

Top Religious Freedom Threats In the North America

It doesn't take a historian to see recent, dramatic changes regarding religious liberty. There have been great strides: A healthy separation of church and state gives diverse groups space to coexist, determine for themselves what they think and believe, and work out their conflicts. In many respects, the free exercise of religion continues to be well protected. But there are also concerns. Government regulators are less and less accommodating of religious interests. Courts are easing judicial standards to allow more and more restrictions on religious freedom. And decisions on religious liberty claims often overvalue governmental interests and undervalue religious interests. At the same time, moral relativism, on the one hand, and a growing distrust of organized religion, on the other, are marginalizing religion and religious views. With equality and privacy the prevailing ideals today, religious viewpoints that can be mischaracterized as discriminatory or intrusive risk being dismissed as bigotry.

There are good reasons for some of the social and legal changes we see, but taken together they raise serious questions about whether important religious liberties will be preserved. These questions affect both the ability of individuals to manifest their faith publicly, as well as the ability of religious organizations to function in the wider world:

FOR RELIGIOUS ORGANIZATIONS

- **RELIGIOUS SCHOOLS:** Will religious schools be able to maintain their religious values and standards while also retaining their accreditation and the ability to participate in federal educational and research programs?
 - Gordon College, an evangelical campus in Massachusetts, was called before the New England Association of Schools and Colleges (NEASC), the local accrediting body, to justify its “moral covenant” – an honor-code style agreement students sign – that prohibits, among other things, “sexual relations outside of marriage and homosexual practice.” While the NEASC did not revoke accreditation, some fellow colleges refused to participate in any sort of athletic or extracurricular competition. Gordon’s students have also been banned from tutoring public school students because of the institution’s stance. <http://www.getreligion.org/getreligion/2015/1/31/that-big-us-supreme-court-case-isnt-the-only-2015-gay-dispute-to-watch> and <http://usmfreepress.org/2016/02/01/usm-maintains-stance-on-gordon-college/>
 - Trinity Western, an accredited Christian university in Canada that also requires student to abstain from sexual relations outside of heterosexual marriage, came under fire for its plans to open a law school. Some provinces voted to deny recognition to TWU graduates, and even in those provinces where recognition has been granted, referenda by professional attorney groups sought to ban TWU grads from joining the bar. Appeals are pending, so far with mixed results. <http://www.cbc.ca/news/canada/british-columbia/trinity-western-law-society-bc-appeal-1.3390980>
 - In January 2016, the U.S. Department of Education announced it would publish a list of schools seeking exemptions from Title IX’s sexual orientation and gender-identity provisions – a list that some believe will be used as a blacklist of institutions whose positions on social issues do not comport with popular mores. <http://www.deseretnews.com/article/865645961/Are-college-campuses-the-next-battleground-in-the-fight-between-religious-freedom-and-LGBT-rights.html?pg=all>
- **TAX EXEMPT STATUS:** Will religious organizations and educational institutions that affirm the traditional definition of marriage lose their tax-exempt status? Will donors’ contributions be tax deductible?
 - While the IRS Commissioner has tried to reassure religious organizations, growing numbers of advocates – including in op-eds in major news outlets – call for Congress to “stop subsidizing religion” and revoke the tax-exempt status of religious institutions that hold traditional views on marriage and

human sexuality. <http://time.com/3939143/nows-the-time-to-end-tax-exemptions-for-religious-institutions/>; https://www.washingtonpost.com/news/in-theory/wp/2015/09/14/americans-are-leaving-religion-why-are-we-still-subsidizing-it/?tid=a_inl

- In 2013, lawmakers in California advanced legislation that would have stripped certain state-level tax exemptions from the youth organizations that adhere to traditional moral viewpoints, and just this year, similar legislation was introduced in New York. http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0301-0350/sb_323_cfa_20130404_141201_sen_comm.html and <http://www.nysenate.gov/legislation/bills/2015/s39>
- **RELIGIOUS EMPLOYMENT:** Will religious organizations continue to have the right to employ people that both affirm and live the religious organizations' beliefs? Will they be forced to provide employment benefits that contradict their deeply held beliefs?
 - Notwithstanding the Supreme Court's recent decision in *Hosanna Tabor*, the EEOC attempts to limit the ministerial exemption by asserting it applies only to employees performing "essentially religious functions," which it defines as "those whose primary duties consist of engaging in church governance, supervising a religious order, or conducting religious ritual, worship, or instruction." According to the EEOC, "the exception does not necessarily apply to everyone with a title typically conferred upon clergy (e.g., minister)," but rather the determination is based on the function of the position. *EEOC Compliance Manual*, 12-1(C)(2), available at <http://www.eeoc.gov/policy/docs/religion.html>
 - A Massachusetts court ruled that a Catholic school discriminated against a gay man, in violation of state law, by retracting a job offer after learning that man was in a same-sex marriage, a practice that contradicts Catholic values. The court refused to apply an explicit exemption for religious institutions because, it held, the man was not a teacher and the school was open to non-Catholics, so the school was not a religious employer. <http://dailysignal.com/2016/01/26/what-a-gay-mans-court-victory-over-catholic-girls-school-means/>; <https://www.glad.org/uploads/docs/cases/barrett-v-fontbonne-academy/barrett-v-fontbonne-summary-judgment.pdf>
 - A Baptist-affiliated organization that places at-risk children in adoption or foster care terminated a gay employee because her lifestyle was contrary to the organization's values. She sued for discrimination. The case has lasted more than fifteen years. *Pedreira v. Kentucky Baptist Homes for Children, Inc.*, 579 F.3d 722 (6th Cir. 2009), *cert. denied*, 131 S. Ct. 2091. <https://www.au.org/our-work/legal/lawsuits/pedreira-v-kentucky-baptist-homes-for-children>
- **PRIVATE PROPERTY:** Will religious organizations be able to build and maintain houses of worship and other facilities? Will they be able to preserve their religiously important properties for activities that are consistent with their religious beliefs?
 - Residential property in Chicago is scarce, but churches can build houses of worship in commercial zones only if they obtain a special use permit, a complicated and costly process. Plus, permits are often denied because of political opposition. A consortium of churches challenged the permitting process, but Seventh Circuit Court of Appeals upheld it. The churches could not invoke protections of the Religious Land Use and Institutionalized Persons Act unless they could show it would be "effectively impractical" to worship anywhere else in the city, an impossible standard. *Civil Lib. For Urban Believers v. City of Chicago*, 342 F3d 752 (7th Cir 2003).
 - A Methodist organization lost its property tax exemption to a boardwalk pavilion because it refused to rent the pavilion for a same-sex wedding. An administrative law judge ruled the refusal was a violation of New Jersey's Law Against Discrimination, with "no true question of religious freedom" at issue. http://www.nytimes.com/2007/09/18/nyregion/18grove.html?_r=0
 - A same-sex couple sued a private Jewish university for limiting student housing to married, male-female couples. New York's highest court allowed the couple to challenge the policy as violating a city ordinance barring housing discrimination based on sexual orientation. *Levin v. Yeshiva Univ.*, 96 N.Y.2d 484 (2001).

- **ACCESS TO GOVERNMENT RESOURCES:** Will religious organizations be able to participate on equal terms with other non-profit organizations in government programs and the use of government facilities and properties?
 - Despite a ranking of 5 out of 44 applicants for a state grant to improve its playground facilities, Missouri denied the grant to a Lutheran school and day care because it is religiously affiliated. The day care challenged the decision, and the case is pending before the U.S. Supreme Court. <http://www.becketfund.org/trinitycase/>
 - Following President Obama's 2014 executive order prohibiting federal contractors from discriminating on the basis of gender identity, sexual orientation and other bases, the administration's Office of Federal Contract and Compliance Programs asserted there was no exemption for faith-based organizations. Thus, religious organizations with traditional views on gender and sexuality could be barred from receiving federal contracts. http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html
 - A New York City church that was denied a permit to rent a school building for worship services filed suit against the city, but the Second Circuit held that a regulation banning religious organizations from using school buildings for worship services was constitutional. The Supreme Court declined to review the case. <http://www.nytimes.com/2015/03/31/nyregion/supreme-court-leaves-intact-new-yorks-ban-on-religious-services-in-schools.html? r=0>

FOR INDIVIDUALS

- **FREE EXPRESSION:** Will religious viewpoints be suppressed in the public square, the workplace, professional and educational settings, and other important places where religious believers live out their lives?
 - A sports broadcaster from Texas was fired for publicly expressing his sincere religious opposition to homosexual conduct and same-sex marriage. <http://www.sbnation.com/college-football/2013/9/24/4767310/craig-james-fired-fox-sports-religious-discrimination>
 - Atlanta's fire chief was fired for publishing a book in which he affirmed his belief in the Biblical understanding of human sexuality. He was initially suspended after a copy of his book, which only even mentions homosexuality in two sentences, made its way into the hands of city officials. City officials claim he was not fired for his beliefs, but for "lack of judgment and failing to obtain permission" to publish the book – a claim which the chief disputes. <http://www.christianpost.com/news/was-atlantas-fire-chief-fired-over-his-faith-132617/>
 - A New York clerk refused to sign same-sex marriage licenses because of her religious beliefs. Instead, she asked that the task be assigned to a deputy clerk who did not object to signing the licenses. Despite this reasonable request for accommodation of both individual rights and state law, she has faced pressure to resign, as well as the threat of legal action from gay-rights activists. <http://www.advocate.com/news/daily-news/2011/09/15/new-york-clerk-could-face-lawsuit-over-refusal-issue-marriage-licenses>
 - An employee of a major motor manufacturer was fired for violating the company's "harassment policy" after posting a single comment opposing homosexual conduct in an online forum. The comment was in response to a company newsletter trumpeting the organization's pro-gay rights policies, and newsletter specifically invited feedback from employees regarding its content. <http://blog.libertyinstitute.org/2015/01/ford-motor-company-allows-employee.html>
 - A major party presidential candidate proposed banning an entire religious tradition from entering the United States. The travel ban would prohibit all Muslims for no other reason than their religious affiliation. <http://www.mormonnewsroom.org/article/church-statement-religious-freedom-pluralism>

- **PARENTS TEACHING CHILDREN:** Will parents of children in public schools have reasonable means to ensure that their religious values regarding marriage, family, gender and sexuality are not directly undermined through classroom instruction or intimidation?
 - Two couples in Massachusetts filed a complaint in District Court after a first grade teacher read the book “King & King,” which tells the story of a Prince who rejects every princess and instead marries another prince, and lives “happily ever after,” to their children. The District Court dismissed the claims, finding that parents don’t have the right to restrict what a public school may teach their children, even if those teaching contradict religious beliefs. <http://www.bpnews.net/23077>
 - In California, the Department of Education updated its recommended reading list to include titles explicitly promoting homosexual and transgender issues, and the Legislature passed, and the Governor signed into law, a bill requiring public schools to teach the “historical contributions” of homosexual Americans. The new law prohibits any school material or instruction that reflects adversely on homosexuality, bisexuality or transgenderism. It does not provide a mechanism for parents to remove children from classes over offensive material. <http://www.nydailynews.com/blogs/pageviews/california-introduce-gay-themed-books-school-curriculum-unsurprisingly-backlash-ensues-blog-entry-1.1640186> and http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sb_48_bill_20110714_chaptered.html
 - A seventh-grade student in Texas was told she must admit there was no God in order to get the correct response on a “critical thinking” assignment. <http://www.deseretnews.com/article/865640188/God-is-real-fact-opinion-or-assertion-Texas-students-had-to-answer.html?pg=all>
- **THE WORKPLACE:** Will religious employees be able to maintain their religious identity in the workplace and be reasonably accommodated when work and religious duties conflict?
 - A major fashion retailer fired one employee in California and declined to hire another in Oklahoma because their hijabs (headscarves), which they wore for religious reasons, did not conform to the company’s “look policy.” A lawsuit against the company was thrown out by the 10th Circuit, but recently reinstated by the Supreme Court. <http://www.wsj.com/articles/supreme-court-sides-with-muslim-abercrombie-job-applicant-over-head-scarf-1433170999> Similarly, the European Court of Human Rights dismissed the appeal of a Christian nurse who was prohibited from wearing a cross at work. <http://www.bbc.com/news/uk-21025332>
 - A Wisconsin-based company fired seven Muslim employees for taking prayer breaks, as required by their faith, and then asked them to sign statements saying their “unscheduled” breaks violated company policy. In fact, the company’s long-standing practice allowed workers to leave their stations for morning and evening prayers. Another 14 employees resigned as a result of the firings. <https://www.washingtonpost.com/news/acts-of-faith/wp/2016/02/05/these-muslims-in-wisconsin-were-just-fired-in-a-prayer-break-dispute/>
 - A High Court judge in the UK ruled that Christians do not have a right to request not to work on Sundays, even when other workers are willing to take the shifts, because keeping the Sabbath by not working on Sundays is not a “core component” of the Christian faith. <http://www.telegraph.co.uk/news/religion/9770825/Christians-have-no-right-to-refuse-to-work-on-Sundays-rules-judge.html>
- **PROFESSIONAL CREDENTIALS:** Will professionals lose or be denied licensing for expressing religious views or declining to provide services that are available elsewhere but that at odds with their deeply held beliefs?
 - A Christian student enrolled in a counselor education program at Augusta State University was required to complete a “remediation plan” to improve her “ability to be a multiculturally competent counselor” because of her religious views on homosexuality. When she refused, she was expelled. *Keeton v. Anderson-Wiley*, 664 F.3d 865 (11th Cir. 2011).
 - The former medical director of an Illinois county health department was fired for refusing to prescribe medications and conduct procedures that violated his religious beliefs, even though there

were other doctors in the same clinic who were willing to provide those services.

http://www.myjournalcourier.com/news/health-home_top-news/1409703/Religion-v.-medicine

- The ACLU is suing Michigan-based Trinity Health Corporation, a Catholic hospital chain, to compel hospitals to provide abortions to women in emergencies. <http://www.usatoday.com/story/news/2015/10/01/aclu-sues-catholic-hospital-chain-over-emergency-abortion/73147778/>
- **SMALL BUSINESSES:** Will small family and religiously oriented businesses be able to maintain their religious values in the face of anti-discrimination laws?
 - The Department of Health and Human Services issued a mandate requiring all employer health plans to provide free contraceptives, sterilizations and abortifacient drugs, regardless of any moral or religious objections of the employer, or face massive IRS penalties. Only after years of litigation was the mandate finally overturned, by the Supreme Court, in *Hobby Lobby*. <http://www.becketfund.org/hhsinformationcentral/>
 - In 1996 the California Supreme Court ruled that a Presbyterian widow with traditional morals violated state law when she desired to rent one of her properties only to couples who are married. The court explained that Mrs. Smith could avoid compromising her religious beliefs by getting out of the rental business altogether. *Smith v. Fair Employment & Housing Com.*, 913 P.2d 909 (Cal. 1996).
 - Husband and wife ministers who, for the past 25 years, have run a small wedding chapel in Coeur d'Alene, Idaho, have been repeatedly threatened with criminal prosecution, fines, and up to six months' jail time if they refused to marry same-sex couples. Only after immense public outcry did the city back down from its stance. <http://blog.alliancedefendingfreedom.org/2014/10/25/setting-the-record-straight-4-things-you-need-to-know-about-the-hitching-post-case/>
 - A Mennonite couple who own and operate a church-turned-art gallery that hosts wedding ceremonies were forced to close their family business after the Iowa Civil Rights Commission threatened punitive action; they declined to personally plan, host, and facilitate a same sex wedding ceremony, as doing so would run counter to their beliefs. In order to avoid the sanctions, the couple ceased performing all marriages. <http://www.desmoinesregister.com/story/news/2015/06/22/gortz-haus-owners-closing-business-sex-marriage/29114043/>; <http://www.becketfund.org/odgaard/>
 - Catholic innkeepers in Vermont have twice faced legal action, and have now had to pay thousands of dollars in fines and discontinue hosting weddings and receptions altogether. Ironically, they *agreed* to host same-sex ceremonies in accordance with state law, but are being punished primarily because they honestly disclosed their religious convictions to potential customers. http://www.huffingtonpost.com/2012/08/23/wildflower-inn-vermont-gay-marriage-lawsuit_n_1826218.html
- **COLLEGE CAMPUSES:** Will campus student groups be able to select their own leaders or express a religious message?
 - Universities in more than a dozen states allow fraternities, sororities, choirs, honors societies, and political clubs that distinguish students by race, gender or viewpoint, but "all comers" policies ban religious clubs that require club leaders to affirm beliefs consistent with the club's avowed message. The Supreme Court upheld this sort of policy in *Christian Legal Society v. Martinez*. http://www.oyez.org/cases/2000-2009/2009/2009_08_1371; <http://www.usatoday.com/story/opinion/2014/11/10/christian-should-lead-christians-persecution-freedom-diversity-equity-college-column/18818265/>
 - In California alone, an international Christian student group has been denied recognition on two dozen state college campuses because it requires its own leaders to share its Christian beliefs The Cal State university system demands that the group subscribe to a nondiscrimination policy, which would allow non-Christian and gay students to become officers. http://www.huffingtonpost.com/2014/09/09/intervarsity-sanctioned-california-state-university_n_5791906.html

- **PUBLIC CEREMONY:** Will public institutions be able to celebrate religious holidays (like Christmas), permit ceremonial prayer, or retain other vestiges of the community's religious heritage?
 - The Fayette R-III School District was forced to stop announcing religious activities over the intercom and prohibit teachers from participating in religious activities with students in religious organizations and from displaying religious paraphernalia. <http://americanhumanist.org/news/details/2014-06-american-humanist-association-successfully-settles-l> and <http://religionclause.blogspot.com/2014/06/consent-decree-entered-in-suit-over.html>
 - In *Lee vs. Weisman*, "non-sectarian" prayer by a selected clergyman at graduation exercises was ruled a violation of the Establishment Clause. The court said that the purpose of the Establishment Clause is to separate religion and government. <http://www.mormonnewsroom.org/article/threatened-demise-religion-wickman>
 - In *Wallace vs. Jaffree*, the Supreme Court struck down an Alabama statute providing for a one-minute period of silent prayer or meditation as a violation of the Establishment Clause because there was no secular purpose in doing so. <http://www.mormonnewsroom.org/article/threatened-demise-religion-wickman>
- **FREEDOM FROM RETALIATION:** Will organizations and people who voice beliefs or otherwise assert religious freedom rights be retaliated against?
 - In one of America's largest cities, lawyers acting for an openly lesbian mayor subpoenaed the sermons and notes of pastors who opposed parts of a new LGBT rights law on religious grounds. The targeted pastors faced not only intimidation but also criminal prosecution if they refused to comply with the subpoenas—all because they insisted that the new ordinance should be put to a vote of the people. https://www.washingtonpost.com/national/religion/houston-subpoenas-pastors-sermons-in-gay-rights-ordinance-case/2014/10/15/9b848ff0-549d-11e4-b86d-184ac281388d_story.html
 - A judge in Washington State was found guilty of an ethics violation for honestly responding to a staffer's question, in chambers, by saying that he would not perform same-sex marriages. <http://www.cjc.state.wa.us/Case%20Material/2013/7251%20Tabor%20Stip%20FINAL.pdf>
 - One of the co-founders a major software and development corporation, who had built the small start-up into a multi-million dollar company, was forced out of his job less than two weeks after being promoted to CEO because he chose show his support for traditional marriage in California. Both he and his company became the target of a vicious, coordinated campaign of boycotts and personal attacks when it was revealed he donated \$1,000 to defend his religious conviction that marriage between a man and woman is sacred. <http://abcnews.go.com/Business/mozilla-ceo-resigns-calif-gay-marriage-ban-campaign/story?id=23181711>
 - In 2011, an Olympian gold-medal gymnast had been selected to lead the American delegation to the Olympic games in London. But he was pressured to resign as the symbolic head of the team because gay-rights advocates protested that he had supported a traditional marriage law in California. Ironically, he was denied the same freedom of conscience that commentators demanded for the gay athletes he would symbolically represent. <http://www.nytimes.com/2011/05/12/sports/olympics/gay-marriage-stance-costs-vidmar-olympic-role.html? r=0>