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To the People of Iceland:

In addition to the possible defects, namely the environmental rights previously enumerated, that appear to be in the present constitution, there are others of no less importance that need to be discussed, specifically, the restrictions on religious freedom caused by the establishment of an official state religion.

A constitution both frames and reflects the political consciousness in a society. The exercise of political freedom coincides with a constitution;¹ constitutional regimes are constantly assimilated to virtuous forms of power. Yet it does not mean that the situation might not be improved and that things have to remain stable and inflexible. On the contrary, either a constitution is vague enough so that it is possible to comprehend things from a different contemporary perspective whenever it is required, or it might be amended. Amending only permits some minor changes when the wording is already precise. The English philosophers Thomas Hobbes and John Locke in the 17th century and the French philosopher Jean-Jacques Rousseau in the 18th century defined a constitution as a social contract between the government and the people of a country. They laid down the solid foundations of modern constitutionalism. This contract involves retaining certain *natural rights*. Among these rights, today, an essential one is freedom of religion. Freedom of religion is developed in Articles 62, 63, and 64 of the present charter. In the case of the present constitution, it enables an amendment by law enacted by Althingi as far as freedom of conscience is concerned that is not embodied by a state-church separation.

In a few European countries there is still a state church—the Anglican Church in England is a known case—which is clearly contrary to the liberal principle of the separation of church and state. Actual interventions by religious organizations in the life of England are minimal and politicians tend to keep their beliefs to themselves. Yet a 2001 Home Office study suggested that the establishment status of the Church of England causes “religious disadvantage” to other religious communities.² In that country’s monarchical system the Crown’s legitimacy stems from divine rights, so the separation of church and state is not a core element of discussion. In the case of a Republic, true freedom of religion is essential.

The relation between religion and politics in the Nordic countries, including Iceland, has been reshaped in the past decade. Both Norway and Sweden (in 2000 and 2012 respectively) formally separated the notions of state and church, following Finland’s example from 1919.

The national organization of religion in Iceland is defined by Article 62: “The Evangelical Lutheran Church shall be the national church of Iceland and, as such, it shall be supported and protected by the state. This may be amended by law.” Because a constitution is a direct mandate from the people, it is essential to gather and represent diversity and pluralism. Religious tradition in Iceland is not monolithic. The independence of religion is a requirement in a democratic republic, which is only made entirely effective when the national government is not granted consti-

¹ C. Montesquieu, *The Spirit of Laws*, 1750.

² Home Office Research Study 220, *Religious discrimination in England and Wales*:
<http://www.religionlaw.co.uk/reportad.pdf>

tutional authority to regulate religion. Cooperation in the defense of fundamental liberties is more important than ever. Indeed, religious extremism and fundamentalism are increasingly present worldwide. Faith-based actions cause harm and intend to disunite. Therefore, protecting a society from the disruptive influence of faith requires all parties from religious organizations to private individuals to collaborate in an effort to protect civil liberties from obscurantism.

The absence of conformity to the complete freedom of religion in Iceland, through a constitutional separation, dates from 1944 and was inherited from a model applied in a monarchical system. The main features of a democratic republican state require its constitution to differ from such a system in many aspects, including the fundamental principle of independent autonomy and the absence of interference between the state and church. The principles of natural rights and rationalism, inherited from the Enlightenment period, shaped the proper relationship between religion and government in modern republican societies. Religion is a private matter for each individual and the state must be kept at a distance for everyone's well-being. A dialogue of mutual respect must be in place to rewrite a long-established relation. Both the state and the church must be sovereign for their own sake. As John Dickinson, one of the American founding fathers pointed out in 1768:

Religion and Government are certainly very different Things, instituted for different Ends; the design of one being to promote our temporal Happiness; the design of the other to procure the Favour of God, and thereby the Salvation of our Souls. While these are kept distinct and apart, the Peace and welfare of Society is preserved, and the Ends of both are answered. By mixing them together, feuds, animosities and persecutions have been raised, which have deluged the World in Blood, and disgraced human Nature.³

But this is not all: what at first sight may seem a positive for the church is in reality a possible threat to its development. Indeed, freedom to choose, to adhere or not, is what differentiates religions and sects. Only a constitutional "wall of separation between church and state"⁴ will guarantee this fundamental right. In the landmark "*Memorial and Remonstrance against Religious Assessments*" James Madison argued that the essentially private and voluntary nature of religion should not be subject to government in any manner.⁵ Madison argued that religious lib-

³John Dickinson, *Pennsylvania Journal*, May 12, 1768, reprinted in *The Founders on Religion*, ed. James H. Huston (Princeton, NJ: Princeton University Press, 2005), 60–61.

http://dla.library.upenn.edu/dla/pacscl/detail.html?id=PACSCL_LCP_LCPDickinson

⁴Thomas Jefferson, letter to the Danbury Baptist Association in 1802. This is a transcript of the final letter as stored online at the Library of Congress: <https://www.loc.gov/loc/lcib/9806/danpre.html>

⁵See <http://fas-history.rutgers.edu/clemens/religion.html>

1. Because we hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the manner of discharging it can be directed only by reason and conviction, not by force or violence." The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men is a duty towards the Creator. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. . . .

2. Because if Religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the co-ordinate departments; more neces-

erty is an inalienable right and placed freedom of conscience as the centerpiece of all civil liberties. He noted that man was first subject to God and then to civil society. Legislative bodies as they derive their power from the civil society, thanks to the system of representation, are “tyrants” whenever they try to surpass their authority. Indeed, because they receive their power from the civil society, they do not have the authority to regulate people’s religious beliefs and the enacted rules lack of legitimacy. Constitutional support for not only the establishment of a single church, but also taxing the people for any and all churches creates issues and tension. The principle of state support and protection of a national church in a modern parliamentary democratic republic is obsolete.

It is a reality that religion is part of Icelandic history and of Icelandic society today. Article 64 refers to the state collection of special religious membership taxes from everyone regardless of religious affiliation. Nonbelievers or atheists also have to financially contribute in conformity with the principle of equality among all Icelandic citizens.

A loosening of the state and church relationship has already taken place but is not significant. Indeed, following the 1997 law on the National Church, the Ministry of Juridical and Church Affairs was renamed the Ministry of Juridical and Human Rights, and new organizations have recently been incorporated into the system of religious tax levied and distributed by the state.

Before the 2009 Regulation for the University of Iceland no. 569–2009, the tax payment for those who were not members of a registered religious organization was directed at the University of Iceland. Some voices furiously stated that it was used to finance clerical members’ training, and that it finally had the same destination, the church. Nowadays, people who are not registered as adhering to a religious organization, or who adhere to one which is not registered, and is therefore not officially recognized, have to pay the equivalent of the church tax to the state treasury.

The liberty of religion that includes the right to support, to oppose, to be perplexed shall also be the case with religious taxes. There are endless positions on religion and finance. Even though one is free to choose which religious coffer into which one’s tax is paid, there remains the problem of those who do not adhere to any religion. To avoid the confusion that unavoidably results from this situation, a constitutional change is essential. The financing is not fair and equal for the Icelandic people as it ought to be. It is high time there is more balance and fairness.

From an ethical and human rights perspective, this situation is puzzling. Indeed, it permits the development of one of the main religious issues that still exists within this system in Iceland: the absence of an alternative. Therefore, it is necessary to adopt a new constitution free from a church incorporation and deprived of official ties between church and state.

sarily is it limited with regard to the constituents. The preservation of a free Government requires not merely, that the metes and bounds which separate each department of power be invariably maintained; but more especially that neither of them be suffered to overleap the great Barrier which defends the rights of the people. . . .

3. Because it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of Citizens, and one of the noblest characteristics of the late Revolution. . . . We revere this lesson too much soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?”

People should not be taxed either for an established church that they do not support, or even to support their own church. Religion should be left to the devotion of its adherents for its own good, thus being fully protected by the state, and for common social harmony. Nevertheless, the root of this system is highly questionable and completely unequal and unfair because it implies a duty on Icelandic taxpayers to support a religious cause. This religious orientation implemented by the state is contrary to the pure doctrine of freedom of religion, the right of conscience, in a democratic republic.

In the past few decades, immigration has significantly diversified Iceland. In 2017, the country recognizes nearly 50 religious organizations.⁶ This pluralism correlates with an increasing number of citizens opting not to adhere to a religious organization.⁷ The secularization process is widely changing the religious landscape and needs to be taken into account.

Yet the collaboration model used in Iceland signifies that the church benefits from certain privileges.⁸ This does imply that the Icelandic system does not currently provide conditions for each individual and religious group to enjoy the entire freedom to worship or not, according to the dictates of individual conscience, free from interference either originating from the rein of government or from pressures exercised by other sources. In fact, the constitutional separation of church and state is more valuable than ever, in a time when new challenges such as an increasing religious diversity, a new perception of religion which disconnects people and threats from fundamentalism, are presented. Indeed, as fundamental liberties such as freedom of religion are increasingly in jeopardy across the globe, a system of respect and a neutrality approach, by a separation of state and church, must be embodied in Iceland's constitution. By embedding this idea, and the accompanying notion of full freedom of religious exercise in the constitution, a privilege would be transformed into a protected right. It is now the right time.

—CIVIS

⁶See “Populations by religious and life stance organizations 1998-2017.

http://px.hagstofa.is/pxen/pxweb/en/Samfelag/Samfelag_mening_5_trufelog/MAN10001.px/table/tabViewLayout1/?rxid=52d708b0-e7e8-49b7-80f1-e8b419b5af06

⁷The number of citizens supporting no religious organizations was 5,591 in 1998. This amounted to 20,500 in 2017. The increase has been regular for the past two decades. See:

http://px.hagstofa.is/pxen/pxweb/en/Samfelag/Samfelag_mening_5_trufelog/MAN10001.px/table/tabViewLayout1/?rxid=99d28aa2-c768-47ad-b0bf-a79033ff843e

⁸Hjalti Hugason, “A Case Study of the Evolution of a Nordic Lutheran Majority Church,” in *Law and Religion in the 21st Century—Nordic Perspectives*, ed. Lisbet Christoffersen, Kjell Å. Modéer, and Svend Andersen (København: Djøf Publishing, 2010), 107–22.