

Primer on the First Amendment & Religious Freedom

What Would Happen to Religious Freedom in America if Religion and Other Forms of Expression were Treated the Same Way?

Some argue that it is unfair or even discriminatory for religion to be treated differently than other forms of expression. Such individuals advocate that the courts should dismantle the First Amendment's distinction between religion and other forms of expression. But this distinction is essential to religious freedom in America and the diversity of faiths that have flourished in our nation for over 200 years.

What would be the state of religious freedom in America if the courts dismantled the First Amendment's special treatment of religion, or if the Founding Fathers had never written the Establishment Clause and Free Exercise Clause into the First Amendment?

- The government could declare an official state religion.
- The government could levy taxes against all citizens to support houses of worship.
- Taxpayer dollars could be used to support religious indoctrination, worship and proselytizing.
- The government could intrude and interfere in houses of worship internal governance and religious disputes.
- Houses of worship, other religious institutions, and observant citizens could not receive special accommodations or exemptions from civil law, including:
 - No accommodations or exemptions from anti-discrimination prohibitions contrary to religious beliefs;
 - No exemptions from other civil laws such as serving alcohol to minors at religious services;
 - No presumption of tax-exempt or charitable status; and
 - No special protections for houses of worship against abuses of zoning or land-use regulations.

In one of her last opinions, U.S. Supreme Court Justice Sandra Day O'Connor elegantly cautioned against changing the First Amendment's basic framework regarding religion:

*Reasonable minds can disagree about how to apply the Religion Clauses in a given case. But the goal of the Clauses is clear: to carry out the Founders' plan of preserving religious liberty to the fullest extent possible in a pluralistic society. By enforcing the Clauses, we have kept religion a matter for the individual conscience, not for the prosecutor or bureaucrat. At a time when we see around the world the violent consequences of the assumption of religious authority by government, Americans may count themselves fortunate: Our regard for constitutional boundaries has protected us from similar travails, while allowing private religious exercise to flourish. The well-known statement that "[w]e are a religious people," has proved true. Americans attend their places of worship more often than do citizens of other developed nations ...and describe religion as playing an especially important role in their lives Those who would renegotiate the boundaries between church and state must therefore answer a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly? *McCreary v. ACLU of KY*, 545 U.S. 844,882 (2005).*

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