



A Constitutional Symposium: Religious Liberty and LGBTQ+ Rights FAQ

1. Why is Saint Mary's holding this symposium?

This symposium is held in recognition of national [Constitution Day](#). All educational institutions that receive Federal funds are required to hold an educational program about the U.S. Constitution for its students.

2. Why this topic?

There is currently a serious Constitutional debate in the public square about religious liberty and equality in the controversy over religious exemptions to discrimination laws that protect LGBTQ+ rights. Many states have laws that prohibit discrimination based on sexual orientation or gender identity. Yet many states also provide religious exemptions that allow withholding certain services and benefits from LGBTQ+ persons. Supporters of religious exemptions and advocates of LGBTQ+ rights each rely on constitutional values that are foundational to the American experience: freedom of religious expression on the one hand and equal protection under the law on the other.

Scholars and Supreme Court Justices have crafted different answers to Constitutional questions such as these: Do states violate the Fourteenth Amendment's equal protection clause by creating religious exemptions from their laws prohibiting discrimination based on sexual orientation or gender identity? Does a city violate the First Amendment's free exercise of religion clause by not referring clients to a religious social service agency that won't provide services to same-sex couples due to its religious beliefs? National surveys show that Americans are closely divided on these matters.

Consequently, this is a very important legal issue in our society today. Understanding what is at stake is important for informed citizenship.

3. Where/when is the symposium and what is the format?

The symposium will take place from 7:30-9:00 on Monday, September 19th in the Soda Center at Saint Mary's College. It will be free and open to all, and it will be live streamed for those who cannot, or do not want to, attend in person.

No one's legitimacy, safety and right to exist will be questioned regardless of their sexual orientation, gender identity, or religious affiliation. The symposium features three thoughtful and respected Constitutional experts who can help us understand better what is at stake in this legal controversy. Each speaker will make opening remarks and address these questions:

- 1) All three of you have considerable expertise on civil rights, public policy, and the US Constitution. Where do you locate yourselves in the legal debate over the right to religious accommodation exemptions versus equal protection rights for LGBTQ+ people? What sources or experiences most inform your perspective?
- 2) Based on your perspective, how would you describe the main dilemma in the legal conflict? What do you think each side in the conflict needs to understand about the other side?
- 3) Should one side's rights prevail over the other? For example, on the one hand, currently, the law does not permit religious exemptions from anti-discrimination legislation that protects racial minorities. Is there something different about sexual orientation and gender identity discrimination that is distinguishable from religiously based racial discrimination? On the other hand, is free exercise of religion such an important right — as our “first freedom” in the Bill of Rights — that it ought only be curbed under very limited circumstances and mostly not at all?
- 4) If instead a compromise is in order, are there aspects of legal thought that could inform an approach that minimizes tension between honoring religious belief and practice and safeguarding LGBTQ+ rights? Could an analysis of the balance of harms approach be employed? Are there other approaches?

Afterwards, members of the audience will provide additional questions for the speakers to address.

4. Who are the speakers?

- **Robin Fretwell Wilson** is the Director of the Institute of Government and Public Affairs for the University of Illinois System, as well as the Mildred Van Voorhis Jones Chair in Law at the University of Illinois College of Law. She is the author of eighteen books, including *Religious Freedom, LGBT Rights, and the Prospects for Common Ground*, and *Same-Sex Marriage and Religious Liberty*. She earned her JD at the University of Virginia.
- **Kyle Velte** is Associate Professor of law at the University of Kansas School of Law. Her scholarship, which examines the intersection of sexuality, gender, and the law, has appeared in law journals, including the *Yale Law & Policy Review*, *Cardozo Law Review*, and *Connecticut Law Review*. Her recent scholarship focuses on the perceived tensions between religious freedom and LGBTQ+ civil rights. She holds an LL.M. from Harvard Law School and a J.D. from American University.
- **Elizabeth Clark** is professor and associate director of the International Center for Law and Religion Studies of the J. Reuben Clark Law School at Brigham Young University. She is the author of numerous books, articles, and chapters on religion

and law. She also has participated in drafting commentaries and legal analyses of pending legislation and developments affecting religious freedom, as well as in drafting amicus briefs on religious freedom issues before the U.S. Supreme Court. She holds a J.D. from the BYU Law School.

5. What will be the outcome of the symposium?

The goal of the symposium is not to endorse or oppose any particular viewpoint, nor to “settle” the issue. Rather the goal is for those attending to learn more about it, and to consider alternative ideas about how to move forward in a way that might satisfy people from a variety of viewpoints. Hearing from experts who have different perspectives about how the legal conflict might be addressed should be enlightening for all present, and it will help us all to begin to think about reasonable resolutions to this Constitutional quandary.

Our democratic republic relies on a process of argument and debate to determine how to best reflect its deepest principles, including the tolerance of divergent beliefs in our pluralistic society. We contribute to that process by talking about our differences with compassion, honesty, and mutual respect—and by listening to those with whom we disagree—so that we have the best chance to find together ways to be inclusive of everyone. Whatever are the attendees’ perspectives on religious exemptions from laws that prohibit discrimination based on sexual orientation or gender identity, they will learn about the legal arguments for and against such exemptions, as well as ideas about how to respect both religious liberty and LGBTQ+ rights.

6. How does this event further the aims and ideals of Saint Mary’s College?

The symposium honors our [intertwined liberal arts tradition, Catholic identity, and Lasallian heritage](#) in several ways:

- It fosters habits of the mind that emphasize how to think, not what to think.
- It allows authentic and respectful exploration into the moral dimensions of intellectual questions.
- It promotes dialogue between faith and free intellectual inquiry.
- It furthers inclusive excellence by creating a hospitable forum that is open, receptive, and inviting to all persons in their uniqueness and diversity.

7. Where does the Catholic Church stand on this issue?

In 2020 the Supreme Court said the [Civil Rights Act of 1964 applied to LGBTQ+ workers](#) when it comes to barring discrimination based on sex. Civil rights groups have encouraged Congress to pass legislation following up on that decision. Catholic critics of the legislation, including the U.S. Conference of Catholic Bishops (USCCB), say such laws would limit religious liberty by forcing faith-based institutions to provide services that go against their

religious beliefs. [Cardinal Timothy Dolan](#), who heads the USCCB Religious liberty committee, said, “no one should be forced by the government to do something that she or he understands to be against his or her deeply held convictions.” At the same time, a group of U.S. Catholic bishops, including a cardinal and an archbishop, have [signed a statement of support for LGBTQ+ youth](#), telling them, “God created you, God loves you and God is on your side.”

A report released in 2021 by the [Public Religion Research Institute](#) says that when asked if “you strongly favor, favor, oppose, or strongly oppose laws that would protect gay, lesbian, bisexual, and transgender people against discrimination in jobs, public accommodations, and housing,” majorities of Hispanic Catholics (81 percent), white Catholics (77 percent) and other Catholics of color (74 percent) said they are in favor.

8. Why is the symposium framed as a tension between two sides with competing interests?

We recognize that not all religions have conflicts with LGBTQ+ persons’ rights and that not all opponents of religious freedom exemptions are LGBTQ+ persons. The tension between opposing sides on this legal debate is an inherent feature of our judicial process. In our adversarial legal system, all cases involve parties who argue for opposing outcomes on a specific controversy.

9. There have been threats and violence towards some people because of their sexual orientation and gender identity, and towards others because of their religious beliefs. Will this event be safe for all to attend?

We have taken steps to prevent the expression of denigrating or disparaging remarks. The speakers are constitutional scholars, chosen because of their respect for, and openness to, those with whom they disagree. Those attending may hear ideas they disagree with. But to avoid the risk of disruptive remarks, the audience will not have an opportunity to make oral comments. Instead, they will submit their questions in writing, and the moderator will choose which questions to ask. Preference will be given to questions that are raised multiple times. In addition, public safety will be notified of the event.

APPENIDIX: For Further Reading:

I. Perspectives from two Catholic Thinkers

Saint Mary’s College of California Academic Convocation (*excerpts*)

Ernest J. Miller, FSC, D. Min. 27 April 2022

The Catholic social tradition affirms not only the inviolable dignity of all people, but also emphasizes the responsibility to protect the human dignity of each person, especially those

who society marginalizes, minoritizes, and disinherits. Likewise, the Catholic intellectual tradition promotes the development of an authentic community—a community comfortable with and capable of investigating, questioning, and celebrating differences. Catholic higher education, therefore, ought to help us see through other people’s eyes.

Because of our Lasallian and Catholic character, it is possible to advance an anti-racist orientation, to support gender equity, to welcome and love LGBTQ+ persons, to create accessibility to the campus and classrooms for those who face both physical and mental disabilities, to fully embrace the religious pluralism among us.

Bryan N. Massingale, S.T.D. 46th General Chapter, Brothers of Christian Schools (excerpts) 5 May 2022, Pattaya, Thailand

Sexuality: Beyond the “Sexual Revolution”

I come to you fresh from meeting with the theological faculties of De La Salle University of Manila, the Ateneo de Manila, and the Religious Educators Association of the Philippines. They asked me to address to topic, “Conversations on Sexuality and Gender in Religious Education.”

Why? Because their students – our students – are raising deep questions concerning human sexuality, questions that are not easily addressed in the frameworks that we have inherited. These are not questions solely from the privileged places of Europe or the Americas. These are the questions from the periphery. Human sexuality traditionally has been understood in a binary fashion, that is, as a system of two polar opposites that exist in a pure or fixed form, and which cannot co-exist in the same person. For example, one is either male or female, homosexual or heterosexual, masculine or feminine. But now the human sciences understand that human sexuality is far more complex.

For example, one’s sexual orientation can be more or less fluid, and can range on a spectrum from exclusively, to mostly, to incidentally homosexual and exclusively, to mostly, to incidentally heterosexual. Moreover, the range of sexual expressions has expanded to include bisexuality, pansexuality, polysexuality, and asexuality– and this isn’t an inclusive listing.

Moreover, the range of gender identities and expressions is now far more contested and pluriform, including identities such as intersex, transgender, transsexual, non-binary, gender-fluid, and queer. Add to this the ways in which traditional expressions of sexuality have become contested and even controversial, as evidenced in the #MeToo movement and the debates over toxic masculinity. We are interrogating what it means to be a man, and what exactly is healthy masculinity. (Indeed, a major question going forward is how an all-male Institute of Brothers creates warm and genuinely collegial relationships with LaSallians who are women). All of this points to how we are living in the midst of radical shifts in our understandings of gender and sexuality – indeed, of human sexualities.

Such major shifts in social attitudes and human understanding starkly reveal the limits of our (that is, the Church’s) traditional sexual ethics. Our traditional sexual ethics has been –

and too often still is – concerned with the regulation and appropriateness of sexual behaviors or sexual acts such as masturbation, premarital or nonmarital sex, and same-sex activity.

But the discipline of sexual ethics is evolving from an analysis of sexual behaviors (e.g., an ethics that focuses on the questions of: Who can do what with whom? And under what circumstances?) to a reflection upon ethical sexuality and sexual authenticity, which leads to a different set of questions: What does it mean to be a sexual person? What is human sexuality for? What does it mean to be an authentic sexual being? What is sexual discipleship? How does being a sexual person embody the image of God in the world? What does it mean to em-body God, to be the body of God, in the world? Indeed, what does it mean to be a man or a woman in the image of God?

These questions are unsettling and even profoundly disturbing. They move us far beyond what our traditional ethical reflection and teachings – and religious formation in sexuality – can account for. For example, we no longer live in a world where we can presume that candidates coming to us – or those who remain – are heterosexual virgins. (Actually, we never could, but we did our best to pretend – and sadly, too often still do).

Moreover, few of us have the training or skills for this kind of honest exploration of a core dimension of our being. Our formation in the call of celibacy is, when we are honest, often inadequate. This has implications for religious life and community living that cry out for spaces for safe and healing discussion.

The paradigm shifts in our understandings of human sexuality shape fault lines and fractures present in our educational ministries. At the Manila meeting, two students who identified as “queer” or non-heteronormative spoke of the pain they and fellow students felt by the lack of open and honest conversation on the gap between their life experience and their formation in the faith. They longed for a spirituality and for ways of praying that would enable them to integrate their sexuality and their desire for God.

And they are not alone. For example, at the conclusion of the 2018 Synod on Youth and Young People, the gathered bishops reflected upon what they had experienced, including pleas from many young people for a more realistic sexual ethics that takes account of contemporary trends and expresses a greater acceptance of LGBTQI persons and their relationships. In their “Final Report,” the Synodal participants made this observation: There are questions relating to the body, to affectivity and to sexuality that require a deeper anthropological, theological, and pastoral exploration, which should be done in the most appropriate way, whether on a global or local level. Among these, those that stand out in particular are those relative to the difference and harmony between male and female identities and sexual inclinations.

This statement aroused great concern and unease among some in the Church, including from high-ranking and influential figures. Cardinal Pell of Australia and Archbishop Chaput, then the ordinary of the see of Philadelphia (USA), were among those who realized that present in this call for deeper examination was an admission that the current teachings

were somehow deficient or inadequate. Paraphrasing their concern: Why would you have to explore or examine teachings that are already clear and certain?

Others, including myself, agreed that this summons for deeper exploration clearly suggests that the Synod reached a consensus that the current teaching on human sexuality is, in fact, problematic. Religious News Service cited me (accurately) noting: “It is clear that the bishops know that something needs to change, but he said it is equally clear that they are not sure “what that change would or should entail; that is, they are uncertain about what should be the new shape of Catholic teaching on sexuality.”

Something needs to change in our engagement with new understandings of human sexuality. But we – and not only the bishops – are unsure about what such changes should be. We are living in an interim time, a time that cannot yet be named, where “the old is not old enough to have died away and the new is still too young to be born.” Such upheaval and uncertainty is all the more traumatic because sexuality is the realm where we are most vulnerable, and an arena in which seismic shifts are experienced as most confusing and personally threatening.

II. See also: [Berkeley Forum: U.S. Religious Freedom and LGBTQ Rights](#)