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# EXERCISING OUR CHRISTIAN BELIEFS THROUGH POLICIES AND PRACTICES: CAN WE STILL DO THAT?

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## Missio Nexus

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# PROLOGUE: THE CURRENT MINISTRY LANDSCAPE

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- Expanding areas of ministry (including business as mission)
- Priority on gospel, not law
- Complex issue for board engagement
- Diverse constituent perspectives and expectations
- Need to preserve key vendor relationships
- Other considerations

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# BACKGROUND:

## 1987

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“Mr. Gorbachev, tear down this wall”



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# BACKGROUND:

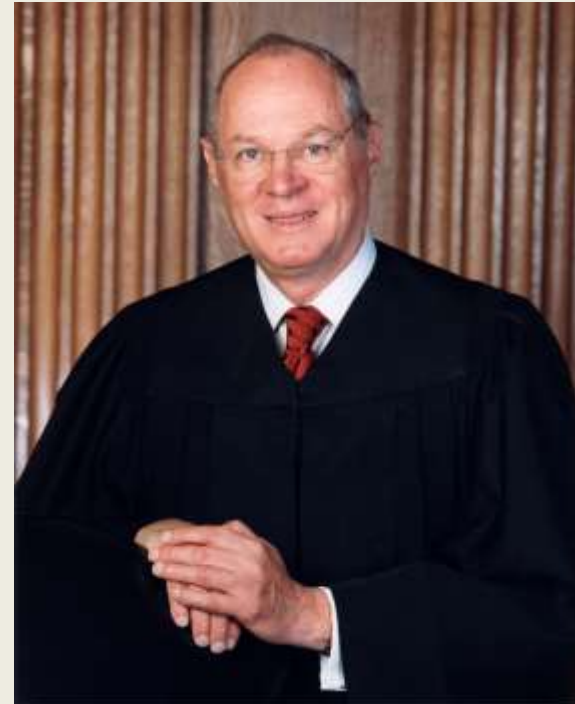
## 1987

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Senator Kennedy:  
“Judge Bork’s America”



Reagan Nominates  
Justice Kennedy



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# A STORY OF RELIGIOUS LIBERTY

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## The Landscape in 1987

- Tenuous Religious Exemptions
- Broad Religious Exclusions
- The Moral Majority and John Paul II



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# 1993: CITY OF HIALEAH LAW

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No Killing of Animals in a Religious Service

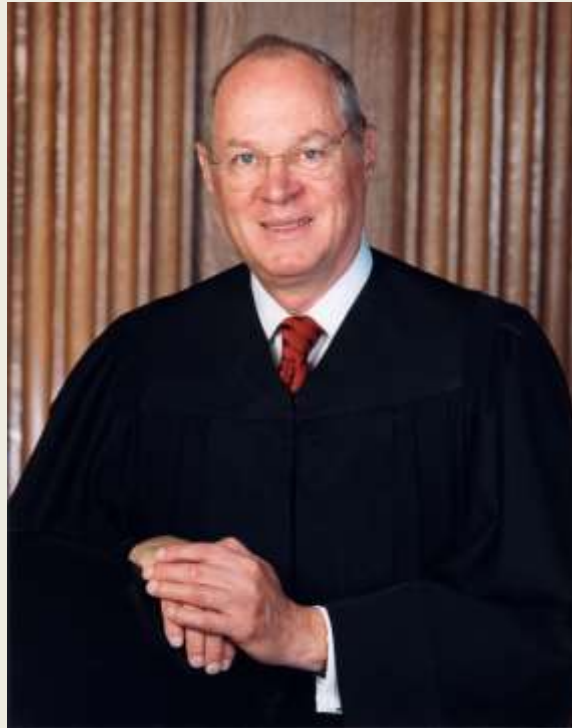


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# 1993: JUSTICE KENNEDY IN THE *LUKUMI* CASE

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“Rigorous scrutiny of laws  
targeting religious exercise”



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# 1993: Bill Clinton signs religious freedom restoration act (“RFRA”)

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Rigorous scrutiny of laws substantially burdening religious exercise





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# 2000-2010: WHAT IS A RELIGIOUS “ORGANIZATION” OR “ACTIVITY”?

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**Religious Exemption:  
Broad**



**Religious Exclusion:  
Narrow**

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## 2012: WHO IS A “MINISTER”? *HOSANNA-TABOR V. EEOC* THE COURT’S UNANIMOUS DECISION

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- Can laws prohibiting discrimination based on race or gender be applied to ministers?

No.



- Can a 4<sup>th</sup> grade math teacher be a “minister”?

Yes.

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# HOSANNA-TABOR V. EEOC CONCURRENCE

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## Justice Alito (and Justice Kagan)

- The ministerial exception should apply to any “employee” who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith.
- With respect to religious groups, their “very existence is dedicated to the collective expression and propagation of shared religious ideals.”

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# 2014: WHAT IS “RELIGIOUS WORSHIP”?

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## YMCA of the Rockies Christian Camp Environment



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# 2014: WHAT IS “RELIGIOUS EXERCISE”?

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Hobby Lobby Exercises Religion



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# RELIGIOUS EXERCISE IN HOBBY LOBBY

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“**The exercise of religion involves** not only belief and profession but the performance of (or abstention from) **physical acts** that are **engaged in for religious reasons**.”

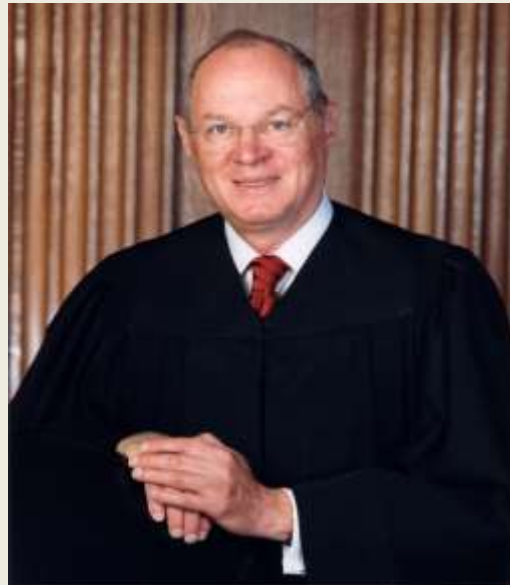
Thus, a law that “operates so as to make the **practice of... religious beliefs** more expensive” in the context of **business activities** imposes a burden on the exercise of religion.”

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# JUSTICE KENNEDY ON RELIGIOUS EXERCISE

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“Free exercise means the right to express religious beliefs and to **establish** one’s religious (or nonreligious) **self-definition** in the **political, civic, and economic** life of our **larger community.**”



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# POPE FRANCIS ON RELIGIOUS EXERCISE

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Religious freedom certainly means the right to worship God, individually and in community, as our consciences dictate. But **religious liberty**, by its nature, **transcends** places of worship and the **private sphere** of individuals and families.





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# 2017: WHAT IS “RELIGIOUS DISCRIMINATION”?

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Includes denial of program funds to a church ...  
because it is a church.

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# 2017: LAWS PROTECTING RELIGIOUS LIBERTY

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- Broad Religious Exemptions
  - Employment
  - Ministry Activities
  - Tax Exemptions
  - Conditions on Benefits
    - Contraceptive Coverage Mandate
    - Title IX (Controlled by a Religious Organization)
    - Government contractors (Bush Executive Order)
  - Churches and Ministers
- Narrow Religious Exclusions
  - *Colorado Christian University v. Weaver*
  - *Trinity Lutheran*



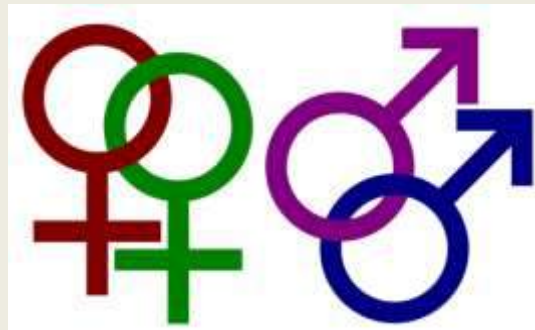
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# A STORY OF SEXUAL LIBERTY

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## The Landscape in 1987

- 1960's sexual revolution and the pill
- AIDS
- Same sex conduct unlawful



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# 1992: COLORADO AMENDMENT 2

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Linked to James Dobson and Others

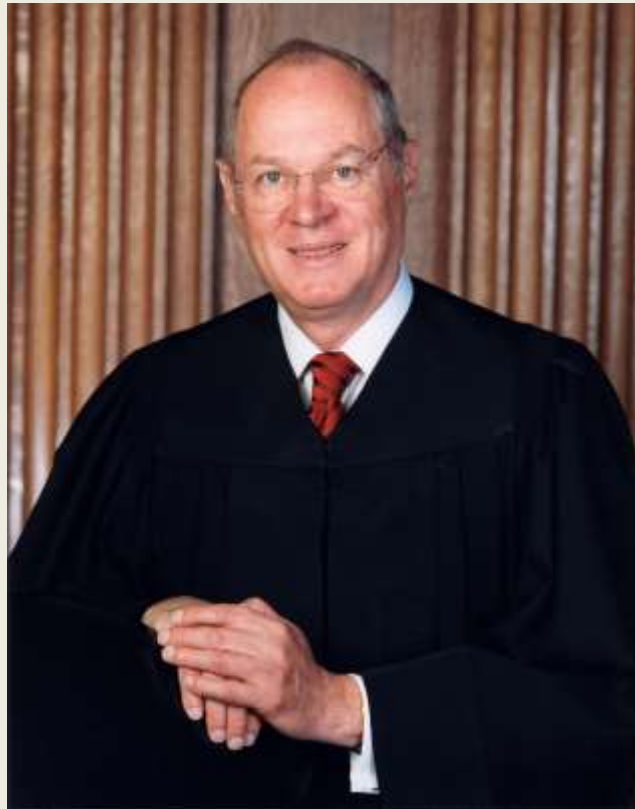


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# 1996: JUSTICE KENNEDY ON AMENDMENT 2

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“Animus!”



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# 1996: BILL CLINTON SIGNS DEFENSE OF MARRIAGE ACT

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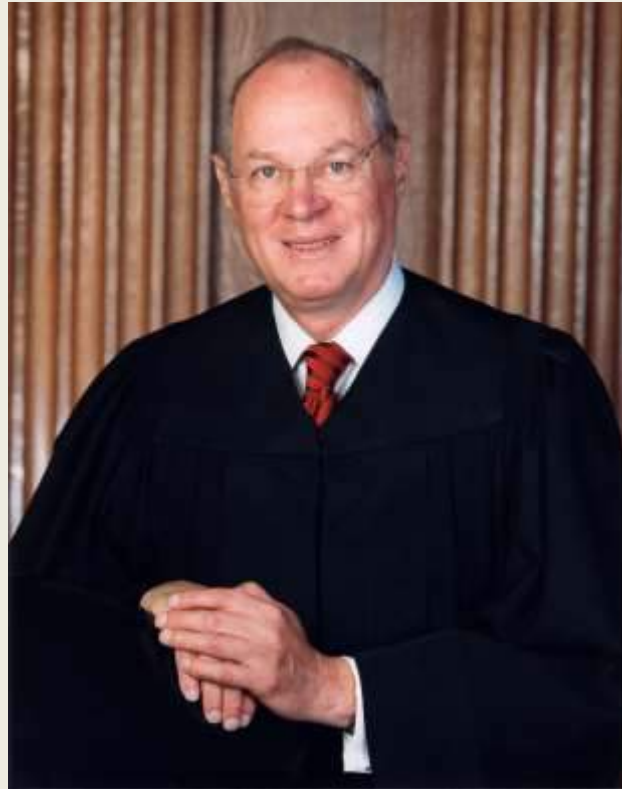


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# 2003: JUSTICE KENNEDY ON SODOMY LAWS

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“Animus!”



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# 2003 TO 2009: REVELATIONS OF TED HAGGARD AND OTHERS

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“Hypocrisy!” “Repression!”





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# 2008: MORMON SUPPORT FOR DENYING SAME-SEX MARRIAGE

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## California Proposition 8



BRIGHAM YOUNG AND HIS WIVES

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# 2009: MODERN FAMILY

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Gay partners with adopted Asian daughter  
(in California)



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# 2013: SUPREME COURT ORAL ARGUMENTS

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Churches Supporting Same Sex Marriage  
(Opposing DOMA and Proposition 8)

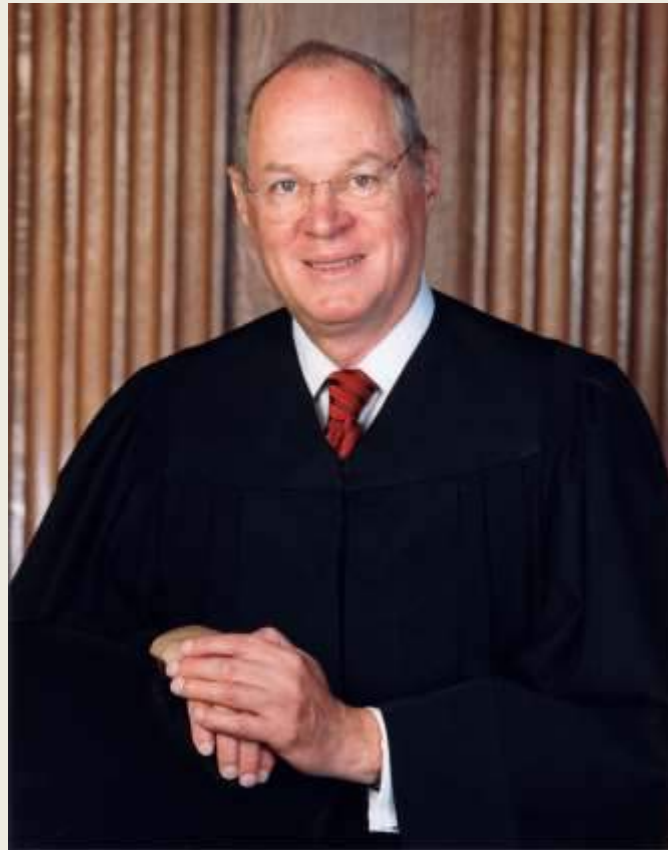


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# 2013: JUSTICE KENNEDY ON DOMA

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“Animus!”

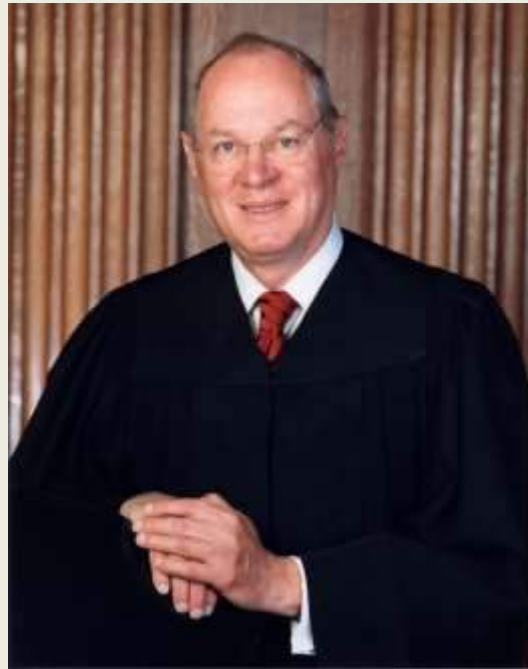


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# 2015: JUSTICE KENNEDY ON RIGHT TO SAME-SEX MARRIAGE

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“DIGNITY!”



(and “Liberty,” “Autonomy,” “Self-Definition,”  
“Intimacy”)

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# 2016: OBAMA ON “SEX”

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Same as “Gender Identity”  
and “Sexual Orientation”

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# 2017: LAWS PROTECTING SEXUAL LIBERTY

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Same-sex marriage legal nationwide

Employers and Public Accommodations may not discriminate based on sexual orientation, gender or marital status in many states

Non-discrimination conditions on access to benefits

- Title IX
- Government contracts (Executive Order)
- Public/Private:
  - Licensing/Accreditation;
  - Foundations;
  - Businesses.



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# RELIGIOUS AND SEXUAL LIBERTY: PERSPECTIVES ON A STORY NOT YET FINISHED

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# THE “URBAN” CULTURAL PERSPECTIVE

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Super Bowl 50



Modern Family

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# THE “HEARTLAND” PERSPECTIVE

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# DIVERGING CULTURAL PERSPECTIVES

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<b>Issue</b>	<b>Conventional Christian View</b>	<b>Emerging Cultural View</b>
<b>Gender Identity</b>	<b>Biological sex at birth</b>	<b>Chosen throughout life</b>
<b>Life</b>	<b>Resolve doubt in favor of protecting new life</b>	<b>Resolve doubt in favor of parental interests</b>
<b>Marriage</b>	<b>One man and one woman for life</b>	<b>Any couple for a mutually-agreed duration</b>
<b>Sexual Conduct</b>	<b>Exclusively within marriage</b>	<b>Consenting adults (and teens)</b>
<b>Sexual Orientation</b>	<b>Distinguished from conduct</b>	<b>Inseparable from conduct</b>
<b>Religion</b>	<b>Public</b>	<b>Private</b>

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# A HISTORICAL PERSPECTIVE

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## The Pendulum Often Swings

**Berlin Wall 1989**



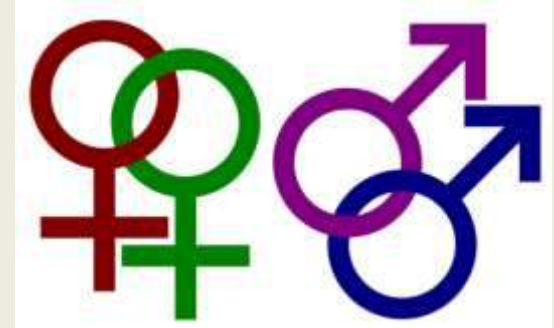
**Ukraine 2015**



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# SEXUAL LIBERTY CHALLENGES

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- The race comparison may not prevail:
  - Vigorous Dissents
  - Majority did not invoke animus
- There is a slippery slope
  - Social science data are mixed and still developing
  - Other types of intimate relationships logically protected
  - Single sex organizations and facilities
- Confusion: are we talking about “gender” or “sex,” and what is the difference, and when is it okay or not?
- Resistance to court interpretations
- Competing rights: wedding vendors/artists; expressive associations

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# RELIGIOUS LIBERTY CHALLENGES

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- Hobby Lobby dissent (four justices) adopted narrow definition, excluding organizations that sell too many goods of services
- “Houses of Worship” (or “exclusively religious” use)
- Narrowing of strict scrutiny (3<sup>rd</sup> party harm; bigotry; complicity)
- Increasing voices to eliminate religious exemptions entirely

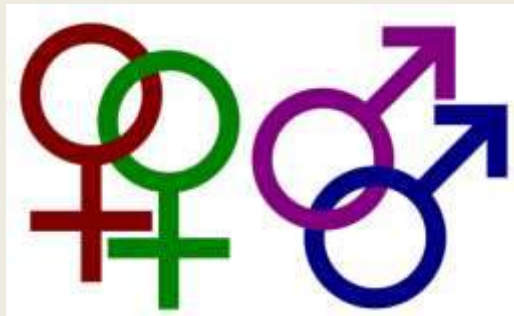
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# A HISTORICAL PERSPECTIVE

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## The Pendulum May Swing

1. Opposition to same sex marriage is not the same as racism
2. Religious exemptions will remain, but may be limited (*e.g.*, Form 990 exemption; minister's housing allowance, commercial entities).



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# THE POPE'S PERSPECTIVE

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The defense of the environment and the fight against exclusion demand that we recognize a moral law written into human nature itself, one which includes the natural difference between man and woman, and absolute respect for life in all its stages and dimensions.

[Religious] freedom remains one of America's most precious possessions. [A]ll are called to be vigilant, precisely as good citizens, to preserve and defend that [religious] freedom from everything that would threaten or compromise it.





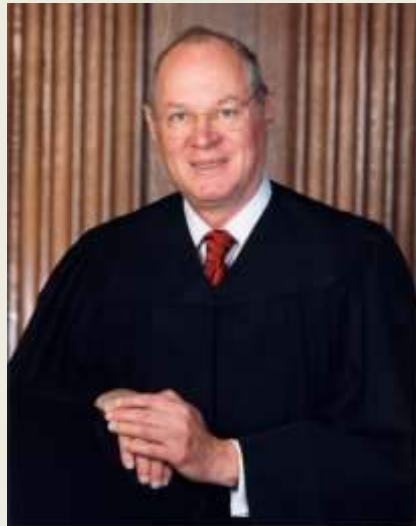
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# A JUDICIAL PERSPECTIVE

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## Justice Kennedy in Hobby Lobby

“But in a complex society and an era of pervasive governmental regulation, defining the proper realm for free exercise can be difficult.”



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# JUDICIAL PERSPECTIVE

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## JUSTICE KENNEDY IN *OBERGEFELL*

“FINALLY, IT MUST BE EMPHASIZED THAT RELIGIONS, AND THOSE WHO ADHERE TO RELIGIOUS DOCTRINES, MAY CONTINUE **TO ADVOCATE** WITH UTMOST, SINCERE CONVICTION THAT, BY DIVINE PRECEPTS, SAME-SEX MARRIAGE SHOULD NOT BE CONDONED. THE FIRST AMENDMENT ENSURES THAT **RELIGIOUS ORGANIZATIONS** AND **PERSONS** ARE GIVEN PROPER PROTECTION AS THEY SEEK **TO TEACH** THE PRINCIPLES THAT ARE SO FULFILLING AND SO CENTRAL TO THEIR LIVES AND FAITHS, AND TO THEIR OWN DEEP ASPIRATIONS TO CONTINUE THE FAMILY STRUCTURE THEY HAVE LONG REVERED.”

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# A MINISTRY LAWYER'S PERSPECTIVE

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1. Clarify Your Religious Beliefs
2. Determine How Religious Beliefs Must be Implemented
  - Standards for employees, students and guests
  - Standards for activities and facility uses
  - Focus on shared beliefs rather than conduct or orientation
3. Strengthen Religious Exemption Claims
  - Adopt a policy describing your community and standards as an exercise/expression of your beliefs
  - Build on “church” and “minister” status
  - Document how specific activities following these standards further your mission

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# A MINISTRY LAWYER'S PERSPECTIVE

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## 4. Advocate

- Negotiate: contract conditions
- Legislate: broad religious exemptions
- Litigate: “amicus” briefs, plaintiff or defendant
- Communicate:



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# ADOPT A CHRISTIAN COMMUNITY POLICY

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- Describe your community as an exercise/expression of your beliefs
- Identify your key Christian beliefs (including on human sexuality and marriage)
- Identify community members: leaders, representatives, participants, others
- Define community standards for members, activities, and facility uses
- Describe enforcement in terms of mission or community impact

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# CONSIDER CHURCH AND/OR MINISTER STATUS

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- Minister status:
  - duties includes religious teaching and/or ministry leadership
  - job descriptions/title/employee handbook
  - calling and commissioning ceremony
- Church status:
  - accomplish mission through congregational focus
  - some type of ministers
  - association of churches is an option

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# LEGAL ELEMENTS OF A CONGREGATIONAL CHURCH ORGANIZATION

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- Primary Elements
  - 1) A religious organization
  - 2) That accomplishes its mission primarily through a group or groups of individuals who assemble regularly
  - 3) For communal worship

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# LEGAL ELEMENTS OF AN “ASSOCIATION OF CHURCHES”

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- Primary Elements
  - 1) An organization of churches (may be from different denominations)
  - 2) Formed to engage in a cooperative undertaking
  - 3) To further a shared religious mission
- Revenue Ruling 74-224



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# A PILGRIM'S PERSPECTIVE

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Act Justly, Love Mercy, Walk Humbly

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# AN ETERNAL PERSPECTIVE

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Freedom from law of sin  
and death.

