After receiving BS in Political Science with emphasis on constitutional law I served 34 years in the US Army mainly in heavy mechanized and airborne units along with work in logistics and combat developments. Received MS in Education and attended Command and General Staff College, Army War College and College of Industrial Arts. Upon retiring from active duty I worked on war game simulations and training development for the Department of Defense. I completed advanced work in Social Studies, US History, philosophy and Education resulting in additional degrees and a teacher certification. I taught Advance Placement US Government and US History for 5 years before returning to work for the Department of Defense in security operations. I have continued advance studies in philosophy, science, history, Constitutional Law and music from a variety of schools.

Good morning,

My name is Bud Droke. I am a member of the Grandview United Methodist Church. I have been asked to reflect on the concept of Religious Liberty laws and regulations. Let me start by stating that I am not a lawyer although I have studied law as a historian and political scientist. Most of my adult life I have been working for the Department of Defense both in uniform and as a civilian and thus assiduously avoiding controversial issues and expressing anything that could be construed as a political opinion.

To me the concept of religious liberty in the broadest context brings up thoughts of Pilgrims in Massachusetts. They were so strict in their interpretation of religious liberty that Ann Hutchinson fled to and help found the colony of Rhode Island. In my wife's state of Virginia, the Anglican church was established as the state church. In Pennsylvania William Penn, although founding a Quaker state, provided for a bit more tolerance and flexibility. There was a large Jewish settlement in South Carolina. My Lutheran and Catholic ancestors moved down Susquehanna Valley to eventually settling in Arkansas and Mississippi and at some point became Baptist.

Out of this conglomeration of peoples, faiths, beliefs and practices we decided to forge a nation. One of my favorite movies is ***1776.***. It has all of our favorite characters, Jefferson is a tall red head, Adams a short portly loudmouth that the southern colonist can understand. Franklin is the old curmudgeon. Rutledge and Lee just want to fight. They argue about everything, Luckily It's a musical so the arguments are easier to tolerate. They come to a common agreement and publish the *Declaration of Independence*,

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,

Note that both the creator and governments have a role to play relative to our rights.

And revolution was fought against a government which had a state sponsored established religion that had fought many a bloody battle against other religions in the same national territory. After gaining independence a confederated government was established which did not work well because it gave too much authority to the individual states; so a new one was formed by creating a federal, republican Constitution. But even that wasn't enough to satisfy the people who required that a Bill of Rights was necessary to guarantee, among other things, religious freedom, religious liberty.

And first is

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article VI of the Constitution contains the only mention of religion;

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; **but no religious** Test shall ever be required as a Qualification to any Office or public Trust under the United States.

This amendment begins a long, and some would say tortuous discussion of religious liberty in government institutions and our society.

I used to teach my college students in American Government that the basic concept of liberty is the right of a person or people to do what ever you want so long as it does not interfere in another's right to do what they want. I have the right to swing my arms about until they reach your nose and then I no longer have that liberty as it interferes with your right to not be punch in the nose.

Thus begins a long path to today's discussion concerning religious freedom, religious liberty. Constitutional amendments, legislation at national and state level and court cases at every level not only embellish but cloud our understanding of what religious freedom/liberty means.

Bottom Line Up Front (BLUF)

When is discrimination legal?

When is discrimination legal based on sincerely held religious beliefs?

What kind of discrimination?

What recourse or remedy does the person or entity being discriminated against have?

What should the EPA UMC say about discrimination?

Understanding where we are relative to civil authorities and religious is as complex as understanding scripture. And in both cases we never really get it exactly right and must be open to others thought, concepts, understandings, interpretations and convictions. But I do know that I am not the judge.

Judgment is an ambiguous word, in Greek as in English: it may mean exercising a proper discernment, or it may mean sitting in judgment on people or even condemning them."

It is this second definition, to condemn, that Jesus forbids and he makes that clear when the whole sentence in Luke 6 is read: "Judge not, and you will not be judged; condemn not, and you

will not be condemned." Jesus is saying the same thing in two ways-a common rabbinical device at the time. He's calling us to not condemn people, to not pass final judgment and declare them irretrievably guilty. The entire culture of his day was predicated on the notion that some people were acceptable and others were not. And the way you defined yourself, your identity and place in the world, was by comparing and contrasting yourself with others.

"I did not come into this world to condemn the world but to save the world."

Like scripture the civil text have several key terms of reference.

Compelling governmental interest; a method for determining the constitutionality of a statute that restricts the practice of a fundamental right or distinguishes between people due to a suspect classification. When used with the concept of strict scrutiny, it can allow the Government to justify doing something which it would otherwise be barred from doing, on grounds of constitutionality.

The "**least restrictive means**," or "**less** drastic **means**," test is a standard imposed by the courts when considering the validity of legislation that touches upon constitutional interests. If the government enacts a law that restricts a fundamental personal liberty it must employ the least restrictive measures possible to achieve its goal. This test applies even when the government has a legitimate purpose in adopting the particular law.

References to an **undue burden standard** are a shorthand to a collection of similar sounding, but legally distinct standards invoked in various areas of United States constitutional law. Some advocates have described the undue burden standard as "a 'middle way' forward" for Constitutional analysis, between the strict scrutiny and the rational basis test.

A **protected class** is a group of people with a common characteristic who are legally **protected** from discrimination on the basis of that characteristic. The following characteristics are "**protected**" by federal law. The **Civil Rights Act of 1964** outlaws discrimination based on race, color, religion, sex, or national origin. It ended unequal application of voter registration requirements and racial segregation schools, at the workplace and by facilities that served the general public known as public accommodations. In 2013 the Supreme Court declared LGBT, sexual identify and gender identification to be protected classes for the purposes of anti-discrimination laws.

Disparate impact occurs when policies, practices, rules or other systems that appear to be neutral result in a disproportionate **impact** on a protected group. ... **Disparate** treatment is intentional employment **discrimination**. For example, testing a particular skill of only certain minority applicants is **disparate** treatment.

Public Accommodation; place of business with the public. I currently work in a family owned bookstore which is a public accommodation. We sell to anyone, except we can't process their American Express Card.

Civil Rights Act of 1964

prohibits discrimination by covered employers on the basis of race, color, **religion**, sex or national origin

recall the Woolworths counter. The bus boycott. The history of slavery. All justified by religion.

from FINDLAW, 2014

As several states are considering bills that would, in effect, reinforce a business owner's right to refuse service to gay and lesbian customers, many may be wondering if it's even legal to do so. With a patchwork of federal, state, and local laws in place regarding the rights of gays and lesbians in public accommodations -- i.e., most businesses that are open to the public -- the issue can get a bit confusing. –

Federal Law and Private Businesses Title II of the Civil Rights Act of 1964 -- the federal law which prohibits discrimination by private businesses which are places of public accommodation -- only prevents businesses from refusing service based on race, color, religion, or national origin.

Federal law does not prevent businesses from refusing service to customers based on sexual orientation. This is true both for customers and employees of private businesses, although forces in Congress have been attempting to pass laws which protect gay and lesbian employees for decades.

So if there are no state or local laws to the contrary, private business owners may legally choose to refuse service to customers based on their sexual orientation -- and some have publicly done so. –

Some other key factors affecting our discussion

In **1993**, Congress adopted the **Religious Freedom Restoration Act**. The RFRA created a judicial standard of review that would be applicable to laws that burden religion. The law required that any category of law passed by government must satisfy a strict scrutiny test. Specifically, RFRA bars the government from applying its laws in a way that substantially burdens a person's religious conduct. The only exception allowed under the RFRA is if the government can show that the law exists to further a compelling government interest and was the least restrictive means of accomplishing that interest.

The Court in ***Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*** **(2006)** made clear that the RFRA is federally constitutional by ruling on the case without questioning its constitutionality. It, however, remains unconstitutional as applied to the states.

The Court also clarified the in the person test. This made clear to the Government and the lower courts that the RFRA is to be applied looking at the particular person's burden, not by looking at the burden on society.

Since then we have seen the Defense of Marriage Act declared unconstitutional and the rights to gay marriage upheld throughout the federal and several state court systems.

Pennsylvania passed a religious freedom law in 2002 long before a similar law created controversy in Indiana. But the two laws have at least one major difference. Indiana allows for-profit companies to claim a religious liberty violation and sue the state. Pennsylvania's law offers protection to individuals, churches and tax-exempt organizations, but not for-profit companies. Pennsylvania specifically excludes for-profits from protection.

Some recent court ruling

30 May 2014. A Colorado judge ruled today that a bakery unlawfully discriminated against a gay couple that had been long term customers by refusing to sell them a wedding cake due to the owners religious beliefs.

2016 Mississippi passed a law that would let merchants and government employees cite religious beliefs to deny services to same sex couples. **April 2017 5th US Circuit Court of Appeals** halted the law before it could take effect, ruling it unconstitutionally establishes preferred beliefs and creates unequal treatment for LGBT people. Stating that the First Amendment is about neutrality.

Feb. 2017 A Richland, Washington florist who refused to provide flowers to a gay couple for their wedding violated state anti-discrimination law, the state Supreme Court ruled Thursday.

The court ruled unanimously that Barronelle Stutzman discriminated against longtime customers when she refused to do the flowers for their 2013 wedding because of her religious opposition to same-sex marriage. Instead, Stutzman suggested several other florists in the area who would help them.

13 March 2017 ATLANTA — In a setback for gay rights advocates who had hoped for an expansion of workplace discrimination protections, a federal appeals court in Atlanta has ruled that employers aren't prohibited from discriminating against employees because of sexual orientation.

A three-judge panel of the 11th U.S. Circuit Court of Appeals on Friday ruled 2-1 that Title VII of the Civil Rights Act of 1964, which prohibits workplace discrimination based on a variety of factors, doesn't protect against workplace discrimination based on sexual orientation.

4 April 2017 A federal appeals court in **Chicago** ruled that Civil Rights Act of 1964 prohibit discrimination on the job against lesbian, gay, bisexual, and transgender employees. It was the first ruling of its kind from a federal appeals court. The decision, from the Seventh Circuit Court of Appeals in Chicago said "discrimination on the basis of sexual orientation is a form of sex discrimination."

Federal law forbids workplace discrimination on the basis of race, color, religion, sex, or national origin, but it does not explicitly mention sexual orientation, and the U.S. Supreme Court has never ruled on the issue.

But the appeals court, in an 8-3 decision, said "it would require considerable calisthenics to remove the 'sex' from 'sexual orientation.'"

4 April 2017, *Los Angeles Times*

Seventeen states and the District of Columbia have nondiscrimination laws with protections in the area of public accommodations for all people regardless of sexual orientation or gender identity. Four more states have nondiscrimination laws with protections in public accommodations regardless of sexual orientation only.

Twenty-nine states have neither.

“Creating licenses to discriminate is a very dangerous path for America to go back down," said Evan Wolfson, president of Freedom to Marry. "Fifty years ago, businesses were allowed to refuse to serve people based on their skin color, and as a nation, we decided that was wrong. Treating people differently based on who they are is discrimination.”

Which finally brings us to today’s discussion.

Should the EPA UMC favor a state law which allows private for profit business to discriminate against customers because of their sexual orientation or gender identify. Should the EPA UMC favor any type of discrimination because of a business owner’s “strongly held religious beliefs”

If so, what religious beliefs? Allowing for what form of discrimination?

OPEN DISCUSSION, QUESTION AND ANSWER.

In conclusion

From Gil Rendle's "Be Strong and of Good Courage, and call to quiet courage" come some words of wisdom for our reflection as our future conversations

> **FINALLY, COURAGEOUS LEADERSHIP IS CONSTRAINED BY THE INTERNAL DIVISION THAT THREATENS ALIENATION AND SCHISM.**
>
> We have too easily defined community as agreement – an idea that worked rather well in times of great cultural consensus and cohesion. However, communities that agree to agree as the basis of being together, actually condemn themselves to be pseudo communities. Mature, healthy communities engage in honest discourse over differences and **willingly live with the discomfort of the tension produced**. Our current unwillingness to live together in disagreement and discomfort prompts us to search for bold decisive leaders who will identify winners and losers and return us to an equilibrium from an earlier remembered time.
>
> Normative, acceptable, Christian behavior has always been contested among the various theological expressions of the church.
>
> There were once clear fault lines between the mainline, the evangelical, the Pentecostal, and the independent expressions of American Christianity. These fault lines were marked and managed by assumptions held about the appropriate use of Scripture in guiding the Christian life. Different strands of Christianity positioned themselves along a continuum of modes of scriptural interpretation producing a subsequent range of behaviors and lifestyles that were acceptable or unacceptable depending upon where one's Christian tradition was located on the continuum.
>
> Definitions of acceptable lifestyles morphed as one traveled from independent and Southern Baptist standards, through mainline, and on to Unitarian Universalist traditions. In mid-20th-century America, family and friendships were defined and delineated by location on this continuum. Internal unity within a theological tradition was fairly well stated and somewhat easily maintained by its location on the continuum.

What is right?

Who are we to judge?

Discrimination is hate manifested by our actions and cannot be justified by God's word.

(in the beginning was the word, and the word was with God and the word was God)