

REPORT FROM THE Center

Religious Freedom Scholar Charles C. Haynes to give 2011 Cookson Lecture

Lecture Kicks Off Symposium on Religion in the Schools

Dr. Charles C. Haynes, director of the Religious Freedom Education Project at the Newseum in Washington, D.C., and senior scholar at the First Amendment Center, will deliver the 2011 Cookson Religious Freedom Lecture on Wednesday, Oct. 5, 2011, at 7:30 p.m. in Monumental Chapel. The title of Dr. Haynes's talk is "From Battleground to Common Ground: Religious Liberty in Public Schools."

Dr. Haynes's presentation will kick off the Center's 2011 Symposium entitled "Religion in the Public Schools: Possibilities, Practices, and Pitfalls." *See page 2 for details.*

Haynes is widely known for his work on First Amendment issues in public schools. He has written several guides on religious liberty in the schools which have been endorsed by many religious and

educational organizations. In 2000, three of these guides were distributed by the U.S. Department of Education to every public school in the U.S. Haynes has also authored or co-authored several books, including *First Freedoms: A Documentary History of the First Amendment* in 2006.

Haynes is a founding board member of the Character Education Partnership and serves on the steering committee of the American Bar Association's Advisory Commission on Public Education. He is also chair of the Committee on Religious Liberty of the National Council of Churches. In 2008 he received the Virginia First Freedom Award from the Council for America's First Freedom.

Widely quoted in major newspapers and news magazines and a frequent guest on television and radio, Haynes'



Dr. Charles C. Haynes

commentary on religious freedom issues is posted regularly on the First Amendment Center's website and his column, "Inside the First Amendment," appears in newspapers across the U.S.

The Cookson Religious Freedom Lecture Series is named for the Center's founding director, Dr. Catharine Cookson. Previous Cookson lecturers include Dr. Martin Marty (2006), Dr. Diana Eck (2008) Dr. Ursula Goodenough (2009).

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REFLECTIONS FROM THE DIRECTOR



The Supreme Court's Erosion of Religious Freedom

Recent U.S. Supreme Court decisions have continued a trend that has significantly eroded constitutional protection for religious freedom. One sign of this trend is the Court's increasingly narrow view of both the Establishment and Free Exercise Clauses of the First Amendment. But equally troubling is the apparent determination by the Court's conservative majority to keep lawsuits challenging government support of religion out of the federal courts. The Court's opinion in *Arizona Christian School Tuition Organization v. Winn*, decided this past April, all but closes the courthouse door.

Winn involved the complex and sometimes esoteric doctrine of standing. In our system, only those who have been personally harmed in some way have "standing" to

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Fall 2011 Symposium on *Religion in the Public Schools* Supports Virginia Wesleyan's 50th Anniversary Celebration

The Center's Fall 2011 Symposium, "Religion in the Public Schools: Possibilities, Practices, and Pitfalls" will be part of Virginia Wesleyan College's 50th Anniversary celebration during the 2011-2012 academic year. Fifty years ago, the U.S. Supreme Court ruled in *Engel v. Vitale* (1962) that public schools violated the First Amendment by beginning the school day with a state-sponsored nondenominational prayer. The following year, in *Abington School District v. Schempp*, the Court invalidated mandatory school Bible readings. These decisions have had a profound and lasting impact on the teaching of religion in public schools. This Symposium explores their legacy by examining some of



the legal and pedagogical challenges faced by teachers, administrators, and students in the public schools today. Symposium speakers will include Virginia Wesleyan Professors Craig Wansink and Eric Mazur.

The schedule of speakers and topics can be found in the Calendar of Events on page 8 and on the Center's website.

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seek a remedy in federal court. Among other things, this means that ordinary taxpayers, simply by virtue of being taxpayers, do not have standing to challenge government expenditures, even if they believe a particular item exceeds the government's constitutional authority.

However, more than 40 years ago the Supreme Court created an important exception to this rule. In *Flast v. Cohen* (1968), the Court said that taxpayers do have standing to bring federal cases alleging that a government expenditure

violates the Establishment Clause. In the years since the *Flast* decision, taxpayer suits have led to several important Establishment Clause rulings.

The *Winn* decision casts serious doubt on the future of these suits. *Winn* involved a provision in the Arizona tax code that gives a dollar-for-dollar tax credit for contributions to school tuition organizations (STOs), who in turn use the funds to provide scholarships for students attending private schools, including religious schools. Some of the largest STOs limited their scholarships to religious schools. The tax credit was challenged in federal court by a group of Arizona taxpayers, following the precedent established by *Flast*. But the Supreme Court ruled 5-4 that they had no standing to bring the case. The *Flast* rule did not apply, said the majority, because a tax credit is not the same as an appropriation.

This distinction is questionable in economic terms, and deciding taxpayer standing on this basis is absurd. As Justice Kagan points out in her ringing dissent, cash grants and tax credits have the same

impact on the public purse, and both can be used to accomplish the same legislative purpose, which here seems clearly to support religious schools. She points out that even the National Commission on Fiscal Responsibility and Reform refers to tax credits and similar techniques as "tax expenditures," or "just spending by another name." By resting on this artificial distinction, the Court's ruling means that taxpayers have the right to bring an Establishment Clause challenge to funding laws but not to tax laws.

The practical consequences of this decision are enormous. As Justice Kagan says, the majority's ruling "threatens to eliminate all occasions for a taxpayer to contest the government's monetary support for religion. Any government that wishes to insulate its financing of religious activity from legal challenge," she notes, can simply follow the "roadmap" provided by the majority and use tax credits in place of direct appropriations. As a result, *Winn* very likely signals the demise of taxpayer standing.

The sad irony is that the Arizona tax credit would probably have been upheld if the Court had reached the merits of the

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Establishment Clause issue. At one time, the Supreme Court struck down most forms of government aid to religious schools, even if the aid was earmarked for “secular” purposes. It was too easy, the Court said, for these funds to become commingled and used for religious instruction, and in any case the state aid freed up other funds that could then be used for religious purposes.

Over the past two decades, however, the Court has changed course. It now routinely upholds most types of aid to religious schools unless it can be shown in a particular case that public funds are in fact being used for religious instruction. And forms of aid that are directed to students or parents, such as tuitions vouchers, are upheld as long as they are available for all private schools and not just religious schools, even in contexts where the only realistic choices are religious schools.

The Court’s pinched view of church-state separation is disturbingly visible in the recent case of *Mitchell v. Helms* (2000). While six justices voted to uphold a federal program providing non-religious educational materials to private schools, including religious schools, four went much further. In his plurality opinion, Justice Thomas, joined by Chief Justice Rehnquist and Justices Scalia and Kennedy, said the program would be constitutionally acceptable even if the schools used the aid for purposes of religious indoctrination. According to Justice Thomas, government aid used to indoctrinate is not the same as indoctrination by the government. This is a troubling and constitutionally questionable distinction. It remains to be seen whether the newest members of the Court’s conservative bloc, Chief Justice Roberts and Justice Alito, share this extreme view. But it seems clear that the demise of taxpayer standing to bring Establishment Clause challenges is unlikely to make much practical difference for religious freedom until the Court’s current majority changes. ■

Director’s note: *The following items reflect common misunderstandings of the proper – and improper – place of religion in the public schools by teachers, students, parents, and administrators. They illustrate the kinds of issues that will be addressed in the Center’s Fall Symposium (see page 2). All items are from the Religion Clause blog.*

Teacher Told to End Prayer and Bible Verses in Class

The Ft. Smith, Arkansas Times Record reported on May 1, 2011, that a Van Buren (AR) middle school teacher was told by administrators to end various religious practices she had introduced in her classes. Teacher Jan Redden had prayed with the students before the annual Benchmark exams “for the Devil to be bound up and not to enter their brains.” Redden has also given students personalized Christian Bible verses to carry in their pockets, and Bible verses were posted on her classroom wall. The school district says it follows Department of Education guidelines on religion in schools.

Referee Concludes that Ohio Science Teacher Repeatedly Violated Establishment Clause

The Mount Vernon (OH) City Schools Board of Education voted 4-1 on January 10, 2011, to accept a hearing officer’s recommendation that middle school science teacher John Freshwater’s contract be terminated because of his repeated violations of the Establishment Clause. Complaints charged that Freshwater taught creationism or intelligent design in class, told his class that anyone who is gay is a sinner, improperly used an electrostatic device to put a cross on the arm of a student, was excessively involved in the school’s Fellowship of Christian Athletes and was insubordinate in failing to remove religious materials when ordered to do so by his principal. The hearing officer concluded that while Freshwater was a successful and well-liked science teacher, he “purposely used his classroom to advance his Christian religious views.”

School’s Prayer Service to Encourage Performance on Standardized Tests is Questioned

The Baltimore Sun reported in March 2011 on the church-state questions, raised by attempts at Baltimore’s Tench Tilghman Elementary/Middle School to raise the performance of students on statewide standardized tests. In preparation for the Maryland School Assessments this year and last, the school held a 30-minute prayer service to culminate special Saturday test preparation classes. Parents asked principal Jael Yon to hold the classes and prayer service as the best way to encourage and instill confidence in the students. Asked about the prayer service, city school officials said that “while we as a district understand that prayer plays an important role for many in our school communities...it is not appropriate for public institutions of education to promote any particular religious practice.” including its protection for freedom of religion, after unsuccessful attempts to prosecute leaders of two FLDS factions.

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Virginia County Reauthorizes Ten Commandments in Schools

The Giles County, Virginia school board has been struggling for months over whether and how copies of the Ten Commandments should be displayed in its schools. For ten years copies of the Ten Commandments had been displayed next to a copy of the Constitution. Last December (2010) they were removed after a complaint from the Freedom from Religion Foundation (FFRF). By January they were back up after community members complained about their removal. But in February they were again removed. And again this was met with student and community protests. Now the Roanoke Times reports that on Tuesday, June 7, 2011, by a split vote, the school board again voted to restore the Ten Commandments to the schools, but this time with an elaborate resolution drafted with the advice of the Christian advocacy group, Liberty Counsel. The Ten Commandments are now to be included as part of a display of nine specified historical documents. The posting of this display in any school can be financed by private parties, and a procedure is set out for others who want to finance the posting of additional historical documents. The FFRF and ACLU say they will file suit.

Suit Challenges School's Ban on Religious Songs From Talent Show

A lawsuit was filed in federal district court in Los Angeles on January 28, 2011 on behalf of a 5th-grade student challenging Superior Street Elementary School's policy of barring acts with religious messages from the school's annual talent show. The

complaint alleges that the school told the student that his interpretive movement to the religious song "We Shine" was not permitted because of the song's religious message. The principal suggested that the student select a song that does not mention Jesus so many times. After the filing of the lawsuit, the School District agreed that it would not prohibit the 5th grader from performing his Christian song.

ACLU Says High School Students Should Be Allowed to Post Ten Commandments on Their Lockers

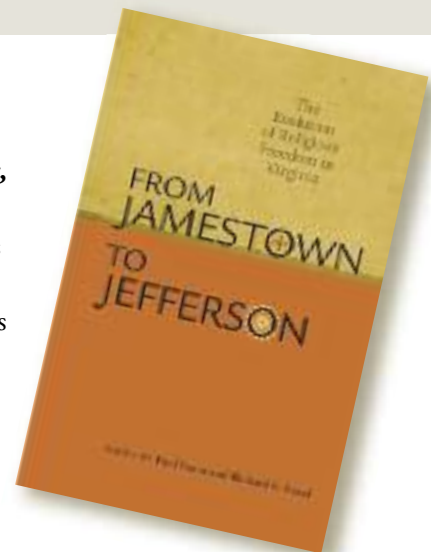
The ACLU of Virginia is supporting the right of Floyd County, Virginia high school students to post their personal views – including copies of the Ten Commandments – on their school locker doors. Apparently Floyd County High School administrators removed copies of the Ten Commandments from lockers of members of the Fellowship of Christian Athletes under a school policy that requires school approval for postings on lockers other than messages such as "happy birthday" or "go team." The ACLU's email to the school principal on February 25, 2011, points out that "allowing students to express their religious views on their lockers is not the same as the school itself posting the Ten Commandments or other religious documents."

Follow-up: On March 16, after reviewing the ACLU's letter, Schools Superintendent Terry Arbogast reversed the earlier decision and will allow the students to post religious messages on their lockers while the policy is reviewed.

New Center Book Published

From Jamestown to Jefferson: The Evolution of Religious Freedom in Virginia, edited by Center Director Paul Rasor and VWC Associate Professor of History Rich Bond, was published by the University of Virginia Press in March 2011. This highly regarded volume, based on the Center's fall 2007 Symposium on religious freedom in Colonial Virginia, explores the deep roots of Thomas Jefferson's famous Statute for Religious Freedom and sheds new light on the origins of the American understanding of religious freedom. Challenging traditional assumptions about life in early Virginia, it argues that the Virginia colony was more religious, more diverse, and (often) more tolerant than commonly supposed.

From Jamestown to Jefferson is available in the Center's library.





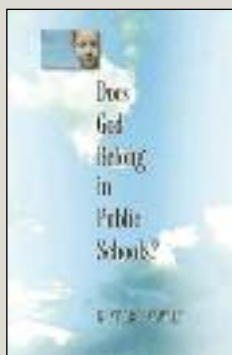
RASOR'S RECOMMENDED READING

Our recommendations relate to the Fall 2011 Symposium on Religion in the Public Schools; these books are available in the Center's library.

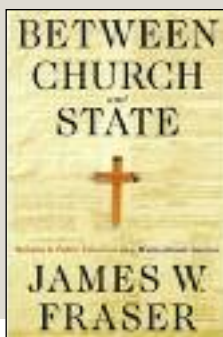


Warren A. Nord, *Does God Make a Difference? Taking Religion Seriously in Our Schools and Universities* (2010)

Kent Greenawalt, *Does God Belong in Public Schools?* (2004)



James W. Fraser, *Between Church and State: Religion and Public Education in a Multicultural America* (1999)



BOOKS RECEIVED

Some new titles in the Center's collection:

Ahmed, Akbar, *Journey into America: The Challenge of Islam* (Brookings Institution, 2010)

Balmer, Randall, *The Making of Evangelicalism: From Revivalism to Politics and Beyond* (Baylor University Press, 2010)

Buruma, Ian, *Taming the Gods: Religion and Democracy on Three Continents* (Princeton University Press, 2010)

Clanton, J. Caleb, ed., *The Ethics of Citizenship: Liberal Democracy and Religious Convictions* (Baylor University Press, 2008)

Dochuk, Darren, *From Bible Belt to Sun Belt: Plain-Folk Religion, Grassroots Politics, and the Rise of Evangelical Conservatism* (W.W. Norton, 2010)

Ebel, Jonathan H., *Faith in the Fight: Religion and the American Soldier in the Great War* (Princeton University Press, 2010)

GhaneaBassiri, Kambiz, *A History of Islam in America: From the New World to the New World Order* (Cambridge University Press, 2010)

Haught, John F., *Making Sense of Evolution: Darwin, God, and the Drama of Life* (Westminster John Knox, 2010)

Kapur, Kamlesh, *Portraits of a Nation: History of Ancient India* (Sterling, 2010)

Kraybill, Donald B., Steven M. Nolt, and David L. Weaver-Zercher, *The Amish Way: Patient Faith in a Perilous World* (Wiley-Blackwell, 2010)

Levey, Geoffrey Brahm, and Tariq Modood, eds., *Secularism, Religion and Multicultural Citizenship* (Cambridge University Press, 2009)

Lodahl, Michael, *Claiming Abraham: Reading the Bible and the Qur'an Side by Side* (Brazos, 2010)

Muñoz, Vincent Phillip, *God and the Founders: Madison, Washington, and Jefferson* (Cambridge University Press, 2009)

Nakhleh, Emile, *A Necessary Engagement: Reinventing America's Relations with the Muslim World* (Princeton University Press, 2009)

Prothero, Stephen, *Religious Literacy: What Every American Needs to Know – and Doesn't* (HarperOne, 2008)

Sehat, David, *The Myth of American Religious Freedom* (Oxford University Press, 2011)



Borrowing Policy

All books in the CSRF collection are included in the college library's online catalog, and most are available to VWC faculty, students, and other interested users. If you would like to borrow a book, come to the Center offices in Clarke Hall 108 during normal college business hours. If you are unable to come to the Center during these hours, please call the office at 455-3129 to make other arrangements. Specific policies can be found on the Center's website under the "Education" button on the Center's home page.

NEXUS Interfaith Dialogue Series 2011-2012

About Our Faiths

Some Hard Questions About Our Faiths

All religions contain features that raise difficult questions for insiders and outsiders alike. These may be found in challenging texts, misunderstood practices, or elsewhere. Left unexamined, these hard questions too often become a source of misunderstanding and fear.

In the Nexus Interfaith Dialogue Series for 2011-2012, panelists from inside and outside particular faiths will discuss one especially challenging issue.

PANELS

SEPTEMBER 26, 2011

Does Islam teach or implicitly condone violence? What are the different understandings among Muslims today?

OCTOBER 17, 2011

Is yoga a religion?
Does it conflict with Christianity?

FEBRUARY 13, 2012

Can Judaism, a minority faith accustomed to surviving persecution, survive in a climate of acceptance?

FEBRUARY 27, 2012

Does Christianity claim to be the only true path to salvation?
Are Jews, Muslims, Hindus, and atheists consigned to Hell?

MARCH 19, 2012

Is Hinduism polytheistic?
Do Hindus worship many Gods or one God?

New Look for Center's Website

The Center's website has been completely redesigned. It now has more images and less text, better features, and is easier to navigate. Best of all, it is now accessible directly from the Virginia Wesleyan College homepage, www.vwc.edu; look for the Center button on the lower left side. We hope you will visit the Center's new web pages and let us know what you think.



Religion on Campus: What does it mean, and what's at stake?

How do college students explore their spiritual identity? How do they tolerate others who are doing the same? And how do we all balance the need for civility with the desire for personal expression?

In spring 2012 a semester-long conversation will examine the ways in which students grapple with religious questions, expressions, and behaviors during their college years, and the role faculty, staff, and administrators can play in this process.



The Center for the Study of Religious Freedom needs your support.

You can support the Center in many ways: by attending Center programs, by sharing news of the Center's work with others, and by your financial contributions. Please share this newsletter with your family and friends, and encourage them to come to Center events.

If you would like to make a financial gift to support the Center, you may use the form below, or you may make a gift through our website: www.vwc.edu/csrf.

Your gifts allow us to improve our programs, strengthen our library and other resources, and continue our work of promoting religious freedom.



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OR Charge my credit card \$ _____ ☐ MasterCard ☐ VISA Card# _____

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Please mail to: College Advancement, Virginia Wesleyan College, 1584 Wesleyan Drive, Norfolk, VA 23502-5599

Calendar

OF EVENTS

SEPTEMBER

Thursday, Sept. 15, 2011

Constitution Day Debate

Contending Views on the Supreme Court's Recent First Amendment Rulings
Dr. Timothy O'Rourke, Vice President for Academic Affairs and Kenneth R. Perry, Dean of the College, and Dr. Paul Rasor, Center Director.

3 – 4:30 p.m., *Monumental Chapel*

Monday, Sept. 26, 2011

Nexus Interfaith Dialogue: Some Hard Questions About Our Faiths

Panel Discussion

Islam: Does contemporary Islam teach or implicitly condone violence? What are the different understandings among Muslims today?

7:30 – 9 p.m., *Boyd Dining Center*

OCTOBER

Wednesday, Oct. 5, 2011

From Battleground to Common Ground: Religious Liberty in Public Schools

The Fall 2011 Cookson Religious Freedom Lecture

Charles C. Haynes, Ph.D., Director of the Religious Freedom Education Project at the Newseum and Senior Scholar at the First Amendment Center

7:30 – 9 p.m., *Monumental Chapel*

Monday, Oct. 17, 2011

Nexus Interfaith Dialogue: Some Hard Questions About Our Faiths

Panel Discussion

Yoga: Is Yoga a religion? Does it conflict with Christianity?

7:30 – 9 p.m., *Boyd Dining Center*

Saturday, Oct. 22, 2011

One Love Festival

An evening of music and the spoken word, demonstrating unity in diversity and fostering a closer interfaith community.

Performers welcome;

see events website:

www.hamptonroad-networkfornonviolence.org.

7 p.m. – 11 p.m., *Boyd Dining Center*



Thursday, Oct. 27, 2011

Negotiating the Creationism/Intelligent



Design Dilemma: A

Historical Approach

Symposium Session

Lisle Dalton, Ph.D., Associate Professor of Religious Studies, Hartwick College

11 – 11:50 a.m., *Monumental Chapel*

NOVEMBER

Thursday, Nov. 10, 2011



When Schools Silence the Bible: The Legal and Political Challenges of the King James Version

Symposium Session

Craig S. Wansink, Ph.D., Professor of Religious Studies, Virginia Wesleyan College, and Brandon Nichols, VWC Class of 2012

11 – 11:50 a.m., *Monumental Chapel*

Thursday, Nov. 17, 2011

Ritual as Performance, Performance as Ritual: Religious

Programs and Prayers in the Public School –

Symposium Session

Eric M. Mazur, Ph.D., Gloria and David

Furman Associate Professor of Judaic Studies, Virginia Wesleyan College

11 – 11:50 a.m., *Monumental Chapel*



Tuesday, Nov. 29, 2011

Workshop: An Exploration of Gratefulness

Rabbi Shefa Gold, Director of the Center for Devotional Energy and Ecstatic Practice and faculty member of the Institute for Jewish Spirituality

7:30 – 9 p.m., *Monumental Chapel*

\$10 admission; reservations recommended

Unless otherwise noted, all events are free and open to the public. Reservations not required.

For more information, call 757.455.3129.



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