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UP IN SMOKE

No, Jeff Sessions, there isn't a war on religion

While announcing the formation of his Religious Liberty Task Force, Attorney General Jeff Sessions portrayed an America at war with religion. He described a "dangerous movement" that is "eroding our great tradition of religious freedom."

In Sessions' dystopian America, morality can no longer be a basis for law, nuns are ordered to buy contraceptives, and evangelical bakers are forced to celebrate same-sex marriages. It's only a matter of time before we start throwing Christians to the lions.

Sessions is correct that there is a dangerous movement afoot. But it's not a movement to persecute religious believers. Instead, it's a movement by religious zealots to impose their values on the rest of society.



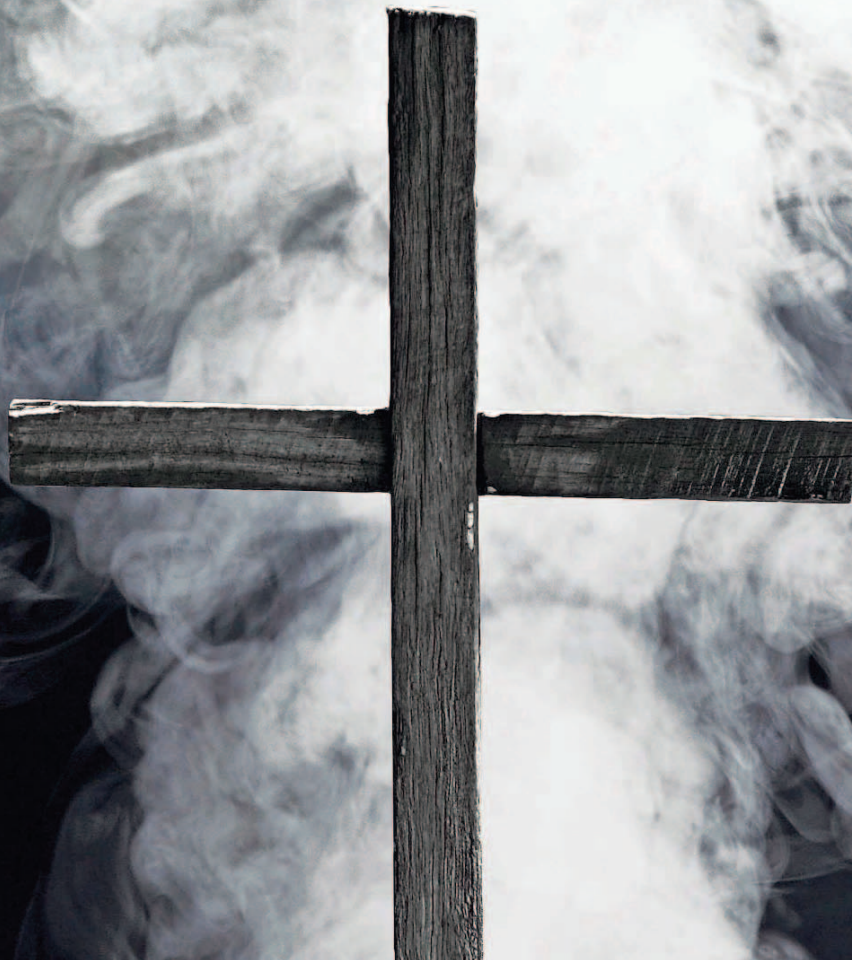
Your Turn
Alan Garfield
Guest columnist

Let's look at the facts.

First, is it true, as Sessions said, "that morality cannot be a basis for law?" Hardly. What the Supreme Court did say – when it struck down a law criminalizing private, consensual homosexual sex – is that a law cannot be based solely on religious morality. Instead, it must have a secular purpose.

For example, the government cannot outlaw eating cheeseburgers simply because Jewish law says that cheeseburgers are not kosher. Without a secular purpose for such a law, it would be a bald attempt to impose Jewish religious morality on everyone else.

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That doesn't mean our society can't regulate immoral behavior. We can and do, for instance, punish murder and theft. But it's not because the Ten Commandments forbid these acts – that would be a religious reason. It's because there are legitimate secular justifications for these laws (i.e., to protect people's lives and property).

Does Jeff Sessions really want to base our nation's laws on religious morality? If so, that would make America more like the Islamic Republic of Iran. I suspect most Americans would prefer a country that, unlike Iran, is not governed by religious law.

Let's next consider Sessions' second contention about "nuns ordered to buy contraceptives."

That does sound nasty. It's just wildly inaccurate.

It's true that the Affordable Care Act (also known as Obamacare) requires employers to provide health insurance for their employees, which includes contraceptive care for women. However, Obamacare regulations specifically allowed religious nonprofits – such as the "Little Sisters" nursing homes – to opt out of providing contraceptive coverage.

The nuns running these homes simply had to fill out a form indicating their religious objection. But the nuns refused.

They said that doing this clerical task violated their faith because it triggered a process by which the employees would receive contraceptive care, even if the nuns no longer had to pay for it.

That might seem like religious oppression to Jeff Sessions. But most people would see it as a generous attempt by government to accommodate the nuns' religious beliefs.

Which leads to Session's third contention: "We've all seen the ordeal faced so bravely by Jack Phillips," the evangelical Christian baker from Colorado who refused to design a wedding cake for a same-sex couple.

First, let's not forget that Phillips won at the Supreme Court. His case was sent back to the lower courts because the justices found evidence that Colorado civil rights commissioners had discriminated against Phillips because of his religious beliefs. The Court never reached the core question of whether the government could require a baker to make a wedding cake for a same-sex couple.

Admittedly, it sounds awful for the government to force someone to violate his faith. But what Sessions failed to mention is that the Constitution has never given religious believers a "get-

out-of-jail free" card to dodge any law that conflicts with their religious practice.

Think about it. Should religious believers be able to engage in human sacrifice, use hallucinogenic drugs, marry off their pre-pubescent daughters, perform female genital mutilation, or participate in polygamous marriages simply because their religions tell them to do so?

Conservative Justice Antonin Scalia said it would be "courting anarchy" to allow people to be exempt from any law that conflicts with their religion. Doing so, he said, would make every religion "a law unto itself."

It's true that our society often chooses to exempt religious believers from laws that would burden their religion. But it is equally true that our society frequently decides that laws further a sufficiently compelling interest that no one should be exempted.

Anti-discrimination laws are a case in point. When, in 1983, Bob Jones University officials told the Supreme Court that its religious mission required them to expel any students that engaged in interracial dating, the justices sent them packing. Fighting discrimination was too important a value to allow any exemption from the law.

Some people think that the same should be true for laws that forbid discrimination against gays and lesbians.

If our society won't allow Jack Phillips to deny service to an interracial couple, why should he be able to deny service to a gay couple?

No one is making Phillips marry a person of the same sex, and it's a stretch for Phillips to say that people will think that he personally endorsed every union for which he bakes a cake.

There is no war on religion in America. Certainly the lawsuits Attorney General Sessions cited as evidence for this proposition are unpersuasive.

In fact, it is exactly because the U.S. Constitution so rigorously keeps religion and state separate that religious practice has been free to flourish in America. A recent Pew study confirms that "Americans are far more religious than adults in other wealthy nations."

If any war is going on, it's being waged by religious zealots who want to impose their religion's values on the rest of society. If they can't use contraceptives, neither should anyone else. If they can't marry someone of the same sex, the rest of society shouldn't either.

The religious right wants to be the American version of the Iranian morality police. As someone who has sworn to uphold the Constitution, Jeff Sessions is obligated to frustrate their efforts, not facilitate them.

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