



FREQUENTLY ASKED QUESTIONS ON RELIGIOUS LIBERTY

USCCB Fact Sheet

2016

What do we mean by religious liberty?

In Catholic teaching, the Second Vatican Council “declare[d] that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.” (*Dignitatis Humanae*, No. 2.) Religious liberty is protected in the First Amendment to the U.S. Constitution and in federal and state laws. Religious liberty includes more than our ability to go to Mass on Sunday or pray the Rosary at home; it also encompasses our ability to contribute freely to the common good of all Americans.

What is the First Amendment?

The First Amendment to the U.S. Constitution states the following: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

What does “shall make no law respecting an establishment of religion” mean?

This phrase, known as the “Establishment Clause,” began as a ban on Congress’ either establishing a national religion or interfering with the established religions of the states. It has since been interpreted to forbid state establishments of religion, governmental preference (at any level) of one religion over another, and direct government funding of religion.

What does “prohibiting the free exercise thereof” mean?

This phrase, known as the “Free Exercise Clause,” generally protects citizens and institutions from government interference with the exercise of their religious beliefs. It sometimes mandates the accommodation of religious practices when such practices conflict with federal, state, or local laws.

What did our early American leaders say about religious freedom?

- **George Washington:** “[T]he conscientious scruples of all men should be treated with great delicacy and tenderness; and it is my wish and desire, that the laws may always be [] extensively accommodated to them...” (Letter to the Annual Meeting of Quakers, 1789.)
- **Thomas Jefferson:** “No provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority.” (Letter to New London Methodist, 1809.)
- **James Madison:** “[W]e hold it for a fundamental and undeniable truth that religion, or the duty which we owe our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence. The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate.” (*Memorial and Remonstrance Against Religious Assessment*, 1785.) (Internal citation and quotations omitted.)

Who have been heroes of religious liberty in the Church?

- **Saint Thomas More:** Thomas More was an English Catholic lawyer who served as Lord Chancellor and a close advisor to King Henry VIII. More opposed the king’s separation from the Catholic Church and his naming himself as Supreme Head of the Church of England. More was imprisoned for his refusal to take the oath required by a law that disparaged papal power and required acknowledging the children of Henry and Anne Boleyn (the

king's second wife after his divorce from Catherine of Aragon) as legitimate heirs to the throne. In 1535, More was tried for treason, convicted on perjured testimony, and beheaded. He is the patron saint of religious freedom.

- **Saint John Fisher:** John Fisher was an English Catholic cardinal, academic, and martyr. Fisher was executed by order of King Henry VIII during the English Reformation for refusing to accept the king as Supreme Head of the Church of England and for upholding the Catholic Church's doctrine of papal primacy.
- **Saint Elizabeth Ann Seton:** Elizabeth Ann Seton was the first native-born U.S. citizen to be canonized by the Catholic Church. In 1809, Seton founded the first American congregation of Religious Sisters, the Sisters of Charity. She also established the first parochial school for girls in the U.S. in Emmitsburg, Maryland in 1810. Seton's efforts initiated the parochial school system in America and opened the first free Catholic schools for the poor.
- **Saint Katharine Drexel:** Katharine Drexel was a religious sister, heiress, philanthropist, and educator. She dedicated herself and her inheritance to the needs of oppressed Native Americans and African-Americans in the western and southwestern United States. She was a vocal advocate of racial tolerance and established a religious congregation, the Sisters of the Blessed Sacrament, whose mission was to teach African-Americans and later American Indians. She also financed more than sixty missions and schools around the United States, in addition to founding Xavier University of Louisiana—the only historically African-American Catholic university in the United States to date.
- **John Courtney Murray, SJ:** Father Murray was an American Jesuit priest and theologian who was known for his efforts to reconcile Catholicism and religious pluralism, particularly focusing on the relationship between religious freedom and the institutions of a democratically structured modern state. During the Second Vatican Council, he played a key role in the Council's groundbreaking Declaration on Religious Liberty, *Dignitatis Humanae*.

Historically, what significant religious liberty issues have affected Catholics in our country?

- **Equal treatment of Catholic Schools:** Catholicism was introduced to the English colonies with the founding of the Province of Maryland by settlers from England in 1634. However, the 1646 defeat of the Royalists in the English Civil War led to stringent laws against Catholic education and the extradition of known Jesuits from Maryland, as well as the destruction of the school they founded. During the greater part of the Maryland colonial period, Jesuits continued to conduct Catholic schools clandestinely. The American Revolution brought historic changes, and in 1782, Catholics in Philadelphia opened St. Mary's School, considered the first parochial school in the U.S. In 1791, the ratification of the Bill of Rights, with the First Amendment guarantee of religious freedom, helped Catholics further cement the establishment of Catholic schools.
- Regardless, anti-Catholic sentiment in the late nineteenth century led to opposition to parochial schools. State governments opposed providing funds to aid students attending parochial schools, which Catholics founded largely in response to the requirement to pray and read from Protestant Bibles in public schools. Some Members of Congress attempted to block all government aid to religiously affiliated schools with the proposed "Blaine Amendment" in 1875. This constitutional amendment was never ratified at the federal level, but many state legislatures adopted similar legislation and amendments. Those "little Blaine" amendments are still in place in the constitutions of about thirty-seven states, and still operate to block Catholic school students from equal participation in government educational benefits.
- **Anti-Catholic bigotry in presidential campaigns:** During the 1884 presidential campaign, candidate James G. Blaine (who proposed the "Blaine Amendment" in Congress) attended a meeting in a church in New York at which a minister chided those who had left the Republican Party by stating, "We don't propose to leave our party and identify with the party whose antecedents are rum, Romanism, and rebellion." Blaine sat quietly during the anti-Catholic remark. The scene was reported widely in the press, and it cost Blaine in the election, particularly in New York City.
 - During the 1928 presidential campaign, Al Smith, a Catholic who had been elected governor of New York three times, was the Democratic candidate for president. It is widely believed that Smith's Catholic beliefs played a key role in his loss of the 1928 presidential election, as anti-Catholic sentiment among the

electorate was strong. Many feared that Smith would answer to the pope and not the constitution if elected president.

- During the 1960 presidential campaign, John F. Kennedy's Catholicism became a major issue in the election. Like Al Smith, Kennedy faced charges that he would "take orders from the Pope" and could not uphold the oath of office.
- **Establishment of diplomatic relations with the Vatican:** In the first years of the United States, the new Republic had contacts with the Papal States. However, in 1867, Congress prohibited the financing of any diplomatic post to the Papal authority. This began a period of over seventy years when the U.S. did not have a diplomatic representative to the Pope, coinciding with a period of strong anti-Catholicism in the U.S. In 1940, President Roosevelt sent a "personal representative" to the Pope who served for ten years. However, when President Truman nominated an ambassador to the Vatican in 1951, opposition mounted, and President Truman abandoned the effort. Presidents Nixon and Carter sent personal representatives to the Vatican. In 1984, President Reagan announced that full diplomatic relations between the U.S. and the Vatican had been established, and the U.S. has continued to send ambassadors to the Vatican since then.

How was religious liberty addressed at the Second Vatican Council (*Dignitatis Humanae*)?

Dignitatis Humanae provides that "the exercise of religion, of its very nature, consists before all else in those internal, voluntary and free acts whereby man sets the course of his life directly toward God." (*Dignitatis Humanae*, No. 3.) Therefore, individuals are "not to be forced to act in manner contrary to [their] conscience" nor "restrained from acting in accordance with [their] conscience . . ." (*Id.*)

The Second Vatican Council also "declare[d] that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits." (*Dignitatis Humanae*, No. 2.)

Further, *Dignitatis Humanae* provides that "[r]eligious communities [] have the right not to be hindered, either by legal measures or by administrative action on the part of government, in the selection, training, appointment, and transferral of their own Ministers . . ." (*Dignitatis Humanae*, No. 4.)

Where are the roots of religious liberty?

Religious liberty is inherent in our very humanity, hard-wired into each and every one of us by our Creator. Religious liberty is also prior to the state itself. It is not merely a privilege that the government grants us and that can be taken away at will.

What has the Church said about religious liberty since Vatican II, for example, through Saint John Paul II, Pope Benedict XVI, and Pope Francis?

Saint John Paul II: "[T]he most fundamental human freedom [is] that of practicing one's faith openly, which for human beings is their reason for living." (*Address to Diplomatic Corps, 13 Jan. 1996*, No. 9.)

Pope Benedict XVI: "[Religious freedom] is indeed the first of human rights, not only because it was historically the first to be recognized but also because it touches the constitutive dimension of man, his relation with his Creator." (*Address to Diplomatic Corps, 10 Jan. 2011*.)

Pope Francis: "American Catholics are committed to building a society which is truly tolerant and inclusive, to safeguarding the rights of individuals and communities, and to rejecting every form of unjust discrimination. With countless other people of good will, they are likewise concerned that efforts to build a just and wisely ordered society respect their deepest concerns and their right to religious liberty. That freedom remains one of America's most precious possessions. And, as my brothers, the United States Bishops, have reminded us, all are called to be vigilant, precisely as good citizens, to preserve and defend that freedom from everything that would threaten or compromise it." (*Address at South Lawn of the White House, 23 Sept. 2015*.)

How have religious liberty questions affected other religious bodies?

- **Discrimination against small church congregations:** In 1994, New York City’s Department of Education (DOE) denied the request of the Bronx Household of Faith and sixty other churches to rent space from public schools on weekends for worship services, even though non-religious groups could rent the same schools for scores of other uses. The City had been investigating what the churches do in the public schools and had made its own assessments of whether the meetings constituted a “worship service” or not. In 2012, a federal district court issued a permanent injunction, ruling that the City’s policy violated the Free Exercise Clause and the Establishment Clause of the U.S. Constitution. However, the City won its case on appeal, and in March 2015, the U.S. Supreme Court declined to take the case. Now it is up to the Mayor of New York City to decide whether to reverse the policy or to render these small church congregations homeless for their worship services. While the DOE’s discrimination would not frequently affect Catholic parishes, which generally own their own buildings, it would be devastating to many smaller congregations. It is a simple case of discrimination against religious believers.
- **Christian students on campus:** In its over-100-year history, the University of California Hastings College of Law has denied student organization status to only one group, the Christian Legal Society, because it required its leaders to be Christian and to abstain from sexual activity outside of marriage.
- **Religious speech in the public square:** In Minneapolis, the city’s Park and Recreation Board effectively exiled a group of Christians handing out Bibles during the Twin Cities Pride Festival to an isolated “no pride zone”—a remote and virtually untraveled corner of the city park where the festival was taking place. In Phoenix, a local resident was told that, in order to informally share his Christian faith at South Mountain Community College, he would have to pay a fee, take out special insurance, and give the school two weeks’ notice. In Cheyenne, members of the Wyoming State Building Commission have complied with a federal court order by admitting they unconstitutionally violated the free speech rights of WyWatch Family Action by first approving, then removing the group’s pro-life signs from a gallery at the state capitol. However, officials then began seeking other ways to silence pro-life speech, including prohibiting *all* outside groups from participating in the gallery.
- **Religious worship in one’s own home:** A Santeria priest in Texas was unable to perform certain religious rituals in his own home because of discriminatory state action. In an important ruling under the Texas Religious Freedom Restoration Act, a unanimous panel of the U.S. Court of Appeals for the Fifth Circuit found in favor of the Santeria priest. The court held that city ordinances forbidding the slaughter of certain animals prevented the Santeria priest from performing ceremonies essential to his faith, causing a substantial burden on his religious exercise.
- **The ministerial exception:** The U.S. Department of Justice (DoJ) attempted to undermine religious liberty in *Hosanna Tabor v. EEOC*, by attacking the “ministerial exception.” The ministerial exception allows religious organizations the right to choose their own ministers without government interference. The DoJ could have taken the position that the ministerial exception, though generally providing strong protection for the right of religious groups to choose their ministers without government interference, didn’t apply in the case before the court. Instead, DoJ needlessly attacked the very existence of the exception, in opposition to a vast coalition of religious groups urging its preservation through their *amicus curiae* briefs. Fortunately, the Supreme Court in a 9-0 decision agreed with religious groups in reaffirming the ministerial exception and rejecting DoJ’s position as “extreme,” “remarkable,” and as having “no merit.”

Current Concern: U.S. Department of Health & Human Services (HHS) Mandate

Under the Administration’s “compromise,” the Church does not have to pay for those services. Why does this not satisfy Church concerns?

The HHS mandate forces countless Catholic schools, hospitals, and social service organizations to participate in providing employees with abortifacient drugs and devices, sterilization, and contraception in violation of Catholic teaching. The mandate began to go into effect for religiously affiliated non-profit organizations, except those that fall under a narrow exemption for houses of worship, on January 1, 2014; Church ministries now are faced with the choice of violating deeply held beliefs or paying crippling fines.

Is this an effort to deny women access to contraceptives?

Access to contraceptives is already widespread. The relevant question is whether those with religious objections should be forced to participate in the provision of services that are in direct violation of Church teaching, in disregard of the First Amendment and federal laws respecting religious freedom.

Some argue that the Church is out-of-step with modern family realities and cite polls stating that the vast majority of Catholics use artificial birth control.

Again, the issue isn't whether individuals use artificial birth control. The Church's teachings may not be popular, but that doesn't mean that the State can force us to violate our own teachings.

Some argue that the issue is about fairness and equity between men and women. Many of these insurance programs cover Viagra for men, but not "protection" for women. Isn't that hypocritical?

Viagra is not a contraceptive for men, so that's not a valid comparison. In fact, the Department of Health and Human Services doesn't mandate men's condoms or vasectomies either. The relevant issue is whether the State should force the Church to violate its profoundly held beliefs.

Aren't you making too much of this "religious freedom" issue?

Religious liberty is a cornerstone of our democracy. The HHS mandate fundamentally alters the fragile balance between government and religious groups created by the framers of our Constitution. The same First Amendment that protects religious freedom protects freedom of the press. We wouldn't stand for the State telling newspapers or news programs what to write or whom to interview.

The HHS mandate has become a major political issue. Does opposition to the mandate put the church in league with the Republicans?

This is a bipartisan issue that affects all Americans. Legislation to correct this problem (the Health Care Conscience Rights Act) has enjoyed bipartisan support in both houses of Congress. We are asking all citizens—Democrats, Republicans, Independents, people of any faith or none at all—to let their views be known to all their elected representatives and to stand up for religious freedom and the First Amendment.

Current Concern: Redefining Marriage

How are marriage and religious liberty connected?

Marriage (the union of one man and one woman as husband and wife) and religious liberty are two distinct goods that are also related to each other. The protection of each good follows from the duty to protect the inviolable dignity of the human person. But even more directly, the legal protection of marriage as the union of one man and one woman also protects the religious freedom of those who adhere to that vision of marriage.

How does changing the legal definition of marriage have any effect on religious liberty?

Changing the legal term "marriage" is not one change in the law but amounts to thousands of changes at once. The term "marriage" can be found in family law, employment law, trusts and estates, healthcare law, tax law, property law, and many others. These laws affect and pervasively regulate religious institutions, such as churches, religiously-affiliated schools, hospitals, and families. When Church and State agree on what the legal term "marriage" means (the union of one man and one woman), there is harmony between the law and religious institutions. When Church and State disagree on what the term "marriage" means (e.g., when the State redefines marriage to include so-called same-sex "marriage"), conflict results on a massive scale between the law and religious institutions and families. Religious liberty is then threatened.

But would ministers really be forced to officiate at the "wedding" of two persons of the same-sex?

In 2014, two Protestant ministers (a husband and a wife) who operate a wedding chapel in Coeur d'Alene, Idaho said they would not officiate at a same-sex "wedding." City officials informed the ministers that their refusal to officiate violated the city's ordinance outlawing discrimination in public accommodations on the basis of "sexual orientation." The city eventually declined to prosecute the ministers. But this situation is rare—it may recur in for-profit wedding chapels, but is still unlikely to occur at all with respect to ministers operating in houses of worship. The much more likely and pervasive threats to religious liberty posed by the legal redefinition of marriage concern people and institutions compelled by the government against conscience, in various contexts, to provide to same-sex couples the special treatment previously reserved to actually married couples.

What's the real threat to religious liberty posed by same-sex "marriage"?

The legal redefinition of marriage can threaten the religious liberty of religious institutions and individuals in potentially numerous ways, involving various forms of government sanction, ranging from court orders compelling action against conscience, to awards of money damages and other financial penalties, to marginalization in public life:

- Compelled Association: the government could attempt to force religious institutions to retain as leaders, employees, or members those who obtain legalized same-sex "marriage"; or to obligate wedding-related businesses to provide services for same-sex "couples".
- Compelled Provision of Special Benefits: the government could try to force religious institutions to extend any special benefit they afford to actual marriage to same-sex "marriage" as well.
- Punishment for Speech: political action or conversation reflecting moral opposition to same-sex "marriage" would represent actionable "harassment" or "discrimination," or forbidden "hate speech".
- Exclusion from Accreditation and Licensure: those who adhere to the definition of marriage could be excluded from participation in highly regulated professions and quasi-governmental functions, as licenses are revoked and religious institutions lose accredited status.
- Exclusion from Government Funding, Religious Accommodations, and Other Benefits: those who adhere to the definition of marriage could be excluded from receiving government grants and contracts to provide secular social services, and from various tax exemptions.

Have any of these threats come to pass?

Yes. Examples include, but are not limited to, the following: a florist who declined to provide flowers for a same-sex "wedding" was sued by the state Attorney General and lost at the trial court level (Washington, 2015); Gordon College, a Christian college with a policy prohibiting same-sex sexual conduct, was given a year by its accreditor to report on how its non-discrimination policies met the accreditor's standards for accreditation (Massachusetts, 2014); a baker who declined to make a cake for a "wedding reception" of two men lost his case before two state administrative tribunals (Colorado, 2014); a photographer who declined to take pictures of a same-sex "commitment" ceremony was sued and lost her case at the state supreme court (New Mexico, 2013); legal action was taken against a Catholic high school for firing a teacher in a same-sex relationship (Ohio, 2013); bed-and-breakfast owners who declined to host a reception for a same-sex "wedding" had to pay \$30,000 and agree to never host wedding receptions again (Vermont, 2012); Catholic hospital was sued by employee for not providing health insurance for the employee's same-sex "spouse" (New York, 2012); University administrator was placed on administrative leave for signing petition to place marriage redefinition law on a state ballot (Maryland, 2012); high school student was threatened with suspension for writing school newspaper op-ed opposing adoption by persons of the same sex (Wisconsin, 2012); Catholic adoption agencies lost their funding and licenses to provide adoptions and/or foster care for refusal to place children with same-sex couples (Catholic Charities in Boston and San Francisco [2006], DC [2010], and Illinois [2011]).

At the federal legislative level, the **Child Welfare Provider Inclusion Act of 2015** has been introduced in both Houses of Congress to try to ensure that no adoption agencies are excluded from serving the most vulnerable children in our society. Further, the **First Amendment Defense Act** would bar the federal government from discriminating against individuals and organizations based upon their religiously belief or moral conviction that marriage is the union of one man and one woman or that sexual relations are properly reserved to such a marriage. The Act provides broad protections against adverse federal actions directed toward individuals and organizations that act on such beliefs.

Doesn't a religious exemption protect institutions and individuals if they believe that marriage can only be between a man and a woman?

A religious exemption may provide certain protections, but so far those protections have been drawn very narrowly and fail to cover known risks. More broadly, because "marriage" so pervades the law, it is difficult to foresee all circumstances where religious freedom conflicts may arise. But even further, no religious exemption—no matter how broadly worded—can justify a supportive or neutral position on the redefinition of marriage (see CDF, 1992, no. 16). Such "redefinition" is always fundamentally unjust, and indeed, religious exemptions may even facilitate the passage of such unjust laws. Protecting marriage protects religious liberty; the two are inseparable.