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PROTECTING FAITH AND FREEDOM

# JUDGE KAVANAUGH ON RELIGIOUS FREEDOM

During his 12-year tenure on the U.S. Court of Appeals for the D.C. Circuit, Judge Brett Kavanaugh has addressed issues of religious freedom only a handful of times. But his larger body of work raises major concerns about how he would navigate the role of religion in public life. Here's what we know—and a few questions left to be answered.

## “THE WALL METAPHOR WAS WRONG AS A MATTER OF HISTORY AND LAW”

Thomas Jefferson's “wall of separation between church and state” ensures that each person can worship as they please—or not worship at all—without fear of government intrusion or favoritism for one faith over another. But last year, in a speech at the [American Enterprise Institute](#), Judge Kavanaugh lamented the Supreme Court's interpretation of the Establishment Clause to require a clear separation between religion and government. Justice William Rehnquist, he noted, “persuasively criticized the wall metaphor as ‘based on bad history’ and ‘useless as a guide to judging.’” How would Judge Kavanaugh address the relationship between faith and public life in its absence?

## EMPLOYERS' RELIGIOUS CONVICTIONS vs. EMPLOYEES' BELIEFS AND NEEDS

Employers' beliefs have no place in their employees' private healthcare decisions. But in [Priests for Life v. U.S. Department of Health and Human Services](#), Judge Kavanaugh sided with a religious non-profit that refused to complete a one-page form to obtain an accommodation to the birth control requirement under the Affordable Care Act. The organization argued that mere participation in this process violated its religious freedom. They ultimately lost before the DC Circuit, but Judge Kavanaugh's dissent displays a sympathy for employers who seek to impose their religious beliefs on their staff. Would he prioritize the beliefs of some over the religious freedom and civil rights of others? What would this mean for a court that sidestepped this question in *Masterpiece Cakeshop*?

## A RIGHT TO PRAYER IN PUBLIC SCHOOLS?

Five decades of First Amendment law have prohibited school-sponsored prayer and religious activities. In 1999, [Santa Fe Independent School District v. Doe](#) examined whether schools can broadcast prayers delivered by students before high school football games. Judge Kavanaugh, then an attorney at Kirkland & Ellis, argued in an [amicus brief](#) that these broadcasts were not only constitutional but that the First Amendment actually requires public schools to allow students to deliver prayers at events in some circumstances. How would Judge Kavanaugh square this view with the right to be free from religious coercion, particularly in a public school?

## DEFENDING SCHOOL VOUCHERS

School voucher programs redirect taxpayer funds from public to private, often religious, schools. While parochial schools play an important role in many communities, spending taxpayer dollars to fund private religious institutions puts the integrity of those schools and the First Amendment at risk. In 1999, Judge Kavanaugh defended a voucher program that was ultimately struck down by the Florida Supreme Court because it harmed public school students by diverting public money to private schools. Furthermore, during an appearance on CNN in 2000, he predicted a future Supreme Court will uphold vouchers for private religious schools. If confirmed, will he make that a reality?

## HOW CAN I HELP?

Interfaith Alliance celebrates religious freedom by championing individual rights, promoting policies that protect both religion and democracy, and uniting diverse voices to challenge extremism. We need your help to ensure that Judge Kavanaugh answers these questions and more—but first, they must be asked. Urge your senator to examine whether Judge Kavanaugh's confirmation will protect true religious freedom or move the nation toward policies that advance a narrow set of interests. Learn more [here](#).