The 2026 Report by the Task Force to Eradicate Anti-Christian Bias

Pursuant to Executive Order 14202

Eradicating Anti-Christian Bias within the Federal Government

April 30, 2026

Executive Summary:
Findings of the Task Force to Eradicate Anti-Christian Bias.

At the start of this Administration, President Donald J. Trump signed Executive Order 14202, *Eradicating Anti-Christian Bias*, highlighting decisions made by the Biden Administration that evinced discriminatory treatment of Christians.[1] He established the Task Force to Eradicate Anti-Christian Bias to investigate those concerns; to identify where religious discrimination may have informed the Biden Administration's policies, practices, or decisions; and to take immediate steps to rectify weaponization of government and unlawful conduct affecting Christians. Led by the Department of Justice (DOJ), the Task Force consists of seventeen principals from departments and agencies across the federal government. This report compiles the Task Force's findings to date and summarizes what its members are doing to detect and eliminate anti-Christian bias. By addressing anti-Christian bias and religious discrimination directly, Americans can make religious discrimination unthinkable for all faiths.

Our Nation's origin and system of government bear the imprint of a Christian worldview and ethic, even as its laws protect religious pluralism. Christian beliefs, in conjunction with contemporary political thought and economic realities, influenced colonial settlers in their decision to overthrow tyranny and pursue independence. After the Revolutionary War, Christians then informed the structure and contents of the United States Constitution, its amendments, and contemporaneous state constitutions.

But, when Christian beliefs about morality and human nature conflicted with the Biden Administration's views, religious rights often suffered. The Biden Administration generally tolerated religious beliefs that were privately held but zealously pursued actions to limit Christians' ability to *act* in accordance with their faith. This affected matters of deep personal importance to nearly every American: life, family, marriage, and self-identity.

I. ANTI-CHRISTIAN BIAS AT THE FEDERAL LEVEL

The Biden Administration's policies regularly clashed with a Christian worldview and burdened traditional religious practices. These conflicts frequently arose over abortion, gender ideology, and sexual orientation. Ultimately, the Biden Administration penalized Christians who lived in accordance with their beliefs.

A. Enforcement Actions

Key Finding 1: The Biden DOJ pursued aggressive prosecutions against non-violent, pro-life, Christian demonstrators under the Freedom of Access to Clinic Entrances (FACE) Act but responded less aggressively to violent attacks against pregnancy resource centers.

[1] Exec. Order No. 14202, Eradicating Anti-Christian Bias, 90 Fed. Reg. 9365 (Feb. 6, 2025).

As detailed in the recent DOJ report, "The Biden Administration's Weaponization of the Freedom of Access to Clinic Entrances Act,"[2] the Biden DOJ operated as an enforcement arm for abortion non-governmental organizations (NGOs), especially National Abortion Federation, Planned Parenthood, and Feminist Majority Foundation. The Biden DOJ was in routine contact with these NGOs and the abortion clinics they represented but mostly disregarded pro-life groups. In most prosecutions, abortion NGOs alerted the Biden DOJ to pro-life activities and gathered evidence at DOJ's request. Abortion NGOs prepared dossiers on Christian, pro-life advocates, including photographs and personal information about the advocates' children. The NGOs also alerted the Civil Rights Division to their protests, rallies, and social media posts, so that the Biden DOJ could search for chargeable offenses.

The Biden DOJ knowingly withheld evidence that defense counsel requested in order to prepare an affirmative defense for at least one pro-life defendant. The Biden DOJ falsely claimed to not maintain the requested evidence. Biden DOJ prosecutors also tried to screen out jurors based on their Christian beliefs. The prosecutors privately complained when a FACE case was assigned to a "very Catholic magistrate" judge who was "very particular about the bond conditions and not infringing on the [defendants'] first amendment rights." They privately mocked Christian pro-life views as "culty" and lambasted defendants in open court for following the guidance of their beliefs.

Finally, the Biden DOJ pursued more severe charges and harsher sentences for peaceful pro-life defendants than violent pro-abortion defendants. The Biden DOJ requested an average sentence of 26.8 months for pro-life defendants, compared to 12.3 months for pro-choice defendants.

Key Finding 2: The Biden Federal Bureau of Investigation (FBI) investigated, monitored, tracked, and scrutinized traditional Catholics who had engaged in no criminal misconduct. FBI's Richmond, Virginia, Field Office was at the forefront of this effort. It justified its actions through misplaced reliance on baseless allegations from the Southern Poverty Law Center and the religious affiliation of a single law enforcement target who happened to identify himself as a "radical traditional Catholic." In response, the Richmond Field Office conducted a low-level investigation of the target's local church and began to consider traditional Catholics as potential violent extremists or domestic terrorists based on their preferred popes, devotion to the Traditional Latin Mass, and views on abortion, immigration, and human sexuality.

Key Finding 3: The Biden Internal Revenue Service (IRS) investigated churches because of what their pastors preached and Christian organizations because they applied biblical teachings to daily life. Churches and Christian non-profits have alleged that the Biden IRS failed to apply the Johnson Amendment in a viewpoint-neutral manner, appearing to investigate Christians whose religious values aligned with conservative political views, while appearing to ignore open endorsements of liberal candidates at other churches. In one matter, the Biden IRS denied a Christian organization's application for tax-exempt status because its "[B]ible teachings are typically affiliated with the [Republican] party and candidates. This disqualifies you from exemption under IRC Section 501(c)(3)."

[2] U.S. Dep't of Just., The Biden Administration's Weaponization of the Freedom of Access to Clinic Entrances Act (Apr. 14, 2026), https://perma.cc/EV2Q-ZGQX.

Key Finding 4: The Biden Department of Education (ED) focused its enforcement actions against Christian universities, levying enormous fines that dwarfed the penalties for Larry Nassar's and Jerry Sandusky's sexual assaults. The Biden ED fined Grand Canyon University $37.7 million over tuition cost reporting. Then-Secretary of Education, Miguel Cardona, stated ED is "cracking down" on the university "not only to shut them down, but [also] to send a message not to prey on students." Federal courts and Arizona regulators found no such issues. The Biden ED also investigated Liberty University under the Clery Act, a law that requires annual security reports about campus crime statistics. Liberty University ultimately paid a $14 million fine. These fines dwarfed the ones levied against Pennsylvania State University ($2.4 million) for assistant football coach Jerry Sandusky's serial child molestation and against Michigan State University ($4.5 million) for physician Larry Nassar's sexual assault of hundreds of athletes.

Key Finding 5: The Biden Health and Human Services (HHS) and DOJ scaled back ongoing enforcement efforts to vindicate conscience rights, withdrawing a notice of violation against the University of Vermont Medical Center after it coerced a Christian nurse into participating in an abortion despite her religious objections. The Biden DOJ viewed this matter as an immediate priority. The Biden HHS ultimately resolved the matter through "technical assistance" rather than enforcement. But the practical effect for the complainant was the same: A Christian nurse who was coerced into performing an elective abortion did not receive a meaningful federal remedy, and the contours of conscience protections in such circumstances were left unresolved.

B. Federal Policy

In many instances, the Biden Administration made rhetorical overtures to religious protections, only to sideline those rights when they competed with the Biden Administration's goals regarding sex, marriage, and abortion. The Biden Administration's policies in these arenas often demonstrated that Christians were free only to *hold* religious beliefs, not *act* on them. The effect was government-driven coercion, forcing Christians with traditional biblical views to choose whether to live in accordance with their faith or risk violating federal law.

Key Finding 6: The Biden Administration was one of the loudest supporters of a congressional proposal that would eliminate religious protections for Christians and other religions that hold traditional social values. Although it was not enacted, the Biden Administration's sustained advocacy revealed how willing the Biden Administration was to eradicate religious rights to promote other policy goals.

Key Finding 7: Even though Congress rejected a similar attempt, the Biden Administration tried to mandate the adoption of its views on sexual orientation and gender ideology, with limited religious exceptions. The Biden Administration did so through executive action based on an overbroad reading of *Bostock v. Clayton County*. After the *Bostock* opinion was issued, but while President Trump was still in office, DOJ put out a memorandum explaining that *Bostock* still required DOJ to respect employees' religious rights. Career attorneys balked and requested that the incoming Biden DOJ rescind the memorandum immediately to "boost employee morale." The Biden DOJ quickly replaced the memorandum with an incorrect and expansive application of *Bostock* that applied the ruling to sex-based discrimination in federally funded schools and sports

under Title IX. The Biden DOJ also considered requests for religious exemptions as harmful conduct to be regulated and pushed its incorrect *Bostock* interpretation in amicus briefs, even though federal courts repeatedly rejected it.

Other federal agencies employed similar tactics, to the detriment of Christians in numerous employment fields. The Biden HHS embedded its expansive reading of *Bostock* into guidance memoranda regarding "gender affirming care for minors," which many providers interpreted as a requirement with limited or no religious exemptions. When courts made clear that HHS must offer religious accommodations, HHS pivoted to a burdensome case-by-case analysis, in which it could consider any perceived harm inflicted by religious exemptions on third parties—a process that could appear to offer illusory protection to those seeking to act in accordance with their faith. The Biden Equal Employment Opportunity Commission (EEOC) likewise dismissed sincerely held religious beliefs about sexual orientation and gender identity as "discrimination in hiring . . . cloaked as religious practice." It adopted similar guidance for workplaces, requiring employers to provide access to bathrooms and locker rooms based on gender identity, without meaningful exceptions. The Biden ED, Department of Housing and Urban Development (HUD), Department of Labor (DOL), and the U.S. Department of Agriculture (USDA) each implemented similar policies, coercing compliance through threats of losing access to government programs and benefits.

Key Finding 8: Because it viewed traditional Christian values as harmful to children with gender dysphoria or same-sex attraction, the Biden HHS took multiple steps to prevent Christian families from living out their religious beliefs. In 2022, the Biden HHS issued guidance memoranda and a final rule, preventing foster children from being placed with Christian foster families or Christian foster agencies that, because of conflicts with their faith, insufficiently affirmed the Biden Administration's views on sexual orientation and gender ideology. State licensing agencies then began to discriminate against Christians in foster family licensing, placements, and adoption processes. The Biden HHS's guidance provided a foothold later relied on by some state licensing agencies. As a result, Christian foster families who had provided safe and loving placements for children in need sometimes lost their licenses, in some cases, dissolving foster families that had been in place for years.

The Biden Administration also took steps to limit Christian families from seeking therapy from likeminded therapists on matters of sexual orientation and gender ideology. Painting with a broad brush, the Biden Administration denigrated and attempted to outlaw religious counseling based on traditional views, deeming such approaches to be dangerous.

Key Finding 9: The Biden Administration took a dismissive approach to conscience rights and religious accommodation rights on the issue of abortion. The Biden HHS issued guidance to healthcare providers on their obligations to provide abortions under the Emergency Medical Treatment and Labor Act. The guidance asserted obligations regardless of state laws and did not mention conscience protections available to individual providers. The EEOC interpreted the Pregnant Workers Fairness Act to require employers to accommodate an employee's abortion, regardless of whether doing so would conflict with an employer's religious rights.

Key Finding 10: The Biden Administration sidelined Christians in favor of their preferred constituencies. On Good Friday, President Biden issued a proclamation announcing "Transgender Day of Visibility," which was to be celebrated on Easter Sunday. Additionally, numerous federal agencies excluded Christians from their outreach. At the Department of Homeland Security (DHS), only two of sixty-one faith-based engagements involved Christians. At the Biden DOJ, the Civil Rights Division issued a brochure that excluded Christians from the list of possible victims of actionable discrimination. At DOL, the Biden Administration replaced its faith office with a Diversity, Equity, and Inclusion office. And American embassies around the world routinely displayed pride flags. This occurred even at the U.S. Embassy to the Holy See, which is located in Rome and leads U.S. diplomatic relations with the Catholic Church.

Key Finding 11: The Biden Administration ignored human rights crises that affected Christians. The Biden State Department removed Nigeria from its list of countries of particular concern for religious freedom, despite acknowledging ongoing murder, kidnapping, and persecution of Nigerian Christians.

Key Finding 12: The Biden Administration denied Christians and faith-based organizations equal access to government services, benefits, and programs. In some instances, this refusal was based on the applicant simply being Christian. In others, it was based on the applicants' Christian views. The Biden Administration undertook a multi-agency rulemaking that broadly burdened faith-based organizations' access to federal funds and public programs. Under the Biden Administration, the Federal Emergency Management Administration (FEMA) and Small Business Administration (SBA) limited Christians' access to federal economic relief, disaster assistance, security grants, and food programs.

C. Adverse Employment Actions

Key Finding 13: Biden agencies' religious accommodation process often functionally penalized Christians who sought to exercise their religious rights. As part of its response to the COVID-19 pandemic, the Biden Administration mandated vaccines for federal employees and contractors, and DOL's Occupational Safety and Health Administration issued a similar mandate for many private employers. The Biden Administration promised a case-by-case evaluation of religious accommodation requests but, for many, this promise was illusory.

The Task Force obtained data from numerous agencies, as well as personal testimonies and third-party survey data from federal employees who sought religious accommodations. The results are striking and evince the Biden Administration's general reluctance to extend First Amendment rights to religious-based conduct. Across federal agencies, requests for religious accommodations to COVID-19 vaccine mandates were summarily denied or remained pending indefinitely.

The Task Force compiled several case studies of the types of adverse employment actions taken against employees who requested religious exemptions. Some saw their promotion opportunities rescinded or lost security clearances. Some were demoted or deemed ineligible for promotion. Others were reprimanded, denied pay and benefits, prohibited from completing necessary training, and even physically banned from the office or outdoor work activities.

D. Limitations on Religious Expression

Key Finding 14: The Biden Administration regulated and suppressed religious speech that it did not like and curtailed Christians' ability to jointly worship and study the Bible. When groups of Christian pro-life students and parents visited Washington, D.C., to participate in the 2023 March for Life, two federally managed museums on the National Mall asked them to remove their religious and pro-life attire or leave the premises. In 2023 and 2024, the National Park Service denied a Catholic organization access to a national cemetery where it intended to hold a quiet Memorial Day mass to honor fallen soldiers. In the DOL Jobs Corps program, a Christian student was repeatedly prohibited from holding a voluntary Bible study outside of school hours. And in 2023, a Catholic hospital in Oklahoma was told to extinguish the flame of a religious candle or risk losing its participation in Medicare and Medicaid, including Children's Health Insurance Program funding.

II. ANTI-CHRISTIAN BIAS IN BROADER CONTEXT

Though this Report primarily focuses on the anti-Christian bias propagated by the federal government during the Biden Administration, Christians and other people of faith also face bias from state and local governments and the private sector. With limited interference from the Biden Administration—and sometimes with its tacit support—state governments and private entities have implemented numerous policies that harm people of faith. In listening sessions, the Task Force repeatedly heard examples of anti-Christian bias and areas where the First Amendment and statutory promises of religious liberty have not been realized in American communities. This report briefly surveys the types of religious discrimination or unequal treatment impacting Christians through COVID church closures, efforts to force out Christian charities via zoning enforcement, limitations on Christians' parental rights, coercion of particular viewpoints in public education, and coercion of certain healthcare coverage with limited or no religious exceptions. The Task Force concludes its findings by assessing the harms of anti-Christian bias, which extend far beyond individual Christians and touch broader American communities of all kinds.

III. CURRENT EFFORTS AND NEXT STEPS

The Task Force is pleased to outline the significant steps that its members have undertaken to protect Americans' religious liberties, including rescinding prior guidance and policies addressed in the report's findings, issuing new guidance, and opening investigations where merited. The Administration is changing course on its enforcement efforts, and returning to principles of equal justice under law for all Americans. The fundamentals of our constitutional design are durable and sound, and the American spirit is resilient. The federal government must once again stand as a bulwark against religious discrimination. The First Amendment's promises are for all, not just Christians. This report concludes with an agency-by-agency compilation of the Task Force's efforts to remediate its findings and fulfill the promise of religious liberty for all Americans.

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"*Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace their connections with private and public felicity. Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths, which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on the minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.*"

George Washington, *Farewell Address* (1796)[3]

[3] George Washington, Farewell Address to the People of the United States 16 (Sept. 19, 1796), https://perma.cc/Z8SC-SQ7N.

Chapter 1. Background.

Religion and morality have been inextricably intertwined with the American system of government from the beginning. Christian beliefs, in conjunction with contemporary political and intellectual thought and economic realities, influenced colonial settlers and the decision to overthrow tyranny and pursue inalienable rights during the Revolutionary War. Most critically, faith informed the structure and contents of the United States Constitution, its amendments, and contemporary state constitutions. The Nation's origin and system of government bear the imprint of a Christian worldview and ethic, even as its laws strive to protect religious pluralism.

Unfortunately, in recent years, some political leaders and policymakers have viewed Christianity and similar religious traditions as an impediment or even an enemy to their policy goals. When Christian views on morality and human nature conflicted with the Biden Administration's views, religious rights often suffered. This infringement of religious rights was a negative externality of the Biden Administration's dogged advocacy on matters of deep personal importance to nearly every American: life, family, marriage, and self-identity.

At the start of this Administration, President Donald J. Trump signed Executive Order 14202, *Eradicating Anti-Christian Bias*, highlighting particular decisions by the Biden Administration that evinced discriminatory treatment of Christians.[4] He established the Task Force to Eradicate Anti-Christian Bias to investigate those concerns; to identify where policies, practices, or individual decisions by the Biden Administration were animated by bias; and to take immediate steps to rectify these governmental abuses.[5]

While the focus of the Task Force's investigation is the effects of this bias on Christians, these affronts to the constitutional rights of the nation's largest faith community pose equal, if not graver, risks to every faith tradition. As President Trump has explained, the Administration is committed to "vigorously enforc[ing] the historic and robust protections for religious liberty enshrined in Federal law."[6] This report provides a deep dive into the Task Force's findings of anti-Christian bias and outlines the steps each member Department is taking to better protect the religious liberty of Americans of all faiths.

I. EXECUTIVE ORDER 14202, ERADICATING ANTI-CHRISTIAN BIAS

On February 6, 2025, President Donald Trump signed Executive Order 14202, *Eradicating Anti-Christian Bias*.[7] The Executive Order denounced unlawful attacks on individuals, churches, charities, and other establishments that implicate the First Amendment, Title VII of the Civil Rights

[4] Exec. Order No. 14202, *supra* note 1.

[5] THE WHITE HOUSE, FACT SHEET: PRESIDENT DONALD J. TRUMP ERADICATES ANTI-CHRISTIAN BIAS (Feb. 6, 2025), https://perma.cc/R4EE-JTDD.

[6] Exec. Order No. 14291, Establishment of the Religious Liberty Commission, 90 Fed. Reg. 19417 (May 1, 2025), https://perma.cc/79HP-S4FB.

[7] Exec. Order No. 14202, *supra* note 1.

Act of 1964, the Religious Freedom Restoration Act (RFRA), and other statutes.[8] The order makes clear this Administration does "not tolerate anti-Christian weaponization of government or unlawful conduct targeting Christians."[9]

E.O. 14202 also established the interagency Task Force to Eradicate Anti-Christian Bias (Task Force), led by Acting Attorney General Todd Blanche.[10] As the Chair of the Task Force, the Department of Justice is responsible for providing administrative and logistical support for its activities and endeavors. Seventeen departments and agencies are named to the Task Force, and others may be invited at the President's discretion.[11] The Task Force members include:

Chair, Acting Attorney General Todd Blanche
Secretary of State Marco Rubio
Secretary of the Treasury Scott Bessent
Secretary of War Pete Hegseth
Acting Secretary of Labor Keith E. Sonderling
Secretary of Health and Human Services Robert F. Kennedy, Jr.
Secretary of Housing and Urban Development Scott Turner
Secretary of Education Linda McMahon
Secretary of Veterans Affairs Douglas Collins
Secretary of Homeland Security Markwayne Mullin
Director of the Office of Management and Budget Russell Vought
Representative of the United States of America to the United Nations Mike Waltz
Administrator of the Small Business Administration Kelly Loeffler
Director of the Federal Bureau of Investigation Kash Patel
Assistant to the President for Domestic Policy Vince Haley
Administrator of the Federal Emergency Management Agency *(Currently Vacant)*
Chair of the Equal Employment Opportunity Commission Andrea Lucas.[12]

E.O. 14202 charged the Task Force to:

i. Review the activities of all executive agencies and identify unlawful anti-Christian policies, practices, or conduct;

ii. Recommend to the head of relevant agencies steps to revoke or terminate any violative policies, practices, or conduct identified and remedial actions to fulfill the purpose of this order;

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

iii. Share information and develop strategies to protect the religious liberties of Americans and advance the purpose and policy of the order;

iv. Solicit information and ideas from a broad range of people and groups, including Americans affected by anti-Christian conduct; faith-based organizations; and state, local, and tribal governments;

v. Identify gaps in existing laws, enforcement, and regulatory practices and recommend actions to remedy failures and fully enforce the law against anti-Christian hostility, vandalism, and violence; and

vi. Recommend to the President any additional executive or legislative action necessary to rectify past improper anti-Christian conduct or protect religious liberty.[13]

II. THE TASK FORCE'S REPORTING OBLIGATIONS

Under the terms of E.O. 14202, the Task Force is charged with submitting three reports to the White House: an initial 120-day report, a report in 2026, and a final report upon the Task Force's dissolution.[14] The Task Force submitted a report of its initial findings to the White House in June 2025, which it released to the public in August 2025.[15] That report provided a high-level summary of what the preliminary evidence showed at the time.[16]

Since June 2025, the Task Force and its administrators have engaged in a deeper review of the Biden Administration's practices, policies, and conduct. The Task Force has investigated the scope of anti-Christian bias that pervaded the federal government during the Biden Administration, and it now delivers a detailed report of its findings. This report documents new findings and adds more detail to the Task Force's initial report. The Task Force's review did not have a predetermined finding in search of evidence. Rather, through the course of its work, the Task Force has independently and impartially assessed what the evidence shows and has invited feedback from a broad variety of sources, which are reflected in this 2026 report.[17]

The Task Force's work will conclude with a final report.[18] Until then, it will continue to evaluate past governmental conduct for evidence of bias, implement additional remedial steps within the

[13] *Id.*

[14] *Id.*

[15] THE INITIAL REPORT BY THE TASK FORCE TO ERADICATE ANTI-CHRISTIAN BIAS: ERADICATING ANTI-CHRISTIAN BIAS WITHIN THE FEDERAL GOVERNMENT (2025), https://perma.cc/M5GN-XNJ6.

[16] *Id.*

[17] Pursuant to Executive Order 14202, DOJ administered the drafting of this report through the Office of the Deputy Attorney General and Office of Legal Policy.

[18] Exec. Order No. 14202, *supra* note 1.

Executive Branch, and propose areas where executive or legislative action would better protect religious liberty from the types of encroachments that the Task Force has identified.[19]

III. OVERVIEW OF THIS REPORT[20]

This report proceeds in four subsequent chapters. Chapter 2 briefly surveys the relevant historical context and legal principles that should guide the federal government's engagement with religious rights and the people who sincerely hold those beliefs.

Chapter 3 describes the Task Force's findings of anti-Christian bias within the federal government. The findings are topically organized based on the type of governmental conduct involved: prosecutions, investigations, and other enforcement actions; policy decisions and regulations; denial of services, benefits, or grants; adverse employment decisions; and regulation of expression and association. Where applicable and not readily available through public sources, supporting exhibits are appended to this report.[21]

Chapter 4 then turns to religious discrimination in a broader context, discussing related findings of anti-Christian bias at the state and local level and in the private sector. The Task Force has found that when the Executive Branch engages in such bias, condones it, or ignores it, more pernicious forms of discrimination can spread in American communities. The report highlights particularly egregious examples, such as targeting public accommodation laws against religious viewpoints, forced speech, opposition to acts of Christian charity through zoning laws, refusal to allow opt-outs or conscience protections, exclusion of religious groups from grants and government programs, debanking, and adverse employment decisions, among other examples.

The report concludes in Chapter 5 by summarizing the remedial steps taken to date by the Task Force members to address religious discrimination and better protect religious liberty rights going forward in accordance with our constitutional obligations and federal law.

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[19] *Id.*

[20] This report is accompanied by a video report: a full-length video documenting anti-Christian bias within the federal government. The Task Force's written report includes testimony given through interviews, which are cited throughout the report.

[21] This report includes citations to numerous internal documents containing predecisional and deliberative discussions where necessary, to demonstrate where anti-Christian bias occurred. Because of the Trump Administration's commitment to transparency, Acting Attorney General Blanche has approved disclosure of documents revealing the abuse of the deliberative-process privilege in these prosecutions. DOJ strived to keep redactions minimal, focusing on personal identifying information, including email addresses, phone numbers, and physical addresses and locations. The exhibits are representative of DOJ's full findings to date. All discussion, citation, and provision of internal information in this report is disclosed pursuant to the authority and approval of the Attorney General. The limited release of this information does not constitute the waiver of privilege beyond the limited disclosure here. The limited release of information in this report does not constitute an authorization to any current or former employee to discuss internal or privileged information or to be subject to serve as a witness. DOJ's *Touhy* regulations continue to apply. 28 C.F.R. §§ 16.21, *et seq.*; *United States ex rel. Touhy v. Regan*, 340 U.S. 462 (1951).

Chapter 2. Overview of Relevant Historical and Legal Principles.

"*Our Founders understood that no right is more fundamental to a peaceful, prosperous, and virtuous society than the right to follow one's religious convictions*."

President Donald J. Trump[22]

Before presenting its findings, the Task Force finds it necessary to briefly overview the historical context of religious rights in the United States, the legal principles that should constrain the federal government's regulation of religion, and brief discussion of how the Biden Administration's view of certain Christian beliefs granted a permission structure for it to infringe on free exercise rights.

As this chapter describes, religion has always influenced the American system of government, from the colonies to present. Many early settlers, revolutionary Founders, and constitutional Framers shared a common belief in the God of the Bible, even as they vigorously disagreed on denominations and doctrines. As a result, the First Amendment and contemporaneous state constitutions reflect two related philosophies: that mankind should live according to their conscience and beliefs, and that the newly established federal government should not unduly burden those rights by establishing a national religion. The laws and underlying principles reflected both religious devotion and the need for toleration amongst denominations.

By limiting the federal government's power to coerce or regulate religious faith, the Framers sought to ensure that the weight and force of government would not yield to political passion, contemporary fads, or the preferences of the majority to the detriment of the minority. As James Madison explained in *The Federalist* No. 10, a just government cannot take away liberty or repress diverse beliefs to promote its interests, but liberty and diverse beliefs are precisely what cause "factions" to emerge.[23] Madison urged ratification of the Constitution, explaining that under the proposed American system, instituting a large republic that elects representatives would reflect a wider variety of views and beliefs, refining public views, filtering out temporary passions, and making it harder for a dominant majority to use its powers to limit the rights of those in disagreement.[24] For most of our nation's history, the wisdom in this constitutional design has held true. Over time, with expanded suffrage rights, and a growing geographic footprint and population, the American republican form of government has tended toward the preservation of rights for minority viewpoints, religions, and races.

The Biden Administration, however, did what Madison warned against: To pursue its policy goals, the Biden Administration attempted to curtail liberty, trample disfavored beliefs, and tamper the ability of Christians to *act* in accordance with their sincerely held religious beliefs. That is not to say that every actor in the Biden Administration held animus toward Christians. Many identify as

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[22] THE WHITE HOUSE, PRESIDENT DONALD J. TRUMP IS SAFEGUARDING THE RIGHT TO RELIGIOUS FREEDOM FOR STUDENTS AND ORGANIZATIONS (Jan. 16, 2020), https://perma.cc/AK84-TKPV.

[23] THE FEDERALIST NO. 10 (James Madison).

[24] *Id.*

Christians.[25] But Christianity is not monolithic, and within that faith tradition, Christians have hotly contested points of doctrine, biblical interpretation, and how faith should inform daily conduct since the earliest days of the religion.

To the Biden Administration, though, not all forms of Christian thought were equal. In particular, Christians who ascribed to traditional Christian morality relating to abortion, marriage, and human sexuality were targeted for their beliefs. The Biden Administration believed it had a compelling interest in promoting access to abortion and contraception, and that it needed to vigorously defend the ability of individuals to define and act on their own sexual identities and preferences. In each of these areas, the Biden Administration fought energetically to allow those individuals to *act* on their beliefs, secular or religious, to those ends.

But traditional Christian views on these matters of public controversy tend toward very different policy outcomes and behaviors, if acted upon. While repeatedly stating that it was committed to religious freedom, the Biden Administration sought to limit the ability of Christians with these traditional views to *act* in accordance with their beliefs.

As the Task Force explains in this Chapter, the Biden Administration misconstrued the nature of these Christian beliefs, viewing them as bigoted or harmful or discriminatory against the *status* of certain groups of individuals, rather than a faith-based normative judgment about *conduct*. The Biden Administration similarly ignored historical context and sought to narrowly apply legal precedents to pursue its preferred policy agendas and protect its preferred constituents. The result was bias against Christians, whether embedded into policy decisions and practices or demonstrated through overt animus.

I. THIS REPORT'S IMPORTANCE TO ALL AMERICANS OF ANY FAITH

The issues presented in the report do not only affect Christians. Far from it. If the federal government can discriminate and limit the rights of a majority group to such an extent, people of every faith—and even those of other minority affiliations—have cause for concern about their rights under future administrations. To wield the force of government against certain viewpoints or the people who hold them is anathema to our constitutional system of government. The American people deserve to know when this type of abuse happens and how it happens, so they can demand better from the Executive Branch and its agencies under any administration.

Two in three American adults are religious.[26] According to a study by the Pew Research Center in 2024, 62 percent of U.S. adults identify themselves as Christians.[27] Of those, 40 percent are

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[25] Yonat Shimron, *A look at Joe Biden's religiously and ethnically diverse cabinet nominees*, AM. MAG. (Jan. 20, 2021), https://perma.cc/3MDN-ZDUZ ("At least 8" of the Biden Cabinet "are Catholic . . . two [are] . . . Baptists").

[26] Gregory A. Smith et al., *Religious Landscape Study: Decline of Christianity in the U.S. Has Slowed, May Have Leveled Off*, PEW RESEARCH CENTER (Feb. 26, 2025), https://perma.cc/G63Y-ESCJ. The remaining individuals either hold no religious beliefs or are atheists. *Id. See also New Research: Belief in Jesus Rises, Fueled by Younger Adults*, Barna (Apr. 7, 2025), https://perma.cc/BCX7-9KMT (reaching slightly higher estimates that approximately 66 percent of Americans are Christian).

[27] Smith, *supra* note 26.

Protestant, 19 percent are Catholic, and about 3 percent identify with other Christian groups, such as the Greek and Russian Orthodox Churches, the Church of Jesus Christ of Latter-Day Saints, Jehovah's Witnesses, and others. About 7 percent of U.S. adults affiliate with other religions: 1.7 percent are Jewish, 1.2 percent are Muslim, 1.1 percent are Buddhist, and 0.9 percent are Hindu.[28]

For most believers across the spectrum of religious affiliation, religion is far more than a pastime or social group. Faith serves as the foundation of their lives, establishes the morals and principles that govern their conduct, structures their families and communities, and gives meaning to life and death. In some traditions, religious beliefs dictate schedules, meals, and dress. A life of faith extends beyond the doors of houses of worship; rather, faith follows religious individuals into their homes, jobs, schools, and communities.

Religious liberty impacts nearly every American. If the federal government can exert its vast resources and weight of authority against the majority religion, then people of all faiths should be concerned about the safekeeping of their own rights.

II. AMERICA'S RICH HISTORICAL LEGACY OF RELIGIOUS FREEDOM

Freedom of religion is fundamental under the United States Constitution. It appears in the First Amendment, guaranteeing that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[29] Faith, particularly Christianity, had a significant influence on America's colonial origins, the text of the Declaration of Independence, and the formation and ratification of the U.S. Constitution.

While legal scholars and advocates disagree over the nature and extent of the Founders' personal religious beliefs,[30] historical evidence demonstrates that, at minimum, they were influenced by Christian ideas, in addition to contemporary intellectual and political influences.[31] While the

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[28] *Id.*

[29] U.S. Const. amend. I.

[30] *Compare* FRANK LAMBERT, THE FOUNDING FATHERS AND THE PLACE OF RELIGION IN AMERICA 61 (2003); Geoffrey R. Stone, *The World of the Framers: A Christian Nation*?, 56 Cal. L. Rev. 1, 7–8 (2008); STEVEN WALDMAN, FOUNDING FAITH: PROVIDENCE, POLITICS, AND THE BIRTH OF RELIGIOUS FREEDOM IN AMERICA 193 (2008); RICHARD T. HUGHES MYTHS AMERICA LIVES BY 50–57 (2003); STEVEN J. KEILLOR, THIS REBELLIOUS HOUSE: AMERICAN HISTORY AND THE TRUTH OF CHRISTIANITY 85 (1996); DAVID L. HOLMES, THE FAITHS OF THE FOUNDING FATHERS 163–64(2006); *and* BROOKE ALLEN, MORAL MINORITY: OUR SKEPTICAL FOUNDING FATHERS xiii (2006); *with* PETER MARSHALL AND DAVID MANUEL, THE LIGHT AND THE GLORY (1977); TIM LAHAYE, FAITH OF OUR FOUNDING FATHERS 90, 113 (1987); WILLIAM J. FEDERER, AMERICA'S GOD AND COUNTRY (1994); DAVID BARTON, ORIGINAL INTENT: THE COURTS, THE CONSTITUTION, & RELIGION (4th ed. 2005); *and* GARY DEMAR, AMERICA'S CHRISTIAN HERITAGE (2003).

[31] *See, e.g.*, Michael W. McConnell, *The Origins and Historical Understanding of the Free Exercise of Religion*, 103 HARV. L. REV. 1409, 1421–54 (1990); *id.* at 1416 ("An understanding of the historical roots of free exercise exemptions . . . suggests [] a peculiarly American conception of the relation between religion and government–one that emphasizes the integrity and diversity of religious life rather than the secularism of the state."); Michael W. McConnell, *Establishment and Disestablishment a the Founding, Part I: Establishment of Religion*, 44 WM. & MARY L. REV. 2105, 2116–30 (2003); MARK DAVID HALL, DID AMERICA HAVE A CHRISTIAN FOUNDING 2, 4 (June 7, 2011), *available at*: https://perma.cc/WK6Y-QSF4.

Founders' remarks on personal faith shed some light, their statements about the nature of American law and society, and their decisions on how to structure American governmental systems, are the clearest evidence available of what role they believed religion should play in government and the public square.[32]

Christian beliefs and biblical texts pervaded America's colonial origins, provided justification for the American Revolution, and informed early state constitutions and rationales for passing the Bill of Rights. The relevant historical inquiry revolves less around the personal beliefs of the Founders and Framers—not about their denomination, creed, personal piety, or level of devotion—but instead around what they said about the nature of government and how they shaped contemporaneous local and state governments' interactions with religious life.[33] "There is an unbroken history of official acknowledgement by all three branches of government of the role of religion in American life from at least 1789."[34] As the Supreme Court described, "We are a religious people whose institutions presuppose a Supreme Being."[35]

A. Experiences in the Old World and Colonial History

During the early stages of the American colonies, England was engaged in "chronic religious strife and intolerance."[36] The Church of England was the state-established church, and the government suppressed both other forms of Protestantism and Roman Catholicism by restricting the religious rights of those outside the Church of England.[37] When a king confessing the faith of the Church of England was deposed, Protestant dissenters, wielding the power of the State, rewrote statements of doctrine, confiscated religious property, and restructured the Church itself. Those in power imprisoned pastors from other denominations.[38] They removed ministers from clerical office who used the wrong prayer books.[39] When power shifted back after the monarchy was restored, Parliament reinstituted the Church of England and imposed religious tests to hold office or serve

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[32] *See* THE WHITE HOUSE, PRAYERS AND PROCLAMATIONS THROUGHOUT AMERICAN HISTORY, https://perma.cc/9ZW3-JFL2 (last visited Jan. 15, 2026).

[33] *See Am. Civil Liberties Union of Ohio v. Cap. Square Rev. & Advisory Bd.*, 243 F.3d 289, 296–99 (6th Cir. 2001) (recounting historical evidence of the Framers' statements on religion, role of religion in early post-ratification governmental charters, and public addresses invoking religion); *see also Church of the Holy Trinity v. United States*, 143 U.S. 457, 465–71 (1892) (similar).

[34] *Lynch v. Donnelly*, 465 U.S. 668, 675–78 (1984) (citing historical examples).

[35] *Zorach v. Clauson*, 343 U.S. 306, 313 (1952); *see also Church of the Holy Trinity*, 143 U.S. at 465 ("[N]o purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of the continent to the present hour [*i.e.*, February 29, 1892]").

[36] *See* McConnell, *Origins*, *supra* note 31, at 1421 (citing F. MAKOWER, THE CONSTITUTIONAL HISTORY AND CONSTITUTION OF THE CHURCH OF ENGLAND 68–95 (1972)).

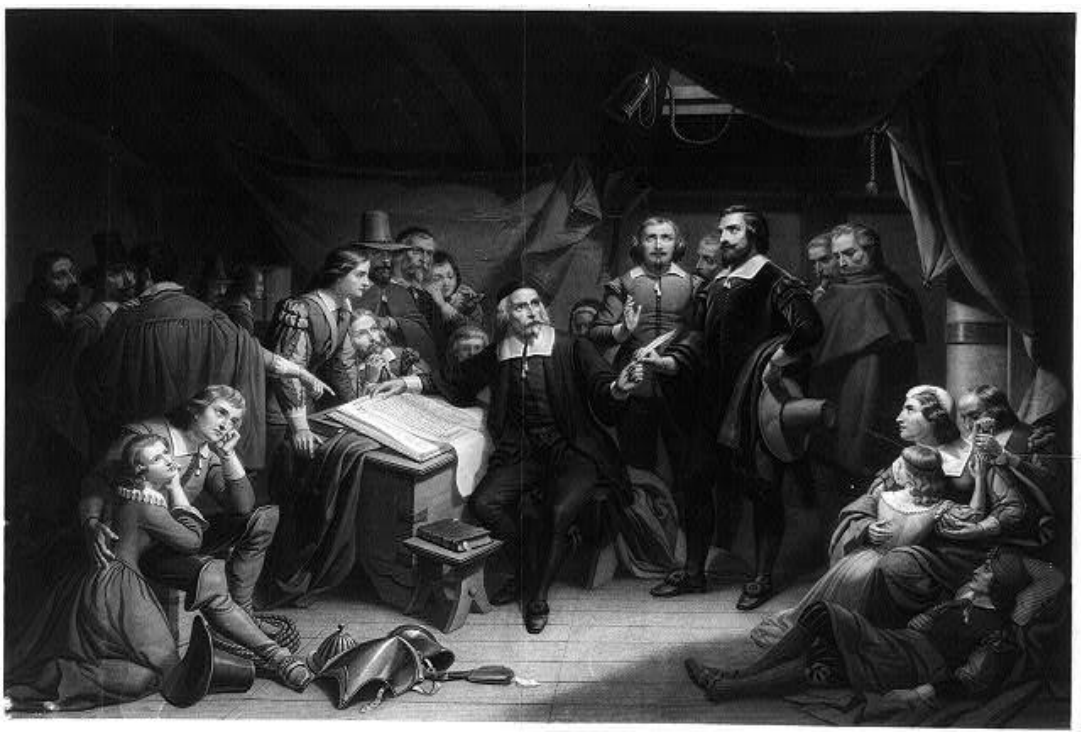
[37] *Id.*

[38] *Id.*

[39] *Id.*

in the military.[40] Even after Parliament passed the Toleration Act, ending the *de jure* persecution of religious dissenters, Anglicans continued to hold a favored position.[41]

Colonists from England and other European nations came to the new world for a multitude of reasons: personal, economic, and religious. Upon arrival, their new American colonies "served as laboratories for the exploration of different approaches to religion and government."[42]



- Plymouth Colony and the Mayflower Compact: In 1620, a group of pilgrims set sail from London aboard the *Mayflower*.[43] Many were religious separatists, Puritans, who sought to form a community away from the Church of England.[44] Their voyage was chartered by the Virginia Company, but they went off course on the voyage, landing at Plymouth, Massachusetts.[45] Faced with near mutiny over their next steps, the free adult men

[40] *Id.* at 1421–22

[41] *Id.* at 1422.

[42] *See* McConnell, *Origins*, *supra* note 31, at 1421.

[43] *See* Matthew Shea, *The Mayflower Compact*, AM. BATTLEFIELD TRUST (May 5, 2020), https://perma.cc/LCS8-4ZWW; Nathan Dorn, *The 400th Anniversary of the Mayflower Compact*, LIBRARY OF CONGRESS BLOGS (Nov. 25, 2020), https://perma.cc/4GAW-VG5L (featuring painting by T.H. Matteson, engraved by Gauthier, 1859).

[44] Dorn, *supra* note 43.

[45] *Id.*

negotiated a pact "in the Presence of God and one another" to "covenant and combine ourselves together into a civil Body Politick."[46]

- Puritan Control in New England: In many of the New England colonies, Puritans maintained tight control over their Christian commonwealth, viewing religious tolerance as sinful. Massachusetts was the "most rigorous of the New England Congregationalist establishments," and it actively persecuted religious dissenters, banishing Baptists and Quakers from the jurisdiction and punishing those who returned by hanging or imprisonment.[47] While violent hostility ended in the 1680s, the state-established church continued into the nineteenth century, pressing against religious diversity.[48]

- Virginia and the Church of England: In Virginia, the Church of England was established by British decree and generally served as "an instrument of social control by the governing authorities."[49] Ministers who traveled to Virginia to serve small populations of religious dissenters were expelled, and the colonial government grew increasingly intolerant of religious dissent through the eighteenth century.[50]

- Religious Toleration in the Mid-Atlantic Region: Due primarily to the extent of religious diversity in the area, colonies in New York and New Jersey maintained a *de facto* policy of religious tolerance.[51] A few counties formally established a church. Periodically, the royal governor attempted to force conformity with the Anglican Church.[52] But generally, Protestants could worship as they chose, and Quakers and Jews were left alone.[53]

- Refuge for Religious Outcasts: In the last approach, several colonies arose as havens for religious dissenters. Maryland was initially founded by George Calvert for English Catholics escaping persecution by the Church of England in their home country.[54] Roger Williams, a Protestant, founded Rhode Island as a refuge from Massachusetts' Puritanical government.[55] William Penn founded Pennsylvania and Delaware for Quakers.[56] Each of these colonies also extended religious freedom to Christian groups beyond their own.[57]

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[46] *Id.*

[47] *See* McConnell, *Origins*, *supra* note 31, at 1422–23.

[48] *Id.*

[49] *Id.* at 1423.

[50] *Id.*

[51] *Id.* at 1424.

[52] *Id.*

[53] *Id.*

[54] *Id.* at 1424–25.

[55] *Id.*

[56] *Id.*

[57] *Id.*

In each example, while the denominations and degrees of toleration varied, each approach shared a common feature: Religion was an integral aspect of early colonial governments. Nine of the thirteen colonies had established churches, and almost all instituted some form of religious test to hold office.[58] Many early colonial laws and charters contained overtly Christian language, even incorporating biblical texts at length.[59] "By almost any measure, colonists of European descent who settled in the New World were serious Christians whose constitutions, laws, and practices reflected the influence of Christianity."[60]

B. Revolutionary History

Around the time of the Declaration of Independence, the few colonies that still belonged to the Church of England began to disestablish it as the established religion of their local governments, instead opting for more informal forms of religious influence over many governmental affairs.[61] But even as the role of a central church as a governmental entity dissipated, Christianity continued to place its imprint on the push for self-governance.

The Declaration of Independence was a political document, aimed at uniting disparate colonies and politically engaged Americans to rally around the cause of independence, despite the risks of engaging in this act of treason against the British crown.[62] The Declaration appealed to God in its terms. Most famously, the Declaration pronounced that "[w]e hold these truths to be self-evident, that all men are created equal, that they are *endowed by their Creator with certain unalienable rights*, that among these are Life, Liberty, and the pursuit of Happiness."[63] The authors appealed to the "Laws of Nature and of Nature's God" as justification to throw off despotism and institute a new government, and "appeal[ed] to the Supreme Judge of the world for the rectitude of [their] intentions."[64] Examining contemporaneous statements of colonial rights and concerns reveals that reliance on Christian rhetoric and arguments was a pervasive feature of the push for independence and self-governance.[65]

Opponents of the revolution characterized it as religious, likely because of the level of support shown for the cause by Calvinist clergy. King George, the head of the Church of England, reportedly referred to the war as a "Presbyterian Rebellion."[66] One loyalist, Peter Oliver, complained of the "dissenting clergy, who took so active a part in the Rebellion."[67] And, upon

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[58] *See* HALL *supra* note 31, at 5 (citing DANIEL L. DREISBACH & MARK DAVID HALL, THE SACRED RIGHTS OF CONSCIENCE: SELECTED READINGS ON RELIGIOUS LIBERTY AND CHURCH-STATE RELATIONS IN THE AMERICAN FOUNDING 84–119 (2009)).

[59] *Id.*

[60] *Id.*

[61] *See* McConnell, *Origins*, *supra* note 31, at 1436–37.

[62] HALL, *supra* note 31, at 6 (citing DREISBACH & HALL, SACRED RIGHTS at 220).

[63] THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

[64] *Id.* at para. 1.

[65] HALL, *supra* note 31, at 6 (citing DREISBACH & HALL, SACRED RIGHTS at 220).

[66] *Id.*

[67] *Id.*

confiscating a religious book from an American prisoner, British Major Harry Rooke decried that "[i]t is your G-d Damned Religion of this Country that ruins the Country; Damn your religion."[68]

And early elected officials shared that view that the Founders' pursuit of independence was inextricably linked to their faith. Less than 100 years after the Revolutionary War, the reports of the House of Representatives reflected that "had the people, during the Revolution, had a suspicion of any attempt to war against Christianity, that Revolution would have been strangled in its cradle. . . ."[69]

C. State Governance

After establishing their independence, the American colonies operated for several years under a weak, decentralized national government designed under the Articles of Confederation.[70] This new system of federal governance was ineffective, failing to regulate commerce or settle disputes between States over territory, taxes, and trade.[71] But before the delegates to the Constitutional Convention met in Philadelphia in 1787 and designed the Constitution, each of the newly minted States engaged in its own effort to define the role of government and the scope of individual rights within their own territorial bounds.[72] Many of the same men who crafted those documents participated in debating and ratifying the Constitution.[73] As such, the state constitutions from this time period reveal contemporaneous evidence of the Framers' views on religious freedom and conscience rights.[74]

The Free Exercise Clause has "more analogs in State Constitutions than any other individual right."[75] By 1789, each State except Connecticut had a constitutional provision protecting religious liberty.[76] One Supreme Court Justice summarized the historical record, finding that the state

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[68] *Id.* (citing PETER OLIVER'S ORIGIN AND PROGRESS OF THE AMERICAN REBELLION 41 (Douglass Adair & John A. Schutz, eds., 1961)); PAUL JOHNSON, A HISTORY OF THE AMERICAN PEOPLE 173 (1997); A Journal Kept by John Leach, During His Confinement by the British, In Boston Gaol, in 1775, 19 (communicated to N.E. Hist. & Genealogical Reg. 256 (1865))).

[69] *Reports of Committees of the House of Representatives Made During the First Session of the Thirty-Third Congress*, 33d Cong. 6–9 (1854).

[70] *See Articles of Confederation (1777)*, NAT'L ARCHIVES (last updated Oct. 23, 2023), https://perma.cc/92P7-C7QN

[71] *Id.*

[72] *Id.*; *see Fulton v. City of Philadelphia*, 593 U.S. 522, 575 (2021) (Alito, J., concurring in judgment) (explaining that early state constitutions "provide the best evidence of the scope of the right embodied in the First Amendment"); *City of Boerne v. Flores*, 521 U.S. 507, 553 (1997) (O'Connor, J., dissenting) (making the same argument, explaining that "it is reasonable to think that the States that ratified the First Amendment assumed that the meaning of the federal free exercise provision corresponded to that of their existing state clauses"); McConnell, *Origins*, *supra* note 31, at 1456 (similar).

[73] McConnell, *Origins*, *supra* note 31, at 1456.

[74] *Id.*

[75] *See Fulton*, 593 U.S. at 573 (Alito, J., concurring in judgment) (citing Calabresi, Agudo & Dore, *State Bills of Rights in 1787 and 1791: What Individual Rights Are Really Deeply Rooted in American History and Tradition?*, 85 S. CAL. L. REV. 1451, 1463–64, 1472–73 (2012)).

[76] *See* McConnell, *Origins*, *supra* note 31, at 1455.

constitutions had "one predominant model" that "extend[ed] broad protections for religious liberty but expressly provid[ing] that the right does not protect conduct that would endanger 'the public peace' or 'safety.'"[77]

The Continental Congress adopted this model of religious toleration when enacting the Northwest Ordinance of 1787, where it provided that "[n]o person, demeaning himself in peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory."[78] It explained that religious liberty is a foundational principle for settling new territories: "And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory."[79]

Most notably, the ordinance highlighted religion as a vital component to ensuring that the fledgling republic could flourish; Article 3 provides that, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools[,] and the means of education shall forever be encouraged."[80]

D. Ratification of the Constitution and Enactment of the Bill of Rights

i. Views of Thomas Jefferson and James Madison on the Scope of Free Exercise

The Founders agreed on the need for religious protections but disagreed on their scope. The compromise that emerged in the First Amendment is instructive about how free exercise rights can properly be understood in light of history and tradition. Thomas Jefferson, the author of the Declaration of Independence and third U.S. President, "espouse[d]s a strict distinction between belief, which should be protected from governmental control, and conduct, which should not."[81] But compared to his contemporaries, Jefferson's position on free exercise "was extraordinarily restrictive for his day."[82] On the other hand, Madison, commonly referred to as the "Father of the Constitution,"[83] advocated for a provision like the Establishment Clause "based on the demands of religion rather than solely [] the interests of society."[84]

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[77] *See Fulton*, 593 U.S. at 576–77 & n.43 (Alito, J., concurring in judgment) (compiling relevant provisions from contemporaneous State Constitutions); *see also* McConnell, *Origins*, *supra* note 29, at 1455–66.

[78] Northwest Ordinance of 1787, Art. I; *see also* Northwest Ordinance of 1789, Art. 3 (1789) (similar).

[79] Northwest Ordinance of 1787, Sec. 13.

[80] *Id.* at Art. 3.

[81] *See* McConnell, *Origins*, *supra* note 29, at 1451.

[82] *Id.* at 1452. In comparison, consider the writings of St. George Tucker, who wrote in 1803 that "[l]iberty of conscience in matters of religion consists in the absolute and unrestrained exercise of our religious opinions, and duties, in that mode which our own reason and conviction dictate." ST. GEORGE TUCKER, 1 BLACKSTONE'S COMMENTARIES, *reprinted in* 5 THE FOUNDERS' CONSTITUTION 96, 97 (P. Kurland & R. Lerner eds. 1987).

[83] "*James Madison, Father of America's Constitution*," Voice of America (Mar. 11, 2025), https://perma.cc/N3GY-F3V4.

[84] *See* McConnell, *Origins*, *supra* note 31, at 1453.

In his famous *Memorial and Remonstrance Against Religious Assessments*, Madison explained:

> 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 . . . 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.[85]

In Madison's view, this duty to God is "precedent both in order of time and degree of obligation, to the claims of Civil Society," and "therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society."[86] Madison also supported a proposal for the Virginia Bill of Rights that would allow for free exercise exemptions, as well expressly allowing for religious exemption from military conscription under the Bill of Rights.[87]

When viewing the historical evidence, Madison's "more generous vision of religious liberty" "more faithfully reflected the popular understanding of the free exercise provision that was about to emerge both in state constitutions and the Bill of Rights."[88]

ii. Development of the First Amendment's Free Exercise Clause

The delegates to the Constitutional Convention did not see a need for any amendment addressing religious liberties because, as they read the Constitution's text, the federal government had no enumerated power to pass any law affecting religion.[89] But those skeptical of ratifying the proposed Constitution disagreed, fearing that a government could still suppress religion through any one of the other enumerated plenary powers.[90] Importantly, as drafted, the Constitution made no provision for religious exemptions from otherwise generally applicable laws.[91] Some religious minorities, such as the Quakers, worried about the "unintended effects of legislation passed without regard to the religious scruples of small minorities."[92] These types of concerns won the day; only an amendment through a Bill of Rights would satisfactorily protect those religious rights.

During House debates over the First Amendment, most discussion centered on the Establishment Clause. Historians primarily must examine the revisions and drafts to understand the precise meaning of the Free Exercise Clause (which continues to be debated to present).[93] Notably,

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[85] James Madison, Memorial and Remonstrance Against Religious Assessments, *in* 2 THE WRITINGS OF JAMES MADISON 183, 184 (G. Hunt ed. 1901).

[86] *Id.* at 184–85.

[87] *See* McConnell, *Origins*, *supra* note 31, at 1454.

[88] *Id.*

[89] *Id.* at 1477 & n.341 (citing several delegates and signatories to the Constitution).

[90] *Id.* at 1478–79.

[91] *Id.* at 1479.

[92] *Id.* at 1480 (citing 3 THE COMPLETE ANTI-FEDERALIST § 3.9.12, at 107 (H. Storing ed. 1981))

[93] *See id.* at 1481–85 (describing the various iterations).

Madison proposed extending the Free Exercise Clause to the States, and the House adopted his proposal, but it ultimately died in the Senate.[94] Eventually, the language that now appears in the Religion Clauses was adopted and ratified by the States without much additional commentary.[95]

iii. Contemporaneous Support for Christian Influence in Self-Governance

As one scholar has described, "[t]he American Founding brought forth neither a 'procedural republic' nor a democracy committed to 'neutrality toward competing conceptions of the good,' but a constitutional republic dedicated to political liberty grounded in the 'laws of nature and nature's God.'"[96] Delegates to the Constitutional Convention pointed to Christianity as a necessary characteristic of the proposed constitutional republic.

- James McHenry stated that without widespread faith, the Framers' attempts to establish a rule of law would be futile: "[P]ublic utility pleads most forcibly for the general distribution of the Holy Scriptures. Without the Bible, in vain do we increase penal laws and draw entrenchments around our institutions."[97]

- In a similar vein, Benjamin Rush opined that "the only means of establishing and perpetuating our republican forms of government is the universal education of our youth in the principles of Christianity by means of the Bible."[98]

- Gouverneur Morris similarly admonished, "There must be religion. When that ligament is torn, society is disjointed and its members perish… [T]he most important of all lessons is the denunciation of ruin to every state that rejects the precepts of religion."[99]

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[94] *Id.* at 1484.

[95] *Id.* at 1485 (discussing the limited discussions during ratification debates in the states).

[96] VINCENT PHILLIP MUÑOZ, RELIGIOUS LIBERTY AND THE AMERICAN FOUNDING: NATURAL RIGHTS AND THE ORIGINAL MEANINGS OF THE FIRST AMENDMENT RELIGION CLAUSES 19 (2019) (citing Harry V. Jaffa, *Thomas Aquinas Meets Thomas Jefferson*, *in* 33 INTERPRETATION: A JOURNAL OF POLITICAL PHILOSOPHY 177-84 (2006); Henry V. Jaffa, *The American Founding as the Best Regime: The Bonding of Civil and Religious Liberty*, in THE REDISCOVERY OF AMERICA: ESSAYS BY HARRY V. JAFFA ON THE NEW BIRTH OF POLITICS 121–44 (ed. Edward J. Erler and Ken Masugi 2019)).

[97] BERNARD C. STEINER, ONE HUNDRED AND TEN YEARS OF BIBLE SOCIETY WORK IN MARYLAND, 1810-1920 (Maryland Bible Society, 1921), 14. *See also James McHenry 1753-1816*, Nat'l Constitution Ctr. (last visited Jan. 24, 2026), https://perma.cc/BA5K-5Y42 (providing biographical information on James McHenry).

[98] Benjamin Rush, *A Defence of the Use of the Bible as a School Book*, reprinted in ESSAYS, LITERARY, MORAL & PHILOSOPHICAL 112 (Thomas & Samuel F. Bradford, eds., 1798). *See also Benjamin Rush 1746-1813*, Univ. of Pennsylvania Archives, https://perma.cc/3HHV-SEWJ (last visited Jan. 24, 2026) (providing biographical information on Benjamin Rush).

[99] *An Inaugural Discourse Delivered Before the New York Historical Society by the Honorable Gouverneur Morris, (President), Sept. 4, 1816*, *in* COLLECTIONS OF THE N.Y. HIST. SOC'Y FOR THE YEAR 1821 32, 34 (1821); *see also* "Gouverneur Morris," The Gouverneur Museum, https://perma.cc/E3TR-PZZX (last visited Jan. 24, 2026) (providing biographical information on Gouverneur Morris).

Likewise, President John Adams proclaimed, "Our Constitution was made only for a moral and religious People. It is wholly inadequate to the government of any other."[100] Taken together, the historical record demonstrates that Christianity left an indelible mark on not only the Founders and Framers, but on the provisions they crafted to govern their federal and local institutions.

E. Post-Ratification Period

Once the Constitution was ratified, the first President of the United States, George Washington, set the tone and first precedents for the role of faith in office. His example on that point was clear: Washington sought God's favor for the country, prayed for wisdom for its leaders, and spoke of the role of God in all the affairs of men.[101]

The first Congress—the same body that had drafted the First Amendment to the Constitution—also placed Christianity at the center of some of its first actions.[102] Congress appointed and paid congressional chaplains.[103] Shortly after, it reauthorized the Northwest Ordinance.[104] Upon approval of the final wording of the Bill of Rights, Representative Elias Boudinot proposed that President Washington recommend a day of prayer and thanksgiving.[105] The result was President Washington's 1789 Thanksgiving Day Proclamation, which stated:

> Whereas it is the duty of all Nations to acknowledge the providence of Almighty God, to obey his will, to be grateful for his benefits, and humbly to implore His protection and favor . . . I do recommend . . . the People of these States to the service of that great and glorious Being, who is the beneficent Author of all the good that was, that is, or that will be . . . And also that we may then unite in most humbly offering our prayers and supplications to the great Lord and Ruler of Nations and beseech Him to pardon our national and other transgressions—to enable us all, whether in public or private stations, to perform our several and

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[100] Letter from John Adams to Massachusetts Militia (Oct. 11, 1798), https://perma.cc/D6YT-2CS3.

[101] *See, e.g., President George Washington's First Inaugural Speech (1789)*, NAT'L ARCHIVES (last reviewed Feb. 6, 2024), https://perma.cc/AA5D-ZEK8:

> [I]t would be peculiarly improper to omit in this first official act my fervent supplications to that Almighty Being who rules over the universe, who presides in the councils of nations, and whose providential aids can supply every human defect, that His benediction may consecrate to the liberties and happiness of the people of the United States a Government instituted by themselves for these essential purposes, and may enable every instrument employed in its administration to execute with success the functions allotted to his charge. In tendering this homage to the Great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own, nor those of my fellow-citizens at large less than either. No people can be bound to acknowledge and adore the Invisible Hand which conducts the affairs of men more than those of the United States.

[102] *See* HALL, *supra* note 31, at 12 (citing DREISBACH & HALL, SACRED RIGHTS, at 236–38, 441–75).

[103] *Id.*

[104] *Id.*

[105] *Id.*

> relative duties properly and punctually—to render our national government a blessing to all the people . . . .[106]

As he left office, President Washington concluded his presidency with similar emphasis on faith, charging that "[o]f all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports."[107] He cautioned that morality cannot be sustained without religion, and that no man could claim to be a patriot "who should labor to subvert these great pillars of human happiness."[108]

On these foundations, observers of early American society and government repeatedly pronounced that Christianity was embedded into both American government and society, to its great credit and benefit. After reflecting on the profound role of Christianity in shaping America's system of government, Alexis de Tocqueville commented: "Christianity, which has rendered all men equal before God, will not be loath to see all citizens equal before the law."[109]

Joseph Story, one of the Nation's preeminent contemporary historians and a Supreme Court Justice appointed by Madison, commented as such: "One of the beautiful boasts of our municipal jurisprudence is that Christianity is a part of the Common Law. There never has been a period in which the Common Law did not recognize Christianity as lying at its foundations."[110] Again, he explained that, "I verily believe that Christianity is necessary to support a civil society and shall ever attend to its institutions and acknowledge its precepts as the pure and natural sources of private and social happiness."[111]

For nearly all of American history, Christianity and religious conviction have inspired some of the most significant advances in civil rights, from promoting the abolition of slavery, to expanding suffrage to women, to advocating for the equal treatment of racial minorities because they were created equal, even if the law failed to treat them as such.[112] As the Reverend Martin Luther King, Jr. boldly preached, faith compels good citizenship and justice: "If one is truly devoted to the religion of Jesus, [that person] will seek to rid the earth of social evils. The gospel is social as well as personal."[113]

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[106] George Washington, Thanksgiving Proclamation of 1789 (Oct. 3, 1789), https://perma.cc/TN9E-LTS4.

[107] George Washington, *Farewell Address*, supra note 2.

[108] *Id.*

[109] ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 279–80, 519 (Harvey C. Mansfield and Delba Winthrop trans. 2002).

[110] JOSEPH STORY, LIFE AND LETTERS OF JOSEPH STORY II:8 (William W. Story, ed. 1851).

[111] *Id.* at I:92.

[112] *See, e.g.*, Robyn Muncy, *The Necessity of Other Social Movements to the Struggle for Woman Suffrage,* NAT'L PARK SERV. (last visited Jan. 26, 2026), https://perma.cc/X8SX-NF72 ("Organized opposition to slavery emerged first among free Blacks in the North, as well as Quakers, Unitarians, and evangelical Christians, both Black and white."); *id.* (pointing to the Woman's Christian Temperance Union as the largest women's organization in the late 19th century and noting its contributions to women's suffrage); James Moorhead, *Presbyterians and Slavery*, PRINCETON & SLAVERY (last visited Jan. 26, 2026), https://perma.cc/49YE-2T5C.

[113] MARTIN LUTHER KING, JR., STRIDE TOWARD FREEDOM 117 (1986).

The Christian faith has been an indispensable feature of American governance and society, from the earliest colonies to present, precisely because the Founders and Framers viewed rights of conscience and faith to undergird and promote civil liberties more broadly.

III. THE CONSTITUTION PROTECTS RELIGIOUS LIBERTY BY DESIGN

The U.S. Constitution and federal law require certain baseline protections for religious liberty. At the forefront, the Religion Clauses of the First Amendment establish that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[114] But beyond that, federal lawmakers have desired to clarify the scope of religious interests.[115]

- Title VII prohibits the federal government, state and local governments, and covered private sector employers from discriminating against an employee "because of such individual's . . . religion."[116]
- The Religious Freedom Restoration Act ("RFRA") mandates that the federal government[117] "shall not substantially burden a person's exercise of religion" unless the government "demonstrates that application of the burden to the person . . . (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."[118]
- The Religious Land Use and Institutionalized Persons Act (RLUIPA), a related statute, applies at the federal, state, and local level, and identifies religious liberty protections in the context of land use regulations and prisons.[119]

The Supreme Court has interpreted these provisions, explaining several key principles that govern First Amendment jurisprudence and help understand the scope of both the Free Exercise Clause

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[114] U.S. Const. amend. I.

[115] *See* Press Release, Dep't of Justice, Attorney General Sessions Issues Guidance on Federal Law Protections for Religious Liberty (Oct. 6, 2017), https://perma.cc/2HPS-U8Y5; Federal Law Protections for Religious Liberty, 82 Fed. Reg. 49668 (Oct. 6, 2017).

[116] 42 U.S.C. § 2000e-2(a); *id.* § 2000e-16(a).

[117] *See City of Boerne v. Flores*, 521 U.S. 507, 532–36 (1997) (finding RFRA can only extend to the federal government without violating Section 5 of the Fourteenth Amendment).

[118] 42. U.S.C.§ 2000bb-1(a)–(b); *see Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 424 (2006); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 695 n.3 (2014); *Holt v. Hobbs*, 574 U.S. 352, 357 (2015) (finding RFRA "provide[s] greater protection for religious exercise than is available under the First Amendment").

[119] 42 U.S.C. § 2000cc; *see Holt*, 574 U.S. at 357 (explaining Congress enacted RLUIPA under its Spending and Commerce Clause authority and can reach the states and their subdivisions).

and the Establishment Clause, which serve "complementary" purposes[120] to "foster a society in which people of all beliefs can live together harmoniously."[121]

A. The Free Exercise Clause

Under the Free Exercise Clause, Congress may pass no law "prohibiting the free exercise of religion."[122] This prohibition has been applied to the Executive Branch and to state and local governments.[123] When a statute, regulation, or governmental action burdens a fundamental right or involves a suspect classification, such as race or religion, courts impose a rigorous analysis called the "strict scrutiny" test to determine if it violates constitutional equal protection principles.[124] To avoid strict scrutiny, any law that burdens religious exercise must be both neutral and generally applicable.[125] Under the strict scrutiny standard, the government must show that "a law restrictive of religious practice must advance 'interests of the highest order' and must be narrowly tailored in pursuit of those interests."[126]

The Free Exercise Clause protects more than just "the right to harbor religious beliefs inwardly and secretly"; rather, "[i]t does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through 'the performance of (or abstention from) physical acts.'"[127]

Supreme Court precedent "sets forth three bedrock requirements of the Free Exercise Clause that the government may not transgress, absent a showing that satisfies strict scrutiny."[128]

1. A "purportedly neutral 'generally applicable' policy may not have a mechanism for individualized exemptions"[129];

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[120] *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 533 (2022) (citing *Everson v. Bd. of Ed. of Ewing*, 330 U.S. 1, 13, 15 (1947)).

[121] *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 38 (2019) (plurality opinion).

[122] U.S. Const. amend. I.

[123] *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (holding that the Religion Clauses apply to the States by incorporation into the Fourteenth Amendment).

[124] Legal Information Inst., *Strict Scrutiny*, CORNELL L. SCH. (Sept. 2024), https://perma.cc/H2KR-C9EC.

[125] *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546 (1993).

[126] *Id.* at 546 (cleaned up); *see also Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015); *Sherbert v. Verner*, 374 U.S. 398, 403 (1963).

[127] *Kennedy*, 597 U.S. at 524 (quoting *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990)); *see Mahmoud v. Taylor*, 606 U.S. 522, 547 (2025).

[128] *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Ed.*, 82 F.4th 664, 686 (9th Cir. 2023) (en banc).

[129] *Id.* (quoting *Fulton*, 593 U.S. at 533).

2. "the government may not 'treat . . . comparable secular activity more favorably than religious exercise'"[130]; and

3. "the government may not act in a manner 'hostile to . . . religious beliefs.'"[131]

That third prohibition is most relevant to this Task Force's investigation. The government may not "act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs or practices."[132] "The Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion," and "commits government itself to religious tolerance, and upon even slight suspicion that proposals for [] intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures."[133] As the Supreme Court has explained, "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion,"[134] nor is it "the role of the State or its officials to prescribe what shall be offensive."[135]

B. The Establishment Clause

Under the Establishment Clause, Congress may pass no law "respecting an establishment of religion."[136] Over time, the Supreme Court has explained several core principles that can be discerned from this constitutional provision.

But first, it is helpful to explain what the Establishment Clause does not do:

- It does not "'compel the government to purge from the public sphere' anything an objective observer could reasonably infer endorses or 'partakes of the religious.'"[137]

- It does not demand "indifference to 'religion in general.'"[138]

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[130] *Id.* (quoting *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam)).

[131] *Id.* (quoting *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm'n*, 584 U.S. 617, 638 (2018)).

[132] *Masterpiece Cakeshop*, 584 U.S. at 638–39.

[133] *Id.* at 638 (quoting *Lukumi*, 508 U.S. at 534, 547).

[134] *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).

[135] *Masterpiece Cakeshop*, 584 U.S. at 638 (citing *Matal v. Tam*, 582 U.S. 218, 243–44 (2017)).

[136] U.S. Const. amend. I.

[137] *Kennedy*, 597 U.S. at 535 (quoting *Van Orden v. Perry*, 545 U.S. 677, 699 (2005) (Breyer, J., concurring in judgment)).

[138] *See, e.g.*, *Zorach v. Clauson*, 343 U.S. 306, 313–14 (1952) ("When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions.").

- It does not include "anything like a 'modified heckler's veto, in which . . . religious activity can be proscribed' based on 'perceptions' or 'discomfort.'"[139]

- It is not "automatically" violated "whenever a public school or other government entity fail[s] to censor private religious speech."[140]

The Establishment Clause simply does not create a rigid "wall of separation between church and state"[141,142] that would push all private faith from the public sphere. Rather, the Constitution "affirmatively mandates accommodation, not merely tolerance, of all religions . . . Anything less would require the 'callous indifference' we have said was never intended."[143] As the Supreme Court has explained, "our precedents plainly contemplate that on occasion some advancement of religion will result from governmental action."[144] Any "hostility" to religion "would bring us into 'war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion.'"[145]

So, what does the Establishment Clause prohibit? Consistent with a historically based analysis of the Clause, the government may not establish a national or federal church,[146] it may not "make a

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[139] *Kennedy*, 597 U.S. at 534 (quoting *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 119 (2001)).

[140] *Kennedy*, 597 U.S. at 534-35 (internal quotation omitted).

[141] *See* Thomas Jefferson, *Letter of January 1, 1802*, *in* 16 *WRITINGS OF THOMAS JEFFERSON* 281-82 (1904). Thomas Jefferson coined the phrase, "wall of separation between church and State," in his 1802 letter to the Danbury Baptists, quoted at length below, but it does not appear anywhere in the Constitution.

> Believing with you that religion is a matter which lies solely between man and his [G]od; that he owes account to none[] other for his faith or his worship; that the legislative powers of the government reach actions only, and not opinions,—I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties.'

Quoted in *Reynolds v. United States*, 98 U.S. 145, 164 (1878) (quoting 8 Jeff. Works 113); *see also Am. Civil Liberties Union of Ohio v. Capitol Square Review & Advisory Bd.*, 243 F.3d 289, 296 (6th Cir. 2001).

[142] Some advocates disagree with the Supreme Court's interpretation of the Establishment Clause, arguing that imposing a wall of separation between church and state would better protect free thought and religious freedom. *See, e.g.*, *Church-State Separation: What It Is, What It Isn't, and Why You Should Care*, AMERICANS UNITED (2026), https://perma.cc/4SWD-GZ5M; Heather L. Weaver & Daniel Mach, *The Supreme Court Benches the Separation of church and State*, ACLU (July 6, 2022), https://perma.cc/6ZTW-3Q2A; *Why is FFRF Concerned with State/ Church Entanglement?*, FREEDOM FROM RELIGION FOUND. (2026), https://perma.cc/C353-M7PK.

[143] *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984).

[144] *Id.* at 683.

[145] *Id.* at 673 (quoting *McCollum v. Bd. of Ed.*, 333 U.S. 203, 211–12 (1948)).

[146] *Cf. Town of Greece v. Galloway*, 572 U.S. 565, 575 (2014); *Am. Legion*, 588 U.S. at 47 ("[T]he concept of a formally established church is straightforward[.]") (plurality opinion).

religious observance compulsory,"[147] it "may not coerce anyone to attend church,"[148] and it may not force citizens to engage in "formal religious exercise."[149] Similarly, the Clause has checked efforts to give churches monopolistic control over civil functions.[150]

Over the years, the Supreme Court's decisions interpreting the Establishment Clause have examined the Clause's original meaning and history, with one notable exception[151] and its progeny.[152] That "anomaly"[153] was *Lemon v. Kurtzman*, which attempted to articulate a "grand unified theory" for assessing Establishment Clause claims,[154] under which the court would examine a "law's purposes, effect, and potential for entanglement with religion."[155] As that test evolved, it also began to inquire whether a "reasonable observer" would consider the government's action to "endorse" religion.[156]

Lemon was short-lived and often ignored.[157] It created confusion among the lower courts, "invited chaos," and led to "differing results" in similar cases.[158] Some critics on the Court were far harsher in their assessment: "*Lemon* devolved into a kind of children's game" where the "default settings are lazy, uninformed about history, and not particularly inclined to legal research."[159] *Lemon* was

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[147] *Zorach*, 343 U.S. at 314.

[148] *Id.*

[149] *Lee v. Weisman*, 505 U.S. 577, 589 (1992); *see* Steven D. Smith, *Separation and the "Secular": Reconstructing the Disestablishment Decision*, 67 TEX. L. REV. 955, 973 (1989) ("In approving the establishment clause, the framers had adopted a principle of *institutional* separation, but they had neither undertaken to impose a secular political culture on the nation nor consented to abandon their own religious values and culture when serving as public officials. Indeed, any such undertaking would have required a seemingly impossible intellectual and psychological surgery . . . [T]hrough those actions the government did not intrude into the internal affairs of any church. Nor did these actions confer governmental authority upon churches.").

[150] *See Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 127 (1982).

[151] *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

[152] *Kennedy*, 597 U.S. at 535-36; *Town of Greece*, 572 U.S. at 576; *Am. Legion*, 588 U.S. at 60–61 (plurality opinion); *Marsh v. Chambers*, 463 U.S. 783, 787–92, 795 (1983); *Van Orden*, 545 U.S. at 686–90; *see also Torcaso v. Watkins*, 367 U.S. 488, 490 (1961) (analyzing certain historical elements of religious establishments); *McGowan v. Maryland*, 366 U.S. 420, 437–440 (1961) (analyzing Sunday closing laws by looking to their "place ... in the First Amendment's history"); *Walz v. Tax Comm'n of City of N.Y.*, 397 U.S. 664, 680 (1970) (analyzing the "history and uninterrupted practice" of church tax exemptions).

[153] *Shurtleff v. City of Boston*, 596 U.S. 243, 279 (2022) (Gorsuch, J., concurring in judgment).

[154] *Am. Legion*, 588 U.S. at 60-61.

[155] *Kennedy*, 597 U.S. at 534 (summarizing *Lemon*, 403 U.S. at 612-13)).

[156] *County of Allegheny v. Am. Civ. Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 593, 620 (1989).

[157] *See Groff v. DeJoy*, 600 U.S. 447, 460 (2023) (confirming *Lemon* is "now abrogated"); *Kennedy*, 597 U.S. at 572 (Sotomayor, J., dissenting) (describing the majority's decision as "overruling *Lemon* entirely and in all contexts"); *Am. Legion*, 588 U.S. at 49 (compiling cases in which the Supreme Court "either expressly declined to apply the test or [] simply ignored it") (plurality opinion); *see also County of Allegheny*, 492 U.S. at 655, 669 (Kennedy, J., concurring in judgment in part and dissenting in part) (describing *Lemon* as "flawed in its fundamentals," "unworkable in practice," and "inconsistent with our history and our precedents").

[158] *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 768–69 n.3 (1995) (plurality opinion).

[159] *Shurtleff*, 596 U.S. at 279 (Gorsuch, J., concurring in judgment).

"exposed as an anomaly and a mistake," an error leading to "a strange world in which local governments have sometimes violated the First Amendment in the name of protecting it."[160] Critics of *Lemon* repeatedly explained that, because its test was so malleable, it could easily bend to arbitrarily protect some religious exercise and prohibit others, based on the preferences of policymakers and judges.[161]

Rather than apply *Lemon*, the Supreme Court has explained that the Establishment Clause "must be interpreted by 'reference to historical practices and understandings.'"[162] "[T]he line that [courts and governments] 'must draw between the permissible and the impermissible'" has to "'accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers.'"[163]

Consistent with that approach, the Court has discerned several key doctrines under the Establishment Clause that protect both religious exercise and religious pluralism:

- Association: The Religion Clauses guarantee the "right to organize voluntary religious associations."[164]

- Denominational Neutrality: The government must not prefer one religion or denomination over another.[165]

- Church Autonomy: Religious institutions have "the right . . . 'to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'"[166] Relatedly, "religious institutions may appoint their spiritual leaders and

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[160] *Id.* at 280–84; *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 398 (1993) (Scalia, J., concurring) (describing *Lemon* [l]ike some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried…frightening the little children and [ ] attorneys").

[161] *See Lamb's Chapel*, 508 U.S. at 399 (Scalia, J., concurring); *Shurtleff*, 596 U.S. at 284 (Gorsuch, J., concurring in judgment) ("[I]t's hard not to wonder whether some simply prefer the policy outcomes *Lemon* can be manipulated to produce. Just dial down your hypothetical observer's concern with facts and history, dial up his inclination to offense, and the test is guaranteed to spit out results more hostile to religion than anything a careful inquiry into the original understanding of the Constitution could sustain. *Lemon* may promote an unserious, results-oriented approach to constitutional interpretation. But, for some, that may be more a virtue than a vice.").

[162] *See supra* note 157, collecting sources.

[163] *Town of Greece*, 572 U.S. at 577 (quoting *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 294 (1963) (Brennan, J., concurring)).

[164] *Watson v. Jones*, 80 U.S. 679, 13 Wall. 679, 728 (1871).

[165] *Cath. Charities Bureau, Inc. v. Wis. Labor & Indus. Rev. Comm'n*, 605 U.S. 238, 248 (2025) ("'The clearest command of the Establishment Clause' is that the government may not 'officially prefe[r]' one religious denomination over another.") (quoting *Larson v. Valente*, 456 U.S. 228, 244 (1982)).

[166] *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 736 (2020) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)). One court explained it simply: "[T]he government has no business in policing who spreads the word on behalf of churches, synagogues, mosques, religious organizations, and other similar institutions." *Union Gospel Mission of Yakima v. Brown*, 162 F.4th 1190, 1196 (9th Cir. 2026).

clergy without any governmental interference."[167] While courts still wrestle with the scope of the ministerial exception—that is, how to define a "minister"—it is well-settled that the doctrine prohibits "government interference with an internal church decision that affects the faith and mission of the church itself."[168] Federal courts of appeal have generally extended this doctrine to the ability of religious institutions to employ co-religionists.[169]

- Equal Access: The government may extend access to public programs and benefits to religious institutions alongside non-sectarian entities.[170] As a corollary, if the government decides to create a public benefit or program, it may not deny religious institutions the opportunity to participate on the basis of their religious character[171] or religious use.[172]

The United States is a pluralistic society with people of widely diverse faith traditions. Religious freedom *for all* is part of our country's bedrock, from the enactment of our Constitution to the establishment of our more recent statutes that protect against religious discrimination. Under our legal system, Americans may hold whatever religious beliefs they choose, even where those beliefs may offend others. The government should not exceed the bounds of its enumerated powers to regulate particular denominations or doctrinal views because of ideological differences of opinion, and it should tread carefully when determining whether religious beliefs cause harm.

IV. THE BIDEN ADMINISTRATION MISCONSTRUED CHRISTIANS' BELIEFS AND TRAMPLED FREEDOM TO PURSUE ITS POLICY ENDS.

Critics of religious liberty often argue that freedom of religion is not absolute, that it does not give "license to discriminate," and that religious liberty must end where harm to another begins.[173] In practice, these arguments have been used to unduly limit religious beliefs and corresponding

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[167] *Union Gospel Mission of Yakima*, 162 F.4th at 1202 (citing *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185-88 (2012)).

[168] *Hosanna-Tabor*, 565 U.S. at 190.

[169] *See, e.g.*, *Little v. Wuerl*, 929 F.2d 944 (3d Cir. 1991); *Kennedy v. St. Joseph's Ministries, Inc.*, 657 F.3d 189 (4th Cir. 2011); *EEOC v. Mississippi College*, 626 F. 2d 477 (5th Cir. 1980); *Hall v. Baptist Mem. Health Care Corp.*, 215 F.3d 618 (6th Cir. 2000); *Union Gospel Mission of Yakima*, 162 F.4th at 1202; *Killinger v. Samford Univ.*, 113 F.3d 196 (11th Cir. 1997).

[170] *Zelman v. Simmons-Harris*, 536 U.S. 639, 662–63 (2002).

[171] *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 474, 484–87 (2020); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 466–67 (2017).

[172] *Carson v. Makin*, 596 U.S. 767, 786-89 (2022); *id.* at 789 (distinguishing *Locke v. Davey*, 540 U.S. 712 (2004)) ("*Locke* cannot be read beyond its narrow focus on vocational religious degrees to generally authorize the State to exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits.").

[173] *See, e.g.*, Louise Melling, *The New Faith-Based Discrimination*, BOSTON REV. (Dec. 14, 2022), https://perma.cc/Z6YA-GX93; Rob Boston, *Supreme Court should recognize that religious freedom is not license to harm LGBTQ+ youth*, AMERICANS UNITED (Oct. 7, 2025), https://perma.cc/7BRS-NTVZ; Alicia Gay, *Religious Freedom Cannot Be a License to Discriminate*, ACLU (June 21, 2012), https://perma.cc/JL85-Q29H; *Lambda Legal Urges Supreme Court to Affirm Definitively that Religion Does Not Grant Businesses a License to Discriminate*, LAMBDA LEGAL (Feb. 22, 2022), https://perma.cc/49U8-SAJL.

conduct with which policymakers hold *political* or *policy* disagreements. This framing of religious exercise and beliefs as discriminatory reflects several fundamental misunderstandings, both about the nature of Christians' traditional beliefs and the scope of their legal protections.

A. Background on Christian Beliefs

Before describing how the Biden Administration demonstrated bias against Christians, it is necessary to define some terms[174] and provide a quick overview of the Christian views that have seemingly generated such controversy and contempt. The overview is not intended to inform Christians what they should believe or how to practice their faith. Questions of "theological controversy," like "matters of church government[,] faith[,] and doctrine," are not in the federal government's purview.[175] We disclaim any attempt to "prescribe what shall be orthodox in . . . religion." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

Rather, the following section's description of Christian beliefs offers a description of general principles many, but not all, Christians hold. The purpose of the overview is to familiarize the reader with some general beliefs, history, and traditions that informed Christian practices that often came into conflict with the Biden Administration. This section serves to "acknowledge the place religion holds in the lives of many private citizens, not to afford government an opportunity to proselytize or force truant constituents into the pews."[176] It draws from a wide variety of sources on both non-sectarian advocacy and schools of Christian theology for informational purposes.

Christianity is a major global religion arising out of the life, death, resurrection, and teachings of Jesus Christ of Nazareth in the 1st Century, whose teachings and historical account are recorded in the Bible.[177] Globally, there are more than two billion Christians.[178] In the United States, there are about 162 million Christians, constituting approximately 62 percent of the American population.[179]

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[174] Without defining terms and discussing fundamentals, we risk "trying to bring about a religious liberty without attempting to settle what is religion or what is liberty." G.K. CHESTERTON, HERETICS AND ORTHODOXY 8 (1905).

[175] *Watson*, 80 U.S. (13 Wall.) at 733; *Kedroff*, 344 U.S. at 116.

[176] *See Town of Greece*, 572 U.S. at 587.

[177] *Christianity*, BRITANNICA (Mar. 24, 2026), https://perma.cc/Y44A-FFU5.

[178] *Christianity*, BRITANNICA, *supra* note 175; *see also* Conrad Hackett et al., *How the Global Religious Landscape Changed from 2010 to 2020*, PEW RESEARCH CTR. (June 9, 2025), https://perma.cc/T6WC-G9L8.

[179] Becka A. Alper & Aleksandra Sandstrom, *If the U.S. had 100 people: Charting Americans' religious affiliations*, PEW RESEARCH CTR. (Nov. 13, 2025), https://perma.cc/9HMS-99BH.

Christians believe that Jesus is the Son of God,[180] and that, along with God the Father and the Holy Spirit, created the world and everything in it.[181] They believe that Jesus, being both fully God and fully human, came to Earth and was killed by crucifixion to bear the punishment once and for all for humanity's sins.[182] Three days later, God the Father raised Jesus from the dead.[183]

All Christians hold to the gospel that "God so loved the world that he gave his only Son, so that everyone who believes in him may not perish but may have eternal life" (Jn 3:16). While the faith tradition stems from Jesus as a historic figure, Christian faith is not "merely historical"; "the vast majority of Christians focus their faith on Jesus as someone who is also a present reality" who condescends to engage with ordinary humans, grants them access to God the Father, and continues to commune with his believers through the Holy Spirit.[184]

From the outset, it is important to acknowledge that Christianity is not monolithic. As of 2023, there are reportedly 47,300 Christian denominations,[185] although an average observer is most likely to categorize Christians among three key groups: Catholics, Protestants, and Orthodox Christians.[186] Christians have hotly debated points of doctrine and biblical interpretation since the earliest days of the religion, ranging from the nature of the Trinity, the authority and methods of interpretation of scripture, human nature, church leadership, baptism, transubstantiation—the list goes on.[187]

Christians have different opinions on doctrinal issues, but the Biden Administration targeted only ones holding certain views. Relevant here, many Christians have long held so-called "traditional" views of marriage and sexuality.[188] For many such Christians, their deep-seated beliefs on sex,

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[180] *What We Believe: The Nicene Creed*, U.S. CONF. OF CATH. BISHOPS (last visited Jan. 18, 2026), https://perma.cc/C6Y2-KGA4; JEN WILKIN & J.T. ENGLISH, YOU ARE A THEOLOGIAN 119–35 (2023) (describing theological understandings of Jesus Christ's incarnation, divinity, life of perfect obedience, work of salvation, death, burial, resurrection, ascension, and redemptive work).

[181] *See, e.g.*, Genesis 1:1-31; 1 John 5:6-9; Westminster Shorter Catechism Q6 ("There are three persons in the Godhead; the Father, the Son, and the Holy Spirit; and the three are one God, the same in essence, equal in power and glory."); WILKIN & ENGLISH, *supra* note 180, at 86–87.

[182] *See* JOHN PIPER, FIFTY REASONS WHY JESUS CAME TO DIE 20–21, 42–43(2006).

[183] *Id.* at 26–27.

[184] *Id.* at 12–14.

[185] *See Christian Denominations*, LAUSANNE MOVEMENT (2023), https://perma.cc/99E6-EB7C (citing study by the Center for Study of Global Christianity).

[186] *See, e.g.*, *Christian Traditions*, LAUSANNE MOVEMENT (2023), https://perma.cc/8EBA-MFD3.

[187] *See* Albert Mohler, *A Call for Theological Triage and Christian Maturity*, S. BAPTIST THEOLOGICAL SEMINARY (July 12, 2005), https://perma.cc/Y3ZD-RAWC; Scott Hubbard, *Of Mountains and Molehills: How Much Should Doctrine Divide Us?*, DESIRING GOD (July 8, 2022), https://perma.cc/64KT-HHRV.

[188] According to a 2025 Pew study, "58% of U.S. adults say there is *a great deal* or *some* conflict between their religious beliefs and mainstream culture, up 10 percentage points from 2024 and 16 percentage points from 2020. Feeling at least somewhat in conflict with American culture because of personal religious beliefs is now a majority view." Chip Rotolo, *Growing Share of U.S. Adults Say Religion Is Gaining Influence in American Life*, PEW RESEARCH CTR. (Oct. 20, 2025), https://perma.cc/X99T-M5Q4 (emphasis removed). That percentage is higher for

marriage, intimacy, and sin, among other topics stem from the Bible's text and teachings.[189] For example:

- Genesis 1:27-28: "So God created man in his own image, in the image of God he created them; male and female he created them. And God blessed them. 'Be fruitful and multiply and fill the earth and subdue it, and have dominion over the fish of the sea and over the birds of the heavens and over every living thing that moves on the earth.'"[190]

- Genesis 2:18, 21-24: "Then the Lord God said, 'It is not good that the man should be alone; I will make a helper fit for him' . . . Then the man said, 'This at last is bone of my bones and flesh of my flesh; she shall be called Woman, because she was taken out of Man.' Therefore a man shall leave his father and mother and hold fast to his wife, and they shall become one flesh."

- Mark 10:6-9: "But from the beginning of creation, God made them male and female. 'Therefore a man shall leave his father and mother and hold fast to his wife, and the two shall become one flesh.' So they are no longer two but one flesh. What therefore God has joined together, let not man separate."[191]

- Romans 1:24-32: "Therefore God gave them up in the lusts of their hearts to impurity, to the dishonoring of their bodies among themselves, because they exchanged the truth about God for a lie and worshiped and served the creature rather than the Creator, who is blessed forever! Amen. For this reason God gave them up to dishonorable passions. For their women exchanged natural relations for those that are contrary to nature; and the men likewise gave up natural relations with women and were consumed with passion for one another, men committing shameless acts with men and receiving in themselves the due penalty for their error. And since they did not see fit to acknowledge God, God gave them up to a debased mind to do what ought not to be done. They were filled with all manner of unrighteousness, evil, covetousness, malice. They are full of envy, murder, strife, deceit, maliciousness. They are gossips, slanderers, haters of God, insolent, haughty, boastful, inventors of evil, disobedient to parents, foolish, faithless, heartless, ruthless. Though they know God's righteous decree that those who practice such things deserve to die, they not only do them but give approval to those who practice them."

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some denominational and demographic groups: 80 percent of white evangelical Protestants, 58 percent of black Protestants, and 55 percent of Catholics see a conflict between their religious beliefs and mainstream culture. *Id.*

[189] *See* WILKIN & ENGLISH, *supra* note 178, at 70–78 (describing the Bible and Christians' understanding of scripture as God's word, which is authoritative, inerrant, infallible, necessary to Christian life, sufficient for a life of godliness, and understandable to the reader). Notably, other Christians and religious groups reach the same conclusions by relying on religious tradition and teachings on natural law. *See, e.g.*, CATECHISM OF THE CATHOLIC CHURCH 1954 to 1960.

[190] Each of the biblical references in this report are taken from the English Standard Version.

[191] *See also Obergefell v. Hodges*, 576 U.S. 644, 679 (2015) (explaining that many Americans "advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned").

While to be sure, some Christians argue that these verses should be understood in a manner different than traditional Christians, only the latter who were subjected to hostility by the Biden administration.

Generally, Christians also believe in forgiveness, redemption, and love for others because of the love that their Lord has shown them.[192] Christian doctrine explains that these gifts are unmerited, were given as a sacrificial gift through the death of Jesus Christ, and have the power to save and transform those who believe in him to walk in a life of love and holiness. Christian beliefs about the sinfulness of man ultimately point to the possibility of repentance and the necessity of Christ's love and forgiveness.[193] Take for instance:

- John 3:16-18: "For God so loved the world, that he gave his only Son, that whoever believes in him should not perish but have eternal life. For God did not send his Son into the world to condemn the world, but in order that the world might be saved through him. Whoever believes in him is not condemned, but whoever does not believe is condemned already, because he has not believed in the name of the only Son of God."

- Romans 3:22b-25a: "For there is no distinction: for all have sinned and fall short of the glory of God, and are justified by his grace as a gift, through the redemption that is in Christ Jesus, whom God put forward as a propitiation by his blood, to be received by faith."

- 1 John 3:1, 11, 16-18: "See what kind of love the Father has given to us, that we should be called children of God; and so we are . . . For this is the message you have heard from the beginning, that we should love one another . . . By this we know love, that he laid down his life for us, and we ought to lay down our lives for the brothers. But if anyone has the world's goods and sees his brother in need, yet closes his heart against him, how does God's love abide in him? Little children, let us not love in word or talk but in deed and in truth."

- Luke 6:27-28, 32, 35-36: "But I say to you who hear, Love your enemies, do good to those who hate you, bless those who curse you, pray for those who abuse you . . . If you love those who love you, what benefit is that to you? For even sinners love those who love them… But love your enemies, do good, and lend, expecting nothing in return, and your reward will be great, and you will be sons of the Most High, for his kind to the ungrateful and the evil. Be merciful, even as your Father is merciful."

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[192] "Repentance that leads to life is a saving grace, where a sinner with a true understanding of their sin and an appreciation of God's mercy in Christ, does, with grief and hatred of their sin, turn away from it and to God with a full intention and effort to live a new life of obedience." THE WESTMINSTER SHORTER CATECHISM Q87.

[193] *See, e.g.*, CATECHISM OF THE CATHOLIC CHURCH 1851 ("The sacrifice of Christ secretly becomes the source from which the forgiveness of our sins will pour forth inexhaustibly."); THE WESTMINSTER SHORTER CATECHISM Q14 ("Sin is any lack of obedience to, or violation of, God's law."); *see also* WILKIN & ENGLISH, *supra* note 180, at 53–58 (listing God's attributes as revealed through Scripture: infinite, eternal, sovereign, omnipotent, omnipresent, omniscient, holy, loving, just, good, merciful, gracious, long-suffering, wise, wrathful, faithful, righteous, and true); PIPER, *supra* note 182, at 20–21 ("To Absorb the Wrath of God"); *id.* at 28–29 ("To Show the Wealth of God's Love and Grace for Sinners"); *id.* at 30–31 ("To Show His Own Love for Us"); *id.* at 36–37 ("For the Forgiveness of Our Sins"); *id.* at 78–79 ("So That We Might Die to Swin and Live to Righteousness").

- Romans 2:4: "Or do you presume on the riches of his kindness and forbearance and patience, not knowing that God's kindness is meant to lead you to repentance?"

Under Christian doctrine, when a believer confronts and repents for the extent of their own sin, they can see the measure of love and grace that God showed in forgiving their sins, and this good news motivates them to share this news with others. Indeed, Christians are commanded to "go therefore and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all that [Christ] [has] commanded" them.[194] Finally, many Christians believe that, if they follow Jesus Christ and affirm these scriptural truths, their faith must necessarily inform their actions and guide how they live their daily lives.[195] To them, Christian faith and a daily walk with Christ stretches "from our very first moments of waking in the morning … to our drifting off into sleep," urging that faith touches each quotidian activity, decision, thought, and statement that a Christian makes.[196] Biblical teachings and church doctrine inform a Christian's daily life at work, at school, on vacation, with family, in the marketplace, and in the decisions of how to care for their bodies.[197]

B. The Biden Administration inappropriately equated disagreement over religious convictions with affirmative harm.

When acted upon, traditional Christian moral beliefs can fall into significant conflict with modern American culture and generate significant policy and political disagreements. In many respects, the current debates within American "culture wars"[198] reveal that the disparate views hold incompatible understandings of the source and nature of truth,[199] the nature of human life and

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[194] Matthew 28:19-20.

[195] *See* James 1:22-25 ("But be doers of the word, and not hearers only, deceiving yourselves. for if anyone is a hearer of the word and not a doer, he is like a man who looks intently at his natural face in a mirror. For he looks at himself and goes away and at once forgets what he was like. But the one who looks into the perfect law, the law of liberty, and perseveres, being no hearer who forgets but a doer who acts, he will be blessed in his doing."); *see also* THE WESTMINSTER SHORTER CATECHISM Q35 ("Sanctification is the work of God's free grace, which allows us to be renewed in our entirety to reflect the image of God, and to increasingly reject sin and embrace righteousness.") (internal citations omitted).

[196] *See* Andy Crouch, *Foreword*, *in* TISH HARRISON WARREN, LITURGY OF THE ORDINARY (2016); JOHN MARK COMER, PRACTICING THE WAY: BE WITH JESUS, BECOME LIKE HIM, DO AS HE DID 41–46 (2024) (describing life as a "seamless integrated whole, grounded in God's presence").

[197] WILKIN & ENGLISH, *supra* note 180, at 19 ("Theology is not done exclusively or even primarily in the classroom. It is done in everyday life, every minute of every day . . . . [W]hen we go to work, when we take a vacation, as we care for an aging parent, as we fight sin, as we raise kids, as we mourn the loss of a loved one, as we spend our money, and as we grow old."); 1 Corinthians 11:1 ("Be imitators of me, as I am of Christ.").

[198] TIMOTHY KELLER, THE REASON FOR GOD xvi (2008) (When fundamental understandings of reality conflict, it is hard to find anything to which to appeal.); *id.* ("[O]ur political and public discourse on matters of faith and morality has become deadlocked and deeply divided. The culture wars are taking a toll. Emotions and rhetoric are intense, even hysterical. Those who believe in God and Christianity are out to "impose their beliefs on the rest of us" and "turn back the clock" to a less enlightened time. Those who don't believe are "enemies of truth" and "purveyors of relativism and permissiveness.").

[199] For example, compare the approaches of "speak your truth" with a belief in absolute truth established by God. *Compare Speaking Your Truth: The 5 Whys*, UC MERCED HUMAN RESOURCES (last visited Jan. 21, 2026), https://perma.cc/2PFU-YCHE; Angela Bailey, *CHCO Blog – Speak Your Truth*, DHS EMPLOYEE RESOURCES (Nov.

personal autonomy,[200] identity,[201] and human relationships.[202] Fewer matters hold greater personal importance to each American, whether religious or not. And the federal government must fairly govern all Americans, no matter their views on these topics.

Despite this responsibility, the Biden Administration asserted governmental interests in antidiscrimination that it believed superseded the freedom of Christians to act in accordance with their beliefs. For example, affirming gender self-identification, for example, has been described by some as a matter of life or death.[203] On the other hand, from the competing Christian worldview, the ability to live according to God's designs for humanity and teachings in all areas of life implicates salvation and ongoing obedience to God.[204]

No matter how well-intended the government's policy aims may be, the First Amendment requires—at minimum—that such "policies may not themselves be utilized in a manner that transgresses or supersedes" constitutionally protected religious rights.[205] And, although the Biden

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12, 2021), https://perma.cc/SVU9-927Y, *with* ALLIE BETH STUCKEY, YOU'RE NOT ENOUGH (AND THAT'S OKAY) 60 (2020) (citing C.S. LEWIS, MERE CHRISTIANITY 6–8 (Harpers Collins 1952)).

[200] Consider mainstream approaches on considering whether to seek an abortion compared to Christian "pro-life" teachings. *Compare Learn: Considering Abortion*, PLANNED PARENTHOOD (last visited Jan. 18, 2026), https://perma.cc/C8AF-DCVS*, with Respect for Unborn Human Life: The Church's Constant Teaching*, U.S. CONF. OF CATH. BISHOPS (2026), https://perma.cc/S8KT-PAQP ("From earliest times, Christians sharply distinguished themselves from surrounding pagan cultures by rejecting abortion and infanticide . . . modern science has not changed the Church's constant teaching against abortion, but has underscored how important and reasonable it is, by confirming that the life of each individual of the human species begins with the earliest embryo."); NANCY R. PEARCEY, LOVE THY BODY 55 (2019) ("A Christian concept of personhood depends not on what I can do but on who I am—that I am created in the image of God, and that God has called me into existence and continues to know and love me . . . Our dignity is intrinsic, rooted in the fact that God made us, knows us, and loves us.").

[201] *Compare Understanding Gay & Lesbian Identities*, THE TREVOR PROJECT (Aug. 20, 2021), https://perma.cc/PLN6-YCBH; For Teens: Sexual Orientation, PLANNED PARENTHOOD (last visited Jan. 18, 2026), https://perma.cc/99DT-8V2L, *with* discussion of Christian teachings on gender, *supra* at 26–28.

[202] *Compare* WHY IS SAME-SEX MARRIAGE IMPORTANT? THE EQUALITY NETWORK (July 2013), https://perma.cc/6LB8-QVW3; Learn: Sex, Pleasure, and Sexual Disfunction, PLANNED PARENTHOOD (last visited Jan. 18, 2026), https://perma.cc/B5HL-UKX5 *with* TIMOTHY KELLER, THE MEANING OF MARRIAGE 6 (Penguin Books 2011) ("Marriage is God's idea. It is certainly also a human institution, and it reflects the character of the particular human culture in which it is embedded. But the concept and roots of human marriage are in God's own action, and therefore what the Bible says about God's design for marriage is crucial."); LEWIS, *supra* note 198, at 104–05 (similar); *Between Man and Woman: Questions and Answers about Marriage and Same-Sex Unions*, U.S. CONF. OF CATH. BISHOPS (2026) ("Only a union of male and female can express the sexual complementarity willed by God for marriage. The permanent and exclusive commitment of marriage is the necessary context for the expression of sexual love intended by God both to serve the transmission of human life and to build up the bond between husband and wife.").

[203] *See Gender-Affirming Care for Youth*, THE TREVOR PROJECT (Jan. 29, 2020), https://perma.cc/ZJ9T-U2C3; *Tingley v. Ferguson*, 57 F.4th 1072, 1083 (9th Cir. 2023) (Bumatay, J., dissenting from denial of rehearing en banc) (summarizing stated governmental interests of preventing emotional harms and suicidal ideation).

[204] *See* John 14:15 ESV (Jesus said, "If you love me, you will keep my commandments"); *see also* ROLAND H. BAINTON, HERE I STAND: A LIFE OF MARTIN LUTHER 331 (1950) (ebook), https://perma.cc/RA8M-APXR (quoting Martin Luther, "Faith . . . is a living, restless thing. It cannot be inoperative. We are not saved by works; but if there be no works there must be something amiss with faith.").

[205] *Fellowship of Christian Athletes*, 82 F.4th at 672.

Administration regularly stated that it was committed to religious liberty,[206] its actions and policies bely that claim. This anti-Christian bias may have stemmed from a conflation of *conduct* and *status* in two significant ways.

i. The Biden Administration Viewed Christian Objections to Certain Conduct as Discrimination on the Basis of Protected Status.

As described earlier, Christians with traditional views generally believe both (1) that they should love others because they are made in the image of God, and (2) that, as followers of Christ, they must not cooperate in conduct or speech that contradicts their faith.[207] Said differently, religious beliefs may require such Christians to object to *conduct* that violates their faith while still respecting the person engaged in the conduct itself. On that basis, some Christians have refused to provide wedding services for same-sex couples, while other Christian employers have sought to hire only co-religionists who not only share their beliefs, but act in accordance with them.[208] In many of these cases, the Christian plaintiffs explained their willingness to gladly serve same-sex customers and clients but politely declined to participate in a same-sex wedding.[209] Celebrating or participating in conduct they view as sin carries a "'very real threat of undermining' [ ] religious beliefs" and may exert "pressure to conform" to certain viewpoints.[210]

Policymakers and courts have often conflated these religious believers' objections to *conduct* with objections to a protected *status*.[211] For example, in the context of issues related to human sexuality, Christians focus on the underlying sexual conduct, while those in favor of gender ideology or same-sex marriage view such conduct as an inherent part of their identities, which they view as equal to other protected classes like race, national origin, or sex.[212]

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[206] A Proclamation on Religious Freedom Day, 2024, THE WHITE HOUSE (Jan. 12, 2024), https://perma.cc/ELQ2-PSE8 ("[M]y my Administration is working tirelessly to protect and preserve the right to freedom of religion for everyone everywhere."); *see also* Maggie Siddiqi et al., *7 Ways the Biden Administration Advanced Religious Liberty During Its First Year*, CTR. FOR AM. PROGRESS (Feb. 25, 2022), https://perma.cc/3NKK-7SUP.

[207] *See* KELLER, REASON, *supra* note 198, at 188 ("That means that I cannot despise those who do not believe as I do."); WILKIN & ENGLISH, *supra* note 180, at 95–96 ("When we distort, overlook, or erase human sexuality as God created it, we participate in attempting to overturn God's created order.").

[208] *See* Brief for Petitioner at 8, *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm'n*, No. 16–111, 2017 WL 3913762, at *8 ("Phillips gladly serves people from all walks of life, including individuals of all races, faiths, and sexual orientations. But he cannot design custom cakes that express ideas or celebrate events at odds with his religious beliefs.").

[209] *See 303 Creative LLC v. Elenis*, 600 U.S. 570, 581–82 (2023); Defendants' Motion for Partial Summary Judgment at 3, *State v. Arlene's Flowers, Inc.*, No. 13-2-00871-5 (Wash. Super. Ct. Oct. 25, 2013), 2013 WL 10257920, at *2–3 (explaining that the couple that sued Barronelle Stutzman were "longstanding customers of Arlene's Flowers," that Barronelle had served them for nine years, "knowing full well that they were gay," but that she "could not [design flowers for a same-sex wedding ceremony] 'because of [her] relationship with Jesus Christ"). *See generally* Joshua J. Craddock, *The Case for Complicity-Based Religious Accommodations*, 12 TENN. J.L. & POL'Y 233 (2018) (addressing the concept of complicity in free-exercise cases).

[210] *Mahmoud*, 606 U.S. at 553–54 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)).

[211] *See* Helen M. Alvaré, *Religious Freedom and the Status/Conduct Problem in Nondiscrimination Cases*, 69 VILL. L. REV. 881, 884–85 (2025).

[212] *See generally id.* (discussing issues caused by conflating religious status and conduct in nondiscrimination cases).

Thus, from a Christian's perspective, a Christian may object to participating in a wedding ceremony because she objects to the underlying *conduct*. But, to the same sex couple seeking the services, they may perceive the Christian's objections as an affront to their *status* and identity. The second perspective—where status and conduct conflate—may then incorrectly presume Christians to hold bigoted views that must be curtailed to protect the rights of these communities. This mischaracterization provides policymakers with the necessary justification to prioritize identitarian policy goals over—and at the expense of—religious liberty.[213]

ii. The Biden Administration Typically Exhibited Bias Against Conduct Stemming from Christian Beliefs, not on the Basis of Christian Status.

The Biden Administration also conflated Christians' status and conduct. For the most part, the Administration did not discriminate against Christians because of their *status* as Christians. Rather, it discriminated against Christians because of their *conduct* as Christians: how they acted in alignment with their religious beliefs.[214] The Biden Administration thought that it could regulate conduct motivated by sincerely held religious beliefs without violating the believers' religious freedoms. Because it incorrectly ascribed discriminatory intent to Christian beliefs about each of the issues discussed in this section, the Biden Administration unduly circumscribed the rights of Christians to live according to their beliefs. Because it set out to regulate "conduct" artificially divorced from faith, the Biden Administration did not always engage in meaningful analysis or individualized assessment of whether those regulations infringed on free exercise. As a corollary to that error, the Administration did not always consider alternative, less restrictive means of regulating conduct based on sincerely held religious beliefs.

As a result, the Biden Administration's policy goals almost always outweighed religious liberty rights. At times, the Biden Administration prioritized protecting certain groups from being offended at the expense of religious beliefs and conscience protections. In other instances, it sought to protect those groups by ensuring that religious believers affirm sexual identities by using preferred pronouns and participating in others' conduct by providing services that violated Christians' conscience rights. The findings of anti-Christian bias in this report generally fall into three erroneous analytical frameworks, all stemming from the conflation of status and conduct:

- The Biden Administration's actions demonstrated a view that Christians can hold certain beliefs *but cannot act on them.* Across many contexts—FACE Act prosecutions, investigations of Catholics and school parents, overbroad application of so-called "nondiscrimination" laws, failure to protect conscience rights, and mandated vaccination policies without meaningful religious accommodations—the Biden Administration made clear that *acting* on one's faith could not be tolerated when religiously inspired conduct ran afoul of its policy goals.

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[213] *See Chiles v. Salazar*, 607 U.S. ____ (2026), slip op. 22 ("[T]he First Amendment rests [] on a simple truth: [T]he people lose whenever the government transforms prevailing opinion into enforced conformity.") (internal quotation omitted).

[214] In support of similar policies and practices, some state governments have urged the view that their policies do not engage in "status-based" discrimination, but rather impose "use-based restrictions," such as in the context of funding restrictions on sectarian schools. *Carson*, 596 U.S. at 786.

- Likewise, the Biden Administration's regulations of religious expression showed that it would tolerate that Christians hold beliefs but *would not allow Christians to share those views or try to convince others to believe them*.

- Relatedly, the Biden Administration's views demonstrate its belief that some types of Christians deserve more protection than others. Christians would enjoy robust religious liberty rights if they agreed with the Biden Administration on its views on matters of human nature, such as life, marriage, and identity. Similarly, the Biden Administration worked to promote the religious liberty of minority faiths only, seemingly ignoring Christians.

Taken together, the Biden Administration's misconceptions of religious liberty and misconstruing of traditional Christian beliefs created a permission structure to engage in significant policy actions against Christians and other religious groups that hold disfavored views because of their faith. In each of the chapters that follow, this report will document the ways in which the Biden Administration engaged in anti-Christian bias, largely by pursuing policy goals at the expense of protected constitutional rights.

Chapter 3. Anti-Christian Bias within the Federal Government.

Based on the Task Force's review of the Biden Administration's policies, practices, and actions, the unavoidable conclusion is that the Biden Administration engaged in anti-Christian bias by disregarding the religious freedom rights of Christians, and, in some circumstances, even launching investigations and prosecutions because of Americans' Christian beliefs. The Biden Administration's ideological motivations regularly clashed with a Christian worldview; when those perspectives were opposed, traditional religious practices were often burdened. These issues most frequently arose in the context of disagreements over abortion, gender ideology, and sexual orientation. In pursuing "inclusion," the Biden Administration promulgated policies and engaged in case-by-case decision-making that often penalized Christians who believe that the Bible and religious tradition inform a different, traditional view on those controversial issues and requires Christians to act in accordance with their beliefs.

In promoting its policy goals, the Biden Administration minimized religious freedom and conscience rights in practice. Religious discrimination was a negative externality of pursuing radical policy objectives at the cost of constitutional rights. The findings of this chapter are not exhaustive and cannot include the full panoply of allegations and instances raised to the Task Force's attention. Rather, this chapter points to the following examples as illustrative of the broader issues of anti-Christian bias in the Biden Administration.

This chapter proceeds as follows:

First, it begins with examples of anti-Christian bias displayed in the Biden Administration's prosecutions and enforcement actions, where these decisions had the most damaging impact not just on the victims' free exercise, but on their liberty and property as well.

Second, the Chapter turns to the broad array of policies and practices that the Biden Administration promulgated and supported that imposed significant burdens on free exercise with few exceptions or conscience protections, without considering or adopting less restrictive means to accomplish its preferred policy goals.

Third, the Chapter describes the many ways in which the Biden Administration curtailed religious freedoms in the workplace by denying religious accommodations and by imposing such onerous and shifting procedures that, in many cases, the process was the punishment for Christians seeking to live out their beliefs.

Fourth, the Chapter addresses the Biden Administration's limitations on religious expression, describing a series of examples in which federal actors undermined the ability of Christians to speak publicly about their beliefs or gather corporately to worship.

Fifth, the Chapter concludes by describing many of the instances in which the Biden Administration restricted Christians' access to federal benefits or services on less favorable terms than other groups.

I. PROSECUTIONS AND ENFORCEMENT ACTIONS

The authority to investigate and prosecute criminal offenders and pursue civil enforcement actions to promote compliance are critical tools the federal government uses to protect our country and the rights we enjoy. The Biden Administration, however, weaponized these tools to target those with traditional Christian views.

- The Biden DOJ pursued aggressive prosecutions against non-violent, pro-life,[215] Christian demonstrators, while responding far less forcefully to violent attacks against Christian pregnancy resource centers and houses of worship.

- The Biden FBI investigated, monitored, tracked, and scrutinized traditional Catholics who had engaged in no criminal misconduct based solely on their traditional Catholic views.

- The Biden DOJ dedicated significant internal effort and law enforcement resources to combat the perceived "threats" of concerned parents at school board meetings through its implementation of the "Garland Memorandum."

- The Biden IRS investigated churches and Christian non-profits because of what their pastors preached at the pulpits and how they sought to apply biblical teachings to current events and daily life.

- The Biden ED focused its enforcement actions primarily against Christian universities, levying enormous fines that dwarfed the penalties for violations by non-religious institutions for more egregious infractions.

- And, notably, the Biden HHS and DOJ declined to continue pursuing a civil action started under the first Trump Administration that sought to vindicate the conscience rights of a Christian nurse who was coerced into participating in an abortion despite her sincere religious objections, ultimately resolving the matter through technical assistance rather than enforcement.

This Section provides a detailed accounting of each category of anti-Christian bias.

A. DOJ's FACE Act Prosecutions

The Freedom of Access to Clinic Entrances (FACE) Act is a viewpoint neutral law designed to protect access to religious institutions and certain healthcare facilities, including abortion clinics and pregnancy resource centers. The Biden DOJ, however, weaponized the FACE Act against non-violent, pro-life demonstrators, while often ignoring vandalism and attacks against pregnancy resource centers or houses of worship. Acting Attorney General Blanche, in his capacity as Chair

[215] "[T]he Roman Catholic Church created the right-to-life movement—rebranded as the pro-life movement after *Roe v. Wade*—by providing the early organizational infrastructure, funding, a vast communications network, people-power and political clout." Lori Friedman, *U.S. Abortion Politics: How Did We Get Here and Where Are We Headed?*, LEHIGH UNIV. NEWS (June 3, 2019), https://perma.cc/S733-X7FU.

of the Task Force, conducted a comprehensive review of the Biden DOJ's FACE Act enforcement efforts and issued a report entitled, "The Biden Administration's Weaponization of the Freedom of Access to Clinic Entrances Act," setting forth the full findings of this review. [216] The following is intended to provide a high-level overview of these findings.[217]

i. Overview of the FACE Act

The FACE Act makes it unlawful to:

> (1) by force or threat of force or by physical obstruction, intentionally injure[], intimidate[] or interfere[] with or attempt[] to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;
>
> (2) by force or threat of force or by physical obstruction, intentionally injure[], intimidate[] or interfere[] with or attempt[] to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or
>
> (3) intentionally damage[] or destroy[] the property of a facility, or attempt[] to do so, because such facility provides reproductive health services, or intentionally damage[] or destroy[] the property of a place of religious worship.[218]

FACE Act violations are punishable by criminal fines and/or terms of imprisonment, including a maximum term of up to six months for a first "offense involving exclusively a nonviolent physical obstruction" and up to one year for any other first offense.[219]

DOJ is responsible for prosecuting crime in a manner that is consistent with its mission "to uphold the rule of law, to keep our country safe, and to protect civil rights."[220] It must act with independence, impartiality, honesty, integrity, excellence, and respect, valuing "differences in people and in ideas and treat[ing] everyone with fairness, dignity, and compassion."[221]

The FACE Act is also subject to civil enforcement. DOJ may secure injunctive relief such as establishing buffer zones. DOJ may also seek monetary damages.[222]

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[216] U.S. Dep't of Just., The Biden Administration's Weaponization of the Freedom of Access to Clinic Entrances Act (Apr. 14, 2026), https://perma.cc/EV2Q-ZGQX.

[217] All statements and conclusions in this high level-overview are discussed in greater detail in DOJ's comprehensive report, along with accompanying exhibits. *See id.*

[218] 18 U.S.C. § 248(a)(1)-(3).

[219] 18 U.S.C. § 248(b)(1)-(2).

[220] *About DOJ*, U.S. DEP'T OF JUST., https://perma.cc/TAJ5-T8XL (last visited Jan. 7, 2026).

[221] *Id.*

[222] 18 U.S.C. § 248(c)(2)(A)-(B).

ii. Key Findings

The Biden DOJ weaponized the FACE Act in several key ways:

a. The Biden DOJ violated the rights of Americans by its biased enforcement of the FACE Act.

Former Attorney General Merrick Garland revived the National Task Force on Violence Against Reproductive Health Care Providers (Task Force) to weaponize the FACE Act.[223] Though the FACE Act was supposed to protect both pro-choice and pro-life facilities, Biden DOJ senior leadership[224] and Task Force Members provided extensive support to abortion clinics,[225] yet the Biden DOJ often ignored and downplayed vandalism and attacks against pregnancy resource centers or houses of worship.

The Task Force, composed primarily of DOJ's Civil Rights Division (CRT) career attorneys, oversaw the FACE Act and related outreach. Task Force leadership handled most of DOJ's communication with outside groups and victims of alleged FACE Act violations. The Task Force Director was in regular, ongoing contact with pro-abortion non-governmental organizations (NGOs) and the clinics they represented but disregarded pro-life groups.

Pro-abortion groups capitalized on their relationship with the Task Force to gain internal information and push targets for FACE Act enforcement. The Task Force Director was on texting terms with the National Abortion Federation's (NAF) Security Team and regularly communicated with Planned Parenthood Federation of America and the Feminist Majority Foundation (FMF). The Task Force viewed NAF's Security Team as an "MVP" at flagging protests for DOJ's "attention, often in real-time, which usually result[ed] in an investigation/prosecution."

Task Force attorneys did not communicate with any pregnancy resource center groups or representatives until September 2022, well after the increase in violence after the Supreme Court's decision in *Dobbs*.[226] After that time, CRT identified possible contacts for pregnancy resource centers via a quick Google search and directed Task Force leadership to schedule meetings. The Task Force then had several meetings with the pro-life groups identified through that initial outreach and periodically sent them press releases. However, internally, CRT attorneys questioned whether to provide pregnancy resource centers with the same resources as abortion clinics, questioning whether these facilities fall under the FACE Act's scope.

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[223] *See* Archives: U.S. Dep't of Just., *Reproductive Rights* (2022), https://perma.cc/9YQ3-L7HZ.

[224] *See* Archives: U.S. Dep't of Just., *Justice Department Announces Reproductive Rights Task Force* (July 12, 2022), https://perma.cc/542N-UQ6R (announcing the establishment of the Reproductive Rights Task Force, chaired by former Associate Attorney General Vanita Gupta, to formalize existing DOJ efforts to "protect access to reproductive health care in anticipation of the Supreme Court overturning *Roe v. Wade*").

[225] *See, e.g.*, "Resource Booklet for Reproductive Health Care Providers and Their Staff," National Task Force of Violence Against Reproductive Health Care Providers (Nov. 7, 2022), *available at* https://perma.cc/CMJ6-3EC6, at 11 (describing the FACE Act only in terms of protection to abortion clinics).

[226] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022).

b. The Biden DOJ collaborated with pro-abortion groups to track pro-life activists' First Amendment activity.

The Task Force affirmatively asked the abortion groups about pro-life individuals' travel and constitutionally protected advocacy. The pro-abortion groups even asked the Biden DOJ to target a pro-life religious order, the Franciscan Brothers of Peace. The FBI flagged that the abortion groups' outreach tracked pro-life groups' "1st Amendment protected activity." Yet, the Task Force did not relent, even after this warning.

Abortion NGOs routinely contacted CRT about protests at clinics and possible, alleged FACE Act violations across the country. The Task Force Director "monitored" pro-life activists for years before charging them. This monitoring included three of the defendants that President Trump later pardoned. During the investigations of these cases, the NGOs sent DOJ "security reports" or "dossiers" on the activities of the pro-life activists and their personal information. For example, in 2021, before an annual conference by a pro-life group, one pro-abortion NGO sent the Task Force Director and the FBI a 137-page memorandum on the conference schedule, lodging, and multi-page dossiers on numerous "anti-choice individuals," including many individuals that DOJ then prosecuted. These dossiers contained personally identifying information, such as addresses, photographs (including of spouses and minor children), names of associates and affiliated ministries, information about their upcoming travel plans or planned protests, and even drivers' license numbers.

NGOs repeatedly complained about one activist, provided real-time updates of her pro-life activism, and requested that DOJ pursue nationwide injunctions against pro-life activities, citing this woman's protests as justification. The Biden DOJ investigated this woman's conduct around the country until one of the United States Attorney's Offices brought charges. After her conviction and lengthy sentence, the NGOs stopped complaining about her.

In each of the later-pardoned FACE Act cases, DOJ and the FBI learned of the possible FACE violations from abortion NGOs, rather than from the purported victims or local law enforcement. NAF typically informed the Task Force Director in real time of ongoing protests, often before local law enforcement could fully respond. At his request, NGOs compiled evidence that ultimately gave rise to search warrants and charges. The Task Force also coordinated with the abortion NGOs on civil actions against pro-life activities at clinics.

c. Biden DOJ prosecutors engaged in inappropriate conduct and comments.

The Biden DOJ prosecutors knowingly withheld evidence that defense counsel requested to prepare an affirmative defense. The Biden DOJ prosecutors falsely claimed to not have such information available. In *United States v. Gallagher*,[227] defense counsel contacted federal prosecutors, requesting historical data on FACE Act prosecutions to prepare their selective prosecution defense. The Task Force Director declined, stating that he did not "keep the[se] kind of records" and did not believe that the Department "will provide them." Notably, he had this

[227] *United States v. Gallager*, No. 3:22-cr-00327 (M.D. Tenn.).

information readily available and decided not to share it with the defendants, despite sharing substantially identical information with NAF.

The Biden DOJ prosecutors tried to screen out jurors based on religion. In *United States v. Zastrow*,[228] Assistant United States Attorneys (AUSAs) looked for ways to screen possible jurors based on their conservative or religious views, while not inquiring about liberal counterviews. They referred to Christian pro-life views as "culty" and lambasted the defendants' beliefs in the courtroom. The AUSAs also complained that they "ended up with a very Catholic magistrate on duty this week and he was very particular about the bond conditions and not infringing on [defendants'] first amendment rights." Seeking to recuse a judge based on their race or religion can lead to disbarment.

The Biden DOJ used the FACE Act to prosecute a father whose minor son was attacked by an abortion clinic worker—and DOJ lost. In *United States v. Houck*,[229] prosecutors considered and declined a request for the defendant to self-report. Rather, 16 FBI agents arrested the defendant at his home. When faced with public backlash about the aggressive arrest, the Task Force Director attempted to blame the FBI, rather than address the Biden DOJ's lack of initial guidance to law enforcement. The jury ultimately found Houck not guilty, and DOJ settled a civil claim to compensate for the Biden DOJ's misconduct.

d. The Biden DOJ pursued more severe charges and significantly harsher sentences for peaceful pro-life defendants than violent pro-abortion defendants.

The Biden DOJ requested an average sentence of 26.8 months for pro-life defendants, compared to 12.3 months for pro-choice defendants. The Biden DOJ pursued significantly higher sentences (near the top range of sentencing guidelines) for pro-life defendants, while pursuing more lenient sentences against the handful of pro-abortion defendants that it charged. Pro-life defendants were ultimately sentenced to an average of 14 months, while pro-abortion defendants were sentenced to an average of 3 months. The individual sentencing requests and sentences are summarized in the following chart:

[228] *United States v. Zastrow*, No. 2:23-cr-20100 (E.D. Mich.).

[229] *United States v. Houck*, No. 2:22-cr-00323 (E.D. Pa.).

Pro-Life Defendants	Request (in months)	Sentence (in months)
United States v. Handy		
Handy	78	58
Darnel	51	34
Harlow	41	24
Marshall	41	24
Hinshaw	33	21
Idoni	41	24
Goodman	41	27
Bell	41	27
Geraghty	41	27
United States v. Gallagher		
Gallagher	20	16
Idoni	18	8
C. Zastrow	24	6
Boyd	15	0
Vaughn	12	0
Green	15	0
Edl	0	0
E. Zastrow	0	0
J. Zastrow	0	0
Place	0	0
United States v. Moscinski		
Moscinski	6	6
United States v. Williams		
Beatty	46	41
Average	26.8 months	14.7 months

Pro-Abortion Defendants	Request (in months)	Sentence (in months)
Florida/Jane's Revenge		
Freestone	12	12
Smith-Stewart	16	1
Rivera	16	1
Oropesa	24	4
United States v. Durant		
Durant	0	0
United States v. Skorick		
Skorick	6	0
Average	12.3 months	3 months

See Table Notes.[230]

[230] This chart does not include the sentencing recommendations of FACE Act defendants who committed violent attacks, but rather assesses the closest possible comparators, whose cases this report discusses. The data presents the Biden DOJ's high-end sentencing request.

Vaughn and Green were sentenced to time served. Boyd, Davis, Edl, Eva Zastrow, James Zastrow, and Place were sentenced to probation. For purposes of calculating average sentences, Vaughn and Green were treated as if they had served sentences of zero days.

Regarding E. Zastrow, DOJ stated that, "[b]ut for the sentencing disparity it would create with other defendants [due to the court's downward variance in imposing sentences], the government would submit that a sentence of three months of incarceration and no fine would be sufficient." DOJ requested a sentence of probation.

The Biden DOJ requested that the court sentence Durant to at least one year of probation.

e. The Biden DOJ sought to provide funding to pro-abortion groups.

The Task Force Director served as a reference on NAF's application for a large, private grant. DOJ found no record of ethics approval for a DOJ attorney to take an interest in the financial outcome of a party having business before the Biden DOJ.[231]

iii. The Trump Administration's Work to Right Prior Wrongs

President Trump issued full and unconditional pardons to many of the pro-life Christians unfairly targeted by the Biden DOJ. And DOJ leadership dismissed, with prejudice, three of the civil lawsuits against non-violent pro-life demonstrators and issued a directive that, moving forward, DOJ prosecutors may only bring FACE Act civil actions and prosecutions in extraordinary circumstances or in cases presenting significant aggravating factors.[232]

B. FBI's Investigations of Traditional Catholics

The FBI's "mission is to protect the American people and uphold the Constitution of the United States."[233] Under the Biden Administration, however, elements within the FBI neglected this mission. Instead, they shifted their focus from protecting Americans to targeting traditional Catholics.[234] FBI's Richmond Field Office was at the forefront of this effort, and it justified its actions through misplaced reliance on baseless allegations from the Southern Poverty Law Center and the religious affiliation of one law enforcement target, with no legitimate connection between the target's religion and the crimes for which he was investigated and ultimately convicted.[235] The Weaponization Working Group will publish a report detailing the day-to-day weaponization of the Richmond Field Office against conservative, practicing Catholics on the basis of guilt-by-association because one career criminal attended a local Catholic church. The following, however, is intended to provide a high-level overview of its findings.

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[231] *See* U.S. Dep't of Just., Ethics Handbook for On and Off-Duty Conduct (Nov. 2024), https://perma.cc/53NY-NQBW.

[232] U.S. DEP'T OF JUST., OFF. OF THE ASSOCIATE ATTORNEY GENERAL, FACE ACT CHARGING POLICY (Jan. 24, 2025), https://perma.cc/U7HK-37PT (directing CRT to dismiss, with prejudice, the following FACE Act cases: *United States v. Connolly*, No. 2:24-cv-04467 (E.D. Penn.); *United States v. Zastrow, et al.*, No. 2:24-cv-00576 (M.D. Fla.); *United States v. Citizens for a Pro-Life Soc'y*, et al., No. 1:24-cv-00893 (N.D. Ohio)).

[233] FBI, *Mission and Priorities*, FBI.GOV, https://perma.cc/6Y37-MKFG (lasted visited Jan. 22, 2026); *see* U.S. Dep't of Justice, *About DOJ*, JUSTICE.GOV, https://perma.cc/2XPA-6LG7 (last visited Feb. 7, 2026) (committing DOJ to operating with respect, valuing "differences in people and in ideas and treat[ing] everyone with fairness, dignity, and compassion.").

[234] *See* Interview with Former Deputy Director Daniel Bishop, Off. of Mgmt. & Budget, *excerpted in* Interviews by the Task Force to Eradicate Anti-Christian Bias (attached as Exhibit 3.1.001).

[235] *See* Interview with Director Kash Patel, FBI (hereinafter "Director Patel Interview"), *see supra* note 234.

i. The FBI investigated and arrested Xavier Louis Lopez

In 2022, FBI's Richmond Field Office and the Henrico County, Virginia, Police Department arrested career criminal Xavier Louis Lopez for possessing eight Molotov cocktails; "destructive devices with Styrofoam added to the gasoline mixture inside, creating improvised napalm;" "9mm hollow-point ammunition;" and a nearly complete "9mm handgun build kit he had purchased anonymously online."[236] This lawful arrest of Lopez resulted in the targeting of his priest and an entire Catholic sect to which Lopez happened to adhere.

During its investigation, FBI learned that Lopez had attended Our Lady of Fatima Catholic Society of Saint Pius X (SSPX) Chapel, in Richmond, Virginia, and described himself as a "radical traditional Catholic Clerical Fascist."[237] Lopez had the constitutional right to attend the church of his choosing and to post about his religion in the manner of his choosing. And FBI, consistent with its mission, was required to respect Lopez's right to do both. Yet the Richmond Field Office used Lopez's statement—and an unsubstantiated claim by the Southern Poverty Law Center that several traditional Catholic churches were "hate groups"—as justification to launch a two-pronged attack against traditional Catholics.[238]

ii. The FBI monitored a Catholic church, its priest, and his family because the FBI's criminal target attended the church.

The Richmond Field Office opened a law enforcement profile, known as a Guardian profile, on Our Lady of Fatima Catholic Society SSPX Chapel, a church that played no role whatsoever in Lopez's acquisition or possession of the destructive devices. They interviewed Lopez's priest, Father James Hewko, who was uncomfortable and noted that he would need to speak with the church's attorneys before providing any additional information about his congregant.[239]

Although Father Hewko's response was reasonable, the Richmond Field Office viewed it as suspicious and used their suspicion as cover for conducting a broader evaluation of Father Hewko and other traditional Catholics.[240] They monitored Father Hewko and his uncle, who Father Hewko often visited.[241] Father Hewko's uncle purportedly served as a key member of a traditional Catholic group that had broken away from SSPX.[242] Father Hewko and his family were monitored because the FBI's target identified himself as sharing their religious beliefs with Lopez.[243]

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[236] U.S. Dep't of Justice, *Henrico Man Sentenced to Over Eight Years in Prison for Illegally Possessing Molotov Cocktails* (Feb. 27, 2025), https://perma.cc/GUJ3-GTP5 (announcing that Lopez had been sentenced "to eight years and one month in prison for possession of destructive devices").

[237] E-mail (Jan. 3, 2023) (attached as Exhibit 3.1.002).

[238] *See* Interview with Chairman Jim Jordan, House Judiciary, *see supra* note 234.

[239] E-mail (Jan. 6, 2023) (attached as Exhibit 3.1.003).

[240] *See id*.

[241] *Id*.

[242] E-mail (Dec. 22, 2022) (attached as Exhibit 3.1.004).

[243] *See* discussion of forthcoming Weaponization Report, *supra* at 41.

iii. The FBI began to assess traditional Catholics more broadly as potential violent extremists or domestic terrorists.

In response to Lopez's case, two intelligence analysts in the Richmond Field Office began developing a "Domain Perspective"[244] on the "increasing intersection of [radical-traditional] Catholics" and domestic violent extremists.[245] The analysts provided an FBI Special Agent questions to ask Lopez about Our Lady of Fatima Catholic Society SSPX Chapel;[246] obtained information about investigations that FBI's Portland and Milwaukee Field Offices had conducted into traditional Catholics; and reviewed material in the public domain, including from the Southern Poverty Law Center.[247]

The Richmond Field Office finalized the Domain Perspective—now colloquially referred to as the "Richmond Memo"—in January 2023.[248] The Domain Perspective encouraged law enforcement to investigate traditional Catholics and provided the following assessments of the alleged risks posed by traditional Catholics:

> [T]he increasingly observed interest of racially or ethnically motivated violent extremists (RMVEs) in radical-traditionalist Catholic (RTC) ideology almost certainly presents opportunities for threat mitigation through the exploration of new avenues for tripwire and source development.[249]

Notably, the analysts offered their own definition of "radical traditional Catholics" in a footnote, without offering a citation, defined first by the believers' views of their ecclesiastical leaders and then by their possible political views.[250] In particular, their characterization of these radical Catholics included a target's view of "the Second Vatican Council (Vatican II) as a valid church council" and "disdain for most of the popes elected since Vatican II, particularly Pope Francis and Pope John Paul II."[251] The Domain Perspective then continued with an outlook assessment:

> FBI Richmond assesses RMVE interest in RTCs is likely to increase over the next 12 to 24 months in the run-up to the next general election cycle complicating the overall RMVE threat picture while also creating new opportunities for mitigation efforts. This assessment is made in light of the ongoing polarization characterizing the US political environment and the probability that policy issues of mutual

[244] A "domain perspective" is an FBI product intended to highlight how a shift of new development related to an environmental variable may affect threats or mitigation in a particular domain.

[245] Fed. Bureau of Investigation, *Interest of Racially or Ethnically Motivated Violent Extremists in Radical-Traditionalist Catholic Ideology Almost Certainly Presents New Mitigation Opportunities* (Jan. 23, 2023) (hereinafter "Richmond Domain Perspective") (attached as Exhibit 3.1.005).

[246] E-mail (Nov. 16, 2022) (attached as Exhibit 03.1.006).

[247] *See* Richmond Domain Perspective, *supra* note 245, at 3-4.

[248] *Id*. at 1.

[249] *Id.*

[250] *Id*. at 1 n. a.

[251] *Id.* at 1.

> interest to RMVEs and RTC adherents will remain in the public spotlight. Catalyzing events in which RMVEs and RTC adherents might have common cause include legislation or judicial decisions in areas such as abortion rights, immigration, affirmative action, and LGBTQ protections. During this same 12 to 24 month period, the overall RTC community is likely to remain relatively stable or show modest growth based on potential disaffection with mainline Catholic churches on social issues in the aforementioned areas, providing RMVEs a persistent Catholic-oriented base with which to interact.[252]

FBI Richmond thus assessed that traditional Catholics and racially motivated violent extremists may share "common cause" on issues of "abortion rights, immigration, affirmative action, and LGBTQ protections."[253] In an appendix, the Domain Perspective cited to the Southern Poverty Law Center's identification of radical traditional Catholics.[254]

The Domain Perspective drew internal criticism, with two FBI headquarters employees disagreeing with the assessment and methodology.[255] One Counterterrorism Division employee reacted:

> CTD's [counterterrorism division] analysis of the racially or ethnically motivated violent extremist (RMVE) threat does not align with FBI Richmond's analysis. The FBI does not use the phrase 'radical traditionalist catholic' to define any domestic terrorism threat category. Further, the FBI does not open investigations based upon first amendment protected activities, such as religion . . .
>
> CTD does not assess there is a significant linkage between RMVE actors and this ideology which would necessitate further FBI interest, analysis, or intelligence collection efforts. . . . When describing ideologically-motivated violent extremists, such as RMVEs, the FBI focuses first and foremost on violence, criminal activity and violation of federal law. Political or religious affiliations (such as 'far-right') are not used to describe or identify violent extremists. Some portions of the paper referenced in the article do not adhere to these FBI standards.[256]

A second Counterterrorism Division employee voiced similar concerns about the methodology and source material:

> [T]he [Southern Poverty Law Center (SPLC)] has been a source for statistics and data not otherwise available to law enforcement. However, this product cites more subjective information from SPLC (a list of hate groups) without examining

[252] *Id*. at 1,4.

[253] *Id*. at 4.

[254] *Id.* at 10 (Appendix D).

[255] E-mail from David Lewis, to Stanley Meador (Feb. 9, 2023) (attached as Exhibit 3.1.007).

[256] *Id*.

> SPLC's threshold for determining a hate group or explanation of how that threshold aligns with the FBI's definition. . . .
>
> Tradecraft standards require describing the quality and credibility of underlying sources. This product's Source Summary Statement does not address factors that would affect the quality and credibility of SPLC as a source for subjective information, such as it previously issuing apologies and retracting its naming of individuals or groups as extremist.[257]
>
> In additoin [*sic*], since the hate group identified in this case was related to a branch of a religious group, there should have been more care to caveat this information . . .
>
> This product states RMVE interest in RTC ideology as a fact and proceeds from that assumption without substantiation.[258]

iv. Despite clear instructions from FBI leadership to disregard the Domain Perspective, lower-level FBI employees ignored the directive.

In early February 2023, a former FBI employee publicly disclosed this Domain Perspective. FBI leadership responded by directing an intelligence analyst to remove the Domain Perspective from FBI systems immediately.[259] Despite this directive, one of the two intelligence analysists who authored the Domain Perspective continued to "tinker" with the document.[260] FBI leadership also directed members of the Richmond Field Office to participate in mandatory, remedial training on the "First Amendment and Legal Considerations in DT Investigations;" "Analytic Tradecraft with a Focus on Sourcing;" and "Domestic Terrorism Operations,"[261] with the First Amendment training being the least attended of the three.[262] Members of the Richmond Field Office failed to fully comprehend the issues with the Domain Perspective[263] and targeted a group based on their religious beliefs. And, when one of the two authors of the Domain Perspective finally apologized, the Special Agent in Charge of the Richmond Field Office responded that no apology was needed, that this will "pass," and that it will make for "a great chapter in [her] memoirs some day!"[264]

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[257] SPLC has issued numerous apologies and retractions for inclusion of several individuals and groups on its list of hate groups. This includes former presidential candidate and Secretary of HUD, Dr. Ben Carson; and British activist Maajid Nawaz and his organization, Quilliam, to whom SPLC paid a $3.375 million settlement. *See* SPLC Statement on Dr. Ben Carson, S. Poverty L. Ctr (Feb. 11, 2015), https://perma.cc/9ZHZ-A4HM; Press Release: Southern Poverty Law Center, Inc. Admits it Was Wrong, Apologies to Quilliam and Maajid Nawaz, Quilliam Int'l (June 23, 2022), https://perma.cc/V842-HL55.

[258] E-mail from Tonya Ugoretz, to [Redacted], FBI (Feb. 9, 2023), *see supra* note 255.

[259] E-mail (Feb. 9, 2023) (attached as Exhibit 3.1.008).

[260] E-mail (Mar. 17, 2023) (attached as Exhibit 3.1.009).

[261] Meeting Invitation (Feb. 23, 2023) (attached as Exhibit 3.1.010).

[262] E-mail (Feb. 23, 2023) (attached as Exhibit 3.1.011).

[263] Meeting Agenda (attached as Exhibit 3.1.012).

[264] E-mail to Special Agent in Charge Stanley Meador (July 8, 2023) (attached as Exhibit 3.1.013).

FBI Director Kash Patel has vowed that this "weaponization and politicization of law enforcement" will never be "allowed to happen again."[265]

C. The Garland Memo and DOJ Responses to Parental Protests

In 2020 and 2021, many parents around the country opted for alternative forms of education for their families; many who remained in public school districts became more informed about and invested in their school district's policies, on topics from COVID-19 precautions to curriculum to bathroom policies.[266] That period was punctuated with a significant increase in parental participation in and protests at school board meetings.[267] According to one recent study, the second half of 2021 saw the highest level of tension in school board meetings over the contents of school curriculum, including whether young children should access books and lesson materials on sexual orientation, gender self-identification, and critical race theory.[268]

One family's protest in Loudoun County, Virginia, was particularly noteworthy because of its role in generating a federal response. Scott and Jessica Smith learned that their daughter, then 15 years old, had been sexually assaulted in the girl's bathroom at her school in May 2021.[269] According to the family, the school covered up her sexual assault because the assailant was a male wearing a skirt.[270] After the assault, the girl was allegedly "physically assaulted, threatened, and bullied by peers," without response from the school district.[271] Increasingly frustrated by the perceived lack of responsiveness by the school district, the father confronted staff members and was escorted off school property by law enforcement.[272]

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[265] Director Patel Interview, *supra* note 234.

[266] *See, e.g.*, Ruth Graham, *Christian Schools Boom in a Revolt Against Curriculum and Pandemic Rules*, N.Y. TIMES (Oct. 19, 2021), https://perma.cc/BFL5-S2LE; Rebecca Noel, *Number of NC parents choosing homeschool for kids hit post-pandemic high last year*, THE CHARLOTTE OBSERVER (Jan. 6, 2026), https://perma.cc/B6A4-JAZW; and Alexis Gustin, *As Public School Enrollment Plateaus, Private Schools See Growth Boom*, LOUDOUNNOW (Sep. 28, 2023), https://perma.cc/4PFN-X4GU.

Parents have a right "to direct the religious upbringing of their children." *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972). Laws or policies that pose a "very real threat of undermining" parents' religious beliefs and practices that they wish to instill into their children may infringe that right. *Id.* at 218, 233.

[267] Evie Blad, *Are School Board Meetings Really Getting More Heated? What a New Study Says*, EDUCATION WEEK (June 30, 2025), https://perma.cc/WCJ9-WW4T ("The most intense versions of these conflicts over issues like race, gender identity, and book bans are focused in larger city and suburban districts.").

[268] *Id.* (citing Mirya Holman, Rebecca Johnson & Tyler Simko, *Measuring Conflict in Local Politics* (Annenberg Institute at Brown Univ., EdWorkingPaper No. 24-1102, 2025), https://perma.cc/UTZ4-L4ZP).

[269] *See* Alexis Gustin, *$30M Title IX Lawsuit Filed Against Loudoun School Board*, LOUDOUNNOW (Oct. 6, 2023), https://perma.cc/D39D-D6D3.

[270] *Id.*

[271] *Id.*

[272] *Id.*

A month later, the school board gathered to discuss policy 8040[273] to protect transgender-identifying students, including the use of preferred pronouns and access to bathrooms and locker rooms aligning with the students' gender self-identification.[274] At the meeting, the superintendent claimed that there were no records of assaults happening in the district's bathrooms.[275] The aggrieved father Scott Smith was arrested, charged with disorderly conduct, and banned from the school.[276]

On September 29, 2021, the National School Boards Association (NSBA) sent a letter to President Biden requesting federal assistance in addressing purported escalated threats at school board meetings.[277] NSBA's letter compiled examples of "disruptions," including this Virginia incident with Scott Smith.[278] Later investigations by the House Judiciary Committee discovered that the NSBA collaborated with the Biden White House to develop the language in NSBA's September 29 letter.[279]

The Office of the Deputy Attorney General (ODAG) appears to have taken the lead in convening DOJ components to address its proposed actions in response to the NSBA letter.[280] On October 2, 2021, attorneys from ODAG convened DOJ contacts from the Criminal Division, the Executive Office for United States Attorneys, National Security Division, FBI, and Civil Rights Division.[281] Apologizing for the "Saturday fire drill," ODAG flagged that all needed to be on call to review a draft memorandum from the Attorney General and a forthcoming "narrative document that sets forth certain steps that the Department may take to address threats against school administrators and officials."[282] The initial draft also would have addressed threats against election officials.[283]

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[273] For additional discussion of Loudoun County Policy 8040, see *infra* at 86, 163–64, 177–78.

[274] *See* Gustin, *supra* note 266.

[275] *Id.* (noting that a special grand jury later discovered the superintended was aware of two sexual assaults involving the same male perpetrator, including a second assault after being transferred to another school).

[276] *Id.* In September 2023, Virginia Governor Glenn Youngkin granted an absolute pardon for Scott Smith's disorderly conduct charges. *See* Press Release, Scott Smith Statement on Governor Youngkin's Pardon (Sept. 10, 2023), https://perma.cc/376M-QPJW.

[277] Letter from Viola M. Garcia and Chip Slaven to President Biden (Sep. 29, 2021), https://perma.cc/55WZ-WE4E.

[278] *Id*.

[279] Staff of H. Select. Sub. Comm. on the Weaponization of the Fed. Gov't, 118th Cong., A "Manufactured" Issue and "Misapplied" Priorities: Subpoenaed Documents Show No Legitimate Basis for the Attorney General's Anti-Parent Memo 5, 9–10 (2023), https://perma.cc/3XEJ-SWAA.

[280] *See* E-mail from Associate Deputy Attorney General (ADAG) Kevin Chambers, to Nicholas McQuaid (Oct. 2, 2021) (attached as Exhibit 3.1.014); *see also* E-mail from Shaheena Simons, to Principal Deputy Assistant Attorney General (PDAAG) Pam Karlan (Oct. 1, 2021) (attached as Exhibit 3.1.015) (referencing earlier email from ADAG Myesha Braden about this letter).

[281] E-mail from ADAG Chambers, *supra* note 280 (attached as Exhibit 3.1.014).

[282] *Id.*

[283] *Id.*

Several hours later, ODAG circulated the materials,[284] including the NSBA letter, the draft AG memorandum,[285] and a strategy document "lay[ing] out several proposals for addressing a recent uptick in threats of violence against school board members, as recently highlighted in a letter to the President from the [NSBA]."[286] Among its proposals for immediate action, ODAG recommended that the Department consider creating a Task Force to assess these threats and "determine how federal enforcement tools can be used to prosecute these crimes," including, "but not limited to, enforcement of applicable federal threats, civil rights, and domestic terrorism statutes."[287] It also recommended that DOJ create "specialized training and guidance for local school boards and school administrators" to help them "understand the type of behavior that constitutes threats, how to report [it] . . . and how to capture and preserve evidence . . . to aid in the investigation and prosecution of these crimes."[288] Finally, it recommended that United States Attorney's Offices and FBI Field Offices coordinate with local law enforcement and school districts, and that the FBI's National Threat Operations Center assist by directing credible threats to appropriate law enforcement partners.[289]

As components reviewed the proposed materials, leadership in CRT's Criminal Section flagged that "the vast, vast majority of behavior cited [in the NSBA letter] cannot be reached by federal law."[290] Deputy Criminal Chief Fitzgerald noted that "[a]lmost all of the language being used is protected by the First Amendment," and that issues of disruption or obstruction could be reached by local trespassing laws.[291] She remarked that "it seems that we are ramping up an awful lot of federal manpower for what is currently non-federal conduct," but offered that if the Department's leadership "want to have an impact, maybe they could try to fashion something like the FACE Act for schools and school board meetings."[292] Her email is included in full below:

[284] Email from ADAG Chambers, to [Redacted], FBI (Oct. 2, 2021) (attached as Exhibit 3.1.016).

[285] "Draft AG Memo to USAOs and SACs" (Oct. 2, 2021) (attached as Exhibit 3.1.017).

[286] "Draft School Board Threats Response Strategy" (Oct. 2, 2021) (attached as Exhibit 3.1.018).

[287] *Id.*

[288] *Id.*

[289] *Id.*

[290] E-mail from CRT Deputy Criminal Chief Paige Fitzgerald, to Deputy Assistant Attorney General (DAAG) Moossy (Oct. 3, 2021) (attached as Exhibit 3.1.019).

[291] *Id.*

[292] *Id.*

I read the letter from NSBA, and looked at the links for a handful of the footnotes, and it appears to me that the vast, vast majority of the behavior cited cannot be reached by federal law. I only saw three stories that involved what sounded like a possible "true threat" and one of those (the Norfolk story) did not appear to be related to masks, etc.. Almost all of the language being used is protected by the First Amendment; the main issue seems to be disruption and obstruction of school board meetings, which could be reached by local trespassing laws or disturbance of the peace laws, but nothing remotely federal. So it seems that we are ramping up an awful lot of federal manpower for what is currently non-federal conduct.

If they want to have an impact, maybe they could try to fashion something like the FACE Act for schools and school board meetings, criminalizing physical obstruction of schools and school board meetings. Just a quick thought, and not sure how that would play out (speaking as a former college student who participated in physically obstructed administration buildings to try to get the University to divest/stop doing business with the South African government under apartheid).

Those concerns did not win the day. By Sunday, October 3, 2021, the revised Attorney General memorandum only addressed school boards.[293] The final version also condensed the timeline for United States Attorney's Offices and FBI Field Offices to coordinate with school districts from an initial 45-day period to 30 days.[294]

On October 4, 2021, Attorney General Merrick Garland issued the memorandum—commonly known as the "Garland Memo"—adopting much of the language from the NSBA letter and advising that DOJ "is committed to using its authority and resources to discourage these threats."[295]

And DOJ quickly acted to follow through. On October 6, 2021, ODAG internally announced the establishment of a Departmental task force and requested that each component designate two points of contact within two days.[296] By October 10, 2021, ODAG had compiled a working list of federal statutes that might apply to threats made against school board members, including criminal statutes involving interstate communications.[297] ODAG and CRT researched and discussed the possible application of color of law provisions that criminalize conduct that interfere with those participating in programs receiving federal financial assistance.[298] CRT's leadership seemed skeptical of ODAG's ideas for federal intervention.[299]

On October 22, 2021, NSBA issued a memorandum apologizing for its initial letter to President Biden, acknowledging that "there was no justification for some of the language included in the letter," and explaining that NSBA values "the voices of parents, who should and must continue to be heard when it comes to decisions about their children's education, health, and safety."[300]

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[293] Email from ADAG Chambers, to [Redacted], FBI (Oct. 3, 2021) (attached as Exhibit 3.1.020).

[294] *Id.* (attaching "Final.AG._MEMO_TO_USAOs_AND_SACs_(10.4.21).docx" (attached as Exhibit 3.1.021)).

[295] Attorney General Merrick Garland, Memorandum on Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff (Oct. 4, 2021), https://perma.cc/D4DY-VGP8.

[296] E-mail from ADAG Chambers, to Kenneth Polite (Oct. 6, 2021) (attached as Exhibit 3.1.022).

[297] E-mail from ADAG Chambers to Shaheena Simons (Oct. 10, 2021) (attached as Exhibit 3.1.023).

[298] E-mail from ADAG Chambers to Mark Blumberg (Oct. 10, 2021), *see supra* note 297.

[299] E-mail from PDAAG Karlan to Shaheena Simons (Oct. 14, 2021), *see supra* note 297.

[300] Letter from NSBA Board of Directors to NSBA Members (Oct. 22, 2021), https://perma.cc/73ME-ER2B.

D. IRS Investigation of Christian Non-Profit Entities

Under the Biden Administration, the IRS actively enforced the Johnson Amendment against Christian churches and non-profit institutions, particularly those who espoused traditional Christian views that could be construed with a political valence, scrutinizing their statements for violations. The Johnson Amendment restricts certain non-profit organizations from endorsing candidates or intervening in elections, among other things.[301] Setting aside debates over the wisdom of the law—where proponents and opponents have loud and strong opinions—the Johnson Amendment must be applied in a neutral manner.

In theory, the Johnson Amendment limits what a pastor can say evaluating a candidate running for political office in light of Scripture. But, in practice, the Johnson Amendment has been sporadically enforced across administrations.[302] When more than 30 pastors preached in 2008 on how their congregations should vote, based on their application of scripture to the issues in that election, the IRS appears to have investigated only one pastor.[303] Under President Obama, the IRS quickly dropped the investigation without punishment or any enforcement action taken.[304]

The Biden IRS took a different course, opening multiple investigations into Christian churches focused on the content of their sermons. The IRS asked these churches for detailed information about their operations, not just about the alleged violations. But during the same time, when other houses of worship gave sermons that reflected different scriptural interpretations on culture war issues, or prayed for Democrat candidates, the Biden IRS appeared to take no action. The Biden IRS's pattern of enforcement raised serious concerns about the IRS attempting to regulate what certain pastors could say from the pulpit and chilled the speech of many other clergy.[305]

i. Background on the First Amendment rights of religious institutions and the Johnson Amendment

Under the First Amendment, churches and their leaders have strongly protected First Amendment rights to teach religious doctrine to their congregations without government interference.[306] And, for many years in the American colonies and United States, clergy spoke often about political

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[301] 26 U.S.C. § 501(c)(3).

[302] Erik Stanley, *A Survey of Religious Freedom for Individuals and Faith-Based Institutions: LBJ, The IRS, and Churches: The Unconstitutionality of The Johnson Amendments in Light of Recent Supreme Court Precedent*, 24 REGENT U. L. REV. 237, 249 (2012).

[303] *Id.* at 238.

[304] *Id.* at 238–39.

[305] One pastor who received a Johnson Amendment inquiry from the Biden IRS told the Task Force: "[T]he most effective persecutor of Christians in the United States is government . . . Not in an active manner, but in a passive manner through the Johnson Amendment, the threat of a lawsuit has had a chilling effect on the role of the church in government." *See* Interview with David Kubal, Intercessors for Am., *see supra* note 234.

[306] *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 114 (quoting *Watson v. Jones*, 80 U.S. 679, 728 (1871) ("In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all.").

issues and candidates.[307] For example, Christian clergy urged their congregations to oppose British tyranny and support the revolutionary cause, while Virginia Baptists endorsed James Madison's campaigns for the Virginia Ratifying Convention and U.S. House of Representatives, as well as Thomas Jefferson's campaign for president.[308] However, the speech rights of churches and their leaders have been somewhat limited since the 1950s by the federal tax code for churches seeking federal recognition of their tax-exempt status.

In 1954, then-Texas Senator Lyndon B. Johnson offered an amendment—now colloquially referred to as the "Johnson Amendment"—to the tax code to limit the political activities of tax-exempt non-profit organizations.[309] Then-Senator Johnson's amendment targeted secular non-profit organizations supporting his opponent in an upcoming reelection campaign.[310] The amendment was signed into law that same year.[311] Because churches are non-profit entities under 26 U.S.C. 501(c)(3), these prohibitions apply to them, too.[312] At the time of the amendment's adoption, Congress did not discuss the implications on churches and religious organizations.[313]

The Johnson Amendment prohibits certain non-profit organizations from "participat[ing] in or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.[314] The provision reads:

> (a) Exemption from taxation
>
> An organization described in subsection (c) . . . shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503 . . .
>
> (c) List of [Tax] Exempt Organizations
>
> . . . (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable . . . or educational purposes, . . . no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

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[307] *See* Shawn A. Voyles, Comment, *Choosing Between Tax-Exempt Status and Freedom of Religion: The Dilemma Facing Politically-Active Churches*, 9 REGENT U. L. REV. 219, 226–30 (1997).

[308] *See* Patricia U. Bonomi, UNDER THE COPE OF HEAVEN: RELIGION, SOCIETY, AND POLITICS IN COLONIAL AMERICA 216 (updated ed. 2003); Reece Barker, *A Memorial and Remonstrance Against Taxation of Churches*, 47 B.Y.U. L. REV. 1001, 1031 (2022); *Voyles*, *supra* note 311, at 227.

[309] Amend. H.R. 8300, 100 Cong. Rec. 9,604 (1954).

[310] *See* Stanley, *supra* note 302, at 243–45.

[311] *Id.* at 247; P.L. 83591 (1954).

[312] H.R. 8300, 100 Cong. Rec. 9,604 (1954).

[313] *See* Stanley, *supra* note 302, at 248.

[314] 26 U.S.C. 501 (C)(3). *See also* Stanley, *supra* note 302, at 248.

ii. Rules Regarding Tax Exemption for Religious Institutions

In general, religious organizations are exempt from federal income taxes.[315] Houses of worship are presumed to be tax-exempt organizations, *ab initio*, without seeking formal recognition from the government.[316] Under federal law, "churches, their integrated auxiliaries, and conventions or associations of churches" are exempted from the requirement to file for tax-exempt status.[317]

Recognition of Tax-Exempt Status

Automatic Exemption for Churches

Churches that meet the requirements of IRC Section 501(c)(3) are automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS.

Although there is no requirement to do so, many churches seek recognition of tax-exempt status from the IRS because this recognition assures church leaders, members and contributors that the church is recognized as exempt and qualifies for related tax benefits. For example, contributors to a church that has been recognized as tax exempt would know that their contributions generally are tax-deductible.

IRS Publication 1828.[318] To put it simply, a church is "a tax exempt entity, not because the IRS [tells the church] so, but because [it is] a church or a house of worship."[319] However, formal recognition from the IRS of a church as a 501(c)(3) non-profit entity can provide helpful assurance to the church's members and other donors that their tithes and offerings will be tax-exempt should the donor ever be audited by the IRS.[320] A church can also lose its 501(c)(3) tax-exempt status.

Federal regulations set out the rules that govern the determination process once a church or other non-profit applies for 501(c)(3) status. The IRS uses two tests to determine whether religious, charitable, and educational non-profit organizations are tax-exempt: (1) the organizational test and (2) the operational test.[321] A non-profit organization must meet both tests to be recognized as a 501(c)(3) tax-exempt organization.

Under the organizational test, a non-profit organization's articles of incorporation must demonstrate that the purpose of the organization is exclusively for an exempt purpose, such as

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[315] *Walz v. Tax Comm'n*, 397 U.S. 664, 678 (1970) ("For so long as federal income taxes have had any potential impact on churches . . . religious organizations have been expressly exempt from the tax.").

[316] 26 U.S.C. §508(c)(1)(A); I.R.S. Pub. 1828 at 2 (Rev. 8-2015), https://perma.cc/45PJ-L5X4 (hereinafter, "Tax Guide for Churches"); *see also* Interview with Jeremy Dys, First Liberty Inst. (hereinafter "Dys Interview"), *see supra* note 234.

[317] 26 U.S.C. §508(c)(1)(A)

[318] Tax Guide for Churches at 2.

[319] Dys Interview, *supra* note 234.

[320] *See* Tax Guide for Churches at 2.

[321] 26 CFR 1.501(c)(3)-1.

religion, charity, or education.[322] Accordingly, a nonprofit organization's primary activities must be for an exempt purpose.[323]

Under the operational test, if the IRS determines that a nonprofit organization is an "action organization," the organization's application for 501(c)(3) tax-exempt status may be denied.[324] The IRS may deem a non-profit organization an "action organization" if it "participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office."[325]

These regulations give the IRS discretion in determining whether a non-profit organization is an "action organization" or may receive 501(c)(3) status. In its assessment, the IRS is required to use "all the surrounding facts and circumstances."[326]

iii. The Obama IRS Targeted Conservative Non-Profits.

During the Obama Administration, the House Committee on Oversight and Government Reform found that, under the direction of Lois Lerner, the former Director of the IRS Exempt Organizations, the IRS subjected conservative-oriented tax-exempt applications to heightened scrutiny, "multi-tier review" systems, "extended delays," and "in most cases" the applications were "sidelined."[327] In 2013, Lerner admitted that applications from some conservative organizations were flagged and subject to enhanced scrutiny because they contained key terms such as "patriot" or "tea party."[328] The controversy led to the resignation of certain senior IRS officials, and the IRS apologized and settled two federal court cases, one involving forty-one plaintiffs, and the other with 428 members of a class action lawsuit.[329]

iv. The Biden IRS Scrutinized Conservative Christian Churches and Non-Profits.

Under the Biden Administration, the IRS scrutinized some non-profit organizations, this time through its enforcement of the Johnson Amendment. This subsection spotlights allegations from public filings where churches and Christian non-profit organizations have published documents that would otherwise be closely protected as confidential taxpayer information. Such protections for taxpayer confidentiality are vitally important to each American taxpayer, but because of the

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[322] *Id.*

[323] *Id.*

[324] *Id.*

[325] 26 CFR § 1.501(c)(3)-l(b)(3)(iii).

[326] 26 CFR 1.501(c)(3)-1

[327] Staff of H. Comm. on Oversight and Gov. Reform, 113th Cong., Lois Lerner's Involvement in the IRS Targeting of Tax-Exempt Organizations (Mar. 11, 2014), https://perma.cc/A67N-HGTR.

[328] Mark Murray, *IRS apologizes for targeting conservative groups*, NBC NEWS (May 10, 2013), https://perma.cc/S4ZB-R2PP.

[329] Brendan O'Brien & Chizu Nomiyama, *Justice Department settles with conservative groups over IRS Scrutiny*, REUTERS (Oct. 26, 2017), https://perma.cc/KYA7-3677.

limitations these protections place on such information, the scope of possible anti-Christian bias in this area is still underdetermined.

a. New Way Church

As alleged in a brief for *amicus curiae* Grace Church St. Louis and New Way Church, in 2022, a candidate for a local school board visited New Way Church in Florida.[330] During the service, the candidate addressed the congregation alongside the church's praise band.[331] The candidate talked about her faith and why she ran for office.[332] Then, the pastor prayed for her.[333]

In 2024, the IRS informed New Way Church it was investigating the church for an alleged violation of the Johnson Amendment—two years after the service occurred.[334] The IRS asked for the following information:

- [H]ow many people were in attendance and in what capacity were they there (e.g., church congregant)?
- What was the purpose of allowing [the candidate] to speak at an official church function of New Way Christian Fellowship Inc.?
- Have you participated in any political campaign intervention activities in 2022 that you have not mentioned in response to the above questions?
- In 2022, were you aware that by violating the prohibition on political activities outlined in IRC Section 501(c)(3) (without making a correction), that your tax-exempt status could be revoked or that you could be subject to excise taxes?[335]

New Way Church, under the advice of legal counsel, declined to answer the questions and asserted the IRS had no authority to investigate in such a manner.[336] The IRS dismissed the investigation, but the events "left the pastor and his congregants shaken, annoyed, and wondering how the promises of the First Amendment could so easily be laid aside by the Johnson Amendment."[337]

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[330] Brief for Grace Church St. Louis and New Way Church as Amici Curiae In Support of Joint Motion 5–6, *Nat'l Religious Broadcasters v. Long*, No. 6:24-cv-00311- JCB (E.D. Tex. Aug. 5, 2025) (attached as Exhibit 3.1.024).

[331] *Id.*

[332] *Id.*

[333] *Id.*

[334] *Id.* at Ex. B.

[335] *Id.*

[336] *Id.* at 6–7.

[337] *Id.*

b. Grace Church St. Louis

As alleged in a brief for *amicus curiae* Grace Church St. Louis and New Way Church, in early 2022, Grace Church in St. Louis, Missouri posted information on its websites regarding "positions local candidates held as a service to, and means of educating, their congregation about the important issues at stake in the local election."[338] The church leadership also "encouraged the members of the church to take an active role in the community, including political office."[339] Finally, the church encouraged members to support those who were willing to run for office, meaning "to lend encouragement and commendation to fellow parishioners who volunteered to run for office."[340]

On April 30, 2024, the IRS sent an inquiry letter to the church with "concerns" "based on the content published on your website during tax year 2022 which potentially constitute political activity."[341] The IRS claimed the church's "website openly endorsed two of the members of [its] congregation who were running in a local school board election."[342] The IRS then asked the following questions:

- Did the Church publish flyers or voter information guides that provided a position either for or against a particular candidate for public office?
- Did the Church have a political candidate speak at the Church? If so, did the Church offer to have opposing candidates speak at the Church?
- Explain in detail what the Civic Engagement groups within the church do. What is their purpose and how do they accomplish the purpose?[343]

While the IRS dismissed the investigation after the church obtained legal counsel, the pastor felt "the damage had already been done because the investigation was the punishment."[344]

c. Johnson Amendment Suit and Allegations by Christians Engaged, Cornerstone Chapel, and Intercessors for America

Christians Engaged was established to promote civil engagement from a religious perspective. According to its mission statement, the entity has three goals: "to awaken, educate, and empower believers in Jesus Christ to: pray for our nation and elected officials regularly, vote in every local, state, and national election to impact our culture, [and] engage our hearts in civic education or

[338] *Id.* at 3–5.

[339] *Id.*

[340] *Id.*

[341] *Id.* at Ex. A.

[342] *Id.*

[343] *Id.*

[344] *Id.* at 5.

involvement for the well-being of our local communities and our nation."[345] It is a Texas non-profit organization formed in 2019 "exclusively for charitable, religious, educational, or scientific purposes."[346] That same year, Christians Engaged applied for 501(c)(3) status.

According to allegations in *National Religious Broadcasters v. Long*, two years later, the Biden IRS denied the application.[347]

After obtaining legal counsel, Christians Engaged appealed the IRS' decision.[348] The IRS ultimately changed course and granted Christians Engaged their 501(c)(3) status. [349]

As alleged in the NRB Complaint, on October 18, 2020, Pastor Gary Hamrick[350] of Cornerstone Chapel in Leesburg, Virginia, preached a sermon on the upcoming election, urging the congregation to vote according to "the values set forth in the Bible."[351] He compared party platforms and "clearly stated that the Republican Platform was in greater alignment with the Bible than the Democratic Platform."[352] Pastor Hamrick stated that his congregants "don't have to vote for Trump" to comply with biblical standards, but warned that voting for Democrat candidates would be unbiblical because of the content in the Democrat Party platform.[353] Subsequently, the IRS assessed an excise tax on Cornerstone Chapel for certain alleged political expenditures.[354]

In 2024, several Christian non-profits, including Intercessors for America, sued the IRS Commissioner over his enforcement of the Johnson Amendment.[355] The complaint included the experiences of Cornerstone Chapel and Christians Engaged, among other examples, alleging that the "Plaintiffs' speech has been unconstitutionally chilled by both the Johnson Amendment and its arbitrary interpretation and enforcement."[356] On March 31, 2026, the case was dismissed without

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[345] Home Page, Christians Engaged (last visited Jan. 25, 2026), https://perma.cc/H3RB-F7BY. The language appears to have been minorly adjusted since 2021. *See* Christians Engaged Appeal Letter to IRS at 1–2 (June 16, 2021) (attached as Exhibit 3.1.025) (quoting website in 2021).

[346] *Id.* at 1.

[347] Complaint ¶ 93, *Nat'l Religious Broadcasters v. Long*, No. 6:24-cv-00311-JCB (E.D. Tex. Aug. 28, 2024), Dkt. No. 1, available at: https://perma.cc/VU7D-VQQK (hereinafter "NRB Complaint"); *see also* Christians Engaged IRS Determination Letter (May 18, 2021) (attached as Exhibit 3.1.026).

[348] *See* Christians Engaged Appeal Letter, *supra* note 345, at 1.

[349] *Case Summary: Christians Engaged*, First Liberty Inst. (last visited Jan. 25, 2026), https://perma.cc/2KUJ-5CGC.

[350] Pastor Hamrick's description of the IRS's inquiry and its effect on Cornerstone Church are also available. *See*, Interview with Gary Hamrick, *see supra* note 234.

[351] Complaint ¶ 92, *Nat'l Religious Broadcasters v. Long*, No. 6:24-cv-00311-JCB (E.D. Tex. Aug. 28, 2024), Dkt. No. 1, available at: https://perma.cc/VU7D-VQQK.

[352] *Id.*

[353] *Id.*

[354] *Id.* ¶ 40.

[355] *Id.* ¶¶ 1-15.

[356] *Id.* ¶ 41.

prejudice for lack of jurisdiction.[357] The status of this case is discussed in greater detail below in subsection (vii).

v. The Biden IRS Appears to Have Ignored Possible Violations by Liberal, Secular Non-Profits and Churches that Endorsed President Biden.

The experiences of these Christian churches and organizations appear to stand in stark contrast with other non-profits that publicly endorsed candidates and issues aligned with the Biden Administration's views, including numerous churches that endorsed President Biden before the 2020 and 2024 elections.

Leading up to the 2020 election, over "1,600 faith leaders in the US . . . publicly backed Joe Biden."[358] Several examples raise significant questions with respect to the Johnson Amendment's prohibitions on engaging in political intervention or endorsing candidates, but there are no public indications that the Biden IRS opened similar inquiries or assessed similar penalties.[359]

At a minimum, there are questions with respect to the evenhandedness of the enforcement of the Johnson Amendment against particular viewpoints under the Biden IRS, which creates the appearance of disfavoring congregations and pastors whose doctrinal beliefs and related policy views did not align with the Democrat Party.

vi. Assessments of the Johnson Amendment by Private Parties

As part of its obligation to "solicit feedback" from a broad array of affected Americans, the Task Force received substantial feedback about the perceived negative impacts of this law on the ability of Christian faith leaders to provide instruction to their congregations about how to apply the Bible's teachings to everyday issues. From their perspective, faith and public policy go hand-in-hand for many Christian leaders—including pastors. But the "Johnson Amendment puts a muzzle" on churches "and prevents them from being able to help individuals think about the cultural moment they're in, wrestle with the issues of their day, and then apply their faith to it."[360] For example, many pastors believe they are making religious statements if they preach that "all life is valuable and infinitely v[alu]able in the sight of God" and "abortion [is] morally wrong."[361] In their view, the IRS should not punish pastors for their convictions or statements on policy issues

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[357] Opinion and Order, *Nat'l Religious Broadcasters v. Bessent*, No. 6:24-cv-00311-JCB (E.D. Tex. Mar. 31, 2026), dkt. no. 106.

[358] *See, e.g.*, Harriet Sherwood, *Faith leaders back Biden in sign that evangelical support for Trump is waning*, THE GUARDIAN (Oct. 9, 2020), https://perma.cc/689G-6Z5S.

[359] For example, a church invited President Biden while he was a candidate for reelection to speak, during which the pastor referred to him as the "man we need in these uncertain times." *President Biden to deliver remarks at Mt. Airy Church in Philadelphia*, at 29:09-30:41. (YouTube July 7, 2024), https://perma.cc/DQ2C-QVJY. Another church preached against "Republican controlled state houses" and encouraged congregants to "not turn [their] back[s] on Biden." ROLAND S. MARTIN, *Black Pastor Calls For UNITY In Black Church To DEFEAT Donald Trump & MAGA Repubs*, at 3:48-4:52, https://perma.cc/G22W-83XS.

[360] Interview with Kristen Waggoner, All. Defending Freedom, *see supra* note 234.

[361] Interview with Sec'y Douglas Collins, Dep't of Veterans Affairs, *see supra* note 234.

or because of the underlying teachings of the Bible. To preserve the freedom of speech for Christians within the four walls of the church and beyond, these critics urged the Task Force that the Johnson Amendment should not be enforced as a selective sword against Christians. First Amendment freedoms must apply to everyone, regardless of which president holds office.

vii. Treasury is Committed to an Evenhanded Application of the Johnson Amendment

The Trump Administration is evaluating the application of the Johnson Amendment in light the First Amendment's protections for religion and speech, as interpreted by the Supreme Court, to ensure freedom of speech for churches and Christian organizations, while meeting its obligations to faithfully execute the Internal Revenue Code. For example, in July 2025 the IRS filed a joint consent decree in litigation brought against the Johnson Amendment in *National Religious Broadcasters v. Long*. The parties agreed to the following terms regarding the plaintiffs in the case:

> When a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with religious services, concerning electoral politics viewed through the lens of religious faith, it neither "participate[s]" nor "intervene[s]" in a "political campaign," within the ordinary meaning of those words. To "participate" in a political campaign is "to take part" in the political campaign, and to "intervene" in a political campaign is "to interfere with the outcome or course" of the political campaign. . . .
>
> Bona fide communications internal to a house of worship, between the house of worship and its congregation, in connection with religious services, do neither of those things, any more than does a family discussion concerning candidates.
>
> Thus, communications from a house of worship to its congregation in connection with religious services through its usual channels of communication on matters of faith do not run afoul of the Johnson Amendment as properly interpreted.[362]

E. Department of Education's Enforcement Actions

Under the Biden Administration, other federal agencies also engaged in weaponized enforcement actions against Christian entities and organizations, including ED through its Office of Enforcement. Although it was obligated to pursue enforcement actions neutrally, without regard to religion, the majority of ED's enforcement actions involved Christian universities and career colleges. Likewise, the largest fines that ED levied were against Christian institutions.[363]

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[362] Jt. Mtn. for Entry of Consent Judgment, *Nat'l Religious Broadcasters v. Long*, No. 6:24-cv-00311-JCB (E.D. Tex. Aug. 28, 2024), Dkt. No. 35, available at: https://perma.cc/2EBX-BU8A.

[363] Jon Schweppe, *The Department of Education's Office of Enforcement: The Obscure Agency Leading a Crusade Against Christian Colleges and How New Data Proves the Bias* 13, Am. Principles Project (Nov. 2024), https://perma.cc/LE35-PJHA.

i. Biden ED's Targeting of Christian Schools

The Biden ED weaponized its enforcement authorities against Christians, eroding public trust that ED was working to serve all Americans equally. As reflected in a 2024 report from the American Principles Project, "[n]early 70 percent (59 out of 87 actions) of the Department [of Education]'s enforcement actions involved faith-based or career education schools, despite these institutions representing only about 10 percent of students."[364] In total, ED targeted at least 12 Christian colleges, banning them from receiving financial aid or issuing them fines to force them, under the guise of compromise, into implementing a specific agenda.[365] And, the unprecedented and unjustifiable fines levied against these schools significantly outweighed those levied against their secular counterparts, including fines imposed against secular universities for failure to report serial child sex offenders. The "average fine against a Christian school was $815,000, compared to $228,571 against public and private institutions."[366]

The two most significant fines issued during this time were levied against Grand Canyon University and Liberty University for violations relating to tuition cost reporting and the Clery Act, respectively.[367]

a. Grand Canyon University

In 2023, ED completed a review of Grand Canyon University's disclosures in connection with its doctoral program and reported that Grand Canyon University, the "largest Christian university in the country," "falsely advertised a lower cost than what 98% of students ended up paying to complete certain doctoral programs," with "more than 7,500 former and current doctoral students incurr[ing] additional costs of at least $10,000 to complete their programs."[368] The United States Court of Appeals for the Eleventh Circuit, the Higher Learning Commission, and the Arizona State Approving Agency of the Department of Veterans Affairs (VA), however, independently evaluated Grand Canyon University's disclosures and found no such issues:

> (1) The United States Court of Appeals for the Eleventh Circuit rejected a breach of contract claim alleging that Grand Canyon University promised its students they would be able to complete their doctoral programs within 60 credits (the amount of time necessary to secure the tuition Grand Canyon University advertised), holding that Grand Canyon University's "documents belie any such promise;"[369]

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[364] *Id.* at 14.

[365] *Id.*

[366] *Id.* at 17.

[367] *See id*. at 13.

[368] Talia Wise, *Education Department Drops $37 Million Fine Against America's Largest Christian University*, CBN NEWS (May 20, 2025), https://perma.cc/4RNP-59HK.

[369] *Young v. Grand Canyon University, Inc.*, 57 F.4th 861, 871 (11th Cir. 2023).

(2) "The Higher Learning Commission deemed the University's disclosures "robust and thorough in its 2021 comprehensive review;"[370] and

(3) "The Arizona State Approving Agency of the Department of Veterans Affairs in March 2024 found 'no substantiated findings' in its audit that looked at [Grand Canyon University]'s disclosures and processes."[371]

Nevertheless, the ED issued Grand Canyon University a $37.7 million fine,[372] with then Education Secretary Miguel Cardona vowing to shut the school down.[373]

b. Liberty University

During the Biden Administration fined, Liberty University—one of the largest Christian universities in the world—under the Clery Act. The Clery Act provides students, parents, employees, prospective students, and the public with important information about public safety issues at U.S. institutions of higher education.[374] The Act requires an institution that participates in the federal student financial aid programs under Title IV of the Higher Education Act to produce and distribute Annual Security Reports containing their campus crime statistics. ED is responsible for assessing compliance with the Clery Act and issuing fines for violations where necessary.[375]

ED reviewed Liberty University's[376] actions between 2016 and 2022.[377] During this review, Liberty University identified some prior "gaps in compliance," and it promptly notified the Department and took timely remedial actions.[378] Liberty University "engaged the firms Cozen O'Connor and The Healy+ Group early in this process to help facilitate and administer a multi-year review of Clery Act compliance and ensure full candor and cooperation with all of the Department's requests" and provided "full access to campus crime data, requested University records, and institutional statements, policies, and procedures in place to adhere to the Clery Act standards for campus safety."[379]

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[370] *U.S. Department of Education Rescinds Record Fine, With Prejudice, Against GCU*, GCU NEWS (May 16, 2025), https://perma.cc/8WQ4-8LMN.

[371] *Id.*

[372] *Id*.

[373] Wise, *supra* note 368 ("We are cracking down on them not only to shut them down but to send a message across the country that you cannot prey on our students and expect to be successful.").

[374] Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990, 20 U.S.C. §1092(f) (2018).

[375] *See id.*

[376] Liberty University, which is based in Lynchburg, Virginia, "has become one of the world's largest Christian schools since its 1971 founding by religious broadcaster Jerry Falwell Sr." *Liberty University Failed to Disclose Crime Data and Warn of Threats for Years, Report Says*, AP NEWS (Oct. 3, 2023), https://perma.cc/N27K-U6YQ.

[377] Off. of Commc'ns. & Pub. Engagement, *University Statement on U.S. Department of Education's Clery Act Program Review*, LIBERTY UNIV. (Oct. 3, 2023), https://perma.cc/CQT2-H4KQ (hereinafter "Liberty Statement").

[378] *Id.*

[379] *Id.*

On May 1, 2023, ED issued preliminary findings regarding Liberty University's "compliance with the requirements of the [Clery Act], the Higher Education Act [] fire safety provisions, the Drug-Free Schools and Communities Act [] and the Department's implementing regulations."[380] Liberty University submitted a supplemental response on September 21, 2023 detailing "significant errors, misstatements, and unsupported conclusions in the Department's preliminary findings."[381]

On March 5, 2024, the ED issued its Final Program Review Determination,[382] and Liberty University and ED "entered into a settlement agreement in the amount of $14 million," with Liberty University agreeing to spend an additional $2 million of university funds to improve campus safety.[383]

This amount dwarfed the fines levied against Pennsylvania State University ($2.4 million) for 11 Clery Act[384] violations involving the school's failure to report sex offenses relating to its assistant football coach Jerry Sandusky's serial child molestation, and against Michigan State University ($4.5 million) for its failure to disclose sex offenses committed by Larry Nassar, a team physician who sexually assaulted hundreds of athletes.[385]

In announcing the settlement, Liberty University acknowledged past failures but shared the following observations regarding the Biden ED's Clery Act Program Review:

> The Department's Clery Act Program Review covered more than seven years and is, by far, the most extensive review period of any higher education institution in the Department's history of published reviews. Many of the Department's methodologies, findings, and calculations in the report were drastically different from their historic treatment of other universities. Liberty disagrees with this unfair treatment. Nevertheless, the university was able to negotiate a final settlement and outline the terms of the Department's two-year post-monitoring process in a collaborative manner.[386]

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[380] U.S. Dep't of Educ., Report on Liberty University's Clery Act Violations (Mar. 5, 2024), https://perma.cc/X3V3-W7N5.

[381] Liberty Statement, *supra* note 377.

[382] U.S. Dep't of Educ., *Report*, *supra* note 380.

[383] Off. of Commc'ns. & Pub. Engagement, *Liberty University and Department of Education Finalize Clery Program Review*, LIBERTY UNIV. (Mar. 5, 2024), https://perma.cc/UW6K-YKM9 (hereinafter "Liberty Settlement").

[384] The Clery Act requires post-secondary schools receiving federal funds to collect and disseminate certain security and crime-related information on an annual basis. *See* 20 U.S.C. § 1092(f).

[385] *Why Is Biden Admin Targeting Grand Canyon University? We're Suing to Find Out*, GOLDWATER INST. (Feb. 14, 2024), https://perma.cc/5VKU-JM6N.

[386] Liberty Settlement, *supra* note 383.

ii. The Trump Administration is Righting the Wrongs of the Biden-Era ED.

In 2025, ED entered into a joint stipulation dismissing its case against Grand Canyon University with prejudice; rescinded Grand Canyon University's $37.7 million fine; and "confirmed it has not established that [Grand Canyon University] violated any Title IV requirements, including the claim that [Grand Canyon University] 'substantially misrepresented' the cost of its doctoral programs that was alleged by ED officials under the Biden Administration."[387]

ED also committed to no longer disproportionately targeting Christian colleges and universities and to affirming the rights of Christian colleges and universities to act in accordance with their faith-based identity.[388]

F. Failure to Prosecute Unlawful Anti-Christian Conduct

So far, this report has identified numerous ways in which the federal government acted with bias against Christians and other people of faith. However, bias against Christians was not limited to affirmative government behavior—in some cases the Government has demonstrated its bias against Christians and other people of faith through its failure to enforce existing protections.

As the Task Force's initial report flagged, after assuming office, the Biden DOJ did not continue to pursue a lawsuit against the University of Vermont Medical Center (UVMMC), even though the Trump HHS Office for Civil Rights (OCR) had already issued a Notice of Violation (NOV), in August of 2019[389] for violations of federal conscience protection laws by forcing staff to participate in medical abortions.[390] The Task Force has conducted further review of the circumstances leading up to this decision.

In 2017, UVMMC reversed a longstanding policy that it would not perform elective abortions. UVMMC permitted medical staff to object to performance of abortion procedures, with the option to specify if their objection was to "medically necessary" abortions, elective abortions, or all abortions.[391] Nevertheless, the new policy required that "[i]n any scenario where circumstances prevent arrangements for alternate coverage, the [objecting] staff member will be expected to provide the assigned care to ensure that patient care is not negatively impacted."[392] In at least one instance, HHS OCR in the first Trump Administration found that a Catholic nurse was initially deceived into and ultimately coerced to perform an elective abortion, despite her recorded

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[387] *U.S. Department of Education Rescinds Record Fine, With Prejudice, Against GCU*, GCU NEWS (May 16, 2025), https://perma.cc/LB3D-BCGD.

[388] *See* Interview with Secretary Linda McMahon, Dep't of Educ., *see supra* note 234 (explaining that each agency is "taking appropriate measures to make sure that [religious discrimination] does not happen in our country, and certainly not during this administration.").

[389] Notice of Violation, Re: OCR Transaction Number 18-306427, U.S. Dep't of Health and Hum. Serv. (Aug. 28, 2019), https://perma.cc/2VE6-WWRB.

[390] The Church Amendments prohibit hospitals from forcing employees to participate in abortions. See 42 U.S.C. 300a-7.

[391] Compl. ¶¶ 17-22, *United States v. Univ. of Vt. Med. Ctr.*, No. 2:20-cv-213 (D. Vt. Dec. 16, 2020), dkt. no. 1.

[392] *Id*. at ¶ 60.

conscientious objection.[393] HHS OCR also found that a number of employees and managers at UVMMC "expressed overt disregard or hostility to religious and moral objections to persons participating in abortions."[394]

After UVMMC declined to sign an Agreement in Principle ensuring its compliance with federal law, the Trump DOJ's Civil Rights Division filed a lawsuit in late 2020 regarding UVMMC's anti-Christian bias and the coerced abortion.[395]

The Biden DOJ rapidly worked to change course, viewing the issue as a day-one priority. Soon after the start of the Biden Administration, UVMMC inquired about the new administration's position regarding the case.[396] In July 2021, the Biden DOJ voluntarily dismissed the complaint against UVMMC.[397] HHS subsequently withdrew the notice of violation.[398] HHS OCR then provided technical assistance to develop a Conflict of Care policy that allowed the hospital to "fully protect employees' conscience rights under the Church Amendments without unduly burdening the hospital's ability to deliver safe, timely, and effective patient care."[399]

This case is emblematic of the Biden Administration's approach to conscience enforcement: When the scope of federal protections was legally contested, the Administration generally chose the interpretation least protective of religious objectors and resolved active enforcement matters through administrative means, if possible, rather than litigation. Government inaction of this kind is an especially damaging source of anti-Christian bias precisely because it is difficult to see and harder to remedy.

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[400] Notice of Violation, Re: OCR Transaction Number 18-306427, U.S. Dep't of Health and Hum. Serv., at 5 (Aug 28, 2019), available at: https://perma.cc/2VE6-WWRB.

[394] *Id*.

[395] Complaint (UVMMC) ¶¶ 64-72, *supra* note 391.

[396] *See* Letter from McDermott, Will & Emery, to DOJ and HHS (Feb. 2, 2021) (attached as Exhibit 3.1.027).

[397] Notice of Voluntary Dismissal, *United States v. Univ. of Vt. Med. Ctr.,* No. 2:20-cv-213 (D. Vt. July 30, 2021).

[398] Letter from U.S. Dep't of Health and Hum. Servs. Providing Notice of Withdrawal of Notice of Violation (July 30, 2021), available at: https://perma.cc/E8S4-NL73.

[399] Letter from U.S. Dep't of Health and Hum. Servs. Providing Notice of Closure of Matter 18-306427 (Feb. 17, 2023) (attached as Exhibit 3.1.028).

II. FEDERAL POLICY DECISIONS INVOLVING ANTI-CHRISTIAN BIAS

"*I assume that those who cling to old beliefs will be able to whisper their thoughts in the recesses of their homes, but if they repeat those views in public, they will risk being labeled as bigots and treated as such by governments, employers, and schools*."

Justice Samuel Alito[400]

Time and again, the Biden Administration vindicated Justice Alito's concerns when it came to religious liberty and conscience protections. In many instances, the Biden Administration made rhetorical overtures to religious protections, only to sideline those rights when they competed with the Administration's policy goals regarding sex, marriage, and abortion. In nearly every instance where the first Trump Administration sought to clarify and expand religious liberty, the Biden Administration worked aggressively to undo these protections.

Across the board, the Biden Administration's policies in these arenas demonstrated that Christians were only free to hold religious beliefs but not to act on them. From the top-down, the Biden Administration sought to eliminate religious exceptions from its preferred policies. The effect was government-driven coercion, placing Christians with traditional religious views in the untenable position of either living in accordance with their faith or violating federal law.

This section walks through notable examples of anti-Christian policies, orders, and directives issued over the course of the Biden Administration.

A. Endorsing Efforts to Eliminate Religious Liberty Protections

The Biden Administration was one of the loudest supporters of a congressional proposal that would fully eliminate statutory religious protections for Christians and other religions that hold traditional social values. Although it was not enacted, the Biden Administration's zealous advocacy for this approach revealed how the Administration would approach religious rights from the beginning.

On its face, the "Equality Act"[401] purports to promote equality for all Americans by prohibiting discrimination based on sex, sexual orientation, and gender identity in public accommodations and facilities, education, federal funding, employment, housing, credit, and the jury system. The day after its introduction, President Biden issued numerous statements supporting the Act, calling for Congress to "swiftly pass this historic legislation," and touting his related day-one order redefining "sex discrimination." [402]

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[400] *Obergefell v. Hodges*, 576 U.S. 644, 741 (2015) (Alito, J., dissenting).

[401] H.R. 5, Equality Act, 117th Congress (1st Sess. 2021).

[402] President Joseph R. Biden, Jr., Statement on Lesbian, Gay, Bisexual, and Transgender Rights Legislation (Feb. 19, 2021), https://perma.cc/DQ9X-8ZDS; Pres. Joseph R. Biden, Jr., State of the Union Address (2022), https://perma.cc/2Z5J-Y2F3 ("Pass the Equality Act.").

In June 2021, the White House held a roundtable with "leaders who are coordinating the national movement to pass the Equality Act."[403] The White House also issued a fact sheet in support of the Equality Act, stating that the legislation enhances the Supreme Court's decision in *Bostock v. Clayton County*[404] "by making explicit that non-discrimination protections for LGBTQ+ people in employment settings apply to other areas of life."[405] The same fact sheet claimed that the Act would strengthen "civil rights protections" for people of faith, due to the expanded definition of public accommodations.[406]

People of faith disagreed. The Act would not have made all Americans equal; rather, the Equality Act would have treated Christians as second-class citizens by eliminating any claim or legal defense based on religious beliefs. As drafted, the Act explained that the Religious Freedom Restoration Act (RFRA)[407] would no longer apply in any arena where issues of sexual orientation and gender identity can reach. One faith leader summarized the grave concerns about the Act's infringement on religious liberty rights:

> [N]o religious American of goodwill wants to see gay or transgender people threatened in any way. But millions of religious Americans of goodwill have deep, faith-based convictions about marriage and sexual identity [that do not comport with the secular progressive approach to these important issues]. Those the Equality Act was crafted to protect are individuals. So are religious Americans. And we have rights, too, ones important enough to have been enshrined in the Constitution.[408]

Academics, bishops, and advocates for conscience rights concurred, stressing the significance of the Act's infringement upon the First Amendment through the first-of-its-kind explicit denial of RFRA protection.[409] And the United States Conference of Catholic Bishops detailed in a letter the manner in which the Act would discriminate against religious adherents and "inflict numerous legal and social harms on Americans of any faith or none."[410]

The Biden Administration ignored the concerns of the faithful and continued to push for this legislation. For example, in March 2022, the Biden Administration issued a Statement of Administration Policy in support of the legislation, the first Statement of Administration Policy

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[403] Readout of White House Roundtable with LGBTQ+ Advocates on the Equality Act and Achieving Full Equality for LGBTQ+ Americans, THE WHITE HOUSE (June 21, 2021), https://perma.cc/PJE7-BBQT.

[404] 590 U.S. 644 (2020).

[405] Fact Sheet: The Equality Act Will Provide Long Overdue Civil Rights Protections for Millions of Americans, THE WHITE HOUSE (June 25, 2021), https://perma.cc/XA8C-V3EN.

[406] *Id*.

[407] 42 U.S.C. § 2000bb-1.

[408] Rabbi Avi Shafran, *Biden and Democrats in Congress voting for Equality Act are undermining religious rights*, NBC NEWS (Feb. 25, 2021), https://perma.cc/HAB4-REFX.

[409] Faith Coalition Letter to Reps. Bonamici and Comer (Apr. 8, 2019), https://perma.cc/T776-PTJK.

[410] U.S. Conf. of Cath. Bishops, Letter to U.S. House of Representatives (Feb. 23, 2021), https://perma.cc/C27G-MSMF.

issued during the Administration.[411] In a May 2023 proclamation declaring June 2023 "Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Pride Month," President Biden again declared support for passage of the Equality Act.[412] In a March 2024 proclamation declaring March 31, 2024 "Transgender Day of Visibility," Biden again stated that he "continue[d] to call on the Congress to pass the Equality Act, to codify civil rights protections for all LGBTQI+ Americans."[413] Biden also declared support for the Equality Act in his annual joint addresses before Congress.[414]

B. Weaponizing "Non-Discrimination" Principles Against Religious Values

i. Overbroadly Applying the Bostock *Decision Against Christian Values*

Although the Biden Administration was ultimately unsuccessful in its push to enact the Equality Act, it sought to implement the same policy goals wherever possible through executive actions, guidance memoranda, and rulemakings. Through these actions, the Biden Administration worked to mandate the embrace of sexual orientation and gender ideology with limited or no religious exceptions. To that end, the Administration employed an expansive interpretation of the Supreme Court's 2020 holding in *Bostock v. Clayton County*.[415]

In *Bostock*, the Court held that personnel decisions made on the basis of an individual's sexual orientation or gender self-identification were necessarily tied to an individual's sex, and therefore constituted a violation of Title VII of the 1964 Civil Rights Act. The Biden Administration welcomed and wielded the holding, but was frustrated in its goals by the Court's related admonition that protections for sexual orientation and gender self-identification are *not* absolute: "RFRA operates as a kind of super statute" and "might supersede Title VII's commands in appropriate cases," which could yield cases in which employers "may raise free exercise arguments that merit careful consideration."[416]

In an effort to avoid the full effect of RFRA's religious liberty protections, the Biden Administration often attempted to regulate Christian conduct. This application of *Bostock* often conflated Christians' traditional beliefs and practices with harmful conduct that could and should be regulated—circumventing RFRA's purpose and protections.

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[411] Fact Sheet: Biden-Harris Administration Advances Equality and Visibility for Transgender Americans, The White House, (Mar. 31, 2022), https://perma.cc/HJ3G-HHYY.

[412] President Joseph R. Biden, Jr., Proclamation: Lesbian, Gay, Bisexual, Queer, and Intersex Pride Month, 2023, 88 Fed. Reg. 36447 (May 31, 2023).

[413] President Joseph R. Biden, Jr., Proclamation: Transgender Day of Visibility, 89 Fed. Reg. 22901 (Mar. 29, 2024). March 29, 2024, was Good Friday and March 31, 2024, was Easter. This is discussed further in the report, *infra* 102.

[414] Full transcripts of President Biden's Addresses Before a Joint Session of the Congress on the State of the Union can be located at links for 2022, 2023, and 2024. President Biden did not give a State of the Union address in 2021, but he gave a similar address in which he endorsed passage of the Equality Act to both houses of Congress. President Joseph R. Biden, Presidential Economic Address (Apr. 28, 2021), https://perma.cc/6BSQ-C9MW at 1:01:11.

[415] 590 U.S. 644 (2020).

[416] *Id*. at 682.

a. Executive Action

Despite *Bostock*'s reminder of religious rights, the Biden Administration leaned on the decision to craft broad executive action with limited religious exceptions. For example, on January 20, 2021, President Biden's first day in office, he signed Executive Order 13988, "Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation."[417] In the Order, President Biden invoked *Bostock*, directing all Executive Branch agencies to ensure that their policies, guidance documents, regulations, and other related agency actions "prevent and combat discrimination on the basis of gender identity or sexual orientation" alongside a commitment to "fully enforce Title VII and other laws that prohibit discrimination on the basis of gender identity or sexual orientation." The Executive Order made no reference to religious beliefs or exceptions. And, under the Biden Administration's leadership, the agencies often quickly complied, to the detriment of religious freedoms.

b. Department of Justice

At DOJ, career attorneys eagerly awaited the incoming Biden Administration specifically so they could adopt a new approach to *Bostock*.[418] The Supreme Court published its *Bostock* decision near the end of the first Trump Administration, and before leaving office, the Administration took steps at DOJ to protect religious rights. On January 17, 2021, Acting Assistant Attorney General John Daukas issued a memorandum, stating in relevant part: "[T]he Department may and should continue to respect its employees' right to express traditional views regarding marriage and gender identity, 'view[s] long . . . held in good faith by reasonable and sincere people here and throughout the world, . . . just as it continues to respect its employees' rights to express contrary views."[419]

The reaction among career DOJ attorneys was swift and subversive. When Acting AAG Daukus circulated the memorandum to the Civil Rights Division's (CRT) Section Chiefs on January 19, 2021, CRT's Criminal Section Chief Jim Felte promptly forwarded it to his deputy chiefs.[420] Deputy Chief Bobbi Bernstein remarked that she found segments of the memorandum "intellectually draw-dropping" [sic], that the memorandum did not "reflect any effort at an honest, unbiased reading of *Bostock*," and that she could not "imagine that it will constitute official guidance for more than 24 hours."[421]

By January 21, 2021, CRT Deputy Assistant Attorney General (DAAG) Gregory Friel had contacted the Biden Administration's incoming senior leadership at DOJ, recommending that, in accordance with Biden's day-one Executive Order 13988, DOJ should immediately withdraw the

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[417] Exec. Order. No. 13988, *Preventing and Combatting Discrimination on the Basis of Gender Ideology or Sexual Orientation*, 86 Fed. Reg. 7023 (Jan. 20, 2021).

[418] For example, in anticipation of the new Biden Administration, the DOJ's "LGBTQI Working Group" prepared a chart of "cases the [Trump] Department took a position in that was counter to LGBTI interests" to share with the new leadership. E-mail from David Knight, to Tovah Calderon (Jan. 14, 2021) (attached as Exhibit 3.2.001).

[419] Memorandum for the Civil Rights Division Regarding Application of *Bostock v. Clayton County*, Dep't of Justice (Jan. 17, 2021) (attached as Exhibit 3.2.002).

[420] E-mail from CRT Criminal Chief Jim Felte, to Bobbi Bernstein (Jan. 19, 2021) (attached as Exhibit 3.2.003).

[421] *Id.*

Daukas Memorandum.[422] Acting AAG Friel disclaimed that CRT had played no role in issuing the memorandum, and noted that CRT was already working to remove the memorandum from public-facing websites.[423]

The following day, DAAG Friel circulated a proposed memorandum to rescind the Daukas Memorandum.[424] In an email explaining the proposal, DAAG Friel claimed the rescission would "boost employee morale," noting that he had "personally heard from a number of CRT employees who are dismayed and disgusted by the Daukus memo," which DAAG Friel described as "an affront to the dignity of our transgender employees."[425] The next day, Friel formally rescinded the Daukas Memorandum in a directive to CRT employees and it was removed from the DOJ website.[426]

By March 2021, CRT's new Principal Deputy Assistant Attorney General (PDAAG) Pamela S. Karlan issued a new memorandum extending *Bostock*'s reasoning in the Title VII employment context to Title IX, the part of the Education Amendments of 1972 dealing with men and women's education and sports.[427] In the memorandum, PDAAG Karlan advised that President Biden's Executive Order 13988 "directs agencies to review other laws that prohibit sex discrimination, including Title IX, to determine whether they prohibit discrimination on the basis of gender identity and sexual orientation. We conclude that Title IX does."[428]

This was a foregone conclusion; PDAAG Karlan, while she was still a professor at Stanford Law School, had argued *Bostock* before the Supreme Court.[429] When later asked in an interview about how to account for religious liberty concerns, PDAAG Karlan responded that "[t]here are a variety of doctrines that potentially permit some religiously motivated employers to take sexual orientation and gender identity into account in their employment."[430] This generic concession, made in an informal setting, made greater acknowledgement of religious liberty than in her memorandum, where she did not mention it at all.

As part of this persistent effort, CRT Assistant Attorney General (AAG) Kristen Clarke issued a letter on March 31, 2022, to the state attorneys general, to reiterate the Biden DOJ's views: That state laws that would prevent "gender-affirming care" may infringe on the Equal Protection and

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[422] E-mail from DAAG Friel, to Matthew Axelrod (Jan. 21, 2021) (attached as Exhibit 3.2.004).

[423] *Id.*

[424] E-mail from DAAG Friel, to Matthew Colangelo (Jan. 22, 2021) (attached as Exhibit 3.2.005).

[425] *Id.*

[426] Josh Gerstein, *Biden DOJ nixes last-minute Trump administration memo on LGBTQ rights*, POLITICO, (Jan. 23, 2021), https://perma.cc/6RKP-4G33.

[427] Pamela S. Karlan Memorandum, Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972 (Mar. 26, 2021) (attached as Exhibit 3.2.006).

[428] *Id*.

[429] *See* Transcript of Oral Argument, *Bostock v. Clayton County* 4-31, No. 17-1618 (Oct. 8, 2019), https://perma.cc/5223-A569. Karlan represented LGBTQ plaintiffs and her arguments focused on sexual orientation.

[430] Sarina Deb, "Q&A: Law professor Pam Karlan discusses victory in landmark Supreme Court case on LGBTQ+ rights," The Stanford Daily (June 25, 2020), https://perma.cc/V3HC-GQVH.

Due Process Clauses of the Fourteenth Amendment.[431] The letter also warned that states must follow "nondiscrimination requirements" as a condition of receiving federal funds under several statutory authorities, such as Section 1557 of the Affordable Care Act and Title IX.[432]

Consistent with this stance, the Biden DOJ worked aggressively to expand the *Bostock* interpretation of "sex discrimination" and conform state laws with its policy views through its participation in several significant cases:

- *303 Creative LLC v. Elenis*: In 2022, Colorado enacted the Colorado Anti-Discrimination Act (CADA), which prohibited, *inter alia*, denial of services based on sexual orientation, subject to state or private action.[433] A Christian website designer brought a pre-enforcement challenge. She would serve same-sex clients under every other situation, but participating in same-sex weddings violated her sincerely held Christian faith. The Biden DOJ filed an amicus brief defending the Colorado law before the Supreme Court.[434] It argued that, no matter the reason—sincere, religious, or otherwise—"denying a service that would be provided but for a customer's sexual orientation . . . constitutes discrimination."[435] The Court rejected Colorado's and the Biden DOJ's position, finding that the CADA amounted to Colorado's attempt to "coerce an individual to speak contrary to her beliefs on a significant issue of personal conviction, all in order to eliminate ideas that differ from its own."[436]

- *United States v. Skrmetti*: In 2023, Tennessee restricted sex-rejecting treatments for minors, and several minors, their parents, and doctors brought a pre-enforcement challenge to the law.[437] The United States intervened, arguing in favor of the minors seeking sex-rejecting interventions that Tennessee's law violated the Equal Protection Clause and that its justification for its law—to encourage minors to appreciate their sex—was "illegitimate."[438] The Supreme Court disagreed, finding that Tennessee had a rational basis for its law.[439]

- *Eknes-Tucker v. Governor of Alabama*: In 2022, Alabama prohibited the "prescription or administration" of puberty-blockers and other hormonal medication to a minor for the purpose of "gender transition." Alabama's Governor Kay Ivey announced, when signing the bill, that "if the Good Lord made you a boy, you are a boy, and if He made you a girl,

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[431] Letter from AAG Clarke, to State Attorneys General (Mar. 31, 2022) (attached as Exhibit 3.2.007).

[432] *Id.*

[433] *See 303 Creative LLC v. Elenis*, 600 U.S. 570, 580–81 (2023).

[434] Brief for the United States as *Amicus Curiae* Supporting Respondents, *303 Creative LLC v. Elenis*, No. 21-476 (Aug. 19, 2023).

[435] *Id*. at 20.

[436] *303 Creative*, 600 U.S. at 597.

[437] *United States v. Skrmetti*, 605 U.S. 495, 505–08 (2025).

[438] Brief for the Petitioner 33–34, *United States v. Skrmetti*, No. 23-477 (Aug. 27, 2024).

[439] *Skrmetti*, 605 U.S. at 523.

you are a girl." A group of plaintiffs seeking such medications subsequently sued, and the Biden DOJ intervened on their behalf.[440] In DOJ's brief before the Eleventh Circuit Court of Appeals, DOJ challenged Alabama's position that a child's sex cannot be changed. The Biden DOJ also argued that Alabama's representations that the law was passed to protect children was "a pretext for discrimination."[441] This filing was indicative of the Biden Administration's general approach to those with traditional Christian values.

- *Brandt v. Griffin*: In 2021, Arkansas prohibited medical providers from providing or referring sex-rejecting interventions for minors. While the case was on appeal before the Eighth Circuit Court of Appeals, the Biden DOJ filed an amicus brief arguing that Arkansas's law amounted to "sex discrimination."[442] The brief claims that "there is no reasonable dispute that transgender persons share 'obvious immutable, or distinguishing characteristics that define them as a discrete group.'"[443,444]

- *Voe v. Mansfield*: In response to North Carolina House Bill 808, which proscribed "gender-affirming care" for minors,[445] the Biden DOJ filed a statement of interest, urging that the law violated the Equal Protection Clause and maintained that "[a] person's gender identity is integral to one's identity and cannot be voluntarily changed."[446]

- *Dekker v. Secretary, Florida Agency for Health Care Administration*: In 2022, Florida's Agency for Health Care adopted a rule prohibiting the use of Medicaid funds for "gender-affirming care"; the Florida Legislature adopted a related statute.[447] The Biden DOJ filed

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[440] *Eknes-Tucker v. Governor of Ala.*, 80 F.4th 1205, 1214–15 (11th Cir. 2023).

[441] Brief for the United States as Intervenor-Appellee, *Eknes-Tucker v. Governor of Ala.* at 50, No. 22-11707 (11th Cir. Aug. 10, 2023).

[442] Brief for the United States as Amicus Curiae in Support of Plaintiffs-Appellees, *Brandt v. Griffin, et. al.*, No. 23-2681 (8th Cir. Dec. 14, 2023).

[443] *Id*. at 17.

[444] The Biden DOJ's position was contrary to at least three federal Circuit Courts of Appeals and was repudiated by multiple Supreme Court Justices in their concurrences during the last term in *Skrmetti*. *See Adams v. Sch. Bd. of St. John's Cnty.*, 57 F.4th 791, 803 n.6 (11th Cir. 2022) ("Such an assertion is contrary to the Supreme Court's reliance on physiological and biological differences between men and women… [and] also undercut by the dissent's refusal to engage the issue of gender fluidity---i.e., the practice . . . in which some individuals claim to change gender identifies."); *L.W. v. Skrmetti*, 83 F.4th 460, 487 (6th Cir. 2023) ("Unlike existing suspect classes, transgender identity is not 'definitively ascertainable at the moment of birth"), *K.C. v. Individual Members of Med. Licensing Bd.*, 121 F.4th 604, 620 n.3 (7th Cir. 2024) ("The incongruence between sex and gender identity, essential to transgender status is fundamentally different than immutable characteristic determined at birth."); *United States v. Skrmetti*, 605 U.S. at 550 (Barrett, J., concurring) ("The Sixth Circuit held that transgender individuals do not constitute a suspect class, and it was right to do so.") (Barrett, J., concurring); *id.* at 566 (Alito, J., concurring) ("Transgender status is not 'immutable,' and as a result, persons can and do move into and out of the class.").

[445] H.B. 808, 2023 N.C. Sess. Laws 111 (2023).

[446] Statement of Interest of the United States of America at 4, *Voe v. Mansfield*, No. 1:23-cv-864, (M.D.N.C. Oct. 27, 2023).

[447] *Dekker v. Weida*, 679 F. Supp. 3d 1271, 181 (N.D. Fla. 2023).

an amicus brief, arguing that Florida violated Medicaid requirements and Section 1557.[448] Section 1557 of the Affordable Care Act prohibits sex discrimination on the basis of race, color, national origin, sex, or disability in certain health programs and activities.[449]

c. Department of Health and Human Services

Following President Biden's Executive Order and PDAAG Karlan's *Bostock* memorandum, federal agencies took measures to comply, often without deference to employees' sincerely held religious beliefs. This was particularly evident in HHS's implementation of Section 1557 of the Affordable Care Act.

Through a series of actions, HHS worked to embed this expansive interpretation of *Bostock* into its guidance documents and regulations.[450] Beginning in May 2021, HHS began to interpret and enforce Section 1557 to include discrimination on the basis of sexual orientation and gender self-identification, but promised that HHS OCR would comply with in appropriate cases RFRA.[451] The next year, in May of 2022, HHS issued a guidance memorandum, declaring that it "stands with transgender and gender nonconforming youth and their families . . . in unequivocally stating that gender affirming care for minors . . . improves their physical and mental health."[452] According to the guidance, "[c]ategorically refusing to provide treatment to an individual based on their gender identity is prohibited discrimination" and "restricting an individual's ability to receive medically necessary care, including gender-affirming care… likely violates Section 1557."[453] This broad reading of *Bostock* means that, for example, a doctor's refusal to provide testosterone prescriptions to a female struggling with gender dysphoria may violate federal civil rights law.[454]

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[448] Brief for the United States as Amicus Curiae in Support of Plaintiff-Appellees and Urging Affirmance, *Dekker v. Sec'y, Fla. Agency for Health Care Admin.*, No. 23-12155 (11th Cir. Dec. 4, 2023).

[449] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1557, 42 U.S.C. § 18116.

[450] Section 1557 has been a shifting target across administrations. HHS's first set of regulations under the section were finalized under the Obama Administration, which asserted that Section 1557 covered discrimination on the basis of "termination of pregnancy" and "gender identity," without including a religious exemption or accommodation. 81 Fed. Reg. 31375 (May 18, 2016). Several religious employers and covered healthcare entities sued against the 2016 Rule, alleging that HHS had violated RFRA. *Franciscan All. v. Burwell*, 47 F.4th 368 (5th Cir. 2022); *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 609 (8th Cir. 2022). Both the Fifth and Eighth Circuits agreed and awarded plaintiffs permanent injunctions. *Id.* The definition for "termination of pregnancy" and the inclusion of "gender identity" in the definition of "sex" was rescinded during the first Trump Administration. 85 Fed. Reg. 37160 (June 19, 2020). The same final rule recognized religious exemptions.

[451] *See* Dep't of Health & Human Servs., Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972, 86 Fed. Reg. 27984 (May 25, 2021), available at: https://perma.cc/3AHH-QBPD.

[452] HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy, U.S. Dep't of Health and Human Serv. (Mar. 2, 2022), https://perma.cc/AYS8-MU6W.

[453] *Id.*

[454] *See, e.g.*, *Skrmetti*, 605 U.S. at 595–96 (Sotomayor, J., dissenting).

Despite the Biden Administration's continued reliance upon *Bostock* to support this position, the Supreme Court reiterated once more in *Skrmetti* that *Bostock* was limited to Title VII and that in this precise hypothetical "[u]nder the reasoning of *Bostock*, neither [her] sex nor [her] transgender status is the but-for cause of [her] inability to obtain testosterone." *See id.* at 520–21.

The Christian Employers Alliance filed suit in October 2021, challenging HHS's interpretation of nondiscrimination as it related to health insurance coverage and noting that such policies would coerce coverage of procedures fundamentally inapposite to its Christian values, including coverage of sex-rejecting interventions[455] A federal district court issued a preliminary injunction protecting the plaintiff and its members from enforcement actions that would violate RFRA, finding that the "HHS Guidance specifically invites the public to file complaints for acting in a manner the Alliance says is consistent with their sincerely held religious beliefs. The Alliance must either violate its sincerely held beliefs or face monetary losses, fines, and even civil liabilities."[456] The court rejected HHS's defense under RFRA, explaining that "[r]eligious freedom cannot be encumbered on a case-by-case basis."[457]

Undeterred, HHS announced a Notice of Proposed Rulemaking on August 4, 2022, which would codify its "gender-affirming" interpretations into HHS's regulations.[458] While HHS represented that it was "fully committed to respecting conscience and religious freedom laws when applying this rule," HHS's proposed procedure raised concerns among many religious Americans about their ability to vindicate those rights.[459] HHS explained that it would not recognize any RFRA claim until after a "fact-sensitive, case-by-case analysis," which would "allow [HHS] to account for any harm an exemption could have on third parties."[460]

By proposing a case-by-case analysis framework, HHS signaled that religious claimants may face a significantly harder path to demonstrate that their religious beliefs reflect an "honest conviction."[461] For more than a decade, HHS was willing to accept a religious organization's sincere religious objection to another mandate based on the entity's submission of a one-page form that says, in part, "I certify that, on account of religious objections, the organization opposes providing coverage for some or all of any contraceptive services that would otherwise be required to be covered; the organization is organized and operates as a nonprofit entity; and the organization holds itself out as a religious organization."[462] But HHS did not offer a similar form or method under Section 1557.[463]

In May 2024, the regulation was finalized, effective July 5, 2024.[464]

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[455] *See Christian Employers All. v. EEOC*, 1:21-cv-195, 2022 WL 1573689, at *1, *4 (D.N.D. May 16, 2022).

[456] *Id.* at *6.

[457] *Id.* at *8.

[458] Centers for Medicare & Medicaid Services, Notice of Proposed Rulemaking: Nondiscrimination in Health Programs and Activities, 87 Fed. Reg. 47824 (Aug. 4, 2022), https://perma.cc/M8L3-CREZ.

[459] *Id*. at 47841.

[460] *Id.* at 47886.

[461] *Hobby Lobby v. Burwell*, 573 U.S. 682, 686 (2014).

[462] HHS, CMS-10459-Certification (as of Mar. 6, 2024), https://perma.cc/369K-52FD.

[463] *See* 45 C.F.R. § 92.302(b) (requiring those seeking conscience protections to provide a notification identifying, *inter alia*, the legal basis for their objection, the conflict between their religious beliefs and the requirements).

[464] Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37522 (May 6, 2024).

On July 3, 2024, a district court stayed enforcement of the final rule on other grounds,[465] and ultimately stayed enforcement of all parts of the final rule that were found to errantly apply an overbroad definition of discrimination on the basis of "sex" in Title IX as applied in Section 1557 of the Affordable Care Act (Section 1557) on August 30, 2024.[466]

Several employers with sincerely held religious beliefs successfully challenged related applications of Section 1557, arguing that the Biden Administration's purported commitment to religious protections was not a reliable promise.[467] The Eighth Circuit Court of Appeals agreed in late 2022, finding that these Christian employers had standing to challenge EEOC's interpretation of Title VII because they faced a credible threat of an enforcement action if they invoked their conscience rights.[468] Likewise, the court found that, "[a]lthough the government maintains that it 'will comply' with RFRA [in applying Section 1557] . . . its promise is so vague that the scope of liability is both unknown by the government and unknowable by the plaintiffs who are within the class whose conduct is arguably restricted."[469]

In 2024, the district court in *Christian Employers Alliance* granted summary judgment and permanently enjoined HHS and the EEOC from interpreting Section 1557 of the Affordable Care Act to mandate insurance coverage for "gender-transition procedures that violates [Alliance members'] sincerely held religious beliefs without satisfying strict scrutiny under the RFRA."[470]

d. Equal Employment Opportunity Commission

The Biden EEOC dismissed sincerely held religious beliefs regarding sexual orientation and gender identity as "discrimination in hiring . . . cloaked as religious practice."[471] Like its counterparts, it applied *Bostock* broadly, issuing a series of Enforcement Guidance in 2021 and 2024.[472] The 2021 Guidance categorically stated "employers may not deny an employee equal access to a bathroom, locker room, or shower that corresponds to the employee's gender identity."[473] It explained that "[p]rohibiting a transgender person from dressing or presenting

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[465] *Texas v. Becerra*, 739 F. Supp. 3d 522, 528 (E.D. Tex. Jul. 3, 2024) ("'How strangely will the Tools of a Tyrant pervert the plain Meaning of Words!'" Samuel Adams, Letter to John Pitts (Jan. 21, 1776), *in* 3 THE WRITINGS OF SAMUEL ADAMS, 1773-1777, at 256 (Harry Alonzo Cushing ed.) (1907). Here, federal agencies are attempting to impose a sweeping new social policy by manipulating and perverting the statutory text that constrains them.").

[466] *Texas v. Becerra*, No. 6:24-cv-00211, 2024 WL 4490621 (E.D. Tex. Aug. 30, 2024). In this order, the court modified the stay to only apply to the challenged portions of the rule. *Id*. There are non-stayed portions of the rule in effect, which HHS OCR actively enforces.

[467] *See Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 606 (8th Cir. 2022).

[468] *Id.* at 607.

[469] *Id.* at 606.

[470] *Christian Employers All. v. EEOC*, 719 F. Supp. 3d 912, 927–28 (D.N.D. 2024).

[471] *Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 939 (5th Cir. 2023).

[472] Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity, U.S. Equal Emp. Opportunity Comm'n (June 15, 2021), https://perma.cc/9VUB-ZK2P; Enforcement Guidance on Harassment in the Workplace, U.S. Equal Emp. Opportunity Comm'n (Apr. 29, 2024), https://perma.cc/23Z6-XCWX.

[473] *Id.*

consistent with that person's gender identity would constitute sex discrimination."[474] And it provided that "intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment."[475] The 2021 Guidance was challenged and vacated as unlawful, and EEOC did not appeal.[476]

Instead, EEOC simply issued a similar Enforcement Guidance in 2024, this time disclaiming its authority, stating that it lacked the force and effect of law and should not be construed to bind the public.[477] Again, a district court struck down the Biden EEOC's Guidance and its "metastasized definition of 'sex'" based on misreadings of *Bostock*.[478]

Even where the Biden Administration acknowledged that religious exemptions could apply, its actions or inactions often suggested a perfunctory compliance with longstanding federal law, rather than a good-faith effort to avoid religious discrimination.[479] For example, both the 2021 and 2024 Guidance only conceded that religious exceptions might apply under Title VII, but that employers' applications would be evaluated on a case-by-case basis.[480]

e. Department of Education

On April 29, 2024, the Biden ED issued a Final Rule,[481] applying an expansive reading of *Bostock*'s holding to the definition of "sex" under Title IX of the Education Amendments Act of 1972, commonly known as Title IX. Congress instituted Title IX in response to concerns "that girls and women were not receiving educational opportunities that were equal to those afforded to their male counterparts."[482] Under this provision, educational institutions that receive federal funding are prohibited from discriminating based on sex in their academic or programmatic offerings, athletic opportunities, and scholarships, among other things.[483]

Under the Biden ED's Final Rule, "sex" now included "gender identity." States and students quickly responded, and courts enjoined the rule:

- Six states immediately sued, seeking to enjoin and invalidate the Rule, and the Christian Educators Association International intervened shortly after.[484] The district court found that

[474] *Id.*

[475] *Id.*

[476] *See Texas v. EEOC*, 633 F. Supp. 3d 824, 847 (N.D. Tex. 2022).

[477] *See* 2024 EEOC Enforcement Guidance, *supra* note 472.

[478] *See Texas v. EEOC*, 785 F. Supp. 3d 170, 188–89 (N.D. Tex. 2025).

[479] *See Religious Sisters of Mercy*, 55 F.4th at 606.

[480] *See* 2021 EEOC Enforcement Guidance, *supra* note 472; 2024 EEOC Enforcement Guidance, *supra* note 472.

[481] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474 (Apr. 29, 2024).

[482] *Tennessee v. Cardona*, 737 F. Supp. 3d 510, 521–24 (E.D. Ky. 2024) (describing legislative history).

[483] *Id.* at 524, 529.

[484] *Id.* at 527.

ED had exceeded its statutory authority by applying *Bostock* outside the Title VII context to Title IX.[485] But the court's analysis under the First Amendment was even more telling: ED could not coerce teachers and students "into affirming messages with which they fundamentally disagree."[486] ED's Final Rule would silence teachers and "only suppress[] one side of the debate, strangling the marketplace of ideas in a way that is 'uniquely harmful to a free and democratic society.'" [487]

- Although the Final Rule was enjoined, some local school districts nevertheless followed the Biden Administration's lead. For example, a Christian middle school student in Oklahoma refused to use the restroom at her school because males were sharing it. She also worried about being compelled to speak in ways that violate her religious beliefs. Oklahoma outlawed students using restrooms incongruent with their biological sex, but the Biden ED's final rule would preempt those laws.[488] This student, along with additional plaintiffs, secured a preliminary injunction prohibiting the final rule from going into effect.[489] In a related district court case, decided on other grounds, the court noted that,

> The [Biden] Guidance Documents functionally turn recipients of federal funds into federally commandeered censors of speech, forcing schools to require engagement in—or, at a minimum, prohibit—certain kinds of speech, such as the use of preferred pronouns, which in turn repress what has long been regarded as protected forms of expression and religious exercise.[490]

The Biden DOJ aggressively supported the Biden ED's policy changes. In another Oklahoma case, DOJ filed an amicus brief challenging the state's bathroom bill.[491] To promote affirming policies, the Department stated that "[p]roviding unisex, single-occupancy restrooms for the use of transgender students is insufficient under Title IX."[492] The Biden DOJ also filed an amicus brief in a similar Florida-based case.[493]

The Biden ED's approach to Title IX had significant local impacts on girls' sports. For example, in 2023, Mid Vermont Christian School (MVCS), a Christian K-12 school, forfeited a girls'

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[485] *Id.* at 533.

[486] *Id.* at 543.

[487] *Id.* at 547 (quoting *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 1326 (2024)).

[488] *Kansas v. U.S. Dep't of Educ.*, 739 F. Supp. 3d 902, 914 (D. Kan. 2024).

[489] *Id.*

[490] *Texas v. Cardona*, 743 F. Supp. 3d 824, 869 n.119 (N.D. Tex. 2024).

[491] Brief for the United States as Amicus Curiae in Support of Plaintiff-Appellants and Urging Reversal, *Bridge v. Okla. St. Dep't of Educ.*, No. 24-6072 (10th Cir. July 19, 2024).

[492] *Id*. at 21.

[493] En Banc Brief for the United States as Amicus Curiae in Support of Plaintiff-Appellee and Urging Affirmance, *Adams v. Sch. Bd. of St. John's Cnty.*, No. 18-13592 (11th Cir. Nov. 26, 2021).

basketball playoff game when slated to compete against a male athlete.[494] MVCS had requested that the Vermont Principals' Association, which governs all extracurricular activities for middle schools and high schools throughout the state, prohibit the male player from competing due to concerns about both fairness and safety, but the Vermont Principals' Association refused.[495] Not content with MVCS's forfeiture, Vermont Principals' Association's Executive Director testified two days later in support of a state bill that would strip private religious schools of public funding.[496] During his testimony, the Executive Director stated that "we should never provide any tax dollars to schools that . . . look away from the common decency of all students being welcomed" and cited MVCS's forfeiture as an example of "blatant discrimination under the guise of religious freedom[.]"[497] The Second Circuit disagreed, finding that MVCS is "likely to succeed . . . in establishing that [the Vermont Principals' Association] acted with hostility toward Mid Vermont's religious beliefs."[498]

These types of policies also impacted single-sex locker rooms. In Loudoun County, Virginia, a female student who identifies as male entered the boys' locker room at a public school. While there, she video-recorded three male students who asked why she was in the boy's locker room.[499] After the incident, the school board launched a Title IX investigation into the *boys*' conduct—relying upon *Bostock* to allege sex discrimination—and ultimately suspended them.[500] Under the Trump Administration, DOJ has filed a motion to intervene in the pending litigation, specifically on religious discrimination grounds.[501]

f. Department of Housing and Urban Development

In response to President Biden's Executive Order 13988 regarding *Bostock*, the Biden Department of Housing and Urban Development (HUD) adopted a novel interpretation of the Fair Housing Act and enforced the statute to effectively limit certain faith-based providers' access to federally funded housing programs.[502] For example, Christian colleges and religious housing providers were informed that participation in HUD programs was conditioned on compliance with the Biden

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[494] *Mid Vermont Christian Sch. v. Saunders*, 151 F.4th 86, 89 (2nd Cir. 2025).

[495] *Id*.

[496] *Id.* at 90.

[497] *Id*.

[498] *Id*. at 95.

[499] Nick Minock, *Loudoun schools suspend boys uncomfortable with biological female student in locker room*, WJLA (Aug. 18, 2025), https://perma.cc/3XQR-AHV2.

[500] Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction, *S.W., et. al. v. Loudoun Cnty. Sch. Bd*., No. 1:25-cv-1536 (E.D. Va. Oct. 6, 2025), 18, 20.

[501] United States' Memorandum in Support of Motion to Intervene 2–3, *id.* (E.D. Va. Dec. 8, 2025), dkt. no. 79; United States' Memorandum in Support of Renewed Motion to Intervene, *id.* (E.D. Va. Jan. 30, 2026), dkt. no. 137.

[502] Press Release, U.S. Department of Housing and Urban Development, HUD to Enforce Fair Housing Act to Prohibit Discrimination on the Basis of Sexual Orientation and Gender Identity (February 11, 2021), https://perma.cc/3WZZ-KG7C; Memorandum from Jeanine M. Worden, Acting Assistant Secretary for Fair Housing & Equal Opportunity, Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act (Feb. 11, 2021), available at: https://perma.cc/87F7-3XY2.

Administration's unprecedented sexual orientation and gender identity nondiscrimination requirements, even if those requirements conflicted with the colleges' and providers' religious beliefs.[503] For many Christian organizations, compliance expectations, regulations, and funding announcements made participation in federal housing programs untenable, resulting in their withdrawal or nonparticipation in federally supported housing initiatives, including in underserved areas.[504]

HUD frequently conveyed compliance expectations through guidance documents, compliance letters, or informal correspondence rather than through notice-and-comment rulemaking or formal adjudication, depriving the public of the opportunity to participate in the process.[505] Faith-based housing providers reported that these communications framed compliance as mandatory and immediate, without meaningful opportunity to seek clarification, religious accommodation, or individualized assessment. As a practical matter, HUD's enforcement posture functioned as a constructive denial of federal housing benefits, as providers faced a choice between violating their religious convictions in their housing policies or relinquishing access to federally funded housing programs.

g. Department of Labor

The expansion of gender ideology extended throughout the federal government, including in a similar notification published in April 2022 by the Department of Labor (DOL).[506] Like HHS, DOL announced that it would interpret its respective nondiscrimination provision, Section 188 of the Workforce Innovation and Opportunity Act,[507] to include discrimination on the basis of gender identity and transgender status.[508] DOL advised that it would use this interpretation in civil rights compliance reviews and investigations.[509]

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[503] *See, e.g.*, Compl., *The School of the Ozarks, Inc. v. Biden*, 6:21-cv-3089 (W.D. Mo. Apr. 15, 2021), dkt. no. 1.

[504] HUD Secretary Scott Turner noted during his interview that under the Biden Administration, "Many faith-based organizations would not apply for grants from the Biden administration because they weren't allowed to because of what they stood for." *Id.* Interview with Sec'y Scott Turner, Dept. of Hous. & Urb. Dev., *see supra* note 234. "Christian organizations [and] faith-based organizations were blocked out from competing for these grants." *Id.*

[505] *See, e.g.*, HUD to Enforce Fair Housing Act to Prohibit Discrimination on the Basis of Sexual Orientation and Gender Identity, U.S. Dep't of Hous. & Urb. Dev., (Feb. 11, 2021), https://perma.cc/PA78-VM9V; Administrative, National, and Department Policy Requirements and Terms for HUD's Financial Assistance Programs, U.S. Dep't of Hous. & Urb. Dev., at 1, 3, and 16, https://perma.cc/W5BQ-S9R2; and Consolidated Certifications Management Agent Form, § XIII, https://perma.cc/458D-8BW4.

[506] Notification of Interpretation of Section 188 of the Workforce Innovation and Opportunity Act, 87 Fed. Reg. 20321 (Apr. 7, 2022).

[507] 29 U.S.C. § 3248.

[508] 87 Fed. Reg. at 20321.

[509] *Id*.

h. Department of Agriculture

During the Biden Administration, the U.S. Department of Agriculture (USDA) also adopted an expanded interpretation of *Bostock*, which severely threatened religious organizations' financial assistance to feed hungry children and adults. Thousands of religious organizations participate in the USDA's federally funded nutritional programs,[510] including the National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program (CACFP), Summer Food Service Program, and Fresh Fruit and Vegetable Program.[511] The USDA administers these programs on the federal level, while state agencies are responsible for administering the programs locally, including monitoring and ensuring participants' compliance with program requirements.[512]

Each federal nutrition program seeks to meet the nutritional needs of particular groups of Americans. The National School Lunch Program, for example, provides nutritionally balanced, low-cost or no-cost lunches to children each school day in public and nonprofit private schools and residential childcare institutions. CACFP, on the other hand, "provides reimbursements for nutritious meals and snacks to eligible children and adults" enrolled in "participating child care centers, day care homes, and adult day care centers."[513] A significant number of faith-based schools and ministries participate in USDA's nutrition programs, with more than half of the nation's Catholic schools, for example, participating in the School Lunch program.[514]

To participate in USDA's nutrition programs, participating organizations must follow several non-discrimination provisions, including Title IX's nondiscrimination provisions related to sex.[515] Title IX exempts religious organizations from complying with the nondiscrimination provisions if the provisions are inconsistent "with the religious tenets of such organization."[516] That is, federal policy has historically held that religious organizations, such as churches, charities, and parochial schools, should have access to participate in the nutrition programs to feed their communities without fear of the government dictating the religious organization's mission, operations, and employment decisions.

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[510] In the 2017–18 school year, approximately 18.8 percent of all the nation's private schools participated in the National School lunch Program. *See* Nat'l Ctr. for Educ. Stat., *N.D.b. Percentage of private schools and students that participated in the Title I and federal free or reduced–price lunch programs, by affiliation: 2017–18*, https://perma.cc/LJ4L-ZUEA (last visited Feb. 10, 2026). This figure includes, for example, more than half of the than 5,852 Catholic schools in the United States. *See* Edie Heipel, *USDA exempts religious schools from LGBT rule change threatening free lunch funds*, NAT'L CATH REG (Aug. 31, 2022), https://perma.cc/8MTM-4P2S; *see also Annual Statistical Report on Schools, Enrollment and Staffing*, NAT'L CATH. EDUC. ASS'N, https://perma.cc/Y3A6-792R (last visited Feb. 10, 2026).

[511] Nutrition Programs, U.S. Dep't of Agric. (2025), https://perma.cc/VJ5X-3SE8.

[512] State Agency, U.S. Dep't of Agric. (2025), https://perma.cc/FWN7-EMD5; 7 C.F.R. §§ 210.23, 225.3 (2024).

[513] The CACFP also "provides reimbursements for meals served to children and youth participating in afterschool care programs, children residing in emergency shelters, and adults over the age of 60 or living with a disability and enrolled in day care facilities." *See* Ensuring Children and Adults Have Access to Nutritious Meals and Snacks, U.S. Dep't of Agric. (Dec. 23, 2024), https://perma.cc/7MZT-9KN9.

[514] *See* Heipel, *supra* note 510.

[515] *See* 7 C.F.R. § 2.25(a)(1)(iii) & (vi) (2024).

[516] 20 U.S.C. § 1681(a)(3) (2024).

But on May 5, 2022, USDA announced a "Policy Update" to enforce President Biden's Executive Order on Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation.[517] The USDA policy memorandum reinterpreted Title IX's definition of "sex" and prohibited program recipients from "discriminat[ing] on the basis of gender identity and sexual orientation."[518] The memorandum instructed state agencies to "expeditiously" review and "make any changes necessary to ensure complaints alleging discrimination on the basis of gender identity and sexual orientation are processed and evaluated as complaints of discrimination on the basis of sex."[519] It instructed that state agencies that receive discrimination complaints should review the complaints on a case-by-case basis and consider whether Title IX's religious exemptions or RFRA's protections apply.[520] But the memorandum failed to ensure broad, statutory religious exemption under Title IX.[521] Months later, USDA issued a memo finally recognizing the explicit religious exemption in Title IX.[522]

Although the Biden Administration's stated goal of these revisions was to ensure all people participating in USDA's nutrition programs were "treated with respect and dignity,"[523] the policy left Christian schools and ministries with a coercive choice: If they wanted to feed the hungry using these programs, they would need to abandon the Bible's teachings on sex and marriage. As a result, the Biden USDA pushed many Christians out of the programs. The Roman Catholic Archdiocese of St. Louis, for example, chose to remove all of its parochial schools from the National School Lunch Program, even after the Biden USDA issued its memo acknowledging Title IX's religious exemption.[524]

The Biden Administration's actions severely impacted nutrition programs for needy children. For instance, in *Church of Compassion v. Johnson*, a church-sponsored preschool in California served students where 40 percent of the preschool's students qualified for meals under CACFP.[525] The preschool had participated in CACFP for 20 years and served all families, including those who

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[517] Press Release, USDA Promotes Program Access, Combats Discrimination Against LGBTQI+ Community (May 5, 2022) https://perma.cc/6DYQ-CXJJ (citing Exec. Order. No. 13988, *Preventing and Combatting Discrimination on the Basis of Gender Ideology or Sexual Orientation*. 86 Fed. Reg. 7023 (Jan. 20, 2021)).

[518] Memorandum from Roberto Contreras, Director of Civil Rights Division, Food and Nutrition Service, to Regional and State Directors Regarding CRD 01-2022 Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing—Policy Update (May 5, 2022), https://perma.cc/9KCK-ES6Y.

The USDA Memorandum relied on and adopted DOJ's and the ED's memoranda interpreting the *Bostock* decision to apply outside the context of Title VII. *Id.* at 2. The Task Force discusses both the DOJ and ED analyses in earlier subsections. For DOJ, *see supra*, at 67–71, and for ED, *see supra*, at 74–76.

[519] USDA Memorandum, *supra* note 518.

[520] *Id.*

[521] *Id.*

[522] Religious Exemptions Under Title IX of the Education Amendments of 1972 (Aug. 12, 2022), https://perma.cc/RN7F-LAL9.

[523] USDA Memorandum, *supra* note 518, at 2.

[524] *See* Heipel, *supra* note 510.

[525] Amended Compl., *Church of Compassion v. Johnson*, No. 3:23-cv-00470-AGS-WVG at 8 (S.D. Cal. June. 2, 2023), dkt. no. 16.

identify as gay, lesbian, or transgender.[526] But, after USDA issued its new policy, California's Department of Social Services demanded that Church of Compassion sign a new nondiscrimination compliance statement that included "sexual orientation" and "gender identity language."[527] Because of the church's orthodox Christian beliefs on human sexuality, California's Department of Social Services terminated the church's 2022-2023 participation. USDA also listed the church on the National Disqualification List for not signing a new agreement to uphold the "sexual orientation" and "gender identity" protections.[528]

California ultimately settled with Church of Compassion and paid $30,478.96 in reimbursement costs, and USDA removed the church from the National Disqualification List.[529] But these policies continued to impact ministries and schools around the country through the end of the Biden Administration.[530]

Under the Trump Administration, USDA rescinded the Biden Administration's Title IX policy on July 7, 2025, allowing religious organizations to continue serving children and adults in need.[531]

C. Promoting Ideology Over Evidence or Objections

The Biden Administration's commitment to gender ideology extended far beyond Title VII and Title IX, as agencies sought to shape scientific consensus around their preferred policy goals. When it came to policies impacting sex-rejecting procedures or other "affirming" care, the Biden Administration sought to control the narrative, often at the expense of empirical evidence and the conscience objections of Christian medical providers and other faith-filled professionals as reflected in the record below.

The Task Force repeatedly heard concerns from Christians in professional fields who approach data analytically and objectively, but when their hypotheses, findings, or methods contradicted the prevailing normative values regarding sexual orientation and gender ideology, their findings were often ignored. When policymakers prioritized their policy goals at the expense of empirical study

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[526] *Id.* at 2.

[527] *Id.* at 8.

[528] Settlement Agreement, *Church of Compassion v. Johnson*, No. 3:23-cv-00470-AGS-MMP (S.D. Cal. Jan. 16, 2024). The National Disqualification List is a tool used by the Child and Adult Care Food Program to help state agencies, sponsoring organizations, and the Food & Nutrition Service monitor compliance with federal regulations and terminate for cause daycare centers that fail compliance checks. Frequent types of disqualifying conduct include reimbursement fraud, failing to maintain adequate records, violating health codes, or operating for profit. *See* USDA, Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations: A Child Care and Adult Food Program Handbook 7, 12–13, 74–76 (Feb. 2015), https://perma.cc/C4U8-MXJC.

[529] *Id.*

[530] Compl., *Rapides Parish Sch. Bd. v. Health and Hum. Services*, No. 1:25-cv-00070 (W.D. La. Jan. 17, 2025), dkt. no. 1.

[531] USDA, Guidance on the Interpretation of Discrimination Based on "Sex" in USDA Child Nutrition Programs (July 7, 2025), https://perma.cc/8G9L-DXSR; Memorandum from James C. Miller, Administrator, Food & Nutrition Service, to Reg'l and State Directors (July 7, 2025), https://perma.cc/J9EY-2SPQ.

and conscience objections, the quality of data, and the policies that data informs, diminished, harming patients, children, and professional development across the country.

i. Anti-Christian Bias Harms Children and Patients

The ongoing campaign to make scientific literature and guidance one-sided—embracing anti-Christian dogma rather than actual science—resulted in a distorted perception of scientific consensus. Unfortunately, the Biden Administration and state counterparts repeatedly relied on and at times facilitated this one-sided approach to "trusting the science."

a. The Biden Administration's Influence on WPATH Standards

As it pursued policies to protect access to sex-rejecting procedures, the Biden Administration relied heavily upon guidance from the World Professional Association for Transgender Health (WPATH). The Biden DOJ relied upon WPATH's "evidence-based practice guidelines for gender dysphoria" and noted that "[a]ll of the Nation's major medical and mental health organizations recognize those guidelines as reflecting the consensus of the medical communities on the appropriate treatment for gender dysphoria."[532] Throughout the Biden Administration, similar language was used to bolster policies and regulations in favor of "affirming" gender confusion.[533] Federal courts and medical associations deferred to WPATH's guidelines.[534]

But WPATH's guidelines were not neutral or objective. Rather, discovery in later litigation suggests that senior Biden HHS officials and outside stakeholders encouraged WPATH to set specific guidelines for sex-rejecting procedures, even where the underlying scientific evidence was

[532] Petition for a Writ of Certiorari, 4, *United States v. Skrmetti*, No. 23-477, 605 U.S. 495 (2025).

[533] *See, e.g.*, HHS Notice and Guidance, 1 (stating that HHS guidance was aligned with "the significant majority of expert medical associations" that support "gender affirming care."); Press Release: Centers for Medicare and Medicaid Services, Biden-Harris Administration Greenlights Coverage of LGBTQ+ Care as an Essential Health Benefit in Colorado (Oct. 12, 2021), https://perma.cc/HT8Y-UGPV ("Gender-affirming care is considered a standard level of care by the American Medical Association, the American Academy of Family Physicians, the American Academy of Pediatrics, and the American Psychiatric Association."); Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37672 (May 6, 2024) ("[T]here is a robust consensus in the medical community that gender-affirming care is safe, effective, and medically necessary when clinically indicated for a particular individual.").

[534] *See, e.g.*, *Eknes-Tucker*, 603 F. Supp. 3d at 1139 (enjoining Alabama's law against sex-change procedures for minors for failing to defer to WPATH guidelines); *id.* at 1139, 1141 n.3 (noting that, as amici, the following groups all endorse WPATH's Standards of Care: the American Academy of Pediatrics; the Alabama Chapter of the American Academy of Pediatrics; the Academic Pediatric Association; the American Academy of Child and Adolescent Psychiatry; the American Academy of Family Physicians; the American Academy of Nursing; the American Association of Physicians for Human Rights, Inc. *d/b/a* Health Professionals Advancing LGBTQ Equality; the American College of Obstetricians and Gynecologists; the American College of Osteopathic Pediatricians; the American College of Physicians; the American Medical Association; the American Pediatric Society; the American Psychiatric Association; the Association of American Medical Colleges; the Association of Medical School Pediatric Department Chairs; the Endocrine Society; the National Association of Pediatric Nurse Practitioners; the Pediatric Endocrine Society; the Society for Adolescent Health and Medicine; the Society for Pediatric Research; the Society of Pediatric Nurses; the Societies for Pediatric Urology; and the World Professional Association for Transgender Health).

contested or limited.[535] HHS Assistant Secretary for Health Levine[536] supported removing age-restrictions from the WPATH's guidance.[537] Upon reviewing an embargoed draft of the upcoming WPATH Guidelines, Admiral Levine contacted WPATH, suggesting that it move the specific minimum ages for sex-rejecting medical procedures to a "less visible" document.[538] According to a WPATH representative, Admiral Levine "was very concerned that having ages (mainly for surgery) will affect access to health care for trans youth . . . and that [Levine] and the Biden administration worried that having ages in the document will make matters worse." Simply put, "[Levine] asked us to remove them."[539]

Over internal consternation about "allowing US politics to dictate international professional clinical guidelines," WPATH followed the Biden Administration's lead.[540] After discovery, Alabama summarized: "[B]oth the United States and [the American Academy of Pediatrics] sought, and WPATH agreed, to make changes in a clinical guidelines recommending irreversible sex-change procedures for kids based purely on political considerations."[541]

b. WPATH's Guidance Was Politically Driven, Not Based in Evidence

WPATH's purported evidence was heavily skewed. In 2018, WPATH began to prepare the eighth edition of its Standards of Care (SOC8) and commissioned a Johns Hopkins University team to conduct systematic reviews. In 2020, WPATH advised the SOC authors that "[i]t is paramount that any publication based on the WPATH SOC8 data is thoroughly scrutinized and reviewed to ensure that publication does not negatively affect the provision of transgender healthcare in the broadest sense."[542] WPATH's SOC8 was designed to make an "evidence-based set of recommendations," but that goal proved difficult, as the Johns Hopkins team "found little to no evidence about children and adolescents," which would "put [the authors] in an untenable position in terms of affecting policy or winning lawsuits."[543]

The Johns Hopkins team became frustrated by WPATH's refusal to publish empirical findings that could be construed to oppose sex-rejecting procedures, and WPATH advised the Johns Hopkins team that it could not conduct a review of child-related content due to limited studies. Ultimately, SOC8 concluded that the "emerging evidence base indicates a general improvement in the lives of

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[535] Brief of Alabama as *Amicus Curiae* Supporting State Respondents at 2, *United States v. Skrmetti*, No. 23-477, 605 U.S. 495 (2025) (hereinafter "Alabama Brief").

[536] *See President-Elect Biden Announces Groundbreaking Nomination of Dr. Rachel Levine*, Advocates for Trans Equality (Jan. 19, 2021), https://perma.cc/VTY6-HCDQ (noting upon the announced nomination that Levine would be "the highest [ranking] transgender official" in the Biden Administration).

[537] Brief of Alabama. at 16-17 (citing evidentiary record).

[538] *Id.* at 17 (citing evidentiary record).

[539] *Id.* at 18 (citing evidentiary record).

[540] *Id.* at 2 (citing evidentiary record).

[541] *Id.* at 20–21.

[542] *See id.* at 33.

[543] *Id.* at 2, 7, 15 (citing evidentiary record).

transgender adolescents" who undergo "gender-affirming care," without clearly citing supporting evidence.[544] Only two manuscripts were published, despite dozens of reports of reviews having been submitted to WPATH.[545]

In May 2022, WPATH's then-president sent an email to HHS officials advising that SOC8 was complete and requesting assistance to "identify funds for both dissemination and funds to create and develop a free app to download the SOC8" to ensure that the SOC8 was distributed "as widely as is humanly possible in North America."[546]

c. Scientific Journals Silenced Research Reaching Other Conclusions

Arguments in favor of sex-rejecting procedures suggest that there is a uniform scientific consensus in support of those interventions. However, when scientific studies have produced results that question WPATH and the Biden Administration's approach, academic journals have sometimes refused to publish studies reaching contrary conclusions, and in some cases, have retracted findings after publication.[547] For example:

- In 2023, the Archives of Sexual Behavior (ASB) published an article regarding rapid onset gender dysphoria, a theory that adolescents, especially vulnerable females, often develop "transgender" identities in social groups.[548] Shortly after publication, a group of academics and pro-gender ideology organizations submitted an open letter calling for ASB's editor to be terminated and threatening to withhold publications and peer reviewers unless ASB removed him.[549] Among its criticisms of the editor, the signatories complained that he associated with "religious conservative groups."[550] The article was ultimately retracted, ostensibly due to consent issues regarding information obtained from an online forum.[551]

- In December 2019, a University of Michigan neuroscientist published an article in eNeuro, a peer-reviewed scientific journal, which described a new theory regarding gender dysphoria, based on previously published data, in which he hypothesized that gender

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[544] E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 INT'L J. OF TRANSGENDER HEALTH 547 (2022), https://perma.cc/M5PV-YDYB.

[545] *See id*.

[546] E-mail from Walter Bouman, to Sarah Boateng, 14 (May 31, 2022), https://perma.cc/XLC3-STMM (under the subject "Fwd: We have finished SOC-8").

[547] Under the current administration, HHS has released a comprehensive report on this censorship of science, self-censorship, and broader concerns regarding "gender-affirming care." *See* U.S. DEP'T OF HEALTH AND HUM. SERV., TREATMENT FOR PEDIATRIC GENDER DYSPHORIA: REVIEW OF EVIDENCE AND BEST PRACTICE (Nov. 19, 2025), https://perma.cc/2CTZ-X39F.

[548] Suzanna Diaz, J. Michael Bailey, *Rapid Onset Gender Dysphoria: Parent Reports on 1655 Possible Cases*, 52 ARCH. SEX. BEHAV. 1031 (Apr. 2023).

[549] Open Letter re: Archives of Sexual Behavior (Apr. 28, 2023), https://perma.cc/5JGD-SR63.

[550] *Id*.

[551] Retraction Note: *Rapid Onset Gender Dysphoria: Parent Reports on 1655 Possible Cases*, 52 ARCH. OF SEX. BEHAV. 3577 (June 14, 2023), https://perma.cc/JWF7-ESYC.

dysphoria arises out of sensory perception.[552] After pushback, the journal advised that it would correct his article regarding his "Implications for Clinical Practice."[553] Critics petitioned the journal to take action, alleging that the study was authored "to do harm to the transgender community, one of the most vulnerable communities across the globe"; that publishing the article "signals clearly to every member of the transgender community . . . that [eNeuro] and associated journals do not care about their safety or well-being"; and that publication gave "a false yet persuasive veneer of legitimacy to every anti-trans group, both secular and religious."[554] Other critics explained that the article did not comport with WPATH's preferred terminology, and that "the author appears disrespectful to the community because he/she does not seem to believe that a transgender person's statement of belonging to one or the other gender is taken at face value and believed to be true."[555] eNeuro retracted the article in April 2020.[556]

- In 2024, the New York Times reported that Dr. Johanna Olson-Kennedy, a pro-"affirming" pediatric doctor,[557] was withholding release of a long-term study funded by the National Institute of Health demonstrating that puberty blockers administered to gender dysphoric children did not improve their mental health because "the finding might be weaponized by opponents of the care."[558] When the findings were ultimately published in the summer of 2025, the accompanying conclusion disingenuously stated that "it is likely that puberty blockers prevent the deterioration of mental health," despite finding that the 24-month administration of puberty blockers resulted in "relatively stable" mental health.[559]

d. The Biden Administration's Approach to Gender Confusion Conflicted with International Findings

In 2024, the United Kingdom's National Health Services (NHS) published the Independent Review of Gender Identity Services for Children and Young People, a comprehensive report commissioned

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[552] *See* Stephen V. Gliske, *A New Theory of Gender Dysphoria Incorporating the Distress, Social Behavioral, and Body-Ownership Networks*, 6 ENEURO 0183-19-2019 (Dec. 2, 2019), https://perma.cc/3DNN-J95L.

[553] Adam Marcus, *Journal retracts paper on gender dysphoria after 900 critics petition*, RETRACTION WATCH, (Apr. 30, 2020), https://perma.cc/6RDH-LEXG.

[554] *Call for eNeuro to retract 'gender dysphoria' theory paper*, CHANGE.ORG (Dec. 17, 2019), https://perma.cc/22YY-A8FB.

[555] Julie Bakker, et. al., *Synthesis statement on "A New Theory of Gender Dysphoria Incorporating the Distress, Social, Behavioral, and Body-Ownership Networks*," https://perma.cc/5H7U-SM9J.

[556] *Retraction: Gliske, A New Theory of Gender Dysphoria Incorporating the Distress, Social Behavioral, and Body-Ownership Networks*, 2 ENEURO 0149-20-2020, (Apr. 27, 2020), https://perma.cc/77HZ-WH6W.

[557] Dr. Olson-Kennedy's gender clinic in California, based at Children's Hospital Los Angeles, closed in 2025, citing pressure from the Trump Administration. *See* Jill Cowan, *Hospitals Are Limiting Gender Treatment for Trans Minors, Even in Blue States*, N.Y. TIMES, (Jul. 22, 2025), https://perma.cc/AX4N-5JN2.

[558] Azeen Ghorayshi, *U.S. Study on Puberty Blockers Goes Unpublished Because of Politics, Doctor Says*, N.Y. TIMES (Oct. 23, 2024), https://perma.cc/RG25-TDS7.

[559] JOHANNA OLSON-KENNEDY, ET. AL., MENTAL AND EMOTIONAL HEALTH OF YOUTH AFTER 24 MONTHS OF GENDER-AFFIRMING MEDICAL CARE INITIATED WITH PUBERTAL SUPPRESSION (2025), https://perma.cc/Q5TF-Z6WJ.

by NHS and prepared by Dr. Hilary Cass (the Cass Review).[560] The Cass Review's findings and recommendations contradicted the alleged American scientific "consensus,"[561] recommending "extreme caution" for the provision of sex hormones prior to adulthood and concluding that "[l]ong-standing gender incongruence should be an essential pre-requisite [*sic*] for medical treatment but is only one aspect of deciding whether a medical pathway is the right option."[562] Dr. Cass noted that "[t]he evidence is weak and clinicians have told us they are unable to determine with certainty which children and young people will go on having an enduring trans identity."[563]

Based on these findings, NHS responded quickly and ceased issuing routine prescriptions of puberty blockers.[564] By December 2024, NHS ultimately banned their prescription for minors.[565] The United Kingdom recognized the lack of scientific support for the radical use of puberty blockers as medical care for "affirming" a minor's gender dysphoria. While the United Kingdom undertook measures to reflect this, American medical associations and the Biden Administration maintained that the report did not alter their support for minors' access to sex-rejecting procedures and medical intervention.[566]

e. Case Studies: Minors Harmed by Sex-Rejecting Procedures

The consequences of this dogged commitment to sex-rejecting interventions and "affirming" procedures are real and wide-reaching, adversely impacting Christian and faith-filled families and children, as reflected in the cases described below.

In a representative case, Sage, who was adopted at age two out of foster care, was encouraged by school counselors to embrace a male identity. They advised her to use the boys' restroom and directed her to pro-gender ideology internet resources.[567] This resulted in a number of difficulties for Sage, who was subjected to repeated harassment; all the while, the school staff kept her parents in the dark regarding their efforts to "affirm" Sage's identity, as well as the bullying and harassment to which she had been subjected.[568] In other words, Sage's mother "was notified and had to consent to her daughter receiving a Tylenol at school, yet was never informed about something as consequential as being affirmed as a boy, using the boys' bathroom, and being

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[560] THE CASS REVIEW, INDEPENDENT REVIEW OF GENDER IDENTITY SERVICES FOR CHILDREN AND YOUNG PEOPLE (Apr. 2024), https://perma.cc/8Y4Q-XMGC.

[561] *See* discussion, *supra* at 81 n.532, 533, 534.

[562] CASS REVIEW, *see supra* note 560, at 35.

[563] *Id*. at 22.

[564] Press Release, Dep't of Health & Soc. Care, Ban on puberty blockers to be made indefinite on experts' advice (Dec. 11, 2024), https://perma.cc/9HPQ-YD3Z.

[565] *Id.*

[566] *See, e.g.*, Pamela Paul, *Why is the U.S. Still Pretending We Know Gender-Affirming Care Works*, N.Y. TIMES (Jul. 12, 2024), https://perma.cc/ZWZ5-HL4L.

[567] *Blair v. Appomattox Co. Sch. Bd.*, 147 F.4th 484, 488–89 (4th Cir. 2025).

[568] *Id*. at 489.

harassed and sexually assaulted at school."[569] At age 14, Sage fled her home, was raped, and was ultimately located with a convicted sex offender.[570] Rather than return Sage to her adoptive parents, a judge placed her in a group home "which makes reasonable accommodation for [her] male gender and desire to live as a trans male."[571]

After Sage escaped from the Maryland group home, she relocated to Texas, where she became the subject of assault, narcotics abuse, and sex trafficking.[572] After Texas law enforcement rescued Sage, they returned her to her adoptive parents. However, upon return, Maryland removed her once more and placed her in a treatment facility, where she was encouraged to undergo a mastectomy.[573] During her mother's visits, Sage requested that she secretly procure girls' clothes for her.[574]

Sage is not alone. Some school boards, including those in Fairfax County[575] and Loudoun County,[576] Virginia, have previously implemented policies requiring school staff to keep a child's "transition" a secret from his or her parents, thus increasing the risk of similar stories transpiring. In 2023, the Virginia House of Delegates considered Sage's Law, which would have required Virginia schools to disclose a student's expression of gender identity confusion.[577] In response to discussions of a separate proposal to categorize not "affirming" a child's gender confusion as "abuse," Sage's Law also included a provision to prevent such categorization.[578] The bill was killed in committee. Reintroduced versions of the bill have also failed. In December 2025, a Southern District of California District Court judge permanently enjoined enforcement of California laws that a school district relied upon to mandate pronoun usage and refuse to disclose students "transitioning."[579] On March 2, 2026, the United States Supreme Court vacated the Ninth Circuit's stay of the injunction, finding the parents were likely to succeed under the Free Exercise Clause.[580]

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[569] Compl. ¶50, *Blair v. Appomattox Co. Sch. Bd.*, No. 6:23-cv-0047 (W.D.Va, Aug. 22, 2023).

[570] Luke Rosiak, *Maryland Refused to Give Back A Virginia Runaway Because Her Parents 'Misgendered' Her. Then She was Sex Trafficked, Mother Says*, DAILY WIRE (Jan. 19, 2023), https://perma.cc/KH8L-MW5U.

[571] *Id*.

[572] *Blair v. Appomattox Co. Sch. Bd.*, 2024 WL 3165312, at *4 (W.D. Va 2024).

[573] Rosiak, *supra* note 570.

[574] *Id*.

[575] Fairfax County Public Schools, *Regulation 2603-Gender-Expansive and Transgender Students Guidance Document*, at 8-10, https://perma.cc/B48R-M5R4.

[576] Jeremiah Poff, Loudoun schools told teachers to keep gender transitions secret from parents, Washington Examiner (Apr. 5, 2022), https://perma.cc/P86S-KWL9.

[577] *See* H.B. 2432, Va. Gen. Assem., 2023 Reg. Sess. (Va. 2023).

[578] *Id*.; *see also* Nick Minock, *'Us parents need to know': Va. Senate Dems kill transgender parental notification bill*, ABC 13 NEWS (Feb. 20, 2023), https://perma.cc/5BQA-3CFL.

[579] *Mirabelli v. Olson*, No. 23-cv-0768-BEN-VET, 2025 WL 3724553 (S.D. Cal. Dec. 24, 2025).

[580] *Mirabelli v. Bonta*, 146 S. Ct. 797, 802-03 (2026) (per curiam).

Earlier this year, a New York jury returned a $2 million malpractice verdict against two healthcare workers who provided sex-rejecting procedures to a minor, Fox Varian.[581] When Fox was 15 years old and dealing with several mental health issues, she began to question her gender and talked to a psychologist about sex-rejecting procedures. About five months after seeking medical and psychiatric advice, Fox underwent a double mastectomy. She has since detransitioned.[582] Since that verdict, the American Society of Plastic Surgeons has published a position statement recommending that surgeons delay "gender-related breast/chest, genital and facial surgery until a patient is at least 19 years old."[583]

D. Attacking Christian Values in the Home

i. Keeping Foster Children Away from Christian Homes

Notwithstanding scientific and faith-based dissent, the Biden Administration also pursued policies that seemed to provide a foothold for state and local governments to engage in similar discriminatory policy-making against traditional Christian views. In one particularly troubling example, the Biden HHS took a series of actions to "protect" foster children from placements with otherwise eligible Christian foster families or Christian foster agencies that were insufficiently "affirming" of sexual orientation and gender ideology.

In March 2022, the Biden HHS issued an Information Memorandum on how federally-funded child welfare agencies must "affirm" children with sexual orientation and gender identity issues in the foster system.[584] The Memorandum recommended "education" for parents who disagree with a child's sexual orientation or gender identity.[585] It stated that HHS's Children's Bureau "strongly encourages" that children with gender identity issues have access to "affirming medical care."[586] HHS referenced "religious or spiritual beliefs" only once in the same sentence as "sexual orientation and gender identity," after first explaining that children should not be denied access to attend a faith-based group "solely because of their perceived or expressed sexual orientation or gender identity"—and then only to state that each agency should provide services to assist "youth and young adults transition to adulthood, including those related to "sexual orientation or gender identity" issues and "to their religious or spiritual beliefs and faith life."[587]

In April 2024, HHS published a Final Rule requiring that certain types of foster care agencies "ensure a Designated Placement is available for , and may be requested by, any child in foster care

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[581] Paige Twenter, *New York jury delivers 1st malpractice verdict against pediatric gender-affirming surgeries*, Becker's Hosp. Rev. (Feb. 3, 2026), https://perma.cc/NW47-89J4.

[582] *Id.*

[583] Am. Soc'y of Plastic Surgeons, Position Statement on Gender Surgery for Children and Adolescents (Feb. 3, 2026), https://perma.cc/7LCQ-CV8U.

[584] *See* Administration for Children and Families Information Memorandum, U.S. Dep't of Health and Human Serv., (Mar. 2, 2022).

[585] *Id*. at 6.

[586] *Id*. at 11.

[587] *Id*. at 8.

who identifies as LGBTQI+"—that is, a placement meeting specified rule requirements, including a "supportive environment," relevant provider training, and facilitation of "access to age- or developmentally appropriate supportive resources and services."[588] Although the Rule claimed that it would still uphold First Amendment protections, its provisions in practice adversely impacted religious foster care entities and families, to say nothing of the foster children who lost opportunities for placements as a result.

In its public comments, the Ethics & Religious Liberty Commission (the public policy entity of the Southern Baptist Convention) noted that the Rule had the effect of "needlessly limiting the pool of eligible foster care providers" by limiting placement for "approximately 30 [percent] of the foster care population."[589] The Commission's comments were indicative of concerns from religious objectors across the board: "Religious and faith-based organizations' belief in a biblical sexual ethic is not at odds with the ability of foster families to provide 'safe and proper care.'"[590] The text of the Rule notwithstanding, the Rule "functionally enforce[ed] such discrimination by relying on the false assumption that only 'affirmation' of a child's LGBTQ beliefs is 'safe and proper.'"[591]

In a related policy decision, the Biden HHS also rescinded policies from President Trump's first term that ensured protection for religious foster care organizations in federal grant programs. In the first Trump Administration, HHS took two primary steps to protect religious foster care agencies from exclusion from HHS grant programs: first, HHS issued RFRA-based waiver/ exception letters in 2020 to South Carolina, Michigan, and Texas from the then-applicable nondiscrimination requirements in 45 C.F.R. § 75.300(c) and (d); second, HHS promulgated grants-rule amendments to 45 C.F.R. part 75 that incorporated a religious-freedom/conscience exemption-assurance process for grant applicants and recipients."[592]

The Biden HHS reversed course. Under its new policy, Christian foster care agencies could no longer require that families seeking to provide foster homes share their faith as a condition of participation.[593] Said differently, the Biden-era policy left Christian foster care agencies feeling

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[588] Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children, Dep't of Health & Human Servs., 89 Fed. Reg. 34819, 34835 (Apr. 30, 2024); 45 C.F.R. § 1355.22.

[589] Frederick Brent Leatherwood, Re: Request for Public Comment Concerning Proposed Regulations Regarding Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B; RIN 0970-AD03, Nov. 27, 2023, https://perma.cc/H66R-AL82.

[590] *Id.*

[591] *Id.*; *see also Texas v. United States Department of Health and Human Services*, 770 F. Supp. 3d 940, 952-53 (E.D. Tex. 2025) ("HHS's interpretation of 'safe and proper care' is untenable . . . [C]ommon sense makes clear that Congress did not delegate to HHS the authority to compel States to support and affirm 'LGBTQI+ foster children' under a general statutory guarantee of 'safe and proper care.'").

[592] Notification of Nonenforcement of HHS Grants Regulation, Dep't of Health & Human Servs., 84 Fed. Reg. 63809 (Nov. 19, 2019); Final Rule: Health and Human Services Grants Regulation, Dep't of Health & Human Servs., 86 Fed. Reg. 2257-01 (Jan. 12, 2021).

[593] *See* Children & Families Administration Letter to Gov. Henry McMaster, Re: Withdrawal of Approval of Exception from Religious Non-Discrimination Requirement of 45 CFR 75.300(c) (Nov. 18, 2021), https://perma.cc/6HKS-QLL3, *see also* Nathaniel Weixel, *Biden administration reverses Trump-era waivers of nondiscrimination protections*, THE HILL (Nov. 18, 2021), https://perma.cc/2QTM-44KY.

that it required them to either abandon their disfavored religious beliefs or forego public funding and licensing. In doing so, the Biden HHS ironically asserted that it was "restoring proper application of RFRA [the Religious Freedom Restoration Act]" and that HHS would "not condone the blanket use of religious exemptions against any person or blank checks to allow discrimination against any persons, importantly including LGBTQ+ persons in taxpayer-funded programs."[594]

The consequences were profound, although mainly felt at the local level. The Biden Administration's HHS Rule provided a foothold that state licensing agencies used to engage in routine practices of anti-Christian bias in foster family placements and the adoption process. By regulatory fiat, the Biden Administration and likeminded States appeared to codify an assumption that traditional Christian values are "unsafe" for children and attempted to prevent placement of foster children in homes that could not promise "affirmation." As a result, Christian foster families who had provided safe and loving placements for children in need sometimes lost their licenses, in some cases dissolving foster families that had been in place for years.[595]

ii. Eliminating Christian Families' Options for Faith-Based Talk Therapy

a. Federal Efforts to Limit Faith-Based Talk Therapy

The Biden Administration also took steps to limit Christian families from voluntarily seeking talk therapy from likeminded therapists on matters of sexual orientation and gender self-identification. Only counselors or therapists who "affirmed" sexual orientation or gender self-identification would pass muster; the Biden Administration often viewed anything less as so-called "conversion therapy."[596]

On June 15, 2022, President Biden issued an Executive Order that committed to "reduc[ing] the risk of youth exposure to so-called conversion therapy."[597] With limited acknowledgment of either religious principles nor adolescents' struggles regarding a wide range of thoughts, the Executive Order (1) directed HHS Secretary Becerra to "establish an initiative to reduce the risk of youth exposure to so-called conversion therapy;" (2) directed HHS to "consider whether to issue guidance clarifying for HHS programs and services agencies that so-called conversion therapy does not meet criteria for use in federally funded health and human services programs;" (3) encouraged the Federal Trade Commission to "consider whether so-called conversion therapy constitutes an unfair or deceptive act or practice"; and (4) directed Secretary of State Blinken, alongside additional Secretaries, to "develop an action plan to promote an end to its use around

[594] U.S. Dep't of Health & Hum. Servs., Press Release: HHS Takes Action to Prevent Discrimination and Strengthen Civil Rights, (Nov. 18, 2021), (archived), https://perma.cc/3JYQ-NX56.

[595] *See infra*, at 145–48 (discussing demonstrative examples at the state and local level).

[596] Exec. Order No. 14075, *Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals* (June 15, 2022) (defining "conversion therapy" as "efforts to suppress or change an individual's sexual orientation, gender identity, or gender expression").

[597] *Id.*

the world."[598] The order defines conversion therapy as "efforts to suppress or change an individual's sexual orientation, gender identity, or gender expression."[599]

Federal agencies promptly followed suit. Secretary of State Antony Blinken repeatedly referenced "conversion therapy" in speeches given during the two remaining years of the Biden Administration.[600] The Department of State prepared an action plan to export the Biden Administration's ideological views to other nations, stating that it would "engage with partner governments to encourage them to stop sponsoring, funding, and/or otherwise supporting [so-called conversion therapy];" "share information with medical professionals and public officials . . . on . . . the harm of [so-called conversion therapy];" engage with international financial institutions "to advance the prevention of direct or indirect support for [so-called conversion therapy];" "develop and deploy guidance and tools to systematically embed education and prevention messages to combat [so-called conversion therapy];" and "solicit [funding] proposals to respond to and prevent [so-called conversion therapy]."[601]

These overbroad definitions of "conversion therapy" have resulted in policy-driven pressure against Christian viewpoints and voluntary talk-therapy between Christians and Christian therapists, as described in the following section. By painting with a broad brush, the Biden Administration treated all religious counseling that adopted God's design for men and women and traditional marriage as dangerous "conversion therapy."

b. States and Medical Associations Followed the Biden Administration's Lead, Pushing Christian Providers Out of the Field

Numerous States and certification boards are marginalizing traditional Christian and similar religious views from the therapy room, eliminating options for Christians and other faith-filled patients seeking therapeutic care and regulating the speech of Christian and other faith-filled therapists. These policies are "unmistakably normative" and "clearly designed to present certain values and beliefs as things to be celebrated and certain contrary values and beliefs as things to be rejected ."[602] Like the Biden Administration, these States and entities deem refusal to "affirm" a gender-confused individual's self-selected name or pronouns as "conversion therapy" and have implemented outright bans on talk therapy, even where Christian clients voluntarily seek

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[598] *Id.*

[599] *Id*. The Supreme Court recently explained that strict scrutiny analysis must apply to regulations of talk therapy in the context of a similar state-level regulation, explaining that such logic may lead to unacceptable outcomes: "Today, tomorrow, and forever, too, any professional speech that deviates from 'current beliefs about the safety and efficacy of various medical treatments' could be silenced with relative ease." *Chiles v. Salazar*, 607 U.S. ____ (2026), slip op. 22 (addressing dissent).

[600] Press Statement, U.S. Dep't of State, *On the International Day Against Homophobia, Biphobia, Interphobia, and Transphobia*, May 17, 2023, https://perma.cc/4EBH-PVKB; Press Statement, U.S. Dep't of State, *On the International Day Against Homophobia, Biphobia, Interphobia, and Transphobia*, May 17, 2024, https://perma.cc/AA6U-SD5G.

[601] Fact Sheet, U.S. Dep't of State, *Summary of Interagency Action Plan to Combat So-Called "Conversion Therapy" Practices Globally in accordance with E.O. 14075*," May 17, 2023, https://perma.cc/VLP2-CZ2U.

[602] *Mahmoud*, 606 U.S. at 550.

counseling from Christian therapists who share their biblically based views on sexual orientation and sex.

Education and Accreditation

In the course of its listening sessions, the Task Force received substantial feedback from Christian mental health professionals, including those represented by the American Association of Christian Counselors.[603] These counselors explained that educational institutions, state licensing boards, insurance companies, and employers each play a role in training, regulating, and insuring the bench of credentialed counselors who can work in American communities. But Christian counselors face significant hurdles in providing like-minded clients with professional care that they view as in the best interest of the client and consistent with their shared Christian beliefs. These entities, in conjunction with state and municipal governments, implement policies that likely infringe on Christian mental health professionals' free speech and free exercise rights by requiring them to affirm behaviors, lifestyles, beliefs, and identities that conflict with their deeply held beliefs—at penalty of losing their professional license or forfeiting their calling.

Educational Institutions: Academic institutions often require Christian students to complete assignments that conflict with or violate their sincerely held religious beliefs, without offering religious exemptions. In some instances, Christian students must affirm this approach to sexual orientation and gender identity issues or risk their academic standing and graduation. The Task Force received feedback from numerous Christian students in master's-level counseling programs who chose to discontinue their education and forego licensure due to state laws requiring professionals to affirm clients' self-identified sexual orientation or gender identity in therapy.

Professional Accreditation Agencies: Mental health professions may seek professional accreditation through various agencies[604] and professional organizations.[605] These entities require mental health students and professionals to adhere to professional codes of conduct and ethics. While maintaining accreditation and licensing is a vital aspect of ensuring safe, competent care for Americans who seek mental health help, in practice, these associations have used their accreditation authority to ensure all licensed professionals adopt affirming views on sexual orientation and gender identity—without exception—including for sincerely held religious beliefs. Likewise, these accrediting agencies ensure that faith-based educational institutions also conform to maintain accreditation.

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[603] The subsequent background information and overview of licensing for Christian medical health professionals in this subsection primarily stems from feedback submitted to the Task Force from the American Association of Christian Counselors unless otherwise cited.

[604] Accrediting agencies in this arena include the Counsel for Accreditation of Counseling and Related Education Programs (CACREP), American Psychological Association (APA), Counsel on Social Work Education (CSWE), and Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE).

[605] These include the APA, the ASWB, the American Counseling Association, and the American Association for Marriage and Family Therapy (AAMFT).

Additionally, many state professional licensing boards outsource their responsibilities to oversee continuing education requirements and providers to private national professional organizations.[606] These associations have delegated authority on what mental health providers must learn—and who should teach them—to maintain their professional licenses over time.

For example, the National Board for Certified Counselors (NBCC) is the world's largest counseling credentialing organization, provides continuing education credit, and establishes a code of ethics that counselors must follow to receive professional credentials.[607] NBCC aggressively advocates for laws to protect "gender affirming care" and ensures that credentialed counselors always "affirm" clients' perceived sexual orientation and gender identity.[608] In its code of ethics, by which counselors must abide to receive certification, NBCC requires counselors to "respect the… gender identity [] of their students."[609] In an article exploring best practices for counseling "transgender/gender expansive folx" through the process of gender sex-rejecting, one NBCC counselor explained that credentialed counselors should "validate" their clients, take action to create "safe and welcoming space," and familiarize themselves with the standards of care established by the World Professional Association for Transgender Health (WPATH), a topic discussed in greater detail later in this chapter.[610]

Likewise, the American Counseling Association (ACA) Code of Ethics has been interpreted to prohibit Christian counselors from referring clients to another clinician based on personal or professional values regarding traditional marriage or the binary nature of sex.[611] This framework places Christian clinicians in a profound ethical dilemma: although the code permits referral when a counselor lacks competence in a particular area, it simultaneously mandates that all counselors demonstrate competence in these very domains. As a result, Christian practitioners are forced into an untenable position in which adherence to professional standards comes at the expense of their religious integrity.

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[606] These national professional organizations include the National Board of Certified Counselors (NBCC), the APA, and the ASWB.

[607] *Resources for the Public*, NATIONAL BOARD FOR CERTIFIED COUNSELORS https://perma.cc/VU75-YYGU (last visited Feb. 4, 2026).

[608] *See, e.g.*, *Legislative Updates: Transgender Rights and Gender-Affirming Care*, NATIONAL BOARD FOR CERTIFIED COUNSELORS (May 24, 2023), https://perma.cc/9VMG-59Z3; *Legislation Impacting Transgender Clients and Communities*, NATIONAL BOARD FOR CERTIFIED COUNSELORS (May 24, 2023), https://perma.cc/LPG9-LQ7Q; *Update on Gender-Affirming Care and State Actions*, NATIONAL BOARD FOR CERTIFIED COUNSELORS (Feb. 21, 2024), https://perma.cc/YLL3-CN5H.

[609] NBCC CODE OF ETHICS, NATIONAL BOARD FOR CERTIFIED COUNSELORS (2023), https://perma.cc/PGN5-X8YS.

[610] *Counseling Clients Exploring the Realm of Gender Transitioning*, NATIONAL BOARD FOR CERTIFIED COUNSELORS (May 24, 2023), https://perma.cc/87SS-CGXG. For discussion of WPATH's Standards of Care, *see supra* at 81–85.

[611] *See* AM. COUNSELING ASS'N, 2014 ACA CODE OF ETHICS 6 (2014), https://perma.cc/HJU5-KJSZ ("Counselors refrain from referring prospective and current clients based solely on the counselor's personally held values, attitudes, beliefs, and behaviors. Counselors respect the diversity of clients and seek training in areas in which they are at risk of imposing their values onto clients.")

In North Carolina, licensed counselors and psychologists are limited to only a certain number of continuing education credits from Christian organizations toward their license renewal.[612] Similar caps do not apply to most secular alternatives in the same manner.

Continuing Education Requirements: The last piece of the regulatory environment for mental health professionals is meeting ongoing continuing education requirements to maintain licenses and other professional credentials. These same accrediting bodies determine which educators can provide continuing education materials for credit. But, as explained to the Task Force during listening sessions, many faith-based continuing education providers have been deemed noncompliant with industry mandates on standard of care requirements relating to sexual orientation and "gender identity" as the term is used in State laws.

Insurance Companies: In New York, insurance companies are compelled to require that mental health professionals not engage in "conversion therapy" for minors. This stems from a 2016 regulation that does not offer religious exemptions for any mental health providers of faith.[613]

Peer-Review Process for Publication: Finally, the Task Force received feedback during listening sessions, alleging that most peer-reviewed mental health journals effectively exclude research conducted from a Christian perspective, enacting almost insurmountable barriers to publication for scientific studies that question the empirical support for the prevailing approach to "gender affirming" care.

Taken together, these accrediting bodies and continuing education regulators exert significant influence over the mental health profession and can require that all credentialed professionals adopt a prevailing worldview, silencing other perspectives, whether based in data or sincerely held religious beliefs. Their combined effect is a government-like authority to control how counselors must engage with clients on matters of personal faith.

State Licensing Requirements

Beyond these education- and certification-related issues, Christian counselors have faced a grave threat—a choice between their license and their faith—in States that require counselors to "affirm" some clients' confusion regarding sexual orientation or gender identity. These laws have often been referred to as bans on "conversion therapy." But these laws primarily regulate *talk* therapy, rather than medical interventions. Nearly half of all States in the United States have implemented such outright bans.[614] These bans are all-encompassing and one-directional: licensed professionals must convey state-approved viewpoints to keep their license. And any clients in these States wanting to utilize talk therapy have been prohibited from receiving their desired treatment.

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[612] 21 N.C. Admin Code 53.0603 (requiring 40 hours of continuing education for renewals, of which a maximum of 15 hours may be through Christian organizations.)

[613] N.Y. Dep't of Fin. Servs., State Reg. Vol. XXXVIII, Issue 8, I.D. No. DFS-08-16-00002-P (Feb. 24, 2016).

[614] Solcyre Burga, *The Fate of 'Conversion Therapy' Bans Is in the Supreme Court's Hands. Here's What to Know*, TIME (Oct. 7, 2025), https://perma.cc/5E6X-98QQ.

These laws take an inherently anti-Christian, anti-religious, and anti-therapeutic approach to counseling, as reflected in the case of Kaley Chiles, a Christian counselor based in Colorado who assists patients seeking Christian-oriented counseling.[615] Chiles sought a preliminary injunction, which would prohibit enforcement of the law, on the grounds that the law suppressed her free exercise of religion and prevented her from providing counseling to patients who seek services conforming with their religious beliefs.[616] As the current DOJ noted in an amicus brief accompanying the Supreme Court's review of this case, Colorado law "effectively 'silenced one side of this debate' by allowing licensed therapists to convey only 'the state-approved message of encouraging minors to explore their gender identities.'"[617] On March 31, 2026, the Supreme Court ruled in favor of Kaley Chiles, finding that strict scrutiny applied to Colorado's viewpoint-based regulations of speech and explaining that:

> Colorado's law addressing conversion therapy does not just ban physical interventions. In cases like this, it censors speech based on viewpoint. Colorado may regard its policy as essential to public health and safety. Certainly, censorious governments throughout history have believed the same. But the First Amendment stands as a shield against any effort to enforce orthodoxy in thought or speech in this country. It reflects instead a judgment that every American possesses an inalienable right to think and speak freely, and a faith in the free marketplace of ideas as the best means for discovering truth. However well-intentioned, any law that suppresses speech based on viewpoint represents an "egregious" assault on both of those commitments.[618]

Colorado's law is not unique. Minnesota law, for example, prohibits any effort that "seeks to change an individual's sexual orientation or gender identity" but excludes "treatment that provides assistance" to those undergoing confusion or "treatment that provides, acceptance, support, and understanding" of such individuals.[619] Michigan, New Jersey, California, Virginia, and Washington have similar laws.[620] In 2020, the Eleventh Circuit Court of Appeals held that a district court erred in declining to enjoin enforcement of two Florida local ordinances that prohibited therapists from "engaging in counseling or any therapy with a goal" of changing a minor's sexual orientation or gender identity.[621] In that case, as with the others, counselors sued in furtherance of their own

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[615] *Chiles v. Salazar*, 116 F.4th 1178, 1193 (10th Cir. 2024).

[616] *Id.* at 1223–24.

[617] Brief for the United States as Amicus Curiae Supporting Petitioner, *Chiles v. Salazar*, No. 24-539 (U.S. Oct. 7, 2025, argued).

[618] *Chiles*, 607 U.S. ____ (2026), slip op. 23.

[619] Minn. Stat. Ann. § 214.078.

[620] *Cath. Charities of Jackson, Lenawee, and Hillsdale Cntys. v. Whitmer*, 162 F.4th 686, 696 (6th Cir. 2025) (discussing Michigan HB 4616); *King v. New Jersey*, 767 F.3d 216, 221 (3d Cir. 2014) (discussing New Jersey's conversion therapy ban: Assembly Bill A3371); *Pickup v. Brown*, 740 F.3d 1208, 1221 (9th Cir. 2014) (regarding California's law, SB 1172, which subjects licensed mental health providers for not affirming); Consent Decree, *Raymond v. Va. Dep't of Health Professions*, CL24006296-00 (Va. Cir. Ct. June 4, 2025) (limiting Va. Code § 54.1-2409.5's force over talk therapy); *Tingley v. Ferguson*, 57 F.4th 1072 (9th Cir. 2023) (en banc) (declining to reconsider Washington's conversion therapy ban, SB 5722).

[621] *Otto v. City of Boca Raton*, 981 F.3d 854 (11th Cir. 2020).

religious free expression but also to protect the provision of "voluntary and client-directed" therapy to assist with adverse mental health issues arising out of their clients' "internal conflicts over their sexuality or gender identity."[622] These local ordinances burdened the religious practice of Christian and other religious professionals with a traditional, faith-based approach to issues of sex and identity, as well as the rights of potential patients who sought the assistance of faith-filled professionals to improve their health outcomes in a way aligned with their religious beliefs.

The results are demonstrable. In an amicus brief filed in support of the therapist, several parents of children struggling with gender confusion issues wrote that the parents of one of the children, a 12-year-old girl, sought a counselor whose approach to these issues aligned with their own.[623] Although the family eventually found a therapist for their daughter, "the counselor ultimately refused to address any aspects of gender identity or the child's exposure to these ideas out of fear of losing her license."[624] Their daughter's inability to obtain the help she sought ultimately yielded suicidal thoughts and has resulted in an ongoing "deep distrust of therapists."[625]

Recently, the Sixth Circuit Court of Appeals ruled in favor of plaintiff counselors who challenged a similar Michigan state law.[626] As with the other cases, clients often approached Christian counselors because they were seeking assistance overcoming issues relating to sexual orientation or gender confusion that were incongruent with their faith.[627] Moreover, the counselors did not initiate this process; for clients who sought assistance in a different manner, the counselors referred the clients elsewhere.[628] As the court notes, counselors who provided therapy "to align with the child's religious beliefs or . . . sex (here, at the child's own request)" (emphasis added) risked loss of licenses and heavy fines, thus chilling their ability to counsel their clients in accordance with their clients' desires.[629]

Many Christian traditional counselors have faced significant professional setbacks and social condemnation because of their sincerely held religious beliefs, often without relief, and shared their experiences with the Task Force. Those stories include:

- Dr. Allan Josephson served approximately 15 years as chief of the University of Louisville's Division of Child and Adolescent Psychiatry and Psychology. Dr. Josephson was demoted and ultimately terminated after he made statements on a panel discouraging

[622] *Id*. at 860.

[623] Brief of Erin Lee, Lewis Jones and Brecken Jones as Amicus Curiae in Support of Petitioner, *Chiles v. Salazar*, No. 24-539 (U.S. Oct. 7, 2025, argued), 1.

[624] *Id*.

[625] *Id*. at 1–2.

[626] *Cath. Charities of Jackson, Lenawee, & Hillsdale Cntys. v. Whitmer*, 2025 WL 3653774 (6th Cir. 2025).

[627] *Id*. at 1.

[628] *Id*.

[629] *Id*. at 3–4.

gender ideologies from influencing medical decisions regarding children with gender dysphoria.[630]

- Dr. Shannae Anderson, who received a 51-page complaint against her professional license as a psychologist in California for speaking at a school board meeting, where she opposed offering education about gender identity to elementary school students.

- Dr. Mercy Connors, a licensed professional counselor, who attended a required clinical supervision training to become an approved supervisor. The course was offered by the Virginia Counselors Association. The instructor made derogatory remarks about graduates of a Christian institution, Liberty University, and stated that any such individuals would need to be retrained to remove their Christian biases.

- Naomi Epps Best, a counseling graduating student at Santa Clara University, who was denied a religious exemption from specific class assignments that violated her Christian beliefs. She lost her counseling internship after speaking out.[631]

- A licensed therapist in Colorado who adhered to his Christian beliefs when counseling individuals with same-sex attraction. As a result, his license as a marriage and family therapist was revoked. He lost his career, has faced ongoing harassment by activists, and has been unable to find employment in his field.

- A psychologist in North Carolina who ran a Christian ministry, wholly unrelated to and separate from her professional practice. She was the subject of a complaint because she ran that ministry. The North Carolina Board of Psychology ultimately dismissed the complaint as based on religious discrimination.

Impacts on Free Exercise

Judges across the country have explained how policies like the Biden Administration's fail to make a good faith assessment of the Christian perspectives at issue: In a dissental from denial of rehearing en banc, a judge on the Ninth Circuit Court of Appeals noted that a therapist's discussion with a patient regarding biblical views on one's ability to change sex can be central to that therapist's beliefs and therapeutic practices.[632] In a separate dissental, another judge noted that "for many who voluntarily seek conversion therapy, faith-based counseling may offer a unique path to healing and inner peace," and urged that courts should consider conversion therapy bans under a strict scrutiny standard because of the possibility of infringement on free exercise rights.[633] Like

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[630] *See* Kristine Parks, *Child psychiatrist who criticized gender therapy receives $1.6 million from university after firing*, FOX NEWS (Apr. 23, 2025), https://perma.cc/83EE-W6VF.

[631] *See* Tyson Langhofer, *Naomi Epps Best's Story Exposes the Ideological Crisis in Counseling*, All. Defending Freedom (Aug. 20, 2025), https://perma.cc/QUJ9-XT4E.

[632] *Tingley*, 57 F.4th at 1082 (O'Scannlain, J., dissenting from denial of rehearing en banc).

[633] *Id*. at 1084 (Bumatay, J., dissenting from denial of rehearing en banc); *see Otto*, 981 F.3d at 860 (therapy clients "typically have 'sincerely held religious beliefs conflicting with homosexuality, and voluntarily seek [sexual orientation change efforts] counseling in order to live in congruence with their faith."). *See also Chiles*, 607 U.S.

its state analogs, the Biden Administration's policies sought to "outlaw[] pure talk therapy based on sincerely held religious principles," thus prohibiting counselors from discussing such issues with patients "even if they seek that counseling."[634]

E. Ignoring Conscience Rights

Several provisions of federal law protect the conscience rights of individuals who object to participating in abortions based on sincerely held religious beliefs or moral convictions. For example, the Church Amendment clarifies that certain federal funding does not require any individual to perform or assist in abortion or sterilization procedures.[635] The Weldon Amendment prohibits federal agencies and programs, as well as state and local governments that receive federal funding, from discriminating against individuals and entities that refuse to provide, pay for, cover, or refer for, abortions.[636] Additionally, the Coats-Snow Amendment prohibits the federal government, and any state or local government receiving federal financial assistance, from discriminating against a health care entity for certain reasons related to abortion training or participation.[637] And, near the end of the first Trump Administration in July 2020, the Supreme Court held that certain federal agencies, including HHS had the statutory authority to craft exemptions from the Affordable Care Act's contraception mandate for employers with accommodate an employer's sincerely held religious or moral beliefs by exempting them from the Affordable Care Act's mandatory coverage of contraception objections.[638]

Notwithstanding those vital protections, the Biden Administration again sought to limit the role of Christian beliefs, this time on the nature of human life, in the process of pursuing its policy agenda. Although the Biden Administration nodded to religious rights, its policies often said otherwise: To the Biden Administration, religious liberty often seemed, at best, only to protect Christians' ability to hold beliefs, not to act on them. As the legal landscape shifted on abortion rights, the Biden Administration vigorously sought to defend abortion access, even when its policies would override Christians' conscience rights, leading many Christians and other faith-filled individuals to feel compelled to choose between following God or the government.

___ (2026), slip op. 7 (citing this circuit split before confirming that strict scrutiny must apply to such regulations of viewpoints expressed in talk therapy).

[634] *Tingley*, 57 F.4th at 1084 (Bumatay, J., dissenting from denial of rehearing en banc).

[635] *See* discussion of the Church Amendment and the Biden DOJ's decision to withdraw a federal lawsuit regarding a nurse at the University of Vermont Medical Center who was coerced into performing an abortion in violation of her sincerely held religious beliefs, *supra* at 62–63; *see also* Dep't of Health and Human Servs., Safeguarding Federal Conscience and Related Protections in Health Care (Jan. 21, 2026), https://perma.cc/B36F-M4S9.

[636] Section 507(d) of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2024, Pub. Law No. 118-47, 138 Stat. 460, 703 (Mar. 23, 2024) as carried forward by the Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. Law No. 119-4, 139 Stat. 9 (Mar. 15, 2025).

[637] 42 U.S.C. § 238n.

[638] *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020).

i. Coercing Abortion Services

a. HHS: Abortion and the Weldon Amendment

Before assuming the role of HHS Secretary under President Biden, Xavier Becerra served as the California Attorney General, where he took a restrictive approach to enforcing conscience protections under the Affordable Care Act and the Weldon Amendment. He argued against allowing religious exceptions from the Affordable Care Act's contraception mandate.[639] During his tenure as California Attorney General, he defended the California Department of Managed Healthcare's (DMHC) 2014 letter to seven insurance carriers, notifying the carriers of their obligation under California law to provide for all abortions, including those that are elective or voluntary.[640] Multiple Christian entities submitted complaints to HHS OCR, alleging violations of the Weldon Amendment.[641] HHS issued a closure letter in 2016, contending that because the larger health care carriers, which were not religious in nature (as opposed to their clients) had not objected to abortion, there was no violation of the Weldon Amendment.[642] In January 2020, HHS reopened the investigation and ultimately issued a notice of violation to California, stating that the Weldon Amendment protects from discrimination all plans that do not cover abortion, whether or not the health care providers are religious.[643] As the notice stated, California's mere provision for exempting "religiously sponsored health carriers" was insufficient to protect the conscience rights of religious individuals opposed to covering abortion, including through the insurance pool.[644]

The Trump Administration ultimately issued California a notice that it had violated the Weldon Amendment, but, shortly after assuming leadership at HHS, Secretary Becerra rescinded the notice and closed the complaints filed with HHS, on which the notice of violation was based.[645]

b. HHS: Abortion and the Emergency Medical Treatment and Labor Act

Following the Supreme Court ruling in *Dobbs v. Jackson Women's Health Organization*,[646] President Biden took executive action to "protect healthcare service delivery and promote access to critical reproductive healthcare services, including abortion" by issuing Executive Order

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[639] *See California v. Dep't of Health & Human Servs.*, 941 F.3d 410 (9th Cir. 2019).

[640] *See Missionary Guadalupanas of Holy Spirit Inc. v. Rouillard*, 38 Cal.App.5th 421, 429-30 (Cal. Ct. App. 2019).

[641] Closure Letter Regarding California Weldon Investigation, U.S. Dep't of Health and Human Serv., (June 21, 2016), available at https://perma.cc/2ZFS-QERF.

[642] *Id*.

[643] Notice of Violation – OCR Transaction Numbers 17-274771 and 17-283890, U.S. Dep't of Health and Human Serv., (Jan. 24, 2020) at 12, available at https://perma.cc/5FNB-K3CK.

[644] *See Id*. at 11; Letter from California Attorney General Xavier Becerra to Roger T. Severino, Re: OCR Transaction Numbers 17-274771 and 17-283890 (Feb. 21, 2020), https://perma.cc/KN7F-WSZ6; *Missionary Guadalupanas of Holy Spirit Inc.*, 38 Cal. App. 5th at 429–30.

[645] *See* U.S. Dep't of Health and Human Serv., Letter to State of California Re: OCR Transaction Numbers 17-274771 and 17-283890 (Aug. 13, 2021), https://perma.cc/9KKN-CKA5.

[646] 597 U.S. 215 (2022).

14076.[647] The Executive Order tasked HHS Secretary Becerra with identifying potential actions to "protect and expand access to abortion care."[648]

Three days later, Secretary Becerra disseminated a letter to healthcare providers and issued Guidance on their ongoing obligations to provide abortions in certain circumstances under the Emergency Medical Treatment and Labor Act (EMTALA), notwithstanding any state law to the contrary.[649] Neither the Guidance nor letter referenced conscience or religious exceptions for healthcare providers with objections to abortions under the Church, Coats-Snowe and/or Weldon Amendments.[650]

EMTALA, passed in 1986, requires hospital emergency departments that accept Medicare to examine and provide stabilizing treatment for any individual requesting services who may or does have an emergency medical condition.[651] "Emergency medical condition" is defined, in relevant part, as "placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy."[652] As Justice Alito observed in a case brought by the Biden Administration to expand abortion through federal mechanisms notwithstanding state law—which the Supreme Court ultimately did not decide—EMTALA makes no mention of abortion but does reference protection of an unborn child in multiple provisions.[653]

In a separate case, Texas, the American Association of Pro-Life Obstetricians & Gynecologists, and the Christian Medical & Dental Association challenged the Biden HHS's EMTALA Guidance, alleging, among other claims, that the Guidance coerces physicians into providing elective abortions even when a mother's life is not at stake, contravening the Free Exercise Clause and RFRA.[654] The court granted a preliminary injunction, finding that the Guidance likely exceeded HHS's statutory authority and was not a permissible construction of EMTALA.[655]

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[647] Exec. Order No. 14076, *Protecting Access to Reproductive Healthcare Services*, 87 Fed. Reg. 42053 (July 8, 2022).

[648] *Id.*

[649] Letter from Sec'y Xavier Becerra to Health Care Providers (July 11, 2022), https://perma.cc/VF2B-5UED; *Rescinded Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss*, Dep't of Health & Human Servs. (July 11, 2022), https://perma.cc/P55U-8PMC (hereinafter "EMTALA Guidance").

EMTALA prevents hospitals and medical providers from discriminating against those without the ability to pay for necessary emergency medical care. 42 U.S.C. § 1395dd. Violations may be punished by fines and exclusion from participation in Medicare and other federally supported programs. *Id.* §§ 1395dd(d)(1); 1395cc(b)(2); 1320a-7(b)(5), (h).

[650] *See* EMTALA Guidance, *supra* note 649.

[651] 42 U.S.C. § 1395dd(a), (b).

[652] 42 U.S.C. § 1395dd(e)(1)(A)(i).

[653] *Moyle v. United States*, 603 U.S. 324, 348–51 (2024) (cert. dismissed as improvidently granted) (Alito, J., dissenting).

[654] *Texas v. Becerra*, 623 F. Supp. 3d 696, 708–09 (N.D. Tex. 2022), *aff'd by* 89 F.4th 529 (5th Cir. 2024), *cert. denied* 145 S. Ct. 139 (2024).

[655] *Id.* at 724–25, 730–31.

c. EEOC: Abortion and the Pregnant Workers Fairness Act

Other executive agencies took similar actions over the course of the Biden Administration with respect to abortion. For example, following passage of the Pregnant Workers Fairness Act (PWFA) in 2022, the EEOC issued a final regulation implementing the act, including a mandate that employers cover abortions.[656] The Act, which covers "pregnancy, childbirth, or related medical conditions," does not reference abortion.[657] Nevertheless, the EEOC read abortion into "medical condition,"[658] going far beyond the underlying text of the law.

While there were appropriate and important provisions of the final rule that were supported unanimously among Commissioners, many religious employers objected to the EEOC's expansive construction of the words "pregnancy, childbirth, or related medical conditions" in the final rule. Specifically, the final regulation took the position that under the PWFA, an employer may be required, in some circumstances, to accommodate an employee's abortion, regardless of whether doing so would conflict with a religious employer's rights and defenses.

In contrast to this sweeping regulation, the PWFA is a focused, measured, and balanced extension of the Americans with Disabilities Act (ADA), which continues to apply to and protect pregnant employees with disabilities related to their pregnancies. The PWFA was a bipartisan effort that extended the reasonable accommodation requirement of the ADA to "known limitations," a lower threshold than "disabilities," for pregnant and postpartum women in the workplace. The primary implication is obvious: Covered employers must reasonably accommodate the limitations of pregnancy and childbirth that may not qualify as a disability, absent undue hardship. Over the objection of then-Commissioners Andrea Lucas (now EEOC Chair) and Keith Sonderling (now Deputy Secretary of Labor), the Biden-era EEOC twisted this commonsense statute to reach radical ends infringing on religious liberty as well as imposing undue burdens on employers in general.

As a result of this textual expansion, the EEOC has been subjected to numerous lawsuits resulting in final judgments against the EEOC—ranging from party-specific injunctions prohibiting enforcement to a partial vacatur of the rule nationwide. When ordering the partial vacatur, the Louisiana District Court noted that "the record before the Court clearly establishes that the [Biden] EEOC has exceeded its statutory authority to implement the PWFA and, in doing so, both unlawfully expropriated the authority of Congress and encroached upon the sovereignty of the Plaintiff States under basic principles of federalism."[659]

In a related opinion issuing a preliminary injunction against the EEOC rule, the district court noted that the abortion coverage requirement would "forc[e] religious employers to choose between two

[656] Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29096 (Apr. 19, 2024).

[657] 42 U.S.C. § 2000gg-1(1).

[658] Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29096, 29104 (Apr. 19, 2024).

[659] *Louisiana v. EEOC*, 784 F. Supp. 3d 886, 892 (W.D. La 2025)

untenable alternatives: either (1) violate Title VII and obey their convictions, or (2) obey Title VII and violate their convictions."[660]

i. Stripping Conscience Rights Protections Through Rulemaking

In December 2020, under the first Trump Administration, the DOL published a final rule clarifying definitions relating to religion and religious entities to explicitly state that religion applies to "all aspects of religious observance and practice" and religious organizations are not limited to those with a nonprofit status but those with a substantially religious purpose reflected by their activities, portrayal, and organization.[661]

In March 2023, the Biden DOL rescinded this rule, justifying rescission by alleging that the 2020 clarification would "increase prohibited discrimination against workers, which is a concern that [DOL] shares," with particular emphasis on the impact on those who "transition[]" or partake in a homosexual marriage.[662] In effect, the revocation of the 2020 rule was justified in part by the "concern" that Christian individuals and organizations would have the ability to make employment decisions that aligned with their sincerely held religious beliefs.

The Biden Administration acted consistently with that rescission. As noted below, the Biden DOJ filed an amicus brief supporting a school board's decision to threaten a teacher's employment due to his attempts to avoid upsetting a student while not frustrating his Christian faith.[663] And the Biden EEOC filed an amicus brief describing a homosexual woman's deceptive practices to be hired by a Christian entity as her having "successfully navigated World Vision's hiring process, including by affirming that she could comply with the standards of conduct."[664]

The Biden ED undertook similar actions to undo religious protections through rulemaking. Under the first Trump Administration, ED published a September 2020 rule protecting religious student organizations at public institutions by ensuring that religious organizations receive the same entitlements as other student organizations, including regarding speech, policies, membership or leadership standards.[665] In February 2023, the Biden ED issued a notice of proposed rulemaking,

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[660] *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 656 (W.D. La. 2024) (citation modified); *see also Tennessee, et. al. v. EEOC*, 129 F.4th 452, 458 (8th Cir. 2025) ("As a practical matter, the Rule requires immediate action by the States to conform to the Rule, and this action produces an injury in fact."); *Stanley M. Herzog Found. v. EEOC*, 781 F. Supp. 3d 897, 916 (W.D. Mich. 2025) ("The Final Rule's approach requires employers to provide accommodations for employees who obtain abortions and permits a religious employer to assert a religious defense only after an employee brings a complaint against it for refusing to provide accommodations. There is no way for a religious employer to ensure it will not face investigation or prosecution ahead of time.").

[661] Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption, 85 Fed. Reg. 79324 (Dec. 9, 2020) (quoting 42 U.S.C. § 2000e(j)).

[662] Rescission of Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption Rule, 88 Fed. Reg. 12842, 12849 (Mar. 1, 2023).

[663] *See infra,* at 161–62.

[664] Brief for the United States as Amici Curiae in Support of Appellee and in Favor of Affirmance, *McMahon v. World Vision, Inc.*, 147 F.4th 959 (9th Cir. 2025).

[665] *See* 34 C.F.R. § 76.500(d).

declaring an intention to rescind these regulations.[666] After President Trump's election in November 2024, ED withdrew its notice and terminated the rulemaking proceeding, citing "the forthcoming change in administration."[667]

ii. Professional Pressures to Ignore Conscience Rights and Faith

To prepare its findings, HHS met with Christian medical providers and associations, who shared similar experiences. Christian medical providers often experience pressure to override conscience and religious objections in clinical and training environments. Raising conscience objections to performing abortions, sterilization, or other objected-to procedures is often viewed as "unprofessional," impacting grades, evaluations, promotion eligibility, and jobs. Participants advised that several medical students avoid entering pediatrics, psychology, and obstetrics-gynecology This is of particular concern in obstetrics-gynecology, as a shortage of OB-GYN doctors already exists.[668] Christian students hold serious reservations about entering fields of medicine that are already heavily influenced by anti-Christian bias. The Christian students' reservations, coupled with journal retractions of studies challenging gender ideology and academic references to traditional Christian values as "unprofessional," result in alarmingly heightened and anti-scientific bias throughout fields of medicine where patients are often most vulnerable.

F. Sidelining Christians in Favor of Preferred Constituencies

i. Replacing Easter with the "Transgender Day of Visibility"

On Good Friday, March 29, 2024, President Biden issued a proclamation declaring Easter Sunday, March 31, 2024, as "Transgender Day of Visibility,"[669] demonstrating a profound lack of consideration for the Christian faith.[670] President Biden was the first president to nationally recognize this day of observation, and for the first three years, he issued his proclamations either on or the day immediately before "Transgender Day of Visibility."[671] In 2024, the Biden Administration broke from that practice, issuing its announcement on Good Friday, several days before the event, without offering any explanation for the timing.

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[666] *See* Direct Grant Programs, State-Administered Formula Grant Programs Proposed Rule, 88 Fed. Reg. 10857 (Feb. 22, 2023).

[667] *See id.*; Withdrawal, 89 Fed. Reg. 104936 (Dec. 26, 2024).

[668] Alejandra O'Connell-Domenech, *The United States is experiencing a growing OB-GYN shortage. Here's why*, THE HILL (Apr. 14, 2024), https://perma.cc/FD57-GEX6. Bias in favor of abortion can be further noted in the article's suggestion that this is due in part to the *Dobbs* decision, alleging that state policies prohibiting abortion would provide inadequate reproductive healthcare education.

[669] President Joseph R. Biden, Jr., Proclamation: Transgender Day of Visibility, 89 Fed. Reg. 22901 (Mar. 29, 2024).

[670] *See, e.g.*, Olivia Alafriz & Giselle Ruhiyyih Ewing, *Sunday marks both Easter and the Transgender Day of Visibility. Cue the culture war*, POLITICO (Mar. 30, 2024), https://perma.cc/C94W-QN7C.

[671] Jon Jackson, *Biden is the First President to Issue Transgender Day of Visibility Proclamation*, NEWSWEEK (Mar. 31, 2021), https://perma.cc/7AXE-FR9Y; *see also* Pres. Joseph R. Biden, Jr., Proclamations on Transgender Day of Visibility from 2021 (Mar. 31, 2021), 2022 (Mar. 30, 2022), 2023 (Mar. 30, 2023), and 2024 (Mar. 29, 2023).

ii. Excluding Christians from Faith-Based Engagements

When the Biden Administration conducted faith-based engagement, agencies focused only on minority faiths, to the exclusion of Christians. This outreach effort is important: All Americans of faith are protected equally by the same laws, and the federal government engages in vital outreach to inform faith groups of their rights and opportunities to participate in federal programs. Under the Biden Administration, however, this outreach consistently excluded Christians, as evidenced by the examples at the Department of Homeland Security (DHS) and DOJ.

a. Department of Homeland Security

DHS conducted an analysis of faith-based outreach and engagement between the months of March 2023 and January 2024. During this period, DHS hosted 61 faith-based meetings, roundtables, briefings, and listening sessions with external organizations. Of these, 20 engagements were held with Muslim organizations, 18 with Jewish organizations, one with a Sikh organization, and 20 with interfaith groups whose invitees and content require further review to determine inclusivity. Only two engagements were identified as involving explicitly Christian organizations: one with the Church of Jesus Christ of Latter-Day Saints and one with an Arab Christian organization.

This disparity is notable given that Christians comprise an estimated 62 percent of the U.S. population[672] and have faced increased hostility and violence in recent years.[673] From 2018 to 2023, the Family Research Council documented 915 acts of hostility against churches, including vandalism, arson, and bomb threats, with 436 attacks occurring in 2023 alone, representing an 800 percent increase since 2018. Notably, these threats have included high-profile acts of violence, such as the massacre of three children and three adults by Audrey Hale at The Covenant School in Nashville in 2023, and the murder of two children by Robert Westman at Annunciation Catholic School in 2025.

The remaining 202 documented headquarters engagements were non-faith-based, and primarily focused on intergovernmental affairs and outreach to other community groups, including 10 Arab-American, 8 LGBTQ-identifying, 6 African-American, and 4 Latino/Hispanic community engagements, along with 29 additional webinars or seasonal events presumed to be either interfaith or non-faith based.

DHS personnel have advised that this extended beyond engagement efforts. Within the workplace, employees were directed to avoid explicit reference to Christian celebrations like Christmas, while similar directives were not provided in cases of holidays celebrated by other religions. Additionally, displays of Christian religious materials and observance of prayer time were discouraged.

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[672] *See How Religious Are Americans?* GALLUP (Mar. 29, 2024), https://perma.cc/82HK-6D75; Gregory A. Smith, et al, *Decline of Christianity in the U.S. Has Slowed, May Have Leveled Off*, PEW RESEARCH CTR. (Feb. 26, 2025), https://perma.cc/74AU-P94L.

[673] *See supra*, at 39–40 (discussing findings regarding the Biden Administration's lack of FACE Act prosecutions regarding violence against churches and other houses of worship).

b. Department of Justice

DOJ took a similar approach. In 2024, DOJ's Civil Rights Division developed an updated version of its brochure on religious discrimination, a public resource to help affected individuals identify religious discrimination and understand their rights.[674] The brochure walks through categories of actionable discrimination, giving examples under each. Out of 21 examples of what religious discrimination could look like, none address Christians as a potential victim. Indeed, the only time Christians are mentioned is as a comparator, explaining that it would be discrimination if a condominium allowed Christians to display a Christmas nativity on their property, but did not allow a Jewish family to place a mezuzah on their doorframe. The brochure was correct on the fundamentals: Such actions *are* discriminatory, actionable, and of concern to DOJ. But by excluding Christians from the examples of possible victims of actionable religious discrimination, the brochure implied that Christians are not part of the intended audience and are not victims of religious discrimination.

iii. Replacing Faith with a DEI Agenda

Under the Biden Administration, the DOL replaced its faith office with a Diversity, Equity, and Inclusion office. During the first Trump Administration, the DOL housed its own Office of Faith-Based and Community Initiatives, a practice under every administration since President George W. Bush's Administration.[675] While the physical office and sign remained during the Biden Administration, this position of Director of Office of Faith-Based and Community Initiatives was eliminated. Instead, the Biden Administration created a Chief Diversity and Equity Officer, who sat in the office previously occupied by the Director of the Office of Faith-Based and Community Initiatives.[676]

During the Biden Administration, Secretary Blinken issued a cable granting U.S. embassies authorization to fly the pride flag alongside the American flag during the month of June.[677] In June 2023, the United States Embassy to the Holy See, which is located in Rome and leads U.S. diplomatic relations with the Catholic Church, prominently displayed an exterior "pride progress" flag showing support for homosexual and gender ideology causes, in conflict with Catholic tenets.[678]

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[674] Dep't of Justice, *Combating Religious Discrimination* (2024), https://perma.cc/MMG5-CRYU.

[675] *See* White House Faith-Based and Community Initiative, THE WHITE HOUSE, https://perma.cc/T58L-M3TF.

[676] The federal government maintains records of political appointees in each administration. 2020 personnel records from the first Trump Administration reflect a Director, Office of Faith-Based and Community Initiatives. U.S. Gov't Publ'g Off., United States Government Policy and Supporting Positions (2020), at 99. 2024 personnel records from the Biden Administration reflect no similar position at the DOL, instead displaying a Chief Diversity and Equity Officer. U.S. Gov't Publ'g Off., U.S. Gov't Policy & Supporting Positions (2024), at 99.

[677] Kevin J. Jones, *US embassy to Vatican again flies Pride Flag as Biden administration backs 'LGBTQIA+' advocacy*, Catholic News Agency (June 1, 2022), https://perma.cc/ZV9R-TJQ7.

[678] U.S. in Holy See (@USinHolySee), X (June 1, 2021, at 9:33AM), https://perma.cc/NJL7-ZP9N; Timothy H.J. Nerozzi, *US Embassy to Holy See flies Pride flag in Rome*, Fox News (June 2, 2023), https://perma.cc/WQ4J-2688.



G. Exporting Anti-Christian Bias

The Trump Department of State has reviewed how the Biden Administration ignored human rights crises that affected Christians and dedicated little time or resources to religious freedom. The Biden Administration did not track in any meaningful way whether, and why, certain programs and events received support, while others were overlooked.

When confronted with ongoing violent persecution of Christians in Nigeria, the Biden State Department appeared to deprioritize its institutional response. In 2021, State removed Nigeria from its list of "countries of particular concern" regarding religious freedom,[679] despite its knowledge that an "Islamist fueled conflict" was persecuting "hundreds of thousands" of Christian Nigerians.[680] That same year, sectarian violence resulted in the demolition of 263 buildings in a predominantly Christian region, including six churches; the 2014 Boko Haram kidnapping of 276 girls, predominantly Christian, of whom 103 remained in captivity at the time of the report; and the abduction and forced conversion and marriage of minor Christian girls.[681]

The following year, nearly six dozen organizations and individuals submitted a letter to Secretary Blinken requesting that he re-designate Nigeria as a country of particular concern, citing findings that more Christians were killed in Nigeria in 2021 than in all other countries combined.[682] The atrocities continued each year, with over "150 persons, mostly Christians" executed during the 2022 Christmas season.[683] Between October 2022 and September 2023 in Nigeria, over 4,000 Christians were executed, 3,300 Christians were abducted, and over 100,000 Christians were

[679] Nahal Toosi, *Christian groups furious at Blinken for removing Nigeria from religious violence list*, POLITICO, (Nov. 23, 2021), https://perma.cc/8KUB-6ZKP.

[680] *Id*.

[681] 2021 Report on International Religious Freedom, U.S. Dep't of State, https://perma.cc/3AX3-RW25.

[682] Letter to Secretary Antony Blinken, (Sep. 19, 2022), https://perma.cc/4S47-TSUP.

[683] 2023 Report on International Religious Freedom, U.S. Dep't. of State, at 20, https://perma.cc/6NND-9VFH.

displaced.[684] Despite these atrocities, the Biden Administration never redesignated Nigeria as a country of particular concern.[685]

Under Secretary Rubio's leadership, the Trump Administration has taken multiple steps to address the ongoing persecution of Christians in Nigeria. In 2025, the Trump Administration redesignated Nigeria as a country of particular concern,[686] and the State Department announced additional actions to restrict visas for actors involved in violating religious freedom, including Nigerian actors.[687]

H. Excluding Christians from Public Programs

The Task Force also reviewed how the Biden Administration distributed public services and benefits, conducted outreach to inform the public about these opportunities, and evaluated concerns from faith-based organizations and individuals impacted by anti-Christian bias. The Task Force found that, at multiple federal agencies, the Biden Administration denied Christians and faith-based organizations equal access to government services, benefits, and programs that are generally available to the public.

The Biden Administration engaged in this anti-Christian bias through how it set eligibility criteria, determined funding allocations, and invited participation with public programs. These methods disproportionately excluded or disadvantaged Christian service providers, often without individualized evaluations or clear statutory authority.

This section begins with the Biden Administration's multi-agency rulemaking that, in some instances, broadly burdened faith-based organizations' access to federal funds and public programs, before turning to specific examples where individual agencies limited Christians' access to federal economic relief, disaster assistance, security grants, and food programs. Collectively, these examples illustrate that religious status and religious beliefs, rather than neutral programmatic considerations, too often barred Christians from full, equal participation in generally available government programs.

i. Religious Restrictions and the Nine Agency Rule

The Biden Administration marginalized Christians' and other religious non-profit organizations' access to government assistance and public programs by retaining or adopting federal regulations that deliberately relied on outdated Supreme Court precedent—posing serious constitutional concerns. Over the last several decades, the Supreme Court has issued numerous opinions clarifying the interplay between the Establishment and Free Exercise Clauses of the First

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[684] *Id*. at 3–4.

[685] Ewelina U. Ochab, *Nigeria and India Do Not Make It As Countries of Particular Concern*, FORBES (Jan. 6, 2024), https://perma.cc/T4TN-S97R.

[686] Countries of Particular Concern, Special Watch List Countries, Entities of Particular Concern, U.S. Dep't of State, https://perma.cc/Z88H-EKRV.

[687] Press Statement, Sec'y Marco Rubio, U.S. Dep't of State, Combating Egregious Anti-Christian Violence in Nigeria and Globally (Dec. 3, 2025), https://perma.cc/KXA9-9RN2.

Amendment. Although the Supreme Court's decisions make clear that the First Amendment provides robust Free Exercise protections, upon taking office, the Biden Administration swiftly worked to undo the first Trump Administration's efforts to make federal regulations and enforcement compliant with constitutional and statutory requirements. An examination of the Biden-era Nine Agency Rule demonstrates how harmful these regulatory failures were to churches and Christian ministries.

a. The Constitution Prohibits the Government from Excluding Recipients from Federal Programs Solely Because They Are Religious.

For decades, federal, state, and local governments excluded religious organizations from public programs based on the now-abrogated Supreme Court precedent, *Lemon v. Kurtzman*.[688] *Lemon* and its progeny were founded on an Establishment Clause jurisprudence that required a "wall of separation" between Church and State, ostensibly to protect the independence and autonomy of religious institutions. *Lemon* established a rule that state action violates the Establishment Clause if it (1) lacks a secular purpose, (2) has the primary effect of promoting or disparaging religion, and (3) excessively entangles the government in religion.[689] In practice, decisions based on *Lemon*'s rule often excluded religious organizations from public programs.

The Supreme Court also clarified its Establishment Clause jurisprudence in 2022 when it abrogated *Lemon*'s test in *Kennedy v. Bremerton School District*.[690] The Court explained that "the Establishment Clause does not . . . compel the government to purge from the public sphere anything an objective observer could reasonably infer endorses or partakes of the religious."[691] By overruling *Lemon* and reiterating that non-establishment interests cannot justify infringing on free-exercise rights, the Court made clear that Americans need not discard their faith to participate in public programs.

During the last decade, the Supreme Court clarified First Amendment jurisprudence related to the Religion Clauses, especially regarding faith-based organizations' rights to equal participation in public programs. The Court's recent decisions explain that the Establishment Clause does not require the government to exclude religious organizations and individuals from fully and equally participating in neutral government programs on the same terms as secular organizations. And while, for many years, States relied on their own anti-Establishment interests to exclude faith-based organizations from public programs and benefits, the Supreme Court has further explained that the Free Exercise Clause forbids the government from excluding religious organizations and individuals from these programs to further its non-Establishment interest. The development in doctrine came through three landmark cases:

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[688] 403 U.S. 602 (1971). For additional background, *see supra* at 20–24 (discussing the Establishment Clause and its requirements).

[689] *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 46 (2019) (citing *Lemon*, 403 U.S. at 612–13).

[690] 597 U.S. 507, 534–36 (2022).

[691] *Id.* at 535.

- In 2017, the Supreme Court struck down Missouri's Blaine Amendment[692] in *Trinity Lutheran Church of Columbia v. Comer*, holding that States cannot exclude faith-based organizations from neutral public programs based solely on their religious status.[693]

- In 2020, the Court extended its reasoning in *Espinoza v. Montana Department of Revenue*, holding that States cannot exclude families from using neutral public benefits at religious schools, even if the curriculum included religious instruction.[694]

- And in 2022, the Court held in *Carson v. Makin* that Maine could not exclude religious schools from a public benefit program to prevent the "religious use" of public dollars.[695] The Court also clarified that "*Trinity Lutheran* and *Espinoza* . . . never suggested that use-based discrimination is any less offensive to the Free Exercise Clause."[696]

Through this trilogy of cases, the Court explained that the government's non-Establishment interest does not justify violating Americans' Free Exercise rights. This case trilogy further undercut any justification for distinguishing between direct and indirect funding that goes toward religious uses.

b. The Biden Administration Updated the Nine Agency Rule and Disregarded These Protections for Faith-Based Groups.

Despite the Supreme Court's clear direction through multiple landmark decisions, the Biden Administration did not amend federal regulations to meet the Constitution's demands and protect Americans' First Amendment rights. Although the Biden Administration's regulatory choices resulted in rules that did not fully account for the Supreme Court's recent First Amendment decisions, the Task Force is treating them as constitutionally compliant for the purposes of this report. The report reviews one major inter-agency regulation as a case study of the harmful effects the Biden Administration's failure to act had on houses of worship and religious nonprofit organizations.

Background on the Nine Agency Rule

The "Nine Agency Rule" (or "Rule") is a multi-agency regulation that sets out the terms of government partnerships with faith-based and community organizations at nine federal agencies.[697] The Rule, among other things:

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[692] *See Espinoza*, 591 U.S. at 498–501 (Alito, J., concurring) (summarizing the history of Blaine Amendments and the "bigoted code language" used in this no-aid provisions).

[693] 582 U.S. 449, 462 (2017).

[694] 591 U.S. at 487.

[695] 596 U.S. 767, 789 (2022).

[696] *Id.* at 787.

[697] The eponymous nine agencies that adopted this Rule and for which the Rule is named are the Departments of Agriculture, Education, Health and Human Services, Homeland Security, Housing and Urban Development, Justice, Labor, and Veterans Affairs, and the U.S. Agency for International Development, the last of which is now defunct.

- requires that organizations receiving federal funds allow beneficiaries of their federally funded programs to opt-out of any religious programs;

- forbids organizations from discriminating on the basis of religion against anyone who uses or seeks to use their federally funded programs;

- preserves faith-based organizations' autonomy; and

- preserves faith-based organizations' ability under Title VII to limit employment of certain positions to coreligionists.[698]

The Nine-Agency Rule also includes a provision known as the Religious Restriction, which forbids organizations that receive direct federal assistance from using that assistance in programs or services that feature "explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization."[699] It requires those organizations to separate, in time or location, their religious activities from their federally funded activities.[700]

In response to an Executive Order, the first Trump Administration updated the Rule's language to ensure that robust religious liberty protections required by the First Amendment, RFRA, RLUIPA, and other federal statutes were given full effect.[701] But because the first Trump Administration's regulations predated the rulings in *Carson* and *Kennedy*, its regulations did not address the current state of First Amendment Establishment Clause jurisprudence.

The Biden Administration's Amendments to the Nine Agency Rule

Upon taking office, the Biden Administration immediately began a review of the first Trump Administration's regulatory changes and flagged the Trump Administration's capacious protection of religious liberty as "deeply concerning."[702] Biden Administration officials at the Department of Justice worried that giving full effect to broad religious liberty protections would have negative effects for those who self-identify as gay, lesbian, or transgender and related enforcement opportunities under Title VII and Title IX.[703] The Biden Administration eventually amended the Rule to pare back the scope of religious liberty protections recognized in the regulation.[704]

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[698] *See, e.g.*, 28 CFR § 38.5.

[699] *See, e.g.*, 28 CFR § 38.5(a).

[700] *Id.*

[701] See Exec. Order No. 13798, Promoting Free Speech and Religious Liberty, 82 Fed. Reg. 21675 (Mar. 4, 2017); Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities, 85 Fed. Reg. 82037 (Dec. 17, 2020).

[702] *See* Dep't of Justice, Civil Rights Division, Responses to Trump Era EO 13,798 on Promoting Free Speech and Liberty (attached as Exhibit 3.2.008).

[703] *See id*.

[704] Joint Rule, Partnerships with Faith-Based and Neighborhood Organizations, 89 Fed. Reg. 15671 (Mar. 4, 2024).

The Biden Administration also declined to update the Rule to comport with recent Supreme Court precedent. The Biden Rule, for example, maintained the provision known as the "Religious Restriction" —a categorical prohibition on use of direct federal assistance for explicitly religious activities—without updating the framework to reflect the Supreme Court's subsequent First Amendment decisions.[705] As a result, many faith-based organizations that could not separate their religious programming from their service delivery were effectively deterred from participating in federal programs, with many opting to forgo federal financial assistance rather than bifurcate the religious character of their work.

When the Biden Administration announced its intent to amend the Rule,[706] several commenters asked it to repeal the Religious Restriction on the grounds that it conflicted with the Supreme Court's decisions in *Trinity Lutheran* and *Carson*. The Biden Administration concluded that both cases were inapposite: *Trinity Lutheran*, because the Court said, "[w]e do not address religious uses of funding," and *Carson*, because its tuition assistance program was an indirect benefit paid only at parents' direction.[707] In the Task Force's assessment, the Biden Administration's reading of these decisions was unduly narrow and inconsistent with the Court's broader reasoning. The trilogy of cases did not turn on what kind of government aid was offered. Rather, the cases—at minimum—establish a rule that a law that disqualifies certain recipients *because* they are religious must be subject to strict scrutiny.[708] The Biden Administration made little effort to show that the Religious Restriction was narrowly tailored.

The Biden Administration also considered it significant that the Court had not explicitly overruled *Bowen v. Kendrick*, a *Lemon*-test case that recognized a "proscription against funding a specifically religious activity in an otherwise substantially secular setting."[709] This argument misses the mark. While the Supreme Court did not specifically address *Bowen* in its recent decisions, in the Task Force's view by overruling *Lemon*, the Court disavowed all of *Bowen*'s substantive reasoning. Undeterred, the Biden Administration relied on the Supreme Court's 1988 instructions to the district court in the *Bowen* case to consider *Lemon*'s analysis in an as-applied Establishment Clause challenge. That approach did not account for the Supreme Court's abrogation of *Lemon*.[710] Thus, between developments in public-benefit cases and the abrogation of *Lemon*, the Biden Administration's changes to the Rule conflicted with current First Amendment jurisprudence and continued to deter religious entities from participating in federal programs.

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[705] *See, e.g.*, 28 CFR § 38.5(a).

[706] 88 Fed. Reg. 2395.

[707] *Trinity Lutheran*, 582 U.S. at 465 n.3. *Carson* undermines the Biden Administration's reliance on this line in *Trinity Lutheran*. In *Carson*, the Court rejected Maine's argument that its exclusion of religious schools from its school choice program could be justified by an anti-establishment interest in preventing the religious *use* of state funds, explaining that "[r]egardless of how the benefit and restriction are described, the program operates to identify and exclude otherwise eligible schools on the basis of their religious exercise." *Carson*, 596 U.S. at 789.

[708] *Carson*, 596 U.S. at 780.

[709] 487 U.S. 589, 613 (1988) (internal quotations omitted).

[710] *See* 88 Fed. Reg. 2395 n.8 (Joint Notice of Proposed Rulemaking) (citing *Bowen*, 487 U.S. at 621–22).

c. The Nine Agency Rule Illustrates a Broader National Problem.

The Rule is but one of scores of federal regulations that reflect pre-*Kennedy* Establishment Clause frameworks, including approaches historically associated with the *Lemon* test, and may warrant modernization to align with current First Amendment doctrine. The Task Force received feedback from the Religious Liberty Clinic at Notre Dame Law School identifying hundreds of federal regulations that have not yet been properly updated in the wake of the Supreme Court's *Trinity Lutheran* trilogy of cases. Together, these regulations can deter religious organizations and individuals from participating in public benefit programs in which they are otherwise eligible to participate. During the Task Force's meetings with community stakeholders, multiple organizations reported that religious entities decline or limit participation in federal programs due to these regulatory concerns.

The Biden Administration's failure to update federal regulations also risked discriminatory outcomes in federally funded programs administered by federal contractors because risk-averse 'anti-endorsement' compliance practices may have been applied more broadly than the Constitution requires, burdening protected religious exercise. The Task Force received feedback, for example, that several Christian Pennsylvanians living in government-subsidized senior living facilities were forbidden from holding Bible studies in common areas or decorating their apartment doors with religious imagery with facility operators citing anti-Establishment Clause concerns.[711]

Considered in conjunction with its other activities, the Biden Administration contributed to the feeling of exclusion of religious entities and individuals from federal programs when it decided not to update these federal regulations to reflect the Supreme Court's rulings protecting religious freedom. And stakeholders reported similar implementation patterns across multiple federal agencies. The Task Force has compiled illustrative examples in the subsections that follow.

ii. Unequal Access to Disaster Relief and Humanitarian Aid

a. Small Business Administration: Economic Injury Disaster Loans

The Small Business Administration (SBA) awarded Economic Injury Disaster Loans to businesses affected by disasters. SBA regulations in effect during the Biden Administration rendered certain religious organizations ineligible for this assistance. As a result, nearly 170 Christian organizations were denied access to federal economic relief programs on the basis of their religious affiliation, notwithstanding statutory eligibility.[712] As SBA Administrator Kelly Loeffler explained, the Biden Administration "prevented [these loans] from going out to faith-based organizations, whether it's small businesses or non-profits."[713]

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[711] *See* Letter from Am. Ctr. for L. & Justice, Jordan Sekulow, to Dep't of Justice, Civil Rights Division, AAG Kristen Clarke (July 8, 2023) (attached as Exhibit 3.2.009); Letter from Independence Law Ctr., Lauren Hackett, to River Front Apartments, Community Director (Mar. 28, 2025) (attached as Exhibit 3.2.010); Case Page, Independence L. Ctr. (attached as Exhibit 3.2.011).

[712] Initial Report, *supra* note 15, at 33 (noting the SBA's denial of generally available benefits).

[713] Interview with Kelly Loeffler, Administrator, Small Bus. Admin., *see supra* note 234.

The record reflects that these denials were based on SBA eligibility rules that excluded organizations engaged in religious instruction or activities.[714] Specifically, SBA regulations in effect under the Biden Administration rendered certain religious organizations ineligible for Economic Injury Disaster Loans assistance based on their religious purpose or affiliation. The Task Force's review raises concerns that this framework resulted in the denial of generally available public benefits solely because of organizations' religious status, in contravention of clear directives from the Supreme Court.[715]

b. Federal Emergency Management Agency: Disaster Relief and Grants

The Federal Emergency Management Agency (FEMA) is responsible for overseeing the Nonprofit Security Grant Program, which provides funding support for target hardening and other physical security enhancements and activities to nonprofit organizations that are at high risk of terrorist attack.[716] During the Biden Administration, however, there were significant discrepancies in FEMA's allocation of Nonprofit Security Grant Program funding. Despite Christianity being the majority religion in the United States and facing heightened security risks during this period, Christian organizations and houses of worship received disproportionately low amounts of funding relative to other groups. During FY21 and FY22, for example, Christian organizations and houses of worship received approximately $97,230,933 (about 23 percent) of total Nonprofit Security Grant Program funds for those years. In contrast, the Biden-era FEMA awarded approximately $320,262,492 (about 77 percent) of available funding to non-Christian faith-based organizations and secular organizations. The Biden Administration continued this trend in FY23 and FY24, awarding Christian groups only approximately $280,638,259 (about 39 percent) of NSGP funding, while it awarded other recipients approximately $440,886,741 (about 61 percent) of funding. This distribution is particularly notable given the escalation in targeted hostility toward Christian institutions. This funding pattern persisted despite a documented surge in targeted incidents affecting Christian institutions, including a significant rise in vandalism, arson, and threats reported between 2018 and 2023.[717]

Despite these elevated threat levels, the proportion of Nonprofit Security Grant funding directed to Christian organizations remained substantially below proportional representation of the population and below the level of risk indicated by incident data. The data suggests a misalignment between threat environment and resource allocation, raising questions about the criteria and methodology used in grant distribution.

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[714] 13 C.F.R. § 123.301(g) (making businesses "principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs . . ." ineligible for EIDL).

[715] *Compare* Initial Report, *supra note* 15, at 40 (noting the SBA's denial of generally available benefits) *with Trinity Lutheran*, 582 U.S. at 460–62 (holding that the Free Exercise Clause prohibits denying an otherwise available public benefit based solely on an entity's religious status); *Espinoza*, 591 U.S. at 475–80 (invalidating exclusion of religious organizations from a public benefit program based on religious character); *see also Carson*, 596 U.S. at 778–83 (holding that exclusion of religious entities from a generally available public benefit based on religious use violates the Free Exercise Clause).

[716] *See* Nonprofit Security Grant Program, Fed. Emergency Mgmt. Agency, https://perma.cc/4PJT-AJHJ.

[717] For more detailed discussion of the ongoing violence against Christian churches from 2021 to 2024, and the Biden Administration's weak response at DOJ, *see supra*, at 39–40.

iii. Canceled Contracts

The Task Force's Initial Report highlighted widespread public reporting regarding the cancellation of a contract with Catholic priests at Walter Reed National Military Medical Center during Holy Week in 2023, which allegedly resulted in a temporary lack of Catholic pastoral care.[718] Task Force fact-finding has since determined that, although the contract lapse raised legitimate concerns and warranted scrutiny, religious services ultimately continued, and clergy access was not suspended.

[718] DOJ Initial Report, *supra* note 15, at 9.

III. ADVERSE EMPLOYMENT ACTIONS

"*It was made very clear to us that we were to deny all of [the requests.] You were going to read them, you were going to deny them, . . . period. Full stop*."[719]

Former Army Reserve JAG Officer, on religious accommodation requests during COVID-19

In its effort to investigate allegations of anti-Christian bias during the Biden Administration, the Task Force received significant quantities of feedback and data about how the Administration handled religious accommodation requests from Christian workers. The Biden Administration's COVID-19 vaccine mandates stand out as particularly stringent, raising concerns about skepticism and disregard for Christian and other similar beliefs and religious practices across agencies and situations. From the beginning, the Biden Administration changed out senior leadership in roles associated with reviewing and addressing claims of religious discrimination. From that starting note, the Biden Administration consistently implemented workplace policies that placed many Christians and faith-filled employees in the position of choosing between their job and their faith. And worse, the Biden Administration sometimes made the process to vindicate religious rights seem as painful, if not more so, than the adverse employment decisions themselves.

This pattern repeated across the federal government: Agencies issued COVID-19 vaccine mandates and offered illusory assurances that religious accommodations would be available, but the processes routinely failed to produce timely or individualized adjudications. When employees requested religious accommodations, agencies frequently placed them in procedural limbo while simultaneously imposing compliance deadlines, workplace restrictions, and career-limiting obstacles.

This section documents how the Biden Administration mistreated accommodation requests, which were delayed, unprocessed, or functionally denied, and often accompanied by intrusive questioning of religious beliefs, disclosure of personal health information, and adverse personnel actions imposed before final assessments. This section also reports feedback shared with the Task Force in the form of survey data, illustrative case studies, and agency-specific findings. The data corroborates the anecdotal feedback from many concerned Christian employees: Prolonged indecision was not an isolated incident, and many requests were denied without a fair assessment. Instead, prolonged indecision was a widespread administrative approach that burdened religious exercise and subjected employees to protracted uncertainty and professional harm.

The evidence summarized in this section paints a bleak picture: In its zealous implementation of COVID-19 responses, the Biden Administration placed immediate policy needs over the enduring constitutional protections of its own federal workforce. Across the country, requests for religious accommodations—especially religious objections to COVID-19 vaccine mandates—were summarily denied. Application processes repeatedly changed, even while requests were pending. For many, requests pended indefinitely. This jeopardized the livelihood of many employees. Under

[719] Interview with Scott Centorino, former Army Reserve JAG Officer (hereinafter "Centorino Interview"), *see supra* note 234. "It was a blanket directive that you were not really to take individual circumstances into account." *Id.* "What is the point of having a JAG officer review and sign off on a denial or an acceptance if they're not actually given the freedom to read the request and judge?" *Id.*

President Biden, agencies' accommodation processes often functionally penalized Christians who sought to exercise their religious liberty rights. And inside federal agencies, the Biden Administration ignored and even cultivated hostile work environments toward Christians.

A. Brief Background on Employment Law

Before turning to its findings, the Task Force offers a quick primer on long-established federal religious protections in the workplace. Federal law promises American employees that, generally, they may practice their faith at work.[720] Building upon the First Amendment's constitutional protections for American employees, Title VII of the Civil Rights Act of 1964 prohibits covered employers, including federal, state, and local governments, from discriminating against an employee "because of such individual's . . . religion."[721]

Title VII's religious protections cover "*all* aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's . . . religious observance or practice without undue hardship" on "the employer's business."[722] The Supreme Court has held that employees should receive reasonable religious accommodations so long as the accommodations do not impose a "substantial" burden on the employer's business.[723] When an employee requests a religious accommodation, he should receive a fair, timely, and responsive process for his or her request. And should the accommodation be denied, the employee may reasonably expect the ability to appeal that decision under the proper process.[724] Moreover, Congress passed the Religious Freedom Restoration Act (RFRA) in 1993 to reinstate a strict scrutiny standard for federal governmental actions that substantially burden a person's religious exercise, even under neutral and generally applicable rules.[725]

B. President Biden's Early Personnel Decisions Set the Tone at the EEOC

The Biden Administration's approach to religious liberty in employment was evident from the beginning, starting with President Biden's personnel and leadership decisions at the EEOC. The EEOC is the agency tasked with investigating complaints of federal employment discrimination based on race, color, religion, sex, national origin, disability, age, or genetic information.[726] The Biden EEOC halted efforts to address religious discrimination (initiatives that worked to protect all faith traditions), and President Biden fired the attorney who spearheaded those efforts.

During the first Trump Administration, the EEOC's General Counsel, Sharon Fast Gustafson, formed a Religious Discrimination Work Group "to assess whether there are practical or legal impediments that prevent individuals from filing complaints of religious discrimination with the

[720] 42 U.S.C. § 2000e-2(a);42 U.SC. § 2000e-16(a).

[721] 42 U.S.C. § 2000e-2.

[722] 42 U.S.C. § 2000e(i) (emphasis added).

[723] *Groff v. DeJoy*, 600 U.S. 447, 468 (2023).

[724] *See Overview of Federal Sector EEO Complaint Process*, EEOC, https://perma.cc/N48U-5Y32.

[725] 42 U.S.C. §§ 2000bb–2000bb-4.

[726] *Youth at Work*, EEOC (2026), https://perma.cc/6RRR-3TRW.

EEOC."[727] The Work Group built on an initiative established during the Obama Administration to combat religious discrimination and solicited feedback from diverse religious perspectives, including Christians, Hindus, Jews, Muslims, and Sikhs.[728]

In November and December 2020, the Work Group, in partnership with then-Commissioner Andrea Lucas, held four virtual listening sessions on religious discrimination in employment with a diverse group of religious stakeholders.[729] A Final Report was issued in January 2021, documenting participants' comments.[730] Some commenters raised "concern[s] that the EEOC prioritizes claims of race and sex discrimination over religious discrimination" and that the EEOC is not as "friendly to [the Listening Session Participants'] religious beliefs."[731] The report was published on the EEOC's website and emailed to participants.[732]

Shortly after President Biden assumed office, the EEOC removed the Final Report and a related press release from the EEOC's website.[733]President Biden fired Gustafson that same day.[734] One commentator aptly summarized Gustafson's firing and its concerning implications for religious liberty: "The fact that the White House has [fired her] shortly after spiking the religious liberty work Gustafson helped lead within the EEOC is a chilling reminder of what a Democratic administration now means for vulnerable religious believers."[735]

C. Systemic Failure to Accommodate Religion During COVID-19

Those concerns about how the Biden Administration would disregard religious liberty rights in the workplace were well-founded. The Biden Administration demonstrated a significant disregard for religious accommodation requests, especially religious exemption or accommodation requests regarding the COVID-19 vaccine.

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[727] EEOC, RELIGIOUS DISCRIMINATION IN EMPLOYMENT: GENERAL COUNSEL LISTENING SESSIONS FINAL REPORT 6 (Jan. 2021), https://perma.cc/9LRE-MK6A.

[728] *Id.*

[729] *Id.*

[730] *Id.* at 1, 2.

[731] *Id.* at 11.

[732] Press Release, EEOC, EEOC General Counsel Issues Report on Dialogue Sessions on Religious Discrimination With Agency Stakeholders (Jan. 15, 2021), https://perma.cc/88WA-ZZQP.

[733] Heather Sells, *EEOC Firing Raises Religious Liberty Questions*, CBN (Apr. 12, 2021), https://perma.cc/DTQ6-3LW7.

[734] *Id.*

[735] *Id.*

i. The Biden Administration's Relentless Vaccine Mandates

The Biden Administration's push to mandate federal workforce vaccinations directly conflicted with many employees' sincerely held religious beliefs, leading them to seek exemptions. The Biden Administration issued three mandates impacting wide swaths of the American workforce:[736]

- On September 14, 2021, President Biden published Executive Order 14043, mandating COVID-19 vaccinations for all federal employees, including teleworkers, subject to legal exceptions for medical or religious reasons.[737] The deadline to comply was November 22, 2021.[738]

- On September 14, 2021, President Biden issued Executive Order 14042[739] and subsequent guidance on September 24, 2021, mandating vaccines for federal contractors.[740] The deadline to comply was December 8, 2021.[741] The Executive Order did not provide for the same religious exemptions as Executive Order 14043.

- Finally, on November 5, 2021, DOL's Occupational Safety and Health Administration issued a vaccine mandate, subject to medical and religious exemptions, for private employers with more than 100 employees (but this mandate was stayed by the Supreme Court).[742]

Despite clear federal law requiring that employers provide meaningful processes to seek religious accommodations and to grant accommodations unless they caused an undue burden, federal and private employers disregarded religious accommodation requests and, in some instances, issued blanket denials. The result: Employees with sincere religious beliefs, including Christian

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[736] On November 5, 2021, Centers for Medicare and Medicaid Services (CMS) issued an interim final rule that required COVID-19 vaccinations for staff members for healthcare facilities receiving Medicare and Medicaid funds. 86 Fed. Reg. 61555 (Nov. 5, 2021). The mandate also included volunteers and contractors. *Id.* On January 13, 2022, the Supreme Court issued a per curiam opinion permitting the final rule to go into effect but noted the rule's religious exemption. *Biden v. Missouri*, 595 U.S. 87, 87, 91 (2022) (per curiam).

[737] Exec. Order No. 14043, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*, 86 Fed. Reg. 50989 (Sept. 14, 2021).

[738] Off. of Personnel Mgmt.—Applicability of the Congressional Review Act to Guidance on Enforcing Coronavirus Disease 2019 Vaccination Requirement for Federal Employees-Executive Order 14043, B-334237 (Comp. Gen. Apr. 6, 2023), https://perma.cc/RLQ8-ZTH7.

[739] Exec. Order No. 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*, 86 Fed. Reg. 50985 (Sept. 14, 2021).

[740] Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors (Sept. 24, 2021), https://perma.cc/Q6ZG-KJ2U.

[741] *Id.*

[742] COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 Fed. Reg. 61402 (Nov. 5, 2021); *Nat'l Fed'n of Indep. Bus. v. Dep't of Labor, Occupational Safety & Health Admin.*, 595 U.S. 109 (2022).

employees, faced termination or separation in multiple jurisdictions when they chose their faith over their jobs.[743]

Relatedly, in Executive Order 13991, President Biden established the Safer Federal Workforce Task Force to oversee the development and implementation of COVID-19 workplace safety plans across the federal government.[744] Notably, the Biden White House excluded the EEOC from the Safer Federal Workforce Task Force—despite its role as the primary federal enforcer of employee rights.[745]

The Safer Federal Workforce Task Force provided a template questionnaire for federal agencies to gather and evaluate federal employees' religious accommodation requests.[746] The questionnaire's content raised concerns because it deviated from long-established Title VII precedent and protections for religious accommodations and could prompt inquiries that employees may view as overly intrusive.[747] That Task Force's template seemed to presume religious insincerity in an effort to ensnare employees in inconsistencies, and thereby find pretext to deny the request. The questionnaire appeared to narrow legal protections for religious liberty by questioning the sincerity of believers seeking accommodations in ways that raised privacy concerns under both Title VII and the ADA, and generally showed hostility to some religious accommodation requests.

The Task Force's approach mirrored advice given by senior administration officers. In leaked audio from a September 2021 briefing, DOJ Office of Legal Counsel Deputy Assistant Attorney General Marty Lederman gave advice on handling religious requests to White House officials and senior leaders of numerous federal agencies.[748] Lederman noted that the majority of vaccine accommodation requests would likely be based on religious objections to aborted fetal cell involvement in vaccine development and/or vaccine testing.[749] He acknowledged it was "likely that [the agencies] will have to take as a given the employee's claim," but he promptly characterized such claims as mostly "insincere," or if sincere, "not religious."[750] Highlighting his allegation of insincerity, Lederman described how some hospitals responded to religious accommodation requests: Asking the employee, "do you know that Tylenol, and Tums, and Preparation H . . . were all tested using abortion fetal cell lines, too[?]"[751] In short, the DOJ Office of Legal Counsel's approach, as conveyed in the briefing, suggested that federal agencies could

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[743] *See infra*, at 118–32; Jenna Green, *Why workers fired for refusing Covid vaccines are starting to win in court*, REUTERS (Nov. 1, 2024), https://perma.cc/7ZGA-C965.

[744] Exec. Order No. 13991, *Protecting the Federal Workforce and Requiring Mask-Wearing*, 86 Fed. Reg. 7045 (Jan. 20, 2021).

[745] *See id.*

[746] Ian Smith, *New Guidance for Federal Employees Seeking Exceptions to Vaccine Mandate*, FEDSMITH INC. (Oct. 5, 2021), https://perma.cc/YJ2A-Y6Q3.

[747] *Id.*

[748] Libby Emmons, *BREAKING: Leaked Audio Reveals DOJ Official Questioning Sincerity of Americans' Religious Exemptions to COVID Vaccine*, THE POST MILLENNIAL (Oct. 19, 2021), https://perma.cc/YFL8-ZRGF.

[749] *Id.*

[750] *Id.*

[751] *Id.*

narrow Title VII religious accommodation rights and Title VII religious anti-harassment protections through invasive questioning and rely on a compelling government interest to burden the religious beliefs of employees.

As the questionnaire and leaked advice both demonstrated, the Biden Administration sought to enforce compliance with vaccine mandates, and in the process, denied religious accommodation requests, bypassing norms on standard forms and processes, and disregarding precedent for evaluating these requests.[752] Compounding the issue, the Biden EEOC did not sufficiently use its platform to rectify these problems. The Biden EEOC chose to remain silent until then-Commissioner Lucas persuaded the then-EEOC Chair Charlotte Burrows to provide additional public information about EEOC's process and forms for handling vaccine religious accommodation requests for employees to serve as an example of best practices for federal and private employers.

The Biden Administration's heavy-handed approach, as well as EEOC's inaction and delay in response, led many federal employees to feel coerced into violating their religious convictions by taking the vaccine. Others chose to remain unvaccinated, facing the risk of losing their jobs and benefits. For too many, that risk became their reality as agencies terminated their positions or employees resigned in protest.

ii. "The Process is the Punishment": Lack of Meaningful Review or Approval for Religious Accommodation Requests

The Task Force's review of federal agency actions during the COVID-19 pandemic identified a consistent pattern in the administration of vaccine mandates. Although agencies formally recognized that religious accommodations were available, agencies often employed processes that frequently resulted in non-adjudication, prolonged delay, or effective denial, often accompanied by adverse employment consequences.[753] These outcomes are documented across internal agency reviews, formal responses, and outside fact-gathering, including survey results and firsthand submissions from federal employees.[754]

a. Religious Accommodation Requests at the Agency Level

Across agencies, the accommodation process often functioned as a procedural bottleneck that exposed employees asserting religious objections to escalating professional risk. By conducting interviews and listening sessions, and by reviewing internal data, public reporting, and litigation records, the Task Force found that employees who sought religious accommodations were frequently subjected to adverse employment actions while their requests pended, even in the absence of a final determination.

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[752] *Id.*

[753] U.S. DEP'T OF JUSTICE, INITIAL REPORT OF THE TASK FORCE TO ERADICATE ANTI-CHRISTIAN BIAS 9–10, 14, 15, 20, 38, 41–48 (June 6, 2025).

[754] Together, these items are referred to as the Task Force Record, which consists of internal summaries of meetings, briefings, and written submissions received by the Task Force from external organizations and individuals.

Moreover, the Task Force found that during the COVID-19 period, federal agencies frequently subjected employees seeking religious accommodations to invasive scrutiny of their beliefs. Survey data reflected that multiple agencies required employees to complete detailed questionnaires probing their religious doctrinal views, personal religious practice, and religious sincerity.[755] Repeated demands for such information delayed adjudication and imposed a coercive burden on religious exercise. These practices contravened well-established legal standards requiring employers to presume sincerity absent a particularized and articulable reason for doubt.[756]

Even when agencies did grant religious accommodations, survey results indicated that information about employee-accommodation and vaccination status was often disclosed or effectively signaled within workplaces, resulting in professional stigma and isolation.[757] Employees explained that if they requested or received a religious accommodation, superiors marked them as non-compliant or suspect, leading to loss of travel and advancement, denial or reduced access to the workplace, and other career-jeopardizing harm.[758] These obstacles operated as a punitive enforcement mechanism, creating workplace conditions that discouraged religious expression and burdened religious exercise separate from any formal denial of accommodation or overt discrimination.[759]

Personal Narratives from Impacted Federal Employees

The Task Force is unable to exhaustively describe each case of adverse employment for the hundreds of individuals that submitted written and oral feedback. The following personal testimonials are illustrative of the pattern of religious hostility that Christian federal employees have described suffering under the Biden Administration.

Demoted and Banned from the Office

An Army civilian employee experienced adverse employment actions after submitting a request for a reasonable accommodation from the COVID-19 vaccine mandate. The Army did not adjudicate the request and returned it "without consideration" on four separate occasions while simultaneously continuing to push the employee to vaccinate under threat of termination. During this period, the employee was subjected to coercive workplace conduct. After remaining

[755] *Select Results from the Feds For Freedom Federal Religious Discrimination Survey,* FEDS FOR FREEDOM (2025-2026), *infra* note 764. Separately, Feds for Freedom also supplied approximately 60 narrative responses from aggrieved federal employees, some of which are highlighted below.

[756] Courts and the EEOC have long recognized that religious beliefs need not be logical, consistent, or comprehensible to merit protection, and that sincerity must be presumed absent a specific, articulable basis for doubt. *See* EEOC, COMPLIANCE MANUAL ON RELIGIOUS DISCRIMINATION § 12-I(A)(3) (2008) (providing that an employee's assertion of religious belief is generally presumed to be sincere unless the employer has an objective basis for questioning either the religious nature or the sincerity of the belief); *Hobby Lobby Stores, Inc. v. Burwell*, 573 U.S. 682, 725 (2014) (explaining that courts are not to question the validity or correctness of asserted religious beliefs); *Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981) ("Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.").

[757] *Select Results*, *infra* note 764.

[758] *Id.*

[759] *Id.*

unvaccinated and engaging in protected EEO activity, the employee was removed from formal leadership roles and restricted from critical travel and assignments. He was physically barred from the workplace and was personally escorted out on one occasion. Similarly situated colleagues were not subjected to comparable treatment. During administrative proceedings, the Army declined to produce records of similarly situated employees despite acknowledging their existence. The employee's EEO case remains pending before the EEOC on appeal as of 2026.[760]

Prohibited from Trainings and Deemed Ineligible for Promotion

A Federal Wildlife Officer with the U.S. Fish and Wildlife Service, Department of the Interior (DOI), reported that for nearly two years, DOI refused to process his religious and medical accommodation requests during the COVID-19 pandemic. During this period, he was barred from completing mandatory training and consequently left uncertified. He was prohibited from wearing a uniform or participating in operations, removed from deployments, denied eligibility for promotions and transfers, and prevented from obtaining performance appraisals. The employee filed an EEO complaint, which ultimately settled for $135,000. DOI's Professional Responsibility Unit completed a subsequent investigation demonstrating the reviewing officials failed to review vaccine accommodation requests under explicit DOI policy-imposed timeframes, prohibiting unvaccinated trainees from completing field trainings or receiving employee evaluations. Unvaccinated officers were also prohibited from attending required trainings, obtaining certain qualifications, or going on other assignments.[761]

Banned from Firefighting

A current employee with the USDA's Forest Service submitted a religious accommodation request in September 2021 seeking exemption from COVID-19 vaccination, and testing, and masking requirements. His request was repeatedly delayed, placed in abeyance, and required resubmission. Although partial accommodation was granted over a year later in October 2022, the majority of his requests were never addressed. As a result of the prolonged failure to process his accommodation, he was prohibited from participating in firefighting activities, denied access to his office while similarly situated coworkers were allowed access, and was issued a reprimand for conduct that was covered in his pending accommodation request. Because he was banned from firefighting, the employee was unable to maintain firefighting qualifications that require regular engagement in fire suppression activities. He also lost overtime compensation that would have come from firefighting.[762]

Issued Generalized Denial

A current Lieutenant Colonel in the U.S. Air Force faced generic denial of her religious accommodation request. She had completed 18 years of honorable service when the Department of War (DOW) COVID-19 vaccine mandate was issued in August 2021, while she was serving as

[760] Dave Giffen (Army), Personal Narrative (attached as Exhibit 3.3.001).

[761] William Catoe (DOI), Personal Narrative (attached as Exhibit 3.3002).

[762] Matt Etzenhouser (Forest Service), Personal Narrative (attached as Exhibit 3.3.003, at 46).

an ROTC instructor at Washington State University and the University of Idaho. After recovering from COVID-19 and testing positive for antibodies, she sought a medical exemption consistent with prior exemptions she had received for other vaccines, but her request was denied. After being informed that no medical or administrative exemptions would be approved, she submitted a religious accommodation request. Although a military chaplain confirmed the sincerity of her beliefs, senior leadership denied her request using generalized assertions about mission -readiness, good order, and discipline. Her appeal was denied, leaving her five days to comply, seek separation, or face adverse consequences.[763]

Survey Findings from Federal Employees

In addition to the overt examples of adverse actions described above, agencies also used subtler, but no less effective, techniques to impede accommodation requests. Employees described harassment tactics including repeated demands to resubmit accommodation requests and navigate shifting decisionmakers, as responsibility for handling requests jumped from one supervisor to the next. These changing supervisory roles and adjudication responsibilities made it difficult—sometimes impossible—to identify the designated decisionmaker or appropriate avenue to obtain resolution. In one case, a supervisor repeatedly directed a complainant to seek action elsewhere, only to later acknowledge that he himself was the deciding official. These shifting responsibilities rendered the process opaque and inaccessible, leaving complainants without a clear avenue for resolution.

The Task Force received survey data compiled by Feds for Freedom to assess patterns in the Biden Administration of religious accommodations during the COVID-19 period.[764] The survey collected responses from federal employees across multiple agencies who reported experiences related to religious accommodation requests, adverse employment actions, and EEO complaints.[765]

Survey respondents represented a range of agencies, with a substantial proportion reporting employment in defense and security-adjacent contexts.[766] Approximately 29% of respondents were associated with DOW, 12% with the DHS, and 9% with DOJ.[767] This distribution supports the Task Force's focus on defense and security-adjacent contexts where compliance designations can generate negative consequences.

Of all respondents, the following approximate percentages reported experiencing types of adverse employment actions due to their religious objections to the COVID-19 vaccine:[768]

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[763] Lieutenant Colonel Carolyn Rocco (United States Air Force), Personal Narrative and Accompanying Documents (attached as Exhibit 3.3004).

[764] *Select Results from the Federal Religious Discrimination Survey*, FEDS FOR FREEDOM (attached as Exhibit 3.3.005). The survey reflects responses from approximately 195 federal employees.

[765] *Id.*

[766] *Id*.

[767] *Id.*

[768] *Id*.

- 44.1% were denied travel,
- 30.1% lost pay,
- 29.1% were reassigned or retired,
- 18.3% were removed from positions,
- 15.1% had their clearance or access revoked or suspended,
- 14.0% received letters of reprimand,
- 11.7% were fired, and
- 9.7% received adverse performance appraisals.

These figures are consistent with other feedback shared with the Task Force during listening sessions, where impacted individuals described how their accommodation requests triggered career-limiting consequences.

Importantly, the accommodation process often did not culminate in an adjudication at all. Only 23.1% of respondents reported that their religious accommodation request was formally denied.[769] A substantially larger share, 63.6%, reported that their request was filed but "never processed, leaving them in prolonged administrative limbo.[770] Additionally, 67.7% reported experiencing an adverse personnel action due to filing an religious accommodation request.[771] These figures support the Task Force's finding that the decision to seek religious accommodation itself resulted in a lasting professional harm.[772] Notably, 22.3% of respondents reported ongoing religious discrimination related to COVID-19 mandates as of 2026, indicating that the effects of these practices persist beyond the formal rescission of the underlying policies.

While the survey was not designed as a statistically representative sample of the federal workforce, its results are probative for identifying patterns and areas warranting further review.[773]

b. Religious Accommodation Requests in the EEO Process

EEO Charges from Federal Employees

Some employees sought relief through the EEO process[774] after their religious accommodation requests were denied, delayed, or resulted in retaliation. But the same problems prevailed there,

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[769] *Id.*

[770] *Id*.

[771] *Id.*

[772] *Id.*

[773] *Id.* The Task Force considered limitations inherent in survey-based data, including self-selection and recall bias. These limitations are mitigated by corroboration from internal agency reviews, formal responses, litigation materials, and outreach meeting records. Related data and agency-specific from several Task Force member agencies are discussed below, *see infra*, at 125–32.

[774] The EEO complaint process allows federal employees alleging workplace discrimination based on race, sex, religion, age, disability, or retaliation to seek resolution at their employing agency through an EEO Counselor. This process allows employees to file a formal complaint with an EEOC Administration Judge or ask the agency to issue a decision on the issue. The employees can then appeal and request reconsideration of the EEOC decision. Once the

too. Just as at the agency level, the Task Force found that many employees encountered prolonged periods of non-responsiveness after filing EEO complaints. In these cases, the employing agency's failure to adjudicate accommodation requests was compounded by the Biden EEOC's failure to provide timely review. This produced a two-layered process failure.

Survey results and the Task Force's independent review show that many EEO complaints remained unresolved for years, exacerbating the harm caused by agency's failures to process requests. Many complaints are still unresolved.

The Task Force's review indicates that procedural delay, both at the employing-agency level and within the EEOC, operated to burden religious exercise, independent of any ultimate determination of merits. In numerous matters reviewed by the Task Force, the absence of timely adjudication functioned as a substantive outcome in itself, leaving employees exposed to adverse consequences without meaningful interim protection.

This pattern is significant because delay carried professional consequences by impacting work assignments. In security-adjacent environments, unresolved accommodation or EEO status was treated as an indicator of non-compliance.[775] This perception particularly hurt employees in intelligence and security-sensitive agencies. In feedback to the Task Force, intelligence employees reported being referred for additional review after declining the COVID-19 vaccine and submitting religious accommodation requests. Because they sought religious exemptions, and while those requests remained pending, Christian employees were referred to counterintelligence and insider-threat review processes. Some officers were placed on "insider threat lists" or related monitoring lists and referred to internal review bodies such as the CIA Counterintelligence Mission Center.[776] Having an unresolved accommodation status on their profiles triggered vulnerability or reliability reviews and resulted in system-of-record notations that functioned as negative professional

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employee has gone through the complaint process, they can file a lawsuit. *Overview of Federal Sector EEO Complaint Process,* EEOC*,* https://perma.cc/N48U-5Y32 (last visited Feb. 2, 2026).

[775] Per feedback shared with the Task Force, employees in intelligence and security-sensitive agencies reported that they were subjected to counterintelligence and insider-threat scrutiny after declining COVID-19 vaccinations and submitting religious accommodation requests. Some intelligence officers described how they were referred to both formal counterintelligence processes, including insider-threat or counterintelligence monitoring lists, and to internal review bodies. The Task Force uncovered that leadership at one Intelligence Community agency authorized counterintelligence evaluations of approximately *2,500* officers for non-compliance with Executive Orders 14042 and 14043, an action ordinarily treated as a disciplinary or administrative matter rather than a counterintelligence predicate. Counterintelligence evaluations such as these generated system-of-record notices (SORNs) that functioned as negative professional markers, notwithstanding the absence of adjudicated misconduct. Some affected officers had pending religious accommodation requests, while others were engaged in active litigation, which are both protected activities under RFRA, Title VII, and the First Amendment. Participants further reported ongoing uncertainty regarding whether such flags or profile designations have since been removed. The Task Force reviewed approximately 20 Federal Register notices, including from the Selective Service System, Federal Election Commission, DHS, Defense Nuclear Facilities Safety Board, Office of Government Ethics, National Endowment for the Arts, Environmental Protection Agency, DOL's OSHA, NASA, Postal Service, Department of Commerce, DOI, Federal Retirement Thrift Investment Board, Peace Corps, Nuclear Regulatory Commission, and the Securities and Exchange Commission, revealing that religious accommodations requests could be used as SORNS in connection with the issuance, or rejection, of security clearances. Obtaining a security clearance, especially in national security related fields, is frequently a condition of employment.

[776] *Id.*

markers, notwithstanding the absence of adjudicated misconduct. These employees told the Task Force that they still do not know whether such flags or profile designations have since been removed. Because these intelligence employees looked for ways to act on their sincerely held beliefs, *they* were now treated and assessed as a threat.

Across the federal government, Christian employees who objected to the vaccine lacked access to meaningful interim relief while EEO complaints were pending. Employees remained subject to compliance deadlines, reassignment, exclusion from duties, or professional stigma during the pendency of EEO review. Feds for Freedom's survey data indicates that employees experienced removal from positions, denial of travel, or workplace-access restrictions while their EEO complaints remained unresolved, without any measures available to preserve the status quo pending investigation.[777]

EEO Charges from Private Sector Employees

As part of its ongoing efforts to address Executive Order 14202, the EEOC compiled relevant EEOC charge data, which underscore the scope of religious hostility disguised as process delays. Since January 2021, the EEOC estimates it has received over 10,471 charges of discrimination related to COVID-19—either as an illness or resulting vaccine mandates. Of those 10,471 charges, an estimated 9,800 alleged a Title VII violation only, primarily for violations of religious accommodation rights to refuse the COVID-19 vaccine. Approximately, an additional 2,400 charges alleged a Title VII violation as well as another statutory violation, such as the ADA. However, out of the thousands of charges alleging a Title VII violation, the Biden EEOC only found cause for 397 of those charges since 2021 (approximately 3.79%).

The Biden EEOC's enforcement activity further reflects the anemic institutional response. Of the 397 COVID-19-related Title VII violations, the Biden EEOC sued private employers only four times for failing to accommodate an employee's religious beliefs under the COVID-19 vaccine mandates. None of these were major, large-scale lawsuits involving dozens or hundreds of employees.

By contrast, litigation brought by the private bar produced substantial verdicts and settlements, often involving large classes of affected employees. In 2022, 473 Illinois healthcare workers received $10 million to settle claims against NorthShore University HealthSystem for being terminated after the workers refused to take the vaccine due to their religious beliefs.[778] In 2024, a San Francisco jury awarded six former Bay Area Rapid Transit employees more than $1 million each after finding they were terminated for refusing vaccination on religious grounds.[779] That same year, a federal jury awarded $12.69 million to a former Blue Cross Blue Shield of Michigan

[777] *Select Results, supra* note 764 (citing Exhibit 3.3.006).

[778] Michael Lee, *Health Care Workers Fired Over Vaccine Mandate Awarded $10 Million in Settlement*, FOX BUS. (Aug. 15, 2022), https://perma.cc/N3KC-JY39.

[779] Antonio Planas, *Transit Workers Who Lost Jobs When They Didn't Get COVID Vaccines Are Awarded $1M*, NBC NEWS (Oct. 25, 2024), https://perma.cc/5DYJ-PF48.

employee after concluding that her employer unlawfully denied her religious accommodation request and terminated her because of her religion.[780]

At the direction of Biden EEOC leadership, investigators and trial attorneys in the field faced roadblocks by management when investigating these charges. One trial attorney recalls a charge alleging a class of employees who were fired because they refused to get the COVID-19 vaccine due to their religious beliefs. After running into repeated management barriers, management transferred the charge from an investigator who wanted to find reasonable cause to another investigator who evidenced open hostility toward anyone who refused to get vaccinated.

These facts demonstrate that private employees had a better chance of adjudication and remedies under the law than the employees who worked for the very entity constitutionally required to enforce the law--the federal government.

iii. Violations of Federal Employees' Religious Accommodation Rights Across Agencies

Under the Biden Administration, many federal agencies repeatedly burdened employees' religious rights through the handling of their accommodation requests, including Christian objectors to the COVID-19 vaccine. While the following list is not exhaustive and should not be construed to imply that agencies not listed were free from issues, this summary helps illustrate recurring concerns reported to the Task Force regarding the Biden Administration's apparent disregard for religious objections to the COVID-19 vaccine.

a. Equal Employment Opportunity Commission

Evidence from the EEOC during the Biden Administration reflects that religious discriminatory outcomes were not accidental. As described earlier, the Biden Administration excluded the EEOC from its Safer Federal Workforce Task Force, which issued a standardized questionnaire for evaluating religious accommodation requests, the content of which ignored established Title VII precedent. Rather than using its authority to correct these deficiencies, EEOC was substantially silent during the critical implementation period. Only later, following internal advocacy by then-Commissioner Andrea Lucas, did the EEOC provide limited public guidance regarding its own accommodation processes and best practices for employers.[781]

The combined effect of aggressive mandates, biased evaluation tools, and the EEOC inaction coerced many federal employees into untenable choices: violate their religious beliefs to retain employment, or refuse vaccinations and risk discipline, termination, or loss of benefits. Some employees lost their jobs; others compromised their conscience under pressure. In either case, the

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[780] Laurel Kalser, *Jury Awards Catholic Woman Nearly $12.7M in Lawsuit Over COVID-19 Vaccine*, HR DIVE (Nov. 18, 2024), https://perma.cc/RW3D-MKEN.

[781] EEOC, *EEOC Issues Updated COVID-19 Technical Assistance*, (Oct. 25, 2021), https://perma.cc/3WMM-CGZ6; Chair Andrea Lucas noted during her video interview that "20% of our charge load peaks in that moment [were religious discrimination claims]. Normally, religious discrimination claims are maybe about a maximum of 4%, 1 to 2 to 4% of our caseload." Interview with Chair Andrea Lucas, EEOC, *see supra* note 234. "The [procedural] silence was intentional. . . very intentional inaction. And the tenor. . . is really indicative of the anti-Christian bias." *Id.*

Biden Administration's approach failed to safeguard religious accommodation rights as required by longstanding federal employment law.

b. Department of War

The Task Force reviewed extensive documentation of COVID-era religious accommodation practices within the DoW that extended far beyond individual complaints and instead appear to reflect systemic deficiencies in the application of the Religious Freedom Restoration Act.[782] Under RFRA, the government cannot substantially burden religious exercise, even if the burden results from a generally applicable rule, unless it furthers a compelling governmental interest and is the least restrictive means of accomplishing that goal.[783] RFRA further requires individualized assessments of accommodation requests, rather than generalized determinations applied to broad categories of complainants.[784] Consistent with these concerns, an internal DoW Inspector General report in June 2022 informed then-Secretary Austin of "potential noncompliance with standards for reviewing and documenting the denial of religious accommodation request[s] from Service members."[785]

Under DOW's vaccine policy, service members faced blanket denials instead of a good-faith accommodations process. One former Army Reserve JAG Officer told the Task Force that, while he would not call it an "order," "it was made very clear to us that we were to deny all of [the requests.]"[786] He recounted the clear pressure from his leadership to deny each without an individualized assessment: "You were going to read them, you were going to deny them, period. Full stop."[787]

Evidence gathered throughout the course of litigation substantiated this JAG Officer's experience. Litigation involving a group of Navy SEALs challenging the DoW's COVID-19 vaccine mandate revealed a near-uniform denial of religious accommodation requests submitted by Christian service members.[788] In August 2021, the Navy mandated COVID-19 vaccination with disciplinary consequences for refusal.[789] Navy Special Operations policy classified service members who

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[782] Some religious accommodation requests did proceed through a formal adjudicative process and reflect individualized consideration in *form*. However, courts later found that the accommodation process produced largely predetermined results and failed to satisfy RFRA's substantive requirements. *See U.S. Navy SEALs 1-26 v. Biden*, *infra* note 795.

[783] 42 U.S.C. § 2000bb-1.

[784] *Id.*

[785] Kelly Laco, *Pentagon in 'potential noncompliance' with law after denying vaccine religious accommodation requests: IG*, FOX NEWS (Sept. 13, 2022), https://perma.cc/HY2B-HXC2.

[786] Centorino Interview, *see supra* note 234.

[787] *Id.* "It was a blanket directive that you were not really to take individual circumstances into account." *Id.* "What is the point of having a JAG officer review and sign off on a denial or an acceptance if they're not actually given the freedom to read the request and judge?" *Id.*

[788] *See U.S. Navy SEALs 1-26 v. Biden*, 578 F.Supp.3d 822, 827 (N.D. Tex. 2022).

[789] *Id.*; Phil Mendes, former Navy SEAL, noted during his video interview that "If you submit [a] religious accommodation or sort of accommodation, the likelihood of you being put on a non-deployable status is pretty high. And for a Navy SEAL to be put on a non-deployable status that [sic] is a career death sentence." Interview with Phil

declined the vaccine as "permanently nondeployable,"[790] "based solely on personal or religious beliefs."[791] Following this policy, several service members who asserted religious objections to the vaccine filed a lawsuit against then-Secretary Austin and President Biden.[792] The service members alleged that the Navy implemented and enforced COVID-19 vaccination mandates in a manner that substantially burdened their sincerely held religious beliefs, in violation of RFRA and the First Amendment.[793] Some were opposed to "the use of aborted fetal cell lines in development of the vaccine" in addition to other religious objections.[794]

In a 2022 decision, the Fifth Circuit recognized more than 4,000 sailors requested religious accommodations from the vaccine mandate and that "The Navy [] denied them all."[795] The court further recognized that the Navy used the same boilerplate denial form in multiple cases.[796] The court reiterated the district court's findings that the Navy's COVID-19 religious accommodation process was mere "theater" and routinely "rubber-stamp[ed]" denials, reflecting that religious exemptions yielded effectively categorical denials absent individualized analysis.[797] The Fifth Circuit then affirmed the district court's ruling on a preliminary injunction, prohibiting the Navy from "making deployment, assignment and other operational decisions" based on the servicemembers' vaccination statuses.[798]

The Fifth Circuit also questioned the Navy's claim that unvaccinated service members posed an unacceptable operational risk from COVID-19, noting that there was no evidence that COVID-19 had in fact caused mission evacuations, even though SEAL missions routinely involve risks equal to or greater than COVID-19 itself.[799]

Mendes, former Navy SEAL, *see supra* note 234. He also noted threats coercing him to get the vaccine: "[The Navy] threatened me. . . if you don't get the vaccine. . . You're going to be kicked out. . . so they threatened me with losing my benefits." *Id.* "[The Navy wanted] recoupment of pay, for all of the training that I've gone through, they want all their money back. They weren't allowing me, to travel to my TBI clinic in Boston to go get, [a] medical evaluation for my TBI." *Id.* "We had found out that [the] whole structure was a sham. They were rubber stamping denials." *Id.*

[790] *U.S. Navy SEALs 1-26*, 578 F. Supp. 3d at 827.

[791] *Id.*

[792] *Id.*

[793] *See* Compl., *U.S. Navy SEALs 1–26 v. Biden*, No. 4:21-cv-01236-P (N.D. Tex. Nov. 9, 2021).

[794] *Id.* at 10.

[795] *U.S. Navy SEALs 1-26 v. Biden, 27* F.4th 336, 342 (5th Cir. 2022).

[796] *Id.* at 342, 344, 345.

[797] *Id.* at 344–45.

[798] *Id.* at 339. The Supreme Court later granted a partial stay of the preliminary injunction pending disposition of the appeal in the Fifth Circuit. *Austin v. United States Navy Seals* 142 S. Ct. 1301, 1302 (2022). On appeal, the Fifth Circuit dismissed on mootness due to the vaccine mandate being rescission, but the court reiterated findings that "the Navy's review process was 'theater' with each request ending in a 'rubber stamp[ed]' denial of a religious exemption." *U.S. Navy Seals 1-26 v. Biden*, 72 F.4th 666, 670 (5th Cir. 2023).

[799] *Id.* at 351–52.

In July 2024, the Navy entered into a class-wide settlement agreement that expunged adverse records related to vaccine refusal, protected the careers of affected sailors, and corrected reenlistment codes for service members who were separated.[800] The Navy also agreed to revise its accommodation policy, and pay $1.5 million for attorneys' fees.[801] These remedial measures underscore the extent to which the original accommodation process failed to protect religious exercise within the naval chain of command.[802]

As part of its efforts on the Task Force, DoW assessed internal reviews of religion-based complaints and exemption requests. The U.S. Army identified 62 relevant entries without findings of discrimination due to religion; the U.S. Air Force identified 35 religion-basis complaints with mixed outcomes; and the U.S. Navy identified 37 religion-basis complaints, 34 of which referenced "Christian," with a range of outcomes.[803] During the mandatory vaccine period from August 24, 2021 until January 10, 2023, DoW did not require or collect data to categorize religious exemption requests by religion.[804]

c. Department of Health and Human Services

In its ongoing efforts as a Task Force member, HHS analyzed its EEO complaint data regarding religion-based allegations for FY 2020 through 2025. HHS noted that 32 of 173 employee narratives (approximately 19%) involved COVID-19 vaccine religious exemption or testing practices.

Across these EEO complaints, HHS employees alleged several recurring patterns involving religion-based discrimination and accommodation disputes.

1. Some employees reported that religious accommodation requests were either denied or granted with conditions they perceived as punitive, including complex, unclear instructions and delays that rendered the process difficult to use. One complainant described receiving "confusing and purposefully difficult to apply" accommodation information months after filing the request. She further alleged that her workload later increased in retaliation. Other employees alleged that, after requesting religious accommodation, supervisors reassigned

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[800] Jorge Gomez, *Victory for Our Navy SEALs & Thousands of Service Members*, FIRST LIBERTY INST. (July 26, 2024), https://perma.cc/43JG-SK3Z.

[801] *Id.*

[802] DOW Secretary Hegseth noted during his video interview that "Upwards of 20,000 service members . . . said, you know, I'd like a religious exemption." Interview with Sec'y Pete Hegseth, DOW, *see supra* note 234. "Less than three percent of those religious exemptions were ever given. And in many of those cases, they were so harassed and so pursued for that exemption that they were pushed out anyway. . . Even if an exemption was eventually given or was ignored in the process, and they were made to be at this Department, [a] sort of a pariah, an outlier, treated as a second class citizen." *Id.* "[The message was] stay in your barracks, wear your mask, sit in, stand over there. Sure, you can be here, but you can't be involved." *Id.*

[803] *Id.*

[804] The only religious data collected was identifying the request as either "Sincerely Held Religious" or "Sincerely Held Non-Religious."

them to more difficult or undesirable work, withheld performance metrics, or downgraded evaluations.

2. Several complainants alleged testing protocols that visibly identified employees with religious vaccine exemptions, raising concerns about stigma and confidentiality. For example, some employees described being required to line up at designated times for objectors or to undergo more frequent testing than vaccinated coworkers. Some described this as humiliating or stigmatizing. Another complainant alleged that a workplace vaccination list was publicly circulated, identifying him as unvaccinated due to a religious objection. He described the disclosure as intimidating and a potential violation of privacy. Relatedly, some employees alleged that enforcement was applied unevenly; for example, while both vaccinated and unvaccinated staff could be out of compliance with booster or masking rules, in some instances only those with religious exemptions faced enforcement or discipline, which they viewed as discriminatory.

3. Some complaints described verbal harassment and ostracism following religious or conscience-based objections. One clinician alleged that her coworkers mocked her faith, excluded her from activities, and suggested she should be denied care if she became ill.

d. Department of Labor

DOL assessed its COVID-19 actions for religious discrimination concerns, and noted that in 2021, DOL's OSHA promulgated an Emergency Temporary Standard requiring vaccination or weekly testing for employees of firms with 100 or more workers.[805] The Emergency Temporary Standard provided no religious exemption to either option, and the testing alternative imposed significant financial burdens given high testing costs and logistical burdens at the time of implementation.[806] These burdens predictably coerced compliance for employees with religious objections.

e. Department of State

The Department of State (DOS) reported religious discrimination in its COVID-19 policies under the Biden Administration. Pursuant to direction from the White House and guidance from DOS Office of the Director General, DOS developed and implemented policies to enforce the COVID-19 vaccine mandate.

DOS used the Safer Federal Workforce Taskforce religious accommodation exemption form, which was provided governmentwide. DOS reported that employees who requested religious exemptions were required to respond to lengthy and intrusive interrogatories—such as asking whether employees objecting to the COVID-19 vaccine had expressed opposition to other vaccines based on religious reasons—and to wait for approval from a specially convened review team (described below) before being permitted to abstain from the vaccination on religious grounds. Employees who were granted religious exemptions were subjected to additional requirements, including weekly nasal swab testing conducted in view of their supervisors, and constant

[805] COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 Fed. Reg. 61402 (Nov. 5, 2021).

[806] *Id.* at 61459–60.

mandatory masking, even after mask requirements had been lifted for other employees. Information regarding exemption requests and accommodation grants was shared beyond supervisors to DOS staff without a demonstrated need to know, resulting in the disclosure of private medical and religious information. The process was cumbersome, and for many, humiliating. Employees who declined to participate in the exemption process were referred for disciplinary action and threatened with penalties, including separation from service at DOS.

Outside submissions to the Task Force also document how DOS changed its religious accommodation policy (only for the COVID-19 vaccine mandate) pursuant to guidance from the Biden White House Office of Management and Budget (OMB). Prior to OMB's guidance, employees initiated religious accommodation requests from their first-line supervisor. The default response was approval and the supervisor only escalated adjudication if he or she intended to deny the request. Under the new guidance, however, all requests were routed through a centralized process in the Office of the Director General. The requests carried a perceived presumption of denial. Additionally, supervisors did not receive any information about their subordinates other than whether the individual was subject to enhanced COVID-19 mitigation protocols, which could include masking, physical distancing, travel restrictions, or future testing. Employees were told that they may file an EEO complaint regarding denials but would need to be fully vaccinated while the complaint remained pending.

Separately from addressing religious accommodation issues related to the COVID-19 vaccine, DOS conducted a broader evaluation of how it protected religious liberty during the Biden Administration. In particular, DOS evaluated concerns and allegations raised about anti-Christian bias regarding homeschooling, religious leave, and hostile work environments. DOS's findings are summarized below:

- DOS received multiple allegations of harassment and mistreatment of homeschool families. Allegations included accusations of child abuse; threats of referral for child welfare, neglect, or abuse investigations; initiation of internal affairs investigations; and, in some cases, external referrals to IRS or DOJ. Employees reported that these actions appeared retaliatory and were linked to their decision to homeschool on religious grounds. Homeschool families also reported being required to adhere to homeschool standards of the Washington, D.C. area rather than the laws of their state or their legal residence. DOS reviewed each allegation and reported to the Task Force that some were substantiated; some were attributable to a misunderstanding of homeschool financial reimbursements and procedures; and others were unsubstantiated.

- DOS also reviewed allegations concerning religious leave, which most frequently arose in connection with Easter Sunday and Good Friday. At certain overseas posts, employees are subject to mandatory Sunday work hours. When Christian holidays, including Easter, fall on a Sunday, employees at these posts were unable to observe the holiday without using their own leave.

- Finally, DOS received hostile work environment allegations affecting Christian employees. Some employees alleged that they were discriminated against for refusing to participate in DOS's Diversity, Equity, Inclusion, and Accessibility (DEIA) promotion precept on

religious grounds. During the 2024 Foreign Service promotion cycle, for instance, employees were assigned numerical scores tied, in part, to their demonstrated commitment to DEIA principles. Some employees alleged that their refusal to participate in DEIA-related activities, such as supporting Pride events or displaying symbols like the rainbow flags in their personal office space resulted in adverse employment actions like denials of promotion.

f. Department of Homeland Security

As part of its efforts for the Task Force, DHS noted that its Federal Protective Services reported no explicit anti-Christian bias in its policies or procedures. However, the COVID-19 vaccination mandate requirements under the Biden Administration created substantial burdens for employees seeking religious exemptions.[807] These Department-directed policies, in effect from September 9, 2021, until January 21, 2022, were generally hostile toward religious liberty.

In one documented case, an employee was informed that participation in mandatory training was contingent upon proof of vaccination, and that non-compliance could result in adverse employment action. Despite submitting a request for a religious exemption based on Christian beliefs, the employee was advised that approval was unlikely and experienced significant pressure to comply with the mandate. Before receiving the vaccine, the employee tested positive for COVID-19, which temporarily deferred the training requirement. Subsequent rescission of the federal vaccination mandate, following the Fifth Circuit Court of Appeals' injunction of Executive Order 14043,[808] allowed the employee to complete training without vaccination.

Moreover, Coast Guard personnel seeking religious exemptions from the COVID-19 vaccine mandate reported encountering significant procedural and institutional obstacles.[809] While official Coast Guard policy did not expressly target any faith group, the exemption review process was characterized by a lack of individualized assessment and a high rate of blanket denials. Congressional oversight revealed that more than 1,300 requests for religious accommodation were processed using automated systems, such as the "Religious Accommodations Appeal Generator," which facilitated rapid and uniform rejection of appeals without substantive review. Service members reported that their exemption requests were routinely dismissed, and appeals were handled in a perfunctory manner, undermining the principles of due process and religious liberty. The climate created by these policies resulted in disciplinary actions and threats of discharge for those who declined vaccination on religious grounds. Some members experienced reputational harm that could affect future advancement. Although the Coast Guard ultimately rescinded the

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[807] Exec. Order No. 14043, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*, 86 Fed. Reg. 50989 (Sept. 14, 2021).

[808] *Feds for Medical Freedom v. Biden*, 30 F.4th 503 (5th Cir. 2022).

[809] Mack Marcenelle, Coast Guard and former Marine Corps, noted during his video interview that "If you were unvaccinated, you had to wear a mask around, while everyone else was not. So, it was easy to identify those of us who were abstaining from the vaccine. We were restricted to travel within a 50-mile radius." Interview with Mack Marcenelle, *see supra* note 234. "Everyone else was allowed to travel freely." *Id.* "I could definitely tell that the military wasn't going to be offering [religious accommodation]." *Id.* "I knew that if I didn't comply with the Covid 19 vaccine mandate, that it would be an end to my service in the military. After eight years in the Marine Corps. And at the time, it was several years in the Coast Guard, I knew that it would all be over." *Id.*

mandate and ceased involuntary separations, concerns persist regarding the absence of safeguards against ongoing or future discrimination based on vaccination status.

g. Department of Justice

Like counterparts on the Task Force, DOJ assessed its EEO complaint data from the COVID-19 period regarding religious accommodations and discrimination complaints.

The DOJ, including its Justice Management Division and Equal Opportunity Employment Staff, maintains formal EEO policies and training that identify religion as a protected basis. These agencies specifically address religious discrimination and accommodations within DOJ. These policies and trainings include department-wide policy statements, mandatory NO FEAR Act training, component-level guidance, and training provided by EEOS.[810] Despite these formal guardrails, the volume and disposition of internal EEO complaints alleging anti-religious discrimination indicate that these protections did not function effectively in practice during the COVID-19 period.

From 2020 through 2024, DOJ employees filed a significant number of internal EEO complaints alleging religious discrimination each year, with consistently few affirmative findings. In 2020, 48 complaints were filed with no findings issued. In 2021, 38 complaints resulted in two findings. Complaints increased sharply in 2022, with 116 submissions during the height of COVID-19–related disputes, yet only one finding was issued. In 2023, 37 complaints produced no findings, and in 2024, 46 complaints resulted in just two findings. Across the five-year period, 285 complaints were submitted, while only five findings were issued. This year-by-year pattern suggests that while employees were able to file complaints, the EEO process rarely resulted in affirmative findings of discrimination. Based on data reviewed to date, it is still unclear whether the lack of findings reflects a lack of discriminatory conduct, a large number of unresolved complaints, or "rubber stamp" issues like those seen at other agencies.

h. Federal Bureau of Investigation

An FBI Inspection Division data study similarly identified a marked increase in religiously based complaints in 2022, attributing the rise primarily to COVID-19–related vaccination, testing, and workplace safety requirements, while reporting few substantive findings of discrimination despite the surge in submissions.

[810] Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), 107 Pub. L. No. 174, 116 Stat. 566 (2002).

IV. LIMITATIONS ON RELIGIOUS EXPRESSION

"Let us tenderly and kindly cherish, therefore the means of knowledge. Let us dare to read, think, speak and write . . . Let them all become attentive to the grounds and principles of government, ecclesiastical and civil . . . Let the pulpit resound with the doctrines and sentiments of religious liberty."

President John Adams[811]

As drafted, the First Amendment "doubly protects" religious speech, ensuring that the government cannot single out religious expression or religious viewpoints for special regulation or exclusion.[812] The Free Exercise and Free Speech Clauses of the First Amendment "work in tandem. Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities."[813] The longstanding protections were adopted through the Bill of Rights because of the "framers' distrust of government attempts to regulate religion and suppress dissent."[814] These concepts are simple and have been clearly explained time and again by the Supreme Court. Unfortunately, "in Anglo-American history, . . . government suppression of speech has so commonly been directed *precisely* at religious speech that a free-speech clause without religion would be Hamlet without the prince."[815] Under the Biden Administration, the government did precisely that: It attempted to regulate and suppress religious speech with which it disagreed.[816]

In this Section, the Task Force presents several case studies where the Biden Administration, through its agencies or individual decisionmakers, took actions that stakeholders characterized as punishing Christian speech, restricting Christians' access to conduct worship services and Bible studies, and conditioning continued federal funding on limits to religious expression, such as the use of sacred objects.

A. Punishing Religious Expression

On January 20, 2023, two groups of Christian students and parents visited Washington D.C. to participate in the 50th Annual National March for Life. Both groups were punished for wearing religious, pro-life attire at federal museums.

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[811] John Adams, VI. "A Dissertation on the Canon and the Feudal Law," No. 4 (Oct. 21, 1765), printed in Adams Papers: Digital Edition (last visited Feb. 8, 2026), https://perma.cc/9FCC-XZN8.

[812] *Kennedy*, 597 U.S. at 523 (2022).

[813] *Id.* at 524 (citing *Widmar v. Vincent*, 454 U.S. 263, 269 n.6 (1981); *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 841 (1995)).

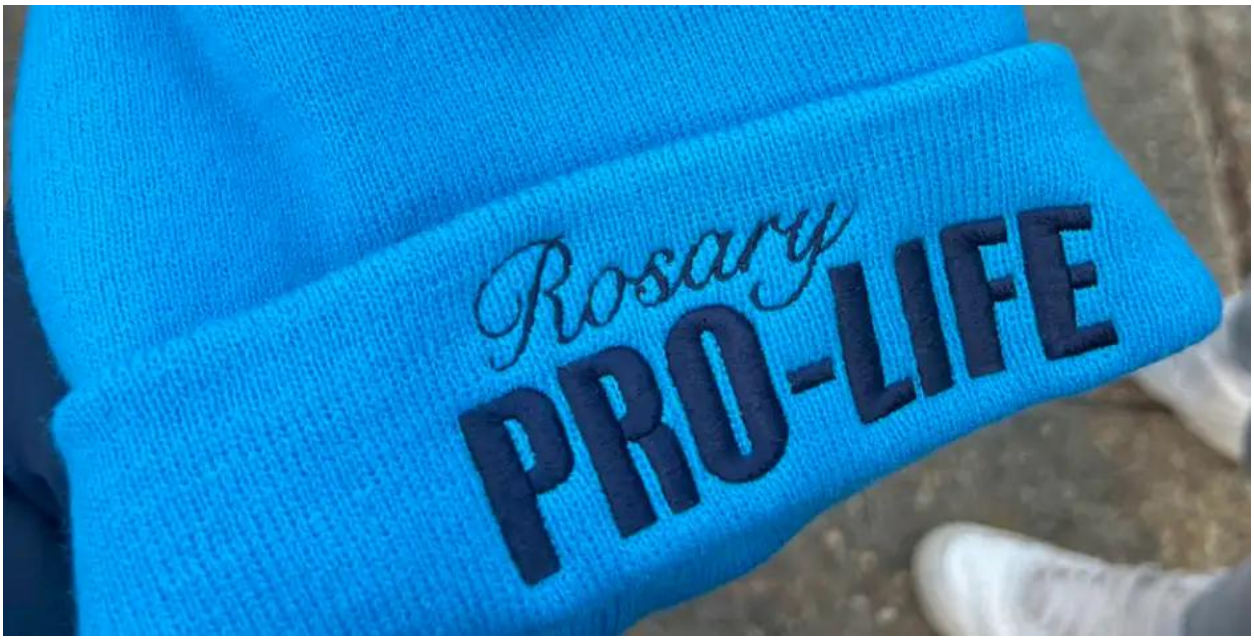
[814] *Id.* (citing A Memorial and Remonstrance Against Religious Assessments, in SELECTED WRITINGS OF JAMES MADISON, 21, 25 (R. Ketcham ed. 2006)).

[815] *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (emphasis in original).

[816] For discussion of Christian faith and religious expression in public schools, *see infra*, at 149–66.

i. Smithsonian Air and Space Museum

The first group consisted of Catholic students, parents, and chaperones from Our Lady of the Rosary Church and School in South Carolina.[817] They came to D.C. in January 2023 for the March for Life and wore matching blue hats with the phrase "Rosary Pro-Life" inscribed on them.



The group sincerely holds the "religious belief that unborn babies are created in the image of God, and should be protected," and that "they have a duty to speak and peacefully advocate on behalf of the unborn babies."[818] The Rosary is "[a] devotional prayer, mental and vocal, honoring the Blessed Mother of God."[819] In addition to showing a shared religious statement, the blue hats helped the chaperones visually identify the students in their group.

[817] *See* Complaint, *Kristi L. v. Nat'l Air & Space Museum*, 1:23-cv-335 (D.D.C. Feb. 2, 2023), dkt. no. 1.

[818] *Id.* ¶¶ 3–4.

[819] *Id.* ¶ 8 (quoting John Hardon, S.J., "Rosary," CATH. DICTIONARY (2013)).



They decided to visit the Smithsonian's National Air and Space Museum[820] after the march concluded, where security personnel required them to remove their hats in order to enter the museum. Once the group had gone through the required security process to enter, they put their hats back on. They did not engage in verbal or active protest activity inside the museum.

After only a few minutes in the Air and Space Museum, several security guards began to harass them because of their hats. Two guards allegedly used expletives to refer to the students, several of whom were minors, stating: "The f—king pro-life. What a bunch of s—t."[821] Another guard told the students that they needed to take off their hats or leave the museum. The students saw other people wearing hats and asked why they could wear hats while the students were being ordered to remove theirs. The security guard responded that the hats were "political statements" and were "not promoting equality."[822] Again, a student asked about other hats and masks they saw around them in the museum, including PRIDE masks and beanies. The guard stated that the museum was a "neutral zone" and that the First Amendment "does not apply here," telling them to remove their hats. Most of the students left the museum quickly. After realizing a few students were missing, a chaperone went back through security to look for them. The same security guards approached him and directed him to remove his hat, stating: "We are a museum that promotes equality, and your hats do not promote equality."[823]

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[820] The Air and Space Museum is one of many museums operated by the Smithsonian Institution, which was founded by an act of Congress on August 10, 1846 (9 Stat. 102). The Smithsonian Institution was created as a federal establishment but operates under the management of a Board of Regents, rather than as part of one of the three branches of government. *See General History*, Smithsonian Institution Archives (last visited Feb. 8, 2026), https://perma.cc/S79T-23F7.

[821] Complaint, *Kristi L. v. Nat'l Air & Space Museum*, *supra* note 832 ¶ 62.

[822] *Id.* ¶¶ 64–65.

[823] *Id.* ¶¶ 76–78.

The student group sued the Smithsonian National Air and Space Museum and eventually entered into a consent order stipulating to agreed facts. Among those, the Smithsonian stated its regret for the treatment of the student group and agreed to not prohibit museum visitors from wearing attire with messages, including religious or political speech.[824]

ii. National Archives

That same day, another Christian pro-life group visited the National Archives Museum after the March for Life.[825] They had also attended the march because of their sincerely held religious beliefs in the sanctity of life of unborn babies.[826] They wanted to see America's founding documents—the Declaration of Independence, the U.S. Constitution, and the Bill of Rights. The three of them wore various pro-life attire with messages like "Life is a HUMAN RIGHT," "I AM THE POST-ROE GENERATION: LAW STUDENTS FOR LIFE," and "MARCH 4 LIFE 2014."[827] Upon entering the main rotunda where those documents are located, the security officers required them to remove their pro-life attire or cover them entirely.[828] The officers said that the clothing was "offensive" or would "disturb the peace."[829] Nevertheless, the guards did not ask museum visitors wearing pro-choice apparel or "rainbow PRIDE t-shirts and pins" to remove their expressive attire.[830]

After these events, the Acting Archivist of the United States issued a public apology to the three museum visitors, and the National Archives and Records Administration voluntarily entered into a consent order ensuring that no future visitors would be prohibited from wearing religious or political speech.[831]

B. Denying Access to Federal Land for Religious Observances

In 2024, the National Park Service denied a Catholic organization, the Knights of Columbus, access to Poplar Grove National Cemetery for an annual Memorial Day mass. The Knights of Columbus is a Catholic fraternal service order with over 2 million members worldwide. Among other activities, the Knights host Memorial Day masses to honor and pray for soldiers and those who have fallen in service to our nation.[832]

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[824] Consent Order at 2, *Kristi L. v. Nat'l Air & Space Museum*, 1:23-cv-335 (D.D.C. Mar. 18, 2024), dkt. no. 38.

[825] *See* Complaint, *Tamara R. v. Nat'l Archives & Records Admin.*, 1:23-cv-365 (D.D.C. Feb. 8, 2023), dkt. no. 1.

[826] *Id.* ¶¶ 27–31.

[827] *Id.* ¶¶ 35–36, 43, 54, 61.

[828] *Id.* ¶¶ 40–42, 48, 52–56, 62–63.

[829] *Id.* ¶¶ 53, 62.

[830] *Id.* ¶¶ 49, 58.

[831] *See* Affidavit of Micah Cheatham 3, *Tamara R. v. Nat'l Archives & Records Admin.*, 1:23-cv-365 (D.D.C. Dec. 18, 2023), dkt. no. 23-2; Consent Order, *Tamara R. v. Nat'l Archives & Records Admin.*, 1:23-cv-365 (D.D.C. Dec. 19, 2023), dkt. no. 26.

[832] Letter from John Moran, Counsel for Knights of Columbus, Council 694, to Aaron Scott, Chief Park Ranger (May 13, 2024) (attached as Exhibit 3.4.001).

Knights of Columbus Council 694 has celebrated an annual Memorial Day mass in Poplar Grove National Cemetery since the 1960s. Because this cemetery is on National Park Service land, the Knights of Columbus have applied for and received permission to hold this service each year until 2023.[833]

For the first time, in 2023, the National Park Service denied the Knights a permit to hold the service in the cemetery, citing a new policy forbidding a "religious service" in the cemetery as a prohibited "demonstration." The Knights applied again in 2024, and again, the National Park Service denied it, this time telling them that *because the mass is religious*, the Knights must hold their service outside the cemetery walls in a designated free speech zone.[834]

When the Knights responded, pointing out that the National Park Service had granted a permit to another Knights Council to hold their annual Memorial Day mass at the Andersonville National Cemetery in Georgia, the National Park Service revoked that permission too.[835]

After the Knights filed a federal lawsuit and a motion for a temporary restraining order and preliminary injunction, the National Park Service relented and issued a permit allowing the Knights to hold their Memorial Day mass.[836] While this resolution ultimately permitted the Knights' religious exercise, the case study raises reasonable questions about the prior Administration's revised policy. For example, why did the Biden Administration reinterpret longstanding national cemetery regulations to categorize religious services as prohibited "demonstrations?"[837] Even if the Biden Administration sought to maintain a solemn and respectful environment in national cemeteries where individuals can quietly contemplate upon the significant contributions of those there interred, was the policy narrowly tailored to respect religious exercise?[838] Based on its application in this case, the Biden Administration's policy apparently excluded Christian gatherings precisely because they were religious, even if the visitors would simply gather and pray for the fallen.

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[833] *Id.* at 1–2.

[834] *Id.* at 2.

[835] Plaintiff's Brief in Support of Motion for a Temporary Restraining Order and Preliminary Injunction at 2, 8–9, *Knights of Columbus, Council 694 v. Nat'l Park Serv.*, No. 3:24-cv-363 (E.D. Va. May 21, 2024), dkt. no. 9.

[836] Daniel Payne, *Knights of Columbus Win Fight to Hold Memorial Day Mass at National Cemetery*, NAT'L CATH. REG. (May 23, 2024), https://perma.cc/5BSB-3D9X.

[837] U.S. Dep't of Interior, Nat'l Park Serv., Policy Memorandum 22-1: Managing Special Events and Demonstrations in National Cemeteries (Aug. 15, 2022), https://perma.cc/5AC9-J96B.

[838] The policy is also inconsistent with America's history and tradition of honoring our deceased veterans through public, religious gatherings. *See Am. Legion*, 588 U.S. at 38 (noting that removing Christian symbols from public land would constitute "a hostility toward religion that has no place in our Establishment Clause traditions.").

C. Prohibiting Student Bible Studies in the Job Corps

In 2022, a student and counselor in the DOL's Job Corps program were repeatedly denied permission to hold a voluntary Bible study outside of school hours. Job Corps is a program administered by DOL that provides career training and education for 16- through 24-year-olds at no cost to students.[839] It has 120-plus campuses nationwide where students earn the skills and gain the experience needed to begin a career or apprenticeship, advance to higher education, or join the military.[840] Although the Office of Job Corps Policy and Requirements Handbook clearly states that "Job Corps centers are required to allow students to engage in religious activities on center,"[841] the Job Corps site delayed, never giving the student and counselor an answer until they retained legal counsel and sent a demand letter to the site director.[842] The Job Corps site eventually granted permission to hold their Bible study on campus grounds after school hours.[843]

D. Threatening Access to Federal Funding Over Use of a Sanctuary Candle

Catholic churches and chapels maintain continuously lit candles in their sanctuaries to signal the presence of the Holy Eucharist in a tabernacle. A hospital accreditor conducting a survey noticed such a sanctuary candle was lit at a hospital chapel at Saint Francis Hospital South in Tulsa, Oklahoma, where the candle was kept under glass. The accreditor ordered Saint Francis Health System to snuff out the sanctuary candle, claiming that it posed a Life Safety Code risk. The Biden HHS Centers for Medicare & Medicaid Services (CMS) initially affirmed the citation and warned of consequences for CMS program participation. CMS noted that an open flame burning unsupervised 24/7 violated its patient safety policy and recommended that the hospital engage with the accreditor on a corrective action plan. In other words, the hospital was told to extinguish the flame or risk losing Medicare and Medicaid program participation (including Children's Health Insurance Program funding).[844] After intense public scrutiny prompted further review, CMS eventually issued a waiver allowing the candle to remain subject to mitigation steps (*e.g.*, signage regarding oxygen equipment and use of a barrier).[845]

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[839] Job Corps Basics (last visited Jan. 28, 2026), https://perma.cc/RM79-XVWM.

[840] *Id.*

[841] Job Corps, Office of Job Corps Policy and Requirements Handbook, Section 6.5, R.2 (2023), https://perma.cc/5PEV-7YQC.

[842] *See* Geoffrey Surtees, *Victory for Religious Practice at Job Corps Site – Student Bible Study Allowed*, AM. CTR. L. & JUSTICE (Aug. 2, 2022), https://perma.cc/QG7G-MHL7.

[843] *Id.*

[844] *See* Kevin Jones, *Update: Feds Back Off Demand That Catholic Hospital Extinguish Chapel Candle*, NAT'L CATH. REG. (May 5. 2023), https://perma.cc/CV55-AWQD.

[845] Alexis Kayser, *Catholic hospital could lose federal funding for burning sacred candle*, BECKER'S HOSP. REV. (May 3, 2023), https://perma.cc/7EAR-DRL8.

Chapter 4. Anti-Christian Bias in Broader Context.

"*I believe the entire Bill of Rights came into being because of the knowledge our forefathers had of the Bible and their belief in it: freedom of belief, of expression, of assembly, of petition, the dignity of the individual, the sanctity of the home, equal justice under law, and the reservation of powers to the people. I like to believe we are living today in the spirit of the Christian religion. I like also to believe that as long as we do so, no great harm can come to our country.*"

Chief Justice Earl Warren[846]

Chief Justice Warren believed that America's Bill of Rights embodied the "spirit of the Christian religion," but as America's religious values have changed, so have the character and enforcement of its laws.[847] Though this Report primarily focuses on the anti-Christian bias propagated by the federal government that flourished during the Biden Administration, Christians and other people of faith also face bias from state and local governments and in the private sector. With limited federal oversight from the Biden Administration—and sometimes with its support—state governments and private entities have implemented numerous policies that harm people of faith and the broader communities around them.

Through the course of the Task Force's listening sessions and invitation for feedback from a wide range of Americans, the responses repeatedly pointed to anti-Christian bias in this broader context. Respondents outlined countless examples where the First Amendment's promise of religious liberty has not been realized in their communities, schools, workplaces, and commerce. The Task Force's mandate to identify anti-Christian bias would be incomplete without briefly addressing these concerns. Unless the federal government learns of and acknowledges this ongoing environment of religious discrimination, it will continue to fail in protecting Americans' First Amendment and statutory rights.

In this Chapter, the Task Force summarizes illustrative examples of anti-Christian bias in broader context, beginning with anti-Christian policies enacted by state and local governments, before turning to religious discrimination at the hands of the private sector. The Chapter concludes by explaining how anti-Christian policies like these inflict harm far beyond the Christian population, but negatively impact patients, children, and professional development for religious and non-religious Americans alike. This Chapter is not intended as an exhaustive review, but rather as a brief survey of feedback received by the Task Force that illustrates the broader themes and issues at the state and local level and in the private sector.

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[846] Chief Justice Earl Warren, Address at the National Prayer Breakfast (Feb. 4, 1954).

[847] According to Pew Research Center, the number of Americans who identify as Christians has fallen significantly in the past two decades, from 78 percent in 2007 to approximately 62 percent in 2023. Meanwhile, the number of Americans who identify as atheists, agnostics or as "nothing in particular" rose to about 29 percent. *See* Gregory A. Smith, et al, *Decline of Christianity in the U.S. Has Slowed, May Have Leveled Off* (Feb. 26, 2025) https://perma.cc/49SQ-VPUZ. In 1954, the year of Warren's remarks, only about two percent of Americans identified as having "no religion." *See* Frank Newport, *In U.S., Increasing Number Have No Religious Identity*, Gallup (May 21, 2010), https://perma.cc/63LV-TRFG.

I. ANTI-CHRISTIAN BIAS AT THE STATE AND LOCAL LEVEL

A. Closing Churches: Attacks on Christian Congregations

The COVID-19 pandemic created the greatest disruption to Americans' daily life since World War II, as state and local governments made exceptional demands to slow the spread of the novel virus, shuttering schools and businesses, outlawing gatherings, and urging Americans to stay in their homes. While the form of the religious restrictions varied, the effect was the same: In many parts of the United States, churches were shut down entirely while businesses and secular gatherings continued without the same degree of heavy regulation. For example:

- New York implemented a "zone" system, which capped the number of individuals permitted to engage in particular activities by geographical zone. In the "red zone," New York capped religious services to 10 attendees, while "essential" services, which included acupuncture facilities, had no such limits.[848] "Orange zones" limited religious services to 25 people, but permitted all businesses to self-determine capacity.[849] The Supreme Court struck down the "zone" system because religious activities were treated less favorably than secular counterparts—indeed, the State "single[d] out houses of worship for especially harsh treatment."[850] The Court explained that New York's restrictive caps on religious services were all the more alarming considering that "[a]lmost all of the 26 Diocese churches immediately affected by the Executive Order can seat at least 500 people, about 14 can accommodate at least 700, and 2 can seat over 1,000."[851]

- Nevada restricted places of worship to 50 people, while casinos were permitted to hold 50% of their maximum occupancy.[852] Although the Supreme Court ultimately did not take this case, Justice Alito aptly dissented from denial of certiorari: "The Constitution guarantees the free exercise of religion. It says nothing about the freedom to play craps or blackjack, to feed tokens into a slot machine, or to engage in any other game of chance."[853]

- California restricted attendance at places of worship to the lesser of 25% capacity or 100 people, while imposing no such capacity limitations on, *e.g.*, "shopping malls, pet grooming shops, bookstores, florists, hair salons, and cannabis dispensaries."[854] Likewise,

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[848] *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17 (2020) (per curiam). The Supreme Court merged the application for relief in this case with a second case, *Agudath Israel of Am. v. Cuomo*, 980 F.3d 222 (2d Cir. 2020), which raised the same constitutional objection relating to synagogues. This is reflective of a broader theme throughout this report: disregard for religious liberty rarely has only one victim.

[849] *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. at 17.

[850] *Id.*

[851] *Id*. at 19.

[852] *Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603, 2603–04 (Mem) (2020) (Alito, J. dissenting from denial of cert.).

[853] *Id*.

[854] *S. Bay United Pentecostal Church v. Newsom*, 590 U.S. 965, 967 (2020) (Kavanaugh, J., dissenting from denial of application for injunctive relief); *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam) ("California treats some comparable secular activities more favorably than at-home religious exercise, permitting hair salons, retail stores,

California banned in-home religious gatherings where more than three families would participate, preventing even small in-home Bible studies.[855] Justice Gorsuch observed, "if Hollywood may host a studio audience or film a singing competition while not a single soul may enter California's churches, synagogues, and mosques, something has gone seriously awry."[856]

- Washington, D.C. prohibited religious gatherings of more than 100 people, indoors or out, even though the mayor personally encouraged "hundreds if not thousands of protestors tightly packed into Black Lives Matter Plaza" just a year earlier during the height of the pandemic.[857]

Other jurisdictions took bans on religious practice to another extreme: prohibiting religious congregations from participating in drive-in services to avoid any form of direct human contact. Mayor Greg Fischer of Louisville, Kentucky, prohibited church attendance, including drive-in services, despite allowing other drive-throughs to continue operating at restaurants and liquor stores.[858] A federal district court enjoined the order, remarking that "[o]n Holy Thursday, an American mayor criminalized the communal celebration of Easter."[859]

In Mississippi, although the State government made clear that religious facilities and gatherings were essential activities, Greensville Mayor Errick Simmons mandated that all church services cease, including drive-in services, and deemed churches "nonessential."[860] The city fined violators, even in one instance where all congregants remained in their vehicles with the windows rolled up to minimize risk of exposure.[861]

B. Punishing Good Samaritans: Attacks on Christian Charity

Across the country, anti-Christian bias has also reared its head through the implementation of municipal zoning laws. In recent years, some municipal governments have attempted to regulate Christian charities out of their communities in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), which prohibits municipal governments from implementing land use or zoning regulations that place unjustifiable burdens on religious

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personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at a time.").

[855] *See Tandon v. Newsom*, 992 F.3d 916, 933 (9th Cir. 2021) (Bumatay, J., dissenting in part and concurring in part) (summarizing restrictions on religious gatherings).

[856] *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (Mem) (Feb. 5, 2021), *on application for injunctive relief* (Gorsuch, J., statement).

[857] *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284, 289 (D.D.C. 2020).

[858] *On Fire Christian Center, Inc. v. Fischer*, 453 F. Supp. 3d 901, 907-08 (W.D. KY 2020).

[859] *Id*. at 905.

[860] Complaint ¶¶ 40–45, *Temple Baptist Church v. City of Greenville*, No. 4:20-cv-64 (N.D. Miss. April 10, 2020).

[861] *Id*. at ¶¶ 54–57.

exercise.[862] Despite this law, local governments and their zoning boards have weaponized their zoning laws to exclude Christian charitable activities from their cities because these Good Samaritans and their ministries serve and attract undesirable crowds. In each situation, the municipalities did not try to restrict the churches because of their Christian status; rather, they sought to restrict Christians' ability to *act* in accordance with their beliefs in their jurisdictions.

i. Shelter for the Homeless

The Rock (Colorado): A church in Castle Rock, Colorado, operates an on-site temporary shelter ministry in two trailers on a large plot of undeveloped land on its property.[863] The ministry provides temporary housing for individuals or small families experiencing homelessness and hard times.[864] The church offers medium-term access to housing, along with food, clothing, and material necessities, while tending to their spiritual needs and assisting them to find work and permanent housing. The Rock also operates a food bank and "clothing bank" for those in need, among numerous other charitable ministries.[865] For several years, the ministry operated under strict safety measures and without safety issues or concerns, but the Town of Castle Rock demanded that the church stop its ministry activity and turn aside the single-parent family living there.[866] The church sued and was quickly granted a preliminary injunction.[867] The Town ultimately settled, allowing the Rock to continue its ministry efforts.[868]

Dad's Place (Ohio): In Bryan, Ohio, the City has pursued a years'-long, multi-front legal fight against Pastor Chris Avell and Dad's Place, a small Christian church in its downtown.[869] Dad's Place seeks to show the love of God to the community by meeting the physical needs of members and guests, providing food and shelter.[870] The church began opening its doors 24-hours, 7-days a week to anyone wishing to use its facilities or sleep on pews, in part because the homeless shelter on the street was often full.[871] The church did so for months without incident, but at the start of winter 2023, the City sent a cease-and-desist letter, demanding that the church stop allowing people to stay overnight or face criminal prosecution.[872]

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[862] 42 U.S.C. § 2000cc(a)(1). For background on RLUIPA and Free Exercise rights, *see supra*, at 19–20. For more information about how the DOJ is proactively enforcing RLUIPA to protect houses of worship, see *infra*, at 173–75 (discussing DOJ's *Place to Worship* Initiative).

[863] *See Church of the Rock, Inc. v. Town of Castle Rock*, 787 F. Supp. 3d 1187, 1192 (D. Colo. 2024).

[864] *Id.*

[865] Complaint ¶¶ 86–93, *Church of the Rock, Inc. v. Town of Castle Rock*, 1:24-cv-1340 (D. Colo. May 13, 2024), dkt. no. 1.

[866] *Id.* ¶¶ 171–73, 190–91, 204–18.

[867] *Church of the Rock, Inc.*, 787 F. Supp. 3d at 1195–1200.

[868] *The Rock*, FIRST LIBERTY INST. https://perma.cc/KKN6-VSJY (last visited Jan. 29, 2026) (appending settlement agreement).

[869] *See Dad's Place*, FIRST LIBERTY INST. https://perma.cc/J5EJ-TEWC (last visited Jan. 30, 2026).

[870] Complaint, *Dad's Place v. City of Bryan*, 3:24-cv-122 (N.D. Ohio Jan. 22, 2024).

[871] *Id.* at 11–13.

[872] *Id.* at 14–15.

On a Sunday morning, the police showed up to the church and served criminal charges on Pastor Avell in front of his congregation as he prepared to conduct morning services.[873] Since then, the City has levied other civil and criminal assessments against the pastor and church, and related litigation in both state and federal courts proceeds apace. Ohio's Attorney General has even weighed in supporting the church's religious exercise.[874] In November 2025, the Sixth Appellate District Court of Appeals of Ohio in Williams County reversed an injunction that had stopped religious activities at Dad's Place, finding that the trial court must reconsider Dad's Place's Free Exercise claim using appropriate strict scrutiny review.[875]

ii. Food for the Hungry

St. Timothy's Episcopal Church (Oregon): In 2009, St. Timothy's Episcopal Church in Brookings, Oregon, began offering free lunches to people in need as part of its Christian faith.[876] Over the years, more and more people in need came to St. Timothy's for meals, and the church expanded its meal service from one day to at least three days per week.[877] When the COVID-19 pandemic arrived, St. Timothy's was the only church that continued to offer a meal service, and it served meals five to six times each week.[878] Around that time, neighbors complained, and the City began to look for legal measures to stop the church's activities. Brookings ultimately passed a new zoning ordinance limiting how often free meals could be served without first obtaining a permit.[879] In March 2024, a federal district court granted summary judgment for the church, finding that this targeted ordinance substantially burdened the church's religious exercise under RLUIPA.[880] The court applauded the church's "compassionate, caring and committed" charitable assistance to those in need.[881]

Gethsemani Baptist Church (Arizona): For twenty-five years, a small Hispanic church provided food, clothing, water, and household supplies to the needy in its community of San Luis, Arizona, located on the Southern border.[882] For most of those years, the City of San Luis celebrated this food pantry and the church's ministry, providing it financial support and inviting the church to participate in local events. The church predated the City's zoning code, and, as a result, was able to conduct its church services and food pantry in a residential area without issue. That warm

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[873] *Id.* at 18.

[874] Brief of Amicus Curiae Ohio Attorney General Dave Yost in Support of Defendants, *Pool v. Dad's Place*, 24CI100 (C.P. Williams Cnty. Dec. 5, 2024), https://perma.cc/N3P7-SN25.

[875] Decision and Judgment, *Pool v. Dad's Place*, 2025-Ohio-5262, No. WM-24-020 (Ct. App. Ohio—6th App. Dist. Nov. 21, 2025), https://perma.cc/498Y-DZDQ.

[876] *St. Timothy's Episcopal Church v. City of Brookings*, 726 F. Supp. 3d 1231, 1238 (D. Or. 2024).

[877] *Id.* at 1239.

[878] *Id.*

[879] *Id.* at 1240.

[880] *Id.* at 1242–47.

[881] *Id.* at 1248.

[882] *See* Statement of Interest of the United States of America, *Gethsemani Baptist Church v. City of San Luis*, 2:24-cv-00534 (D. Ariz. July 29, 2024), dkt. no. 39 (summarizing allegations).

relationship changed abruptly in 2022, when the City declared the church in violation of the zoning code—largely because of how many people the Church was feeding and helping. The City issued the pastor civil citations and fines, and it dramatically limited the food ministry's ability to serve the community for months while litigation pended. The case ultimately settled, allowing the church to continue its charitable mission.[883]

iii. Help for the Needy

Micah's Way (California): Micah's Way is a Christian ministry located in Santa Ana, California, which provides food and charitable services to homeless individuals, such as assistance to obtain photo identification so they can apply for government benefits, including housing assistance.[884] The City issued an administrative citation and held a community meeting about its enforcement efforts against the ministry, where the mayor made clear the ministry should move. Micah's Way attempted to work with the City to comply with all administrative processes and find compromises, but the City told Micah's Way that it could not provide food or beverages to "any other members of the public (whether rich or poor)."[885] After Micah's Way sued under RLUIPA and the Free Exercise Clause, a federal district court rejected the City's motion to dismiss,[886] and the City ultimately settled, allowing the ministry to continue.[887]

C. Controlling Families: Attacks on Parental Rights

This section reviews numerous examples of state and local governments using nondiscrimination laws to pressure Christians into affirming values that are contrary to their religious beliefs, such as non-traditional sexual practices and gender ideology. In some reported cases, these conflicts have been associated with adverse custody outcomes and reduced placement opportunities for Christian foster families.

i. Anti-Christian Bias in Custody Decisions

In some extreme instances, state authorities have removed children from their parents because of their religious beliefs about biological sex. For example, in November 2016, a Christian couple living in Hamilton, Ohio, brought their teenage daughter to a hospital for psychiatric treatment regarding her anxiety and depression.[888] The hospital diagnosed their daughter with gender dysphoria and attempted to treat her with testosterone therapy.[889] Because the parents objected to

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[883] Gethsemani Baptist Church, FIRST LIBERTY INST. https://perma.cc/GSB8-H4NQ (last visited Jan. 29, 2026).

[884] Statement of Interest in Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint, *Micah's Way v. City of Santa Ana*, 8:23-cv-183 (C.D. Cal. May 9, 2023) (summarizing allegations).

[885] *Id.* at 6.

[886] *Micah's Way v. City of Santa Ana*, 8:23-cv-183, 2023 WL 4680804, at *5–6 (C.D. Cal. June 8, 2023).

[887] "Keeping Micah's Way Open," Elder Law & Disability Rights Ctr. (Sept. 15, 2023), https://perma.cc/9ZB7-UHLM.

[888] Kevin Grasha, *Judge paves way for transgender teen to get hormone therapy at Cincinnati Children's Hospital*, CINCINNATI ENQUIRER (Feb. 16, 2018), https://perma.cc/J39L-PTHB.

[889] *In re: JNS*, No. F-17-334 X, (Hamilton Cty. Ct. Com. Pl. Div. Dom. Rel. Feb 16, 2018).

this treatment and refused to affirm their daughter's gender self-identification, the hospital refused to return the girl to her parents and contacted the Hamilton County Department of Jobs and Family Services.[890] Ultimately, the girl was placed in the custody of her maternal grandparents, who were willing to affirm her gender confusion and support the use of hormone therapy.[891]

ii. Anti-Christian Bias in State Foster Licensing Decisions

Several States have implemented policies that exclude Christians who hold traditional views on sexual orientation and identity from becoming foster parents. These states require foster parents to "affirm" a child's gender self-identification when incongruent with the child's sex. In some cases, these policies have resulted in the separation of foster families that have been in place for years.

a. Vermont

In 2022, the Vermont Department for Children and Families (VDCF), which is responsible for overseeing the State's foster care program, amended the licensing requirements for foster parents.[892] The new licensing requirements stated that prospective foster parents must be willing to respect and to affirm the sexual orientation and gender self-identification of each of their foster children.[893] Vermont has enforced these requirements vigorously against several Christian families.

Brian Wuoti, a pastor, and his wife, Katy, lost their license to foster children after responding to questions from the VDCF.[894] The Wuotis told the VDCF that they would love, accept, and support any child but would not encourage any lifestyle conflicting with their traditional Christian worldviews.[895] Katy Wuoti also explained that she and her husband would "encourage (not force)" a foster child to accept their sex.[896] Based on these responses, the Department revoked the Wuotis' foster license.[897] The Wuotis subsequently appealed to Vermont's Human Services Board, but the Board denied their appeal.[898] The Board noted in its decision that "it is undisputed [the Wuotis]

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[890] *Id*. at *1.

[891] *Id*. at *4. While the court deprived the girl's parents of the right to make determinations regarding the off-label use of prescription drugs to alter their daughter's body, it did express concern concerning two common themes in the gender treatment: (1) a doctor's testimony that 100% of patients seen by the hospital who present for gender dysphoria are "considered appropriate candidates for continued gender treatment" and (2) an attempt to use the "threat of suicide and the existence of suicidal ideation… [to] hold this Court hostage." *Id.* at *2-3.

[892] *Wuoti v. Winters*, No. 2:24-cv-614, 2025 WL 569909, at * 2 (D. Vt. 2025).

[893] *Id.*

[894] *Id*. at *3.

[895] *Id*.

[896] *Id*.

[897] *Id*.

[898] *Id.* at *4.

are warm, loving, kind, and respectful people who have a history of parenting foster children without any concerns."[899]

Michael Gantt, a pastor, and his wife, Rebecca, are parents to three adopted and four biological children.[900] In September 2023, the VDCF asked the Gantts to consider fostering the soon-to-be-born child of a drug-addicted mother.[901] The Department told the Gannts that it considered them to be "the most qualified" and the "unanimous choice" to foster the child.[902] Michael told the Department that he and Rebecca would love and support any child they fostered but that "affirming just takes things to another level I just cannot go to given my religious convictions."[903] When asked if he and Rebecca would take their foster child to a gay pride event, Michael responded no.[904] In February 2024, the Department revoked the Gantts' foster license.[905]

b. New Jersey

Michael and Jennifer Lasche are a Christian couple living in New Jersey who served as foster parents for over a decade.[906] In September 2017, the New Jersey Division of Child Placement and Permanency asked the Lasches to consider fostering two sisters.[907] Several months later, a homosexual couple in Illinois expressed interest in adopting the sisters, as well as their three younger siblings, who were also in the foster system.[908] These events prompted increased scrutiny of the Lasches' religious beliefs and their attitudes toward homosexuality.[909] By late 2018, the Division of Child Placement and Permanency had removed both foster children from the Lasches' home and suspended the Lasches' foster license without notice and explanation.[910]

c. Oregon

Oregon requires that prospective foster and adoptive parents must "[r]espect, accept and support the . . . sexual orientation, gender identity, [and] gender expression" of their children.[911] Jessica Bates, a devout Christian, widow, and mother of five, applied to the Oregon Department of Human

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[899] *Id.*

[900] *Id.*

[901] *Id.*

[902] *Id*.

[903] *Id.*

[904] *Id.*

[905] *Id*.

[906] *Lasche v. New Jersey*, No. 20-2325, 2022 WL 604025, at *1, (3d Cir. 2022).

[907] *Id*.

[908] *Id*.

[909] *Id*.

[910] *Id*.

[911] Or. Admin. R. § 413-200-0308(2)(k).

Services for certification to adopt two children under the age of nine.[912] The Department required her to undergo training in which she was instructed that she "must use a child's preferred pronouns, allow a child to dress and express themselves in accordance with their gender identity, and take the child to affirming events like Pride parades."[913] After completing the training, Ms. Bates informed the Department that she had concerns about affirming the sexual orientation and gender self-identification of young children:

> One of the things the training really emphasized is SOGI (sexual orientation gender identity) and that the host must respect, accept, and support children whose preferred pronouns & identity don't match their biological sex. I don't know how many children there are out there under the age of 9 who fall into this category (and to me it's kind of crazy that society is wanting to get kids thinking about this stuff at such young ages; I think we should let them keep their innocence), so this may not even be an issue, but I need to let you know I cannot support this behavior in a child. I have no problem loving them and accepting them as they are, but I would not encourage them in this behavior. I believe God gives us our gender/sex and it's not something we get to choose. Basically, my faith conflicts with this & I just felt that I needed to let you know.[914]

The Department denied Jessica's application based on this statement.[915] Jessica sued the Department, alleging that it had violated her rights to free speech and religious exercise under the First Amendment.[916] Although a district court initially denied Jessica's motion for a preliminary injunction, the Ninth Circuit Court of Appeals reversed, holding that Jessica was likely to succeed on the merits.[917] With respect to free speech, the court explained that Oregon's rule "quite clearly restricts and compels speech based on both content and viewpoint."[918] The rule "restricts certain speech by adoptive parents on the topic of sexual orientation and gender identity, while requiring speech that aligns with the state's perspective on these intensely debated issues in our society."[919] With respect to religious exercise, the court held that the rule was not generally applicable because it afforded "substantial discretion" to Department officials by allowing them to grant individualized exceptions.[920]

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[912] *Bates v. Pakseresht*, 146 F.4th 772, 779 (9th Cir. 2025).

[913] *Id.* at 780.

[914] *Id.* at 780–81.

[915] *Id.* at 781.

[916] *Id.* at 782.

[917] *Id.* at 782, 801.

[918] *Id.* at 785.

[919] *Id.*

[920] *Id.* at 795–96.

d. Massachusetts

Until recently, Massachusetts required potential foster parents to demonstrate that they will "support[] and respect[] a child's sexual orientation and gender identity."[921] The Massachusetts Department of Children and Families denied foster licenses to multiple Christian couples for failing to comply with this requirement, prompting lawsuits against the State for religious discrimination.[922] In September 2025, the Federal Administration for Children and Families, a division of HHS, sent a letter to the Massachusetts Department of Children and Families expressing its grave concerns about the requirement.[923] In response, Massachusetts recently began the process of updating its foster licensing standards to replace the phrase "sexual orientation and gender identity" with "individual identity and needs."[924]

D. Controlling Culture: Attacks on Christian Beliefs in Public Education

Evidence of anti-Christian bias is particularly troubling in the context of public education. In some States and localities, decisionmakers (from governors to school principals) are attempting to enforce their views of the prevailing cultural orthodoxy. School districts around the country are striving to ensure teachers and students affirm a progressive view of sexual orientation and gender identity, without offering any religious accommodations to students, families, or teachers. These localities have gone far beyond promoting fairness and equality—which are laudable, lawful, and constitutionally required. Rather, localities are codifying and inculcating how students, families, and teachers should think, speak, and act on these controversial issues.

To advance those ends, States and school boards have silenced dissent at school board meetings, attached conditions to public funds, changed curricula, regulated the use of preferred pronouns, allowed boys in girls' spaces, and, when those policy efforts have fallen short, school leaders have even attempted to enforce compliance through social pressure campaigns. At the same time, public schools in many States have tried to eliminate Christian influence or presence from the classroom, curriculum, and extracurriculars.

Unfortunately, in each area, States and localities found guidance and support from the Biden ED. These jurisdictions' efforts were often inextricably intertwined. Accordingly, the Task Force jointly addresses the anti-Christian bias inflicted by the federal government and state and local counterparts in this subsection.

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[921] 110 Mass. Code Regs. 7.104(1)(d).

[922] *See, e.g.*, Complaint, *Jones v. Mahaniah*, No. 2025-cv-12449, 2025 WL 2550558 (D. Mass. Sept. 3, 2025); *Burke v. Walsh*, No. 23-11798-MGM, 2024 WL 3548759 (D. Mass. June 5, 2024).

[923] Letter from Acting Assistant Secretary Andrew Gradison, Administration for Children and Families, to Starverne Miller, Commissioner, Massachusetts Department of Children and Families (Sept. 30, 2025), https://perma.cc/UV64-RW5K.

[924] *See* Press Release, *Following ADF lawsuit, Massachusetts removes gender ideology mandate from foster care licensing*, All. Defending Freedom (Dec. 17, 2025), https://perma.cc/MBH7-TBNH; *see also* Harvest Prude, *Massachusetts Reverses Gender-Identity Mandate for Foster Parents*, CHRISTIANITY TODAY (Dec. 18, 2025), https://perma.cc/AX6B-KGSG.

These policies failed to engender greater equality or respect on school campuses. Instead, by ostracizing Christians and anyone (religious or otherwise) skeptical of these preferred policies, States and schools have fueled resentment and distrust on both sides of these debates.

i. Silencing Prayer at School

Under federal law, the Secretary of Education is required to issue guidance to state educational agencies, local education agencies, and the public on prayer in public schools.[925] In 2020, during President Trump's first term, the Office of Legal Counsel in the Department of Justice (DOJ) and ED jointly approved updated *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools*.[926]

The Biden Administration issued revised Prayer Guidance in May 2023.[927] The new guidance purported to address a recent decision from the Supreme Court about school prayer: *Kennedy v. Bremerton School District*. In that case, the Court found that a public school district wrongfully punished high school football coach Joe Kennedy for quietly praying after a football game, finding that such actions were constitutionally protected under the Free Exercise and Free Speech Clauses of the First Amendment.[928] Importantly, the Court explained that Coach Kennedy's prayer could not be attributed to the school district, and thus, his act of prayer did not violate the Establishment Clause.[929]

But the new Biden Guidance did not even resemble the Court's holding in *Kennedy*. Rather, the revised Prayer Guidance removed language that would allow religious student groups "to meet during their lunch periods or other non-instructional time during the school day, as well as . . . before and after the school day."[930] The Biden Guidance also removed key language that allowed for religious student groups to select "only members of their religion to serve in leadership positions if these leadership positions are positions that affect the religious content of the speech at the group's meetings."[931]

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[925] 20 U.S.C. § 7904(a) (codifying Section 8524(a) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act).

[926] U.S. DEP'T OF EDUC., GUIDANCE ON CONSTITUTIONALLY PROTECTED PRAYER AND RELIGIOUS EXPRESSION IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS (2020), https://perma.cc/NPP8-K7AG.

[927] U.S. DEP'T OF EDUC., LETTER FROM SECRETARY CARDONA ON UPDATED GUIDANCE REGARDING CONSTITUTIONALLY PROTECTED PRAYER AND RELIGIOUS EXPRESSION IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS (May 15, 2023), https://perma.cc/4G3Y-5VTU.

[928] *Kennedy v. Bremerton Sch. Dist.* 597 U.S. 507, 544 (2022).

[929] *Id.* at 533–42.

[930] *Compare* U.S. DEP'T OF EDUC., GUIDANCE ON CONSTITUTIONALLY PROTECTED PRAYER AND RELIGIOUS EXPRESSION IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS (May 15, 2023), https://perma.cc/B5NU-DQJB, *with* U.S. DEP'T OF EDUC. GUIDANCE ON CONSTITUTIONALLY PROTECTED PRAYER AND RELIGIOUS EXPRESSION IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS (2020) https://perma.cc/NPP8-K7AG.

[931] *Id*.

Critically, the Biden Prayer Guidance largely ignored the Supreme Court's analysis of the Establishment test,[932] issuing an expanded interpretation of when speech could be attributable to the school—in effect, expanding the ability of state educational agencies, local education agencies, and public school administrators to regulate and limit prayer in schools. Specifically, the Biden Guidance reasoned that "where school officials determine or have control over the content of what is expressed, such speech is attributable to the school and may not include prayer or content promoting (or opposing) religion."[933] In comparison, the Trump 2020 Prayer Guidance sought to give flexibility to schools and students by allowing schools to disclaim private speech: "To avoid any mistaken perception that a school endorses student or other private speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's speech."[934] Under President Trump, ED issued new Prayer Guidance in February 2026.[935]

Under overly restrictive rules, Christian students have been punished for praying at school. For example, Hannah Allen, a middle-school student from Honeygrove, Texas, was punished by her school for organizing a prayer time with her classmates to pray for a fellow student.[936] The principal at Hannah's school prohibited her and her classmates from praying in view of other students.[937] The school has since corrected its policy.[938]

ii. Conditioning Public Funds

After the pandemic, an increasing number of families sought educational alternatives to public schools, including among Christian communities where parents wanted greater involvement in their children's academic and moral education.[939] For many Christians, educational choice became a key tool to provide their children with high quality educational options away from the ongoing culture war issues. And of course, Christian families have turned to private, sectarian education and homeschooling alternatives for many years for all sorts of faith-related reasons.

Several States, however, wanted greater influence over what children learn about sexual orientation and gender identity, even at private institutions. To that end, some States enacted new conditions on public funding for sectarian education. Take Maine, for example. Maine is the most rural of the 50 States, making its promise of free public education practically difficult to implement

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[932] *See supra*, at 20–24 (discussing the Supreme Court's move away from *Lemon*'s entanglement test, its abrogation in the *Kennedy* decision, and the Court's reiteration that the Establishment Clause should be understood in light of history and tradition).

[933] *Id.*

[934] U.S. DEP'T OF EDUC. GUIDANCE ON CONSTITUTIONALLY PROTECTED PRAYER AND RELIGIOUS EXPRESSION IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS (2020), https://perma.cc/NPP8-K7AG.

[935] For details on 2025 Prayer Guidance, *see infra*, at 188–89.

[936] Rapid Response 47 (@ RapidResponse47), X (Sept. 8, 2025, at 10:55 ET), https://perma.cc/QNW8-85TD.

[937] *Hannah Allen Case*, FIRST LIBERTY INST., https://perma.cc/XR7J-D6VA (last visited Jan. 20, 2025).

[938] *Id.*

[939] *See supra*, at 46 n.270 (compiling public reporting).

across school districts.[940] As a result, Maine operates a tuition assistance program for families in rural areas to use their tuition at a public school or approved private school of the parent's choice.[941] For several years, Maine would only approve the use of tuition funds at *non-sectarian* private schools, to prevent its state funds from being used for religious purposes.[942] The Supreme Court quickly struck down this tortured reading of the Establishment Clause in *Carson v. Makin*, making clear that once a State establishes a public program like this, it may not exclude faith-based applicants because of their religious status or religious use.[943] But that was only the beginning of the story in Maine.

While this case was still pending, Maine took action to soften its impact on state policy, passing amendments to "outmaneuver the Supreme Court."[944] In public explanations of its new laws, the Maine Attorney General lambasted the Christian viewpoints of the schools that wished to participate in the tuition program, and made clear that Maine would not pay to "promote discrimination, intolerance, and bigotry":

> "I am terribly disappointed and disheartened by [the *Carson*] decision," said AG Frey. "Public education should expose children to a variety of viewpoints, promote tolerance and understanding, and prepare children for life in a diverse society. *The education provided by the schools at issue here is inimical to a public education. They promote a single religion to the exclusion of all others, refuse to admit gay and transgender children, and openly discriminate in hiring teachers and staff. One school teaches children that the husband is to be the leader of the household.* While parents have the right to send their children to such schools, it is disturbing that the Supreme Court found that parents also have the right to force the public to pay for an education that is fundamentally at odds with values we hold dear. I intend to explore with Governor Mills' administration and members of the Legislature statutory amendments to address the Court's decision and *ensure that public money is not used to promote discrimination, intolerance, and bigotr*y."[945]

To exclude Christians with traditional beliefs from public programs, Maine implemented so-called "nondiscrimination" provisions into the Maine Human Rights Act.[946] The amendments prohibited discrimination on the basis of sexual orientation or gender identity, without any religious exemption.[947] However, religious institutions and schools who did not participate in the tuition

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[940] *See Carson v. Makin*, 596 U.S. 767, 773–74 (2022).

[941] *Id.* (summarizing Me. Rev. Stat. Ann., Tit. 20-A, § 5204(4) (Cum. Supp. 2021)).

[942] *Id.*

[943] *Id.* at 786–87.

[944] First Am. Complaint ¶ 14, *St. Dominic Academy v. Makin*, 2:23-cv-0246 (D. Me. Nov. 21, 2024), dkt. no. 62 (quoting essay by U.C. Davis School of Law Professor Aaron Tang, *There's a Way to Outmaneuver the Supreme Court, and Maine Has Found It*, N.Y. TIMES (June 23, 2022), https://perma.cc/C4ZT-URYF); *see also* Complaint, *Crosspoint Church v. Makin*, 1:23-cv-146 (D. Me. Mar. 27, 2023), dkt. no. 1, https://perma.cc/PF7Z-PFX9.

[945] Press Release, Maine Attorney General Aaron Frey, Statement of Maine Attorney General Aaron Frey on Supreme Court Decision in *Carson v. Makin* (June 21, 2022) https://perma.cc/C5WF-MNZR (emphasis added).

[946] Me. P.L. 2021, Ch. 366 § 19 (amending 5 M.R.S.A. § 4602(5)(C)).

[947] *Id*. at § 19.

program remained free to follow a Statement of Beliefs or Code of Conduct with Christian views, and to hire faculty and admit students accordingly.[948] The challenges to this law remain pending before the First Circuit Court of Appeals.[949]

While Maine's example is illustrative, it is hardly the only State to employ such tactics.[950]

- In 2022, following approval of a ballot initiative establishing statewide funding for preschool, the Colorado legislature enacted a new law requiring any participating schools and families to follow certain conditions, including nondiscrimination on the basis of gender identity.[951] In 2023, a federal district court judge enjoined Colorado from excluding a Christian preschool's participation in the funding program, finding that the nondiscrimination policies obstructed the school's ability to select employees who adhere to its religious teachings and to "internal policies related to gender distinctions rooted in religious beliefs."[952]

- In 2023, Minnesota Governor Tim Walz signed a law making clear that if private schools accepted certain public funds, they would not be allowed to follow or require a statement of faith in school admission policies, or consider gender identity, sexual orientation, or religious beliefs or affiliations in admissions.[953] A federal district court found that these provisions violated both colleges' and students' free exercise of religion.[954] The ban on faith statements violated the Free Exercise Clause of the First Amendment because it burdened religious exercise, lacked neutrality and general applicability, and was not narrowly tailored to reflect Minnesota's compelling state interest in ensuring nondiscrimination in postsecondary education offering admissions.[955]

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[948] *See St. Dominic Academy v. Makin*, 744 F. Supp. 3d 43, 53 (D. Me. 2024) (describing statutory scheme).

[949] Brian Dowling, *Religious Schools Ask 1st Circ. To Gut 'Poison Pill' Law*, LAW360 (Jan. 7, 2025), https://perma.cc/BHJ9-MUX3 (as of February 2025, the First Circuit has not issued its opinion).

[950] Vermont has a similar Town Tuition Program, which extends program funds to high school students to dual-enroll in up to two courses at approved colleges. Vermont's standards for "approved" colleges specifically exclude "Christian/parochial school." *A.H. v. French*, 985 F.3d 165, 170–73 (2d Cir. 2021).

Outside the educational context, a significant number of state laws and regulations across all 50 States deny religious organizations the ability to participate in otherwise available public programs *because* they are religious, even after the Supreme Court's clear rulings in *Trinity Lutheran*, *Espinoza*, and *Carson*. During the Task Force's listening sessions, external stakeholders identified a web resource that identifies such state regulations impacting charitable funding, social services, grants for juvenile facilities, special education services, preschool funding, and arts and cultural funding. As of late January 2026, the initiative has identified 364 state statutes and 104 regulations with these anti-religious provisions. *See Protecting Religious Organizations from Discrimination*, EPIC COALITION, TEACH COALITION, & NOTRE DAME RELIGIOUS LIBERTY CLINIC, https://perma.cc/AK4R-ZDG6.

[951] *See Darren Patterson Christian Academy v. Roy*, 765 F. Supp. 3d 1194, 1197–98 (D. Colo. 2025) (discussing Colo Rev. Stat § 26.5-4-205(2)(b)).

[952] *Darren Patterson Christian Academy v. Roy*, 699 F. Supp. 3d 1163, 1184–85 (D. Colo. 2023).

[953] *Loe v. Jett*, 796 F. Supp. 3d 541, 550 (D. Minn. 2025).

[954] *Loe v. Jett*, 796 F. Supp. 3d 541 (D. Minn. 2025).

[955] *Id*. at 571–72.

In service to their own normative views about some of the most controversial contemporaneous social issues, each of these States conditioned access to public funds upon Christians' willingness to surrender their beliefs.[956]

iii. Controlling Curriculum

The Biden Administration and state counterparts also exerted significant influence over the kinds of curricular materials schools provide to children, once again for the purpose of inculcating one view on controversial policy issues, without regard to sincerely held religious objections.

a. Christians and Other Religious Groups Objected to Books Promoting Gender Ideology or Same-Sex Marriage for Young Students

Public school districts, administrators, and teachers have incorporated "LGBTQ+-" books in their schools, including for elementary students. Although many religious groups, including Christians, as well as non-religious families object to providing these educational materials to young children, many school districts have worked to reduce or eliminate parents' opt-out abilities for these curricular materials. The following examples are illustrative.

Encinitas Union School District, California: This school district directs its teachers to select books for their curriculum that promote gender ideology.[957] Although the district has an opt-out policy, it includes equity curriculum outside of its health unit courses, thus making it impossible for religious families to opt out of LGBTQ instruction, including for kindergartners. In a buddy program for kindergartners and their fifth-grade buddies, the school district required buddies to read "My Shadow is Pink" aloud, watch a companion instructional video on the book, and then assist the kindergarten students to "pick a color that represents you" to color their own shadows on the pavement.[958] The book plot is devoted to a boy who enjoys princesses and fairies, and its publisher describes it as relating to "the subjects of gender identity, self acceptance [*sic*], equality and diversity."[959]

One fifth grader, Shea Encinas, was required to read "My Shadow is Pink" to a kindergarten buddy through this program. With the assistance of his parents, Shea sought the ability to opt out of future readings that contradicted his Christian faith.[960] This request was declined. Instead, Encinas and his family were subjected to continued harassment and a "Pink Out the Hate" day was organized in support of gender ideology in response.

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[956] *See Bates*, 146 F.4th at 791 (citing *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017)).

[957] Verified Complaint ¶¶ 63-64, *S.E. v. Grey*, 24-cv-1611 (S.D. Cal. Sept. 10, 2024), https://perma.cc/HMS7-AU2N.

[958] *Id.* ¶¶ 115–32. Some of the plaintiffs in this lawsuit, Shea Encinas and his mother Jennifer Encinas, recently testified about their experience before the Religious Liberty Commission on September 8, 2025. Video of their testimony is available at: https://perma.cc/D8KJ-CUYE.

[959] Larkin House, Product Description, *My Shadow is Pink* (2020), https://perma.cc/6BGQ-Q7YY.

[960] Shea Encinas and his mother Jennifer Encinas recently testified about their experience before the Religious Liberty Commission on September 8, 2025. Video of their testimony is available at: https://perma.cc/D8KJ-CUYE.

Seattle Public Schools (SPS), Washington: Likewise, although Washington State law permits parents to opt out their children out of sexual health education curricula, SPS has a policy that "[l]earning about identities or groups of people is different from sexual health education" and deems LGBTQ-related education as " ineligible for the opt-out provision.[961] SPS defines this mandatory category capaciously. For example, SPS's "K-5 Gender Book Kit Lessons" include mandatory LGBTQ storybooks for young children. The kindergarten lessons include a book about a teddy bear who tells his friend that, "[i]n my heart, I've always known that I'm a girl teddy, not a boy teddy," and that, upon completion of the lesson, students will "[u]nderstand that there are many ways to express gender."[962] The first grade curriculum relies upon a book titled "My Princess Boy" about a cross-dressing child. Second grade teaches "Jacob's New Dress."[963] By fifth grade, students read "Red: A Crayon's Story" about a crayon with "a bright red label, but he is, in fact, blue" and "It Feels Good to Be Yourself" about "4 children, each of whom has a different gender identity."[964]

Montgomery County Public Schools, Maryland: MCPS incorporated storybooks that promoted gender ideology and same-sex marriage into their curriculum. While the district initially informed parents of upcoming lessons and allowed opt-outs, the MCPS School Board decided that students and families "may not choose to opt out," citing the overwhelming number of requests that were disrupting the lessons.[965] The lesson plans, designed for children as young as five,[966] were "unmistakably normative," and included books like "Prince & Knight," describing the celebration of "two men's wedding day." MCPS also taught "Uncle Bobby's Wedding," a book implying "that two people can get married, regardless of whether they are of the same or the opposite sex, so long as they 'love each other.'"[967] Another book, "Born Ready," follows the story of Penelope, a young girl who decides that she is a boy, and the positive experience of her parents assisting her social transition.[968] The Board "requires teachers to instruct young children using storybooks that explicitly contradict their parents' religious views, and it encourages the teachers to correct the children and accuse them of being "hurtful" when they express a degree of religious confusion."[969]

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[961] Opt Out Requests for LGBTQ-Inclusive Instruction, SEATTLE PUB. SCHS., https://perma.cc/P4J6-VCL5 (last visited Feb. 6, 2025).

[962] *Introducing Teddy by Jessica Walton*, SEATTLE PUB. SCHS., https://perma.cc/H5H8-M3BM (last visited Feb. 6, 2026).

[963] *My Princess Boy by Cheryl Kilodavis*, SEATTLE PUB. SCHS., https://perma.cc/AMB9-ZZKV (last visited Feb. 6, 2026); *Jacob's New Dress by Sarah and Ian Hoffman*, SEATTLE PUB. SCHS., https://perma.cc/3YPN-T34T (last visited Feb. 6, 2026).

[964] *Red: A Crayon's Story by Michael Hall*, SEATTLE PUB. SCHS., https://perma.cc/L2J9-U5A4 (last visited Feb. 6, 2026); *It Feels Good to Be Yourself by Theresa Thorn*, SEATTLE PUB. SCHS., https://perma.cc/7SYM-FDW4 (last visited Feb. 6, 2026).

[965] *Mahmoud*, 606 U.S. at 538.

[966] *Id*. at 533. Prior to their removal from the curriculum, similar books were offered to pre-kindergarten students as well. *Id*. n. 6.

[967] *Id.* at 552.

[968] *Id.* at 553.

[969] *Id.* at 555.

b. The Biden Administration's "Book Ban Coordinator"

Across the country, some school districts moved to exclude books like these from their libraries and curriculum.[970] This is not a new phenomenon—libraries and schools have regulated and removed their inventories over the past 200 years, for example, updating science textbooks to reflect technological and scientific advances.[971] But from 2021 to 2023, complaints about particular books in public schools were often raised by conservative Christians, including concerned parents, state legislators, and Christian action groups, in response to concerns about sexually explicit content or discussions of sexual orientation and gender ideology.[972]

In response, in June 2023, the Biden Administration created a coordinator position in ED to train school districts and advise them that removing books "may violate federal civil laws if they create a hostile environment for students."[973] The new Education Coordinator had previously led "LGBTQ+ outreach efforts for the DNC and the Biden-Harris Campaign," and had previously led the Civil Rights Division's "work to advance LGBTQ+ rights" in the Obama Administration.[974] In May 2023, the Biden ED published a "first-of-its-kind resolution" with the Forsyth County School District (Georgia), stemming from parental requests to separate out and clearly label sexually explicit books and those discussing sexual orientation and gender identity.[975] These requests all arose from "personal/family preference, morals and beliefs."[976] Although the Biden ED acknowledged that the books were ultimately not removed and that "the District limited its book screening process to sexually explicit material," it nonetheless determined that communications regarding the books' possible screening and removal was sufficient to create a concern of a "hostile environment."[977]

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[970] *Examining Book Banning Trends in the US*, BOOK BAN TRENDS, https://perma.cc/7RAP-7EXW (last visited Jan. 31, 2026) (summarizing data that public and school libraries saw a 57% increase in "book banning attempts" during the 2021-22 and 2022-23 academic years).

[971] Marcelo S.O. Moncalves et al., *Book bans in political context: Evidence from US schools*, 3 PNAS NEXUS, No. 6, https://perma.cc/QCS6-ZATT.

[972] *See, e.g.*, Verified Article 78 Petition, *Moms for Liberty, Inc. of Wayne Cnty v. New York*, No. CV091486 (Sup. Ct, Wayne Cnty., 2024) (co-petitioner was a local pastor who had requested school remove five sexually explicit books); Jonathan Allen and Hannah Beier, *How Christian groups helped parents pull books from some Pennsylvania school libraries*, REUTERS (June 24, 2023), https://perma.cc/CV3K-7YL9 (Shannon Harris, a mother who sought to have inappropriate books removed from her children's school stated, "I am a Christian [] and what I believe is that what I should be doing is advocating for the good of everybody, because that's what God would want."); Letter from Rep. Matt Krause, Tex. House of Rep., Comm. on Gen. Investigating, to Tex. Educ. Agency (Oct. 25, 2021), https://perma.cc/FC3W-CRYV (inquiring about books or content on human sexuality, sexually transmitted diseases, sexually explicit materials, etc.); *see also Book Bans: Should Books Be Banned in Schools and Libraries?*, BRITANNICA https://perma.cc/CRQ3-XDJ6 (last visited Jan. 31, 2026).

[973] Bo Erickson, *Biden administration to appoint anti-book ban coordinator as part of new LGBTQ protections*, CBS NEWS (June 8, 2023), https://perma.cc/M49H-YKPU.

[974] *See Matt Nosanchuk*, PEN AMERICA (last visited Jan. 30, 2026), https://perma.cc/7HYR-VEEL.

[975] *See* Linda Jacobson, *Ed Dept. Hires Book Ban Czar to Monitor Escalating Challenges Over Content*, THE 74, https://perma.cc/X6WL-EZQF.

[976] Letter from Dep't of Ed., Off. of Civ. Rts., to Dr. Jeff Bearden, Superintendent, Forsyth County Schools, Re: OCR Complaint No. 04-22-1281, 4–5 (May 19, 2023), https://perma.cc/4D7J-Q4TD.

[977] *Id*. at 6–7.

At the start of the second Trump Administration, ED removed the book ban coordinator position, dismissed book banning complaints and investigations, and terminated the obligations imposed upon Forsyth County Schools by the Biden Administration.[978] In so doing, ED stated that "school districts, in consultation with parents and community stakeholders, have established commonsense processes by which to evaluate and remove age-inappropriate materials. Because this is a question of parental and community judgment, not civil rights, [the Office for Civil Rights] has no role in these matters."[979]

c. The Supreme Court's Admonitions in *Mahmoud v. Taylor*

These curricular issues reached the Supreme Court last year, when several families, including both devout Muslims and Christians, alleged that their school board's policy to expose children to books regarding sexual orientation and gender self-identification without offering a parental opt-out violated their free exercise rights.[980] The plaintiffs pointed to a policy promulgated by the Board of Education of Montgomery County, Maryland, which introduced "LGBTQ+-inclusive storybooks into the elementary school curriculum."[981] The books and lesson plans were "designed to 'disrupt' children's thinking about sexuality and gender."[982] The Board informed parents that participation for all children was mandatory, and that the Montgomery County Public Schools system would not provide parental notice of when books would be used.[983]

The Supreme Court recently addressed this case, finding that the books provided by Montgomery County Public Schools were "unmistakably normative" with the purpose of "present[ing] certain values and belief as things to be celebrated, and certain contrary values and beliefs as things to be rejected."[984] Denying an option to opt out of these lessons was "'hostile' to [students'] parents' religious beliefs," imposed on their free exercise of religion, and "pose[d] a very real threat of undermining the religious beliefs and practices that the parents wish to instill in their children."[985] Justice Thomas noted that the district's curriculum was developed to address "heteronormativity," "cisnormativity," and "power hierarchies that uphold the dominant culture"; "[t]he storybook curriculum is also different in kind from traditional sex education."[986]

Montgomery County complained that, because so many students would opt out, it would be difficult to administer an opt-out from storybooks promoting gender ideology or same-sex marriage. The Court found this reasoning to be insufficient, and explained:

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[978] Press Release, U.S. Dep't of Educ., U.S. Department of Education Ends Biden's Book Ban Hoax (Jan. 24, 2025), https://perma.cc/Q7EQ-JATU.

[979] *Id*.

[980] *Mahmoud*, 606 U.S. at 533–42.

[981] *Id.* at 529.

[982] *Id.* at 530.

[983] *Id.*

[984] *Id*. at 550.

[985] *Id*. at 553–54, 565 (internal citation omitted).

[986] *Id.* at 583 (Thomas, J., concurring).

> The Board is doubtless aware of the presence in Montgomery County of substantial religious communities whose members hold traditional views on marriage, sex, and gender. When it comes to instruction that would burden the religious exercise of parents, the Board cannot escape its obligations under the Free Exercise Clause by crafting a curriculum that is so burdensome that a substantial number of parents elect to opt out.[987]

The Court ordered that the plaintiffs should receive preliminary relief when the case returned to lower courts for final resolution. It further ordered that, "until all appellate review in this case is completed, the Board should be ordered to notify them in advance whenever one of the books in question or any other similar book is to be used in any way and to allow them to have their children excused from that instruction."[988]

d. School Districts' Ongoing Efforts to Circumvent *Mahmoud*

Despite this clear directive, many school districts are still seeking to outmaneuver the Supreme Court's ruling in *Mahmoud*, by continuing to promote ideological materials to young students that fundamentally conflict with Christian tenets, without parental opt-out policies. While the list below is far from exhaustive, the issues and tactics are illustrative of the ongoing anti-Christian bias in school districts as they seek to circumvent *Mahmoud*'s holding.

Montgomery County Public Schools, Maryland: Although it was the subject of the Supreme Court's ruling in *Mahmoud*, MCPS appears determined to make opt outs an illusory offer for religious families. The Task Force received significant feedback from families and attorneys about their observations in Montgomery County. Under the ruling, MCPS must offer opt-outs from materials taught in the "Family Life and Sexuality unit" of its curriculum. Based on feedback received during these stakeholder meetings, MCPS appears to have simply moved all the objectionable books to other parts of the school curriculum so that parents do not receive prior notice and cannot opt out.

These examples are indicative of the general feedback received by the Task Force. In each instance, schools appear to justify their actions by deeming objectionable materials as mandatory "inclusive" or "cultural" materials. As a result, it appears that the coercive effort to override Christian objections continues unabated in many districts even after *Mahmoud*.

Seattle Public Schools, Washington: SPS established its curricular offerings described above in 2024, but it refused to change course after *Mahmoud*. SPS maintains "state law does not provide for selective opt-outs from curriculum, and SPS continues to follow this direction."[989] As of

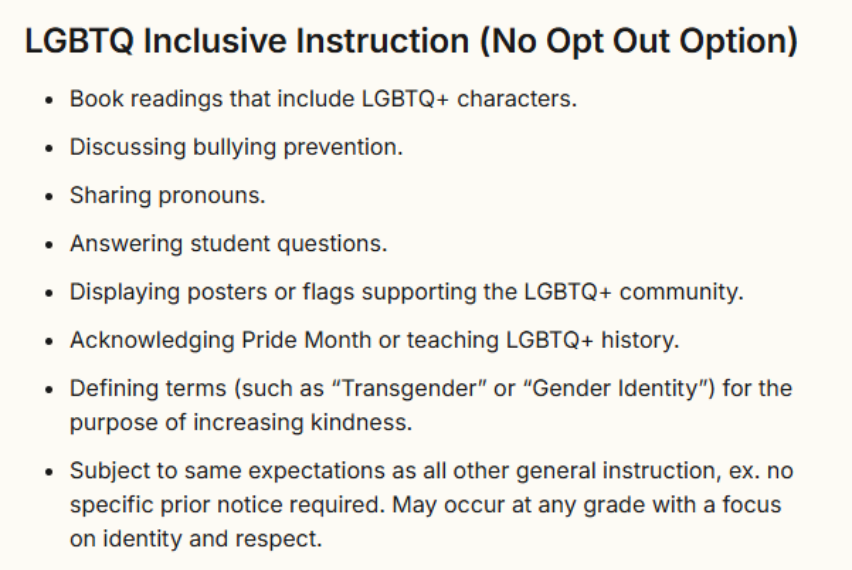
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[987] *Id*. at 567.

[988] *Id.* at 569.

[989] Jackie Kent, Seattle Public Schools LGBTQ+ curriculum and 'opt out' policy draws attention from parents, KOMO NEWS (Sep. 5, 2025), https://perma.cc/75PM-SJD5.

January 2026, SPS will not allow parents to opt out of the kinds of content directly addressed in *Mahmoud*:[990]



LGBTQ Inclusive Instruction (No Opt Out Option)

- Book readings that include LGBTQ+ characters.
- Discussing bullying prevention.
- Sharing pronouns.
- Answering student questions.
- Displaying posters or flags supporting the LGBTQ+ community.
- Acknowledging Pride Month or teaching LGBTQ+ history.
- Defining terms (such as "Transgender" or "Gender Identity") for the purpose of increasing kindness.
- Subject to same expectations as all other general instruction, ex. no specific prior notice required. May occur at any grade with a focus on identity and respect.

e. Broader Efforts to Limit Students' Access to Christian Materials

Simultaneously, several of the same States have implemented policies to ensure students cannot study Christian books or faith-based educational materials. Take California, for instance. California law authorizes tuition-free charter schools, operated under the jurisdiction of local school districts.[991] Some of these charter schools offer "independent study" programs, which allow families to homeschool their children and receive access to public funds to purchase curricula and educational materials of their choice.[992] School districts maintain a limited oversight role to ensure students and their educational materials satisfy minimum standards.[993] This structure enables families to make personalized choices for how and what to teach their children.

But California imposes one major limitation on educational options in these charter school programs: California parents may *not* use Christian educational materials to teach their children.[994] Two California families have alleged that, under this restriction, they were not able to purchase educational materials about religious figures in colonial America like Jonathan Edwards and

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[990] Opt Out Requests for LGBTQ-Inclusive Instruction, SEATTLE SCHOOLS https://perma.cc/3FK7-PWE9, (last visited Jan. 30, 2026).

[991] Cal. Educ. Code § 47612.5(b); *see also Today's Fresh Start, Inc. v. L.A. Cnty. Off. of Educ.*, 303 P.3d 1140, 1144 (Cal. 2013); Cal. Educ. Code § 47600 *et seq.*

[992] *See, e.g.*, Complaint ¶¶ 35-45, *Woolard v. Thurmond*, 2:23-cv-2305 (E.D. Cal. Oct. 11, 2023), dkt. no. 1 (summarizing the educational models at two California charter schools, including curricula budgets and approval process for lesson plans).

[993] *Id.*; Cal. Educ. Code § 51749.5(a)(4)(A); *id.* § 47605(d)(1); Cal. Code Regs. tit. 5, § 11701.5(a).

[994] *See* Complaint ¶¶ 5-7, *Woolard v. Thurmond*, 2:23-cv-2305 (E.D. Cal. Oct. 11, 2023), dkt. no. 1; *Woolard v. Thurmond*, 170 F.4th 701, 716 (9th. Cir. March 23, 2026) (en banc) (Van Dyke, J., dissenting from denial of rehearing en banc) ("No one disputes that California blatantly discriminated against religion in this case.").

William Penn.[995] The program also denied requests to use a curriculum on science, social studies, reading, handwriting, and phonics *because* the curriculum included themes such as, "God is Great, and God is good; God created me and all things; the Bible is God's Word, and it is true; and I learn in order to serve God and others."[996] The program denied access to an economics textbook that taught various economic views, including those from Marx and Engels, John Stuart Mills, and theories of Christian use of money from St. Thomas Aquinas and John Wesley; this was denied because the textbook "contains a Biblical worldview."[997]

These families are engaged in a years' long legal battle about whether California may exclude religiously based materials from programs expending public funds.[998]

iv. Controlling Speech

Although the Supreme Court has clearly explained that the constitutional right to free speech "includes both the right to speak freely and the right to refrain from speaking at all,"[999] both the Biden Administration and school boards attempted to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion" and to "force citizens to confess by word or act their faith therein."[1000] The Task Force's findings demonstrate that, for many Christian teachers around the country, this right to speak or refrain from speaking has not been upheld.

On the issue of speech in public classrooms, the Biden ED and local school districts were regularly aligned. Federal policy often guided, and at times outright supported, local school districts' decisions to terminate faculty for refusing to "affirm" the purported gender identity of students. This was particularly evident in cases where school boards relied upon ED's Title IX guidance to fire and punish Christian teachers who sought to speak in alignment with their faith. Their sobering stories are surveyed below.

a. Peter Vlaming: Virginia

Peter Vlaming is a Christian and teaches high-school-level French in Virginia. His school district implemented a pronoun policy that conflicted with his Christian beliefs. Vlaming sought to find a compromise so he could follow the commands of his faith while treating students respectfully under the policy.

Vlaming had a female student in his class who asked to use a male name and pronouns. To avoid directing unwanted attention to the student, Vlaming avoided using pronouns to refer to all students

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[995] *Id.* ¶ 50.

[996] *Id.* ¶ 52.

[997] *Id.* ¶ 58.

[998] The Ninth Circuit Court of Appeals recently declined to rehear the parents' allegations en banc. *Woolard*, 2025 WL 4662285, at *2 (en banc).

[999] *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

[1000] *West Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *see also Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 585 U.S. 878, 892 (2018) (quoting Justice Robert Jackson in *Barnette*, 319 U.S. at 642).

in the classroom.[1001] Despite these efforts to avoid offending or embarrassing the student, the school was dissatisfied.[1002] Vlaming's supervisors explained that he *must* use pronouns, specifically students' preferred pronouns.[1003]

After resuming the use of pronouns, Vlaming inadvertently referred to the student as "her." Vlaming apologized after class, but the student was unhappy and withdrew her enrollment. Vlaming referred the matter to the school's principal, who advised Vlaming that he should have stated, "I'm sorry, I meant to say *him*"—he should have "affirmed" the student's desired pronouns, rather than simply apologized for referring to her in accordance with her sex.[1004] The principal recommended Vlaming be placed on administrative leave.[1005] Ultimately, Vlaming was fired.[1006]

From the outset, ED's federal policies dictated this course of events. When Vlaming was first directed by his superiors to affirmatively use masculine pronouns to refer to the student in question, the school provided him with a transgender advocacy group's "Fact Sheet on U.S. Department of Education Policy Letter on Transgender Students."[1007] This fact sheet was based on a "Dear Colleague" letter prepared by the Obama ED and DOJ which included the following language:

> Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.[1008]

Although the first Trump Administration rescinded this letter, the school board continued to rely on it.[1009] The Virginia Supreme Court ruled in Vlaming's favor, finding that Vlaming had raised viable free exercise and compelled speech claims under the Virginia Constitution.[1010]

[1001] See *Vlaming v. West Point Sch. Bd.*, 895 S.E.2d 705 (Va. 2023) (The Virginia Supreme Court based its decision on facts as alleged in the complaint; accordingly, so does this report.). In addition to Vlaming's commitment to not using pronouns for any students in the class, he also invited all students to select a new French name for the course, despite their enrollment the prerequisite course during which time they had made this selection, for the purpose of avoiding the direction of unwanted attention towards to one subject student who had changed her name between courses.

[1002] *Id.* at 714–15

[1003] *Id.* at 714.

[1004] *Id.* at 714–15

[1005] *Id.* at 715.

[1006] *Id*. at 715.

[1007] *Id*. at 714, 745.

[1008] U.S. Dep't of Just. and U.S. Dep't of Educ., Dear Colleague Letter on Transgender Students (May 13, 2016), https://perma.cc/8XEH-DC3B.

[1009] *Vlaming*, 895 S.E.2d at 745–46.

[1010] *See id.* at 748.

b. John Kluge: Indiana

The case of John Kluge, an Indiana high-school orchestra teacher, demonstrates just how adamantly the Biden Administration forced Christian public school teachers to accept and promote gender ideology. Beginning in 2017, Kluge's school district implemented a policy requiring its staff to refer to students by name, including when their names were incongruent with their sex if students had submitted letters from a parent and healthcare professional in support of changing the student's name, as well as a student's desired pronouns.[1011]

Kluge informed the school board that, due to his Christian values, he could not abide by the policy and requested that he in turn be permitted to refer to all students, regardless of gender identity, by their surnames without titles (*e.g.*, Ms., Mr.).[1012] The school agreed to this request.[1013] However, after receiving several complaints, the school reversed course, ultimately threatening to terminate Kluge if he did not comply with the directive to refer to students by the first name of a student's choosing.[1014] Facing the threat of termination, Kluge resigned and initially lost a partial motion for summary judgement which he sought based on the school's failure to adhere to Title VII religious accommodation requirements.[1015]

The Biden DOJ filed an amicus brief supporting the school district on appeal.[1016] The Biden Administration argued that the school district would suffer undue hardship if it granted Kluge's religious accommodation request, because it would undermine the district's efforts to protect gender-nonconforming students from emotional or psychological harm that Kluge's religious actions might cause.[1017] DOJ's brief specifically argued that the students' emotional harms should be the end of the inquiry, disclaiming any "anti-Christian bias or opposition to the religious character of Kluge's beliefs."[1018] Thus, because the students were aggrieved by Kluge's conduct, the Biden DOJ encouraged the Seventh Circuit to find that the religious nature of his beliefs was essentially irrelevant.[1019]

[1011] *Kluge v. Brownsburg Cmty. Sch. Corp.*, 548 F. Supp. 3d 814, 820–22 (S.D. Ind. 2021). As with Vlaming, Kluge undertook additional efforts to avoid a focus on a particular student, including by no longer providing sex-specific orchestra uniforms for students.

[1012] *Id.*

[1013] *Id*. at 823. This was a particularly accommodating request; as the Sixth Circuit Court of Appeals noted in a comparable case involving a Christian teacher who had initially referred to only one specific student by his surname in light of his gender self-identification, ceasing to use pronouns entirely amounted to "a practical impossibility that would also alter the pedagogical environment in his classroom." *Meriweather v. Hartop*, 992 F.3d 492, 500 (6th Cir. 2021).

[1014] *Kluge*, 548 F. Supp. 3d at 829–30.

[1015] *Id.* at 839, 849.

[1016] Brief for the United States as Amici Curiae Supporting Defendant-Appellee and Urging Affirmance, *Kluge v. Brownsburg Cmty. Sch. Corp.*, 21-2475 (7th Cir. Nov. 8, 2021), available at: https://perma.cc/6YE8-HJ3S.

[1017] *Id.* at 14–19.

[1018] *Id.* at 23.

[1019] *Cf. id.*

Kluge's legal battle is ongoing, as the Seventh Circuit Court of Appeals recently held that too many fact issues remain unresolved, requiring remand to the district court for further proceedings regarding his religious accommodation requests.[1020]

c. Tanner Cross and Monica Gill: Virginia

Loudoun County, Virginia pushed for similar inclusive policies, regardless of the impact on Christians in the school district. In 2021, the school board considered and ultimately adopted Policy 8040, a "Rights of Transgender Students and Gender-Expansive Students" policy, that would require school employees to use preferred names and pronouns of students, among other rules.[1021] When two Christian teachers voiced their concerns, they were punished.

Tanner Cross is a Christian elementary school teacher in Loudoun County. During a public hearing on Policy 8040, Cross stated that he was "speaking out of love for those who suffer with gender dysphoria" and that he "will not affirm that a biological boy can be a girl and vice versa because it is against [his] religion. It's lying to a child. It's abuse to a child. And it's sinning against our God."[1022] Loudon County placed Cross on administrative leave because of his statements.[1023] The Virginia Supreme Court ruled in his favor, finding that Cross's suspension resulted from his opposition to "a policy that might burden his freedoms of expression and religion by requiring him to speak and interact with students in a way that affirms gender transition, a concept he rejects for secular and spiritual reasons."[1024] Cross was reinstated.

After Cross's reinstatement, another Loudoun County teacher, Monica Gill continued the lawsuit against the county because of the adverse impact Policy 8040 would have on her Christian faith.[1025] Gill has been teaching for over 30 years and professes a strong love for her students, stating that "the most important thing . . . for them to know [is] that there is someone in their life who loves them unconditionally."[1026] Gill emphasized that she "treat[s] all [her] students, including those who identify as the opposite sex, with dignity and respect."[1027] Consonant with her love for and commitment to her students, including those with whom she disagrees, Gill risked her employment in challenging Policy 8040 because she could not "imagine standing before my Father in Heaven and saying my pension plan was more important than your truth."[1028] In 2025, Loudoun County

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[1020] *Kluge v. Brownsburg Cmty. Sch. Corp.*, 150 F.4th 792, 795–96 (7th Cir. 2025).

[1021] *Loudoun Cnty. Sch. Bd. v. Cross*, No. 210584, *2 (Va. Sup. Ct. Aug. 30, 2021).

[1022] *Id.* at *3.

[1023] *Id.*

[1024] *Id*. at *10.

[1025] *Circuit Court Challenge to Transgender Student Policy Ends*, LOUDOUN NOW (Jul. 18, 2025), https://perma.cc/74HJ-9PZL; *see also* Interview with Monica Gill, *see supra* note 234.

[1026] Gill Transcript, *supra* note 234.

[1027] *ADF lawsuit prompts Loudoun County schools to end pronoun mandate*, ALL. DEFENDING FREEDOM (Jul. 18, 2025), https://perma.cc/2EYX-LW2Q.

[1028] Gill Transcript, *supra* note 234.

agreed to not compel Gill to use pronouns inconsistent with a student's sex and resolved the lawsuit.[1029]

In July 2025, the Trump ED's Office for Civil Rights (ED OCR) found Loudoun County Public Schools had violated Title IX through its policy. Following this finding, OCR offered the district an opportunity to voluntarily rescind the policy to comply with Title IX or risk enforcement action.[1030] The Loudoun County School Board rejected OCR's resolution agreement, intransigently maintaining Policy 8040.[1031] The Trump ED is exploring all options to protect students and the religious liberties of students, families, and teachers in public education.

d. Loudoun County Students

In the same school district, Policy 8040 also directly impacted students who voiced their concerns.[1032] At Stone Bridge High School, a female student took advantage of this policy, entered the boys' locker room, and recorded audio and video of the boys in that locker room.[1033] Several boys spoke out about this incident, including two Christian, male students whose religious beliefs require them to use biologically accurate pronouns and use sex-segregated facilities.[1034] Loudoun County determined that these Christian, male students' religious practices violated school policy, recasting constitutionally protected activity as "sex-based discrimination" and "sexual harassment."[1035] As punishment, Loudoun County suspended the boys for ten days and ordered them to submit to a "Comprehensive Student Support Plan" that further violates the boys' right to free exercise of religion at school.[1036]

e. Jessica Tapia: California

Across the country, the Jurupa Unified School District in California engaged in similar anti-Christian bias by firing Jessica Tapia, a Christian physical education teacher. Tapia voiced her religious beliefs regarding gender on social media, and in conversations with school personnel, she explained that the school district's gender identity policies would require her to violate her beliefs. In response, the district fired her.[1037] The case ultimately settled. Although there are factual

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[1029] Order, *Gill v. Loudoun County Sch. Bd.*, No CL21003254 (Loudoun Cty. Cir. Ct, July 16, 2025).

[1030] Press Release, U.S. Dep't of Educ., U.S. Department of Education Finds Five Northern Virginia School Districts in Violation of Title IX (July 25, 2025), https://perma.cc/X8NE-CBYV.

[1031] Erin Reed, *Loudoun County Public Schools Defies Trump, Votes Not to Ban Trans Kids from Bathrooms*, ERIN IN THE MORNING (Aug. 14, 2025), https://perma.cc/K7RE-D8JX.

[1032] Press Release, U.S. Dep't of Just. Off. of Pub. Affairs, Justice Department Sues Loudoun County for Violating Equal Protection of Christian Students (Dec. 8, 2025), https://perma.cc/UQ2P-5MUX.

[1033] U.S. Dep.'t of Just. Memorandum in Support of Motion to Intervene at 2, *Wolfe v. Loudoun Cty. Sch. Bd.*, No. l:25cv1536 (E.D. Va., Dec. 8, 2025), https://perma.cc/62TD-3ANH.

[1034] *Id.* at 2.

[1035] *Id.*

[1036] *Id.*at 2–3.

[1037] Grace Toohey, *SoCal district to pay $360k to teacher who was fired after refusing to follow transgender policies*, LA TIMES (May 15, 2024), https://perma.cc/G2LZ-XZRV.

disputes as to the ultimate grounds for Tapia's termination, Jurupa represented in court filings that Tapia's "religious beliefs [which] mandated her to only refer to students by their name and gender pronouns" "result[ed] in a direct violation of California's harassment and anti-discrimination laws."[1038] In the same filing, the district stated that Tapia had uploaded content to her private social media account that "expressed negative attitudes, feelings, or actions towards transgender people or transness in general" and that her "religious belief which mandated her to refuse to comply with the directive to refrain from discussing religious beliefs or the Bible with students" was "unlawful."[1039]

f. Student Graduation Speeches

As these examples show, school districts have too often dictated what students and teachers *must* say. But the inverse has also occurred. Schools have told students not to speak on matters of faith and Christian values. In 2021, Elizabeth Turner, a Michigan-based valedictorian included reference to her Christian faith in her proposed graduation speech but was told such references were "not appropriate for a speech in a school public setting."[1040] After attorneys sent a letter to the school on Turner's behalf, she was permitted to deliver her speech as written.[1041] In 2025, Justin Aguilar, a North Carolina-based valedictorian wanted to thank Jesus Christ in his graduation speech, specifically because he credited Jesus for helping him through health issues during school.[1042] The school district made modifications to the speech, on the supposed basis of "separation of church and state."[1043] Ultimately, after assistance from outside counsel, the student was able to deliver his speech, including his expression of gratitude to Jesus Christ.[1044]

v. Ignoring Overt Animus

In 2019, a high school teacher took issue with his school's local chapter of the Fellowship of Christian Athletes (FCA).[1045] FCA is an international student organization that merges students' interests in athletics and Christian ministry.[1046] The teacher was particularly offended by FCA's Statement of Faith and Sexual Purity Statement, which required the group's student leaders—but

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[1038] Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss 3, *Tapia v. Jurupa Unified Sch. Dist., et. al.*, 5:23-cv-00789 (C.D. Cal. Sept. 7, 2023).

[1039] *Id*. at 4.

[1040] Press Release, First Liberty, Breaking: Michigan School Censors Religious References in Student's High School Graduation Speech (May 26, 2021), https://perma.cc/28GN-BJBL.

[1041] *Victory: Michigan High School Student No Longer Censored*, FIRST LIBERTY, https://perma.cc/7HAZ-AH5U.

[1042] Aguilar detailed his story before the Religious Liberty Commission. *See* Dep't. of Justice, *Second Hearing of the Religious Liberty Commission, Part 1*, at 0:23:46, YOUTUBE (Sep. 8, 2025), https://perma.cc/8FKU-EYZ5.

[1043] *Id.*

[1044] *Valedictorian Delivers Faith-Filled Speech After Censorship Attempt*, LIBERTY COUNSEL (May 27, 2025), https://perma.cc/XAY4-VDNJ.

[1045] *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Ed.*, 82 F.4th 664, 673–74 (9th Cir. 2023) (en banc).

[1046] *See id*. at 671–73.

not general members—to be Christians and follow Christian teachings in their own lives.[1047] The teacher obtained copies of the Statement of Faith and felt that "he had to react right away" to avoid any delay being interpreted as "agreement, or even worse, apathy."[1048] While FCA members sat in his classroom, the teacher posted the group's Statement of Faith on the classroom whiteboard with a note: "I am deeply saddened that a club on Pioneer's campus asks its members to affirm these statements. How do you feel?"[1049]

The California-based school district revoked FCA's status as an official student club on multiple campuses because of the group's Christian beliefs on sex and marriage.[1050] But some teachers felt that action did not go far enough. Several teachers told student reporters that the club's beliefs were "unfortunate" and urged students to rally against the FCA group.[1051] That same year, the school granted official recognition to the Satanic Temple Club. The Satanic Temple Club's faculty advisor lambasted the Christians in FCA:

> Even with the Biden win, millions of people voted for the real devil. And, evangelicals, like FCA are charlatans and not in the least bit Christian based or they "conveniently" forget what tolerance means. Talk about twisting the truth ... and the sad thing is that they probably believe they are victims . . . Get your voice out there. Slander is unacceptable. They choose darkness over knowledge and they perpetuate ignorance.[1052]

Students responded in kind, protesting their FCA peers, disrupting their meetings, and "verbally abusing" the high-school members of FCA.[1053] Rather than address the relentless bullying, the school district attempted to impose a policy that would require FCA to include any and all students as members, regardless of their shared religious beliefs or values. Sitting en banc, the Ninth Circuit struck down the school district's approach.[1054]

Other instances of anti-Christian bullying on school campuses have been equally troubling. This report already introduced the story of Shea Encinas, the fifth grader who was required to read "My Shadow is Pink" to a kindergarten "buddy."[1055] When his parents requested an opt-out, Shea faced significant bullying, including a coordinated school- and parent-led effort to shame Shea and his brother.[1056] Shea's parents were bullied as well, including by relatives of school officials, who

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[1047] *Id.*

[1048] *Id.* at 673.

[1049] *Id.*

[1050] *Id.* at 671.

[1051] *Id.* at 675–76.

[1052] *Id.* at 676.

[1053] *Id.* at 677.

[1054] *Id.* at 694.

[1055] *See* discussion of Shea Encinas's story, *supra* note 957.

[1056] *See Second Hearing of the Religious Liberty Commission, Part 2*, at 8:22, YOUTUBE (Sep. 8, 2025), https://perma.cc/G6F3-RHQ8.

called the family "a disgrace" and told them to move out of the district or "move to a remote island."[1057] Due to the continued harassment, Shea and his brother eventually switched schools.[1058]

II. ANTI-CHRISTIAN BIAS IN THE PRIVATE SECTOR

The Task Force received numerous allegations of anti-Christian bias or religious discrimination at the hands of private actors. Although the federal government has a limited role in addressing such allegations, a few examples merit mention. For example, a private employer punished a Christian employee for not adequately supporting the Biden Administration's policy preferences in promoting gender ideology and same-sex marriage. In 2021, Alaska Airlines terminated two Christian flight attendants for questioning the company's support on a company networking platform for the Equality Act, alongside the statement "[t]o continue to make progress and ensure full equality for LGBTQ+ individuals and families, Congress should swiftly move to pass the Equality Act."[1059]

The Task Force also heard concerns about debanking of Christians based on their religious beliefs, although the banks pointed to other reasons for cutting off access to funds and closing accounts. The Trump Administration is evaluating such allegations and considering how best to protect values-based entities from arbitrary exclusion from commerce. Take, for instance, the following examples presented to the Task Force:

- In 2022, the National Committee for Religious Freedom (NCRF) opened an account with Chase Bank. NCRF is a 501(c)(4) founded by Sam Brownback, who formerly served as United States Senator, Kansas Governor, and Ambassador-at-Large for International Religious Freedom. Shortly after opening the account, Brownback attempted to make a deposit, only to be told that "corporate" had closed the account and that the closure was irrevocable.[1060] According to Brownback, Chase provided five distinct reasons for closing the account over the course of a year, which suggested to him that the actual reason Chase closed the account was due to its religious nature.[1061]

- In 2023, David Bahnsen, who oversees a financial trust company, proposed a resolution at a Chase shareholders meeting to protect against religious debanking.[1062] After its failed attempt to prevent consideration of the resolution via a request of the Securities and Exchange Commission, Chase's board of directors denied the allegations and encouraged

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[1057] *Id*.

[1058] *Id*.

[1059] *See Brown v. Alaska Airlines, Inc.*, 2024 WL 2325058, at *2 (W.D. Wash. 2024), argued, No. 24-3789 (9th Cir. Aug. 22, 2025).

[1060] Sam Brownback, *Big banks discriminate against Chirstian ministries, churches*, THE WASHINGTON TIMES (May 2, 2024), https://perma.cc/DC3E-L88V.

[1061] *Id*.

[1062] Jon Brown, *JPMorgan Chase urges 'no' vote on shareholder proposal to evaluate alleged religious discrimination at bank*, FOX BUSINESS (May 15, 2023), https://perma.cc/V53P-6X5N.

shareholders to reject the resolution.[1063] Bahnsen ultimately withdrew the resolution after Chase amended a number of concerning policies alleged to have resulted in debanking.[1064]

- In 2023, Indigenous Advanced Ministries (IAM), a Christian nonprofit devoted to assist Ugandan orphans, was abruptly debanked by Bank of America.[1065] Bank of America insisted that IAM's traditional Christian values did not factor into the decision. It claimed to be following policy of not providing a banking platform for entities involved in debt collection. However, IAM's ministry was a separate entity from its for-profit customer center involved in debt collection.[1066]

- In 2020, Bank of America debanked Timothy Two Project International, a Christian ministry, due to its "operating a business type we have chosen not to service."[1067]

- Family Council, a Christian organization that advocates for traditional family values, was abruptly debanked by a Chase-owned credit card processor in 2021.[1068]

Anti-Christian bias has also appeared in senior housing facilities that receive federal funds. In several States, residents have been prohibited from hosting Bible studies in common areas, in direct contravention of the federal Fair Housing Act.[1069] Despite this, many housing complexes have enacted such prohibitions for decades.[1070] In 2025, a Pennsylvania senior housing complex

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[1063] *Id*.

[1064] Ross Kerber, *Exclusive: Conservative investor pulls JPMorgan resolution, cites changes addressing 'politicized finance,'* REUTERS, (May 21, 2024), https://perma.cc/JQ4Z-P5YY.

[1065] Jamie Joseph*, Christian non-profit claims Bank of America 'debanked' them over religious discrimination*, N.Y. POST (Aug. 25, 2023), https://perma.cc/X8SV-3HR4.

[1066] *Id*.

[1067] Letter from State Attorneys General Letter to Brian T. Moynihan, 2 (Apr. 15, 2024), https://perma.cc/78RX-MVNH.

[1068] Jerry Cox*, Chase Bank Cancels National Committee for Religious Freedom's Account Just Like it Canceled Family Council's*, FAMILY COUNCIL (Oct. 19, 2022), https://perma.cc/YQ3H-BCTQ.

[1069] The Department of Justice has published at least two documents advising that such prohibitions violate the First Amendment, as well as the Fair Housing Act. *See* U.S. DEP'T OF JUST., PROTECTING RELIGIOUS FREEDOM OF ALL: FEDERAL LAWS AGAINST RELIGIOUS DISCRIMINATION, 4–5 (June 2025), https://perma.cc/2HM5-VKDG ("An apartment complex has a meeting room that is available for residents to reserve for card games, social activities, and similar events. A resident is told that she may not use the room to hold a Bible study with friends…. Th[is] example[] may be [a] violation[] of the Fair Housing Act.") and U.S. DEP'T OF JUST., KNOW YOUR RIGHTS: FEDERAL LAWS PROTECTING RELIGIOUS FREEDOM (Dec. 15, 2010), https://perma.cc/2HM5-VKDG ("[S]omeone could not, for example, be excluded from reserving a common room for a prayer meeting when the room may be reserved for various comparable secular activities.").

[1070] *See, e.g.*, Jason Spencer, *It's official: Bible study allowed in apartments*, GO UPSTATE, (May 25, 2006), https://perma.cc/2MZ8-CTYL, Letter from Adam Foslid to Secretary Ben Carson regarding Cambridge House (Mar. 6, 2018), https://perma.cc/5FN6-B667; Press Release, U.S. Dep't of Hous. and Urb. Dev., Secretary Investigates Alleged Religious Discrimination in Senior Housing Complexes (Oct. 9, 2020).

sent a letter to all tenants prohibiting Bible studies in the common area, along with display of any religious signs or decorations—including on the doors of their own individual units.[1071]

[1071] *Case Page: Pennsylvania Apartment Complex Discriminates Against Religious Tenants in the Name of Diversity and Inclusion*, INDEPENDENCE LAW CTR., https://perma.cc/USR3-SZM4.

Chapter 5. Current Efforts and Future Steps.

"*It is the policy of the United States, and the purpose of this order, to protect the religious freedoms of Americans and end the anti-Christian weaponization of government*."

President Donald J. Trump[1072]

The Task Force and its administrators have worked tirelessly since the issuance of Executive Order 14202 to meet President Trump's directive to protect religious liberty and identify areas where unlawful anti-Christian bias has pervaded the federal government. The Task Force's work will continue through 2027, under President Trump's direction. To meet its mandate, the Task Force has engaged in the following activities to eradicate anti-Christian bias and protect religious liberty for all Americans.

I. SOLICIT BROAD FEEDBACK

Executive Order 14202 directs the Task Force to "solicit information and ideas from a broad range of people and groups, including Americans affected by anti-Christian conduct; faith-based organizations; and state, local, and tribal governments." To that end, Task Force administrators at DOJ contacted over 120 entities, including impacted individuals and faith groups, advocacy groups, law firms, think tanks, law professors, and law school clinics. Staff at other Task Force member agencies conducted outreach and listening sessions to varying degrees.

Of those invitations, DOJ has met with each entity that expressed interest in sharing feedback, and it is in the process of scheduling upcoming meetings with the remainder. DOJ also accepted written submissions from others. To date, DOJ has conducted approximately 60 stakeholder meetings, during which administrators heard feedback on all the topics addressed in this report. DOJ received substantially more feedback than could be included in this written report, as well as many personal stories that have been summarized or anonymized to protect the identities of the impacted individuals. Because the Task Force's work continues through 2027, the Task Force will continue efforts to solicit relevant feedback and independently assess those allegations.

In addition, the Task Force has heard feedback from Americans in other settings. On April 22, 2025, the Task Force held a hearing where they received testimony from three victims of anti-Christian bias.[1073] Task Force administrators and the Domestic Policy Council also interviewed over 40 impacted individuals, legal experts, and advocates, along with Task Force members to share their experiences and observations for the video report.

[1072] Exec. Order 14202, *supra* note 1.

[1073] *See* Press Release: Attorney General Pamela Bondi Hosts First Task Force Meeting to Eradicate Anti-Christian Bias in the Federal Government, Dep't of Justice (Apr. 22, 2025), https://perma.cc/3AWN-NULS (last visited January 12, 2026).

II. REVIEW UNLAWFUL POLICIES, PRACTICES, OR CONDUCT

Executive Order 14202 next directs the Task Force to complete two related tasks: (i) "review the activities of all executive departments and agencies . . . and identify unlawful anti-Christian policies, practices, or conduct," and (ii) "identify deficiencies in existing laws, enforcement and regulatory practices" and recommend actions "to remedy failures to fully enforce the law against anti-Christian hostility, vandalism, and violence."[1074]

In addition to seeking external feedback about anti-Christian bias for independent assessment, the Task Force has conducted its own research and internal review. Some Task Force members have invited feedback from their employees to assess what further steps, if any, may be beneficial to address religious discrimination. Other Task Force members have also conducted listening sessions with outside stakeholders. Most Task Force members have reviewed internal policies and practices and are working to implement policy changes within their jurisdiction.

III. RECOMMEND AND IMPLEMENT REMEDIAL ACTIONS

Lastly, the Executive Order charges the Task Force with recommending solutions to better protect the religious liberty of all Americans, Christian or otherwise, by (i) recommending remedial actions to relevant agency heads, (ii) recommending additional executive or legislative action to the President, and (iii) "shar[ing] information and develop[ing] strategies to protect the religious liberties of Americans and advance the purpose and policy of th[e] order."[1075]

In addition to sharing its findings with the public through this report and the accompanying video report, the Task Force has worked diligently to identify and implement immediate remedial measures to address religious discrimination and better protect religious liberty for all Americans. Those efforts are summarized below, and the Task Force's next report in 2027 will provide additional policy recommendations to achieve the Executive Order's purpose.

A. Government-Wide Efforts

i. Representing Faith in the Federal Government

In coordination with the White House, several agencies are robustly operating a Center for Faith or have otherwise designated a Faith Liaison within the agency in compliance with Executive Order 14205.[1076] These centers build partnerships with the faith community to increase public awareness and access to government services and programs.[1077] They also assist their agencies and

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[1074] *See* Exec. Order 14202, *supra* note 1.

[1075] *Id.*

[1076] *See* Exec. Order 14205, *Establishment of the White House Faith Office*, 90 Fed. Reg. 9499 (Feb. 12, 2025). Links to these Centers for Faith are available here: Department of Agriculture; Department of Education; Department of Health and Human Services; Department of Homeland Security; Department of Housing and Urban Development; Department of Veterans Affairs; and Small Business Administration. The Departments of Commerce, the Interior, and State also have federal Centers for Faith, but do not have a website.

[1077] *Id.*

coordinate with the White House Faith Office to recommend changes to policies, programs, and practices that affect the ability of faith-based entities, community organizations, and houses of worship to serve families and communities.[1078] The faith centers and liaisons also assist in the efforts below.

- Showcasing innovations by faith-based entities, community organizations, and houses of worship that serve and strengthen individuals, families, and communities throughout the United States;

- Identifying and promoting grant opportunities for non-profit faith-based entities, community organizations, and houses of worship, especially those inexperienced with applying for public funding but that operate effective programs; and

- Identifying concerns raised by faith-based entities, community organizations, and houses of worship about any failures of the executive branch to enforce constitutional and federal statutory protections for religious liberty.[1079]

ii. America Prays Initiative

In preparation for the 250th Birthday of the United States, President Trump has invited one million Americans to dedicate one hour a week to pray for our country and our people.[1080] Additionally, President Trump invited Americans to pray for America on the National Mall to "rededicat[e] America as one nation under God."[1081]

iii. Protecting Religious Expression and Practices of Federal Workers

In July 2025, the Office of Personnel Management issued two government-wide guidance memoranda clarifying the religious liberty rights of federal employees. The Office explained that the "Federal workforce should be a welcoming place for Federal employees who practice a religious faith," and cautioned that, beyond simply violating the law, allowing religious discrimination "threatens to adversely impact recruitment and retention of highly-qualified employees of faith."[1082] As such, the memorandum offered "guidance to agencies on robustly protecting and enforcing each federal employee's right to engage in religious expression in the federal workplace consistent with the U.S. Constitution, Title VII, and other applicable sources of law."[1083] To that end, the memorandum offered guidance on the display and use of religious items,

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[1078] *Id.*

[1079] *Id.*

[1080] America Prays, THE WHITE HOUSE (2025), https://perma.cc/CZ82-XXEP.

[1081] Rededicate 250: National Jubilee of Prayer, Praise, and Thanksgiving, Freedom 250 (2026), https://perma.cc/P63K-QY3R.

[1082] U.S. Off. of Pers. Mgmt., Memorandum Regarding Protecting Religious Expression in the Federal Workplace (July 28, 2025), https://perma.cc/T253-VD82.

[1083] *Id.*

group expression, conversations between employees, speech directed at members of the public, and speech made in publicly-accessible areas.[1084]

The Office of Personnel Management also issued updated guidance to help federal agencies accommodate employees' religious beliefs and practices in light of the recent Supreme Court decision in *Groff v. DeJoy*.[1085] The memo encourages the use of telework, flexible schedules, and leave options to meet reasonable religious needs while maintaining efficient operations.[1086]

B. Agency-Specific Actions

Across the Task Force, federal agencies are taking steps to prevent future weaponization of government against religious groups and to better protect the religious liberties of all Americans of faith. These efforts are summarized below.

Department of Justice

Ending Weaponization of the FACE Act and Protecting Houses of Worship: On January 24, 2025, new DOJ leadership directed the Civil Rights Division to "immediately dismiss, with prejudice," multiple civil lawsuits against peaceful, pro-life protesters, including some of the same protesters whom the Civil Rights Division had criminally prosecuted under the Biden Administration.[1087] To address concerns about weaponization, "and to ensure that federal law enforcement and prosecutorial resources are devoted to the most serious violations of federal law, future abortion-related FACE Act prosecutions and civil actions will be permitted only in extraordinary circumstances, or in cases presenting significant aggravating factors, such as death, serious bodily harm, or serious property damage."[1088]

In February 2025, the Civil Rights Division filed a statement of interest supporting the plaintiff in *Pollak v. Codepink Women for Peace*.[1089] In this case, plaintiffs alleged that protestors terrorized Jewish congregants outside their synagogue, blocked access, trapped others inside, and even attacked some worshippers with bear spray.[1090] The Statement of Interest was the first time that DOJ applied the FACE Act to a place of worship despite frequently applying it to alleged

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[1084] *Id.*

[1085] U.S. Off. of Pers. Mgmt., Memorandum Regarding Reasonable Accommodations for Religious Purposes (July 16, 2025), https://perma.cc/9DDJ-P322 (discussing *Groff v. DeJoy*, 600 U.S. 447 (2023)).

[1086] *Id.*

[1087] Dep't of Justice, Memorandum for Kathleen Wolfe, Supervisory Official of the Civil Rights Division (Jan. 24, 2025), https://perma.cc/TU97-MGVG.

[1088] *Id.*

[1089] Dep't of Justice, Press Release, Justice Department Files Statement of Interest Supporting Access to Places of Worship (Mar. 3, 2025), https://perma.cc/25NK-3Y7D; Statement of Interest of the United States of America, *Pollak v. Codepink Women for Peace*, 2:24-cv-06253 (C.D. Cal. Feb. 28, 2025), dkt. no. 119, https://perma.cc/5J2C-Z4T8.

[1090] *Id.*

obstructions of abortion clinics. DOJ argued that the plain language of the FACE Act prohibits the kind of physical obstructions of places of religious worship alleged in this case.[1091]

Enforcing RLUIPA to Protect Houses of Worship: Since 2018, DOJ has operated its *Place to Worship* Initiative, which seeks to increase enforcement and public awareness of the land use provisions of RLUIPA.[1092] These provisions protect places of worship and other religious uses of property (including religious schools and religious social service providers) in the zoning and landmarking process from actions by local governments that:

- "Place unjustifiable burdens on religious exercise;
- Treat religious assemblies and institutions worse than nonreligious assemblies and institutions;
- Discriminate against religious assemblies or institutions based on religion or religious denomination; or
- Totally or unreasonably exclude religious assemblies and institutions from a particular municipality or county."[1093]

This DOJ initiative advocates for religious liberty for all faiths, including Christians, across administrations, and the Task Force found no evidence of bias in its efforts. For example, DOJ filed six statements of interest through this initiative during the Biden Administration, including in the case of a Christian pastor seeking to feed the hungry in his border community in Arizona[1094] and a Christian ministry seeking to provide services to the homeless in Santa Ana, California.[1095]

Since assuming office, the Trump DOJ has continued this effort, filing numerous RLUIPA actions and statements of interests just in the first year across faith groups.[1096] As is most relevant to this report, DOJ's RLUIPA efforts have included the following actions to ensure Christian congregations and ministries may operate without unjustifiable burdens or discrimination:

- *United States v. City of Troy*: On May 20, 2025, the DOJ filed a suit in Idaho alleging that the City of Troy, Idaho, violated RLUIPA when it denied a conditional use permit

[1091] Statement of Interest of the United States of America, *Pollak v. Codepink Women for Peace*, 2:24-cv-06253 (C.D. Cal. Feb. 28, 2025), https://perma.cc/B8GQ-6LAE.

[1092] Place to Worship Initiative, DEP'T OF JUSTICE (last visited Jan. 26, 2026), https://perma.cc/5JHB-66FH.

[1093] *Id.*

[1094] Dep't of Justice, Press Release, Justice Department Files Statement of Interest in Religious Land Use Case Involving Arizona Food Ministry that Serves the Hungry (July 30, 2024), https://perma.cc/S3MG-W4PA.

[1095] Statement of Int. in Opposition to Defendant's Motion. to Dismiss Plaintiff's Compl., *Micah's Way v. City of Santa Ana*, No. 8:23-cv-00183 (C.D. Cal. May 9, 2023), dkt. no. 25, https://perma.cc/D7ZU-USR8.

[1096] *See* Housing and Civil Enforcement Cases, Civil Rights Division, DEP'T OF JUSTICE (last visited Jan. 26, 2026), https://perma.cc/8D2E-F372.

application sought by Christ Church, a small evangelical church, while granting similar use permits to nonreligious institutions.[1097]

- *Grace New England v. Town of Weare, New Hampshire*: On April 29, 2025, DOJ filed a statement of interest addressing ripeness for federal court adjudication. In this lawsuit, the church alleges that the Town violated the RLUIPA when it required the pastor of a small church to take procedural steps to allow the church to meet in his home but did not require the same steps for non-religious gatherings.[1098]

- *Summit Church-Homestead Heights Baptist Church, Inc. v. Chatham County, N.C. Board of Commissioners*: On April 18, 2025, DOJ filed a statement of interest addressing the availability of injunctive relief in a lawsuit alleging that the local county violated RLUIPA by denying an application to rezone parcels of land to build a church.[1099]

- *Anchor Stone Christian Church v. City of Santa Ana*: On March 13, 2025, DOJ filed a statement of interest in a lawsuit alleging that the city violated RLUIPA by enacting and enforcing zoning provisions that treat religious uses less favorably than secular places of assembly.[1100] On April 17, 2025, the court issued an opinion ruling in favor of the plaintiff, granting a preliminary injunction on the church's substantial burden and equal terms claims, and adopting several of the arguments from the United States' statement of interest.[1101]

- *United States v. City of Brunswick*: On September 5, 2025, DOJ reached a settlement agreement with the City of Brunswick, Georgia, resolving a civil action in which the Department alleged that the City violated RLUIPA through its efforts to interfere with and permanently close The Well, a faith-based resource center affiliated with the United

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[1097] Dep't of Justice, Press Release, Justice Department Files Religious Liberty Lawsuit Against Troy, Idaho for Discriminating Against a Small Christian Church (May 20, 2025), https://perma.cc/Q6EY-D6KH; Compl., *United States v. City of Troy,* No. 3:25-cv-00262-REP (D. Idaho May 20, 2025), dkt. no. 1, available at: https://perma.cc/8YUT-5L68.

[1098] Dep't of Justice, Press Release, Justice Department Files Statement of Interest in Support of North Carolina Church in Land Use Case (Apr. 22, 2025), https://perma.cc/94E5-GVUV; Statement of Interest of the United States, *The Summit Church-Homestead Heights Baptist Church, Inc. v. Chatham Cnty, N.C. Bd. of Comm'rs*, 1:25-cv-00113 (Apr. 18, 2025), dkt. no. 23, available at: https://perma.cc/FAU2-C6MD.

[1099] Dep't of Justice, Press Release, Justice Department Files Statement of Interest in Support of North Carolina Church in Land Use Case (Apr. 22, 2025), https://perma.cc/8MEZ-VKPP; Statement of Interest of the United States, *The Summit Church-Homestead Heights Baptist Church, Inc. v. Chatham Cnty, N.C. Bd. of Comm'rs*, 1:25-cv-00113 (Apr. 18, 2025), dkt. no. 23, available at: https://perma.cc/N9L9-TN7T.

[1100] Dep't of Justice, Press Release, Justice Department Files Statement of Interest in California Religious Land Use Case Brought by Small Christian Church (Mar. 17, 2025), https://perma.cc/KJN2-J7P6; Statement of Interest in Support of Pl.'s Mtn. for Preliminary Injunction, *Anchor Stone Christian Church v. City of Santa Ana*, 8:25-cv-215 (C.D. Cal. Mar. 14, 2025), dkt. no. 56, available at: https://perma.cc/E98S-4UXD.

[1101] Order Granting Plaintiff's Motion for Preliminary Injunction, *Anchor Stone Christian Church v. City of Santa Ana*, 8:25-cv-215 (C.D. Cal. Mar. 14, 2025), dkt. no. 67, available at: https://perma.cc/MP6G-8J56.

Methodist Church for the homeless.[1102] The action was brought at the end of the Biden Administration.[1103]

- *Hope Rising Community Church v. Borough of Clarion*: On March 3, 2025, DOJ filed a statement of interest in a private lawsuit alleging that the Borough violated RLUIPA by enacting and enforcing zoning provisions that treat religious uses less favorably than similar secular assemblies.[1104] DOJ's statement of interest explains that the Church properly alleged an equal terms claim under the Act and that the Church, which cannot develop its proposed religious facility, suffered a concrete injury.[1105]

- *United States v. Sugar Grove Township*: On January 30, 2025, the United States announced an agreement with Sugar Grove Township, Pennsylvania, on the same day it filed suit. The United States alleged that the township and the Sugar Grove Area Sewage Authority (SUGASA) violated RLUIPA by enacting and enforcing multiple ordinances against Old Order Amish residents, including requiring the use of electrical devices for sewage management and banning privies on private residential property.[1106] The court entered a consent decree on March 18, 2025.[1107]

Addressing Anti-Christian Bias in the Workplace: On September 18, 2025, the Office of Legal Counsel issued an opinion addressing the interplay between religious liberty and Title VII in the federal workplace that affirmed important religious-liberty protections for federal employees.[1108] In the opinion, the Office of Legal Counsel explained that recent legal developments in Supreme Court precedent abrogated two aspects of the 1997 Guidelines issued by the Clinton White House.[1109]

[1102] Dep't of Justice, Press Release, Justice Department Sues City of Brunswick, Georgia, for Trying to Close Christian Resource Center for Homeless Individuals (Dec. 17, 2024), https://perma.cc/KX5U-GKEN (last visited Jan. 28, 2026).

[1103] *Id.*

[1104] Dep't of Justice, Press Release, Justice Department Files Statement of Interest in Religious Land Use Case in Clarion, Pennsylvania, Alleging Unequal Treatment of Religious Assembly Uses (Mar. 3, 2025), https://perma.cc/YH4C-9S6Z; Statement of Interest of the United States of America, *Hope Rising Community Church v. Borough of Clarion*, 2:24-cv-01504 (W.D. Pa. Mar. 3, 2025), https://perma.cc/SCN2-DLLC.

[1105] *Id.*

[1106] *See* Dep't of Justice, Press Release, Justice Department Resolves Lawsuit Against Pennsylvania Township and Sewage Authority Over Allegations They Substantially Burdened Amish Residents' Religious Exercise (Jan. 30, 2025), https://perma.cc/MU9A-GWQQ; Complaint, *United States v. Sugar Grove Township*, 1:25-cv-22 (W.D. Pa. Jan. 30, 2025), dkt. no. 1, available at: https://perma.cc/S97Y-KAEX.

[1107] Consent Order, *United States v. Sugar Grove Township*, 1:25-cv-22 (W.D. Pa. Jan. 30, 2025), https://perma.cc/4EFU-68CG.

[1108] *See generally Religious Liberty Protections for Federal Employees in Light of Recent Legal Developments*, 49 Op. O.L.C. 1 (Sept. 18, 2025) ("Religious Liberty Protections").

[1109] *Id.* at 4–7 (discussing *Guidelines on Religious Exercise and Religious Expression in the Federal Workplace*, 1997 WL 475412 (Aug. 14, 1997) ("1997 Guidelines")).

First, the Office of Legal Counsel noted that following the Supreme Court's decision in *Groff v. DeJoy*, 600 U.S. 447 (2023), federal agencies must provide religious accommodations to employees unless the accommodations are an "undue hardship" on the agency that is "substantial in the overall context" of its business.[1110] *Groff* rejected atextual interpretations of Title VII and held that the statutory term "undue hardship" means more than a "de minimis" burden.[1111] The 1997 Guidelines, by contrast, were based on pre-*Groff* precedent that did not require federal agencies to provide a religious accommodation if it had "more than a *de minimis* cost to the agency."[1112]

Second, the Office of Legal Counsel observed that the 1997 Guidelines' use of the "endorsement" test derived from *Lemon* had been abrogated by the Supreme Court's decision in *Kennedy*.[1113] The 1997 Guidelines required federal agencies to restrict personal religious expression where it "creates the appearance, to a reasonable observer, of an official endorsement of religion."[1114] This restriction on religious speech could "no longer be enforced in light of subsequent legal developments."[1115] Because the endorsement test is no longer good law,[1116] respecting religious liberty to the greatest extent practicable requires abandoning an unnecessarily restrictive limit on federal employees' liberty.[1117]

On January 20, 2025, the Office of Legal Counsel separately opined that federal agencies may continue to permit situational telework as a form of religious accommodation to federal workers, consistent with the President's Return to In-Person Work Memorandum.[1118]

Protecting Parental Rights: On February 5, 2025, Attorney General Pamela Bondi rescinded the October 4, 2021, Garland Memo that directed the FBI to investigate parents who raised concerns about their children's education at local school board meetings.[1119] Attorney General Bondi subsequently sent a memorandum to FBI Director Kash Patel and all 93 U.S. Attorneys entitled,

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[1110] *Id.* at 4 (citing *Groff*, 600 U.S. at 468).

[1111] *Groff*, 600 U.S. at 468.

[1112] 1997 Guidelines at *8 (emphasis added).

[1113] *See Religious Liberty Protections* at 5–6 (citations omitted). For extended discussion of *Lemon*'s abrogation, *see* Chapter 2.III.B, *supra* at 20–24.

[1114] 1997 Guidelines at *1–2; *see also Religious Liberty Protections* at *3–4, *9.

[1115] *Religious Liberty Protections* at 8.

[1116] *See Kennedy*, 597 U.S. at 534

[1117] *Religious Liberty Protections* at 6.

[1118] 90 Fed. Reg. 8251 (Jan. 20, 2025).

[1119] Memorandum For All Department Employees, *Restoring the Integrity and Credibility of the Department of Justice* (Feb. 5, 2025), https://perma.cc/SC5P-EJ56 (rescinding Memorandum to the Director, Federal Bureau of Investigation, Director, Executive Office for U.S. Attorneys, Assistant Attorney General, Criminal Division United States Attorneys, *Partnership Among Federal, State, Local Tribal, and Terrorist Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff* (Oct. 4, 2021), https://perma.cc/38UW-DA6E).

Upholding Constitutional Rights and Parental Authority in America's Education System.[1120] The memorandum was sent in response to the "disturbing trend[s] in which government officials and public education authorities have ignored, dismissed, or even retaliated against concerned parents" for daring to voice opposition to their children's curriculum.[1121] The memorandum instructs U.S. Attorneys to "work with federal, state, and local partners to identify and respond to credible threats against parents or violations of their lawful rights."[1122]

On December 8, 2025, DOJ filed a motion to intervene in *S.W. et al. v. Loudoun County School Board*.[1123] The suit alleges that Loudoun County applied Policy 8040, which requires students and faculty to accept and promote gender ideology, to two Christian, male students in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.[1124] Policy 8040 requires all students, regardless of their religious beliefs, to adopt the Loudoun County School Board's understanding of "gender identity"—including its practical application that affects all students' use of intimate spaces, such as bathrooms and changing facilities.[1125]

Continuing Efforts to Protect Against Religious Discrimination: In the coming months, the DOJ will continue to implement E.O. 14202 and protect religious liberties without fear or favor. DOJ will continue to develop recommendations on additional legislative and policy changes responsive to the Executive Order, after a process of identifying the deficiencies in existing laws and enforcement and regulatory practices that have contributed to anti-Christian discriminatory conduct by governments and private parties. DOJ will work with the relevant agency heads to recommend appropriate actions that agencies may take to remedy failures to fully enforce the law against anti-Christian discriminatory conduct. DOJ will continue to serve as the administrative entity that ensures that the various agencies that comprise the Task Force are tracking and following through on the deliverable elements of the Executive Order to meet the goals of E.O. 14202, *Eradicating Anti-Christian Bias*.

Department of State

At the time of the first report, the Department had received 133 reports, several including multiple allegations, totaling ~150 unique allegations. The Department continues to receive, vet, and process allegations of anti-Christian bias from the workforce. Since the first round of reporting, the Department has completed investigations, taken various responsive actions, and updated relevant policies. Some matters are ongoing. The Department's subsequent progress and findings

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[1120] Press Release, Dep't of Justice, Attorney General Bondi Issues Memo Upholding Constitutional Rights and Parental Authority in America's Education System (Sept. 9, 2025), https://perma.cc/9YTL-M69T.

[1121] *Id.*

[1122] Bondi Memorandum, *supra* note 1119.

[1123] Press Release, Justice Department Sues Loudoun County for Violating Equal Protection of Christian Students (Dec. 8, 2025), https://perma.cc/59TA-D443. This Report discusses Policy 8040 and its effects on families and educators in Loudoun County in earlier findings, *see supra* at 47, 86, 162–63.

[1124] *Id.*

[1125] U.S. Dep.'t of Just. Memorandum to Intervene, *Wolfe v. Loudoun Cty. Schl. Bd.*, No. l:25cv1536 (E.D. Va., Dec. 8, 2025), https://perma.cc/5DZ3-PZ4M.

for round two of the Task Force report follow. The below outlines the current status of each issue, to the extent that can be disclosed publicly. Pending matters are noted, and final updates will be included in the next/final round of reporting, scheduled for the two-year anniversary of the Task Force. The Department has taken additional specific steps to address anti-Christian bias and better protect religious liberty.

Addressing Bias in Foreign Policy and Humanitarian Relief: The Department is engaged with Christian communities around the world, highlighting human rights crises and taking action, as appropriate.

As part of efforts to restore stability to Southern Syria, the United States is providing humanitarian assistance to Suwayda, where Christian and other religious communities have faced violence, had their homes destroyed, and have lost their livelihoods. This assistance will support life-saving needs of approximately 60,000 people through targeted provision of food, water, and hygiene items, as well as the rehabilitation of houses and water systems for when people can safely return home.

The ongoing slaughter of thousands of Christians in Nigeria by radical Islamists and Fulani ethnic militias is both tragic and unacceptable.[1126] President Trump designated Nigeria as a Country of Particular Concern (CPC) under the International Religious Freedom Act (IRFA) in 2020. The Biden Administration did not continue to designate Nigeria. President Trump redesignated Nigeria on October 31, 2025.

Additionally, a new policy under Section 212(a)(3)(C) of the Immigration and Nationality Act will allow the State Department to restrict visa issuance to individuals who have directed, authorized, significantly supported, participated in, or carried out violations of religious freedom and, where appropriate, their immediate family members. It's very simple: A U.S. visa is a privilege, not a right. This policy will apply to Nigeria and government officials or individuals engaged in violations of religious freedom in any country.

There is no greater friend to religious freedom than the United States, and under President Trump, the U.S. will continue to lead with strength to protect religious liberty around the world.

Protecting Religious Liberty in the Workplace: The Department is committed to safeguarding the religious liberty rights of its employees, and has taken the following actions:

- *Religious Accommodations*: The Department is establishing an internal-facing religious liberties program, staffed by a subject-matter-expert who will, as part of his or her duties, manage allegations of inappropriate denial of religious accommodation requests in a timely manner, including requests for religious leave, and receive allegations of religious bias. This change should ensure employees are provided religious freedom, as guaranteed in the Constitution, and that religious accommodation requests are evaluated in accordance with the law.

[1126] *See also supra*, at 105–06 (discussing the Biden Administration's inadequate response to the ongoing persecution of Nigerian Christians in greater detail).

This program responds, in part, to the Biden State Department's handling of religious accommodation requests to the COVID-19 vaccine mandate and should ensure employees are never again subjected to the kind of discriminatory humiliation rituals established under the Biden Administration.

As always, employees are free to file a formal complaint of discrimination, if they believe they have been the victim of discrimination, including in the denial of religious accommodation.

- *Hostile Work Environment*: In response to allegations of a hostile work environment against Christians, the Department will review all internal affairs processes to ensure they are free from ideological bias. The results of this audit will be available upon the third iteration of the Task Force report.

  Similarly, in response to allegations that some employees were discriminated against because they objected to participating in Diversity, Equity, Inclusion, and Accessibility (DEIA) promotion practices on religious grounds, Secretary Rubio has initiated a comprehensive audit of promotion decisions and a recalculation of promotion rankings, excluding the DEIA score. These audit results were astonishing. Over 100 employees, who were otherwise exceptional performers, would have been promoted, but for the DEIA precept score. Hundreds more would have landed in a promotable category, which has meaningful consequences for future promotions cycles. The Secretary directed retroactive promotions and other remedial measures for everyone affected.

- *Homeschool Families*: Additionally, in response to the multiple allegations of harassment and mistreatment of homeschool families, the Department has taken steps to address and correct these issues. Namely, any current employee who has engaged in harassment or other misconduct will be referred for discipline (the Department cannot publicly comment further about personnel matters). Additionally, the Department is conducting a comprehensive review of all homeschool policies; any outdated, discriminatory, or vague policies will be rewritten, and updated policies will be communicated to the workforce. Senior officials from the Bureau of Administration are leading these efforts. The revised policies should be completed by the third iteration of the Task Force report. The Department's homeschool reimbursement policy excludes reimbursement for religious instruction. The Department will review the legal basis for this policy/statutory interpretation to determine whether more flexibility can be offered to avoid any infringement on religious freedom.

Department of Treasury

Joint Agreement on Applying the Johnson Amendment: As described in Chapter 3,[1127] on July 3, 2025, the IRS filed a joint consent decree in *National Religious Broadcasters v. Long*, in which it agreed to the following terms regarding the plaintiffs in the case:

> When a house of worship in good faith speaks to its congregation, through its customary channels of communication on matters of faith in connection with religious services, concerning electoral politics viewed through the lens of religious faith, it neither "participate[s]" nor "intervene[s]" in a "political campaign," within the ordinary meaning of those words. To "participate" in a political campaign is "to take part" in the political campaign, and to "intervene" in a political campaign is "to interfere with the outcome or course" of the political campaign. . . .
>
> Bona fide communications internal to a house of worship, between the house of worship and its congregation, in connection with religious services, do neither of those things, any more than does a family discussion concerning candidates.
>
> Thus, communications from a house of worship to its congregation in connection with religious services through its usual channels of communication on matters of faith do not run afoul of the Johnson Amendment as properly interpreted.[1128]

On March 31, 2026, the District Court for the Eastern District of Texas determined that it lacked jurisdiction to consider the suit and dismissed without prejudice. The parties have until June 1, 2026, to determine whether to appeal.

Ensuring No Anti-Christian Bias in Financial Institution Evaluations: To remedy incidents of bias, within the first 100-days of President Trump's administration, Treasury's Office of the Comptroller of Currency ("OCC") instructed examiners to discontinue the use of "reputational risk" to evaluate the financial institutions it oversees. This "reputational risk" was often misused to disguise anti-Christian bias in banking. Discontinuing this practice is a significant step to reducing discretion of regulators that could result in discrimination against faith-based groups.

In furtherance of these aims, Treasury's Office of the Comptroller of Currency has taken the following steps:

- March 20, 2025: The OCC announced that it is removing references to "reputation risk" from Comptroller's Handbook booklets and supervisory guidance and instructs examiners that they should no longer examine for reputation risk as a standalone concept.[1129]

[1127] *See supra*, at 55–58.

[1128] Joint Motion for Entry of Consent Judgment, *Nat'l Religious Broadcasters v. Long*, No. 6:24-cv-00311-JCB (E.D. Tex. Aug. 28, 2024), Dkt. No. 35, https://perma.cc/B2RN-R4DF.

[1129] Office of the Comptroller of the Currency, OCC Bulletin 2025-4 (Mar. 20, 2025), https://perma.cc/J8H4-JV4D.

- June 23, 2025: The FRB announced that reputational risk will no longer be a component of bank examination programs and that it is removing references to "reputation and reputational risk" from supervisory materials.[1130]

- September 8, 2025: The OCC issued a bulletin explaining that the OCC will treat evidence of politicized or unlawful debanking as a relevant factor when it reviews bank licensing applications and when it evaluates a bank's performance under the Community Reinvestment Act.[1131]

- October 7, 2025: The OCC and FDIC jointly issued a proposal that would codify the elimination of reputation risk from their supervisory programs by prohibiting examiners from (i) criticizing banks on the basis of reputation risk or (ii) directing or encouraging banks to close accounts on the basis of political, social, religious, or other views.[1132]

Ensuring Equal Footing in Federal Financial Assistance: On February 27, 2025, the Department of Treasury's Office of Civil Rights and Equal Employment Office issued a policy to ensure that "religious organizations are entitled to compete on equal footing for federal financial assistance used to support government programs."[1133]

Department of War

Fostering Faith in the Pentagon: Under Secretary of War Hegseth's leadership, the Pentagon has now held multiple worship services open to military and civilian personnel, which have featured sermons, singing hymns, and reading scripture. On December 17, 2025, Secretary Hegseth invited the Rev. Franklin Graham, president and CEO of Samaritan's Purse, a humanitarian aid charity, along with prominent Christian musical artists to the Pentagon for the Department's first Christmas Worship Service.[1134]

Strengthening the Role of Military Chaplains: On December 16, 2025, Secretary of War Hegseth issued a directive[1135] to strengthen the role of chaplains in the military by rescinding the

[1130] Board of Governors of the Federal Reserve System, Federal Reserve Board Announces that Reputational Risk will no Longer be a Component of Examination Programs in its Supervision of Banks (June 23, 2025), https://perma.cc/5796-FHFZ.

[1131] Office of the Comptroller of the Currency, OCC Bulletin 2025-22 (Sept. 8, 2025), https://perma.cc/GN26-YXEL.

[1132] Prohibition on Use of Reputation Risk by Regulators, 90 Fed. Reg. 48825 (Oct. 30, 2025).

[1133] OCRE-08 (Feb. 27, 2025), https://perma.cc/2VJA-DHEG.

[1134] C. Todd Lopez, *Hegseth Hosts Special Guests During Pentagon Christmas Worship Service*, U.S. DEP'T OF WAR (Dec. 17, 2025), https://perma.cc/7ZG3-2K62https://www.war.gov/News/News-Stories/Article/Article/4363226/hegseth-hosts-special-guests-during-pentagon-christmas-worship-service/.

[1135] Sec'y of War, MEMORANDUM FOR SECRETARY OF THE ARMY: DISCONTINUATION OF THE UNITED STATES ARMY'S "2025 SPIRITUAL FITNESS GUIDE" (Dec. 15, 2025) (attached as Exhibit 5.3.001).

Army Spiritual Fitness Guide, which began development in the fall of 2024 but was published by the Army in 2025.[1136] Secretary Hegseth explained why this change was needed:

> I'm here to tell you about a real problem facing our nation's military. It's one you're probably not aware of, but it's a really important one, and it's been going on for far too long: the weakening of our chaplain corps. You see, chaplains are intended to be the spiritual and moral backbone of our nation's forces. George Washington established the chaplain corps in 1775--one of his first actions as General of the Continental Army. Congress authorized chaplains for the Navy that very same year. In Washington's general orders, he explained their importance: "The blessing and protection of Heaven are at all times necessary, but especially so in times of public distress and danger." For about 200 years, the chaplain corps continued its role as the spiritual leader of our service members, serving our men and women in times of hardship and ministering to their souls.
>
> But sadly, as part of the ongoing war on warriors, in recent decades, its role has been degraded. In an atmosphere of political correctness and secular humanism, chaplains have been minimized, viewed by many as therapists instead of ministers. Faith and virtue were traded for self-help and self-care.
>
> If you need proof, just look at the current *Army Spiritual Fitness Guide*. In well over 100 pages, it mentions God one time. That's it. It mentions "feelings" 11 times. It even mentions playfulness, whatever that is, 9 times. There's zero mention of virtue. The *Guide* relies on New Age notions, saying that the soldier's spirit consists of consciousness, creativity, and connection. The *Guide* itself reports that around 82% of the military are religious yet ironically it alienates our warfighters of faith by pushing secular humanism.
>
> In short, it's unacceptable and unserious, so we're tossing it. I have a directive right here, that I will sign today, to eliminate the use of the *Army Spiritual Fitness Guide* effective immediately. These types of training materials have no place in the War Department. Our chaplains are chaplains, not emotional support officers, and we're going to treat them as such. . . .
>
> More reforms will be coming in the days and weeks ahead. There will be a top-down cultural shift, putting spiritual wellbeing on the same footing as mental and physical health. As a first step, we're creating a supportive environment for our warriors and their souls. We're going to restore the esteemed position of chaplains as moral anchors for our fighting force. The 1956 Army Chaplain's manual states: "The chaplain is the pastor and the shepherd of the souls entrusted to his care." This is a high and sacred calling, but this only works if our shepherds are actually given the freedom to boldly guide and care for their flock.[1137]

[1136] Nicholas Slayton, *Army tosses out its Spiritual Fitness Guide after four months*, TASK & PURPOSE (Dec. 20, 2025), https://perma.cc/DLY5-AKT3.

[1137] @SecWar, X (Dec. 16, 2025, 9:11 PM), https://perma.cc/AX4W-2TPW.

Under the new directive, chaplains are now fully recognized as the primary advisors to commanders regarding the organization and execution of religious ministry. As such, chaplains in each of the Military Services have a robust program to provide direct ministry through rights, rituals, sacraments, and weekly worship services as well as the facilitation of the individual religious expression for all service members at each installation and unit where a chaplain is present. Critical to that effort is integrating observances of religious holidays into the operational and training calendar.

As of 2024, 5,042 Chaplains across all the military services, to include the United States Coast Guard, and components provide for the religious requirements of 2,022,141 Service members from 210 different identified faith traditions supported by 146 civilian Religious Organizations who provide endorsed Religious Ministry Professionals as Chaplains and Chaplain candidates. Chaplains are integrated directly into military units, accompanying service members through training, deployment, and operations. This close proximity between chaplains and the operational area builds trust and ensures timely access to spiritual care. These Religious Support Teams operate in multi-discipline environments by working alongside behavioral health officers—both civilian and military—to provide comprehensive emotional and spiritual support.

Typical practices for Religious Support Teams include a check-in process for newly assigned Service Members so they can become familiar with their chaplain and available resources. An annual religious needs assessment to ensure continued familiarity with available resources; regular chaplain engagement in workplaces; and advisement of the commander on religious needs of the command. Chaplains are readily available through the referrals from other helping agencies such as Inspector General, Equal Opportunity Office, Sexual Harassment/Assault Response and Prevention and Family Advocacy.

Implementing Grooming Standards with Religious Accommodations: On March 11, 2026, Secretary Hegseth issued Guidance on Grooming Standards for Facial Hair and Religious Liberty.[1138] The U.S. military grooming standards require servicemen to be "clean shaven and neat in presentation for proper military appearance."[1139] The Guidance on Grooming Standards provides a process for servicemen with a sincerely held religious belief on facial hair to receive a religious accommodation.[1140]

[1138] Sec'y of War, MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS [AND] COMMANDERS OF THE COMBATANT COMMANDS: GUIDANCE ON GROOMING STANDARDS FOR FACIAL HAIR AND RELIGIOUS LIBERTY, (Mar. 11, 2026) (attached as Exhibit 5.3.002).

[1139] Sec'y of War, MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP [,] COMMANDERS OF THE COMBATANT COMMANDS [AND], DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS: GROOMING STANDARDS FOR FACIAL HAIR (Aug. 20, 2025), https://perma.cc/3PUY-QVNM.

[1140] GUIDANCE ON GROOMING STANDARDS FOR FACIAL HAIR AND RELIGIOUS LIBERTY (attached as Exhibit 5.3.002).

Department of Labor

Supporting Religious Exemptions on Contraception: DOL has taken steps to address perceived anti-Christian bias by reversing course on a Biden-era decision and supporting the religious rights of the Little Sisters of the Poor. A United States District Court overturned rules adopted during President Trump's first term that exempted employers with religious or moral beliefs, such as the Little Sisters of the Poor, from the Affordable Care Act's contraceptive mandate, an area partially overseen by DOL's Employee Benefits Security Administration.[1141] The Biden Administration did not support the Little Sisters or other religious employers and did little to intervene on their behalf during the litigation.[1142] Under President Trump's second term, DOL, with the HHS and Treasury, filed an appeal in the case, *Pennsylvania v. Trump*.[1143]

Department of Health and Human Services

Under Secretary Kennedy's leadership, HHS has taken several enforcement actions to advance conscience and religious protections of all faiths, including:

Rescission of Gender Ideology Policies: On February 20, 2025, HHS OCR rescinded the March 2, 2022 *HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy*. The rescinded document described how HHS would interpret civil rights and health information privacy authorities in cases involving what the Biden Administration termed "gender-affirming care." HHS' new notice states that the 2022 guidance no longer reflects the agency's policy and that enforcement of civil rights and HIPAA authorities will instead be aligned with the Trump Administration's framework, which recognizes only two sexes, male and female. This rescission is part of a broader initiative to defend women and children and restore biological truth in federal health care enforcement.

On August 26, 2025, the HHS Administration for Children and Families strengthened federal oversight of child- and youth-serving programs by directing 46 states and territories to remove "gender ideology" from federally funded Personal Responsibility Education Program (PREP) materials, terminating California's PREP grant for refusal to comply. It also sent letters to several States, including Oregon and Massachusetts, querying such States about foster care and adoption policies that conditioned licensure on "affirmation" of a child's gender identity. Massachusetts subsequently announced that it would remove the gender-identity "affirmation" mandate from its foster care licensing rules and replace it with neutral language requiring support for each child's "individual identity and needs," enabling religious foster families to participate in the foster care program without compromising their beliefs.

Rulemaking to Strengthen Conscience Protections (45 C.F.R. Part 88): As indicated in the Spring 2025 Unified Agenda, through a forthcoming rulemaking, titled Making Technical Changes and Clarifying How OCR Addresses Conscience Authorities in Health Care; Delegation of Authority, HHS will be amending 45 C.F.R. Part 88, to make technical corrections and clarifying

[1141] *See Pennsylvania v. Trump*, 795 F. Supp. 3d 607, 619 (E.D. Pa. 2025).

[1142] *See id.* at 624–25.

[1143] Defendant's Notice of Appeal, *Pennsylvania v. Trump*, No. 2:17-cv-04540-WB (Aug. 26, 2025), ECF No. 361.

amendments to provide a clearer, more administrable regulatory framework for entities and individuals participating in HHS-funded health programs.

Section 504 Rulemaking to Clarify Statutory Alignment: On December 19, 2025, HHS published a Notice of Proposed Rulemaking proposing revisions to 45 C.F.R. § 84.4(g), its implementing regulation for Section 504 of the Rehabilitation Act applicable to recipients of HHS financial assistance. The NPRM proposes a targeted clarification that the statutory exclusion for gender identity disorders not resulting from physical impairments encompasses gender dysphoria not resulting from a physical impairment for purposes of HHS's Section 504 regulation. This is a narrow, text-grounded clarification intended to address ambiguity created by prior regulatory commentary and to ensure its implementing regulation conforms to the underlying statutory language.

Conscience Dear Colleague Letter: On January 21, 2026, HHS issued a nationwide Dear Colleague Letter summarizing the principal federal conscience and related protections in health care administered and enforced by HHS. The letter consolidates core statutes, including the Church Amendments, Coats-Snowe Amendment, and Weldon Amendment, into a single public reference intended to provide clarity to providers on their responsibilities and educate patients on their rights.

Whistleblower Portal & Additional Enforcement under Church Amendments: On April 14, 2025, HHS announced whistleblower guidance and launched a new portal for tips related to "chemical and surgical mutilation of children." On the same day, HHS OCR opened an investigation into a pediatric teaching hospital over allegations that a nurse was terminated after requesting a religion-based accommodation to avoid administering puberty blockers and cross-sex hormones. HHS stated it would evaluate the provider's compliance with the Church Amendments. On May 12, 2025, HHS OCR initiated a compliance review of a hospital based on information that ultrasound technicians faced potential termination for refusing to assist in abortion-related ultrasounds based on their conscience objections. HHS identified the Church Amendments as the governing statute for its review. On June 20, 2025, HHS OCR opened an investigation of a major health system in Michigan after allegations that a clinician was fired for exercising conscience rights by declining to follow pronoun use policies and to participate in certain sex-rejecting procedures. HHS is reviewing compliance with the Church Amendments.

Dear Colleague Letter on Vaccine-related Religious and Conscience Exemptions: On September 4, 2025, HHS OCR issued a nationwide "Dear Colleague" letter to state, local, and territorial awardees in the federal Vaccines for Children Program, and earlier in the year directly to West Virginia officials. The letter clarifies that participation in the Vaccines for Children Program, which supplies publicly purchased vaccines for eligible children, requires immunization programs and registered providers to comply with applicable state religious and conscience-based exemptions to mandatory vaccination laws. The letter explains that state laws may constrain vaccine mandates that substantially burden religious exercise and highlights that some parents do not object to vaccination *per se*, but to particular products, such as vaccines historically developed using aborted fetal cell lines, based on beliefs about the sanctity of life. The letter offers technical assistance to States and providers seeking to operate their Vaccine for Children Programs in compliance with these legal requirements.

Initiative to Advance Parents' Rights in Children's Health Decisions: On December 3, 2025, HHS announced a set of actions under the heading "HHS Protects Parents' Rights in Children's Health Decisions." First, the HHS Office of Civil Rights opened an investigation into a complaint that a Midwestern school administered a federally provided vaccine to a child despite a state law religious exemption submitted by the parents, potentially violating the Vaccines for Children Program condition that providers honor applicable religious and other exemptions when using federally supplied vaccines. The HHS Office of Civil Rights simultaneously issued a *Dear Colleague* letter reminding health care providers that, under the HIPAA Privacy Rule, parents are generally their minor children's personal representatives and, thus, are entitled to access their children's protected health information when they have legal authority to make healthcare decisions. In addition, the HHS Health Resources and Services Administration added an explicit grant condition requiring all Health Center Program awardees to comply with applicable federal and state parental consent laws before providing medical, dental, behavioral health, or other services to minors, including care involving sensitive topics such as sexual identity or reproductive health.

State Licensing Investigation to Protect Conscience & Religious Freedom: On December 9, 2025, the HHS Office of Civil Rights announced a major investigation into a state health department's licensing policies and enforcement practices for behavioral health residential facilities and licensed behavioral health personnel. The investigation is examining whether the state discriminates against faith-based organizations and religiously observant professionals by conditioning licensure on facilitating certain contested practices (such as abortion, sex-rejecting procedures, or female genital mutilation or by treating religious objections as grounds for denial, suspension, or termination of professional licenses. HHS is also assessing whether any HHS-funded health service programs require individual staff to perform or assist in services contrary to their religious beliefs or moral convictions, including counseling related to abortion, sex-rejecting procedures, or FGM. HHS is proceeding under the Equal Treatment for Faith-Based Organizations rule (45 C.F.R. part 87) and federal health care conscience statutes administered under 45 C.F.R. part 88, including the Weldon Amendment, Coats-Snowe Amendment, and Church Amendments.

Illinois Notice of Violation under Weldon and Coats-Snowe: On January 21, 2026, HHS issued a Notice of Violation to the State of Illinois, finding that Illinois law violates the Weldon Amendment and the Coats-Snowe Amendment by unlawfully tying state conscience protections to referral requirements in the case of abortion. This action is part of HHS's broader enforcement and policy initiative to safeguard federal health care provider conscience rights and affirm the dignity of human life consistent with the Hyde Amendment.

Repudiation of Prior OCR Documents: On January 21, 2026, HHS published notices identifying eight previously issued HHS/OCR documents that no longer represent the views of HHS or the Administration or are otherwise no longer applicable. The documents identified for disavowal, repudiation, or rescission include both case-specific correspondence and broad guidance addressing core conscience and religious-liberty issues in HHS-funded programs, such as outdated positions on the Church Amendments (including a prior letter withdrawing an earlier notice of violation involving abortion-related participation), RFRA-related analyses in foster care funding correspondence, COVID-era vaccine "equitable administration" guidance, and correspondence

withdrawing an earlier Weldon Amendment notice of violation. These deregulatory notices remove superseded or legally unsupported positions, reduce compliance costs arising from confusion about statutory requirements, and align public-facing materials with governing conscience statutes and the Administration's current enforcement framework.

Medical School Antisemitism Compliance Reviews: On February 3, 2025, HHS OCR announced compliance reviews of 4 medical schools based on reports of antisemitic incidents at their 2024 commencement ceremonies, including offensive symbols, hostile messaging, and alleged expressions of support for terrorist organizations. The investigations focus on whether the schools, as recipients of HHS funding, complied with Title VI of the Civil Rights Act and Section 1557 of the Affordable Care Act, which prohibit discrimination in HHS-funded programs based on race, color, or national origin, including when discrimination targets individuals because of their actual or perceived Jewish or Israeli identity or ancestry. HHS framed the initiative as part of a multi-agency effort to implement President Trump's Executive Order on Additional Measures to Combat Antisemitism.

Title VI Investigation of a Midwestern University: On May 13, 2025, HHS OCR opened a separate investigation into a "prestigious" Midwestern university after receiving a complaint from a multi-stakeholder advocacy organization alleging systemic discrimination against Jewish students. HHS is investigating the university under Title VI to determine whether campus climate, academic policies, or administrative responses denied Jewish students educational opportunities or benefits on the basis of race, color, or national origin, including actual or perceived Jewish or Israeli identity. The press release links the case to the Administration's broader Joint Task Force to Combat Anti-Semitism and reiterates that higher-education institutions receiving HHS funds must ensure that all students, including Jewish students, can pursue their education in environments free from discrimination and harassment.

Department of Housing and Urban Development

HUD Recommends Rescinding the Gender Identity Rule: Shortly after taking office, Secretary Turner issued an order directing HUD to halt any pending or future enforcement actions related to HUD's 2016 rule entitled "Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs" ("Gender Identity Rule").[1144] This responds to concerns raised by faith-based providers regarding men attempting to enter shelters intended for women only and applies across a wide array of housing programs. HUD recommends that the Gender Identity Rule be rescinded and that all references to gender ideology be removed in HUD regulations and other guidance. HUD is working towards that end to make its regulations consistent with the content of Executive Order 14168 entitled "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government." On April 23, 2026, HUD filed a notice of proposed rulemaking, recommending these changes.[1145]

[1144] Press Release, *Secretary Scott Turner Halts Enforcement Actions of HUD's Gender Identity Rule*, U.S. Dep't of Housing and Urban Development (Feb. 7, 2025), https://perma.cc/2J9R-AUM9.

[1145] Press Release, *Secretary Scott Turner Moves to Restore Biological Truth and Sanity to HUD's Policies*, U.S. Dep't of Housing and Urban Development (Apr. 23, 2026), https://perma.cc/G8CG-4K4Z.

HUD Withdraws Discriminatory Biden Fair Housing Act Guidance: HUD has rescinded the Fair Housing Act guidance which required Christian colleges to violate their religious beliefs by opening their dormitories to members of the opposite sex.[1146] HUD is actively considering how to bolster protections for faith-based housing providers under the Fair Housing Act.

Promoting Partnerships with Religious Organizations: The Secretary has been outspoken about ensuring more faith-based providers feel welcome and can compete for HUD funds on a level playing field. HUD is working to increase access by ensuring that religious organizations can appropriately seek and receive religious accommodations throughout HUD's programs, as part of a broader effort to put them on an equal playing field. HUD is also working to promote the excellent work of many of its religious partners. For example, in September 2025, HUD hosted its first ever faith-based disaster recovery event on the National Mall. This event celebrated the work of faith-based disaster relief organizations with remarks from influential faith leaders and a special musical performance by American singer Sean Feucht. Secretary Turner spoke about the important role faith-based and community organizations play in disaster recovery efforts.[1147]

Protecting Religious Expression for Federal Workers: Secretary Turner has made it a priority to listen and foster an environment where faith and respect can coexist. The Office of Personnel Management has issued guidance to allow for religious expression for federal employees in the workplace and to allow for reasonable accommodations for federal employees to observe their religion. Consistent with this guidance, HUD will allow personal religious expression by HUD employees to the greatest extent possible unless such expression imposes an undue hardship on business operations. This is a part of Secretary Turner's broader efforts to promote faith in the workplace. Further, on Good Friday of 2025, Secretary Turner invited employees to leave early in recognition of the holiday–a simple gesture that showed how honouring faith can strengthen the HUD family. Secretary Turner has taken decisive action to ensure his team feels safe and valued when expressing their beliefs, not only because the U.S. Constitution, Title VII, and other laws protect them, but because it promotes religious freedom, the very purpose for which our country was founded.

Department of Education

Safeguarding faith-based institutions and the right to prayer: From Day One of the Trump Administration, ED has been committed to treating all institutions equally under the law, including those institutions with a faith-based identity. For example, ED recently granted Grand Canyon University's request for a change in status, recognizing it as a non-profit institution. This aligns ED's assessment with the Internal Revenue Service, the State of Arizona, and the institution's accreditor.

[1146] HUD Memorandum announcing withdrawal of Fair Housing and Equal Opportunity guidance documents (Sep. 17, 2025), https://perma.cc/VJ6P-Z89Z; Administrative, National, and Department Policy Requirements and Terms for HUD's Financial Assistance Programs, U.S. Dep't of Hous. & Urb. Dev., https://perma.cc/6B7Q-SX7U.

[1147] Jasmine Baehr, *Exclusive, HUD Secretary Turner, worship leader Sean Feucth unite at National Mall faith-based event*, Fox News (Sep. 6, 2025), https://perma.cc/YVA3-JPXE.

On February 5, 2026, ED issued guidance on constitutionally protected prayer and religious expression in public elementary and secondary schools.[1148] The guidance, required by the Elementary and Secondary Education Act of 1965, makes clear that parents and children have a constitutional right to take part in public school in ways that align with their sincerely held religious beliefs.[1149] Under the guidance, school officials should allow members of the public school community to act and speak according to their faith so long as they respect the rights of other; the school itself does not engage in religious activities or speech as an institution; and the school does not favor secular views over religious ones or one religion over another.[1150]

Protecting Parents' Rights: Under the Trump Administration, ED's Office for Civil Rights (ED OCR) affirmed the rights of parent and school boards to remove explicit materials by disbanding the Biden-imposed "book ban czar" role (January 24, 2025) and dismissing complaints on fraudulent claims of civil rights violation.

ED's Student Privacy Policy Office (SPPO) issued a *Dear Colleague Letter* on March 28, 2025, concerning the Family Educational Rights and Privacy Act (FERPA) compliance that re-affirmed the rights of parents with children in federally funded schools to access all education records of their children, including those materials concerning "Gender Plans" and "gender transitions."[1151]

The SPPO opened investigations in four States (California, Maine, Kansas and Washington) that have policies that encourage and even mandate the concealing of records relating to students' transgender identity from parents in violation of FERPA.

On August 25, 2025, ED launched an investigation into Burlington Public Schools (Burlington, MA) for administering a sexually-explicit survey to students that asked students to describe their sexual behaviors and gender identities without proper parental notification, which could constitute a violation of the Protection of Pupil Rights Amendment (PPRA), a federal law that protects the rights of parents to exempt their children from school surveys that solicit private information.

Protecting Women and Biblical Views of Gender: On January 31, 2025, following a district court vacatur of the Biden Administration's 2024 Title IX Final Rule, enforcement returned to operating under the auspices of the 2020 Rule. The agency has aggressively investigated alleged violations of Title IX to protect women and girls. ED OCR found several States to be out of compliance with Title IX, including Maine, Minnesota, and California. Other institutions have entered into voluntary resolution agreements with ED OCR to protect women and girls (including the University of Pennsylvania and Wagner College).

[1148] Press Release, U.S. Dep't of Educ., U.S. Department of Education Issues Guidance on Prayer and Religious Expression in Public Schools (Feb. 5, 2026), https://perma.cc/U4DX-LKFQ.

[1149] U.S. DEP'T. OF EDUC., GUIDANCE ON CONSTITUTIONALLY PROTECTED PRAYER AND RELIGIOUS EXPRESSION IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS (Feb. 5, 2026), https://perma.cc/7B6T-H4QA.

[1150] Press Release, U.S. Dep't of Educ., U.S. Department of Education Issues Guidance on Prayer and Religious Expression in Public Schools (Feb. 5, 2026), https://perma.cc/RSL6-K8UU.

[1151] Letter from The Secretary of Education to Educators, U.S. Dep't of Educ. (March 28, 2025), https://perma.cc/JK8V-54VA.

ED terminated, discontinued, or reprogrammed approximately $3 billion in grant funds that supported divisive ideology; Diversity, Equity, and Inclusion (DEI) initiatives; and gender ideology.

Rescinding Ideological Guidance Documents: ED identified and rescinded guidance documents that required school districts and institutions of higher education to enact Title IX policies recognizing gender self-identification over sex. For example, ED rescinded the Biden Administration's guidance from June 2021 prioritizing gender ideology and the use of preferred pronouns over biological realities.[1152] ED also identified and rescinded the Biden Administration's guidance that encouraged schools to allow students to participate in athletics programs based on gender identity.[1153] This guidance also encouraged schools to use time and resources for training sessions on gender self-identifying inclusivity. ED will continue to identify and rescind documents that promote gender ideology at the cost of the rights of students. ED OCR has also taken steps to terminate resolution agreements signed by the previous administration that conflict with Title IX.

Department of Homeland Security

Enhancing Engagement with Christian Communities: In response to previously identified gaps in outreach, the Office of Partnership and Engagement has prioritized direct engagement with Christian pastors and community leaders nationwide. The Office of Partnership and Engagement has established and sustained regular information-sharing channels, ensuring ongoing dialogue and collaboration with Christian organizations. These efforts have strengthened relationships, improved situational awareness, and enhanced the Department's ability to address concerns and support the needs of Christian communities across the country.

Increasing Public Recognition of Christian Faith: The Office of Public Affairs has launched a sustained series of social media campaigns and public communications explicitly acknowledging the significance of Christianity to both the American public, members of DHS, and its components. Recent posts have featured scriptural passages, such as Isaiah 41:10 and Psalm 28:7, alongside imagery of DHS personnel in service, underscoring the Department's recognition of faith as a source of strength and guidance. Additionally, messaging has been refined to include direct references to Christian observances, such as the correction from "Happy Holidays" to "Merry Christmas." These efforts demonstrate a renewed commitment and respect for Christian traditions, fostering a sense of belonging and affirmation for Christian employees and Christian communities nationwide.

Changing Leadership in the U.S. Coast Guard: In response to widespread concerns regarding the Coast Guard's handling of a variety of personnel and operational issues, including the process for religious exemption requests under the COVID-19 vaccine mandate, DHS implemented senior leadership changes to address institutional shortcomings. Admiral Linda Fagan, who served as Commandant during the period of these procedural deficiencies, was relieved of command by

[1152] Implemented in response to Exec. Order No. 14168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8615 (2025).

[1153] Implemented in response to Exec. Order No. 14201, *Keeping Men Out of Women's Sports*, 90 Fed. Reg. 9279 (2025).

Acting Secretary of DHS Benjamin Huffman. This decision reflected not only her administration's failure to ensure fair and transparent adjudication of religious accommodation requests, but also broader leadership shortcomings, including operational failures, mismanagement of personnel and acquisitions, and inadequate response to sexual misconduct scandals. Admiral Kevin E. Lunday was appointed as acting commandant, with a mandate to address these systemic issues, reinforce due process protections, and implement reforms to safeguard the rights and well-being of Coast Guard personnel moving forward.

Providing Additional Informational Resources to Christians: DHS will launch targeted initiatives to strengthen engagement with Christian communities, including Protestant, Catholic, and Orthodox denominations. These efforts will feature dedicated listening sessions, on-site visits, and tailored grant briefings to address unique challenges and priorities. By facilitating direct communication and resource sharing, DHS aims to resolve longstanding issues and ensure Christian organizations have meaningful opportunities to participate in federal programs and policy development.

Further Enhancing Leadership Visibility and Engagement: DHS suggests that its leadership should rebalance public remarks and representational engagements by planning keynotes and public statements for Christian gatherings, aligned with current risk trends and executive order guidance. These actions will visibly recognize Christian communities and promote parity in public-facing engagement, while maintaining balanced outreach across all faith groups.

Small Business Administration

Opening Opportunities for Disaster Relief: SBA eliminated a Biden-era ban on disaster relief for faith-based organizations.[1154] SBA published updated guidance to decline enforcement of the eligibility restrictions identified in the Code of Federal Regulations, specifically Title 13 Part 123.301(g). under which a business may be ineligible for an Economic Injury Disaster Loan from the SBA if the business is "principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting.[1155]

Ensuring Fair Banking for All: SBA sent a letter to all SBA lending institutions pursuant to Executive Order 14331, Guaranteeing Fair Banking for All Americans to ensure no financial institution participating in the agency's loan guarantee programs targets any current or future customers based on political, religious, or ideological beliefs.

Assessing for Internal Biases: SBA has also conducted a sweeping digital search of all platforms, communications, and documents. This search yielded thousands of communications. The SBA team is working extensively to identify and review the context for each of these communications. The SBA further maintains its efforts to review any reports of discrimination from all employees and contractors.

[1154] News Release, SBA, SBA Launches Center for Faith, Eliminates Biden Ban on Disaster Relief for Faith Organizations (July 14, 2025), https://perma.cc/TE5K-NX4L.

[1155] *Id.*; 13 C.F.R. § 123.301(g).

Federal Bureau of Investigation

Addressing the Richmond Memo: During the 119th Congress, the FBI has produced 2,641 pages related to the Richmond Domain Perspective as part of Director Patel's commitment to transparency. Following the Richmond product, the FBI has cut ties with the Southern Poverty Law Center and Anti-Defamation League as part of its dedication to restoring analytic integrity and objectivity to intelligence gathering.

Assessing Threats Against Christians: The FBI is currently considering new threat categories to address violent extremism, including but not limited to violent extremism that derives from bias against Christian denominations or perceived members of those denominations.

Equal Employment Opportunity Commission

Redressing Biden-Era COVID-19 Charges: As detailed above in Chapter 3,[1156] Chair Andrea Lucas is ensuring the remaining COVID-19 vaccine mandate charges are no longer being treated as second-class, disfavored charges. Chair Lucas has directed leadership to look at these charges with fresh eyes. She has directed the field to conduct a class search in accordance with standard investigatory procedures where charges implicate a potential systemic or class violation. While much of the Biden EEOC's damage is irremediable in this space due to expired statute of limitations, for any pending EEOC charges arising out of COVID-19 vaccine mandates the EEOC is now ensuring the charging parties receive an investigation and, where appropriate, robust equitable and non-equitable relief.

Since January 2025, the EEOC has secured meaningful relief for individuals who alleged religious discrimination related to their employer's COVID-19 vaccine mandate, including securing:

- $15 million to resolve a systemic investigation against a global technology company with locations in twelve U.S. States. As part of the three-year conciliation agreement resolving the charge, the company agreed to pay a class of employees a total of $15 million. The company also agreed to review its policies to ensure compliance with Title VII and the ADA. The company also agreed to provide annual training on religion- and disability-based discrimination and reasonable accommodations to all management and non-management staff and report to the EEOC on accommodation requests for three years. Further, the company will post a notice about equal employment opportunity rights, which encourages employees to report allegations of discrimination.[1157]

- $2.8 million to resolve a systemic investigation against UT-Battelle after finding the employer violated Title VII by failing to provide an exemption or accommodation to employees who were required to take the COVID-19 vaccine in conflict with their

[1156] *See*, *supra* at 123–26.

[1157] Press Release, EEOC, EEOC Reaches $15 Million Conciliation Agreement to Resolve Discrimination Claims Related to COVID-19 Vaccinations (Mar. 24, 2026), https://perma.cc/2NRW-EW8L.

religious beliefs. The two-year conciliation agreement included back pay and compensatory damages to the aggrieved individuals, and significant equitable relief.[1158]

- Over $1.74 million and significant injunctive relief to resolve an investigation for 20 individuals after finding the employer violated Title VII by failing to provide a religious accommodation to the COVID-19 vaccine requirement.[1159]

- Over $1 million to resolve a class-wide investigation via conciliation against Mercyhealth after finding reasonable cause to believe that the healthcare system failed to grant its employees religious accommodations to the employer's vaccine mandate, instead terminating employees or withholding pay. In addition to recovering substantial monetary compensation for a class of employees, the EEOC also secured an important commitment that Mercyhealth would offer to reinstate employees terminated for refusing to comply with the organization's COVID-19 vaccine policy, provide back pay and compensatory damages to the aggrieved individuals, and significant equitable relief.[1160]

- $772,000 for a class of employees who were denied religious accommodation from its employee's COVID-19 vaccine mandate.

- $212,280 for another class of employees who were denied religious accommodation from its employee's COVID-19 vaccine mandate.

Additionally, during fiscal year 2025, the EEOC also vindicated the rights of federal employees who requested religious accommodation in the workplace. One example *is Andy B. v. Federal Reserve Board of Governors*, Appeal No. 2023002014, in which the Federal Reserve Board was found liable for failing to accommodate a Christian police officer's request for exemption from the government agency's COVID-19 vaccine mandate. After denial of his request, complainant was placed on administrative leave and provided a few weeks to comply with the mandate or be terminated. Complainant remained unvaccinated and was terminated. The EEOC found his termination was a Title VII violation, that Complainant was subjected to harassment based on his religion, and provided for reinstatement, expunging of his termination, and backpay with interest.

Defending Religious Beliefs in the Workplace: In addition to attempting to remedy the past harms of the previous administration, the EEOC under Chair Lucas has vigorously enforced Title VII's requirement to accommodate employees sincerely held religious beliefs and practices, provided it does not cause an undue hardship. The agency is committed to protecting workers of all faiths in their right to be free from discrimination in the workplace, as evidenced by securing:

[1158] Press Release, EEOC, UT-Battelle to Pay Over $2.8 Million to Settle EEOC COVID-19 Vaccine Mandate-Related Religious Discrimination Charges (Sept. 30, 2025), https://perma.cc/X6QE-8LEL.

[1159] EEOC, Fiscal Year 2025 Agency Financial Report (2025), https://perma.cc/GN2R-SHNN.

[1160] Press Release, EEOC, Mercyhealth to Pay Over $1 Million to Settle EEOC COVID-19 Vaccine Mandate-Related Religious Discrimination Charges (Aug. 13, 2025), https://perma.cc/759H-UB4Y.

- $21 million for Jewish employees and faculty who were subjected to antisemitism at Columbia University. This settlement was the agency's largest ever for a religious discrimination case.[1161]

- $175,000 for Seventh-day Adventists against Marriott Vacations Worldwide Corporation and Marriott Ownership Resorts to resolve a religious discrimination lawsuit after the companies revoked a Seventh-day Adventist sales executive's Sabbath accommodation following a management change, despite no undue hardship.[1162]

- $303,758 for a Jewish applicant who was allegedly denied employment by Mavis Tire Supply, LLC due to his need for an accommodation to observe the Sabbath.[1163]

- $850,000 via a consent decree in a Title VII lawsuit against companies doing business as the Venetian Resort, a hotel and casino resort on the Las Vegas strip, for a class of employees of various faiths that the suit alleged were denied reasonable accommodation of sincerely held religious beliefs absent undue hardship and retaliated against those who opposed the religious discrimination.[1164]

- $181,000, and significant injunctive relief, to successfully conciliate an investigation after finding the employer violated Title VII when it failed to provide the charging party and six class members a religious accommodation when they sought exemption from Respondent's mandatory flu vaccine policy and instead terminated their employment.[1165]

- $60,000 via a consent decree in a Title VII religious accommodation lawsuit against Center One LLC, et al., a consumer debt collection services companies, following a favorable appellate ruling in the case holding that an employer's insistence on clergy verification of a religious practice as a condition of providing scheduling accommodation was at odds with EEOC guidance and could also give rise to constructive discharge.[1166]

Under Chair Lucas' leadership, the EEOC is committed to rooting out religious discrimination and returning to evenhanded civil rights enforcement.

[1161] Press Release, EEOC, In Largest EEOC Public Settlement in Almost 20 Years, Columbia University Agrees to Pay $21 Million to Resolve EEOC Antisemitism Charges (July 25, 2025), https://perma.cc/X3HK-K5U4.

[1162] Press Release, EEOC, Marriott Companies to Pay $175,000 in EEOC Religious Discrimination Lawsuit (Dec. 11, 2025), https://perma.cc/JH35-542W.

[1163] Press Release, EEOC, Mavis Tire to Pay $303,758 for Religious Discrimination and Retaliation (Dec. 15, 2025), https://perma.cc/CB44-T5DN.

[1164] Press Release, EEOC, The Venetian Resort Las Vegas Settles Religious Discrimination and Retaliation Lawsuit (July 2, 2025), https://perma.cc/8H5E-G6A8.

[1165] Press Release, EEOC, Fiscal Year 2025 Agency Financial Report (Dec. 31, 2025), https://perma.cc/F6QK-ENZT.

[1166] Press Release EEOC, Center One and Capital Management Services to Pay $60,000 in EEOC Religious Accommodation Suit (Dec. 25, 2024), https://perma.cc/29NC-NLRQ.

Conclusion

The Task Force to Eradicate Anti-Christian Bias has engaged in this exhaustive analysis and presented its findings as transparently as possible. The findings are sobering. The Task Force found that, in its zealous pursuit of its preferred policies and constituents, the Biden Administration engaged in anti-Christian bias, seeking to limit Christians' ability to act in concert with their sincerely held beliefs in their homes, in the workplace, and in the public square. At times, it went still further, leading Christians to reportedly choose between their beliefs and compliance with federal law. And, most troublingly, the Biden Administration is alleged to have prosecuted and jailed peaceful Christian pro-life demonstrators, terminated or harassed Christian workers who did not comply with the vaccine mandates, targeted Christian organizations with IRS inquiries, and subjected Christian schools to excessive fines. Taken together, the findings presented by the Task Force raise serious concerns about whether certain Biden-era policies and practices were administered in a manner consistent with the Constitution and applicable federal law. These concerns implicate core American commitments—religious liberty, equal treatment, and the rule of law—that protect all Americans of faith and conscience.

The Task Force's findings are particularly troubling against the backdrop of apparent increases in threats, vandalism, and violence against Christians in the last few years. Christian schools and churches have faced unimaginable mass shootings in Tennessee and Minnesota, while Christian conservative activist Charlie Kirk was killed in broad daylight while dialoguing over matters of faith and policy. Political protests have moved off the streets into houses of worship, where protestors disrupted Christians' participation in worship services. When confronted with this grim reality, the federal government's response will set the tone: Even when our hearts are troubled, American freedoms must be strengthened, and our constitutional republic must steadfastly preserve them.

As the United States approaches the celebration of America 250, the Task Force encourages Americans to reflect on where we have come as a nation and where we are going. In 1776, the American Colonies declared their independence from British tyranny because of the simple but profound truth—that all men are created equal and endowed *by their Creator* with certain unalienable rights. Annually throughout the Revolutionary War, the Continental Congress proclaimed days of prayer, fasting, and thanksgiving, including designating May 17, 1776, as a "day of Humiliation, Fasting and Prayer" throughout the colonies. President George Washington issued the first presidential proclamation designating November 26, 1789, as "a day of public thanksgiving and prayer."

Our Nation's forefathers recognized that our most essential rights are given to us by God and are not bestowed by civil government. By design, the Constitution and federal law limit the government's reach into speech and religion to protect those inalienable rights from the vicissitudes of politics and changing times. Americans have been promised freedom of religion, not just in the privacy of their homes and four walls of their churches, but to daily walk in accordance with their religious teachings and conscience in the public square.

The fundamentals of our constitutional design are durable and sound, and the American spirit is resilient. The federal government must once again stand as a bulwark against religious

discrimination. The First Amendment's promises are for all, not just for Christians. And the Trump Administration is committed to fulfilling these promises of religious liberty for all Americans.

To that end, the Trump Administration, through this Task Force, will continue to strive for transparency and accountability. Americans must be informed of the concerns addressed in the Task Force's report, so that, with their families and communities, they are equipped to continue the hard task of self-governance. By addressing anti-Christian bias directly, Americans can make religious discrimination unthinkable for all faiths.

EXHIBIT 3.1.001

Interviews by the Task Force to Eradicate Anti-Christian Bias

The following quotes are excerpted from interviews conducted by administrative staff for the Task Force to Eradicate Anti-Christian Bias. They are included in this exhibit in the order of appearance in the written report.

Interview with Former Deputy Director Daniel Bishop, Office of Management and Budget

Americans of faith, Americans who had traditional values were stigmatized. And, denigrated and even implicitly threatened by the Biden administration through its exercise of law enforcement authority. You saw it in the memorandum about traditionalist Catholics. You saw it in the way the Administration sort of disregarded a string of attacks on pregnancy counseling centers, on and on.

Interview with Director Kash Patel, Federal Bureau of Investigation

[T]he Richmond memo is something that has been discussed widely and rightfully so. But before I get into the details of the Richmond memo, I want to highlight for your audience the types of heinous acts of violence based on religion that we face. And these are just some of them, as we saw in Minnesota, the attack, the Annunciation School shooting that left two children dead. We also saw an attack on a church, an LDS church in Michigan. Again, an unfortunate tragedy based on hate-filled misinformation. And thankfully, what the FBI is doing to countermand those things is what we saw out in Arizona, where we thwarted a bomb attack against multiple churches. Again, based on this hatred of religion. And so, when you take those instances of unfortunate tragedy, and also the one success where we were able to prevent and save lives at the FBI, you have to ask yourself, where is this all coming from? And does law enforcement play a role? Unfortunately, the prior administration allowed this Richmond memo, as it's become known, to go out from the FBI as essentially an authorization to go after people of religious values and extend the weaponization and politicization of law enforcement.

This memo, we in this administration, President Trump's administration, under my leadership at the FBI, we did a full deep dive into how did this happen? How is it created? And we came to learn that companies like the Southern Poverty Law Center and the Anti-Defamation League were out there working with the FBI, giving them false information to generate a memo that allowed law enforcement a [] "justification" to go after and attack people of faith.

These institutions [of faith] are to be protected. And the Richmond memo has since been explicated from the roles of the FBI. We have also jettisoned all relationships with the Southern Poverty Law Center and the Anti-Defamation League, and others who contributed to this woeful violation of our constitutional rights. And under our tenure here and President Trump, and mine at the FBI, we're never going to allow that to happen again. We do intelligence-based work. We do not do politically motivated, hate filled work. And that memo and those responsible for it are no longer at the FBI.

Interview with Chairman Jim Jordan, House Judiciary Committee

That was I just think ridiculous, was huge. And became an issue that we spent a lot of time on doing our oversight work in committee. Second, and kind of following in that same [] vein was when we learned in the Richmond field office, the FBI had put together a memorandum basically saying, if you're a pro-life Catholic, you are an extremist. And they did this investigation. We've [] subsequently learned that they were surveilling a priest. They were trying to get in the middle of the pastor, parishioner, or priest penitent[.] That dialog that goes on, that's frankly sacred. And then I think the third big thing in my mind was what we saw in the immediate aftermath of the leak of the *Dobbs* opinion, how the Garland Biden Justice Department, didn't really go after.

Interview with David Kubal, Intercessors for America

The most effective persecutor of Christians in the United States is government. Not in an active manner, but in a passive manner through the Johnson Amendment, the threat of a lawsuit has had a chilling effect on the role of the church in government.

Interview with Jeremy Dys, First Liberty Institute

Our houses of worship are tax exempt, *ab initio* from the beginning, without any reference to the government . . . That's it . . . My message to pastors is very simple. You have the right under the First Amendment. That is very clear. You are a tax-exempt entity, not because the IRS told you so, but because you are a church or a house of worship.

Interview with Gary Hamrick, Cornerstone Chapel

In October of 2020. I preached an election sermon from the pulpit of Cornerstone Chapel where I pastor. The sermon was entitled Church in America Wake Up. It was really to galvanize Christians in the election process to make sure that we were participating in the national elections. But in 2023, the Biden administration weaponized the Justice Department and came after us to try to remove our tax-exempt status because they believed that my election sermon had crossed the line, violated the Johnson Amendment, and had actually endorsed Donald Trump . . . Well, basically, people just wondered if our tax-exempt status was going to go away. At the end of the day…you know what? We have to be faithful to what God wants me to say from the start, that we have to be faithful. The initial reaction of the congregation was, of course, that we could potentially be targeted by the Internal Revenue Service for something that I said just as a matter of biblical principle and biblical teaching.

Interview with Kristen Waggoner, Alliance Defending Freedom

That comes not just from government, but it has to come through mediating institutions like churches, like religious organizations. The Johnson Amendment puts a muzzle on these mediating institutions, like our churches, and prevents them from being able to help individuals think about the cultural moment they're in, wrestle with the issues of their day, and then apply their faith to it.

Interview with Secretary Douglas Collins, Department of Veterans Affairs

This is where our faith . . . in the specificity of where they're looking at. Because you typically, if you're going to look at it, all churches have been involved in politics in this country for, for years, ever since our founding. Is there a difference in preaching a sermon and giving a political speech? Yes. But also my question is, is if, as I have if I'm giving a sermon as a pastor that says that all life is valuable and infinitely viable in the sight of God, and that abortion would be morally wrong, is that a political statement or a religious statement?

To me, it's a religious statement, which is a moral value that over trumps a political statement. I'm there to protect life. And if that is a, you know, something to be investigated, then maybe we've got our priorities wrong. But praying over people, praying over candidates and things like that is again, to me is, sort of self-serving in that I've watched over my time churches of various denominations, some of which have been very active in politics all of their time, but never investigated.

Interview with Secretary Linda McMahon, Department of Education

[W]e look for DEI to make sure all that DEI language has had to come out of, any of those grant competitions or the or they're not eligible for them. So, each agency . . . is taking appropriate measures to make sure that this does not happen in our country, and certainly not during this Administration. Our country was founded on the basis of freedom of religion.

People fled their native country and came to this country for freedom of religion and for any religion, now, to have any bias against it is just contrary to the founding principles of our country and our government.

Interview with Secretary Scott Turner, Department of Housing & Urban Development

Under the Biden administration, there's a rule called the Equal Access Rule. And this had allowed me inside women's shelters that were funded by HUD. And so, one of the earliest actions we took was to take down the Equal Access Rule and no longer allow men to go into women's shelters that are funded by HUD . . . Many faith-based organizations would not even apply for grants from the Biden Administration because they weren't allowed to because of what they stood for. But now, today, we want to open it up so the faith-based entities can not only apply for but compete for it because they truly are doing the work that's bringing out transformative results for our people . . . So now, during the Biden administration, Christian organizations, faith-based organizations were blocked out from competing for these grants. But now we've opened it up to bring more people, in particular faith-based institutions, to the table, because every single day it's the faith-based entities, it's the churches the churches that have their hand to the plow and feet on the ground serving our homeless neighbors.

Interview with Kelly Loeffler, Administrator, Small Business Administration

The Biden administration made disaster loans inaccessible to faith organizations. So that was a decision that the Supreme Court made. But the Biden administration went against it. So,

we have reinstated the ability to have, disaster loans go out to faith-based organizations and small businesses and nonprofits like any other nonprofit or business should have. And so that was really an illegal attempt to silence and threaten and chill religious liberty . . . So perhaps most shocking that we found when we went in and looked at how the Biden SBA operated was they prohibited economic injury disaster loans, of which we gave 6 billion last year. They prevented that money from going out to faith-based organizations, whether it's small businesses or nonprofits. That means churches that went through hurricanes, floods, fires, did not get the relief that they were rightfully owed.

Interview with Scott Centorino, former Army Reserve JAG Officer

We're talking thousands upon thousands upon thousands that the shops that the JAG shops in the regular active-duty army asked us, the reservist, to help them go through all of them. It's burdensome to read an application and then basically come to a finding. In terms of training, all we received was, I won't call this an order, but it was made very clear to us that we were to deny all of them.

What I remember about the directive to us as JAG officers to deny all exemption requests to the Covid vaccine, was that it was a blanket directive that you were not really to take individual circumstances into account. And I remember it was not in writing . . . I don't remember the exact form it took, but it was made very clear to everybody that this is going to be a rote activity. You were going to read them, you're going to deny them, period. Full stop.

[O]verall, the experience of being told to deny all religious exemption requests for the Covid vaccine was if it's not the most embarrassing, most shameful part of my own military career, it's up there . . . That's why I'm here. And I have a right to speak, and I have a right to make judgments within the bounds of the law, obviously. And I felt an awful lot like a potted plant in making those determinations. I know that other JAG officers did, too. What is the point of having a JAG officer review and sign off on a denial or an acceptance if they're not actually given the freedom to read the request and judge?

Interview with Chair Andrea Lucas, Equal Employment Opportunity Commission

And so, we have this unique wave event, thousands and thousands of requests. The EEOC probably only received a small percentage compared to how many, likely millions, of Americans were impacted by this issue. But for us alone, we're talking about, 20% of our charge load peaks in that moment. Normally, religious discrimination claims are maybe about a maximum of 4%, 1 to 2 to 4% of our caseload . . . And at some point, it became clear to me that the silence was intentional, that it wasn't just a sin of omission, it was a sin of commission. It was very intentional silence, very intentional inaction. And the tenor, the view, I mean, is really indicative of the anti-Christian bias. In any other case, you have people who their entire perspective, their entire focus is to be victim friendly, to assume that someone who is requesting something, likely has some potential merit to their claim to have deep sympathy and concern when someone's requesting.

Interview with Phil Mendes, former Navy SEAL

From there, the vaccine mandate came down . . . If you submit a religious accommodation or sort of accommodation, the likelihood of you being put on a non-deployable status is pretty high. And for a Navy Seal to be put on the board of a status that is a career death sentence.

And they had told me and threatened me that they said, you know, you can continue down this path, but just know if you don't get the vaccine, you're still going to lose your benefits. You're going to be kicked out. I just got married and had my wife is pregnant at the time. So, they threatened me with losing my benefits. Recoupment of pay for all of the training that I'd gone through, they wanted all their money back. They weren't allowing me to travel to my TBI clinic in Boston to go get medical evaluation for my TBI.

And they weren't even allowing my wife to travel as well. So, there's a lot of things that that there were, trying to coerce me into getting this vaccine. And it was a lot of pressure. And at the end of the day, they wanted me to essentially betray my faith. Whereas they were the ones betraying the Constitution, I felt.

They told me to follow the administrative structure that was set in place where we could submit and if approved, you know, we could stay in. However, we had found out that that whole structure was a sham. They were rubber stamping denials, and they weren't even looking at our religious accommodations. So, it didn't matter that we put it in. At the same time this is going on, I was put in for a medical evaluation board because of my many injuries sustained during my time.

Interview with Secretary Pete Hegseth, Department of War

What the Biden administration did with the Covid vaccine mandate inside the then Department of Defense is a sin and a stain on this department to those that it affected. You had a, emergency vaccine, that was mandated on to a largely young, largely healthy population here at the Department of Defense. Many, in fact, upwards of 20,000 service members over time said, you know, I'd like a religious exemption from this experimental unlawfully mandated vaccine. And oftentimes they were sent to chaplains to seek and get that religious exemption.

Eventually, less than 3% of those religious exemptions were ever given. And in many of those cases, they were so harassed and so pursued for that exemption that they were pushed out anyway. Right. Even if an exemption was eventually given or was ignored in the process, and they were made to be at this department, sort of a pariah, an outlier, treated as a second-class citizen because they weren't.

Stay in your barracks, wear your mask, sit in, stand over there. Sure, you can be here, but you can't be involved. I mean, it was an ostracization of people of conscience, and I think that's the way to think about it, is warriors of conscience who said, I don't believe in injecting this experimental vaccine. I don't think you can mandate that to me.

Interview with Mack Marcenelle, Coast Guard

If you were unvaccinated, you had to wear a mask around, while everyone else, was not wearing a mask. So, it was easy to identify those of us who were abstaining from the vaccine. We were restricted to travel within a 50-mile radius, so I couldn't leave a 50-mile bubble without explicit permission from my commanding officer . . . I did have hope that I would be granted a religious commendation. However, as the time went on, I could definitely tell that the military wasn't going to be offering that . . . I knew that if I didn't comply with the Covid 19 vaccine mandate, that it would be an end to my service in the military. After eight years in the Marine Corps. And at the time, it was several years in the Coast Guard, I knew that it would all be over.

Interview with Monica Gill

But the most important thing would be for them to know that there is someone in their life who loves them unconditionally. So, I tell my students I love them all the time. They come into my classroom. I say, Mrs. Gill loves you. They leave, I say, “goodbye, Mrs. Gill loves you.” I put, a little question on every quiz, “Mrs. Gill loves me, (A) true (B) false.” And they have to put true to get it. You know, the bonus question there. But, you know, in the beginning of the year, I think they think it's kind of cute and just funny. But by the end of the year, when we've built rapport with each other, they know it's true . . . But I also can't imagine standing before my Father in Heaven and saying my pension plan was more important than your truth. And when this policy came up and the opportunity came for me to challenge it, I was afraid. I was. It's a very frightening situation because speaking up against the sexually explicit materials or DEI was one thing, but the hostility toward anyone who would speak up against the transgender policy was so intense.

EXHIBIT 3.1.002

[redacted] (RH) (FBI)

From: [redacted] (RH) (FBI)
Sent: Tuesday, January 3, 2023 10:33 AM
To: [redacted] (RH) (FBI)
Subject: FW: Fleury --- UNCLASSIFIED//FOUO

RMTFRUserProp: Short-Term Use Email (Transitory)
SentinelCaseId: Short-Term Use Email (Transitory)

Classification: UNCLASSIFIED//FOUO
==========
Transitory

[redacted]

I apologize as I thought I copied you on this email. [redacted] is an interesting individual and I am waiting to hear back from [redacted]. It may be worth doing a call with them depending on their response. I am going up to HQ today and will be meeting with the DT IA who covers Richmond. She is onboard with the SPEAR so I will talk to her about the next step in that process. I added an intel gap and PCG to the product. I need to do a footnote on SSPX and write the substantiation paragraph. I can convert this to a SPEAR for us (you've done all of the hard work—thank you!). Oh, do you mind popping over to [redacted]s desk and showing him what you found on the priest? Thanks!!

From: [redacted] (RH) (FBI)
Sent: Friday, December 30, 2022 12:16 PM
To: [redacted] (MW) (FBI) <[redacted]>
Cc: [redacted] (MW) (FBI) <[redacted]>
Subject: Fleury -- UNCLASSIFIED//FOUO

Classification: UNCLASSIFIED//FOUO
==========
Transitory

Good afternoon,

My coworker and I are drafting an Intelligence Note related to the interest of RMVEs in Radical-Traditionalist Catholic ideology. Our subject, [redacted] prompted our interest in exploring this topic. On 11/13, [redacted] (Gab account @[redacted]) was arrested and a search was executed at his residence. Molotov cocktails, 3D printed pistol frames, firearm components including handgun components, ammo, and a non-specific target list was found at his residence among other things. We do not know how far along in the attack planning process he was at this time or if he was collaborating with others. CART and OTD are still working to get into his computer. [redacted] had attended Our Lady of Fatima Catholic Society of Saint Pius X (SSPX) Chapel for approximately seven months and participated in three or four catechism classes as part of the process to become baptized. In [redacted]s extensive anti-Semitic, anti-LGBTQ, and racist postings on social media platform, [redacted] claimed he was a "radical traditional Catholic Clerical Fascist."

I have been doing some queries to look into other RMVE subjects who adhere to rad-trad ideology and I read that [redacted] had attended Maria Stella Maris Mission Church located in San Pedro, California for over a

year. This church was operated by the Society of Saint Pius X (SSPX). I wanted to see if [redacted] still adheres to this ideology and if I could pick your brain further to use this information as an evidence bullet in our product.

Thanks so much for your time!

Sincerely,

[redacted]

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Classification: UNCLASSIFIED//FOUO

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Classification: UNCLASSIFIED//FOUO

EXHIBIT 3.1.003

[redacted] (RH) (FBI)

From: [redacted] (RH) (FBI)
Sent: Friday, January 6, 2023 1:40 PM
To: [redacted] (LS) (FBI); [redacted] (LS) (FBI); [redacted] (LS) (FBI); [redacted] (LS) (FBI); [redacted] (LS) (FBI)
Cc: [redacted] (LS) (FBI); [redacted] (LS) (FBI); [redacted] (LS) (FBI); [redacted] (LS) (TFO); [redacted] (LS) (TFO); [redacted] (LS) (FBI); [redacted] (LS) (FBI); [redacted] (LS) (FBI)
Subject: RE: SSPX Resistance background --- UNCLASSIFIED//LES

RMTFRUserProp: Short-Term Use Email (Transitory)
SentinelCaseId: Short-Term Use Email (Transitory)

Classification: UNCLASSIFIED//LES
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Transitory

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You're welcome and thank you for your help. If you guys need anything, please let me know!

From: [redacted] (LS) (FBI) [redacted]
Sent: Thursday, January 5, 2023 1:34 PM
To: [redacted] (RH) (FBI) [redacted] (LS) (FBI) [redacted] (LS) (FBI) [redacted] (LS) (FBI) [redacted] (LS) (FBI)
Cc: [redacted] (LS) (FBI) [redacted] (LS) (FBI) [redacted] (LS) (FBI) [redacted] (LS) (TFO) [redacted] (LS) (TFO) [redacted] (LS) (FBI) [redacted] (LS) (FBI) [redacted] (LS) (FBI)
Subject: RE: SSPX Resistance background --- UNCLASSIFIED//LES

Classification: UNCLASSIFIED//LES
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Transitory

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receiving authorization from the originating agency. Recipients are prohibited from subsequently posting the information marked LES on a website or an unclassified network.

Thank you for the addresses [redacted] –

SSRA [redacted] – Please see the following email. The Walton, KY address resolves to Boone/Kenton counties, Covington RA. Boston, KY did not show up on the territory map. I was also informed the link below did not work, I've attached the ppt on SSPX -

[1/5/2023 1:09 PM] [redacted] (RH) (FBI):
Thanks!
[redacted]
for [redacted]

[redacted]
for [redacted]
[redacted]
for [redacted]

Regards,
[redacted]

[redacted]
Intelligence Analyst
Counterterrorism – Domestic Terrorism
Louisville Field Office – Squads 4 & 9
Desk - [redacted]
Cell – [redacted]

From: [redacted] (LS) (FBI)
Sent: Thursday, January 05, 2023 1:14 PM
To: [redacted] (RH) (FBI) [redacted] (LS) (FBI)
[redacted]
Cc: [redacted] (LS) (FBI) [redacted] (LS) (FBI)
[redacted] (LS) (FBI) [redacted]
(LS) (TFO) [redacted] (LS) (TFO) [redacted]
[redacted] (LS) (FBI) [redacted] (LS) (FBI) [redacted] (LS) (FBI)
[redacted]
Subject: RE: SSPX Resistance background --- UNCLASSIFIED

Classification: UNCLASSIFIED
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Transitory

All – I don't recall ever coming across these names or organization before. The best way to address this is to send Guardians on [redacted]. I cc'd the CTSSA, SIA, DT agents and TFOs for their situational awareness.

I found this information online, [redacted], you probably have it already – background on the Society of Saint Pius X-Resistance (SSPX-R)

file:///C:/Users/[redacted]/Downloads/Initial+Findings+SSPX+Resistance.pdf

Regards,

[redacted]

[redacted]
Intelligence Analyst
Counterterrorism – Domestic Terrorism
Louisville Field Office – Squads 4 & 9
Desk - [redacted]
Cell – [redacted]

From: [redacted] (RH) (FBI) [redacted]
Sent: Thursday, January 05, 2023 1:01 PM
To: [redacted] (LS) (FBI) [redacted] [redacted] (LS) (FBI) [redacted]
Subject: FW: SSPX Resistance background --- UNCLASSIFIED

Classification: UNCLASSIFIED
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Transitory

Good afternoon,

On 11/13, RMVE subject Xavier Lopez (Gab account [redacted]) was arrested and a search was executed at his residence. Molotov cocktails, 3D printed pistol frames, firearm components including handgun components, ammo, and a non-specific target list was found at his residence among other things. We do not know how far along in the attack planning process he was at this time or if he was collaborating with others. CART and OTD are still working to get into his computer. Lopez had attended Our Lady of Fatima Catholic Society of Saint Pius X (SSPX) Chapel for approximately seven months and participated in three or four catechism classes as part of the process to become baptized. In Lopez's extensive anti-Semitic, anti-LGBTQ, and racist postings on social media platform, Gab, Lopez claimed he was a "radical traditional Catholic Clerical Fascist." FBI Richmond attempted to interview the priest, [redacted] (see email below) who was not cooperative. Additionally, he has been to see Lopez six times in jail. Richmond is opening a Guardian on [redacted]. According to [redacted], he frequently flies back to Kentucky. It appears that his uncle is [redacted], one of the key people in the SSPX-MC organization.

We would be very interested in any information that you have on the organization, the [redacted], etc. We could set up a conference call tomorrow or a day next week that works for you to discuss further.

Thanks so much for your assistance.

From: [redacted] (RH) (FBI)
Sent: Wednesday, January 04, 2023 11:35 AM
To: [redacted] (RH) (FBI) [redacted]
Cc: [redacted] (RH) (TFO) [redacted] (RH) (FBI)
[redacted] (RH) (FBI) [redacted]
Subject: RE: SSPX Resistance background --- UNCLASSIFIED

Classificati●n: UNCLASSIFIED
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Transitory
Good morning,

Just as a follow up, I found the product below last week when I was searching Sentinel related to SSPX. I shot it to [redacted] as we are drafting a joint product together on RMVE's interest in rad-trad ideology. [redacted] did some research and sent me the information below on [redacted]. I ran [redacted]'s number and it came back to a [redacted] located in Kentucky. So we have [redacted] and [redacted] both residing in Kentucky. I was going to dig deeper into this.

SSPX-Resistance spun out of a disagreement with the SSPX's attempts to reconcile with the Roman Catholic Church and became a "thing" when the SSPX Bishop Richard Williamson was expelled from the group (Williamson is British and is known for his anti-Semitic remarks; at one point he was charged in Germany with Holocaust denial). Upon expulsion, Williamson called for a "Catholic resistance." The most notable and largest group in North America originally called itself "Society of St. Pius X of the Strict Observance" (SSPX-SO), though it is now known as the "Society of St. Pius X – Marian Corps" (SSPX-MC). [redacted] is one of the key people in the SSPX-MC organization. In addition to the phone number which I provided you earlier, a dated email address for [redacted] was provided as [redacted]

*Note: All this information was gleaned from open source, I haven't fully validated it.

From: [redacted] (RH) (FBI) [redacted]
Sent: Wednesday, January 4, 2023 10:51 AM
To: [redacted] (CTD) (FBI) [redacted] (CTD) (FBI)
[redacted] (CTD) (FBI)
Cc: [redacted] (RH) (TFO) [redacted] (RH) (FBI)
[redacted] (RH) (FBI) [redacted]
(RH) (FBI) [redacted]
Subject: FW: SSPX Resistance background --- UNCLASSIFIED

Classificati●n: UNCLASSIFIED
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Transitory

Good morning,

During the course of our investigation into Xavier Lopez (266N-RH-3169558) we determined that Lopez was attending Our Lady of Fatima Chapel – SSPX. After Lopez's arrest, TFO [redacted] and I attempted to interview [redacted] regarding his interactions with Lopez. Since Lopez has not completed his catechism or been baptized in the church his

communication with [redacted] is not considered privileged. However, upon asking [redacted] questions about Lopez's desire and plans to commit violence, [redacted] became very uncomfortable and started incoherently stuttering. He requested to speak with the churches leadership and attorneys before continue to provide any more information. Since then, [redacted] has refused to speak with us any further, but has continued to speak with Lopez while in prison, and even attempted to visit him.

IA [redacted] recently discovered this product regarding [redacted]'s attendance at the UK conference and their discovery of SSPX-R's efforts to recruit and radicalize white supremacists/neo-Nazi's. Prior to our interview with [redacted], we were unaware of any connection with SSPX and neo-Nazi radicalization. We would like to set up an initial meeting with you all to discuss more details around this presentation, and possibly conduct a VTC with UK Metropolitan Police, Counter Terrorism to determine if they have any more information on SSPX stateside and/or [redacted]. Please let me know if you guys have time tomorrow or Friday morning.

Thanks,

[redacted]

From: [redacted] (RH) (TFO) [redacted]
Sent: Wednesday, January 04, 2023 10:16 AM
To: [redacted] (RH) (FBI) [redacted] (RH) (FBI) [redacted] (RH) (FBI) [redacted] (RH) (FBI) [redacted] (RH) (FBI) [redacted]
Subject: SSPX Resistance background --- UNCLASSIFIED

Classification: UNCLASSIFIED

I think this is the Intel product [redacted] mentioned to [redacted].

Interesting. Make sure to look at the powerpoint on SSPX Resistance.

[redacted]

Doug

Classification: UNCLASSIFIED

Classification: UNCLASSIFIED

Classification: UNCLASSIFIED

Classification: UNCLASSIFIED

Classification: UNCLASSIFIED

Classification: UNCLASSIFIED

Classification: UNCLASSIFIED//LES

EXHIBIT 3.1.004

[redacted] (RH) (FBI)

From: [redacted] (RH) (FBI)
Sent: Thursday, December 22, 2022 4:30 PM
To: [redacted] (RH) (FBI)
Subject: SSPX-Resistance --- UNCLASSIFIED//FOUO

RMTFRUserProp: Short-Term Use Email (Transitory)
SentinelCaseId: Short-Term Use Email (Transitory)

Classification: UNCLASSIFIED//FOUO
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Transitory

So apparently SSPX-Resistance spun out of a disagreement with the SSPX's attempts to reconcile with the Roman Catholic Church and became a "thing" when the SSPX [redacted] was expelled from the group [redacted] is British and is known for his anti-Semitic remarks; at one point he was charged in Germany with Holocaust denial). Upon expulsion, [redacted] called for a "Catholic resistance." The most notable and largest group in North America originally called itself "Society of St. Pius X of the Strict Observance" (SSPX-SO), though it is now known as the "Society of St. Pius X – Marian Corps" (SSPX-MC). [redacted] is one of the key people in the SSPX-MC organization. In addition to the phone number which I provided you earlier, a dated email address for Hewko was provided as [redacted]

*Note: All this information was gleaned from open source, I haven't fully validated it.

[redacted]

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Classification: UNCLASSIFIED//FOUO

EXHIBIT 3.1.005

Domain Perspective

Threat Target/Facilitation Platform
FBI Richmond
23 January 2023
266N-RH-2893090-INTELPRODS
818A-RH-2792790-INTELPRODS

(U) This document is classified UNCLASSIFIED//FOR OFFICIAL USE ONLY
(U) Warnings and Handling Caveats: Information Concerning Specific Individuals' Activities when that Individual is Part of a Group. Full text is found in the Warnings and Handling Caveats section.
(U) This document is only for FBI internal use. Do not externally disseminate this product.
(U) Domain Perspective (DP) template approved for fiscal year 2023, as of 1 October 2022.

(U//FOUO) Interest of Racially or Ethnically Motivated Violent Extremists in Radical-Traditionalist Catholic Ideology Almost Certainly Presents New Mitigation Opportunities

(U) Executive Summary

(U//FOUO) FBI Richmond assesses the increasingly observed interest of racially or ethnically motivated violent extremists (RMVEs) in radical-traditionalist Catholic (RTC)[a] ideology almost certainly[b] presents opportunities for threat mitigation through the exploration of new avenues for tripwire and source development. FBI Richmond makes this assessment with high confidence[c] based on FBI investigations, local law enforcement agency reporting, and liaison reporting, with varying degrees of corroboration and access.

(U//FOUO) In making this assessment, FBI Richmond relied on the key assumption that RMVEs will continue to find RTC ideology attractive and will continue to attempt to connect with RTC adherents, both virtually via social media and in-person at places of worship. Indicators that would cause FBI Richmond to revise the judgments or confidence levels in its assessment include increases or decreases in RMVE subjects' attendance at RTC or traditionalist Catholic places of worship; increases or decreases in RMVE subjects' activity on social media platforms and forums maintained or frequented by RTCs; or the public distancing of prominent RTC or traditionalist Catholic personalities or institutions from RMVE ideologies. FBI Richmond assesses RMVE interest in RTCs is likely to increase over the next 12 to 24 months in the run-up

[a] (U) Analyst Note: RTCs are typically characterized by the rejection of the Second Vatican Council (Vatican II) as a valid church council; disdain for most of the popes elected since Vatican II, particularly Pope Francis and Pope John Paul II; and frequent adherence to anti-Semitic, anti-immigrant, anti-LGBTQ, and white supremacist ideology. Radical-traditionalist Catholics compose a small minority of overall Roman Catholic adherents and are separate and distinct from "traditionalist Catholics" who prefer the Traditional Latin Mass and pre-Vatican II teachings and traditions, but without the more extremist ideological beliefs and violent rhetoric. Vatican II took place from 1962-1965 and essentially shaped the modern Roman Rite Catholic Church. It was intended to help the church respond to global cultural changes in the aftermath of World War II and resulted in significant reforms to the liturgy, attitudes toward non-Christian religions, roles and responsibilities of the laity, views on religious freedom, etc.
[b] (U) See Appendix B: Expressions of Likelihood.
[c] (U) See Appendix C: Confidence in Assessments and Judgments Based on a Body of Information.

to the next general election cycle, complicating the overall RMVE threat picture while also creating new opportunities for mitigation efforts. During this same 12 to 24 month period, the overall RTC community is likely to remain relatively stable or show modest growth, providing RMVEs a persistent Catholic-oriented base with which to interact. FBI Richmond did not include an Analysis of Alternatives in this product due to the quality of the source information and the lack of significant uncertainties.

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(U) Source Summary Statement

(U//FOUO) Reporting in this Domain Perspective (DP) was primarily derived from an FBI Richmond contact with direct access who reported for the first time, an FBI Portland liaison contact with direct access, an FBI Undercover Employee (UCE) with direct access, local law enforcement agency reporting with varying degrees of corroboration and access, and open source reporting. FBI investigative case files, local law enforcement agency reporting, and liaison reporting were critical to the development of the DP's overall assessments by providing credible examples of RMVE actors expressing interest in and/or actively adopting RTC ideology. Open source information was instrumental in providing an understanding of current trends in the far right white nationalist movement and background information on the various RTC and traditionalist Catholic factions. The information was dated between 9 July 2020 and 28 November 2022. The reporting was current as of 11 January 2023.

(U//FOUO) Increasingly Observed Interest of RMVEs in RTC Ideology Almost Certainly Presents New Opportunities for Threat Mitigation

(U//FOUO) FBI Richmond assesses the increasingly observed interest of RMVEs in RTC ideology almost certainly presents new opportunities for threat mitigation through the exploration of new avenues for tripwire and source development. This assessment is based on reporting from an FBI UCE, jail calls associated with [redacted], local law enforcement agency reporting, and liaison and contact reporting demonstrating RMVE actors have sought out and attended traditionalist Catholic houses of worship, as well as used language indicative of adherence to RTC ideology in social media postings.

- (U//FOUO) According to an FBI Richmond contact with direct access reporting for the first time, prior to RMVE actor [redacted]'s [redacted] 2022 arrest he had been attending the Society of Saint Pius X[d] (SSPX)-affiliated [redacted] Virginia, for approximately seven months and was participating in catechism

[d] (U) Analyst Note: The Society of Saint Pius X (SSPX) is an international priestly society that promotes the traditional Catholic priesthood and the celebration of the traditional Latin Mass and sacraments. It is named after Pope Pius X whose anti-Modernist stance serves as the organization's inspiration. The SSPX is currently considered "canonically irregular" (i.e., not in full communion with the Vatican). The SSPX has spawned a number of offshoots. These include SSPX-Resistance, aka SSPX-Marian Corps (SSPX-MC), which rejected SSPX attempts to reconcile with the Vatican; the Priestly Fraternity of Saint Peter (FSSP), which holds to many of the SSPX beliefs and practices, but ultimately split from the SSPX to stay in full communion with the Vatican; and the Society of Saint Pius V (SSPV), which does not consider Vatican II valid and binding, questions the legitimacy of all of the popes since Vatican II, and has no canonical standing (i.e., is schismatic).

classes as part of the process to become baptized.[1,2] Prior to attending [redacted] stated he wanted to find a church that was "anti-Zionist" and "anti-progressive" because "that's where God lives."[3] In [redacted] extensive anti-Semitic, anti-LGBTQ, and racist postings on the social media platform [redacted] claimed [redacted] was a "radical traditional Catholic Clerical Fascist." At the time of [redacted] arrest, eight Molotov cocktails, six smoke bombs, one smoke grenade, and firearms components consisting of a complete Glock 19 slide/upper receiver, a lower parts kit, a 3D printed Glock 19 frame, a magazine, and 9 mm ammunition were found in his possession.[4]

- (U//FOUO) According to an FBI Portland liaison contact with indirect access, as of September 2021, deceased RMVE subject Robert Reynolds had previously posted online that he first sought out a mainline Roman Catholic community that practiced the Novus Ordo liturgy[e] and then gravitated to the SSPX. In a comment posted to an online discussion group Reynolds noted, "I've been trying to be catholic [sic] for 2 years I went to a novus ordo church at first then became radicalized by the internet after they told me to go away because of fake virusb [sic]." Reynolds posted a photograph of himself outside of a Catholic church and several pictures from inside of the church captioned, "The holy sacrifice of the mass. Join the Catholic Taliban." Reynolds also posted graphics depicting Jesus holding an assault rifle.[5] Prior to his death, Reynolds was under investigation by FBI Portland for his involvement in civil disturbances, vandalism, threatening communications, weapons violations, and other acts of violence furthering his white supremacist ideology.[6]

- (U//FOUO) According to an FBI UCE with direct access, as of July 2021, FBI [redacted] RMVE subject [redacted] attended the SSPX-affiliated [redacted] Church in [redacted] California, for over a year prior to his relocation to [redacted] While at [redacted] started a [redacted] company, [redacted] to provide [redacted] for the church. [redacted] planned to expand [redacted] to other churches and include "fraternal-based" meetings and events.[7] FBI Los Angeles originally initiated an investigation of [redacted] based on allegations that [redacted] was a neo-Nazi with racist and sexist views known to verbally harass and physically assault those who opposed his positions. [redacted] was a member of Legio Christi[f], now known as "Imperium," an organization that violently opposes LGBTQ individuals. [redacted] has attempted to acquire unregistered "paperless" firearms and large capacity ammunition magazines in the past.[8]

(U) Perspective

(U) As of 2021, the Southern Poverty Law Center identified nine RTC hate groups operating in the United States (*see Appendix D for a complete list of these groups and their headquarters'*

[e] (U) Novus Ordo, short for Novus Ordo Missae, refers to the new order of the Catholic Mass promulgated by Pope Paul VI in the aftermath of Vatican II. The Novus Ordo Mass is delivered in the vernacular (as opposed to Latin) and is the normal form of the Mass in the Roman Rite of the Catholic Church.
[f] (U) Legio Christi is not associated with the mainline Roman Catholic religious order known as the Legionaries of Christ, aka the Legion of Christ.

locations).[9] Open source reporting and FBI investigations have noted a growing overlap between the far-right white nationalist movement and RTCs. Illustrative of this has been the increasing collaboration of the far-right Catholic media outlet Church Militant (and its activist wing, the Resistance network) with the America First/"groyper"[g] movement.[10,11] The ongoing convergence of the far-right white nationalist movement and RTCs was further demonstrated through the increase in hostility toward abortion-rights advocates on social media sites in the run-up to and aftermath of the *Dobbs v. Jackson Women's Health Organization* decision that overturned *Roe v. Wade*.[12] Much of the interaction between far-right white nationalists and RTCs takes place online, and adherents of RTCs and other far-right white nationalist groups frequently share language and symbolism, such as crusader references or anti-Semitic discourses.

(U//FOUO) This is the first FBI Richmond domain product to focus on the interest of RMVEs in the RTC movement. A search of FBI databases indicated this is also the first FBI finished intelligence product to specifically address this environmental variable.

(U) Outlook

(U//FOUO) FBI Richmond assesses RMVE interest in RTCs is likely to increase over the next 12 to 24 months in the run-up to the next general election cycle complicating the overall RMVE threat picture while also creating new opportunities for mitigation efforts. This assessment is made in light of the ongoing polarization characterizing the US political environment and the probability that policy issues of mutual interest to RMVEs and RTC adherents will remain in the public spotlight. Catalyzing events in which RMVEs and RTC adherents might have common cause include legislation or judicial decisions in areas such as abortion rights,[h] immigration, affirmative action, and LGBTQ protections. During this same 12 to 24 month period, the overall RTC community is likely to remain relatively stable or show modest growth based on potential disaffection with mainline Catholic churches on social issues in the aforementioned areas, providing RMVEs a persistent Catholic-oriented base with which to interact.

(U//FOUO) Ultimately, there may be limits to the level of engagement between RTCs and other far-right white nationalists. For example, many RTCs consider other forms of Christianity to be heretical and an over-emphasis on white US nationalism may be off-putting to RTCs of different ethnicities and countries of origin. Conversely, deep-seated anti-Catholicism remains a characteristic of many far-right white nationalists. Nonetheless, the current trend of RMVE interest in RTC ideology provides new opportunities to mitigate the RMVE threat through outreach to traditionalist Catholic parishes[i] and the development of sources with the placement

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[g] (U) The term "groyper" refers to followers of Nick Fuentes's alt-right "America First" movement, which is characterized by its white Christian nationalism platform.

[h] (U) Analyst Note: Currently, Virginia bans abortion after 26 weeks, 6 days, unless performed by a licensed physician in a licensed hospital with three physicians certifying that the continuation of the pregnancy will result in death of the pregnant person or impair their mental or physical health. According to open source reporting, in the aftermath of the Supreme Court's decision to overturn *Roe v. Wade*, Virginia Governor Youngkin has called on state legislators to enact restrictions that would ban abortions in Virginia after 15 weeks.

[i] (U) According to official websites for the respective organizations, there are both SSPX and FSSP houses of worship in the FBI Richmond AOR. There are no formally recognized SSPX-MC or SSPV houses of worship in the FBI Richmond AOR.

and access to report on RMVEs seeking to use RTC social media sites or places of worship as facilitation platforms to promote violence.

(U) Intelligence Gaps

(U//FOUO) FBI Richmond established the following FY2023 Priority Collection Gap to drive collection against factors motivating RMVEs to commit violence, which may include increased religiosity and/or adherence to extreme religious teachings:

- (U//FOUO) What are the catalysts for RMVEs to commit criminal or violent acts in FBI Richmond's area of responsibility (AOR)? [RH-GAP-0023-CTD-491-23]

(U//FOUO) In addition, the following FBI Requirement Essential Element of Information focuses on RMVE actors adhering to ideologies that may be associated with aspirations to conduct criminal activity or acts of violence:

- (U//FOUO) Identify instances of RMVEs' increasing adherence to, or merging of, relatively novel ideological themes to promote and/or warrant carrying out violence or other criminal activity. [Citation: USA-TERR-CTD-SR-1185-22.I.A.8]

(U) Opportunities

- (U//FOUO) In addition to [redacted], engage in outreach to the leadership of other SSPX chapels in the FBI Richmond AOR to sensitize these congregations to the warning signs of radicalization and enlist their assistance to serve as suspicious activity tripwires. The following are the formally recognized SSPX chapels in the FBI Richmond AOR:
    - (U) Immaculate Heart of Mary Chapel, 5267 John Marshall Highway, Linden, Virginia 22642; mailing address P.O. Box 1344, Front Royal, Virginia 22630; telephone number 603-244-6643
    - (U) Our Lady of Fatima Chapel, 5217 Futura Avenue, Richmond, Virginia 23231; telephone number 804-222-3530
    - (U) St. Thomas Aquinas Seminary,[j] 1208 Archbishop Lefebvre Avenue, Dillwyn, Virginia 23936; telephone number 434-505-7007, fax number 507-216-6243
- (U//FOUO) Engage in outreach with the leadership of St. Joseph Parish (828 Buford Road, Richmond, Virginia; telephone number 804-320-4932, fax number 804-451-1009), the sole FSSP parish in the FBI Richmond AOR, to sensitize the congregation to the warning signs of radicalization and enlist their assistance to serve as suspicious activity tripwires.

[j] (U) According to the official SSPX website, St. Thomas Aquinas Seminary is the only SSPX seminary currently operating in the United States.

- (U//FOUO) Based on historical instances of RTC/RMVE actors initially seeking out or attending mainline Catholic parishes, consider outreach to the Diocese of Richmond Pastoral Center (7800 Carousel Lane, Richmond, Virginia 23294; telephone number 804-359-5661, fax number 804-358-9159) to provide background information on the increasing intersection of RMVE actors and RTC, and enlist the diocesan leadership's assistance in sensitizing parishes to the warning signs of radicalization.

- (U//FOUO) Use Requests for Collection to leverage existing sources and/or initiate Type 5 Assessments to develop new sources with the placement and access to report on RMVEs frequenting RTC social media platforms/forums/websites, RMVEs currently attending RTC places of worship, or RMVEs expressing an interest in attending RTC places of worship.

(U) Approval: SIA/IPC RH-10 (CSCC)
SIA RH-15 (Criminal/DT)

(U) Reviewed by: OGC/CDC [redacted]

(U) Coordinated with: SA [redacted] (FBI Portland)
IA [redacted] (FBI [redacted])

(U) Warning and Caveats

(U) Potential criminality exhibited by certain members of a group referenced herein does not negate nor is it a comment on the constitutional rights of the group itself or its members to exercise their rights under the First Amendment to the U.S. Constitution. The FBI does not investigate, collect, or maintain information on U.S. persons solely for the purpose of monitoring activities protected by the First Amendment.

(U) FBI Richmond prepared this Domain Perspective. Please direct comments and queries to the FBI Richmond Intelligence Program at 1-804-261-1044.

(U) Appendix A: Intelligence Metadata

(U) Environmental Variable(s)

- (U) Social/Cultural Conditions

(U) Threat Issue and Threat Variable(s)

(U) Addresses the impact of EV(s) on threats cross-programmatically: ☐ Yes ☒ No

- (U//FOUO) Racially or Ethnically Motivated Violent Extremism (RMVE), HQ-CTD-491-23, FBI Richmond Band II Threat
    - (U//FOUO) Threat Variables
        - (U//FOUO) Threat Actors: RMVEs
        - (U//FOUO) Threat Activities: Use of force or violence in support of ideological objectives
        - (U//FOUO) Facilitation Platform: Social media platforms, RMVE places of worship
        - (U//FOUO) Threat Targets/Victims: Racial or religious minorities, immigrants, members of the LGBTQ community, members of the pro-choice community

(U) Key Intelligence Question(s)

- (U) How do ideological, personal, sociopolitical, community, economic, behavioral or other factors contribute to the radicalization and mobilization of violent extremists? (FBI-CTD-2-06-23)

(U) Appendix B: Expressions of Likelihood

(U) Phrases such as "the FBI judges" and "the FBI assesses," and terms such as "likely" and "probably" convey analytical judgments and assessments. The chart below approximates how expressions of likelihood and probability correlate with percentages of chance. Only terms of likelihood should appear in FBI products; the chart includes terms of probability strictly for comparison, as they sometimes appear in reporting of other government agencies. Furthermore, the FBI does not arrive at judgments through statistical analysis; and will not use terms of probability to convey uncertainty in external FBI intelligence products.

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Terms of Likelihood	Almost No Chance	Very Unlikely	Unlikely	Roughly Even Chance	Likely	Very Likely	Almost Certain(ly)
Terms of Probability	Remote	Highly Improbable	Improbable (Improbably)	Roughly Even Odds	Probable (Probably)	Highly Probable	Nearly Certain
Percentages of Chance	1-5%	5-20%	20-45%	45-55%	55-80%	45-55%	95-99%

(U) Table showing terms of likelihood aligned with terms of probability and percentages of chance.

(U) Appendix C: Confidence in Assessments and Judgments Based on a Body of Information

(U) Confidence levels reflect the quality and quantity of the source information supporting a judgment. Consequently, the FBI ascribes high, medium, or low levels of confidence to assessments, as follows:

(U) **High confidence** generally indicates the FBI's judgments are based on high quality information from multiple sources. High confidence in a judgment does not imply the assessment is a fact or a certainty; such judgments might be wrong. While additional reporting and information sources may change analytical judgments, such changes are most likely to be refinements and not substantial in nature.

(U) **Medium confidence** generally means the information is credibly sourced and plausible but not of sufficient quality or corroborated sufficiently to warrant a higher level of confidence. Additional reporting or information sources have the potential to increase the FBI's confidence levels or substantively change analytical judgments.

(U) **Low confidence** generally means the information's credibility or plausibility is uncertain, the information is too fragmented or poorly corroborated to make solid analytic inferences, or the reliability of the sources is questionable. Absent additional reporting or information sources, analytical judgments should be considered preliminary in nature.

(U) Appendix D: Southern Poverty Law Center-Defined RTC Hate Groups in the United States

(U) Following are the nine RTC hate groups operating in the United States in 2021 as defined by the Southern Policy Law Center, followed by the location of their organizational headquarters.

- (U) Catholic Apologetics International (Greencastle, Pennsylvania)
- (U) Catholic Family News/Catholic Family Ministries, Inc. (Niagara Falls, New York)
- (U) Christ or Chaos (Corsicana, Texas)
- (U) Culture Wars/Fidelity Press (South Bend, Indiana)
- (U) The Fatima Crusader/International Fatima Rosary Crusade (Buffalo, New York)
- (U) In the Spirit of Chartres Committee (Glenelg, Maryland)
- (U) The Remnant/The Remnant Press (Forest Lake, Minnesota)
- (U) Slaves of the Immaculate Heart of Mary (Town of Richmond, New Hampshire)
- (U) Tradition in Action (Los Angeles, California)

Source: (U) Website | Southern Poverty Law Center | "Radical Traditional Catholicism" | https://www.splcenter.org/fighting-hate/extremist-files/ideology/radical-traditional-catholicism | Accessed on 12 December 2022.

(U) Endnotes

[1] (U) FBI | FD-302 | 266N-RH-[redacted], Serial 363 |25 November 2022 | 8 December 2022 | "(U) Interview of [redacted] | UNCLASSIFIED | UNCLASSIFIED | Source was a [redacted] who had no prior reporting history with FBI Richmond.
[2] (U) FBI | FD-302 | 266N-RH-[redacted], Serial 361 |28 November 2022 | 5 December 2022 | "(U) Interview of [redacted] | UNCLASSIFIED | UNCLASSIFIED | Source was [redacted] who had no prior reporting history with FBI Richmond.
[3] (U//FOUO) FBI | FD-1057 | 266N-RH-[redacted], serial 165 | 12 July 2021 | 27 June 2021 | "(U//FOUO) [redacted] Jail Calls from [redacted] 2021" | UNCLASSIFIED | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Jail Calls.
[4] (U) FBI | FD-302 | 266N-RH-[redacted], Serial 351 |13 November 2022 | 17 November 2022 | "(U) [redacted] - Scanned Documents from Search Warrant" | UNCLASSIFIED | UNCLASSIFIED | Source was a law enforcement officer.
[5] (U//FOUO) FBI | Email | 266N-PD-3289811, Serial 168 |15 September 2021 | 16 September 2021 | "(U//FOUO) Email and Product from [redacted]" | UNCLASSIFIED//FOR OFFICIAL USE ONLY | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Source was a liaison contact.
[6] (U//FOUO) FBI | FD-1057 | 266N-PD-3289811, Serial 1 | 9 July 2020 | 9 July 2020 | "(U//FOUO) ROBERT MICHAEL LINDSAY REYNOLDS; AKA SIEGE BUS; SELIGMAN, ARIZONA; DT - RACIALLY MOTIVATED VIOLENT EXTREMIST - WHITE; TIER 6 - OTHER" | UNCLASSIFIED//FOR OFFICIAL USE ONLY | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Source was an FBI agent.
[7] (U//FOUO) FBI | FD-302 | 266N-[redacted], Serial 86 | 20 July 2021 | 22 July 2021 | "(U//FOUO Consensually Recorded Meeting with [redacted] | UNCLASSIFIED//FOR OFFICIAL USE ONLY | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Source was an Undercover Employee.
[8] (U//FOUO) FBI | FDR | 266N-[redacted], Serial 107 | 25 October 2021 | 25 October 2021 | "(U//FOUO To request Swiss authorities assistance with obtaining information from Proton Technologies AG" | UNCLASSIFIED//FOR OFFICIAL USE ONLY | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Source was an FBI employee.
[9] (U) Website | Southern Poverty Law Center | "Radical Traditional Catholicism" | https://www.splcenter.org/fighting-hate/extremist-files/ideology/radical-traditional-catholicism | Accessed on 12 December 2022.
[10] (U) Website | Salon | "White Nationalists Get Religion: On the Far-Right Fringe, a Catholics and Rascists Forge a Movement" | 12 May 2022 | https://www.salon.com/2022/05/12/nationalists-get-religion-on-the-far-right-fringe-catholics-and-forge-a-movement/ | Accessed on 5 December 2022.
[11] (U) Website | Salon | "Traditional" Catholics and White Nationalist "Groypers" Forge a New Far-Right Youth Movement" | 13 May 2022 | https://www.salon.com/2022/05/13/trad-catholics-and-nationalist-groypers-forge-a-new-far-right-youth-movement/ | Accessed on 5 December 2022.
[12] (U) Website | The Atlantic | "How Extremist Gun Culture is Trying to Co-opt the Rosary" | 14 August 2022 | https://www.theatlantic.com/ideas/archive/2022/08/radical-traditionalist-catholic-christian-rosary-weapon/671122/ | Accessed on 5 December 2022.

EXHIBIT 3.1.006

[redacted] (RH) (FBI)

From: [redacted] (RH) (FBI)
Sent: Wednesday, November 16, 2022 9:34 AM
To: [redacted] (RH) (FBI)
Subject: RE: Questions for Lopez --- UNCLASSIFIED//LES

RMTFRUserProp: Short-Term Use Email (Transitory)
SentinelCaseId: Short-Term Use Email (Transitory)

Classification: UNCLASSIFIED//LES
==========
Transitory
Thanks! These look great. I will draft an RFC.

From: [redacted] (RH) (FBI) [redacted]>
Sent: Wednesday, November 16, 2022 9:26 AM
To: [redacted]. (RH) (FBI) <[redacted]>
Subject: Questions for Lopez --- UNCLASSIFIED//LES

Classification: UNCLASSIFIED//LES
==========
Transitory

Below are a few initial questions re: Lopez I would love to get answers for. If we can drop these into a RFC for [redacted] to put in front of Lopez or task to [redacted] so much the better. Let me know what you think.

- What initially drew Lopez to Our Lady of Fatima Catholic Church?
  - How did he find out about the church?
  - Was he invited there by someone?
  - Why did he choose a radical-traditional Catholic church (v. one of the many conservative Protestant/non-denominational congregations or a mainstream Catholic church)?
  - What points of ideology or doctrine attracted Lopez to Our Lady of Fatima?
  - How knowledgeable is Lopez about radical-traditional Catholic doctrine?

- Did anyone in the Our Lady of Fatima congregation share Lopez's radical ideology? Did Lopez share his ideology or intentions with anyone in the congregation?

- Did anyone affiliated with the Our Lady of Fatima congregation provide Lopez with financial assistance?

- Did anyone affiliated with Our Lady of Fatima provide Lopez with acquisition or technical assistance related to any of the contraband he possessed?

- Was Lopez in contact (to include physical, electronic, social media, etc.) with other adherents to radical-traditional Catholic ideology either in the Richmond AOR or elsewhere?

- Did Lopez frequent radical-traditional Catholic websites, the accounts of radical-traditional Catholic social media personalities, etc.?

*Note: If we use these questions in a RFC we will need to try to reword the ones that are yes/no to make them open-ended.

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Classification: UNCLASSIFIED//LES

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Classification: UNCLASSIFIED//LES

EXHIBIT 3.1.007

[redacted] (RH) (FBI)

From: Lewis, David C. (RH) (FBI)
Sent: Thursday, February 09, 2023 8:50 AM
To: Meador, Stanley M. (RH) (FBI); [redacted] (RH) (FBI); [redacted] (RH) (FBI)
Subject: RE: Richmond Intel Product, referenced in news --- UNCLASSIFIED//FOUO

RMTFRUserProp: Personal Email (Nonrecord)
SentinelCaseId: Personal Email (Nonrecord)

Classification: UNCLASSIFIED//FOUO
==========
Nonrecord

Good copy

Respectfully,
ASAC David C. Lewis, National Security Branch
Richmond Field Office
Office:
Mobile [redacted]

From: Meador, Stanley M. (RH) (FBI) [redacted]
Sent: Thursday, February 9, 2023 8:12 AM
To: Lewis, David C. (RH) (FBI) [redacted]
Subject: FW: Richmond Intel Product, referenced in news --- UNCLASSIFIED//FOUO

Classification: UNCLASSIFIED//FOUO
==========

Start from the bottom. Let's discuss shortly.

Stanley

From: Ugoretz, Tonya L. (DI) (FBI) [redacted]
Sent: Thursday, February 09, 2023 7:40 AM
To: [redacted] (CTD) (FBI) [redacted]; Coakley, Miriam M. (OGC) (FBI) [redacted]; [redacted] (RH) (FBI) [redacted]; Meador, Stanley M. (RH) (FBI) [redacted]; Wells, Robert R. (CTD) (FBI) [redacted]; Jones, Jason Allen (OGC) (FBI) [redacted]; Turner, Suzanne (INSD) (FBI) [redacted]; Dunham, Christopher G. (OCA) (FBI) [redacted]; [redacted] (OCA) (FBI) [redacted]; [redacted] (CTD) (FBI) [redacted]; [redacted] (DI) (FBI) [redacted]; Milhoan, Catherine L. (OPA) (FBI) [redacted]; Goodwater, Douglas M. (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted]; [redacted] (OGC) (FBI) [redacted]; [redacted] (OGC) (FBI) [redacted]; Rojas, Rachel L. (InTO) (FBI) [redacted]; Beidler, Douglas S. (SecD) (FBI) [redacted]; Platt, Lon Stuart (OPR) (FBI) [redacted]; Byron, Pamela (DI) (FBI) [redacted]; [redacted] (DI) (FBI) [redacted]; Hardiman, Kellie M. (CTD)

(FBI) [redacted]; [redacted] (CTD) (FBI) [redacted]; [redacted]
(CTD) (FBI) [redacted]; Decker, Eric L. (DI) (FBI) [redacted]
Subject: RE: Richmond Intel Product, referenced in news -- UNCLASSIFIED//FOUO

Classificatione UNCLASSIFIED//FOUO
==========

Good morning,

We understand there is discussion of recalling this Domain Perspective. DI conducted a preliminary review of the product's analytic tradecraft to help inform that decision, with the following key takeaways:

- **With respect to sourcing (in particular, SPLC):** SPLC has been a source for statistics and data not otherwise available to law enforcement. However, this product cites more subjective information from SPLC (a list of hate groups) without examining SPLC's threshold for determining a hate group or explanation of how that threshold aligns with the FBI's definition.
    - Tradecraft standards require describing the quality and credibility of underlying sources. This product's Source Summary Statement does not address factors that would affect the quality and credibility of SPLC as a source for subjective information, such as its previously issuing apologies and retracting its naming of individuals or groups as extremist.
    - In additoin, since the hate group identified in this case was related to a branch of a religious group, there should have been more care to caveat this information.
- **Assumptions:** CTD notes below that this product "is the only finished intelligence product to specifically address RMVE's interest in radical-traditionalist catholic ideology of which we are aware." This product states RMVE interest in RTC ideology as a fact and proceeds from that assumption without substantiation. A more logical first product on this topic would have laid out the author's assessment of a connection between RTC ideology and violence or extremism so that assessment could have been appropriately reviewed.

We will share our fuller read with CTD and welcome any questions.

Thanks,
Tonya

From: [redacted] (CTD) (FBI) [redacted]
Sent: Wednesday, February 08, 2023 6:03 PM
To: Ugoretz, Tonya L. (DI) (FBI) [redacted]; Coakley, Miriam M. (OGC) (FBI) [redacted]; [redacted]. (RH) (FBI) [redacted]; Meador, Stanley M. (RH) (FBI) [redacted]; Wells, Robert R. (CTD) (FBI) [redacted]; Jones, Jason Allen (OGC) (FBI) [redacted]; Turner, Suzanne (INSD) (FBI) [redacted]; Dunham, Christopher G. (OCA) (FBI) [redacted]; [redacted] (OCA) (FBI) [redacted] (CTD) (FBI) [redacted] (DI) (FBI) [redacted] Milhoan, Catherine L. (OPA) (FBI) [redacted]; Goodwater, Douglas M. (OPA) (FBI) [redacted] (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted] (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted] (OPA) (FBI) [redacted] (OGC) (FBI) [redacted] (OGC) (FBI) [redacted]; Rojas, Rachel L. (InTO) (FBI) [redacted] Beidler, Douglas S. (SecD) (FBI) [redacted]; Platt, Lon Stuart (OPR) (FBI) [redacted]; Byron, Pamela (DI) (FBI) [redacted] (DI) (FBI) [redacted]; Hardiman, Kellie M. (CTD) (FBI) [redacted] r (CTD) (FBI) [redacted]; [redacted] (CTD) (FBI) [redacted]
Subject: RE: Richmond Intel Product, referenced in news --- UNCLASSIFIED//FOUO

Classification: UNCLASSIFIED//FOUO

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Transitory

[redacted]:

Per our conversation this afternoon –

CTD's analysis of the racially or ethnically motivated violent extremist (RMVE) threat does not align with FBI Richmond's analysis. The FBI does not use the phrase "radical traditionalist catholic" to define any domestic terrorism threat category. Further, the FBI does not open investigations based upon first amendment protected activities, such as religion. The leaked internal-only intelligence product referenced in the article is the only finished intelligence product to specifically address RMVE's interest in radical-traditionalist catholic ideology of which we are aware. CTD does not assess there is a significant linkage between RMVE actors and this ideology which would necessitate further FBI interest, analysis, or intelligence collection efforts. FBI engagement with all communities of faith to provide educational materials on indicators of mobilization helps protect those communities by allowing them to recognize potential violent actors before violence occurs against their congregants or other members of the community. When describing ideologically-motivated violent extremists, such as RMVEs, the FBI focuses first and foremost on violence, criminal activity and violation of federal law. Political or religious affiliations (such as "far-right") are not used to describe or identify violent extremists. Some portions of the paper referenced in the article do not adhere to these FBI standards.

A query of Sentinel identified 13 documents and 5 attachments that included the term, "radical traditionalist catholic" or "Radical Traditionalist Catholic":

1. *The leaked product*:
   a. On 24 January 2023, FBI Richmond serialized the Domain Perspective titled, "Interest of Racially or Ethnically Motivated Violent Extremists in Radical-Traditionalist Catholic Ideology Almost Certainly Presents New Mitigation Opportunities" (266N-RH[redacted], Serial 68). The case file 266N-RH-[redacted] was opened on 17 May 2013 and is still open.
   b. On 6 February 2023, FBI Tampa serialized a "CT Intel Monthly Roundup," which cited the FBI Richmond product (800A-TP-[redacted] Serial 77). The case file 800A-TP-[redacted] was opened on 24 May 2018 and is still open.
2. On 23 September 2022, the National Threat Operations Center serialized its weekly Domain Awareness tips, which included an attachment listing the tips; one of the tips cited the Southern Poverty Law Center (SPLC) website, https://www.splcenter.org/fighting-hate/intelligence-report/2007/12-anti-semitic-radical-traditionalist-catholic-groups (242-HQ-[redacted] Serial 57). The case file 242-HQ-[redacted] was opened on 15 October 2020 and is still open.
3. On 15 August 2018, FBI Boston opened a Guardian (454854_BS) based on an individual who called the FBI Public Access Line (PAL) and reported possible involuntary servitude/human trafficking by "Slaves of the Immaculate Heart of Mary." According to the Guardian, an open source search of "Slaves of the Immaculate Heart of Mary" identified a Southern Poverty Law Center article that described it as a "radical traditionalist catholic religious order." On 16 August 2018, FBI Boston converted the Guardian to a Type 1 Assessment (7A-BS-2970726 (Closed)), which was closed on 15 November 2018.
4. On 7 March 2018, FBI Los Angeles serialized a FOIA release, which included a paragraph about "radical traditionalist Catholics," which was identified as coming from the Southern Poverty Law Center (SPLC) (100N-LA-[redacted], Serial 3759). The case file 100N-LA-[redacted] was opened on 12 January 2010 and closed on 6 August 2012.
5. On 15 August 2017, FBI Indianapolis serialized an "Indiana Open Source Bulletin," which cited the Southern Poverty Law Center (SPLC) as stating "radical traditional catholic" hate groups were operating in Indiana (818A-IP-[redacted], Serial 557). The case file 818A-IP-[redacted] was opened on 5 June 2011 and is still open.
6. On 6 July 2016, FBI Milwaukee serialized a Southern Poverty Law Center (SPLC) document titled, "The Year in Hate and Extremism," which included "radical traditional catholic" groups as hate groups (804I-MW-[redacted], Serial 2). The case file 804I-MW-[redacted] was opened on 30 June 2016 and is still open.

7. ATF report titled, "Northern Border Extremists, Overview of American/Canadian Extremists":
    a. On 27 May 2015, FBI Boston serialized a copy of a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) report titled, "Northern Border Extremists, Overview of American/Canadian Extremists," dated 1 December 2008, which cites hate groups identified by the Southern Poverty Law Center (SPLC), including "radical traditional catholic" groups (62F-BS-[redacted], Serial 150). The case file 62F-BS-[redacted] was opened on 15 May 2002 and is still open.
    b. On 26 February 2016, FBI San Francisco serialized a Guardian (308576_SF), and attached documents titled, "U ATT_18.pdf" and "U ATT_20.pdf," which included copies of a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) report titled, "Northern Border Extremists, Overview of American/Canadian Extremists," dated 1 December 2008, which cites hate groups identified by the Southern Poverty Law Center (SPLC), including "radical traditional catholic" groups (415-SF-[redacted] Serial 8526). The case file 415-SF-[redacted] was opened on 13 January 2009 and is still open.
8. On 24 June 2014, FBI Minneapolis serialized a document citing open source research on the Southern Poverty Law Center (SPLC), and the document stated the SPLC maintained a list of hate groups, which included "radical traditionalist catholic" groups (266N-MP-[redacted] Serial 5). The case file 266N-MP-[redacted] was opened on 24 June 2014 and closed on 19 May 2019.
9. The RESTRICTED case file 804B-HQ-[redacted] is marked as a sensitive investigative matter (SIM) involving: Domestic Public Official; Domestic Political Candidate; and Domestic Political Organization or an Individual Prominent in Such an Organization. The case file was opened on 3 March 2006 and closed on 25 September 2018. The following documents in the case file cite the phrase "radical traditionalist catholic":
    a. On 31 January 2011, a restricted document citing the phrase "radical traditionalist catholic" was filed to 804B-HQ-[redacted] Serial 243. The serial and case file are restricted.
    b. On 8 September 2010, a restricted document citing the phrase "radical traditionalist catholic" was filed to 804B-HQ-[redacted] Serial 227.
10. On 9 July 2009, FBI Indianapolis serialized a Domestic Terrorism Domain Threat Assessment, which cited the Southern Poverty Law Center as identifying 16 "hate groups" active in their domain, to include two "radical traditionalist catholic" groups (801H-IP-[redacted] Serial 8).
11. On 16 April 2009, FBI Buffalo serialized an intelligence assessment to provide baseline information on the threat and scope of civil rights in Buffalo (804B-BF-[redacted] Serial 346; and 62F-BF-[redacted] Serial 89). The document states, "The Southern Poverty Law Center (SPLC) identified four active hate groups within the Buffalo jurisdiction and classified them as black separatist, white nationalist, radical traditionalist catholic and general hate groups." The case file 804B-BF-[redacted] was opened on 5 October 2005 and closed on 28 February 2018. The case file 62F-BF-[redacted] was opened on 22 December 2006 and is still open.

CTD defers to DI for any further comment/action/assessment.

[redacted]

[redacted]
Unit Chief - CT Executive Staff
Desk: [redacted]
Cell: [redacted]

From: Ugoretz, Tonya L. (DI) (FBI) [redacted]
Sent: Wednesday, February 08, 2023 4:06 PM
To: Coakley, Miriam M. (OGC) (FBI) [redacted] (RH) (FBI) [redacted]; Meador, Stanley M. (RH) (FBI) [redacted] Wells, Robert R. (CTD) (FBI) [redacted] Jones, Jason Allen (OGC) (FBI) [redacted] Turner, Suzanne (INSD) (FBI) [redacted] Dunham, Christopher G. (OCA) (FBI) [redacted] (OCA) (FBI) [redacted] (CTD) (FBI) [redacted] (CTD)

(FBI) [redacted]; [redacted] (DI) (FBI) [redacted]; Milhoan, Catherine L. (OPA) (FBI) [redacted]; Goodwater, Douglas M. (OPA) (FBI) [redacted] (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted] (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted] (OPA) (FBI) [redacted] (OGC) (FBI) [redacted] (OGC) (FBI) [redacted] Rojas, Rachel L. (InTO) (FBI) [redacted]; Beidler, Douglas S. (SecD) (FBI) [redacted]; Platt, Lon Stuart (OPR) (FBI) [redacted] Byron, Pamela (DI) (FBI) [redacted]; [redacted] (DI) (FBI) [redacted]
Subject: RE: Richmond Intel Product, referenced in news --- UNCLASSIFIED//FOUO

Classification: UNCLASSIFIED//FOUO

Thank you. + DAD Pam Byron and A/SC [redacted] for DI.

For the background of ALCON, this product type, a Domain Perspective, is an FBI product intended to highlight how a shift or new development related to an environmental variable (EV) may affect threats or mitigation in a particular domain. (EVs include demographic shifts, technology development, economic conditions, special events, social/cultural conditions, etc.)

The Field Office's IPC is the final approver. The product is typically internal (which seems to be the case here based on the screen shots in the article). From a quick read, this product's topics would have triggered legal review.

From: Coakley, Miriam M. (OGC) (FBI) [redacted]
Sent: Wednesday, February 08, 2023 3:25 PM
To: [redacted] (RH) (FBI) [redacted]; Ugoretz, Tonya L. (DI) (FBI) [redacted]; Meador, Stanley M. (RH) (FBI) [redacted]; Wells, Robert R. (CTD) (FBI) [redacted]; Jones, Jason Allen (OGC) (FBI) [redacted]; Turner, Suzanne (INSD) (FBI) [redacted]; Dunham, Christopher G. (OCA) (FBI) [redacted]; [redacted] (OCA) (FBI) [redacted]; [redacted] (CTD) (FBI) [redacted]; [redacted] (CTD) (FBI) [redacted]; [redacted] (DI) (FBI) [redacted]; Milhoan, Catherine L. (OPA) (FBI) [redacted]; Goodwater, Douglas M. (OPA) (FBI) [redacted] (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted] (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted] (OPA) (FBI) [redacted] (OGC) (FBI) [redacted] (OGC) (FBI) [redacted]; Rojas, Rachel L. (InTO) (FBI) [redacted]; Beidler, Douglas S. (SecD) (FBI) [redacted]; Platt, Lon Stuart (OPR) (FBI) [redacted]
Subject: RE: Richmond Intel Product, referenced in news --- UNCLASSIFIED//FOUO

Classification: UNCLASSIFIED//FOUO

Transitory

+ InTo, SecD, and OPR.

From: [redacted] (RH) (FBI) [redacted]
Sent: Wednesday, February 08, 2023 3:16 PM
To: Ugoretz, Tonya L. (DI) (FBI) [redacted]; Meador, Stanley M. (RH) (FBI) [redacted]; Wells, Robert R. (CTD) (FBI) [redacted]; Jones, Jason Allen (OGC) (FBI) [redacted]; Turner, Suzanne (INSD) (FBI) [redacted]; Dunham, Christopher G. (OCA) (FBI)

[redacted]>; [redacted] (OCA) (FBI) [redacted] [redacted] (CTD) (FBI) [redacted]; [redacted] (CTD) (FBI) [redacted]>; [redacted] (DI) (FBI) [redacted]>; Milhoan, Catherine L. (OPA) (FBI) [redacted]>; Goodwater, Douglas M. (OPA) (FBI) [redacted]>; [redacted] (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted] (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted]; [redacted] (OPA) (FBI) [redacted]>; [redacted] (OGC) (FBI) [redacted]>; [redacted] (OGC) (FBI) [redacted]; [redacted] (OGC) (FBI) [redacted]>
Subject: Richmond Intel Product, referenced in news --- UNCLASSIFIED//FOUO

Classification: UNCLASSIFIED//FOUO
==========
Transitory

Good afternoon.

Responding to [redacted]'s (unclass) email from 2:19 today please find attached the product referenced in the article titled: The FBI Doubles Down on Christians and White Supremacy in 2023.

[redacted]
Public Affairs Specialist
Congressional Liaison
FBI Richmond
[redacted]

(S/B) [redacted]
(Direct line) [redacted]
Follow us on Twitter - @FBIRichmond

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EXHIBIT 3.1.008

[redacted] (RH) (FBI)

From: [redacted] (RH) (FBI)
Sent: Thursday, February 9, 2023 12:37 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] (RH) (FBI); [redacted] (RH) (FBI); [redacted]
Subject: RE: Need to remove an item from Sentinel in a "Freeze List" file --- UNCLASSIFIED//FOUO

RMTFRUserProp: Short-Term Use Email (Transitory)
SentinelCaseId: Short-Term Use Email (Transitory)

Classification: UNCLASSIFIED//FOUO
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Transitory

Hi [redacted] and [redacted],

Richmond is looking to remove 266N-RH-[redacted], Serial 68 from Sentinel. As advised by [redacted] with Richmond concurrence it is being removed pursuant to Policy Directive 0861D, 8.2.5. Pursuant to Policy Directive 0619D Richmond is requesting OGC permission to proceed with the request to remove the serial from Sentinel.

Thanks,
[redacted]

SSA [redacted]
Chief Division Counsel
Richmond Division
desk [redacted]
mobile [redacted]



Confidentiality Statement:
This message is transmitted to you by the Office of the Division Counsel of the Richmond Field Office, Federal Bureau of Investigation. The message, along with any attachments, may be confidential and legally privileged. If you are not the intended recipient of this message, please destroy it promptly without further retention or dissemination (unless otherwise required by law). Please notify the sender of the error by a separate e-mail or by calling [redacted]

From: [redacted]
Sent: Thursday, February 9, 2023 10:34 AM
To: [redacted] (RH) (FBI) [redacted]
Cc: [redacted] (RH) (FBI) [redacted]
Subject: RE: Need to remove an item from Sentinel in a "Freeze List" file --- UNCLASSIFIED//FOUO

Classification: UNCLASSIFIED//FOUO
==========
Transitory

Good morning,

If a file is on the freeze list you will have to get permission from OGC to proceed with the PCO request. Since you are asking prior to submitting the lead, please email [redacted] and copy [redacted] on the email. She is the one able to give permission for us to do a PCO in any case on the freeze list.

Thanks,

[redacted]
Records Information Management Specialist
Information Maintenance Unit
Building [redacted] Room [redacted]
Phone [redacted]

From: [redacted] (RH) (FBI) [redacted]
Sent: Thursday, February 09, 2023 10:23 AM
To: [redacted]
Cc: [redacted] (RH) (FBI) [redacted]
Subject: Need to remove an item from Sentinel in a "Freeze List" file --- UNCLASSIFIED//FOUO

Classificatione UNCLASSIFIED//FOUO
==========

Good morning,

I have been directed by my management/FBI Executive Management to remove a serial from Sentinel and per the guidance here, because the document is in a "Freeze List" file, IMD cannot process the request and I should reach out to this email box. (266N-RH-[redacted] serial 68)

- *"If case is listed on the Freeze list or meets any of the criteria listed in CPD 0619D, IMD is unable to process your request; for additional guidance e-mail* [redacted]

Please contact me ASAP regarding this request at one of the below numbers.

Thanks,
[redacted]

SIA [redacted]
Richmond SQ [redacted] (CRIM & DT)
[redacted] (desk)
[redacted] (cell)
[redacted]@fbi.gov (UNCLASS)

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Classification: UNCLASSIFIED//FOUO

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Classification: UNCLASSIFIED//FOUO

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Classification: UNCLASSIFIED//FOUO

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Classification: UNCLASSIFIED//FOUO

EXHIBIT 3.1.009

[redacted] (RH) (FBI)

From: [redacted] (RH) (FBI)
Sent: Friday, March 17, 2023 4:23 PM
To: [redacted] (RH) (FBI)
Cc: [redacted] (RH) (F[redacted] (RH) (FBI)
Subject: DP --- UNCLASSIFIED//FGI GBR//FOUO
Attachments: RTC-Revision.docx

RMTFRUserProp: Short-Term Use Email (Transitory)
SentinelCaseId: Short-Term Use Email (Transitory)

Classification: UNCLASSIFIED//FGI GBR//FOUO
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Transitory

Good afternoon. I spent today tinkering with the DP, not with the intention to immediately push to re-disseminate, but just to see how difficult it might be to address Di's, CTD's, and OGC's areas of concern. I do not intend to formally pursue this any further without assurances from higher up that this initiative is supported. Take a look and let me know what you think.

Major changes:

- Re-oriented the analytical line slightly
- Softened instances of language that seemed to be causing distress
- Added a fourth Substantiation bullet with the FGI GBR information
- Re-ordered the language in Substantiation bullet #1
- Shortened one of the first page footnotes
- Dropped the Perspective entirely
- Added an AofA

There are a few areas where we could tinker further:

- "RTC" is still in there, but caveated
- We could possibly chop some of the language in the Substantiation bullets
- I'm not crazy about the AofA since it is kind of just the opposite of the analytical line, but I didn't really have a better idea
- Some of the end notes are incomplete pertaining to the new Substantiation bullet
- Maybe some additional sourcing for some of the footnotes

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Classification: UNCLASSIFIED//FGI GBR//FOUO



Domain Perspective



Threat Target/Facilitation Platform
FBI Richmond
XX XXXXXXX 2023
266N-RH-[redacted]-INTELPRODS
818A-RH-[redacted]-INTELPRODS

(U) This document is classified UNCLASSIFIED//FBI GBR//FOR OFFICIAL USE ONLY
(U) Warnings and Handling Caveats: Information Concerning Specific Individuals' Activities when that Individual is Part of a Group. Full text is found in the Warnings and Handling Caveats section.
(U) This document is only for FBI internal use. Do not externally disseminate this product.
(U) Domain Perspective (DP) template approved for fiscal year 2023, as of 1 October 2022.

(U//FOUO) Racially or Ethnically Motivated Violent Extremists Likely Increasingly Interested in Self-Described "Radical-Traditionalist" Catholic Beliefs, Presenting New Opportunities for Outreach

(U) Executive Summary

(U//FOUO) FBI Richmond assesses racially or ethnically motivated violent extremists (RMVEs) likely[a] are increasingly interested in self-described "radical-traditionalist" Catholic (RTC)[b] beliefs, presenting new opportunities for threat mitigation through outreach to canonically irregular[c] Catholic communities. FBI Richmond makes this assessment with medium confidence[d] based on FBI investigations, local law enforcement agency reporting, and foreign and domestic liaison reporting, with varying degrees of corroboration and access.

(U//FOUO) In making this assessment, FBI Richmond relied on the key assumption that RMVEs will continue to find RTC beliefs attractive and will continue to attempt to connect with RTC adherents, both virtually via social media and in-person at places of worship. Indicators that would cause FBI Richmond to revise the judgments or confidence levels in its assessment include increases or decreases in RMVE subjects' attendance at places of worship frequented by RTC adherents; increases or decreases in RMVE subjects' activity on social media platforms and

[a] (U) See Appendix B: Expressions of Likelihood.
[b] (U) Analyst Note: RTCs are self-identified Catholic communities found online or as subsets of larger, often canonically irregular or non-canonical, Catholic communities. RTC beliefs are typically characterized by the rejection of the Second Vatican Council (Vatican II) as a valid church council; disdain for most of the popes elected since Vatican II, particularly Pope Francis and Pope John Paul II; and frequent adherence to anti-Semitic, anti-immigrant, anti-LGBTQ, and white supremacist ideology.
[c] (U) Analyst Note: Canonically irregular (i.e., not in full communion with the Vatican) Catholic communities primarily consist of those associated with the Society of Saint Pius X (SSPX), an international priestly society that promotes the traditional Catholic priesthood and the celebration of the traditional Latin Mass and sacraments. The SSPX has spawned a number of offshoots. These include SSPX-Resistance, aka SSPX-Marian Corps (SSPX-MC), which rejected SSPX attempts to reconcile with the Vatican; the Priestly Fraternity of Saint Peter (FSSP), which holds to many of the SSPX beliefs and practices, but ultimately split from the SSPX to stay in full communion with the Vatican; and the Society of Saint Pius V (SSPV), which does not consider Vatican II valid and binding, questions the legitimacy of all of the popes since Vatican II, and has no canonical standing (i.e., is schismatic).
[d] (U) See Appendix C: Confidence in Assessments and Judgments Based on a Body of Information.

forums maintained or frequented by RTC adherents; or the public distancing of prominent RTC adherents or canonically irregular Catholic institutions from RMVE ideologies. FBI Richmond assesses RMVE interest in RTC beliefs is likely to increase over the next 12 to 24 months in the run-up to the next general election cycle, complicating the overall RMVE threat picture while also creating new mitigation opportunities. During this same 12 to 24 month period, the overall RTC community is likely to remain relatively stable or show modest growth, providing RMVEs a persistent Catholic-oriented base with which to interact.

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(U) Source Summary Statement

(U//FOUO) Reporting in this Domain Perspective (DP) was primarily derived from an FBI Richmond contact with direct access who reported for the first time, an FBI Portland liaison contact with direct access, an FBI Undercover Employee (UCE) with direct access, local law enforcement agency reporting with varying degrees of corroboration and access, foreign liaison reporting, and open source reporting. FBI investigative case files, local law enforcement agency reporting, and liaison reporting (both foreign and domestic) were critical to the development of the DP's overall assessments by providing credible examples of RMVE actors expressing interest in and/or actively adopting RTC beliefs. Open source information was instrumental in providing background information on RTC beliefs and canonically irregular Catholic factions. The information was dated between 9 July 2020 and 28 November 2022. The reporting was current as of 11 January 2023.

(U//FOUO) This is the first FBI Richmond domain product to focus on the interest of RMVEs in RTC beliefs. A search of FBI databases indicated this is also the first FBI finished intelligence product to specifically address this environmental variable.

(U//FOUO) RMVEs Likely Increasingly Interested in RTC Beliefs

(U//FOUO) FBI Richmond assesses RMVEs likely are increasingly interested in RTC beliefs and are seeking out RTC communities both online and at places of worship. This assessment is based on reporting from an FBI UCE, jail calls associated with an FBI subject, local law enforcement agency reporting, contact reporting, foreign liaison reporting, and open source reporting demonstrating RMVEs are active on RTC-oriented social media sites, have sought out and attended canonically irregular Catholic houses of worship, and use language indicative of adherence to RTC beliefs in social media postings.

- (U//FOUO) According to an FBI Richmond contact with direct access reporting for the first time, RMVE actor Xavier Lopez stated he wanted to find a church that was "anti-Zionist" and "anti-progressive" because "that's where God lives."[1] In Lopez's extensive anti-Semitic, anti-LGBTQ, and racist postings on the social media platform Gab, Lopez claimed he was a "radical traditionalist Catholic Clerical Fascist." Lopez subsequently began attending the SSPX-affiliated Our Lady of Fatima Chapel in Richmond, Virginia, and was participating in catechism classes.[2,3] During Lopez's November 2022 arrest, authorities found eight Molotov cocktails, six smoke bombs, one smoke grenade, and firearms components consisting of a complete Glock 19 slide/upper receiver, a lower parts kit, a 3D printed Glock 19 frame, a magazine, and 9 mm ammunition in his possession.[4]

- (U//FOUO) According to an FBI Portland liaison contact with indirect access, as of September 2021, deceased RMVE subject [redacted] had previously posted online that he first sought out a mainline Roman Catholic community that practiced the Novus Ordo liturgy[e] and then gravitated to the SSPX. In a comment posted to an online discussion group [redacted] noted, "I've been trying to be catholic [sic] for 2 years I went to a novus ordo church at first then became radicalized by the internet after they told me to go away because of fake virusb [sic]." [redacted] posted a photograph of himself outside of a Catholic church and several pictures from inside of the church captioned, "The holy sacrifice of the mass. Join the Catholic Taliban." [redacted] also posted graphics depicting Jesus holding an assault rifle.[5] Prior to his death, [redacted] was under investigation by FBI Portland for his involvement in civil disturbances, vandalism, threatening communications, weapons violations, and other acts of violence furthering his white supremacist ideology.[6]

- (U//FOUO) According to an FBI UCE with direct access, as of July 2021, FBI Milwaukee RMVE subject [redacted] attended the SSPX-affiliated Maria Stella Maris Mission Church in San Pedro, California, for over a year prior to his relocation to Wisconsin. While at Maria Stella Maris Mission, [redacted] started a security company, [redacted], to provide armed security for the church. [redacted] planned to expande[redacted] to other churches and include "fraternal-based" meetings and events.[7] FBI Los Angeles originally initiated an investigation of [redacted] based on allegations that [redacted] was a neo-Nazi with racist and sexist views known to verbally harass and physically assault those who opposed his positions. [redacted] was a member of Legio Christi[f], now known as "Imperium," an organization that violently opposes LGBTQ individuals. [redacted] has attempted to acquire unregistered "paperless" firearms and large capacity ammunition magazines in the past.[8]

- (U//FGI GBR//FOUO) According to open source and UK liaison reporting, [redacted], an Action Zealandia[g] member who was arrested in March 2020 in connection with a threat to the Al-Noor mosque in Christchurch, New Zealand, began online engagement with the ideas and teaching of Bishop Richard Williamson, leader of SSPX Resistance, circa mid-2021.[9] [redacted] subsequently became extremely active on SSPX Resistance chat forums and in March 2022 attempted to travel to the United Kingdom in order to spend two months at the SSPX Resistance-affiliated St. Finbarr's Priory.[11]

[e] (U) Novus Ordo, short for Novus Ordo Missae, refers to the new order of the Catholic Mass promulgated by Pope Paul VI in the aftermath of Vatican II. The Novus Ordo Mass is delivered in the vernacular (as opposed to Latin) and is the normal form of the Mass in the Roman Rite of the Catholic Church.

[f] (U) Legio Christi is not associated with the mainline Roman Catholic religious order known as the Legionaries of Christ, aka the Legion of Christ.

[g] (U//FOUO) According to the Open Source Enterprise's "Lexicon of International White REMVE Groups, Adjacent Extremists," (see 818D-SF-[redacted]-DSAC, serial 1087) Action Zealandia is a "male-only nationalist organization that aims to create a community of young European New Zealanders."

(U//FOUO) Analysis of Alternatives

(U//FOUO) FBI Richmond considered the alternative hypothesis that RMVEs are unlikely to find common cause with RTC beliefs and communities, and that the incidents cited in the Substantiation section above were aberrations not indicative of a broader trend. This alternative was ultimately deemed less plausible based on the increasing accessibility of RMVEs to RTC beliefs and platforms via social media; RMVE adoption of language, imagery, and teachings common to online media, chatrooms, and websites professing to promote RTC beliefs; and the historical willingness of RMVE actors to incorporate elements of various faith traditions that they perceive could be used to support RMVE ideological positions.

(U) Outlook

(U//FOUO) FBI Richmond assesses RMVE interest in RTC beliefs is likely to increase over the next 12 to 24 months in the run-up to the next general election cycle complicating the overall RMVE threat picture while also creating new opportunities for threat mitigation through outreach. This assessment is made in light of the ongoing polarization characterizing the US political environment and the probability that policy issues of mutual interest to RMVEs and adherents to RTC beliefs will remain in the public spotlight. Catalyzing events in which RMVEs and RTC adherents might have common cause include legislation or judicial decisions in areas such as abortion rights, immigration, affirmative action, and LGBTQ protections. During this same 12 to 24 month period, the overall RTC community is likely to remain relatively stable or show modest growth based on potential disaffection with mainline Catholic churches on social issues in the aforementioned areas, providing RMVEs a persistent Catholic-oriented base with which to interact.

(U//FOUO) Ultimately, there may be limits to the level of engagement between RTC adherents and RMVEs. For example, many RTC adherents consider other forms of Christianity to be heretical and an over-emphasis on white supremacy may be off-putting to RTCs of different ethnicities and countries of origin. Conversely, deep-seated anti-Catholicism remains a characteristic of many RMVEs from different faith backgrounds. Nonetheless, the current trend of RMVE interest in RTC beliefs provides new opportunities to mitigate the RMVE threat through outreach to canonically irregular Catholic parishes[h] to sensitize these congregations to the warning signs of radicalization to violence.

(U) Intelligence Gaps

(U//FOUO) FBI Richmond established the following FY2023 Priority Collection Gap to drive collection against factors motivating RMVEs to commit violence, which may include increased religiosity and/or adherence to extreme religious teachings:

[h] (U) According to official websites for the respective organizations, there are both SSPX and FSSP houses of worship in the FBI Richmond AOR. There are no formally recognized SSPX-MC or SSPV houses of worship in the FBI Richmond AOR.

- (U//FOUO) What are the catalysts for RMVEs to commit criminal or violent acts in FBI Richmond's area of responsibility (AOR)? [RH-GAP-0023-CTD-491-23]

(U//FOUO) In addition, the following FBI Requirement Essential Element of Information focuses on RMVE actors adhering to ideologies that may be associated with aspirations to conduct criminal activity or acts of violence:

- (U//FOUO) Identify instances of RMVEs' increasing adherence to, or merging of, relatively novel ideological themes to promote and/or warrant carrying out violence or other criminal activity. [Citation: USA-TERR-CTD-SR-1185-22.I.A.8]

(U) Opportunities

- (U//FOUO) In addition to our Lady of Fatima Chapel, engage in outreach to the leadership of other SSPX chapels in the FBI Richmond AOR to sensitize these congregations to the warning signs of radicalization. The following are the formally recognized SSPX chapels in the FBI Richmond AOR:
    - (U) Immaculate Heart of Mary Chapel, 5267 John Marshall Highway, Linden, Virginia 22642; mailing address P.O. Box 1344, Front Royal, Virginia 22630; telephone number 603-244-6643
    - (U) Our Lady of Fatima Chapel, 5217 Futura Avenue, Richmond, Virginia 23231; telephone number 804-222-3530
    - (U) St. Thomas Aquinas Seminary,[i] 1208 Archbishop Lefebvre Avenue, Dillwyn, Virginia 23936; telephone number 434-505-7007, fax number 507-216-6243
- (U//FOUO) Engage in outreach with the leadership of St. Joseph Parish (828 Buford Road, Richmond, Virginia; telephone number 804-320-4932, fax number 804-451-1009), the sole FSSP parish in the FBI Richmond AOR, to sensitize the congregation to the warning signs of radicalization.
- (U//FOUO) Based on historical instances of RMVE actors initially seeking out or attending mainline Catholic parishes prior to transitioning to canonically irregular communities, consider outreach to the Diocese of Richmond Pastoral Center (7800 Carousel Lane, Richmond, Virginia 23294; telephone number 804-359-5661, fax number 804-358-9159) to provide background information on the increasing interest of RMVE actors in RTC beliefs, and enlist the diocesan leadership's assistance in sensitizing parishes to the warning signs of radicalization.

(U) Approval: SIA/IPC RH-10 (CSCC)

[i] (U) According to the official SSPX website, St. Thomas Aquinas Seminary is the only SSPX seminary currently operating in the United States.

SIA RH-[redacted] (Criminal/DT)

(U) Reviewed by: OGC/CDC[redacted]

(U) Coordinated with: SA [redacted] (FBI Portland)
IA [redacted] (FBI Milwaukee)

(U) Warning and Caveats

(U) Potential criminality exhibited by certain members of a group referenced herein does not negate nor is it a comment on the constitutional rights of the group itself or its members to exercise their rights under the First Amendment to the U.S. Constitution. The FBI does not investigate, collect, or maintain information on U.S. persons solely for the purpose of monitoring activities protected by the First Amendment.

(U) FBI Richmond prepared this Domain Perspective. Please direct comments and queries to the FBI Richmond Intelligence Program at 1-804-261-1044.

(U) Appendix A: Intelligence Metadata

(U) Environmental Variable(s)

- (U) Social/Cultural Conditions

(U) Threat Issue and Threat Variable(s)

(U) Addresses the impact of EV(s) on threats cross-programmatically: ☐ Yes ☒ No

- (U//FOUO) Racially or Ethnically Motivated Violent Extremism (RMVE), HQ-CTD-491-23, FBI Richmond Band II Threat
    - (U//FOUO) Threat Variables
        - (U//FOUO) Threat Actors: RMVEs
        - (U//FOUO) Threat Activities: Use of force or violence in support of ideological objectives
        - (U//FOUO) Facilitation Platform: Social media platforms, RMVE places of worship
        - (U//FOUO) Threat Targets/Victims: Racial or religious minorities, immigrants, members of the LGBTQ community, members of the pro-choice community

(U) Key Intelligence Question(s)

- (U) How do ideological, personal, sociopolitical, community, economic, behavioral or other factors contribute to the radicalization and mobilization of violent extremists? (FBI-CTD-2-06-23)

(U) Appendix B: Expressions of Likelihood

(U) Phrases such as "the FBI judges" and "the FBI assesses," and terms such as "likely" and "probably" convey analytical judgments and assessments. The chart below approximates how expressions of likelihood and probability correlate with percentages of chance. Only terms of likelihood should appear in FBI products; the chart includes terms of probability strictly for comparison, as they sometimes appear in reporting of other government agencies. Furthermore, the FBI does not arrive at judgments through statistical analysis; and will not use terms of probability to convey uncertainty in external FBI intelligence products.

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Terms of Likelihood	Almost No Chance	Very Unlikely	Unlikely	Roughly Even Chance	Likely	Very Likely	Almost Certain(ly)
Terms of Probability	Remote	Highly Improbable	Improbable (Improbably)	Roughly Even Odds	Probable (Probably)	Highly Probable	Nearly Certain
Percentages of Chance	1-5%	5-20%	20-45%	45-55%	55-80%	80-95%	95-99%

(U) Table showing terms of likelihood aligned with terms of probability and percentages of chance.

(U) Appendix C: Confidence in Assessments and Judgments Based on a Body of Information

(U) Confidence levels reflect the quality and quantity of the source information supporting a judgment. Consequently, the FBI ascribes high, medium, or low levels of confidence to assessments, as follows:

(U) **High confidence** generally indicates the FBI's judgments are based on high quality information from multiple sources. High confidence in a judgment does not imply the assessment is a fact or a certainty; such judgments might be wrong. While additional reporting and information sources may change analytical judgments, such changes are most likely to be refinements and not substantial in nature.

(U) **Medium confidence** generally means the information is credibly sourced and plausible but not of sufficient quality or corroborated sufficiently to warrant a higher level of confidence. Additional reporting or information sources have the potential to increase the FBI's confidence levels or substantively change analytical judgments.

(U) **Low confidence** generally means the information's credibility or plausibility is uncertain, the information is too fragmented or poorly corroborated to make solid analytic inferences, or the reliability of the sources is questionable. Absent additional reporting or information sources, analytical judgments should be considered preliminary in nature.

(U) Endnotes

[1] (U) FBI | FD-302 | 266N-RH[redacted], Serial 361 |28 November 2022i| 5 December2022 | "(U) Interview of [redacted]Choir Director, Our Lady of Fatima Chapel" | UNCLASSIFIED | UNCLASSIFIED | Source was a member of the church who had no prior reporting history with FBI Richmond.
[2] (U) FBI | FD-302 | 266N-RH[redacted], Serial 363 |25 November 2022 | 8 December 2022 | "(U) Interview of [redacted] Our Lady of Fatima Catholic Chapel" | UNCLASSIFIED | UNCLASSIFIED | Source was a Catholic priest who had no prior reporting history with FBI Richmond.
[3] (U) FBI | FD-302 | 266N-RH-[redacted], Serial 361 |28 November 2022 | 5 December 2022 | "(U) Interview of [redacted]- Choir Director, Our Lady of Fatima Chapel" | UNCLASSIFIED | UNCLASSIFIED | Source was a member of the church who had no prior reporting history with FBI Richmond.
[4] (U) FBI | FD-302 | 266N-RH-[redacted], Serial 351 |13 November 2022 | 17 November 2022 | "(U) Henrico Police - Scanned Documents from Search Warrant" | UNCLASSIFIED | UNCLASSIFIED | Source was a law enforcement officer.
[5] (U//FOUO) FBI | Email | 266N-PD-[redacted], Serial 168 |15 September 2021 | 16 September 2021 | "(U//FOUO) Email and Product from ADL" | UNCLASSIFIED//FOR OFFICIAL USE ONLY | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Source was a liaison contact.
[6] (U//FOUO) FBI | FD-1057 | 266N-PD[redacted] Serial 1 | 9 July 2020 | 9 July 2020 | "(U//FOUO) ROBERT [redacted] AKA SIEGE BUS; SELIGMAN, ARIZONA; DT - RACIALLY MOTIVATED VIOLENT EXTREMIST - WHITE; TIER 6 - OTHER" | UNCLASSIFIED//FOR OFFICIAL USE ONLY | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Source was an FBI agent.
[7] (U//FOUO) FBI | FD-302 | 266N-[redacted]Serial 86 | 20 July 2021 | 22 July 2021 | "(U//FOUO Consensually Recorded Meeting withi[redacted]M[redacted]" | UNCLASSIFIED//FOR OFFICIAL USE ONLY | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Source was an Undercover Employee.
[8] (U//FOUO) FBI | FDR | 266N-MW[redacted], Serial 107 | 25 October 2021 | 25 October 2021 | "(U//FOUO To request Swiss authorities assistance with obtaining information from Proton Technologies AG" | UNCLASSIFIED//FOR OFFICIAL USE ONLY | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Source was an FBI employee.
[9] (U//FOUO) Open source article, accessed via Sentinel 466N-LA[redacted]serial 2.
[10] (U//FGI GBR) UK slide show 806B-HQ[redacted]serial 46.
[11] (U//FBI GBR) UK slide show 806B-HQ-[redacted]erial 46.

EXHIBIT 3.1.010

[redacted] (RH) (FBI)

Subject: DT centric training --- UNCLASSIFIED
Location: RH Main Conference Room & Skype Meeting

Start: Thu 2/23/2023 10:00 AM
End: Thu 2/23/2023 3:00 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: [redacted] (RH) (FBI)
Required Attendees: [redacted]; [redacted] (OGC) (FBI); [redacted] (DI) (FBI); [redacted] (CTD) (FBI)

Classificatione UNCLASSIFIED
==========

Richmond employees will attend from the 3rd floor conference room or the EOC.

Richmond RAs and FBIHQ personnel will attend via SKYPE.

Agenda
10:00 a.m. - 11:00 a.m. Office of General Counsel: First Amendment and Legal Considerations in DT Investigations
11:00 a.m. - 1:00 p.m. BREAK
1:00 p.m. - 2:00 p.m. Directorate of Intelligence: Analytic Tradecraft with a Focus on Sourcing
2:00 p.m. - 3:00 p.m. Domestic Terrorism Operations Section

Join Skype Meeting

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[redacted]for Lync VTC and Secure Phone Bridge (WashDC) English (United States)

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Conference ID: [redacted]

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IMPORTANT: This is an FBINET Skype meeting. TRADITIONAL PHONES OR CELL PHONES CANNOT BE USED FOR SECURE CALLING.

Skype users on FBINet click "Join Skype Meeting" above. Agencies outside of FBI or users without access to FBINet dial 294-9000 from a classified device and use the secure area code 401 when calling from a VoSIP phone or SIPRNET VTC system. STE/vIPer callers dial the access number ([redacted). Enter [redacted]#" [SEND] when prompted for secure

digits and the conference ID above followed by "#" [SEND] as prompted. Please contact the meeting organizer with any questions specific to this meeting invite.

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Classification: UNCLASSIFIED

EXHIBIT 3.1.011

[redacted] (RH) (FBI)

From: [redacted] (RH) (FBI)
Sent: Thursday, February 23, 2023 2:56 PM
To: Meador, Stanley M. (RH) (FBI); [redacted] (RH) (FBI); [redacted] (RH) (FBI)
Subject: DT Centric Training - Attendees List --- UNCLASSIFIED//FOUO
Attachments: DT Centric Training - Attendees List - 23FEB2023.xlsx; Screenshots of DT Centric Training.zip

Classification: UNCLASSIFIED//FOUO
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Transitory

Team,

Attached is a spreadsheet listing everyone who attended broken out by session and sorted by division and name. All the screenshots are in the zip file for your review.

Please let me know if you have questions.

[redacted]
Mission Support Analyst (MSA)
FBI Richmond / MSA Site
(w) [redacted] (m) [redacted]

==========
Classification: UNCLASSIFIED//FOUO

Person	Division	Title
[redacted]	CTD	INTELLIGENCE ANALYST
[redacted]	CTD	UNIT CHIEF (SUPERVISORY INTELLIGENCE ANALYST)
[redacted]	CTD	INTELLIGENCE ANALYST
[redacted]	CTD	INTELLIGENCE ANALYST
[redacted]	CTD	INTELLIGENCE ANALYST
[redacted]	CTD	INTELL ANALYSIS (SUPERVISORY INTELLIGENCE ANALYST)
[redacted]	CTD	INTELLIGENCE ANALYST
[redacted]	CTD	INTELLIGENCE ANALYST
[redacted]	CTD	SUPERVISORY INTELLIGENCE ANALYST
[redacted]	CTD	INTELLIGENCE ANALYST
Machtinger, Michael P.	CTD	SEC CH (INTELLIGENCE ANALYST MANAGER)
[redacted]	CTD	SUPERVISORY INTELLIGENCE ANALYST
[redacted]	CTD	ASST SEC CH (SUPERVISORY INTELLIGENCE ANALYST)
[redacted]	CTD	INTELLIGENCE ANALYST
[redacted]	CTD	UNIT CHIEF (SUPERVISORY INTELLIGENCE ANALYST)
[redacted]	CTD	INTELLIGENCE ANALYST
[redacted]	CTD	INTELLIGENCE ANALYST
[redacted]	CTD	SUPERVISORY INTELLIGENCE ANALYST
[redacted]	CTD	INTELLIGENCE ANALYST
[redacted]	CTD	FBIHQ SUPVR (SUPVY SPECIAL AGENT)
[redacted]	CTD	SUPERVISORY INTELLIGENCE ANALYST
Byron, Pamela	DI	DEP ASST DIR (INTELLIGENCE ANALYST MANAGER)
Decker, Eric L.	DI	SEC CH (INTELLIGENCE ANALYST MANAGER)
[redacted]	DI	UNIT CHIEF (SUPERVISORY INTELLIGENCE ANALYST)
[redacted]	OGC	GENERAL ATTORNEY
[redacted]	OGC	GENERAL ATTORNEY
[redacted]	OGC	UNIT CH (SUPERVISORY ATTORNEY-ADVISOR (GENERAL)
[redacted]	OGC	GENERAL ATTORNEY
[redacted]	OGC	GENERAL ATTORNEY
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	TACTICAL SPECIALIST (STAFF OPERATIONS SPECIALIST)
[redacted]	RH	SUPERVISORY INTELLIGENCE ANALYST
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	STNARY SUPVR (SUPVY SPECIAL AGENT)
[redacted]	RH	MISSION SUPPORT ANALYST
[redacted]	RH	IT SPECIALIST (SYSADMN/CUSTSPT)
[redacted]	RH	OPERATIONAL SUPPORT TECHNICIAN
[redacted]	RH	SPECIAL AGENT

[redacted]	RH	SPECIAL AGENT
[redacted]	RH	OPERATIONAL SUPPORT TECHNICIAN
[redacted]	RH	FORENSIC ACCOUNTANT (ACCOUNTANT (FORENSICS))
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	OPERATIONAL SUPPORT TECHNICIAN
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	OPERATIONAL SUPPORT TECHNICIAN
[redacted]	RH	STUDENT WORKFORCE TRAINEE
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	SUPERVISORY INFORMATION TECHNOLOGY SPE
[redacted]	RH	SUPERVISORY INTELLIGENCE ANALYST
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	SUPERVISORY INTELLIGENCE ANALYST
[redacted]	RH	TASK FORCE OFFICER (TFO), RH
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	INTELLIGENCE ANALYST
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	SUPERVISORY ADMINISTRATIVE SPECIALIST
[redacted]	RH	SECRETARY-EXECUTIVE MANAGEMENT ASST
[redacted]	RH	PUBLIC AFFAIRS SPECIALIST
[redacted]	RH	INTELLIGENCE ANALYST
[redacted]	RH	FORENSIC ACCOUNTANT (ACCOUNTANT (FORENSICS))
[redacted]	RH	COMPUTER SCIENTIST
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	SPECIAL AGENT
[redacted]	RH	TASK FORCE OFFICER (TFO), RH
[redacted]	RH TFO	TASK FORCE OFFICER (TFO), RH
[redacted]	RHATFO	TASK FORCE OFFICER (TFO), RH

Participant Type	10 am session - Office of General Counsel: First Amendment and Legal Considerations in DT Investigations	1pm session - Directorate of Intelligence: Analytic Tradecraft with a Focus on Sourcing	2pm session - Domestic Terrorism Operations Section
Attendee			1
Attendee			1
Attendee/Presenter (2pm)	1	1	1
Presenter			1
Attendee			1
Presenter	1	1	1
Attendee			1
Attendee			1
Attendee			1
Attendee			1
Attendee	1		1
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Attendee	1	1	1
Attendee			1
Attendee			1
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Attendee/Presenter (2pm)		1	1
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Attendee	1		
Presenter	1	1	1
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Presenter	1	1	1
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Attendee	1	1	1
Attendee	1		
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Attendee	1	1	
Total	**46**	**50**	**64**

EXHIBIT 3.1.012

1) RH — opp to do something good — where is when paper

Q - If we were writing today, what should we do differently? - Hear OGCs CTDs DIs issues

however we make sure this kind of paper can be written? Create success path

- Kibian Clinton — Ass't for logistics, getting in the bldg

"as specific as you need"

how to fix, specifics, tangible

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Abbreviated Agenda/Questions

Meeting goals:

- Preserve and promote the FBI's ability to aggressively investigate and analyze threats
- Prevent similar incidents
- Prevent damage to the FBI's reputation
- Understand the issues with the DP
- Establish clear operating guidelines

Pam wanted to have mtg, then training + cover a smaller group - talk more openly get more of a handle where it

DP

- Clarification of Richmond's intent
- Can DI, OGC, and CTD provide RH authors/reviewers a full, written account of the legal/tradecraft/CT terminology issues contained within the DP?

Training

come from integration/ collaboration things at play - CTD/DI/OGC thought

- the training was very general
- there were some logical follow up questions, which in sum OGC/CTD are voicing an
- Depending on OGC/DI/CTDs resp. to our overarching Q, it might make sense to ask some of these questions.

Questions moving forward:

- OGC
  - Additional guidance on "Washington Post test"
  - Additional guidance on ~~when authors/CDCs should seek additional reviews from OGC on~~ intelligence products
- CTD
  - Additional guidance on "controversial" sources and advocacy groups
  - Additional guidance on terms to avoid in CT products, how to use terms not appearing in the CSG
  - Additional guidance on how to identify/discuss ideologies driving RMVEs
  - Additional guidance on CTD's preferred level of involvement in the coordination process for internal-only Field products
- DI
  - Additional guidance on what constitutes an unacceptable description of sources' "quality and credibility"
  - Additional guidance on the recall/revision of analytic intelligence products due to tradecraft issues

a PAM guiding principles - we all want this kind of topic to be written on. want to avoid chilling effect. 2) to understand what can we do collectively to avoid

three kinds of situations arising. don't want to feel at an impasse. how do we execute the right dynamic? how do we make sure we're on the same page?

PAM 3/6/23 — 3) even w/ variances of opinion, how do we make sure we're on the same page?

First of all thank you for suggesting + arranging the mtg. Just got out of a ~~meeting~~ huddle w/ some folks here about what we'd like to cover but I obviously want to defer to you as well for things you'd like to discuss/have discussed. Plan for who [redacted] IPC or AIPC + Mapper — briefs is aim

Don't want folks to be surprised or to waste folks time.

For RH, single overarching question: "If we were writing today, what should we do differently?" - Hear DI/CTD/OGCs response. We'd like to possibly

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- NOT relitigating - Future focused, - Specific, tangible edits + changes

how do we operate going forward?

our contention that folks in room should have read the paper + be prepared to speak to DI/CTDs/OGCs issues + suggestions for what we should do differently.

up to

Training was general + some logical follow up questions

EXHIBIT 3.1.013

Meador, Stanley M. (RH) (FBI)

From: [redacted] (RH) (FBI)
Sent: Saturday, July 8, 2023 5:55 PM
To: Meador, Stanley M. (RH) (FBI)
Subject: Re: Follow Up

Thank you. I will try my best.

From: Meador, Stanley M. (RH) (FBI) [redacted]@fbi.gov>
Sent: Friday, July 7, 2023 10:58:54 PM
To: [redacted] (RH) (FBI) [redacted]@fbi.gov>; [redacted] (RH) (FBI) [redacted]@fbi.gov>
Subject: Re: Follow Up

No apology needed [redacted]. I'm glad you are on the team and am thankful for your commitment.

Keep that head up, this too shall pass. Will make for a great chapter in your memoirs some day!

Stanley

From: [redacted] (RH) (FBI) [redacted]@fbi.gov>
Sent: Friday, July 7, 2023 10:29:09 PM
To: Meador, Stanley M. (RH) (FBI) [redacted]@fbi.gov>; [redacted]RH) (FBI) [redacted]@fbi.gov>
Subject: Re: Follow Up

Thank you for keeping us informed. I am terribly sorry for all that everyone has had to endure as a result of this product. Each person negatively impacted is a trusted colleague and/or supervisor whom I deeply respect and admire. I feel personally responsible as I should have known the potential DT pitfalls and the susceptibility to politicization surrounding this paper better than anyone.

Thank you for supporting us and please accept my sincerest apologies.

[redacted]y

From: Meador, Stanley M. (RH) (FBI) [redacted]fbi.gov>
Sent: Friday, July 7, 2023 7:27:03 PM
To: [redacted](RH) (FBI) [redacted]fbi.gov>; [redacted] (RH) (FBI) [redacted]l@fbi.gov>; [redacted] (RH) (FBI) [redacted]@fbi.gov>; [redacted] (RH) (FBI) [redacted]@fbi.gov>; [redacted] (RH) (FBI) [redacted]fbi.gov>; [redacted] (RH) (FBI) [redacted]@fbi.gov>; [redacted] (RH) (FBI) [redacted]e@fbi.gov>; [redacted] (RH) (FBI) [redacted]fbi.gov>
Cc: [redacted] (RH) (FBI) [redacted]@fbi.gov>; [redacted] (RH) (FBI) [redacted]@fbi.gov>
Subject: Follow Up

Evening everyone, sorry to both you on a Friday evening.

I just wanted to follow up with you on one point from our meeting today.

I just finished a call with INSD regarding the Director's upcoming testimony. Given the report has not been finalized, the D's is not expected to speak to anything related to the product. Per INSD, their report has to go through a finalization process which is going to take additional time. Until which time it is finally approved, there is no expectation any comments will be made about it. They advised they will let me know if anything changes.

I hope you each have a good weekend,

Stanley

EXHIBIT 3.1.014

From: "Chambers, Kevin (ODAG)" <[redacted]>
To: "McQuaid, Nicholas (CRM)" <[redacted]>, "Moossy, Robert (CRT)" <[redacted]>, "Wilkinson, Monty (USAEO)" <[redacted]>, "Toscas, George (NSD)" <[redacted]>, "Darke Schmitt, Katherine (OJP/OVC)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]v>, "[redacted] (CTD) (FBI)" <[redacted]>,e[redacted] (CTD) (FBI)" <[redacted]>, "Blue, Matt (NSD)" <[redacted]>
Cc: "Braden, Myesha (ODAG)" <[redacted]>, "Newman, David A. (ODAG)" <[redacted]>, "Lan, Iris (ODAG)" <[redacted]>
Subject: Draft Documents to be Circulated Later Today
Date: Sat, 02 Oct 2021 11:57:46 -0400
Importance: Normal

All,

Later today I will be circulating a couple documents related to threats against election officials and school administrators and . I want to flag for your attention so that you can prepare to review them later today for any red-flag concerns.

Document 1 (primarily EOUSA and FBI) will be a draft memo from the AG to the field instructing USAOs and FBI-SACs to convene separate meetings with state and local law enforcement regarding both types of threats.

Document 2 will be a narrative document that sets forth certain steps that the Department may take to address threats against school administrators and officials. Possibilities include including creation of a task force, training, the aforementioned coordination with state and local law enforcement, and threat assessment and filtering through the National Threat Operations Center (NTOC).

I've spoken to some, but not all of you, on these issues. If others in your components need to review the documents when they come in, please forward this email (and the documents later today) to their attention.

With apologies for the Saturday fire drill,
Kevin

EXHIBIT 3.1.015

From: "Simons, Shaheena (CRT)" <[redacted]>
To: "Karlan, Pamela (CRT)" <[redacted]>, "Friel, Gregory B (CRT)" <[redacted]>, "Moossy, Robert (CRT)" <[redacted]>, "Cochran, Shaylyn (CRT)" <[redacted]>
Subject: Fwd: [EXTERNAL] FW: Letter to President Biden from the National School Boards Association
Date: Fri, 01 Oct 2021 18:53:58 -0400
Importance: Normal
Attachments: NSBA_Letter_to_President_Biden_Concerning_Threats_to_Public_Schools_and_School_Board_Members.pdf

All, this is same letter Myesha reached out about earlier in the week.

To whom do you think I should direct Suzanne? ODAG?

Thanks and have great weekend.

Begin forwarded message:

From: "Goldberg, Suzanne" [redacted]
Date: October 1, 2021 at 6:29:51 PM EDT
To: "Simons, Shaheena (CRT)" [redacted]
Subject: [EXTERNAL] FW: Letter to President Biden from the National School Boards Association

Hi Shaheena, Do you know who would be the right person in DOJ to reach out to on this? Thanks, Suzanne

I'm including an excerpt from the cover note that includes the basic context and have highlighted the request:

Please find attached a letter to President Biden sent on behalf of the National School Boards Association (NSBA), our state association members, and the thousands of local school board members across the nation concerning threats to public schools and school board members. We appreciate the recent opportunity to discuss these issues with White House and Administration officials. The letter requests that federal law enforcement and relevant agencies work with state and local authorities and public schools to address these ongoing threats. It also outlines some of the publicly reported threats and incidents that have taken place.

EXHIBIT 3.1.016

From: "Chambers, Kevin (ODAG)" <[redacted]>
To: "[redacted] (CTD) (FBI)" <[redacted]>, "McQuaid, Nicholas (CRM)" <[redacted]>, "Moossy, Robert (CRT)" <[redacted]>, "Wilkinson, Monty (USAEO)" <[redacted]>, "Toscas, George (NSD)" <[redacted]>, "Darke Schmitt, Katherine (OJP/OVC)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "Blue, Matt (NSD)" <[redacted]>, "Langan, Timothy R. Jr. (CTD) (FBI)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "[redacted]. (CTD) (FBI)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "Lesko, Mark (NSD)" <[redacted]>, "Wiegmann, Brad (NSD)" <[redacted]>, "Driscoll, Kevin (CRM)" <[redacted]>, "Rossi, Rachel (OASG)" <[redacted]>, "Monroe, Becky (OASG)" <[redacted]>, "Wong, Norman (USAEO)" <[redacted]>
Cc: "Carlin, John P. (ODAG)" <[redacted]>, "Braden, Myesha (ODAG)" <[redacted]>, "Newman, David A. (ODAG)" <[redacted]>, "Lan, Iris (ODAG)" <[redacted]>
Subject: FOR REVIEW: Draft Documents Re: School Board Threats
Date: Sat, 02 Oct 2021 16:02:21 -0400
Importance: Normal
Attachments: Draft_School_Board_Threats_Response_Strategy_(10.2.21).docx; DRAFT_AG_MEMO_TO_USAOs_AND_SACs_(10.2.21).docx; NSBA_Letter_to_President_Biden_Concerning_Threats_to_Public_Schools_and_School_Board_Members.pdf

DRAFT/DELIBERATIVE/PREDECISIONAL

All,

Attached are two documents proposing Department responses to continuing threats against election officials and workers and recent threats against school administrators and board members.

Draft AG Memo to USAOs and SACs – draft guidance to USAOs and SACs voicing concerns about increasing threats against election officials and workers and, separately, against school administrators and board members and instructing them to convene separate meetings for each type of threat with state/local law enforcement and other affected parties.
Components Affected: EOUSA, FBI, CRM

Draft School Board Threats Response Strategy – lays out several proposals for addressing a recent uptick in threats of violence against school board members, as recently highlighted in a letter to the President from the National School Boards Association. The letter form the NSBA is also attached for reference.
Components Affected: EOUSA, FBI, CRM, CRT, NSD, CRS, and OJP

The timeline on these documents is short, but we want to provide awareness to your components and give potentially affected components the opportunity to voice views/red-flag concerns.

Best,
Kevin

Kevin Andrew Chambers (he/him/his)

Associate Deputy Attorney General
Office of the Deputy Attorney General
[redacted]

EXHIBIT 3.1.017

TO: UNITED STATES ATTORNEYS AND SPECIAL AGENTS IN CHARGE

FROM: THE ATTORNEY GENERAL

SUBJECT: COMMUNICATION AND PARTNERSHIP AMONG PROSECUTORS, LAW ENFORCEMENT, AND STATE AND LOCAL ELECTION OFFICIALS TO ADDRESS ELECTION THREATS AND THREATS AGAINST SCHOOL ADMINISTRATORS AND BOARD MEMBERS

I am greatly concerned by the recent increase in threats, harassment, and intimidation of our nation's public servants. Combatting this problem requires a focused and committed response from the Justice Department. To address this disturbing trend, and as part of the Department's commitment to the rule of law, I am instructing United States Attorney's Offices and the Federal Bureau of Investigation to take the following steps.

Threats Against Election Officials and Workers

In June of this year, at my direction, the Deputy Attorney General established an Election Threats Task Force composed of officials from the Department's Criminal and Civil Rights Divisions, the FBI, and the Department of Homeland Security.

The work of the Election Threats Task Force is now underway. But that work must be accompanied by broader, nationwide efforts to identify and respond to these incidents and threats of violence. United States Attorney's Offices and Federal Bureau of Investigation (FBI) field offices across the country must work closely with state and local law enforcement, and state and local election officials and workers, to ensure that we are identifying and reporting conduct, and taking effective steps to respond to and deter such threats, including through prosecutions of criminal violations.

The Department's response must also include robust communication with state and local election officials and workers. As top Department leadership learned in August during a teleconference with over 1400 such personnel across the country, their input is vital.

Today, I am directing the United States Attorney in each district, together with the Special Agent in Charge from the relevant FBI Field Office, to convene federal, state, and local law enforcement partners, and state and local election officials to discuss the threats facing election officials and workers in each district and how all levels of government can work together to counter those threats. These meetings, and others that will occur in the months ahead, will help us learn more about the range of threats, harassment, and intimidation that election officials and workers are facing; provide information on how such conduct should be reported to the FBI to ensure prompt routing to the Task Force; and discuss how law enforcement can most effectively respond to this conduct, including through criminal prosecution in appropriate cases.

Threats Against School Administrators and Board Members

In recent months, there has also been a disturbing spike in threats of violence against school administrators, school board members, and others who participate in the important work of managing the nation's public school systems. In some cases, these threats and acts of violence have occurred during discussions of school boards' efforts to protect children and teachers alike by requiring use of face masks to stem the spread of the COVID-19 virus. While spirited debate about this and other policy matters is protected under our Constitution, that protection does not extend to threats of violence or efforts to intimidate individuals based on their policy, political, or ideological views.

The Department takes these incidents seriously and is committed to leveraging its authority and resources to discourage these threats, identify the threats when they occur, and prosecute those threats when appropriate. In the coming days, I will announce a series of proactive measures designed to address the rise in criminal conduct directed toward school administrators and school board members.

To properly implement these measures for the benefit of our nation's nearly 14,000 public school districts, coordination with local law enforcement is critical. To this end, I am directing the United States Attorney and Special Agent in Charge in each federal judicial district to convene meetings with federal, state, and local law enforcement leaders. These meetings (which will be separate from and in addition to the election threats meetings described in the previous section) will permit law enforcement to discuss strategies for addressing threats against school administrators and school board members and allow them to open dedicated lines of communication to report threats and threat assessments and determine how best to respond to those threats.

* * *

Threats against public servants – whether election officials and workers or school administrators and school board members – are not only illegal, they run counter to our nation's core values. Those who dedicate their time and energy to safeguarding our electoral process or ensuring that our children receive a proper education in a safe environment deserve to be able to do their jobs free from fear. The Department is steadfast in its commitment to protect all people in the United States from violence, threats of violence, and other forms of intimidation and harassment.

EXHIBIT 3.1.018

On September 29, 2021, the National School Board Association (NSBA) sent a letter to the President noting an increase in threats of violence to its members, who are elected school board officials in over 13,000 public school districts throughout the nation. The letter references specific incidents in numerous states, including in-person threats to officials, threats communicated by mail, and episodes of disorderly conduct.

NSBA requests the following assistance from the federal government:

- "[asking] federal law enforcement and other assistance to deal with the growing number of threats of violence and acts of intimidation occurring across the nation."
- "[asking that] the federal government investigate, intercept, and prevent current threats and acts of violence against public school officials…."
- "Collaboration among federal law enforcement agencies, state and local law enforcement, and with public school officials."
- "Joint expedited review by the U.S. Departments of Justice, Education, and Homeland Security, along with the appropriate training, coordination, investigations, and enforcement mechanisms from the FBI."

The Department is committed to addressing this issue and reassuring the public that the Department will do all that it can to address the concerns raised by NSBA. The following are **DRAFT PROPOSALS** for immediate actions the Department may consider:

1. **Creation of a Department of Justice Task Force**

   The Department can consider creating a Task Force comprising representatives from CRM, NSD, CRT, EOUSA, FBI, CRS and OJP. The primary mandate of this Task Force would be to review the array of threats against school administrators and school board members to determine how federal enforcement tools can be used to prosecute these crimes. These tools may include, but are not limited to, enforcement of applicable federal threats, civil rights, and domestic terrorism statutes.

   Because there may be situations where federal enforcement authority is not available, the Task Force could also be directed to develop methods to assist local and state law enforcement with combatting threats of violence that may not constitute federal crimes. In addition to evaluating its law enforcement authority, the Task Force can also consider other methods of providing support to school boards to eliminate threats, including the use of grants designed to promote safer schools and support state and local law enforcement efforts and involvement by the Department's Community Relations Service.

2. **Development of Training Materials**

   The Department can also draw on its extensive experience combatting various types of criminal threats and intimidation to create specialized training and guidance for local school boards and school administrators. This training would help school board members and other potential threats victims understand the type of behavior that constitutes threats,

how to report threatening conduct to the appropriate law enforcement agencies, and how to capture and preserve evidence of threatening conduct to aid in the investigation and prosecution of these crimes.

3. **Attorney General Directive to United States Attorney's Offices and FBI Field Offices**

   Coordination with local law enforcement is critical, given the decentralized nature of our nation's nearly 14,000 public school districts. To this end, United States Attorneys and Special Agents in Charge in each federal judicial district could convene meetings with federal, state, and local law enforcement heads. These meetings would permit law enforcement to discuss strategies for addressing threats against school administrators and school board members and allow them to open dedicated lines of communication to report threats and threat assessments and determine how best to respond to those threats.

4. **Threat Assessment and Filtering**

   The FBI's National Threat Operations Center (NTOC) handles threats reported by the public via its national tip line (1-800-CALL-FBI) and online through the FBI website (http://fbi.com/tips). To ensure that threats are communicated to the appropriate authorities, NTOC would assist by directing credible threats to the appropriate FBI field offices. Those field offices would then coordinate with the appropriate United States Attorney's Office and, as appropriate, with state and local law enforcement partners. The work of the NTOC would also help the federal government identify and report increased threats in specific jurisdictions or trends indicating that threats are part of coordinated widespread efforts to intimidate, rather than discrete, unrelated events.

EXHIBIT 3.1.019

From: "Fitzgerald, Paige (CRT)" <[redacted]>
To: "Moossy, Robert (CRT)" <[redacted]>, "Felte, James (CRT)" <[redacted]>
Subject: RE: FOR REVIEW: Draft Documents Re: School Board Threats
Date: Sun, 03 Oct 2021 13:32:12 -0400
Importance: Normal

I read the letter from NSBA, and looked at the links for a handful of the footnotes, and it appears to me that the vast, vast majority of the behavior cited cannot be reached by federal law. I only saw three stories that involved what sounded like a possible "true threat" and one of those (the Norfolk story) did not appear to be related to masks, etc.. Almost all of the language being used is protected by the First Amendment; the main issue seems to be disruption and obstruction of school board meetings, which could be reached by local trespassing laws or disturbance of the peace laws, but nothing remotely federal. So it seems that we are ramping up an awful lot of federal manpower for what is currently non-federal conduct.

If they want to have an impact, maybe they could try to fashion something like the FACE Act for schools and school board meetings, criminalizing physical obstruction of schools and school board meetings. Just a quick thought, and not sure how that would play out (speaking as a former college student who participated in physically obstructed administration buildings to try to get the University to divest/stop doing business with the South Afr can government under apartheid).

From: Moossy, Robert (CRT)
Sent: Sunday, October 3, 2021 11:26 AM
To: Felte, James (CRT) <[redacted]>; Fitzgerald, Paige (CRT) <[redacted]>
Subject: Fwd: FOR REVIEW: Draft Documents Re: School Board Threats

FYI. Please review if you have time. Looks like they are committing CrimSec equities. Just seeing this.

Sent from my iPhone

Begin forwarded message:

From: "Chambers, Kevin (ODAG)" <[redacted]>
Date: October 2, 2021 at 4:02:33 PM EDT
To: "[redacted] (CTD) (FBI)" <[redacted]>, "McQuaid, Nicholas (CRM)" <[redacted]>, "Moossy, Robert (CRT)" <[redacted]>, "Wilkinson, Monty (USAEO)" <[redacted]>, "Toscas, George (NSD)" <[redacted]>, "Darke Schmitt, Katherine (OJP/OVC)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "Blue, Matt (NSD)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "Lesko, Mark (NSD)" <[redacted]>, "Wiegmann, Brad (NSD)" <[redacted]>, "Driscoll, Kevin (CRM)" <[redacted]>, "Rossi, Rachel (OASG)" <[redacted]>, "Monroe, Becky (OASG)" <Becky.Monroe2@usdoj.gov>, "Wong, Norman (USAEO)" <NWong@usa.doj.gov>
Cc: "Carlin, John P. (ODAG)" <[redacted]>, "Braden, Myesha (ODAG)" <[redacted]>, "Newman, David A. (ODAG)" <[redacted]>, "Lan, Iris (ODAG)" <[redacted]>
Subject: FOR REVIEW: Draft Documents Re: School Board Threats

DRAFT/DELIBERATIVE/PREDECISIONAL

All,

Attached are two documents proposing Department responses to continuing threats against election officials and workers and recent threats against school administrators and board members.

Draft AG Memo to USAOs and SACs – draft guidance to USAOs and SACs voicing concerns about increasing threats against election officials and workers and, separately, against school administrators and board members and instructing them to convene separate meetings for each type of threat with state/local law enforcement and other affected parties.
Components Affected: EOUSA, FBI, CRM

Draft School Board Threats Response Strategy – lays out several proposals for addressing a recent uptick in threats of violence against school board members, as recently highlighted in a letter to the President from the National School Boards Association. The letter form the NSBA is also attached for reference.
Components Affected: EOUSA, FBI, CRM, CRT, NSD, CRS, and OJP

The timeline on these documents is short, but we want to provide awareness to your components and give potentially affected components the opportunity to voice views/red-flag concerns.

Best,
Kevin

Kevin Andrew Chambers (he/him/his)
Associate Deputy Attorney General
Office of the Deputy Attorney General
[redacted]

EXHIBIT 3.1.020

From: "Chambers, Kevin (ODAG)" <[redacted]>
To: "[redacted] (CTD) (FBI)" <[redacted]>, "McQuaid, Nicholas (CRM)" <[redacted]>, "Moossy, Robert (CRT)" <[redacted]>, "Wilkinson, Monty (USAEO)" <[redacted]>, "Toscas, George (NSD)" <[redacted]>, "Darke Schmitt, Katherine (OJP/OVC)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "Blue, Matt (NSD)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "Lesko, Mark (NSD)" <[redacted]>, "Wiegmann, Brad (NSD)" <[redacted]>, "Driscoll, Kevin (CRM)" <[redacted]>, "Rossi, Rachel (OASG)" <[redacted]>, "Monroe, Becky (OASG)" <[redacted]>, "Wong, Norman (USAEO)" <[redacted]>
Cc: "Braden, Myesha (ODAG)" <[redacted]>, "Newman, David A. (ODAG)" <[redacted]>, "Lan, Iris (ODAG)" <[redacted]>
Subject: FOR IMMEDIATE REVIEW: Draft AG Memo Re: School Board Threats and Draft Press Release
Date: Mon, 04 Oct 2021 14:59:48 -0400
Importance: Normal
Attachments: Final.AG_MEMO_TO_USAOs_AND_SACs_(10.4.21).docx; DRAFT_PRESS_RELEASE_-_Threats_Against_School_Workers_(version_to_components).docx

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All,

Please see attached documents (memo from AG and related press release) re school board threats effort. Please review and advise of any red flag concerns as soon as possible.

CRM/FBI/EOUSA: Please note that the turnaround has been reduced from 45 to 30 days.

From: Chambers, Kevin (ODAG)
Sent: Sunday, October 3, 2021 7:27 PM
To: [redacted] <[redacted]>; McQuaid, Nicholas (CRM) <[redacted]>; Moossy, Robert (CRT) <[redacted]>; Wilkinson, Monty (USAEO) <[redacted]>; Toscas, George (NSD) <[redacted]>; Darke Schmitt, Katherine (OJP/OVC) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; Blue, Matt (NSD) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; Lesko, Mark (NSD) <[redacted]>; Wiegmann, Brad (NSD) <[redacted]>; 'Driscoll, Kevin (CRM)' <[redacted]>; Rossi, Rachel (OASG) <[redacted]>; Monroe, Becky (OASG) <[redacted]>; Wong, Norman (USAEO) <[redacted]>
Cc: Braden, Myesha (ODAG) <[redacted]>; Newman, David A. (ODAG) <[redacted]>; Lan, Iris (ODAG) <[redacted]>
Subject: RE: FOR REVIEW: Draft Documents Re: School Board Threats

Team,

FYI, the proposed memo to USAOs and SACs is now drafted as a communication concerning only school boards. Draft attached.

Best,
Kevin

From: Chambers, Kevin (ODAG)
Sent: Saturday, October 2, 2021 4:02 PM
To: [redacted] <[redacted]>; McQuaid, Nicholas (CRM) <[redacted]>; Moossy, Robert (CRT) <[redacted]>; Wilkinson, Monty (USAEO) <[redacted]>; Toscas, George (NSD) <[redacted]>; Darke Schmitt, Katherine (OJP/OVC) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; Blue, Matt (NSD) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; Lesko, Mark (NSD) <[redacted]>; Wiegmann, Brad (NSD) <[redacted]>; Driscoll, Kevin (CRM) <[redacted]>; Rossi, Rachel (OASG) <[redacted]>; Monroe, Becky (OASG) <[redacted]>; Wong, Norman (USAEO) <[redacted]>
Cc: Carlin, John P. (ODAG) <[redacted]>; Braden, Myesha (ODAG) <[redacted]>; Newman, David A. (ODAG) <[redacted]>; Lan, Iris (ODAG) <[redacted]>
Subject: FOR REVIEW: Draft Documents Re: School Board Threats

DRAFT/DELIBERATIVE/PREDECISIONAL

All,

Attached are two documents proposing Department responses to continuing threats against election officials and workers and recent threats against school administrators and board members.

Draft AG Memo to USAOs and SACs – draft guidance to USAOs and SACs voicing concerns about increasing threats against election officials and workers and, separately, against school administrators and board members and instructing them to convene separate meetings for each type of threat with state/local law enforcement and other affected parties.
Components Affected: EOUSA, FBI, CRM

Draft School Board Threats Response Strategy – lays out several proposals for addressing a recent uptick in threats of violence against school board members, as recently highlighted in a letter to the President from the National School Boards Association. The letter form the NSBA is also attached for reference.
Components Affected: EOUSA, FBI, CRM, CRT, NSD, CRS, and OJP

The timeline on these documents is short, but we want to provide awareness to your components and give potentially affected components the opportunity to voice views/red-flag concerns.

Best,
Kevin

Kevin Andrew Chambers (he/him/his)
Associate Deputy Attorney General
Office of the Deputy Attorney General
[redacted]

EXHIBIT 3.1.021

TO: DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
DIRECTOR, EXECUTIVE OFFICE FOR U.S ATTORNEYS
ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION
UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL

SUBJECT: PARTNERSHIP AMONG FEDERAL, STATE, LOCAL, TRIBAL, AND TERRITORIAL LAW ENFORCEMENT TO ADDRESS THREATS AGAINST SCHOOL ADMINISTRATORS, BOARD MEMBERS, TEACHERS, AND STAFF

In recent months, there has been a disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our nation's public schools. While spirited debate about policy matters is protected under our Constitution, that protection does not extend to threats of violence or efforts to intimidate individuals based on their views.

Threats against public servants are not only illegal, they run counter to our nation's core values. Those who dedicate their time and energy to ensuring that our children receive a proper education in a safe environment deserve to be able to do their work without fear for their safety.

The Department takes these incidents seriously and is committed to using its authority and resources to discourage these threats, identify them when they occur, and prosecute them when appropriate. In the coming days, the Department will announce a series of measures designed to address the rise in criminal conduct directed toward school personnel.

Coordination and partnership with local law enforcement is critical to implementing these measures for the benefit of our nation's nearly 14,000 public school districts. To this end, I am directing the Federal Bureau of Investigation, working with each United States Attorney, to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district within 30 days of the issuance of this memorandum. These meetings will facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff and will open dedicated lines of communication for threat reporting, assessment, and response.

The Department is steadfast in its commitment to protect all people in the United States from violence, threats of violence, and other forms of intimidation and harassment.

EXHIBIT 3.1.022

From: "Chambers, Kevin (ODAG)" <[redacted]>
To: "Polite, Kenneth (CRM)" <[redacted]>, "McQuaid, Nicholas (CRM)" <[redacted]>, "Clarke, Kristen (CRT)" <[redacted]>, "Moossy, Robert (CRT)" <[redacted]>, "[redacted] (CID) (FBI)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "[redacted] (CTD) (FBI)" <[redacted]>, "Wilkinson, Monty (USAEO)" <[redacted]>, "Wong, Norman (USAEO)" <[redacted]>, "Lesko, Mark (NSD)" <[redacted]>, "Toscas, George (NSD)" <[redacted]>, "Wiegmann, Brad (NSD)" <[redacted]>, "Ratliff, Gerri L (JMD)" <[redacted]>, "Darke Schmitt, Katherine (OJP/OVC)" <[redacted]>, "Monroe, Becky (OASG)" <[redacted]>, "Solomon, Amy (OJP)" <[redacted]>
Cc: "Newman, David A. (ODAG)" <[redacted]>, "Braden, Myesha (ODAG)" <[redacted]>, "Singh, Anita M. (ODAG)" <[redacted]>
Subject: Task Force Representatives: School Board and School Worker Threats
Date: Wed, 06 Oct 2021 09:02:44 -0400
Importance: Normal

To: CRM, CRT, FBI, EOUSA, NSD, OJP and CRS

As announced in the Attorney General's Memorandum of October 4, 2021, the Department is taking steps to combat the uptick in unlawful threats of violence against school administrators, board members, teachers, and staff. One of those steps is the establishment of a Departmental task force charged with:

(1) determining how federal enforcement tools can be used to prosecute threat of violence that constitute federal crimes;
(2) identifying how best to assist state, tribal, territorial and local law enforcement in addressing threats of violence;
(3) developing appropriate training for school administrators, board members, teachers and staff regarding how to identify, report, and preserve evidence related to criminal threats of violence; and
(4) coordinating with our interagency partners, including the Dept. of Education, DHS, and others, on these efforts and sharing strategies and best practices.

Your components have been selected to serve on this task force. Please designate at least two people who can represent your component on this task force, each of whom should have authority to make decisions in principle on your behalf. Please send me the names of your component's representatives by noon on Friday, October 8, 2021. I will be in touch first thing next week to set up our initial meeting.

Thank you so much for your attention to these important issues.

Kevin Andrew Chambers (he/him/his)
Associate Deputy Attorney General
Office of the Deputy Attorney General
[redacted]

EXHIBIT 3.1.023

From: "Pamela.Karlan@usdoj.gov" <[redacted]>
To: "Simons, Shaheena (CRT)" <[redacted]>
Subject: Re: Task Force Welcomee/ Request for Statutes
Date: Thu, 14 Oct 2021 09:12:56 -0400
Importance: Normal

Thanks. I'm kind of stunned that they keep coming back to CRT when there have to be more straightforward paths to federal intervention.

Pam Karlan
[redacted]

On Oct 14, 2021, at 6:08 AM, Simons, Shaheena (CRT) [redacted] wrote:

here's the follow up. No need to do anything, these are just fysa emails

---

From: Simons, Shaheena (CRT)
Sent: Thursday, October 14, 2021 9:02 AM
To: Chambers, Kevin (ODAG) <[redacted]>
Subject: RE: Task Force Welcome / Request for Statutes

Thanks, Kevin. I agree that "federal financial assistance" is read very expansively under our funding statutes like Title VI and Title IX and public schools are certainly recipients of FFA. The question of who is "enjoying the benefits" of the program is less straightforward but I can check in with our experts in the Federal Coordination and Compliance Section to see what they think.

I totally defer to Mark and CrimSec on whether any criminal statutes may apply; I was just noting that our civil authority seems to be very limited here.

From: Chambers, Kevin (ODAG)
Sent: Thursday, October 14, 2021 8:49 AM
To: Simons, Shaheena (CRT) <[redacted]>
Subject: Fwd: Task Force Welcome / Request for Statutes

See discussion of b(2)(c).

Sent from my iPhone

Begin forwarded message:

From: "Blumberg, Mark (CRT)" <[redacted]>
Date: October 12, 2021 at 10:42:14 PM EDT
To: "Chambers, Kevin (ODAG)" <[redacted]>
Subject: RE: Task Force Welcome / Request for Statutes

Kevin –

You asked what the state of the law is on "federal financial assistance" as it applies to 18 USC 245(b)(1)(e). While this is not a full memo, I thought you should have at least an outline of the legal landscape before our first call tomorrow. There is very little law interpreting 245(b)(1)(e) and no explicit interpretation of the federal financial assistance element in the context of that specific provision. While there is one reported District Court denial of a motion to dismiss a prosecution under 245(b)(1)(e) for bombing a university mathematics center, there was no explicit discussion of the financial assistance component. See United States v. Fine, 413 F. Supp. 728 (W.D. Wis. 1976) (denying motion to dismiss § 245(b)(1)(E) count, arising out of bombing of university's mathematics research center). Other reported cases applying the provision included prosecutions related to murdering a government informant, See United States v. Pimental, 979 F.2d 282 (2d Cir. 1992) (affirming conviction for violation § 245(b)(1)(B) for murdering government informant); and an assault in a federal recreation area. See United States v. Price, 464 F.2d 1217 (8th Cir. 1972) (affirming conviction for violating § 245(b)(1)(B) for assault that occurred at federal recreational area).

However, the phrase "Federal Financial Assistance" is given a wide interpretation in the context of Title VI (prohibiting discrimination in any program or activity receiving federal financial assistance) and Title IX (prohibiting discrimination on the basis of sex in any education program or activity receiving Federal financial assistance). Title 34 of the Code of Federal Regulations addresses Education. 34 C.F.R. 106.2 is the definitional section pertaining to the Office for Civil Rights, Department of Education and the Non-Discrimination in Education Programs subsection. Federal financial assistance is defined as:

(g) Federal financial assistance means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

34 CFR § 106.2.

In sum, part of our efforts to use 18 U.S.C. 245 would require factual investigation to determine whether federal money has been delivered to a particular state school system and how the money has been allocated. I realize that this does not answer the question as directly as will be necessary, but it may prove to be a starting point for tomorrow's conversation and form the basis of conversations with the Civil Rights Division's Education Section Chief and relevant officials at the Department of Education. Lastly, since the vast majority of allegations appear to be arising out of electronic communications by phone or internet, the easier path to investigation and prosecution for most threats may well be using 18 U.S.C. 875(c), which is a felony, rather than 18 U.S.C. 245 which is a misdemeanor and adds the financial assistance element.

Mark Blumberg
Special Legal Counsel
Criminal Section
Civil Rights Division
U.S. Department of Justice
[redacted] (o)
(c)

From: Chambers, Kevin (ODAG)
Sent: Sunday, October 10, 2021 2:42 PM
To: Blumberg, Mark (CRT) <[redacted]>
Subject: Re: Task Force Welcome / Request for Statutes

Thanks, mark. Particularly on a Sunday.

One question I had is whether b(1)(e)'s language, as it has been interpreted, prohibiting interference with those participating in a program receiving federal financial assistance, apply to interfering with or intimidating administrators or teachers in public schools.

So I guess the questions are
1) are public schools programs receiving financial assistance, and
2) what does it mean to participate in one of these programs.

Thanks!

Sent from my iPhone

On Oct 10, 2021, at 1:48 PM, Blumberg, Mark (CRT) <[redacted]> wrote:

Kevin,

18 USC 245 also provides:

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(2) any person because of his race, color, religion or national origin and because he is or has been—

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or

subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

The provisions of Section 245 that you cited below protect those enjoying the benefits of a program that received Federal assistance and, where a prohibited animus is at issue, also those who are enrolled or attend public schools. Section (b)(2)(C) also gets to victims who are employed (rather than students) by a private employer (such as a private school where that might be appropriate) or any agency of a State (school board, superintendent, etc.) where a prohibited animus is at issue. I'm not sure how many, if any, of the threats that are being transmitted are racially motivated, but (b)(2)(C) might be more expansive in those instances.

Mark Blumberg
Special Legal Counsel
Criminal Section
Civil Rights Division
U.S. Department of Justice
[redacted] (o)
(c)

From: Chambers, Kevin (ODAG)
Sent: Sunday, October 10, 2021 12:35 PM
To: Simons, Shaheena (CRT) <[redacted]>; Blumberg, Mark (CRT) <[redacted]>; Meinero, Seth Adam (USAEO) <[redacted]>; Donini-Melanson, Brandy (USAEO) <[redacted]>; Darke Schmitt, Katherine (OJP/OVC) <[redacted]>; Pearl, Elizabeth (OJP) <[redacted]>; Ratliff, Gerri L (JMD) <[redacted]>; Segovia, Theresa (CRS) <[redacted]>; Plair, Vincent (CRS) <[redacted]>; Diegor, Melody L. (CRS) <[redacted]>
Cc: Polite, Kenneth (CRM) <[redacted]>; McQuaid, Nicholas (CRM) <[redacted]>; [redacted] (CID) (FBI) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; Lesko, Mark (NSD) <[redacted]>; Toscas, George (NSD) <[redacted]>; Wiegmann, Brad (NSD) <[redacted]>
Subject: Task Force Welcome / Request for Statutes

Good afternoon,

If you're receiving this email, you've been designated by your component for participation in the school board/administrators/staff threats task force. Thank you for lending your time and effort to this initiative. The first meeting will likely be on Tuesday or Wednesday of this week.

Note: CRM/NSD/FBI (on cc line) has not designated anyone for the TF. When you have designated folks, please forward this ask to your designees and let me know so I can add them to the To: line and remove you from CC. Thanks.

Before we meet, OAG has asked for a working list of **federal** statutes potentially applicable to threats made against school board members and school administrators, and workers. The below includes that list to date, based on conversations and input received from components related to this and other threats responses. Please supplement with any other potentially applicable statutes as appropriate. With apologies for the timing, please provide any supplements to me by end of day tomorrow. As simple citation to the statute is fine.

Many thanks,
Kevin

WORKING LIST OF STATUTES POTENTIALLY APPLICABLE TO SCHOOL ADMINISTRATOR THREATS

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18 U.S.C. § 875 Interstate Communications
RELEVANT TEXT

…
(b)Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than twenty years, or both.
PENALTY: Five (5) year maximum

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18 U.S.C. § 876 – Mailing Threatening Communications
…
(c) [Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Postal Service or knowingly causes to be delivered by the Postal Service according to the direction thereon], any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than five years, or both.
PENALTY: Five (5) year maximum

---

18 U.S.C. § 275 Federally Protected Activities
RELEVANT TEXT
…
(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(1) any person because he is or has been, or in order to intimidate such person or any other person or class of persons from-
(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance
…
(2)any person because of his race, color, religion or national origin and because he is or has been—
(A)
enrolling in or attending any public school or public college;

PENALTY: One (1) year maximum if no bodily injury and no use or threatened use of dangerous weapon or explosive
Ten (10) years maximum if bodily injury or use or threatened use of dangerous weapon or explosive
Life imprisonment or capital punishment if death results or kidnapping involved

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47 U.S.C. § 223 – Harassing Telephone Calls

RELEVANT TEXT
(a)Prohibited acts generally
Whoever—

1. in interstate or foreign communications—

…

(C)makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to abuse, threaten, or harass any specific person

PENALTY: Two (2) year maximum

From: Chambers, Kevin (ODAG)
Sent: Friday, October 8, 2021 2:32 PM
To: Polite, Kenneth (CRM) <[redacted]>; McQuaid, Nicholas (CRM) <[redacted]>; Clarke, Kristen (CRT) <[redacted]>; Moossy, Robert (CRT) <[redacted]>; [redacted] (CID) (FBI) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; Wilkinson, Monty (USAEO) <[redacted]>; Wong, Norman (USAEO) <[redacted]>; Lesko, Mark (NSD) <[redacted]>; Toscas, George (NSD) <[redacted]>; Wiegmann, Brad (NSD) <[redacted]>; Ratliff, Gerri L (JMD) <[redacted]>; Darke Schmitt, Katherine (OJP/OVC) <[redacted]>; Monroe, Becky (OASG) <[redacted]>; Solomon, Amy (OJP) <[redacted]>
Cc: Newman, David A. (ODAG) <[redacted]>; Braden, Myesha (ODAG) <[redacted]>; Singh, Anita M. (ODAG) <[redacted]>
Subject: RE: Task Force Representatives: School Board and School Worker Threats

Thanks to those who have provided names for their component designees. If you have not yet provided names, please forward along as soon as practicable. Many thanks.

From: Chambers, Kevin (ODAG)
Sent: Wednesday, October 6, 2021 9:03 AM
To: Polite, Kenneth (CRM) <[redacted]>; McQuaid, Nicholas (CRM) <[redacted]>; Clarke, Kristen (CRT) <[redacted]>; Moossy, Robert (CRT) <[redacted]>; [redacted] (CID) (FBI) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; [redacted] (CTD) (FBI) <[redacted]>; Wilkinson, Monty (USAEO) <[redacted]>; Wong, Norman (USAEO) <[redacted]>; Lesko, Mark (NSD) <[redacted]>; Toscas, George (NSD) <[redacted]>; Wiegmann, Brad (NSD) <[redacted]>; Ratliff, Gerri L (JMD) <[redacted]>; Darke Schmitt, Katherine (OJP/OVC) <[redacted]>; Monroe, Becky (OASG) <[redacted]>; Solomon, Amy (OJP) <[redacted]>
Cc: Newman, David A. (ODAG) <[redacted]>; Braden, Myesha (ODAG) <[redacted]>; Singh, Anita M. (ODAG) <[redacted]>
Subject: Task Force Representatives: School Board and School Worker Threats

To: CRM, CRT, FBI, EOUSA, NSD, OJP and CRS

As announced in the Attorney General's Memorandum of October 4, 2021, the Department is taking steps to combat the uptick in unlawful threats of violence against school administrators, board members, teachers, and staff. One of those steps is the establishment of a Departmental task force charged with:

(1) determining how federal enforcement tools can be used to prosecute threat of violence that constitute federal crimes;
(2) identifying how best to assist state, tribal, territorial and local law enforcement in addressing threats of violence;

(3) developing appropriate training for school administrators, board members, teachers and staff regarding how to identify, report, and preserve evidence related to criminal threats of violence; and
(4) coordinating with our interagency partners, including the Dept. of Education, DHS, and others, on these efforts and sharing strategies and best practices.

Your components have been selected to serve on this task force. Please designate at least two people who can represent your component on this task force, each of whom should have authority to make decisions in principle on your behalf. Please send me the names of your component's representatives by noon on Friday, October 8, 2021. I will be in touch first thing next week to set up our initial meeting.

Thank you so much for your attention to these important issues.

Kevin Andrew Chambers (he/him/his)
Associate Deputy Attorney General
Office of the Deputy Attorney General
[redacted]

EXHIBIT 3.1.024

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

NATIONAL RELIGIOUS BROADCASTERS, *et al.*,

Plaintiffs,

v.

BILLY LONG, *in his official capacity as* COMMISSIONER OF THE INTERNAL REVENUE SERVICES, *et al.*,

Defendants.

Civil Action No. 6:24-cv-00311

BRIEF OF *AMICUS CURIAE* GRACE CHURCH ST. LOUIS AND NEW WAY CHURCH IN SUPPORT OF JOINT MOTION FOR ENTRY OF CONSENT JUDGMENT

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RULES

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INTEREST OF AMICI

Amici are churches targeted by the Internal Revenue Service ("IRS") for enforcement under the Johnson Amendment. Grace Church St. Louis and New Way Church do not speculate on the ways in which the Johnson Amendment may apply to them at some theoretical point in the future. Rather, they have each suffered through the enforcement of the Johnson Amendment and received political opposition for the exercise of rights otherwise protected by the First Amendment to the U.S. Constitution.

Grace Church St. Louis is a praying church in Maryland Heights, MO, committed to confronting a godless culture with the truth of God's Word. Founded in 1970 when Senior Pastor Ron Tucker started a worship/Bible study in his home, Grace Church St. Louis now touches the lives of thousands weekly across its two campuses in Missouri and Illinois. The IRS launched an investigation of Grace Church St. Louis under the Johnson Amendment on April 30, 2024.

New Way Church describes itself in terms of family, hoping for the church to be a place where God is transforming lives one person, one couple, one family at a time. Pastor Richard and Kimberly Summerlin founded the church in 2006 when the church met in a local high school. In addition to the hundreds that gather at its primary campus in Palm Coast, Florida, New Way's ministry reach extends to locations in Florida, Pakistan, Kenya, Haiti, and the Dominican Republic. The IRS launched an investigation of Grace Church St. Louis under the Johnson Amendment on June 14, 2024.

Both churches have an interest of avoiding future enforcement of the Johnson Amendmentagainst them, while hoping houses of worship like them from across the country will benefit from the Court's granting of the Joint Motion for Entry of Consent Judgement, ECF No. 35.

STATEMENT OF ISSUES

Consistent with Local Rule CV-7(a)(1), Grace Church St. Louis and New Way church declares that the issues in this *amicus* brief are: (1) the experience of the amici as targets of enforcement under the Johnson Amendment, (2) the threat the Johnson Amendment poses to Church Autonomy, (3) that the IRS shields the Johnson Amendment from judicial review while chilling core constitutional rights, and (4) that the Johnson Amendment violates the guarantees of the First Amendment and federal law in myriad ways.

SUMMARY OF ARGUMENT

In an act of political retribution, then-Senator Lyndon Baines Johnson chilled the guarantees of the First Amendment to the U.S. Constitution for the last 70+ years. His 31-word amendment to the Internal Revenue Code would tie his name to the suppression of church autonomy, free speech, religious liberty, and foment hostility toward religion billed as nonpartisanship. It would further give approval to intimidating tactics by agents of the IRS who, in the name of the law, would set upon pastors and houses of worship with oppressive demands to examine records, bank accounts, membership lists, bylaws, statements of faith, sermon manuscripts, church bulletins, church services and church-sponsored events, religious publications, and even call into question the prayers of the faithful. All the while, the IRS would dangle the carrot of compliance: cease anything resembling political activity and all will be forgiven; but, if we determine you have engaged in political activity, you lose your tax-exempt status.

The IRS does not grant tax-exemption to the nation's house of worship. Yet agents with the IRS, and those politically motivated to silence the voice of pastors and religious adherents, have insisted that they can punish those houses of worship they unilaterally determine to have violated the Johnson Amendment by revoking such exemptions. Thus, decades of IRS

enforcement has revealed the existence of a frustrating political scheme that chills constitutional guarantees: the only way to upend the law is to violate it—but only the IRS can say whether a house of worship is in violation. The futile irony is that even if the IRS were to punish a house of worship by revoking its prior tax-exempt recognition, the house of worship remains tax-exempt *ab initio*.

Because the Johnson Amendment is woefully out of step with this nation's historic commitment to free speech, church autonomy, and religious liberty, it should be declared unlawful in its entirety and enjoined from ever being weaponized against houses of worship ever again. But for now, this Court should secure these constitutional commitments by granting the modest Joint Motion for Entry of Consent Judgement proposed by the parties, ECF No. 35.

ARGUMENT

I. Experience of the Amici Targeted by the IRS for Constitutionally Protected Activity.

a. Grace Church St. Louis

In 2022, during local school board elections, Grace Church St. Louis posted information on the church's website about positions local candidates held as a service to, and a means of educating, their congregation about the important issues at stake in the local election. In addition, two members of the church put themselves forward as candidates after years of church leadership encouraging its members to take an active role in the community, including political office. The church encouraged its members to support their fellow members for being willing to run for office. By "support," the church clearly meant to lend the encouragement and commendation to fellow parishioners who volunteered to run for office. Yet, others could see only the political meaning of the word, "support."

The Editorial Board of the *St. Louis Post-Dispatch* was one such hostile group. In a March 9, 2022 editorial, the Board excoriated the church publicly, declaring that it "needs to decide what it wants to be. It can be a tax-exempt megachurch that tends to the spiritual needs of its flock, or it can be a political entity that endorses politicians and spreads misleading information about candidates the church opposes."[1] The editors bragged that it "took us about 10 seconds to locate" the Johnson Amendment and, with an air of superiority and authority, summarily concluded that, "Grace Church has stepped far beyond the boundaries and deserves a thorough review of its tax-exempt status." *Id.*

Perhaps the editors themselves notified the IRS. Or, maybe inspired by their bombast, a local citizen undertook to file a complaint with the IRS. However it started, the IRS opened an official investigation into the church over *two years* later during the Biden administration. If the IRS was so determined to enforce the Johnson Amendment and if violating the Johnson Amendment was of such a serious nature as to merit a full-blown investigation by the IRS and, possibly, the revocation of a church's tax-exempt recognition, one wonders why the IRS would wait a full 783 days between the *Post-Dispatch's* editorial and the announcement of the IRS's investigation into Grace St. Louis.

In its late-arriving letter of April 30, 2024, the IRS stated its motivations plainly, "Our concerns are based on the content published on your website during tax year 2022 which potentially constitute political activity. Your website openly endorsed two of the members of your congregation who were running in a local school board election." *See* Exhibit A. Despite taking more than two-years to launch its investigation, the IRS then invited the church to incriminate

[1] Editorial Board, *Editorial: Maryland Heights church deserves to have its tax-exempt status suspended*, St. Louis Post Dispatch (Mar. 9, 2022), https://archive.is/NcqZl#selection-3473.23-3477.73.

itself with such questions as:

- Did the Church publish flyers or voter information guides that provided a position either for or against a particular candidate for public office?
- Did the Church have a political candidate speak at the Church? If so, did the Church offer to have opposing candidates speak at the Church?
- Explain in detail what the Civic Engagement groups within the church do. What is their purpose and how do they accomplish the purpose?

Ignoring the fact that an affirmative answer to any of these questions would not violate the Johnson Amendment that the Federal government sanctioned such unconstitutional queries in the first place is troubling. How a church speaks to its members, what it says, who it invites to speak from its pulpit, or what function groups within its ministry perform are not subject to inspection and evaluation by the federal government. Yet, the Johnson Amendment gives the IRS sanction to impose itself upon the nation's houses of worship with audit-like powers and impose what it holds out as severe penalties.

Thankfully, the leaders of Grace Church St. Louis retained the undersigned counsel and, by the same, denied entry to the IRS. Though the IRS retreated and dismissed its investigation, the damage had already been done because the investigation was the punishment. A land that guarantees rights to free speech, free exercise, and association ought never countenance agents of the state examining the exercise of those rights by a pastor, congregation, or house of worship.

b. New Way Church

In the same year that Grace Church St. Louis received the ire of the local editorial board, New Way Church in Palm Coast, FL, received a visit one Sunday morning from a candidate for a local school board race. During the service, the pastor allowed the candidate to address the

congregation from the stage alongside the church's praise band. After talking about the importance of her faith and reasons for seeking the elected position, the pastor performed one of the most central and common of all duties of a Christian minister: he prayed for her.

Yet, this act of worship and Christian care did not escape the attention of the IRS either. In June of 2024—again *two years* after the supposedly offending deed—the IRS informed the church that it was investigating alleged violations of the so-called Johnson Amendment. *See* Exhibit B. As with Grace Church St. Louis, the IRS's letter to New Way posed improper and invasive questions, such as:

- [H]ow many people were in attendance and in what capacity were they there (e.g., church congregant)?
- What was the purpose of allowing Jill Woolbright to speak at an official church function of New Way Christian Fellowship Inc.?

And, true to form, the IRS did not miss a chance to invite the church to incriminate itself, asking such questions as:

- Have you participated in any political campaign intervention activities in 2022 that you have not mentioned in response to the above questions?
- In 2022, were you aware that by violating the prohibition on political activities outlined in IRC Section 501(c)(3) (without making a correction), that your tax-exempt status could be revoked or that you could be subject to excise taxes?

With the advantage of the advice of counsel, New Way Church declined the invitation to answer any of the IRS's questions, asserted the IRS had no authority to inspect the church in this manner, and invited the IRS to dismiss its investigation. It did, but the process left the pastor and his congregants shaken, annoyed, and wondering how the promises of the First Amendment could

so easily be laid aside by the Johnson Amendment.

II. The Johnson Amendment Upends Church Autonomy

a. The IRS merely recognizes what is already true: churches are tax exempt.

Many in the general population incorrectly believe that the IRS controls the exempt status of the nation's houses of worship. The common understanding is that when a church, synagogue, or mosque applies for 501(c)(3) status, the IRS weighs the merit of the application and grants or denies the exemption accordingly. While the IRS does evaluate the qualifications for 501(c)(3) tax-exempt status, it is *false* to say that the IRS *grants* a house of worship tax exemption.

In fact, according to the IRS's own publication, *Tax Guide for Churches & Religious Organizations* (Publication 1828 (Rev. 8-2015)), churches "are automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS." I.R.S. Pub. 1828 at 2 (Rev. 8-2015), https://www.irs.gov/pub/irs-pdf/p1828.pdf; *see also* 26 U.S.C. §508(c)(1)(A). Nonetheless, many churches elect to seek recognition as a 501(c)(3) tax exempt organization to assure leadership, membership, and contributors that the church qualifies for tax exemption and other related tax benefits.

Thus, churches may claim tax-exempt status through two avenues: (1) by obtaining an advance tax-exemption ruling pursuant to IRC § 501(c)(3), which requires filing of an Exemption Application (IRS Form 1023), or (2) by simply holding itself out as a church and claiming tax-exempt status pursuant to IRC § 508. Importantly, the IRS considers a church tax exempt *during* the 501(c)(3) application period. Those so recognized by the IRS are exempt from federal income taxes and eligible to receive tax-deductible contributions, among other advantages. 26 U.S.C. §§ 501(a), 170(c)(2).

Section 501(c)(3) recognizes the tax-exempt status of entities "organized and operated exclusively for religious [or] charitable" purposes, provided that the organization "does not

participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501(c)(3); 26 C.F.R § 1.501(c)(3)-1(c)(3)(iii) ("candidate for public office" applies at the national, State, and local level). The proviso against participating or intervening in political campaigns is commonly known as the "Johnson Amendment."

b. The history of the Johnson Amendment and its chilling of constitutionally protected rights.

Then-Texas Senator Lyndon B. Johnson introduced the 31-words that prohibit participation in political campaigns in 1954. The alleged motivation for the language came after two wealthy Texans used tax-exempt organizations to support Johnson's opponent in the primary election. Johnson won by a significant margin, but he was reportedly furious at the political opposition and took retribution in the form of amending the Internal Revenue Code. History records Johnson as the proponent of the language, but he offered no explanatory note with his amendment, nor is there even a record of who voted for or against it. The Johnson Amendment passed the U.S. Senate on a voice vote on July 12, 1954.

According to official IRS guidance, what constitutes prohibited political activity by a charitable nonprofit depends "on the facts and circumstances." I.R.S. Pub. 1828 at 7. Examples of prohibited activity include conducting voter education activities in such a way that favors one candidate over another; inviting one candidate to speak, but purposefully not inviting other candidates; and providing goods, services, or facilities to some, but not all, candidates in a campaign.

Nonetheless, the IRS does not consider voter education activities "conducted in a non-partisan manner" to constitute political activity. Thus, a church may publish voter education guides, host voter registration drives, and even host nonpartisan candidate forums at the church

without running afoul of the Johnson Amendment. Whether a church steps over the thin line between partisan and non-partisan education is left to the broad discretion of the IRS, however, with little to no guidance for the average pastor, parishioner, or lay leader.

The wide-ranging language of the Johnson Amendment, and its potential application by the IRS, has led many religious leaders to avoid political topics entirely. Many political leaders have proposed alternatives to the Johnson Amendment and others have attempted to repeal it without success. In 2017, President Donald Trump signed an executive order directing the Department of the Treasury not to "take any adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective." E.O. 13798, "Promoting Free Speech And Religious Liberty," 82 FR 21675 (May 4, 2017). However, that order ended with his presidency—as demonstrated by the experiences of Grace Church St. Louis and New Way Church.

And, absent the repeal of the Johnson Amendment by Congress, and without this Court's entry of the proposed Consent Judgement, future administrations will flip the impact of the Johnson Amendment on or off depending upon their political preferences—all the while chilling and unchilling the guarantees of free speech, free exercise, and church autonomy.

III. The IRS Shields the Johnson Amendment from Challenge While Chilling Constitutionally Protected Speech.

a. The futility of enforcing the Johnson Amendment.

The Supreme Court of the United States has never addressed the Johnson Amendment's application to churches, and only a few federal courts have done so. Indeed, it took 46 years after the adoption of the Johnson Amendment for a federal appellate court to uphold the IRS's revocation of a church's tax-exempt status. *See Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C.

Cir. 2000). No church's recognized tax exemption has been revoked under the Johnson Amendment since that case.

Branch Ministries operated Pierce Creek Church in New York. Ahead of the 1992 presidential election, Branch Ministries placed a full-page advertisement in the *USA Today* and *Washington Times* urging Christians not to vote for then-presidential candidate Bill Clinton due to his stance on certain moral issues. The IRS examined the church as a result and, in 1995, revoked its tax exemption. The church filed suit, but on appeal the U.S. Court of Appeals for the D.C. Circuit upheld the IRS's adverse action over arguments that it violated the First Amendment, the Religious Freedom Restoration Act ("RFRA"), and the Equal Protection Clause's prohibition on selective prosecution. The court noted that, should the church wish to engage in political activity, it could form a related 501(c)(4) organization, which in turn could form a Political Action Committee ("PAC") that "would be free to participate in political campaigns." *Id.* at 143.

Interestingly, although the court upheld the IRS's revocation decision, it noted that "the impact of the revocation is likely to be more symbolic than substantial." *Id.* at 142. After all, the revocation does not "necessarily make the Church liable for payment of taxes," as it "does not convert bona fide donations into income taxable to the Church." *Id.* at 143. Moreover, while no provision of law requires a church to file for tax-exempt status to have that status, the court noted that "we know of no authority, and counsel provided none, to prevent the Church from reapplying for" 501(c)(3) status "provided, of course, that it renounces future involvement in political campaigns." *Id.* at 143. In other words, the investigation of Branch Ministries and revocation of its tax-exempt status was an exercise in futility.

The court noted that the only immediate consequence of revocation would be felt, if at all, by the Church's donors. One benefit to churches of applying for 501(c)(3) status is that IRS

approval "provide[s] donors with advance assurance that their contributions will be deductible" from the donor's taxable income. *Id.* at 139. "Donors to a church that has not received an advance determination of its tax-exempt status may also deduct their contributions; but in the event of an audit, the [donor] will bear the burden of establishing that the church meets the requirements of section 501(c)(3)." *Id.* Thus, revocation of Branch Ministries' 501(c)(3) status removed "the advance assurance of deductibility in the event a donor should be audited," in which event the donor would bear the burden "to establish that the Church meets the requirements of 501(c)(3)." *Id.* at 142–43.

In sum, then, even after the IRS revoked Branch Ministries' tax exemption—and a court upheld that revocation—Branch Ministries remained tax exempt, although its donors might have borne an additional burden of proof in any audit. Why? Because the IRS does not *grant* tax exemption to churches, it merely *recognizes* what is already true: houses of worship are tax-exempt entities.

Other cases have examined application of § 501(c)(3)'s conditions, including both its clause prohibiting substantial efforts to "influence" legislation and the Johnson Amendment. Almost 30 years before *Branch Ministries*, a federal appellate court upheld revocation of the tax exemption of a religious radio ministry rather than a church. That exemption rested on the ministry's extensive efforts to influence legislation to restore prayer in public schools. *See Christian Echoes Nat'l Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972). In 1988, the Bar of New York City lost its tax exemption to the Johnson Amendment for publishing nonpartisan ratings of candidates for elective judgeships. *See Ass'n of the Bar of N.Y. v. Comm'r*, 858 F.2d 876 (2d Cir. 1988). And in *Regan v. Taxation with Representation*, 461 U.S. 540, 551 (1983), the U.S. Supreme Court upheld the IRS's denial of an organization's application for

nonprofit recognition under the clause that prohibits a 501(c)(3) organization from devoting "a substantial part of [its] activities" to "attempting[] to influence legislation." 26 U.S.C. § 501(c)(3). Yet, that case did not involve a church or religious organization.

b. The onerous process of a church tax inquiry under the Johnson Amendment.

Congress imposed special procedures on how and when the IRS may conduct civil tax inquiries and examinations of churches. The IRS may begin a church tax inquiry only if an appropriate high-level Treasury official reasonably believes, based on facts and circumstances recorded in writing, that the church may not qualify for an exemption. While the IRS is required to obtain the approval of a high-level Treasury official prior to launching a church tax inquiry and says as much in inquiries under the Johnson Amendment, the identity of that person is not included, nor has the IRS provided that information in response to such public records requests submitted by the undersigned. In fact, the undersigned counsel has sought copies of all such inquiries launched under the Johnson Amendment only to be told that such are not subject to disclosure under public records laws.

In any event, Federal law provides a 90-day period for the church to respond in writing to address the IRS's concerns. If this response does not sufficiently alleviate the IRS's concerns, the IRS may issue a second notice, generally within 90 days, informing the church of a need to examine its books and records. After issuing the second notice, but before starting any examination of church records, the church may request a conference with the IRS to discuss and attempt to resolve concerns about the examination. Reference by the IRS to "church records" contemplates "all corporate and financial records regularly kept by a church, including corporate minute books and lists of members and contributors." 26 U.S.C. § 7611(h)(4)(A). The IRS must complete its examination within 2 years of launch, *id.* § 7611(c)(1), and it may examine church conduct only from the prior 3 years to determine tax-exempt eligibility, *id.* § 7611(d)(2)(A).

At any point during the inquiry, if the church's responses satisfy the IRS's concerns, the IRS will close the matter without examining the church's records. Additionally, after this type of inquiry, the IRS generally cannot conduct a subsequent examination of the church for a 5-year period unless the previous examination resulted in a revocation of tax-exempt status, a notice of deficiency of assessment, or a request for significant change in church operations, such as significant change in accounting practices. *Id.* § 7611(f)(1); *see also* IRS, *Church Audit Process* (last updated Dec. 4, 2023), https://www.irs.gov/charities-non-profits/churches-religious-organizations/church-audit-process.

c. The potential penalties available to the IRS to exert upon houses of worship it determines have violated the Johnson Amendment.

In addition to dragging a church or house of worship through two-year long investigation and the general chill the Johnson Amendment imposes upon constitutional guarantees, the IRS has more tangible means of punishment for entities it determines violate the Johnson Amendment. Such penalties include:

1. Revoking the entity's 501(c)(3) status, *see Branch Ministries*, 211 F.3d 137;
2. In cases involving political expenditures by the entity, recovering a 10% tax on all such expenditures, *see* 26 U.S.C. § 4955; and
3. In cases of "flagrant violation[s] of the prohibition against making political expenditures," immediately assessing all taxes due, *id.* § 6852, for the 6 most recent taxable years, *id.* § 7611(d)(2)(A)(ii), and seeking injunctive relief in federal court, *id.* § 7409.

On the less severe end, the IRS may issue a written advisory noting that the church engaged in campaign activity but declining to impose a penalty because of mitigating factors. For example, in 2004 and 2006, during the IRS's short-lived Political Activity Compliance Initiative, it declined to withdraw exemptions from churches that deliberately violated the Johnson Amendment, opting

instead to issue written advisories. Those violations included "distribution of church bulletins and inserts supporting or opposing candidates, church officials supporting or opposing candidates during services or church functions, candidates being allowed to use church facilities, and distribution of biased voter guides and candidate ratings." *Churches and Campaign Activity: Analysis Under Tax and Campaign Finance Laws* 7–8, Congressional Research Service (Oct. 9, 2012), *available at* https://www.everycrsreport.com/files/20121009_RL34447_22d86a9c9b98adab4e9846c34dccff3dc741b652.pdf. In those cases, mitigating factors included whether the churches' violations only occurred once, whether they were done in good faith reliance on the advice of counsel, whether the church corrected the conduct, and whether the church took steps to prevent future violations. *Id.*

Despite many alleged violations, only two churches have ever lost their tax-exempt status during the Johnson Amendment's existence and only two others have been required to pay excise taxes. *See id.* (citing *Review of Internal Revenue Code Section 501(c)(3) Requirements for Religious Organizations: Hearing on H.R. 2357 Before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 107th Cong. 80 (2002) (statement of Rep. Karen L. Thurman, Member, Subcomm. on Oversight)).

d. The doctrine of Taxpayer Standing insulates the Johnson Amendment from challenge until it's too late while inviting the political targeting of constitutional rights.

Complaints concerning the Johnson Amendment may echo in the sanctuaries of the nation's churches or find debate in the halls of Congress, but rarely gain a hearing in the nation's Article III courts. The reason for this is simple: taxpayer standing. The clear holding of the U.S. Supreme Court—for over 100 years—is that complaints of a general nature cannot support a taxpayer's legal action against a statute's validity. *See Commonwealth of Massachusetts v. Mellon*, 262 U.S. 447 (1923) (denying judicial review of federal statutes based upon general complaints by

taxpayers). The court admitted "no power per se to review and annul acts of Congress on the ground that they are unconstitutional." *Id.* at 488. Rather, such complaints may be heard by Article III courts "only when the justification for some direct injury suffered or threatened." *Id.* Thus, to invoke the court's jurisdiction, a taxpayer "must be able to show, not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." *Id.*

Even if *Flast v. Cohen* may extend access to the Federal courts in cases invoking the First Amendment's Free Exercise Clause, even there a party must have standing to challenge a statute that specifically works to his immediate injury "and not on the issues he wishes to have adjudicated." *Flast v. Cohen*, 392 U.S. 83, 99 (1968). Article III courts require a redressable injury and are not in the business of issuing advisory opinions. And, for an issue like the Johnson Amendment, though a great many retain political disagreement with its continuation, even if "a party may have standing in a particular case . . . the federal court may nevertheless decline to pass on the merits of the case because, for example, it presents a political question." *Id.* at 100.

Absent Congressional repeal, faith leaders threatened by the Johnson Amendment have little recourse but to wait and see whether the IRS will enforce the Johnson Amendment against them. But, even if it were to open an investigation against a house of worship accused of violating the Johnson Amendment, the IRS determines its own future. It can either fully enforce the Johnson Amendment sufficient to give injury to a litigant and, thus, standing to challenge the law in court, or it can unilaterally end any such investigation and deprive a house of worship of an injury sufficient to afford standing. Neither removes the threat of enforcement against pastors, priests,

and parishioners who must guess whether their sermon, prayer, or educational activity violates the Johnson Amendment.

Thus, the fox guards the henhouse. One Executive may direct his IRS to suspend enforcement of the Johnson Amendment, while another may direct the IRS to enforce it aggressively. *See Fonticiella v. Comm 'r of Internal Revenue*, 117 T.C.M. (CCH) 1377 (T.C. 2019) ("The President retains full oversight of the [IRS] Commissioner," who exercises "delegated authority" in his supervision of the IRS as a bureau of the Department of the Treasury). What results not only chills constitutionally protected activity, but also invites abuse. Thus, while New Way's prayer for a local school board member and Grace Church's provision of educational information warrants an investigation by the IRS (which, at the time of the investigation, was controlled by President Joe Biden), we are aware of no such investigation when President Biden stumped for re-election in a Philadelphia church.[2] Nor did the IRS announce its enforcement of the Johnson Amendment following a campaign event by Vice President Kamala Harris mere days before Election Day 2024.[3] Too be sure, both churches should have had the right to host President Biden or Vice President Harris in the very manner in which they did. The point nonetheless remains: the Johnson Amendment remains a threat to core constitutional rights, deployed (or not) at a time and choosing determined by a Presidential administration's political motivation, but otherwise shielded from judicial review by the doctrine of taxpayer standing.

Until Congress deletes the Johnson Amendment from the Internal Revenue Code, which it should do at the earliest opportunity, it falls to the Executive and his delegated authority to

[2] Carmen Russel-Sluchansky, *Biden joins sermon at Church of God in Christ during 6th campaign visit to Philadelphia*, WHYY (July 7, 2024, 7:04 PM), https://whyy.org/articles/biden-pennsylvania-mount-airy-church-visit/.
[3] Alexandra Simon and Dan Snyder, *Harris tells Philadelphia church election will 'decide the fate of our nation for generations to come,'* CBS News (Oct. 28, 2024, 4:48 AM), https://www.cbsnews.com/philadelphia/news/kamala-harris-philadelphia-campaign-rally/.

administer the IRS, including the Johnson Amendment. If that be so, then it is entirely within the Executive's prerogative to direct the IRS to agree to the consent decree now before this Court and urge the Court to bind its enforcement power in the manner described therein. We agree and urge the Court to grant the Joint Motion.

IV. The Johnson Amendment Violates the Guarantees of Free Speech and Religious Liberty in Multiple Ways.

a. The doctrine of Church Autonomy undermines the Johnson Amendment's power.

The First Amendment's Religion Clauses protect the "power" of "religious organizations" to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 186 (2012). Pastors' approach to politics and voting are necessarily informed by Biblical teachings and the church's doctrine. Despite what the Johnson Amendment threatens, the government cannot control what a pastor speaks from the pulpit, nor what churches consider to be part and parcel a matter of religious duty—even where they consider engaging in speech regarding political campaigns part of that duty. To monitor and control religious speech by a church presupposes the ability of the government to regulate the church and, worse, dictate what is or is not a matter of religion. *See also Watson v. Jones*, 80 U.S. (13 Wall.) 697, 733 (1871); *Jones v. Wolf*, 443 U.S. 595, 602 (1979); *see also Branch Ministries*, 211 F.3d at 142 (recognizing that First Amendment challenge to the Johnson Amendment might have succeeded if the church had maintained that "a withdrawal from electoral politics would violate its beliefs").

b. The Free Exercise Clause of the First Amendment to the U.S. Constitution protects against the Johnson Amendment's threats.

While the Johnson Amendment may appear to regulate all nonprofits neutrally, religious nonprofits (especially churches and their auxiliaries) are different and given special solicitude under the First Amendment and federal law. Indeed, the Constitution places religious freedom in

a "preferred position." *Murdock v. Com. of Pennsylvania*, 319 U.S. 105, 115 (1943). And religious speech is "doubly protect[ed]." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022).

Moreover, the Religious Freedom Restoration Act ("RFRA"), 42 U.S. C. § 2000bb, *et seq*, requires laws restricting the free exercise of religion—like the Johnson Amendment—to be narrowly tailored to further a compelling interest. Thus, even if the IRS might enforce the Johnson Amendment against secular nonprofits, any such enforcement against religious nonprofits, like churches, unconstitutionally burdens the free exercise of religion. More specifically still, churches are given even greater protection than traditional nonprofit organizations or even *religious* nonprofit organizations. Thus, even if the IRS may enforce the Johnson Amendment against secular nonprofits and require certain religious nonprofits to form a separate, but related, 501(c)(4) organization for purposes of political/legislative involvement, enforcement against churches—who, according to the IRS, are "automatically considered tax exempt" where others are not—presents even greater unconstitutional burdens upon the free exercise of religion.

c. The Johnson Amendment violates the Free Speech Clause of the First Amendment to the U.S. Constitution.

The First Amendment insists upon more speech rather than less in order "to assure the unfettered interchange of ideas for [the] bringing about of political and social changes desired by the people." *FCC v. League of Women Voters*, 468 U.S. 364, 403 (1984) (Rehnquist, J., dissenting). In the context of political dialogue, that means that the "First Amendment protects speech and speaker, and the ideas that flow from each." *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 341 (2010).

While *Citizens United* expanded the free speech rights available to corporations, the Supreme Court's jurisprudence has not yet addressed whether political speech restrictions on tax-exempt churches are effectively more restrictive than those on non-religious, non-tax-exempt

entities. But, given the Supreme Court's recent insistence that the Free Speech and Free Exercise Clauses of the First Amendment "work in tandem" to provide "overlapping protection for expressive religious activities" thus "doubly protect[ing] religious speech," it seems likely that churches, if anyone, should be afforded greater protections against intrusion upon religious speech. *Kennedy*, 597 U.S. at 523–24; *see also Shurtleff v. City of Bos., Massachusetts*, 596 U.S. 243, 252 (2022) (In determining whether government intends "to regulate private expression," key factors include "the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression.").

For the IRS to insist that a church form a separate organization—a 501(c)(4) or 527 Political Action Committee—to engage in religious speech that touches upon matters political unconstitutionally burdens that right. Indeed, such speech is not speech by the church, but by a different entity entirely. If there is "[n]o sufficient governmental interest [justifying] limits on the political speech of nonprofit or for-profit corporations" regarding corporate expenditures for express political advocacy, surely the tax code cannot be used to regulate a church's constitutional rights. *Citizens United* 558 U.S. at 365.

A Free Speech challenge could also argue that the threat of disclosing lists of church members and church donor information pursuant to IRC § 7611(h)(4)(A) chills the church's speech and is unconstitutional under a heightened level of scrutiny. *See Am. for Prosperity Foundation v. Bonta*, 594 U.S. 595, 612–19 (2021); *NAACP v. State of Ala.*, 357 U.S. 449, 461, (1958) ("In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgement of such rights, even though unintended, may inevitably follow from varied forms of governmental action.").

d. Enforcement of the Johnson Amendment against houses of worship constitutes unlawful viewpoint discrimination.

Since tax exemptions cannot be considered government speech, a church does not relinquish its fundamental rights of speech and religion. They are thus free to speak for themselves upon topics of their choosing, expressing viewpoints of their own. Government cannot insist that a religious organization express, or prevent from expressing, a particular viewpoint. *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995) ("The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.").

e. Giving the IRS nearly unfettered discretion to enforce the Johnson Amendment invites inequitable, politically-motivated application of the law.

The Internal Revenue Code, and specifically the Johnson Amendment, gives significant, nearly unfettered discretion to the IRS to determine what constitutes participation or intervention in a political campaign or any candidate for public office. Such discretion can easily be abused, especially regarding religious speech from the pulpit. *See Fulton v. City of Phila.*, 141 S. Ct. 1868, 1877 (2021) ("A law is not generally applicable if it invite[s] the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions.") (internal quotations removed). That is especially likely given that the IRS allows other secular organizations—even nonprofit organizations—to engage in the very speech it prohibits of churches. Thus, a law "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way" will also lack the requisite neutrality demanded by the First Amendment. *Id.*

f. Since 1954, the Johnson Amendment has bread unlawful hostility toward religion by the government and fomented it within the American culture.

Government must always be respectful toward religious exercise. Yet, government officials have often demonstrated hostility toward religion in the enforcement of its laws. For instance, in *Masterpiece Cakeshop*, the State of Colorado held baker Jack Phillips, in derision for his religious beliefs. As the Supreme Court noted, "[t]he Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion." *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 584 U.S. 617 (2018) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 534 (1993)). To further drive the point, the Court later concluded that "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton*, 141 S.Ct. at 1877. The past behavior of IRS agents like Lois Lerner, former Director of Exempt Organization for the IRS, suggest that the inquiry against houses of worship in enforcing the Johnson Amendment could be motivated by more than mere enforcement. Indeed, further investigation may reveal open hostility to the religious beliefs of America's houses of worship in violation of the Constitution.

In May of 2021, the IRS denied tax exempt status to Christians Engaged, a Christian nonprofit formed to educate and empower everyday Americans to pray for its elected officials, vote, and be civically engaged. Bizarrely, in its determination letter, the IRS would not even use the phrase, "Word of God," a common reference to the Christian Bible. *See* Exhibit C. Rather, it substituted the letter "M" throughout its letter denying Christians Engaged tax exemption. The IRS denied their application after it determined the Christian organization's "educational activities were not neutral" because the topics typically on which Christians Engaged educated were "associated with political party platforms" and often "affiliated with distinct candidates." *Id.*

More bluntly, the IRS claimed it was required to deny their application because, Christians Engaged "instruct[ed] individuals on how Christians should use the Bible and vote the Bible." *Id.*

Such a negative determination letter reflects not only the ignorance of IRS agents tasked with following its own rules related to religious organizations and houses of worship, but also reveals and encourages a hostility toward religion that the Supreme Court has rightly labeled as "odious to the Constitution . . . and cannot stand." *Trinity Lutheran Church of Columbia v. Comer*, 582 U.S. 449, 467 (2017).

g. America's history and tradition counsels against the continuation of the Johnson Amendment's application against houses of worship.

After abandoning its *Lemon* test, the Supreme Court has increasingly emphasized history, historical practices, and original meaning in the First Amendment context. *See, e.g.*, *Kennedy*, 597 U.S. at 535; *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 50–52 (2019); *Shurtleff v. City of Boston*, 596 U.S. 243, 287 (2022) (Gorsuch, J., concurring) (endorsing historical understanding of the First Amendment's original meaning); *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014).

American pastors have historically spoken on political issues and candidates. *See generally* Shawn A. Voyles, Comment, *Choosing Between Tax-Exempt Status and Freedom of Religion: The Dilemma Facing Politically-Active Churches*, 9 Regent U. L. Rev. 219, 226–30 (1997). Even before the Revolution, "patriotic clergymen told their congregations that failure to oppose British tyranny would be an offense in the sight of Heaven." Patricia U. Bonomi, *Under The Cope Of Heaven: Religion, Society, And Politics In Colonial America* 216 (updated ed. 2003). A few years later, in the late 1700s and early 1800s, Virginia Baptists, under John Leland's leadership, endorsed James Madison's campaign for the Virginia Ratifying Convention and U.S. House of Representatives—thus playing a crucial factor in passing the First Amendment—and Thomas Jefferson's campaign for President. *See* Reece Barker, *A Memorial and Remonstrance Against*

Taxation of Churches, 47 B.Y.U. L. Rev. 1001, 1031 (2022). Churches played a key role on both sides of the presidential election of 1800; while the Virginia Baptists supported Jefferson, on the other side, Dutch Reformed minister, Rev. William Linn, attacked Jefferson's candidacy through print, charging Jefferson as a deist who never observes the Lord's Day. *See* Voyles, *supra*, at 227.

The Johnson Amendment further departs from the long historical tradition in the United States of granting tax-exemptions to churches. Prior to the American Revolution, most colonies provided tax relief to churches, and Congress introduced its first tax exemption for churches in 1802. *See* Vaughn E. James, *The African-American Church, Political Activity and Tax Exemption*, 37 Seton Hall L. Rev 371, 376 (2007). As the Supreme Court has long acknowledged, "[f]ew concepts are more deeply embedded in the fabric of our national life, beginning with pre-Revolutionary colonial times, than for the government to exercise at the very least this kind of benevolent neutrality toward churches and religious exercise . . . ." *Walz v. Tax Comm'n of New York*, 397 U.S. 664, 676 (1970). The Supreme Court has not considered church tax exemptions from an originalist perspective, but such historical arguments improve the chances that the Court would invalidate the Johnson Amendment if ever presented with such a case.

h. The government cannot place unconstitutional conditions to compel a house of worship to comply with the Johnson Amendment.

Through enforcement of the Johnson Amendment, the government cannot compel a church to forgo its constitutional rights to receive the same tax exemption all other similarly situated organizations receive. Indeed, "if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited . . . Such interference with constitutional rights is impermissible." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

CONCLUSION

For all the reasons stated herein, the Court should GRANT the Joint Motion for Entry of Consent Judgement, ECF No. 35.

Dated: August 5, 2025

Respectfully Submitted,

/s/ Jeremiah G. Dys

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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2025, I electronically filed this motion with the Clerk of the Court for the United States District for the Eastern District of Texas by using the CM/ECF system. Counsel in this case are registered CM/ECF users and service will be accomplished using the CM/ECF system.

/s/ Jeremiah G. Dys

EXHIBIT A

Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
1111 Constitution Avenue, NW
TE/GE, SE:T, NCA-660
Washington, DC 20224

Date:
04/30/2024
Taxpayer ID number:
[redacted]
Form:
990
Tax periods ended:
12/31/2022
Person to contact:
Name: Brian Schroeder
ID number: 1000909102
Telephone: 313-234-1368
Fax: 855-234-1429
Manager's contact information:
Name: Jerry Morrow
ID number: 1000923742
Telephone: 313-234-1307
Response due date:
05/30/2024

GRACE CHURCH SAINT LOUIS
[redacted]

Certified Mail - Return Receipt Requested [Certified Mail Label]

Dear GRACE CHURCH SAINT LOUIS:

Why we're sending you this letter
We have some questions about your tax-exempt status as a church under Internal Revenue Code (IRC) Section 501(a).

Our concerns are based on the content published on your website during tax year 2022 which potentially constitute political activity. Your website openly endorsed two of the members of your congregation who were running in a local school board election. Additionally, your website contained a list of fourteen other candidates that were part of various local elections. Your website made statements in either opposition or endorsement of these candidates. All section 501(c)(3) organizations, including churches, their integrated auxiliaries, conventions or associations of churches are prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office.

We can conduct inquiries and examinations to determine the accuracy of any tax return, create a return when a taxpayer doesn't file one, and determine the tax liability of any person or organization (IRC Section 7602). However, IRC Section 7611 imposes restrictions on us when conducting tax inquiries and examinations of churches and conventions or associations of churches. IRC Section 7611 protects the rights of churches and provides a framework for us to resolve questions about their tax liability and tax-exempt status and to enforce the internal revenue laws.

As Commissioner, Tax Exempt and Government Entities, I have a reasonable belief that you may not be tax-exempt as a church under IRC Section 501(a). I'm approving this church tax inquiry as described in IRC Section 7611(a).

What you need to do
Respond to the enclosed Church Tax Inquiry Questions by the response due date shown above. Answer each question completely. If your responses resolve our concerns, we'll close our inquiry.

Send your response using one of the following methods:

- Upload your response using secure messaging: IRS secure messaging provides a safe means for exchanging information with IRS online. Secure messaging information is available at **IRS.gov/TEGEconnect**. Enclosed is Publication 5295, Secure Messaging for Tax Exempt and Government Entities, which provides additional information about secure messaging. Scan the QR code below for information.
- Fax your response to the fax number at the top of this letter using either a fax machine or an online fax service. Protect yourself when sending digital data by understanding the fax service's privacy and security policies.
- Mail your response to:

  Attention: Brian Schroeder, Internal Revenue Agent
  Internal Revenue Service
  Mail Stop TEGE:EO:7936
  985 Michigan Avenue
  Detroit, MI 48226

What will happen if you don't respond or send an incomplete response
If we don't hear from you by the response due date shown above or if we receive an incomplete response, we may issue Letter 5309, Notice of Church Examination, and begin examining your records or religious activities.

Taxpayer rights and sources for assistance
The enclosed Publication 5328, Statement of Administrative and Constitutional Rights, explains your administrative and constitutional rights during a tax inquiry and examination. You're entitled to a conference with us to discuss our concerns before we begin an examination. If we send you a Notice of Church Examination, we'll offer you the opportunity for a conference.

The Internal Revenue Code (IRC) gives taxpayers specific rights. The Taxpayer Bill of Rights groups these into 10 fundamental rights. See IRC Section 7803(a)(3). IRS employees are responsible for being familiar with and following these rights. For additional information about your taxpayer rights, please see the enclosed Publication 1, Your Rights as a Taxpayer, and Notice 609, Privacy Act Notice, or visit **IRS.gov/taxpayer-bill-of-rights**.

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that helps taxpayers and protects taxpayers' rights. TAS can offer you help if your tax problem is causing a financial difficulty, you've tried but been unable to resolve your issue with the IRS, or you believe an IRS system, process, or procedure isn't working as it should. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. To learn more, visit **taxpayeradvocate.IRS.gov** or call 877-777-4778.

Tax professionals who are independent from the IRS may be able to help you.

State bar associations, state or local societies of accountants or enrolled agents, or other nonprofit tax professional organizations may also be able to provide referrals.

If you submitted a Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, and asked us to send your authorized representative or appointee copies of written communications, we'll send a copy of this letter to them.

For more information, see the enclosed Publication 1, Your Rights as a Taxpayer and Notice 609, Privacy Act Notice.

If you have questions, you can call the person shown above.

Sincerely,

Edward T. Killen

Digitally signed by Edward T. Killen
Date: 2024.04.28 22:51:16 -04'00'

Edward T. Killen
Commissioner
Tax Exempt and Government Entities Division

Enclosures:
Church Tax Inquiry Questions
Publication 5328
Publication 5295
Publication 1
Notice 609

Church Tax Inquiry Questions

Date:

Questionnaire Completed by (Name and Title):

FOR TAX YEAR 2022:

1. Does the Church have a policy on political activities? If yes, explain and give more details as they relate to the policy for year 2022.

2. Did the Church endorse any candidates for public office? According to a newspaper article and an editorial in the St. Louis Post-Dispatch, the Church published on its website an endorsement of two of its congregants, Linda Henning and Jeff Mintzlaff, for local school board office elections.

3. Did the Church use social media platforms and/or websites to provide a position either for or against a candidate for public office? If so, please explain and give more details.

4. Did the Church publish flyers or voter information guides that provided a position either for or against a particular candidate for public office?

5. Did the Church make contributions to a candidate for public office?

6. Did the Church have a political candidate speak at the Church? If so, did the Church offer to have opposing candidates speak at the Church?

7. Explain in detail what the Civic Engagement groups within the church do. What is their purpose and how do they accomplish the purpose?

IRS

Your Rights as a Taxpayer

Publication 1

This publication explains your rights as a taxpayer and the processes for examination, appeal, collection, and refunds.
Also available in Spanish.

The Taxpayer Bill of Rights

1. The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

3. The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

4. The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

5. The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

6. The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections, and will provide, where applicable, a collection due process hearing.

8. The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

10. The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

The IRS Mission | Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Publication 1 (Rev. 9-2017) Catalog Number 64731W Department of the Treasury **Internal Revenue Service** www.irs.gov

Examinations, Appeals, Collections, and Refunds

Examinations (Audits)

We accept most taxpayers' returns as filed. If we inquire about your return or select it for examination, it does not suggest that you are dishonest. The inquiry or examination may or may not result in more tax. We may close your case without change; or, you may receive a refund.

The process of selecting a return for examination usually begins in one of two ways. First, we use computer programs to identify returns that may have incorrect amounts. These programs may be based on information returns, such as Forms 1099 and W-2, on studies of past examinations, or on certain issues identified by compliance projects. Second, we use information from outside sources that indicates that a return may have incorrect amounts. These sources may include newspapers, public records, and individuals. If we determine that the information is accurate and reliable, we may use it to select a return for examination.

Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund, explains the rules and procedures that we follow in examinations. The following sections give an overview of how we conduct examinations.

By Mail

We handle many examinations and inquiries by mail. We will send you a letter with either a request for more information or a reason why we believe a change to your return may be needed. You can respond by mail or you can request a personal interview with an examiner. If you mail us the requested information or provide an explanation, we may or may not agree with you, and we will explain the reasons for any changes. Please do not hesitate to write to us about anything you do not understand.

By Interview

If we notify you that we will conduct your examination through a personal interview, or you request such an interview, you have the right to ask that the examination take place at a reasonable time and place that is convenient for both you and the IRS. If our examiner proposes any changes to your return, he or she will explain the reasons for the changes. If you do not agree with these changes, you can meet with the examiner's supervisor.

Repeat Examinations

If we examined your return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so we can see if we should discontinue the examination.

Appeals

If you do not agree with the examiner's proposed changes, you can appeal them to the Appeals Office of the IRS. Most differences can be settled without expensive and time-consuming court trials. Your appeal rights are explained in detail in both Publication 5, Your Appeal Rights and How To Prepare a Protest If You Don't Agree, and Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund.

If you do not wish to use the Appeals Office or disagree with its findings, you may be able to take your case to the U.S. Tax Court, U.S. Court of Federal Claims, or the U.S. District Court where you live. If you take your case to court, the IRS will have the burden of proving certain facts if you kept adequate records to show your tax liability, cooperated with the IRS, and meet certain other conditions. If the court agrees with you on most issues in your case and finds that our position was largely unjustified, you may be able to recover some of your administrative and litigation costs. You will not be eligible to recover these costs unless you tried to resolve your case administratively, including going through the appeals system, and you gave us the information necessary to resolve the case.

Collections

Publication 594, The IRS Collection Process, explains your rights and responsibilities regarding payment of federal taxes. It describes:

- What to do when you owe taxes. It describes what to do if you get a tax bill and what to do if you think your bill is wrong. It also covers making installment payments, delaying collection action, and submitting an offer in compromise.
- IRS collection actions. It covers liens, releasing a lien, levies, releasing a levy, seizures and sales, and release of property.
- IRS certification to the State Department of a seriously delinquent tax debt, which will generally result in denial of a passport application and may lead to revocation of a passport.

Your collection appeal rights are explained in detail in Publication 1660, Collection Appeal Rights.

Innocent Spouse Relief

Generally, both you and your spouse are each responsible for paying the full amount of tax, interest, and penalties due on your joint return. However, if you qualify for innocent spouse relief, you may be relieved of part or all of the joint liability. To request relief, you must file Form 8857, Request for Innocent Spouse Relief. For more information on innocent spouse relief, see Publication 971, Innocent Spouse Relief, and Form 8857.

Potential Third Party Contacts

Generally, the IRS will deal directly with you or your duly authorized representative. However, we sometimes talk with other persons if we need information that you have been unable to provide, or to verify information we have received. If we do contact other persons, such as a neighbor, bank, employer, or employees, we will generally need to tell them limited information, such as your name. The law prohibits us from disclosing any more information than is necessary to obtain or verify the information we are seeking. Our need to contact other persons may continue as long as there is activity in your case. If we do contact other persons, you have a right to request a list of those contacted. Your request can be made by telephone, in writing, or during a personal interview.

Refunds

You may file a claim for refund if you think you paid too much tax. You must generally file the claim within 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later. The law generally provides for interest on your refund if it is not paid within 45 days of the date you filed your return or claim for refund. Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund, has more information on refunds.

If you were due a refund but you did not file a return, you generally must file your return within 3 years from the date the return was due (including extensions) to get that refund.

Taxpayer Advocate Service

TAS is an ***Independent*** organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit *www.taxpayeradvocate.irs.gov* or call 1-877-777-4778.

Tax Information

The IRS provides the following sources for forms, publications, and additional information.

- ***Tax Questions:*** 1-800-829-1040 (1-800-829-4059 for TTY/TDD)
- ***Forms and Publications:*** 1-800-829-3676 (1-800-829-4059 for TTY/TDD)
- ***Internet:*** *www.irs.gov*
- ***Small Business Ombudsman:*** A small business entity can participate in the regulatory process and comment on enforcement actions of the IRS by calling 1-888-REG-FAIR.
- ***Treasury Inspector General for Tax Administration:*** You can confidentially report misconduct, waste, fraud, or abuse by an IRS employee by calling 1-800-366-4484 (1-800-877-8339 for TTY/TDD). You can remain anonymous.

Department of the Treasury
Internal Revenue Service

Notice 609
(Rev. October 2013)

Privacy Act Notice

The Privacy Act of 1974 says that when we ask you for information about yourself, we must first tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if you do not provide it and whether or not you must respond under the law.

This notice applies to tax returns and any papers filed with them. It also applies to any questions we need to ask you so we can complete, correct, or process your return; figure your tax; and collect tax, interest, or penalties. We ask for information to carry out the U.S. tax laws. We need the information to figure and collect the right amount of tax.

Our legal right to ask for information is found in Internal Revenue Code sections 6001, 6011, and 6012 and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Your response is mandatory under these sections. Sections 7601–7613 authorize us to examine books and records and ask questions to obtain information we need. Section 6109 and its regulations say that you must provide your identification number on what you file. Paid tax return preparers and electronic return originators are also required to provide their identifying numbers.

We may give the information to the Department of Justice to enforce the federal civil and criminal tax laws, and to other federal agencies as provided by law. We may also give it to cities, states, the District of Columbia, and to U.S. commonwealths or possessions to carry out their tax laws. We may give it to certain foreign governments under tax treaties they have with the United States. We may also disclose this

information to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

If you do not file a return, the law says that you may be subject to penalties and interest, and in certain cases, criminal prosecution. If you do not provide required information, or provide false or fraudulent information, the law says that we may have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on your return. This could make your tax higher or delay any refund. You may also be subject to additional interest, penalties, or criminal prosecution.

Please keep this notice with your records. You may want to refer to it if we ask you for other information. If you have questions about the rules for filing and giving information, please visit our website at IRS.gov, or call or visit any Internal Revenue Service office.



IRS

Statement of Administrative and Constitutional Rights

Publication 5328 (2-2019) Catalog Number 72017N Department of the Treasury Internal Revenue Service www.irs.gov

Statement of Administrative and Constitutional Rights

The First Amendment of the Constitution provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." The first clause is referred to as the Establishment Clause; the second is the Free Exercise Clause. The Establishment Clause prohibits government sponsorship of religion. Central to this prohibition are the concepts of government neutrality and the separation between church and state. The Supreme Court has held that the Free Exercise Clause of the First Amendment is an absolute prohibition against the regulation of religious beliefs. The First Amendment provides substantial protection for lawful conduct grounded on religious beliefs. However, the government may limit religiously motivated conduct when the limitation is essential to accomplish an overriding governmental interest. Section 7611 of the Internal Revenue Code (IRC) provides the following protections to organizations claiming to be churches or conventions or associations of churches:

1. The IRS may begin a church tax inquiry only if an appropriate high-level Treasury official reasonably believes, based on written facts and circumstances, that an organization claiming to be a church or convention or association of churches:
    - May not qualify for exemption,
    - May be carrying on an unrelated trade or business (within the meaning of IRC Section 513),
    - May otherwise be engaged in taxable activities, or
    - May have entered into an IRC Section 4958 excess benefit transaction with a disqualified person.
2. If the IRS begins a tax inquiry, it is required to provide the church written notice at the beginning of the inquiry. The Notice of Church Tax Inquiry must contain all of the following:
    - An explanation of the concerns that gave rise to the inquiry
    - The general subject matter of the inquiry
    - An explanation of the IRC provisions that authorize the inquiry
    - A general explanation of applicable administrative and constitutional provisions with respect to the inquiry
3. If the IRS wants to examine a church's records or religious activities, the Secretary of the Treasury, or his or her delegate, must personally approve the examination and must provide an additional written notice (Notice of Church Examination) to the church at least 15 calendar days before the examination. At the same time the IRS gives notice to the church, the IRS must notify IRS Counsel of the proposed examination. IRS Counsel is then allowed 15 days to file a non-binding advisory opinion about the examination.

The Notice of Church Examination must include all of the following:

- A copy of the Notice of Church Tax Inquiry previously provided
- A description of the church records and activities which the IRS wants to examine
- A copy of all documents collected or prepared by the IRS for use in the examination that are required to be disclosed under the Freedom of Information Act (5 U.S.C. 552) as supplemented by IRC Section 6103
- An offer of a conference with the IRS, prior to the examination, to discuss the concerns which gave rise to the inquiry and the general subject matter of the inquiry

The IRS may send the Notice of Church Examination to the church no less than 15 days after the Notice of Church Tax Inquiry. However, the IRS must generally mail the Notice of Church Examination, within 90 days after the Notice of Church Tax Inquiry or the IRS is required to end the inquiry without change to the church's tax status.

4. If the IRS fails to substantially comply with the above requirements, it may result in a stay of summons enforcement proceedings to gain access to church records until the IRS satisfies the requirements.

5. The IRS generally must complete any church tax inquiry or examination no later than two years after the date on which it mailed the Notice of Church Examination to the church. The two-year period may be extended by mutual agreement between the church and the IRS.

   The church tax inquiry or examination will also be suspended during certain judicial proceedings and during any period more than 20 days but not more than six months, during which a church or its agents fail to comply with any reasonable IRS request for church records or other information. However, in the case of a church tax inquiry in which there is no Notice of Church Examination, the IRS must generally complete the inquiry within 90 days from the date it mailed the Notice of Church Tax Inquiry to the church.

6. The IRS is limited initially to an examination of church records relevant to the church's tax-exempt status for the three most recently completed tax years preceding the date of the Notice of Church Examination.

   If the church is not exempt for any of those three years, the IRS may examine relevant records for the six completed tax years immediately preceding the Notice of Church Examination. The IRS may examine church records for a year earlier than the third or sixth completed taxable years if material to a determination of tax-exempt status during the three or six-year period.

For examinations relating to unrelated business taxable income, when no return is filed, the IRS may assess tax for the six most recently completed taxable years preceding the date of the Notice of Church Examination. The IRS may examine church records for a year earlier than the sixth year if material to a determination of unrelated business income tax liability during the six-year period.

For examinations involving issues other than determination of exempt status or unrelated business income tax liability, there is no limit on the taxable periods the IRS may examine if the church has not filed a tax return. If a church has filed a tax return, the normal rules for determining tax liability or assessing tax apply.

7. IRS Counsel must approve, in writing, any of the following:
   - An adverse determination concerning the tax-exempt status of an organization claiming to be a church
   - An adverse determination concerning the right of an organization claiming to be a church to receive tax deductible contributions
   - The issuance of a notice of tax deficiency to a church or disqualified person subject to IRC Section 4958 tax following a church tax examination
8. An organization claiming to be a church is entitled to bring a declaratory judgment action under IRC Section 7428 once the IRS issues a revenue agent's final report revoking or denying the church's tax-exempt status.
9. The Secretary of the Treasury, or his or her delegate, must approve an inquiry or examination begun within five years from the date of the Notice of Church Examination (or if no Notice of Church Examination is sent, a Notice of Church Tax Inquiry). This approval is not required if either of the following apply:
   - The second examination does not involve the same or similar issues as the preceding inquiry or examination
   - The first inquiry or examination resulted in a change to the organization's exempt status, an assessment of unrelated business income tax or other tax, or a recommendation for a substantive change in the church's operations, including accounting practices

EXHIBIT B

Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
1111 Constitution Avenue, NW
TE/GE, SE:T, NCA-660
Washington, DC 20224

Date: 6/14/2024

Taxpayer ID number: [redacted]

Form:
990 Return

Tax periods ended:
202212

Person to contact:
Name: Kristopher A Raper
ID number: 1002841529
Telephone: 214-413-5249
Fax: 855-780-9036

Manager's contact information:
Name: Mary Lee Morris
ID number: 1000120353
Telephone: 816-966-2371

Response due date:
7/5/2024

New Way Christian Fellowship Inc.
[redacted]

Certified Mail - Return Receipt Requested [Certified Mail Label]

Dear New Way Christian Fellowship Inc.:

Why we're sending you this letter

We have some questions about your tax-exempt status as a church under Internal Revenue Code (IRC) Section 501(a) and/or your liability for tax.

Our concerns are based on information we are in possession of indicating that you may have conducted political campaign intervention activities which are prohibited under IRC Section 501(c)(3).

We can conduct inquiries and examinations to determine the accuracy of any tax return, create a return when a taxpayer doesn't file one, and determine the tax liability of any person or organization (IRC Section 7602). However, IRC Section 7611 imposes restrictions on us when conducting tax inquiries and examinations of churches and conventions or associations of churches. IRC Section 7611 protects the rights of churches and provides a framework for us to resolve questions about their tax liability and tax-exempt status and to enforce the internal revenue laws.

As Commissioner, Tax Exempt and Government Entities, I have a reasonable belief that you may not be tax-exempt as a church under IRC Section 501(a) or that you may be liable for tax. I'm approving this church tax inquiry as described in IRC Section 7611(a).

What you need to do

Respond to the enclosed Church Tax Inquiry Questions by the response due date shown above. Answer each question completely. If your responses resolve our concerns, we'll close our inquiry.

- Upload your response using secure messaging: IRS secure messaging provides a safe means for exchanging information with IRS online. Secure messaging information is available at **IRS.gov/TEGEconnect**. Enclosed is Publication 5295, Secure Messaging for Tax Exempt and Government Entities, which provides additional information about secure messaging. Scan the QR code below for information.
- Fax your response to the fax number at the top of this letter using either a fax machine or an online fax service. Protect yourself when sending digital data by understanding the fax service's privacy and security policies.

Send your response using one of the following methods:

- Mail your response to:

Attention: Kristopher A Raper, Internal Revenue Agent
Internal Revenue Service
Mail Stop MC 4957 DAL
1100 Commerce Street
Dallas, TX 75242

What will happen if you don't respond or send an incomplete response
If we don't hear from you by the response due date shown above or if we receive an incomplete response, we may issue Letter 5309, Notice of Church Examination, and begin examining your records or religious activities.

Taxpayer rights and sources for assistance
The enclosed Publication 5328, Statement of Administrative and Constitutional Rights, explains your administrative and constitutional rights during a tax inquiry and examination. You're entitled to a conference with us to discuss our concerns before we begin an examination. If we send you a Notice of Church Examination, we'll offer you the opportunity for a conference.

The Internal Revenue Code (IRC) gives taxpayers specific rights. The Taxpayer Bill of Rights groups these into 10 fundamental rights. See IRC Section 7803(a)(3). IRS employees are responsible for being familiar with and following these rights. For additional information about your taxpayer rights, please see the enclosed Publication 1, Your Rights as a Taxpayer, and Notice 609, Privacy Act Notice, or visit **IRS.gov/taxpayer-bill-of-rights**.

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that helps taxpayers and protects taxpayers' rights. TAS can offer you help if your tax problem is causing a financial difficulty, you've tried but been unable to resolve your issue with the IRS, or you believe an IRS system, process, or procedure isn't working as it should. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. To learn more, visit **taxpayeradvocate.IRS.gov** or call 877-777-4778.

Tax professionals who are independent from the IRS may be able to help you.

State bar associations, state or local societies of accountants or enrolled agents, or other nonprofit tax professional organizations may also be able to provide referrals.

If you submitted a Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, and asked us to send your authorized representative or appointee copies of written communications, we'll send a copy of this letter to them.

For more information, see the enclosed Publication 1, Your Rights as a Taxpayer and Notice 609, Privacy Act Notice.

If you have questions, you can call the person shown above.

Sincerely,
Edward T. Killen
Digitally signed by Edward T. Killen
Date: 2024.06.09 17:49:29 -04'00'
Edward T. Killen
Commissioner, Tax Exempt and Government Entities

Enclosures:
Church Tax Inquiry Questions
Publication 5328
Publication 5295
Publication 1
Notice 609
Revenue Ruling 2007-41

New Way Christian Fellowship Inc.

Questions

We have a reasonable belief that you may have participated in political campaign intervention activities which are prohibited under Internal Revenue Code (IRC) Section 501(c)(3). Our concerns are based on information we possess indicating that New Way Christian Fellowship Inc. may have provided support to one or more candidates in a political campaign. Specifically, that you allowed Jill Woolbright, a candidate in a local school board election, to address your congregation during a Church service.

We have attached a copy of Revenue Ruling 2007-41 to this questionnaire for your convenience. The Revenue Ruling outlines the prohibition against political campaign intervention for organizations which are exempt from taxation under IRC Section 501(c()3).

Please answer the following questions:

1. Does the video located at https://www.youtube.com/watch?v=E9F_vPlvvDo accurately depict Jill Woolbright speaking at an official church function of New Way Christian Fellowship Inc. in 2022?

   a. If yes, how many people were in attendance and in what capacity were they there (e.g., church congregant)?

   b. Also, the referenced video appears to have been published on YouTube.com by a local news organization. In 2022, did you publish or stream your own recording of Jill Woolbright's speech?

   c. What was the purpose of allowing Jill Woolbright to speak at an official church function of New Way Christian Fellowship Inc.?

2. The video referenced in question 1.a. appears to depict Jill Woolbright giving a speech discussing her candidacy for the Flagler County School Board in 2022 at an official church function of New Way Christian Fellowship Inc. The video appears to further depict New Way Christian Fellowship Inc.'s pastor, Richard Summerlin, endorsing Jill Woolbright's candidacy for the Flagler County School Board at an official church function. Organizations exempt under 501(c)(3) are prohibited from engaging in political campaign intervention.

   a. If you believe what is depicted in the video does not constitute prohibited political campaign intervention, please explain why.

3. In 2022, if you permitted a candidate for any public office to speak at any event you organized or otherwise sponsored, did you provide an equal opportunity to all candidates to speak at the event?

   a. Allowing one candidate for office to speak at an event, without providing all candidates with the same opportunity, may result in violation of the prohibition against political campaign intervention outlined in IRC Section 501(c)(3). If you did not provide an equal opportunity to all candidates, please explain why you believe you have not engaged in prohibited political campaign intervention.

4. In 2022, were you aware that by violating the prohibition on political activities outlined in IRC Section 501(c)(3) (without making a correction), that your tax-exempt status could be revoked or that you could be subject to excise taxes?

5. Have you participated in any political campaign intervention activities in 2022 that you have not mentioned in response to the above questions?

6. In 2022, did you have any measures in place designed to prevent your organization from violating the prohibition on political campaign intervention under IRC Section 501(c)(3)?

   a. If yes, please explain.

EXHIBIT C

Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: 05/18/2021

Employer ID number:
[redacted]

Contact person/ID number:
Roger Vance/0203391

Contact telephone number:
513-975-6666

Contact fax number:
855-789-2984

CHRISTIANS ENGAGED
[redacted]

UIL:
501.03-00

Legend:
B= July 22, 2019
C= Texas
D= Republican
F= The Texas Eagle Forum
G= Promise Keepers
H= Collin County
J= Collin County Republican
K = Collin County Victory Efforts
M = Word of God

Dear Applicant:

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues
Do you qualify for exemption under IRC Section 501(c)(3)? No, for the reasons stated below.

Facts
You were incorporated on B in the state of C. You are formed exclusively for charitable, religious, educational, or scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3), or the corresponding section of any future federal tax code.

Your founder and President is a motivational public speaker, former D Congressional Candidate, political consultant and Preacher of the Gospel. Your Vice President is a motivational public speaker, former President of F, intercessor, former Prayer Coordinator for G and a homeschool mom. Your Secretary you describe as a conservative millennial thought leader with a marketing and political consulting background. He now serves as the Executive Director for the K, where he manages the J Party's field teams in H as well as the grassroots get-out-the-vote efforts for H.

Your mission statement indicates that you exist to awaken, motivate, and empower ordinary believers in Jesus Christ to:

- Pray for the nation regularly
- Vote in every election to impact the culture
- Engage hearts in some form of political education or activism for the future of the nation
- Strive to educate Christians on the importance of prayer, voting and engagement in a non-partisan manner.

You explained that you hold weekly prayer meetings to pray for leaders of your state and nation. Churches are given program outlines for the prayer meetings. Statewide and area prayer gatherings are also conducted. You partner with other organizations to have strategic prayer gatherings for the state, nation, and elected officials.

In addition, you educate individuals through your website, social media, video, and live in person teachings in churches. Your goal is to provide a place of connection and educational tools for Christians to engage in political activism. Your website includes educational materials and blogs. Everywhere you go, you will have voter registrars and you will be registering people to vote on the spot.

You also educate believers on national issues that are central to their belief in the Bible as the inerrant M. You educate Christians in areas where they can be instrumental as in areas of the sanctity of life, the definition of marriage, biblical justice, laws vs. lawlessness, freedom of speech, religious liberty, government and business ethics, human trafficking, fiscal responsibility in government budgeting, defense, borders and immigration, U.S. and Israel relations.

To further your mission, you conduct educational activities including a month-long political activism course. The thrust of the course is to create onramps of practical education and mentorships for people to engage in political activism with a basis in a biblical/Christian value system. Topics include instructing individuals on becoming a citizen lobbyist, working with elected officials and candidates, discerning between the lessor of two evils, keeping the Christian soul right when working on politics, practical steps and pitfalls in political activism, how to work with an interest group focused on an area that you are interested in including the sanctity of life and fiscal responsibility, how to use mentoring to encourage Christians to engage in political activism. You will establish key leadership positions in each Congressional district across the state, so ordinary Christians can learn through action.

You educate individuals on how to choose between imperfect candidates as well as instruct individuals that parties matter. They should look at the party they represent and the core beliefs and values of that party. They should look at what the candidate says about the issues and see if their beliefs align with the Bible. Individuals should know the Bible, vote the Bible and vote on values.

Your president has several blogs on your website. A blog describing how to choose between candidates lists considerations that can be used to help make a decision when voting. For example, concerning the topic of partisan political races the blog indicates that party platforms should be looked at to see which candidate is most aligned with Christian/biblical values. The blogs list the some of the most important Christian and biblical values as the sanctity of life, biblical marriage, and government and debt.

Initially, you had references to candidates that aligned with the Christian/biblical value system and had created voter guides that reflected the candidates values. You have since removed such references.

You are funded by donations. Your expenses are for salaries, professional fees, website, social media, video educational marketing, software and festival expenses.

You indicated that you do not engage in any substantial political activity and you are not advocating for specific political parties, candidates, or legislation.

Law

IRC Section 501(c)(3) provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable or educational purposes, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more exempt purposes specified in IRC Section 501(c)(3).

Treasury Regulation Section 1.501(c) (3)-1(c)(3)(i) states that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization.

Treas. Reg. Section 1.501(c)(3)-1(c)(3)(iii) of the regulations defines an "action" organization as an organization that participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" is defined as an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. The regulations further provide that activities that constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written statements or the making of oral statements on behalf of or in opposition to such a candidate.

Rev. Rul. 2007-41 2007-25 I.R.B., provides 21 examples illustrating the application of facts and circumstances to determine whether a 501(c)(3) organization has participated in a political campaign intervention activity. Situation 16 describes an organization in which the executive director presented a preferred position on a prominent issue that distinguishes candidates before an election and encourages individuals to go to the polls and cast their vote. This situation is political campaign intervention. Situation 19 describes an organization that maintains a web site and posts an unbiased, nonpartisan voter guide that is prepared consistent with the principles discussed in Rev. Rul. 78-248. This situation is not political campaign intervention.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the court held that an organization that operated a school to train individuals for careers as political campaign professionals, but that could not establish that it operated on a nonpartisan basis, did not exclusively serve purposes described in IRC 501(c)(3) because it also served private interests more than incidentally. The court found that the organization was created

and funded by persons affiliated with a particular political party and that most of the organization's graduates worked in campaigns for the party's candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting the party's candidates and entities. Although the candidates and entities benefited were not organization "insiders," the court stated that the conferral of benefits on disinterested persons who are not members of a charitable class may cause an organization to serve a private interest within the meaning of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). The court concluded by stating that even if the political party's candidates and entities did "comprise a charitable class, [the organization] would bear the burden of proving that its activities benefited members of the class in a non-select manner."

Application of law

You are not as described in IRC Section 501(c)(3) because you are not operated exclusively for religious and educational purposes. Specifically, you are engaged in prohibited political campaign invention. You are also operated for substantial nonexempt purposes in contravention to Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You are not described in Treas. Reg. Section 1.501(c)(3)-1(c)(3)(i) in that you spend a substantial amount of time and resources devoted to activities that are typical of an action organization. Treas. Reg. Section 1.501(c)(3)-1(c)(3)(iii) further defines an "action" organization as one that plans to participate and intervene in political campaigns on behalf of or in opposition to candidates for public office. You instruct individuals on issues that are prominent in political campaigns and instruct them in what the Bible says about the issue and how they should vote. These issues include the sanctity of life, the definition of marriage, and biblical justice. These issues generally distinguish candidates and are associated with political party platforms. These facts preclude you from exemption under IRC Section 501(c)(3).

You are similar to Situation 16 in Revenue Ruling 2007-41. Certain aspects are weighed in determining campaign intervention as evidenced within the ruling. While you educate voters on what the bible says about issues, your educational activities are not neutral. The topics typically are affiliated with distinct candidates and specific political party platforms.

You are not similar to Situation 19 in Revenue Ruling 2007-41. Information you present and on your website is not neutral. You instruct individuals on how Christians should use the Bible and vote the Bible.

You are like the organization described in American Campaign Academy, because you are serving the private interests of the D party more than incidentally in contravention to Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) as well as serving a substantial nonexempt private purpose. For example, you educate believers on national issues that are central to their belief in the Bible as the inerrant Word of God. Specifically, you educate Christians on what the bible says in areas where they can be instrumental including the areas of sanctity of life, the definition of marriage, biblical justice, freedom of speech, defense, and borders and immigration, U.S. and Israel relations. The bible teachings are typically affiliated with the D party and candidates. This disqualifies you from exemption under IRC Section 501(c)(3).

Conclusion

You do not qualify as an organization described in IRC Section 501(c)(3). You engage in prohibited political campaign intervention. You are also not operated exclusively for one or more exempt purposes within the meaning of Section 501(c)(3), because you operate for a substantial non-exempt private purpose and for the private interests of the D party.

If you agree
If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

If you don't agree
You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

  For an officer, director, trustee, or other official who is authorized to sign for the organization: Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2).

Where to send your protest
Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service
The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

EXHIBIT 3.1.025

FIRST LIBERTY

June 16, 2021

Internal Revenue Service
EO Determinations Quality Assurance
[redacted]

Via FedEx

Re: Christians Engaged
[redacted]
Form 1023: Protest of Proposed Denial of Tax-Exempt Status

Dear Sir or Madam:

First Liberty Institute represents Christians Engaged, a nonprofit organization located at the address below, with respect to the proposed denial of its application for recognition of exemption under § 501(c)(3).

Christians Engaged
[redacted]

This letter protests the proposed determination[1] denying its application for tax exempt status under 26 U.S.C. § 501(c)(3). Form 2848, Power of Attorney and Declaration of Representative, is enclosed. Please direct any communication regarding this protest to my attention.

Statement of Facts

Christians Engaged was incorporated on July 22, 2019, as a Texas nonprofit corporation "formed exclusively for charitable, religious, educational, or scientific purposes."[2] As a Christian organization, it sincerely holds the religious beliefs set out in its Doctrinal Statement.[3] From its religious perspective, Christians Engaged provides nonpartisan religious and civic education, focusing on encouraging and educating Christians to be civically engaged as a part of their religious practice.

Christians Engaged's mission statement articulates three goals: "to awaken, motivate, and empower ordinary believers in Jesus Christ to: pray for our nation regularly, vote in every election

[1] Letter from Stephen A. Martin to Christians Engaged (May 18, 2021) (hereinafter "Letter" or "Proposed Determination Letter"), enclosed.
[2] Certificate of Formation, Art. III, enclosed.
[3] Christians Engaged Amended Bylaws Attachment A (Dec. 5, 2019), enclosed.

to impact our culture, [and] engage our hearts in some form of political education or activism for the furtherance of our nation."[4] To accomplish the first, Christians Engaged provides a weekly Bible study, sends out weekly prayer alerts, and organizes statewide and area prayer gatherings.[5] It works with churches and pastors to facilitate annual church prayer meetings for local, state, and national government.[6] Through articles, a blog, social media, videos, educational tracts and booklets, church outreach, and live speaking opportunities, Christians Engaged educates the public on the importance of praying regularly for government and elected officials.[7]

Second, Christians Engaged educates the public on the importance of voting in every election and provides tools to enable them to do so.[8] Its voter outreach teams with voter registrars visit festivals, public events, Christian concerts, and churches.[9] Christians Engaged invites individuals to pledge to pray regularly for the nation, vote in every election, and "commit to some form of political education or activism for the furtherance of our nation."[10] It also follows up with election reminders, but it does not produce voter guides or otherwise suggest that recipients should vote for or against any particular candidate or candidates.[11]

Finally, Christians Engaged empowers ordinary Christians who are generally unfamiliar with civic and public policy processes and issues to become actively involved by 1) "educat[ing] believers on the national issues that are central to our belief in the Bible as the inerrant Word of God," and 2) providing training, resources, and mentorships that help them navigate the political process in order to "promote [their] values or get involved with [their] passion."[12] It offers an online educational course in political activism and is developing an online educational course on Texas government.[13]

The goal of Christians Engaged's political activism course "is to build Christian servant leaders who feel called to engage in the world of politics" by creating "an interactive mentoring community where you can learn how to find your place in political involvement in your city, state, and nation."[14] The course teaches how "major political parties are organized," "how to get involved . . . and make a difference in the political party of your choice," how to engage with

[4] Christians Engaged, https://christiansengaged.org (last visited June 15, 2021).
[5] *See* Christians Engaged, It's Time to Pray, https://christiansengaged.org/pray (last visited June 15, 2021); Christians Engaged, Virtual Bible Study, https://christiansengaged.org/bible-study (last visited June 15, 2021).
[6] *See* Christians Engaged, Vote, https://christiansengaged.org/vote (last visited June 15, 2021).
[7] *See id.*
[8] *See id.*
[9] *See id.*
[10] *See* Christians Engaged, Pledge, https://christiansengaged.org/pledge (last visited June 15, 2021).
[11] *See* Christians Engaged, Vote, https://christiansengaged.org/vote (last visited June 15, 2021). The Letter's assertion that Christians Engaged instructs individuals "how they should vote," Proposed Determination Letter at 4, is incorrect. Christians Engaged "educate[s] the public on the processes of voting and how the Bible speaks to civic duty," but it does so "[w]ithout advocating for specific issues or candidates [and] encourage[s] the public to research and search the scriptures for their own answers." Letter from Bunni Pounds to Robert Vance re: Response to Second Information Request (Aug. 25, 2020), enclosed.
[12] *See* Christians Engaged, Engage, https://christiansengaged.org/engage (last visited June 15, 2021).
[13] Christians Engaged, Educational Classes, https://christiansengaged.org/classes (last visited June 15, 2021).
[14] Christians Engaged, On-Ramp to Political Activism, https://ce-academy.teachable.com/p/on-ramp-to-political-activism-class-1 (last visited June 15, 2021).

elected officials and their offices.[15] The class also "discusses issues in our national conversation from a Biblical perspective" and teaches students how to engage in politics as a "Christian with integrity."[16] The class is taught from a nonpartisan perspective "to educate and minister to all Texans."[17] None of Christians Engaged's activities involve supporting or opposing political parties, candidates, or legislation;[18] rather, it "educate[s] the public on the processes of voting and how the Bible speaks to civic duty . . . [w]ithout advocating for specific issues or candidates [and] encourage[s] the public to research and search the scriptures for their own answers."[19]

Christians Engaged applied for tax exempt status under 26 U.S.C. § 501(c)(3) in late 2019. On May 18, 2021, Exempt Organizations Director Stephen A. Martin denied the application, contending that Christians Engaged "engage[s] in prohibited political campaign intervention" and "operate[s] for a substantial non-exempt private purpose and for the private interests of the D[20] [Republican] party."[21] This conclusion pointed specifically to Christians Engaged's education of "believers on national issues that are central to their belief in the Bible as the inerrant M [Word of God]"[22]: namely, "the sanctity of life, the definition of marriage, biblical justice, freedom of speech, defense, and [sic] borders and immigration, [and] U.S. and Israel relations."[23] Because Director Martin believes that "bible [sic] teachings are typically affiliated with the D [Republican] party and candidates," the Proposed Determination Letter found that "[t]his disqualifies [Christians Engaged] from exemption under IRC Section 501(c)(3)."[24]

Legal Argument

26 U.S.C. § 501(c)(3) exempts from taxation:

> Corporations . . . organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in

[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *See, e.g.*, Christians Engaged, On-Ramp to Political Activism, *supra* note 14. ("Christians Engaged is a nonpartisan, nonprofit ministry. We are here to educate and minister to all Texans. This class is taught from that perspective and we do not endorse candidates or political parties.").
[19] Letter from Bunni Pounds to Roger Vance, *supra* note 11; While some of the materials used by Christians Engaged make specific reference to the Republican Party and its leaders have sometimes spoken at Republican Party events, references to the Republican Party are not intended to be excusive. Christians Engaged's leadership sometimes uses examples from their own experience, and like any other organization Christians Engaged takes the speaking opportunities afforded to it. Christians Engaged's leadership would certainly accept invitations to speak at Democratic Party events. *See id.*
[20] Please note that the Letter employed a cryptic abbreviation methodology. *See* Proposed Determination Letter at 1. Mystifyingly, Director Martin abbreviates "Republican" as "D." For clarity and accuracy, this letter will follow the abbreviation with the corresponding term in bracketed text when quoting the Proposed Determination Letter.
[21] Proposed Determination Letter at 4.
[22] *Id.* at 2.
[23] *Id.* at 4.
[24] *Id.*

> subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 C.F.R. § 1.501(c)(3)-1 requires an exempt organization to fulfill both the organizational test, which requires certain language in the organization's formative documents, and the operational test, which requires an organization's primary activities to seek to accomplish exempt purposes. The Proposed Determination Letter does not contest that Christians Engaged's formative documents comply with the organizational test.[25]

However, by finding that Christians Engaged does not meet the operational test, Director Martin errs in three ways: 1) he invents a nonexistent requirement that exempt organizations be neutral on public policy issues; 2) he incorrectly concludes that Christians Engaged primarily serves private, nonexempt purposes rather than public, exempt purposes because he thinks its beliefs overlap with the Republican Party's policy positions; and 3) he violates the First Amendment's Free Speech, and Free Exercise, and Establishment clauses by engaging in both viewpoint discrimination and religious discrimination.

Neutrality

First, Director Martin improperly interprets the requirement that an exempt organization not intervene for or against any candidate for public office as requiring neutrality on public policy issues. While exempt organizations must maintain neutrality with respect to political campaigns,[26] they do not have to maintain strict neutrality on controversial public policy issues. *See* 26 C.F.R. § 1.501(c)(3)-1(d)(2) ("The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) . . . ."); Internal Revenue Service, *Compliance Guide for 501(c)(3) Public Charities* at 5 ("Some Section 501(c)(3) organizations take positions on public policy issues, including issues that divide candidates in an election for public office.").[27]

Revenue Ruling 2007-41 explains the difference between permissible issue advocacy and impermissible political campaign intervention. Rev. Rul. 2007-41, 2007-25 I.R.B. at 8 (June 18, 2007). While "section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention," they "may take positions on public policy issues, including issues that divide candidates in an election for public office." *Id.* As a result, advocating positions on

[25] *See* Proposed Determination Letter at 4; Certificate of Formation, Art. III, VI–VII; Amended Bylaws Art. II.
[26] 26 C.F.R. § 1.501(c)(3)-1(d)(2) (allowing a 501(c)(3) organization to engage in issue advocacy so long as it is not an action organization); *id.* § 1.501(c)(3)-1(c)(3) (defining action organizations as including, as relevant here, an organization that "participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office").
[27] Available at https://www.irs.gov/pub/irs-pdf/p4221pc.pdf; *see also* Internal Revenue Service, "Lobbying," https://www.irs.gov/charities-non-profits/lobbying (last visited June 15, 2021) ("Organizations may, however, involve themselves in issues of public policy without the activity being considered as lobbying. For example, organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.").

issues that may also be generally associated with political party platforms is not enough, standing alone, to disqualify an organization from exempt status. Rather, whether an organization's communication constitutes political campaign intervention depends on several factors:

> [1] Whether the statement identifies one or more candidates for a given public office;
> [2] Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
> [3] Whether the statement is delivered close in time to the election;
> [4] Whether the statement makes reference to voting or an election;
> [5] Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
> [6] Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election;
> [7] Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

Id. at 8–9. Even a statement referring to a particular candidate or to voting in a specific upcoming election does not automatically constitute political campaign intervention and "must still be considered in context before arriving at any conclusions." *Id.* at 9.

Director Martin considers none of these factors, instead deciding that Christians Engaged is an action organization solely because of its religious education on issues including "the sanctity of life, the definition of marriage, and biblical justice," which are issues that Director Martin believes to "generally distinguish candidates and [to be] associated with political party platforms."[28] This directly contradicts Revenue Ruling 2007-41 and 26 C.F.R. § 1.501(c)(3)-1(d)(2). Considering the above factors demonstrates that Christians Engaged may engage in issue advocacy, but it does not intervene in political campaigns. Its communications do not identify candidates for office and thus do not express approval or disapproval of them. Its communications related to specific elections provide only general election information.[29] Christian Engaged encourages and organizes prayer meetings to pray for elected officials without regard to the election cycle or their candidacy status. Its efforts to educate the public respecting civic engagement, political process, and national issues occur as an ongoing series of communications independent of the timing of any particular election.

The Proposed Determination Letter's analogy to Revenue Ruling 2007-41's Situation 16 is inapt.[30] Situation 16 describes a scenario in which a § 501(c)(3) community development organization hosts an annual fundraiser a month prior to an election in which funding for a new mass transit project is a prominent issue.[31] One of the two competing candidates supports the project, while the other opposes the project in favor of highway improvements.[32] The organization's executive

[28] Proposed Determination Letter at 4.
[29] *See* Christians Engaged, Pledge, *supra* note 10.
[30] Proposed Determination Letter at 4.
[31] Rev. Rul. 2007-41 at 10.
[32] *Id.*

director's speech emphasizes the need for mass transit, criticizes highway improvements, and exhorts the event attendees to "improve [their] quality of life" in the particular state senate district by voting accordingly in the upcoming state senate election.[33] The revenue ruling explains that this scenario constitutes political campaign intervention,[34] but Christians Engaged's activity is not analogous. Among its activities, it engages the public in discussing a variety of broad national public policy issues from its religious perspective and belief in the Bible. These communications do not necessarily lead to one ("for" or "against") conclusion on specific candidates and consistently occur independent of any particular election's timing. In contrast, the hypothetical listeners to the speech in Situation 16 cannot help but understand that the organization supports a specific candidate in a specific election and is asking them to support him as well.

Director Martin compares Christians Engaged's effort to "educate voters on what the bible [sic] says about issues" to Situation 16 by arguing simply that "these topics typically are affiliated with distinct candidates and specific political party platforms."[35] But this description lacks the key factors present in Situation 16: proximity to a particular election, support for a specific position on a prominent campaign issue on which the particular candidates had spoken in opposite ways, and a call to action to vote for the corresponding candidate.[36]

Moreover, Director Martin's discussion of Situation 19 demonstrates that he may have confused the requirements for voter guides, which must be neutral among candidates and parties, with the requirements for educational activity, which need not be neutral on public policy issues.[37] Situation 19 describes how an exempt organization may permissibly publish voter guides and links to candidate information on its website.[38] Christians Engaged does neither, so Situation 19 is irrelevant.

In sum, Director Martin's conclusion that Christians Engaged engages in political campaign intervention relies on the mistaken assumption that an exempt organization may not engage in issue advocacy. Indeed, if exempt organizations may only articulate public policy positions on issues as to which no political party or candidate has an opinion, then the regulations recognizing that exempt organizations may advocate positions on public policy issues[39] have no meaning. Under the appropriate standards, Christians Engaged's activities fall well within permissible boundaries.

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[33] *Id.*
[34] *Id.*
[35] Proposed Determination Letter at 4.
[36] *See* Rev. Rul. 2007-41 at 10; *see also Compliance Guide for 501(c)(3) Public Charities* at 5 ("Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate's name but also by other means such as showing a picture of the candidate, referring to political party affiliations or other distinctive features of a candidate's platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.").
[37] *See generally* Rev. Rul. 78-248, 1978-1 C.B. 154 (1978) (explaining the requirements for voter guides); 26 C.F.R. § 1.501(c)(3)-1(d)(3) (discussed *infra*).
[38] Rev. Rul. 2007-41 at 12.
[39] *See, e.g.*, 26 C.F.R. § 1.501(c)(3)-1(d)(2).

Exempt Purposes

Second, Director Martin incorrectly applies the operational test to conclude that Christians Engaged primarily serves private, nonexempt purposes rather than public, exempt purposes. His analysis fails to apply the required standard for determining whether an organization serves exempt educational purposes and rests on the same erroneous assumption that exempt organizations cannot take positions on public policy issues.

The operational test regards an organization "as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)." 26 C.F.R. § 1.501(c)(3)-1(c)(1). Exempt purposes include, as relevant here, religious, charitable, and educational purposes. *Id.* § 1.501(c)(3)-1(d)(i). In fulfilling these purposes, the organization must serve a public interest rather than a private interest. *Id.* § 1.501(c)(3)-1(d)(ii).

Director Martin concluded that Christians Engaged "serv[es] the private interests of the D [Republican] party more than incidentally," because it "educate[s] believers on national issues that are central to their belief in the Bible as the inerrant Word of God."[40] He faults Christian Engaged's educational activity as "not neutral," pointing specifically to Christians Engaged's efforts to "educate Christians on what the bible [sic] says in areas where they can be instrumental including the areas of sanctity of life, the definition of marriage, biblical justice, freedom of speech, defense, and [sic] borders and immigration, [and] U.S. and Israel relations."[41] Because "[t]he bible [sic] teachings are typically affiliated with the D [Republican] party and candidates," Director Martin concludes that Christians Engaged "operate[s] for a substantial non-exempt private purpose" and serves the "private interests of the D [Republican] party."[42]

This erroneous conclusion results from an analysis that ventures far afield from the applicable regulatory test.[43] Organizations that serve exempt purposes do not cease to serve public interests when they advocate positions on public policy issues or share opinions on controversial issues. "The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3)." *Id.* § 1.501(c)(3)-1(d)(2) (defining "charitable").[44] Similarly, educational organizations may "advocate[] a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion" and its "principal function" does not merely present "unsupported opinion." *Id.*

[40] Proposed Determination Letter at 4.
[41] *Id.*
[42] *Id.*
[43] As explained *supra*, Director Martin may have confused the neutrality requirements for voter guides with the requirements for educational activities.
[44] Director Martin does not (and could not) contend that Christians Engaged does not seek to accomplish religious purposes or charitable purposes (the term "charitable" includes "advancement of religion," 26 C.F.R. § 1.501(c)(3)-1(d)(2)). Accordingly, this section focuses on the Letter's argument regarding educational purposes.

The methodology standard, adopted after the D.C. Circuit struck down the "full and fair exposition" standard as unconstitutionally vague in isolation,[45] determines whether an organization's advocacy is educational based on "the method used by an organization in advocating its position, rather than the position itself."[46] The "viewpoint or position" of the beliefs an organization advocates is irrelevant to determining whether the organization is educational.[47] This standard evaluates four criteria: 1) whether "[t]he presentation of viewpoints or positions unsupported by facts is a significant portion of the organization's communications," 2) whether "[t]he facts that purport to support the viewpoints or positions are distorted," 3) whether "[t]he organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations," and 4) whether "[t]he approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter."[48] However, even if "one or more such factors" are present, "[t]he Service will look to all the facts and circumstances to determine whether an organization may be considered educational."[49]

Director Martin woefully fails to apply this standard. He makes no mention of these criteria, and none of his analysis corresponds to them. He does not consider Christians Engaged's methods at all; to the contrary, Director Martin considers *only* Christians Engaged's positions and the religious viewpoint it holds in advocating them. That is, Director Martin deems Christians Engaged's purpose not educational because he evidently associates biblical positions on national issues with Republicans, not because of the methodology Christians Engaged employs. This directly contradicts the IRS's procedure and regulations.

Moreover, the Proposed Determination Letter's analogy to *American Campaign Academy v. Commissioner*, 92 T.C. 1053 (1989), is misplaced. *American Campaign Academy* found that an organization developed by the National Republican Congressional Committee ("NRCC") to train career political campaign professionals "conducted its educational activities with the partisan objective of benefiting Republican candidates and entities." *Id*. at 1055, 1070. The court in that case noted that the organization's curriculum studied a variety of partisan topics, including "Growth of the NRCC," "Why are people Republicans," "Other Republican givers lists," "How some Republicans have won Black votes," and "NRCC/RNC/NRSC/State Party naughtiness," while failing to "counterbalance the Republican party focus" with comparable studies of other political parties. *Id.* at 1070–71. As a result, the court found the organization operated to advance the private interests of the Republican party rather than a public interest. *Id.* at 1072.

Director Martin erroneously compares Christians Engaged to *American Campaign Academy* solely because he believes that Christians Engaged's "bible [sic] teachings are typically affiliated with the D [Republican] party and candidates."[50] But educating the public on policy issues from a

[45] *Big Mama Rag, Inc. v. United States*, 631 F.2d 1030 (D.C. Cir. 1980); *Nationalist Movement v. Comm'r*, 102 T.C. 558, 583, *aff'd*, 37 F.3d 216 (5th Cir. 1994); *see also Nat'l Alliance v. United States*, 710 F. 2d 868 (D.C. Cir. 1983).
[46] Rev. Proc. 86-43, 1986-2 C.B. 729 § 2 (1986).
[47] *Id.*
[48] *Id.* § 3.
[49] *Id.*
[50] Proposed Determination Letter at 4.

position that a political party may happen to share is not the same thing as primarily serving that party's private interests. Unlike *American Campaign Academy*, Christians Engaged's political activism course is taught from a nonpartisan perspective "to educate and minister to all Texans."[51] It does not single out a particular political party; instead it teaches ordinary citizens how "major political parties are organized," "how to get involved . . . and make a difference in the political party of your choice," and how to engage with elected officials and their offices.[52] These subjects fit within the definition of educational: "relat[ing] to (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual and beneficial to the community." *Id.* § 1.501(c)(3)-1(d)(3).[53]

That the class also "discusses issues in our national conversation from a Biblical perspective" does not conscript it into the service of private interests.[54] Indeed, similar organizations with similar missions and policy positions are recognized as exempt under § 501(c)(3).[55] Director Martin is also evidently unaware that Christians discussing biblical perspectives on national issues often arrive at different political and policy conclusions.[56] This very possibility is why the methodology test exists—to "minimize the potential for any public official to impose his or her preconceptions or beliefs in determining whether the particular viewpoint or position is educational,"[57] because allowing such "latitude for subjectivity" is constitutionally problematic.[58] Applying the appropriate standard demonstrates that Christians Engaged qualifies for 501(c)(3) status.

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[51] *See supra* note 18.
[52] *Id.*
[53] *See* Rev. Rul. 72-512, 1972-2 C.B. 246 (determining political science course may require students to participate in the political campaign of their choice without jeopardizing the university's exemption under § 501(c)(3)).
[54] *See* Rev. Proc. 86-43 § 3.
[55] *See, e.g.*, American Majority, https://www.americanmajority.org/ (last visited June 14, 2021) ("As a 501c(3) non-partisan, nonprofit, American Majority continually trains, organizes, mobilizes, and equips new grassroots conservative leaders.") (tax exempt status granted Aug. 19, 2008); My Faith Votes, https://www.myfaithvotes.org/about (last visited June 14, 2021) ("My Faith Votes calls Christians to "Pray, Think and Vote" in order to protect four core pillars of faith which are religious freedom, the sanctity of life, strong families and marriages, and compassion and support for those in need. We reach Christians to stand boldly for these values in every election and in every community and city across our nation.") (exempt under 501(c)(3), EIN: 48-6393123); And Institute, Inc., https://www.andcampaign.org/about (exempt under § 501(c)(3), EIN: 81-3991404) ("To educate and organize Christians for civic and cultural engagement that results in better representation, more just and compassionate policies and a healthier political culture.")
[56] *See, e.g.*, Asma Khalid, *How Joe Biden's Faith Shapes His Politics*, NPR (Sept. 20, 2020), https://www.npr.org/2020/09/20/913667325/how-joe-bidens-faith-shapes-his-politics ("Biden, who carries a rosary in his pocket and attends Mass every Sunday, is known as a deeply devout person of faith, and his campaign sees electoral implications in that.") ("[P]eople who know him well say his Catholic faith is central to how he sees the world."); Evangelical Environmental Network, https://creationcare.org/who-we-are/ ("Our mission is to inspire, equip, educate, and mobilize evangelical Christians to love God and others by rediscovering and reclaiming the Biblical mandate to care for creation and working toward a stable climate and a healthy, pollution-free world.") (exempt under § 501(c)(3), EIN: 23-2827214). Christians who are Democrats may disagree that biblical teachings are affiliated with the Republican party.
[57] Rev. Proc. 86-43 § 2.
[58] *Big Mama Rag*, 651 F.2d at 1037.

Viewpoint Discrimination

Director Martin's proposed denial of Christians Engaged's application for exemption under § 501(c)(3) discriminates against its viewpoint in violation of the First Amendment. "The IRS may not discriminate on the basis of viewpoint" when administering the tax code. *Z St. v. Koskinen*, 791 F.3d 24, 30 (D.C. Cir. 2015); *Regan v. Taxation with Representation*, 461 U.S. 540, 548 (1983) (noting in a 501(c)(3) status denial challenge that the IRS would violate the First Amendment if it "discriminate[s] invidiously . . . in such a way as to aim at the suppression of dangerous ideas." (internal quotation marks and alteration omitted)). Viewpoint discrimination "is an egregious form of content discrimination" that targets "particular views taken by speakers on a subject" and is presumptively unconstitutional. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829–31 (1995) (holding that a subsidy program excluding religious publications violated the First Amendment by "select[ing] for disfavored treatment those student journalistic efforts with religious editorial viewpoints"). Discrimination against religious perspectives is itself a form of viewpoint discrimination. *Id.* at 830 (holding that rejecting content because it is from a "religious standpoint" is impermissible viewpoint discrimination (citing *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393–94 (1993))).

As discussed above, Director Martin's reasoning in denying tax exempt status relies entirely on Christians Engaged's positions and its religious perspective in articulating them. Denying tax exempt status for Christians Engaged while recognizing the exempt status of other organizations who encourage civic engagement from different viewpoints demonstrates the IRS's impermissible viewpoint discrimination. For example, the IRS recognizes § 501(c)(3) status for Civic Nation, whose "When We All Vote" initiative, started by Michelle Obama, has as its mission[59]:

> [T]o change the culture around voting and to increase participation in each and every election by helping to close the race and age gap. Created by Michelle Obama, When We All Vote brings together individuals, institutions, brands, and organizations to register new voters across the country and advance civic education for the entire family and voters of every age to build an informed and engaged electorate for today and generations to come. We empower our supporters and volunteers to take action through voting, advocating for their rights, and holding their elected officials accountable.

Similarly, the IRS granted tax exempt status to The Libertarian Christian Institute, whose mission is[60]:

> [T]o make the Christian case for a free society and provide the best content to proclaim that libertarianism is the most consistent expression of Christian political thought. We aim to persuade Christians that the political expression of our faith inclines us toward the principles of individual liberty and free markets.

[59] When We All Vote, "About Us," https://www.whenweallvote.org/about-us (last accessed June 14, 2021).
[60] Libertarian Christian Institute, "Our Mission, Vision, & Core Values," https://libertarianchristians.com/mission/ (last accessed June 14, 2021).

The IRS also recognizes the tax exempt status of Faith in Texas, "a nonpartisan, multi-racial, multi-faith grassroots movement of people united in values working together to achieve economic, racial, and social justice for all people" that works to end mass incarceration, gun violence, and "profiting off of the suffering of immigrant families" and to support a "moral economy" through voter mobilization.[61]

The IRS recognizes each of these organizations as tax exempt under § 501(c)(3). Each of these organizations is functionally similar to Christians Engaged, but each organization approaches civic engagement from a different viewpoint. Director Martin's objections to Christians Engaged, however, are equally applicable to these organizations, yet they received tax-exempt status while Christians Engaged did not.

The Proposed Determination Letter's blatant disregard for regulatory requirements and the IRS's granting of tax-exempt status to similar organizations with different viewpoints demonstrates that the IRS is discriminating against Christians Engaged's religious viewpoint. Indeed, the IRS has an enduring track record of discriminating against conservative organizations' applications for 501(c)(3) status.[62] Consequently, the denial of Christians Engaged's application for tax exemption violates the First Amendment's prohibition on viewpoint discrimination.

Free Exercise Clause and Establishment Clause

Likewise, Director Martin's discrimination against particular religions—here, all religions whose beliefs are grounded in the Bible—violates the Establishment Clause and the Free Exercise Clause of the U.S. Constitution. In the Proposed Determination Letter, Director Martin states that Christians Engaged "educate[s] believers on national issues that are central to their belief in the Bible as the inerrant Word of God. . . . The bible [sic] teachings are typically affiliated with the D [Republican] party and candidates. This disqualifies [Christians Engaged] from exemption under IRC Section 501(c)(3)."[63]

First, Director Martin's bald assertion that "bible [sic] teachings are typically affiliated with the D [Republican] party and candidates" constitutes an impermissible governmental interpretation of religious doctrine and one with which Christians Engaged strongly disagrees. Christians Engaged believes that the Bible is for persons of any political party and that conscientious Christians may support different public policy proposals and candidates. Indeed, President Biden, who is not a member of the Republican Party, quoted the Bible as recently as last month, saying in his remarks at the 153rd National Memorial Day Observance, "The Bible teaches, 'Blessed are they that mourn, for they shall be comforted.'"[64] Director Martin's analysis of "the bible [sic] teachings," however, presupposes that the only valid interpretations of the Bible are those that comport with policy positions of the Republican party. Such determinations—indeed, even such inquiries—are

[61] Faith In Texas, "The Power of Faithful People," https://faithintx.org (last accessed June 14, 2021).
[62] *See True the Vote, Inc. v. I.R.S.*, 831 F.3d 551, 556 (D.C. Cir. 2016) (citing a 2013 Inspector General audit report explaining that the IRS systematically targeted conservative organizations for discriminatory treatment and finding that the IRS, though improved, had not ceased that practice).
[63] Proposed Determination Letter at 4.
[64] Joseph Biden, "Remarks by President Biden at the 153rd National Memorial Day Observance," *available at* https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/05/31/remarks-by-president-biden-at-the-153rd-national-memorial-day-observance/ (May 31, 2021).

constitutionally prohibited. *See Mitchell v. Helms,* 530 U.S. 793, 828 (2000) ("It is well established . . . that courts should refrain from trolling through a person's or institution's religious beliefs."); *NLRB v. Catholic Bishop of Chicago,* 440 U.S. 490, 502 (1979) ("It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions."); *see also Colorado Christian Univ. v. Weaver,* 534 F.3d 1245, 1261 (10th Cir. 2008) ("Properly understood, the doctrine protects religious institutions from governmental monitoring or second guessing of their religious beliefs and practices, whether as a condition to receiving benefits . . . or as a basis for regulation or exclusion from benefits . . . .").

Second, the Proposed Determination Letter obviously departs from the neutrality towards religion from which even a "subtle departure" is prohibited. *See Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n,* 138 S. Ct. 1719, 1731 (2018) ("The Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion." (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 534 (1993))). Director Martin's stereotyping of those who believe the Bible to be "the inerrant M [Word of God]" and his treatment of Christians Engaged in a manner that is inconsistent with the IRS's treatment of other organizations who engage in comparable conduct indicate that Christians Engaged's application for tax exempt status "was not considered with the neutrality that the Free Exercise Clause requires." *Masterpiece Cakeshop,* 138 S. Ct. at 1731–32 (noting that expressions of hostility towards religion and "disparate consideration" of a religious organization are "inconsistent with what the Free Exercise Clause requires").

By Director Martin's reasoning, any church that teaches these commonly-held religious beliefs and encourages its parishioners to fulfill their civic duty to vote would violate the restrictions on campaign intervention, because the IRS views the religious beliefs as overlapping with a particular party's positions. We hope that the Proposed Determination Letter does not imply such a drastic and sweeping shift in how the IRS views encouragement to civic engagement by those who believe the Bible.

Conclusion

For these reasons, Director Martin wrongly concludes that Christians Engaged is ineligible for tax-exempt status under 26 U.S.C. § 501(c)(3). Accordingly, Christians Engaged respectfully requests that the Office of Independent Appeals rescind the Proposed Denial Letter and issue a favorable determination letter. Christians Engaged requests Independent Appeals Office consideration and conference. Please direct all communications regarding this protest to my attention. You may contact me by email at [redacted], by phone at [redacted], or by fax at [redacted].

Sincerely,

Lea Patterson

Lea Patterson
Counsel

Enclosures:

Form 2848, Power of Attorney and Declaration of Representative
Declaration of Lea Patterson
Declaration of Bunni Pounds
Letter from Stephen A. Martin to Christians Engaged (May 18, 2021)
Christians Engaged Certificate of Formation
Christians Engaged Amended Bylaws (Dec. 5, 2019)
Letter from Bunni Pounds to Robert Vance re: Response to Second Information Request (Aug. 25, 2020)

EXHIBIT 3.1.026

Department of the Treasury
Internal Revenue Service
[redacted]

Date: 05/18/2021

Employer ID number:
[redacted]
Contact person/ID number:
[redacted]
Contact telephone number:
[redacted]
Contact fax number:
[redacted]

CHRISTIANS ENGAGED
[redacted]

UIL:
501.03-00

Legend:
B= July 22, 2019
C= Texas
D= Republican
F= The Texas Eagle Forum
G= Promise Keepers
H= Collin County
J= Collin County Republican
K = Collin County Victory Efforts
M = Word of God

Dear Applicant:

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues
Do you qualify for exemption under IRC Section 501(c)(3)? No, for the reasons stated below.

Facts
You were incorporated on B in the state of C. You are formed exclusively for charitable, religious, educational, or scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3), or the corresponding section of any future federal tax code.

Your founder and President is a motivational public speaker, former D Congressional Candidate, political consultant and Preacher of the Gospel. Your Vice President is a motivational public speaker, former President of F, intercessor, former Prayer Coordinator for G and a homeschool mom. Your Secretary you describe as a conservative millennial thought leader with a marketing and political consulting background. He now serves as the Executive Director for the K, where he manages the J Party's field teams in H as well as the grassroots get-out-the-vote efforts for H.

Your mission statement indicates that you exist to awaken, motivate, and empower ordinary believers in Jesus Christ to:

- Pray for the nation regularly
- Vote in every election to impact the culture
- Engage hearts in some form of political education or activism for the future of the nation
- Strive to educate Christians on the importance of prayer, voting and engagement in a non-partisan manner.

You explained that you hold weekly prayer meetings to pray for leaders of your state and nation. Churches are given program outlines for the prayer meetings. Statewide and area prayer gatherings are also conducted. You partner with other organizations to have strategic prayer gatherings for the state, nation, and elected officials.

In addition, you educate individuals through your website, social media, video, and live in person teachings in churches. Your goal is to provide a place of connection and educational tools for Christians to engage in political activism. Your website includes educational materials and blogs. Everywhere you go, you will have voter registrars and you will be registering people to vote on the spot.

You also educate believers on national issues that are central to their belief in the Bible as the inerrant M. You educate Christians in areas where they can be instrumental as in areas of the sanctity of life, the definition of marriage, biblical justice, laws vs. lawlessness, freedom of speech, religious liberty, government and business ethics, human trafficking, fiscal responsibility in government budgeting, defense, borders and immigration, U.S. and Israel relations.

To further your mission, you conduct educational activities including a month-long political activism course. The thrust of the course is to create onramps of practical education and mentorships for people to engage in political activism with a basis in a biblical/Christian value system. Topics include instructing individuals on becoming a citizen lobbyist, working with elected officials and candidates, discerning between the lessor of two evils, keeping the Christian soul right when working on politics, practical steps and pitfalls in political activism, how to work with an interest group focused on an area that you are interested in including the sanctity of life and fiscal responsibility, how to use mentoring to encourage Christians to engage in political activism. You will establish key leadership positions in each Congressional district across the state, so ordinary Christians can learn through action.

You educate individuals on how to choose between imperfect candidates as well as instruct individuals that parties matter. They should look at the party they represent and the core beliefs and values of that party. They should look at what the candidate says about the issues and see if their beliefs align with the Bible. Individuals should know the Bible, vote the Bible and vote on values.

Your president has several blogs on your website. A blog describing how to choose between candidates lists considerations that can be used to help make a decision when voting. For example, concerning the topic of partisan political races the blog indicates that party platforms should be looked at to see which candidate is most aligned with Christian/biblical values. The blogs list the some of the most important Christian and biblical values as the sanctity of life, biblical marriage, and government and debt.

Initially, you had references to candidates that aligned with the Christian/biblical value system and had created voter guides that reflected the candidates values. You have since removed such references.

You are funded by donations. Your expenses are for salaries, professional fees, website, social media, video educational marketing, software and festival expenses.

You indicated that you do not engage in any substantial political activity and you are not advocating for specific political parties, candidates, or legislation.

Law

IRC Section 501(c)(3) provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable or educational purposes, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more exempt purposes specified in IRC Section 501(c)(3).

Treasury Regulation Section 1.501(c) (3)-1(c)(3)(i) states that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization.

Treas. Reg. Section 1.501(c)(3)-1(c)(3)(iii) of the regulations defines an "action" organization as an organization that participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" is defined as an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. The regulations further provide that activities that constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written statements or the making of oral statements on behalf of or in opposition to such a candidate.

Rev. Rul. 2007-41 2007-25 I.R.B., provides 21 examples illustrating the application of facts and circumstances to determine whether a 501(c)(3) organization has participated in a political campaign intervention activity. Situation 16 describes an organization in which the executive director presented a preferred position on a prominent issue that distinguishes candidates before an election and encourages individuals to go to the polls and cast their vote. This situation is political campaign intervention. Situation 19 describes an organization that maintains a web site and posts an unbiased, nonpartisan voter guide that is prepared consistent with the principles discussed in Rev. Rul. 78-248. This situation is not political campaign intervention.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the court held that an organization that operated a school to train individuals for careers as political campaign professionals, but that could not establish that it operated on a nonpartisan basis, did not exclusively serve purposes described in IRC 501(c)(3) because it also served private interests more than incidentally. The court found that the organization was created

and funded by persons affiliated with a particular political party and that most of the organization's graduates worked in campaigns for the party's candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting the party's candidates and entities. Although the candidates and entities benefited were not organization "insiders," the court stated that the conferral of benefits on disinterested persons who are not members of a charitable class may cause an organization to serve a private interest within the meaning of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). The court concluded by stating that even if the political party's candidates and entities did "comprise a charitable class, [the organization] would bear the burden of proving that its activities benefited members of the class in a non-select manner."

Application of law

You are not as described in IRC Section 501(c)(3) because you are not operated exclusively for religious and educational purposes. Specifically, you are engaged in prohibited political campaign invention. You are also operated for substantial nonexempt purposes in contravention to Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You are not described in Treas. Reg. Section 1.501(c)(3)-1(c)(3)(i) in that you spend a substantial amount of time and resources devoted to activities that are typical of an action organization. Treas. Reg. Section 1.501(c)(3)-1(c)(3)(iii) further defines an "action" organization as one that plans to participate and intervene in political campaigns on behalf of or in opposition to candidates for public office. You instruct individuals on issues that are prominent in political campaigns and instruct them in what the Bible says about the issue and how they should vote. These issues include the sanctity of life, the definition of marriage, and biblical justice. These issues generally distinguish candidates and are associated with political party platforms. These facts preclude you from exemption under IRC Section 501(c)(3).

You are similar to Situation 16 in Revenue Ruling 2007-41. Certain aspects are weighed in determining campaign intervention as evidenced within the ruling. While you educate voters on what the bible says about issues, your educational activities are not neutral. The topics typically are affiliated with distinct candidates and specific political party platforms.

You are not similar to Situation 19 in Revenue Ruling 2007-41. Information you present and on your website is not neutral. You instruct individuals on how Christians should use the Bible and vote the Bible.

You are like the organization described in American Campaign Academy, because you are serving the private interests of the D party more than incidentally in contravention to Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) as well as serving a substantial nonexempt private purpose. For example, you educate believers on national issues that are central to their belief in the Bible as the inerrant Word of God. Specifically, you educate Christians on what the bible says in areas where they can be instrumental including the areas of sanctity of life, the definition of marriage, biblical justice, freedom of speech, defense, and borders and immigration, U.S. and Israel relations. The bible teachings are typically affiliated with the D party and candidates. This disqualifies you from exemption under IRC Section 501(c)(3).

Conclusion

You do not qualify as an organization described in IRC Section 501(c)(3). You engage in prohibited political campaign intervention. You are also not operated exclusively for one or more exempt purposes within the meaning of Section 501(c)(3), because you operate for a substantial non-exempt private purpose and for the private interests of the D party.

If you agree
If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

If you don't agree
You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

  For an officer, director, trustee, or other official who is authorized to sign for the organization: Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2).

Where to send your protest
Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service
The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

EXHIBIT 3.1.027

mwe.com

David Gacioch
Attorney at Law
[redacted]

February 2, 2021

VIA EMAIL AND UNITED STATES MAIL

Matthew Donnelly, Esq.
U.S. Department of Justice, Civil Rights Division
[redacted]
Email: [redacted]

Amanda Hine, Esq.
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Sean Keveney, Esq.
Deputy General Counsel
U.S. Department of Health & Human Services
[redacted]
Email: [redacted]

Re: United States v. University of Vermont Medical Center, U.S. District Court (D. Vt.), Dkt. No. 2:20-cv-00213-wks (request for review before responsive pleading is due on February 19, 2021)

Dear Ms. Hine and Messrs. Donnelly, Ophardt, and Keveney:

I write on behalf of my client, the University of Vermont Medical Center ("UVMMC" or the "Hospital"), to ask the Departments of Justice ("DOJ") and Health and Human Services ("HHS") to review and reconsider this unprecedented lawsuit against UVMMC, brought by DOJ's Civil Rights Division, in coordination with the recently-created "Conscience and Religious Freedom Division" ("CRFD") of HHS's Office for Civil Rights ("OCR"), which in turn coordinated its pre-litigation efforts with Jay Sekulow's Christian Advocates Serving Evangelism, Inc. (doing business as the American Center for Law and Justice—"ACLJ")).[1] HHS, represented by DOJ, already has told the Court of Appeals for the Ninth Circuit that it plans to similarly reassess a pending government appeal of district court decisions covering some of the same legal issues, in the context of OCR CRFD rulemaking.[2] We respectfully request that DOJ and HHS do the same here. Please share this letter and summary with other DOJ and HHS decision-makers, as appropriate.

[1] The ACLJ, founded by Rev. Pat Robertson, describes itself as a "not-for-profit, religious corporation" that engages on "legal, legislative, and cultural issues" from a religious conservative perspective. See https://aclj.org/ Mr. Sekulow, who has led the ACLJ since 1991, is one of former President Trump's personal lawyers, as well as a conservative media personality. See, e.g., https://www.splcenter.org/20130709/dangerous-liaisons; https://www.newsweek.com/jay-sekulow-donald-trump-impeachment-1483301; https://www.aaespeakers.com/speakers/jay-sekulow.

[2] See Joint Mot. to Remove Consol. Appeal from the Oral Argument Calendar and Place Appeals in Abeyance, Dkt. No. 110, City & Cnty. of S.F. v. Azar, Nos. 20-15398, 20-15399, 20-16045, 20-35044 (9th Cir.).

The government abruptly filed this lawsuit near the end of the prior administration, after more than a year of inaction by OCR on the underlying investigation. On December 16, 2020, then-Principal Deputy Associate Attorney General Claire McCusker Murray announced that action from the stage of a White House "Life is Winning" political event celebrating the outgoing administration's efforts to restrict women's constitutionally-protected reproductive rights. DOJ has based its complaint on the position—contrary to more than four decades of agency interpretation and case law—that federal law gives health care workers ***unqualified and unrestricted*** rights to refuse to provide health care services with which they personally disagree on moral or religious grounds, regardless of the surrounding circumstances or the resulting impacts on health care employers or (most importantly) on patients.

We ask that you and your colleagues reconsider the government's position and voluntarily dismiss the complaint. We do not make this request lightly, as we deeply respect the importance of allowing DOJ's decision-making processes, as well as HHS's investigative decision-making, to remain insulated from partisan politics. Unfortunately, the prior administration's politically appointed decision-makers did not demonstrate that same respect for the non-partisan administration of justice, and the circumstances surrounding the genesis of this lawsuit in mid-December, combined with the unprecedented and untenable legal position DOJ has taken, lead us reluctantly to seek further review now.

UVMMC is a not-for-profit entity whose mission is to improve the health of the more than one million people in the Vermont and northern New York communities that it serves by integrating patient care, education, and research in a caring environment. UVMMC plays a critical role in the northeastern United States health care system, as the only Level 1 Trauma Center and only tertiary care hospital in the state of Vermont, and the closest such facility to much of northern New York. UVMMC is one of a very limited number of providers that offers full-spectrum reproductive health and family planning services to women across Vermont and northern New York.

DOJ's complaint accuses the Hospital of violating the Trump Administration's absolutist view of the Church Amendments.[3] The government's position in this lawsuit, staked out at the urging of Mr. Sekulow's ACLJ, would upset nearly fifty years of a consensus framework of reasonable accommodation of employee religious beliefs, subject to undue hardship on the employer, set forth in Title VII of the Civil Rights Act of 1964, as amended.[4] Through that standard, Congress and the courts have carefully balanced employees' legitimate interests in avoiding participation in procedures to which they personally object with hospitals' ability to provide a full spectrum of timely, safe, legal, and medically appropriate care options to patients—and with patients' rights to access such care.[5] Health care providers, including the Hospital, have long relied on that Title VII-based consensus in crafting appropriately-balanced policies, procedures, and staffing models.

[3] Codified at 42 U.S.C. § 300a-7.

[4] See 42 U.S.C. § 2000e(j); Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 84 (1977).

[5] See, e.g., Shelton v. Univ. of Med. & Dentistry of N.J. , 223 F.3d 220, 222–28 (3d Cir. 2000) (affirming summary judgment for hospital on nurse's claim of religious discrimination after hospital terminated nurse for refusing to participate in certain reproductive health procedures and refusing transfer to a different hospital unit).

OCR's investigation and DOJ's resulting complaint, on the other hand, are premised on the view that there are no bounds of reasonableness and there is no degree of resulting hardship to health care employers or patients that is relevant—*i.e.* that employees' refusal rights are absolute. This radical departure from longstanding consensus was primarily the work of the Trump-era Director of OCR, Roger Severino, and individuals he brought into OCR to form the new CRFD. UVMMC and the State of California have been primary targets of these efforts. In UVMMC's case, Director Severino and his team worked so closely with Mr. Sekulow's ACLJ team that the ACLJ publicly has claimed the filing of this DOJ lawsuit as ACLJ's own "victory" and a basis for its fundraising.[6]

Currently, the government is pressing this untenable view of the Church Amendments in at least two different forums. First, OCR incorporated its interpretation of the Church Amendments into recent rulemaking on employee refusal of care issues, finalized in May 2019. Several states, local governments, and private entities promptly sued to enjoin those rules from taking effect, citing OCR's departure from the decades-long balance described above, as well as the limits the rules would place on the availability of reproductive health care services ("Refusal Rule Litigation"). In response, three district courts issued decisions in November 2019 that struck down OCR's new rule on a variety of grounds.[7] In the first of those decisions, Judge Paul Engelmayer of the Southern District of New York ruled, among other things, that the Church Amendments do ***not*** create the absolute, unqualified refusal right that Trump Administration OCR leaders asserted.[8] The government has since appealed these district court rulings, and the consolidated appeals are fully briefed.[9]

Oral argument in the Ninth Circuit had been scheduled for next Monday. Late last week, HHS (represented by DOJ) and the appellee state and local governments jointly moved to place the HHS appeals in abeyance while new HHS leadership "evaluates" and "reassess[es]" the issues being litigated.[10] The joint motion explained that:

> *New leadership began arriving at HHS and [DOJ] only 19 days before the scheduled oral argument and will need additional time to review the rule in question and the multiple legal issues that are involved in these consolidated appeals; consult with all interested federal agencies and offices; and determine the appropriate course going forward. Given the recent change of administration and the complexity and importance*

[6] See "Victory Report: DOJ Sues University of Vermont for Violating Pro-life Conscience Rights of ACLJ Client," available at https://aclj.org/pro-life/victory-report-doj-sues-university-of-vermont-for-violating-pro-life-conscience-rights-of-aclj-client (last accessed Jan. 26, 2021).

[7] New York v. U.S. Dep't of Health & Human Servs., 414 F. Supp. 3d 475, 578-80 (S.D.N.Y. 2019) (vacating "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority," 84 Fed. Reg. 23,170 (May 21, 2019), codified at 45 C.F.R. Part 88) (reasoning and conclusions endorsed and adopted by Washington v. Azar, 426 F. Supp. 3d 704, 719-20 (E.D. Wash. 2019)); see also City & Cnty. of S.F. v. Azar, 411 F. Supp. 3d 1001 (N.D. Cal. 2019).

[8] New York v. HHS, 414 F. Supp. 3d at 524; accord Washington v. Azar, 426 F. Supp. 3d at 719-20.

[9] City & Cnty. of S.F. v. Azar, Nos. 20-15398, 20-15399, 20-16045, 20-35044 (9th Cir.); New York v. U.S. Dep't of Health & Human Servs., Nos. 19-4254(L), 20-31, 20-32, 20-41 (2d Cir.).

[10] See Joint Mot. to Remove Consol. Appeal from the Oral Argument Calendar and Place Appeals in Abeyance, Dkt. No. 110, at 2-3, City & Cnty. of S.F. v. Azar, Nos. 20-15398, 20-15399, 20-16045, 20-35044 (9th Cir.).

> *of the issues presented by the rule and in these appeals, these exceptional circumstances support postponing the oral argument and holding the consolidated appeals in abeyance.*[11]

The Ninth Circuit quickly granted the joint motion, placing the appeal in abeyance with status reports due at the end of March. Oral argument on the Second Circuit appeal of the S.D.N.Y. decision is scheduled for March 17th and we are watching for similar steps to be taken there.

This case against UVMMC is the second front in that effort by Trump Administration OCR leaders. Mr. Sekulow's ACLJ lawyers brought the underlying complaint by "Nurse 1" to OCR in May 2018, which then purported to investigate for several months and to reach findings of fact and conclusions of law in August 2019—without ever identifying a valid statutory basis for such authority. The ACLJ publicly claims to have "cooperated closely with HHS in [that] investigation."[12] The investigation halted for thirteen months after Judge Engelmayer's November 2019 decision in the Refusal Rule Litigation rejected OCR's and ACLJ's absolutist position on refusal rights, only to be hastily reconstituted into this first-of-its-kind lawsuit against the Hospital on December 16, 2020.

Only 48 hours after UVMMC learned that HHS was once again pursuing OCR's baseless allegations, DOJ hand-served the complaint and PDAAG Murray immediately announced the new lawsuit from a White House podium to a gathering of anti-reproductive rights activists at the "Life is Winning" event, headlined by Vice President Pence and HHS Secretary Azar and attended by Director Severino; Assistant Attorney General for Civil Rights, Eric Dreiband; and several other Trump Administration officials. The next day, Mr. Sekulow's ACLJ publicly proclaimed that DOJ's lawsuit is "the first time in the four-and-a-half-decades history of the Church Amendments that [DOJ] has sued a healthcare entity for violation of an individual pro-life healthcare worker's conscience rights."[13] In short, we can be confident that DOJ's lawsuit against the Hospital did not arise from the normal, non-partisan course of HHS investigations and DOJ litigation decision-making, but instead as a political maneuver by members of the outgoing Trump Administration.

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[11] See Joint Mot. to Remove Consol. Appeal from the Oral Argument Calendar and Place Appeals in Abeyance, Dkt. No. 110, at 3-4, City & Cnty. of S.F. v. Azar, Nos. 20-15398, 20-15399, 20-16045, 20-35044 (9th Cir.).

[12] See "Victory Report: DOJ Sues University of Vermont for Violating Pro-life Conscience Rights of ACLJ Client," available at https://aclj.org/pro-life/victory-report-doj-sues-university-of-vermont-for-violating-pro-life-conscience-rights-of-aclj-client (last accessed Jan. 26, 2021) ("We met with our client, interviewed key witnesses, and determined that the most effective legal course of action would be filing a formal complaint against UVMMC with the then-newly established Conscience and Religious Freedom Division of the Department of HHS's Office of Civil Rights. We cooperated closely with HHS in its investigation of our client's claims.").

[13] See "Victory Report: DOJ Sues University of Vermont for Violating Pro-life Conscience Rights of ACLJ Client," available at https://aclj.org/pro-life/victory-report-doj-sues-university-of-vermont-for-violating-pro-life-conscience-rights-of-aclj-client (last accessed Jan. 26, 2021).

Fueled by the ACLJ's and Trump Administration OCR leaders' allegations, DOJ's December 16, 2020 complaint accuses the Hospital of deceiving one of its objecting nurses into participating in an abortion procedure against her will nearly four years earlier. Those accusations are false. To the contrary, UVMMC leaders have long made reasonable efforts to accommodate staff members' personal beliefs, including following (and periodically updating) a Conflict of Care policy to cover such situations. Such reasonable efforts to accommodate were made in the specific 2017 case of "Nurse 1" highlighted in DOJ's complaint, as Nurse 1 herself acknowledged in contemporaneous conversations with colleagues about the issue.

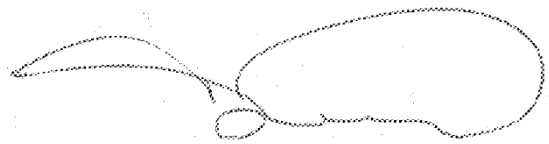
The Hospital detailed those efforts in its spring 2019 submissions to the Equal Employment Opportunity Commission ("EEOC"), in the course of responding to the ACLJ's charge of discrimination against Nurse 1. The EEOC then, in May 2019, dismissed the ACLJ's charge and issued a "right to sue" letter to the ACLJ and Nurse 1. Approximately two months later, the Hospital received from the ACLJ and politely rejected a $300,000 demand to avoid a threatened lawsuit by Nurse 1 (which never subsequently materialized). ***Just five hours after the Hospital declined that demand,*** OCR resurfaced, after nearly eight months of silence, to escalate its investigation of UVMMC—seemingly part of the "close cooperation" between OCR leaders and the ACLJ. Just 26 days later, OCR issued the "Notice of Violation" ("NOV") that forms of the basis of DOJ's present complaint, announcing it at an August 28, 2019 press conference held by Director Severino at which the ACLJ's contact information was also provided to assembled reporters. UVMMC first learned of OCR's issuance of the NOV from a reporter who called for comment, having been informed of OCR's issuance of the NOV against UVMMC at least a day before OCR decided to notify UVMMC itself.

To be clear, the Hospital takes the interests of both its patients and its employees very seriously and strives to eliminate, as much as reasonably practicable, the (already rare) instances in which employees' religious beliefs come into conflict with patient care needs. Its policies and procedures in this area have always complied with federal law. Its ongoing process of continuous quality improvement more recently has resulted in further enhancements to scheduling processes to staff planned abortion procedures only with employees who have affirmatively opted into participation in such procedures. As a testament to the success of such ongoing efforts, the Hospital has not received a staff member complaint about religious conflict of care issues with respect to abortion since at least 2019.

The Hospital's motion to dismiss DOJ's complaint is presently due by February 19th. We are seeking a further 60-day continuance from the Court, with DOJ's assent, in order to give DOJ and HHS more time to reconsider the position taken in the complaint. We ask you and your colleagues to voluntarily dismiss DOJ's complaint before the Hospital's motion ultimately is due. Failing that, we will file a strong motion to dismiss that will focus on both DOJ's baseless legal position and the impropriety of OCR's underlying investigation and findings, working in coordination with Mr. Sekulow's ACLJ. We also specifically ask that, while HHS and DOJ are re-evaluating the government's position, they remove from their websites all references to OCR's partisan investigation of UVMMC and resulting findings, and of the pending lawsuit.[14]

Thank you for taking the time to consider this letter amid the busy start of a new administration. The attached summary provides additional detail on the key facts, legal issues, and procedural history for reference by DOJ and HHS decision-makers as needed. We hope you and your colleagues will agree that it is not in the best interests of the United States, or the institutional interests of your Departments, to continue to press the unprecedented and untenable positions staked out for DOJ and HHS in this lawsuit by Trump Administration partisans at OCR.

Respectfully submitted,



David Quinn Gacioch

cc: Eric Miller, Esq. – General Counsel, University of Vermont Medical Center
Ian Carleton, Esq. – Co-Counsel for University of Vermont Medical Center
Sarah J. Heim, Esq. – Co-Counsel for University of Vermont Medical Center

[14] See, e.g., https://www.hhs.gov/about/news/2020/12/16/hhs-disallow-200m-california-medicaid-funds-due-unlawful-abortion-insurance-mandate.html; https://public3.pagefreezer.com/browse/HHS.gov/31-12-2020T08:51/https://www.hhs.gov/about/news/2019/08/28/ocr-issues-notice-violation-university-vermont-medical-center-after-it-unlawfully-forced-nurse.html; https://public3.pagefreezer.com/browse/HHS.gov/31-12-2020T08:51/https://www.hhs.gov/sites/default/files/uvmmc-nov-letter_508.pdf

United States v. Univ. of Vermont Medical Center
U.S. District Court (D. Vt.), Dkt. No. 2:20-cv-00213-wks

SUMMARY OF KEY FACTS, PROCEDURAL HISTORY, AND LEGAL ISSUES
February 2, 2021

The University of Vermont Medical Center ("UVMMC" or the "Hospital") submits the following summary for reference by Department of Justice ("DOJ") and Department of Health and Human Services ("HHS") leaders in evaluating the merits of, and basis for, the above-referenced litigation, which is currently pending in the U.S. District Court for the District of Vermont. Barring any interim change in course from DOJ, UVMMC will file its motion to dismiss DOJ's complaint on February 19, 2021—unless the Court further extends that deadline to give the government more time to reevaluate its position.

A. Key Background Facts

1. In January 2018, the HHS Office for Civil Rights ("OCR"), under Director Roger Severino, launched a new "Conscience and Religious Freedom Division" ("CRFD") to "restore federal enforcement of our nation's laws that protect the fundamental and unalienable rights of conscience and religious freedom."[1] Director Severino took over leadership of OCR a few months earlier, after working at the Becket Fund for Religious Liberty and as head of the Heritage Foundation's DeVos Center for Religion and Civil Society—both focused on promoting conservative positions on legal issues impacting religious expression.[2] Director Severino staffed OCR's new CRFD, and other OCR positions, with individuals coming from positions in conservative organizations such as the Family Research Council—often initially as contractors, who then moved into permanent staff roles.[3]

2. In May 2018, Christian Advocates Serving Evangelism, Inc., doing business as the American Center for Law and Justice ("ACLJ"),[4] filed parallel complaints with the Equal Employment Opportunity Commission ("EEOC") and the OCR's CRFD on behalf of a UVMMC operating room nurse ("Nurse 1"), claiming she had been forced to participate in an abortion procedure the prior year, notwithstanding her personal objection to such procedures.

[1] Press Release, "HHS Announces New Conscience and Religious Freedom Division," Jan. 18, 2018, available at https://public3.pagefreezer.com/browse/HHS.gov/31-12-2020T08:51/https://www.hhs.gov/about/news/2018/01/18/hhs-ocr-announces-new-conscience-and-religious-freedom-division.html (last accessed Jan. 28, 2021).

[2] Ornstein, C., "Heritage Foundation Alum Critical of Transgender Rights to Lead HHS Civil Rights Office," *ProPublica*, March 24, 2017, available at https://www.propublica.org/article/heritage-foundation-critical-transgender-rights-hhs-civil-rights-office (last accessed Jan. 28, 2021).

[3] See, e.g., https://equityfwd.org/mandi-ancalle; https://equityfwd.org/david-hyams; https://equityfwd.org/march-bell; https://equityfwd.org/matt-bowman; https://equityfwd.org/rebekah-masters; https://equityfwd.org/maya-noronha. Ms. Ancalle and Mr. Hyams were UVMMC's initial OCR points of contact on this investigation.

[4] The ACLJ was founded by Rev. Pat Robertson and has long been run by President Trump's personal lawyer, Jay Sekulow. The ACLJ describes itself as a "not-for-profit, religious corporation" that engages on "legal, legislative, and cultural issues" from a religious conservative perspective. See https://aclj.org/.

3. In November 2018, OCR representatives first contacted the Hospital on the ACLJ's complaint—sending 42 investigative requests for documents and information. Despite OCR's inability to identify any valid statutory grant of investigative authority to OCR (or HHS more broadly) in such matters, UVMMC voluntarily provided basic documents and information in response to OCR's requests, as a show of good faith, and invited OCR's advice on the Hospital's relevant policies and procedures. UVMMC did so primarily by letter sent on December 14, 2018. OCR did not respond for several months (see below).[5]

4. In the winter and spring of 2019, the EEOC investigated the ACLJ's charge of religious discrimination against Nurse 1. As part of that investigation, UVMMC explained that:

a. The Hospital has long maintained a Conflict of Care policy, under which processes are set forth for employees to note in advance their objections to participation in certain types of health care procedures and for supervisors to make reasonable efforts to honor such objections, consistent with patient care needs.

b. While Nurse 1 had expressed a preference not to participate in abortion procedures, she had never told supervisors that that preference was religious or moral in nature. Many of the Hospital's operating room nurses have "opted out" of such procedures, for a variety of reasons. Nurse 1 had the option of completing and submitting a Conflict of Care Disclosure Form to provide such detail to the Hospital, but did not do so.

c. The surgical case in question, which took place back in 2017, was running late and unexpectedly crossed a nursing shift change. The charge nurse at the time tried to get staff members already in the case to stay past the ends of their shifts to complete it, but they could not do so and the charge nurse could not force them to do so under the applicable collective bargaining agreement. The actual procedure was nearly complete at that point and Nurse 1 was asked to take over the circulating nurse role, which amounted only to maintaining case documentation, caring for the patient post-procedure, and transferring the patient to the post-operative care unit.

d. To the best of the charge nurse's knowledge, no non-objecting nurses were available to place in that role instead of Nurse 1.

[5] OCR's representatives in these initial exchanges consisted solely of Ms. Ancalle and Mr. Hyams (see n.3, above)—contractors who had just joined OCR from legal and advocacy work opposing abortion rights, marriage equality rights, LGBTQ legal equality, and similar issues—the same types of endeavors in which Mr. Sekulow and the ACLJ are engaged.

e. Far from attempting to deceive Nurse 1, as alleged, the charge nurse apologized to her from the start in making the assignment, explaining that no non-objecting nurses were available to switch roles and that the case was nearly finished.

f. When Nurse 1 entered the operating room, the surgeon performing the case greeted her but never said anything like "please don't hate me," as the ACLJ, OCR, and DOJ allege.

g. After helping to care for and transfer the patient, Nurse 1 discussed the situation further with the charge nurse. While she was unhappy to have been assigned to the case, Nurse 1 expressed understanding that no other feasible options had been available to the charge nurse under the circumstances.

h. Nurse 1 did not further raise the issue to any supervisor or manager until nearly a year later, in the context of an in-service training for operating room staff on pregnancy termination cases. At that time, nursing management was supportive of Nurse 1's concerns about the case the prior year and reiterated to all charge nurses the importance of making accommodations for objecting nurses in such cases whenever feasible to do so. Nurse 1 expressed agreement with that approach and did not request any further steps be taken.

5. In May 2019, the EEOC dismissed the ACLJ's complaint, finding insufficient evidence to conclude that any violation of law had occurred.

6. Notwithstanding the EEOC's dismissal, in July 2019, the ACLJ demanded that the Hospital pay $300,000 to settle the ACLJ's allegations related to Nurse 1. UVMMC responded midday on August 2, 2019—politely declining any settlement, as the ACLJ's allegations were unfounded.

7. ***Just a few hours later, after nearly eight months of silence,*** OCR sent a letter to the Hospital "responding to" the Hospital's correspondence from the prior December and making further investigative demands. The Hospital promptly replied by asking first to establish the statutory basis for OCR's investigation and suggesting that the parties first meet, at OCR's convenience, to address that issue. OCR did not respond. The timing of these events corroborates ACLJ's public claim in December 2020 that it had "cooperated closely with HHS in its investigation of [Nurse 1's] claims."[6]

[6] See "Victory Report: DOJ Sues University of Vermont for Violating Pro-life Conscience Rights of ACLJ Client," available at https://aclj.org/pro-life/victory-report-doj-sues-university-of-vermont-for-violating-pro-life-conscience-rights-of-aclj-client (last accessed Jan. 26, 2021).

8. On the morning of August 28, 2019, OCR Director Roger Severino held a press conference at which he announced to the news media that OCR was issuing a "Notice of Violation" ("NOV") to the Hospital. The Hospital first learned of this development late in the prior day—from a news reporter, who had been informed of the NOV at least a day before the Hospital knew of it. OCR did not directly advise the Hospital of the NOV until it issued the NOV to the Hospital's outside counsel by email 30 minutes before the press conference started. The NOV and Director Severino's press conference were replete with factual inaccuracies and unsupported conclusions of law, many of which found their way into the government's complaint in the pending lawsuit. Among other things, OCR explicitly based the NOV on the unprecedented position that employees' opt-out rights are ***unqualified***—*i.e.*, not subject to Title VII's reasonable accommodation/undue hardship framework (as explained in more detail below). Notably, Director Severino and OCR closed the press conference by offering reporters the ACLJ's contact information, as counsel for Nurse 1.

9. OCR and Hospital representatives communicated further in the wake of the NOV, leading to an in-person meeting at OCR's main office on September 27, 2019 and several calls and emails over the subsequent weeks—seeking a cooperative path forward notwithstanding the parties' widely disparate understandings of the relevant facts and positions on the applicable law.

10. On November 6, 2019, Judge Engelmayer of the Southern District of New York issued his ruling against OCR in the Refusal Rule Litigation.[7] As further detailed below, Judge Engelmayer's 147-page decision expressly rejected OCR's argument that the refusal right provided by federal law is unqualified and absolute—eviscerating the purported legal basis for OCR's NOV against UVMMC (which OCR had claimed to issue on the basis of pre-existing law, not its new Refusal Rule). Two weeks later, Judge Stanley Bastian of the Eastern District of Washington issued a decision that endorsed Judge Engelmayer's reasoning and conclusions.[8] No court has ruled otherwise.[9] Both decisions remain on appeal in the Second and Ninth Circuits, respectively.[10]

[7] New York v. U.S. Dep't of Health & Human Servs., 414 F. Supp. 3d 475, 578-80 (S.D.N.Y. 2019) (vacating "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority," 84 Fed. Reg. 23,170 (May 21, 2019), codified at 45 C.F.R. Part 88).

[8] Washington v. Azar, 426 F. Supp. 3d 704, 719-20 (E.D. Wash. 2019) (same).

[9] A third district court decision, City & Cnty. of S.F. v. Azar, included some *obiter dicta* about the absolute versus qualified refusal right issue, but ultimately vacated OCR's rule solely on other grounds. See 411 F. Supp. 3d 1001, 1020 (N.D. Cal. 2019).

[10] City & Cnty. of S.F. v. Azar, Nos. 20-15398, 20-15399, 20-16045, 20-35044 (9th Cir.); New York v. U.S. Dep't of Health & Human Servs., Nos. 19-4254(L), 20-31, 20-32, 20-41 (2d Cir.).

11. In the wake of these federal court decisions, Hospital and HHS/OCR representatives spoke by phone at 2:30 pm EST on Thursday, November 22, 2019. The Hospital asked OCR to withdraw the NOV, given the district courts' unequivocal rejection of the NOV's core legal premise of unqualified refusal rights. The HHS/OCR representatives said they would convey that request to Director Severino and others within HHS, but probably would not endorse it for "institutional" reasons. The HHS/OCR representatives did, however, say that they would recommend no further enforcement action be taken against the Hospital on the NOV pending the outcome of any appeals of the district court decisions in the Refusal Rule Litigation that OCR might choose to pursue. The Hospital heard nothing further from OCR for nearly thirteen months after that conversation.

12. On Monday, December 14, 2020, the Hospital received abrupt demands from OCR and the Health Resources and Services Administration ("HRSA") insisting that the Hospital sign an agreement effectively acknowledging Director Severino's and the ACLJ's judicially-rejected, absolutist view of health care worker refusal rights. After nearly thirteen months of silence, the HHS agencies initially gave the Hospital less than one full business day to respond to that demand, and later changed the deadline to the morning of Wednesday, December 16, 2020 (giving the Hospital less than 48 hours). At that time, the Hospital respectfully renewed its prior declination to sign such an agreement, as nothing substantively had changed since November 2019.

13. A couple of hours later on December 16, 2020, a process server hand delivered DOJ's complaint to UVMMC—just a short time before Vice President Pence, Secretary Azar, Principal Deputy Associate Attorney General Claire McCusker Murray, and others took the stage before a crowd of anti-abortion activists at a televised "Life is Winning" anti-choice event at the White House. Director Severino and Asst. Attorney General for Civil Rights Eric Dreiband were among the attendees acknowledged from the stage. PDAAG Murray publicly announced and celebrated the commencement of this lawsuit, as part of the Trump Administration's political campaign against constitutionally-protected reproductive rights.

14. The ACLJ publicly claimed DOJ's unprecedented lawsuit as its own "victory," explaining that:

> ***At the ACLJ, we believe this is the first time in the four-and-a-half-decades history of the Church Amendments that the Department of Justice has sued a healthcare entity for violation of an individual pro-life healthcare worker's conscience rights.*** *We have represented dozens of pro-life professionals over the years and have, quite frankly, been frustrated with the unwillingness of the federal government officials charged with enforcing the Church Amendments to put some teeth in those laws. While we have often succeeded in obtaining conscience protection for our clients through other analogous laws at the state and federal level, the Church Amendments have always appeared – at least on paper – to be the clearest and theoretically most effective conscience-protecting laws on the books. But they've always been more of a paper tiger than anything else.*
>
> *Until now. With the filing of this lawsuit, hospitals and other healthcare providers have been put on notice by the highest level of the United States government: The Church Amendments mean what they say: Do not discriminate – period. If you don't want to comply, then don't take the federal funding.*[11]

[11] See "Victory Report: DOJ Sues University of Vermont for Violating Pro-life Conscience Rights of ACLJ Client," available at https://aclj.org/pro-life/victory-report-doj-sues-university-of-vermont-for-violating-pro-life-conscience-rights-of-aclj-client (last accessed Jan. 26, 2021) (emphasis added).

B. Key Legal Background

1. DOJ's complaint accuses the Hospital of violating one provision of the Church Amendments, codified at 42 U.S.C. § 300a-7(c)(1):

> *(c)Discrimination prohibition*
>
> *(1)**No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act** [42 U.S.C. 201 et seq.], … after June 18, 1973, **may**—*
>
> > *(A) **discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel**, or*
> >
> > *(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel,*
>
> *because he performed or assisted in the performance of a lawful sterilization procedure or abortion, **because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions**.* (emphases added)

2. As previously noted, DOJ's complaint takes the position that this anti-discrimination provision includes an absolute right of health care workers to refuse safe, legal, and medically appropriate care to patients based on the workers' personal religious or moral convictions. DOJ's complaint is based on, and incorporates, OCR's August 28, 2019 NOV against UVMMC, which took that same position (in fact, emphasized it):

> *Paragraph (c)(1)(A) and (B) of the Church Amendments, however, creates an **unqualified** right for health care personnel to decline to participate in abortions without fear of adverse employment actions or loss of staff privileges. See 42 U.S.C. § 300a-7(c)(1). The Church Amendments put the burden on providers who choose to provide abortion services to create staffing policies that fully respect the consciences of its professional staff. Providers may also choose not to accept PHSA funds if they are uncomfortable with the conditions such acceptance imposes by law. Because UVMMC's Conflict of Care policy admits to circumstances where UVMMC can and will force staff—on pain of adverse action or discipline—to participate in abortions against their moral or religious objections, it facially violates paragraph (c)(1)(A) and (B) of the Church Amendments with respect to abortion procedures.* (emphasis in original)

3. Just one year before beginning to add the Church Amendments to federal appropriations legislation, Congress amended Title VII of the Civil Rights Act of 1964 to prohibit discrimination in "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is ***unable to reasonably accommodate*** to an employee's or prospective employee's religious observance or practice ***without undue hardship on the conduct of the employer's business***."[12] Soon thereafter, the Supreme Court clarified that any workplace accommodation that would present "more than a *de minimis* cost" to an employer would constitute an undue hardship—emphasizing that employees' personal religious beliefs were important, but that employers' legitimate needs would usually supersede in cases of actual conflict.[13] This balancing test has governed employers' obligations with respect to the religious beliefs and preferences of their employees for more than four decades; no court or government agency ever (to our knowledge or apparently the ACLJ's, as noted above) has asserted that the Church Amendments imposed a stricter standard on health care employers until Director Severino took over OCR and, in cooperation with the ACLJ, pushed the position of absolute, unqualified employee refusal rights through the Refusal Rule and this investigation and lawsuit against UVMMC.[14]

[12] See 42 U.S.C. §§ 2000e(j) and e–2(a) (emphases added); Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 72-73 (1977).

[13] Trans World Airlines, 432 U.S. at 84.

[14] Indeed, when such issues (rarely) arose in the health care context, courts adjudicated them under the familiar Title VII standard of reasonable accommodation and undue hardship. See, e.g., Shelton v. Univ. of Med. & Dentistry of N.J. , 223 F.3d 220, 222–28 (3d Cir. 2000) (affirming summary judgment for hospital on nurse's claim of religious discrimination after hospital terminated nurse for refusing to participate in certain reproductive health procedures and refusing transfer to a different hospital unit).

4. In his November 6, 2019 decision in the Refusal Rule Litigation, Judge Engelmayer of S.D.N.Y. rejected Director Severino's unprecedented expansion of employee refusal rights as contrary to law: "Simply put, the Rule's definition of 'discrimination' [omitting the reasonable accommodation and undue hardship parameters of Title VII] is game-changing. Relative to the status quo, it would materially expand the rights of employees articulating objections to covered procedures, and correspondingly enhance the duties of health care employers in this area."[15] Judge Engelmayer further explained that:

> *HHS in this litigation has stated that Congress, in passing the Conscience Provisions* [including 42 U.S.C. § 300a-7(c)(1)]*, intended the term "discrimination" to mean what* [OCR's 2019] *Rule says. See HHS SJ at 59 (asserting that Congress chose not to impose the Title VII framework in the Conscience Provisions). But that declaration is an ipse dixit. HHS has not pointed to any evidence that Congress as a whole, or any legislator, understood any Conscience Provisions to embody the content and ground rules that the 2019 Rule assigns to the term "discrimination." At argument, HHS could not point to any evidence of this.* ***That Congress passed the first Conscience Provision, the Church Amendments, a year after it had adopted the reasonable accommodation / undue hardship framework to govern Title VII claims of religious discrimination in employment, without any indication that it perceived a conflict with Title VII, makes it all the more improbable that Congress silently intended effectively to override that framework in the context of the health care industry.***[16]

5. Two weeks later, Judge Bastian of E.D. Washington analyzed Judge Engelmayer's decision in the context of parallel Refusal Rule Litigation pending before him, and adopted Judge Engelmayer's reasoning and conclusion in full—including that OCR's new rule was void because it conflicted with Title VII.[17] As previously noted, Judge Bastian's and Judge Engelmayer's decisions are on appeal to the Ninth and Second Circuits, respectively.

[15] New York v. HHS, 414 F. Supp. 3d at 524.

[16] New York v. HHS, 414 F. Supp. 3d at 524 (citations omitted; emphasis added).

[17] Washington v. Azar, 426 F. Supp. 3d 704, 719-20 (E.D. Wash. 2019). The third district court to issue a substantive decision in the Refusal Rule Litigation did not rule on the Title VII conflict (reasonable accommodate/undue hardship) issue, but proceeded on the assumption that Director Severino's new rule would still excuse employers from making employee accommodations that caused undue employer hardships—an assumption belied by this lawsuit. See City & Cnty. of S.F. v. Azar, 411 F. Supp. 3d 1001, 1020 (N.D. Cal. 2019).

6. DOJ's complaint against UVMMC relies on Director Severino's and the ACLJ's absolutist interpretation of refusal rights under the Church Amendments—an interpretation expressly rejected by the only courts that have ruled on the question to date. DOJ's complaint also suffers from the fundamental deficiencies that: (1) this application of the Church Amendments constitutes a Constitutionally impermissible condition on Ryan White HIV/AIDS Program funding under the Spending Clause,[18] and (2) OCR's underlying investigation of UVMMC lacked any statutory authorization.[19]

[18] See South Dakota v. Dole, 483 U.S. 203, 207–08 (1987) ("Conditions on federal grants might be illegitimate if they are unrelated 'to the federal interest in particular national projects or programs.'") (quoting Massachusetts v. United States, 435 U.S. 444, 461 (1978) (plurality opinion)); see also Ivanhoe Irrigation Dist. v. McCracken, 357 U.S. 275, 295 (1958) ("[T]he Federal Government may establish and impose ***reasonable conditions relevant to federal interest in the project and to the over-all objectives thereof*** …") (emphasis added).

[19] As an administrative agency, HHS "literally has no power to act . . . unless and until Congress confers power upon it," and the Administrative Procedures Act provides that any "[p]rocess, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law." La. Pub. Serv. Comm'n v. F.C.C., 476 U.S. 355, 374 (1986); 5 U.S.C. § 555(c). The Church Amendments contain no such Congressional delegation or authorization.

EXHIBIT 3.1.028

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

Headquarters • Humphrey Building
200 Independence Ave, S.W.• Washington, DC 20201
[redacted]

Mr. Francis J. Manion, Esq.
American Center for Law and Justice
[redacted]

RE: OCR Transaction Number 18-306427

February 17, 2023

Dear Mr. Manion:

As you are aware, the U.S. Department of Health and Human Services ("HHS") Office for Civil Rights ("OCR") rescinded its notice of violation against the University of Vermont Medical Center ("UVMMC") in matter 18-306427 on July 30, 2021, following the U.S. District Court for the Southern District of New York's decision in *New York v. HHS*, 414 F.Supp.3d 475, 536 (S.D.N.Y. 2019) (holding that HHS exceeded its authority in promulgating a regulation that departed from the burden shifting Title VII framework by requiring employers to allow employees to decline to participate in procedures, even if it would constitute an undue hardship to the employer, and even if the employer offered a reasonable religious accommodation).

Since issuing that decision, OCR has provided technical assistance to UVMMC in developing a Conflict of Care policy that will allow the hospital to fully protect employees' conscience rights under the Church Amendments without unduly burdening the hospital's ability to deliver safe, timely, and effective patient care. *See New York v. HHS*, 414 F.Supp.3d 475, 536 (S.D.N.Y. 2019). Following the provision of this technical assistance, OCR is now closing this matter.

If you have any questions, please contact our office.

Sincerely,

Luis Perez
Deputy Director
Office for Civil Rights
U.S. Department of Health and Human Services

EXHIBIT 3.2.001

From: "Knight, David (CRT)" <[redacted]>
To: "Calderon, Tovah R (CRT)" <[redacted]>, "Hecker, Elizabeth (CRT)" <[redacted]>, "Bailey, Rebekah (CRT)" <[redacted]>, "Bernstein, Bobbi (CRT)" <[redacted]>, "Phillips, Colleen (CRT)" <[redacted]>, "Wagstaff, Brandy (CRT)" <[redacted]>, "Berger, Stephanie (CRT)" <[redacted]>, "Schuller, Megan (CRT)" <[redacted]>, "Weinstock, Lindsey (CRT)" <[redacted]>, "Lill, Victoria (CRT)" <[redacted]>, "Newton, Jonathan (CRT)" <[redacted]>, "O'Connor, Trevor (CRT)" <[redacted]>, "Pellegrino, Whitney (CRT)" <[redacted]>, "Percia, Veronica (CRT)" <[redacted]>, "Vaughan, Aria (CRT)" <[redacted]>, "Kisch, Lori (CRT)" <[redacted]>, "McEntire, Brian (CRT)" <[redacted]>, "Null, Taryn Wilgus (CRT)" <[redacted]>, "Rich, Robert (CRT)" <[redacted]>, "de Kervor, Dylan (CRT)" <[redacted]>, "Marks, Lauren (CRT)" <[redacted]>, "Nurse, Abigail (CRT)" <[redacted]>, "Towt, Katie (CRT)" <[redacted]>, "May, Orly (CRT)" <[redacted]>, "Ondrade, Samantha (CRT)" <[redacted]>, "Grambort, Jenna (CRT)" <[redacted]>, "Young, Stacey (CRT)" <[redacted]>, "Washington, Angela (CRT)" <[redacted]>, "Dean, Kerry K (CRT)" <[redacted]>, "Killebrew, Paul (CRT)" <[redacted]>, "Shandell, Alexandra (CRT)" <[redacted]>, "Russ, John (CRT)" <[redacted]>, "Sitton, Jaye (CRT)" <[redacted]>
Cc: "Lareau, Alyssa (CRT)" <[redacted]>
Subject: LGBTI WG: Cases the Department took a position in
Date: Thu, 14 Jan 2021 14:20:45 -0500
Importance: Normal

Here is the first item we are working on:

Cases the Department took a position in that was counter to LGBTI interests. Thank you to Whitney and Beth for taking the lead on pulling this together. We will hopefully move this to the wiki soon. But in the interim, we need to know if anything is missing, and which of these are still open with an opportunity to consider retracting our filing.

Case	Subject Matter	Status (Jan 2021)
Appellate Briefs		
Texas v. California, No. 153 (S. Ct.) Amicus Filed Dec. 17, 2020	Constitutionality of California law forbidding state-sponsored travel to states that have enacted laws discriminating on the basis of sexual orientation or gender identity.	
Hecox v. Little Nos. 20-35813, 20-35815 (9th Cir.) Amicus Filed Nov. 19, 2020	Whether Idaho's Fairness in Women's Sports Act, which excludes transgender females from women's sports teams, violates the Equal Protection Clause of the Fourteenth Amendment.	

State Of Indiana ex rel. Roman Catholic Archdiocese of Indianapolis v. Marion County Superior Court No. 20S-OR-520 (S. Ct. Ind.) Amicus Filed September 17, 2020	Whether the First Amendment guaranteed the Archdiocese of Indianapolis the right to withdraw a parochial school's distinction as a Catholic school for refusing to fire a teacher in a same-sex marriage.	
Fulton v. City of Philadelphia No. 19-123 (S. Ct.) Amicus Filed June 1, 2020	Whether Philadelphia's termination of a contract with Catholic Social Services to help place children with foster parents, due to CSS's unwillingness to place children with same-sex couples, violated the Free Exercise Clause of the First Amendment.	
Bostock v. Clayton Cty, GA; *Altitude Express, Inc. v. Zarda* Nos. 17-1618, 17-1623 Amicus supporting affirmance in *Bostock*, reversal in *Zarda* Filed August 23, 2019	Whether Title VII's prohibition against employment discrimination "because of *** sex" prohibits employment discrimination because of sexual orientation.	S. Ct. decided June 15, 2020
R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC No. 18-107 (S. Ct.) Brief for Federal Respondent Filed Aug. 16, 2019 *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC* No. 18-107 (S. Ct.) Brief for Federal Respondent in Opposition to Cert Filed October 24, 2018	Whether Title VII prohibits discrimination based on gender identity.	S. Ct. decided June 15, 2020
Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n No. 16-111 (S. Ct.) Amicus Filed September 7, 2017	Whether Colorado's public accommodations law violated the First Amendment as applied to an individual who declines to design and create custom wedding cakes for same-sex wedding celebrations that violate his sincerely held religious beliefs.	S. Ct. decided June 4, 2018
District Court Briefs		
Hecox v. Little, 1:20-cv-00184-DCN Filed June 19, 2020	Whether Idaho's Fairness in Women's Sports Act violates the Equal Protection Clause.	
Soule v. Connecticut Interscholastic Athletic Conference, 3:20-cv-00201-RNC Filed March 24, 2020	Whether CIAC's policy of allowing transgender students to compete on team's consistent with their gender identity violates Title IX.	
Chelsea Nelson Photography v. Louisville/Jefferson Co. Metro Gov't, 3:19-cv-00851-JRW Filed February 27, 2020	Whether Kentucky's public accommodations law violated the First Amendment as applied to an individual who declines to provide photography services for same-sex weddings.	
Business Leaders in Christ v. University of Iowa, 3:17-cv-	Whether the University of Iowa violated the First Amendment (expressive	

00080-SMR-SBJ Filed December 21, 2018	association, viewpoint, and free exercise) by enforcing its Policy on Human Rights, which prohibits differential treatment based on, among other things, sexual orientation and gender identity, to the selection of leadership of student religious organizations.	
State Court		
Payne Elliott v. Roman Catholic Archdiocese of Indianapolis, 49D01-1907-PL-027728 Filed September 27, 2019	Whether the First Amendment shields the Archdiocese from tort claims for terminating an employee for participating in a same-sex marriage.	

EXHIBIT 3.2.001

Department of Justice

January 17, 2021

MEMORANDUM FOR THE CIVIL RIGHTS DIVISION

FROM: ACTING ASSISTANT ATTORNEY GENERAL JOHN B. DAUKAS

SUBJECT: Application of *Bostock v. Clayton County*

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, makes it an "unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of, *inter alia*, such individual's . . . sex." 42 U.S.C. § 2000e-2(a)(1). On June 15, 2020, the Supreme Court held that this provision prohibits covered employers from firing an individual "simply for being homosexual or transgender." *Bostock v. Clayton County*, 590 U.S. __, __, 140 S. Ct. 1731, 1737 (2020).

Perhaps unsurprisingly, questions have been raised about the consequences of the decision in *Bostock* for other applications and provisions of Title VII, as well as for other statutes. No one in 1964—whether the Member of Congress voting on the statute or the average person on the street—would have understood Title VII the way that the Supreme Court interpreted it in *Bostock*. The Court did not contend otherwise, acknowledging that its interpretation of Title VII "reaches 'beyond the principal evil' legislators may have intended or expected to address," but asserting that "many, maybe most, applications of Title VII's sex provision were 'unanticipated' at the time of the law's adoption." *Bostock*, 140 S. Ct. at 1749, 1752. It is thus unsurprising that questions would be raised about the unintended consequences of the *Bostock* decision. The Supreme Court acknowledged, but expressly reserved, such questions. *Id.* at 1753 ("Whether other policies and practices might or might not qualify as unlawful discrimination . . . are questions for future cases, not these.").

Because the federal government is tasked with enforcing many civil rights protections that could be implicated by *Bostock*, this memorandum provides guidance for Civil Rights Division Attorneys and staff on this subject, recognizing that many additional questions will need to be addressed individually as they arise.[1] Specifically, the memorandum first addresses whether

[1] Some have criticized the *Bostock* majority's literal and context-free interpretation of Title VII, and suggested such an approach dooms race-based affirmative action under Title VI, Title VII, and the Equal Protection Clause of the United States Constitution, if applied in those contexts. *See, e.g.*, Nelson Lund, *Unleashed and Unbound: Living Textualism in* Bostock v. Clayton County, 21 Federalist Soc. Rev. 158 (Aug. 6, 2020); Jason Mazzone, Bostock: *Were the Liberal Justices*

Bostock must lead to change in the Department's own employment practices. It then addresses federal law protections for religious liberty. Finally, it analyzes *Bostock*'s implications with regard to other statutory provisions, including provisions of Title VII not at issue in *Bostock*, DOJ's enforcement responsibilities under Title VII, Title IX, the Fair Housing Act, the Equal Credit Opportunity Act, the Justice System Improvement Act of 1979, and the Constitution.

As explained with greater detail in the attached analysis, I conclude as follows:

- The Department of Justice does not need to change its employment practices to comply with *Bostock*. The Department does not discriminate on the basis of sexual orientation or gender identity in its employment decisions.
- The Department, like any other entity subject to federal prohibitions on sex discrimination, may continue to maintain sex-specific facilities and policies, including bathrooms, locker rooms, dress codes, and physical fitness standards, where physiological differences between the sexes are relevant.
- The Department may hire individuals based on biological sex where sex is a bona fide occupational qualification for the position.
- The Civil Rights Division will apply *Bostock*'s reasoning to federal statutory provisions where the reasoning logically applies, but will not extend it to distinguishable contexts or language. Under that approach, the reasoning of *Bostock* likely applies to prohibit discrimination based on homosexual or transgender status as unlawful "sex" discrimination under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-2(a), Title IX of the Educational Amendments Act, 20 U.S.C. § 1681, the Fair Housing Act, 42 U.S.C. §§ 3604(a), (b), (d), 3605, 3606, the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1), and the Justice System Improvement Act of 1979, 34 U.S.C. § 10228(c). The reasoning of *Bostock* also severely erodes the doctrinal underpinnings of Supreme Court decisions that allow employers to maintain affirmative action policies despite Title VII's prohibition on race discrimination. The reasoning does not necessarily, however, affect the interpretation of the Constitution; statutes that incorporate constitutional standards, *see, e.g.*, 42 U.S.C. 2000c-6; disparate impact liability under Title VII, 42 U.S.C. § 2000e-2(a)(2), or the Fair Housing Act, 42 U.S.C. § 3604(a); or other distinguishable statutory or regulatory language.
- The Civil Rights Division will continue to abide by, and provide guidance on, the multiple statutory and constitutional protections that may exempt religious employers and educational institutions from the rule announced in *Bostock*, or applications of *Bostock*'s reasoning to other statutes.

Namudnoed?, Balkanization (July 6, 2020). Others suggest *Bostock* was result driven, and the Court will not apply the same mode of analysis in other cases where the result would be to rein in applications of federal statutes. For the purposes of this memorandum, we take the Court at its word and seek to analyze what impact a fair reading of *Bostock* has on various statutes enforced by the Civil Rights Division. We will not, however, address in-depth broader questions about whether the reasoning of *Bostock* requires an end to all forms of race discrimination—including affirmative action—in employment, higher education, and other areas of society.

- Given the sea change effected by *Bostock*, the Civil Rights Division will exercise civil and criminal enforcement discretion relating to conduct predating *Bostock*.

Implementation

After studying the decision, I have advised leadership that the Department of Justice does not need to change its employment practices to comply with *Bostock*. A provision of Title VII not at issue in *Bostock* applies to the federal government, 42 U.S.C. § 2000e-16, but regardless of whether the reasoning in *Bostock* would apply to that provision, the Department has already committed itself to ensuring that "no applicant for employment or employee of our Department will be denied equal employment opportunity because of race, color, religion, national origin, sex, age, sexual orientation, disability (physical or mental), gender identity, protected genetic information, pregnancy, status as a parent, marital status, political affiliation, or any other nonmerit-based factor." DOJ EEO Statement. The Department may and should continue to adhere to this commitment, as well as to its commitment to equal justice and equal opportunity more broadly.

The Department likewise may and should continue its commitment to take "swift and appropriate corrective and/or disciplinary action when employees are found to have engaged in discrimination, retaliation, or harassment, including sexual harassment." DOJ EEO Statement. Although Justice Alito's dissent in *Bostock* suggests that the majority's logic might preclude a covered Title VII employer from refusing to hire an applicant with a history of sexual harassment, *Bostock*, 140 S. Ct. at 1761 (Alito, J. dissenting), and presumably from firing an employee who engages in such conduct, the Department need not read Title VII in that manner. The Supreme Court has held that "sexual harassment so severe or pervasive as to alter the conditions of the victim's employment and create an abusive working environment violates Title VII," *Faragher v. City of Boca Raton*, 524 U.S. 775, 786 (1998) (cleaned up), and the Department need not read the *Bostock* decision to undermine its ability as an employer to prevent or address such harassment.

The Department has long expected all of its employees to behave professionally and respectfully toward each other. To be clear, Title VII does not impose a "general civility code," *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 81 (1998), nor reach "the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, [or] occasional teasing," *Faragher*, 524 U.S. at 788. "The prohibition of harassment on the basis of sex . . . forbids only behavior so objectively offensive as to alter the 'conditions' of the victim's employment." *Oncale*, 523 U.S. at 81. But the Department has long recognized that respectful and professional behavior amongst its diverse workforce is important to the Department's ability to carry out its mission of ensuring fair and impartial administration of justice for all Americans. Thus, the Department may and should continue to respect its employees' right to express traditional views regarding marriage and gender identity, "view[s] long . . . held . . . in good faith by reasonable and sincere people here and throughout the world," *Obergefell v. Hodges*, __ U.S. __, __, 135 S. Ct. 2584, 2594 (2015), just as it continues to respect its employees' right to express contrary views.

Bostock does not require any changes to the Department's sex-specific facilities or policies. Although the Court refrained from opining on the validity of "sex-segregated bathrooms, locker rooms, and dress codes," 140 S. Ct. at 1753, its reasoning confirms that such practices do not run afoul of Title VII so long as they do not treat an individual "worse than others who are similarly situated," *id.* at 1740. That is because "discrimination"—as used in the statute—requires this type of difference in treatment between similarly situated individuals. *Id.* And men and women are not similarly situated where physiological differences are relevant. *See Jespersen v. Harrah's Operating Co.*, 444 F.3d 1104, 1109-10 (9th Cir. 2006) ("Grooming standards that appropriately differentiate between the genders are not facially discriminatory."); *Gerdom v. Continental Airlines, Inc.*, 692 F.2d 602, 606 (9th Cir. 1982) (en banc), *cert. denied*, 460 U.S. 1074 (1983) (recognizing that "physiologically based policies which set a higher maximum weight for men than for women of the same height" would not be problematic where "no significantly greater burden of compliance was imposed on either sex").

The physiological differences between men and women are relevant for physical fitness standards, bathrooms, locker rooms, and dress codes. These practices do not, like the odious practice of maintaining race-segregated bathrooms or locker rooms, treat similarly situated people differently. Rather, they treat *differently*-situated people differently—men and women are simply not similarly situated for policies under which physiological differences are relevant. Indeed, in effectively requiring Virginia Military Institute (VMI) to admit women, the Supreme Court stated that "[a]dmitting women to VMI would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements, and to adjust aspects of the physical training programs." *United States v. Virginia*, 518 U.S. 515, 550 n.19 (1996); *id.* (noting that, when the service academies admitted women, Congress specified that standards for women "shall be the same as those required for male individuals, except for those minimum essential adjustments in such standards required because of physiological differences between male and female individuals"). Although *Virginia* involved a claim under the Equal Protection Clause, rather than Title VII, the Supreme Court's implicit approval of policies that ensure privacy of the sexes from each other and that take into account the physiological differences between men and women for physical training purposes suggests that such policies are not inherently discriminatory.

It is thus no surprise that courts have repeatedly rejected challenges to sex-specific policies and facilities where physiological differences are relevant. For example, courts have held that the FBI does not violate Title VII when it "utilizes physical fitness standards that distinguish between the sexes on the basis of their physiological differences but impose an equal burden of compliance on both men and women." *Bauer v. Lynch,* 812 F.3d 340, 351 (4th Cir. 2016), *cert. denied*, 137 S. Ct. 372 (2016) (discussing cases). Courts have also held that "regulations promulgated by employers which require male employees to conform to different grooming and dress standards than female employees is not sex discrimination within the meaning of Title VII." *Fountain v. Safeway Stores, Inc.*, 555 F.2d 753, 755 (9th Cir. 1977) (collecting cases). And for the more than 50 years that Title VII has been in place, no court has held that Title VII requires the *elimination* of sex-segregated bathrooms or locker rooms, even as some courts have struggled with the application of bathroom policies to transgender individuals in various stages of transition. Indeed,

some courts have suggested that failure to have sex-specific bathrooms and locker rooms could, in some circumstances, itself create liability under Title VII. *See, e.g.*, *Pucino v. Verizon Wireless Commc'ns, Inc.*, 618 F.3d 112, 118 (2d Cir. 2010) (concluding that evidence that "there was an attempt to force female employees to use restrooms that had no locks" could support a hostile work environment claim); *DeClue v. Central Illinois Light Co.*, 223 F.3d 434, 437 (7th Cir. 2000) (suggesting that failure to offer "toilet facilities sufficiently private to meet [a female] plaintiff's needs . . . may have been a perfectly good claim of sex discrimination"); *James v. Nat'l R.R. Passenger Corp.*, No. 02-civ-3915, 2005 WL 6182322, at *5 (S.D.N.Y. Mar. 28, 2005) (holding that a jury could reasonably conclude that a policy of offering only unisex bathrooms and changing rooms could have a disparate impact on women in violation of Title VII). *Bostock* did not disturb this body of case law.

To the contrary, *Bostock* made clear that special treatment for homosexual or transgender persons would itself constitute sex discrimination in some circumstances. The Court explained, for example, that "[a]n individual's homosexuality or transgender status *is not relevant* to employment decisions." 140 S. Ct. at 1741. That means that no one should be given either a preference or a demerit in hiring and firing decisions based on the person's sexual orientation or transgender status. It also means that exceptions for homosexual or transgender persons from sex-specific policies and facilities where physiological differences are relevant may themselves constitute unlawful sex discrimination. The Court said that "discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second." *Id.* at 1747.

With respect to its enforcement responsibilities under Title VII, the Division will exercise enforcement discretion with respect to the pursuit of retroactive relief under *Bostock*. The Supreme Court has recognized that "Title VII does not require a district court to grant any retroactive relief. A court that finds unlawful discrimination 'may enjoin [the discrimination] . . . and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement . . . with or without back pay . . . or any other equitable relief as the court deems appropriate.'" *City of Los Angeles, Dept of Water & Power v. Manhart*, 435 U.S. 702, 718 (quoting 42 U.S.C. § 2000e-5(g)). "To the point of redundancy, the statute stresses that retroactive relief 'may' be awarded if it is appropriate." *Id.* In *Manhart*, although the Court had "no doubt about the application of the statute," it reversed an award of retroactive relief. *Id.* at 719. In doing so, it "recognize[d] that conscientious and intelligent administrators of pension funds, who did not have the benefit of the extensive briefs and arguments presented to [the Court], may well have assumed that a program like the Department's was entirely lawful," noting that "[t]he courts had been silent on the question and the administrative agencies had conflicting views." *Id.* at 719-20. The Court further noted that the rule announced in *Manhart* represented a "marked departure from past practice" and that it could have significant potential impact on the economy. *Id.* at 721-23.

Although *Bostock* did not arise out of the pension context at issue in *Manhart*, much of *Manhart*'s reasoning counsels against retroactive relief under *Bostock*. Specifically, many conscientious and intelligent employers may have assumed that discrimination based on sexual orientation or transgender status did not run afoul of Title VII's prohibition on discrimination

based on sex. As Justice Alito noted in his dissent in *Bostock*, "until 2017, every single Court of Appeals to consider the question interpreted Title VII's prohibition against sex discrimination to mean discrimination on the basis of biological sex." 140 S. Ct. at 1757 (Alito, J. dissenting). Indeed, "[s]ome 30 federal judges" to consider whether Title VII prohibited discrimination based on sexual orientation "said no, based on the text of the statute. 30 out of 30." *Id.* at 1824 (Kavanaugh, J., dissenting). For its part, the EEOC did not hold that Title VII prohibited discrimination based on transgender status and sexual orientation until 2012 and 2015 respectively. *Id.* at 1757-58 & n.7 (Alito, J. dissenting). Thus, "for the first 48 years after Title VII became law," the Commission "[d]ay in and day out" enforced Title VII under an interpretation contrary to the one announced by the Supreme Court in *Bostock*. *Id.* at 1575-58. Likewise, with the exception of a brief period from 2014 to 2017, the Department consistently interpreted the plain text of Title VII not to prohibit discrimination on the basis of transgender status or sexual orientation, and it vigorously argued that position to the Supreme Court. *See* Br. of the United States, *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC*, No. 18-107, Br. of the United States, *Bostock v. Clayton County, Ga.*, Nos. 17-1618, 17-1623. *Bostock* thus represents at least as equally significant a break in past practice as *Manhart*. Under these circumstances, the Civil Rights Division will exercise its enforcement discretion in individual cases not to seek back pay for conduct predating *Bostock* unless particular facts suggest that such relief is necessary and appropriate. *Cf. Manhart*, 435 U.S. at 720; *Barr v. Am. Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2355 n.12 (2020) (plurality op.).

Protections for Religious Employers

The Department of Justice does not have primary responsibility for the enforcement of Title VII against private employers, but it has promulgated guidance on the federal protections for religious liberty, including those that may affect Title VII enforcement. *See* Memorandum for All Executive Departments and Agencies, 82 Fed. Reg. 49,668 (Oct. 26, 2017). The *Bostock* decision identified three such protections for religious liberty that may limit the reach of its decision: the "express statutory exception for religious organizations" in Title VII itself, the Religious Freedom Restoration Act, and the First Amendment's protection of "the employment relationship between a religious institution and its ministers." 140 S. Ct. at 1754. This memorandum addresses each of these protections, along with additional statutory protections in Title VII and the First Amendment. The expression of these protections should not be taken as a suggestion that they are the exclusive protections for religious liberty that may apply in any given case.

First, the Court acknowledged in *Bostock* that its decision does not disturb Title VII's exemption for religious organizations in 42 U.S.C. § 2000e-1(a), which states that Title VII "shall not apply to . . . a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." This provision protects the right of religious employers to "choose to employ only persons whose beliefs and conduct are consistent with the organizations' religious precepts." *See* 82 Fed. Reg. at 49,670, 49,677. As explained at greater length in the Memorandum regarding Federal Protections for Religious Liberty, that protection is not limited "to organizations that carry on only religious

activities, or to organizations established by a church or formally affiliated therewith." 82 Fed. Reg. 49,677. Instead, it applies broadly to organizations that are organized for religious purposes and engage in activity consistent with, and in furtherance of, such purposes. *Id.* Thus, for example, a religious charity that meets this test and holds traditional Christian views on marriage could choose to employ only those individuals who share those beliefs and conduct themselves accordingly.

And, although not expressly mentioned in *Bostock*, Title VII contains two additional protections for the hiring decisions of religious organizations. Specifically, Title VII makes clear that "it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion." 42 U.S.C. § 2000e-2(e). Nor shall it be "an unlawful employment practice for an employer to hire and employ employees . . . on the basis of his religion . . . in those certain instances where religion . . . is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise." *Id.* "Because Title VII defines 'religion' broadly to include 'all aspects of religious observance and practice, as well as belief,' 42 U.S.C. 2000e(j), these exemptions include decisions to employ only persons whose beliefs and conduct are consistent with the employer's religious precepts." *See* 82 Fed. Reg. 49,677 (internal quotation marks omitted).

Second, as the Supreme Court noted in *Bostock*, employers that do not qualify for any of the Title VII religious exemptions may nevertheless qualify for an exemption under the Religious Freedom Restoration Act of 1993. *Cf. Bostock*, 140 S. Ct. at 1754 ("Because RFRA operates as a kind of super statute, displacing the normal operation of other federal laws, it might supersede Title VII's commands in appropriate cases."). RFRA prohibits the federal government from imposing a substantial burden on the religious exercise of an employer unless doing so is the least restrictive means of achieving a compelling governmental interest. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705 (2014). Title VII may impose such a burden if it compels an act inconsistent with an adherent's religious observance or practice—as it would if, for example, an employer sincerely believes that employing someone who is publicly undergoing a gender transition would render the employer complicit in conduct that the employer's religion forecloses. *See* 82 Fed. Reg. 49,674 (describing the substantial burden test). The Civil Rights Division does not anticipate that there would be many employers who would face such a substantial burden, in light of the express Title VII exceptions for religious organizations described above, §§ 2000e-1(a), 2000e-2(e), and the general exception for employers with fewer than 15 employees, § 2000e(b).

Under RFRA, government may impose such a burden only if "application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened"—is the least restrictive means of furthering a compelling governmental

interest. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegatal*, 546 U.S. 418, 430-31 (2006) (quoting 42 U.S.C. § 2000bb-1(b)). In other words, as relevant here, RFRA requires the government to show that the "marginal interest in" substantially burdening a particular covered entity or person's religious exercise is sufficiently compelling to withstand strict scrutiny. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 727 (2014). For example, in *O Centro*, the fact that a particular controlled substance, dimethyltryptamine (DMT), was "exceptionally dangerous" could "not provide a categorical answer that relieves the Government of the obligation to shoulder its burden under RFRA" to justify its refusal to allow a particular church to use a sacramental tea (hoasca) containing that drug. 546 U.S. at 432. Rather, the Court explained any application of RFRA must "look[] beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants." *Id.* at 431. As the Court observed, "there is no indication that Congress, in classifying DMT, considered the harms posed by the particular use at issue here—the circumscribed, sacramental use of *hoasca* by the [church]." *Id.* at 432.

Although any application of RFRA will depend on the applicable facts, it is unlikely that the government would be able to justify imposing a substantial burden in this context. As the Supreme Court said "in *Sherbert v. Verner*, 374 U.S. 398 (1963), the decision that provides the foundation for the rule codified in RFRA, . . . only the gravest abuses, endangering paramount interest could give occasion for a permissible limitation on the free exercise of religion." *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2392 (2020) (Alito, J., joined by Gorsuch, J., concurring) (internal quotation marks omitted). As an initial matter, "Congress' determination that" sex "should be listed" as a protected characteristic in Title VII "simply does not provide a categorical answer that relieves the Government of its obligation to shoulder its burden under RFRA." *O Centro*, 546 U.S. at 432. As in *O Centro*, "there is no indication that Congress," in prohibiting covered employers from firing employees because of their sex, "considered the harms posed" by firing employees because of their sexual orientation or transgender status, much less concluded that the government had a compelling interest in forcing employers to violate their faith to prevent such harms. 546 U.S. at 432; *see supra* XX; *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. at 2392 (Alito, J., joined by Gorsuch, J., concurring) ("We can answer the compelling interest question simply by asking whether *Congress* has treated the provision of free contraceptives to all women as a compelling interest."). And unlike racial discrimination, the Supreme Court has never held that a religious employer's decision not to hire homosexual or transgender persons "violates deeply and widely accepted views of elementary justice" or that the government has a "compelling" interest in the eradication of such conduct. *Cf. Bob Jones Univ. v. United States*, 461 U.S. 574, 592, 604 (1983). To the contrary, the Court has held that a government's interest in "ensur[ing] by statute [that] gays and lesbians desiring to make use of public accommodations . . . will not be turned away merely on the proprietor's exercise of personal preference" could not justify compelled modification of speech. *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 578 (1995) (applying heightened scrutiny). It likewise has held that the "state interests embodied in" a public "accommodations law" prohibiting discrimination on the basis of sexual orientation could "not justify" compelling the Boy Scouts to retain a gay man as an assistant scoutmaster in conflict with their expressive activity. *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 659 (2000)

(applying heightened scrutiny). In light of these precedents, and in the absence of a legislative judgment about the interests served by this application of Title VII, it is difficult to see how the government could show that any "marginal interest in enforcing" this unexpected construction of Title VII could be so compelling as to justify forcing certain employers to violate their faith. *Hobby Lobby*, 573 U.S. at 727.

The difficulty in establishing a compelling interest here may be heightened by the many employers not covered by the rule announced in *Bostock*. As described above, Congress expressly allowed religious organizations and educational institutions owned, supported, controlled, or managed in whole or in substantial part by a particular religion to hire only those employees whose beliefs and conduct are consistent with the employer's precepts. 42 U.S.C. §§ 2000e-1(a), 2000e-2(e). Congress also included an exemption for hiring on the basis of religion or sex where either characteristic is a bona fide occupational qualification. § 2000e-2(e). And Congress exempted all employers with fewer than 15 employees from Title VII's reach, § 2000e-2(b)—a category that, according to one recent estimate, covers 85 percent of U.S. employers, Reply Br. for the Resp. at 22-23 & n.90, *Altitude Express, Inc. v. Zarda*, No. 17-1623, *aff'd sub nom. Bostock v. Clayton County*, 2019 WL 4464222. These exemptions only further support the conclusion that it is hard to see how the government could demonstrate that it has a compelling interest in forcing certain employers to contravene their religious convictions in this particular context. *See O Centro*, 546 U.S. at 433 (quoting *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 547 (1993) (counseling that "a law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited").

Notably, RFRA controls whether an employer faces a lawsuit from a government actor or a private party. RFRA expressly "applies to all federal law, and the implementation of that law, whether statutory or otherwise," 42 U.S.C. § 2000bb–3(a), and broadly defines "government" to "include[]" every "branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States," *id.* § 2000bb–2(1). That language covers actions by private plaintiffs seeking to enforce federal statutes such as Title VII: the federal judiciary is a "branch … of the United States" and its application of Title VII in a private lawsuit constitutes "implementation" of federal law. *Cf. New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964) (applying First Amendment because "[a]lthough this is a civil lawsuit between private parties, the Alabama courts have applied a state rule of law which petitioners claim to impose invalid restrictions on their constitutional freedoms of speech and press"). RFRA also directs that "[a] person whose religious exercise has been burdened" by the government "may assert" the Act's protection as a "defense in a judicial proceedings," *id.* § 2000bb–1(c), and nothing in that provision limits that defense to suits brought by a government actor. Accordingly, "RFRA's language surely seems broad enough" to reach "an action by a private party seeking relief under a federal statute against another private party who claims that the federal statute substantially burdens his or her exercise of religion." *Hankins v. Lyght*, 441 F.3d 96, 103 (2d Cir. 2006). This reading also fits with RFRA's codified "declaration of purposes," one of which was "to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and to guarantee its application in all cases where free exercise of religion is substantially burdened." 42 U.S.C. § 2000bb(b). The pre-*Smith* compelling interest regime that RFRA was designed to restore applied to suits among private parties, *see, e.g.*, *McDaniel v. Paty*, 435 U.S. 618 (1978), and limiting RFRA's scope to litigation involving government actors does

not guarantee the Act's application "in all cases" where religious exercise is substantially burdened. *Cf. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705-06, 709-10, 714-15 (2014) (relying on pre-*Smith* cases to conclude that RFRA covered for-profit corporations).

That RFRA requires the "[g]overnment" to "demonstrate[]" that substantially burdening a person's religious exercise survives strict scrutiny, 42 U.S.C. § 2000bb–1(b), does not mean, as some courts have concluded, that the Act's protections vanish in suits bought by private parties, *see Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731, 736–37 (7th Cir. 2015); *General Conference Corp. of Seventh-Day Adventists v. McGill*, 617 F.3d 402, 410–12 (6th Cir. 2010); *see also Hankins*, 441 F.3d at 114–15 (Sotomayor, J., dissenting). To the contrary, RFRA's strict-scrutiny provision is an "exception" to RFRA's "general" rule that "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." *Compare* 42 U.S.C. § 2000bb–1(a), *with id.* § 2000bb–1(b). Reading that exception to give the government *carte blanche* to substantially burden religious exercise so long as it did so through private rights of action would turn RFRA's strict-scrutiny provision on its head. Instead, private parties must carry the government's burden when they seek to use federal law (and federal courts) to substantially burden another person's religious exercise. That is akin to how courts approached private suits involving the Free Exercise Clause under the pre-*Smith* regime. *See, e.g. Paul v. Watchtower Bible & Tract Soc. of New York*, Inc., 819 F.2d 875, 883 (9th Cir. 1987); *cf. Florida Star v. B.J.F.*, 491 U.S. 524, 537 (1989) (requiring private party invoking statute to impose liability on newspaper to show that the statute's application "serves 'a need to further a state interest of the highest order'" under the First Amendment).[2]

Third, *Bostock*, a statutory decision, cannot intrude upon the First Amendment's protections for religious autonomy, including in ecclesiastical and internal governance matters. The Free Exercise Clause and Establishment Clause prevent governmental intrusion into the autonomy of religious institutions "with respect to internal management decisions that are essential to the institution's central mission," including "the selection of the individuals who play certain key roles" for carrying out their missions. *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). For example, "[j]udicial review of the way in which religious schools discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate." *Id.* at 2055. In identifying which employees are covered by this protection, the Supreme Court has explained that "a variety of factors may be important," but "[w]hat matters, at bottom, is what an employee does." *Id.* at 2063, 2064. Employees whose "work lie[s] at the core of the[] mission" of a religious institution are covered by the ministerial exception. *Id.* at 2055. And because, "[i]n a country with the religious

[2] Similarly, RFRA's directive that anyone "whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief *against a government*," does not, as some courts have assumed, narrow the unqualified right to assert a RFRA "defense in a judicial proceeding." 42 U.S.C. § 2000bb–1(c) (emphasis added); *see, e.g.*, *Listecki*, 780 F.3d at 737. Rather, the relevant clause broadens the rights of a party asserting RFRA. "The narrowing interpretation—permitting the assertion of the RFRA as a defense only when relief is also sought against a governmental party—involves a convoluted drawing of a hardly inevitable negative implication." *Hankins*, 441 F.3d at 103.

diversity of the United States, judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition," "[a] religious institution's explanation of the role of such employees in the life of the religion in question is important" to this analysis. *Id.* at 2066. Neither Title VII in general, nor *Bostock* in particular, can overcome the First Amendment's protection for a religious institution's selection or supervision of these employees.

Fourth, although not mentioned in *Bostock*, "religious and secular groups alike" may claim a right to freedom of association under the First Amendment. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 189 (2012). That right applies to any group engaged in public or private expressive activity—even if not associated primarily for that purpose. *Boy Scouts of America*, 530 U.S. at 648. And it generally protects such groups from being forced to accept members if the presence of such members would "affect[] in a significant way the group's ability to advocate public or private viewpoints." *Id.* The Supreme Court has described this right as "crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas." *Id.* at 647-48; *Masterpiece Cakeshop*, 138 S. Ct. at 1737 (Gorsuch, J., concurring) ("Popular religious views are easy enough to defend. It is in protecting unpopular religious beliefs that we prove this country's commitment to serving as a refuge for religious freedom."). Thus, the Supreme Court held in *Boy Scouts of America* that the Boy Scouts, which at that time "believe[d] that homosexual conduct is inconsistent with the values it seeks to instill in its youth members," could not be forced to accept a gay scoutmaster. *Boy Scouts*, 530 U.S. at 654-56. By comparison, in *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984), the Court had allowed the forced inclusion of women because "the Jaycees had failed to demonstrate . . . any serious burdens on the male members' freedom of expressive association." *Boy Scouts*, 530 U.S. at 657-58. Employers who are able to show that they are engaged in expressive activity whose message would be significantly affected by application of the *Bostock* rule may be exempt from it.

Implications for other statutes

Provisions of Title VII not addressed by Bostock

Bostock will have consequences for the interpretation of Title VII beyond those addressed by the decision itself. The provision at issue in *Bostock* declares it an unlawful employment practice for an employer "(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex." 42 U.S.C. § 2000e-2(a)(1). The Supreme Court reasoned in *Bostock* that the words "because of" in the disparate treatment provision "incorporate the simple and traditional standard of but-for causation," which is "established whenever a particular outcome would not have happened 'but for' the purported cause." *Bostock*, 140 S. Ct. at 1739 (internal quotation marks omitted). The Court further reasoned that this provision focuses on the employer's treatment of individuals, rather than groups, *id.* at 1740-41, and that, because "homosexuality and transgender status are inextricably bound up with sex," any "discriminat[ion] on those grounds requires an employer to intentionally treat individual employees differently because of their sex," *id.* at 1742.

The reasoning of *Bostock* raises significant concerns about the vitality of Supreme Court precedent permitting covered employers to adopt affirmative action policies. In *United Steelworkers of America v. Weber*, 443 U.S. 193 (1979), the Supreme Court held that § 2000e-2(a)(1), the same provision at issue in *Bostock*, did not outlaw such policies. *Id.* at 197; *see also Johnson v. Transportation Agency*, 480 U.S. 616 (1987) (permitting sex-based affirmative action policies under *Weber*). The *Weber* Court took the position that although a prohibition on affirmative action policies was "within the letter of the statute"—as a policy that "discriminate[s] against white employees solely because they are white" plainly constitutes "discriminat[ion] because of race"—it was "not within its spirit nor within the intention of its makers." 443 U.S. at 201 (quoting 42 U.S.C. § 2000e-2(a)(1) and *Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892)) (ellipses omitted). Based on an examination of "legislative history" and "historical context," the *Weber* Court concluded that an interpretation of Title VII "that forbade all race-conscious affirmative action would 'bring about an end completely at variance with the purpose of the statute'"—*i.e.*, to "open employment opportunities" for African Americans—and therefore "must be rejected." *Id.* at 201-02 (citation omitted).

Bostock squarely rejected that method of interpreting Title VII. In the Court's view, it was irrelevant whether its interpretation of § 2000e-2(a)(1) conflicted with "the legislature's purpose in enacting Title VII or certain expectations about its operations." *Bostock*, 140 S. Ct. at 1745; *see id.* at 1749-54. As the Court explained: "When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law." *Id.* at 1737. There is no way to reconcile that analysis with the one in *Weber—i.e.*, that even if the express terms of § 2000e-2(a)(1) prohibit affirmative action policies, Congress in 1964 neither intended nor expected that result. In addition, *Bostock* concluded that § 2000e-2(a)(1)'s use of the term "individual" mandated that the judicial focus of that provision "be on individuals, not groups" and thus that Title VII did not permit inquiring as to "how a policy affects one sex as a whole versus the other as a whole." *Id.* at 1740-41. That reasoning also cannot be squared with *Weber*'s conclusion that discrimination against an individual because of his race is permissible so long as it benefits another racial group.

Accordingly, while employers presently may rely on *Weber* to adopt affirmative action policies, they should be on notice that its "doctrinal underpinnings" have been significantly "eroded" by *Bostock*. *Kimble v. Marvel Entm't, LLC*, 576 U.S. 446, 458 (2015). And that is important because the Supreme Court has observed that "'the primary reason' for overruling statutory precedent" is that "subsequent legal developments . . . have removed the basis for a decision." *Id.* (citation omitted); *see also Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989) ("[W]here the later law has rendered the decision irreconcilable with competing legal doctrines or policies, the Court has not hesitated to overrule an earlier decision.") (internal citations omitted). In addition, when, as here, civil-rights statutes are involved, the Supreme Court has often declined to "place on the shoulders of Congress the burden of the Court's own error." *Monell v. Department of Social Servs.*, 436 U.S. 658, 695 (1978) (citation omitted); *see Johnson*, 480 U.S. at 672-73 (Scalia, J., dissenting). Covered employers therefore should not be surprised if the Supreme Court eventually overrules *Weber* and holds that 42 U.S.C. § 2000e-2(a)(1) prohibits affirmative action policies in the workplace.

Bostock also likely affects the traditional interpretation of the second general prohibition in Title VII. Under § 2000e-2(a)(2), it is an unlawful employment practice "to limit, segregate, or classify . . . employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's . . . sex." 42 U.S.C. § 2000e-2(a)(2). The Supreme Court has interpreted this provision to prevent both intentional discrimination and disparate impact. *Griggs v. Duke Power Co.*, 401 U.S. 424, 429-30 (1971). The *Bostock* reasoning may make a claim of intentional discrimination arising out of sexual orientation or transgender status discrimination cognizable under this provision, although it would not support a claim for disparate impact based on either group.

With respect to intentional discrimination, *Bostock* appears to contemplate that certain employer actions taken to limit, segregate, or classify employees based on sexual orientation or transgender status may run afoul of the prohibition on doing so "because of such individual's . . . sex," § 2000e-2(a)(2). Specifically, the Supreme Court discussed a hypothetical case in which "an employer asked homosexual or transgender applicants to tick a box on its application form" and concluded that even such a box implicates sex discrimination because "[t]here is no way for an applicant to decide whether to check the homosexual or transgender box without considering sex." *Bostock*, 140 S. Ct. at 1746. In the Court's view, the employer that decides not to hire anyone who checks the hypothetical homosexual or transgender box "intentionally refuses to hire applicants in part because of the affected individuals' sex, even if it never learns any applicant's sex." *Id.* Thus, a policy that limits, segregates, or classifies employees based on sexual orientation or transgender status may support a claim of intentional discrimination because of sex under § 2000e-2(a)(2) although such claim remains subject to the statutory requirement that, to be actionable, the limitation, segregation, or classification "deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee," § 2000e-2(a)(2). *See infra* p.14 (discussing this limitation).

The reasoning of *Bostock*, however, does not support a disparate impact claim based on a policy's effect on homosexual or transgender persons as such. Disparate impact may occur even when the employer has "good intent or absence of discriminatory intent," *see Griggs*, 401 U.S. at 432, and focuses on the effect of a policy on a particular group, *see id.* at 431 (considering an employment practice that operated to exclude African American employees from promotions or transfers to other jobs). The relevant group for purposes of the provision's reference to "sex" is men and women. *See Nashville Gas Co. v. Satty*, 434 U.S. 135, 141-42 (1977); *see also Bostock*, 140 S. Ct. at 1739 (proceeding on the assumption that sex in 1964 "[r]eferr[ed] only to biological distinctions between male and female). A policy targeted at homosexual or transgender status in general is not one targeted to either men or women and thus does not necessarily "cause[] a disparate impact on the basis of . . . sex," § 2000e-2(k).

To the extent that a policy had a disparate impact on a subset of men or women based on sexual orientation or transgender status—for example, biological men who identify as women—a disparate impact claim might be cognizable based on sex. *See Nashville Gas Co.*, 434 U.S. at 141 (finding liability based on disparate impact based on policy that deprived employees returning

from pregnancy leave of accumulated seniority). But that claim would have to satisfy the various limitations that Title VII imposes on disparate impact liability. Most notably, the disparate impact must be one that "deprive[s] or tend[s] to deprive any individual of employment opportunities or otherwise adversely affect[s] his status as an employee," § 2000e-2(a)(2). Moreover, the challenged policy must actually deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee. *See Nashville Gas Co.*, 434 U.S. at 143; *E.E.O.C. v. AutoZone, Inc.*, 860 F.3d 564, 570 (7th Cir. 2017) (lateral job transfer that entailed no loss in pay, benefits, or job responsibilities did not adversely affect employment opportunity or status). Mere discomfort in a work place would not meet that standard. *See Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1487-89 (9th Cir. 1993), *cert denied*, 512 U.S. 1228 (1994) (rejecting claim by Spanish-speaking employees that an "English-only policy … deprives them of a privilege given by the employer to native-English speakers: the ability to converse on the job in the language with which they feel most comfortable" because "there is no disparate impact with respect to a privilege of employment if the rule is one that the affected employee can readily observe and nonobservance is a matter of individual preference"). And in all events, the complaining party would need to meet the special burden of proof set forth in statute for Title VII disparate impact claims. 42 U.S.C. § 2000e-2.

Bostock also does not mean that employers cannot "hire or employ employees. . . on the basis of [employees'] . . . sex . . . in those certain instances where . . . sex . . . is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise." § 2000e-2(e)(1). *Bostock* proceeded on the assumption that, as used in Title VII, "'sex . . . referr[ed] only to biological distinctions between male and female." 140 S. Ct. at 1739. And the bona fide occupational qualification provision rests on the understanding that an employee's biological sex may, in some narrow circumstances, interfere with the employee's ability to perform the job. *See International Union, United Auto., Aerospace & Agri. Implement Workers of Am. v. Johnson Controls*, 499 U.S. 187, 204 (1991); *see also Dothard v. Rawlinson*, 433 U.S. 321, 335-36 (1977) (recognizing that male sex was a bona fide occupational qualification "for the job of correctional counselor in a 'contact' position in an Alabama male maximum-security penitentiary"); *Wilson v. Chertoff*, 699 F. Supp. 2d 364 (D. Mass. 2010) (recognizing that female sex is a bona fide occupational qualification for a TSA employee hired "to conduct pat-down searches of female passengers"). In these cases, employers may hire or employ employees based on their biological sex.

Other Statutes

Bostock is not directly relevant to the interpretation of statutes outside of Title VII. The Court in *Bostock* emphasized that its holding was rooted in a conclusion about "the ordinary public meaning" of Title VII in 1964. 140 S. Ct. at 1738.[3] Because the Court cautioned that "only the words on the page constitute the law adopted by Congress and approved by the President," *id.*, we must hesitate to apply the reasoning of *Bostock* to different texts, adopted at different times, in different contexts. As the Court noted, any attempt to "add to, remodel, update, or detract from

[3] Though the majority's assertion was vigorously contested by the dissent. 140 S. Ct at 1755 ("The Court tries to convince readers that it is merely enforcing the terms of the statute, but that is preposterous.")(Alito, J dissenting).

old statutory terms" would "deny the people the right to continue relying on the original meaning of the law they have counted on to settle their rights and obligations." *Id.* Although more than "100 federal statutes prohibit discrimination because of sex," *see Bostock*, 140 S. Ct. at 1778 & Appendix C (Alito, J., dissenting), this memorandum of necessity addresses only four for which the Civil Rights Division has some enforcement authority.

Title IX

The application of *Bostock*'s reasoning to Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681 *et seq.*, requires due care. Both Title VII and Title IX relate to discrimination based on sex, and both use sex in its ordinary, binary meaning. Indeed, if there were any doubt on that point, Title IX includes express references to "one sex" and "the other sex," as well as to "both sexes," usage that confirms the ordinary, binary meaning of the term. § 1681(a)(2), (8). But Title VII is also "a vastly different statute from Title IX" in both text and context. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 175 (2005). Title IX provides, subject to a number of express exemptions, that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681. It does not authorize disparate impact liability, nor does it use precisely the same "because of such individual's . . . sex" language that the Court relied upon in *Bostock*. *Compare* 42 U.S.C. § 2000e-2 *with* 20 U.S.C. § 1681. And while Title VII imposes a regulatory prohibition on covered employers, Title IX acts as a condition on the receipt of certain federal funding. *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 275, 286-87 (1998). The Supreme Court has explained that, when Congress acts pursuant to its power under the Spending Clause, a "central concern . . . [is] ensuring that the receiving entity of federal funds [had] notice" of its prospective liability. *Id.*

Nevertheless, the similarities in language between Title VII and Title IX suggest that the *Bostock* reasoning may carry over in some respects. Justice Thomas has, for example, reasoned that the phrases "on the basis of sex" and "because of such individual's . . . sex" have been used by Congress "interchangeably." *Jackson*, 544 U.S. at 185-86 (Thomas, J., dissenting); *see also Comcast Corp. v. Nat'l Ass'n of African American-Owned Media*, 140 S. Ct. 1009, 1016 (2020) ("When it first inferred a private cause of action under § 1981, this Court described it as 'afford[ing] a federal remedy against discrimination . . . *on the basis of* race,' language (again) strongly suggestive of a but-for causation standard."). If that is the case, then it seems to follow from the Supreme Court's reasoning in *Bostock* that an individual who is, on the basis of sexual orientation or transgender status, "excluded from participation in, . . . denied the benefits of, or . . . subjected to discrimination under any education program or activity receiving Federal financial assistance" may be able to make out a claim of intentional discrimination on the basis of sex in violation of Title IX. *See Bostock*, 140 S. Ct. at 1741. Like Title VII, Title IX recognizes that an individual's sex is "not relevant" to many, if not most, aspects of education programs or activities.

But where the physiological differences of the sexes *are* relevant to education programs or activities, sex may be taken into account. Several indicia from the statute establish this proposition, three of which are discussed here. First, Congress expressly provided that "notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to

prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes." 20 U.S.C. § 1686. The fact that this provision is phrased as a rule of construction, rather than an exemption, is a textual indicator that Congress did not believe that its general prohibition on sex discrimination must be read to cover different living facilities. That makes sense, as separate-sex living facilities do not generally exclude anyone from participation in education programs or activities, nor deny them the benefits thereof. Nor do separate-sex living facilities subject any person to discrimination, because discrimination requires treating an "individual worse than others who are similarly situated," *Bostock*, 140 S. Ct. at 1740, and men and women are not similarly situated for these purposes. Rather, the physiological differences between men and women may justify the additional privacy and security that can only be guaranteed by such separate facilities. This provision supports the conclusion that Title IX's prohibition on sex discrimination does not prohibit different treatment of the sexes where the physiological differences of the sexes are relevant.

Second, Congress expressly exempted certain single-sex activities from Title IX's reach where it is not clear that physiological differences are relevant. For example, Congress expressly exempted from Title IX the "membership practices of" sororities and fraternities, 20 U.S.C. § 1681(6)(A), or "voluntary youth service organization" that traditionally serve minors of a single sex, § 1681(6)(B); programs and activities undertaken in connection with Boys State, Boys Nation, Girls State, and Girls Nation, § 1681(7); and "father-son or mother-daughter activities at an educational institution," so long as "reasonably comparable activities [are] provided for students of the other sex," § 1681(8). The justification for the single-sex practices of these activities cannot be that men or women are particularly ill suited to partake of the activities given that parallel organizations or activities are available to men and women. Rather, the apparent justification is that the exempted activities have unique value as single-sex activities. Namely, because men and women are not fungible, they may gain unique perspectives and experiences from participating in these activities with only members of their own sex. *See United States v. Virginia*, 518 U.S. 515, 533, 535 (1996) (recognizing the "reality" that "[s]ingle-sex education affords pedagogical benefits to at least some students"). But Congress's decision to exempt these activities, rather than construe them as not covered by Title IX, confirms that Congress understood its prohibition on sex discrimination in the ordinary sense—as prohibiting discrimination based on sex only where men and women were similarly situated.

Third, Congress has long hailed the rise of women's athletics as one of the crowning achievements of Title IX. Although athletics was not expressly discussed in the text of Title IX, Congress tasked the Executive Branch with issuing regulations on the subject. *See* Pub. L. 93-380, § 844, 88 Stat. 484 (Aug. 21, 1974) ("The Secretary shall prepare and publish … proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in federally assisted education programs, which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports."). These Title IX regulations have, from the very beginning, authorized schools to offer separate-sex teams "where selection for such teams is based upon competitive skill or the activity involved is a contact sport" and required recipients to "provide equal athletic opportunity for members of both sexes." 34 C.F.R. 106.41. Congress extensively studied and

held hearings on these regulations before ultimately leaving them in place. *See North Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 531-33 (1982). And agencies across the federal government have incorporated them into their implementing regulations. *See* 65 Fed. Reg. 52,857 (common rule for 21 federal agencies). Women's sports teams have accordingly flourished, allowing women to compete against other women, including in sports for which a school does not offer a men's team. Such separate teams would only be permissible under Title IX if the text prohibits differential treatment of the sexes only where the physiological differences between the sexes are irrelevant.

The Civil Rights Division will not lightly assume that Title IX should be interpreted in a way that "would frustrate the purposes" of that law, *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 285 (1998). It would frustrate Title IX's purpose to read its text as prohibiting the single-sex teams that have ensured women equal opportunity in athletics for nearly 50 years. It would likewise frustrate those purposes to read Title IX to prohibit sex-specific facilities that allow men and women privacy from the other sex, particularly given that many boys and girls will be undergoing physiological changes associated with their biological sex at the same time that they are participating in, or attempting to participate in, education programs and activities. And it would frustrate the purposes of Title IX's express statutory and regulatory exemptions for single-sex activities to require such activities to admit members of the opposite sex in accordance with gender identity. A formerly single-sex activity that admits members of the opposite sex based on gender identity is by definition no longer single sex. And allowing admission of members of the opposite sex to a single-sex activity based on gender identity would actually end up discriminating on the very basis that it would be attempting to accommodate: A girls' volunteer organization that accepts all females and all males who identify as females *excludes* males who identify as males. But if the benefits from the single-sex nature of the activity were not a reason to exclude transgender members of the opposite sex from the group, it is hard to understand the reason for excluding non-transgender members of the opposite sex. At a bare minimum, no statute should be read to require or permit giving transgender individuals special—as opposed to equal—treatment. Discrimination in favor of transgender status is still discrimination on the basis of gender identity and, under the reasoning of *Bostock*, on the basis of sex.

To sum up, after *Bostock*, it would behoove recipients to ensure that they do not discriminate on the basis of sexual orientation or transgender status. In most cases, sex (and therefore sexual orientation and transgender status) are not relevant in decisions relating to admissions, employment, or grading. Homosexual or transgender persons should thus not be treated either more or less favorably than other persons. *Bostock* does not prevent recipients from adopting sex-specific policies and facilities when the physiological differences of the sexes *are* relevant, including with respect to living assignments, bathrooms, locker rooms, and competitive sports teams. Men and women are not "materially identical in all respects," *Bostock*, 140 S. Ct. at 1741, and nothing in *Bostock* requires recipients to treat them as if they are. With respect to such policies, however, *Bostock*'s reasoning forecloses special preferences based on homosexual or transgender status. Thus, for example, a women's volleyball team, ice hockey team, weightlifting team, or rugby team may not allow men who identify as women to play on the team if other men are not allowed to, because doing so would discriminate against non-transgender men and in favor of transgender men based on sex, which is unlawful under *Bostock*. Sex is relevant to the team

assignment policy; transgender status is not, and transgender individuals may have no more and no less opportunity than non-transgender individuals.[4]

As with Title VII, it is worth noting the religious exemptions that may be applicable to Title IX recipients. The statute expressly provides that its prohibition "shall not apply to an educational institution which is controlled by a religious organization if the application of [the prohibition] would not be consistent with the religious tenets of such organization." 20 U.S.C. § 1681(a)(3); *see also* § 1687 (defining "program or activity" to exclude "any operation of an entity which is controlled by a religious organization if the application of section 1681 . . . would not be consistent with the religious tenets of such organization"). Although under existing regulations "eligible institutions may 'claim the exemption' in advance by 'submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions . . . [that] conflict with a specific tenet of the religious organization,' 34 CFR § 106.12(b), they are not required to do so to have the benefit of it." 82 Fed. Reg. at 49,679. Organizations that do not qualify for that exemption may still be able to claim the protection of RFRA, *id.*, as well as the constitutional protections described *supra*.

Fair Housing Act

The reasoning of *Bostock* is also applicable to some provisions of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* Like Title VII, the Fair Housing Act imposes a series of prohibitions, rather than conditions on federal funding. And like Title VII, the Act uses the phrase "because of," which the Supreme Court interpreted in *Bostock* to require but-for causation. *Bostock*, 140 S. Ct. at 1739 For example, as made applicable, and subject to some exemptions, § 3604(a) makes it unlawful "[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . sex." § 3604(a).[5] This language incorporates the legal test of but-for causation. *Cf. Univ. of Texas Southwestern Med. Ctr. v. Nassar*, 570 U.S. 338, 350 (2013). And under the reasoning of *Bostock*, but-for causation is established in the case of discrimination because of homosexuality or transgender status "because to discriminate on those grounds requires an employer to treat individual[s] . . . differently because of their sex." *Bostock*, 140 S. Ct. at 1742. Thus, after *Bostock*,

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[4] *Bostock* addressed "transgender status" only in the binary, *see, e.g.*, 140 S. Ct. at 1741, and, as noted above, did not define "sex" to include "gender identity," *id.* at 1739. It is unclear how some of the sex-specific provisions of Title IX could even operate if "sex" were defined to include "gender identity," given that these provisions presuppose a binary view of sex and according to the American Psychiatric Association, gender identity may include "an individual's identification as . . . some category other than male or female." Diagnostic and Statistical Manual of Mental Disorders Fifth Edition 451 (2013).

[5] The Supreme Court has interpreted the phrase "otherwise makes unavailable" in § 3604(a) to authorize disparate-impact liability as well. *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, __ U.S. __, 135 S. Ct. 2507, 2518 (2015). Because such liability focuses on the effects on groups, rather than individuals, *see supra* at 8, the *Bostock* reasoning does not support liability for disparate impact based on sexual orientation or transgender status under the Fair Housing Act.

a person who refuses to sell or rent a dwelling because of sexual orientation or transgender status may violate this provision.

The same reasoning applies to several other provisions of the Fair Housing Act. It applies, for example, to § 3604(b), which makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin," to § 3604(d), which makes it unlawful "[t]o represent to any person because of . . . sex . . . that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available," and to § 3605, which makes it unlawful "for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of . . . sex." Those provisions use the same "because of . . . sex" language discussed above. In addition, the phrase "discriminate against any person" in § 3604(b) is similar to the phrase "discriminate against any individual" in Title VII, which the Court in *Bostock* interpreted to support its conclusion that to "discriminate" because of homosexuality or transgender status necessarily requires one to discriminate because of sex. 140 S. Ct. at 1741.[6] And a similar conclusion may be reached with respect to § 3606, which provides, that "it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of . . . sex." The language "on account of . . . sex" is not identical to the language in *Bostock*, but it is similar to the "on the basis of" language discussed above that the Supreme Court has used interchangeably with "because of," *see supra* XX, and it shares the focus on the individual that the *Bostock* court relied so heavily upon in its analysis, *see Bostock*, 140 S. Ct. at 1740-41.

This interpretation of the Fair Housing Act will likely come as a surprise to any ordinary reader of the Act, which includes no mention of sexual orientation or transgender status. Indeed, until very recently, all courts to have considered such claims had rejected them. *See, e.g.*, *Lath v. OakBrook Condominium Owners' Ass'n*, 2017 WL 1051001, at *4 n.5 (D. N.H. 2017) (collecting

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[6] It is less clear how the *Bostock* reasoning applies to § 3604(c) and § 3604(e). Section 3604(c) makes it unlawful to "make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination." Section 3604(e) makes it unlawful "[f]or profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular . . . sex." These provisions are not focused on the but-for causation of any act, but rather on the particular language used in advertisements and representations. Because a notice that indicates a preference, limitation, or discrimination on sexual orientation or transgender status does not necessarily indicate "any preference, limitation, or discrimination based on . . . sex," it is unclear how the Supreme Court would apply the *Bostock* reasoning to these provisions.

cases); *Miller v. 270 Empire Realty LLC*, 2012 WL 193798, at *5 (E.D.N.Y. 2012); *Neithamer v. Brenneman Property Services, Inc.*, 81 F. Supp. 2d 1, 4 (D.D.C. 1999). The same, of course, may be said of *Bostock* itself.

But to those concerned about overbroad enforcement, the Civil Rights Division notes that the Act expressly does not apply to "rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence," § 3603(b)(2), nor to certain sales or rentals of small-scale owners, § 3604(b)(1). It also exempts a "religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin." § 3607. In addition, RFRA applies to the Fair Housing Act and may prevent courts from imposing liability under the reasoning of *Bostock*. § 2000bb-3(a) ("This chapter applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.").

The Civil Rights Division will exercise its enforcement discretion, in both civil and criminal matters, in a manner that takes into account the unexpected nature of this interpretation. On the civil side, for many of the same reasons that retroactive liability under Title VII for the rule announced in *Bostock* may not be appropriate, retroactive liability under the Fair Housing Act may also not be appropriate. 42 U.S.C. § 3612(g)(3) (noting that in administrative enforcement proceedings, an administrative law judge "shall promptly issue an order for such relief as may be appropriate, which *may* include actual damages suffered by the aggrieved person and injunctive or other equitable relief" and "may, to vindicate the public interest" include a civil penalty); § 3613(c) (noting that in civil actions by private persons a court "*may* award to plaintiffs actual and punitive damages"); § 3614(d) (noting that in enforcement proceedings by the Attorney General a court "*may* award . . . preventive relief" and "*may* award such other relief as the court deems appropriate, including monetary damages to persons aggrieved"). On the criminal side, *see* 42 U.S.C. § 3631, "the Government retains 'broad discretion' as to whom to prosecute." *Wayte v. United States*, 470 U.S. 598, 607 (1985). It would be a rare case in which prosecution would be appropriate for conduct that appears to violate the Fair Housing Act under the *Bostock* reasoning but predated that decision—indeed there likely is none.

Equal Credit Opportunity Act

The Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, declares that it "shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction on the basis of . . . sex," § 1691(a)(1). The Act contains a number of provisions outlining activities that do not constitute discrimination, *id.* § 1691(b), (c), and provides for administrative enforcement, in addition to civil enforcement by private parties, *id.* § 1691e. The Act caps any damages that may be available under the Act to aggrieved individuals. *Id.*

For much the same reason discussed above with respect to the Fair Housing Act, the *Bostock* reasoning is likely applicable to claims that a creditor has discriminated on the basis of sexual orientation or transgender status with respect to any aspect of a credit transaction. To succeed, however, any potential plaintiff would need to make an actual showing of discrimination—that is, treatment of an applicant worse than other applicants similarly situated. § 1691(a). Moreover, the claim must not fall within any applicable statutory or regulatory exclusions. *See, e.g.*, § 1691(b), (c) (setting forth certain exemptions); § 1691(b) (authority to grant regulatory exemptions). The Civil Rights Division again recognizes that this reading of ECOA is unanticipated for many Americans, and it will take notice concerns into account in deciding whether to institute a civil action, including upon referral, for any conduct that appears to violate ECOA under the *Bostock* reasoning but predated that decision.

Justice System Improvement Act of 1979

The Justice System Improvement Act of 1979, as amended, 34 U.S.C. 10101 *et seq.*, added a nondiscrimination provision to the Omnibus Crime Control and Safe Streets Act of 1968. Specifically, under that provision, "[n]o person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this title." 34 U.S.C. § 10228(c). The language is similar to that of Title IX of the Education Amendments Act of 1972, except that it uses the phrase "on the ground of" instead of "on the basis of" and prohibits not just discrimination on the ground of sex, but on the grounds of race, color, religion, or national origin as well. *Compare* 34 U.S.C. § 10228(c) *with* 20 U.S.C. § 1681. The language also has narrower application, in that it applies to State and local governments receiving federal funds, rather than the many private parties who are subject to Title IX. Finally, the Justice System Improvement Act expressly provides for enforcement by both the Attorney General and, after exhaustion, by private parties. *See* 34 U.S.C. § 10228(c)(3), (4). A violation of this Act may also provide grounds for an enforcement action by the Department under 34 U.S.C. § 12601, which declares it "unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States," § 12601(a).

For many of the same reasons discussed above with respect to Title VII and Title IX, the *Bostock* reasoning suggests that this nondiscrimination provision prohibits intentional discrimination on the basis of sexual orientation or transgender status, but does not require law enforcement agencies to alter longstanding sex-specific practices or facilities where physiological differences between the sexes are relevant. *See Curl v. Reavis*, 740 F.2d 1323, 1326, 1331 (4th Cir. 1984) (affirming district court decision treating the discrimination on the basis of sex in violation of Title VII as sufficient also to violate the nondiscrimination provision of the Justice System Improvement Act). As with the other statutes discussed, the Civil Rights Division will

exercise enforcement discretion that takes due account of the unanticipated interpretation of this statutory condition on grants to state and local governments.

Implications for the Constitution (and statutes that incorporate constitutional standards)

Finally, *Bostock* has no bearing on the proper interpretation of the Constitution, including on whether classifications based on sexual orientation or transgender status should be treated as sex-based classifications (or otherwise trigger heightened scrutiny). The Supreme Court in *Bostock* interpreted a specific phrase in Title VII—"discriminate against any individual because of such individual's . . . sex." 140 S. Ct. at 1753 (ellipsis omitted). That text does not appear in either the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, or the Fifth Amendment's Due Process Clause in which the Supreme Court has identified an equal protection principle, *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954). The Supreme Court's assessment that it did not need to consult "historical sources" to interpret the meaning of Title VII does not suggest that it would approach the Constitution in like manner. 140 S. Ct. at 1750. To the contrary, the Court recognized that it had repeatedly "consulted the understandings of the law's drafters" in order to discern "subtle distinctions between literal and ordinary meaning" in the context of older statutes. *Id.* And it has done so likewise in the context of constitutional provisions. *See, e.g.*, *Ramos v. Louisiana*, 140 S. Ct. 1390, 1395 (2020) (Sixth Amendment right to jury trial); *Bucklew v. Precythe*, 139 S. Ct. 1112, 1122-23 (2019) (Eighth Amendment); *Timbs v. Indiana*, 139 S. Ct. 682, 688-89 (2019) (Excessive Fines Clause); *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 50 (2004) (Confrontation Clause). In short, there is no indication the Supreme Court will apply its literal and context-free mode of interpretation to the Constitution, as doing so would upend over two centuries of precedent. *Bostock* may simply be an aberration.

Given the very different context of Title VII from the Constitution, it should be no surprise that the Supreme Court has not imported its construction of Title VII into the Constitution. The Court has, for example, refused to import disparate-impact liability from its Title VII precedents to the constitutional context, stressing that "[w]e have never held that the constitutional standard for adjudicating claims of invidious racial discrimination is identical to the standards applicable under Title VII, and we decline to do so today." *Washington v. Davis*, 426 U.S. 229, 239 (1976). Conversely, the Supreme Court has also imposed more stringent limits on affirmative action under the Equal Protection Clause than Title VII. *See Johnson*, 480 U.S. at 627 n.6. The Court has also recognized that "[t]he Equal Protection Clause . . . is essentially a direction that all persons similarly situated should be treated alike," and thus is not limited to the protected categories listed in Title VII. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). But most governmental classifications—including those related to sexual orientation and transgender status—continue to be subject only to rational basis review, and nothing in *Bostock* casts doubt on those precedents. *See Romer v. Evans*, 517 U.S. 620, 632 (1996). In all events, as with Title VII, *Bostock* does not undermine the authority of government to draw distinctions based on sex where, due to physiological differences, the sexes are not similarly situated. *See United States v. Virginia*, 518 U.S. 515, 533 (1996) (recognizing that "[p]hysical differences between men and women . . . are enduring" and that the "two sexes are not fungible").

EXHIBIT 3.2.003

From: "Felte, James (CRT)" <[redacted]>
To: "Bernstein, Bobbi (CRT)" <[redacted]>, "Bosserman, Barbara (CRT)" <[redacted]>, "Fitzgerald, Paige (CRT)" <[redacted]>
Subject: RE: Memorandum on Application of Bostock v. Clayton County
Date: Tue, 19 Jan 2021 13:34:25 -0500
Importance: Normal

I'm quite confident this guidance won't last long.

From: Bernstein, Bobbi (CRT)
Sent: Tuesday, January 19, 2021 12:58 PM
To: Bosserman, Barbara (CRT) <[redacted]>; Felte, James (CRT) <[redacted]>; Fitzgerald, Paige (CRT) <[redacted]>
Subject: RE: Memorandum on Application of Bostock v. Clayton County

I just read all the other emails on this topic and wanted to make clear that I wasn't trying to make myself the point-person on reviewing the guidance; I was just interested in what the memo said, so I opened it and started reading.

My two-cents (based on a super-fast reading): Some of the reasoning in this memo requires a great deal of contortion, such as when it goes way out of its way to say that Bostock calls into serious question the legal precedents approving certain types of affirmative action, and when it suggests that Bostock will forbid employers or schools from allowing transgender people to use the bathroom of their choice (I seriously think that's what it says, although, as I mentioned, I read this super-fast).

FWIW, part of this memo sounds (to me, at least) a bit like: "Yeah? You want to tell us we can't discriminate against 'homosexual persons'? Fine. Then we'll use this case to argue that *you* can't do something *we* don't like. Oh, and by the way, we'll also argue that this case says that *you* will violate the law if you try to make us let transgender people use the bathrooms they want to use (because that will be showing 'special favor' based on sex)."

This memo does not, in my view, reflect any effort at an honest, unbiased reading of *Bostock*, and I can't imagine that it will constitute official guidance for more than 24 hours.

From: Bernstein, Bobbi (CRT)
Sent: Tuesday, January 19, 2021 12:37 PM
To: Bosserman, Barbara (CRT) <[redacted]>; Felte, James (CRT) <[redacted]>; Fitzgerald, Paige (CRT) <[redacted]>
Subject: RE: Memorandum on Application of Bostock v. Clayton County

(Bosses only):

I just read the memo. I found parts of it to be intellectually draw-dropping. I strongly suspect that the new team coming in will want to reassess this as official guidance.

For example:

> Finally, *Bostock* has no bearing on the proper interpretation of the Constitution, including on whether classifications based on sexual orientation or transgender status should be treated as sex-based classifications (or otherwise trigger heightened scrutiny). The Supreme Court in *Bostock* interpreted a specific phrase in Title VII "discriminate against any individual because of such individual's . . . sex."

140 S. Ct. at 1753 (ellipsis omitted). That text does not appear in either the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, or the Fifth Amendment's Due Process Clause in which the Supreme Court has identified an equal protection principle, *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954).

From: Bosserman, Barbara (CRT)
Sent: Tuesday, January 19, 2021 12:24 PM
To: Felte, James (CRT) <[redacted]>; Fitzgerald, Paige (CRT) <[redacted]>
Cc: Phillips, Colleen (CRT) <[redacted]>; Bernstein, Bobbi (CRT) <[redacted]>
Subject: RE: Memorandum on Application of Bostock v. Clayton County

Thanks. I think Colleen is working on it. At least I received an email from her on it. Bobbi also apparently is looking at it. Should we figure out who is running point on this? I am happy to have Colleen (or Bobbi) collect our comments given that I am working on several other projects. We should also comment on using Title VII and any other civil statute that uses the term "because of sex" as a basis for a § 241 prosecution.

From: Felte, James (CRT)
Sent: Tuesday, January 19, 2021 12:19 PM
To: Fitzgerald, Paige (CRT) <[redacted]>; Bosserman, Barbara (CRT) <[redacted]>
Subject: FW: Memorandum on Application of Bostock v. Clayton County

Paige & Barbara,

I have not yet had a chance to review this memo. It looks like its writing was tightly held. We can discuss when we have an opportunity to review as per below, we will be asked to comment. Obviously, CRM's immediate equities would pertain to the Fair Housing Statute.

Jim

From: Friel, Gregory B (CRT)
Sent: Tuesday, January 19, 2021 11:18 AM
To: Stoneman, Christine (CRT) <[redacted]>; Abraham, Robert K (CRT) <[redacted]>; Embrey, Diana (CRT) <[redacted]>; Foran, Sheila (CRT) <[redacted]>; Ginsburg, Jessica A (CRT) <[redacted]>; Herren, Chris (CRT) <[redacted]>; Howe, Suey (CRT) <[redacted]>; Kennebrew, Delora (CRT) <[redacted]>; Majeed, Sameena (CRT) <[redacted]>; Rosenbaum, Steven (CRT) <[redacted]>; Ruisanchez, Alberto (CRT) <[redacted]>; Simons, Shaheena (CRT) <[redacted]>; Felte, James (CRT) <[redacted]>; Bond, Rebecca (CRT) <[redacted]>; Chandler, Thomas (CRT) <[redacted]>
Cc: Toomey, Kathleen (CRT) <[redacted]>; Moossy, Robert (CRT) <[redacted]>
Subject: RE: Memorandum on Application of Bostock v. Clayton County

Dear Chiefs,

Neither Robert Moossy, Kathy Toomey, nor I saw this memo until this morning when John sent it to you. We are reviewing the memo and will seek your input about next steps. Thanks.

Greg

Gregory B. Friel

Deputy Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
[redacted]

From: Daukas, John (CRT)
Sent: Tuesday, January 19, 2021 10:28 AM
To: Stoneman, Christine (CRT) <[redacted]>; Abraham, Robert K (CRT) <[redacted]>; Embrey, Diana (CRT) <[redacted]>; Foran, Sheila (CRT) <[redacted]>; Ginsburg, Jessica A (CRT) <[redacted]>; Herren, Chris (CRT) <[redacted]>; Howe, Suey (CRT) <[redacted]>; Kennebrew, Delora (CRT) <[redacted]>; Majeed, Sameena (CRT) <[redacted]>; Rosenbaum, Steven (CRT) <[redacted]>; Ruisanchez, Alberto (CRT) <[redacted]>; Simons, Shaheena (CRT) <[redacted]>; Felte, James (CRT) <[redacted]>; Bond, Rebecca (CRT) <[redacted]>
Cc: Friel, Gregory B (CRT) <[redacted]>; Toomey, Kathleen (CRT) <[redacted]>; Moossy, Robert (CRT) <[redacted]>; Daukas, John (CRT) <[redacted]>
Subject: Memorandum on Application of Bostock v. Clayton County

Dear Section Chiefs:

Attached is a memorandum analyzing the application of *Bostock v. Clayton County* to various statutes enforced by the Civil Rights Division. The memorandum was developed by components other than CRT, and I was quite recently asked to issue it as it implicates our statutes.

The memorandum concludes *Bostock* applies to many provisions of Title VII, Title IX, the Fair Housing Act, the Equal Credit Opportunity Act, and the Justice System Improvement Act of 1979. It addresses the scope and application of *Bostock*.

Thanks

John B. Daukas
Acting Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, DC 20530
Office: [redacted]
Cell: [redacted]

EXHIBIT 3.2.004

From: "Friel, Gregory B (CRT)" <[redacted]>
To: "Moossy, Robert (CRT)" <[redacted]>, "Toomey, Kathleen (CRT)" <[redacted]>
Subject: FW: Component Points of Contact and Transition Materials
Date: Thu, 21 Jan 2021 12:56:26 -0500
Importance: Normal
Attachments: CRT_14_Day_Memo_to_ODAG_draft_210121_revised.docx

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FYI.

From: Friel, Gregory B (CRT)
Sent: Thursday, January 21, 2021 12:54 PM
To: Axelrod, Matthew S. (ODAG) <[redacted]>; Singh, Anita M. (ODAG) <[redacted]>
Subject: FW: Component Points of Contact and Transition Materials

Dear Matt, Anita, and Karl,

We are looking forward to working with you. Per John Carlin's email, following are items that we recommend be addressed in the next 48 hours. Attached is a memo that addresses those items that we recommend be addressed in the next 14 days. We have already provided a 90-day look ahead memo to Matthew Colangelo in OASG. If you need additional information about any of the items addressed in this email or you would like a copy of the 90-day look ahead, please let us know.

1. **Gender Identity**

The Department will need to take action on the following in order to effectuate Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, issued January 20, 2021. We propose to take the following actions in compliance with section 1 of the Executive Order.

Application of *Bostock v. Clayton County*, Memorandum to Civil Rights Division: This week, we propose to withdraw an internal Division memorandum, Application of *Bostock v. Clayton County*, dated January 17, 2021, and issued Tuesday, January 19, 2021, by Acting Assistant Attorney General John B. Daukas. The memorandum, which was not prepared by the Civil Rights Division and was issued without consultation with or review by senior career staff or Division subject matter experts, purports to:

> Provide[] guidance for Civil Rights Division Attorneys and staff . . . [and] addresses whether *Bostock* must lead to change in the Department's own employment practices. It then addresses federal law protections for religious liberty. Finally, it analyzes *Bostock*'s implications with regard to other statutory provisions, including provisions of Title VII not at issue in *Bostock*, DOJ's enforcement responsibilities under Title VII, Title IX, the Fair Housing Act, the Equal Credit Opportunity Act, the Justice System Improvement Act of 1979, and the Constitution.

We have worked with the Justice Management Division (JMD) to remove the memo from the Division and Department websites.

Updating Division Website Description of Title VII to comply with Executive Order. This week, we plan to update the Division website to clarify that sexual orientation and gender identity are included within the definition of sex. In addition, we plan to update the description of sex discrimination as follows:

Discrimination on the basis of sex involves denying equal employment opportunity to any individual, or treating any employee or applicant worse, because of that individual's sex. Sex discrimination includes treating a individual unfavorably because the individual is pregnant, or based on gender stereotypes, or based on a person's failure to conform to gender stereotypes. Sex discrimination also includes treating an individual less favorably because of that individual's sexual orientation or gender identity, or perceived sexual orientation or gender identity. Sex discrimination also may include treating a person unfavorably because of the person's association with someone or some group generally associated with a particular sex. Sex discrimination could take the form of refusing to hire, discharging, failing to promote, harassing, or discriminating against an individual with respect to any other term, condition or privilege of employment. These actions violate Title VII when they are based in part, or entirely, on the protected characteristics described above.

2. **Diversity and Inclusion**

[redacted]

3. **Consent Decrees**

[redacted]

[redacted]

[redacted]

[redacted]

4. **Pending Criminal Matters**

[redacted]

Thanks,

Greg

Gregory B. Friel
Deputy Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
[redacted] (work cell)
(office phone)
[redacted]

From: Carlin, John P. (ODAG)
Sent: Wednesday, January 20, 2021 5:59 PM

To: Heads of Department Components (JMD) <[redacted]>
Subject: Component Points of Contact and Transition Materials

All:

Thank you for your hard work to date to ensure a smooth and safe transition. We look forward to working with you as a collective team, in service to the Department and the American people.

During these early days, it is critical that we have a timely and complete flow of communication between your offices and ours. Over the next few days, we will set up a schedule of regular meetings for us to share information. Until we have those in place, we need to stay in close contact.

By **noon tomorrow**, can you please send an email to Senior Counselor Matt Axelrod, Chief of Staff Anita Singh, and your interim ODAG Point of Contact (listed below), detailing any sensitive or high-profile matters or issues that fall into one or more of the following categories and could occur in the next 48 hours:

- Likely to generate significant press attention;
- Sensitive litigation requiring an immediate filing or responsive briefing, or where we expect an imminent ruling;
- Matters or cases where we need additional time to evaluate and consider the merits of a particular position given the change in Administration and might consider requesting a stay to do so; and
- Any other matters which, in your judgment, require immediate leadership office attention.

Second, it is my understanding that the litigating components may have already prepared this material for the next 14 days (through February 5). If that is ready, please send that data at the same time. If you need additional time to collect this information beyond the next 48 hours, please send it to Matt, Anita, and your ODAG Point of Contact no later than the close of business on **Friday, January 22.**

Finally, the Department will begin work on a new White House contacts policy. In the meantime, as a reminder, all White House communications should go through the Office of the Attorney General, the Office of the Deputy Attorney General, or the Office of the Associate Attorney General in the first instance, with the sole exception of appropriate national security matters.

Thank you very much. This will greatly assist us as we ensure clear communication lines with your offices and with Acting Attorney General Wilkinson and his staff. We look forward to working with you. If you have questions or need anything at all, please reach out.

Best,
John

ODAG Primary Points of Contact (1/20-1/25):
**We will send an updated list of points of contact on 1/25.*

Antitrust	Matt Axelrod
ATF	Adam Braverman
BOP	David Newman
Civil Division	Karl Thompson
Civil Rights Division	Karl Thompson
COPS	Shomari Figures
CRS	Shomari Figures
Criminal Division	Iris Lan
DEA	Adam Braverman
ENRD	Karl Thompson
EOIR	Margy O'Herron
EOUSA/USAs	Iris Lan
FBI	Iris Lan (Criminal) David Newman (National Security)
Foreign Claims Settlement Commission	Margy O'Herron
INTERPOL	Adam Braverman

Justice Management Division	Anita Singh
National Security Division	David Newman
OCDETF	Adam Braverman
Office of Information Policy	Margy O'Herron
Office of the Inspector General	Brad Weinsheimer
Office of Justice Programs	Shomari Figures
Office of Legal Counsel	Karl Thompson
Office of Legal Policy	Anita Singh
Office of Legislative Affairs	Matt Axelrod
Office of the Pardon Attorney	Brad Weinsheimer
Office of Professional Responsibility	Brad Weinsheimer
Office of Public Affairs	Matt Axelrod
Office of the Solicitor General	Karl Thompson
Office of Tribal Justice	Karl Thompson
Office on Violence Against Women	Karl Thompson
PRAO	Andrew Goldsmith
Tax	Karl Thompson
USMS	Adam Braverman
U.S. Parole Commission	David Newman
U.S. Trustee Program	Adam Braverman

EXHIBIT 3.2.005

From: "Friel, Gregory B (CRT)" <[redacted]>
To: "Colangelo, Matthew (OASG)" <[redacted]>
Cc: "Toomey, Kathleen (CRT)" <[redacted]>, "Moossy, Robert (CRT)" <[redacted]>
Subject: Plan to withdraw Bostock memo issued by former Acting AAG Daukas
Date: Fri, 22 Jan 2021 10:26:41 -0500
Importance: Normal
Attachments: Bostock_withdrawal_memo_draft_21.1.21.docx; Daukas_Bostock_Memo.pdf

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Matthew,

I would like to issue the attached memo to all CRT staff by the end of the day today. As you'll see the memo announces the withdrawal of a memo, dated Jan. 17 and issued Jan. 19, 2021, by then-Acting AAG Daukas, discussing the application of the Bostock decision to federal civil rights laws. Issuing the withdrawal memo as soon as possible will help boost employee morale, which has suffered greatly since Mr. Daukas distributed his memo. I've personally heard from a number of CRT employees who are dismayed and disgusted by the Daukas memo. In that memo, Mr. Daukas even suggested that an employer's accommodating transgender employees by allowing them to use restrooms that correspond to their gender identity would actually constitute unlawful sex discrimination. See Daukas Memo at 5. In other words, he adopted a reading of Bostock that could actually prohibit the decent and humane treatment of transgender individuals in the workplace. Allowing that memo to remain as the official position of the Civil Rights Division any longer is an affront to the dignity of our transgender employees, who may wonder whether they are even allowed to continue using restrooms in DOJ buildings consistent with their gender identity.
Please let me know if you have any objections to my issuing the attached memo to CRT staff today. Thanks.

Greg
Gregory B. Friel
Deputy Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
[redacted] (work cell)
[redacted] (office phone)

TO: Civil Rights Division

FROM: Gregory B. Friel
Acting Head of the Civil Rights Division

On January 20, 2021, President Biden signed Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation. Section 1 of the E.O. states:

> It is the policy of my Administration to prevent and combat discrimination on the basis of gender identity or sexual orientation, and to fully enforce Title VII and other laws that prohibit discrimination on the basis of gender identity or sexual orientation. It is also the policy of my Administration to address overlapping forms of discrimination.

The E.O. directs agencies to identify and revise, suspend, or rescind agency actions, that "are or may be inconsistent with the policy set forth in section 1 of this order." E.O., Sec. 2

Pursuant to the E.O., I am withdrawing the memorandum, Application of *Bostock v. Clayton County*, dated January 17, 2021, and issued Tuesday, January 19, 2021, by Acting Assistant Attorney General John B. Daukas. I have determined that this memorandum is inconsistent in many respects with the E.O.

I plan to confer with Department leadership about issuing revised guidance that comports with the policy set forth in the E.O. As part of that process, we will seek the input of Division subject matter experts.

DRAFT

EXHIBIT 3.2.006

U.S. Department of Justice

Civil Rights Division

Principal Deputy Assistant Attorney General
950 Pennsylvania Ave, NW - RFK
Washington, DC 20530

MEMORANDUM

TO: Federal Agency Civil Rights Directors and General Counsels

FROM: Principal Deputy Assistant Attorney General Pamela S. Karlan
Civil Rights Division



SUBJECT: Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972

Several federal agencies have recently contacted the Civil Rights Division with questions regarding the application of the Supreme Court's reasoning in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. ___ (2020), to Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § 1681 *et seq*.) (Title IX), particularly in light of Executive Order 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, 86 Fed. Reg. 7023 (Jan. 25, 2021). The Department of Justice is charged with coordination of the implementation and enforcement of Title IX by Executive agencies. Exec. Order No. 12250, § 1-2, 45 Fed. Reg. 72,995 (Nov. 4, 1980). Under the Executive Order 12250 authority delegated to the Civil Rights Division, 28 C.F.R. § 0.51(a) (1981) and 28 C.F.R. § 42.412(a) (1981), I write to share the Division's view as to whether *Bostock* applies to Title IX.

Executive Order 13988 sets out the Administration's policy that "[a]ll persons should receive equal treatment under the law, no matter their gender identity or sexual orientation." Citing the Supreme Court's holding in *Bostock* that the prohibition on discrimination "because of . . . sex" under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (Title VII), covers discrimination on the basis of gender identity and sexual orientation, the Executive Order explains that *Bostock*'s reasoning applies with equal force to other laws that prohibit sex discrimination "so long as the laws do not contain sufficient indications to the contrary." The Executive Order directs agencies to review other laws that prohibit sex discrimination, including Title IX, to determine whether they prohibit discrimination on the basis of gender identity and sexual orientation. We conclude that Title IX does.

Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Because their statutory prohibitions against sex discrimination are similar, the Supreme Court and other federal courts consistently look to interpretations of Title VII to inform Title IX. *See, e.g.*, *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 75 (1992); *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007); *Gossett v. Oklahoma ex rel. Bd. of Regents for Langston Univ.*, 245 F.3d 1172, 1176 (10th Cir. 2001). Thus, *Bostock's* discussion of the text of Title VII informs the Division's analysis of the text of Title IX.

First, like Title VII, Title IX applies to sex discrimination against individuals. The *Bostock* Court focused on this feature of Title VII in reaching its holding. *Bostock*, 140 S. Ct. at 1740–41 ("[The statute] tells us three times—including immediately after the words "discriminate against"—that our focus should be on individuals"). Similarly, Title IX focuses on individuals when it uses the term "person." *See Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979) (stating that, in enacting Title IX, Congress "wanted to provide *individual citizens* effective protection against those [discriminatory] practices" (emphasis added)).

Second, Title IX's "on the basis of sex" language is sufficiently similar to "because of" sex under Title VII as to be considered interchangeable. In *Bostock* itself, the Supreme Court described Title VII's language that way: "[I]n Title VII, Congress outlawed discrimination in the workplace *on the basis of* race, color, religion, sex, or national origin." *Bostock*, 140 S. Ct. at 1737 (emphasis added); *see also Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986) ("[W]hen a supervisor sexually harasses a subordinate *because of* the subordinate's sex, that supervisor 'discriminate[s]' *on the basis of* sex." (emphasis added)). The *Bostock* Court concluded that Title VII's prohibition of discrimination "because of" sex includes discrimination because of sexual orientation and transgender status, finding that when an employer discriminates against employees for being gay or transgender, "the employer must intentionally discriminate against individual men and women in part because of sex." *Bostock*, 140 S. Ct. at 1740–43. The same reasoning supports the interpretation that Title IX's prohibition of discrimination "on the basis of" sex would prohibit recipients from discriminating against an individual based on that person's sexual orientation or transgender status. This interpretation of Title IX is consistent with the Supreme Court's longstanding directive that "if we are to give Title IX the scope that its origins dictate, we must accord it a sweep as broad as its language." *N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 521 (1982) (citations and internal alterations omitted).

In the months following the *Bostock* decision, two appellate courts have reached the same conclusion, citing *Bostock* to support their holdings that Title IX protects transgender students from discrimination on the basis of gender identity. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *reh'g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *petition for cert. filed*, No. 20-1163 (Feb. 24, 2021); *Adams v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1305 (11th Cir. 2020), *petition for reh'g en banc pending*, No. 18-13592 (Aug. 28, 2020). Other circuits reached this conclusion before *Bostock*. *See Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.,* 858 F.3d 1034, 1049–50 (7th Cir. 2017) (transgender boy was likely to succeed on his claim that school district violated Title IX by excluding him from the boys' restroom); *Dodds v. U.S. Dep't of Educ.,* 845 F.3d 217, 221–22 (6th Cir. 2016) (per curiam) (school district that sought to exclude transgender girl from girls' restroom was not likely to succeed on the claim because Title IX prohibits discrimination based on sex stereotyping and gender nonconformity).

After considering the text of Title IX, Supreme Court caselaw, and developing jurisprudence in this area, the Division has determined that the best reading of Title IX's prohibition on discrimination "on the basis of sex" is that it includes discrimination on the basis of gender identity and sexual orientation. Before reaching this conclusion, the Division considered whether Title IX "contain[s] sufficient indications" that would merit a contrary conclusion. The Division carefully considered, among other things, the dissenting opinions in

Gloucester and *Adams*, and the concerns raised in the dissents in *Bostock*. Like the majority opinions in those cases, however, the Division ultimately found nothing persuasive in the statutory text, legislative history, or caselaw to justify a departure from *Bostock*'s textual analysis and the Supreme Court's longstanding directive to interpret Title IX's text broadly. Whether allegations of sex discrimination, including allegations of sexual orientation or gender identity discrimination, constitute a violation of Title IX in any given case will necessarily turn on the specific facts, and therefore this statement does not prescribe any particular outcome with regard to enforcement.

I hope this memorandum provides a starting point for your agencies to ensure the consistent and robust enforcement of Title IX, in furtherance of the commitment that every person should be treated with respect and dignity. The Civil Rights Division is available to answer any questions your agencies have as you implement Title IX's protections against sexual orientation and gender identity discrimination.

EXHIBIT 3.2.007

U.S. Department of Justice
Civil Rights Division

Assistant Attorney General
950 Pennsylvania Ave, NW - RFK
Washington, DC 20530

March 31, 2022

Dear State Attorneys General:

The U.S. Department of Justice (the Department) is committed to ensuring that transgender youth, like all youth, are treated fairly and with dignity in accordance with federal law. This includes ensuring that such youth are not subjected to unlawful discrimination based on their gender identity, including when seeking gender-affirming care. We write to remind you of several important federal constitutional and statutory obligations that flow from these fundamental principles.

People who are transgender are frequently vulnerable to discrimination in many aspects of their lives, and are often victims of targeted threats, legal restrictions, and anti-transgender violence.[1] The Department and the federal government more generally have a strong interest in protecting the constitutional rights of individuals who are lesbian, gay, bisexual, transgender, queer, intersex, nonbinary, or otherwise gender-nonconforming,[2] and in ensuring compliance with federal civil rights statutes. The Department is also charged with the coordination and enforcement of federal laws that protect individuals from discrimination in a wide range of federally-funded programs and activities.[3]

Intentionally erecting discriminatory barriers to prevent individuals from receiving gender-affirming care implicates a number of federal legal guarantees. State laws and policies that prevent parents or guardians from following the advice of a healthcare professional regarding what may be medically necessary or otherwise appropriate care for transgender minors may infringe on rights protected by both the Equal Protection and the Due Process Clauses of the Fourteenth Amendment. The Equal Protection Clause requires heightened scrutiny of laws that discriminate on the basis of sex[4] and prohibits such discrimination absent an "exceedingly

[1] *See, e.g.*, Michelle M. Johns et al., Ctrs. for Disease Control and Prevention, *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students—19 States and Large Urban School Districts, 2017*, Morbidity and Mortality Weekly Report 68: 67-71 (2019), https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm?s_cid=mm6803a3_w (finding that transgender youth reported higher levels of violence victimization compared to their cisgender peers).
[2] *See, e.g.*, Exec. Order No. 13,988, § 1, 86 Fed. Reg. 7023 (Jan. 20, 2021); Pamela S. Karlan, Principal Deputy Assistant Attorney General, Civ. Rts. Div., U.S. Dep't of Justice, Memorandum, *Application of Bostock v. Clayton County to Title IX of the Education Amendments of 1972* (Mar. 26, 2021), https://www.justice.gov/crt/page/file/1383026/download.
[3] Exec. Order No. 12,250, § 1-201, 45 Fed. Reg. 72,995 (Nov. 2, 1980).
[4] *See*, *e.g.*, *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 610-13 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *reh'g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *cert. denied*, 2021 WL 2637992 (June 28, 2021); *Whitaker* v.

persuasive" justification.[5] Because a government cannot discriminate against a person for being transgender "without discriminating against that individual based on sex,"[6] state laws or policies that discriminate against transgender people must be "substantially related to a sufficiently important governmental interest."[7]

A law or policy need not specifically single out persons who are transgender to be subject to heightened scrutiny. When a state or recipient of federal funds criminalizes or even restricts a type of medical care predominantly sought by transgender persons, an intent to disfavor that class can "readily be presumed."[8] For instance, a ban on gender-affirming procedures, therapy, or medication may be a form of discrimination against transgender persons, which is impermissible unless it is "substantially related" to a sufficiently important governmental interest.[9] This burden of justification is "demanding."[10] Such a law or policy will not withstand heightened scrutiny when "the alleged objective" differs from the "actual purpose" underlying the classification.[11] In addition, the Due Process Clause protects the right of parents "to seek and follow medical advice" to safeguard the health of their children.[12] A state or local government must meet the heavy burden of justifying interference with that right since it is well established within the medical community that gender-affirming care for transgender youth is not only appropriate but often necessary for their physical and mental health.[13]

In addition to these constitutional guarantees, many federal statutes require recipients of federal financial assistance to comply with nondiscrimination requirements as a condition of receiving those funds. Relevant statutes include:

- **Section 1557 of the Affordable Care Act**[14] protects the civil rights of people—including transgender youth—seeking nondiscriminatory access to healthcare in a range of health

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Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034, 1051 (7th Cir. 2017), *cert. dismissed*, 138 S. Ct. 1260 (2018); *see also* Brief for the United States as Amicus Curiae Supporting Plaintiffs-Appellees, *Brandt v. Rutledge*, No. 21-2875 (8th Cir. Jan. 21, 2022); En Banc Brief for the United States as Amicus Curiae Supporting Plaintiff-Appellee, *Adams v. School Board of St. John's County*, No. 18-13592 (11th Cir. Nov. 26, 2021); Brief for the United States as Amicus Curiae Supporting Plaintiffs-Appellees, *Corbitt v. Taylor*, No. 21-10486 (11th Cir. Aug. 2, 2021).

[5] *United States v. Virginia*, 518 U.S. 515, 531 (1996) ("Parties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for that action.") (quoting *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982)).

[6] *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1741 (2020).

[7] *Grimm*, 972 F.3d at 608 (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 441 (1985) (internal quotations omitted)).

[8] *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 270 (1993) ("Some activities may be such an irrational object of disfavor that, if they are targeted, and if they also happen to be engaged in exclusively or predominantly by a particular class of people, an intent to disfavor that class can readily be presumed.").

[9] *Virginia*, 518 U.S. at 533.

[10] *Id.*

[11] *Miss. Univ.*, 458 U.S. at 730.

[12] *Parham v. J.R.*, 442 U.S. 584, 602 (1979).

[13] *See, e.g.*, *Brandt v. Rutledge*, 551 F. Supp. 3d 882, 891, 893 (E.D. Ark. 2021).

[14] 42 U.S.C. § 18116.

programs and activities.[15] Categorically refusing to provide treatment to a person based on their gender identity, for example, may constitute prohibited discrimination under Section 1557. As the U.S. Department of Health and Human Services has stated, restricting an individual's ability to receive medically necessary care, including gender-affirming care, from their health care providers solely on the basis of their sex assigned at birth or their gender identity may also violate Section 1557.[16]

- **Title IX of the Education Amendments of 1972**[17] prohibits sex discrimination, including sex-based harassment, by recipients of federal financial assistance that operate education programs and activities.[18] Policies and practices that deny, limit, or interfere with access to the recipient's education program or activity because students are transgender minors receiving gender-affirming care may constitute discrimination on the basis of sex in violation of Title IX.

- The **Omnibus Crime Control and Safe Streets Act of 1968**[19] prohibits sex discrimination in certain law enforcement programs and activities receiving federal financial assistance.[20] If a law enforcement agency takes a transgender minor who is receiving gender-affirming care into custody or arrests the child's parents on suspicion of child abuse because the parents permitted such medical care, that agency may be violating the statute's nondiscrimination provision.

- **Section 504 of the Rehabilitation Act of 1973**[21] protects people with disabilities, which can include individuals who experience gender dysphoria.[22] Restrictions that prevent, limit, or interfere with otherwise qualified individuals' access to care due to their gender

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[15] *See, e.g.*, Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972, reprinted at 86 Fed. Reg. 27,984 (May 25, 2021).
[16] U.S. Dep't Health & Hum. Servs., *Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy* (Mar. 2, 2022), https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf.
[17] 20 U.S.C. § 1681, *et seq*.
[18] *See* Karlan, *supra* note 2; *see also Doe v. Snyder*, --- F.4th ---, 2022 WL 711420, at *9 (9th Cir. Mar. 10, 2022); *Grimm*, 972 F.3d at 619.
[19] 34 U.S.C. § 10101, *et seq*.
[20] *See* 34 U.S.C. § 10228(c)(1); *see also* Kristen Clarke, Assistant Attorney General, Civ. Rts. Div., U.S. Dep't of Justice, Memorandum, *Interpretation of Bostock v. Clayton County regarding the nondiscrimination provisions of the Safe Streets Act, the Juvenile Justice and Delinquency Prevention Act, the Victims of Crime Act, and the Violence Against Women Act* (Mar. 10, 2022), https://www.justice.gov/crt/page/file/1481776/download.
[21] 29 U.S.C. § 794. Additionally, Title II of the Americans with Disabilities Act extends disability civil rights protections with respect to all programs, services and activities of state and local governments, regardless of the receipt of federal financial assistance. *See* 42 U.S.C. § 12132.
[22] *See, e.g.*, *Doe v. Penn. Dep't of Corrections*, No. 1:20-cv-00023-SPB-RAL, 2021 WL 1583556, at *12 (W.D. Pa. Feb. 19, 2021), report and recommendation adopted in relevant part, 2021 WL 1115373 (W.D. Pa. March 24, 2021); *Lange v. Houston Cnty.*, 499 F. Supp. 3d 1258, 1270 (M.D. Ga. 2020); *Doe v. Mass. Dep't of Correction*, No. 1:17-cv-12255-RGS, 2018 WL 2994403 at *6 (D. Mass. June 14, 2018); *Blatt v. Cabela's Retail, Inc*., No. 5:14-CV-04822, 2017 WL 2178123 (E.D. Pa. May 18, 2017).

dysphoria, gender dysphoria diagnosis, or perception of gender dysphoria may violate Section 504.

All persons should be free to access the services, programs, and activities supported by federal financial assistance without fear that they might face unlawful discrimination for doing so. Courts have held that many nondiscrimination statutes contain an implied cause of action for retaliation based on the general prohibition against intentional discrimination, and agencies have made this clear in regulations.[23] Thus, any retaliatory conduct may give rise to an independent legal claim under the protections described above.

* * *

Thank you for your continued commitment to improving the well-being of children and their families. The Department is always available to help ensure that state and local governments, many of which are recipients of federal financial assistance, meet their obligations under federal law. Please feel free to contact the Department's Civil Rights Division for assistance if you have further questions.

Sincerely,



Kristen Clarke
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

[23] *See, e.g.*, *Jackson v. Birmingham Bd. of Ed.*, 544 U.S. 167, 173 (2005) ("Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination…"). Examples of agency regulations that prohibit retaliation include 24 C.F.R. § 1.7(e) (Dep't of Housing and Urban Development); 34 C.F.R. § 100.7(e) (Dep't of Education); 38 C.F.R. § 18.7(e) (Dep't of Veterans Affairs); and 45 C.F.R. § 80.7(e) (Dep't of Health and Human Services). Other relevant regulations can be found in the Civil Rights Division's Title VI Legal Manual. Civ. Rts. Div., U.S. Dep't of Justice, *Title VI Legal Manual*, Section VIII, https://www.justice.gov/crt/book/file/1364106/download.

EXHIBIT 3.2.008

Report on Trump Era EO 13,798 from the Civil Rights Division

Office	Involvement with EO 13,798	Summary of types of civil rights issues CRT foresees coming up as a result of these documents	Link to document
Appellate Section	APP used the EO in the SG memo in Fulton v. City of Philadelphia (foster care/same-sex couples), EO in the Interest of the United States section, but I don't recall if the government ever actually filed a brief in that case.	APP has no concerns	N/A
Complaint Adjudication Office	CAO has not had any cases in which EO 13,798 or associated guidance documents or regulations have been raised in the litigation	EO 13,798 has not had and is not expected to have any role in Department of Justice Final Decisions.	N/A
Criminal Section	CRM doesn't have any specific involvement with EO 13,798 or associated guidance documents or regulations	CRM has no concerns	N/A
Disability Rights Section	DRS has not had any cases in which EO 13,798 or associated guidance documents or regulations have been raised in the litigation	DRS does not foresee any ADA-related, civil rights issues coming up as a result of these documents.	N/A
Employment Litigation Section	ELS has not had any cases in which EO13,798 or associated guidance documents or regulations have been raised in litigation.	The directives in EO 13798 and related guidance memoranda regarding the scope of religious liberties could impact ELS' efforts to effectively enforce Title VII. ELS is concerned about state or local governments arguing that they lack the authority to prevent or take corrective action that would restrict discriminatory adverse employment actions against an LGBTI employee by another government employee, or contractor from a religious organization working at a government agency, if the basis for such discriminatory action is justified under a religious tenet, belief, or association.	N/A
Educational Opportunities Section	EOS has not had any cases in which EO 13,798 or associated guidance documents or regulations have been raised in the litigation	The 2017 Attorney General Memorandum on Federal Law Protections for Religious Liberties (2017 Memo) and the Guidance Regarding Department of Justice Grants (Grants Guidance), stemming from Executive Order 13,798, 82 Fed. Reg. 21675 (May 4, 2017), contain a sweeping view of the Religious Freedom Restoration Act (RFRA) that may severely undermine	Link

		the rights in Title IV of the Civil Rights Act of 1964, 42 U.S.C § 2000c, and other, civil rights protections.	
Federal Coordination & Compliance	FCS does not have any first-hand knowledge of relevant litigation, but searched and listed: • *City & Cty. of San Francisco v. Azar*, 411 F. Supp. 3d 1001 (N.D. Cal. 2019) • U.S. Pastor Council et al v. Equal Employment Opportunity Commission et al, No. 4:18cv824 (N.D. Tex., Oct. 6, 2018) • Arizona Yage Assembly Et al v. Barr Et al, No. 2:20cv2373 (D. Ariz.) • Public Advocate of The United States V. • United States Department of Justice, No. 1:19cv984 (D.D.C., April 9, 2019) • DARRELL PATTERSON, Petitioner, v. WALGREEN CO., Respondent • Carmichael v. Pompeo • Pennsylvania v. Trump 281 F.Supp.3d 553, 563+ , E.D.Pa. • Massachusetts v. United States Department of Health and Human Services 923 F.3d 209, 216	FCS is concerned that the documents may; 1) leave LGBTQI+ applicants and beneficiaries of recipients of DOJ FFA exposed to potential discrimination 2)The third-party impacts resulting from exemptions and accommodations are given inadequate value in the analysis provided in the AG Memorandum 3)Mandatory OLP review will significantly delay DOJ review of agency documents, many of which will not have any implications for religious liberty 4) Mandatory OLP review will significantly delay DOJ review of agency documents, many of which will not have any implications for religious liberty	Link

Office of the Assistant Attorney General	These cases can be found on CRT's website: Protecting Constitutional and Civil Liberties During COVID-19. • Givens v. Newsome • Lighthouse Fellowship Church v. Northam	The legal landscape regarding COVID-related restrictions and free exercise claims has shifted over the past year. Initially, the Supreme Court permitted a number of the restrictions to go into effect. See, e.g., South Bay United Pentecostal Church v. Newsom, 140 S. Ct. 1613 (2020) (denying an application for injunctive relief against a California executive order that limited attendance at places of worship to 25% of building capacity or a maximum of 100 attendees). However, a now majority of the Justices seem to have adopted the view that so long as a jurisdiction allows virtually any type of secular business (even ones where customers stay for only a short period of time) to operate with more individuals inside its facilities, it cannot restrict religious gatherings to smaller numbers.	Link
Housing & Civil Enforcement	HCE has not had any case arise from EO 13,798, or the DOJ Guidance on Federal Law Protections for Religious Liberty pursuant to it.	In short, the impact of EO 13798 and the guidance pursuant to it is that since they purport merely to describe existing legal protections under the Constitution, the Religious Freedom Restoration Act, Title VII, and other statutes, there is no actual impact on our statutes. But the guidance does suggest how the federal government should interpret these constitutional provisions and statutes, and to the extent that this impacts the actions or arguments advanced by actors in the Executive Branch, it could have an impact.	Link
Immigrant & Employee Rights Section	IER has not had any cases that cited to EO 13,798 or associated guidance documents or regulations in our cases in litigation	Based on prior cases, we don't foresee these documents coming up in our enforcement work. For example, we haven't seen respondents raise religious beliefs to justify discrimination based on citizenship status or national origin.	N/A
Policy Section	POL has not had any cases in which EO 13,798 or associated guidance documents or regulations have been raised in the litigation	POL has no concerns	N/A
Special Litigation Section	SPL has not had any cases in which EO 13,798 or associated guidance documents or regulations have been raised in the litigation	SPL has no concerns	N/A
Voting Section	VOT has not had any cases in which EO 13,798 or associated guidance documents or regulations have been raised in the litigation,	VOT has no concerns	N/A

EOS Response to Trump Era EO 13,798 on Promoting Free Speech and Liberty

EOS recognizes the importance of protecting the free exercise of religion from unlawful state interference and safeguarding individuals from religious-based discrimination. Indeed, it enforces such nondiscrimination protections in public schools. *See e.g.,* Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c, *et seq*. However, the 2017 Attorney General Memorandum on Federal Law Protections for Religious Liberties (2017 Memo) and the Guidance Regarding Department of Justice Grants (Grants Guidance), stemming from Executive Order 13,798, 82 Fed. Reg. 21675 (May 4, 2017), contain a sweeping view of the Religious Freedom Restoration Act (RFRA) that may severely undermine these, and other, civil rights protections.

One need only look at these documents' potential application to schools to understand the scope of the problem. CRT enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, *et seq*., which prohibits discrimination on the basis of sex in education programs or activities receiving federal funding. In practice, this includes every public K-12 school, college, and university in the country, private K-12 schools that receive certain types of federal financial assistance, and virtually all private colleges and universities. To be sure, Title IX already contains an exemption that protects religious institutions. Specifically, the statute exempts "educational institution[s] which [are] controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization[s]." 20 U.S.C. § 1681(a)(3).[1] But, EO 13,798, the Grants Guidance, and the 2017 Memo seek to extend religious exemptions in a manner that undercuts Title IX's underlying protections. For example, rather than limiting exemptions to religious institutions, the 2017 Memo states that every individual has the right to "act or abstain from action" based on their religious beliefs, even where the individual has a legal obligation to confer benefits on third parties. *See* 2017 Memo at pp. 2, 5. Thus, the Memo's interpretation of RFRA suggests that *any* teacher in *any* school—whether a religious school or a public school supported wholly by public funds—could refuse to teach an openly gay student or a transgender student on the basis that the student's identity is inconsistent with the teacher's religious beliefs. Such a broad exemption would upend Title IX enforcement.[2]

On December 17, 2020, the Department (lead by OJP-OCR), and eight other agencies, issued a joint final rule to provide wide-ranging protections for faith-based organizations seeking federal grant funding. These regulations became effective on January 19, 2021 and are still in effect. *See* Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities, 85 Fed. Reg. 82,037, 82,137 (Dec, 17, 2020). These regulations are deeply concerning given that they carry the force of law. Further, Congress only has a limited time for potential nullification of these regulations under the Congressional Review Act.

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[1] For example, while there is a Title IX regulation prohibiting a school from discriminating against an employee or applicant for employment on the basis of pregnancy, *see* 28 C.F.R. § 54.530(b), a Catholic university would not be required to consider an unmarried pregnant individual for employment if doing so "would not be consistent with the religious tenets of such organization" 20 U.S.C. § 1681(a)(3). Similarly, religious schools that meet the requirements of 20 U.S.C. § 1681(a)(3) would be exempt from Title IX prohibitions against discrimination on the basis of gender identity, transgender status, and sexual orientation.

[2] This broad interpretation may also be inconsistent with EO 13988.

That said, the Grants Guidance, which summarizes these regulations and the Department's policies on EO 13,798 is equally troubling. It suggests that DOJ must allow its religious grant recipients to engage in otherwise prohibited conduct in an effort to make an "accommodation" under RFRA. In practice, this could allow religious institutions to support the exact conduct a grant is designed to prevent. For instance, the Office on Violence Against Women administers a Campus Grant Program designed to help postsecondary institutions prevent and respond to sexual assault, domestic violence, dating violence, and stalking. The Grants Guidance suggests that DOJ would have to allow a religious college to use Campus Program funds to provide training to female students that stated that marital rape is permissible if the institution claimed that its religious tenets viewed all relations between husband and wife as consensual. We disagree that RFRA requires such an unacceptable outcome, which would have implications for our Title IX enforcement.

On December 17, 2020, the Department (lead by OJP-OCR), and eight other agencies, issued a joint final rule to provide wide-ranging protections for faith-based organizations seeking federal grant funding. These regulations became effective on January 19, 2021 and are still in effect. *See* Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities, 85 Fed. Reg. 82,037, 82,137 (Dec, 17, 2020). These regulations are deeply concerning given that they carry the force of law. Further, Congress only has a limited time for potential nullification of these regulations under the Congressional Review Act.

FCS Response to Trump Era EO 13,798 on Promoting Free Speech and Liberty

FCS has identified the following concerns with the Trump Era EO:

A. These documents may leave LGBTQI+ applicants and beneficiaries of recipients of DOJ FFA exposed to potential discrimination. For LGBTQI+ beneficiaries of specific classes of recipients, such as domestic violence organizations and shelters, universities, and health clinics, the impacts of the broad interpretation of religious liberties found in the documents at issue could be significant. *See, e.g.* 2020 OVW Grant Awards by State (including a range of recipients). Such protections have been used to justify denial of medically necessary care for transgender individuals, denial of shelter for individuals experiencing homelessness, and denial of foster home placements. Religious protections are not irrelevant, however, accommodations should be granted on a case-by-case basis keeping in mind the nature of the service the entity is being funded to provide. For example, if a religiously-affiliated domestic violence (DV) shelter receives FFA, the wholesale exclusion of LGBTQI+ victims from their programs based on a religious exercise claim should not be automatically permitted absent rigorous analysis.

B. The third-party impacts resulting from exemptions and accommodations are given inadequate value in the analysis provided in the AG Memorandum. The AG Memorandum on Federal Law Protections for Religious Liberty (AG Memorandum) provides that "RFRA applies even where a religious adherent seeks an exemption from a legal obligation requiring the adherent to confer benefits on third parties." AG Memorandum 5. While the memorandum explains that "burdens imposed on third parties are relevant to RFRA analysis," we have seen that the harm to third parties was often dismissed or not addressed at all when discussing protections based on religion or conscious objections in recent rulemaking. *Id.* For example, in the 2019 HHS Provider Conscience Final Rule, commenters raised the concern that these rules may result in harm to others. HHS responded to commenters that:

> …This type of objection is not accepted for any other anti-discrimination law. For example, the Fair Housing Act and the Americans with Disabilities Act, under certain circumstances, require building and apartment owners to incur costs to ensure that facilities are accessible to persons with disabilities. These statutes impose costs, but Congress and several Presidents have deemed it important to remove barriers to full participation in economic and social life for persons with disabilities. Similarly, America has since the founding recognized that Free Speech results in harm and hurt feelings (sometimes extraordinarily so) for many Americans, yet it is deemed a price worth paying. Conscience protection should be not be a special exception to the principle that fundamental rights do not depend on there being zero conflicts or disagreements in their exercise.

Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23170, 23251 (May 21, 2019). In declining to change the NPRM language, HHS chose to compare the cost of modifying buildings for accessibility and "hurt feelings" to the documented concerns that HHS' interpretation of provider conscience

laws would have potentially life and death consequences for some individuals (primarily LGBTQI+ individuals and individuals seeking or needing to obtain a pregnancy termination). Such analysis clearly fails to provide the appropriate import on the potential burdens faced by third parties.

C. Mandatory OLP review will significantly delay DOJ review of agency documents, many of which will not have any implications for religious liberty. Specifically relevant to FCS's authorities, the AG Memorandum states that the Office of Legal Policy will review "any proposed agency or executive action upon which the Department's comments, opinion, or concurrence are sought… to ensure that such action complies with the principles of religious liberty outlined in [the] memorandum and appendix." AG Memorandum at 7. The memorandum provides, as an example, those proposed agency and executive actions reviewed in accordance with Executive Order 12250.

D. Much of the language in the Guidance Regarding Department of Justice Grants and EO 13798 (Guidance) is codified at 28 C.F.R. Part 38. *See Partnerships with Faith-Based and Other Neighborhood Organizations*, 85 Fed. Reg. 82037 (Dec. 17, 2020) (multi-agency final rule implementing Executive Order 13831, effective January 19, 2021). We have included an attachment showing the deletions and additions made to 28 C.F.R. §§ 38.4-38.6 of DOJ's rule in response to EO 13798. Please let us know if you would like a redline of the entire rule. We would need additional time to consult with other Sections to fully consider the ramifications of the rule beyond the general points above.

E. The Guidance refers extensively to the Office of Justice Programs' FAQs, which were based on the 2016 version of the Partnerships regulation and may warrant review.

Office of the Assistant Attorney General's Response to Trump Era EO 13,798 on Promoting Free Speech and Liberty

On April 27, Attorney General Barr issued a memorandum for the AAG in CRT and all U.S. Attorneys, Balancing Public Safety with the Preservation of Civil Rights. The memorandum told USAOs to "be on the lookout" for state and local COVID-related directives "that could be violating the constitutional rights and civil liberties of individual citizens." It highlighted the possibility of restrictions that might involve "discrimination against religious institutions and religious believers" as well as possible "discrimination against disfavored speech and undue interference with the national economy." It directed Assistant Attorney General for Civil Rights, Eric Dreiband, and Matthew Schneider; the U.S. Attorney for the Eastern District of Michigan, to "oversee and coordinate our efforts to monitor state and local policies."

Pursuant to that memorandum, the Civil Rights Division (working essentially out of the front office, rather than through one of the litigating sections) filed a series of statements of interest and amicus briefs supporting challenges to various COVID-related restrictions. Those cases are collected on CRT's website: Protecting Constitutional and Civil Liberties During COVID-19.

The Department filed at least one statement of interest supporting a speech clause-based challenge by individuals who wanted to conduct a Second Amendment protest at the California capitol. Givens v. Newsome.

But the bulk of the Department's filings were on behalf of churches and other religious institutions challenging capacity restrictions. The core of the Department's arguments was that the restrictions on the size of religious gatherings could not be more stringent than restrictions on the size of other indoor activities. So, for example, it argued that a Virginia executive order that restricted the size of gatherings that "include[d] parties, celebrations, religious, or other social events" was unconstitutional because it did not also apply to "business operations offering professional rather than retail services" and because other orders exempted certain retail businesses from the ten-person limit or, even if they imposed a ten-customer limit, did not restrict the number of employees who could also be present. Lighthouse Fellowship Church v. Northam.

In addition to court filings, the Department also sent letters to a number of jurisdictions raising free exercise clause-related concerns about their COVID-related restrictions.

Virtually all of the filings were at the TRO or preliminary injunction phase.

The legal landscape regarding COVID-related restrictions and free exercise claims has shifted over the past year. Initially, the Supreme Court permitted a number of the restrictions to go into effect. See, e.g., *South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020) (denying an application for injunctive relief against a California executive order that limited attendance at places of worship to 25% of building capacity or a maximum of 100 attendees). Particularly since the change in the Court's membership this past fall, however, the Court has been less deferential to states' decisions. The cases so far have all come to the Court in the posture of applications, rather than plenary consideration. Most recently, in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), and *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021), a majority of the Justices seem to have adopted the view that so long as a jurisdiction allows virtually any type of secular business (even ones where customers stay for only a short period of time) to operate with more individuals inside its facilities, it cannot restrict religious gatherings to smaller numbers.

The Department has not filed any statements of interest or amicus briefs since the Supreme Court's decisions in *Roman Catholic Diocese* and *South Bay Pentacostal II*.

HCE Response to Trump Era EO 13,798 on Promoting Free Speech and Liberty

1) Regarding the first question, the issue of EO 13798, or the DOJ Guidance on Federal Law Protections for Religious Liberty pursuant to it, has not arisen in our cases.

2) The short answer to the impact of EO 13798 and the guidance pursuant to it is that since they purport merely to describe existing legal protections under the Constitution, the Religious Freedom Restoration Act, Title VII, and other statutes, there is no actual impact on our statutes. But the guidance does suggest how the federal government should interpret these constitutional provisions and statutes, and to the extent that this impacts the actions or arguments advanced by actors in the Executive Branch, it could have an impact.

- For example, principle number 9 states:

> ***9. Government may not interfere with the autonomy of a religious organization.***
>
> *Together, the Free Exercise Clause and the Establishment Clause also restrict governmental interference in intra-denominational disputes about doctrine, discipline, or qualifications for ministry or membership. For example, government may not impose its nondiscrimination rules to require Catholic seminaries or Orthodox Jewish yeshivas to accept female priests or rabbis.*

  The issue of qualification for membership can sometimes come up in the context of the Fair Housing Act or Title II. For example, a number of years ago we considered a case involving a woman discharged from a Hindu Ashram, or commune. The Ashram said she was uncooperative, and she alleged it was due to disability in violation of the FHA. A vigorous reading of Principle 9 would suggest that her FHA case would be constitutionally barred. Of course, that issue in a given case would be up to a judge to decide.

- Likewise Principle 10 through 15 of the Guidance on Federal Protections for Religious Freedom describe how the Religious Freedom Restoration Act (RFRA), applies to limit governmental action, and describes RFRA in more detail at pages 5a-7a. In this discussion, the guidance does not address the application of RFRA to civil rights laws like the FHA or Title II except to note, in discussing what government interests are compelling, that the "fundamental, overriding interest in eradicating racial discrimination in education-discrimination that prevailed, with official approval, for the first 165 years of this Nation's history," *Bob Jones Univ. v. United States,* 461 U.S. 574, 604 (1983), would be a compelling governmental interest. See p. 6a.

- The guidance describes RLUIPA on pages 7a-8a, in terms that are very general in nature, and does not take a position on any substantive issue that is beyond the statutory text of RLUIPA and things that clearly follow from it.

EXHIBIT 3.2.009

AMERICAN CENTER
for LAW & JUSTICE

DISTRICT OF COLUMBIA
[redacted]
T:
F:

TENNESSSEE
[redacted]
T:
F:

VIRGINIA
[redacted]
T:
F:

July 8, 2024

Kristen Clarke, Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Re: Request for Guidance on Widespread Religious Discrimination by Senior Living Communities and Complexes

To whom it may concern,

The American Center for Law and Justice ("ACLJ")[1] would like to bring to your attention the recent surge in religious discrimination against residents of senior living communities and complexes across the country. The purposes of this letter are to (1) raise awareness of the ongoing illegal conduct taking place; (2) explain the federal law that is being misunderstood/misapplied; (3) and respectfully request guidance from the Department of Justice ("DOJ"), the Department of Housing and Urban Development ("HUD"), and/or any other appropriate agency, on religious discrimination in senior living facilities specifically relating to religious decorations, gatherings and advertisements in common areas open to all residents.

ISSUE

Since the beginning of 2023, the ACLJ has addressed violations of the Fair Housing Act ("FHA") by 10 different complexes/communities spread across eight states. Each instance involves the same problem – senior living facilities across the country simply do not understand the laws that have been in place for decades preventing religious discrimination against residents by housing complexes. Some instances of discrimination we have addressed include: (1) Bible

[1] By way of introduction the American Center for Law and Justice is an organization dedicated to the defense of religious and constitutional freedoms. The ACLJ engages legal, legislative, and cultural issues through advocacy, education, and litigation that includes representation before the United States Supreme Court and international tribunals around the globe.

studies prohibited from common areas/rooms while other resident-led groups are able to utilize the same area for other gatherings such as card games, board games, and knitting clubs; (2) religious decorations banned while allowing a variety of other decorations; (3) Bible studies and other religious gatherings banned from advertising the event in common areas where other resident-led groups advertise their events; and (4) religious literature banned in common areas used by other individuals for various pamphlets, flyers, and business cards. Ironically, the alleged reasons for the illegal conduct are attempts to be "neutral," more "inclusive," or even claims that allowing Bible studies in common areas violates federal housing laws. Furthermore, some residents have faced eviction for exercising rights protected by the FHA.

LAW

The freedom to exercise and practice religion is one of the most revered rights in the United States and is not left at the doorstep when one enters their home. The FHA preserves the free exercise of religion in housing and makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . religion . . . ." 42 U.S.C. § 3604(b). Moreover, the FHA also makes it unlawful to coerce, intimidate, threaten, or interfere with any person exercising any right granted under the FHA. 42 U.S.C. § 3617. The United States Supreme Court notes that the FHA must be given "generous construction" because of the act's "broad and inclusive" language. *Hunter v. District of Columbia*, 64 F. Supp. 3d 158, 173 (D.D.C. 2014) (quoting *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209, 212 (1972)). Congress authorizes HUD to administer the FHA. 42 U.S.C. § 3608.

Buyers and renters are not only protected from discrimination before a sale, but the FHA also reaches post-acquisition discriminatory conduct. *Bloch v. Frischolz*, 587 F.3d 771, 776 (7th Cir. 2009); *Evans v. Tubbe*, 657 F.2d 661, 662-663 & n.3 (5th Cir. 1981). Accordingly, courts have explained that

> The inclusion of the word "privileges "implicates continuing rights . . . there are many "services or facilities" provided to the dwelling associated with the occupancy of the dwelling. Under this natural reading, the reach of the statute encompasses claims regarding services or facilities perceived to be wanting after the owner or tenant has acquired possession of the dwelling."

Comm. Concerning Cmty. Improvement v. City of Modesto, 583 F.3d 690, 713 (9th Cir. 2009) (see also *Idaho Aids Found., Inc. v. Idaho Hous. & Fin. Ass'n*, No. CV-04-155-S-BLW, 2008 U.S. Dist. LEXIS 16178, *16 (D. Idaho Feb. 29, 2008) ("Consistent with Congress' broad purpose in enacting the FHA, its language, and HUD's implementing regulations, courts throughout the country have held that § 3604 applies to a myriad of activities related to housing beyond the actual selling and renting of homes.")). The DOJ emphasizes that the FHA's ban on religious discrimination covers both overt discrimination against members of a particular religion as well as less direct actions. U.S. DOJ, Civil Rights Div., *The Fair Housing Act*, https://www.justice.gov/crt/fair-housing-act-1 (last visited June 9, 2024).

Even if a senior complex receives Section 8 funding from HUD, the complexes are still subject to HUD's housing regulations and not given a free pass to violate federal law. Specifically, HUD regulations prohibit religious discrimination that imposes "different terms, conditions, or privilege relating to the sale or rental of a dwelling." 24 C.F.R. 100.65(a). Moreover, HUD makes it clear that "limiting the use of privileges, services, or facilities, associated with a dwelling" because of the owner's or tenant's religion is prohibited as well. 24 C.F.R. 100.65(b)(4).

Particularly relevant to the specific issues here is the DOJ's instruction regarding residents' rights to engage in religious speech and other activities in common areas and meeting rooms:

> No one may be discriminated against in the sale, rental or enjoyment of housing because of their religious beliefs. This includes equal access to all the benefits of housing: someone could not, for example, be excluded from reserving a common room for a prayer meeting when the room may be reserved for various comparable secular uses.

U.S. DOJ, *Know Your Rights: Federal Laws Protecting Religious Freedoms*, https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/know_your_rights.pdf (last visited June 9, 2024).

Further, the FHA prohibits an apartment complex, condominium or other housing complex from *inconsistent* application of rules or regulations to single out religious speech and/or beliefs for different treatment. In the case of *Bloch v. Frischholz*, for example, plaintiff homeowners brought suit under the FHA against the condo association following the association's refusal to allow the owners to display a mezuzah on their exterior doorpost pursuant to a facially neutral rule that barred the placement of "mats, boots, shoes, carts or objects of any sort" outside a co-owner's door. *Bloch v. Frischholz*, 587 F.3d 771, 773 (7th Cir. 2011). The Court upheld the Blochs' claim of discriminatory intent against the association where evidence indicated that the association ordered the removal of the mezuzah but allowed other tables and coat racks to remain in place. *Id.* at 786. The Court reasoned that a selective interpretation and/or enforcement of the rule could infer discriminatory intent. *Id.* The Second Circuit, in a similar fashion, "recognized that an FHA violation could be established through a showing that a facially neutral or policy had a discriminatory effect on a protected class." *Anderson Group, LLC v. City of Saratoga Springs*, 805 F.3d 34, 49 (2d. Cir. 2015).

CONCLUSION

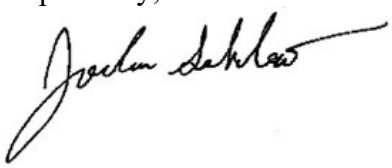
Time and time again, senior citizens fall victim to illegal religious discrimination. Oftentimes, Bible studies and prayer groups are formed in complexes because many of the residents are physically unable to attend church. As discussed above, federal laws and regulations are already in place to combat religious discrimination by senior living facilities. The rise in the cases we have seen, however, seem to reflect more of a misunderstanding of the applicable statutes and regulations. For example, most residents we have assisted have been denied access to an apartment's community room or prevented from having religious decorations in an effort by management to be "neutral" or "more inclusive." In no way does the FHA permit

complexes to discriminate on the basis of religion, which would include preventing religious activity in the name of neutrality. We have explained to each complex that this practice of excluding religious groups while including any other groups violates federal law. Following these explanations, we have been able to reach quick resolutions in most of the matters after laying out the clear and longstanding FHA. But nonetheless, the fact that such legal action was necessary demonstrates a widespread lack of awareness of what the FHA actually prohibits.

Therefore, we respectfully request that the DOJ, HUD, or any other appropriate agency provide a written guidance to senior living complexes and management companies explaining the laws and regulations currently in place that prohibit religious discrimination in the context of religious gatherings, decorations, and advertisements. Agencies oftentimes offer guidance on specific issues. For example, in May 2023, the United States Department of Education offered "Guidance on Constitutionally Protected Prayer and Religious in Public Elementary and Secondary Schools." The DOJ explains "guidance materials often convey important information to the public in language that is clearer and more accessible than the underlying statutes and regulations. Department of Justice Manual 1-19.000 – Principles for Issuance and Use of Guidance Documents, https://www.justice.gov/jm/1-19000-limitation-issuance-guidance-documents-1. If any of these agencies were to provide a similar guidance then instances of discrimination against senior citizens could be prevented in the future.

We appreciate your attention to this matter and are hopeful this letter results in HUD and/or DOJ guidance.

Respectfully,



Jordan Sekulow
Executive Director
American Center for Law & Justice



Garrett Taylor
Associate Counsel
American Center for Law & Justice

EXHIBIT 3.2.010

INDEPENDENCE
LAW CENTER

[redacted]
Community Director, Residential
River Front Apartments
[redacted]

March 28, 2025

Re: Religious discrimination in government-subsidized senior living facilities relating to religious decorations, gatherings, advertisements, or other materials in common areas open to all residents.

To Whom It May Concern:

The Independence Law Center (ILC) has been retained to represent a resident of your facility who has been affected by the recent policy change made in March, 2025. By way of introduction, ILC is a public interest law and educational civil rights law firm specializing in First Amendment issues, religious liberty, and speech protections. We provide representation and advice to a number of people related to matters similar to the one that the residents at River Front Apartments are experiencing.

This resident has informed us that your apartment facility has implemented a new rule that prohibits religious decorations or activities in the common areas of the facility, which includes decorations on private residents' doorways in areas that are open to all other residents. By implementing this new policy, however, River Front Apartments is engaged in religious discrimination in violation of the Fair Housing Act, as well as unconstitutional viewpoint discrimination in violation of the First Amendment of the United States Constitution.

FACTS

In a letter dated March 17, 2025, local management of the apartments indicated that pursuant to "Fair Housing guidelines," "decorating and celebrating for any holiday other than those listed in the paragraphs below [spring, fall, winter, summer, Independence Day, Labor Day, Memorial Day, birthdays, etc.], and presentation of any religious materials is not allowed in any of the common areas. This includes signage, decorations, any hosted bible studies or meetings, etc." The letter further specifies that "[c]ommon areas include anywhere on the property that is not inside of your apartment." The letter ironically ended by saying it was in the name of "inclusivety and diversity" that the apartment complex was prohibiting Bible studies when someone might see them and prohibiting any religious themes when tenants chose to decorate their own doors.

[redacted] • [redacted] • FAX: [redacted] • [redacted]@indlawcenter.org • independencelaw.org

A subsequent letter was sent the following day, March 18, 2025, from Charise Walker of PMI, the property management company as agents for River Front, clarifying that the intent of this new rule was to provide an "inclusive" experience, but this effort at promoting inclusion still meant excluding any reference to religion. This letter explained that the common areas would nonetheless be open for other uses and activities, such as "potluck dinners, barbecues, and heart health education." There were further examples of decorations that could still be permitted in common areas and on the outside of the residents' doors, such as "floral decorations and pastel colors for the Spring season, autumn leaves for the Fall season, and snowflakes and icicle lights for Winter season." Noteably, these examples exclude religious pictures, symbols, or messages.

STATEMENT OF RELEVANT LAW

It is our hope that the following discussion will clarify this important area of the law and avoid needless litigation. We truly believe this issue can be resolved amicably.

RIVER FRONT APARTMENT'S DENIAL OF THE COMMON AREAS FOR RELIGIOUS DECORATION, MATERIAL, OR OTHER USE IS DISCRIMINATORY AND UNCONSTITUTIONAL.

The freedom to exercise and practice religion is one of the most sacred protections enshrined in the First Amendment of the United States Constitution. The Fair Housing Act (FHA) preserves the free exercise and practice of religion in housing, making it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . religion . . . ." 42 U.S.C. §3604(b). Moreover, the FHA makes it unlawful "[t]o make, print, or publish, . . . any notice, statement, or advertisement, . . . that indicates any preference, limitation, or discrimination based on . . . religion[.]". 42 U.S.C. §3604(c). Finally, the FHA also makes it unlawful to coerce, intimidate, threaten, or interfere with any person exercising any right granted under the FHA. 42 U.S.C. §3617. The United States Supreme Court notes that the FHA must be given "generous construction" because of the act's "broad and inclusive" language. *Hunter v. District of Columbia*, 64 F. Supp. 3d 158, 173 (D.D.C. 2014) (quoting *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209, 212 (1972)).

Buyers and renters are not only protected from religious discrimination before a sale, but these renters are also protected after the sale as they continue to use the property. In fact, courts have explained that:

> The inclusion of the word "privileges" implicates continuing rights . . . there are many "services or facilities" provided to the dwelling associated with the occupancy of the dwelling. Under this natural reading, the reach of the statute

> encompasses claims regarding services or facilities perceived to be wanting after the owner or tenant has acquired possession of the dwelling.

Comm. Concerning Cmty. Improvement v. City of Modesto, 583 F.3d 690, 713 (9th Cir. 2009). *See also Idaho Aids Found., Inc. v. Idaho Hous. & Fin. Ass'n,* No. CV-04-155-S-BLW, 2008 U.S. Dist. LEXIS 16178, *16 (D. Idaho Fed. 29, 2008) ("Consistent with Congress' broad purpose in enacting the FHA, its language, and HUD's implementing regulations, courts throughout the country have held that §3604 applies to a myriad of activities related to housing beyond the actual selling and renting of homes."). Additionally, the Department of Justice ("DOJ") emphasizes that the FHA's ban on religious discrimination covers both overt discrimination against members of a particular religion as well as less direct actions. U.S. DOJ, Civil Rights Div., *The Fair Housing Act*, https://www.justice.gov/crt/fair-housing-act-1 (last visited March 27, 2025).

Even if the senior living facility receives government subsidies, those facilities are still subject to HUD's housing regulations and not given a free pass to discriminate on the basis of religion in violation of federal law. Specifically, HUD regulations prohibit religious discrimination that imposes "different terms, conditions, or privileges relating to the sale or rental of a dwelling." 24 C.F.R. 100.65(a). Moreover, HUD makes it clear that "limiting the use of privileges, services, or facilities, associated with a dwelling" because of the owner's or tenant's religion is prohibited as well. 24 C.F.R. 100.65(b)(4).

Particularly relevant to the specific issue here is the DOJ's explicit instruction regarding residents' rights to engage in religious speech and other activities in common areas and meeting rooms:

> No one may be discriminated against in the sale, rental or enjoyment of housing because of their religious beliefs. This includes equal access to all the benefits of housing: **someone could not, for example, be excluded from using a common room for a prayer meeting when the room may be reserved for various comparable secular uses**.

U.S. DOJ, *Know Your Rights: Federal Laws Protecting Religious Freedoms*, https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/know_your_rights.pdf (last visited March 28, 2025) (emphasis added).

Further, the FHA prohibits an apartment complex, condominium, or other housing complex from an inconsistent application of rules or regulations to single out religious speech and/or beliefs for different treatment. In the case of *Bloch v. Frischholz*, for example, the plaintiff homeowners brought suit under the FHA against the condo association following the association's refusal to allow the owners to display a mezuzah on their exterior doorpost pursuant to a facially neutral rule that barred the placement of

"mats, boots, shoes, carts, or objects of any sort" outside a co-owner's door. 587 F.3d 771, 773 (7th Cir. 2011). The Court upheld the Blochs' claim of discriminatory intent against the association where evidence indicated that the association ordered the removal of the mezuzah but allowed other tables and coat racks to remain in place. *Id*. at 786. The Court reasoned that selective interpretation and/or enforcement of the rule could infer discriminatory intent. *Id*. In a similar fashion, the Second Circuit "recognized that an FHA violation could be established through a showing that a facially neutral rule or policy had a discriminatory effect on a protected class." *Anderson Group, LLC v. City of Saratoga Springs*, 805 F.3d 34, 49 (2d. Cir. 2015) (citations omitted).

THE ESTABLISHMENT CLAUSE DOES NOT JUSTIFY DISCRIMINATION AGAINST RELIGION IN RIVER FRONT COMMON AREAS.

Allowing religious organizations to access government-subsidized property on the same terms as nonreligious organizations does not violate the First Amendment's Establishment Clause. The Establishment Clause does not "compel the government to purge from the public sphere" anything an objective observer could reasonably infer endorses or "partakes of the religious." *Van Orden v. Perry*, 545 U.S. 677, 699 (2005). Rather, the Establishment Clause merely "requires the state to be a neutral in its relations with . . . religious believers and non-believers; it does not require the state to be their adversary." *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947).

It is well established that rules such as the one proposed by your apartment complex have been found to be discriminatory on its face. *See Good News Club, et al. v. Milford Central School*, 533 U.S. 98 (2001); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993). Both *Good News Club* and *Lamb's Chapel* dealt with the issue of whether or not a state, or an institution of the state, could prohibit all religious groups from meeting in its facilities while opening the same facilities for use by other groups with a non-religious purpose. The Supreme Court held that the state engaged in viewpoint discrimination in violation of the First Amendment when it prohibited religious groups from accessing these areas purely because of their religious content. Recently, the United States Supreme Court unanimously rejected a city's attempt to censor religious speech, as denying the display of a Christian Flag while permitting other secular flags on government property was impermissible viewpoint discrimination that violated the Free Speech Clause of the First Amendment. *Shurtleff v. City of Boston*, 596 U.S. 243 (2022).

Moreover, the First Amendment's "Free Exercise Clause protects against laws that 'impose[] special disabilities on the basis of . . . religious status.'" *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 (2017) (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993) (alterations in original)). In fact, in *Board of Education of Westside Community Schools v. Mergens*, 496 U.S. 226, 248 (1990), the Supreme Court explained that a policy of equal access

conveys a message "of neutrality rather than endorsement; if a State refused to let religious groups use facilities open to others, then it would demonstrate not neutrality but hostility toward religion." *See also Trinity Lutheran Church*, 137 S. Ct. at 2022 (holding unconstitutional a state policy "that expressly discriminate[d] against otherwise eligible recipients by disqualifying them for a public benefit solely because of their religious character").

CONCLUSION

It is becoming all too common for senior citizens and individuals with disabilities to become victims of illegal religious discrimination. It is extremely important to many residents at apartment complexes like River Front Apartments to form Bible studies and prayer groups where they can meet in common areas, especially since many of these residents are disabled, homebound, and physically unable to attend church. As already discussed, federal laws and regulations are already in place to combat religious discrimination in senior living facilities. It is wrong and in violation of the law for an apartment complex such as River Front to deny access to an apartment's community room or prohibit religious decorations, and it makes the facility less diverse and less inclusive. In no way does the Fair Housing Act permit complexes to discriminate on the basis of religion, which would include preventing religious activity in the name of "inclusion" and "diversity." Moreover, River Front Apartment's denial of access to the common areas for religious groups, but where those same areas are otherwise open to groups for other purposes such "potluck dinners, barbecues, and heart health education," constitutes viewpoint discrimination. Since the common areas are open to other groups, those areas must be equally open to host religious groups as well. To implement the new policy as outlined in the March 17th and 18th letters and deny religious groups and displays in common areas equal treatment is discriminatory and unconstitutional.

Therefore, we respectfully request that you immediately rescind the new policy set forth in the March 17th and 18th, 2025 letters to your residents. Second, we request that you issue another letter to your residents advising them to disregard the March 17th and 18th, 2025 letters and the policy changes contained therein. We sincerely hope that this matter can be resolved without litigation. Our attorneys are happy to work with you to help formulate guidance that fully complies with your obligations under the FHA and First Amendment. Your response can be directed to our address below, or via email to [redacted] or [redacted].

Sincerely,

Lauren L. Hackett, Esq.



Lauren L. Hackett, Esq.
Legal Counsel
Independence Law Center

Cc: Jeremy Samek, Esq.
Independence Law Center

Cc. [redacted]
Property Management, Inc., as agents for River Front Aparments

EXHIBIT 3.2.011

CASE PAGE

Case Page: Pennsylvania Apartment Complex Discriminates Against Religious Tenants in the Name of Diversity and Inclusion.

Religious residents at an apartment complex in Pennsylvania for senior citizens and people with disabilities received an unwelcome surprise in their mailboxes in March of 2025.

The apartment complex sent a letter to all its residents, explicitly banning them from having "Bible studies or meetings" in common areas. The rule also prohibited any religious materials, religious signs, or religious decorations, even on the door of their own apartment.

The hostility to religious tenants was palpable. The discriminatory rule stated in bold for extra emphasis that the rule banning Bible studies and religious decorations applies to "anywhere on the property that is not inside of your apartment."

DEI used by Apartment Complex to Treat Religion like Dangerous Asbestos

Why would the apartment complex do such a thing? The apartment complex did not hide its motives for discriminating against religious tenants. They, without sensing the irony, justified their new rules excluding religion in the name of DEI concepts of inclusion and diversity!

The letter stated that the new rule prohibiting any Bible Studies, religious activities or decorations, including on the residents' own door, was to "build an environment focused on inclusivity and diversity." The Property Management

company piled on to the first letter from the Apartment complex, and sent a second letter the very next day, stating that the rule was to "ensure everyone in our communities have an inclusive experience." Finally, the letter justified its discrimination against religious tenants using the common areas for Bible Studies or decorating their own apartment door with religious holiday decorations because the property management company wanted to "limit the likelihood of offending anyone who visits or lives in our communities."

The new policy permitted gatherings to read or talk about non-religious books, but not religious ones. The letters explained that the common areas would be open for other non-religious uses and activities, such as "potluck dinners, barbecues, and heart health education." (Apparently, they were only worried about people offended by seeing others use a space for Bible study, but they were not worried that a Vegetarian might be offended by people eating meat at a barbeque!)

The letters even explained that tenants could still decorate with "floral decorations and pastel colors for the Spring season, autumn leaves for the Fall season, and snowflakes and icicle lights for Winter season." They could decorate for holidays such as "Independence Day, Labor Day, Memorial Day, Birthdays, etc." But No Religion Allowed!

The Apartment Complex engaged in Religious Discrimination

By implementing this new policy, the facility was engaged in religious discrimination in violation of the Fair Housing Act, as well as unconstitutional viewpoint discrimination in violation of the First Amendment of the United States Constitution. Federal laws and regulations prohibit religious discrimination in senior living facilities. Apartments and Property Management Companies cannot deny access to an apartment's community room or prohibit religious decorations. Denial of access to the common areas because of their religious nature or content, but where those same areas are otherwise open to groups for other non-religious purposes, such as "potluck dinners, barbecues,

and heart health education," constitutes viewpoint discrimination. Common areas open for secular uses must be equally open to host religious uses as well.

Plus, denying religious tenants equal access makes the facility less diverse and less inclusive, not more diverse or inclusive. The freedom to exercise and practice religion is one of the most sacred protections enshrined in the First Amendment of the United States Constitution. The Fair Housing Act (FHA) preserves the free exercise and practice of religion in housing, making it unlawful to discriminate on the basis of religion. 42 U.S.C. §3604(b). Buyers and renters are not only protected from religious discrimination before the sale of the residence, but these renters are also protected after the sale as they continue to use the property.

Even the Department of Justice (DOJ) has provided explicit instructions regarding residents' rights to engage in religious speech and other activities in common areas and meeting rooms:

> No one may be discriminated against in the sale, rental or enjoyment of housing because of their religious beliefs. This includes equal access to all the benefits of housing: someone could not, for example, be excluded from using a common room for a prayer meeting when the room may be reserved for various comparable secular uses.

U.S. DOJ, Know Your Rights: Federal Laws Protecting Religious Freedoms, https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/know_your_rights.p (last visited March 28, 2025) (emphasis added).

The fact that the senior living facility receives government subsidies does not give the facility a free pass to discriminate on the basis of religion in violation of federal law. Those facilities are still subject to the Department of Housing and Urban Development's (HUD's) housing regulations, which make it clear that "limiting the use of privileges, services, or facilities, associated with a dwelling" because of the owner's or tenant's religion is prohibited. 24 C.F.R. 100.65(b)(4).

The housing complex is furthermore unable to claim that by taking government money, it can prohibit religious gatherings or decorations so that it does not violate the Establishment Clause. There is no violation of the Establishment Clause when equal access is provided to the facility where both religious and non-religious activities and signage can share the same space. There is, however, a violation of the First Amendment when the government favors one viewpoint over another, as it did in this case.

It is becoming all too common for senior citizens and individuals with disabilities to become victims of illegal religious discrimination. It is extremely important to many residents at these living facilities to form Bible studies and prayer groups where they can meet in common areas, especially since many of these residents are disabled, homebound, and physically unable to attend church.

Status

Victory! Independence Law Center wrote sent a letter on behalf of their client to the government-subsidized apartment complex in Pennsylvania that housed senior citizens and those with disabilities, demanding that they remove the discriminatory and unconstitutional policies prohibiting Bible studies in common areas and religious decorations on tenants' own doors. Attorneys for the apartment complex responded quickly and agreed to rescind the new policy, which means residents are again allowed to utilize common areas of the apartment for Bible studies and prayer, and to decorate their own doors with religious decorations.

Our Role

On March 28, 2025, Independence Law Center sent a legal demand letter to the government-subsidized Pennsylvania apartment complex, challenging its discriminatory policy that banned Bible studies in common areas and religious decorations on tenants' doors. The apartment's attorneys agreed to rescind the

unconstitutional policy—restoring the residents' right to live out their faith freely within their community.

RELATED



Little v. Hecox & B.P.J. v. West Virginia: Safety & Fairness in School Sports & Facilities

November 11, 2025



Hecox (Idaho) & B.P.J. (West Virginia) — State Statutes Protecting Girls' Sports

October 28, 2025



Analysis: Release Time From Public Schools for Religious Instruction

October 24, 2025

EXHIBIT 3.3.001

Dave Giffin
Chief, Environmental Division [redacted]
HQ Installation Management Command [redacted]
[redacted]
Desk – [redacted]
Email: [redacted]

To whom it may concern:

I'm submitting a Congressional petition that I provided on the subject as it may be of support to your cause. I've also attached an EEOC appeal of Summary Judgement that also provides facts in my case. Both mention the great legal and advocacy work that Feds for Medical Freedom did for Federal Civilians.

Key points from my experience:

1. My Agency returned my formal / written request for reasonable accommodation under Title VII in writing on four separate occasions "without consideration". This occurred at the exact time that I was forced to take the vaccine or face termination effectively removing all Title VII protections. They did not deny my request, but outright refused to consider it – essentially as a coercion tactic.
2. My supervisor routinely wore a large silver "Vaccinated" necklace in the workplace and described the situation as a "game of chicken" where the government threats would be a forcing function.
3. I was removed from formal leadership roles after remaining unvaccinated and filing EEO actions and communicating with Congressional members by my Commanding General and not allowed to travel on critical assignments, while colleagues traveled freely.
4. I was physically locked out of offices and denied assignments due to vaccination status.

5. In the Discovery phase of my case, my Agency refused to turn over records of similarly situated employees despite acknowledging they had them. Agency attorneys defend to this day the refusal to even consider my RA request.
6. My EEO case now sits with the EEOC awaiting a review of my appeal.

Dave Giffin

[redacted]

November 8th, 2023

Senator John Cornyn
600 Navaro, Suite 210
San Antonio, TX 78205

Senator Ted Cruz
9901 IH-10W, Suite 950
San Antonio, TX 78230

Senator Ron Johnson
328 Hart Senate Office Building
Washington, DC 20510

Senator Rand Paul
167 Russell Senate Office Bldg
Washington DC 20510

Congressman Tony Gonzales
4372 N. Loop 1604 W, Suite 205
San Antonio, TX 78249

Congressman Matt Gaetz
2021 Rayburn House Office Bldg
Washington, DC 20515

Congressman Jefferson Van Drew
2447 Rayburn HOB
Washington, DC 20515

Congressman Chip Roy
6414 San Pedro Ave, Suite 817
San Antonio, TX, 78232

Congressman Ronny Jackson
446 Cannon HOB,
Washington, DC 20515

Dear Congressional Leaders:

I am writing to my Texas Representatives and key Congressional leaders that have demonstrated leadership on the COVID vaccine mandates to provide insights into Agency abuses during and since the vaccine rollout to the DoD civilian workforce. More importantly I highlight the time critical need for new statutory solutions that provide indisputable religious freedoms and prevent future civil servants from suffering the same fate as current Army Civilians. Existing religious statutory protections have proven to be ineffective at preventing discrimination, harassment, coercion and retaliation by senior military leaders enforcing an executive order that Federal courts have determined to be unlawful.

I am a civilian Supervisory Program Manager (GS-15) serving in the Headquarters, Installation Management Command of the U.S. Army at Fort Sam Houston, San Antonio, TX. I am not seeking intervention in my EEO case (#451-2022-00086X) at this time, but will use the case facts to demonstrate why existing Statutes enacted under Title VII of the 1964 Civil Rights Act and Religious Freedom Restoration Act of 1993 have not provided sufficient protection to Federal civilian employees.

In my case I was given exactly seven days (4-11 OCT 21) to take the COVID injection by direct Command order and under clearly written threat of termination. I immediately submitted an honest and detailed request for accommodation under Title VII that laid out my three decades long religious beliefs on this specific issue that dated back to my early career as a genetic researcher. During and after the exact critical time that these vaccination orders went into effect and decisions had to be made on violating deeply held religious beliefs, the Army and my Command prevented me from utilizing long standing Constitutional and statutory protections by outright returning my exemption request on multiple occasions, and specifically "without consideration". My Command gave clear orders to comply or be terminated, but repeatedly stripped statutory protections from unvaccinated employees.

Despite Title VII being in place for nearly 60 years, the Army later claimed it had "no process in place" so could not even accept or consider my request as these orders went into full effect and decisions were forced. This is all documented as an indisputable fact admitted by the Army through discovery and in formal correspondence. The Army placed its orders above the long standing civil rights enshrined by our Constitution and our Congress. The Army formally defends its position to this day, that it was entirely lawful to formally return multiple detailed exemption requests in writing without consideration or action, proving that they will do this again in the future if more protective laws are not enacted.

I am now 24 months into an EEO case against the Army and awaiting a hearing. At the current pace of the severely backlogged EEOC, this will be a 5-year long process and would never offer timely protection to an employee ahead of termination. If not for the 5th Circuit Court of Appeal's temporary injunction, I would have been terminated long ago and my case would have been an irrelevant footnote, with a hearing happening years after my termination. EEO is neither a swift nor sufficient protection against these Agency abuses.

As my EEO case has slowly moved forward, my Command's most senior military leader committed textbook retaliation by swiftly removing me from a leadership position without any stated cause and on the very day after I executed a protected EEO action. Despite two decades of perfect performance ratings, there is no room on this Command's leadership team for those that did not follow unlawful orders. This retaliation fit into the broader climate established by the POTUS who declared that *"We've been patient, but our patience is wearing thin"…….. "your refusal has cost all of us" …..and…. "they (unvaccinated) are killing us"*. These were the dog whistles for Army leaders to exert enormous pressure on anyone non-complying or asserting their constitutional rights, and it was certainly heard and acted upon by my Command's senior leaders. Those that did not follow the unlawful orders and sought religious protections were sent the message and dealt with.

From the time that the POTUS signed EO 14043 on 16 SEP 2021, my Command issued over a dozen orders, policies, and memos directed at employees in a mere two weeks. The Army had vaccination and testing stations stood up at locations around the globe and placed travel, testing, and masking restrictions on unvaccinated employees. I was removed from critical assignments and physically locked out of my office through key card deactivation on multiple occasions because my covid test results (only for the unvaccinated) were not properly entered by Agency officials into their databases. The Army moved mountains to efficiently stand up this massive and complex COVID bureaucracy, but the unvaccinated were told many months later that the Army could not develop a simple process to review our religious exemption requests….for that was either far too difficult; or more accurately a deliberate act to pressure, harass, coerce, and humiliate employees.

The Army's coercion campaign reached a frenzy just before the court ordered injunction was issued, as agencies informed the media that discipline was imminent for those employees who were hold-outs—and the discipline would increase in severity for the express purpose of putting maximum pressure on employees. Agency delays, harsh tactics and written threats of termination caused many colleagues to forsake their medical and religious freedoms and give in to the orders. Others just resigned or retired prematurely to avoid it. Some Federal civilians unfortunately took their own lives. For those of us who remained unvaccinated and unexempted that stayed on, it has been an intimidating, chilling, discriminatory, and retaliatory environment to say the least.

It was disheartening to know that our fate would be in the hands of the same military leaders that were rejecting service member exemption requests with form letters at a rate of 99.8%. These leaders either forgot or ignored the protections enshrined in the constitution they swore to uphold. They swiftly saluted a Commander in Chief whose Executive Order was repeatedly rejected as unlawful by Federal courts. Military leaders were in an extraordinary position of authority over subordinates and proved that they could not exercise any degree of moral autonomy in the face of unlawful orders. Dr. Martin Luther King noted in 1963 that *"One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws."* I remain committed to the constitutional oath I took many years ago, but the Army ultimately undermines its own core values when it decides to coerce, harass, and retaliate against dedicated career employees while ignoring long standing constitutional protections.

Civilians would have been terminated over a year ago if not for organizations like the "Feds for Medical Freedom", and are one Federal court ruling away from new mandates returning with full force. Civilian employees do not have the benefit of legal protections granted to Service members by the 2023 NDAA and orders could return at any time as the DOJ continues to defend the civilian mandates in Federal Courts. Current protections are too subjective to be left in the hands of leaders that get swept up in the frenzied false narrative of *"they're killing us"*. Without change, future leaders will strip individual rights and freedoms under similar circumstances. We need serious reform now while these facts are fresh.

This case had an enormous toll on me and my family as I came to the realization that after 35 years of impeccable service to my country, both in uniform as a Marine Corps combat veteran and now as an Army civilian, that I would be terminated and thrown out as easily as a bag of garbage. Despite the tremendous impacts, I will continue to fight long term for necessary change and protection through Congressional engagement, the EEOC process, and Federal Courts if necessary.

I'm asking for your help and leadership! I thank you for your consideration in this matter and pray that you will go beyond oversight hearings on past agency abuses to enact real legislative protections. These should transcend the past COVID issues, providing absolute medical and religious freedom statutory reforms that protect Federal workers from these abuses in the future. I also thank you on behalf of future Federal civilians who without your leadership on this issue will face similar challenges and ruined careers. Our future freedoms are in your hands, so please take action!

Sincerely,

David C. Giffin

Dave Giffin

[redacted]

This letter is written in my personal capacity and does not reflect an official position of the Dept of Defense. My communication with and petition of Congressional members is authorized and protected from retaliation under 5 U.S.C. Sec 2302(b)(8); Sec 7211; the 1st Amendment of the U.S. Constitution to petition the Government for a redress of grievances and a Constitution that I have sworn to uphold - Semper Fidelis.

EXHIBIT 3.3.002

My name is William Catoe. I am a Federal Wildlife Officer with the US Fish and Wildlife Service, Division of Refuge Law Enforcement, Department of Interior. I was one of the few FWO's who stood firm during Covid against the pressure and retaliation. My agency decided early on that any officer who was unvaccinated would be ostracized and punished.

I spent almost 2 years trying to submit requests for accommodation both religious and medical and the agency denied even accepting them. During this time, I was denied the ability to complete mandatory training, leaving me uncertified. As a result, I was denied the ability to wear a uniform, participate in operations, removed from deployments, denied the ability to apply for promotions and transfers and subjected to loss of income in the tens of thousands of dollars. I was even denied getting performance appraisals. They stated I couldn't have one as long as I was unvaccinated.

When EO 14043 came out my agency required us to fill out questionnaires explaining our religious beliefs and why they conflicted with the EO. After they were submitted our agency very quickly sent word out that none would be approved and we would be terminated "quickly and for cause" so that we could never work in law enforcement again. Feds4MedFreedom obtained an injunction but that didn't stop the service.

They continued adding more and more restrictions and punishments even as the rest of the service reduced and lifted restrictions. They continued to refuse to accept any requests for accommodation from vaccination. Finally in April 2022 they agreed to accept a religious and medical request for accommodation. They then refused to decide on it until August 2022 when they stated that my requests would be denied as they stated "*I find that you have not satisfied the burden of establishing a prima facie showing of a sincerely held religious belief, observance, or practice, which conflicts with a work requirement, as required under Title VII of the Civil Rights Act*."

Even after all covid restrictions were lifted the agency still refused to lift the restrictions for those who requested accommodation until several months later.

My litigation through EEO ran its course and the agency decided to pay $135,000 to settle. However, they refused to take any accountability measures against those who blatantly violated the law. The EEO Judge also stated he would not take any action against the officials responsible. The Professional Responsibility Unit completed an investigation showing the senior leadership knowingly violated the law by refusing and later denying mine and others requests for accommodation. Through evidence later received during discovery I provided PRU and OIG with evidence that the senior leadership lied under oath to the investigators, but nothing happened.

Since then, the officials responsible have been promoted. I became one of the most productive and proficient officers in my agency. I earned multiple performance awards and QSI's and since being allowed to receive performance appraisals have received 3 straight outstanding evaluations. But they haven't forgotten. I was the only officer in the entire agency to apply for a transfer recently. I was denied the opportunity to be considered as they stated, "the supervisor can't guarantee he will treat you fairly because of your history filing an EEO". They hired 3 outside applicants over me. I was told that I would have to "continue to prove myself" to be considered in the future. The same senior leadership involved during covid was involved now.

Until there is accountability nothing will change.

EXHIBIT 3.3.003

Statement of Religious Discrimination - Failure of Religious Accommodation

Matthew Etzenhouser, USDA, Forest Service

Status of accommodation requests: a partial accommodation was granted in October 12, 2022. The majority of the expected activities requested were never addressed.

Approval/denial/unanswered: a partial approval and mostly unanswered

Changes in accommodation request processing: Yes, the agency had a special process developed for the COVID related RAs.

Any other instance of religious discrimination unrelated to COVID-19 issues: No

In my estimation, the religious discrimination I experienced was from the delay and lack of response to seriously addressing my religious accommodation request. Here is the timeline I experienced and the majority of what I requested was never considered.

- Submitted original Religious Accommodation (RA) – Sept 29 2021
- RA placed in abeyance for Jab. The agency ignored the other part of my RA – February 10, 2022
- After inquiring, I was told to resubmit RA – May 9 2022
- A partial exemption was granted leaving most of my request unaddressed or denied - October 12, 2022 (over one year after original filling).

Due to the delay and lack of fully processing my Religious Accommodation request I was subjected to demands to test for COVID-19 infection, denied my ability to engage in fire fighting activities (the opportunity to make overtime pay), denied access to the office, and I was subject to a verbal reprimand for an activity that I had requested an accommodation for. If the accommodation had been processed in a fair and timely manner I would not have been subjected to any of this discrimination.

Summary:

It appears that the Department withheld guidance or deliberately instructed the responsible officials not to provide a timely response and processing of requests for religious accommodations related to COVID-19 vaccination, testing and masking requirements. Official policy never outright denied any request for accommodation although the national COVID call notes from September 28 2021 did record statements that the agency would not make decisions about accommodation until it had guidance from the White House and that no exemptions would be granted for masking. Whether it was official policy or not, the actions of the officials had the effect of denying accommodations for many months. In my case it took 12 months and 13 days from the initial request to a final accommodation. There was no work done on the request for 11 months and one week, and the process required two separate submissions of the same request.

A Lack of diligence and professionalism in regard to my religious beliefs was demonstrated when my original accommodation request was placed into "abeyance" after the nation wide, temporary injunction against the federal vaccine mandate was issued on January 21, 2022. This notice was provided on February 10, 2022. The accommodation that I requested was to forgo all COVID-19 safety measures, as described in my statement of faith, and explicitly identified vaccination and masking. It was apparent that the agency did not intend to address all the items in the request and focused only on the vaccination portion. Given this oversight, it is reasonable to question whether the document was even read by the processing officials.

This same pattern was observed in many, if not all of the potential United States Department of Agriculture EEO class members who sought religious accommodations.

Harms

I was harmed due to unfair discrimination in many ways. Shortly after the testing requirement became enforced, the county where my office is located raised to a medium COVID-19 community level and my supervisor informed me on June 2, 2022 that I must work from home and could not come into the office unless I tested for COVID-19 infection. An exemption for testing was part of my Religious Accommodation request filed on September 29, 2021, yet was not processed at the time of this incident. This restriction coincided with the scheduled re-opening of the office set for June 6, 2022 that I was not allowed to participate in while other employees were unrestricted. I had been working almost exclusively alone, and isolated at my house for over two years and I was very much looking forward to having some face to face connection with my co-workers in the office setting. For a period after our office opening, I continued to be restricted from entry and was forced to work from home when other co-workers without my religious belief were allowed to come and go to the office as they pleased. This gave them the ability to perform their duties in an unrestricted fashion, which was denied to me.

I was also prohibited from participating in firefighting activities due to my religious belief and the failure to have my accommodation processed. The inability to participate in firefighting activities was a financial harm to me and my family and has a long-term impact in my ability to maintain my firefighting qualifications that are partially based on regular and continuous engagement in fire suppression activities. In addition to these restrictions on my ability to fully conduct and advance in my job duties, I also suffered from the general feeling of exclusion and marginalization.

This workplace environment of identifying and discriminating against a subset of employees based on religion and perceived disability has negatively affected my emotional and psychological well-being and created a significant amount of stress. At the time I suffered from anxiety and lack of motivation. During the height of the Department's discrimination, I would often wake up in the morning with a "pit in my stomach" and a feeling of dread with the knowledge that I was entangled with the RA and the EEO process and the threat of job loss looming over my head. I have always been an obedient, professional and productive employee and I had never needed to utilize the EEO or RA processes up to that point. At the time I felt as though my diligent and professional career development over three decades of service as a professional Forester was being undermined and I was looked at as a disruptive and unwanted liability to the Agency because of my religious convictions.

EXHIBIT 3.3.004

Carolyn Rocco, Lieutenant Colonel, United States Air Force

Carolyn enlisted in the Air Force in January 2001, graduated Basic Military Training (BMT) as an Honor Graduate (#1) and served four years as a C-130 aircraft maintainer, before she separated to finish college via Air Force Reserve Officer Training Corps (ROTC) from 2004-2007. In May 2007, Carolyn graduated as the ROTC distinguished graduate (#1) and commissioned as a second lieutenant into the Air Force Office of Special Investigation (AFOSI) career field. She served 18 honorable years when the DoD covid vaccine mandate was issued in August 2021. At the time, Carolyn was working as a ROTC instructor at Washington State University and the University of Idaho, in the Pacific Northwest. Because Carolyn received medical exemptions for shots, such as hepatitis and tetanus, after providing the medical clinic lab results with positive antibodies, she expected the same would apply to the Covid vaccine. Carolyn, after natural infection from Covid, tested positive for its antibodies, but she was denied a medical exemption, even after following the same process she did for previous exemptions. Carolyn also requested a medical exemption because the medical clinic did not have the FDA approved vaccine, named Comirnaty. All the clinic had was Emergency Use Authorized (EUA) vaccines, such as Pfizer BioNTech. Because Carolyn was familiar with 10 USC 1107a, a result of the Anthrax debacle, which states EUA products cannot be forced on military members, she requested a medical exemption for lack of Comirnaty supply. That exemption was also denied. Carolyn even tried to join a DoD-managed medical trial, where she would be part of the unvaccinated control group, but that effort was not accepted by the Air Force, leaving her with a tough decision to make- do nothing or submit a religious accommodation request (RAR).

Carolyn understood that testing one's religious beliefs, in order to get or maintain a job, is unconstitutional. However, in an effort to stay in the fight and force the leadership to understand what they were doing was immoral, unethical, and illegal, Carolyn submitted a RAR, after being told and shown no medical or administrative exemptions would be approved. Like 99 percent of the Air Force, Carolyn's RAR was denied by the Major Command (MAJCOM) commander, Lieutenant General Marshall "Brad" Webb (Attachment 2) and subsequently by the Air Force Surgeon General, General Robert Miller (Attachment 3), for generic and intangible reasons like "mission readiness" and "ensuring good order and discipline." As a mandatory step in the RAR process, Carolyn was required to interview with a military chaplain in order to determine how sincere Carolyn was in her faith. This too was unconstitutional, but Carolyn "passed" the Zoom interview resulting in Chaplain [redacted]'s approval of my RAR (Attachment 1). Even with "proven" sincere religious beliefs, the Religious Resolution Team- comprised of commander(s), legal, public affairs, and chaplain(s)- discussed and voted to deny Carolyn's RAR. This decision was presented to Lt Gen Webb, which is likely the reason he denied my request. In order for Carolyn to properly appeal to the Air Force Surgeon General, she requested the documents that the RRT drafted and sent to Lt Gen Webb. After Carolyn was told she would have to FOIA those documents, and facing a strict timeline to submit an appeal, she submitted an appeal with the caveat that upon receipt of the FOIA documents, her appeal may be amended. Unfortunately, but not surprisingly, the FOIA request resulted in nothing of substance as the majority of the information was redacted. Using the same language and format most, if not all, airmen received, Carolyn's appeal to the Surgeon General was also denied. The denial meant Carolyn was faced with another order to

take the vaccine, apply for separation, or suffer the consequences. Carolyn had five (5) days to decide.

From the time of the mandate, there were approximately 40 lawsuits filed against the DoD in some capacity. One case in particular, Doster v. Kendall, was specific to the Air and Space Force. Within the five days Carolyn was given to respond to her appeal denial, Judge McFarland of Ohio issued an injunction for the class of Air and Space Force members who submitted, and were denied, RAR's. His court order is the only reason why Carolyn did not receive derogatory paperwork, like a Letter of Reprimand (LOR), nor was she removed from the Air Force. In March 2023, Carolyn was able to promote to Lieutenant Colonel. While the ROTC instructor role was only a two-year assignment, because Carolyn was not vaccinated, as a way of punishing her, she was unable to move, forcing her to stay a third year in the PNW, which directly impacted her career progression. Additionally, from the time Carolyn refused the Covid vaccine, her annual performance reports have been less than stellar; not because she is not a hard worker, but likely because she disrupted the system of blind compliance.

DEPARTMENT OF THE AIR FORCE
42D AIR BASE WING (AETC)
MAXWELL AIR FORCE BASE ALABAMA

29 September 2021

MEMORANDUM FOR AETC/CC

FROM: 42 ABW/HC
[redacted]

SUBJECT: Religious Accommodation Request Interview of Major Carolyn D. Rocco

References: (a) Secretary of Defense, *Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members* (24 August 2021)
(b) Secretary of the Air Force, *Mandatory Coronavirus Disease 2019 Vaccination of Department of the Air Force Military Members* (3 September 2021)
(c) DoDI 1300.17, *Religious Liberty in the Military Services*, 1 September 2020
(d) AFI 48-110, *Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases*, 16 February 2018
(e) DAFI 52-201, *Religious Freedom in the Department of the Air Force*, 23 June 2021

1. Maj Rocco requests religious accommodation from the Pfizer/Comirnaty COVID-19 immunizations. Lt Col [redacted] AFROTC Det 905/CC has requested an interview to be passed on to the wing's Religious Resolution Team. I was selected by the Wing Chaplain since I do not provide care to the member's unit. I informed the member that this interview was not confidential and would generate a memorandum, but that confidential support could be received from another chaplain. The interview took place on 29 September 2021 at 0900 hours. I reviewed DAFI 52-201, *Religious Freedom in the Department of the Air Force* prior to the interview.

2. In my conversation with Maj Rocco, I read over her MFR to the Unit CC and asked a series of questions regarding her beliefs and practice. Maj Rocco has been a non-denomination Christian most of her life. Maj Rocco is seeking exemption from the COVID immunizations based on her firmly held religious beliefs mainly in two areas. First, that "mRNA vaccines corrupt the robust genetic resiliency she has already inherited in her cells, by God's grace." Maj Rocco had COVID and has confirmed COVID antibodies in her blood as a result of her viral infection. Furthermore, Maj Rocco declared in our interview that "taking of the COVID vaccine, which the FDA, HHS, and FDA Center for Biologics Evaluation and Research (CBER) have stated are gene therapy, violates her religious beliefs according to (1 Corinthians 6:19-20 "Do you not know that your bodies are temples of the Holy Spirit, who is in you, whom you have received from God? You are not your own; you were bought at a price. Therefore, honor God with your bodies."; Romans 12:1 "I appeal to you brothers, by God's mercy, present your bodies as a living sacrifice, holy and acceptable to God, which is to serve as spiritual worship." Additional supporting text include 2 Corinthians 7:11. Maj Rocco believes the COVID mNRA vaccines "are a form of promulgating genetic mutation finther away from God's initial creation."

Second, Maj Rocco noted that "I believe God has commanded her not to live in fear of COVID and blessed her with the gifts of discernment and wisdom, and through those gifts, she has not found a reason that aligns with her morals and beliefs, that would support her taking the COVID" (Isaiah 41:10; James 3:13-18 etc.).
Maj Rocco shared she is open to receiving alternative vaccines which are proven to be safe and do not use mNRA gene therapy. This is Maj Rocco's first Religious Accommodation request for immunization. Maj Rocco's demeanor, character and reputation are solid with her peers and leadership. She has an 18-year track record of success in the military and desires to continue serving honorably. However, she is 100% willing to sacrifice her military career in order to remain true to her firmly-held religious beliefs.

3. I recommend this exemption be granted based on Maj Rocco's firmly held religious beliefs based on the aforementioned. Maj Rocco continues to wear masks and to practice social distancing. Finally, this mandate places a substantial burden upon Maj Rocco's religious belief as it relates to the mNRA COVID vaccine. Taking the vaccine will cause grave spiritual, mental and emotional health damage.

4. If you have any questions, please contact me at [redacted] or [redacted].

[redacted], Major, USAF
Deputy Wing Chaplain

1st Ind, Major Carolyn D. Rocco

MEMORANDUM FOR AETC/CC

My signature below releases Ch, Major [redacted] from my privileged communication status for the release of information only included in this letter.

CAROLYN D. ROCCO, Major, USAF
Director of Operations

DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

MEMORANDUM FOR MAJOR CAROLYN D. ROCCO

FROM: HQ AETC/CC
[redacted]

SUBJECT: Decision Regarding Religious Accommodation Request

I have received your accommodation request for exemption from the COVID-19 immunization requirement based on your religious beliefs. After careful consideration of the specific facts and circumstances, I deny your request for exemption from Air Force COVID-19 immunization standards based on the recommendations from your chain of command and the Religious Resolution Team (any other religious exemption that you seek must be addressed in a separate, specific request). A copy of this decision memorandum will be placed in your automated personnel records.

I thoroughly reviewed your request, examined the comments and recommendations from the functional and legal experts, and considered the impact on you personally, the Airmen with whom you work and the mission. I find that your request, while sincere, does not meet the threshold necessary for an exemption.

First, the Air Force's compelling government interest outweighs your individual belief and no lesser means satisfy the government's interest. For the past 18 months, the Air Education and Training Command fought through the COVID pandemic by implementing several extreme measures and processes to ensure the health, safety and welfare of our Airmen. These measures included maximum telework, workplace occupancy limitations, extreme adjustments to Basic Military Training to include multiple training sites and modified training, and remote learning for most Professional Military Education to name just a few actions. Similar measures for the medical community included telehealth consultations and reduced in-person appointments. Despite these efforts, the Air Force remained in this posture until vaccinations became available and administered, and only then did our pandemic numbers begin to decrease. Continuing to implement these drastic measures detracts from the readiness, efficiency and good order and discipline of the force, and is unsustainable as the long-term solution.

When I reviewed your request, I used the same method as I did for requests from other similarly situated individuals, taking into account factors such as your duty position and rank. In your particular position as an AFROTC Instructor, there is a compelling government interest for you to receive the vaccine. Specifically, you are required to have close contact with students in order to accomplish your mission. An exemption will cause dissention and create the perception of favoritism, eroding good order and discipline. Unit cohesion will also be negatively impacted as your coworkers will have to take on additional work if you must quarantine due to your

unvaccinated status. Your personal lack of readiness will impact your ability to deploy, perform temporary duties away from your home station, and be transferred overseas. Even if you are permitted to travel on official orders with an exemption, your ability to perform the mission may be limited due to restriction of movement and isolation requirements that are inapplicable to vaccinated members. Finally, failure to receive the vaccine increases the risk to your own health and safety and that of those around you.

Lesser means to accomplish the government's compelling interest are insufficient. You cannot accomplish your duties via telework as you are required to have close contact with students. Further, you cannot lead or instruct as effectively if you must interact virtually or while remaining socially distanced. Finally, mask wear alone is an insufficient intervention.

Upon receipt of this decision, I expect you will take every action necessary to comply with the requirement for COVID-19 immunization as soon as possible. You have five (5) calendar days from receipt of this memorandum to accomplish one of the following: (1) receive an approved COVID-19 vaccination and provide proof of vaccination to your commander; (2) submit for retirement or separation; or (3) appeal this decision to the Air Force Surgeon General. Should you elect to appeal this decision, follow the procedures in AFI 52-201, *Religious Freedom in the Department of the Air Force*, Chapter 6. If you appeal this decision, submit your appeal to your commander in writing. Include in your appeal any additional matters you wish for the AF/SG to consider. Your commander will forward your appeal and any additional matters to HQ AETC/SG for further processing.

If you have any questions, contact HQ AETC/HC at [redacted] or email at [redacted]

MARSHALL B. WEBB
Lieutenant General, USAF
Commander

cc:
Member's Unit
Member's Servicing FSS

1st Ind, MAJ CAROLYN D. ROCCO

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

I have received AETC/CC's decision regarding my request for a religious based exemption from the COVID-19 vaccine on 13 APR 22 (date). I understand that I have five (5) calendar days to accomplish one of the following:

a. Receive an approved COVID-19 vaccine and provide proof of vaccination to my commander;

b. Apply for retirement or separation;

c. Appeal this decision in writing to the Air Force Surgeon General.

CAROLYN D. ROCCO, Maj, USAF

2d Ind, MAJ CAROLYN D. ROCCO

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

Five calendar days have elapsed since I received AETC/CC's decision denying my request for a religious based exemption from the COVID-19 vaccine. I have chosen to:

_____ Receive an approved COVID-19 vaccine on _____(date) and provide proof of vaccination to my commander on _____(date).

_____ Apply on _____(date) for retirement or separation.

_____ Appeal this decision in writing on _____(date) to the Air Force Surgeon General.

_____ Refuse to comply with this order.

CAROLYN D. ROCCO, Maj, USAF

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
Washington DC

JUN 2 6 2022

MEMORANDUM FOR MAJOR CAROLYN D. ROCCO

FROM: HQ USAF/SG
[redacted]

SUBJECT: Decision on Religious Accommodation Appeal

Your final appeal is denied. In accordance with Department of the Air Force Instruction (DAFI) 52-201, *Religious Freedom in the Department of the Air Force*, paragraph 3.2, I have carefully reviewed your request for religious accommodation, specifically for an exemption from the COVID-19 immunization.

The Department of the Air Force has a compelling government interest in requiring you to comply with the requirement for the COVID-19 vaccine, because preventing the spread of disease among the force is vital to mission accomplishment. In light of your circumstances, your present duty assignment requires intermittent to frequent contact with others. These duties are not fully achievable without mission degradation when fully teleworking or in complete isolation from other personnel. In addition, your deployable position may require you to deploy in a time-frame in which you cannot attain fully immunized status prior to departure and others may need to deploy in your place. Your instructor role also requires frequent contact and immersion with multiple individuals, which would significantly impact training accomplishment if you, your trainees, or your fellow instructors were exposed or actively infected. We must be able to leverage our forces on short notice as evidenced by recent worldwide events. Your health status as a non-immunized individual in this dynamic environment, and aggregated with other non-immunized individuals in steady state operations, would place health and safety, unit cohesion, and readiness at risk. Foregoing the above immunization requirement would have a real adverse impact on military readiness and public health and safety. Masking, social distancing, and testing mitigate risk but not as effectively as vaccination in combination with additional measures determined by local spread. Your positive antibody test demonstrates that you may have some degree of protection, but the duration and completeness is unclear. COVID-19 antibody titers are not FDA authorized to prove immunity, and there is no quantitative threshold, once exceeded, to validate protection from subsequent infection. Additionally, vaccination provides a strong boost of immunity to those recovered. There are no less restrictive means available in your circumstance as effective as receiving the above immunization in furthering these compelling government interests.

A copy of this decision memorandum will be placed in your automated personnel records. Please contact your unit leadership with any questions or concerns.

ROBERT I. MILLER
Lieutenant General, USAF, MC, SFS
Surgeon General

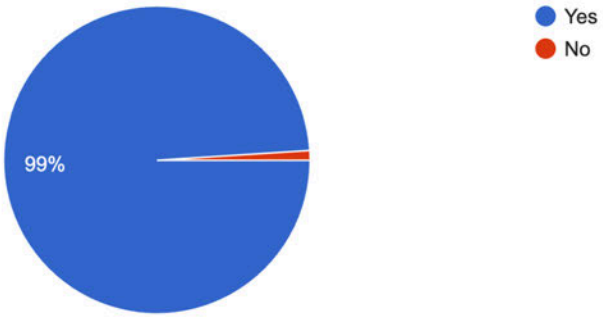
EXHIBIT 3.3.005

FEDS FOR FREEDOM

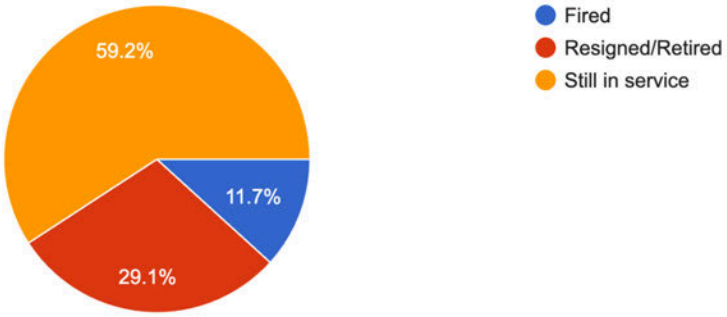
Select Results from the Feds For Freedom
Federal Religious Discrimination Survey

Respondent Demographics

5. I am (or was) a federal employee, military member, or federal contractor.
196 responses

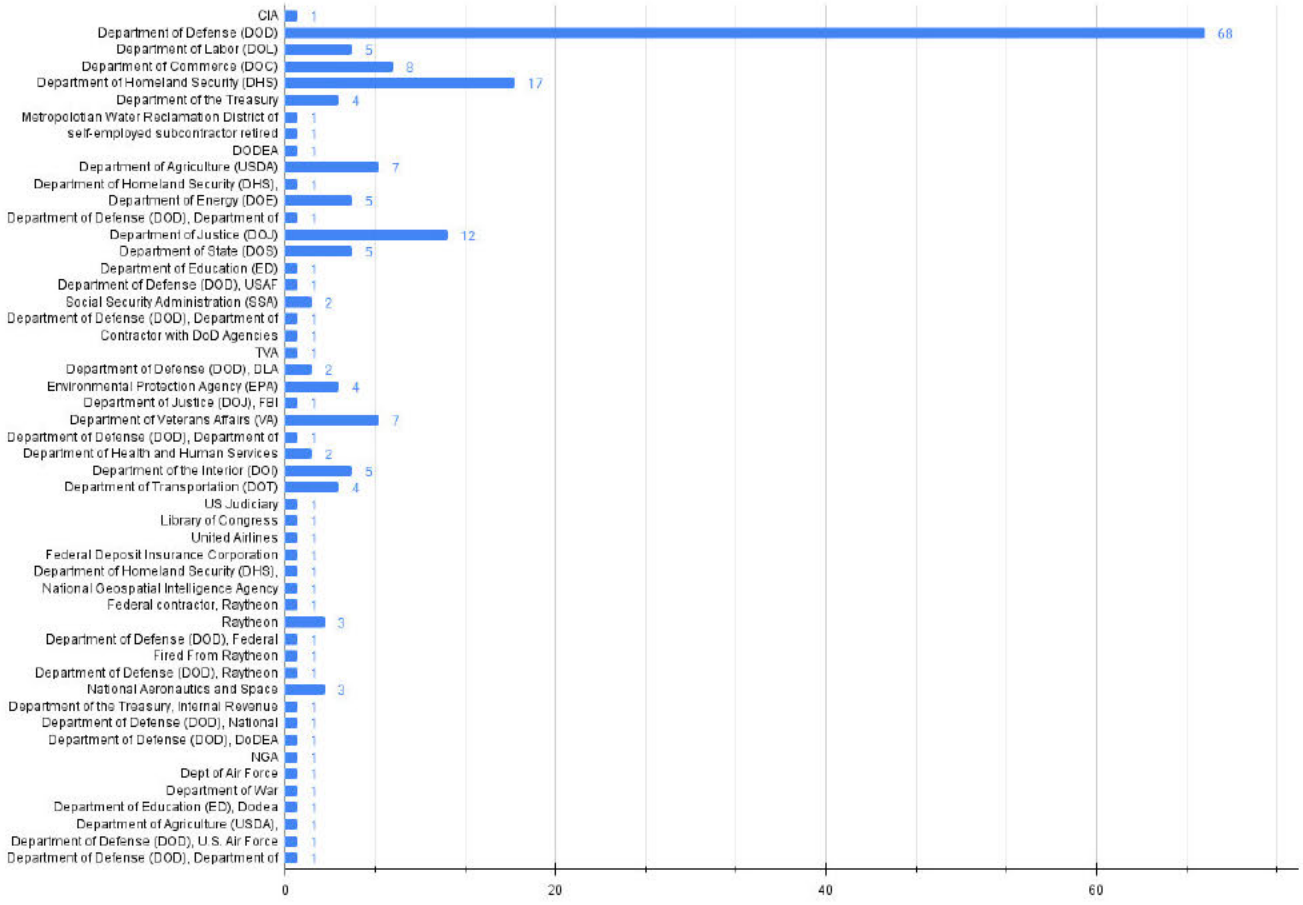


6. Your current employment status
196 responses



7. Which agency were/are you employed with?

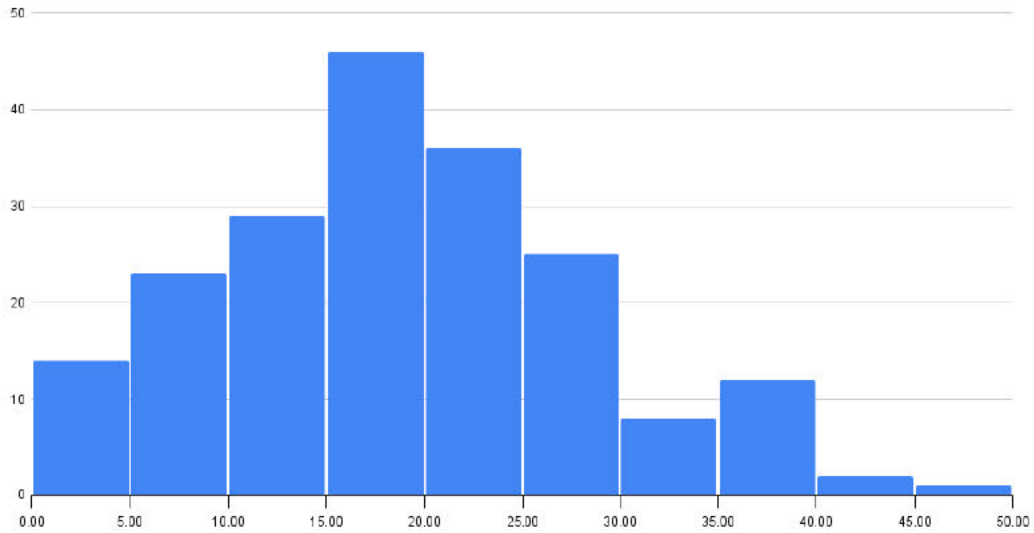
193 responses



See separate PNG file for greater visibility of chart content.

8. Total years of government service

196 responses

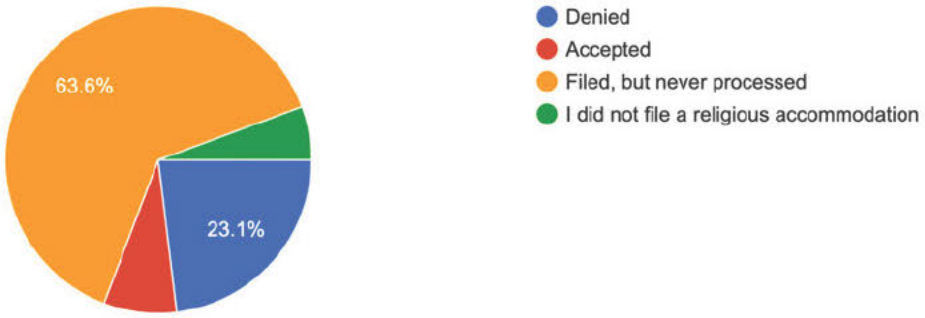


See separate PNG file for greater visibility of chart content.

Religious Accommodation Request Information

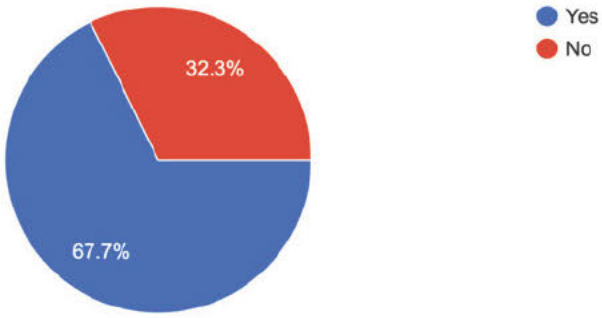
9. Status of religious accommodation request:

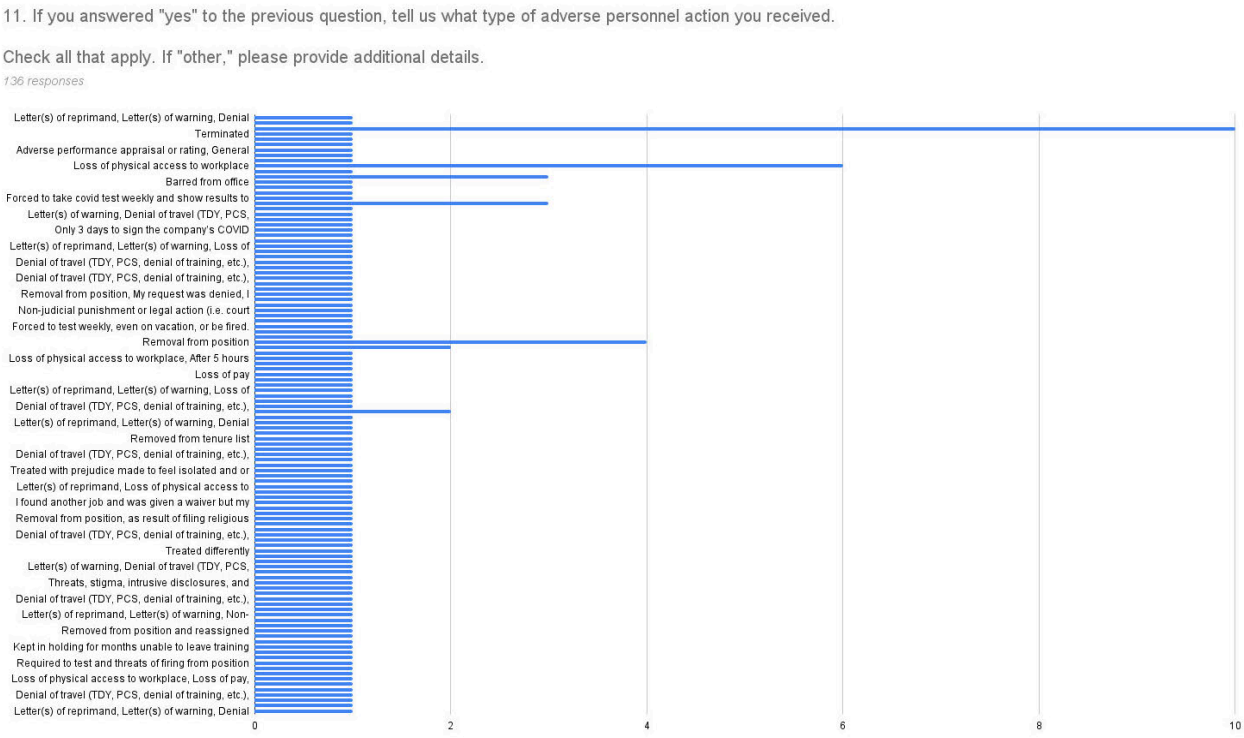
195 responses



10. Did you experience an adverse personnel action due to your religious accommodation request?

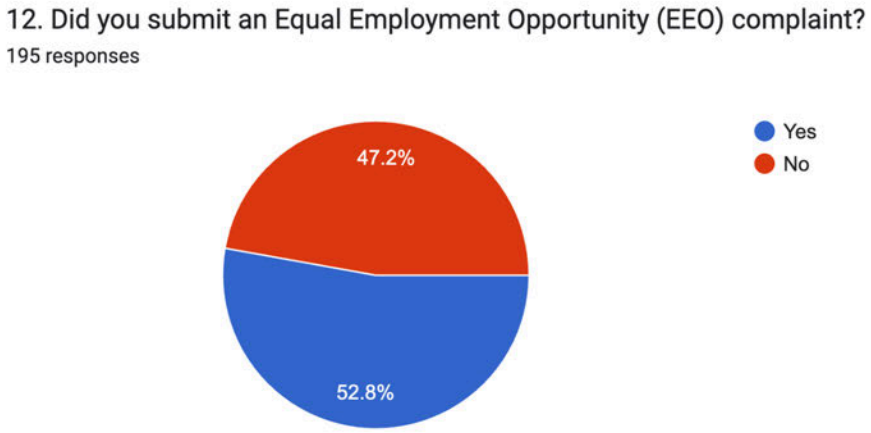
195 responses





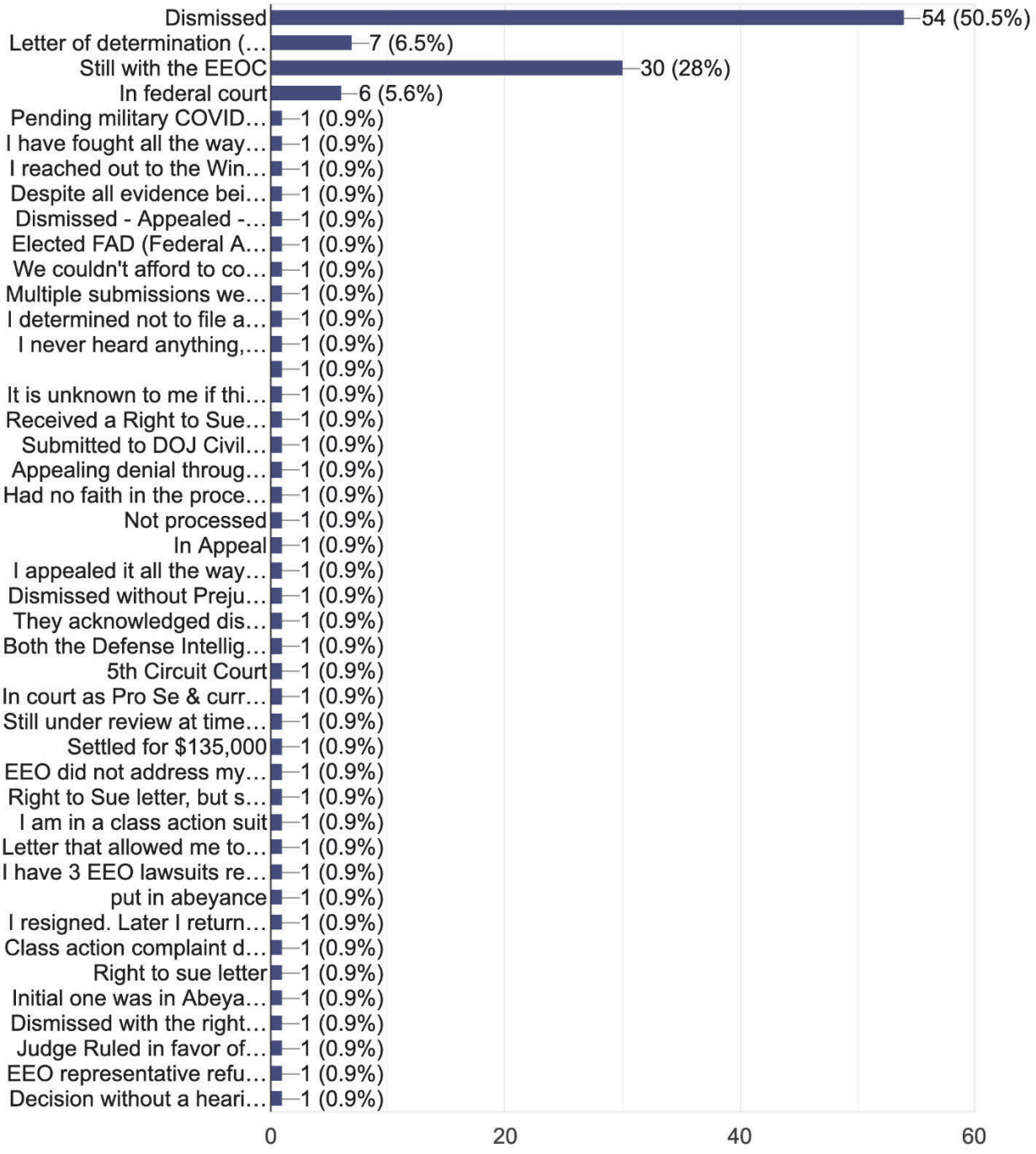
See separate PNG file for greater visibility of chart content.

EEO Complaint Information



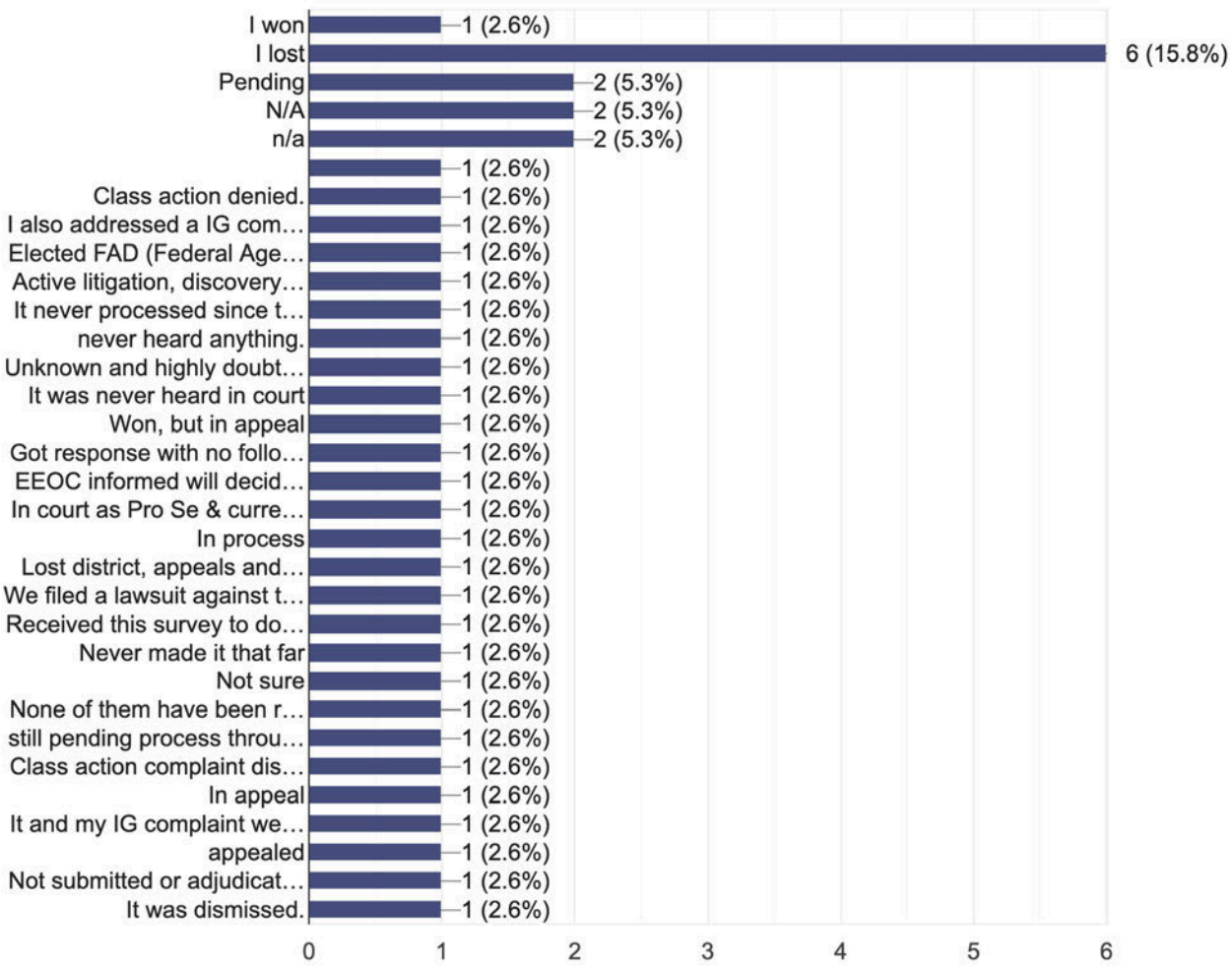
13. If you answered "yes" to the previous question, tell us the current status of your EEO complaint. If you want to provide additional comments or context, do so in the "other" field.

107 responses



14. If your EEO complaint was addressed in federal court, what was the outcome? If "other," please provide additional details.

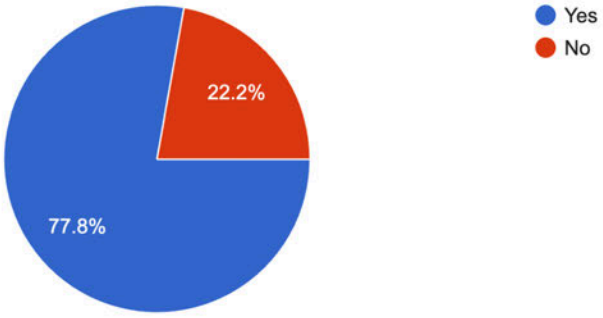
38 responses



COVID-19 Adverse Action Violations

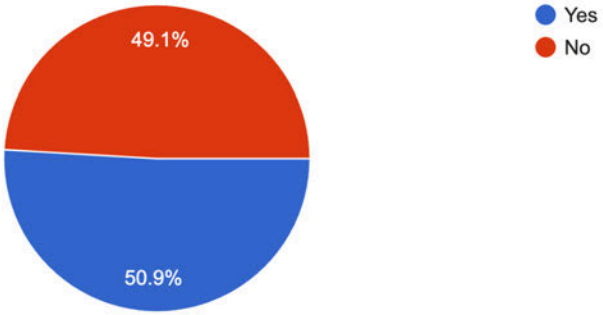
15. Were you forced to test for COVID-19?

194 responses



16. If you answered "yes" to the previous question, did you experience an Adverse Personnel Action related to COVID-19 testing?

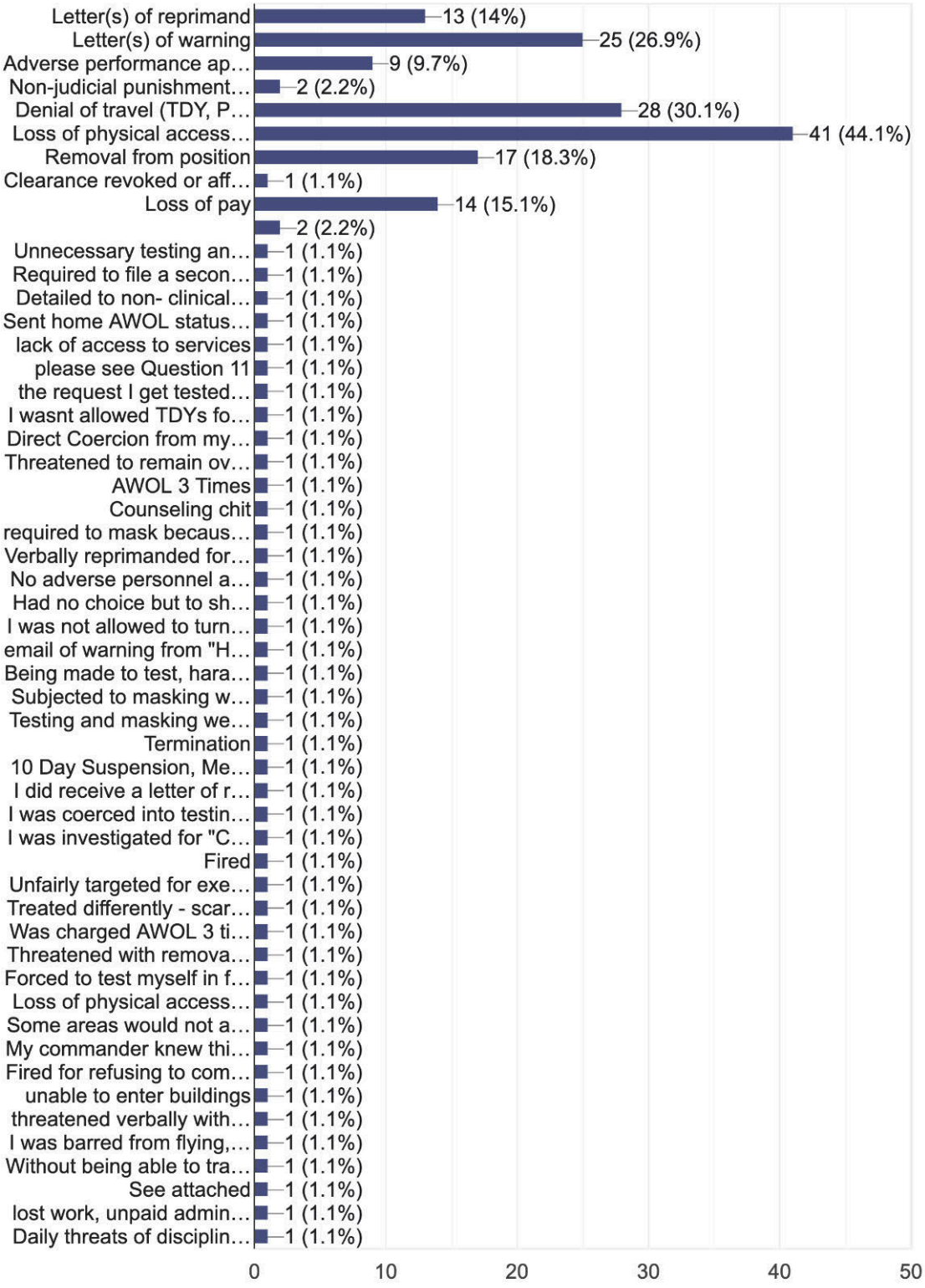
161 responses



Note: This survey did not capture the data of who indeed tested v. who refused to test for religious or medical reasons.

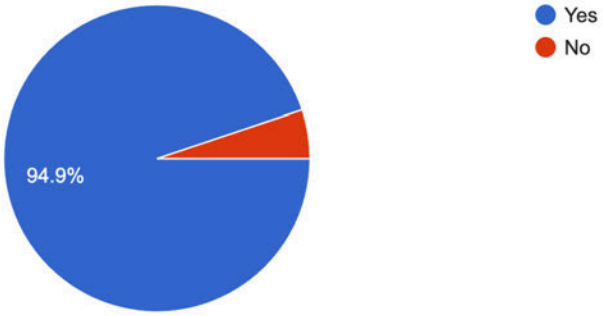
17. If you answered "yes" to the previous question, tell us what type of adverse personnel action you received related to COVID-19 testing. Check all that apply. If "other," please provide additional details.

93 responses



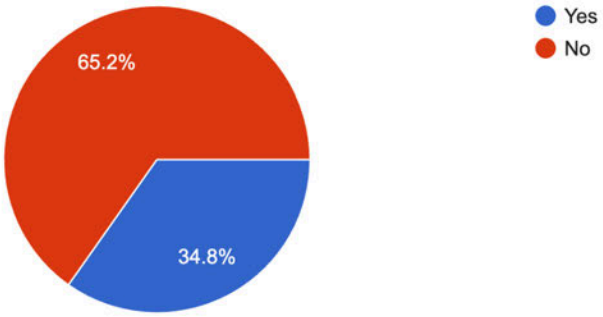
18. Were you forced to wear a mask?

195 responses



19. If you answered "yes" to the previous question, did you experience an Adverse Personnel Action related to wearing a mask?

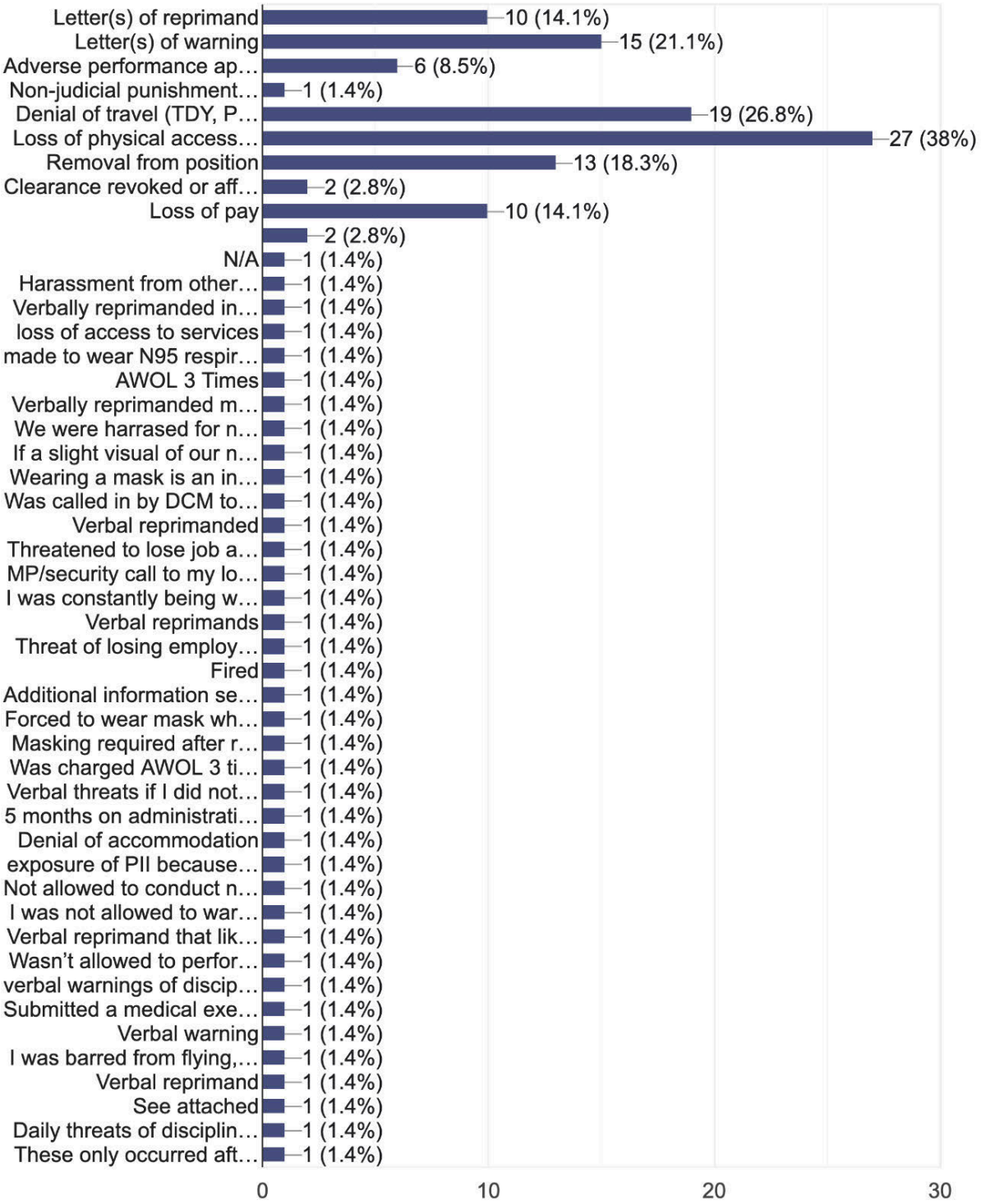
184 responses



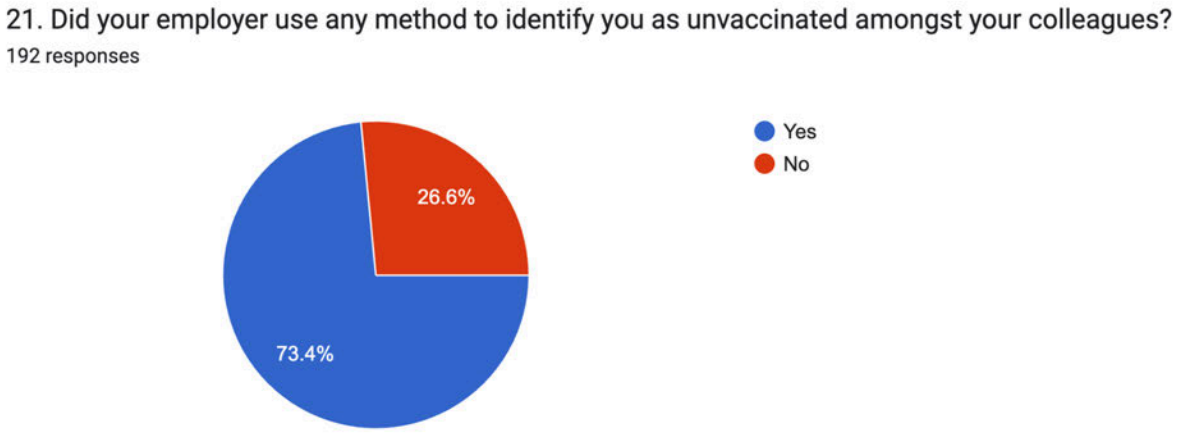
Note: This survey did not capture the data of who indeed masked v. who refused to mask for religious or medical reasons.

20. If you answered "yes" to the previous question, tell us what type of adverse personnel action you received related to wearing a mask. Check all that apply. If "other," please provide additional details.

71 responses



Unvaccinated Identification



22. If you answered "yes" to the previous question, please explain.
Only unvaccinated employees were required to wear masks.
Unvaccinated employees were required to wear a mask at all times and personnel with masks were not allowed to conduct normal activities such as eating in the food court, etc.
They made us fill out the form which asked if we had been vaccinated.
Physical - mask requirement for unvaccinated. Digital - COVID-19 Vaccine Attestation, COVID-19 Screening Program Attestation
Online portal. Don't remember the name.
co-worker hysteria and isolation for not wearing a mask
Removed from position, addressed in front of peers regarding vaccination status, isolated in front of peers and students while testing
Only non-vax were required to wear a mask. I was the only person in my area of about 50.
Team calls - made assignments “assuming” positive jab status, requiring explanation in front of the group why assignment wasn’t possible. Multiple times over the weeks.
At one point when there was an office exposure all unvaccinated had to quarantine the same as the covid positive staff.
Mandatory vaccine status submission. Vaccinated were not required to test prior to being granted entry to the federal workplace. Unvaccinated were also not allowed to participate in outdoor activities without first being tested.

22. If you answered "yes" to the previous question, please explain.
We were put on a specific list, removed from travel and annotated on multiple forms with an unvaxed status. I was specifically put in a quasi leadership role to oversee the unvaxxed employees of life status. Mainly due to my seniority, but also everyone else was in full travel status while we were in an ostracized leper status.
The VSS (Vaccine ?? Survey) plus I believe we had to advise management via email whether we had taken the vaccine.
I am a physician and they tracked who was not vaccinated
In the military at BCT we had to wear a black/purple bead on our boots and water source indicating we were unvaccinated. In dol we could only go to the office alone when no one else was there.
We were told it was prohibited to ask about vaccine status even as management continuously told us to take the jab and test
I was the only one required to mask and test
Covid tests were sent to the office for my personal testing. No other office member was forced to take a test because they were vaccinated. The order for covid test were made by district personnel, tests were only ordered for those who refused the vaccine. I was using a free test through an Iowa state program and there was no need to order the tests. This was done to force observation through a third party for verification of testing. I never took those tests as they required a nasal swab.
Forced testing with non-FDA approved COVID tests
Allegedly management emailed vaccination status of employees amongst themselves. A nonsupervisory colleague was inadvertently CC'd on the email.
Employer created spreadsheets with those that refused to take vax & filed religious exemptions request
Unvaccinated employees were informed they must perform COVID tests.
Use of a sticker on company identification badge
We were forced to stand in public lines behind caution tape twice a week for testing. After testing we were forced to carry a stamped document with us at all times. Our access was flagged so the security alarms went off whenever we entered the entrance checkpoint. In addition to badging in, we were forced to present these documents to guards to gain access. If we failed to do this, we lost physical access to the work environment.

22. If you answered "yes" to the previous question, please explain.
We first had to email our Supervisor to acknowledge the November 22, 2021 "Notification of Requirement for COVID Vaccination" deadline by October 13, 2021. Then the Disability Program Coordinator emailed stating we had to submit our "Religious Exemptions To Not Take COVID Vaccine" to email address ([redacted]) and stated "DLA employees who are requesting RA exemption are encouraged to submit exception requests NLT November 8, 2021." We were then mandated to report our vaccination status via "DLA Vaccination Documentation Tracker" also known as "COVID-19 Vaccination Documentation System (HRM Center – Response Tracker)" by November 8, 2021, which the email stated "This includes those who are not getting vaccinated, only partially vaccinated, or requesting an exemption." Then the Disability Program Coordinator emailed the unvaccinated to fill out form DD3177 and to submit any additional supporting documentation to the email address [redacted], which I submitted November 15, 2021. Then on May 24, 2022, DLA mandated their own policy for testing, masking, and social distancing and requested all Supervisor to email the Memo "Testing Requirement Acknowledgement - DLA Columbus" which stated that this must be signed by every employee that is not vaccinated or refuses to attest to their vaccination status. This Memo itself was dated May 16, 2022 and this was forwarded to me by my Supervisor on May 24, 2022. On May 26, 2022, my Supervisor requested that I sign the Memo and return by 11:00am on May 27, 2022. I responded stating I do not consent to this as per my religious beliefs, which is explained in my religious exemption that I submitted October 8, 2021. On May 31, 2022, my Supervisor emailed me and CC the Branch Chief the Memo signed by him and stated "this email documents that the employee refused to sign on 5/26/22." Then on June 1, 2022, I received an email from my Supervisor with a signed (Revised) "Testing Requirement Acknowledgement" Memo; the Memo was dated May 31, 2022 and the revision included the change in the Title of the Memo with several areas of the Memo information being deleted/added. I was AWOL because of my refusal to test, mask, and social distance.
i dont know. but there was talk. management knew.
Unvaxed Called out of Section meetings as the cause of everyone having to wear masks.
Labeled me an insider threat
I had to mask when the rest of the staff did not. Might as well be wearing a scarlet letter. Emails stating unvaxxed could not travel. So I did not request travel or training.
They had everyone fill out an email survey. The Miami field office website had a section specifically stating vaccination, but I didn't have access.
Masking requirement after lifting requirement for others.
Prominent appearing badges or placards were only given to those who took the shots. If you were not wearing a placard, this was frowned upon.
While on site we had to wear a mask. Fortunately I swapped to mostly remote so that was minimal.
Forced mask wearing when the unvaccinated did not have to.
We were forced to submit our names as being unvaccinated

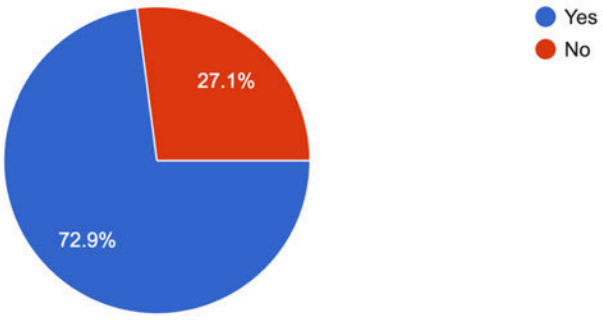
22. If you answered "yes" to the previous question, please explain.
All employees were instructed to upload their vaccine status in DOI's Safety Management Information System (SMIS) (https://smis.doi.net/auth/). It was explained that those who failed to do so would be considered unvaccinated.
We were not allowed to participate in Missions as to avoid "exposing" the vaccinated to health risks. In addition, we were tested regularly.
Made to test in a public area where anyone passing would know why I was being tested
I had to wear a mask while on the campus.
E-mail, designed testing sites, background checks
I had to wear a mask when everyone who had received the EUA COVID shots could remove theirs.
Not that I know of.
I wasn't allowed to wear a uniform, was given a "volunteer" t-shirt to wear, had to tape over my law enforcement decals on my patrol truck.
I was asked if I had taken the vaccine by my supervisor.
The unvaxxed were forced to test and wear a mask even though the unvaxxed were not
I was identified as unvaccinated by being fired
We were all forced to test next to the ground floor entrance where everyone could see.
Mailed a post card to my home with my vaccine status and put me on unpaid leave.
Travel log for non vaccinated all could access
By not allowing me to participate in travel and training like my fellow coworkers, they knew I was not vaccinated.
Required recurring testing.
Required submission of religious exemption, isolated me for 100 days then terminated me
once vaccinations were available and required only the unvaccinated were required to wear a mask - this made it very obvious who the unvaccinated were and we were treated as villains

22. If you answered "yes" to the previous question, please explain.
DoD leadership treated me like a criminal. In addition to having my (very successful) career derailed, members of my community were aware of my unvaccinated status and refused to speak to me. I became a community pariah overnight. I was banned from attending professional development events that were required for advancement. I lost opportunities to attend courses that would enhance my ability to perform my job. I was denied leave (vacation) on multiple occasions. I was forced to wear a mask due to my unvaccinated status. I had previously provided scientific studies to those around me, to include my leadership, demonstrating the lack of mask efficacy. Everyone I worked with understood that I was forced to wear a mask because I was unvaccinated and seen as a potential vector for disease transmission. Mass emails were sent out to Navy members at the Defense Intelligence Agency as part of a "readiness overview" explicitly stating that I had not taken the COVID-19 shot. My position as a future diplomat was removed because of my unvaccinated status and decision to file a religious accommodation request. The memorandum that cited my removal specifically stated that waiting for the accommodation process would result in an unacceptable vacancy on station in [redacted]. My job had been vacant for over a year at that point, and remained unfilled for an extended period of time following the loss of my position, questioning the sincerity of the basis for removal. DoD leadership used public awareness of vaccination status, shame, and physical separation within office spaces (among other activities) to psychologically pressure those who were unvaccinated. It was horrible.
1. A policy/agreement was put in place that Air Traffic Controllers could not work on position for 2 days post vaccine. 2. Paid leave was offered to those who decided to get vaccinated. Schedule coordination was required, as well as submission of proof in order to get the paid leave. Most controllers took the offer. 3. Once a new memorandum of agreement (between the FAA and NATCA) was issued, controllers who were vaccinated were allowed to go mask free, while the unvaccinated were still required to wear masks. 4. Within 1-2 hours of my going into work without a mask, since I was not on the list of those who had taken vaccination leave, I was pulled into a meeting with a NATCA rep to determine if I was "in compliance with the MOA" - meaning vaccinated. (Submission of vaccination record was not required, but a yes or no response to the compliance question was).
They kept a database of the unvaccinated and numerous employees had access to this list; the list was then used to contact us when they thought we were late for testing and when testing was required to the local area outbreaks
Supervisors openly spoke of my weekly covid 19 testing requirements dmas the unvaccinated during roll calls. Denied Training to unvaxxed status
Considering the sneaky behavior that ensured, there is no way of telling if I was identified to my colleagues or not.
We were targeted and discriminated against then fired when I did not waiver from my religious beliefs that the vax & testing were a violation of my faith.
Prohibited from onsite work, unpaid leave

22. If you answered "yes" to the previous question, please explain.
Supervisor informed all SES and HR staff as well as the Support Services Department who does payroll and IDs. via email. She also informed at least one fellow counselor via email. This was all between September and December 2021. In January through March 2022, I was outed to all peers because I was forced to defend unvaccinated Veterans who were being discriminated against by fellow counselors. I received a Reprimand and then a 10 Day Suspension and eventually a Medical Separation for attempting to resolve these issues.
Those who did not show proof of vaccination were forced to wear a mask. This data was also in a database for those in position to harass you from remote locations. Emails were sent out daily and further contact via workplace Instant messages and the like, including face to face harassment.
It was clear to USAF leadership based on my IMR immunizations report, but it became clear to colleagues when I was required to take the EUA Covid-19 test weekly and was denied TDY travel and deployment for ~506 days.
Small work group and somehow the information was communicated.
Raytheon sent out a weekly warning email as identifying me as a non-vaccinated employee
When the "everyone" mask mandate was dropped, but the unvaxxed were required to mask and thus the yellow star on the chest was born, and then also required weekly tests. Information on unvaxxed employees was freely shared and discussed. Disparate treatment of employees was evident on its face, and given as direction from the top down.
Had to put vaccination status in our file, had to undergo testing, which vaccinated individuals did not have to do.
A list of unvaccinated was kept
Only the vax free were required to test and mask
Having to request travel made my vaccination status known to several people who had no business knowing.

23. Did you feel you were being coerced to participate in activities that you had explicitly filed a religious accommodation request to not participate in?

192 responses



24. If you answered "yes" to the previous question, please explain.
It was a constant harangue from leaders, peer, coworkers, and subordinates
My Director (second level supervisor) told my supervisor that because I was unvaccinated I "would not travel again until PCSing back to the US". My position required regular travel across southern Europe.
Wearing masks and covid testing
My RA for the vaccine was never processed due to the F4F injunction. However, I was forced to test weekly because my testing RA was denied.
I consider my body to be sacred, everything I choose to enter must be vetted to be also sacred.
I was told every day I would be fired if I didn't get the vaccination.
Jab and "testing"
They were trying to force us to take the experimental, risky covid-19 injections and participate in their pre-trial run of the Mark of The Beast system - tracking everyone and denying freedoms based on compliance, threatening our livelihoods, etc.
We were sent a lot of threatening emails even AFTER the religious exemptions were filed.
My religious exception request was lost, then I received a letter of caution stating I had to comply or they would start discipline actions. I had to send proof that I had filed on time. My emails and documents were sent to several others and many were cc'd. I had asked how they were protecting my privacy and I never received any reply to this question.
Penalties such as lack of building access, threats of job functions reassignment, and potential dismissal from employment were frequently made.

24. If you answered "yes" to the previous question, please explain.
I felt I was coerced into participating in testing. While awaiting the outcome of the religious accommodation I filed, negative employment actions were threatened/discipline was threatened if one did not agree to be tested for COVID-19
I was required to register on the VSS website, indicating I had not vaxxed.
I felt coerced into getting "vaccinated" despite having filed a religious exemption.
I felt harassed at every meeting as management berated us to take the jab and test. I submitted religious and medical RAs that were ignored. No means no and it is harassing to continuously be told to do something I unequivocally said no to doing. It caused me constant stress and made me a pariah because it was no secret that I was vaccine injured by the shingles shot and vocal about refusing vaccines before COVID.
Injection and testing
It was made very clear that I was the black sheep
Covid testing.
I was days from being fired and my religious accommodation was never responded to. If it wasn't for the court verdict I feared I was going to lose my job.
Yes vaccination. Religious request was completely ignored twice.
Threatened with termination. Removed as supervisor. Mistreated.
Yes. Consistently subjected to questions on my status and last test dates.
Forced to vax to stay employed
Mandatory COVID testing that others didn't have to experience, multiple polygraphs for security clearances
Unvaccinated employees were informed they must perform COVID tests, but unvaccinated employees did not.
Multiple and repeatedly told by our CEO to obtain the COVID shot (town halls, emails, every time the CEO addressed the company workforce)
Yes, this was evidenced by my immediate supervisor, who was supportive, went to testing with me and said he didn't feel well. He was denied testing because he was vaccinated. This shows that the testing was meant to coerce us into compliance not to enhance safety as claimed.
While my Religious Exemption is "held in abeyance" it was non-stop requesting status on inputting tracker info, to emailing vaccination status, to signing a memo, that on July 18, 2022 I emailed a "Notice of Violation of Religious Discrimination & Hostile Work Environment" letter which was never addressed and when I was charged AWOL, is when I submitted my EEOC complaint, which again, I am in Federal Court fighting this as Pro Se.
Either comply or lose access to the workplace

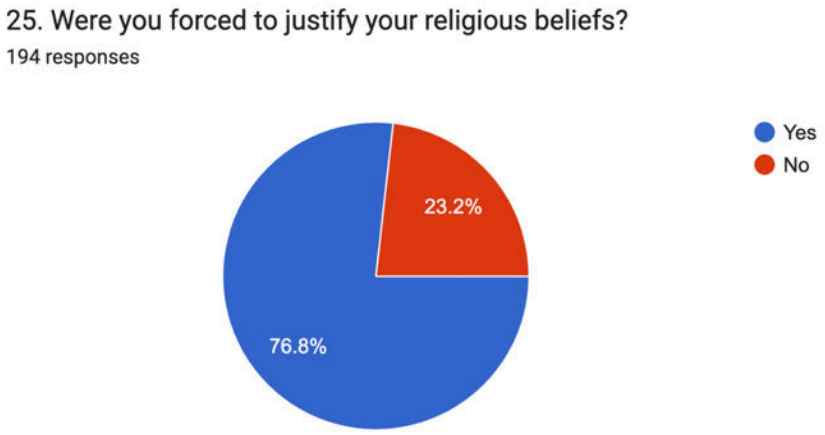
24. If you answered "yes" to the previous question, please explain.
Emails stating we would need counseling or “leading to dismissal”, I.e., being fired. For not taking the EUA Covid vax.
I was fired for not complying
My religious accommodation was only for the COVID shots, but I was also forced to test regularly (every 3 days) and told I needed to share test results with my supervisor. I told them I did not want to, but would share via department email if I was forced to share. My supervisor told me that he would assume I was negative unless I told him otherwise, but still expected me to report any positive tests. I was required to mask in nearly all government buildings due to being “unvaccinated”. I never received any response for my religious accommodation.
My agency ignored my religious exemption request even though they requested me to provide one. It was never approved or denied. As I was unvaccinated due to religious beliefs they required testing.
There was tremendous coercion on an institutional level to take the COVID-19 shot. If you were able to keep your job, you felt ostracized and marginalized for not participating in the forced shots. People of faith were desperately affected and were forced to test in order to keep their job and maintain their livelihood.
I told them, by their logic, if their vaccine protected them and I was willing to assume the risk, my mask or vax status shouldn't matter.
Required forced masking while at work due to not having the vax
The coercion to perform testing was excessive and repetitive (emails/announcements/town halls) and regardless of any actual benefit of the testing or any need based on protection or existing immunity.
Constant emails from DHS
I did not file a religious accommodation request but did feel coerced into participating in these activities. By not providing any information to the federal government, it was assumed I was unvaccinated and I was treated as such. This meant I had two letters of counsel issued with a third on the way. Had that third been formally issued, I would have been suspended from work for 14 days and then removed from my position if I did not comply at that point. It is only because of the Feds 4 Med Freedom lawsuit that I did not receive that third letter and subsequent actions.
I was told by my Section Chief that unless I was a "Biblical Scholar" I would not receive a religious exemption. Therefore I fully expected to be denied my exemption and promptly terminated if I did not participate in taking the vaccine.
Did not want to test for spiritual and medical reasons- exposing my body intentionally to toxins
While deployed on a Navy Cruiser from Jan to Sep in 2021 the Executive officer, Commanding Officer, and medical corpsman addressed the entire crew on a daily basis to discuss the "benefits" of the "vaccine" that was "safe and effective". A threat always accompanied the announcement that those not fully vaccinated would not be authorized liberty and could receive a dishonorable discharge.

24. If you answered "yes" to the previous question, please explain.
I was a remote worker and was being made to come into the office when not necessary to justify getting vaccinated.
The FAA never approved any of either exemptions.
mocked for not taking the vaccine
I was coerced to receive a vaccine to keep my job after I stated my sincerely-held religious belief
United Airlines took all benefits including medical benefits, they also froze my retirement account so I couldn't access my funds.
Wearing a mask and acceptance of vaccines
My command tempted to use me in the position to get others to take the COVID-19 vaccine
Forced to issue direction to subordinates contrary to those known to be unethical and immoral
I was encouraged to vaccinate even though I had contracted COVID a month prior and had natural immunity
My career was derailed for following my conscience and filing religious accommodation requests. I worked with hundreds of people throughout the military and federal government to help them understand their rights and administrative options regarding COVID-19 mandates. Coercive activities appeared to be widespread throughout the federal government; systematic tactics employed by the government to compel vaccination, testing, and masking compliance. Examples of coercive activities included name-calling, threats or actual loss of career position and/or employment, withholding of personal property during moves (my belongings were held hostage for nearly a year because I had a pending religious accommodation request and was unwilling to take a COVID-19 shot), loss of access to the workplace (I was told I was not allowed to telework, even though the majority of my work was on unclassified systems, yet my badge was disabled and I was told if I did not physically show up in my access-controlled workspace, I would be charged with an unauthorized absence and may face punitive action, to include court martial), denial of leave, denial of travel and training, etc. Government leaders employed a plethora of tools and tactics to coerce federal employees into participating in activities that they had explicitly filed a religious accommodation request to not participate in.
Prior to Accommodation request: 1. The incentive of 2 free days off, paired with the "reward" of going unmasked. 2. The focus on getting vaccinated vs natural immunity/herd immunity. After Accommodation request regarding masking: 1. I was denied access to work and required to take leave during the decision process. 2. My request was denied, and I was required to work masked, against my religious belief. I was directed that if I would not do so, I should call in to request leave. 3. I called prior to every shift, requested to work unmasked in accordance with my faith. When I was denied, I requested leave. My leave request was denied every time, and management tagged me as AWOL.

24. If you answered "yes" to the previous question, please explain.
The pressure to get a Covid vaccine was amplified by the punishment imposed on those of us who filed religious exemptions against the vaccine. We were required to submit Covid tests every 72 hours in the beginning regardless of having no symptoms. We were required to go to testing facilities and potentially expose ourselves to sick individuals to get a negative test. We were told we could not travel if we didn't have the vaccine. The treatment of the unvaccinated was made to be so inconvenient it would coerce one to take the vaccine to avoid the punishments.
Weekly PCR testing just to go to work
Files a religious accommodation request as I was not going to participate in their C19 vaccination and testing requirements.
I was banned from work site, cannot work from home since its classified work
If I did not wear a mask and test weekly for Covid19, I would be sent home without pay.
Mask and vaccine mandates
To be free of harassment for being unvaxxed. I didn't want non-medical personnel testing me because I feared being injured and outed to my veterans and peers.
I was frequently contacted by different members of management, not just the department I worked for, and was told that they go to church and believe in God and took the vaccine, so why can't I.
Despite my religious accommodation request pending I was pressured both indirectly via lost opportunities (no flying, TDY or deployments) and via negative/discriminatory DoD and USAF media articles, and later directly when forced to choose between Vaccination (against my beliefs) or face UCMJ discipline even though my Voluntary Separation and Appeals were both denied - the USAF systematically removed every option to comply with established policies and process other than vaccination which was at odds with my constitutional right to free exercise of religion and private health autonomy. I was pressured directly before/after/during my LOC and LOR with statements about repayment of aviation flying bonus, loss of pension/medical, dishonorable or general discharge with loss of GI bill benefits, and most poignantly "this is conduct unbecoming a field grade officer" and "criminal" after I chose to assert my rights by disobeying an unlawful order to vaccinate while fully accepting the known consequences.
I worked on a team that included DEI, STEM outreach, Recruiting, and Deaf programs, under the Executive Support Office, we were tasked with leading many pandemic initiatives and expected to 'lead by example'. My refusal to be vaccinated was a source of frustration.
I informed my supervisor that I had no intention in receiving the Covid-19 vaccine due to my personal religious belief and that the vaccine was not properly FDA approved.
I requested not to participate in vax and discriminatory practices, and there was daily intimidation and threats in nearly every meeting/email from the WO and the RO. In addition I was directed as a supervisor with more than 50 employees (50 Administratively Determined emergency hires) to gather and review their private medical and religious information (vax and religious exemption request status), which I refused to do as well.

24. If you answered "yes" to the previous question, please explain.
They sat on my request for a year and a half and did nothing about it, but kept saying we would be fired.
Raytheon demanded I get the Covid-19 vaccine despite religious objections over fetal cells being used.
Consistently gaslit on "safe and effective" campaign; Could not apply to next job assignments; Given non-negotiable accommodation requirement of weekly testing only for non-vaccinated;
The blanket accommodation for religious exemption to the vax was mask wear and weekly testing with a eua test which also violated my religious belief.
I was being told I needed to discriminate against myself and train new hires to do my work since I was not being given permission to travel.

Religious Belief Justification



26. If you answered "yes" to the previous question, please explain.
I was asked to provide a religious justification in my accommodation request.
Part of the Religious Accommodation process was a section that required us to explain our religious beliefs and how we came to hold such beliefs.
I had filled out the Religious Exemption Form which asked all types of questions.
In my EEO cases, multiple affidavits, etc. The sticky point is that the agency attorney (that just filed motion for summary judgment) keeps saying vaccination status isn't a protected class, but can't see through to the fact that I'M NOT VACCINATED DUE TO MY RELIGIOUS BELIEFS.

26. If you answered "yes" to the previous question, please explain.
In my interactive dialogue with [redacted], his questioning was interrogating. He kept demanding, "Why is this your belief" and "What makes this your belief". In regards to testing, he compared sticking a qtip in my ear to swabbing my nose.
I had to explain my religious beliefs
In appeal HR asked to explain.
I was forced to prove my belief that I lived out every single day in such an unrealistic way that nobody would ever have had to do otherwise.
The RE form had specific instructions and questions that needed to be followed and answered.
Reason for requesting religious exemption from the jab. What in the religion forbids the jab. How long beliefs were held. How serious are you really about the beliefs…
Their religious exemption was written in such a way (by the lawyers) that forced you to explain in detail your beliefs and they challenged your logic & consistency in adhering to those beliefs. Tried to set traps in the way they worded the questions on the form.
I had to answer a specific question from a religious exception request form that made me detail specifics about my beliefs and medical status.
Mandatory within the accommodation request. DHS did not have a religious accommodation process so ability to submit religious related requests were also delayed.
Only to the extent of having to explain my beliefs in my religious accommodation filing
It never came to us putting it on paper, but we were told by our supervisors that we had better be prepared to quote scripture and or have our religious exemptions backed up by some kind of religious authority.
When filing the religious exemption from taking the vaccine.
I had to speak to a chaplain and get a letter from my pastor
Meet with Chaplin in the army. Singled out in army for not being vaccinated.
I was forced to justify my religious beliefs in the sense that I had to explain my religion when I made the request for a religious exemption.
The department forced me to file a questionnaire for my religious RA that was clearly intended to try to negate religious convictions.
I filed a religious exemption request for both the "vaccination" shot, and to avoid Covid testing. Both exemption requests required me to explain why/how the vaccine and testing mandates violated my religious beliefs.

26. If you answered "yes" to the previous question, please explain.
The initial religious exemption form (to the injection) that DOL used was overly invasive and unlawful (particularly Question 13) - I protested it, and it was eventually revised. I was also forced to justify my religious beliefs during my EEO deposition - my beliefs were attacked, and the questioning was inappropriate.
Since the request was not immediately approved, I had to continue to defend my values
I had filed an email request requesting a religious accommodation to the district managers and to WECO. The Department of Labor then released an additional form asking for additional information to justify your beliefs. I never received an answer for my request.
I created a religious exemption and sent to my CC, but chose not to re-enlist due to the unconstitutional mandate.
Supervisor told me I was not religious enough. That he didn't believe me.
Had to submit a secondary request for information after my initial religious accommodations had been submitted. This level of questions had never been submitted before and was submitted agency wide to those that submitted a reasonable accommodation based on their religious beliefs.
Submitted a formal Dept of Navy Religious Exemption
I had to write a multi-page memo explaining my religious beliefs for the Defense Intelligence Agency Chaplain to review. It was never reviewed, adjudicated, or processed.
The process for filing a religious accommodation was changed just for the COVID vaccine. I had to fill out two different forms explaining my religious beliefs.
In the accommodation request form, had to reply with justifications for the accommodation.
My request was never processed so I never had to address anything.
We were required to submit a document that asked us to document our religious justification.
Had to submit two letters from clergy or those in religious positions. Had to justify why I'm a Christian. Had to answer multiple invasive and misleading questions such as "ever taken medications, ever had a vaccine, flu shot, etc. If I had decided to "transition" to a different gender, all you have to do is log into your personnel file and check a different box! No questions, no denial!

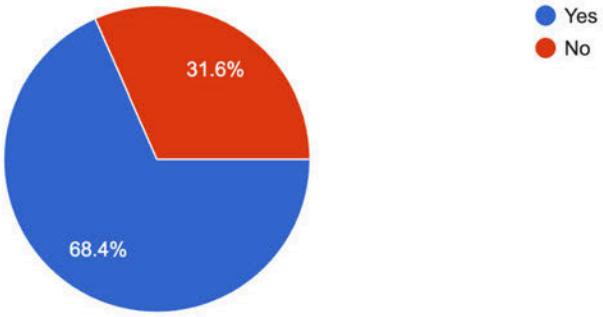
26. If you answered "yes" to the previous question, please explain.
My original Religious Exemption has never been addressed. When DLA mandated their own policy for testing, masking, social distancing, I amended my original religious exemption notice on July 7, 2022 and sent to the email address [redacted] objecting to the vaccine, test and masking policy, even though this was already included in the original RE. I received an email on July 18, 2022 from the Chief, EEO Affirmative Employment Program acknowledging my reasonable accommodation from COVID Testing based on religious beliefs request. I was requested to fill out a "Reasonable Accommodation COVID-19 Testing Exemption-RELIGIOUS Questions" consisting of 7 questions to be submitted by July 26, 2022, which I submitted and stated "I am not real sure how these questions pertain to reasonable accommodation and please understand that the questionnaire does not waiver any of my legal right to seek religious exemption and accommodation from any requirement that conflicts with my sincerely-held religious beliefs, and without waiver of the right to seek legal redress from any wrongful denial of such exemption or accommodation." The EEO Chief stated that the questionnaire was forwarded to the decision makers for COVID Testing Exemptions, which are handled outside of the EEO RA Office, and that upon a receipt of an answer, the decision will be communicated through HR and/or your Chain of Command. After requesting status on September 6th and 12th to EEO Chief because I was getting threatening, hostile notices that I will be put on unpaid leave, considering me “AWOL” or putting me on disciplinary action, on September 13, 2022, the EEO Chief responded stating "As of this morning, an answer has not been received. [redacted] is the EEO Complaints Manager and will be able to address your concerns of discrimination." On October 4, 2022, I received an email from an email box "COVID Exemptions" with an attached Memo denying my religious accommodation to the COVID-19 screening testing.
We had to write exemptions
On October 15, 2021 I emailed form DOJ-100A for reasonable accommodation not to take the mandated COVID shots. On November 23, 2021, ATF ([redacted]) sent me a religious questionnaire titled: “Request for a religious Exception to the COVID-19 Vaccination Requirement”. The accompanying email asked that I “please complete the attached form” by December 7 or by reasonable accommodation “may be denied”. It also said they had received my request for a reasonable accommodation. They were clearly playing word games with the switch from ‘accommodation’ to ‘exception’.
In writing to file a request, non official form used by agency.
I had to provide documentation on how the masks, testing, or vaccines were impacted by my religion.
Only in my RA request
They introduced an SF7509 that is not any SF I've ever seen and doesn't see results when googled. I have copies of all correspondence to include that and the 10 page addendum I wrote to go with it.
I had to interview with the Chaplain while with the GA ANG.
I had to provide a letter from the pastor of my church
I was given 2 different surveys that required me to validate my beliefs. After I submitted the first survey, they resent an edited survey for resubmission.

26. If you answered "yes" to the previous question, please explain.
The form required justification statement
I had to submit my statement of faith
I wrote a 70 page religious accommodation request with a detailed explanation of my religious beliefs which prohibit human cloning, genetic modification, and gene therapy. I sent it to my XO, CO, supervisory Chaplain, and Navy OPM.
Obtain a letter from a priest / representative from church.
I was required to explain my beliefs.
I was denied the exemption and threatened with termination.
After filing my EEOC complaint I was questioned on my religious beliefs and how they justified requesting an exemption.
had to file religious exemption paperwork
Through the Religious Accommodation Request process, my request was denied, so I appealed providing further information about why the Covid vaccine was against my religious beliefs. My appeal was also denied.
I submitted a letter
United Airlines head of HR (Katie Kebo) requested proof of my religious beliefs in a written statement from an unrelated party verifying my beliefs.
Never processed
I had to write a lengthy letter to explain my beliefs as as well as an appeal
Questionnaire(s) issued to explain religious request that invoked feelings of religious justification
I was made to answer questions about my beliefs, how long I had these beliefs and explain them. The questions on the form I had to fill out were not legal questions, yet I felt I had to answer them.
The military religious accommodation request process requires members to speak with a military chaplain to verify the validity of the individual's beliefs.
I received a follow-up questionnaire challenging the sincerity of my religious beliefs
I was asked to provide the basis for my faith regarding my request. The question was posed along the lines of: Where can I go to find out the support of this belief. In management's denial, it would seem they were looking for the "religious support" to explicitly state that wearing a mask would violate the tenets of the faith.
We had to submit a modified religious exemption questionnaire that did not comply with the standard three questions for eeo. Then when the FBI learned it was wrong to ask these additional questions of our religious beliefs they changed the form back to three questions but our answers were already documented in their databases.

26. If you answered "yes" to the previous question, please explain.
An unreasonable series of questions were required to be answered about my personal religious beliefs through the accommodation process, and to submit those details into a database that was also seemingly not keeping personal details secure.
Required to justify my beliefs and then told that I was required to violate my beliefs by using the medical tests to prove I was not infected or be fired
I was given a form that asked for justification
I had to disclose the address of church and how often I attend, and had to defend God from my peers who believed the government knew what was best for me.
I was forced to exploit my sincere, personal beliefs and experiences in the accommodation request which left me feeling violated.
I justified my beliefs to my superiors many times in spoken / written word as well as deed as they struggled to understand my choice and reasons while wrestling with their own conscience as they followed the orders of DoD and USAF leadership and JAG recommendations despite their cognitive dissonance regarding the hypocrisy that was evident.
Had to write a paper on my beliefs and why they prevented me from getting vaccinated. Honestly, my command leadership struggled with the vaccine and mask mandates because many of them personally understood why people didn't want to participate but they were tasked with making it happen. It was often terribly awkward.
I had to explain in their compliance request why I was not taking the covid-19 vaccine.
The USDA/USFS completely changed their religious accommodation request forms and process that had been in place and in policy 19+ years prior specifically for the COVID-19 vax mandate in August of 2021 during the mandatory vax certification runup period (AD-1163R). They then re-did the new form/questionnaire again in October of 2021 with extremely intrusive and threatening questions which were obviously setting up predecisional rationale for denial, and required employees to resubmit using that form and justify their religious beliefs. Leaked audio of Whitehouse/DOJ lawyers/SAFER Taskforce prior to the questionnaire
In the accommodation request.
I had to submit paperwork explaining what my objection was.
Had to submit a statement and questionnaire explaining/justifying my beliefs. The company subjected some employees (not me personally) to an even more more extensive back and forth about their beliefs
We were required to fill out a very detailed form asking for justification of my beliefs.

27. Did your employer change the rules for religious accommodation requests during the time of your employment?

193 responses



28. If you answered "yes" to the previous question, please explain.
The CIA changed the process during COVID and created a board to adjudicate on the accommodation made up of employees from medical services, Office of General Counsel, and HR. There were no individualized assessments for those requests, no meeting minutes were provided, and almost none of the accommodation requests were processed. In contrast, previous requests were approved by the immediate supervisor after a cursory examination of the cost to the workforce.
Prior to EO 14043, religious accommodations were approved at the first line supervisor level. After signing of EO 14043 the Department of the Army changed the process, no longer following the DODI regarding religious accommodations, and was now conducting centralized processing of all religious accommodations at a senior level.
When I first submitted my exemption it should have been processed in a few days, it was never processed. Then they changed the form and others didn't have to answer all the questions that we did.
Instead of first-line supervisor approving the request, it became second-line supervisor approval for the vaccine mandate (that was put on hold), and then moved to the Director of NOAA Office of Human Capital Services for the testing RA.
They did not follow deadlines for addressing or processing them. After the interactive dialogue meeting I never received a determination.
They created special emails and procedures
While in [redacted], the host nation eliminated the testing requirements while the government of the US and bases still upheld their own testing requirements.
I believe they did at the time, can't remember exactly what.
Not really sure - it seemed the rules kept changing during the "pandemic."
Not sure, they never gave me an answer one way or another.

28. If you answered "yes" to the previous question, please explain.
DHS did not have a religious accommodation process so ability to submit religious related requests were also delayed.
At no point was anyone ever threatened or questioned about their religious exemptions for anything else to my knowledge duty related. It has never come up to my knowledge, but that being said no one would have had the balls to question someone about their religious beliefs.
The time limits were nit honored by the government when it came to the timeline of reviewing and approving the religious and medical exemptions.
I resigned to avoid disciplinary action since I knew they wouldn't take religious exemptions. I didn't want my unvaccinated status documented in the government. I returned a year later when they allowed religious exemptions
Timeline shifted for their response. They wouldn't identify who was making the decisions or who was responding to questions.
The department issued new RA policies, forms and questionnaires. The department failed to follow their own policies.
They instituted the vaccine/shot mandate while I was employed, and then they tried to require testing also, after I was approved for an exemption to the shot.
The initial religious exemption form (to the injection) that DOL used was overly invasive and unlawful - I protested it, and it was eventually revised.
It was a piece of paper previously, now it was a whole new process
I had filed an email request requesting a religious accommodation to the district managers and to WECO. The Department of Labor then released an additional form asking for additional information to justify your beliefs. I never received an answer for my request.
Invented entirely new protocol for making the request, including extensive written q's
Reasonable accommodations had been originally routed to the first line supervisor. However, after Covid began, they changed the procedure and made the reasonable accommodation be sent to a individual headquarters. Then they changed it a second time and made it a requirement to send it to a panel of people to decide.
I can't remember everything. They changed forms, requirements, and process multiple times throughout fall of 2021 and spring of 2022
The process for filing a religious accommodation was changed just for the COVID vaccine. I had to fill out two different forms explaining my religious beliefs.
When I asked for additional time to sign their form to consult with counsel, the HR Director immediately replied via email that any further questions/replies would need to be routed via the company's General Counsel.

28. If you answered "yes" to the previous question, please explain.
Our petitions were not given any serious consideration until we hired a lawyer. Then our Command decided they would instantiate a panel to assess our packets. This never happened because the EO was rescinded. Even though the EO was rescinded, as far as I know, the testing policies are still in place and never revoked.
Yes as mentioned above I had to submit the request several times to different people and/or systems and/or forms.
RA was denied w/out consideration they couldn't have followed established rules
The review authority changed from BUMED to CNP
I believe there are policies and specific time frames whereby agencies are to respond and follow through with Reasonable Accommodation requests. This never happened. They never responded.
Changed multiple times.
ATF formed the COVID-19 Reasonable Accommodation Coordination Team - an anonymous group of ATF (presumably managers/leaders) personnel that would assist Chief [redacted] with reviewing ALL COVID-19 RA requests. Additionally, REACT requested many, if not all, ATF employees seeking RA from the COVID-19 mandate to submit the religious questionnaire I mentioned in 26. above. This was clearly not a case-by-case inquiry as required by EEOC guidance from January 2021. I retained copies of every email/form I filed and saved all documents pertaining to the COVID mandates.
Required use on unofficial form for vaccine requests.
The forms had to be completed and submitted to a specific person.
Sent to an anonymous centralized unit for processing instead of 1st line supervisor.
It is my understanding that the reasonable combination process provides for an interactive dialogue and good faith process between the employer and the employee. In my experience, this never happened. I was purposefully kept in the dark about the process. This created a great deal of undue stress.
They introduced an SF7509, gathered that and many other forms and responses, then just held it. They iced it out for four years then under the trump admin allegedly started removing it. God knows who all had access, saw it, and or could see it in transit. Oddly, I administered the share it was on when it went to rest and, until my last day, I never betrayed the trust of not snooping. I even attempted to recuse myself and made mention of the conflict of interest. They said they trust me.
Both DoD and DHS required in writing a religious accommodation where previous to that a verbal was sufficient.
I believe so, but would need to look up specifics.
It seems like the rules were unofficially changed. Multiple of my coworkers submitted religious accommodation requests and never heard back on them again. There is typically a specific timeframe that is supposed to be adhered to when it comes to these kinds of actions. That was not the case here.

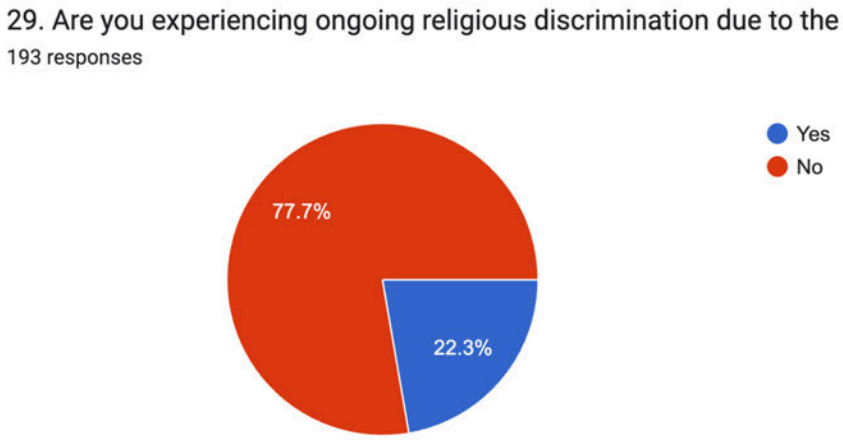
28. If you answered "yes" to the previous question, please explain.
As stated before, I was required to take different surveys validating my request.
Usual process was automatic accommodation within the week. I never had my request addressed
Deadlines and forms
ALL previous and other religious accommodation requests were discussed with the Chaplain and recommended by the CO. COVID religious accommodation requests were never discussed with the Chaplain and were all rubber stamped with the CO's "not recommended" denial.
I was denied when that is an unconstitutional action on their part and civil rights violation on their part. Also a violation of the Nuremberg Act.
They refused to approve or deny my medical & religious accommodation requests & never did.
According to DODI 1300.17 the Dod had 30 days to respond and failed to respond within 30 days and just left the request in limbo without affirming for rejecting it.
During Covid they wanted forms filled out as well as statements from your church
The Coast Guard didn’t even have its own policy for applying for RARs, but quickly compiled one at the beginning of the COVID vaccine mandate.
I don't know if the rules were changed prior to COVID since I never asked for an accommodation prior
United Airlines put a deadline on the accommodation request.
Added more red tape and bureaucracy. Blanket denials for the entire Marine Corps.
I didn't file, but I know the rules changed
Additional databases and denied adherence to established timelines for accommodations process.
I had an approved contract that was amended after my selection and full qualifications to require vaccination. My exemption was the single factor in my termination and that was later lied about claiming a TDY discrepancy. Not only was my exemption not considered or reviewed my gaining unit lied about the reason for my termination
They made new rules up, they didn’t know what the rules were and I had to wait for them to figure out what to ask and who I should be submitting my answers to. The entire thing was very stressful. It felt like these new requirements were put in place to make the RA more difficult

28. If you answered "yes" to the previous question, please explain.
The process for adjudicating religious accommodation requests in the U.S. Navy was changed during COVID. Prior to COVID, any religious accommodation request associated with an immunization was routed to the Chief, Bureau of Medicine and Surgery (MEDCOM-24).1 During COVID and contrary to existing policy, the process was altered and requests were required to be routed to the Deputy Chief of Naval Operations for Manpower, Training, and Education. For members seeking legal assistance with their religious accommodation requests, the Defense Service Offices (DSO), which is supposed to be dedicated to providing the highest quality legal representation to military service members as efficiently as possible, provided incorrect advice regarding the right to appeal -- stating no appeal authority existed -- to the point of professional negligence. The right to appeal is clearly stated in at least two military instructions and they mislead numerous military members seeking to assert their right to religious liberty. Religious accommodation requests were often not processed, and after the COVID-19 vaccine mandates were rescinded, all remaining requests were dismissed without adjudication. Military members previously received approved religious accommodation requests for vaccination, however it is my understanding that many of these requests are refused and members have recently experienced adverse action for filing exemptions to immunizations, such as the flu shot.
It originally was three questions. Then the FBI altered the form to require additional questions to be answered regarding our religious beliefs specific to the Covid vaccine. Those of us who submitted the three question form were required to go back and complete the modified form with ~5 questions. Later the FBI changed the form back to three questions, presumably after learning their modified version was illegal.
Once my religious accommodation request was approved, they informed me I needed to take a nasal swab test. Upon asking for permission to take a free saliva test, I was informed I needed Doctors notes explaining my condition as to WHY I needed a saliva test. My doctor had to provide 2 notes explaining it was against HIPAA to release that information and to allow me to take the free saliva test. Once the 2nd accommodation was approved, I was informed I could not submit my weekly test results without signing my HIPAA rights to Raytheon. Since I could not do that, I lost my career/livelihood.
Written process "guidelines" were issued for the religious accommodation process and discipline process that would likely ensue before I ever got to the point of RAR denial, appeal denial and discipline. The USAF offered a Voluntary Separation for those who had objections to the Covid-19 vaccination, but denied my Vol Sep and instead forced me into an InVoluntary Separation for misconduct after removing all options for compliance with established policies short of vaccination against my religious beliefs.
Raytheon changed the accommodation process after the vaccine mandate executive order. Weekly testing for COVID was required for my religious accommodation to be accepted. Testing was not required at any time previously.

28. If you answered "yes" to the previous question, please explain.
Management denied my request for 2 reasons: 1. The FAA & NATCA had an MOA in place stating that vaccinated employees could go unmasked. 2. It would pose an "undue hardship" because they believed that I could get others sick. In my request for reconsideration, I addressed the MOA - that my request fit within Section 9 of the agreement. "This agreement does not constitute a waiver of any right guaranteed by law, rule, regulation, or Collective Bargaining Agreement on behalf of either Party." And that Title VII applies in this section. Since management did not seem to be questioning the sincerity of my belief, I addressed the 2nd reason for denial - the health concern - with multiple science/health related sources that rendered the concerns moot. The response from management was that I did not provide any additional faith related basis for not complying with the face covering policy. Essentially, they circled back to turn it into a matter of dress code.
An unreasonable series of questions were required to be answered about my personal religious beliefs through the accommodation process, and to submit those details into a database that was also seemingly not keeping personal details secure.
Initially they explained that religious accommodations would be honored, but then additional conditions were placed on each, requiring me to violate my beliefs or be fired.
Prior to the vaccine mandate, there was no option to request a religious exemption for the masks
They never accommodated me but never gave me a denial so I could appeal. The law states all accommodation requests are to be processed within a specific timeframe. Not years. And these requests are private no matter what.
Often, from the time the administration made decisions to it trickling down to unit level, changes happened and there was a lot of uncertainty.
There was a new and separate form created on a Sharepoint site designated solely for COVID-19 religious accommodation requests with more questions than previous forms.
Yes, Raytheon emphasize that it was a mandatory for al employee to take the vaccines and it was their new policy
Constant updates to internal FAQ blog was primary interface with employees that had no traceability to change control (who)
The rules changed seemingly weekly. They never updated the company policies just updated a FAQ almost weekly that they treated as the de facto vaccine policy manual
The process was changed specifically for the covid-19 vaccination and was never approved.

28. If you answered "yes" to the previous question, please explain.
The USDA/USFS completely changed their religious accommodation request forms and process that had been in place and in policy for 19+ years prior specifically for the COVID-19 vax mandate in August of 2021 during the mandatory vax certification runup period (AD-1163R). As a supervisor I had the required training on reasonable accommodations many times in my career prior to the new form. They then re-did the new form/questionnaire again in October of 2021 with extremely intrusive and threatening questions which were obviously setting up predecisional rationale for denial, and required employees to resubmit using that form and justify their religious beliefs. Process wise, prior to this, RAs were required to be timely and settled within 30 days using an interactive process with the direct supervisor, they never processed these RAs and took all authority from the direct supervisor to a specially selected group at the Washington Office. As of the jab or job deadline November 22, 2021 of nearly 3000 (2856 Accommodations pending per 11/16/21 FS National Covid-19 Coordination Weekly Update), Reasonable Accommodation requests across the US Forest Service exactly none (0), had been approved by the USFS. When our F4MF injunction took effect, ironically they used it as an excuse to further hold it in "abeyance" on 2/17/2022 even though processing RAs would not have any effect on the injunction. This was also the first time my RA had been even looked at per READ RECEIPT, indicating they were NEVER serious about considering RAs or my rights.

Ongoing Religious Discrimination Due to COVID-19 Mandates



30. If you answered "yes" to the previous question, please explain.
Failure to promote.
Still terminated from my career. 1.5 yrs later applied for retirement.
isolation, name calling, bullying
This is still an open chapter of my life that I deal with every single day, having to essentially restart my entire life and career.

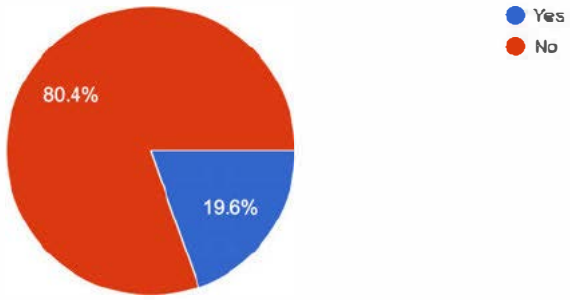
30. If you answered "yes" to the previous question, please explain.
Not sure, since all was left un answered. Not sure if I will in future. Curious what is in my records. I sent a FOIA request during shutdown but I have not received anything back yet.
I continue to tell my colleagues how I was discriminated against and harassed for standing up for my rights and that the worst offenders in management are still employed. I am not provided funding for my project nor management support to comply with legal requirements.
11 months delays in the military COVID Reinstatement process
Requested a special promotion selection board and was denied
Ongoing discrimination only ended when I changed offices within DoD.
I'm not sure how to answer this question, however, the workplace in relationships have never been the same. People don't look at you the same way trust has been almost completely eroded.
I work part time at the VA and they want me to be masked if unvaxxed- essentially a badge of your status
I still don't have my position back.
I applied back to my previous job twice and was denied employment
I never received my FOIA request answer regarding the communications about me and COVID.
United Airlines brought me up on a letter of charge and then tried to get me to sign all my rights away to any past, present, or future litigation. United Airlines also tried to force a gag order on my wife.
I was fired and cut off from my career and income.
It is possible the any subtle discrimination is covert so as to not be clear. Unlike before where I was in cohesive alignment with a work-group, that alignment has seemingly changed and I stand out apart from my colleagues in the "social circle".
I have not worked since I was fired by Raytheon, thus not subjected to their ongoing abuse. But we have communicated with many who were also targets and fired, potentially hundreds. I am aware of over 50 workers that were fired or quit before being fired by this tyrannical company! A core group of former employees have filed discrimination suits and are continuing to fight this battle! Our Attorney Scott Lloyd has our current case; 2024:cv02083, most recent activity, sanctions were handed down and a stay of the fines on Dec 12th, 2025. We are at a loss of understanding how any judge can dismiss our case while our rights have been violated. These rogue judges are attempting to hide the discrimination!
I was forced to medically Separate, and they changed my last date of pay because of the 10 Day Suspension for discussing covid vaccine mandate which reduced my retirement backpay by approximately $35,000. They violated the DOJ agreement to purge all punishment regarding covid mandates. It has cost me my entire life savings.

30. If you answered "yes" to the previous question, please explain.
No, because I am no longer employed at Raytheon. I, along with other former Raytheon employees, are in ongoing litigation through the Federal Courts in the District of Virginia (24:CV02083). Scott Lloyd is our Atty and is facing sanctions with a current stay of the fine for standing up and representing us. We have yet to be heard, we have not had any justice. Every Judge that touches our cases have imposed their own personal political views on the vaccine while allowing our civil rights to be demolished.
Not directly since all discipline has been removed, but I am experiencing the ensuing negative consequences of not being able to TDY, Fly or Deploy for ~506 days including the missed job opportunities, awards and "fluffy" performance reports that more accurately reflected the quality of my work.
At the time of Covid-19 I experienced discrimination because I objection was not recognized as a valid personal beliefs
I never received a RA or even a decision, my beliefs did not matter to the USDA/USFS. I have had no action on my EEO, which was dismissed at the agency level in 2022 and now sits at the EEOC with the USDA/USFS still pushing for dismissal. People and the agency were never held accountable for violating my rights. I retired from the USFS after fighting through 2022 and getting nowhere, it was a hostile work environment for Christians, and my promotion prospects were killed.
I was terminated. (Actually resigned to pursue other opportunities before they terminated me but it was imminent). Raytheon granted my religious exemption but did not engage in any good faith discussion whatsoever with regard to accommodations. Blanket accommodation offer was weekly testing, travel restrictions, and mask wear across the board for any unvaxxed personnel.

Other Religious Liberty Violations

36. Are you witnessing other examples of religious liberty violations NOT related to COVID-19 in your workplace?

189 responses



37. If you answered "yes" to the previous question, please explain.
Prior to this administration, most EEO and HR emails appeared to purposely leave off religion as a

37. If you answered "yes" to the previous question, please explain.
protected class.
Active military service members are being removed from service after filing for a religious accommodation and not accepting the flu shot.
Most of it was in the previous administration, but most specifically the 2024 Sexual Awareness/Sexual Harassment (SASH) mandatory training that basically said misgendering someone is a form of harassment. See included images from January 2024 training.
I asked to telework on Fridays due to the Sabbath and received no response, at the beginning of my career I had to file a EEO complaint which resulted in a settlement.
Flu shots
In order to play sports in the youth league my kids are required to be vaccinated. The waiver requirements must include a signed letter from our pastor.
DEI- “White privilege” training, which contradicts the golden rule of equality.
Have to be cautious discussing beliefs as it can be construed as offensive to others.
Well before Covid a group of Christian employees would meet before work for a positive thought and a prayer in an unused office space. EM learned we were meeting and ordered us to stop. Within weeks I remember seeing a canvas for a LGBQ representative. I was amazed that they could openly support that, traveling to regional and national meetings and we couldn’t even meet.
Requests to grow beards in the military are being negatively endorsed
Many Christians seemed to be held in slightly less regard, especially when compared to Jewish faiths.
I'm in a new location.
VA has same stupid policy for Flu vaccines
Mandatory training
In 2021 I sat on the [redacted] Department Head ranking board for 1st Class Petty Officer's. 54 1st Class Petty Officers were ranked. All 4 who attended Chapel services were ranked dead last in order of how often they attended Chapel services. No sailor who had attended a single Chapel service was ranked higher than 50th on the whole ship. At least one of these sailors had been ranked first at his previous command. This ranking board was a statistical ranking of how Christians were generally treated on the Ship.
A co-worker used a post-it note to share a Bible reference on a “Pride” month bulletin board. It was not an offensive Bible verse in any way, but simply referenced the verses that talk about the rainbow being the sign of a covenant with God after the flood. The note was removed and a complaint was filed. That employee was questioned about it and told not to do it again, but thankfully no negative remarks were added to his record, etc.
I am in the middle of grieving 1) religious discrimination based on my Christian long dress and veil and 2) showing a fellow employee a religious poster which resulted in my lack of promotion.

37. If you answered "yes" to the previous question, please explain.
The prosecution of Dr. Eithan Haim by agents and the DOJ prior to the case being dropped in 1/25.
Until the 2025 EO memo regarding religious freedom, all prior years there has been an ongoing suppression of religious expression, especially from Christians. Some of the suppression was included in the DEI training, albeit intentionally subtle and indirect.
A few other employees were not given religious accommodation to the vax mandate. My punishment prevented others from speaking up and actually coerced others to get vaccinated who were then injured by the vaccine. I was given unlawful orders to participate in illegal hiring due to the Reprimand I received regarding vaccine mandate. I recorded and transcribed this and reported up the chain to include OIG and all other appropriate agencies. It was disregarded.
No, because I was fired.
Other friends and co-workers that have filed Religious Accommodation Requests to other vaccinations (like myself) faced and continue to face an uphill battle while complying with a process designed to be protected by regulation, RFRA and constitutional freedoms in theory, but in practice provide no such protections. For example, in my case, I was only allowed to deploy on a medical waiver that was approved in 48 hours, but my religious accommodation was denied after months on grounds that I could not deploy - that was factually incorrect, logically errand, and unlawful discrimination against religious based requests. With the help of Siri-Glimsted I successfully appealed the RAR denial to the HAF/SG, one of the first RARs approved in the post-Covid policy era. Like me, other friends and co-workers have been denied and many are still being denied promotion, TDY, flying, deployment or leadership opportunities because of their religious accommodation requests or unvaccinated status. If you desire any documentation regarding my experiences please email me directly with specific requests; if you desire documentation regarding others, I can connect you with those individuals as needed.
After Covid, a group of individuals, including the command chaplain, wanted to create a non-denominational Christian employee resource group and was mocked and denied repeatedly. I left the organization at that point but was in contact with individuals that were trying up until the Trump administration eliminated ALL employee resource groups.

EXHIBIT 3.4.001

McGuireWoods

McGuireWoods LLP
[redacted]

John S. Moran
[redacted]

May 13, 2024

By E-Mail and Federal Express

Aaron Scott, Chief Park Ranger
Petersburg National Battlefield
[redacted]

Application of Petersburg Knights of Columbus for Special Use Permit to Host Annual Memorial Day Mass at Poplar Grove National Cemetery

Dear Mr. Scott:

Together with co-counsel Roger Byron of the First Liberty Institute, I write on behalf of our client, the Knights of Columbus, Council 694, of Petersburg, Virginia, regarding your denial of a permit for the Knights to host their annual Memorial Day mass in the Poplar Grove National Cemetery to honor and pray for the soldiers buried there, as well as all those who have fallen in service to our Nation.

Founded almost 150 years ago in the United States, the Knights of Columbus is a Catholic fraternal service order with over 2 million members worldwide. The Knights' guiding principles are Charity, Unity, Fraternity, and Patriotism. One long-standing way the Knights have lived out their faith and their patriotism is by hosting Memorial Day masses.

In Petersburg, the Knights have held an annual Memorial Day mass in Poplar Grove National Cemetery for generations, in accordance with their religious beliefs. The tradition is so old that Council 694 has no written record of when it first began, but living memory confirms that the masses have been celebrated at Poplar Grove since at least the 1960s, and they likely started long before. Until last year, the National Park Service (NPS) always granted the Knights permission to hold the mass within the cemetery, and the mass or a prayer service (when a priest was not available) had been celebrated there annually without incident.[1]

[1] On rare occasion, the mass was not held because the Poplar Grove National Cemetery was closed for renovations.

In 2023, for the first time in memory, NPS denied the Knights a permit to hold the service in the cemetery, citing a new policy which, you say, forbids a "religious service" in the cemetery as a prohibited "demonstration." You invoked the policy again this year as justification for denying the Knights a permit to hold this year's service in the cemetery. Instead, because the mass is religious, you insist that the Knights must hold their service, if at all, outside the cemetery walls in a designated "free speech" zone. But to be clear, that is not an adequate substitute. In accordance with the Knights' sincerely held religious beliefs, the service they seek to hold must be held within the sacred ground of the cemetery, as it has been annually for scores of years.

We strongly urge you to reconsider your decision and promptly to grant the Knights a permit to host their annual Memorial Day mass within the walls of the Poplar Grove National Cemetery. If you persist in denying the permit, our clients intend to take all appropriate steps to protect their rights, including though litigation. We therefore ask that you preserve all relevant documents and materials in anticipation of litigation.

But we sincerely hope that litigation will not be necessary; there are many reasons why NPS should grant the Knights' permit application.

(1) ***The requested permit is consistent with NPS policy and established practice, even under the new policy***.

There is no reason under NPS regulations or Policy Memorandum 22-01 ("Managing Special Events and Demonstrations in National Cemeteries") (August 15, 2022) to deny the Knights a permit to hold the service within the cemetery. Indeed, even since the adoption of Policy Memorandum 22-01, the Park Service has authorized Memorial Day masses in other National Cemeteries.[2]

To begin, there is no reason to think that the Knights' annual mass is "reasonably likely to attract a crowd or onlookers" (so as to meet the regulatory definition of a "demonstration," 36 C.F.R. § 12.3) because in the decades-long history of the Memorial Day mass, it has never drawn a crowd or onlookers. But even if the Memorial Day mass were considered a "demonstration," NPS's regulations specifically contemplate the approval of "demonstrations" as commemorative events held in National Cemeteries on Memorial Day, particular where the occasion has "special historic and commemorative

[2] This coming Memorial Day, the Knights of Columbus will be hosting a mass in the Andersonville National Cemetery in Georgia. The mass is listed in the Memorial Day Weekend schedule on the Park Service website, *see* 2024 Memorial Day Weekend Schedule for Andersonville National Cemetery, https://www.nps.gov/ande/planyourvisit/memorialdayobservance.htm (last visited May 10, 2024), and the official Facebook page for the Andersonville National Historic Site, *see* https://www.facebook.com/AndersonvilleNPS/ (last visited May 10, 2024). The Knights of Columbus hosted a mass in the same cemetery last year, as well, also under the new policy. *See* Andersonville National Historic Site hosts Memorial Day weekend events, https://www.nps.gov/ande/learn/news/andersonville-national-historic-site-hosts-memorial-day-weekend-events.htm (last visited May 10, 2024).

significance to a particular national cemetery." 36 C.F.R. § 12.4. The Knights' annual Memorial Day mass more than meets that standard under any reasonable interpretation.

The most sensible thing to do—indeed, the *right* thing to do—is for NPS to approve the permit for the Memorial Day mass as an historically significant commemorative event. But, as explained below, even if NPS were to conclude that Policy Memorandum 22-01 required the denial of the Knights' permit, that application of the policy would violate the Free Exercise and Free Speech Clauses of the First Amendment, as well as the Religious Freedom Restoration Act.

(2) *Denying the permit based on the Knights' intention to celebrate a religious sacrament violates the Free Exercise Clause of the First Amendment*.

Whatever the regulations and NPS's policy say, it violates the First Amendment of the U.S. Constitution to discriminate against and censor the Knights' activities "solely because of their religious character." *Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 780 (2022) (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017)). It is a firmly established constitutional principle that the "[g]overnment fails to act neutrally when it . . . restricts practices because of their religious nature." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). And because NPS's rules specifically characterize activities as prohibited "demonstrations" if they involve a "religious service" (assuming your interpretation is correct), those policies necessarily "impose[] a penalty on the free exercise of religion that triggers the most exacting scrutiny." *Trinity Lutheran*, 582 U.S. at 462 (citing *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993)).

NPS policy, both on its face and as applied to the Knights' annual Memorial Day mass, cannot possibly satisfy that exacting "strict scrutiny" standard, which requires that the policy and its application to the Knights be "justified by a compelling state interest and . . . narrowly tailored in pursuit of that interest." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022) (citing *Lukumi*, 508 U.S. at 546). Here, the NPS policy cites "a substantial government interest in maintaining a protected atmosphere in national cemeteries where individuals can quietly contemplate and reflect upon the significance of the contributions made to the Nation by those interred." Policy Memorandum 22-01 (citing NPS, *National Cemetery Regulations*, 51 Fed. Reg. 8976, 8977 (Mar. 14, 1986)). Even if a substantial interest were adequate to meet strict scrutiny, a scheme that prohibits the Knights from hosting their annual Memorial Day mass is not narrowly tailored to further that interest. Indeed, the mass is entirely *consistent* with the goal of promoting quiet and reverent contemplation. There is certainly no substantial difference between the Knights' Memorial Day service and a graveside committal service, which is permitted under the policy and regulations. *See* Policy Memorandum 22-01, at 5; 36 C.F.R. § 12.4. And in any event, the policy "'prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way.'" *Kennedy*, 597 U.S. at 526 (quoting *Fulton*, 593 U.S. at 533). To take but one example, it would be consistent with the policy to allow a *reenactment* of the annual Memorial Day mass held at Poplar Grove National

Cemetery for generations based on its historical significance as a commemorative event; but to *conduct* the mass itself is prohibited because it constitutes a "religious service." That absurd result does not satisfy the constitutional demands of strict scrutiny.

Thus, even if you were to conclude that you cannot grant the Knights' permit under NPS policy (which would be a mistake), you must acknowledge that the policy, both on its face and as applied, violates the Knights' rights under the Free Exercise Clause and grant the permit anyway.

(3) *Denying the permit also violates the Religious Freedom Restoration Act by substantially burdening the Knights' free exercise of religion without being the least restrictive means to serve a compelling government interest*.

As a federal agency, NPS is also bound by the Religious Freedom Restoration Act (RFRA), *see* 42 U.S.C. § 2000bb *et seq.* RFRA "operates as a kind of super statute, displacing the normal operation of other federal laws." *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 682 (2020). It imposes a strict-scrutiny standard on governmental actions that "substantially burden a person's exercise of religion." *Id.* § 2000bb-1(a). RFRA requires the government to "demonstrate[] that application of the burden to *the person*—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705 (2014) (emphasis in original) (quoting 42 U.S.C. §§ 2000bb–1(a), (b)). Notably, under RFRA the strict scrutiny standard applies "even if the burden results from a rule of general applicability." 42 U.S.C. §§ 2000bb–1(a). When RFRA is violated, "[a] person whose exercise of religion has been unlawfully burdened. . . can sue Government officials in their *personal capacities*" for monetary damages, in addition to seeking other appropriate relief. *Tanzin v. Tanvir*, 592 U.S. 43, 46–47 (2020) (emphasis added).

Even if NPS policy did not specifically prohibit a "religious service," the denial of a permit for the Knights to host their annual Memorial Day mass would still constitute a substantial burden on their religious exercise prohibited under RFRA. It is the Knights' sincere religious belief that they need to be within the cemetery for their Memorial Day mass and service. As memorialized in a resolution formally adopted by Council 694, their presence in the cemetery "aids and helps [them] to pray for the fallen, and . . . failure to hold the service in the national cemetery would diminish [their] ability to pray for the fallen." They also believe their service should include the blessing for "Visiting a Cemetery on Memorial Day" from the Book of Blessings, which may be performed only within the cemetery. The Knights have therefore resolved that, "to be faithful to and act in accordance with the religious beliefs of [the] Council, [they] must continue to hold [their] annual religious memorial service on Memorial Day in the Poplar Grove National Cemetery here in Petersburg, Virginia, to include our Memorial Day Mass and from the Book of Blessings the blessing for Visiting a Cemetery on Memorial Day." Holding a service outside the cemetery walls, down the hill, and out of sight of the vast majority of the gravesites simply does not provide a meaningful substitute.

Prohibiting the Knights from holding the service within the cemetery substantially burdens their religious practice and cannot satisfy strict scrutiny, as explained above. Even if the interest expressed in the policy were found compelling, "[t]he least-restrictive-means standard is exceptionally demanding . . . and it is not satisfied here." *Burwell*, 573 U.S. at 728. The Park Service does not "lack[] other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the [Knights]." *Id.* The Knights, therefore, are "entitled to an exemption from the rule." *Id.* at 695. RFRA demands it.

(4) *Denying the permit based on the Knights' intention to hold a religious service also represents content-based and viewpoint discrimination which violates the Free Speech Clause of the First Amendment*.

The Supreme Court has recognized that restrictions on religious expression often violate the Free Speech Clause of the First Amendment, as well. *See, e.g.*, *Kennedy*, 597 U.S. at 543 (holding that the post-game prayers of a high school football coach were "doubly protected by the Free Exercise and Free Speech Clauses of the First Amendment"). "Indeed, in Anglo–American history, at least, government suppression of speech has so commonly been directed *precisely* at religious speech that a free-speech clause without religion would be Hamlet without the prince." *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (emphasis in original). The Court, therefore, "ha[s] not excluded from free-speech protections . . . acts of worship." *Id.* And this is a case in point.

The Knights wish to gather at the Poplar Grove National Cemetery on Memorial Day in the sight of God, as they have done for generations, to celebrate the mass and honor and pray for our Nation's fallen soldiers. If they were there for a secular purpose, it is doubtful that you would characterize their mass as a prohibited "demonstration" in the first place. But due to the religious content of their observance, they are shut out. The Free Speech Clause of the First Amendment does not countenance that result any more than the Free Exercise Clause does.

Under the Free Speech Clause, "[i]t is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995). Accordingly, "[w]hen a government does not speak for itself, it may not exclude speech based on religious viewpoint; doing so constitutes impermissible viewpoint discrimination." *Shurtleff v. City of Bos., Massachusetts*, 596 U.S. 243, 258 (2022) (quotations omitted) (quoting *Good News Club v. Milford Central School*, 533 U.S. 98, 112 (2001)). And "[d]iscrimination against speech because of its [religious] message is *presumed to be unconstitutional*." *Rosenberger,* 515 U.S. at 828 (emphasis added).

The NPS's prohibition of the Knights' Memorial Day service due to its religious nature is not merely unlawful content-based discrimination on speech—it is textbook viewpoint discrimination, which is per se unconstitutional. *See id.* at 828-29.

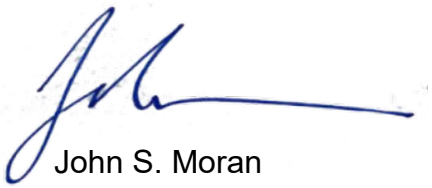
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The Knights ask NPS to do the right thing and grant them permission to host their annual Memorial Day mass in Poplar Grove National Cemetery, as the Park Service has done since time immemorial—before last year—and as it has continued to do in other National Cemeteries.

If you have any questions or would like to discuss the issues I have raised in this letter, please do not hesitate to contact me.

Because Memorial Day is fast approaching, we ask that you please let us know by **no later than Friday, May 17, 2024**, whether you intend to grant the permit application for the Knights to hold their annual Memorial Day mass within the cemetery.

Sincerely,



John S. Moran

Counsel for Knights of Columbus, Council 694

cc: Roger Byron, First Liberty Institute

Chuck Sams, Director, National Park Service

Bob Anderson, Solicitor, U.S. Department of Interior

Jessica Aber, United States Attorney, Eastern District of Virginia, U.S. Department of Justice

Alex Haas, Director, Federal Programs Branch, Civil Division, U.S. Department of Justice

EXHIBIT 5.001

SECRETARY OF WAR
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

DEC 16 2025

MEMORANDUM FOR SECRETARY OF THE ARMY

SUBJECT: Discontinuation of the United States Army's "2025 Spiritual Fitness Guide"

The "2025 United States Army Spiritual Fitness Guide" ("the Guide") does not properly reflect the vast array of faith traditions of our Service members, and the Army should discontinue all usage of the Guide immediately.

The Guide uses unnecessarily elaborate verbiage that lacks clarity and accessibility, thereby causing more confusion than clarity. It also promotes the authors' personal interpretations of spiritual components — consciousness, creativity, and connection. These interpretations prioritize self-derived purpose, identity, intuition, and subjective ethics over the traditional religious and spiritual foundations of our great Chaplain Corps. This approach is likely to alienate the various faiths represented across the DoW, by directly depicting them as dogmatic, biased, or harmful to battlefield decision-making.

I am also directing you to review the Army's Holistic Health and Fitness programming concerning the "Spiritual Domain."

The spiritual health of our Service members is an essential element of creating a ready and resilient fighting force. We must ensure all present and future training elements support this position and provide an increase in overall spiritual health.

PBH

cc:
US Army Chief of Chaplains

OSD01439825/CMD018201-25

EXHIBIT 5.002

SECRETARY OF WAR
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

MAR 11 2026

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
COMMANDERS OF THE COMBATANT COMMANDS

SUBJECT: Guidance on Grooming Standards for Facial Hair and Religious Liberty

References: (a) Secretary of War Memorandum, "Grooming Standards for Facial Hair Implementation," September 30, 2025
(b) Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq.
(c) Department of Defense Instruction 1300.17, "Religious Liberty in the Military Services," September 1, 2020
(d) Department of Defense Instruction 1332.14, "Enlisted Administrative Separations," August 1, 2024
(e) Department of Defense Instruction 1332.30, "Commissioned Officer Administration Separations," May 11, 2018, as amended

The Department's policy on grooming standards in reference (a) will be implemented in a manner consistent with reference (c). This implementing guidance supersedes any contrary guidance in reference (a) and provides standardized procedures that ensure consistent, lawful, and equitable outcomes across the Military Services.

Upholding Religious Liberty Within Military Standards

Service members and applicants for Military Service may request exemptions from grooming standards based on sincerely held religious beliefs. Requests will be analyzed under the standard in paragraph 1.2.e. of reference (c), using the process in section 3 of reference (c). Because reference (a) directs that Service grooming policies be revised to require Service members to be clean shaven, the decision authority for grooming standard exemptions for facial hair is the Secretary of the Military Department concerned. This authority may be delegated no lower than the Chief of Personnel for each Military Service.

Requests by Applicants for Military Service

Military Departments must act upon religious-based requests for exemption from grooming standards for facial hair prior to applicants entering onto active duty or active duty for training. Applicants whose requests are denied may voluntarily separate, in accordance with references (d) and (e).

Standardizing Religious Accommodation Request and Review Processes

Currently approved religious accommodations related to grooming standards for facial hair must be reevaluated, within 90 days, in accordance with reference (c) and the guidance in

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this memorandum. Military Departments will ensure the provisions of section 3.2.g. of reference (c) are followed when contemplating recission of an approved accommodation.

Military Departments must provide training on applicable laws and procedures to unit commanders and personnel involved in reviewing religious-based requests for exemption from grooming standards for facial hair. To promote fairness, transparency, and consistency, the procedures below and further detailed in the attachment will be used to process requests.

Service members and applicants for Military Service requesting an exemption to grooming standards for facial hair for religious reasons must provide the following information:

- A sworn written attestation affirming that the requestor's belief is sincerely held and religious in nature. False statements may be subject to disciplinary action under Article 107 of the Uniform Code of Military Justice, or denial of accession, as appropriate.

- A statement describing the specific religious belief that is the basis of the request for a religious exemption.

- An explanation of how the religious belief conflicts with prescribed grooming standards (i.e., how the requirement to be clean shaven substantially burdens the requestor's exercise of religion).

- Supporting information or evidence that demonstrates the religious belief is sincerely held. Examples of such information may include, but are not limited to, personal testimony, participation in religious observances, or corroborating statements from religious leaders or community members.

Unit commanders must provide the following information when forwarding requests to the decision authority:

- A written assessment of the requestor's sincerity of religious belief.

- Specific information concerning the requestor's occupation, current work environment and anticipated work environment, including any requirements concerning the likely and expected use of protective equipment (e.g., helmets, masks, and firefighting respirators) and scheduled deployments, exercises, or assignments.

Unit commanders and decision authorities may request additional documentation or evidence to assist in evaluating religious exemption requests. Requests for additional information will be in writing and narrowly tailored to the specific concerns identified during the review.

Decision authorities must review requests for accommodation on an individualized basis, applying the "compelling governmental interest" and "least restrictive means" criteria described in section 1.2. of reference (c).

Assessing the Sincerity of a Religious Belief and Substantial Burdens on the Exercise of Religion

To prevent abuse and maintain military combat readiness, determining the sincerity of a religious belief and whether a military policy, practice or duty substantially burdens a Service member's exercise of religion is a critical component of the review process. Decision authorities must consider the following:

- Contextual factors such as circumstances existing at the time of the request, contradictory or inconsistent statements and conduct, and any evidence suggesting that the request may be based on personal preference or convenience.

- Input from the first-line supervisor on character of the individual and adherence to Service values.

- Input from a military chaplain on the religious nature of the belief.

- Input from other sources at the unit commander's discretion.

Record of Decision

If a requestor is determined to have a sincerely held religious belief and the requirement to be clean-shaven is a substantial burden on the requestor's exercise of religion, but the request is denied, the written decision memorandum must include:

- A clear explanation of the operational risks and concerns;

- Citations to relevant studies or standards;

- An analysis of alternatives and why they were deemed insufficient; and

- An explanation of how the decision is no less restrictive than exemptions based on non-religious reasons (e.g., medical).

Reporting and Accountability

The Chief of Personnel of each Military Service must maintain accountability of the disposition of requests for religious accommodations permitting facial hair and implement measures to ensure they are notified of changes in circumstances, including anticipated operational requirements, that merit re-evaluation of approved requests.

This guidance is effective immediately. Implementation plans related to reference (a) should be submitted to the Under Secretary of War for Personnel and Readiness within 30 days of the date of this memorandum. References (d) through (e) will be updated within 90 days to reflect the guidance in the memorandum, as appropriate.

Attachment:
As stated



Review Process for Religious-Based Requests for Exemption from Grooming Standards for Facial Hair

1. Request Submission. Service members and applicants for military service initiate the process by submitting a written request that includes:

    - A description of the specific religious belief that is the basis of the request.

    - An explanation of how the religious belief conflicts with the prescribed grooming standard (i.e., how the requirement to be clean shaven substantially burdens the requestor's exercise of religion).

    - Supporting information or evidence demonstrating that the religious belief is sincerely held.

    - A signed and sworn attestation affirming the validity of the matters presented in the Service member's request.

    - Additional documentation or corroborating statements, if available, to assist in adjudicating the request.

2. Sincerity Assessment. Unit commanders must provide a written assessment of the requestor's sincerity of religious belief that addresses the following:

    - Contextual factors such as circumstances existing at the time of the request, contradictory or inconsistent statements and conduct, and any evidence suggesting that the request may be based on personal preference or convenience.

    - Input from the first-line supervisor on the character of the requestor and adherence to Service values.

    - Input from a military chaplain on the religious nature of the belief.

    - Input from other sources, at the unit commander's discretion.

3. Operational Assessment. The unit commander must provide relevant information to the deciding official concerning any operational impact of an accommodation. An appropriate subject matter expert will provide a written assessment of the operational impact of the request that addresses the following:

    - Mission readiness and the fit and functionality of protective equipment (e.g., protective masks, respirators, etc.).

    - Role-specific requirements for emergency response, firefighting, or hazardous material handling.

- Feasibility of alternative accommodations.

- Safety implications and alignment with unit demands.

4. Legal Review. A legal advisor must advise the deciding official concerning compliance with:

   - The Religious Freedom Restoration Act.

   - Department of Defense Instruction 1300.17 and other applicable policies.

   - Procedural due process and evidentiary sufficiency.

   - Consistency with non-religious accommodations.

5. Final Determination. The deciding official must review the request on an individualized basis and issue a written decision. A decision to deny a request will address whether the requestor is determined to have a sincerely held religious belief and whether the requirement to be clean-shaven is a substantial burden on the requestor's exercise of religion. If so found, a decision to deny a request must address the following:

   - A clear explanation of the operational risks and concerns;

   - Citations to relevant studies or standards;

   - An analysis of alternatives and why they were deemed insufficient; and

   - An explanation of how the decision is no less restrictive than exemptions based on non-religious reasons (e.g., medical).