

Separation of Church and State

INTRODUCTION

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” When the First Amendment to the U.S. Constitution was ratified in December 1791, the establishment and free exercise clauses were the culmination of more than 150 years of religious, philosophical, and political thought and debate. Although the establishment and free exercise clauses applied only to the federal government when they were adopted, they have since been applied to state and local governments as well through the 14th Amendment.

League Position

The League of Women Voters of the United States (LWVUS) concurred with the following position at their 2026 annual convention:

The League of Women Voters of Colorado stands for the separation of church and state and religious freedom founded upon individual conscience, free of social or political influence by any state or religious body; these fundamental civil rights are threatened by religious nationalism....

The League of Women Voters of Colorado believes that the Establishment Clause and the Free Exercise Clause of the First Amendment are cornerstones of our democracy.

BACKGROUND

The earliest proponents of the separation of church and state were considered by many to be radical. Roger Williams was banned from the Massachusetts Bay Colony in 1635 for advocating for the separation of civil and church authority, leading him to found Providence, Rhode Island, and establish the New World's first government with formal religious freedom. In 1670, William Penn expanded on these principles by publishing *The Great Case of Liberty of Conscience*, arguing for religious tolerance through reason, scripture, and history.

John Locke's 1685 *Letter Concerning Toleration* argued that government exists to protect life, liberty, and property, not to save souls. Because true faith requires genuine inner conviction and cannot be forced, government-coerced religion produces hypocrisy rather than true belief. Furthermore, because churches are voluntary associations that individuals freely join or leave, state magistrates have no authority to impose a single faith.

The Founders were greatly influenced by these ideas and saw religious diversity in the American colonies and Europe's history of religious conflict as reasons to separate church and state. In his 1785 *Memorial and Remonstrance Against Religious Assessments*, James Madison opposed a Virginia tax to support Christian teachers, arguing that faith flourishes through genuine conviction, not government coercion, and that religious belief lies beyond the state's authority. Madison famously said, “The purpose of the separation of church and state is to keep forever from these shores the ceaseless strife that has soaked the soil of Europe in blood for centuries.”

A key provision of the Virginia Declaration of Rights, adopted June 12, 1776, and drafted primarily by George Mason, included freedom of religion. It stated that religion should be guided by “reason and conviction,” not force, and that everyone was entitled to the free exercise of religion according to conscience. In 1777, Thomas Jefferson drafted the Virginia statute for religious freedom, arguing that compelling someone to support any religion with taxes or law is “sinful and tyrannical.” It passed the Virginia legislature in 1786. Jefferson considered it one of his greatest achievements. Its main points were that religious freedom was a natural right, belief could not be coerced, civil rights should not depend on religious opinion, no one should be compelled to support any religion nor should anyone be punished for their beliefs. The statute became the direct model for the establishment and free exercise clauses. In 1789, Madison's original draft of the First Amendment stated, “The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, on pretext, infringed.”

The Treaty of Tripoli, negotiated under George Washington and unanimously ratified under John Adams in 1797, is notable for Article 11's statement that the U.S. government was not founded on Christianity and held no hostility toward Muslim nations.

Thomas Jefferson coined the phrase “a wall of separation between church and state” in an 1802 letter to the Danbury Baptists Association, arguing that government has authority over actions, not religious beliefs. “I contemplate with sovereign reverence that act of the whole American people which declared that their legislatures should make no laws respecting an establishment of religion or prohibiting the free exercise thereof thus building a wall of separation between church and state.” The phrase later gained constitutional significance when the Supreme Court cited it in *Reynolds v. United States* (1878) and *Everson v. Board of Education* (1947).

1. ESTABLISHMENT CLAUSE

Different Theories of Interpretation

Three major theories of how the establishment clause should be interpreted have been used by United States Supreme Court (USSC) justices.

Strict Separation: This approach is often described as requiring a “wall of separation” between church and state and is based on the belief that government should be secular and religion should be a private matter. Strict separation was the first approach used by the USSC to decide if a law violated the establishment clause.

The Neutrality Theory: The government must be neutral regarding religion and cannot favor religion over secularism or favor one religion over another. Some USSC justices have applied this approach by considering whether a government action endorses a particular religion or generally favors either religion or secularism.

Accommodation: This approach assumes that the significance of religion in society and its presence in government should be accommodated. Under this approach, the establishment clause will only be violated if the government actually establishes a religion, coerces someone to support or participate in a religion, or favors one religion over another.

The Historical Application of the Establishment Clause

The USSC first considered a potential violation of the establishment clause in 1947, in *Everson v. Board of Education*, when it heard a challenge to a state law providing reimbursement directly to parents for bus fares incurred sending their children to school. Reimbursements were allowed for children attending both public and private parochial schools. In its decision, the USSC stated: “The First Amendment has erected a wall between church and state,” which “must be kept high and impregnable.” The Court then applied the strict separation approach and concluded that the reimbursements did not breach that wall and were permissible. Establishment clause cases after *Everson* tend to fall into two categories, cases involving religious activity in public schools and cases involving religious activities or symbols in other public places.

Prayers and Bible readings by school employees were common practices in public schools at the time the religion clauses were adopted and continued to be so until cases challenging those practices first reached the USSC in the early 1960s. In 1962 and 1963, the USSC ruled in two cases that state-mandated prayers and Bible readings in public schools violated the establishment clause even if students could opt out (*Engel v. Vitale*; *Abington School District v. Schemp*).

In 1971, the USSC adopted a three-part test to determine when a law violated the establishment clause in the case of *Lemon v. Kurtzman*. That test, which became known as the *Lemon* test, provides that a law is valid only if it meets all of the following requirements: (1) The law has a legitimate secular purpose; (2) the law does not have a primary effect of either advancing or inhibiting religion; and (3) the law does not result in an excessive entanglement of government and religion. In *Lemon* the Court considered a state program that provided funding for teacher salaries and textbooks to teach secular subjects in private schools, including parochial schools. Funding was limited to teachers who taught only secular subjects, and there could be no reimbursement if any religious instruction was included. The USSC concluded the program violated the establishment clause because the level of ongoing oversight necessary to ensure compliance with program conditions resulted in an excessive entanglement of government and religion.

Using the *Lemon* test, the USSC has invalidated a number of state laws involving religious activities in public schools because they lacked a secular purpose, including:

- A requirement to post the Ten Commandments in public school classrooms (*Stone v. Graham*, 1980);
- A state mandate for a one-minute period of silence or voluntary prayer (*Wallace v. Jaffree*, 1985);
- A state mandate to teach creation theory alongside evolution in public schools (*Edwards v. Aguillard*, 1987); and
- Prayers offered at a high school graduation in violation of the establishment clause (*Lee v. Weisman*, 1992).

The court has found secular and generally available government programs intended to provide aid to students rather than schools do not violate the establishment clause just because they provide incremental benefit to a religious school. Therefore, the establishment clause was not violated when a school district provided a sign language interpreter under the Individuals with Disabilities Education Act for a deaf child in a parochial school when the interpreter would have been provided in a public school (*Zobrest v. Catalina Foothills School Dist.*, 1993). Likewise, tuition vouchers offered to parents of children in a failing school district did not violate the establishment clause even if they could be used at parochial schools because the assistance was offered for the secular purpose of providing educational assistance to poor children in a particular failing school district and because any choice to use the assistance for a parochial school was a purely private decision of the parents (*Zelman v. Simmons-Harris*, 2002).

Religious Activities or Symbols in Other (Non-School) Public Places

Just as prayers were common in public schools until the 1960s, prayers in legislative bodies and religious displays on public properties were also common at the time the religion clauses were adopted and continue to be so today. In evaluating these cases, the USSC often relies primarily on historical context rather than the *Lemon* test.

Unlike its decisions regarding school prayer, the USSC has held that prayers conducted by legislative bodies do not violate the establishment clause. In 1983, the USSC found that Nebraska did not violate the establishment clause by employing a chaplain who led prayers at the beginning of its legislative sessions (*Marsh v. Chambers*). In 2014, the USSC found that sectarian prayers at the beginning of town council meetings were similarly permitted (*Town of Greece v. Galloway*). The basis for the USSC's viewing of legislative prayers differently than school prayers is largely attributed to two factors. First, the Court relies heavily on the fact that such prayers have been a consistent feature of legislative bodies since before the adoption of the religion clause. Second, even when children are allowed to not participate in prayers or other religious activities, the practice itself can still be coercive because children are vulnerable to feeling pressure to participate by their peers and the teachers who are in authority, whereas adult members of a legislative body can more easily choose not to participate or remove themselves from the activity.

Whether the display of a religious symbol on public property violates the establishment clause depends on the context surrounding the display. In *Allegheny County v. ACLU* (1989), the USSC considered two holiday displays in different parts of the county: a nativity scene placed in a prominent location in the county courthouse, which included a banner with the words "Gloria in Excelsis Deo" (Glory to God in the Highest), and an outdoor display that included an 18-foot menorah placed near the city's 45-foot Christmas tree and a sign declaring a "salute to liberty." The USSC found the nativity scene violated the establishment clause because it was placed in a prominent location, its message was clearly religious, and there were no secular components to the display. However, the menorah did not violate the establishment clause because it was part of a larger secular display that did not promote religion.

In 2019, the USSC found that public ownership and maintenance of a Latin cross originally erected in 1918 as a memorial to local soldiers who died in WWI did not violate the establishment clause. In 1961, the cross became publicly owned and maintained. In 2014, a lawsuit was filed alleging that public ownership and maintenance of the cross violated the establishment clause. The USSC disagreed, noting that while the erection of the cross may have originally had some religious aspect, over time it had acquired an historical and cultural significance for the community (*American Legion v. American Humanist Association*, 2019).

Similarly, the USSC found that a 6-foot monolith of the Ten Commandments on the grounds of the Texas State Capitol did not violate the establishment clause. The monolith was not challenged until forty years after its installation, and the Court's decision was based on the monument's nature and the nation's history. The Court noted the government has long acknowledged the role of religion in American life and that similar representations appear in many places, including in the USSC building and the Capitol, and found that the Ten Commandments, while undeniably religious, also have historical meaning (*Van Orden v. Perry*, 2005).

2. FREE EXERCISE CLAUSE

Over time, the USSC has applied three main theories when considering free exercise clause cases.

Beliefs Are Protected, Conduct is Not: In its first cases evaluating possible violations of the free exercise clause, the USSC stated that an individual's beliefs are protected, but the government is permitted to regulate, or prohibit, actions based on that belief when regulation is for the peace, good order, and morals of society.

Strict Scrutiny: In the early 1960s the Court shifted to a strict scrutiny approach: A law is valid if it burdens the free exercise of religion but only if the law is justified by a compelling state interest and imposes the least possible restrictive burden on free exercise of religion.

Neutral Laws of General Applicability: The USSC abandoned the strict scrutiny test in 1990 when it ruled that a law with a secular purpose is valid even if it burdens the free exercise of religion. However, a law specifically directed at religion or a religious practice is still subject to review under strict scrutiny.

Historical Application of Legal Theories Behind the Free Exercise Clause

Protection of Beliefs, Not Conduct: This seminal decision was handed down in a case brought by George Reynolds, a Utah man convicted of bigamy. Reynolds argued that polygamy was a central tenet of his Mormon faith, but in *Reynolds v. United States* (1879), the USSC ruled that citing a religious belief is not a valid defense to a crime. Allowing such a defense, the opinion noted, would "permit every citizen to become a law unto himself. Government could only exist in name under such circumstances."

In 1961, the USSC considered a Pennsylvania law prohibiting retail sales on Sundays. Orthodox Jews had challenged the law, arguing that it violated the free exercise clause because Christians and others were free to engage in business six days a week, but Orthodox Jews would be limited to conducting business only five days a week, putting them at a disadvantage in earning a living (*Braunfeld v. Brown*). The Court held the law did not violate the free exercise clause and referenced the rule it stated in *Reynolds*. However, the opinion also noted that a state law advancing a secular goal was valid even if it burdens religious practices "unless the state may accomplish its purpose by means which do not impose such a burden." Although that language did not appear to be applied with much rigor in *Braunfeld*, it pointed to a shift in how the Court would evaluate free exercise cases in the future.

The Strict Scrutiny Test: Two years after *Braunfeld*, the Court adopted the strict scrutiny test in *Sherbert v. Verner* (1963). Textile worker Adell Sherbert refused to work on Saturdays, her day of Sabbath as a Seventh-day Adventist. After being fired, she was denied unemployment compensation under state law because she had made herself "unavailable" to work. The USSC applied the strict scrutiny test and found the law burdened her free exercise rights because it forced her to choose between following the precepts of her religion or abandoning them in order to accept work. The Court found no "compelling state interest" that justified that burden.

Other examples of cases applying strict scrutiny include:

- A state law requiring children to attend school past eighth grade violated the free exercise clause because it infringed on Amish parents' constitutional right to direct their children's religious upbringing (*Wisconsin v. Yoder*, 1972).
- A university could not maintain its tax-exempt status as long as it enforced policies banning interracial dating contrary to the "fundamental public policy" against racial discrimination in education (*Bob Jones University v. United States*, 1983).
- The law may require parents receiving food stamp benefits to obtain a social security number for their child even if it violates their Native American religious beliefs. The Court ruled that, while the free exercise clause

provides protection from some forms of government compulsion, it “does not afford an individual a right to dictate the conducts of the Government’s internal procedures” (*Bowen v. Roy*, 1986).

Neutral Laws of General Applicability: The first decision that moved away from the strict scrutiny test, *Employment Division v. Smith* (1990), echoes the basis for *Reynolds*, more than a century earlier—that people cannot cite religious justifications for violating the law. In this case, a private employer fired two members of the Native American Church for using peyote, an illegal drug. Citing peyote’s use in their religious ceremonies, the employees sued after the state denied their unemployment compensation claims because their drug use was found to be misconduct. The USSC ruled that “neutral and generally applicable” laws need not be subjected to strict scrutiny and upheld the state’s decision.

The Court did use strict scrutiny to invalidate city ordinances that it found were adopted specifically to ban rituals practiced by the Santeria religion (*Church of the Lukumi Babalu Aye v. City of Hialeah*, 1993).

A similar dynamic prevailed in *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission* (2012), in which the USSC ruled that secular employment discrimination laws do not apply to the internal affairs of religious groups.

Congressional Response: In a nearly unanimous vote, Congress reinstated the strict scrutiny review for federal laws and regulations by enacting the Religious Freedom Restoration Act (RFRA) of 1993, which “ensures that interests in religious freedom” are protected. Under RFRA, a law that burdens religious freedom may stand only if it is the least restrictive means of protecting a compelling government interest. RFRA applies to only federal laws, but 21 states have adopted their own versions of RFRA.

Recent Free Exercise Cases: The Supreme Court’s has applied RFRA in a variety of high-profile cases. In *Burwell v. Hobby Lobby Stores* (2014), the Court ruled that closely held for-profit corporations are covered under RFRA and therefore could opt not to adhere to the Affordable Care Act’s mandate that employers’ group health plans offer contraceptives without cost-sharing requirements.

Masterpiece Cake Shop v. Colorado Civil Rights Commission (2018) involved a bakery’s refusal to sell a wedding cake to a same-sex couple, contrary to a Colorado state law that prohibits public accommodations from refusing service based on race, religion, or sexual orientation. The Colorado Civil Rights Commission determined that the bakery illegally discriminated against the couple. However, the USSC ruled that the commission had failed to afford a “neutral and respectful” consideration of the bakery owner’s religious liberty.

In *Mahmoud v. Taylor* (2025), several parents filed suit, citing religious objections, after the school district denied their request to opt their children out of the elementary school’s “Pride Storybooks” program that featured LGBTQ+ characters and themes. The district’s position is that the program promotes respect and inclusion for all students. The USSC issued a preliminary injunction ordering the school board to allow opt-outs from the curriculum, ruling that requiring participation unconstitutionally burdens the parents’ right to free religious exercise.

TENSION BETWEEN THE CLAUSES

Historically, the establishment and free exercise clauses were seen as jointly requiring government neutrality regarding religion. However, recent USSC decisions have moved away from the Court’s original interpretation of the religion clauses that called for maintaining a wall of separation between church and state. Those decisions have eroded that wall by allowing the government to provide funding directly to religious institutions, such as tuition vouchers, even when that money will be used to support an institution’s religious purpose. Additionally, recent cases have interpreted the free exercise clause to give greater protections to people who argue that they should be exempt from laws that they assert will interfere with their free exercise rights. This narrowing of the application of the establishment clause and expansion of the application of the free exercise clause result in situations where the interests in preventing a violation of the establishment clause may conflict with individual interests in the free exercise of religion.

One example of where this tension occurred involved a state-funded program in Maine that provided tuition assistance for students in rural school districts that did not operate secondary schools. Parents could send their children to any public or nonsectarian private school and the state would send payments directly to that school. Parents wanting to send their children to Christian and Jewish schools challenged the requirement that private schools be nonsectarian, arguing that the rule violated their right to free exercise of religion. Maine had limited the program to nonsectarian schools because it believed providing funding to sectarian schools would violate the establishment clause. Had the Court followed a strict separation approach, Maine may have prevailed with its argument. However, the USSC found that allowing the program to pay for education at religious schools did not violate the establishment clause because, under its recent rulings using the neutrality approach, secularism cannot be favored over religion. Because the program was a generally available benefit, religious schools could not be excluded based solely on their religious character. Since allowing religious schools to participate did not violate the establishment clause, the provision limiting the program to nonsectarian schools had to give way to the parents' free exercise rights to choose religious schools for their children (*Carson v. Makin*, 2022).

WHERE THESE ISSUES STAND TODAY

The Rehnquist Legacy and the Roberts Court

During William Rehnquist's term as Chief Justice (1986–2005), the USSC issued decisions that are viewed as supporting religious accommodation, including *Zobrest v. Catalina Foothills School District* (1993), holding that a public school could provide staff to support a parochial school student and *Zelman v. Simmons-Harris* (2002), which allowed a school voucher program to extend to parochial schools.

This tendency toward accommodation appears likely to continue with the Roberts Court. John Roberts clerked for Rehnquist and was appointed Chief Justice to fill the vacancy left by Rehnquist's death in 2005. In her paper on changes that have occurred during the Roberts Court about religion, Washington University Professor Lee Epstein writes:

The Roberts Court has ruled in favor of religious organizations far more frequently than its predecessors—over 83% of the time, compared to about 50% for all previous eras since 1953. In most of these cases, the winning religion was a mainstream Christian organization, whereas in the past, pro religion outcomes more frequently favored minority or marginal religious organizations.

Pending and Potential Cases in the Upcoming 2026-2027 USSC Session

Each October the Court begins a new session. The Court already has several religion cases on its Merits Docket for this term.

In November 2026, the USSC will hear oral arguments as to whether the exclusion of a Catholic preschool from Colorado's Universal Preschool Program is a form of religious discrimination that violates the First Amendment in *St. Mary Catholic Parish v. Roy*. Established in 2022, the Colorado Universal Preschool Program offers preschool to every Colorado child in the year before kindergarten. St. Mary Catholic Parish preschool argued that the state should have provided it with an exemption from rules that required it to admit any student who applied, including LGBTQ children or children of LGBTQ parents. A federal appeals court rejected that argument, concluding that, under the Supreme Court's 1990 decision in *Employment Division v. Smith*, the state's rules did not violate the Constitution because they are neutral and generally apply to every preschool, regardless of religious affiliation.

In December 2026, the Court will hear arguments in *International Partners for Ethical Care v. Ferguson*. That case will consider a challenge to a Washington state law that allows youth shelters to decline to notify, or delay notifying, the parents of the location of their child when the child requests gender affirming care. The parents challenging the law argue that it displaces their rights to make decisions for the care of their children, including decisions based on religious beliefs regarding gender-affirming care.

The USSC has agreed to hear the case *Missionaries of Saint John the Baptist, Inc. v. Frederic* (2025). In this case a private Catholic association applied for and was denied a permit to build an outdoor grotto and shrine on land zoned for residential use. The construction of accessory religious structures was not directly permitted under the current zoning ordinance. A challenge by neighbors has led to the USSC's consideration of whether a Kentucky land-use

regulation constitutes a “substantial burden” on religious exercise, including religious assemblies and institutions. The Kentucky Supreme Court has decided that it did not. It will be incumbent on the plaintiffs to demonstrate to the USSC that a prohibition on building a religious structure on an adjacent property is a substantial burden.

It is anticipated that USSC will also hear *Nathan v. Alamo Heights ISD*, out of Texas, and *Dier v. Landry*, out of Louisiana. These two cases involving state requirements to post the Ten Commandments in public school classrooms are clear examples of the tension between the First Amendment protection of the right of free exercise and the prohibition of the establishment of religion. A federal appellate court upheld the law in *Nathan*. The *Dier* case was dismissed as being premature. The parties challenging the laws have filed petitions asking the USSC to consider whether those laws violate the establishment clause.

The Religious Liberty Commission

The May 2025 establishment of the Presidential Religious Liberty Commission through Executive Order 14291 is seen by some as a cultural shift toward the primacy of Christianity. The executive order was signed during a National Day of Prayer ceremony at the White House. The Commission is composed of eleven Christians and one Orthodox Jew with no other religious or nonreligious representation. Under the purview of the Department of Justice (DOJ), the Commission’s tasks include producing a comprehensive report on the foundations of religious liberty in the United States, strategies to increase awareness of and celebrate the country’s peaceful religious pluralism, current threats to religious liberty, and strategies to preserve and enhance protections for future generations.

The Commission's June 2026 draft report, titled “America's First Freedom,” highlighted key focus areas, including parental rights in religious education, school choice, conscience protections, attacks on houses of worship, free speech for religious entities, and institutional autonomy. The report:

- characterizes the separation of church and state as a mid-20th-century invention associated with the Warren Court era rather than a founding-era principle;
- recommends creating a DOJ religious liberty task force, a “religious liberty violation hotline,” and rolling back the law that bars tax-exempt churches from political campaign activity; and
- leans heavily toward documenting perceived discrimination against Christians specifically.

The Commission’s draft report argues that the “wall of separation” reading is a distortion of the historical record rather than the original constitutional understanding. Critics frame this argument as an attempt to give official government sanction to Christian nationalist ideas.

In February 2026, a coalition including the American Historical Association, Interfaith Alliance, and Secular Coalition for America, as well as Muslim, Sikh, and Hindu organizations, sued over the Commission’s composition (*Interfaith et al v. Trump*). They argued it violates federal advisory committee balance requirements and pointed to the Federal Advisory Committee Act, which requires such groups to be “fairly balanced in terms of the points of view represented.”

In response to the plaintiffs’ argument, U.S. District Judge John P. Cronan said commissioners’ religious beliefs are “not relevant to the Commission’s function.” He also disagreed with the premise that there is a single Judeo-Christian viewpoint: “Given the wide diversity of Christian and Jewish beliefs, there is no reason to think that an Evangelical member would ‘balance out’ a Catholic member any less than a Buddhist member would.”

In response to Judge Cronan’s ruling, the plaintiffs issued the following joint statement:

Religious liberty and pluralism are foundational American values, and we remain committed to fighting for a democracy that does not promote a single religious belief and ignores others. We are grateful that this case achieved a major goal by forcing greater transparency, and we will continue our work.

Christian Nationalism

Christian nationalism is a political ideology asserting that the United States was explicitly founded as a Christian nation and that government policy should actively restore and enforce Christian cultural dominance. Christian nationalism centers on three core imperatives:

- Seeking political authority and utilizing state power to enforce Christian values and governance,

- Defining who constitutes a “true” American by fusing national identity with specific religious, racial, and cultural parameters, and
- Maintaining traditional social hierarchies, particularly regarding family structures, authority, and strict gender roles.

The majority of Christians reject Christian nationalism and support the separation of church and state, while a minority use the term to describe what they see as a legitimate defense of America’s religious heritage.

According to national surveys by the Public Religion Research Institute, around 30 percent to 32 percent of Americans qualify as either Christian nationalist adherents (strongly agree with core tenets of Christian nationalism) or sympathizers (agree with most Christian nationalist statements, but with slightly less intensity than strict adherents). Support is highest among White Evangelical Protestants (more than 65 percent) and Hispanic Protestants (more than 50 percent). Support is strongest in Arkansas, Mississippi, and West Virginia.

Development

In the 19th century, the Evangelical movement drove major social reforms, but fractured over race and slavery. While Northern evangelicals largely opposed slavery, Southern evangelicals constructed theological defenses for slavery and segregation to protect their social order.

Decades later, when segregated Christian schools like Bob Jones University faced losing their tax-exempt status over civil rights compliance, conservative political operatives saw an opportunity. Operatives like Paul Weyrich, cofounder of the Heritage Foundation, mobilized historically apolitical white evangelicals into a reliable Republican coalition by framing federal integration mandates as government overreach into religious freedom.

During the 1960s, 1970s, and 1980s progressive social movements—anti-Vietnam War protests, civil rights, women’s movement, and gay rights—created a climate of rapid cultural change. In response, conservative evangelical leaders like Jerry Falwell (Moral Majority), Pat Robertson (Christian Coalition), James Dobson (Focus on the Family), along with Weyrich transformed a decentralized, primarily spiritual movement into a unified political force tied directly to the Republican Party. They believed that the United States had been a Christian country and would be once again.

Some evangelical leaders shifted focus from theology to abortion, school prayer, equal rights amendment, secularism, and LGBTQ+ rights by framing them as existential threats to the family. By portraying these cultural shifts as direct dangers to Christian households and traditional values, they reframed political participation as a sacred duty to protect the faith.

Grassroots and Media Power

Founded in 1989, the Christian Coalition became a pivotal vehicle for grassroots political organizing. Conservative Christian networks expanded their influence across multiple sectors, including churches and megachurches, religious schools and homeschooling networks, broadcast ministries, conservative think tanks, legal advocacy groups, and local municipal politics. A growing charismatic movement, the New Apostolic Reformation (NAR), promoted “Seven Mountain Dominionism,” teaching that Christians must conquer seven key spheres of culture (business, government, media, arts, family, education, and church).

Political Alignment

To unite Americans against what he called “godless communism,” President Eisenhower championed a broad, bipartisan civil religion. He signed legislation adding “under God” to the Pledge of Allegiance in 1954 and requiring “In God We Trust” on all currency in 1955. It became the national motto in 1956. He attended the inaugural National Prayer Breakfast in 1953, opened Cabinet meetings with prayer, and cultivated a close relationship with Billy Graham, helping establish a precedent for evangelical access to the presidency.

During the administrations of Ronald Reagan (1980s) and George W. Bush (2000s), conservative Christianity solidified as a central force within the Republican Party (GOP).

Reagan forged a strategic alliance with Jerry Falwell's Moral Majority and broader evangelical networks. This alliance directly linked Christian identity to core conservative policies, including low taxes, deregulation, and a strong anti-communist defense position.

Bush deepened this bond through explicit rhetoric about his personal faith, his vision of "compassionate conservatism," and aggressive, organized voter outreach. For many voters, religious identity and Republican affiliation became increasingly intertwined, effectively fusing Christian identity with GOP policy to the point that for some supporting the party felt like a religious obligation.

This movement extended beyond electoral politics into the judiciary, where organizations like the Federalist Society coordinated with religious leaders to groom, nominate, and confirm conservative judges to federal courts.

Ultimately, this foundation culminated in white evangelical voters overwhelmingly supporting Donald Trump. Many viewed him as a political protector against perceived threats from secularism, liberalism, and demographic change—ultimately trading traditional expectations of personal piety in leaders for policy victories, executive power, and key judicial appointments.

Impact on Establishment Clause

The push from Christian nationalist ideology has significantly weakened strict separationist interpretations in federal courts. Critics argue that this conflicts with religious pluralism, equal citizenship, and the constitutional prohibition on establishing a national religion.

- Erosion of the wall of separation: Proponents advocate for an "originalist" view. Their interpretation of that view is that the founders intended only to prevent a single state-sanctioned church (like the Church of England), not to keep religion out of public life or government operations.
- Overturning the *Lemon* Test: In *Kennedy v. Bremerton School District* (2022) the USSC formally discarded the long-standing *Lemon* test, replacing it with an inquiry into historical practices and understanding. In that case, Joseph Kennedy sued a school district in federal court for violating his religious and free speech rights after losing his job as a high school football coach for kneeling at midfield following games to offer a quiet personal prayer.
- Public funding for religious institutions: Legal strategies aligned with Christian nationalism have expanded public funding access. In cases like *Carson v. Makin* (2022), the Court ruled that excluding religious schools from public tuition assistance programs violates the free exercise clause.
- Displays and state actions: Recent state-level initiatives mandate displaying the Ten Commandments or incorporating biblical instruction into public school curricula (such as recent legislation in Louisiana and Oklahoma), testing the boundaries of state-sponsored religious expression.

Impact on the Free Exercise Clause

The free exercise clause prevents government from restricting or compelling religious speech. Christian nationalism shapes this area in three main ways:

- Protected expression: Courts increasingly treat religious acts in public spaces like a coach engaging in a post-game prayer as protected private speech rather than an establishment clause violation.
- Compelled-speech exemptions: Cases like *303 Creative LLC v. Elenis* (2023) allow business owners to refuse creating expressive content that conflicts with their religious beliefs on marriage.
- Public censorship debates: Critics argue this movement drives state censorship through laws restricting school library books, gender identity discussions, and critical race theory.

CONCLUSION

The First Amendment is part of the genius of American life. It has protected the common good from religious factionalism, and it has ensured the integrity of faith from too close an alliance with the state.

—Randall Balmer, *Solemn Reverence* (2021)

Balmer's observation evokes the ideals of our nation's founders, so clearly evident in their calls for the separation of church and state—and against a state religion. In practice over time, however, the establishment and free exercises clauses have reflected evolving societal, cultural, and ideological norms. In recent decades, the USSC has

shifted significantly from a strict separation of church and state toward an accommodationist framework. This shift has given the free exercise clause broader reach while narrowing the scope of the establishment clause. The effect has been to exempt more and more religious practice—especially conservative Christian practice—from the law, moving civil society further from religious pluralism and the secular.

The Roberts Court has “misused religious freedom as a way to allow people to impose their religion on others and undermine church-state separation, which is the true guard for religious freedom,” contends Rachel Laser, president/CEO of Americans United for Separation of Church and State, in a recent *Washington Post* article.

The outcome of several major cases now before the Court may have a significant impact on the role of religion in government, education, and society.

DISCUSSION QUESTIONS

1. In *Reynolds v. United States* (1879), Chief Justice Waite argued if religious belief grants an automatic exemption from civil duties or public welfare laws, law enforcement and regulations become subjective and unenforceable. It would “permit every citizen to become a law unto himself,” concluding that “government could exist only in name under such circumstances.”

Legal scholar Garrett Epps observes that the modern claim to free exercise goes beyond seeking simple accommodation or exemption from neutral laws: It seeks legal immunity and, in essence, the right to secede from civil society itself.

Should a person ever be allowed to be exempt from a law based on their religious beliefs, and if so, how should it be decided when that is allowed?

2. Has the Supreme Court’s recent focus on stronger protection for religious exercise opened new doors—or created new friction—in your daily work, education, or personal life? How?

3. Now that the League of Women Voters of the United States has formally adopted a position on religious nationalism, how can the League translate this policy into action, both individually and as an organization?

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APPENDIX

History of Religion in Public Education and Society

Public education has been viewed as an important facet of American democracy. But our current interpretation of public education is quite different than its Puritan origins of the 1600s. Religious instruction fostered literacy and moral instruction that were aligned with Puritan-dominated beliefs. In 1647 towns with 50 or more families, schools were required to appoint a teacher to instruct children in reading so that they could read and understand the Scriptures, reflecting the Puritan belief that biblical knowledge was essential to combat ignorance and sin. This mandate underscored that schooling served religious rather than secular purposes.

These traditions continued through the early 19th century as evidenced by their inclusion in state constitutions and laws. There were no challenges to the prioritized Protestant beliefs and practices of states and schools in part because the establishment clause was interpreted to apply only to federal law.

The country became more diverse during the late 19th century because of urban growth and greater cultural and religious diversity. Bible-centric values intensified in some regions, while greater religious diversity and secularism grew in other regions. Some of the opposition to religious instruction was partially due to Catholic immigration. In the early 20th century, Catholic communities countered the Protestant practices by developing parochial schools to preserve their faith traditions.

Over time the Protestant-influenced systems were increasingly moved by a more secular influence. The Reformers of the Progressive Era (1890-1920) worked to address issues of rapid industrialization, immigration, urbanization, political corruption, monopolies, slums, poverty, and labor conditions. They advocated for scientific methods, medical solutions, business regulations, engineering solutions, environmental protection, and improvements in urban and working conditions. Women's suffrage took place during this era. The reformers' work aimed to remake government and education. The middle class became a driving force behind much of the reform.

In public schools the Protestant practices of daily prayer and Bible readings were challenged locally by religious minorities. However, the Protestant practices were justified as being nonsectarian moral instruction rather than formal religious worship. The viewpoints of non-Protestants struggled to gain traction against the Protestant practices because of the strength in numbers of the latter in rural and small school districts. These Protestant practices had the effect of marginalizing non-Protestants. But debates among the differing religious viewpoints began to intensify as urbanization and immigration continued.

In 1898, the state case *Pfeiffer v. Board of Education*, challenged the legality of Bible readings in public schools. Conrad Pfeiffer sued the Board of Education, asking the Michigan Supreme Court to require the Board of Education to discontinue reading daily Bible excerpts. Ultimately the Court ruled in favor of the Board under the state constitution. The decision noted that there had already been a half century of such practice—historical practice—and that children whose parents opposed the practice were exempt. At this point in time the USSC had not yet applied the First Amendment to state laws.

Of Local Interest: Skinner Butte Cross

In the 1920s, wooden crosses associated with the Ku Klux Klan were regularly burned on Skinner Butte. After that practice stopped, private individuals erected a series of wooden crosses on Skinner Butte from the 1930s to 1964. The last wooden cross was replaced with a 51-foot concrete cross with neon lighting. The concrete cross was erected without a city permit, but building and electrical permits were obtained after its construction.

A lawsuit was filed shortly after the concrete cross was installed, and in 1969, the Oregon Supreme Court ruled that the cross violated both the federal and Oregon constitutions because it was erected with a religious purpose and created the inference of official endorsement of Christianity.

In 1970, Eugene voters approved a city charter amendment to designate the cross a war memorial, and the cross was then deeded to the city as a gift. A bronze plaque was placed at the foot of the cross stating it was a memorial

to war veterans. A second lawsuit was filed. This time the Oregon Supreme Court ruled that, under the new circumstances, the cross could remain.

In 1991, a third lawsuit was filed, this time in federal court. Ultimately, the Federal Appellate Court found the cross to be unconstitutional as a violation of the establishment clause. The cross was clearly a religious symbol that reasonably appeared to endorse a particular religion, in spite of any claimed secular purpose. The City of Eugene decided not to appeal that decision, and the cross was removed in 1997.