
A

Shared

Vision

Religious Liberty in the 21st Century

The American Jewish Committee

Baptist Joint Committee on Public Affairs

The Interfaith Alliance Foundation

National Council of the Churches of Christ in the U.S.A.

Religious Action Center of Reform Judaism

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America's embrace of religious liberty has produced the most religiously pluralistic nation in history. The success of that bold experiment in liberty cannot be denied, but its future is always at risk. As representatives of religious organizations, we reaffirm our commitment to maintaining church-state separation as the best means of assuring robust religious liberty and to creating a climate of mutual respect in a religiously diverse culture.

We do so at a time when we are confronted by two strikingly different and equally invalid views about the role of religion in public life. One portrays America as a Christian or Judeo-Christian nation. This view wrongly suggests that the Founders never meant to separate the institutions of church and state or to prohibit the establishment of religion. Such a view is historically inaccurate and endangers our common welfare because it uses religion to divide rather than unite the American people. This view of religion in public life, inaccurate and dangerous as it is, has gained credence in reaction to another inaccurate and equally damaging view of the proper role of religion in public life. The other view sees religion and religious groups as having a minimal role in — perhaps even being barred from — the vital public discourses we carry on as a democracy. It sees involvement in the democratic process by people of faith as violating the principle of church-state separation. It regards religious arguments as naive and seeks to embarrass any who profess religious motivation for their public positions on political issues. This view denies our country the powerful moral guidance of our religious heritage and discourages

many of our brightest and most committed citizens from actively participating in our public life. Both of these approaches caricature the intent of the Framers.

As organizations committed to religious liberty as well as a dynamic role for religion in public life, we share a different vision about the future: a vision that avoids both the theocratic tendencies on one side and the hostility toward religion associated with the other. Now more than ever, the United States must maintain its commitment to freedom for persons of all faiths or no faith. We are beset by religious and ethnic conflict abroad. Exploding pluralism challenges us at home. At such a time, we must reaffirm our dedication to providing what Roger Williams called a “haven for the cause of conscience.” We agree with Williams that conscience is best guarded by maintaining a healthy distance between the institutions of religion and government.

But it is not enough to reaffirm these truths. This statement is a call to action. We must apply these principles in practical ways whether we are electing a school board member or an American president, whether we are debating aid to parochial schools or prayer in public schools.

The Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof

The first sixteen words of the First Amendment form the backbone of the American experiment. Together they guarantee religious liberty for Americans of every faith as well as for those who affirm

no faith at all. A profound belief in the freedom of conscience motivated the decision of the Founders to disestablish religion in the new nation and to specifically protect the free exercise of religion. Both clauses require the separation of church and state as the means of ensuring religious liberty.

While not divorcing religion from public life, the Establishment Clause separates the institutions of church and state. Grounded in the belief that (1) no citizen's rights or opportunities should depend on religious beliefs or practices, resulting in a government that serves all citizens regardless of their religious belief or disbelief, and (2) authentic faith must be free and voluntary, the separation of church and state has been good for religion. This "lively experiment" has allowed religions to flourish with unparalleled strength and diversity. The religious and ethnic diversity of the United States makes the constitutional prohibition against laws respecting an establishment of religion more important than ever. No one wants government taking sides against their religion in favor of someone else's. In matters of faith, government must not take sides at all.

Critics of the Establishment Clause argue that the phrase "separation of church and state" does not appear in the Constitution and that society cannot survive without government support of religion. As to the former, they are correct. "Separation of church and state," like "separation of powers," "fair trial" or even "religious freedom," does not appear in the Constitution. Yet, Article VI's prohibition against religious tests for public office and the Establishment Clause's prohibition against laws

even “respecting” an establishment of religion make clear that government is to be neutral in matters of faith. As to the latter, government support has proven a hindrance, not a help, to religion. History is replete with wrecked governments and weakened churches brought down by the unhealthy union of church and state.

Some suggest that government support for religion should be permitted as long as no religion is favored over another and no citizen is forced to participate. The weight of the evidence suggests the Framers considered and rejected this approach. Even benign, non-coercive endorsements of religion make outsiders of those who are non-adherents of the endorsed faith. A proper interpretation of the Establishment Clause ensures that one’s standing in the political community is not affected by one’s standing in the religious community.

The separation of church and state requires that government refrain from promoting or inhibiting religion. Neutrality — by which religion is accommodated but never advocated by the state — should be the touchstone for interpreting both religion clauses. But far from the kind of neutrality proposed by some who would tear down the wall of separation between church and state — a vision of neutrality that would treat religion the same as secular pursuits, for good or for ill — the neutrality envisioned by the Framers often requires government to treat religion differently.

The Free Exercise Clause was designed to safeguard the inalienable right of Americans to believe, worship and practice any faith they may choose without government

interference. Subsumed in this right is the freedom to change our religious beliefs as we may see fit and to live according to our individual and communal beliefs. All faiths must be free to order their own internal affairs without governmental intrusion. No faith can ever be prohibited, penalized or declared heretical by the government. All must be equally secure, minority as well as majority.

Like most constitutional rights, the free exercise of religion is not absolute. It cannot extend to practices that harm other human beings or threaten public safety and welfare. Absent such compelling reason, however, government should not be able to restrict religious exercise.

The Free Exercise Clause can be only as vital and vibrant as the spirit of liberty throughout the land. If that spirit is submerged or squelched, for whatever reason, the rights and freedoms of all citizens are at risk. In the words of the 1988 Williamsburg Charter: “A right for one is a right for another — and a responsibility for all.”

Unfortunately, the Supreme Court’s enforcement of the Free Exercise Clause has been uneven over the years. While the Court has frequently reaffirmed the value of full and spirited religious expression, it has occasionally failed to protect these important principles when faced with claims by unpopular or politically weak groups. For some, the protections promised under the Free Exercise Clause have been too elusive.

Tragically, the Supreme Court’s decision in *Employment Division vs. Smith* (1990) weakened the Free Exercise Clause substantially

further. Describing the traditional legal protections for religion as a “luxury,” the Court rolled back a half century of legal precedent. After *Smith*, the government in most cases was no longer required to demonstrate a compelling reason for restricting religious exercise. Our “First Liberty” was not only no longer first, it was barely a liberty.

We applaud the passage of the 1993 Religious Freedom Restoration Act (RFRA), which restored the protections for religious liberty stripped away by *Smith*. Unfortunately, the Supreme Court in *City of Boerne vs. Flores* (1997) struck down as unconstitutional RFRA as applied to the states, even though several courts have held that it continues to apply to limit the power of the federal government to burden the exercise of religion. Fortunately, many states have adopted their own religious freedom acts and some interpret their state constitutions to afford more ardent protection for the exercise of religion. And Congress passed the Religious Land Use and Institutionalized Persons Act (2000) to provide greater protection for religious organizations from unreasonable zoning and land-use regulation and for institutionalized persons — such as prisoners — when their religious liberty is burdened without a compelling state interest.

In a related area, while the U.S. Constitution does not prevent private employers from instituting work rules that burden religion, the U.S. Congress wisely legislated in 1972 that it is a form of religious discrimination when employers, absent undue hardship, refuse to provide reasonable accommodation of an employee’s religious

practice. Unfortunately, judicial interpretation has greatly weakened this important protection of freedom of religion in the workplace, necessitating a legislative remedy to clarify Congress' intentions of some three decades ago.

We long for the day when the Court again recognizes the exercise of religion as a fundamental constitutional right entitled to the highest level of legal protection.

Religion and Politics

As concerned citizens, religious people can and do seek public office. Article VI of the Constitution wisely provides that no religious test shall be required for public office.

As voices of conscience, religious organizations can and do seek to express their prophetic witness by influencing moral values and public policy. Separation of church and state does not mean the separation of religion and politics. Nevertheless, attempts at affecting public policy should be tempered by tolerance for differing views and recognition that a multiplicity of voices is crucial for the success of a democratic society.

While religious groups serve an important role in holding government accountable for its actions, that role can be fulfilled only when a healthy distance is maintained between religion and government.

Neither church nor state may control, dominate or subjugate the other. The idea that America is a "Christian nation" violates the American commitment both to democratic government and religious liberty. In the most religiously pluralistic nation in the

world, any government endorsement of religion inevitably will make some people feel like outcasts in their own land.

Accordingly, we must:

- Defend the right of individuals and organizations to speak, debate and advocate with their religious voices in the public square;
- Stand firm by the principle that government action without a secular purpose or with a primary effect that advances or inhibits religion violates the separation of church and state.

Similarly, we should:

- Discourage efforts to make a candidate's religious affiliation or nonaffiliation a campaign issue;
- Discourage the invoking of divine authority on behalf of candidates, policies and platforms and the characterizing of opponents as sinful or ungodly.

Religion and Public Education

One of the most critical issues facing our country is how best to educate our children. While recognizing the contributions of private education in serving particular constituencies, we affirm the vital importance of the public school system to ensuring the education of all. Public schools belong to all citizens regardless of their faith perspectives. Public schools have the difficult task of equipping children from all sectors of society for citizenship and transmitting to them our civic values. They offer the opportunity — because of the diversity in public schools — to teach about and promote respect for differing cultures, nationalities and religions.

The primary goal of the public schools is the education of children in an increasingly

diverse society, not to provide a captive audience for the transmission of religious beliefs. As a result, schools must not allow the public trust to be manipulated for religious goals. Schools are not to sponsor any religious exercises or to allow religious ceremonies at school-directed events. As agents of the state, they must not promote or endorse any religion or even religion in general. Nevertheless, public schools should accommodate the religious rights of students when that can be done without disrupting the learning process or interfering with the rights of others.

Applying these general principles, schools may teach about religion so long as it is accomplished from an academic, objective perspective that eschews proselytizing. Teaching about religion should occur when the subject naturally arises in the curriculum. We oppose interjecting religious beliefs into the curriculum at inappropriate points, such as attempting to teach creationism in biology class under the guise of science. Schools may not sponsor or encourage prayer or other devotional activities in the public classroom or at school-organized student gatherings. They should not take sides in religious disputes or suggest one religious tradition is superior to others. They should not teach in a way that undermines the student's sense of citizenship because of his or her religious beliefs, or lack thereof.

Nevertheless, schools should accommodate the free exercise rights of students. Private devotion or religious exercise on the part of a single student or a group of like-minded students, including private prayer, Bible reading or other religious activities, is per-

mitted so long as it does not interfere with other students' rights or with the educational process. Schools should not discourage students from discussing their faith with other students except for reasonable time, place and manner restrictions and the protection of students from unwanted harassment. Under Supreme Court precedent, schools are generally free to permit voluntary student religious groups to meet and to allow released time programs off campus for religious studies without academic credit.

In sum, public schools should not advance religion, but should accommodate the free exercise of religion. They may not confer a benefit on religion but may lift governmentally imposed burdens on the free exercise of religion. They may not promote a religious perspective but may teach about religion.

Aid to Religious Institutions

We agree with Jefferson and Madison that it is wrong to tax citizens to support the teaching of religion. In the words of the Virginia Statute for Establishing Religious Freedom: "No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever" Receipt of such aid — accompanied as it certainly will be by government conditions and regulations necessary to assure accountability and the appropriate use of public funds — brings with it a grave danger to the integrity and autonomy of religious institutions. As the late Rev. Dean Kelley, a religious liberty advocate, often said: "With the King's shilling, comes the King." While in its decision in the *Zelman* case, the U.S. Supreme Court held that, under the circumstances of

that case, indirect aid (vouchers) to a religious school is constitutional, it did not disturb the time-honored prohibition on direct financial aid to such schools. In any event, what may be constitutional is not always wise or good public policy. Therefore, we oppose direct and indirect government funding of parochial schools at primary and secondary levels and of pervasively religious colleges and universities.

On the other hand, government aid to certain social service programs sponsored by religious organizations enjoys a long history. Aid to religious institutions, such as religiously affiliated hospitals or social service agencies, that provide secular services does not pose a threat to religious liberty, if services are provided on a nondiscriminatory basis. However, if an institution indoctrinates its clients with religion, or discriminates based on religion in its admission or employment policies in government-funded services, receipt of government aid presents substantial concerns. Because of these concerns, which arise from both constitutional and policy considerations, we oppose the “charitable choice” approach to government funding of social-service programs, which would permit pervasively religious organizations to receive public funds to provide social services and which lacks other necessary church-state and anti-discrimination safeguards.

Having said this, we recognize that special questions arise when funded social services, such as foster homes, are residential in nature. In such cases government must arrange for residents’ religious needs to be met, where possible through access to existing ministries in the community.

In sum, several broad and unifying principles should be applied in determining when it is appropriate for religious social services providers to receive government aid. Reference should be made to the types of institutions and services involved, the constituency to whom the services are provided, and the adequacy of church-state and anti-discrimination safeguards. Further, government's partnership with religious institutions for purposes of facilitating the availability of social services should recognize that privately funded programs in those institutions need not operate under the same standards as publicly funded programs. In addition, religious institutions that receive government funds for secular programs should be permitted, consistent with constitutional principles, to maintain their religious identities.

Conclusion

Our heritage of religious liberty and church-state separation must be reaffirmed. The increasing religious pluralism in our country beckons us to turn this heritage into a legacy. The aspirations of the Founders — that religion should involve a voluntary response and that government should remain neutral toward religion — must be converted into practical reality. Daniel Carroll of Maryland said it well over 200 years ago when he declared that “the rights of conscience are ... of particular delicacy and will little bear the gentlest touch of governmental hand.” Carroll's lofty view of conscience captures our understanding of our past and guides our vision of the future. We commit ourselves to making this ideal a reality in the 21st Century.

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