

Do We Still Have Freedom of Religion?



By Paul Engel

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- How do you know if freedom of religion still exists in America?
- What protects our freedom of religion?
- Do courts have the authority to interpret a church's own rule to them?

How can you tell if you have freedom of religion? Is it because of the First Amendment? Does freedom of religion exist because people say so? Does freedom of religion exist if government can decide whether you are properly following the tenants of your religion? A recent case before the Supreme Court asked that very question. Sadly, the court decided not to consider answering it.

Our desire to worship as we please was not only one of the driving factors in the creation of the colonies in America, it's a foundational freedom in this country. The very first freedom listed in the very first amendment in the Bill of Rights to be ratified was your freedom of religion. Specifically:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

[U.S. Constitution, Amendment I](#)

All of our states and the federal government recognize the

importance of freedom of religion. Or do they? The laws of our states and of the United States provide religious organizations tax exempt status. Under 26 USC §501(d), religious associations or corporations are exempt from federal taxation. In the Commonwealth of Virginia, not only are religious organizations exempt from taxation, but property owned and used by the organization are also tax exempt.

Enter the case of Trustees of the New Life in Christ Church v. City of Fredericksburg, Virginia (New Life Church v. Fredericksburg).

This case began when the New Life in Christ Church in Fredericksburg, Virginia, claimed a tax exemption for a residence occupied by Josh and Anacari Storms. ...

The city of Fredericksburg (City) sought to deny the church's tax exemption. Years of litigation ensued.

[New Life Church v. Fredericksburg \(Certiorari dissent\)](#)

This case seems simple enough at first. The New Life in Christ Church claimed a tax exemption for the residence of their youth ministers, Josh and Aracari Storms, which the city of Fredericksburg denied, leading to this case. The case was heard in Virginia Circuit Court, which found for the City of Fredericksburg. After the Virginia Supreme Court declined to review the opinion, the church appealed to the Supreme Court of the United States for redress.

The process for having a case heard by the Supreme Court involves a petition for a writ of certiorari (Latin for "To be informed of"), ordering that a lower court produce records for the superior court's review. In their petition, New Life Church posed two questions. First, did the city violate the First Amendment by interpreting church doctrine? And second, did the City of Fredericksburg refuse to extend tax exempt status to the church's property without a compelling reason and thereby violate Virginia law?

If you've followed [The Constitution Study](#) for any length of time, you probably recognize that this cannot be a First Amendment violation, since neither Congress nor the federal government had any part in this situation. While federal courts have conveniently ignored that fact for decades, I do want to look at this in the context of the Constitution and laws of Virginia. While this may not be a violation of the First Amendment to the United States Constitution, it very well may be a violation of the Fourteenth Amendment.

State Interpretation of Church Doctrine

*Virginia law provides an exemption from property taxes for "[r]eal property and personal property owned by churches or religious bodies * * * and exclusively occupied or used * * * for the residence of the minister of any church or religious body." Va. Code § 58.1- 3606(A)(2). When the New Life In Christ Church claimed the property tax exemption for a residence occupied by two of its ministers, the City of Fredericksburg conducted an independent inquiry into the Presbyterian Church in America's Book of Church Order to determine whether the ministers actually are "ministers" under church doctrine. The City never challenged the sincerity of the Church's belief that the ministers are, in fact, ministers. Instead, the City denied the exemption because it read the Book of Church Order to confer that designation only on ordained church officials with specific leadership roles.*

[New Life Church v. Fredericksburg \(Petition for Certiorari\)](#)

State law provides that property owned by religious bodies for the residence of ministers are exempt from property taxes. The issue that the church wanted to court to weigh in on was, does the city have the authority to determine who is or is not a minister for a church?

So how has the City sought to justify denying the tax exemption? Primarily, the City has argued that the church is

not entitled to a tax credit because it misunderstands who qualifies as “minister” in its own faith tradition. ...

The church tried to explain that the City misunderstood its traditions and practices.

[New Life Church v. Fredericksburg \(Certiorari dissent\)](#)

Who decides who qualifies as a minister of a church? Is it the church or the government?

In sum, the Stormses perform “essential religious functions” within the Church. ... Indeed, there is no dispute among the parties that they are “doing religious work.”

[New Life Church v. Fredericksburg \(Petition for Certiorari\)](#)

This is a clear case of a government entity establishing the standards for ministers of a church. The City of Fredericksburg not only claimed the authority to interpret the Presbyterian Church in America’s Book of Church Order to the New Life Church, which is a member of that denomination, but to override the church’s interpretation of that book:

The City filed a motion for summary judgment. ... In support, it relied on the Presbyterian Church in America’s Book of Church Order, which governs the Church, to argue that the Stormses are not ministers as understood by the Church. ... It then proceeded to argue that “[t]he Book of Church Order utilizes the term ‘minister’ in contexts that make it clear that the term refers to a duly ordained person with specific leadership duties.” ...

In response, the Church argued that the City had misinterpreted the Book of Church Order. In particular, the Church explained that “[w]hile it is true that in order to deliver sermons to the congregation a person doing so must be an ‘ordained’ minister, there is nothing in the Book of Church Order that prohibits a particular church from hiring ministers

to serve as messengers and teachers of the faith.” ... On the contrary, “Section 12 of the Book of Church Order provides each church rather broad authority to govern its own affairs, which would include the ability to hire ministers to cater to specialized groups, such as youth.”

[New Life Church v. Fredericksburg \(Petition for Certiorari\)](#)

Isn't the city not only establishing a religious test for church ministers, but by interpreting their governing convention, establishing oversight of the church itself? Since the question of tax exempt status is a state matter, such a test would be in violation Article I, Section 16 of the Constitution of Virginia:

And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination

[Constitution of Virginia, Article I, Section 16](#)

Furthermore, by determining who qualifies as a minister, the City of Fredericksburg further violated Article I, Section 16:

but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. ... but it shall be left free to every person to select his religious instructor,

[Constitution of Virginia, Article I, Section 16](#)

Even in its opposition to the church's appeal, the Virginia Supreme Court said:

The City conceded that “the statute providing a limited exemption from taxation of real estate says to churches or religious bodies, ‘you tell us who your leader is, and if they reside in church-owned property, [and] we will exempt that specific property from taxation.’”

[New Life Church v. Fredericksburg \(Petition for Certiorari\)](#)

However, the Circuit Court could not recognize this violation, not only of the laws and the constitution of Virginia, but the idea of freedom of religion. And since the the Supreme Court of Virginia was unwilling to hear the case, we find ourselves at the Supreme Court of the United States.

Supreme Court Certiorari

I do not know why the Supreme Court decided not to grant certiorari in this case. Yes, the First Amendment claim fails based on the plain language of the document, but that has not stopped this court before. There can be any number of reasons why four of the nine justices were unwilling to hear the case. Since only Justice Gorsuch was willing to publish his opinion, we will never know the whys. In his dissent, Justice Gorsuch does give us a a sense of the travesty of justice the court has delivered to the church.

I would grant the petition and summarily reverse. The First Amendment does not permit bureaucrats or judges to “subject” religious beliefs “to verification.” About this, the Court has spoken plainly and consistently for many years. ...

The Framers of our Constitution were acutely aware how governments in Europe had sought to control and manipulate religious practices and churches. They resolved that America would be different. In this country, we would not subscribe to the “arrogant pretension” that secular officials may serve as “competent Judge[s] of Religious truth.” ... Instead, religious persons would enjoy the right “to decide for themselves, free from state interference, matters of . . . faith and doctrine.”

[New Life Church v. Fredericksburg \(Certiorari dissent\)](#)

Since the City of Fredericksburg refused to abide by the laws of Virginia, and deny the New Life Church the equal protection of the laws of the Commonwealth, I believe there is sufficient

evidence to claim a violation of the Fourteenth Amendment to the Constitution of the United States. Sadly, just as the courts of Virginia have acted as accessories to this crime, the Supreme Court has allowed this injustice to proceed. I can only hope that Justice Gorsuch's conclusion is correct:

This case may be a small one, and one can hope that the error here is so obvious it is unlikely to be repeated anytime soon. But I would correct it. Bureaucratic efforts to "subject" religious beliefs to "verification" have no place in a free country.

[New Life Church v. Fredericksburg \(Certiorari dissent\)](#)

Conclusion

So, let us return to my opening question. How can you tell if you have freedom of religion? Neither the words in the Constitution of the United States nor those of Virginia's, were sufficient to protect the freedom of religion for the New Life in Christ Church. Does this mean we only have the rights our governments will allow? Is the only protection for our most precious freedoms a judicial system corrupted by politics and self-importance?

Those in the city of Fredericksburg, who have denied this church their rights, work for the citizens of that city. The governor who executes the laws of the Commonwealth works for the people. If they are unwilling to follow the laws created by the representatives of the people, they should be removed. If the people of the Commonwealth of Virginia are unwilling to hold their elected officials accountable, they have no one to blame except themselves. If we want freedom of religion, then we the People must defend it. Otherwise, we resign ourselves to be subjects of those we hired to protect our rights.

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