note 99 (discussing remarks from Sen. Lindsey Graham quoted in a conference report at the American Bar Association Annual Meeting).

106. Ted Widmer, *Redemption Politics*, N.Y. TIMES, July 6, 2008, § MM (Magazine), at 9.

107. Neela Banerjee and Michael Luo, *McCain Cuts Ties to Pastors Whose Talks Drew Fire*, N.Y. TIMES, May 23, 2008, at A17.

108. 505 U.S. 833, 850 (1992) (plurality opinion).

religious matters might also discourage political parties from looking for candidates who hold extremist religious views that are likely to alienate many independent, moderate voters. Whatever the consequences of raising religious views to prominence, I believe we must do so if we are to avoid letting our commitment to church-state separation quietly slip away by not openly confronting that danger.

Such questions need not be relevant to future presidential campaigns if American voters came to support a more robust separation of religion and politics. But that would require a return to the past, when candidates assumed religion was a private affair, to be kept separate from the task of creating national policy. The nation debated this assumption most vigorously in the campaign of 1960, a campaign whose echoes were heard in the 2008 election. I will examine the positions on religion and politics of some of the key 2008 presidential candidates, but first I turn to the election of John F. Kennedy in 1960, a unique and instructive milestone in the history of religion and political campaigning.

II. JOHN F. KENNEDY'S SPEECH ON RELIGION AND POLITICS

Any discussion of the role of religion in modern political campaigns must look back to the speech that John F. Kennedy gave on September 12, 1960, to the Greater Houston Ministerial Association. While the speech was given during the general election campaign, Kennedy faced opposition, generated by his Catholicism, as soon as he began campaigning for his party's nomination. He addressed the issue initially in his appearances throughout the state of West Virginia, the site of the first contested Democratic Party primary, where Kennedy was opposed by Hubert Humphrey. The state's population was overwhelmingly Protestant. As Theodore H. White's classic chronicle of the 1960 campaign recognized, "the issue, it was clear, over and beyond anything [the Kennedy campaign's] organizational genius could do, was religion. . . . All other issues were secondary."¹⁰⁹ Kennedy repeatedly confronted questions about religion and said it was a personal and private matter, not a campaign issue.¹¹⁰ He managed to allay the fears of West Virginia Democrats about whether a Catholic could serve as president and be independent of his church, and on May 8, 1960, he won the West Virginia primary and went on to capture the Democratic nomination.

But in the national campaign the issue of his faith had not been laid to rest. In September 1960 the Southern Baptist Convention unanimously passed a resolution expressing its grave doubts that any Catholic should be president. A group calling itself the National Conference of Citizens for Religious Freedom, led by prominent Protestant ministers such as Norman Vincent Peale, wrote an open letter claiming that a Catholic president would be under "extreme pressure from the hierarchy of his church" to make U.S. policy comport with the views of the Vatican.¹¹¹

109. THEODORE H. WHITE, *THE MAKING OF THE PRESIDENT 1960*, at 106 (1961).

110. W.H. Lawrence, *Kennedy Tackles Issue of Religion*, N.Y. TIMES, Apr. 12, 1960, at 25.

111. "Protestant Underworld" Cited As Source of Attack on Kennedy, N.Y. TIMES, Sept. 11, 1960, at 60 [hereinafter *Protestant Underworld*].

This was the kindest thing said by the anti-Catholic forces. The president of the Southern Baptist Convention was quoted as saying, "No matter what Kennedy might say, he cannot separate himself from his church if he is a true Catholic. All we ask is that Roman Catholicism lift its bloody hand from the throats of those that want to worship in the church of their choice."¹¹²

The Protestant community, it should be noted, was sharply divided. A leading Protestant theologian, John Bennett, dean of the Union Theological Seminary, replied to the Peale group by asking, "What kind of a country do these Protestants want? A country in which 40,000,000 citizens feel that they are outsiders?"¹¹³ Bennett joined with Reinhold Niebuhr in a public statement declaring that Peale's group had "loosed the floodgates of religious bigotry."¹¹⁴ Bennett denounced the anonymous statements being circulated and the hatred they stirred up in the nation, especially in the Southern states.

The South had been solidly Democratic for a century, but many in the region were up in arms over the nomination of Kennedy, even with his Texas running mate, Lyndon Johnson.¹¹⁵ Democratic Party leaders offered replies to the anti-Catholic forces. Then Congressman Adam Clayton Powell Jr. from New York condemned the "un-Christlike, ungodly and un-American attacks" on Kennedy being made by many pastors in the South.¹¹⁶ Adlai Stevenson, the Party's nominee in 1952 and 1956, adopting a lighter tone, reportedly said, "I have always found the gospel of Paul appealing, but I find the gospel of Peale appalling."¹¹⁷

On September 12, 1960, Kennedy traveled to Houston, Texas to confront the issue head on in a speech to a conference of Protestant ministers, a far from friendly audience. The *New York Times* referred to the event as "a ticklish appearance before a Protestant clerical forum studded with militant anti-Catholics."¹¹⁸ No single speech, of course, could settle the religious issue in the state of Texas. As the *New York Times* reported, "[t]he occasion produced little indication of diminishing the sectarian controversy that has been seething throughout predominantly Protestant

112. Jake Tapper, *Will "Pulling a JFK" Be Enough for Romney?*, ABC NEWS, Dec. 2, 2007, <http://abcnews.go.com/print?id=3944320>.

113. *Protestant Underworld*, *supra* note 111, at 69.

114. John Wicklein, *Peale Quits Organization That Pushed Church Issue: Niebuhr and Bennett Say Raising of Religious Issue Spurs Bigotry*, N.Y. TIMES, Sept. 16, 1960, at A1.

115. See Gladwin Hill, *Kennedy Is Facing Trouble in Texas: Religion a Hurdle but Real Conflict Lies in State's Rising Conservatism*, N.Y. TIMES, Sept. 11, 1960, at 69 (recounting how a speaker at a public meeting in Dallas referred to Johnson as "Lyndon Benedict Johnson").

116. Emanuel Perlmutter, *Powell Attacks Clergy of South: Harlem Pastor at Interfaith Rally Decries Defaming of Kennedy's Religion*, N.Y. TIMES, Sept. 26, 1960, at 28.

117. TED SORENSEN, *COUNSELOR: A LIFE AT THE EDGE OF HISTORY* 163 (2008) (quoting Adlai Stevenson). Kennedy himself, upon hearing that Peale had said his election would change the country forever, remarked that he would like to take the remark as a compliment but he did not think Peale meant it as one. *Id.*

118. Gladwin Hill, *Reaction of Ministers*, N.Y. TIMES, Sept. 14, 1960, at 1 (reporting for a series of stories headlined *How Kennedy Is Being Received: The Texas and California Tours*).

Texas ever since the Massachusetts Senator's nomination."¹¹⁹ But the speech was credited with helping his campaign nationwide, and is often remembered when the issue of religion and politics arises.

In the speech, Kennedy made clear that, in his view, his religious beliefs were private and of no concern to voters. Several unequivocal statements stand out:

- “[I]t is apparently necessary for me to state once again—not what kind of church I believe in, for that should be important only to me—but what kind of America I believe in.”
- “I believe in a President whose religious views are his own private affair”
- “I do not speak for my church on public matters; and the church does not speak for me.”¹²⁰

Kennedy strongly endorsed the notion of separation of church and state, and asserted that he would not be influenced by Catholic Church leaders:

I believe in an America where the separation of church and state is absolute—where no Catholic prelate would tell the President (should he be Catholic) how to act, and no Protestant minister would tell his parishioners for whom to vote—where no church or church school is granted any public funds or political preference

. . . .

. . . Whatever issue may come before me as President—on birth control, divorce, censorship, gambling or any other subject—I will make my decision in accordance with . . . what my conscience tells me to be the national interest, and without regard to outside religious pressures or dictates. And no power or threat of punishment could cause me to decide otherwise.¹²¹

He declared religious exclusion from the presidency a blot on America and its reputation at home and abroad:

[I]f this election is decided on the basis that 40 million Americans lost their chance of being President on the day they were baptized, then it is the whole nation that will be the loser, in the eyes of Catholics and non-Catholics around the world, in the eyes of history, and in the eyes of our own people.¹²²

Kennedy's goal in the speech was a limited one. His hope was to convince voters not to vote *against* him simply because his religion differed from theirs. He did not touch upon the converse aspect of religious politics: that Catholics might vote for

119. *Id.* at 32.

120. Kennedy Speech, *supra* note 70.

121. *Id.*

122. *Id.*

him simply *because* he was Catholic. In fact, Kennedy won roughly eighty percent of the Catholic vote in 1960, much more than the Catholic vote four years earlier for Democrat Adlai Stevenson.¹²³

Kennedy argued for tolerance of difference, fairness for all Americans, and the irrelevance of religion to governing. He made very clear his independence from the Catholic hierarchy. Interestingly, Kennedy talked of conscience being his guide, rather than religious beliefs. For Kennedy, conscience may well have had nothing to do with his religious beliefs. Jackie Kennedy was said to have remarked about the debate over her husband's religion that the whole controversy was so unfair because he was such a poor Catholic.¹²⁴ Perhaps because he was never very devout, Kennedy did not seriously consider the question of what role religious belief might play in the decisions of a president whose conscience was significantly influenced by religious beliefs.

It is also noteworthy that Kennedy, in applying the doctrine of separation of church and state and citing the First Amendment, made no reference to the final interpretive authority on the Constitution, the U.S. Supreme Court. A case reference was readily available, as the Court had decided *Everson v. Board of Education* in 1947, using very strong language to endorse the separation of church and state.¹²⁵ Justice Hugo Black, writing for the majority, declared: "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."¹²⁶

Despite this unequivocal language, there were reasons for Kennedy to exclude the case from his speech. First, the decision itself did not live up to its absolutist rhetoric. The 5–4 majority held that the state of New Jersey could continue a public transportation program that provided public funds for bus transportation for both parochial school students and public school students. The program did not violate the First Amendment's Establishment Clause, according to the majority, because it was secular in nature, no more an official support for religious institutions than was the provision of municipal fire and police protection to church buildings.¹²⁷ In dissent, Justice Robert Jackson could not reconcile the majority's rhetoric with its result, complaining that

the undertones of the opinion, advocating complete and uncompromising separation of Church from State, seem utterly discordant with its conclusion yielding support to their commingling in educational matters. The case

123. E.J. Dionne Jr., *The Unavoidable Issue*, WASH. POST, Aug. 5, 2008, at A19.

124. MICHAEL A COHEN, *LIVE FROM THE CAMPAIGN TRAIL: THE GREATEST PRESIDENTIAL CAMPAIGN SPEECHES OF THE TWENTIETH CENTURY AND HOW THEY SHAPED MODERN AMERICA* 265 (2008). Ted Sorensen recounts that Kennedy himself had a wry comment about the Catholic vote, to the effect "that 'the nuns were all for' him, though he was 'not so sure of the Monsignors.'" SORENSEN, *supra* note 117, at 165.

125. See 330 U.S. 1 (1947).

126. *Id.* at 18.

127. See *id.* at 17.

which irresistibly comes to mind as the most fitting precedent is that of Julia who, according to Byron's reports, "whispering I will ne'er consent,— consented."¹²⁸

Justice Rutledge, writing for four dissenters, repeatedly cited James Madison's *Memorial and Remonstrance Against Religious Assessments* to demonstrate the need to be more vigilant than the majority in keeping religion and the state separate.¹²⁹

The second reason for Kennedy not to mention the Court was to avoid offending the political sensibilities of his Democratic political base, which then included the South. The wounds felt in the region from the decision in *Brown v. Board of Education*¹³⁰ were still raw. President Eisenhower had sent the troops of the 101st Airborne to ensure the integration of the public high school in Little Rock, Arkansas, only three years before Kennedy's speech. Battles to integrate other schools, like James Meredith's struggle to attend the University of Mississippi, lay ahead.¹³¹ Citing the Court as a source of constitutional wisdom would hardly persuade the multitude of Southerners engaged in massive resistance to the Court's school desegregation decree in *Brown*.

While Kennedy did not let the Supreme Court influence his speech, his speech may well have influenced the Court. A year and a half after his election as president, the Court handed down its landmark decision in *Engel*,¹³² followed in another year by *School District of Abington Township v. Schempp*,¹³³ together prohibiting state-sponsored reading of prayers and Bible verses in public school. Reading the Bible to schoolchildren, in particular a version of the Bible favored by Protestants and protested by Catholics, had been a sore point between Catholics and Protestants for many years,¹³⁴ and one of the reasons why private Catholic schools were created.¹³⁵ The election of a Catholic president—one who had spoken out so forcefully against religious bias and in favor of the "absolute" separation of church and state—coupled with the Court's demonstrated resolve to apply the Constitution to America's schools, no doubt emboldened the Court in its controversial attack on school prayer. The Court endured a new round of criticism, illustrated by the comment of one southern

128. *Id.* at 19 (Jackson, J., dissenting).

129. *See id.* at 28–63. Justice Rutledge even attached Madison's text as an appendix to his dissent. *Id.* at 63.

130. 347 U.S. 483 (1954).

131. Meredith was admitted to the university with the aid of federal marshals on October 1, 1962. Rioting on campus left two dead. *See* KARL FLEMING, *SON OF THE ROUGH SOUTH: AN UNCIVIL MEMOIR* 264–89 (2005) (providing a dramatic rendition of the story of his admission).

132. 370 U.S. 421 (1962) (prohibiting state-sponsored reading of prayers in public school).

133. 374 U.S. 203 (1963) (prohibiting state-sponsored reading of Bible verses in school).

134. *See* *Neb. ex rel. Freeman v. Scheve*, 91 N.W. 846 (Neb. 1902). In holding that a schoolteacher's reading of the King James version of Bible is religious and sectarian, in violation of state constitutional ban, the court noted that the history of Bible translations shows some publishers and translators were persecuted, imprisoned, and tortured for producing their versions. *Id.* at 870.

135. DIONNE, *supra* note 13, at 36, 72.

congressman, Rep. L. Mendel Rivers (D-S.C.), who accused the Court of “legislating—they never adjudicate—with one eye on the Kremlin and the other on the NAACP.”¹³⁶ At a news conference, President Kennedy lent his prestige to the Court. He responded to a question about the adverse effects of the Court’s ban on school prayer by saying, “We have in this case a very easy remedy. . . . We can pray a good deal more at home.”¹³⁷

III. THE 2008 CAMPAIGN

The rise of an identifiable, well-funded, and organized Christian evangelical political movement, heavily influenced by Christian supremacy leaders, radically changed the political-religious landscape in the decades following JFK’s speech to the Houston ministers. Instead of trying to put religion aside, as Kennedy advocated, several major 2008 presidential candidates promoted their own faith, stressed their ties to religious figures, and pledged to work toward the goal of increasing the presence of religion in public life.

The political change in attitude mirrored legal changes that weakened the chief protection against state-church involvement, the Establishment Clause. The present Supreme Court has two members who would practically make the Establishment Clause disappear (Justices Scalia and Thomas),¹³⁸ two new members who have signaled their willingness to construe past precedent narrowly to rein in protections against religious favoritism (Chief Justice Roberts and Justice Alito),¹³⁹ and one member who has accused his colleagues on the Court of displaying “hostility” to religion and whose view of the Clause would allow “some latitude” for the state to recognize “the central role of religion in society” (Justice Kennedy).¹⁴⁰ Just how far the conservative majority will go in eroding the Clause remains to be seen, but the Court’s recent 5–4 decision denying standing to a group of taxpayers objecting to the expenditure of public funds by President Bush to religious organizations foretells bolder decisions constricting the Establishment Clause.¹⁴¹ The replacement of

136. Anthony Lewis, *Both Houses Get Bills to Lift Ban on School Prayer*, N.Y. TIMES, June 27, 1962, at A20.

137. SORENSEN, *supra* note 117, at 165.

138. *See, e.g.*, *Van Orden v. Perry*, 545 U.S. 677, 692–98 (2005) (Thomas, J., concurring); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 318–26 (2000) (Rehnquist, C.J., dissenting); *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 852–63 (1995) (Thomas, J., concurring); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 397–401 (1993) (Scalia, J., concurring); *Edwards v. Aguillard*, 482 U.S. 578, 610–40 (1987) (Scalia, J., dissenting).

139. *See, e.g.*, *Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587 (2007) (plurality opinion) (denying taxpayer standing to make Establishment Clause challenge to President Bush’s faith-based funding grants by construing precedent of *Flast v. Cohen*, 392 U.S. 83 (1968), narrowly but leaving it intact).

140. *County of Allegheny v. Am. Civil Liberties Union*, 492 U.S. 573, 576, 655 (1989) (Kennedy, J., concurring in part and dissenting in part).

141. Lower courts have already gotten the message. *See Hinrichs*, 506 F.3d 584 (holding that Indiana citizens lacked standing to challenge the recitation of prayers beginning the state’s House of Representatives sessions, despite a substantial number of the prayers being offered in the name of Jesus).

Sandra Day O'Connor by Samuel Alito may prove to be most significant; O'Connor was sensitive to "both the fundamental place held by the Establishment Clause in our constitutional scheme and the myriad, subtle ways in which Establishment Clause values can be eroded."¹⁴² In interviews with senators after his Supreme Court nomination, Alito indicated his belief that the Court's precedents were too heavily weighted toward separating church and state.¹⁴³ It is reasonable to suspect that Chief Justice Roberts and Justice Alito were appointed in part to remove constitutional barriers to the Christian Right's religious agenda.

The 2008 campaigns of four candidates are particularly interesting to the study of religion and politics: for the Republicans, Mike Huckabee, Mitt Romney, and John McCain; for the Democrats, Barack Obama.

A. Mike Huckabee

Candidate Mike Huckabee, a Baptist minister and former governor of Arkansas, relied most openly on his religious credentials in seeking the Republican presidential nomination. He possessed a master's degree from Southwestern Baptist Theological Seminary, and he called himself a "Christian leader" in his political ads.¹⁴⁴ In one of his ads, he reminded viewers that the holiday season celebrated the birth of Christ, and featured the image of a cross with "Silent Night" playing in the background, prompting the *Washington Post* to ask, "Is Mike Huckabee running to be president of all Americans, or just the Christian ones?"¹⁴⁵

Huckabee campaigned on the claim that his religion did not just influence him, it defined him. He supported constitutional amendments to outlaw gay marriage and abortion, using explicitly religious reasons for his policy positions. In an appearance in the state of Michigan, Huckabee said:

[Some of my opponents] do not want to change the Constitution, but I believe it's a lot easier to change the Constitution than it would be to change the word of the living God, and that's what we need to do is to amend the Constitution so it's in God's standards rather than try to change God's standards.¹⁴⁶

142. *Lynch*, 465 U.S. at 694 (O'Connor, J., concurring). Justice O'Connor also warned that government endorsement of religion "sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." *Id.* at 688.

143. David D. Kirkpatrick, *Nominee Is Said to Question Church-State Rulings*, N.Y. TIMES, Nov. 4, 2005, at A22.

144. Editorial, "Christian Leader"; *Finding the True Meaning of Mike Huckabee's Christmas Ad*, WASH. POST, Dec. 21, 2007, at A34.

145. *Id.*

146. *Id.*

B. Mitt Romney

Other Republican candidates sought the support of Christian supremacist voters, if a tad more subtly than Huckabee. Mitt Romney delivered what was billed as a major speech on faith and politics on December 6, 2007.¹⁴⁷ Romney had previously said he did not see the need to make such a statement, but significant support for self-proclaimed “Christian leader” Mike Huckabee and strong doubts voiced by Americans generally, and by the Republican Party’s religious base in particular, about Mormonism caused Romney to change his mind. In fact he was urged to “do a JFK” by Richard Land of the Southern Baptist Convention—a group that originally opposed Kennedy because of his religion.¹⁴⁸ Many Mormons in 1960 had expressed antipathy to the Catholic Church as well.¹⁴⁹ Romney, perhaps unaware of these ironies, spoke before a friendly audience, introduced by former president George H. W. Bush.

Romney started out recalling the memory of JFK’s 1960 speech:

Almost 50 years ago another candidate from Massachusetts explained that he was an American running for President, not a Catholic running for President. Like him, I am an American running for President. I do not define my candidacy by my religion. A person should not be elected because of his faith nor should he be rejected because of his faith.¹⁵⁰

He seemed to sound a Kennedy-like separationist note, saying that “no authorities of my church, or of any other church for that matter, will ever exert influence on presidential decisions. Their authority is theirs, within the province of church affairs, and it ends where the affairs of the nation begin.”¹⁵¹

But then, sprinkled through the speech, were some very different sentiments. He abandoned Kennedy’s notion that a candidate’s religion was a purely private matter, and declared his belief in Jesus: “There is one fundamental question about which I often am asked. What do I believe about Jesus Christ? I believe that Jesus Christ is the Son of God and the Savior of mankind.”¹⁵² He stopped short of describing any tenets of his Mormon faith, but this seemed a calculated judgment that certain Mormon ideas would sound alien to evangelical Protestants and traditional Christians who do not recognize the Book of Mormon as a sacred text

147. Governor Mitt Romney, Speech on Religion (Dec. 6, 2007), in WALL ST. J., Dec. 6, 2007, at A6 [hereinafter Romney Speech].

148. Tapper, *supra* note 112.

149. *Loss by Kennedy in Utah Expected: Mormons’ Long Antipathy to Catholics Is Big Factor in Voters’ Preferences*, N.Y. TIMES, Oct. 9, 1960, at 52.

150. Romney Speech, *supra* note 147.

151. *Id.*

152. *Id.*

and who find aspects of the creed strange.¹⁵³ Indeed, one past president of the Mormon Church once said in its defense, “We’re not a weird people.”¹⁵⁴

While avoiding delving too deeply into Mormonism, Romney expressed his desire for less separation of church and state in America:

[I]n recent years, the notion of the separation of church and state has been taken by some well beyond its original meaning. They seek to remove from the public domain any acknowledgment of God. Religion is seen as merely a private affair with no place in public life. It is as if they are intent on establishing a new religion in America—the religion of secularism. They are wrong.¹⁵⁵

This was a nod to the culture warriors on the right who would infuse the public space with Christian symbols.¹⁵⁶ The remark about the “religion of secularism” would resonate with the religious right; it echoed a false charge going all the way back to the attacks in the early 1960s on the Supreme Court cases banning official school prayer. The 1963 majority opinion in *Abington Township* explicitly rejected any suggestion that the Court’s decision would establish a “religion of secularism,” declaring that the ban on schoolhouse religious exercise was not “affirmatively opposing or showing hostility to religion” and was not a government preference for non-religion over religion.¹⁵⁷

An explicit reference to the judiciary followed: “Our greatness would not long endure without judges who respect the foundation of faith upon which our Constitution rests.”¹⁵⁸ Romney ignored the fact that the Constitution does not mention God, although the founders certainly knew that many state constitutions did so and that the Articles of Confederation had as well.¹⁵⁹ Reading a foundation of faith into the Constitution would certainly appeal to those angry Christians who charged the courts with conducting a “war on faith” and would be understood as endorsing the effort to appoint judges who would weaken the Establishment Clause,

153. *Id.* South Carolina’s state campaign chair for Romney rival Sen. Fred Thompson (R-Tenn.) criticized the speech saying it did not address those Mormon tenets that were “very unusual to the point that it’s almost unbelievable.” Matt Stuart, *Romney Delivers Major Speech on Faith*, ABC NEWS, Dec. 6, 2007, <http://abcnews.go.com/print?id=3961048>.

154. Seth Perry, *Romney’s Religious Dilemma*, CHRON. OF HIGHER EDUC., Feb. 22, 2008, at B10.

155. Romney Speech, *supra* note 147.

156. The remark might suggest disagreement with Supreme Court limits on public displays of religious symbols. See *McCreary County*, 545 U.S. 844. Romney did approve both Christian and Jewish symbols, stating: “We should acknowledge the Creator as did the Founders—in ceremony and word. He should remain on our currency, in our pledge, in the teaching of our history, and during the holiday season, nativity scenes and menorahs should be welcome in our public places.” Romney Speech, *supra* note 147.

157. *Abington Twp.*, 374 U.S. at 225.

158. Romney Speech, *supra* note 147.

159. See *Marsh v. Chambers*, 463 U.S. 783, 807 (1983) (Brennan, J., dissenting). One historian calls the Constitution’s insistence on disestablishment “a stunning innovation.” WILLS, *supra* note 59, at 6.

the Constitution's principal bulwark against the intermixing of church and state.¹⁶⁰ This was a partisan call to believers, not a unifying, Kennedy-style call to reject the divisions that faith-first politics creates in the country.

Romney added an epigrammatic statement that left its practical application open to the imagination: "Freedom requires religion just as religion requires freedom." His explanation was brief: "Freedom opens the windows of the soul so that man can discover his most profound beliefs and commune with God. Freedom and religion endure together, or perish alone." That religion needs freedom is uncontroversial and a basic notion underlying the Free Exercise Clause of the First Amendment. But freedom needing religion, and the two perishing without each other, is hardly self-evident. In fact, Romney provided the countervailing evidence elsewhere in his speech when he noted that the cathedrals of Europe were empty. A free populace had foresworn religion while retaining freedom; Romney did not seem to notice.

If Romney intended a clarion call like Kennedy's, he had failed. He was ambiguous where Kennedy was clear. He did not want his Mormon religion to be counted against him, but he scorned the secularism that would grant him acceptance by making his religion irrelevant. He seemed to want to avoid religious discussion while simultaneously inviting it. He talked positively of separation while he advocated lowering the barriers of separation. He obfuscated his message by saying things like "I will take care to separate the affairs of government from any religion, but I will not separate us from the God who gave us liberty."¹⁶¹ He implicitly argued that his belief in Jesus Christ was relevant but that everything else in Mormonism was off-limits for discussion. He was not likely to succeed with a religious voting bloc that cared a good deal about his religion and worried that it was insufficiently Christian. Exploiting these religious differences, Romney's chief rival in the then upcoming Iowa caucuses, Mike Huckabee, publicly posed the stake-in-the-heart question: "Don't Mormons believe that Jesus and the devil are brothers?"¹⁶² It is doubtful that Romney won over those who believed Mormonism to be a cult and not a true Christian religion.¹⁶³ Despite his attempted Kennedyesque moment, Romney lost Iowa to Huckabee.

C. John McCain

In a July 2008 interview with the *New York Times*, John McCain was "asked if he considered himself an evangelical Christian. He responded, 'I consider myself a

160. See Milbank, *supra* note 93; Peter Wallsten, *2 Evangelicals Want to Strip Courts' Funds*, L.A. TIMES, Apr. 22, 2005, at A22.

161. Romney Speech, *supra* note 147.

162. Zev Chafets, *The Huckabee Factor*, N.Y. TIMES, Dec. 12, 2007, § 6 (Magazine), at 68. Huckabee later apologized saying he did not wish to make the tenets of Romney's faith a campaign issue. Katherine Q. Seelye, *Apologies from the Heart (of Darkness?)*, N.Y. TIMES, Dec. 14, 2007, at A37. The damage, of course, was already done.

163. See, e.g., Gromer Jeffers, Jr., *Dallas Minister: Vote for a Christian, Not Mitt Romney*, DALLAS MORNING NEWS, Oct. 18, 2007, at 2A.

Christian.’ . . . Asked how often he attended [church], he responded, ‘Not as often as I should.’”¹⁶⁴ These replies, along with his past condemnation in the 2000 campaign of Rev. Jerry Falwell and Pat Robertson as “agents of intolerance,” highlighted the fact that John McCain was not comfortable aligning himself too closely with the Christian supremacist faction of his party.¹⁶⁵ But while he did not cater to this segment of the Republican Party as much as some of his rivals for the nomination had, he did adopt some positions designed to please that constituency, including advocating the overthrow of *Roe v. Wade*, opposing gay adoption, and endorsing the idea that local school systems should decide whether to teach anti-evolution theories in the public schools.¹⁶⁶ Early in the campaign, in September 2007, McCain went so far as to say that the Constitution created “a Christian nation,” but his campaign later clarified his statement to mean only that the nation had a Judeo-Christian heritage.¹⁶⁷

To bolster his standing, McCain sought out the endorsements of pastors who could confer legitimacy on him in the eyes of Republican-base religious voters. He reached out to influential figures in the religious political community and picked up two pastors with large followings, Rev. John C. Hagee and Rev. Rod Parsley. Both would easily fit the “agents of intolerance” mold, but McCain forged ahead. Hagee had previously stated that he believed “Hurricane Katrina was, in fact, the judgment of God against the city of New Orleans. . . . New Orleans had a level of sin that was offensive to God.” Hagee believed that God felt particularly wrathful because “there was to be a homosexual parade there . . . [when] Katrina came.”¹⁶⁸

Hagee got himself and the McCain campaign into trouble not by virtue of his anti-gay rhetoric, but because of his anti-Catholic remarks. His animus toward the Catholic Church was evident in his references to Catholicism as “the great whore of Babylon” and the “anti-Christ.”¹⁶⁹ When the remarks came to public light, Hagee wrote a letter apologizing for them to the president of the Catholic League, William

164. Adam Nagourney & Michael Cooper, *McCain's Conservative Model? Roosevelt (Theodore, That Is)*, N.Y. TIMES, July 13, 2008, at A1.

165. See Fineman, *supra* note 28. One of the leaders of the religious right, Dr. James Dobson, declared that he would never vote for McCain, and many other evangelicals were publicly very skeptical about McCain. *Id.*

166. See Senator John McCain, Address at Virginia Beach Election Event (Feb. 28, 2000), available at <http://transcripts.cnn.com/TRANSCRIPTS/0002/28/se.01.html> (describing himself as “pro-life, pro-family fiscal conservative” who does not pander to Pat Robertson, Jerry Falwell, and other Washington leaders); Nagourney & Cooper, *supra* note 164 (noting that McCain described himself as “basically in sync with the party’s conservative core,” “opposed [to] allowing gay couples to adopt,” and a “believe[r] in evolution”). McCain later issued a “clarification” on his anti-gay adoption statement, saying the issue was one for the states to decide and he would not propose federal legislation to ban it. Michael Cooper, *Facing Criticism, McCain Clarifies His Statement on Gay Adoption*, N.Y. TIMES, July 16, 2008, at A15.

167. Michelle Boorstein, *Altar Egos*, WASH. POST, June 7, 2008, at B09.

168. Matt Corley, *Hagee Says Hurricane Katrina Struck New Orleans Because It Was Planning A Sinful Homosexual Rally*, THINK PROGRESS, Apr. 23, 2008, <http://thinkprogress.org/2008/04/23/hagee-katrina-mccain/>.

169. E.J. Dionne, Jr., *Fair Play for False Prophets*, WASH. POST, May 2, 2008, at A21.

Donohue. In his letter Hagee claimed he did not mean to refer to the Catholic Church as a great whore, and he generally pledged to show more respect for Catholicism in the future. He conceded that he “may have contributed to the mistaken impression that the anti-Jewish violence of the Crusades and the Inquisition defines the modern-day Catholic Church. It most certainly does not.”¹⁷⁰ Donohue, a conservative political activist himself, promptly accepted the apology and declared the case “closed.”¹⁷¹ The McCain campaign went along and rejected Hagee’s anti-Catholic statements, but McCain refused to disown Hagee’s endorsement until Hagee publicly declared his understanding that Adolph Hitler was part of God’s plan for getting the Jews to go to Israel. God, according to Hagee, apparently utilized the Nazis in preparation for the ultimate arrival of Judgment Day.¹⁷² Making Hitler part of God’s plan promised more trouble for McCain than Hagee was worth, and the candidate, in the political parlance of the day, felt he had to throw Hagee under the bus and reject his endorsement.

McCain’s experience with Rev. Parsley was not much happier. On February 26, 2008, McCain warmly spoke of Parsley: “I’m very honored today to have one of the truly great leaders in America, a moral compass, a spiritual guide, Pastor Rod Parsley . . . here.”¹⁷³ Within three months, McCain had repudiated him, after Parsley sermons indicated that the great spiritual leader regarded Islam as “an anti-Christ religion” and that he believed “America was founded in part to see this false religion destroyed.”¹⁷⁴ In one address to his 12,000 member church, Parsley declared: “We were built for battle! We were created for conflict! We get *off* on warfare!”¹⁷⁵ Disowning his earlier embrace of Parsley, McCain felt it necessary to throw him under the bus as well, saying in late May: “I believe there is no place for that kind of dialogue in America. I believe that even though [Parsley] endorsed me, and I didn’t endorse him, the fact is that I repudiate such talk, and I reject his endorsement.”¹⁷⁶

McCain’s relations with Christian supremacists suffered some damage from these incidents,¹⁷⁷ and in June 2008 he went on a pilgrimage to see Billy Graham, the 89-year old godfather of evangelism, at Graham’s home in North Carolina. He did not win an endorsement, but earned some friendly remarks from Graham’s son Franklin, himself an evangelist in charge of the Graham organization, who praised

170. Michael D. Shear, *McCain Backer Apologizes for Anti-Catholic Remarks*, WASH. POST, May 14, 2008, at A06.

171. *Id.*

172. Banerjee & Luo, *supra* note 107.

173. Abby Livingston, *McCain Changes Tone on Other Pastor?*, MSNBC, May 23, 2008, <http://firstread.msnbc.msn.com/archive/2008/05/23/1058954.aspx>.

174. Banerjee & Luo, *supra* note 107.

175. Kindy, *supra* note 92.

176. Livingston, *supra* note 173.

177. Kindy, *supra* note 92.

the candidate's "personal faith and his moral clarity on important social issues facing America today."¹⁷⁸

In late August 2008 McCain named Sarah Palin, a first-term governor of Alaska and former mayor of the tiny town of Wasilla, Alaska, to be his vice-presidential running mate. The pick instantly revived the spirits of the party's religious right wing, which applauded her absolute stance against abortion (she opposed abortion even in cases of rape or incest) and her longstanding affiliation with an evangelical church. She attended churches that preached belief in the literal truth of the Bible; she believed in the power of prayer.¹⁷⁹ At an event at the Wasilla Assembly of God Church she addressed a group of young ministers and suggested that they pray that "God's will" sustain her administration's position on the building of a major oil pipeline in Alaska.¹⁸⁰

Not even the announcement of her teenage daughter's out-of-wedlock pregnancy seemed to dampen the enthusiasm of the religious "family values" crowd. Her lack of any real qualification for high office was painfully obvious. After a few news interviews in which Palin stumbled over answers and preposterously claimed foreign policy experience because Russia was visible from Alaska, it became clear that she had little knowledge of basic foreign and domestic policy issues. Liberal columnist Bob Herbert of the New York Times called her interview with CBS news anchor Katie Couric a "painful" and "frightening" performance.¹⁸¹ On the cable news outlet CNN, commentator Jack Cafferty went so far as to say, "If John McCain wins this woman will be one 72-year-old's heartbeat away from being president of the United States and if that doesn't scare the hell out of you, it should."¹⁸² Even conservative columnist Kathleen Parker, writing for *National Review Online*, urged Palin to resign from the ticket, saying, "I watch her interviews with the held breath of an anxious parent, my finger poised over the mute button in case it gets too painful. Unfortunately, it often does. My cringe reflex is exhausted."¹⁸³

Palin's view on church-state separation arose only occasionally in the media; the issue did not come up at all in the vice-presidential debate between Governor Palin and Senator Biden. A few news stories did mention evidence of her fundamentalist

178. Robert D. McFadden, *McCain Gets Praise, Not Backing, From Grahams*, N.Y. TIMES, June 30, 2008, at A14.

179. Kirk Johnson & Kim Severson, *In Palin's Worship and Politics, A Call to Follow the Will of God*, N.Y. TIMES, Sept. 6, 2008, at A1.

180. See Governor Sarah Palin, Speech by Governor Sarah Palin at the Assembly of God Church (June 8, 2008), available at http://www.huffingtonpost.com/2008/09/02/palins-church-may-have-sh_n_123205.html.

181. Bob Herbert, Op-Ed, *Palin's Words Raise Red Flags*, N.Y. TIMES, Sept. 27, 2008, at A21.

182. *The Situation Room with Wolf Blitzer* (CNN television broadcast Sept. 26, 2008), available at <http://www.cnn.com/video/#/video/politics/2008/09/26/cafferty.fri.cnn>.

183. Kathleen Parker, *Palin Problem: She's Out of Her League*, NAT'L REV. ONLINE, Sept. 26, 2008, <http://article.nationalreview.com/?q=MDZiMDhjYTU1NmI5Y2MwZjg2MWNiMWMMyYTUxZDkwNTU=>; see also James Rainey, *Conservative Columnists Join a Chorus of Criticism over Palin*, L.A. TIMES, Sept. 27, 2008, at A23.

beliefs, e.g., her belief that dinosaurs and men shared the earth after its creation a mere 6,000 years ago, contrary to standard scientific accounts of the earth's age and of dinosaur extinction 65 million years ago.¹⁸⁴ But news reporters could not discover how much she would force her religious beliefs into public policy. In an interview with CBS news anchor Katie Couric, she answered a question on church-state separation this way:

KATIE COURIC: Thomas Jefferson wrote about the First Amendment, building a wall of separation between church and state. Why do you think that's so important?

SARAH PALIN: His intention in expressing that was so that government did not mandate a religion on people. And Thomas Jefferson also said never underestimate the wisdom of the people. And the wisdom of the people, I think in this issue is that people have the right and the ability and the desire to express their own religious views, be it a very personal level, which is why I choose to express my faith, or in a more public forum.

And the wisdom of the people, thankfully, engrained in the foundation of our country, is so extremely important. And Thomas Jefferson wanted to protect that.¹⁸⁵

This brief, confused answer ignored the critical issue of when religious beliefs may, and may not, influence government policy. As a candidate whose background and views were little known to the public prior to her nomination, Palin should have been pressed to give a detailed explanation of how her religious views would influence her public policy attitudes and agenda.

D. Barack Obama

Barack Obama planned an extensive effort to court faith-oriented voters, going well beyond what any previous Democratic candidate had attempted. His campaign events ran the gamut from Christian rock concerts to house parties and telephone conference calls with faith leaders.¹⁸⁶ He created a special national advisory council to reach out to Catholic voters.¹⁸⁷ He ran a website designed to connect with people

184. Stephen Braun, *Palin Canny on Religion and Politics; As Governor and Mayor, She Has Trod Carefully Between Fundamentalist Beliefs and Public Policy*, L.A. TIMES, Sept. 28, 2008, at A24.

185. *CBS Evening News with Katie Couric: VP Candidates on Church-State Separation* (CBS television broadcast Oct. 1, 2008), available at <http://www.cbsnews.com/stories/2008/10/01/eveningnews/main4493077.shtml>.

186. See John M. Broder, *Obama Courting Evangelicals: Once Loyal to Bush*, N.Y. TIMES, July 1, 2008, at A18.

187. Robin Toner, *With Faith in Spotlight, Candidates Battle for Catholic Votes*, N.Y. TIMES, Apr. 15, 2008, at A1.

of faith.¹⁸⁸ He quoted the Bible to church audiences; he spoke to a Christian congregation of Jesus Christ as “our Lord and Savior.”¹⁸⁹

Obama was determined to fight for the votes of the evangelical Christians who had overwhelmingly supported George W. Bush in the past;¹⁹⁰ many of these voters resided in key battleground states like Ohio and Pennsylvania.¹⁹¹ In his quest for these votes, one political writer observed: Obama “is drawing on his own characteristics and story, including his embrace of Christianity as an adult, a facility with biblical language and imagery, and comfort in talking about how his religious beliefs animate his approach to public life.”¹⁹²

1. *June 28, 2006, Speech on Religion and Politics*

On June 28, 2006, Obama gave the Keynote Address at a conference sponsored by progressive religious leaders.¹⁹³ He recalled his 2004 campaign for U.S. Senate in which he ran against Republican Alan Keyes. Keyes made the startling claim towards the end of the campaign that “Jesus Christ would not vote for Barack Obama.”¹⁹⁴ Obama did not have to worry about how he should respond, as he was very far ahead in the polls. But the incident caused him to think about the importance of religion in political campaigns, and by 2006 he had reached some key conclusions that would guide his presidential campaign in 2008.

At the outset, he made clear his pragmatic sense that Democrats running for office could not afford to ignore the religious direction of politics today. He noted, “[W]hen we shy away from religious venues and religious broadcasts because we assume that we will be unwelcome—others will fill the vacuum, those with the most insular views of faith, or those who cynically use religion to justify partisan ends.”¹⁹⁵ He deemed it essential “to reach out to the evangelical community and engage millions of religious Americans in the larger project of American renewal.”¹⁹⁶ These voters were driven by beliefs and values, and “that is why that, if we truly hope to

188. People of Faith for Obama, <http://faith.barackobama.com> (last visited Feb. 22, 2009).

189. *See, e.g.*, Senator Barack Obama, Remarks at Apostolic Church of God on Father’s Day (June 15, 2008), available at http://www.barackobama.com/2008/06/15/remarks_of_senator_barack_obam_78.php.

190. Broder, *supra* note 186. Bush won seventy-eight percent of the white evangelical Christian vote in 2004. *Id.*

191. *Id.*

192. *Id.* Of course, Obama had problems with his own pastor, Rev. Jeremiah Wright, whose sermons critical of American social policies led to a media storm and ultimately to Obama’s leaving the pastor’s Chicago church. Michael Powell, *Following Months of Criticism, Obama Quits His Church*, N.Y. TIMES, June 1, 2008, at A1.

193. Senator Barack Obama, Keynote Address at the Call to Renewal’s Building a Covenant for a New America Conference (June 28, 2006) [hereinafter Call to Renewal Speech], available at http://www.barackobama.com/2006/06/28/call_to_renewal_keynote_address.php.

194. *Id.*

195. *Id.*

196. *Id.*

speak to people where they are at—to communicate our hopes and values in a way that's relevant to their own—then as progressives, we cannot abandon the field of religious discourse.”¹⁹⁷

Obama stressed the point that religious issues could be broad in scope and both national and international. He stated:

Pastors . . . are wielding their enormous influences to confront AIDS, Third World debt relief, and the genocide in Darfur. Religious thinkers and activists . . . are lifting up the Biblical injunction to help the poor as a means of mobilizing Christians against budget cuts to social programs and growing inequality.

And by the way, we need Christians on Capitol Hill, Jews on Capitol Hill and Muslims on Capitol Hill talking about the estate tax. When you've got an estate tax debate that proposes a trillion dollars being taken out of social programs to go to a handful of folks who don't need and weren't even asking for it, you know that we need an injection of morality in our political debate.¹⁹⁸

None of this would require abandoning the idea of separation of church and state. In noting that religion had flourished because of the separation, Obama recognized that welcoming religious organizations into government programs and policy debates would invite contentious argument among sects over which ones deserved government preferences.¹⁹⁹ He seemed here to want sectarian participation without the inevitable sectarian strife. His resolution of this knotty problem was to suggest religious participants change their language in public debate:

Democracy demands that the religiously motivated translate their concerns into universal, rather than religion-specific, values. It requires that their proposals be subject to argument, and amenable to reason. I may be opposed to abortion for religious reasons, but if I seek to pass a law banning the practice, I cannot simply point to . . . God's will. I have to explain why abortion violates some principle that is accessible to people of all faiths, including those with no faith at all.

Now this is going to be difficult for some who believe in the inerrancy of the Bible, as many evangelicals do. But in a pluralistic democracy, we have no choice. Politics depends on our ability to persuade each other of common aims based on a common reality. It involves compromise, the art of what's possible. At some fundamental level, religion does not allow for compromise.²⁰⁰

197. *Id.*

198. *Id.*

199. *See id.* This position echoes the concern articulated by Sandra Day O'Connor in *McCreary County*. *See supra* text accompanying note 1.

200. Call to Renewal Speech, *supra* note 193.

He seemed to see the difficulty with his own resolution with that last sentence; religious speakers who rely on sectarian doctrine to justify political positions cannot be expected to alter their religion-specific language. They would rather be faithful to their religion than “accessible” to non-believers. Obama’s ideas might be acceptable to centrist and liberal religious activists, but it seems unlikely he can persuade real Christian supremacists to change their language or their objectives.

2. *Proposal for a Faith-Based Program*

In July 2008, Obama went to Ohio to announce that he would establish a Council for Faith-Based and Neighborhood Partnerships in the White House and make it a centerpiece of his administration. He linked the idea to his own faith saying:

[M]y experience in Chicago showed me how faith and values could be an anchor in my life. And in time, I came to see my faith as being both a personal commitment to Christ and a commitment to my community; that while I could sit in church and pray all I want, I wouldn’t be fulfilling God’s will unless I went out and did the Lord’s work.²⁰¹

He emphasized that the faith-based groups receiving public funds would have to comply with constitutional requirements; no group could discriminate on the basis of religion against recipients of their programs or against those hired by the programs, and none could use funds to proselytize.²⁰² The employment discrimination ban drew criticism from certain evangelical organizations that insisted they had the right to limit hiring to their own co-religionists, a view shared by President Bush and by John McCain.²⁰³ The uses of the funds, said Obama, would extend to social programs, illustratively those to help alleviate poverty and to aid poor children to overcome common educational deficiencies. People of faith, he added, could “help set our national agenda” by challenging Congress to regard genocide and the fight to stop the spread of AIDS as moral crises that must be addressed.²⁰⁴

The program drew criticism from those advocating a strict separation of church and state. A *New York Times* editorial chastised Obama for expanding what it deemed to be an unconstitutional program created by the Bush administration to favor religion. The editors called the ban on discrimination in hiring “nice,” but not sufficient to save the program from violating the required separation of church and state.²⁰⁵

201. Senator Barack Obama, Remarks made at the Council for Faith-Based and Neighborhood Partnerships (July 1, 2008) [hereinafter Council for Faith-Based and Neighborhood Partnerships Remarks], available at http://www.barackobama.com/2008/07/01/remarks_of_senator_barack_obam_86.php.

202. *See id.*

203. Jeff Zeleny & Michael Luo, *Obama Seeks Bigger Role for Religious Groups*, N.Y. TIMES, July 2, 2008, at A1.

204. Council for Faith-Based and Neighborhood Partnerships Remarks, *supra* note 201.

205. Editorial, *New and Not Improved*, N.Y. TIMES, July 4, 2008, at A20.

Obama's program differed from the Bush plan in two important respects. One was the hiring discrimination ban. The other was the inclusion of non-religious groups doing the sorts of community projects that the council would fund.

I'm not saying that faith-based groups are an alternative to government or secular nonprofits. And I'm not saying that they're somehow better at lifting people up. What I'm saying is that we all have to work together—Christian and Jew, Hindu and Muslim; believer and non-believer alike—to meet the challenges of the 21st century.²⁰⁶

With these words, he sought to put religious groups on an equal footing with secular community organizations and to take the gross religious favoritism out of the program that the White House had established under President Bush.²⁰⁷

3. *Democratic Compassion Forum*

On April 13, 2008, CNN broadcasted what it labeled a "Compassion Forum" for the two leading contenders of the Democratic Party, held at Messiah College in Grantham, Pennsylvania.²⁰⁸ It was in fact two consecutive, separate interviews of candidates Hillary Clinton and Barack Obama. Host Campbell Brown announced the event would "focus on the issues of faith and compassion and how a president's faith can affect us all," and she promised that "some of these questions tonight will be deeply personal."²⁰⁹

Obama confirmed that he was a "devout Christian," that he wanted to do "good works," and that he was determined "to reach out to evangelicals."²¹⁰ No headlines there. Asked if he believes God intervenes in the affairs of nations, he said:

You know, what I believe is that God intervenes, but that his plans are a little too mysterious for me to grasp. And so what I try to do is, as best I can, be an instrument of his will. To act in what I think is accordance to the precepts of my faith.

And, you know, if I'm acting in an ethical way, if I am working to make sure that I am applying what I consider to be a core value of Christianity, but also

206. Council for Faith-Based and Neighborhood Partnerships Remarks, *supra* note 201.

207. For a description of the political nature of the program's funding of friendly religious groups, see Kuo, *supra* note 62. Within a few weeks of taking office, President Obama signed an executive order creating the council and appointed a mix of sectarian and secular members to it. He asked the council to refer all constitutional questions to the attorney general. See Laura Meckler, *Faith-Based Program Gets Wider Focus*, WALL ST. J., Feb. 5, 2009, at A4.

208. *Live Event/Special: Democratic Candidates Compassion Forum* (CNN television broadcast Apr. 13, 2008) [hereinafter *Democratic Candidate Compassion Forum*], available at <http://transcripts.cnn.com/TRANSCRIPTS/0804/13/se.01.html>.

209. *Id.* A similar format of consecutive interviews on faith-related topics was hosted by Rick Warren, pastor of the Saddleback Church in California, in August of 2008. Ed Hornick, *Obama, McCain Talk Issues at Pastor's Forum*, CNN.COM, Aug. 17, 2008, <http://www.cnn.com/2008/POLITICS/08/16/warren.forum/>.

210. *Id.*

a core value of all great religions, and that is that I am my brother's keeper and I am my sister's keeper, then I will be doing my part to move his agenda forward.²¹¹

Would he tell his children that the world was created by God in six days? He said he would tell them it was created by God, though the six days in the Bible may not be twenty-four hour days. The literal reading of the Bible raises a matter of legitimate debate within the Christian community. He does not feel science and religion are incompatible; he does believe in evolution.

He was asked his views on abortion, and he said this was a decision to be made by a woman, that it was a wrenching moral choice, and that we should do what we can to avoid unwanted pregnancies by a program of comprehensive education that includes abstinence and contraception. Did he believe life began at conception? If not, when did life begin? He replied:

This is something that I have not, I think, come to a firm resolution on. I think it's very hard to know what that means, when life begins. Is it when a cell separates? Is it when the soul stirs? So I don't presume to know the answer to that question. What I know, as I've said before, is that there is something extraordinarily powerful about potential life and that that has a moral weight to it that we take into consideration when we're having these debates.²¹²

On issues concerning withdrawing medical treatment for the terminally ill, he also supported individual and family rights:

Well I think we have to be very careful in making end of life decisions. I believe in first of all everybody having a living will so that their views on these issues can be factored in by family members and their doctors and many of the difficult choices that are made are made because people don't have guidance from the individual.

I do believe in the importance of medicine and that if somebody is terminally ill, relieving their pain and suffering is the right thing to do. What happens then is you start getting into a gray area where relieving pain and suffering may accelerate death in some situations and that's a decision that should be made by the individual, the family and the doctor.²¹³

On other substantive issues of interest to a religious audience, he endorsed AIDS relief, fighting poverty, preserving the environment, and providing health care to all Americans. He opposed torture and promised it would end with his administration.²¹⁴

It seems likely that Obama does not see faith as giving him answers to tough questions of public policy. In a lengthy *Newsweek* article, Obama's faith was described

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

as “a new chapter in a long American tradition of presidents and politicians for whom faith is more a matter of mystery than magic, of enduring questions rather than pat answers.”²¹⁵ Obama says he believes one must strive to do good works and to improve the world, and he includes the nation’s Founding Fathers and Abraham Lincoln as religious influences on him. Lincoln often referred to divine Providence, but recognized that man must use reason as best he could to advance worthy political causes. When contemplating emancipation, for example, with its complex consequences on the war effort, Lincoln observed that some men gave him conflicting advice about God’s will on the matter. With humor and wisdom, he said:

I hope it will not be irreverent for me to say that if it is probable that God would reveal his will to others, on a point so connected with my duty, it might be supposed he would reveal it directly to me; for, unless I am more deceived in myself than I often am, it is my earnest desire to know the will of Providence in this matter. *And if I can learn what it is I will do it!* These are not, however, the days of miracles, and I suppose it will be granted that I am not to expect a direct revelation. I must study the plain physical facts of the case, ascertain what is possible and learn what appears to be wise and right. The subject is difficult, and good men do not agree.²¹⁶

As usual, Lincoln brings a flood of insight on the matter of politics and religion in just a few sentences.

IV. ASSESSING THE USES OF RELIGION IN MODERN POLITICAL CAMPAIGNS

In 1960, John F. Kennedy had urged Americans to put religion aside. The candidates of both parties in 2008 instead tried to put religion to work politically. Presidential candidates want to get elected and pursue voting blocs where they find them. For many years now, the large number of evangelical Protestant Americans has been a targeted voting bloc, and this is unlikely to change in the near future. The Republican Party showed how this group, making up between thirty to forty percent of the U.S. population, was capable of being mobilized for political purposes.²¹⁷

With millions of votes at stake, appeals to religious voters will continue. But appeals can be crafted in many different ways. Some may be traditional, harmless gestures of respect, similar to those campaign events featuring candidates eating ethnic foods and extolling the contributions of the local community to the fabric of American life. Voters seem to respond to vacuous ego stroking, so candidates will press on with their compliments and flattery, and their ambiguous statements of support. McCain’s embrace of various pastors, Obama’s incorporation of biblical

215. Jon Meacham, *More a Matter of Mystery Than Magic*, NEWSWEEK, July 21, 2008, at 30.

216. ABRAHAM LINCOLN, *Reply to Emancipation Memorial Presented by Chicago Christians of All Denominations*, in 5 COLLECTED WORKS OF ABRAHAM LINCOLN 420 (Rutgers Univ. Press 1953).

217. Ralph Z. Hallow, *Evangelicals Warn Against McCain-Romney Ticket*, WASH. TIMES, July 29, 2008, at A01. Evangelical or “born-again” Christians voted overwhelmingly for President Bush in 2004 and for Republican congressional candidates in 2006. *Id.*

allusions in his speeches, and Romney's pledge that if he were elected religious Americans who bend a knee in prayer would "have a friend and ally" in the White House, all promise nothing specific, but serve to make the candidates seem religion-friendly.²¹⁸

The three Republican candidates discussed above worked to keep Christian supremacists in the Republican camp. Mike Huckabee was most obvious in his sectarian appeals, promising to put "God's law" into the Constitution. Mitt Romney proclaimed his reverence for Jesus and for the "right to life." John McCain said he would appoint justices to the Supreme Court who would overturn *Roe v. Wade*, and he sought out extremist pastors, staying with them until their rank offensiveness became too politically burdensome.

Barack Obama took the most innovative stance. He tried to get religious leaders into the Democratic fold by first showing respect for their moral perspective on public issues, and then inviting them to re-focus their political energies on matters more important to the welfare of the nation than the two Christian supremacist standbys, abortion and homosexuality. Obama set out to expand the concerns of religious voters by talking about social injustice as a religious issue. He called for religiously-minded citizens to think of climate change as a need to exercise responsible stewardship over God's creation. He urged them to speak to their congressmen about the gutting of the estate tax because it would further enrich the wealthy at the expense of the federal treasury and result in reduced funding for social programs to alleviate hunger and poverty.²¹⁹ His opposition to the Iraq War is shared by the Vatican, which also opposed the war from its inception.²²⁰ In opposing the use of torture by the Bush administration, Obama spoke pragmatically (it does not yield good information) and morally ("it is also important for our long-term security to send a message to the world that we will lead not just with our military might but we are going to lead with our values and our ideals").²²¹ Thus, he attempted to identify broad, overlapping values in the two realms of religion and politics.²²² He invokes moral values when addressing economic issues and talks in terms of American ethical

218. Romney Speech, *supra* note 147. When elected, officials continue to nod to God. Even John F. Kennedy, in his Inaugural Address, said "the same revolutionary beliefs for which our forebears fought are still at issue around the globe—the belief that the rights of man come not from the generosity of the state, but from the hand of God." John F. Kennedy, Inaugural Address (Jan. 20, 1961), in *IN OUR OWN WORDS: EXTRAORDINARY SPEECHES OF THE AMERICAN CENTURY* 217, 222 (Sen. Robert Torricelli & Andrew Carroll eds., 1999). While this statement could have been made by a president like George W. Bush promising a more religiously oriented approach to governance, Kennedy did not seem to be linking this belief to any substantive policy, and the remark safely fell within the realm of inconsequential rhetoric. Interestingly, Romney's speech on faith echoed the line when he proclaimed, "Americans acknowledge that liberty is a gift of God, not an indulgence of government." Romney Speech, *supra* note 147.

219. See Call to Renewal Speech, *supra* note 193.

220. John M. Broder, *Obama's View on Abortion May Divide Catholics*, N.Y. TIMES, Aug. 6, 2008, at A16.

221. *Democratic Candidate Compassion Forum*, *supra* note 208.

222. See David Van Biema, *The Global Ambition of Rick Warren*, TIME, Aug. 7, 2008, at 36.

ideals of justice, fairness, equality, liberty, and working together for the common good. As Douglas Kmiec, a Catholic legal scholar supporting Obama, remarked:

The proper question for Catholics to ask is not “Can I vote for him?” but “Why shouldn’t I vote for the candidate who feels more passionately and speaks more credibly about economic fairness for the average family, who will be a true steward of the environment, and who will treat the immigrant family with respect?”²²³

Obama also endorsed the notion that religious speakers in the public debate should adopt language that explains their concerns and values in terms that might engage and possibly persuade others who do not share their full complement of beliefs. He asked participants to “translate” religious speech delivered in the public square. This would allow for politics that potentially unites sectarian believers with secularists of conscience. John F. Kennedy’s 1960 speech also called for politics that promoted harmony among the different groups in America, albeit through religious non-participation. Obama invites participation, but in a manner that creates space for the exchange of views and the identification of common ground on important issues.

Does this approach to religious participation have any chance of success? Much depends upon the reception of such ideas in the evangelical community. Some leaders, like James Dobson of the hard-line group Focus on the Family, will never be convinced. Indeed, on his radio show, Dobson hotly castigated Obama for “deliberately distorting the traditional understanding of the Bible to fit his own worldview, his own confused theology. He is dragging biblical understanding through the gutter.”²²⁴

But the evangelical community is not as one-dimensional as it may appear. New leaders, like Pastor Rick Warren, are more enlightened than the Dobson group of leaders, and they embrace a much broader moral/social agenda.²²⁵ Warren leads a 23,000 member church in California, has sold 40,000,000 copies of his book *The Purpose Driven Life*, has trained 500,000 pastors worldwide, and boasts a network of several hundred thousand pastors on his email list.²²⁶ If Warren’s influence grows as Dobson’s wanes, a vast number of voters could be freed from the grip of Christian supremacist politics for years to come. If this happens, our country might have a chance to fulfill what Austin Dacey has called

[t]he great promise of America . . . the promise of a moral foundation for society that could transcend religious differences. That moral foundation, which seventeenth- and eighteenth-century liberal thinkers described in terms of natural rights evident to a universal moral sense, would support a new kind of government, a secular civil order secured against sectarian persecution and war. The public values of this civil order would be those

223. Broder, *supra* note 220.

224. Fineman, *supra* note 28.

225. See Van Biema, *supra* note 222.

226. *Id.*

enunciated in the preamble to the US Constitution: justice, tranquility, common defense, general welfare, and liberty.²²⁷

We have experienced, at times in our history, a moral politics that infused a deep spiritual feeling into the nation's political governance. The supreme example of this may be the words Abraham Lincoln spoke in his Second Inaugural Address, calling for charity, reconciliation, and even national penance at the close of the Civil War and acknowledging the complicity of both the North and South in the morally unjust system of slavery:

Both read the same Bible, and pray to the same God; and each invokes His aid against the other. . . . The prayers of both could not be answered; that of neither has been answered fully. The Almighty has His own purposes. "Woe unto the world because of offences! for it must needs be that offences come; but woe to that man by whom the offence cometh!" If we shall suppose that American slavery is one of those offences which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South, this terrible war, as the woe due to those by whom the offence came, shall we discern therein any departure from those divine attributes which the believers in a Living God always ascribe to Him? Fondly do we hope—ferently do we pray—that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said "the judgments of the Lord are true and righteous altogether."²²⁸

President Lincoln eschewed any triumphant cry of victory, although the victory of the North was in sight, and did not make the claim of having God on the victor's side. Instead there is a message of a grave punishment deserved and suffered by the entire nation, and a subsequent need to heal what Lincoln called "the nation's wounds." Implicit also is the need to return to the moral path from which both sides in the struggle had strayed. Slavery's political status was still unsettled. The Thirteenth Amendment abolishing slavery had been proposed; Lincoln's address implicitly urged its ratification, and ratification came within the year.²²⁹

227. AUSTIN DACEY, *THE SECULAR CONSCIENCE: WHY BELIEF BELONGS IN PUBLIC LIFE* 16 (2008).

228. ABRAHAM LINCOLN, *Second Inaugural Address*, in 8 *THE COLLECTED WORKS OF ABRAHAM LINCOLN* 333 (Rutgers Univ. Press 1953).

229. Ratification was completed on December 6, 1865. Notably, Robert Bellah cited Lincoln's speech as an exemplar of the American civil religion, which invests our basic political documents and institutions with a sacred aura. See Robert N. Bellah, *Civil Religion in America*, 96 *DAEDALUS* 1 (1967). Martin Luther King, Jr. similarly invoked religious imagery in the civil rights movement, linking God's will with the nation's history and the highest aspirations of the political system:

We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands.

...

Encouraging religious politics is very risky. Religion can be a force for ill as well as good. Martin Luther King, Jr. had to battle against both white supremacists and Christian supremacists as the righteous foundations of Christian civilization were invoked to justify racial discrimination throughout much of the twentieth century.²³⁰ Many churches strongly supported slavery before the Civil War, prompting Frederick Douglass to declare in an 1852 address:

[T]he church of this country is not only indifferent to the wrongs of the slave, it actually takes sides with the oppressors. It has made itself the bulwark of American slavery, and the shield of American slave-hunters. Many of its most eloquent Divines, who stand as the very lights of the church, have shamelessly given the sanction of religion and the Bible to the whole slave system. They have taught that man may, properly, be a slave; that the relation of master and slave is ordained of God; that to send back an escaped bondman to his master is clearly the duty of all the followers of the Lord Jesus Christ; and this horrible blasphemy is palmed off upon the world for Christianity.

For my part, I would say, welcome infidelity! welcome atheism! welcome anything! in preference to the gospel, as preached by those Divines! They convert the very name of religion into an engine of tyranny, and barbarous cruelty . . . ! These ministers make religion a cold and flinty-hearted thing It is a religion for oppressors, tyrants, man-stealers, and thugs.²³¹

In our own times, religious leaders have supported George W. Bush, despite the fact that his administration, having gone over to what Vice President Cheney called “the dark side” after the World Trade Center attacks, has openly embraced torture, indefinite detention without charges, pre-emptive war, and other morally repugnant acts and practices.²³²

By inviting religion’s active participation in public affairs, Obama must take responsibility for assessing and monitoring the quality of that participation. The Christian supremacist movement has demonstrated the potential for ugly religious politics that divides the nation and undermines fundamental Establishment Clause

. . . One day the South will know that when these disinherited children of God sat down at lunch counters, they were in reality standing up for what is best in the American dream and for the most sacred values in our Judaeo-Christian heritage, thereby bringing our nation back to those great wells of democracy which were dug deep by the founding fathers in their formulation of the Constitution and the Declaration of Independence.

Martin Luther King, Jr., Letter from Birmingham Jail (Apr. 16, 1963), in *WHY WE CAN'T WAIT* 82–83 (Signet Classic 2000).

230. See, e.g., *Naim v. Naim*, S.E.2d 749, 752, 756 (Va. 1955) (upholding ban on interracial marriage, reasoning that preventing “a corruption of races is . . . clearly divine” natural law).

231. Frederick Douglass, Address: What to the Slave Is the Fourth of July? (July 5, 1852), available at <http://www.teachingamericanhistory.org/library/index.asp?document=162>.

232. See JANE MAYER, *THE DARK SIDE: THE INSIDE STORY OF HOW THE WAR ON TERROR TURNED INTO A WAR ON AMERICAN IDEALS* (2008) (examining the extent of the indecent acts promoted by Bush, Cheney, and others after 9/11). Domestically, the administration has fostered gross levels of income inequality; failed to act to prevent global warming; burdened the next generation with an enormous debt; and endangered the constitutional system of checks and balances.

values. That movement's network is in place, politicized, and ready to fight for Christian preferences, school prayer programs, anti-evolution science classes, public funding for Christian projects, and other special privileges. It has a receptive Supreme Court in place. Any politician facilitating religious political involvement, who is also respectful of the values underlying church-state separation, must keep a careful watch on this group.

V. CONCLUSION

In 1960, John F. Kennedy faced a segment of the voting public that regarded his Catholicism as a compelling reason to vote against him. He appealed to basic principles of equality for all citizens, just treatment for those who have sacrificed for the country, and harmony in the society through the absolute separation of faith and politics. His detractors, principally some Protestant Christians, argued that he would follow the dictates of church leaders, fail to think and act independently of them, and ultimately grant preeminence to the church in the affairs of state.

By 2008, some of these dire effects had come about, not because Kennedy was elected, but because some religious leaders turned away from Kennedy's stress on secular government. Some Protestant leaders became exactly what their predecessors feared: religious leaders aspiring to dominance through political power, acting like another special interest group seeking public funds and favors, telling followers how to vote, and seeking out politicians who promise special status and privileges for their religion. They have, in short, promoted Christian supremacy.

Kennedy said his religion was a private matter, of interest only to himself. Now millions of voters hear about a candidate's "spiritual journey."²³³ The 2008 campaign was marked by candidates pursuing pastoral endorsements and talking about their devotion to Jesus. Even the Democratic nominee was advancing a faith-based council in the White House.

With all this said, it seems as if in 2008 both political parties' presidential candidates drew back from the religious extremists. John McCain was not a born-again Christian fanatic and seemed to have trouble relating to them. Barack Obama seemed to offer an acknowledgment of religion without letting it set his policy agenda. Yet those who want government to play religious favorites have not disappeared. They are still part of the Republican Party's voter base. Even if their influence wanes nationally, they will fight on in numerous local venues in their effort to make this a Christian nation. They are organized, funded, and energetic, with an ample supply of media-savvy pastors, fast-talking talk radio hosts, aggressive television broadcasters, litigation-loving lawyers, and pliant officeholders. We have not heard the last of them.

233. See Lisa Miller & Richard Wolffe, *Finding His Faith*, NEWSWEEK, July 21, 2008, at 26 (running a cover story on Barack Obama's faith and picturing the candidate in a prayerful pose, hands folded and eyes closed).