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Legal Status of Religious Groups in the United States A Brief Overview

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Introduction

The United States does not require religious groups to register with the government in order to organize, meet, collect funds, or claim federal tax-exempt status. Such a registration requirement would violate a core freedom guaranteed by the United States Constitution. This overview identifies the underpinnings of this freedom, including a discussion of the United States Constitution's religion and speech clauses. Following this discussion, the issues of association, legal status and tax exemption are addressed.

Freedom of Religion in United States

Foundational to civil liberties in the United States is the principle that government was created by and exists at the will of the people. Governmental power is a *limited* power conferred to the government by the people. In the United States, the fundamental rights of the individual are paramount and they may only be abrogated by the government under very limited and defined circumstances.⁽¹⁾

Freedom of religion is a fundamental, natural, and absolute right, deeply rooted in the American constitutional system. Available to all, citizen and non-citizen, the free exercise of religion includes the right to believe and profess whatever religious belief one desires. Government officials may not compel any person to affirm a religious belief or punish the expression of religious doctrine deemed by officials to be false. The individual's freedom of conscience embraces the right to select any religious faith or none at all. This fundamental right was established by the First Amendment to the United States Constitution, the first of the original "Bill of Rights."⁽²⁾

Specifically, the First Amendment to the Constitution of the United States forbids the government to make any law respecting an establishment of religion or prohibiting the free exercise of religion.⁽³⁾ While originally an inhibition to action by the United States Congress only, the First Amendment has been made applicable to the individual state governments, as well, through the passage of the Fourteenth Amendment to the Constitution.⁽⁴⁾ The First Amendment guarantees that the government may not coerce anyone to support or participate in religion, or otherwise

act in a way which establishes a state religion.⁽⁵⁾

This constitutional constraint on the government's ability to enact legislation regarding religion has two primary aspects. First, the government is prevented from enacting a law that requires citizens to accept a particular religious belief. Second, this constitutional provision safeguards the free exercise of each person's chosen form of religion. These two interrelated concepts are known, respectively, as the "establishment" and "free exercise" clauses.

The Establishment Clause

The First Amendment provides, among other things, that "Congress shall make no law regarding an establishment of religion."⁽⁶⁾ This clause keeps church and state separate so that the legislative powers of the government could address actions only and not opinions. The meaning of this clause is that neither a state nor the federal government can establish a religious institution, and neither can pass laws which aid a particular religion.

The United States Supreme Court has held that the government may not demonstrate a preference for one particular religion over other religions,⁽⁷⁾ including any preference for Christianity over other religions. The establishment clause requires the government to be neutral.

The Supreme Court has also held, however, that the establishment clause does not require the government to adopt an attitude of antagonism toward religion and religious believers. In fact, when the interests of government and religion incidentally coincide, the government may accommodate religion as long as it does not excessively entangle the government in the affairs of religion.⁽⁸⁾

The Free Exercise Clause

The First Amendment to the Constitution also provides that "Congress shall make no law . . . prohibiting the free exercise" of religion.⁽⁹⁾ This clause has been interpreted by the Supreme Court to mean that the government is prohibited from interfering with or attempting to regulate any individual's religious beliefs. This includes coercing a citizen to affirm ideas or beliefs offensive to his or her religious beliefs and from discriminating against a person for holding beliefs contrary to those held by anyone else.⁽¹⁰⁾ Also, religious beliefs need not be acceptable, logical or comprehensible to others in order to merit First Amendment protection.

The "free exercise" clause constitutes an absolute prohibition against governmental regulation of religious belief.⁽¹¹⁾

Religious Free Speech

Along with the religion clauses, the First Amendment also provides that "Congress shall make no law . . . abridging the freedom of speech." Under this clause, religious speech, like other types of speech, is protected free speech. This includes a religious group's right to share with others its beliefs. The United States Supreme Court has consistently struck down governmental attempts to restrict religious free speech.⁽¹²⁾

In many of its rulings, the United States Supreme Court has identified freedom of speech, including religious speech, as a "preferred" constitutional right that could only be regulated based on a strong governmental need.⁽¹³⁾ In particular, speech cannot be prohibited or restricted because of its content unless the circumstances are exceptional. The government may, however, place reasonable content-neutral

restrictions on the "time, place, or manner" of speech, and these can be applied to religious speech as well.⁽¹⁴⁾ Nevertheless, these restrictions may not restrict religious speech because of its religious message.

Freedom of Association

Unlike the guarantees of freedom of religion and freedom of speech, freedom of association is not expressly found within the First Amendment. Freedom of association, however, is implicitly guaranteed by the First Amendment and thus, is afforded the same protection as other First Amendment freedoms.⁽¹⁵⁾ Freedom of association as it relates to religious groups protects the right of individuals to associate without hindrance for purposes of practicing religion. This freedom is extended to all religious associations, including those that hold unpopular, controversial, and unorthodox beliefs.

Legal Status and Religion

Because of the constitutional protection of religion, there is no governmental system of registering religions. A law requiring religious groups to register with a government agency before meeting would be unconstitutional. Any religious group is allowed to meet, organize, and exercise free speech (including sharing with others its beliefs) without any interaction with the government at all. This is true irrespective of the religious group's size, length of time in existence, or content of its doctrine.

There is also no requirement that religious groups incorporate.⁽¹⁶⁾ A religious group can own and transfer property, for example, as an unincorporated entity, just as individuals do. Most religious groups, however, choose to incorporate to enjoy the many benefits of being an incorporated non-profit entity, one of which is institutional stability. Each of the individual states in the United States has its own laws governing the process of incorporation. On the whole, these laws make the incorporation process uncomplicated and easily accessible to religious groups.

Federal Tax Exempt Status

Although not a constitutional issue, the practice of granting tax exemption to religious organizations raises questions about the interaction between the government and religion.

Tax exempt status frees an organization from having to pay taxes of many kinds, including income tax. This exemption also allows donors to deduct contributions to these organizations from their gross taxable income. Federal tax exempt status can be enjoyed by various non-profit entities, religious and secular alike.⁽¹⁷⁾ For most organizations, federal tax exempt status⁽¹⁸⁾ is gained through an application with the Internal Revenue Service of the United States Treasury Department. Under the federal tax code,⁽¹⁹⁾ non-profit organizations submit a special form⁽²⁰⁾ to apply for tax exempt status.

Some may view the application procedure for tax exempt status as a form of registering religious organizations. This is a misunderstanding of United States tax law. Unlike other non-profit entities, religious groups are specifically exempted from having to file this form in order to receive tax exempt status. Under the tax code, a religious organization need not apply for tax exempt status.⁽²¹⁾ It is automatically conferred. Nor does a religious organization have to file income tax returns.⁽²²⁾ While many religious organizations choose to file for tax exempt status as a matter of course, they are not required to do so by law. Religious organizations occupy a unique tax status under federal law that protects the religious organization's autonomy and

guards against unnecessary governmental intrusion.⁽²³⁾

Conclusion

As guaranteed by several provisions in the United States Constitution, religious groups in the United States enjoy broad religious freedom with minimal governmental interference. This includes the ability to exist, meet, organize, buy property, share beliefs with others, and even claim tax exemption without registering with government officials.

Footnotes

1. This fundamental tenet of the United States Government is well-enshrined in the federal Constitution. The Preamble begins: "We the People of the United States . . . do ordain and establish . . ." The concept of limited powers is perhaps best illustrated by Amendments IX and X to the United States Constitution:

Amendment IX: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Amendment X: "The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

2. U.S. Const., amend. I.

3. *See id.*

4. *See Cantwell v. Connecticut*, 310 U.S. 296 (1940) and *Everson v. Board of Educ.*, 330 U.S. 1 (1947) (making the free exercise and establishment clauses of the First Amendment applicable to the actions of the individual state governments).

5. *See Lee v. Weisman*, 505 U.S. 577 (1992) (holding unconstitutional prayer at a high school graduation).

6. U.S. Const., amend. I.

7. *See Larson v. Valente*, 456 U.S. 228 (1982) (holding that the government may not prefer one religious denomination over another).

8. *See Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703 (1985); *Agostini v. Felton*, 521 U.S. 203 (1997) (holding that not all entanglements between church and state have the effect of inhibiting or advancing religion).

9. U.S. Const., amend. I.

10. *See School Dist. of Abington Tp., Pa. v. Schempp*, 373 U.S. 203 (1963) (holding unconstitutional a requirement that the Bible be read in public schools).

11. *See Bob Jones Univ. v. United States*, 461 U.S. 574 (1983) (holding constitutional an Internal Revenue Service decision to revoke the tax-exempt status of a religious university for its racially discriminatory policies).

12. *See e.g. Martin v. Struthers*, 319 U.S. 141, 149 (1943) (holding unconstitutional on free speech grounds an ordinance that prohibited knocking on doors to distribute information); *Schneider v. State*, 308 U.S. 147, 164 (1939) (holding unconstitutional on free speech grounds an ordinance that prohibited the distribution of leaflets).

without a permit); *Lovell v. City of Griffin*, 303 U.S. 444, 451 (1938) (holding unconstitutional on free speech grounds an ordinance that required permission of city manager to distribute religious literature); *Widmar v. Vincent*, 454 U.S. 263, 277 (1981) (holding unconstitutional on free speech a university regulation denying a student religious group access to university facilities to meet); *Kunz v. New York*, 340 U.S. 290, 293 (1951) (holding unconstitutional on free speech ground an arbitrary refusal to grant permit for religious worship); *Saia v. New York*, 334 U.S. 558, 559 (1943) (holding unconstitutional a conviction of Jehovah's Witness under ordinance forbidding use of sound amplification devices).

13. See e.g. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943) (striking down a license tax applied to Jehovah's Witness street preachers); *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943) (holding that Jehovah's Witness children could not be compelled to salute the United States flag in violation of their religious beliefs).

14. See e.g. *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 648 (1981) (holding constitutional a state regulation requiring the International Society of Krishna Consciousness to distribute literature from a fixed location at a state fair as a reasonable time, place and manner restriction on free speech).

15. See e.g. *Aptheker v. Secretary of State*, 378 U.S. 500, 507 (1964); *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 543 (1963).

16. Incorporation, the creation of a legal entity, is achieved under state, not federal law

17. § 501(c)(3) of the tax code sets forth the categories of organizations that are eligible for tax exemption:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 U.S.C. § 501(c)(3).

18. Likewise in most states, non-profit entities benefit from an exemption from many state taxes, including income and property taxes. Each state has its own law regarding how religious organizations obtain these exemptions.

19. See 26 U.S.C. § 501(c)(3).

20. Schedule A: Form 990 "Organization Exempt Under Section 501(c)(3)."

21. See 26 U.S.C. § 508. This section provides: "New organizations must notify Secretary [of the Internal Revenue Service] that they are applying for recognition of section 501(c)(3) status [tax exempt status]-Except . . . churches, their integrated auxiliaries, conventions or associations of churches. . . ."

22. See 26 U.S.C. § 6033. This section provides: "Except as provided in paragraph (2), every organization exempt from taxation under section 501(a) shall file an annual [income tax] return," except "churches, their integrated auxiliaries, and conventions or associations of churches."

23. As a related note, the United States Supreme Court has held that allowing for charitable tax deductions and tax exemptions to religious organizations does not violate the establishment clause because it does not advance nor inhibit religion. See *Hernandez v. C.I.R.*, 490 U.S. 680 (1989).