

ISSUES IN PERSPECTIVE

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Religious Liberty Under Siege?

One of the many precious liberties we enjoy as Americans is freedom of religion. Indeed, the First Amendment to the US Constitution reads, “. . . Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof. . . .” This Amendment guarantees that America will never have a state church and it also guarantees that the state will always protect the freedom of religious expression. It is the “free exercise” clause that is so dear to us, especially to Christians. Since 1607, when the first successful British colony was planted in North America, there has been a Protestant consensus in this nation. That consensus no longer exists. Protestants comprise only 48% of the current population and a smorgasbord of religious choice now characterizes the nation. In addition, according to a recent Pew survey, about 20% of Americans identify themselves as “none of the above,” meaning they have no clearly defined religious convictions. Hence, in the name of pluralism and in an oxymoronic sense, religious freedom in our nation is coming under a sustained and rather relentless attack. What is the evidence for this claim? Matthew J. Franck, Director of the William E. and Carol G. Simon Center on Religion and the Constitution at the Witherspoon Institute, offers several poignant examples of this claim:

- At the Hastings College of Law in San Francisco, the student chapter of the Christian Legal Society was denied any status on the campus because it would not abandon its requirement that members commit themselves to traditional Christian norms regarding sexual morality.
- Vanderbilt University has rewritten its student organizations policy and thereby chased every traditionally Christian student group off campus, denying them regular access to campus facilities.
- At the University of Illinois, an adjunct professor of religion, hired to teach a course on Catholicism, was let go because a student complained about his explanation of the Catholic Church’s natural law teaching on human sexuality.
- Authorities in Washington state and Illinois have attempted to force pharmacists, against their conscience, to dispense “morning after pills.”
- New York City has barred church congregations—and them alone—from using public school buildings outside school hours.
- In New Mexico, a Christian wedding photographer was fined for violation of a state “human rights act” because she refused to take the business of a same-sex couple who claimed to want her services at their civil union ceremony.

- In Massachusetts, Illinois, and the District of Columbia, the adoption and fostering agencies of the Catholic Charities have been closed because they will not place children with same-sex couples, as the local authorities demand.
- The US Seventh Circuit Court recently ruled that a Wisconsin public high school could not rent space for its annual graduation exercises in a local church, lest it be seen as “endorsing” religion and “coercing” its students to view Christianity in a positive light.
- In 2010, Judge Vaughn Walker of the US District Court in San Francisco ruled that Proposition 8, preserving marriage in the California constitution as the union between one man and one woman, was unconstitutional. In addition, he concluded that religious doctrines holding homosexual acts to be sinful are in themselves a form of “harm” to gays and lesbians. The Iowa Supreme Court held a similar view that an expression of a religious viewpoint restricting marriage to a man and a woman is for that reason unconstitutional!!
- The Obama administration, in repealing the “Don’t Ask, Don’t Tell” policy for the military, has strongly opposed legislation that would protect the conscience rights of chaplains and other servicemen and women who continue to hold on religious grounds that sexual relations are only permissible in marriage and between a man and a woman.
- The Obama administration issued its now famous mandate on contraception, requiring that every employer with more than 50 employees must provide group health insurance that includes, in the category of preventive medicine for women, no-cost coverage of sterilization services and FDA-approved prescription contraceptives, including abortifacients. The seeming compromise, which followed the understandable uproar over this policy, is meaningless because the exact same mandate is shifted to the insurance companies that serve the employers. The employers are still required to provide the service, regardless of their conscience and religious convictions.
- In March 2012 [in the city where I reside], the Omaha City Council adopted, by a four-to-three vote, an ordinance adding “sexual orientation” and “gender identity” as newly protected classifications to the City’s nondiscrimination and employment law. This ordinance poses serious threats to the First Amendment and religious freedom rights of Omaha’s citizens. Potentially, it could negatively affect the mission and operation of many diverse religious institutions, including churches, faith-based schools of all types, hospitals, clinics, day-cares and other such faith-based organizations. I believe that the Omaha City Council surpassed its authority in passing this ordinance, which threatens the First Amendment and freedom of religion rights of Omaha’s citizens. The “religious exemptions” clauses of the ordinance do not adequately protect the First Amendment and religious freedom rights of individuals and religious organizations. The ordinance conflicts with the United States Constitution and United States Supreme Court precedent in cases dealing with freedom of religion and freedom of conscience.

What then should we conclude? The threat to religious expression is real and formidable; of that there is no question. Politically, the Democratic Party seems to assign a higher value to liberty as economic equality, ignoring almost totally religious expression as a valued liberty. In fact, as

the Health Care law shows, economic equality, when it comes to health care, must be secured at the expense of religious freedom and freedom of conscience. The Democratic Party appears to value redistribution of wealth as its core value—and, for them, that must shape future public policy. There are several reasons why this approach is ethically wrong. Why is religious freedom so central to America? Why should it be valued as one of the most important freedoms we have? Franck offers several reasons:

1. Religious communities form an essential element in America's civil society. These religious communities are as natural and as organic as the family. Franck argues that "their integrity and freedom come near to being as important as that of the individuals of which they are composed."
2. The power of government is the creature "and not the creator of men's rights, and the servant, not the master of our private relations in our families and religious communities. It has no jurisdiction over belief; it cannot properly legislate or adjudicate questions of religious duty or the validity of requirements of conscience."
3. The state should actually respect, honor and even foster the role of religious communities in our nation. They are essential elements of America's civil society. Franck writes that "subordination of the religious to the political tends to sever, in the minds of policymakers and judges, the link between individuals and the various expressions of religious community that enrich their understanding of the truth, animate their peaceful encounters with their fellow citizens who have different understandings, and inform the reasonable basis of our objective moral order."
4. The power of the state comes from God and from the people the state represents. Its power cannot be greater than what its citizens rightfully give it. It is ethically wrong to give the state power over the conscience of men and women, because "we do not have any right to come between God and our fellow citizens."

We must restore the core of religious freedom, "the freedom of religious expression," to this nation, its public square and its body politic. The state has the ethical obligation to guarantee and protect religious expression and the freedom of conscience. For that reason, the state's growing hostility to religious expression and freedom of conscience is both disturbing and frightening. That is not what our Founders intended and that is not what this nation has stood for since it was founded. May God give us the grace and the courage to restore that which has been lost in this nation.

See Matthew J. Franck in *Imprimis* (September 2012) and Norman Podhoretz in *Imprimis* (October 2012).