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# Religious Freedom—A Cherished Heritage to Defend

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## INTRODUCTION

My remarks this evening are about America’s great heritage of religious liberty—and about the need for each of us to defend that heritage before it is too late.

In 1790, at a time when western Europe excluded Jews from the full rights of citizenship, including the ability to hold public office, President George Washington wrote a memorable letter to the Jewish congregation in Newport, Rhode Island. They had written congratulating him on his election. In reply, Washington assured them that “the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should [conduct] themselves as good citizens.” And he included a prayer for their welfare: “May the children of the stock of Abraham who dwell in this land continue to merit and enjoy the good will of the other inhabitants—while every one shall sit in safety under his own vine and fig tree and there shall be none to make him afraid.”<sup>1</sup>

No one who knows the difficult history of the Jewish people, or their fate during succeeding generations, can fail to be impressed by Washington’s affirmation of religious freedom.

## RELIGIOUS FREEDOM UNDER FIRE

Last year at an interfaith conference on religious freedom in São Paulo, Brazil, I addressed a meeting of religious leaders, including Catholics, Evangelicals, Seventh-day Adventists, Jews, Muslims, and many others. There I explained:

Religious freedom is the cornerstone of peace in a world with many competing philosophies. It gives us all space to determine for ourselves what we think and believe—to follow the truth that God speaks to our hearts.<sup>2</sup>

While protection from government persecution is of course crucial, that is not all that religious freedom means. “A robust freedom is not merely what political philosophers have referred to as the ‘negative’ freedom to be left alone .... Rather, it is a much richer ‘positive’ freedom—the freedom to live one’s religion or belief in a legal, political, and social environment that is tolerant, respectful, and accommodating of diverse beliefs.”<sup>3</sup>

That freedom is now under fire. Although religious freedom lies at the core of what America is and what it stands for, critics now openly ask whether religion belongs in American public life at all. Some say that faithful Americans have no business speaking of their beliefs when addressing issues of public concern, even when those issues involve unmistakably moral judgments.<sup>4</sup> Others condemn churches and religious organizations for expressing moral and religious perspectives on matters of public policy—especially when those perspectives conflict with secular viewpoints.<sup>5</sup> Some even claim, with no sense of history, that religious people and institutions violate the constitutional separation of church and state if they bring their beliefs into the public square.<sup>6</sup> A few scholars go so far as to argue that religion does not deserve to be tolerated, much less receive special protection.<sup>7</sup>

Recently it has become popular to argue that the freedom of religion is really only the right to worship rather than the right freely to exercise your faith in your daily life—as if religion should be kept in the closet or some other private place. Some advocates demean as “discrimination” the long-standing right of religious organizations and schools to have faith-based standards in employment and admissions. Others resort to politically correct name-calling rather than talking about difficult topics in a spirit of mutual respect. Hurtful labels like “bigot” or “hater” are all too common. There are concerted efforts to shame and intimidate believers who have traditional moral values and to suppress religious viewpoints and practices regarding marriage, family, gender, and sexuality.<sup>8</sup> Worst of all, government sometimes joins in these efforts.

So religious freedom is indeed under attack. In case you think that’s an exaggeration, let me read to you a statement by Professor Douglas Laycock, one of the nation’s premier authorities on religion and law: “For the first time in nearly 300 years, important forces in American society are questioning the free exercise of religion *in principle*—suggesting that free exercise of religion may be a bad idea, or at least, a right to be minimized.”<sup>9</sup>

## **RELIGION IN AMERICAN HISTORY**

I am convinced that those who question the value, or even the legitimacy, of religious freedom do not understand that it is woven into the very soul of America. Supreme Court Justice Oliver Wendell Holmes wrote that “a page of history is worth a volume of

logic.”<sup>10</sup> So let’s review a little history to see what role religious faith and churches have played in the miraculous unfolding of America.

Religious conviction was a leading reason why colonists left England for the New World. One historian wrote that “when the English undertook to plant colonies in America, they commenced not with propositions about the rights of man or with the gospel of wealth, but with absolute certainties concerning the providence of God.”<sup>11</sup> Religious purpose was the common thread connecting the Puritans of Massachusetts, who felt a divinely appointed duty to found Zion in the wilderness,<sup>12</sup> with Virginia’s first colonists, who looked to God for success.<sup>13</sup> William Penn, who founded Pennsylvania, and Roger Williams, who founded Rhode Island, established colonies dedicated to the principle of religious liberty. And Maryland was established as a place of religious toleration for England’s persecuted Catholic minority.<sup>14</sup>

Religion remained a vital source of shared meaning in the years leading up to the American Revolution. The principal influence in public debates during that period was the King James Bible.<sup>15</sup> Indeed, the American Revolution cannot be understood without taking into account the religious teachings that motivated patriots to action.<sup>16</sup>

Following the battles of Lexington and Concord, sermons rang out across New England. Clergymen, as one scholar noted, “connected religion and patriotism, and in their sermons and prayers, represented the cause of America as the cause of heaven.”<sup>17</sup> Thousands of sermons justified resistance to British tyranny by, as another scholar put it, reaffirming “New England’s enduring identity as an embattled people of the Word [of God] who were commissioned to uphold a sacred and exclusive covenant between themselves and God.”<sup>18</sup>

The clergymen of New England were not alone in drawing the connection between religion and patriotism. In New Jersey, John Witherspoon—James Madison’s tutor at what is now Princeton University—delivered a sermon in 1776 announcing his support for the Revolution. He explained that the union of the colonies against Great Britain resulted from “a deep and general conviction, that our civil and religious liberties . . . depended on [it].”<sup>19</sup>

Capturing the sentiments of that patriotic generation, one historian wrote that “the men of 1776 believed that the good state would rise on the rock of private and public morality, that morality was in the case of most men and all states the product of religion, and that the earthly mission of religion was to set men free. It was no mere pose when they justified resistance to oppression as obedience to God and an appeal to heaven.”<sup>20</sup>

Hence, it is no surprise that just weeks before the Declaration of Independence, Virginia adopted a Bill of Rights, largely penned by George Mason. Its ringing affirmation of religious liberty remains an inspiration: “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; and therefore all men are equally entitled to *the free exercise of religion*, according to the dictates of conscience.”<sup>21</sup>

And of course, the Declaration itself reminds us that Americans believed they were “endowed by their Creator with certain unalienable rights.”<sup>22</sup> Later, the Constitution would enshrine the first of those unalienable rights—the right to religious freedom.

These formative experiences of colonization and revolution solidified the importance of religion in our national understanding. The French political thinker Alexis de Tocqueville, visiting America during the 1830s, reported that Americans considered religion indispensable to freedom. “I stop the first American whom I meet,” Tocqueville wrote, “and ask him if he thinks religion is useful for the stability and the good order of society; he immediately responds that a civilized society, but above all a free society, cannot subsist without religion.”<sup>23</sup>

But it was not just America’s colonists and founders who valued faith and religious freedom.

Repeating the pattern set by their Puritan forebears, early Latter-day Saints fled from state to state—eventually settling in the Great Basin—in the hope of building Zion in the wilderness.

Religious convictions and language set the terms of the national debates over slavery, emancipation, and the Civil War.<sup>24</sup>

Within my lifetime, the civil rights movement depended on the persuasive power of ministers and the language of religious belief. Martin Luther King Jr. wrote from the Birmingham jail, for instance, that “human progress . . . comes through the tireless efforts and persistent work of men willing to be co-workers with God.”<sup>25</sup>

So religion and religious freedom are deeply connected to both the formation of America and our ongoing effort, in the words of the Constitution, “to form a more perfect Union [and] establish Justice.” As one historian summarized:

American churchmen and American churches have, throughout our history, played an important role in public affairs . . . The churches have usually assumed that their mission includes active participation in the formulation and fulfilment of moral principle. Whether the cause has been abolition, prohibition, or integration, the churches and their leaders have played a central, sometimes a crucial, role in translating what the churches conceived to be moral principle into rules of law.<sup>26</sup>

Religious participation in public life is one of the golden threads in our national tapestry. It is also a cherished constitutional right.

## RELIGIOUS LIBERTY IS A FUNDAMENTAL RIGHT

The First Amendment to the Constitution declares that “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.”<sup>27</sup>

Notice that religious liberty is the first freedom mentioned in the First Amendment. It consists, first, of protection from laws “respecting an establishment of religion.” This is what we lawyers call the “Establishment Clause.” (Some of you didn’t know I used to be a lawyer. I hope that doesn’t lower your opinion of me!) Unlike England, for example, this country knows no national church, and government may not officially prefer one religious denomination over another.<sup>28</sup> But some have misunderstood the ban on establishing an official religion to mean that government should treat religion with skepticism, even hostility. Not so. The Supreme Court has said that “the Establishment Clause does not license government to treat religion and those who teach or practice it . . . as subversive of American ideals and therefore subject to unique disabilities.”<sup>29</sup> And, contrary to what some say, a law does not become unconstitutional when it coincides with religious principles. Otherwise we couldn’t have laws punishing murder and theft.<sup>30</sup>

The other First Amendment right protecting religion forbids the government from enacting laws “prohibiting the free exercise” of religion. Notice the word “exercise.” It protects the right to “exercise” religion in our daily lives—not just to believe whatever we like or to worship privately in our homes and chapels, but to live openly and freely according to our faith as long as we respect the fundamental rights of others.

The First Amendment’s protection against an established religion and its guarantee of the free exercise of religion are not the only freedoms that make religious liberty possible. The First Amendment’s freedom of speech and press and assembly, plus the freedom to petition the government for redress of grievances—all of these ensure that religious people and institutions can function freely and openly in our society as equal citizens.

The right to exercise religion would be seriously diminished if we couldn’t say what we believe. Fortunately, in common with all Americans, religious believers and organizations are entitled to the freedom of speech. Their right to speak on matters of public concern is beyond dispute. The Supreme Court has taught that “private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.”<sup>31</sup> Religious speech cannot be singled out for government suppression.<sup>32</sup> Nor is there any question that churches and other religious organizations—not just individuals—hold the right of free speech too.<sup>33</sup>

To be effective, the freedom to speak must also include the freedom to publish one’s opinions. Whether communicated through traditional means like books, newspapers, and television, or through the global medium of the Internet, religious voices cannot be silenced any more than other points of view.<sup>34</sup>

All of these rights—including the freedom of peaceful assembly—are indispensable to what we mean by religious freedom. As I have previously explained:

We use our freedom of religion and belief to establish our core convictions, without which all other human rights would be meaningless. How can we claim the freedom of speech without being able to say what we truly believe? How can we claim the freedom of assembly unless we can gather with others who share our ideals? How can we enjoy freedom of the press unless we can publicly print or post who we really are?<sup>35</sup>

## **RELIGIOUS PARTICIPATION IN PUBLIC LIFE IS GOOD**

There are two big points I want you to remember when you leave this evening. The *first* is that religious participation in public life is not only part of American history and a constitutionally protected freedom, it’s also *good* for our nation. All laws and government policies are based on values—religious or otherwise. Everyone has a right to be heard—“to compete”—in the marketplaces of ideas and in influencing governmental decisions. To silence one voice potentially leads to silencing all others.

Religious voices are at least as deserving of being heard as any others. In fact, churches and other religious organizations bring unique experiences and perspectives to public policy debates. They recognize corrosive social forces that threaten faith, family, and freedom. They know personally about the hardships of family breakdown, unemployment, poverty, drug abuse, and numerous other social ills. Why? Because they are on the front lines helping individuals and families work through these wrenching problems. When they speak out they do so *not* for selfish reasons like the special interest groups that constantly lobby our public officials, but out of concern for the people they minister to, their families, and society itself. They bring a moral—often cautionary—voice to matters of social and public policy that we desperately need in this age of materialism, self-promotion, and disruptive change. The perspectives of churches and religious leaders make an irreplaceable contribution to our on-going democratic conversation about how we should live together. Their voices are essential.

And so are yours. If you’re a person of faith, you have a critical contribution to make to our country and society. Public discussions about the common good are enriched by men and women like you who routinely put duty above convenience and conscience above

personal advantage. And don't be intimidated by those who claim that you are imposing your religious beliefs on others. In a pluralistic society, to promote one's values for the good of society is not imposing them on others—it is putting them forward for consideration along with all others. Societies will choose and decide. Someone's values prevail in the end, and all of us have the right – and duty – to argue for what we believe will best serve the need of the people and most benefit the common good. Without you, our political and social debates will lack the richness and insights needed to make wise decisions, and our nation and communities will suffer.

So again, the first thing I want you to remember is that the religious voice is vitally important to our country—both to society and to wise government.

### **STANDING UP FOR RELIGIOUS FREEDOM**

The second point I want you to remember is that it is time to get involved and take a stand for religious freedom. There is so much you can do to ensure a culture where religious freedom has an honored place in American life.

- Begin by becoming informed. Study the principles of the American Founding and teach them in your families. Teach your families to cherish America's heritage of freedom. Teach them the importance of religion to our nation and society. Teach them to respect the faith of all people, even those with very different beliefs. And teach them that respecting religious freedom means tolerating religious beliefs, speech, and practices we disagree with. That is the price of asking others to respect our own freedoms.
- Next, speak up. Churches and people of faith must not allow themselves to be intimidated and silenced. Your opinions count. You have a right to speak and to be heard. Make the effort to stay informed about issues of public importance, and then speak out with courage and civility—and I do emphasize civility. Whatever your faith, our society needs your voice, your experience, and your goodness.
- Next, get involved. You don't need to run for president or Congress to make a big difference. To borrow a phrase from another LDS leader, “lift where you stand.”<sup>36</sup> The crisis of religious freedom is as much a cultural crisis as a political or legal one. So get involved in the cultural and civic organizations around you so that you can influence them to respect religious freedom. Be active in the PTA and express your views to the school board; the future of religious freedom will depend a great deal on what our children are taught. If you're a professional or run a business, get involved with your professional association or the chamber of commerce; the lack of business and professional support for religious freedom

is a real concern. You can make a difference. Participate in your political party and help guide it toward sound principles. Write your representatives. Make it a family tradition to vote regularly. There are numerous opportunities to get involved right in your own community.

- Finally and above all, as the Apostle Paul wrote, “be . . . an example of the believers, in word, in conversation, in charity, in spirit, in faith, in purity.”<sup>37</sup> Whatever your religion, “live your faith so that others . . . will see your good works, experience your genuine love and friendship, and feel [God] working through you.”<sup>38</sup> Americans tend to respect and protect what they believe is good. So let us show them the highest and best in our faiths—our willingness to love and serve others, to build strong families, to live honorable lives, to be good citizens. As our fellow citizens see the goodness of your faith, “they will want to listen to you and understand when you say your religious freedom is being abridged. They may not agree with you or even understand entirely the issue that is so important to you. But if they know you and respect you because you are a true [example of the believers], they will be far more inclined to work toward a solution that respects [essential] religious freedoms.”<sup>39</sup>

## CONCLUSION

My friends and fellow citizens, we live in challenging times. Religious freedom is indeed under fire. And things may get worse before they get better. But these are *our* times. This is *our* moment to defend our fundamental freedoms. With courage, conviction, and civility—drawing upon our noble heritage as Americans—each one of us can make a profound difference. As the great Winston Churchill said on the eve of the world’s greatest conflict, let us “arise again and take our stand for freedom as in the olden time.”<sup>40</sup> As fellow believers and citizens of this great nation, we can do no less. Thank you, and may God bless you and this wonderful nation.

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<sup>1</sup> Letter from George Washington to the Hebrew congregation in Newport, Rhode Island, Aug. 1790, reprinted in *George Washington: A Collection*, ed. W. B. Allen (1988), 548.

<sup>2</sup> D. Todd Christofferson, “A Celebration of Religious Freedom” (address given at an interfaith conference in São Paulo, Brazil, Apr. 29, 2015), [mormonnewsroom.org/article/a-celebration-of-religious-freedom](http://mormonnewsroom.org/article/a-celebration-of-religious-freedom).

<sup>3</sup> *Ibid.*

<sup>4</sup> See William P. Marshall, “The Other Side of Religion,” *Hastings Law Journal*, vol. 44, no. 4 (Apr. 1993), 843, 844. (Endorsing the proposition that “religion and religious conviction are purely private matters that have no role or place in the nation’s political process.”)

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<sup>5</sup> See Michael W. McConnell, “Secular Reason and the Misguided Attempt to Exclude Religious Argument from Democratic Deliberation,” *Journal of Law, Philosophy and Culture*, vol. 1, no. 1 (2007), 159–60. (Canvassing

<sup>6</sup> See Kathleen Sullivan, “Religion and Liberal Democracy,” *University of Chicago Law Review*, vol. 59, no. 1 (1992), 197–98. (“Religious teachings as expressed in public debate may influence the civil public order but public moral disputes may be resolved only on grounds articulable in secular terms. Religious grounds for resolving public moral disputes would rekindle inter-denominational strife that the Establishment Clause extinguished.”)

<sup>7</sup> See Brian Leiter, *Why Tolerate Religion?* (2013).

<sup>8</sup> See “ ‘Religious Liberty’ and the Anti-LGBT Right” (report by the Southern Poverty Law Center, 2016), 5. (Referring to state laws protecting religious liberty, the report says that “we must expose the groups behind these laws as extremists that despise the LGBT community.”)

<sup>9</sup> Douglas Laycock, “Sex, Atheism, and the Free Exercise of Religion,” *University of Detroit Mercy Law Review*, vol. 88, no. 407 (Spring 2011), 407.

<sup>10</sup> *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921).

<sup>11</sup> Perry Miller, *Errand into the Wilderness* 115 (1956), 115.

<sup>12</sup> See the Mayflower Compact (1620), reprinted in Donald S. Lutz, ed., *Colonial Origins of the American Constitution: A Documentary History* (1998), 32.

<sup>13</sup> See “Articles, Laws, and Orders, Divine, Politic, and Martial for the Colony in Virginia” (1610–11), reprinted in *Colonial Origins*, 315. (“We must alone expect our successes from him, who is only the blesser of all good attempts, the King of kings, the commander of commanders, and Lord of Hostes.”)

<sup>14</sup> Sanford H. Cobb, *The Rise of Religious Liberty in America* (1902), 423 (about Roger Williams and the founding of Rhode Island); 440–41 (about William Penn and the founding of Pennsylvania); and 363–64 (about Lord Baltimore and the founding of Maryland).

<sup>15</sup> See Donald S. Lutz, *A Preface to American Political Theory* (1992), 135, 136. (Listing the Bible as the leading source of citation in American political writings between 1760 and 1805.)

<sup>16</sup> See, for example, Robert Middlekauff, *The Glorious Cause: The American Revolution, 1763–1789* (2005), 49. (“Although Americans entered the revolt against Britain in several ways, their religion proved important in all of them . . . because, more than anything else in America, religion shaped culture.”) See also Bernard Bailyn, *Ideological Origins of the American Revolution* (1967), 268. (Describing “the mutual reinforcement that took place in the Revolution between the struggles for civil and religious liberty.”)

<sup>17</sup> David Ramsay, *The History of the American Revolution*, 2 vols. (1789), 1:199.

<sup>18</sup> Harry S. Stout, *The New England Soul: Preaching and Religious Culture in Colonial New England* (1986), 7.

<sup>19</sup> John Witherspoon, “The Dominion of Providence over the Passions of Men” (1776), reprinted in Ellis Sandoz, ed., *Political Sermons of the American Founding Era* (1998), 549.

<sup>20</sup> Clinton Rossiter, *Seedtime of the Republic: The Origin of the American Tradition of Political Liberty* (1953), 59.

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- <sup>21</sup> Virginia Bill of Rights, § 16 (June 12, 1776), reprinted in S. E. Morison, ed., *Sources and Documents Illustrating the American Revolution, 1764–1788* (1929), 151; emphasis added.
- <sup>22</sup> Declaration of Independence (July 4, 1776), reprinted in *Sources and Documents Illustrating the American Revolution*, 157.
- <sup>23</sup> Alexis de Tocqueville, *The Old Regime and the Revolution*, ed. François Furet and Françoise Mélonio; trans. Alan S. Kahan (1998), 206.
- <sup>24</sup> See Randall M. Miller, Harry S. Stout, and Charles Reagan Wilson, eds., *Religion and the American Civil War* (1998), 4. (“Religion stood at the center of the American Civil War experience.”)
- <sup>25</sup> Martin Luther King Jr., “Letter from Birmingham City Jail” (1963), in James M. Washington, ed., *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.* (1986), 296.
- <sup>26</sup> Mark DeWolfe Howe, *The Garden and the Wilderness: Religion and Government in American Constitutional History* (1965), 62.
- <sup>27</sup> U.S. Constitution, First Amendment.
- <sup>28</sup> *Larson v. Valente*, 456 U.S. 228, 244 (1982).
- <sup>29</sup> *Board of Education v. Mergens*, 496 U.S. 226, 248 (1990) (quoting *McDaniel*, 425 U.S., 641 [Brennan, J., concurring in the judgment]).
- <sup>30</sup> See *McGowan v. Maryland*, 366 U.S. 420, 442 (1961). (A law does not establish religion because it “merely happens to coincide or harmonize with the tenets of some or all religions.”)
- <sup>31</sup> *Capitol Square Review and Advisory Board v. Pinette*, 515 U.S. 753, 760 (1995).
- <sup>32</sup> See *Ibid.* (“In Anglo-American history, at least, government suppression of speech has so commonly been directed *precisely* at religious speech that a free-speech clause without religion would be Hamlet without the prince.”)
- <sup>33</sup> See *Walz v. Tax Commission*, 397 U.S. 664, 670 (1970). (“Adherents of particular faiths and individual churches frequently take strong positions on public issues,” and “churches, as much as secular bodies and private citizens, have that right.”)
- <sup>34</sup> See *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). (License taxes on the sale of religious literature were ruled unconstitutional.)
- <sup>35</sup> Christofferson, “A Celebration of Religious Freedom.”
- <sup>36</sup> Dieter F. Uchtdorf, “Lift Where You Stand,” *Ensign*, Nov. 2008, 53–56.
- <sup>37</sup> 1 Timothy 4:12.
- <sup>38</sup> D. Todd Christofferson, “Watchmen on the Tower: Religious Freedom in a Secular Age,” *Clark Memorandum* (Spring 2015), 11.
- <sup>39</sup> *Ibid.*
- <sup>40</sup> Winston S. Churchill, *Blood, Sweat, and Tears* (1941), 66.