

RELIGIOUS FREEDOM

A Guide to Your Rights

UNITED STATES OF AMERICA



*Congress shall make
no law respecting
an establishment
of religion, or
prohibiting the free
exercise thereof; or
abridging the freedom
of speech, or of the
press; or the right of
the people peaceably
to assemble, and
to petition the
Government for a
redress of grievances.*

*—The First Amendment
to the U.S. Constitution*

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RELIGION IN THE US CONSTITUTION AND LAWS

1. What is religious freedom?

Religious freedom means more than just freedom to believe what you want. It includes the freedom to worship, to act according to your beliefs, and to talk about and share your beliefs. These rights apply to both individuals and groups, subject to narrow limitations discussed below.

2. What laws protect religious freedom?

The Constitution of the United States, many state constitutions, and various state and federal laws provide special protections for the fundamental rights of individuals.

Perhaps the best-known American law protecting religious freedom is the First Amendment to the Constitution of the United States:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. –First Amendment to the U.S. Constitution

The opening clauses of First Amendment protect religious freedom in two ways:

- (1) The “Establishment Clause” prohibits the government from adopting an official religion, and
- (2) The “Free Exercise Clause” prohibits the government from interfering with the practice of religion.

The First Amendment applies to all levels of government: federal, state, and local. The government must provide at least as much protection for religious liberty as the Constitution requires, but it can choose to provide more. Often, in fact, state constitutions and laws offer greater protection for religious freedom than the U.S. Constitution.

Beyond the Religion Clauses, the First Amendment guarantees rights that protect religious freedom as an aspect of American citizenship. To flourish, religious people and institutions need the freedom to speak, publish their religious beliefs, assemble with fellow believers, and petition the government to redress grievances. All these rights are necessary to what we understand as a robust religious freedom.

3. What is separation of church and state?

“Separation of church and state” does not appear in the Constitution, nor is it a legal term. Thomas Jefferson coined the phrase to describe religious freedom as including a healthy independence between government and religious organizations to protect the interests of both. The phrase is sometimes used to claim, incorrectly, that the Constitution requires government to be religion-free. This is incorrect. Government may cooperate with religious organizations in common causes, such as public health or social welfare.

Government also has a duty to accommodate religion when necessary to guarantee the right to free exercise of religion. For example, police officers must protect religious communities or speakers from harassment or persecution, religious organizations must be allowed to use public facilities, and government employees generally must be allowed to wear clothing to work that their religion dictates.

4. Is protecting religious freedom important?

Yes. Religious freedom is essential to allowing people with strong differences of opinion and belief to live together in peace. The authors of the Constitution knew that when European rulers tried to control their subjects' religion, hundreds of years of violent religious conflicts ensued. Some early American colonies also tried to regulate religion and experienced similar conflict. The Founders sought to avoid repeating this turmoil by forbidding official state religions and by protecting all religions from government interference.

The Founders also believed that government interference in religion was an assault on human rights. The Declaration of Independence states that people are "endowed by their Creator" with certain rights that the government has a duty to protect. The Constitution protects people from government attempts to deny basic human rights, including the right to exercise one's religion.

Even though religious discrimination may persist, 250 years of relatively peaceful coexistence between diverse religions have proven the wisdom of the Constitution. Our nation benefits when people are free to hold sincere beliefs of many kinds that guide their actions in private and in public, and when people feel free to discuss and debate their beliefs and ideas publicly.

5. Must religion be exclusively a private matter?

No. The Constitution and other laws protect religious liberty both in private and in the public square. The right to religious freedom does not disappear when people enter a public setting such as a school or a government building, when they accept government office or employment, or when they operate a business open to the public. In fact, the government is obliged to protect religious liberty in all these settings, with very limited exceptions discussed below.

6. Are there limits on the free exercise of religion?

Yes. As with any right, religious freedom is not absolute. While the government may never tell people or communities what to believe, in limited circumstances, it may restrict the way beliefs are exercised, such as to protect public safety or the fundamental rights of others. To take an obvious example, the government could forbid human sacrifice even if religious teaching required it.

The U.S. Supreme Court has developed a demanding test for when the government is allowed to restrict religious practices under the Constitution. The Court has held that a law restricting religious exercise is valid if it is a “neutral law of general applicability,” meaning that it doesn’t specifically target or discriminate against religion and applies to everyone generally. In addition, federal and many state laws also require that to restrict religious exercise, the government must have a “compelling government interest” and use the “least restrictive means” to achieve that interest.

RELIGION IN POLITICS AND LAWMAKING

7. May religious groups and people of faith participate in politics?

Yes. Religious groups and individuals have the right to take positions and influence public opinion on all matters of politics and public policy. Religious leaders and organizations frequently do so. To comply with relevant tax laws, religious organizations should consult qualified tax attorneys about their political activities.

8. May religious beliefs influence public policy?

Yes. The fact that a policy coincides with a religious teaching or grows out of religious values concerning right and wrong does not make it unconstitutional, so long as the policy itself is not a policy or law that establishes a state religion. What does or does not constitute an establishment of religion depends on “historical practices and understandings.”

9. May elected officials speak about God?

Yes. Elected officials have a First Amendment right to express their religious beliefs. However, they may not use their official capacity to establish religion, such as by favoring, promoting, or discriminating against a particular religion.

10. May government meetings open with prayer?

Yes, so long as the prayers are not used to proselytize or advance any particular faith or belief. Good practice is to invite chaplains or representatives of various faiths, including non-Christian denominations, to take turns offering the prayers, and to make the prayers generic in content.

11. May the government require that government officials or employees belong to a certain religion or believe in God?

No. The Constitution prohibits religious tests for federal office. Many state laws likewise ban any kind of religious test as a condition for public office or employment. The government may require people to take an oath of office or make a similar affirmation, but it may not require them to place their hand on the Bible or any other religious book or to use the phrase “so help me God,” although the person can do these things if they wish. The government also cannot prohibit ministers from holding public office.

12. May local governments use zoning laws or other means to exclude religious groups from their communities?

No. Federal law provides that local land use laws, such as zoning ordinances, may not target religious organizations for exclusion, discriminate against them, or place unreasonable burdens on them. Examples of government actions that are not allowed include:

- Zoning ordinances that prohibit places of worship, while allowing non-religious places of assembly for clubs or other associations;
- Denying a permit to a religious group simply because they are religious or because they belong to a specific religious group;
- Forbidding new church buildings or other tax-exempt houses of worship for the purpose of maximizing tax revenue; and
- Creating a zoning plan that has no zones permitting houses of worship, such that the only way a church can be built is by expensive and lengthy proceedings to rezone a parcel or receive a zoning variance.

13. Do tax exemptions for religious organizations violate the Constitution?

No. Religious organizations are tax-exempt under all state and federal tax codes. As with other kinds of tax exemptions for non-profit organizations, religious tax exemptions respect people's right to organize with others to further common interests free from government coercion or control through taxation. Plus, exemptions acknowledge the tremendous good that religious organizations do for our communities, such as feeding the hungry, housing the homeless, and rehabilitating drug addicts, to name just a few.

14. May the government favor one religion over another?

No. The government may not give special privileges or place special penalties on any specific religion or religious group or show preference for one religion over another or for nonreligion.

RELIGION ON GOVERNMENT PROPERTY

15. Does government property have to be religion-free?

No. Government property need not be free from religious references, symbols, or messages. Whether a court finds a particular religious display on government property is constitutional or not will depend on "historical practices and understandings" given the context of the religious display.

16. May individuals and religious organizations use government property for religious expressions and activities?

Yes. In general, the government must provide religious groups the same access to public facilities that it provides for other types of groups. If a government building, including a school, is opened for after-hours use by community groups for educational, social, recreational, or entertainment purposes, it must allow religious groups the same kind of access for similar purposes.

The government is allowed to impose reasonable restrictions on when, where, and how a religious group uses government property (“time, place, and manner restrictions”). For example, the government may set time limits for events, restrict the location to prevent traffic obstruction, or limit the size of displays.

17. May government employees wear religious dress or symbols to work?

Yes. Employees generally can believe and act consistently with deeply held religious beliefs while in the workplace, subject to narrow limitations. Government employees enjoy these rights as well. Government, for example, must allow employees to wear religious clothing or symbols even while engaged in official government work, unless doing so would cause a reasonable observer to interpret it as a government endorsement of religion, or if doing so would present a significant burden, such as a safety hazard.

RELIGIOUS SPEECH AND EXPRESSION

18. What laws protect religious speech?

The First Amendment provides extremely broad protection for freedom of speech of all kinds, including religious speech. The government cannot forbid speech because of its content, religious or otherwise, even if it is offensive to others. This is subject only to very narrow exceptions, such as speech that poses a clear and present danger by inciting imminent violence. This strong protection of speech safeguards the free public exchange of ideas that is essential in a democracy. It keeps government from limiting criticism, unpopular speech, and the expression of ideas with which it does not agree.

19. Does freedom of speech include more than speaking?

Yes. Freedom of speech—religious or otherwise—includes not only speech but other forms of expression such as displaying, publishing, and distributing signs, banners, pamphlets, books, magazines, websites, or other materials. The government may regulate some aspects of these activities, such as solicitation of donations or commercial agreements between religious groups and publishers or distributors, but it may not control the content.

20. May privately owned newspapers, magazines, television, and other media outlets publish religious (or anti-religious) speech?

Yes. The First Amendment guarantees the right to freedom of the press. With narrow exceptions, people and groups have the right to publish any views in any media available to them. These views may be religious, non-religious, or even anti-religious. Laws against blasphemy are unconstitutional. Government does not have to provide the means for publishing these messages. Private media outlets have the right to refuse to publish material, religious or otherwise.

21. May the government forbid religious speech or expression on government property?

No. Government may not forbid or restrict speech on government property simply because it is religious. In fact, government has a duty to accommodate such speech, for example by providing police protection, if needed.

The types of restrictions government may place on speech on government property, including religious speech, depends on the type of property. Only limited restrictions may be placed on speech in public places (like sidewalks, parks, and civic centers), such as requiring speakers to stay on sidewalks or imposing time limits on events. Government may place more restrictions on property not usually open for public speech, such as military bases and jails. Even where such restrictions are allowed, they must have a legitimate aim and be viewpoint neutral (not designed to suppress a particular opinion).

22. May the government prohibit religious speech because it offends others?

No. Government cannot restrict speech because it is unpopular or offensive, even if it is extremely offensive or likely to provoke protests. On the contrary, police have a duty to protect speakers by controlling crowds and hecklers.

23. May the government prohibit religious speech on private property?

No. Individuals and organizations have the right to express their religious faith or views on their own property, including displaying religious symbols or messages. Certain land use or zoning restrictions may limit religious and non-religious displays alike, but they may not single out religious speech or unreasonably limit it.

If private property is open to the public—such as shopping centers or medical clinics—owners may need to obey certain anti-discrimination laws that prohibit certain messages, even if the owner considers the messages religious. Owners of such property should consult with qualified attorneys in their state for specific guidelines.

24. Is there a constitutional right to religious speech on the private property of others?

No. Even if the private property is open to the public, such as retail stores or shopping centers, permission must be obtained from the owner.

25. Can the government require permits for door-to-door proselytizing or advocacy?

No, but government may impose reasonable regulations on the time, place, and manner of door-to-door advocacy, so long as they apply equally to everyone who engages in this kind of activity. For example, a city may prohibit door-to-door advocacy during nighttime hours, and cities may have greater leeway to restrict such activities if they involve sales or solicitation of money.

26. May the government control the content of religious sermons?

No. Even if anti-discrimination laws were to prohibit messages that might offend certain groups of people, applying these laws to church sermons would be unconstitutional, as would any law prohibiting churches from preaching their own views on social and moral issues.

RELIGION AND ANTI-DISCRIMINATION LAWS

27. Can professionals (such as bakers, florists, and doctors) refuse to provide services that violate their conscience or religious beliefs?

It depends. Each state has its own anti-discrimination laws applying to businesses and professionals providing goods or services to the public. Some of these laws explicitly allow exceptions when providing a service that would violate a provider's religious beliefs. Others do not. Similarly, some states have conscience laws that affirm the right of doctors and other professionals to refuse to provide services they oppose. While government enforcement of anti-discrimination laws must avoid hostility toward religion or toward religious believers, the outcome depends on the law in question. Under some circumstances, state civil rights laws can violate the U.S. Constitution. For example, the U.S. Supreme Court has held that a Christian web designer could refuse to work with same-sex couples because of her religious beliefs. Businesses and professionals should consult attorneys in their state for specific information.

28. Can a religious organization that rents its facilities to the public for events refuse certain types of events?

It depends. Some states have laws that specifically protect religious organizations' right to refuse to rent their facilities for events contrary to their beliefs. But the answer is not always clear. Religious organizations should consult with local attorneys for information and advice.

RELIGION IN FEDERALLY FUNDED PROGRAMS AND SERVICES

29. May religious organizations receive federal funding for social programs and services, such as health care or education?

Yes. Religious organizations may apply for and receive federal funding on the same basis as non-religious organizations. An organization that receives direct federal funds can't engage in inherently religious activities such as religious teaching, worship, or proselytizing as part of such programs or services. Religious activities must be (a) offered separately in time or location, and (b) voluntary—in other words, participants can't be required to attend religious activities to receive federally funded assistance. A homeless shelter receiving federal funds may not require participants to pray before meals or attend scripture study, although it may invite them to do so. Additionally, religious organizations that accept federal funds to provide such social service programs may not refuse the services to a recipient based on the recipient's religion.

RELIGION IN THE WORKPLACE

30. How is religious faith protected in the workplace?

As a fundamental right guaranteed by the First Amendment, employers must respect religious beliefs and reasonably accommodate the religious needs of employees. Religious freedom in the workplace means that an employee is free to believe and act in accordance with his or her deeply held religious beliefs while at work. In support of this right, Congress included language in Title VII of the 1964 Civil Rights Act that requires employers not to discriminate based on religion. That law applies to any employer that has 15 or more employees for at least 20 weeks during the year.

Under Title VII, employers must not treat employees (or applicants for employment) differently because of religious beliefs or practices, or lack thereof. Employees cannot be required to participate or refrain from participating in a religious activity as a condition of employment.

Title VII also requires employers to accommodate the religious needs of their employees upon request, unless the burden of the accommodations would result in “substantial increased costs in relation to the conduct of its particular business.” This includes accommodating employees wearing religious symbols (such as Christian crosses), clothing (such as a Jewish yarmulke or Muslim headscarf), and hairstyles, or facial hair (such as Sikh uncut hair and beard). Title VII prohibits harassment because of religious beliefs or practices and forbids an employer from retaliating against an employee for asserting rights under Title VII.

31. May employees share their beliefs with co-workers?

Yes, but not to the detriment of either the work for which the employee has been hired, or to the irritation of co-workers. Clearly, if one employee asks about the religious belief of another, a free exchange of ideas between them is protected. Respectful conversation about religion while at work is certainly not less protected than conversations about other topics—and is arguably more so.

32. May an employee have a Bible, a religious picture, or other religious item on display in the employee's personal workspace?

Yes. If the employer allows employees to have non-work-related items in personal workspace—such as photos, posters, or other items—then religious items must be allowed as well.

33. How should an employee's sincerely held beliefs about religious holidays be treated in the workplace?

Federal and state law designate certain holidays for which employees are to be given paid time off. Some of these legal holidays are also religious holidays, such as Christmas Day. Federal law does not currently require employers to give time off, paid or unpaid, for other religious observances not included in the list of legal holidays. Under Title VII, an employer is required to reasonably accommodate an employee's request for time off to meet the obligations of the employee's sincerely held religious beliefs, unless it would cause the employer "substantial increased costs in relation to the conduct of its particular business." The employer may not simply refuse to accommodate an employee's request. Reasonable accommodations might include flexible scheduling, shift swaps, agreeing to work other holidays, and the like. An employer may require the employee to use paid time off as part of the accommodation.

34. May employees or employers distribute religious literature in the workplace?

Employers are not required to allow the distribution of literature in the workplace, including religious literature. But if an employer allows employees to distribute or post in the workplace personal items of a non-religious nature, then the employer must also allow those of a religious nature.

35. May an employee discuss religious views with customers?

Not unless the employer permits it. An employer may prohibit an employee from discussing religious views with customers. An employer may require the employee to greet customers with “Merry Christmas” or certain other generic religious expressions.

36. May an employee be required to attend a company sponsored religious event?

No.

37. May other employees mock or harass an employee at work because of the employee’s religion?

No. An employer has an obligation to maintain a work environment free from harassment based upon religious beliefs or practices, once the employer is made aware of the offensive conduct. This includes offensive remarks, as well as verbal or physical threats or abuse. The employer’s obligation is not limited to employee behavior only but also covers others in the workplace. These might include owners, supervisors, contractors, customers, or others regularly within the workplace. It is important also to understand that this protection extends to an employee’s co-workers and others who have indicated a preference not to receive the employee’s religious communications.

38. What do I do, as an employee, if my employer and I disagree on what my religious freedom rights are?

Employees have three options when they disagree with an employer about religious rights in the workplace:

- One side or the other can terminate the employment (quit or be fired), which may lead to litigation;
- One side or the other can take the matter to court or a government equal employment opportunity commission to determine what the law requires under the particular circumstances; or
- Both sides can attempt to understand the other's position and find an acceptable compromise. A peaceful solution that does not result in ongoing negative consequences for either side is preferable, if possible.

RELIGION IN THE PUBLIC SCHOOLS

39. Do public schools have to be religion-free?

No. Public schools and universities must be neutral toward religion, neither inculcating nor inhibiting it. Schools must accommodate students' exercise of religion unless it is disruptive to reasonable discipline or interferes with the rights of others. Schools may teach about religion in an academic, neutral, non-denominational way.

40. Can students pray at school?

Yes. Students can pray individually or with others at school if it is voluntary, student-initiated, and not disruptive to others. On the other hand, schools may not sponsor "religious speech." For example, school-sponsored prayers or devotional scripture readings during the school day or at school events are impermissible. School officials may lead a moment of silence.

41. Can students talk about their religion at school?

Yes. Students can express their religious beliefs and discuss religion with other students subject to general rules about student expression that do not discriminate against religion. Students may also distribute religious literature according to reasonable time, place, and manner restrictions (for example, during lunch time or posted to the main office bulletin board) if the literature is not obscene, defamatory, or disruptive to the educational environment. Students can also organize religious groups or clubs at school subject to the same treatment, rules, and access to resources as non-religious groups or clubs. Students may also express their religious beliefs in school assignments, and their expression should be evaluated in the same way as non-religious expression for grading purposes.

42. Are schools required to give students religious accommodations?

Schools have a duty to accommodate a student's exercise of religion unless it is disruptive to discipline or interferes with the rights of others. This may include excusing students from class so they can pray or celebrate religious holidays. Religious accommodations to dress codes are required when non-religious accommodations are permitted, such that students who wear religious garb like head scarves or yarmulkes should be allowed.

43. May students be released for off-campus religious instruction during the school day?

Yes. Public schools may choose to release students during the school day to off-campus, privately operated, religion classes ("release-time programs") to accommodate religious students and parents.

44. Can teachers manifest their religion at school?

It depends. Teachers and school employees cannot promote, discourage, or actively participate in religious activities in their official capacity. When it is clear they are acting in a private capacity, or it is an appropriate time to participate in private actions, teachers can manifest their religion or participate in religious activities in the same way they participate in other forms of personal expression.

45. Can teachers teach or answer questions about religion?

Yes. Teachers may teach about religion in an academic, neutral, non-denominational way. For example, a teacher can teach about a religion's history or the influence of religion on art, music, history, and literature. Teachers can also answer students' questions of the same nature.

46. How can individuals, religious organizations, employers, employees, and local officials resolve differences peacefully?

Value principles above politics and agendas.

America's system of democratic lawmaking, government checks and balances, and constitutional guarantees protects everyone's rights, including those with whom we deeply disagree. Respecting these processes and guarantees, no matter how much we may dislike the outcome, protects our own rights and our democratic system of government. Developing consensus through dialogue and persuasion is difficult and requires patience—but it is the only way a healthy democracy functions.

Identify common values. Expressing a shared commitment to core values can help those with different policy preferences to understand and respect one another. Religious individuals and communities should identify principles that people with diverse backgrounds and agendas can relate to.

Be proactive. Many communities and organizations unintentionally contribute to confusion and distrust by having no policies on these issues. Communities and organizations can nurture a climate of openness and trust and demonstrate their commitment to the fundamental principles of human dignity if they work with people of faith, religious organizations, appropriate legal counsel, and other individuals affected by policies. Such collaboration can help avoid or lessen conflict. It can lead to the development of comprehensive and clear policies on issues affecting religion—for example, a school district-wide policy on religion in schools. Communities and organizations should also make sure those policies are widely known and enjoy broad support.

Listen to all sides. We live in a diverse society in which people of goodwill hold widely differing views. All parties should acknowledge and try to understand others' positions. Appropriate involvement of those affected by the decisions and due consideration of those holding different views will help generate unity and successful policies.

Commit to civil debate. Being able to express and discuss differing views on important issues is vital to free society. It is equally important that those expressions and discussions be conducted in a way that is constructive and not destructive. Personal attacks, name-calling, ridicule, and similar tactics destroy the fabric of our society and undermine the success of any community or organizations. We must treat each other with respect and courtesy and strive to be fair and accurate. Deeply held beliefs may prevent full agreement, but civil and courteous debate will allow us to live more peacefully with those difference.

Work for comprehensive policies. Adopting clear policies that uphold religious freedom in communities and organizations can contribute to greater harmony and productivity. On the other hand, failure to have such policies can lead to confusion, conflict, and even legal disputes. By working together to develop comprehensive policies, communities and organizations demonstrate that they take religious freedom seriously.

FINDING COMMON GROUND

As people, we have the freedom to choose, share, and live what we believe. We generally hold our religious freedoms and beliefs dear as guiding principles in our lives. Just as we value our own religion and beliefs, we should highly value all people's rights to religious freedom and belief. Knowing the importance of these freedoms, how can we share the principles of freedom of religion in our communities? Is there a way to find common ground when we interact with people holding different beliefs?

The following strategies may allow you to find common ground in your community:

BECOME INFORMED

Before you can protect the religious beliefs of yourself or others, it is important to be informed and understand the rights and basic principles of freedom of religion. This brochure contains some relevant information with regards to your rights and the basics of freedom of religion. Seek to stay aware of changes in religious freedoms by watching developments that affect these freedoms in the news.

LISTEN TO ALL SIDES

Listen and show concern for other people's religions and sincere beliefs. Even if you disagree with the beliefs, or convictions of another, seek to understand and to be respectful of his or her perspective. People's words, beliefs and actions are influenced by many factors. You should be sensitive to the feelings of others as you explain and pursue your positions, and you should ask that others not be offended by your sincere religious beliefs.

PRACTICE CIVILITY

In order to live as a community with differences of opinion and beliefs, it is critical to know how to debate and not just what to debate. Your communications on controversial topics should not be contentious. All people should treat one another with civility and respect while striving to be accurate and fair. When your positions do not prevail, you should accept unfavorable results graciously and civilly. Remember to reject persecution of any kind, including persecution based on race, ethnicity, religious belief or nonbelief, and differences in sexual orientation.

PROMOTE TOLERANCE

People must be able to peaceably live together while having differences. To live peaceably does not mean you need to abandon your positions; rather, it means you should strive to live peacefully with others who do not share your values or accept the teachings upon which they are based. Strive to teach values and standards of behavior to those around you without having them distance themselves or show disrespect to any who are different.

BUILD TRUSTED RELATIONSHIPS

Build trusted relationships in your community among people of diverse opinions. You will be better able to protect the rights of others in a way that benefits everyone as you get to know more people and as those people come to understand each other's beliefs. Concentrate on what you have in common with your neighbors and fellow citizens. Then, as you work together, speak out for religion and the importance of religious freedom.

