

# Church/State Separation: Making the Case for a Secularism as a Conservative Value

## Executive Summary

Religious freedom has come to be defined by a narrow range of advocates that favor an ahistorical and overly expansive view of rights that would seem to require religious exemptions from every law. But the fact is that those advocates only advance exemptions to certain types of laws and favor certain types of beliefs—namely their own.

Granting special accommodations to only particular religions is not small government and it isn't equality: **It is government picking winners and losers in the religious marketplace and deciding what religious beliefs are “reasonable” or deserving of protection.**

This approach is constitutionally problematic, undermines the rule of law, and requires government to make determinations about the validity of religious belief.

Conservatism, as articulated our conservative members and constituents, is about maintaining a strong connection to constitutionalism and our nation's history, and ensuring accountability and transparency from our government to limit the potential for waste, fraud, and abuse within government programs and actions.

We strongly support the right of houses of worship to operate freely without government interference, but that is only possible when those religious entities are supported by the convictions of their adherents and not by government, a principle articulated by Madison, Jefferson, and others from the founding of our nation.

## Broad Religious Exemptions are Ahistorical

Dating back to the founding of our nation, religious *beliefs* have been absolutely protected, but actions rooted in religious obligations have been subjected to regulation under the law. Thomas Jefferson's 1802 letter to the Danbury Baptists said, in part:

Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, **that the legitimate powers of government reach actions only**, and not opinions... [emphasis added]

This distinction between government laws targeting actions, even those rooted in religious belief, and the religious beliefs themselves has been recognized by the Supreme Court dating back to the mid-19th century. In *Reynolds v. United States*, the court said:

Can a man excuse his practices to the contrary [of the law] because of his religious belief? To permit this would be to make the professed doctrines of religious belief

superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

This position was reaffirmed by **Justice Antonin Scalia** in *Employment Division v. Smith*, adding:

To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs, except where the State's interest is "compelling"—permitting him, by virtue of his beliefs, "to become a law unto himself,"—contradicts both constitutional tradition and common sense. **To adopt a true "compelling interest" requirement for laws that affect religious practice would lead towards anarchy.**

The religious accommodations required by the 1993 Religious Freedom Restoration Act (RFRA), however, overturned this constitutional tradition and common sense approach to religious accommodations, requiring that the government not only show that it had a compelling interest in regulating conduct, but that it was accomplishing that compelling interest in the least restrictive way.

## Religious Exemptions Pick Winners and Losers

Religious exemptions for public accommodation laws for LGBTQ individuals and so-called conscience objection rights for individuals employed by healthcare providers elevate the beliefs of some religious groups above others.

For public accommodation, employment, and housing laws protecting LGBTQ people, religious exemptions render the laws toothless. These exemptions single out religious disapproval for LGBTQ people specifically—and not religious disapproval for racial minorities, other religious groups, or women—as reasonable and deserving of special treatment. This runs counter to the promise of equal protection under the law and the Establishment Clause. There is no question that there are religious objections related to employing women in careers outside the home, to recognizing interracial marriages, and in the inherent sinfulness of other religious groups held by adherents of any number of religions. Yet these objections receive no such protection by these exemptions.

In the healthcare arena, special accommodations are frequently granted to healthcare professionals who object to providing services and employers who object to purchasing insurance that provides for certain types of reproductive healthcare, including sterilization, abortion, and birth control, or end of life care. These accommodations are often specifically enumerated. However, no similar accommodation is made for providers or employers who object to blood transfusions, mental health care, or even all medical intervention, beliefs held by Jehovah's Witnesses, Scientologists, and Christian Scientists, respectively.

**By picking winners and losers in the marketplace of religions, the government is forced to determine the “reasonableness” of religious belief, a position none of us want the government to be in.**

## Government Funding of Churches Endangers Their Religious Freedom and Independence

The Supreme Court’s decision in *Trinity Lutheran Church v. Comer* and the Trump administration’s actions to permit FEMA emergency recovery funding to be given directly to houses of worship and religious organizations put the independence of these religious organizations in jeopardy.

The federal government—and indeed all of us—have an interest in ensuring transparency and accountability in the use of government funds. Government at all levels has finite financial resources and must take steps to guarantee that taxpayer money is spent in accordance with program guidelines and regulations.

This accountability requires that government have access to complete financial statements from recipient organizations. However, houses of worship are not required to file financial disclosures with the IRS (IRS Form 990) nor have their financial statements independently audited.

**Requiring that churches take government direction about their expenditures is profoundly constitutionally problematic, but granting them government funds would require exactly that sort of government oversight and direction.** Without any sort of accountability regime, government funding would be subjected to huge amounts of waste, fraud, and abuse.

Our founders specifically articulated objections to direct funding of religious denominations by the government. James Madison, in his 1785 writing *Memorial and Remonstrance Against Religious Assessments* warned against compelled support of religion as antithetical to the fundamental right to religious freedom and as a “dangerous abuse of power.”

Because we hold it for a fundamental and undeniable truth, “that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence.” **The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate.**

The direct funding of houses of worship and religious denominations is an affront to our history, to our fundamental rights, and to common sense accountability requirements needed for any government program.

## Numbers Don't Lie: The Number of Atheists, Agnostics, and Non-Religious Americans is Exploding

In the last 20 years, the number of non-religious Americans has exploded. From 2007 to 2014, the percentage of non-religious Americans grew from 16.1% to 22.8%, the only religious demographic to show growth in all 50 states.

Among young people, the patterns are even more stark. For the 19-29 age group, almost 40% are nonreligious. And nonreligious people make up more than a quarter of Americans aged 30-49. Just 8% of people aged 18-29 identify as evangelicals.

**The trend toward nonreligion is not only continuing, it is accelerating.**

Among the nonreligious, their views on the size and role of government broadly reflect the American population as a whole. But their voting behavior does not reflect those views. The nonreligious favor a smaller government over a larger government by a 47% to 46% margin.

However, an analysis by Pew showed that nearly 7-in-10 non-religious Americans voted for Hillary Clinton in the 2016 election compared to just 26% who voted for President Trump.

**Despite an even split on the role of government, more than twice as many religiously unaffiliated Americans voted for Hillary Clinton over Donald Trump.**

The close ties of the Trump campaign's messaging about religious issues drove away (and continues to drive away) political allies. As the number of non-religious Americans continues to grow as young people move away from religion, the clock is ticking for the conservative movement to appeal to this demographic.

## Atheists, Agnostics, and the Non-Religious Are Not a Monolith

On the issues, there is broad agreement that giving special treatment on the basis of religious belief is not the roll of government. However, there is no doctrine or dogma associated with atheism or non-religion.

**Groups like Pro-Life Humanists, Republican Atheists, and others demonstrate that there is no political identity directly associated with atheism. American Atheists is committed to one issue: protecting government neutrality on religious matters.**

Reasonable people can disagree about reasonable things. Whether belief in a god is necessary to be a good American is not a reasonable thing to disagree about. The sooner we can move past this "debate," the sooner we can focus on the economic policies and kitchen-table issues that matter to all Americans.