



# AMERICAN ATHEISTS

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June 2, 2020

The Honorable Asm. Lorena Gonzalez  
Chair, Assembly Committee on Appropriations  
State Capitol, Room 4202  
Sacramento, California 95814

**Re: AMEND AB 1851, Testimony from American Atheists regarding development privileges for religious institutions**

Dear Chairperson Gonzalez and Members of the Assembly Committee on Appropriations:

American Atheists, on behalf of its over 7,000 constituents in California, writes in to urge you to amend AB 1851, a well-intentioned but unconstitutional bill that will allow religious institutions to bypass state zoning restrictions that are enforced on the rest of the community. While proponents might argue that AB 1851 encourages religious institutions to serve the homeless population, it also creates special privileges for religious organizations that place an unfair burden on other citizens, regardless of whether they are religious, in violation of the Establishment Clause. We strongly urge you to reconsider this legislation and to extend the proposed exemption to all nonprofits seeking to serve homeless people by building housing, rather than restrict the exemption to religious institutions.

American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the “wall of separation” between government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation’s communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. As advocates for the health, safety, and well-being of all Americans, American Atheists objects to granting special privileges to religious organizations that burden third parties.

AB 1851 would create an exemption for religious institutions that allows them to cut up to 50% of nearby legally required religious-use parking spaces in the process of building an affiliated housing development. This may allow, for example, a large church to covert a portion of its parking lot into housing without replacing the parking spaces required by local ordinances.

Available parking in many areas of California, particularly in cities, is already extremely limited. Granting this accommodation would further reduce an already scarce resource, creating a spillover effect that would impact nearby residents and businesses. American Atheists frequently receives complaints from homeowners and businesses owners who are unable to park near their homes or who suffer

commercially because patrons are not able to access their businesses because of spillover parking from religious institutions and events. Already in California, efforts to convert church parking spaces into housing for homeless people has created controversy and harmed nearby businesses.<sup>1</sup>

While it is laudable for religious institutions to seek to serve homeless people, the state cannot give these institutions special privileges that place an unfair burden on third parties. If California wants to move forward with this type of legislation, it should instead provide this exemption to any nonprofit that seeks to provide housing for homeless people – not merely to religious organizations that seek to do so.

The Establishment Clause requires the consideration of any impact an accommodation or religious exemption would have on third parties. The Constitution commands that “an accommodation must be measured so that it does not override other significant interests;”<sup>2</sup> “impose unjustified burdens on other[s];”<sup>3</sup> or have a “detrimental effect on any third party.”<sup>4</sup> Unfortunately, if the proposed religious exemption is granted, the spillover from attending religious services will frequently negatively impact surrounding businesses and residents. Moreover, in order to comply with the Establishment Clause, the government “must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries.”<sup>5</sup> Unfortunately, this bill does the opposite. It removes a local government’s ability to consider the implications of reduced parking spaces, creating a blanket exemption in the place of careful weighing of harms and oversight by local elected officials.

These constitutional issues are difficult to navigate. Fortunately, lawmakers can avoid constitutional concerns by simply making the exemption available to nonprofit organizations more broadly, rather than just religious institutions.

Finally, we note that the religious exemption proposed in this legislation is misaligned because with the purported goal of the bill. Not only does it not allow secular nonprofit organizations to make use of the zoning exemption to provide housing for homeless people, it does not place any requirement on the exempted religious developers to actually provide the housing created to homeless people. Under the current version of the bill, a religious institution may choose to convert land and parking spaces to market-rate housing and achieve a significant profit on land that is essentially tax free, while burdening nearby homeowners and businesses due to an insufficient parking allotment. Finally, some religious

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<sup>1</sup> Kendall, M., “As one East Bay church builds tiny homes for the homeless, other may follow,” The Mercury News, Dec. 14, 2019, available at <https://www.mercurynews.com/2019/12/14/as-one-east-bay-church-builds-tiny-homes-for-the-homeless-others-may-follow/> (Planned construction “sparked some opposition in the neighborhood, mostly over the loss of parking spaces that serve both the church and a Trader Joe’s.”); “Developer works on architectural changes amidst opposition to church development,” Resident Community News Group, Inc., Jan. 1, 2020, available at <https://residentnews.net/2020/01/01/developer-works-on-architectural-changes-amidst-opposition-to-church-development/>.

<sup>2</sup> *Cutter v. Wilkinson*, 554 U.S. 709, 722 (2005).

<sup>3</sup> *Id.* at 726.

<sup>4</sup> *Id.* at 720, 722.

<sup>5</sup> *Id.* at 722.

organizations may choose to make this housing (which would be, in effect, partially subsidized through this legislation) only available to members of their religion and/or use the availability of housing as a proselytizing tool. By including secular nonprofits in this exemption, lawmakers may lessen the resulting potential religious coercion.

We urge you to consider amending the AB 1851 to create an exemption for secular and religious nonprofits alike to provide housing for homeless people in California. The current exemption is underinclusive, misaligned, and likely unconstitutional. At the same time, we applaud your consideration of unconventional means to address the dire needs of homeless people in California. If you should have any questions regarding American Atheists' position on AB 1851, please contact me at 908.276.7300 x309 or by email at [agill@atheists.org](mailto:agill@atheists.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'AG', with a long horizontal flourish extending to the right.

Alison Gill, Esq.  
Vice President, Legal & Policy  
American Atheists

cc: All Members of the California Assembly Committee on Appropriations