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First Amendment Ramifications of Mandating Drunk Drivers to Alcoholics Anonymous

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FIRST AMENDMENT RAMIFICATIONS OF MANDATING DRUNK
DRIVERS TO ALCOHOLICS ANONYMOUS

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Submitted in partial fulfillment of the requirements of the
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Michigan State University College of Law
under the direction of
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"Among [other A.A.] members you will make lifelong friends. You will be bound to them with new and wonderful ties, for you will escape disaster together and you will commence shoulder to shoulder your common journey."

-- The *Big Book* of Alcoholics Anonymous¹

"In the United States, AA is becoming an after-care depository for . . . criminal justice agencies. Reliance on widespread or routinized AA mandates presents challenges to basic assumptions on which the [AA] fellowship was founded: anonymity, peer-based mutual aid and a common welfare."

-- Richard Speigman, "Mandated AA attendance for recidivist drinking drivers"²

INTRODUCTION

It is becoming common practice for courts to require, as a condition of probation, for alcohol- and drug-related criminal offenders, typically drunk drivers, to attend Alcoholics Anonymous (A.A.) meetings. A state's Department of Motor Vehicles or Secretary of State may also require A.A. attendance as a condition for drunken driving offenders to have their revoked drivers' licenses reinstated. There is existing case law on the topic of whether the Free Exercise rights of those forced to attend A.A. have been violated, and whether by such acts the government has violated the Establishment Clause.³

However, the question of whether the rights of *A.A. members* have been violated by judicial and administrative authorities, in forcing criminal offenders to attend A.A., has not yet been examined. Large numbers of people are mandated to attend A.A. meetings; in one Michigan community A.A. meetings have had attendance comprised of 30% to 80% government-mandated attendees.⁴ The voluntary A.A. members, because of A.A.'s Traditions, are in effect powerless to prevent attendance by those sentenced or forced to attend by the government. By overwhelming A.A. in this fashion, the government is possibly destroying the organization it is relying on to cure the social ills associated with alcohol and drug-related crimes. Furthermore, because the government does not respect the A.A. Traditions, which are the tenets of A.A. that ensure its survival, the government may be contributing to the demise of A.A.

An analogy is in order to explain the plight of the A.A. member. Most people understand the religious practice of taking Holy Communion as part of a Catholic Church service. Individuals take Holy Communion voluntarily in a group setting during Mass.⁵ Taking Holy Communion is one of the sacraments of the Catholic Church, which the Church considers a "necessary means of salvation, conferring each sacrament's special graces, forgiveness of sins . . .

and membership of the Church."⁶ Furthermore, "the sacraments presuppose faith; and, in addition, their words and ritual elements nourish, strengthen and give expression to faith."⁷ Suppose that courts began sentencing criminals to attend Mass and partake in the Holy Communion as a rehabilitative measure. Of course there would arguably be violations of the Establishment Clause and Free Exercise rights of the criminals, but what about the rights of the voluntary members of the Catholic Church? The voluntary church member might feel their communion with God to be burdened, inhibited, restricted or even non-existent because of the forced participation by non-believers. The church member's communion with God might lose its meaning if the member knows that others are participating as a form of *punishment*. Voluntary membership in a Church might not be so meaningful if a certain percentage of the church population is forced to attend, some of those forced attendees are hostile about attending, many of the forced attendees come in late, and they tell the church member that as soon as their probation is over, they're through with the church.

While A.A. members do not take Holy Communion while attending an A.A. meeting, they do have regular meetings, they do have rituals, and they do believe in a Higher Power which most members call God. As in the Catholic Church analogy, what A.A. members do, say, and believe can be altered as a result of forced attendance by criminal offenders. As an A.A. member, might you change what you say based on the fact that there are a large percentage of people, sometimes as much as 80%,⁸ at your meeting who don't believe as you do? Might you worry that if you share intensely personal information,⁹ it won't be held confidential? Might you keep your comments at an "A.A. beginner" level because most of the people in the room are either "beginners," or don't want to follow the A.A. program, when your message would be much different if they weren't present?¹⁰ As one researcher succinctly states regarding mandated A.A.

attendance: “[I]n a group setting the group as well as the individual experiences the impact of mandated participation.”¹¹

Possible constitutional claims on behalf of A.A. members include violations of their Freedom of Speech, Freedom of Religion, and Freedom of Association. It is important to note that the regulations allow courts and administrative agencies to force offenders to attend A.A., but they do not force the A.A. member to accept the offender. However, the A.A. member is powerless to challenge the attendance by the offenders because of the A.A. Traditions, as discussed in detail Parts II.D and II.F *infra*.¹²

The regulations impinging on the free speech at issue in this paper are only permissible if they are narrowly tailored to serve a significant government interest and the regulations leave open ample alternative channels for the communication of the information.¹³ The regulations will survive free association challenges only if the government can assert that the regulations serve a compelling interest unrelated to the expression of ideas, and the regulations are the least restrictive means of achieving that interest. If A.A. is deemed a religious organization, and if the regulations infringe on the free exercise of A.A.’s religious practices, and another of the A.A. members’ fundamental constitutional rights is also implicated, then the regulation will survive only if the government can show a compelling interest and that the regulation is the least restrictive method of achieving the government’s interests.

While A.A. members’ rights may be impinged, the government and the public do have a compelling interest in reducing drunk driving. The National Highway Traffic Safety Administration (hereinafter NHTSA) estimated there were 16,694 alcohol-related traffic deaths in 2004 in the United States, accounting for 39% of the total U.S. traffic deaths.¹⁴ Furthermore, NHTSA estimates there are approximately 300,000 people injured on an annual basis in alcohol-

related crashes.¹⁵ The statistic relevant to court-ordered A.A. attendance has to do with recidivism: approximately one-third of drunken driving arrests and convictions in the U.S. are of repeat offenders.¹⁶ If sentencing drunk drivers to attend A.A. can lower the recidivism rate by even 25%, it would save over one thousand lives and prevent up to 25,000 injuries per year.

This paper looks at the ramifications of court-mandated A.A. attendance on the A.A. member and A.A. groups. First, focusing on Michigan, the offending statutes, rules, and programs are examined in conjunction with the purpose they serve. Next is a detailed discussion of the A.A. Program, specifically regarding those elements of A.A. that might be burdened by these government regulations. The next section analyzes the possible constitutional violations of the A.A. member by comparing the member's case with seminal U.S. Supreme Court cases. Last, alternatives to court-mandated A.A. attendance are explored.

I. THE GOVERNMENT'S INTEREST

In Michigan there were 430 alcohol-related traffic deaths in 2004, accounting for 37% of the total traffic deaths.¹⁷ In 2005, Oakland County, Michigan experienced 6,691 alcohol and drug-related traffic offenses, and, as a microcosm point of reference, the 52-1 District¹⁸ of Oakland County experienced approximately 1,115 offenses.¹⁹ These numbers do not include arrests for such offenses such as minor-in-possession, public intoxication, marijuana or other drug possession, and these offenders are also frequently forced to attend A.A. as a condition of probation.²⁰

The Michigan regulations used by the courts to reduce recidivism among drunk drivers include M.C.L.A. Section 771.3, which allows a court to mandate A.A. attendance as a condition of probation;²¹ Chapter 10A, which establishes the Sobriety Court;²² M.C.L.A. Section

257.625b(5), which requires assessment of offenders to determine if alcohol or drug treatment programs would be beneficial, and, if so, provides for sentencing to a rehabilitative program;²³ and M.C.L.A. Section 257.313, which requires the Secretary of State to revoke a driver license given specific driving while impaired/intoxicated convictions, and requires the offender to show A.A. membership in order to have a driver license reinstated.²⁴

As a condition of probation, a drunk driver or other alcohol- or substance-related criminal may be ordered to attend A.A., typically once or twice a week for several months.²⁵ Or, if the offender meets certain requirements, such as having two or more alcohol-related convictions but no convictions for violent crimes, he or she may be admitted into a special program called Sobriety Court as an alternative to jail time.²⁶ Sobriety Court programs may require the probationer to attend A.A. meetings every day.²⁷ The probationer is legally required to offer proof to the courts that he or she attended A.A. meetings by having the A.A. chairperson sign an attendance sheet, which the probationer turns into the court.²⁸

Sobriety Courts, also known as Drug Courts or DWI Courts,²⁹ are springing up all over the country. As of April, 2005, there were approximately 50 drug/sobriety courts operating in the state of Michigan.³⁰ In February, 2006, there were eight such courts operating in Oakland County alone.³¹ Their purpose is to reduce recidivism rates "by bringing about a behavioral change" in the offender, which in turn promotes overall public safety.³² Drug/sobriety courts are showing success. A National Institute of Justice study showed a recidivism rate among drug court graduates of 16.4 percent after one year and 27.5% after two years,³³ compared to recidivism rates of 33% for offenders that did not participate in any program.³⁴ Indirect benefits of sobriety court programs include saving taxpayers' money by avoiding incarceration of offenders, lowering crime rates, and improving family situations.³⁵

Offenders enter Sobriety Courts as part of a suspended or reduced sentence, thereby avoiding jail time.³⁶ The criminal offenses committed are usually alcohol-related, such as Driving While Impaired or Driving While Intoxicated (DWI), but they may also be substance-abuse related crimes, such as Marijuana or Cocaine Possession, and in some instances, even Domestic Violence.³⁷

A Sobriety Court will provide an offender with a coordinated team effort, over a period of approximately one year, in an intense interactive environment consisting of biweekly meetings with the judge, weekly or biweekly visits with a designated sobriety court probation officer, daily or random drug and alcohol testing, and required attendance at a “12 step support group (such as AA).”³⁸ Ingham County Michigan requires, during Phase I, which is a minimum of twelve weeks, that the probationer attend a minimum of four 12-step support group meetings per week.³⁹ In Oakland County, Michigan, the 52-1 District program, which consists of a minimum of 72 weeks of supervision by the court, requires participants to “attend AA meetings daily for at least 30 days. . . . [and] [t]he sanction for missing an AA meeting is daily AA attendance for a minimum of 30 days.”⁴⁰ While in Sobriety Court, participants must attend a minimum of three A.A. meetings per week.⁴¹ Almost all such programs require A.A. attendance.⁴²

In addition to A.A. attendance as part of DWI or Sobriety Court probation, administrative agencies such as a Secretary of State or Department of Motor Vehicles have also promulgated rules for drunk drivers that implicate A.A.⁴³ In Michigan, if a person receives a second drunk driving offense within seven years of a prior offense, the person’s driver license is automatically suspended for one year.⁴⁴ After the period of revocation is up, the person must petition the Secretary of State to have their license reinstated.⁴⁵ The petitioner has the burden of proof to

show by clear and convincing evidence that they have abstained from alcohol and drugs, that their alcohol or substance-abuse problem is under control, and, most importantly, that their problem is likely to remain under control.⁴⁶ Available case law indicates that the only evidence of abstinence and sobriety that the Secretary of State has accepted is A.A. attendance.⁴⁷

II. THE AA PROGRAM

A. What is AA

The Alcoholics Anonymous' *Preamble* states:

Alcoholics Anonymous is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from alcoholism. The only requirement for membership is a desire to stop drinking. There are no dues or fees for AA membership; we are self-supporting through our own contributions. AA is not allied with any sect, denomination, politics, organization or institution; does not wish to engage in any controversy, neither endorses nor opposes any causes. Our primary purpose is to stay sober and help other alcoholics to achieve sobriety.⁴⁸

A.A. was started in 1935 with two original members;⁴⁹ today A.A. membership is estimated at over 2 million people worldwide.⁵⁰ The book *Alcoholics Anonymous*, affectionately known as the *Big Book*, was written in 1939 by members of A.A.⁵¹ The purpose of the book was to help suffering alcoholics find a "Higher Power" that would help them solve their alcohol problem.⁵² The *Big Book* spells out the Twelve Steps⁵³ of A.A. that members are encouraged to put into practice in their lives, and the book *Twelve Steps and Twelve Traditions*,⁵⁴ published in 1952, explains how to work the Twelve Steps in great detail, along with explanations of the Twelve Traditions, which A.A. members are encouraged to follow to ensure the survival of the A.A. fellowship.

A.A. was formed with the idea that to stay sober, recovering alcoholics must have a spiritual awakening and learn to depend on their Higher Power for help to stay sober.⁵⁵ The way to have this spiritual awakening is through practicing the Twelve Steps, and the way to practice

the Twelve Steps is together with other members of the A.A. fellowship.⁵⁶ The fellowship of A.A. is important because it is believed that only an alcoholic can understand another alcoholic, and therefore recovering alcoholics are in the best position to help other alcoholics recover.⁵⁷ The text of the *Big Book* states that “The ex-problem drinker who has found this solution, who is properly armed with facts about himself, can generally win the entire confidence of another alcoholic in a few hours. Until such an understanding is reached, little or nothing can be accomplished.”⁵⁸ Furthermore, it is believed that the A.A. program needs to be worked on a continuous basis, otherwise the alcoholic will again enter a state of denial regarding his or her alcohol problem, and will eventually drink alcoholically again.⁵⁹

The disease of alcoholism is unique in that self-denial of affliction is a symptom, as is the inability to stop drinking, once started.⁶⁰ Some alcoholics will not admit they have a drinking problem, even as they are dying of cirrhosis of the liver, or they may believe that they will be able to control their drinking.⁶¹ Others may admit they have a problem, but won’t give up alcohol even as they are losing their families and livelihood due to drinking.⁶² According to the *Big Book*, alcoholics who do recover through A.A. do so only when they reach a state of desperation, such that they experience “pitiful and incomprehensible demoralization.”⁶³ The *Big Book* says that the alcoholic must be humbled in order to give up the idea that he can quit drinking on his own and be convinced to follow the program.⁶⁴ For instance, one passage describing how a recovering alcoholic can help another to recover states that “The more hopeless [the drinker] feels, the better. [The drinker] will be more likely to follow your suggestions.”⁶⁵

The A.A. program is not easy to follow. The *Big Book* says that the A.A. program must be followed completely or the alcoholic may not recover.⁶⁶ To achieve sobriety, alcoholics have to “grasp[] and develop[] a manner of living which demands rigorous honesty.”⁶⁷ They need to

engage in “self-searching,” the “leveling of [] pride,” and “the confession of shortcomings.”⁶⁸

The program requires a “revolutionary change” in the alcoholic’s way of thinking since the alcoholic must learn to rely on spiritual help.⁶⁹ A relationship with God is a necessity.⁷⁰ Hopeless alcoholics must find the willingness to “go to any lengths” to recover.⁷¹

B. AA organization (or lack thereof)

It may be a surprise to learn, given Alcoholics Anonymous longevity and membership size, that “A.A. has no central authority, minimal organization, and a handful of Traditions instead of laws.”⁷² There are no rules or policy to follow. An A.A. group is formed when someone says it is formed,⁷³ and then the group can commence to hold A.A. meetings. There is a structure, the General Services Organization (G.S.O.), which supports A.A. worldwide.⁷⁴ Under the G.S.O. are Regions, Areas, and Districts.⁷⁵ Individual groups may elect a General Service Representative (G.S.R.) to represent the group at district and area meetings.⁷⁶ However, the G.S.O. and district and area organizations hold no authority over an A.A. group.⁷⁷

C. The Twelve Steps⁷⁸

To understand the difficulty of practicing the A.A. program, it is helpful to look at a few of the Twelve Steps. A.A. members practice the steps to recover from alcoholism, but after recovery is established, alcoholics work the steps as a “design for living.”⁷⁹ A.A. members practice the steps at meetings and also with their A.A. sponsor, and ultimately in all of their daily interactions.⁸⁰ The purpose of the steps is to humble the alcoholic and to help the alcoholic have a spiritual awakening.⁸¹

The Fourth Step asks the A.A. member to make a fearless and thorough moral inventory.⁸² Essentially, a “fourth step inventory” is a member’s autobiographical account of the various transgressions, resentments, and character defects that played a role in their drinking

careers.⁸³ It is believed that members will not be able to overcome drinking for good without taking this step.⁸⁴ Taking an inventory is a “humbling experience,”⁸⁵ for alcoholics since they are asked to write down all of their humiliating experiences and any dark secrets they may be keeping.⁸⁶

The Fifth Step asks the A.A. member to share their fourth-step inventory with God and another person, usually their A.A. sponsor.⁸⁷ The *Big Book* expresses concern that alcoholics “may rebel at the thought of a drastic housecleaning which requires discussion with other people.”⁸⁸ However, to stay sober, it is necessary for an alcoholic to tell another their entire life story; those who avoid doing this had not “humbled themselves. . . . they had not learned enough of humility, fearlessness and honesty”⁸⁹

The Eighth and Ninth Steps ask the member to make amends to people they have harmed by their drinking.⁹⁰ No one can be ignored, even those people who harmed the alcoholic must be apologized to if the alcoholic harmed them in any way.⁹¹ The alcoholic apologizes only for his or her own wrong-doing, without making mention of any wrong-doing on behalf of the other person.⁹² A.A. members need to “repair the damage done in the past,” remembering that they “agreed at the beginning [to] *go to any lengths for victory over alcohol.*”⁹³ A.A. members are even expected to make amends to people they may hate.⁹⁴ The *Big Book* instructs, “We go to [the person we hated] in a helpful and forgiving spirit, confessing our former ill feeling and expressing our regret.”⁹⁵ A.A. members probably owed money as a result of their drinking. They are expected to pay any money back, and to let their creditors “know we are sorry.”⁹⁶ Maybe the alcoholic has committed a criminal offense, such as stealing money from a former employer.⁹⁷ Again being reminded that they agreed “to go to any lengths to find a spiritual experience,” they

are expected to make amends for criminal offenses, even if means they might lose their job or reputation or even if they might face incarceration.⁹⁸

The Twelfth Step says that the member, after “having had a spiritual awakening,” should carry the A.A. message to other alcoholics and practice the A.A. principles in every aspect of their lives.⁹⁹ The Alcoholics Anonymous program was formed when one alcoholic reached out to another alcoholic, and then those two reached out to help a third.¹⁰⁰ A.A. members believe that recovering alcoholics are uniquely qualified to help other alcoholics since they understand each other.¹⁰¹ In fact, the *Big Book* says that in order for a recovering alcoholic to maintain sobriety, he or she must reach out to help other suffering alcoholics recover.¹⁰²

D. The Twelve Traditions¹⁰³

The Twelve Traditions were first published in 1946.¹⁰⁴ They were the result of many experiences among A.A. members on what to do and what not to do in making A.A. the most effective program possible.¹⁰⁵ The author of the Twelve Traditions, Bill W., thought it was essential that members follow the Twelve Traditions in order for A.A. to survive.¹⁰⁶ All Twelve Traditions can be found on the A.A. web site,¹⁰⁷ and their full text along with detailed explanations can be found in the *Twelve Steps and Twelve Traditions*.¹⁰⁸ The Traditions implicated by drunk driving regulations are quoted here in their short form:

Tradition Three: The only requirement for membership is a desire to stop drinking.¹⁰⁹

Tradition Five: Each group has but one primary purpose – to carry its message to the alcoholic who still suffers.¹¹⁰

Tradition Ten: Alcoholics Anonymous has no opinion on outside issues; hence the A.A. name ought never be drawn into public controversy.¹¹¹

Tradition Twelve says that “Anonymity is the spiritual foundation of all our Traditions, ever reminding us to place principles before personalities.”¹¹²

E. AA Meetings

The most important aspect of an A.A. member’s sobriety is attendance at A.A. meetings.¹¹³ Meetings comprise the “fellowship” of Alcoholics Anonymous.¹¹⁴ A.A. members gather at meetings to discuss their common problems and to encourage each other in maintaining stable sobriety.¹¹⁵ As one medical director of a recovery center said, “there’s a real magic and power in the room of Alcoholics Anonymous meetings”¹¹⁶ A typical statement from recovering alcoholics is that they could not have stopped drinking without the fellowship found at A.A. meetings.¹¹⁷ Recovering members of Alcoholics Anonymous say they feel a spiritual connection with other alcoholics at A.A. meetings.¹¹⁸

The format of A.A. meetings varies. Some meetings are “step meetings,” where the Twelve Steps are discussed.¹¹⁹ Some meetings are “lead meetings,” where an A.A. member gives a short talk, followed by discussion by other members regarding the speaker’s topic.¹²⁰ Other meetings may be “topic meetings,” where different topics are picked to discuss, such as spirituality, gratitude, resentments, and honesty.¹²¹ There are *Big Book* meetings where text from the *Big Book* is read and discussed.¹²²

For each format, the meeting may be either “open” or “closed.”¹²³ “*Open* meetings are available to anyone interested in Alcoholics Anonymous’ program of recovery from alcoholism.”¹²⁴ Most open meetings are “lead” meetings where one or more A.A. members speak about what their existence was like while they were drinking, how they came to become an A.A. member, and what their life is like today.¹²⁵ Some open meetings are exactly like closed meetings, except anyone is welcome. In Oakland County, Michigan, there are approximately 71

open A.A. meetings per month.¹²⁶ “*Closed* meetings are for A.A. members only, or for those who have a drinking problem and ‘have a desire to stop drinking.’”¹²⁷ There are approximately 565 closed A.A. meetings in Oakland County per month.

The purpose of A.A. meetings of any type is for A.A. members to “share their experience, strength and hope with each other that they may solve their common problem and help others to recover from alcoholism.”¹²⁸ Members make life-long friends at A.A. meetings.¹²⁹ They get to know each other on an intimate level since they share personal stories at meetings.¹³⁰ They help one another to stay on a steady course of sobriety, pointing out possible negative behavior or thought processes that might signal a possible relapse.¹³¹ “Once isolated by their drinking, they find in the[ir] home group a solid, continuous support system, friends, and very often, a sponsor.”¹³²

A.A. meetings are set up and conducted on a volunteer basis. Members set up a meeting by opening up the building where the meeting is held, making coffee, setting up tables and chairs, making A.A. literature available, chairing the meeting, and then they do clean up afterwards.¹³³ Meetings/groups require a treasurer to collect donations,¹³⁴ purchase supplies, and pay rent to the building owners where the meetings are held. Groups may elect a General Service Representative (G.S.R.) to maintain contact with other A.A. groups or central offices.¹³⁵ “[F]or a group to keep going, all kinds of jobs must be done.”¹³⁶

F. Why A.A. is Powerless to Prevent Attendance by Probationers/Offenders

A.A. members and groups cannot oppose the regulations that allow the government to force criminals to attend A.A. meetings. The long form of the Tenth Tradition of Alcoholics Anonymous states: “No A.A. group or member should ever, in such a way as to implicate A.A., express any opinion on outside issues—particularly those of politics, alcohol reform, or sectarian

religion. The Alcoholics Anonymous groups oppose no one. Concerning such matters they can express no views whatever.”¹³⁷

Presumably, all of the Oakland County, Michigan, meetings will have some government-mandated offenders in attendance, based on the number of Sobriety Courts now in operation.¹³⁸ Voluntary A.A. members typically frequent the same A.A. meetings; for instance, one might attend the same meetings every week on Monday, Wednesday, Friday and Saturday nights.¹³⁹ However, A.A. members attend different meetings as well. For instance, an A.A. member might have spare time around noon on a Tuesday, and may be in the vicinity of a meeting, and so they attend that meeting.¹⁴⁰ A.A. members will also attend meetings while on vacation in other states or even other countries.¹⁴¹

Unless every A.A. meeting in Michigan or the U.S. was able to ban forced attendees, it is impossible for a voluntary A.A. member to avoid attending a meeting where there are forced offenders are present. Even so, for an A.A. group to declare that no one can attend a meeting if they have been ordered to attend by the state would be the equivalent of blasphemy. A.A. will not tell someone that they can or cannot attend, unless it is obvious that the person does not have a desire to stop drinking.¹⁴² There may be times when an offender is ordered to attend A.A. and they *are* willing to practice the A.A. program. Just because a person is ordered to attend A.A. does not always mean the person does not want to be there. If an A.A. group were to declare that no membership would be afforded to the offenders, then the group may be turning away a person who truly wants help. A.A. refuses to have membership regulations,¹⁴³ because “to take away an alcoholic’s chance at A.A. was sometimes to pronounce his death sentence.”¹⁴⁴ To expect A.A. members to decide who can stay and who has to leave a meeting, when such a decision involves life or death consequences, is an unworkable solution. Besides, no individual member would

have the authority to tell someone they cannot attend because no member can speak on behalf of the group.¹⁴⁵ Instead, the solution is for the legislatures and courts to recognize there are alternatives to A.A. sentencing.¹⁴⁶

III. FREE ASSOCIATION, FREE SPEECH, AND FREE RELIGIOUS EXERCISE ANALYSIS

A. Freedom of Expressive Association

The right of association can be separated into two contexts. First is the right to privacy in intimate relationships, such as that between spouses, or parents and their children, so as to protect individual freedoms against government intrusion.¹⁴⁷ Second is the freedom to associate in non-intimate groups, where the groups are engaging in expressive activities entitled to protection under the First Amendment.¹⁴⁸ The two association rights have been called the freedom of intimate association and the freedom of expressive association.¹⁴⁹ A.A. is a non-intimate group, with over 2 million members,¹⁵⁰ that engages in expressive activities;¹⁵¹ therefore, the A.A. challenge is based on freedom of expressive association.

In determining whether a regulation can survive a freedom of expressive association challenge, the regulation must “serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.”¹⁵² The drunk driving regulations at issue for the A.A. member are not related to the suppression of ideas,¹⁵³ and, as previously discussed, they serve compelling state interests.¹⁵⁴ Thus, the A.A. member must show that his or her associational rights have been infringed upon, and that the government had no means to achieve its interests that were significantly less restrictive of associational rights. It is argued below that the regulations at issue infringe on A.A. members’ free association rights by forcing A.A. members to associate with people that are

court-mandated to attend A.A. meetings.¹⁵⁵ As the Court in *Roberts v. United States Jaycees* instructed, the right to associate implies the right not to associate.¹⁵⁶ “In the absence of a compelling justification,” the government may not “force an organization to accept as members individuals whose expressive activity is inconsistent with the tenets of the organization.”¹⁵⁷

1. *NAACP v. Alabama*¹⁵⁸

The issue in *NAACP v. Alabama* was whether a civil contempt judgment against the NAACP for not providing its membership list to the state of Alabama was a violation of the members’ constitutional right to associate.¹⁵⁹ The NAACP had refused to provide the list because in the past when members’ identities were publicly exposed, the members were subject to “economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility.”¹⁶⁰ Also, exposure of members may have led to members withdrawing from the NAACP and to dissuading others from joining.¹⁶¹

The justification the state of Alabama gave for requiring the NAACP membership lists “was to determine whether petitioner [NAACP] was conducting intrastate business in violation of the Alabama foreign corporation registration statute.”¹⁶² The Court could not hypothesize how disclosure of membership lists would answer the state’s question, and held that the state failed to show sufficient justification for requiring the membership lists, given the corresponding infringement on the NAACP members’ “free enjoyment of the right to associate.”¹⁶³

Unlike the NAACP situation, members of A.A. are not directly ordered by a court to provide their names. However, some Sobriety Courts, such as the 52-1 District in Oakland County, Michigan, require court participants to supply their probation officer with the name of the participant’s A.A. sponsor.¹⁶⁴ In this case, the A.A. member usually has no idea that their

name is being supplied to the government, unless they are familiar with the sobriety court's policies.

Furthermore, probationers are ordered by courts to have their meeting attendance sheets signed by the A.A. chairperson in order to confirm attendance at meetings. The attendance sheets in some instances explicitly require that the chairperson give their first AND last name, or they require the chairperson's full signature. They always require a telephone number.¹⁶⁵ A.A. chairpersons are reluctant to go against court orders so they provide their name as required.¹⁶⁶

These requirements by the courts and state government are in direct conflict with A.A.'s Twelfth Tradition of Anonymity.¹⁶⁷ A.A. members, while not subject to the extreme backlash that NAACP members experienced, are subject to the fear their membership in A.A. will be disclosed, therefore subjecting the member to the stigma and shame associated with being an admitted alcoholic.¹⁶⁸ Fear of disclosure or actual disclosure has sometimes turned prospective members away from A.A., just as disclosure may have turned members away from the NAACP in 1958.¹⁶⁹

2. *Boy Scouts of America v. Dale*¹⁷⁰

In *Boy Scouts of America v Dale*, an openly homosexual scout leader was expelled from membership in the Boy Scouts.¹⁷¹ He challenged the Boy Scouts, claiming that New Jersey's Law Against Discrimination was being violated.¹⁷² The Court opined that the Boy Scouts' rights of expressive association would be significantly burdened, and the New Jersey public accommodation law did not justify the intrusion on the rights of the Boy Scouts' organization.¹⁷³ Therefore, the First Amendment rights of the Boy Scouts would be violated by enforcing the law and requiring Dale be reinstated.¹⁷⁴

The Court analyzed Dale's claim by evaluating the impact of his membership on the expressive activities of the Boy Scouts: "The forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints."¹⁷⁵ The Court stated that the Boy Scouts engage in expressive association by developing in young people, through expression and by example, the Boy Scouts "positive moral code for living."¹⁷⁶ According to the Court, the Boy Scouts' expression that homosexuality is not "morally straight" would be significantly affected by accepting Dale, an openly gay person, because it "would force the organization to send a message, both to the youth members and the world, that the Boy Scouts accept homosexual conduct as a legitimate form of behavior."¹⁷⁷ The Court next went on to examine the application of New Jersey's public accommodation law to the Boy Scouts' rights.¹⁷⁸ Considering that the definition of "public accommodation" in New Jersey included "membership organizations such as the Boy Scouts," in addition to places like restaurants and hotels, the Court implied New Jersey had gone too far,¹⁷⁹ and held that New Jersey's interests "d[id] not justify the severe intrusion on the Boy Scouts' rights to freedom of expressive association."¹⁸⁰

The A.A. case presents a similar situation in that the government is forcing A.A.s to associate with court-mandated attendees. While A.A.'s official stance is that anyone is accepted as a member,¹⁸¹ there is a caveat. Tradition Three explicitly states that there is only one requirement for AA membership: a desire to stop drinking.¹⁸² When courts force people to attend who do not meet the single requirement of having a desire to stop drinking, i.e. they may not be alcoholic, or they might be alcoholic but do not want to stop drinking, the courts violate A.A.'s Traditions.

The “fellowship” of A.A. is the essence of the A.A. program. As the *Big Book* states, “[a]mong [other A.A. members] you will make lifelong friends. You will be bound to them with new and wonderful ties, for you will escape disaster together and you will commence shoulder to shoulder your common journey.”¹⁸³ Inclusive within this “common journey” is the presupposition that all A.A. members meet the only membership requirement that A.A. has: the desire to stop drinking. A “common journey” is impossible if a person is coming to A.A. solely because they are forced to by the courts.

In *Dale*, the Court discussed how forced inclusion was an intrusion on the Boy Scouts’ association rights because it might hinder the “ability of the original members to express only those views that brought them together.”¹⁸⁴ A.A.’s original members, or “old-timers,” might be changing their message to attempt to help those attendees who do not yet have the desire to stop drinking.¹⁸⁵ Prior to the presence of these attendees in meetings, A.A. members could assume everyone present met the requirement of having the desire to stop drinking, and therefore members could focus their discussion around more advanced topics. Now, these same members may be spending their discussion time in meetings trying to convince the court-ordered attendees that sobriety is desirable. Furthermore, if the A.A. meeting is the type where anyone present may speak, the court-mandated attendee, if unwilling to work the A.A. program, will be incapable of speaking on A.A.-related topics, such as the Twelve Steps, and may choose instead to discuss their personal situation within the court system.¹⁸⁶ Such expression is not that which brought the original A.A. members together.

Another ramification of forcing A.A. members to associate with court-mandated people is that the A.A. member may waste time and energy trying to help someone who does not want to be helped. The court-mandated person might stop drinking only because he or she is ordered

by the court to submit to drug and/or alcohol tests, and if they fail the tests they will go to jail, or, the court-mandated attendee might not even be an alcoholic. In either case, the A.A. member may not know whether or not the court-ordered attendee is serious about not drinking. The A.A. member, in working the Twelfth Step, which says “we try to carry this message to other alcoholics,”¹⁸⁷ will attempt to help the probationer recover. Previous to the enactment of regulations that authorized court-mandated A.A., the A.A. member could assume that someone coming to A.A., by virtue of their mere presence at a meeting, wanted help to stop drinking. If the person wasn’t truly ready and willing “to go to any lengths,” they would quickly stop coming to A.A. meetings. The A.A. member knows not to pursue such a person, because A.A. instructs that if a person does not want to stop drinking, the member “should not waste [] time trying to persuade him.”¹⁸⁸ In contrast, under the court-mandated scenario, A.A. members may not know if the probationer is serious about sobriety, because the probationer is forced to attend A.A., and is forced to abstain from alcohol, usually for a period of 12 to 18 months.¹⁸⁹ That means the A.A. member can waste 12 to 18 months time on unwilling probationer, when he or she could have spent time trying to help someone who legitimately wanted help. The experience of an unwilling probationer ceasing all A.A. contact upon completion of the A.A. probation requirement is not an unusual one.¹⁹⁰ If A.A. members are diverted in this fashion, it is arguable that the government is causing harm to the A.A. program by diminishing the members’ ability to engage in expressive activities. The primary purpose, and the expressive activity, of A.A. is to help alcoholics achieve sobriety.¹⁹¹

The communicated message of A.A. may be changing as a result of court-ordered attendance. For instance, some members complain that A.A.’s message has softened recently as a result of attendance by people unwilling to practice the A.A. program as it is laid out in the *Big*

*Book.*¹⁹² A.A. members, wanting to be helpful, tailor their message to accommodate these unwilling participants by no longer stressing the importance of working the steps; instead the discussion might center around topics more agreeable to the involuntary attendees.¹⁹³ Even more importantly, many A.A. meetings allow any attendee to speak. A.A. members may be forced to listen to a negative message from a reluctant probationer who does not believe he or she belongs in A.A.

Furthermore, A.A.'s primary purpose as expressed in Tradition Five,¹⁹⁴ is compromised by the attendance of court-mandated attendees, because the courts on occasion sentence people with drug problems to A.A.¹⁹⁵ (Interestingly, while the 52-1 District Sobriety Court allows members to choose between A.A. and N.A., when discussing details of the program in the Participant Guide, only A.A. is mentioned.¹⁹⁶) The A.A. member's primary expressive purpose is "to stay sober and help other alcoholics to achieve sobriety."¹⁹⁷ The singleness of purpose of A.A. as an organization is for A.A. to stay singularly focused on alcoholism. According to A.A. literature, "only those with a *drinking* problem may attend *closed* meetings or become A.A. members."¹⁹⁸ The original founders and today's members are concerned that A.A. could easily lose its efficacy if diverted from this primary expressive purpose of helping alcoholics to recover.¹⁹⁹

B. Free Speech Violations

Content-neutral regulations of expression, occurring on private property, are permissible if they are narrowly tailored to serve a significant government interest and the regulations leave open ample alternative channels for the communication of the information.²⁰⁰ A.A. meetings are held almost exclusively on private property, typically that of a church.²⁰¹ The state regulations at issue here, namely the sentencing of criminals to attend A.A., are content-neutral, i.e. they are

not aimed at restricting content of speech.²⁰² It was discussed in Part I that the government has a compelling interest in the enforcement of these regulations. For the remaining tests, relevant Supreme Court cases are used to show that the voluntary A.A. member's speech has been restricted as a result of the forced members' attendance, and that the regulations are not narrowly tailored and do not leave open alternate methods of communication.

1. *City of Ladue v. Gilleo*²⁰³

In *City of Ladue v. Gilleo*, a resident of Ladue challenged a local ordinance that prohibited her from placing a 24" X 36" sign on her property that stated "Say No to the War in the Persian Gulf, Call Congress Now."²⁰⁴ The ordinance allowed residents to place on their property for sale signs, resident identification signs, and signs warning of hazards.²⁰⁵ Other types of signs were also allowed, such as Church or other religious signs, commercial signs in commercial zones, and on-site signs for gas stations.²⁰⁶ The government's interest in prohibiting yard and window signs was significant – the purpose of the ordinance was the prevention of “ugliness, visual blight and clutter” and to prevent “safety and traffic hazards to motorists, pedestrians and children.”²⁰⁷ However, the Court held this particular type of speech -- putting a sign in one's yard or window -- to be “a venerable means of communication that is both unique and important.”²⁰⁸ The ordinance “totally foreclosed [the residential sign] to political, religious, or personal messages.”²⁰⁹ The Court discussed the importance of this type of communication in the community context; for instance, signs can “react to a local happening or express a view” or “play an important role in political campaigns.”²¹⁰ Furthermore, the Court held that alternate means of communication, such as hand-held signs, letters, flyers, and telephone calls, were inadequate.²¹¹ Residential signs are unique and irreplaceable in that, in addition to being cheap and convenient, they identify the speaker.²¹² The Court stated that a different message can often

be conveyed based on whether the sign is posted from a residence, or posted on a sandwich board or bumper sticker.²¹³ Because of their location, the signs provide the speaker's identity, and "the identity of the speaker is an important component of many attempts to persuade."²¹⁴ Thus, there are no "adequate substitutes" for the residential sign.²¹⁵

The DWI regulations' effect on an A.A. member's communication at an A.A. meeting can be compared to *Ladue*. While it is argued in this paper that the A.A. member's speech is restricted by the state's regulations,²¹⁶ the method of communicating in A.A. meetings is not completely foreclosed as it was in *Ladue*. However, the speech at an A.A. meeting is unique and important, and, if A.A. speech is foreclosed or even just restricted,²¹⁷ there are no ample alternative means of communication.

Forcing probationers to attend A.A. changes the dynamics of A.A. meetings and inadvertently affects the speech of members. If a person is involuntarily attending A.A., they are more reluctant to share anything personal about themselves, in fact, many of the court-ordered attendees do not speak at all.²¹⁸ Regular A.A. members may limit what they share due to the presence of involuntary attendees, since the regular member has no idea whether the court-ordered person will respect the heretofore confidential sanctity of an A.A. meeting.²¹⁹ Regular members may also be reluctant to speak on topics of advanced recovery, worrying that the court-ordered attendees will not be able to relate, and therefore not be helped by the A.A. meeting.²²⁰

Members of A.A. are encouraged to share their "experience, strength, and hope" at meetings in order to help each other recover from alcoholism.²²¹ In doing so, members share intimate details about their lives. "[I]t is only by fully disclosing ourselves and our problems that [desperate alcoholic men and women] will be persuaded to say, 'Yes, I am one of them too.'"²²² Given the context of members being recovering alcoholics, many of the stories are incriminating

or humiliating, and confidential.²²³ Members would typically feel comfortable sharing such stories at a meeting, since everyone in attendance would share similar stories, and because A.A. instructs its members to “repeat no one’s personal sharing made in A.A. meetings. The word ‘anonymous’ in our name is a promise of privacy.”²²⁴ However, if a person is forced to attend A.A. involuntarily, and they are therefore not committed to the A.A. program, it may be difficult for voluntary members to believe the forced attendee will respect A.A.’s confidentiality.

A.A. members believe that the speech taking place at A.A. meetings has the capability to save lives, or at the very least, to change previously unproductive and unhealthy people into constructive, productive members of society. Members attribute their careers and the return of their families to their regular attendance at A.A. meetings.²²⁵ Many members also attribute their lives to A.A. meetings, since they would have died an alcoholic-related death had they not recovered.²²⁶ Thus, A.A. meetings, which help alcoholics stay sober, is a “unique and important” method of communication, similar to the *Ladue* residential sign.

Regarding alternative methods of communicating, such as the hand-held signs in *Ladue*, there are alternatives to traditional A.A. meetings as well, such as on-line A.A. meetings, letter-writing, and telephone conversations.²²⁷ However, as the alternatives in *Ladue* were inadequate, so are these methods for A.A. members. A.A. meetings are the main method of recovery, and the alternatives are typically used only when a meeting is impracticable or impossible to attend.²²⁸ The importance of A.A. meetings cannot be over emphasized. After all, the Alcoholics Anonymous fellowship was started when groups of recovering alcoholics *met together* to discuss their common problem and solution.²²⁹ As stated in the A.A. *Preamble*, “Alcoholics Anonymous is a . . . fellowship of men and women . . . who *meet together* to attain and maintain sobriety.”²³⁰

After the *Ladue* Court discussed the importance of the residential signs, it moved on to discuss the ramifications of foreclosing that right. While in the A.A. case the manner of communication has not been completely foreclosed,²³¹ the trend of sentencing offenders to attend A.A. may over time cause the demise of A.A. meetings by overwhelming the fellowship. There are 1.5 million drunk driving convictions annually in the United States,²³² whereas there are estimated to be only 1.18 million A.A. members in the U.S.²³³ Drunk driving statutes are getting tougher, which will result in more arrests, and therefore more forced A.A. attendance.²³⁴ As an example, one county in Florida is planning to sentence *first-time* drunk driving offenders to “substance abuse treatment,” when previously the offender would only be charged with a violation punishable by a fine.²³⁵ Given the increased numbers of people being court-ordered to attend A.A., the fact that A.A.’s membership appears to have remained stagnant at 2 million members worldwide over the last five years is disconcerting.²³⁶ It can be inferred that regular members are being replaced by court-ordered attendees. The NHTSA Guide to Sentencing DWI Offenders questions the wisdom of making A.A. the central focus of drunk drivers’ treatment based on research that “court-mandated A.A. attendance may overwhelm meetings with people who do not want to be there and who are often hostile and disruptive.”²³⁷

While court-ordered attendance increases, regular A.A. members who attend meetings for positive reinforcement of their sobriety may experience frustration, and may therefore discontinue their attendance.²³⁸ Without the regular, voluntary members to carry on the A.A. program, people coming to A.A. voluntarily in the future, as well as those ordered by the courts, will have no one to help them, essentially foreclosing the A.A. meeting as a method of attaining sobriety. Most alcoholics “cannot recover unless there is a group.”²³⁹ “[W]hen newcomers walk into our meeting rooms, we want A.A. to be there for them as it was for us – something we can

do continuously only if we function as a group.”²⁴⁰ Furthermore, A.A. works because of voluntary service work²⁴¹ performed by A.A. members, but court-ordered people, who do not consider themselves members, may not be committed to the program and therefore do not volunteer to help run A.A.²⁴²

Last, the regulations are not narrowly tailored. The courts and Secretary of State could just as easily sentence probationers to attend open A.A. meetings, or to any of a number of other available programs. The alternatives are discussed in Part IV.

2. *Cantwell v. Connecticut*²⁴³

An older case, *Cantwell v. Connecticut*,²⁴⁴ is also instructive of the A.A.’s Free Speech claim. Cantwell and two other members of Jehovah’s Witnesses were convicted of violating a Connecticut statute which required that a license be issued before the members could “solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable, or philanthropic cause”²⁴⁵ The purpose of the statute was to protect the public from unknown solicitors.²⁴⁶ Because discretion was given to the secretary of the public welfare council to determine whether or not a cause was religious, and therefore whether or not a license would issue, the Court held that “[s]uch a censorship of religion as the means of determining its *right to survive* is a denial of liberty protected by the First Amendment”²⁴⁷

An interesting analogy between this case and *Cantwell* is the discretion given to government officials to affect an organization’s survival. In *Cantwell*, the secretary determined what constituted a religious organization, which in turn determined an organization’s ability to solicit funds. In the A.A. situation, government officials, specifically judges and probation officers, determine who will be sentenced to A.A. Recalling that one of A.A.’s Traditions says that “the only requirement for membership is a desire to stop drinking,” if government officials

are honoring A.A.'s traditions, they are therefore determining who has a desire to stop drinking. Even A.A. members will not tell prospects whether or not they have a drinking problem, for the members believe that only the individuals themselves can determine whether or not they are alcoholic.²⁴⁸ If the government is not following the A.A. Traditions, then that is also a problem. Since A.A. teaches that the purpose of the Traditions is to ensure A.A.'s survival, then the state, by disregarding those Traditions, is, in effect, determining A.A.'s "right to survive."

C. Free Exercise of Religion

1. Is A.A. Religious?

The program of Alcoholics Anonymous is not considered by its members to be a religious program.²⁴⁹ The Twelve Steps make reference to a "God," or "Higher Power," but the person practicing the steps uses his or her own concept of God.²⁵⁰ Since the steps are but suggestions, there is no requirement that A.A. members even believe in a God. There are no references to organized religion in the Twelve Steps, in fact the A.A. Preamble states that "A.A. is not affiliated with any religion."²⁵¹

The courts are not in agreement regarding the religiosity of A.A. The Supreme Court has not passed on whether or not A.A. is religious. California,²⁵² New York,²⁵³ and Tennessee²⁵⁴ have determined that A.A. is religious, while Kansas,²⁵⁵ in a prison case, said A.A. is not religious. The existing cases arose from probationers or prisoners claiming free exercise and/or Establishment Clause violations when forced by the state to attend A.A. meetings.

A.A. is arguably religious from a legal standpoint. One of the definitions of religion is "in reference to one's views of one's relation to his or her Creator and to the obligations these views impose of reverence for the Creator's being and character, and of obedience to the Creator's will."²⁵⁶ Passages from A.A. literature show that A.A.'s concept of religion is similar to the

courts. For instance, this passage from the *Big Book* is typical: “As soon as we admitted the possible existence of a Creative Intelligence, a Spirit of the Universe underlying the totality of things, we began to be possessed of a new sense of power and direction.”²⁵⁷ The Third Step of Alcoholics Anonymous is also instructive: “Made a decision to turn our will and our lives over to the care of God, as we understood him.”²⁵⁸ Additionally, most A.A. meetings are brought to a conclusion by the group reciting the Lord’s Prayer in unison.²⁵⁹

2. Religious Practices

The two cases discussed below, *Wisconsin v. Yoder*²⁶⁰ and *Employment Division v. Smith*,²⁶¹ demonstrate free exercise determinations where the law is one of general applicability that interferes with a religious practice. In *Smith*, the law prohibited a religious practice, and in *Yoder* regulations required a practice that was in conflict with a practice resulting from the Amish religion. The regulations at issue for the voluntary A.A. member do not *require* the voluntary member to engage in a practice that is in conflict with A.A.; however, the regulations *cause or force* the A.A. member to engage in practices in conflict with A.A.²⁶² Furthermore, the regulations at issue do not prohibit any A.A. practices, but they do restrict important practices.

a. *Wisconsin v. Yoder*²⁶³

The Supreme Court affirmed a Wisconsin Supreme Court ruling that found a free exercise violation by the state in requiring the Amish to send their children to private or public school until the age of sixteen.²⁶⁴ The parents faced a choice to either send their children to formal schooling beyond the eighth grade, in violation of their religious beliefs, or face criminal charges.²⁶⁵ The Amish beliefs required members of the religion to work as farmers, and to remain apart from the “world and worldly influence.”²⁶⁶ The Amish believed their children should “acquire Amish attitudes favoring manual work and self-reliance,” and that such tasks are

better learned “through example and ‘doing’ rather than in a classroom.”²⁶⁷ The Court held that the state’s interest in compulsory education was not compelling enough to overcome the parents’ interest in raising their children according to the Amish religious principles.²⁶⁸

Expert witnesses testified that compulsory high school attendance of Amish children would “ultimately result in the destruction of the Old Order Amish church community” because high school attendance would expose the Amish children to “‘worldly’ influence[s] in conflict with their beliefs.”²⁶⁹ The Amish existence has not changed over the last several centuries.²⁷⁰ They embrace a life of physical labor, rejecting modern conveniences such as automobiles, television and telephones.²⁷¹

The state’s interest in compulsory high school attendance was in educating the youth to prepare them for citizenry and to enable them to be self-sufficient.²⁷² However, the Court found that the Amish youth were sufficiently educated through their own communities such that they were able to learn to support themselves and their families and not become burdens on society.²⁷³ The Court noted the Amish survival over the centuries, and termed “speculative” the government’s argument that additional formal schooling would bring any gain to their community.²⁷⁴ “A more particularized showing” was required of the state “to justify the severe interference with religious freedom such additional compulsory attendance would entail.”²⁷⁵

The interest of the A.A. member is one of life or death. Without A.A., the alcoholic may become mentally incapacitated, be incarcerated in a prison or mental health hospital, or die.²⁷⁶ As in *Yoder*, the state’s regulations may cause the destruction of the fellowship by causing conflict between A.A. as it was originally intended to operate and the post-regulation practices. The regulations cause conflict with the practice of alcoholics attending A.A. meetings, for instance a member may decide not to attend anymore because the A.A. membership now consists

of a large number of court-mandated attendees.²⁷⁷ The regulations can cause conflict with a member's practice of sharing on a personal level at meetings – the member may feel uncomfortable sharing personal information in front of attendees that aren't serious about practicing the program.²⁷⁸ Also, the regulations can cause conflict with a member's practice of the Twelve Steps, because A.A. members may spend time trying to help a court-ordered probationer when that probationer does not truly want their help, and there are others who could have benefited from that help.

b. *Department of Human Resources of Oregon v. Smith*²⁷⁹

An Oregon law made peyote use illegal, however members of the Native American Church used peyote in their religious ceremonies.²⁸⁰ The Native American respondents in *Smith* were dismissed from their jobs for peyote use; then they were denied unemployment benefits due to this “misconduct.”²⁸¹ The respondents brought a Free Exercise claim, arguing that their rights were violated by the state in prohibiting their use of peyote, and that the state could not therefore deny their unemployment benefits for having used peyote.²⁸² The Court held that the Free Exercise clause was not implicated because the law was not directed at the suppression of a religious practice; instead, it was a law of general applicability that just happened to burden a religious practice.²⁸³ Justice Scalia reasoned that, while laws may not interfere with religious belief, if they were found unconstitutional because they incidentally burdened religious practices, then “doctrines of religious belief” would become superior to the “law of the land,” thereby permitting “every citizen to become a law unto himself.”²⁸⁴ After *Smith*, generally applicable laws that incidentally burden religious practice will be subject to strict scrutiny only if the challenged law also violates another constitutional right.²⁸⁵

In the A.A. member's case, the religious practice of participating in the fellowship of A.A. is arguably burdened by laws of general applicability, as discussed in conjunction with *Yoder* in Part III.C.2.a. In addition, there are other fundamental rights at stake – Freedom of Speech²⁸⁶ and Freedom of Association²⁸⁷ – so strict scrutiny should be applied to determine the regulation's constitutionality. Under strict scrutiny, the government's regulations would fail because they are not narrowly tailored to accommodate their purpose. Alcoholics Anonymous may have been the only addiction recovery program available in 1935, but today there are numerous programs available where alcoholics and drug addicts can easily go for help.²⁸⁸ Some programs even advertise themselves as being particularly suitable for court programs.²⁸⁹ These other programs, discussed in the following section, will not have the problems inherent in mandating offenders to attend A.A.

IV. ALTERNATIVES TO AA/NA COMPELLED ATTENDANCE

The great news is that anyone can attend an A.A. meeting, if they have the desire to stop drinking. Anyone can declare themselves to be alcoholic and attend closed A.A. meetings. Therefore, if the government is found to be in violation of First Amendment rights, as argued in this paper, and can no longer sentence drunk drivers or other offenders to attend A.A., probationers are still free to attend A.A. on their own. No one will ever tell them they can't become a member of A.A., as long as they have the desire to stop drinking.²⁹⁰

Nevertheless, there are a number of alternatives to Alcoholics Anonymous. Clearinghouse web sites, *The Addiction Recovery Guide*,²⁹¹ and *The Alcoholism and Addictions Resource Guide*,²⁹² are good places to start. It lists drug rehabilitation centers, alcohol

rehabilitation centers, recovery web sites, and special focus programs such as alternatives to 12-Step programs. The most well-known alternatives to A.A. are discussed below.

A. SMART²⁹³ (Self Management and Recovery Training)

SMART Recovery is a non-profit organization that provides free support to people wanting to recover from addictive behaviors, such as alcoholism and drug addiction.²⁹⁴ SMART considers itself to be an alternative to A.A., but states that SMART is compatible with A.A. if a person chooses to practice both types of recovery programs.²⁹⁵ SMART offers approximately 300 face-to-face meetings located mostly in the United States, sixteen online meetings per week, chat rooms, and SMART literature.²⁹⁶ The SMART program works by teaching individuals “how to change self-defeating thinking, emotions, and actions; and [how] to work towards long-term satisfactions and quality of life.”²⁹⁷ The SMART Recovery program is recognized by the American Academy of Family Physicians, the Center for Health Care Evaluation, The National Institute on Drug Abuse (NIDA), the U.S. Department of Health and Human Services, and the American Society of Addiction Medicine.²⁹⁸

The techniques used by SMART are based on scientific methods, as opposed to the spiritual method used by A.A.²⁹⁹ SMART also differs from A.A. in that sponsors are not used, attendance is encouraged for months or years “but probably not a lifetime,” and it “discourages use of labels, such as ‘alcoholic’ or ‘addict.’”³⁰⁰ The effectiveness of SMART is not known.³⁰¹ However, the SMART program states that the effectiveness of A.A. is also unknown, so the important question is which program is most effective for each individual.³⁰²

B. Rational Recovery³⁰³

Rational Recovery is a program based on self-recovery and what the founder, Jack Trimpey, calls AVRT, or Addictive Voice Recognition Technique. All that is needed is either access to the internet or about \$15.00 to buy the Rational Recovery *Small Book*.³⁰⁴ There are no meetings to attend. However, Trimpey says “To take the strongest action against addiction, register for four days of direct, face-to-face instruction in AVRT: The Course, conducted by Mr. Trimpey every month at Rational Recovery headquarters near Sacramento, California,” for \$2,200.³⁰⁵ He “strongly suggest that public agencies adopt the cost-effective methodology, Addictive Voice Recognition Technique (AVRT), as the first consideration with substance abusers, and as the logical choice when there is a history of unsuccessful exposure to addiction treatment programs or significant unsuccessful involvement in the recovery group movement.”³⁰⁶

C. S.O.S., or Secular Organizations for Sobriety³⁰⁷

SOS, founded in 1985, is basically a secular alternative to Alcoholics Anonymous.³⁰⁸ It is a non-profit organization, with a scientific foundation, that claims the individual can recover through “personal responsibility and self-reliance” as opposed to reliance on A.A.’s “Higher Power.”³⁰⁹ However, like A.A., SOS encourages interaction with other recovering alcoholics as “a vital adjunct to sobriety.”³¹⁰

California has “recognized SOS as an alternative to AA in sentencing offenders to mandatory participation in a rehabilitation program.”³¹¹ Meetings in the United States can be found through the SOS meeting clearinghouse.³¹² The clearinghouse also publishes a quarterly paper, The SOS International Newsletter.³¹³ SOS does not publish any statistics on their web site regarding the effectiveness of the program.

D. Open AA meetings

Probationers can be sentenced to attend open A.A. meetings instead of closed meetings. Open A.A. meetings are similar to closed A.A. meetings; but whereas only people with a desire to stop drinking are able to attend closed meetings, anyone can attend an open meeting.³¹⁴ In addition, the probationer can still choose to attend closed A.A. meetings, if they meet the membership requirement, which is a desire to stop drinking.

Open A.A. meetings are typically available in communities where closed A.A. meetings are held. In Oakland County, for instance, there are 71 open meetings per month.³¹⁵ Open A.A. meetings vary in format similar to closed meetings. Both closed and open meetings may take the format of having a “lead,” which is an A.A. member giving a talk to the group about what happened to them and how they recovered.³¹⁶ Or, both closed and open meetings may consist of group members sitting around tables, with each group member taking a turn to speak on a topic relating to recovery from alcoholism.³¹⁷

CONCLUSION

This paper argued that the First Amendment rights of voluntary A.A. members are being trampled by the government by forcing drunk drivers to attend A.A. meetings. It is established that the government’s purpose in forcing drunk drivers and other alcohol- and drug-related offenders to attend A.A. is an admirable one. Drunk driving is a serious problem in the United States. Recidivism, which is also a serious problem given that one-third of drunk driving convictions are of repeat offenders, can be reduced through programs such as Sobriety Courts. Some Sobriety Courts are claiming success in reducing the drunk driving recidivism rates, at least in the short term. In the long run, sentencing offenders to attend A.A. meetings may prove to be detrimental because A.A. is being overwhelmed by government-mandated attendees. There

are other methods besides A.A. meetings, such as SMART or *open* A.A. meetings, that the government can rely on in attempting to rehabilitate drunk drivers. Because these alternatives are based on scientific, as opposed to spiritual, methods, not only will they relieve A.A. of this overwhelming burden, they will also reduce free exercise challenges brought by those sentenced to attend A.A.

¹ ALCOHOLICS ANONYMOUS 152-53 (4th ed. 2001) [hereinafter BIG BOOK].

² Richard Speiglmán, *Mandated AA attendance for recidivist drinking drivers: policy issues*, ADDICTION 1133-36 (1997).

³ See *infra* Part III.C.1.

⁴ A.A. Meeting attendance in Milford, Michigan, as reported by Mark M., A.A. General Service Representative, and Tim H.: Thursday, Jan. 19, 2006, 8:00 p.m. Young People, 18 in attendance, 12 attendance sheets signed; Sunday, Jan. 22, 2006, 7:30 p.m., 31 in attendance, 25 attendance sheets signed; Tuesday, Jan. 24, 2006, 8:00 p.m., 43 in attendance, 29 attendance sheets signed; Sunday, Mar. 12, 2006, 7:30 p.m., 40 in attendance, 14 attendance sheets signed.

⁵ See Wikipedia, *Roman Catholic Church, Sacraments*, http://en.wikipedia.org/wiki/Catholic_Church#Sacraments (last visited Mar. 15, 2006).

⁶ *Id.*

⁷ *Id.*

⁸ See text accompanying note 4.

⁹ See the personal stories in the BIG BOOK, *supra* note 1, starting at page 171.

¹⁰ See Speiglmán, *supra* note 2 (stating that A.A. members who want to discuss “later stages of the recovery program express resentment toward newcomers . . .”).

¹¹ See *id.*

¹² See TWELVE STEPS AND TWELVE TRADITIONS (1952) [hereinafter TWELVE & TWELVE]. Tradition Ten (the long form) states “No A.A. group or member should ever, in such a way to implicate A.A., express any opinion on outside controversial issues – particularly those of politics, alcohol reform, or sectarian religion. The Alcoholics Anonymous groups oppose no one. Concerning such matters they can express no view whatever.” *Id.* at 192; see also discussion *infra* Part II.F.

¹³ See *City of Ladue v. Gilleo*, 512 US 43, 56 (1994) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 US 288, 293 (1984)). From the A.A. members’ standpoint, the regulations are content-neutral because the regulations do not aim to suppress the A.A. members’ expression of subject matter or viewpoint. In an argument on behalf of the offenders that are forced to attend A.A., the regulations might possibly constitute the compelled belief that *West Virginia v. Barnette* held violates the Free Speech clause.

¹⁴ NHTSA, *Traffic Safety Facts* 1 tbl.1, Aug. 2005, <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/RNotes/2005/809904.pdf>.

¹⁵ NHTSA, *A Guide to Sentencing DWI Offenders* Introduction, 2d ed. 2005 [hereinafter *DWI Offenders*], <http://www.nhtsa.dot.gov/people/injury/alcohol/DWIOffenders/pages/TreatProg.htm#alcoholican> (last visited Mar. 18, 2006).

¹⁶ *Id.*

¹⁷ NHTSA, *Traffic Safety Facts* 2 tbl.4, Aug. 2005, <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/RNotes/2005/809904.pdf> (last visited Mar. 17, 2006).

¹⁸ The 52-1 district court, located in Oakland County, Michigan, serves a population of 175,000 in Townships of White Lake, Rose, Highland, Milford, Lyon, Novi and Commerce; Cities of Novi, South Lyon, Wixom and Walled Lake; and Villages of Milford and Wolverine Lake. Novi City Services, 52nd District Court, <http://www.ci.novi.mi.us/Services/Police/52ndDistrictCourt.htm> (last visited Mar. 17, 2006).

¹⁹ 2004 Michigan Annual Drunk Driving Audit 132, 133, http://www.michigan.gov/documents/DDA2004_130704_7.pdf.

²⁰ See MICH. COMP. LAWS. ANN. § 771.3.

²¹ See MICH. COMP. LAWS. ANN. § 771.3(2). As a condition of probation, the court may require the probationer to do 1 or more of the following: (g) Participate in inpatient or outpatient drug treatment or, beginning January 1, 2005, participate in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.160 to 600.1082. *Id.*

²² See MICH. COMP. LAWS. ANN. § 600.1060 *et seq.* (2005).

²³ See MICH. COMP. LAWS. ANN. § 257.625b(5).

Before imposing sentence for a violation of section 625(1) . . . or (8) . . . the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. . . . [T]he court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs as part of the sentence. If the person has 1 or more prior convictions, the court shall order the person to participate in and successfully complete 1 or more of the appropriate rehabilitative programs as part of the sentence. . . .

Id.

²⁴ Michigan Secretary of State, *Driver License Appeals Practice Manual, Criminal Sentencing/Administrative Consequences of HB 4247* (alcohol convictions), available at http://www.michigan.gov/documents/CRIMINAL_20020_7.pdf (last visited Apr. 4, 2006).

²⁵ See MICH. COMP. LAWS. ANN. § 771.3(2).

²⁶ See Chapter 10A, MICH. COMP. LAWS. ANN. § 600.1060 *et seq.*

²⁷ See District 52-1 *Sobriety Court Participant Guide* (on file with author).

²⁸ See A.A. GUIDELINES: COOPERATING WITH COURT, D.W.I AND SIMILAR PROGRAMS, available at http://www.aa.org/en_pdfs/mg-05_coopwithcourt.pdf (last visited Apr. 17, 2006) [hereinafter A.A. GUIDELINES].

²⁹ See National Drug Court Institute, *DWI Courts and DWI/Drug Courts: Reducing Recidivism, Saving Lives*, http://www.ndci.org/dwi_drug_court.htm (stating that Sobriety Courts, Drug Courts, and DWI Courts are basically interchangeable courts) (last visited Mar. 27, 2006).

³⁰ *Saginaw County Needs Drug Court*, THE SAGINAW NEWS, April 19, 2005.

³¹ Oakland Drug Court Association of Professionals, *ODCAP Update*, Feb. 1, 2006, <http://spa.american.edu/justice/publications/ODCAP%20Newsletter%202-1-06.pdf>.

³² Jeff Tauber & C. West Huddleston, *DUI/Drug Courts: Defining a National Strategy*, Mar. 1999, <http://www.ndci.org/dui.pdf> (last visited Apr. 17, 2006).

³³ Patrick Sullivan, *Sobriety court reflects on success*, TRAVERSE CITY RECORD-EAGLE, Mar. 21, 2004 (quoting Susan Weinstein, chief counsel for the National Drug Court Institute), available at <http://www.record-eagle.com/2004/mar/21dcourt.htm>.

³⁴ *DWI Offenders*, *supra* note 15.

³⁵ See *ODCAP Update*, *supra* note 31.

³⁶ See Alaska's "Wellness Court" program, <http://www.ak.us/courts.wellness.htm> (stating that enrollment and completion of the program can reduce an offender's sentence and "thus minimize jail time") (last visited Mar. 19, 2006); New Orleans' DWI Court, <http://www.dps.state.la.us/tiger/TrafficWise%20article.pdf> (stating that if offender is accepted into program, their sentence may be reduced by 50-75%) (last visited Mar. 19, 2006).

³⁷ A person convicted of Domestic Violence can therefore be ordered to attend A.A. under MICH. COMP. LAWS. ANN. § 769.4a, which states that, for an individual found guilty of domestic violence, "An order of probation entered under subsection (1) may require the accused to participate in a mandatory counseling program. . . . The court also may order the accused to participate in a drug treatment court under chapter 10A (drug court)."

³⁸ 55th District Court Sobriety Court Operations Manual, available at http://www.ingham.org/dc/sobriety_courT.htm (last visited Apr. 19, 2006).

³⁹ *Id.*

⁴⁰ Sobriety Court Participant Guide, *supra* note 27.

⁴¹ See *id.*

⁴² Butte County, California: "Each sentence includes mandatory attendance at AA meetings. . . . Defendants must keep AA logs . . ."; Dona Ana County, New Mexico: "Treatment requires attendance at AA meetings . . ."; Maricopa County, Arizona: "[T]he offender contracts to . . . attend[] AA meetings. . . .". Ann L. Keith, *Specialized*

and *Problem-Solving Courts Trends in 2002: DUI Courts*, National Center for State Courts, available at http://www.ncsconline.org/WC/Publications/KIS_SpePro_Trends02DUI_Pub.pdf (last visited Mar. 20, 2006).

⁴³ MICH. COMP. LAWS ANN. § 257.303 (2001), Habitual Offender:

(4) The secretary of state shall not issue a license under this act to a person whose license has been revoked under this act or revoked and denied under subsection (2) until all of the following occur, as applicable: . . . (b) For a denial under subsection (2)(a), (b), (c), and (g), the person rebuts by clear and convincing evidence the presumption resulting from the prima facie evidence that he or she is a habitual offender. The convictions that resulted in the revocation and denial constitute prima facie evidence that he or she is a habitual offender.

⁴⁴ Michigan Secretary of State, *Driver License Appeals Practice Manual, Criminal Sentencing/Administrative Consequences of HB 4247* (alcohol convictions), available at http://www.michigan.gov/documents/CRIMINAL_20020_7.pdf (last visited Apr. 4, 2006).

⁴⁵ See *id.* at 31, available at http://www.michigan.gov/documents/2000_with_links_19846_7.pdf (last visited Apr. 4, 2006).

⁴⁶ See *id.*

⁴⁷ See *id.* at 45 (citing *Berch v. Secretary of State*) available at http://www.michigan.gov/documents/2000_with_links_19846_7.pdf (last visited Apr. 19, 2006).

⁴⁸ Alcoholics Anonymous, *Preamble*, http://www.aa.org/en_information_aa.cfm. (last visited Apr. 18, 2006).

⁴⁹ Alcoholics Anonymous, *Alcoholics Anonymous Marks 70th Anniversary* (May 16, 2005), http://www.aa.org/en_press.cfm?PressID=3&thisyear=2005-01-01.

⁵⁰ *Id.*

⁵¹ Press Release, 25 Millionth Alcoholics Anonymous “Big Book” (June 20, 2005), http://www.aa.org/en_press.cfm?PressID=1&thisyear=2005-01-01.

⁵² BIG BOOK, *supra* note 1, at 45.

⁵³ See *id.* at 59-60.

⁵⁴ TWELVE & TWELVE, *supra* note 12.

⁵⁵ BIG BOOK, *supra* note 1, at 59-60.

⁵⁶ *Id.*

⁵⁷ *Id.* at 18.

⁵⁸ *Id.*

⁵⁹ Definition of alcoholic: “Someone who demonstrates a continuous or periodic impaired control over drinking; preoccupation with alcohol; and use of alcohol despite adverse consequences and distortions in thinking, most notably denial.” [Http://mulligangroup.com/soberpedia/](http://mulligangroup.com/soberpedia/).

⁶⁰ See *id.*

⁶¹ See BIG BOOK, *supra* note 1, at 30.

⁶² See *id.* at 32. “[W]e believe that early in our drinking careers most of us could have stopped drinking. But the difficulty is that few alcoholics have enough desire to stop while there is yet time.” *Id.*

⁶³ See *id.* at 30.

⁶⁴ See *id.*

⁶⁵ See *id.* at 94.

⁶⁶ See *id.* at 59. “[T]here is no middle-of-the-road solution.” *Id.* at 25.

⁶⁷ See BIG BOOK, *supra* note 1, at 58.

⁶⁸ *Id.* at 25.

⁶⁹ *Id.* at 25-26, 50.

⁷⁰ *Id.* at 28.

⁷¹ *Id.* at 58.

⁷² Alcoholics Anonymous, *THE A.A. GROUP . . . WHERE IT ALL BEGINS* 11 (2005), [hereinafter *THE A.A. GROUP*], available at http://www.aa.org/en_pdfs/p-16_theaagroup.pdf.

⁷³ See *id.* at 16. “[G]roup membership requires no formal application. Just as we are members of A.A. if we say we are, so are we members of a group if we say we are.” *Id.*

⁷⁴ Alcoholics Anonymous, *A.A. FACT FILE* (1998), http://www.aa.org/en_information_aa.cfm?PageID=2.

⁷⁵ Alcoholics Anonymous, *Services for Members*, http://www.aa.org/en_services_for_members.cfm (last visited Apr. 19, 2006).

⁷⁶ See *THE A.A. GROUP*, *supra* note 72, at 72.

⁷⁷ TWELVE & TWELVE, *supra* note 12, at 132. “Our leaders are but trusted servants. They do not govern.” *Id.*

⁷⁸ BIG BOOK, *supra* note 1, at 59, chapter entitled “How It Works”:

1. We admitted we were powerless over alcohol—that our lives had become unmanageable.
2. Came to believe that a Power greater than ourselves could restore us to sanity.
3. Made a decision to turn our will and our lives over to the care of God *as we understood Him*. (emphasis in original).
4. Made a searching and fearless moral inventory of ourselves.
5. Admitted to God, to ourselves and to another human being the exact nature of our wrongs.
6. Were entirely ready to have God remove all these defects of character.
7. Humbly asked Him to remove our shortcomings.
8. Made a list of all persons we had harmed, and became willing to make amends to them all.
9. Made direct amends to such people wherever possible, except when to do so would injure them or others.
10. Continued to take personal inventory and when we were wrong promptly admitted it.
11. Sought through prayer and meditation to improve our conscious contact with God *as we understood Him*, praying only for knowledge of His will for us and the power to carry it out.
12. Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics and to practice these principles in all our affairs.

⁷⁹ *See id.* at 28.

⁸⁰ *See id.* at 59-60.

⁸¹ *See id.* at 58-60.

⁸² *See* BIG BOOK, *supra* note 1, at 63-71.

⁸³ *See id.*

⁸⁴ *See id.* at 72.

⁸⁵ *Id.*

⁸⁶ *See id.* at 75. “We subjected ourselves to drastic self-appraisal.” *Id.* at 76.

⁸⁷ *See id.* at 72-75.

⁸⁸ *See* BIG BOOK, *supra* note 1, at 94.

⁸⁹ *Id.* at 73.

⁹⁰ *See id.* at 76-83.

⁹¹ *See id.*

⁹² *See id.*

⁹³ *Id.* at 76.

⁹⁴ *See* BIG BOOK, *supra* note 1, at 81.

⁹⁵ *Id.* at 77.

⁹⁶ *Id.* at 78

⁹⁷ *See id.*

⁹⁸ *Id.* at 79.

⁹⁹ *See id.* at

¹⁰⁰ *See* BIG BOOK, *supra* note 1, at 1-16.

¹⁰¹ *See id.* at 89

¹⁰² *See id.* “[N]othing will so much insure immunity from drinking as intensive work with other alcoholics. . . . Carry this message to other alcoholics ! You can help when no one else can. You can secure their confidence when others fail. . . . [B]ecause of your own drinking experience you can be uniquely useful to other alcoholics.” *Id.*

¹⁰³ TWELVE & TWELVE, *supra* note 12:

1. Our common welfare should come first; personal recovery depends upon A.A. unity.
2. For our group purpose there is but one ultimate authority — a loving God as He may express Himself in our group conscience. Our leaders are but trusted servants; they do not govern.
3. The only requirement for A.A. membership is a desire to stop drinking.
4. Each group should be autonomous except in matters affecting other groups or A.A. as a whole.
5. Each group has but one primary purpose—to carry its message to the alcoholic who still suffers.
6. An A.A. group ought never endorse, finance or lend the A.A. name to any related facility or outside enterprise, lest problems of money, property and prestige divert us from our primary purpose.
7. Every A.A. group ought to be fully self-supporting, declining outside contributions.

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8. Alcoholics Anonymous should remain forever nonprofessional, but our service centers may employ special workers.
 9. A.A., as such, ought never be organized; but we may create service boards or committees directly responsible to those they serve.
 10. Alcoholics Anonymous has no opinion on outside issues; hence the A.A. name ought never be drawn into public controversy.
 11. Our public relations policy is based on attraction rather than promotion; we need always maintain personal anonymity at the level of press, radio and films.
 12. Anonymity is the spiritual foundation of all our traditions, ever reminding us to place principles before personalities.

¹⁰⁴ See *id.* at 18.

¹⁰⁵ See *id.*

¹⁰⁶ ‘PASS IT ON’: THE STORY OF BILL WILSON AND HOW THE A.A. MESSAGE REACHED THE WORLD 304-24 (1984).

¹⁰⁷ See Alcoholics Anonymous, *Twelve Traditions*, available at

http://www.aa.org/en_information_aa.cfm?PageID=2&SubPage=52 (last visited Apr. 19, 2006).

¹⁰⁸ See TWELVE & TWELVE, *supra* note 12.

¹⁰⁹ *Id.* at 139.

¹¹⁰ *Id.* at 150.

¹¹¹ *Id.* at 176.

¹¹² *Id.* at 184.

¹¹³ See *Online Alcoholism groups supplement AA meetings*, ALCOHOLICS ANONYMOUS REVIEWS (Apr. 3, 2006) [hereinafter REVIEWS], <http://www.aa-uk.org.uk/alcoholics-anonymous-reviews/2006/04/online-alcoholism-groups-supplement-aa.html>.

¹¹⁴ Alcoholics Anonymous, A.A. Meetings, http://www.alcoholics-anonymous.org/en_information_aa.cfm?PageID=2&SubPage=57 (last visited Apr. 19, 2006).

¹¹⁵ See REVIEWS, *supra* note 113.

¹¹⁶ *Id.*

¹¹⁷ See *id.*

¹¹⁸ See *id.*

¹¹⁹ See OAKLAND COUNTY MEETING DIRECTORY, revised 7/05 at 1, [hereinafter DIRECTORY].

¹²⁰ See, e.g., Wayne County, Indiana, Directory of Social Services, Alcoholics Anonymous Lead meetings, available at http://www.aa.org/en_information_aa.cfm?PageID=2&SubPage=52 (last visited Apr. 18, 2006).

¹²¹ See, e.g., Denison University, Office of Alcohol, Drug, and Health Education, <http://www.denison.edu/oade/anonymous.html> (last visited Apr. 19, 2006) (“Discussion meetings follow a variety of formats. At some, the person chairing the meeting will suggest a topic. At other meetings, those attending may offer a topic or problem for discussion . . .”).

¹²² See DIRECTORY, *supra* note 119, at 1.

¹²³ See THE A.A. GROUP, *supra* note 72, at 16.

¹²⁴ *Id.*

¹²⁵ See *id.*

¹²⁶ DIRECTORY, *supra* note 119.

¹²⁷ *Id.*

¹²⁸ Preamble, *supra* note 48.

¹²⁹ See Big BOOK, *supra* note 1, at 29.

¹³⁰ See Alcoholics Anonymous, A BRIEF GUIDE TO A.A. 7 (1972), available at http://www.aa.org/en_pdfs/p-42_abriefguidetoaa.pdf (last visited Apr. 18, 2006).

¹³¹ See THE A.A. GROUP, *supra* note 72, at 18. “My fellow group members are the people who know me, listen to me, and steer me straight when I am off in left field. They give me their experience, strength, and A.A. love, enabling me to ‘pass it on’ to the alcoholic who still suffers.” *Id.*

¹³² *Id.*

¹³³ See *id.* at 19-20.

¹³⁴ Interview with Rick L., Ken C., Tim H., A.A. members, in Oakland County, Michigan (Dec. 6, 2005) [hereinafter *Interview*]. A.A. meeting participants are asked to contribute \$1, if they have it. *Id.*

¹³⁵ See THE A.A. GROUP, *supra* note 72, at 20.

¹³⁶ See *id.* at 22-23.

¹³⁷ BIG BOOK, *supra* note 1, at 565.

¹³⁸ There are currently eight Sobriety Courts in Oakland County, Michigan. *See ODCAP Update, supra* note 31.

¹³⁹ *See Interview, supra* note 134.

¹⁴⁰ *See id.*

¹⁴¹ *See id.*

¹⁴² On occasion it will happen that someone comes to a closed A.A. meeting with their spouse, friend, or relative, in order to “support” that person, and if asked if they have a desire to stop drinking they will answer “no”. They may then be politely told to wait outside until the meeting is over. *See Interview, supra* note 134.

¹⁴³ Except for Tradition Three, which says the only requirement for membership is a desire to stop drinking.

¹⁴⁴ TWELVE & TWELVE, *supra* note 12, at 10.

¹⁴⁵ “A.A. members may speak [to the media] as A.A. members only if their names or faces are not revealed;” in addition, “[t]hey speak not for A.A. but as individual members.” Alcoholics Anonymous, UNDERSTANDING ANONYMITY 10 (2002), available at http://www.aa.org/en_services_for_members.cfm?PageID=135 (last visited Apr. 20, 2006).

¹⁴⁶ *See* discussion *infra*, Part IV.

¹⁴⁷ *See* *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18, 620-21 (1984).

¹⁴⁸ *See id.* at 618. “An association does not have to associate for the ‘purpose’ of disseminating a certain message,” but need only “engage in expressive activity that could be impaired,” in order to be entitled to First Amendment protection. *Boy Scouts of America v. Dale*, 530 U.S. 540, 655 (2000).

¹⁴⁹ *See id.*

¹⁵⁰ Alcoholics Anonymous, Alcoholics Anonymous Marks 70th Anniversary (May 16, 2005), http://www.aa.org/en_press.cfm?PressID=3&thisyear=2005-01-01.

¹⁵¹ *See* discussion *supra*, Part II.A.

¹⁵² *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984).

¹⁵³ From the A.A. member standpoint, the regulations serve to reduce the recidivism rate amongst drunk drivers by forcing the criminals to attend A.A. However, it may be argued from the criminal’s standpoint that the regulations are related to the suppression of ideas, since the regulations, by forcing A.A. attendance, may coerce drunk drivers to change their belief systems.

¹⁵⁴ *See* discussion *supra* Part I.

¹⁵⁵ “Potential infringements on the right of expressive association may include such governmental action as making membership in a particular organization a crime, imposing special hardships on those who join a disfavored group, forcing disclosure of otherwise secret membership lists, interfering with the internal operations of an organization, and creating barriers to an organization’s participation in the political process.” ALLAN IDES & CHRISTOPHER N. MAY, CONSTITUTIONAL LAW: INDIVIDUAL RIGHTS 386 (3d ed. 2004) (emphasis added).

¹⁵⁶ *See Roberts*, 468 U.S. at 623.

¹⁵⁷ IDES & MAY, *supra* note 155, at 386.

¹⁵⁸ 357 U.S. 449 (1958)

¹⁵⁹ *NAACP*, 357 U.S. at 460.

¹⁶⁰ *Id.* at 462.

¹⁶¹ *Id.* at 463.

¹⁶² *Id.* at 464.

¹⁶³ *Id.* at 464, 466.

¹⁶⁴ Sobriety Court Participant Guide, *supra* note 27.

¹⁶⁵ *See, e.g.*, 59th District Court Probation Department, Proof of AA/NA Attendance, available at <http://www.cityofgrandville.com/ReferenceDesk/Forms/AANAAttendanceVerification.pdf>.

¹⁶⁶ *See Interview, supra* note 134.

¹⁶⁷ “Anonymity is the spiritual foundation of all our traditions, ever reminding us to place principles before personalities.” TWELVE & TWELVE, *supra* note 12, at 184.

¹⁶⁸ UNDERSTANDING ANONYMITY, *supra* note 145, at 6. “Without [anonymity], most newcomers would never attend their first meeting.” *Id.*

¹⁶⁹ TWELVE & TWELVE, *supra* note 12, at 185.

¹⁷⁰ *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).

¹⁷¹ 530 U.S. 640 (2000).

¹⁷² *See id.* at 645.

¹⁷³ *Id.* at 658-59.

¹⁷⁴ See *id.* at 656-60.

¹⁷⁵ *Id.* at 648 (quoting *N.Y. State Club Assoc. v. City of N.Y.*, 487 US 1, 13 (1988)).

¹⁷⁶ *Id.* at 649-650.

¹⁷⁷ *Dale*, 530 U.S. at 650, 653.

¹⁷⁸ *Id.* at 656.

¹⁷⁹ *Id.* at 657.

¹⁸⁰ *Id.* at 657-59.

¹⁸¹ See A.A. GUIDELINES, *supra* note 28.

¹⁸² TWELVE & TWELVE, *supra* note 12, at 139.

¹⁸³ BIG BOOK, *supra* note 1, at 29.

¹⁸⁴ *Roberts*, 468 U.S. at 623.

¹⁸⁵ See *Interview*, *supra* note 134. Rick L. has been a member of A.A. for more than twenty years; Ken C. has been a member of A.A. for over nine years. *Id.*

¹⁸⁶ See *id.*

¹⁸⁷ BIG BOOK, *supra* note 1, at 59-60.

¹⁸⁸ *Id.* at 90.

¹⁸⁹ See District 52-1 Sobriety Court Participant Guide, *supra* note 27.

¹⁹⁰ See *Interview*, *supra* note 134. Rick L. points to court-mandated attendees Mike C., Steve B., Merris, and Aaron B. as examples of people that left A.A. permanently upon their probation termination.

¹⁹¹ See TWELVE & TWELVE, *supra* note 12, at 150. “Each group has but one primary purpose – to carry its message to the alcoholic who still suffers.” *Id.*

¹⁹² See Speiglmán, *supra* note 2 (discussing that A.A. members who want to discuss “later stages of the recovery program express resentment toward newcomers . . .”).

¹⁹³ See *id.*

¹⁹⁴ See text accompanying note 191.

¹⁹⁵ At a recent Milford, Michigan A.A. meeting, three court-ordered attendees introduced themselves as addicts instead of alcoholics. See *Interview*, *supra* note 134.

¹⁹⁶ See District 52-1 Sobriety Court Participant Guide, *supra* note 27 (stating requirements of “verification of an A.A. sponsor” and “A.A. Attendance”).

¹⁹⁷ *Preamble*, *supra* note 48.

¹⁹⁸ Alcoholics Anonymous, HOW A.A. MEMBERS COOPERATE WITH PROFESSIONALS 11 (1999) (emphasis added).

¹⁹⁹ See TWELVE & TWELVE, *supra* note 12, at 150.

²⁰⁰ *City of Ladue v. Gilleo*, 512 US 43, 56 (1994) (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

²⁰¹ See DIRECTORY, *supra* note 119.

²⁰² Content-neutral regulations are those regulations that regulate speech regardless of the substance of the speaker’s message, as opposed to a regulation which is content based because it regulates the *substance* of a speaker’s message or the viewpoint of the speaker. From the perspective of the court-mandated offender, the regulations may not be content-neutral because the offender is compelled to speak or belief on a particular viewpoint: the viewpoint of Alcoholics Anonymous. On the other hand, from the A.A. member’s perspective, the regulations do not aim to regulate the substance of the member’s speech.

²⁰³ 512 U.S. 43 (1994).

²⁰⁴ *Ladue*, 512 U.S. at 44-45.

²⁰⁵ See *id.* at 45.

²⁰⁶ See *id.* at 46. The Court assumed *arguendo* that the ordinance was content-neutral. See *id.* at 53.

²⁰⁷ *Id.* at 47.

²⁰⁸ *Id.* at 56-57.

²⁰⁹ *Ladue*, 512 U.S. at 54.

²¹⁰ *Id.* at 54-55.

²¹¹ See *id.* at 56.

²¹² See *id.* at 56-57.

²¹³ See *id.* at 56.

²¹⁴ *Id.* at 56. “An espousal of socialism may carry different implications when displayed on the grounds of a stately mansion than when pasted on a factory wall” *Ladue*, 512 U.S. at 56-57.

²¹⁵ *Id.* at 56.

²¹⁶ It is also argued in Part II.F that A.A. members are constructively forced to accept court-mandated offenders into A.A.

²¹⁷ The *Ladue* Court stated that “even regulations that do not foreclose an entire medium of expression, but merely shift the time, place, or manner of its use, must ‘leave open ample alternative channels for communication.’” *Ladue*, 512 U.S. at 56.

²¹⁸ See *Interview*, *supra* note 134.

²¹⁹ See *id.*

²²⁰ See *id.*

²²¹ *Preamble*, *supra* note 48

²²² BIG BOOK, *supra* note 1, at 29.

²²³ See the personal stories in the BIG BOOK, starting at page 171.

²²⁴ THE A.A. GROUP, *supra* note 72, at 10.

²²⁵ See BIG BOOK, *supra* note 1, at 291. “Many women who have reached the stage that I had reached in my drinking have lost husbands, children, homes, everything they hold dear.” *Id.*

²²⁶ See BIG BOOK, *supra* note 1, at 286. “Had I not gone [into the meeting], I believe I would not be alive today.” *Id.* “I’m convinced that if I had continued on my course, I wouldn’t have survived much longer.” *Id.*

²²⁷ See REVIEWS, *supra* note 113 (stating that “most people use [online meetings] to supplement their participation in the A.A. program”).

²²⁸ See *id.*

²²⁹ See BIG BOOK, *supra* note 1, at 1-16.

²³⁰ Alcoholics Anonymous, A.A. AT A GLANCE (2000), available at http://www.aa.org/en_information_aa.cfm?PageID=10 (emphasis added).

²³¹ Since A.A. speech is not totally restricted, but rather is inhibited.

²³² MSNBC online, *Drunk driving cases turn on source code*, Mar. 12, 2006, at <http://www.msnbc.msn.com/id/11752290/>.

²³³ Estimates of AA Groups and Members, based on reports to the General Service Organization as of January 1, 2004, can be found at http://www.alcoholics-anonymous.org/en_media_resources.cfm?PageID=74.

²³⁴ In Michigan the legal alcohol limit was lowered from 0.1 to 0.08. MICH. COMP. LAW. ANN. § 257.625(2)(b) (2004).

²³⁵ Michael Frazier, *Nassau DA reveals her DWI plan*, Mar. 14, 2006, NEWSDAY.COM.

²³⁶ The foreword to the Fourth Edition of Alcoholics Anonymous, published in 2001, estimated membership at approximately 2 million worldwide, BIG BOOK, *supra* note 1, at xxiii, and a press release issued in 2005 regarding A.A.’s 70th Anniversary also estimated A.A. membership at 2 million. Alcoholics Anonymous, *Alcoholics Anonymous Marks 70th Anniversary* (May 16, 2005), http://www.aa.org/en_press.cfm?PressID=3&thisyear=2005-01-01.

²³⁷ *DWI Offenders*, *supra* note 15 at ch. IV.

²³⁸ See *Interview*, *supra* note 134

²³⁹ See THE A.A. GROUP, *supra* note 72, at 12.

²⁴⁰ *Id.* at 22.

²⁴¹ See discussion *infra* Part II.E.

²⁴² See *Interview*, *supra* note 134

²⁴³ 310 U.S. 296 (1940).

²⁴⁴ *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

²⁴⁵ *Id.* at 301-02 (quoting the Connecticut General Statute § 6294 as amended by § 860d of the 1937 supplement).

²⁴⁶ See *id.* at 304.

²⁴⁷ *Id.* at 305. (emphasis added).

²⁴⁸ See A.A. FACT FILE, *supra* note 74. The *Big Book* teaches: “[B]e careful not to brand him as an alcoholic. Let him draw his own conclusion.” BIG BOOK, *supra* note 1, at 92. “[O]nly you can decide whether you think A.A. is for you. . . . If the answer is YES, we will be glad to show you how we stopped drinking ourselves.” Alcoholics Anonymous, *IS AA FOR YOU* (1973), available at http://www.aa.org/en_is_aa_for_you.cfm.

²⁴⁹ See BIG BOOK, *supra* note 1, at 44-57.

²⁵⁰ The Third Step of A.A. says “Made a decision to turn our will and our lives over to the care of God *as we understood him.*” TWELVE & TWELVE, *supra* note 12, at 34.

²⁵¹ *Preamble*, *supra* note 48.

²⁵² *O’Connor v. California*, 855 F. Supp. 303 (C.D. Cal. 1994).

²⁵³ Warner v. Orange County Dep't of Prob., 870 F.Supp. 69 (S.D.N.Y. 1993).
²⁵⁴ Arnold v. Tenn. Bd. of Paroles, 956 S.W.2d 478 (Tenn. 1997).
²⁵⁵ Stafford v. Harrison, 766 F. Supp. 1014 (D. Kan. 1991).
²⁵⁶ 16A AM. JUR. 2D *Constitutional Law* § 416 (2005).
²⁵⁷ BIG BOOK, *supra* note 1, at 46.
²⁵⁸ *Id.* at 59-60.
²⁵⁹ *See supra* notes 252-55.
²⁶⁰ 406 U.S. 205 (1972).
²⁶¹ 494 U.S. 872 (1990).
²⁶² *See discussion supra* Part II.F.
²⁶³ Yoder v. Wisconsin, 406 U.S. 205 (1972)
²⁶⁴ *Yoder*, 406 U.S. at 207.
²⁶⁵ *See id.* at 207-09.
²⁶⁶ *Id.* at 210.
²⁶⁷ *Id.* at 211.
²⁶⁸ *Id.* at 235-36.
²⁶⁹ *Id.* at 211, 212.
²⁷⁰ *See Yoder*, 406 U.S. 215.
²⁷¹ *See id.* at 217.
²⁷² *See id.* at 221-22.
²⁷³ *See id.* at 222-23.
²⁷⁴ *Id.* at 225.
²⁷⁵ *Id.* at 227.
²⁷⁶ *See* BIG BOOK, *supra* note 1, at 30-43.
²⁷⁷ *See Interview, supra* note 134. The A.A. members interviewed discussed their dissatisfaction with A.A. meetings because of the attendance by court-ordered people.
²⁷⁸ *See Interview, supra* note 134.
²⁷⁹ 494 U.S. 872 (1990).
²⁸⁰ *See Employment Div. v. Smith*, 494 U.S. at 874 (1990).
²⁸¹ *Id.*
²⁸² *See id.* at 876.
²⁸³ *See id.* at 878-79.
²⁸⁴ *Id.* at 879 (quoting *Reynolds v. United States*, 98 U.S. 145 (1879)).
²⁸⁵ *See Smith* at 881.
²⁸⁶ *See discussion supra* Part III.B.
²⁸⁷ *See discussion supra* Part III.A.
²⁸⁸ *See discussion supra* Part IV.
²⁸⁹ *See id.*
²⁹⁰ *See TWELVE & TWELVE, supra* note 12, at 10 (“Any alcoholic is a member of A.A. when *he* says so.”).
²⁹¹ *See* The Addiction Recovery Guide, <http://www.addictionrecoveryguide.org/index.html> (last visited Apr. 19, 2006).
²⁹² *See* Directory of recovery resources, <http://www.soberrecovery.com/links/resources.html> (last visited Apr. 13, 2006).
²⁹³ SMART Recovery, <http://www.smartrecovery.org/> (last visited Apr. 18, 2006).
²⁹⁴ *See* Introduction to SMART Recovery, <http://www.smartrecovery.org/intro/index.htm> (last visited Apr. 18, 2006).
²⁹⁵ *See id.*
²⁹⁶ *Id.*
²⁹⁷ *Id.*
²⁹⁸ *See* SMART Recovery, *supra* note 293.
²⁹⁹ *See* Introduction to SMART Recovery, *supra* note 294.
³⁰⁰ Frequently Asked Questions about SMART Recovery, <http://www.smartrecovery.org/resources/faq.htm> (last visited Apr. 18, 2006).
³⁰¹ *See id.*
³⁰² *See id.*

³⁰³ According to the Rational Recovery website, “Rational Recovery is the exclusive, worldwide source of counseling, guidance, and direct instruction on *self-recovery* from addiction to alcohol and other drugs through planned, permanent abstinence,” <http://www.rational.org/faq.html> (last visited Apr. 18, 2006).

³⁰⁴ *See id.*

³⁰⁵ *Id.*

³⁰⁶ Rational Recovery AVRT Study, http://www.rational.org/html_public_area/avrt_study.html (last visited Apr. 18, 2006).

³⁰⁷ SOS International, <http://www.secularsobriety.org/> (last visited Apr. 18, 2006).

³⁰⁸ An Overview of SOS, <http://www.secularsobriety.org/overview.html> (last visited Apr. 18, 2006).

³⁰⁹ Secular Sobriety and 12 Step Programs, <http://www.secularsobriety.org/12steps.html> (last visited Apr. 18, 2006).

³¹⁰ An Overview of SOS, *supra* note 308.

³¹¹ *Id.*

³¹² <http://sossobriety.org/meetings/states.htm>.

³¹³ The SOS Newsletter, <http://www.secularsobriety.org/newsletter.html> (last visited Apr. 18, 2006).

³¹⁴ *See* discussion *supra* Part II.E.

³¹⁵ *See* DIRECTORY, *supra* note 119.

³¹⁶ *See, e.g.*, Denison University, Office of Alcohol, Drug, and Health Education, <http://www.denison.edu/oade/anonymous.html> (last visited Apr. 19, 2006).

At Lead/Speaker meetings a person tells his/her story to the group. (A new person or visitor will not be asked to give the talk; the speaker is selected in advance of the meeting and usually has at least a year's sobriety) After some initial readings and announcements, the person will share his/her story with the group.

Id.

³¹⁷ *See id.* “Discussion meetings follow a variety of formats. At some, the person chairing the meeting will suggest a topic. At other meetings, those attending may offer a topic or problem for discussion” *Id.*