

FAITH BASED HIGHER EDUCATION AND THE CONSTITUTION: AN UNEASY
MARRIAGE? © Dr. John Jackson, President, William Jessup University
BYU ANNUAL REVIEW OF RELIGIOUS FREEDOM

Thank you profusely for the privilege to speak here with you at this important and timely conference. I am a trained and experienced pastor and organizational leader. I am also a thoroughly amateur historian, economist, and constitutional attorney. With that delimiter, I have two quotes I'd love to share with you:

John Adams, our 2nd President: *"We have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge or gallantry would break the strongest cords of our Constitution as a shale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other"*

French diplomat and historian, Alexis de Tocqueville, circa 1848: *"The Americans combine the notions of religion and liberty so intimately in their minds, that it is impossible to make them conceive of one without the other."*

Morality, religion, liberty and constitutional law. These are the forces in some measure of tension and heightened conflict in our day (for an excellent background, see this short video at Prager U: <https://www.prageru.com/courses/history/was-america-founded-be-secular>).

During this session, our focus is more specifically on religious liberty and faith based higher education. As many of you know, the history of higher education in America begins with religious institutions. All but one of what we know as Ivy League schools were started by religious groups, fundamentally for the training of ministers. Over time, many of these schools became more secularized even while remaining private. Public colleges were soon

developed by states with a particular eye towards specializations that were important for the developing nation. Schools training business, agriculture, education, medicine, liberal arts, arts have long been part of the mix. Today in CA, accredited private higher education educates about 20% of the undergraduate population and 55% of the graduate population of students in the state.

William Jessup University was founded in 1939 as San Jose Bible College, changing its name to honor our founder upon our move to the Sacramento region in 2004. We are Christ Centered, affirm Biblical Authority and the Unity of the Church. We have a Statement of Faith, Community Covenant, and Handbook for All Employees as well as the Community Covenant and Student Handbook for all students. Our Community Covenant contains explicit language regarding beliefs, behaviors, and community standards. We are committed to Transformation, Scholarship, Innovation and Flourishing.

I know that one of the issues that you would like to hear about is how a school of our type responds to our ever changing culture in CA and on the national scene, and to particular challenges with religious liberty in a pluralistic environment. I want to provide a broad overview with general themes and then a specific application with a recent CA state legislative matter. I will conclude with brief remarks regarding what some have called Fairness for All, roughly modeled on legislation you have here in Utah (known by some as the "Utah Compromise") that many of you in this room will be familiar with, and likely supportive of in the main.

My view of many of these matters has to do with Constitutional parameters and from my understanding of the Bible. Let me begin with a basic Biblical framework: Jessup's Biblical and Orthodox Christian mission includes the teaching of the creation of human sexuality as reflected in the communal nature of God himself through the relationship of Father, Son and Spirit. Genesis 1:26-27 in the first pages of Scripture says, "Let US create humankind in OUR image." And therefore God, "Created humankind in his image, male

and female he created them." As we understand Scripture, the male/female gender duality of human sexuality is at the very heart of the human race's identity as carriers of the image of God. (Gen. 1:26-27). According to the creation account, the purpose of marriage is to express and to protect the nature of that male/female duality within the unified covenant relationship of marriage; how God expresses His commitment to his creation's life, its law and ultimate plan of salvation. (Gen. 2:24)

Regarding the Constitution, I offer the following: The supremacy clause (Article VI, Clause 2) says that the Constitution is the supreme law of the land. There are 3 amendments that I see as having intersection here; the First Amendment (which guarantees freedoms of religion, speech, press, assembly), the Fourteenth Amendment (which provides due process protections and therefore a presumed right to privacy), and the Tenth Amendment (which reserves powers to the States that are not specifically enumerated as belonging to the Federal government). Each of these intersecting amendments will continue, in my view, to be part of the national conversation about religious, personal, and sexual freedom concerns in the days and years ahead. My hope is that the tone and the content of those conversations, like the one we are having here today, can be respectful of personal, religious, and social convictions in our increasingly pluralistic society. Recent court cases may suggest a more deferential tone towards religious liberty and First Amendment cases than has been thought likely. Should that occur, I will certainly celebrate the seeming change in direction and tone.

And now, to turn to a recent event in California, a slightly more "blue" state than UT (smile!). SB1146 as originally proposed last year in CA's legislative session would have dramatically and negatively impacted CA faith based schools. It would have established an adversarial framework in which faith motivated schools seeking to live out their convictions on sexuality and gender might have been prevented from having students who chose to attend their accredited schools from accessing scholarships under the Cal Grant program (a state sponsored program of college scholarships available to all CA

residents and all CA accredited institutions of higher learning). In my view, and in the view of others, this was an egregious affront to religious liberty in that it would have effectively established a religious test for a generally available public benefit.

A SECTION OF MY STATEMENT TO THE CA LEGISLATURE ON SB1146 SAID THIS:

Part of the beauty of the American experience is the foundational recognition of inalienable rights which do not derive from government but derive from our Creator. Jessup and other faith-based schools have clear religious convictions regarding gender, sexuality, and marriage. Those convictions extend to all who attend our school and all who are employed by our school. SB 1146 marginalizes students and schools whose beliefs do not align with the views of those holding the levers of government power, creating a society that does not tolerate diversity of opinion, and even punishing dissent from what politicians have determined are the “correct” beliefs.

SB 1146 restricts freedom of choice and limits opportunities in education by forcing many first-generation college students and many students of color – who would be unable to pursue higher education without a Cal Grant – to choose between attending a school that they have chosen or another option that does not fit their unique needs.

THANKFULLY, This bill was dramatically altered because of our opposition (AND THAT OF THE ACLU...because it did not go far enough!) and it became a reporting bill rather than a restricting bill. Thus far, this current legislative session has been thankfully relatively quiet..EXCEPT for an attack on funding for any private higher education; thankfully that was also rebuffed.

In light of our CA experience, it might seem that I personally, and our school corporately, would run into the arms of a proposed “Fairness For All” national legislative approach, correct? It would seem that way, but I remain very dubious, having not seen the proposed legislation, having not seen an indication of potential sponsorship, and having grave concerns about our

experience in CA, mirrored by MA, IL, and others.

I realize that many (including my friends here in this room) intend to press for federal legislation, as yet unwritten and unsponsored, that will seek to provide a host of religious liberty protections while simultaneously enshrining into federal law a variety of civil liberty protections for those in the LGBTQ community and for other sexual minorities yet to be determined. Let me be clear that I cast no aspersions on the motives of those who have pursued these policy aims with focus and force these past several months.

As a higher education leader in California, however, I live with the daily tension that these issues present for our state's lawmakers, our university's faculty and staff, and our students. Knowing firsthand the inevitable pain that comes from a lack of clarity around these issues, I am unwilling and unable to support any legislation that normalizes gender fluidity or gender inconsequentiality or that normalizes same sex sexual behavior. Please know that I am, unequivocally, for civil protections for all persons in our constitutional republic, regardless of status or standing.

Simultaneously, I am Biblically, theologically, parentally, and pastorally unable and unwilling to affirm any view of gender which suggests that maleness and femaleness are arbitrary, self selected, fluid, or inconsequential. I am likewise unable to affirm public policy which seeks to codify a host of variant sexual practices as normative for our republic, particularly when it does so while taking direct aim at the religious values and liberties that so many members of our community cherish and rely on our institutions to protect and uphold. My convictions compel me, for the sake of those for whom I have responsibility to lead, not to appease or accommodate what Scripture clearly forbids. We may now, or in the future, be living in exile; if so we will seek to be faithful to the gospel of Jesus Christ in exile. But I will not be party to voluntarily writing laws that facilitate an exilic life in violation of my religious convictions.

I recently had occasion, due to the kindness of my friend, Stake President Ned Telford, to review the remarks of Elder Oaks on religious freedom made in Dallas(<http://www.mormonnewsroom.org/article/transcript-elder-dallin-h-oaks-religious-freedom-dallas>). I found those remarks both refreshing and a helpful guide in principle and I commend them to you. I do question whether those principles will end up being thwarted by proposed “Fairness for All” legislation.

Thank you for your time and attention today.