

Florida's Children and Youth Cabinet

Article I Section 3 of Florida's Constitution and Florida's "Blaine Amendment"

Marion Drew Parker, General Counsel
Florida Department of Children and Families

Article I Section 3 of Florida's Constitution

SECTION 3. Religious freedom.—There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

Three Clauses in Article I Section 3 of Florida Constitution

1. Establishment Clause
2. Free Exercise Clause
3. No-Aid Clause

Establishment Clause

"There shall be no law respecting the establishment of religion..."

Generally interpreted to prohibit:

1. Establishment of a national or state religion, and
2. Preference by the government of one religion over another.

Free Exercise Clause

"There shall be no law ... prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. "

- Generally interpreted to provide that government cannot prohibit religious beliefs and opinions; however, they may prohibit certain practices. *Reynolds v. U.S.*, 98 U.S. 145 (1878).
- For government to restrict religious practices, a compelling government interest must exist.

No-Aid Clause

"No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution."

Proposed Federal Blaine Amendment

- 1875, President Grant called for a constitutional amendment that would mandate free public schools and prohibit use of public money for sectarian schools.
- That same year, Congressman James G. Blaine proposed such an amendment to the federal constitution.
- Passed the House of Representatives by 180 to 7, but failed by four votes in the Senate to receive the two-thirds for passage.

Text of the Blaine Amendment

"No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised or lands so devoted be divided between religious sects or denominations."

History of Florida's No-Aid Provision

- First adopted in 1885:
 - "...no money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or religious denomination, or in aid of any sectarian institution."
- 1968 Constitution retained language of no-aid provision:
 - "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution."

Interpretation of Florida's No-Aid Provision

- Four part test to assess compliance with Article I section 3 of Florida's Constitution:
 1. The statute must have a secular legislative purpose (religion-neutral program);
 2. Its principal or primary effect must be one that neither advances nor inhibits religion;
 3. The statute must not foster "an excessive government entanglement with religion"(three prong Lemon test; *Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1971)); AND
 4. The statute must not authorize the use of public monies, directly or indirectly, in aid of a sectarian institution.

Bush v. Holmes, 886 So. 2d 340, 358 (Fla. 1st DCA 2004).

Interpretation of Florida's No Aid Provision

- **Council for Secular Humanism v. McNeil**, 44 So. 3d 112 (Fla. 1st DCA 2010).
 - o Application of the no aid provision to a faith-based substance abuse transitional housing program administered by contract with the Florida Department of Corrections.
 - o Program violates the no aid provision found in Article I section 3 of Florida's Constitution.
 - o No aid provision of Florida Constitution not limited to school context.
- **Bush v. Holmes**, 886 So. 2d 340 (Fla. 1st DCA 2004).
 - o Court held the Florida school voucher program violated the Florida constitutional provision prohibiting public aid of sectarian schools because it gave an indirect benefit to sectarian schools.
- **Southside Estates Baptist Church v. Board of Trustees, School Tax Dist. No. 1, In and For Duval County**, 115 So. 2d 697 (Fla. 1959).
 - o Florida Supreme Court held that permitting several churches to use various public school buildings on Sunday until the construction of their church buildings was complete did not violate the Florida constitutional provision prohibiting public aid of sectarian institutions.
- **Fenske v. Coddington**, 57 So. 2d 452 (Fla. 1952).
 - o Florida Supreme Court held that the existence of a chapel for religious worship in the buildings of a public school did not violate the Florida constitutional provision prohibiting public aid of sectarian institutions, when the chapel was maintained with funds from a private trust).

Proposed Amendment to Article I section 3 of Florida's Constitution

- HJR 1471:

Except to the extent required by the First Amendment to the United States Constitution, neither the government nor any agent of the government may deny to any individual or entity the benefits of any program, funding, or other support on the basis of religious identity or belief. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

Current State

- No direct or indirect funding to a church, sect, or religious denomination or in aid of any sectarian institution.
 - Indirect funding: funding an organization through the independent choice of a beneficiary of a voucher, certificate, coupon, or similar mechanism.
 - Direct funding: funding that is provided to a religious organization directly by the government.
- However, Florida's First District Court of Appeals has noted: "Nothing in the Florida no-aid provision would create a constitutional bar to state aid to a nonprofit institution that was not itself sectarian, even if the institution is affiliated with a religious order or religious organization." *Council for Secular Humanism v. McNeil*, 44 So. 3d 112, 118 (Fla. 1st DCA 2010).

Effect of Passage of Proposed Amendment

- Faith-based organizations (FBO's) will eligible to participate in state administered social service programs to the same degree as any other group, with certain restrictions to protect separation of church and state.
- White House Office of Faith-Based and Neighborhood Partnerships (formerly the White House Office of Faith-Based and Community Initiatives).
 - FBO's cannot use government funds to support inherently religious activities such as prayer, worship, religious instruction, or proselytizing.
 - Any inherently religious activities the organization offers must be offered separately in a time or location from services that receive federal assistance.
 - FBOs cannot discriminate on the basis of religion when providing services.

Questions
