

Religious liberty is embedded in our Nation's DNA. Respect for religious conscience is not an afterthought or luxury, but the very essence of our political and social compact.

America's tradition of protecting religious conscience predates the United States itself. In seventeenth century Colonial America, Quakers were exempted in some colonies from oath taking and removing their hats in court. Jewish persons were sometimes granted exemptions from marriage laws inconsistent with Jewish law. Exemptions from paying taxes to maintain established churches spread in the eighteenth century. Even though perpetually outnumbered in battle, George Washington urged respect for Quakers' exemptions from military service. *See* Michael McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1466-73 (1990) (religious exemptions in early America); Douglas Laycock, *Regulatory Exemptions of Religious Behavior and the Original Understanding of the Establishment Clause*, 81 Notre Dame L. Rev. 1793, 1804-1808 (2006) (same). During a more recent struggle against totalitarianism, Jehovah's Witness schoolchildren won exemption from compulsory pledges of allegiance to the flag. *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).

"Religion-specific exemptions are relatively common in our law, even after [*Employment Division v. Smith*], 494 U.S. 872 (1990)." Michael McConnell, *The*

*Problem of Singling Out Religion*, 50 DePaul L. Rev. 1, 3 (2000). Responding to *Smith*, with nearly unanimous bipartisan support, Congress passed the Religious Freedom Restoration Act of 1993, providing a statutory exemption for religious claims, unless the government has a compelling interest that it is unable to achieve by less restrictive means. 42 U.S.C. § 2000bb-1. Congress has enacted other modern exemptions, including the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc (protecting religious congregations and prisoners); the American Indian Religious Freedom Act Amendments, 42 U.S.C. § 1996 (protecting Native Americans); and the Religious Liberty and Charitable Donation Protection Act, 11 U.S.C. §§ 548(a)(2) (protecting religious congregations).