

The Newest Supreme Court Case

The Religion and Society Debate

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On February 28, the U.S. Supreme Court heard arguments in a case brought by the Freedom from Religion Foundation, which wants to stop government's efforts to aid self-professed religious organizations that provide social services. The foundation's argument is that the First Amendment of the Constitution prohibits any and all government aid to anything religious. This is a traditional *separationist* argument. In their view, religion is one thing, government and everything pertaining to it is a non-religious thing, and never the twain should meet.

Actually, the Justices may, in the end, decide not to express themselves directly on the merits of that argument, because what they are considering is whether a group of taxpayers even has a right to come before a court to challenge government's spending decisions. Generally speaking, citizens are not allowed to present such challenges in the courts. But in 1968, the Supreme Court "carved out an exception . . . in a case called *Flast v. Cohen*, for taxpayers to challenge congressional spending that violated the establishment clause" of the First Amendment (*Washington Post*, 3/1/07). Regardless of what the Justices say in their ruling, which is due out by early July, it is worthwhile to look once again at the separationist argument.

The Constitution's First Amendment mandates that Congress may not prohibit the free exercise of religion or establish any religion. In keeping with these stipulations, the United States now has a long history of keeping the institutions of church and state separate. Neither Congress nor any state now runs a church (or synagogue, or mosque, or temple). Dozens of church-type organizations exist in this country and receive equal treatment under a government that does not establish any of them.

What might appear to be an exception to this rule is government's funding of chaplains in the military services. But in that case, the government is not establishing a religion of its own but merely fulfilling its responsibility to protect the free exercise of religion by military personnel when they are sequestered on military bases in the United States and abroad. In this program there are no *government* chaplains. Rather, the government cooperates with a diverse range of independent church-type bodies to make sure that military personnel have access to the chaplains they want. Moreover, no one in the military is required to have contact with a chaplain or to acknowledge any religion. Thus, church and the state are kept quite separate in the military, just as they are when gov-

ernment exempts churches and other nonprofits from property taxes and provides fire protection and other public services to them, just as it does to homes and businesses. The separation of church and state is simply not in question here.

Nevertheless, if governments at any level decide to fund education, or social services, or child care, or the arts, or science, it is always right to ask whether government is acting fairly. If government were to fund childcare only for white people and not for people of color, for example, that would be illegitimate discrimination. The question then, is whether government's funding of welfare services or childcare services is unfairly discriminatory when government cooperates with both religious and non-religious organizations in doing so. I would argue that this does not amount to unfair discrimination. That is exactly how government should act in order to protect the free exercise of religion by citizens. Government's equal treatment of nongovernment organizations regardless of their religious profession is the same as government providing families with tax-deductions for their dependents regardless of whether the families consider themselves religious or nonreligious.

It is precisely this matter of nondiscrimination by government that is at stake in the case brought by the Freedom from Religion Foundation. Citizens who want to be free *from* religion should be equally protected in the practice of their atheism or agnosticism. And that requires equal treatment for all, which is precisely what equal treatment of faith-based organizations in the social-services field is all about. The federal government has been working for more than 10 years now to assure that neither faith-based service organizations nor so-called secular organizations suffer illegitimate discrimination when government decides to cooperate with nongovernment groups in funding the delivery of social services.

If the Freedom from Religion Foundation were to be successful in their suit, the judicial outcome would actually be a violation of the Constitution's First Amendment, because it would establish secularism rather than nondiscrimination as the qualifying criterion for all government funding. And according to that criterion, government should no longer be allowed to fund any chaplaincy program, or fire-protection services for churches, or college loans for students who attend religious colleges, or childcare vouchers to be used at religious day-care centers. The result would not be the continuation of the separation of church and state but the establishment of government's systematic violation of religious freedom for those citizens whose religions cannot be wholly disconnected from all educational, social-service, and family activities that are supported by government.

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