

IN BETWEEN CHURCH AND STATE: A CASE STUDY ON SALT LAKE CITY'S NONDISCRIMINATION ORDINANCES

RESPONSIBLE CITIZEN SUMMARY

Background

- The so-called “separation of church and state” takes on special meaning for Utah where the majority of citizens are also people of faith
- Religious influence is healthy and necessary in civic affairs as well as personal lives
- Public policy is always a matter of the state, even when political opinions are offered by religious institutions and their adherents
- The recently-passed Salt Lake City nondiscrimination ordinances, and the Church’s support, offer all people of faith a constructive opportunity to discuss church/state relations and the meaning of religious freedom

What’s at stake?

- The meaning and importance of religious freedom
- How people of faith negotiate their citizenship
- The meaning and importance of political prudence

What’s next?

- Utahns should continue to welcome the political opinions of people of faith and their religions
- Sutherland Institute calls on the Utah State Legislature to expand the religious exemption of Salt Lake City’s nondiscrimination ordinances to include the constitutional rights of a church’s adherents

Responsible *Citizenship*[™]

As we continue to improve our understanding of the relationship between church and state, let’s remember that all public policies are matters of the state.

Paul T. Mero

The so-called “separation of church and state” takes on special meaning here in Utah. With nearly two-thirds of the state’s population coming from one religious denomination – and so many more people of different faiths living here – Utah can’t help but be unique. All of what my friend, LaVar Christensen, has shared with us tonight has special meaning for Utahns – and, yet, there is so much more for many of us to negotiate as both citizens and people of faith.

The ideas, decisions, and actions of Sutherland are guided by seven Governing Principles. Among these seven principles is “religion as the moral compass of human progress.” As we explain on our web site, we believe that,

A free and prosperous Utah requires active religious influence among its people. This means that every Utahn should seek some reflection of the Divine in their purpose in life; that every Utahn should think beyond the moment and themselves to consider the broader context of their existence and their children’s future; that every Utahn should set their personal morality against the backdrop of millennia of universally-held faith-based experiences; that every Utahn should appreciate the religious heritage that gave birth to this state; and, that every Utahn should support public policies that protect religious liberty, integrate universal religious morals and values in our laws, and that publicly express our reverence for religion in our lives.¹

As conservatives, we know that order precedes liberty and that order is not man-made, only man-sustained. As we have written and stated many times, conservatism is not an ideology and Sutherland is not full of ideologues. We do not endorse or oppose people, we endorse or oppose policies. We do not support abstract ideas of what we think the world ought to look like. We support real-live human beings as they struggle to better themselves and find happiness in a free society. We happen to believe that self-improvement and happiness are the results of conforming our behavior to our identity – and this assumes that reasonable people can agree on what it means to be a human being.

Sutherland has held four *Sacred Ground Initiative* events to date. I have been privileged to speak at three of the four and among the many consistent themes in each address has been my emphasis on what it means to be a human being. Addressing this definition is what religion does best. Religion constantly calls on our better selves to think about who we are and about behaviors that define our humanity.

If the “separation of church and state” means that we will be forced to banish religious influence, then I don’t believe in the “separation of church and state.” I welcome all serious people of faith in my personal life and in civic affairs. I welcome every instance when Utah’s many religions address important political issues of the day. I welcome the opinion of Utah’s Catholic Church on illegal immigration and so many other issues that it considers matters of public concern. Why? Because, whether in agreement or disagreement, its input reminds me to think about what it means to be a human being – its input reminds me to see people as people and not as objects – and this influence is an essential basis for human progress.

Of the many religions that fill Utah, a few of them have hierarchical structures, meaning that matters of doctrine and administration flow from the top down. This relationship between church leaders and adherents represents an additional layer of complexity in negotiating church-and-state relations. For not only do these adherents face the civic challenge of conforming their core values to their citizenship, as every person must, they also face the challenge of conforming their citizenship to their faith.

I can imagine that a faithful Catholic parishioner is carefully attentive to what the Catholic Church has to say about civic issues. Likewise, for me personally, as a member of the Church of Jesus Christ of Latter-day Saints, I, too, am keenly sensitive about what my Church says about civic issues and how my opinions conform to my Church. Again, I am sure that many Catholics and persons of other orthodox faiths feel the same way in their unique circumstances.

This sensitivity is not new to American politics. The State of Utah and its Latter-day Saint population faced this issue 100 years ago with the seating of Reed Smoot in the United States Senate. John F. Kennedy, as a Catholic running for public office, was asked if his personal faith would dictate his politics. Most recently, presidential candidate Mitt Romney was put to the same test. Interestingly, in the same presidential cycle, another candidate, Mike Huckabee, an avowed evangelical Christian and an ordained minister, escaped similar scrutiny – he was castigated for being a person of faith generally, not specifically.

When asked if his faith would dictate his politics, Mitt Romney’s response was,

Almost 50 years ago another candidate from Massachusetts explained that he was an American running for president, not a Catholic running for president. Like him, I am an American running for president. I do not define my candidacy by my religion. A person should not be elected because of his faith nor should he be rejected because of his faith.

Let me assure you that no authorities of my church, or of any other church for that matter, will ever exert influence on presidential decisions. Their authority is theirs, within the province of church affairs, and it ends where the affairs of the nation begin.

As governor, I tried to do the right as best I knew it, serving the law and answering to the Constitution. I did not confuse the particular teachings of my church with the obligations of the office and of the Constitution – and of course, I would not do so as president. I will put no doctrine of any church above the plain duties of the office and the sovereign authority of the law.²

John F. Kennedy's response was,

I am not the Catholic candidate for president. I am the Democratic Party's candidate for president, who happens also to be a Catholic. I do not speak for my church on public matters, and the church does not speak for me.

Whatever issue may come before me as president – on birth control, divorce, censorship, gambling or any other subject – I will make my decision in accordance with these views, in accordance with

what my conscience tells me to be the national interest, and without regard to outside religious pressures or dictates. And no power or threat of punishment could cause me to decide otherwise.³

During the congressional hearings regarding the seating of Reed Smoot, he was asked, "Suppose that some measure were pending before the Senate here upon which you are called upon to vote and the church through its president or in some other way should direct you to vote in a certain way; what would you do?" Senator Smoot responded,

I would vote just the way I thought was best for the interests of this country without any dictation from the church or anybody representing it in the slightest degree guiding me in casting my vote, because it is not their business. As a matter of fact, neither the church nor anybody representing the church or purporting to represent the church has undertaken in any way to dictate or direct me in the performance of duties as a Senator. I would not submit for a moment to any dictation of that kind.⁴

In Utah, where the vast majority of state legislators are Latter-day Saints, many elected officials must face these challenges every day – they swear an oath of office to support, obey, and defend the Constitution of the United States and the Utah State Constitution and they have voluntarily chosen to live their lives in accordance with their faith. In fact, no serious person of faith, who also takes her citizenship seriously, is immune from either of these influences.

Whenever the leaders of the Church of Jesus Christ of Latter-day Saints speak on matters of civic affairs,

faithful members listen, especially those who are also elected officials. The reasons might not always be personal. There is at least one very prudent political reason to listen to the Church in Utah politics – it is the most powerful political voice in the state. And it is the most powerful political voice in the state precisely because its faithful adherents are eager to follow its counsel.

The most recent opportunity we have to address this relationship is the Church's November 10, 2009 statement before the Salt Lake City Council as it endorsed two nondiscrimination ordinances.

Nobody was more surprised by the Church's statement than I. Nobody in our very substantial network of immediate colleagues at Sutherland knew about it. Of course, a few of our friends did know about it, but were not privy to talk about it and, to their credit, remained faithful to the confidence that was asked of them. Sutherland tries very hard to know about such things – our business is not only to advance ideas in the cause of freedom but also to constructively influence Utah's decision makers and promote responsible citizenship.

Seven weeks earlier, we received a call from a representative in Mayor Becker's office wanting to meet with us about drafts of the proposed ordinances. We met with two of the Mayor's representatives in our main office across the hall. They shared their thoughts with us and we shared ours with them. Subsequently, we released a statement opposing the proposed ordinances and gave our reasons for doing so.

As we wrote in our statement, we encouraged the Mayor's team to "emulate the compromise found sev-

eral years ago on the state 'hate crimes' bill" and "we alternatively recommended that Mayor Becker might choose to propose non-binding resolutions" that could be embraced as a win-win situation. After the ordinances passed unanimously on November 10, Sutherland issued a second statement – this time expressing our disappointment and calling on the State Legislature to overturn them.

The Sutherland Institute is not a church; it is a public policy organization. Its business is not to save spiritual souls; its business is to promote the cause of freedom in Utah. As a conservative think tank, the Institute takes the long-view of policy. It demands it. But it cannot see around corners. As the Institute approaches any issue, it must measure its decisions against its Governing Principles, its collective professional experience, and its conservative traditions, not the least of which is prudence.

Sutherland is not the Church. It does not speak for the Church, or any church. It does not pretend to speak for the Church, or any church, nor does it allow the Church, or any church, to speak for it. Pertaining to the Salt Lake City ordinances, we have received many requests to explain the Church's statement. Friends of ours are sincerely trying to negotiate their faith and their citizenship. Others, not so friendly with us, are simply trying to drive a wedge where they can to diminish the influence of the Institute. In both cases, Sutherland is perceived to have some inside knowledge of the Church's thinking as well as some unknown authority to express that knowledge publicly. We don't.

For our friends sincerely trying to negotiate their faith and their citizenship, I can only tell you what I have

done personally as a Latter-day Saint. First, I have discussed the topic privately with people I admire and respect and whose opinions and counsel I trust. Second, I have read and re-read the Church's statement. Third, I have read and re-read the additional suggested readings listed adjacent to the statement on the Church's web site. And, fourth, I have placed everything I have learned in the context of my own faith and my own understanding. Like you, I've had much to think about.

Historically, the Church risks raising the ire of its critics by speaking out on civic affairs for any one, or combination, of three reasons: a civic matter is a moral issue in which the Church has a deep and abiding interest; the Church seeks to protect its religious freedom, including the right to protect its corporate interests; or, and this reason is not well-known outside of Utah, the Church seeks to protect Church headquarters by protecting the community surrounding Temple Square.

Personally, I believe all of those reasons are factors in understanding the Church's statement to one degree or another. As I mentioned, the Church is in the business of saving souls – and I personally believe the Church's statement addresses this vital concern. The Church always will protect its religious freedom – and I personally believe the Church's statement makes that perfectly clear. Additionally, the Church will go beyond the second mile to keep peace and order around Temple Square and it will do everything it can to build community relationships with local, diverse audiences – and I personally believe the Church's statement achieved this goal.

Personally speaking, I trust that my Church can see around corners that I cannot – and that it will do what

it must to fulfill its mission and protect its interests. On matters of protecting marriage and family, aspects of my life in which I believe deeply, it has never let me down. There is no reason for me to doubt it now.

Sutherland, on the other hand, cannot speak personally. It only speaks professionally and publicly. It speaks collectively as the combined voices of staff, trustees, donors, supporters, and other colleagues – many of whom are Latter-day Saints and some who are not. Certainly Sutherland represents any person throughout the State of Utah who believes in its Governing Principles and the cause of freedom. Sutherland's constituency is citizens of any and all stripes who appreciate and support what it does.

As a matter of public policy, Sutherland remains concerned about the practical legal effects of the ordinances. As a matter of public policy, we can see why every religion would exempt itself from these laws.

We have expressed our concern that these sorts of ordinances represent small but progressive steps on a staircase toward "gay marriage." We cite the precedents of states that have adopted "gay marriage" laws. And yet, in this case, the Church states that these ordinances, as crafted, "do not do violence to the institution of marriage." Of course, we must rely on the Church's opinion in that respect. As a matter of political prudence, Sutherland trusts that the same influence exercised on November 10 will be the same powerful influence in the future that will not permit the Salt Lake City ordinances to do "violence to the institution of marriage."

We remain concerned about the promotion of special rights when special rights are not needed. Sutherland

has previously addressed this question regarding hospital visitation and decisions over medical care, probate rights, and housing and employment protections. Our position on these issues hasn't changed – every adult has the right to enter into a private contract (or not) with another adult and, when it comes to basic human rights, we see everyone as a human being. What we do not see is the moral equivalence of every human choice or action. A free society does not discriminate against human beings; it does, however, discriminate against human actions – some human actions are unreasonable or inappropriate in any given circumstance and a free society is entitled to proscribe or discourage them, just as we are entitled to elevate good behavior.

We remain concerned about the conflict between the ideal of nondiscrimination and the very practical aspects of owning and renting private property. We are equally concerned about the conflict between the ideal of nondiscrimination and what that means for at-will employment within a free market and a right-to-work state. And, we are vitally concerned about how the ideal of nondiscrimination conflicts with the freedom of association.

Political prudence is a hallmark of the authentic conservatism that Sutherland embraces. We believe what Russell Kirk expressed: “What particular principles conservatives emphasize during any given time will vary with the circumstances and necessities of that era”⁵ – as well as this statement,

Any public measure ought to be judged by its probable long-run consequences, not merely by temporary advantage or popularity. Liberals and radicals, the conservative says, are imprudent: for they dash at their objectives without giving

much heed to the risk of new abuses worse than the evils they hope to sweep away...Providence moves slowly, but the devil always hurries. Human society being complex, remedies cannot be simple if they are to be efficacious.⁶

A friend recently shared some comments with me from Abraham Lincoln that define political prudence. Responding to his friend, newspaper publisher Horace Greeley, who was concerned about the seeming appearance that Lincoln was shrinking from his commitment to end slavery, Lincoln wrote,

As to the policy I “seem to be pursuing” as you say, I have not meant to leave anyone in doubt. I would save the Union. I would save it the shortest way under the Constitution. The sooner the national authority can be restored, the nearer the Union will be “the Union as it was.” If there be those who would not save the Union, unless they could at the same time save slavery, I do not agree with them. If there be those who would not save the Union unless they could at the same time destroy slavery, I do not agree with them. My paramount object in this struggle is to save the Union, and is not either to save or destroy slavery. If I could save the Union without freeing any slave I would do it; and if I could save it by freeing all the slaves I would do it; and if I could save it by freeing some and leaving others alone I would also do that. What I do about slavery, and the colored race, I do because I believe it helps to save the Union; and what I forbear, I forbear because I do not believe it would help to save the Union. I shall do less whenever I shall believe what I am doing hurts the cause, and I shall do more whenever I shall believe doing more will

help the cause. I shall try to correct errors when shown to be errors; and I will adopt new views so fast as they shall appear to be true views.

I have here stated my purpose according to my view of official duty; and I intend no modification of my oft-expressed personal wish that all men everywhere could be free.⁷

We share Lincoln's sentiments, especially as they pertain to protecting marriage and family in Utah today.

It is this sense of political prudence that leads Sutherland to revise an earlier recommendation. We call on the State Legislature to build upon constructive elements within the Salt Lake City nondiscrimination ordinances during the upcoming legislative session. Specifically, we call on the State Legislature to expand the religious exemption to include the constitutional rights of a church's adherents.

As a matter of political prudence, Sutherland has reflected on the Church's statement, and its direction to review the document "The Divine Institution of Marriage" wherein its consistent "prior position" can be found. Therein, we read that the Church does not mind the array of special rights "so long as these do not infringe on the integrity of the family or the constitutional rights of churches and their adherents to administer and practice their religion free from government interferences."

In legislative terminology, to "perfect" is to offer a friendly amendment that only serves to make a legislative proposal better. Perfecting the Salt Lake City nondiscrimination ordinances to protect a religion's adherents would make it better. It would keep the re-

ligious freedom of all Utahns on a level playing field. Adding individual adherents to the religious exemption honors the conclusion that these ordinances are both "fair and reasonable." After all, if a gay employee or gay tenant can unilaterally invoke the protections of these ordinances, unconditionally, it is only fair and reasonable that a person of faith should be allowed to unilaterally invoke the same law's protections, unconditionally, just as that person's church is allowed to do.

As I mentioned earlier, when our Sutherland staff met with two of Mayor Becker's representatives in September to go over the drafts of the ordinances, we recommended to them that they might follow the example of how the state "hate crimes" law was crafted. It passed unanimously and was a win-win for everyone involved. Our recommendation this evening not only follows that example by embracing the spirit and letter of the Church's statement, it would make our laws better. It would make these ordinances a win-win for everyone.

As we continue to improve our understanding of the relationship between church and state – whether the issue is illegal immigration, tax rates, or nondiscrimination ordinances – let's remember that all public policies are matters of the state. Certainly most religious denominations understand this distinction. You get this sense, too, from the Church's statement – the religious exemption is a clear indication that the specific language of the ordinances is policy, not doctrine.

There is a big difference between protecting religious freedom as a matter of public policy and using public policy to subordinate religious freedom because you disagree with the decisions that this freedom allows. The insistence in some quarters to expose religious

freedom to the ideology of political-correctness is a sign, to me anyway, that the state has become someone's religion.

People of faith and their religious institutions have a right in a free country to express their opinions about matters that affect their religious freedom. Salt Lake City's nondiscrimination ordinances clearly infringe on religious freedom. Were it not so, there would be no need for the religious exemption. It is only "fair and reasonable" to preserve these same protections for all people of faith in Utah.

Religion is a redeeming influence in any free society. Expanding the public dialogue over religion makes us more intelligent, more compassionate, human beings. The fight over "the separation of church and state" will continue. Personal dilemmas for people of faith will continue as they earnestly strive to integrate their faith and citizenship. But this broader fight and these personal dilemmas are healthy in a free society. Like many of you, Sutherland recognizes the strength of religion for human progress and enjoys the privilege of seeing faith play out to the benefit of Utah citizens each and every day.

Thank you for joining us this evening.

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("In Between Church and State: A Case Study on Salt Lake City's Nondiscrimination Ordinances" is a speech presented on December 10, 2009, by Paul T. Mero at the *Religious Freedom Forum: Negotiating Church & State in Utah* conducted by the Sutherland Institute in Salt Lake City, Utah.)

ENDNOTES

1. "Religion as the moral compass of human progress" is one of the seven Governing Principles of Sutherland Institute. <http://www.sutherlandinstitute.org/sitePages/?section=aboutus&page=governingprinciples>
2. Willard Mitt Romney, "Faith in America," an address delivered on December 6, 2007. At the time, Romney was the former governor of Massachusetts and a Republican candidate for the office of President of the United States. In the speech, given at the George H.W. Bush Presidential Library in College Station, Texas, Romney discussed his views on religious liberty, religious tolerance and how faith would inform his presidency. <http://www.npr.org/templates/story/story.php?storyId=16969460>
3. John F. Kennedy, "Address to the Greater Houston Ministerial Association," presented on September 12, 1960. A member of the U.S. Senate, Kennedy was a candidate for the American presidency. He delivered the speech to a group of Protestant ministers, on the issue of his religion. At the time, many Protestants questioned whether Kennedy's Roman Catholic faith would allow him to make important national decisions as president, independent of the church. <http://www.npr.org/templates/story/story.php?storyId=16920600>
4. An excerpt from *Testimony of Important Witnesses as Given in the Proceedings Before the United States Senate in the Matter of the Protest Against the Right of Hon. Reed Smoot, a Senator from the State of Utah, to Hold His Seat*, Salt Lake City, UT: Salt Lake Tribune Publishing Company, 1905, 5.
5. Russell Kirk, "Ten Conservative Principles," *The Politics of Prudence*, Wilmington, DE: Intercollegiate Studies Institute, Inc. (ISI), 2004, 2nd edition, 17.
6. *Ibid.*, 20.

7. Abraham Lincoln, letter to Horace Greeley, August 22, 1862. *The Collected Works of Abraham Lincoln*, Springfield, IL: The Abraham Lincoln Association, 1953, 388-389. An abolitionist, publisher of the *New York Tribune*, and a friend of Lincoln, Greeley could not understand why Lincoln had seemingly shifted his focus away from abolition and toward preserving the Union.



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