



Five Questions on Religious Freedom For Supreme Court Nominee Ketanji Brown Jackson

Interfaith Alliance believes that true religious freedom is a bedrock value of the Constitution. The First Amendment guarantees that every individual has freedom of belief, no matter faith or philosophy, and that the government may not favor any religion or religion itself. Therefore, among the essential questions, any nominee to the Supreme Court of the United States must answer are these five questions about true religious freedom. Interfaith Alliance believes that there are answers consistent with the Constitution. Interfaith Alliance submits the following questions to the Senate Judiciary Committee to ask Judge Jackson during the confirmation hearings:

Question 1: What role, if any, does your personal faith or philosophy play in your judicial philosophy?

The Constitution seems to recognize the importance that personal faith plays in the formation of a moral code and standard of behavior for every individual, including public servants such as judges. It also explicitly demands that personal religious beliefs are separate from the interpretation and application of the Constitutional.

Article Six of the Constitution prohibits any religious test for office, judgeships included. The shifting religious makeup of the Supreme Court over time — sometimes dramatically — is the best indication that personal religious convictions are not part of the qualification for a Justice. Instead, each Justice bears the responsibility of ensuring that every American, regardless of personal conscience, receives equal treatment under the law. A jurist who would privilege one religious viewpoint over another, or even any religious viewpoint over a non-religious viewpoint, contradicts the Constitution and weakens the separation of “church and state.”

Question 2: How do you think justices should approach instances where their personal faith conflicts with their obligations to the Constitution?

Sixty years ago, John F. Kennedy was questioned about how his Roman Catholicism would affect the presidency he was seeking. He answered that the issue was not what kind of church he believed in, but what kind of America he believed in, saying, “I believe in an America where the separation of church and state is absolute.”

In the intervening years, and especially since the emergence of church-based political alliances, a segment of the population has demanded religious litmus tests for judicial nominees. And too many of these nominees have been all too willing to meet these tests



behind closed doors, while declining to acknowledge them when questioned publicly. A Supreme Court justice must only rely on the constitution and the laws of our country when deliberating — religious dogma should play no role in the outcome.

Question 3: How do you understand the Establishment Clause?

For more than 200 years, the United States has celebrated its deserved reputation as the most religiously diverse nation in the world. Following the description of Thomas Jefferson that the First Amendment creates “a wall of separation between church and state,” the Supreme Court’s legacy has been to restrain the government from imposing a hierarchy of favored religious beliefs and practices or benefitting any religious tradition over another.

In recent years, that legacy has been contested as the Court has been asked to affirm “workarounds” that enable travel bans to target faith groups, some houses of worship to benefit from taxpayer-funded goods and services, and public officials to perform their duties in a discriminatory manner if the law conflicts with their personal convictions. Every exception to the Establishment Clause privileges the few at the expense of the many.

Question 4: Do you believe that the Free Exercise Clause supersedes the rights of others?

The first of the individual rights enumerated in the Bill of Rights secures freedom of conscience for everyone. However, like the other rights so detailed, the limit of personal freedom begins when it interferes with the rights of others.

Challengers to this understanding of the Free Exercise Clause contend that the Constitution was not established to challenge the primacy of Biblical instruction (as they understand it), and that therefore they are protected in refusing to abide by civil law that violates their deeply held beliefs. Famously, in *Burwell v. Hobby Lobby*, a private corporation sought an exemption from providing medically sound and legally available reproductive health care to employees who did not share their personal convictions — and the Court supported their claim.

The door to such claims thus opened, merchants and landlords have similarly sought release from the requirement of equal treatment. Childcare agencies have sought to deny services to people of differing faith commitments. Private schools have fired teachers of secular subjects who do not live according to the tenets of certain religious convictions.



Free exercise is a protection of conscience, not an exemption that denies the universal rights of citizenship to some at the discretion of others. As the Court considers issues of religious freedom and civil rights now and in the future, it is important that religious freedom is not treated as a license to discriminate.

Question 5: Should taxpayer dollars be permitted to fund the mission of religious institutions, and, if so, should the government be allowed to regulate the use of those dollars?

For many years, faith-based institutions have been able to provide government-funded services as long as they did so according to the same non-discriminatory standards of non-faith-based organizations. More and more, religious communities have sought support for educational programs, social services, and even business ventures that seek to advance their faith values and practices. During this pandemic, houses of worship have received millions of dollars of support for their ministries, including the salaries of clergy.

Deciding to allow such funding to religious organizations, many of which are exempt from taxation, comes with a responsibility for determining that the monies go to proper and intended uses. If indeed such funding is allowed in the first place, there appears to be an opening or obligation for the government to regulate the recipients. The nature of non-profit, tax-exempt religious institutions would change dramatically (but not for the better) in these circumstances.

The American people have a stake in the judicial philosophy of any nominee to the Supreme Court. Among the critical questions that a nominee must answer are those relating to true religious freedom and the standard by which they will address the challenges being brought by groups and individuals with the explicit and implicit motives that seek to impose a theocratic standard on the Constitution and its applications.

Interfaith Alliance is a national policy and advocacy organization that champions an inclusive vision of religious freedom, protecting people of all faiths and none. For more information, please contact policy@interfaithalliance.org.

2101 L St. NW, Suite 800, Washington, DC, 20037 | TEL: 202.466.0567 | www.interfaithalliance.org