

Atheists. Agnostics. Humanists.  
**Americans.**

# MODEL SECULAR POLICY GUIDE



# SECULAR VALUES

## Freedom

### *Beliefs Protected, Not Imposed*

A society that truly respects the freedom of the individual must strike a balance between protecting freedom of thought and belief, and protecting citizens from being forced to conform to the beliefs of others.

## Inclusion

### *All Faiths and None*

In the American melting pot, people come from all walks of life, yet can feel connected to each other through shared pride of our national heritage. Every American, no matter who they are and what they believe, should feel included in our national symbols and traditions.

## Equality

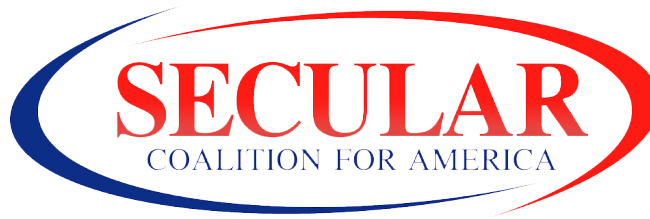
### *Unbiased Governance*

Protecting the rights of all its citizens equally, while also holding everyone equally responsible for abiding by laws that serve to benefit our society, is a fundamental tenet of America's constitutional democracy. Our laws must be unbiased and religiously neutral. When the government favors one group and their belief system over another, it relegates all others to a second-class status.

## Knowledge

### *Information Empowers*

We are constantly in awe of the scientific and technological accomplishments human beings have made, particularly how these advances have improved and saved so many lives. Continued progress depends on society valuing science and fostering free inquiry. When the government skews scientific findings for ideological reasons or suppresses accurate information, it restricts freedom of thought and halts scientific progress.



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The production of this Model Secular Policy Guide would not have been possible without the time, dedication, and help of:

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<b>PREAMBLE</b>	<b>01</b>
<b>CONSTITUTIONAL LAW</b>	<b>02</b>
THE ESTABLISHMENT CLAUSE	03
RELIGIOUS DISPLAYS ON GOVERNMENT PROPERTY	04
GOVERNMENT FUNDING OF RELIGIOUS INSTITUTIONS	05
<b>FREE EXERCISE CLAUSE</b>	<b>06</b>
FREEDOM OF SPEECH	06
<b>INCLUSIVE AND RESPONSIBLE LANGUAGE</b>	<b>07</b>
<b>HEALTH AND SAFETY</b>	<b>08</b>
WOMEN'S HEALTH ISSUES	08
LIMITS ON ABORTION	08
ABORTION WITH MEDICATION	09
CRISIS PREGNANCY CENTERS	09
HEALTH CARE PROVIDER REFUSAL LAWS	09
RELIGIOUS EXEMPTION FOR CONTRACEPTIVE COVERAGE	10
<b>RESEARCH ISSUES</b>	<b>12</b>
STEM CELL AND FETAL TISSUE	12
MEDICAL AID-IN-DYING	12
CHILDREN'S HEALTH ISSUES	13
RELIGIOUSLY BASED CHILD ABUSE AND NEGLECT	13
EXCEPTIONS TO VACCINATION REQUIREMENTS	14
HEALTH AND SAFETY STANDARD EXEMPTIONS FOR RELIGIOUS CHILD	
CARE CENTERS	15
CHILD ABUSE REPORTING EXEMPTIONS FOR CLERGY	16
ADDICTION RECOVERY PROGRAMS	16
<b>EDUCATION</b>	<b>18</b>
SCHOOL VOUCHER SCHEMES	18
SECULAR STUDENT GROUPS	18
SEX EDUCATION	19
SECULAR SCHOOL CURRICULUM	19
SCHOOL PRAYER	20
PLEDGE OF ALLEGIANCE	20
<b>DISCRIMINATION</b>	<b>22</b>
EMPLOYMENT DISCRIMINATION	22
HOUSING DISCRIMINATION	23
RELIGIOUS FREEDOM RESTORATION ACT	23
<b>TAX POLICY</b>	<b>25</b>
TAX LOOPHOLES FOR RELIGIOUS ORGANIZATIONS	25
POLITICAL ENDORSEMENT FROM THE PULPIT	25
<b>IMMIGRATION</b>	<b>27</b>
<b>MILITARY</b>	<b>28</b>
HUMANIST CHAPLAINS	28
CHAPLAIN TRAINING ON THE NONTHEIST PERSPECTIVE	29
<b>GLOBAL</b>	<b>30</b>
FREEDOM OF RELIGION, BELIEF, AND EXPRESSION	30
OTHER AREAS OF HUMAN RIGHTS	31
CIVIL SOCIETY	32
CLIMATE CHANGE	32

# PREAMBLE

The Secular Coalition for America is an advocacy organization representing 19 national voting member organizations, more than 200 endorsing organizations and a state chapter structure across the United States. The Secular Coalition for America was created to amplify the diverse and growing voice of the U.S. nontheistic community, which includes atheists, agnostics, humanists, and freethinkers. Our mission is to increase the visibility of and respect for nontheistic viewpoints in the United States and to protect and strengthen the secular character of our government as the best guarantee of freedom for all.

As of 2016, one-quarter (25%) of Americans reported themselves as atheist, agnostic, or otherwise religiously unaffiliated.<sup>1</sup> According to the Public Religion Research Institute (PRRI), this dramatic rise in the religiously unaffiliated makes them the single largest “religious” group in the United States. Thirty-nine percent of all adults under age 30 do not affiliate with any particular religion, which is three times as many as who identify as unaffiliated at the age of 65 and older.<sup>2</sup>

According to PRRI’s Exodus report published in 2016, 33% of the religiously unaffiliated say they do not believe in God, 37% describe God as an impersonal force, and 22% say God is a person with whom people can have a relationship. Of those who do believe in God, 53% say they sometimes doubt whether God exists and are less likely to link belief in God to moral behavior.

The Secular Coalition for America represents nontheists, but does not ask government leaders to promote nontheism. The strength of our country lies in its diversity and its robust marketplace of religious and nonreligious ideas. Government officials may not and should not promote any articles of faith or faithlessness. Instead, they have a duty to protect the freedom of every U.S. citizen to believe or disbelieve in the god or gods of their choice. By advocating for the rights of the nontheistic minority, the Secular Coalition for America affirms its support for equal rights and freedoms for all U.S. citizens.

This guide includes select issues relevant to the separation of religion and government and is designed to assist legislators and policymakers at the local, state, and federal branches of government.





# CONSTITUTIONAL LAW



*"Congress shall make no law  
respecting an establishment of religion,  
or prohibiting the free exercise thereof..."*

The First Amendment to the Constitution

## INTRODUCTION

The first freedom protected by the Bill of Rights is the right of every U.S. citizen to a secular government that does not endorse or promote specific religious beliefs or prohibit citizen engagement in private religious practices. Thomas Jefferson, in his famous 1802 letter to the Danbury Baptists, expressed his "sovereign reverence [for] 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."<sup>3</sup> Jefferson's stipulation has long been acknowledged by the U.S. Supreme Court as "an authoritative declaration of the scope and effect" of these two clauses of the First Amendment, known as the Establishment Clause and the Free Exercise Clause, respectively.<sup>4</sup>

The desire of the United States' founders to establish a secular government leaving religion in a protected, private sphere was rooted in their experiences with the officially established Church of England during the colonial period (as well as with other established churches throughout Europe) and the religious violence of the wars triggered by the Reformation and its aftermath.

Many of the earliest settlers in North America were religious nonconformists who immigrated to the New World to escape a society where the head of state was also the head of the national church and where refusal to belong and conform to that church's teachings was not only heresy, but treason. Having escaped into the relative obscurity of a distant wilderness, many of these settlers proceeded to establish their own theocracies with their particular preferred brand of religion as the established orthodoxy. Quakers and others who dissented from Puritanism were hanged in Boston and elsewhere.

Roger Williams was banished from Puritan-governed Massachusetts in the 1630s due to his religious disputes with colony officials. He then founded the colony of Rhode Island, which guaranteed freedom of conscience by separating church and state, thereby becoming one of the first beacons of religious liberty in the colonies. Many of the colonies established a religion and

taxed every person to support the colony's designated church and clergy. This often led to violence against religious minorities (such as the Baptists in Massachusetts and the Presbyterians in Virginia) who refused to pay the tax or publicly protested it.

Virginia's Statute for Religious Freedom, drafted by Thomas Jefferson and passed in 1786, provided that "no man shall be compelled to frequent or support any religious worship, place, or ministry." Virginia's Statute also proclaimed that "our civil rights have no dependence on our opinions" regarding religious questions, and that the government has no right to "intrude . . . into th[is] field of opinion" except when such "principles break out into overt acts against peace and good order."<sup>5</sup>

Political support for the passage of the Virginia bill had been marshaled by James Madison's famous Memorial and Remonstrance Against Religious Assessments, a tract written to oppose a bill that would have reinstated the former colonial tax to fund the teaching of Christianity. Madison wrote, "It is proper to take alarm at the first experiment on our liberties," calling this vigilance "the first duty of Citizens, and one of the noblest characteristics of the late Revolution." He then called upon citizens to defend the separation of church and state, asking, "[w]ho does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?"<sup>6</sup>

This strong desire for secular governance is evidenced by the Constitution, a completely secular document that includes no references to Christianity (or other religions) or to religious authority. The only two references to religion are exclusionary: the No Religious Test Clause, found in Article VI, which forbids the imposition of any religious test as a condition for holding a public office or governmental position, and the First Amendment, which separates religion and government and protects religious practices.

The Constitution, although generally setting up a government according to the will of a democratic majority, protects the civil rights and liberties of all from abuse by that majority. Any law that violates the Bill of Rights, which includes the Establishment and Free Exercise Clauses, is unconstitutional.<sup>7</sup> Therefore, it is irrelevant whether any particular governmental measure promoting religion is popular; if it violates the separation of religion and government, the court must strike it down.

The court has failed to do so with something known as "ceremonial deism," a misnomer<sup>8</sup> that refers to supposedly de minimis violations of the separation of state and church. For example, federal courts have ruled that the phrase "In God We Trust", the national motto, "is excluded from First Amendment significance because the motto has no theological or ritualistic impact."<sup>9</sup> Courts have upheld many instances of "ceremonial deism" using this same rationale.<sup>10</sup> Government prayers, "In God We Trust" as a motto, "One Nation Under God" in the pledge, are no longer religious because "any religious freight the words may have been meant to carry originally has long since been lost."<sup>11</sup> Put another way, these have "lost through rote repetition any significant religious content."<sup>12</sup>

In a government where state and church are walled off from one another, courts should not be declaring that patently religious statements have lost their "religious freight."<sup>13</sup>

## THE ESTABLISHMENT CLAUSE

In 1947, the first modern Establishment Clause case made its way to the Supreme Court, and the Court ruled that, because of the Fourteenth Amendment, the clause applies to all levels of government.<sup>14</sup>

The Supreme Court has since interpreted the Establishment Clause in a wide array of cases. Certain general principles have emerged from the Court's jurisprudence. Separation of religion and government means "that government may not promote or affiliate itself with any religious doctrine or organization, may not discriminate among persons on the basis of their religious beliefs and practices, may not delegate a governmental power to a religious institution, and may not involve itself too deeply in such an institution's affairs."<sup>15</sup>

The government cannot "set up a church[;] . . . pass laws which aid one religion, aid all religions, or prefer one religion over another[;] . . . force [or] influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion[;] . . . punish [any person] for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance[; or] . . . [impose a] tax in any amount, large or small, . . . to support any religious activities or institutions."<sup>16</sup> In short, the government cannot promote, advance, fund, endorse, affiliate itself with, or participate in religion.<sup>17</sup>

Furthermore, the First Amendment "mandates governmental neutrality" both among religions and "between religion and nonreligion."<sup>18</sup> The Supreme Court has specifically rejected the idea that the Constitution merely proscribes the preference of one Christian sect over another, holding instead that it requires equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism.<sup>19</sup>

The Supreme Court has distilled these principles into a test to be applied by courts in cases in which an Establishment Clause challenge is brought. All governmental actions must: 1) have a secular purpose, 2) not have the effect of advancing or inhibiting religion, and 3) not result in excessive entanglement between church and state. The court has named this analysis the "Lemon Test" after the case in which it was first stated.<sup>20</sup> In recent years, the courts have bowed to the federal Religious Freedom Restoration Act (RFRA), which was signed into law in 1993. In 1984, Supreme Court Justice Sandra Day O'Connor proposed the "establishment test," also referred to as the "reasonable observer" test. Justice O'Connor's belief was that a government action could be deemed invalid if it creates a perception in the mind of a "reasonable observer" that the government is either endorsing or disapproving of a religion.<sup>21</sup>

## RELIGIOUS DISPLAYS ON GOVERNMENT PROPERTY

The Establishment Clause prohibits government sponsorship of religious messages. Therefore, it is inappropriate for government entities to erect or sponsor religious symbols or displays on government property.

- Ten Commandments: No Ten Commandments display in a public school has ever survived constitutional scrutiny by a court of last resort. Other displays of the Ten Commandments as a sole monument on public property have also been struck down as unconstitutional.<sup>23</sup>
- Religious Holiday Displays: It is impermissible for a government entity to place a nativity scene or menorah as the sole focus of a display on government property.<sup>24</sup> In contrast, temporary holiday displays which are secular in nature but include a religious element that is not the



predominant element of the display have sometimes been permitted.<sup>25</sup>

- **Cross Displays:** The courts have been nearly unanimous in concluding that a government display of a Christian cross is unconstitutional. Nearly every court that has addressed crosses on government insignia has found them unconstitutional.<sup>26</sup> No use of Christian crosses as a form of war memorial has been upheld by a federal court as constitutional.<sup>27</sup> These courts have found that the displays amount to a governmental promotion of, and affiliation with, Christianity and give the impression that only Christian soldiers are being honored.
- **Classroom Religious Displays:** The courts have held that religious items displayed in public school classrooms, including faculty desks, are generally impermissible, as they send a message that the school is endorsing religion.<sup>28</sup>

## POLICY RECOMMENDATION

Government entities should prohibit religious symbols or displays on public property in order to remain religiously neutral and conform to the judicial interpretation of the Establishment Clause.

## GOVERNMENT FUNDING OF RELIGIOUS INSTITUTIONS

The Establishment Clause prohibits government funding of religious institutions. Madison's Memorial opposed even a three pence tax that would support "teachers of the Christian religion" as a "dangerous abuse of power." Despite this principle, billions of taxpayer dollars have gone to religious groups to provide "secular services." Still, the Supreme Court has said that government funds cannot be provided, even for secular services, "when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission...." Similarly, taxpayer money cannot fund any "specifically religious" activities.<sup>29</sup> For example, the government may not fund construction or repair of "buildings in which religious activities will take place."<sup>30</sup>

## POLICY RECOMMENDATION

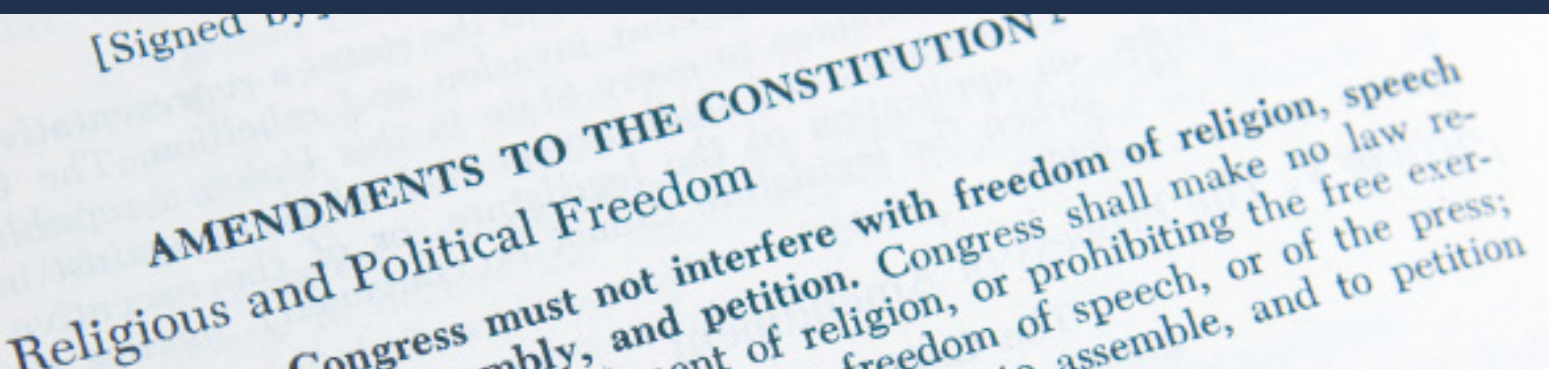
Taxpayer dollars should not fund religious activities or institutions, as it opens the door to proselytizing and religiously motivated discrimination, rendering oversight nonexistent.

## LEGISLATIVE PRAYER

This area of Establishment Clause jurisprudence saw an important precedent established in 2014 with the Supreme Court decision in *Town of Greece v. Galloway*,<sup>31</sup> which held that a municipal legislative prayer practice can be constitutionally acceptable even when the prayers are sectarian in nature. The 5-4 majority upheld the town's practice of opening its board meetings with a prayer offered by members of the clergy when the town does not discriminate against minority faiths and beliefs (including nontheists) and the prayer does not force participation of non-adherents.

The decision in *Town of Greece* was based on the 1983 decision, *Marsh v. Chambers*.<sup>32</sup> In *Marsh* and *Town of Greece*, the Court strayed from prior understanding of Establishment Clause boundaries, carving out a narrow exception to the Establishment Clause for legislative prayer as a nod to history and custom. The Marsh exception was confined to a situation involving a nonsectarian, nondenominational prayer led by an officiant who had not been selected based upon any impermissible religious motive, and which was addressed to the body of legislators present and to no one else. Some federal appellate courts after *Marsh* had ruled that frequent sectarian prayers to "Jesus" affiliate the government with Christianity and are unconstitutional.<sup>33</sup>

# THE FREE EXERCISE CLAUSE



## POLICY RECOMMENDATION

Nontheists and religious minorities should be welcome to give invocations in communities that allow legislative prayer or prayer must be eliminated altogether. Prayer practices should not be led by town officials, must be non-coercive, and should not denigrate nonbelievers.

## THE FREE EXERCISE CLAUSE

The wall of separation between religion and government also protects a private individual's freedom of conscience. This reflects the Madisonian concern that secular and religious authorities must not interfere with each other's respective spheres of choice and influence. The Free Exercise Clause forbids the government from interfering with religious belief, opinion, and some—but not all—actions taken with religious motives. While the freedom to believe is absolute, the freedom to act may be circumscribed by law, so long as those laws are not meant to discriminate against a particular religion.

The Free Exercise Clause does not give a religious actor a special right to ignore a law by claiming that complying with it conflicts with its religion. Neutral laws of general applicability that incidentally burden religion are constitutional.<sup>34</sup> However, under the Religious Freedom Restoration Act (RFRA), this rule with regard to laws of general applicability has been modified in practice. RFRA now requires that the federal "government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability."<sup>35</sup> RFRA does not apply to state government actions, however several states have codified laws based on the federal RFRA.

A claim of a right to "religious accommodation" under the Free Exercise Clause may be rejected if it would result in an impermissible preference of religion prohibited by the Establishment Clause.<sup>36</sup> The Supreme Court has indicated that accommodation is permitted only when it "alleviates exceptional government-created burdens on private religious exercise."<sup>37</sup> An accommodation which "conveys a message of endorsement" of the religious practice being accommodated, however, advances religion in violation of the Lemon Test.<sup>38</sup>

## FREEDOM OF SPEECH

The First Amendment to the U.S. Constitution also protects freedom of speech and freedom of the press from government interference. Freedom of speech protects the ability of all Americans, no matter their views, to express their opinions with only narrow exceptions, such as obscenity, speech that incites harm to others, and child pornography. Freedom of the press protects the right to form media outlets and publish news and investigations regarding public affairs, with only a narrow exception for defamation.

Many Americans, including elected officials, have made statements or taken actions which suggest that these rights are too expansive. For instance, some Americans have called for bans on speech they dislike or find offensive.

# INCLUSIVE AND RESPONSIBLE LANGUAGE



Freedom of speech is meaningless if government officials decide what kind of speech is allowed based on their feelings or beliefs. Some lawmakers have repeatedly threatened to sue media outlets for reporting factual aspects of their activities and their policies. Such behavior is at odds with the spirit of our country's founders, who recognized the importance of a free press in a democratic society.

## **POLICY RECOMMENDATION**

Legislators should vigorously oppose legislation and policies aimed at limiting freedom of speech.

## **INCLUSIVE AND RESPONSIBLE LANGUAGE**

The language used by those serving at the highest levels of government has a powerful impact on how American values are perceived abroad and at home. The tone of our political discourse influences our culture and defines what are respectable and decent means of communicating competing ideas. In a nation that prides itself on its Constitution and the values of freedom and equality, our elected leaders have a duty and a responsibility to ensure that their words and actions reflect those values.

When elected officials conflate faith with patriotism, it effectively imposes a de facto religious test for participating in civic life. It sends a message to millions of U.S. citizens who are nonreligious and nontheistic that they are excluded from our shared national pride and heritage. Too often nationalist language and symbols are tied to Christianity or Judeo-Christian values to the exclusion of other faiths and nontheists. To ascribe one particular faith as the defining feature of what it means to be an American betrays our country's founding principle of religious freedom.

Even as the United States becomes increasingly diverse, hate, prejudice, and stigma towards religious minorities and nontheists remains commonplace. A 2015 Gallup poll revealed that 38% of Americans would not consider voting for a Muslim for president and 40% would not vote for an atheist president.<sup>39</sup> When government officials use language maligning any particular faith, or elevating one faith over others or over non-belief, they reinforce existing prejudices and embolden those who harbor hatred. Inflammatory rhetoric intended to sow fear and distrust can be interpreted as a license to commit acts of violence or intimidation.



# HEALTH & SAFETY



## WOMEN'S HEALTH ISSUES

There are complicated moral and ethical questions involved in health issues relating to pregnancy, abortion, and access to health care for theists and nontheists alike. However, the particular influence of sectarian religious beliefs on government policy regarding pregnancy and abortion suggests a government endorsement of particular religious beliefs to the exclusion of minority and nontheist views.

## LIMITS ON ABORTION

In the landmark case *Roe v. Wade*, the U.S. Supreme Court recognized that the U.S. Constitution protects a person's right to make their own medical decisions, including the decision to have an abortion.<sup>40</sup> Therefore, a state may not ban abortion prior to viability. In the years following that landmark ruling, in decisions including *Casey v. Planned Parenthood of Southeastern Pennsylvania*, the Supreme Court has never wavered from this principle. Even with these landmark cases, myriad abortion restrictions remain in the states. Restrictions include:

- **State-Mandated Counseling:** 16 states mandate a person must be given counseling before an abortion that includes at least one of the following: debunked information that links abortion to breast cancer (5 states); the ability of a fetus to feel pain (12 states); or unproven long-term mental health consequences for a person (6 states).
- **Gestational Limits:** After a specified point in pregnancy, 43 states prohibit abortions (except to protect the person's health or life).
- **Refusal:** 45 states allow individual health care providers to refuse to participate in abortions.
- **Private Insurance:** 11 states restrict coverage of abortion in private insurance plans.

- **Waiting Period:** 27 states require a person seeking an abortion to wait a specified amount of time, usually 24 hours, between when the person receives counseling and when the procedure is performed. Fourteen of these states' laws require persons to make two separate trips to the facility to obtain an abortion. Laws concerning abortion access should be made on scientifically sound medical research and driven by a compelling government interest, not sectarian religious beliefs.

## **ABORTION WITH MEDICATION**

Non-surgical or medication abortions have been safely and legally used in the United States since 2000, but anti-abortion health activists have devoted significant attention to creating barriers and restrictions to block access. Non-surgical abortion uses medication that ends a pregnancy over time and in a person's home. The most common method uses two medications (mifepristone and misoprostol) to terminate a pregnancy up to 63 days after the first day of a person's last period.

Restrictions by states include 19 states requiring a clinician to be present during the procedure, which prevents persons who live far from abortion clinics and hospitals from being able to receive the medication remotely.<sup>42</sup> Thirty-seven states require physicians to prescribe the medication rather than physician assistants or advanced practice nurses.<sup>43</sup> These mid-level providers are able to prescribe other medications and provide a range of medical services to patients but are unable to extend these benefits to persons seeking non-surgical abortions, many of whom live in rural and poor areas.<sup>44</sup>

Medication abortion gives a person the option of a more private, less invasive method of ending a pregnancy in a setting in which they feel more comfortable. With the advice of a medical professional, a person decides when the abortion starts, where it should happen, and who should be with them while it is happening. One in four persons who receives an abortion utilizes this method, which has little to no risks to their future fertility.<sup>45</sup>

## **POLICY RECOMMENDATION**

Laws and regulations regarding pregnancy and abortion should be based on scientifically sound medical research and driven by a compelling government interest, not sectarian religious beliefs.

## **CRISIS PREGNANCY CENTERS**

The terms "crisis pregnancy center" (CPC) and "pregnancy resource center" have been used to euphemize brick-and-mortar facilities or mobile units that combine the provision of some pregnancy resources with attempts to prevent persons from having abortions. Many of these centers and mobile units provide false and misleading information about the effects of abortion to the individual and on the fetus, and many states have no licensing or medical service requirements for CPCs.<sup>46</sup> Mobile units often set up in public parking lots near clinics that provide abortion services and activists attempt to persuade persons headed to the clinic to come to the mobile unit instead with promises of free care.

A person should have accurate information about all their pregnancy options. Information should support a pregnant person, help them make a decision for themselves, and enable them to take care of their health and well-being. Such information should not be provided with the intent of



shaming or coercing patients toward any particular decision.

## **POLICY RECOMMENDATION**

Access to scientifically accurate, unbiased, and timely information about reproductive health and pregnancy options should not be obstructed by religiously motivated legislation or regulations.

## **HEALTH CARE PROVIDER REFUSAL LAWS**

Following the Supreme Court's 1973 decision in *Roe v. Wade*, many states and the federal government enacted health care provider refusal laws ("Refusal Laws"). These Refusal Laws allow medical professionals to refuse participation in abortion-related services. Congress passed the Public Health Service Act ("Church Amendment"),<sup>47</sup> which permits any health care facility or provider receiving federal funds to refuse to provide abortion services and sterilization services if doing so violated the provider's religious or moral beliefs. The District of Columbia and 45 states have statutes allowing medical professionals to refuse to provide abortion services; 18 states allow health care providers to refuse sterilization procedures, such as tubal ligation and vasectomies.<sup>48</sup> Refusal Laws have been expanded to include dispensing of prescriptions and to pharmacists themselves. At least 12 states have laws allowing a pharmacist to refuse to fill lawful prescriptions for drugs that the pharmacist considers "abortifacient," including emergency contraception prescriptions.

Refusal Laws can be challenged on the basis of their conflict with the right to privacy of the individual.<sup>50</sup> A patient is denied the right to decide whether to use contraception when a pharmacist denies their right to have it. These laws also raise issues of equal protection. When the law allows pharmacists to refuse to fill contraceptive prescriptions, it sanctions unequal treatment of men and women. More practically, issues of access are raised, especially for patients in low-income or rural areas, for whom a refusal to dispense may cut off access to contraceptives entirely.

Religious refusal exemptions, also known as "conscience clauses" (because such exemptions allow providers to decline to provide lawful services that conflict with their religious or moral beliefs), must balance the provider's conscience claims with the patient's right to care, privacy, and self-determination.

In 2015, 1 in 6 American patients were cared for at a Catholic-based hospital.<sup>51</sup> As Catholic hospitals increase in number through mergers across the country, the use of religious beliefs and directives to determine patient care is increasing. The U.S. Conference of Catholic Bishops uses the *Ethical and Religious Directives for Catholic Health Care Services*<sup>52</sup> to control how Catholic-based health care providers make medical decisions for all patients, even those who are not Catholic. Patients who unwittingly choose, or have no choice due to insurance or location, a Catholic-affiliated doctor or hospital may not be told of certain medications, treatments, or services if they conflict with Catholic teachings or beliefs.

## **POLICY RECOMMENDATION**

Lawmakers should overturn existing laws and oppose any proposed legislation that would allow medical professionals to deny patients abortion and sterilization procedures (or other services),

and/or enable pharmacists, based on their personal religious beliefs, to refuse to fill lawful prescriptions for contraception, including emergency contraception.

## RELIGIOUS EXEMPTION FOR CONTRACEPTIVE COVERAGE

Under the Affordable Care Act, the Department of Health and Human Services (HHS) provides a broad religious employer exemption to providing contraceptive care that includes all nonprofit organizations that claim a tax exemption as a “religious employer.” In the 2014 *Burwell v. Hobby Lobby* case, the Supreme Court expanded that exemption to include closely held<sup>53</sup> for-profit companies if the owners object to the contraceptive coverage on religious grounds.

The employees of these companies and organizations may still receive contraceptive coverage through third-party coverage once the employers notify HHS of their intent not to provide coverage via an email or a one-page form. Some Catholic groups challenged this notice requirement, claiming that under RFRA their religious exercise was burdened. The appeals courts split on the issue. However, in 2016 in *Zubik v. Burwell* the Supreme Court vacated all decisions from the appeals courts that dealt with the contraception mandate notice requirement by employers and ordered that the government and objecting parties should be afforded the opportunity to reach an accommodation that satisfies religious exercise and ensures employees receive full and equal health coverage, including the contraceptive coverage.<sup>54</sup>

The contraceptive coverage requirement of the Affordable Care Act is intended to serve the compelling public health and gender equity goals and is in no way targeted at religion or religious practices, keeping in line with First Amendment jurisprudence. All employees are entitled to earn a living without sacrificing their health and their own religious liberty.

## POLICY RECOMMENDATION

Religious exemptions from a neutral law of general applicability, such as contraceptive coverage in health care plans, should be limited to houses of worship in regards to employees with ministerial duties.

# RESEARCH ISSUES



## STEM CELLS AND FETAL TISSUE

In 2001, President Bush restricted federal funding for research on stem cells obtained from human embryos.<sup>55</sup> This ban severely restricted progress in stem cell research and its possible applications, and caused many of the U.S.'s best scientists to move overseas.<sup>56</sup> While the ban was lifted by President Obama in 2009, Congress' 2017 Labor-HHS-Education FY18 Appropriations bill would ban federal funding for fetal tissue research if passed.<sup>57</sup>

Human pluripotent stem cells, more commonly known as "stem cells," are derived mainly from fetal tissue and early stage embryos. Using embryonic stem cells is favored because of their capacity to renew indefinitely, providing an unlimited supply of cells. Utilizing non-embryonic stem cells (or "adult stem cells"), in contrast, produces a limited result, both in their capacity to self-renew and their ability to diversify: typically they can only replicate into the cell types found in the organ of origin.

Adult stem cells are also relatively uncommon to find in the human body. For example, blood-forming stem cell experts estimate that only 1 in 2000 to fewer than 1 in 10,000 cells found in the bone marrow is actually a stem cell.<sup>58</sup> The number of stem cells in fetal tissue is much higher, and has contributed to vaccines for polio, rubella and chickenpox.<sup>59</sup>

Even more critically, embryonic stem cells have the remarkably rare ability to develop into many crucial cell types in the body, including heart, liver, brain, and lung cells.<sup>60</sup> With their unique regenerative abilities, stem cells offer the potential for treating diseases such as diabetes and heart disease, to test new drugs and medications, to develop better cancer-fighting treatments, and to provide renewable cells for ailments such as macular degeneration, spinal cord injury, stroke, burns, and rheumatoid arthritis.<sup>61</sup>

## POLICY RECOMMENDATION

Government policy regarding the use of stem cells for medical research should be based on scientific and medical research. Therefore, the decision as to whether or not to allocate federal funds to stem cell research should not be dictated by religious beliefs.

## MEDICAL AID-IN-DYING

Six states and the District of Columbia have policies allowing a terminally ill, medically competent adult to request and receive prescriptive medication to hasten death: Oregon, Washington, Vermont, California, and Colorado. The District of Columbia also passed the D.C. Death with Dignity Act in 2016. In addition, the Montana Supreme Court determined there was no state law banning the prescribing of medications to hasten death for terminally ill individuals, effectively validating the practice in 2009. Montana state law also bars prosecution of doctors who help terminally ill patients end their lives.

The Supreme Court has ceded policy decisions about medical aid-in-dying to the states. While declining to recognize a constitutional right to medical aid-in-dying, the Court has held that state laws allowing the option trump the U.S. Attorney General's power to regulate controlled substances.<sup>62</sup>

The Oregon Death with Dignity Act is considered model legislation by the medical aid-in-dying movement, and a careful reading of 20 years of data published by the Oregon Health Authority,<sup>63</sup> without a single reported instance of abuse, demonstrates its legitimacy as a state policy. The model legislation is very narrow, allowing only terminally ill, mentally competent patients with a twice-confirmed diagnosis of six months or less to live to request the medication. While some opponents to medical aid-in-dying argue that it will lead to coercion and abuse, particularly of the elderly and the disabled, there is no evidence to support this claim either in the language of the legislation or the implementation of the law in states that have passed it.<sup>64</sup>

State legislation legalizing medical aid-in-dying, which have been introduced in dozens of states and are modeled from Oregon's law, establish a thorough vetting process for patients requesting the medication. This includes the requirement that the patient voluntarily submit written requests with the presence of witnesses and the second opinion of the patient's diagnosis by a physician.

Much of the opposition to medical aid-in-dying arises out of religious beliefs, particularly those rooted in the tenet of the sanctity of life. Such arguments assert the practice is akin to suicide, however it is not accurate to describe the patients who would be eligible for medical aid-in-dying as suicidal. They must be assessed as mentally competent by their physician to make this decision voluntarily. They are not faced with a choice of whether or not to live, as they are facing a terminal illness that will take their life within six months. Medical aid-in-dying empowers these terminally ill patients with six months or less to live with the choice die on their own terms, at the time and place of their choosing and in accordance with their own conscience and beliefs. The conditions of one's death, one of the most deeply personal moments in one's life and in the lives of their families, should be left to the patient and their doctor.

Reports show that on average, nearly one third of patients who receive the prescription do not ingest it, demonstrating the profound significance this option has for terminally ill patients who simply want to have autonomy and control in their final days.<sup>65</sup>

## POLICY RECOMMENDATION

Legislators should legalize medical aid-in-dying in states where the option is not available and should not undermine or impede the legalization of this medical option on religious or ideological grounds.

## CHILDREN'S HEALTH ISSUES

### RELIGIOUSLY BASED CHILD ABUSE AND NEGLECT

The Supreme Court has made it clear that the right to practice one's faith does not extend to the point where children's health and safety are jeopardized. The Court ruled in *Prince v. Massachusetts* that parents' religious beliefs do not give them a constitutional right to engage in practices that compromise a child's health or safety.<sup>66</sup>

In his article, "The Children We Abandon," William and Mary Law School Professor James G. Dwyer states that child abuse laws providing exceptions for perpetrators who deny children needed medical care for religious reasons "discriminate among groups of children, in the conferral of important state benefits, on an arbitrary and improper basis—namely, the religious beliefs of other persons."<sup>67</sup>

However, after Congress passed the federal Child Abuse Prevention and Treatment Act (CAPTA) in 1974, the Department of Health, Education, and Welfare required states to add a religious exemption for health care to their child protection laws in order to receive federal funding. In 1983, the requirement was removed but all 50 states and D.C. had passed religious exemptions for medical treatments. The current CAPTA reauthorization does not have a religious exemption, but states have been slow to repeal their statutes. Currently, 34 states and D.C. provide for a religious defense for caregivers who refuse medical treatment for children, and nine states allow religious exemptions to statutes criminalizing child abuse and neglect.<sup>70</sup>

### POLICY RECOMMENDATION

Lawmakers should remove religious exemptions in child abuse and neglect laws to better protect our nation's children.

### EXCEPTIONS TO VACCINATION REQUIREMENTS

Vaccine mandates in the United States are generally confined to children enrolling in public schools and daycares—i.e., those children mingling with large numbers of other children. These mandates have been effective in reducing mortality and morbidity by making enrollment conditional on vaccination.

While all states have medical exemptions for those who cannot vaccinate for medical reasons, such as having an immunodeficiency, 47 states have nonmedical vaccine exemptions. There are two types of nonmedical exemptions: religious and "philosophical" (also known as "personal belief") exemptions. All 47 states have religious exemptions and 18 have "philosophical" vaccine exemptions.<sup>71</sup>

Those who cannot vaccinate for medical reasons depend on the immunity of their surrounding community to protect them. As misinformation and fears surrounding vaccines have spread, the number of people utilizing nonmedical vaccine loopholes has increased in recent years.<sup>72</sup> This has tragically resulted in outbreaks of dangerous diseases like measles that previously were almost entirely eradicated because of vaccines.

This resurgence of previously eradicated diseases was evidenced by a record number of measles cases in 2014, with 667 cases from 27 states reported to the Center for Disease Control and Prevention's (CDC) National Center for Immunization and Respiratory Diseases (NCIRD). According



to the CDC, “this was the greatest number of cases since measles elimination was documented in the U.S. in 2000.”<sup>73</sup>

Proponents of nonmedical exemptions frame the issue in terms of parental choice, however unvaccinated children are not the only ones at risk. Their untreated immune systems put other children and adults at risk, including the most vulnerable members of the community who cannot vaccinate for medical reasons. Every parent has a right to send their children to school in an environment that is as safe and healthy as possible.

The number and percentage of parents claiming nonmedical exemptions for their children has risen rapidly in the past decade,<sup>74</sup> largely because of fears about vaccine safety, despite an established body of research that has overwhelmingly demonstrated that the benefits of vaccines far outweigh the risks.<sup>75</sup> As vaccination rates have fallen, the number of measles and pertussis (also known as “whooping cough”) cases have risen.<sup>76</sup> In the United States, children with nonmedical exemptions are 35 times more likely to contract measles than vaccinated children.<sup>77</sup> Public health officials have called upon legislators to make nonmedical exemptions harder to obtain.

### **POLICY RECOMMENDATION**

States should be incentivized to protect the public and work toward eradicating vaccine-preventable diseases, especially in children, by repealing nonmedical exemptions to their respective vaccination laws. Lawmakers should take an active role in standing up for the science behind vaccines and encouraging constituents to vaccinate on time, every time, in accordance with the recommendations of the Advisory Committee on Immunization Practices.

### **HEALTH AND SAFETY STANDARD EXEMPTIONS FOR RELIGIOUS CHILD CARE CENTERS**

When parents place their children in a child care center, they expect the facilities to meet minimum health, safety, and caregiver-training standards as set by law. However, if that child care center is religiously affiliated, parents may unknowingly be putting their children at risk because religiously affiliated child care facilities in some states are exempt from regulations.

Currently in several states, if a child care center fails to meet health and safety standards for licensing, it can simply affiliate with a church, religious institution, or parochial school endorsed by a private religious accrediting agency, and be exempted from meeting those standards. Depending on the state, this can mean some of these child care centers are not regulated to meet the following criteria: minimum staff-to-child ratios, minimum staff training requirements, and various health, safety, and sanitation standards.

### **POLICY RECOMMENDATION**

State regulatory standards for child care centers should be designed to ensure children’s health and safety and to provide parents with the assurance that their children will be well cared for. Exempting religiously affiliated child care centers from these requirements puts children at risk and all such exemptions should be repealed. Therefore, secular and religiously affiliated child care centers should be held to the same health and safety standards and all religious exemptions for health and safety standards should be eliminated.

### **CONVERSION THERAPY**

Conversion therapy, a psychological treatment or spiritual counseling attempting to alter

an individual's sexual orientation from homosexual to heterosexual, has been debunked as pseudoscience. Many major mental health organizations have denounced the use of conversion therapy as a means of altering one's sexual orientation.

California, Connecticut, Illinois, New Jersey, Oregon, Vermont, New Mexico, Nevada and the District of Columbia have enacted laws to prevent licensed mental health providers from offering conversion therapy to minors, and more than 20 states have introduced similar legislation. In addition, New York State agencies have taken administrative action to protect LGBTQ youth by barring insurance coverage for the harmful practice and making it unlawful for state-licensed mental health providers to engage in conversion therapy with minors. A number of municipalities have also enacted similar protections that apply within city limits.

The American Academy of Child and Adolescent Psychiatry rejects the assertion that sexuality can be altered by therapy. They maintain that empirical evidence, failed trials, and a trove of convincing medical studies prove that sexual orientation is not a choice; rather, conversion therapy causes more psychological harm than benefit, by inflicting upon the patient a sense of isolation and self-loathing.<sup>78</sup> The American Psychological Association indicates that the mainstream medical community has shifted away from aversion therapy practice to affirmative psychotherapy instead. The new norm for therapists is to help patients cope with their sexuality rather than attempt to repress it.<sup>79</sup>

This new approach is in part due to several studies pointing to harm being done to individuals who are subjected to conversion therapy in either a psychological setting or through spiritual counseling. The American Psychiatric Association (APA) lists risks of so-called "reparative therapy" that are considerable and include loss of sexual desire, suicidal tendency, depression, anxiety, and self-destructive behavior.<sup>80</sup> Many patients who have undergone reparative therapy relate that they were inaccurately told that homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction.<sup>81</sup> The reality that a person might achieve happiness and satisfying interpersonal relationships as an LGBT person is not presented, nor are alternative approaches to dealing with the effects of societal stigmatization discussed.<sup>82</sup> The secular community supports these and other medical associations that have debunked conversion therapy as an acceptable means of attempting to alter an individual's sexual orientation.

## **POLICY RECOMMENDATION**

Lawmakers should support legislation that bans the use of conversion therapy on minors. Furthermore, they should regulate its use on adults to ensure that consenting adults are fully aware of the risks involved in participating in the practice.

## **CHILD ABUSE REPORTING EXEMPTIONS FOR CLERGY**

The confidentiality of pastoral communications is fundamental, but not absolute: confidentiality must be balanced with children's essential rights to be free from abuse. Every state and the District of Columbia has statutes identifying those who are required to report child maltreatment under specific circumstances. As of 2015, 28 states and Guam currently include members of the clergy among those professionals specifically mandated by law to report known or suspected instances of child abuse or neglect.<sup>83</sup> However, in 23 states and D.C., the law is unclear or absent in relation to whether clergy are mandated to report child abuse and maltreatment.<sup>84</sup> In 18 states and Puerto Rico, any person who suspects child abuse or neglect is required to report it.<sup>85</sup> Only nine states explicitly include Christian Science practitioners among classes of clergy required to report, which

is significant considering the role faith healing can play in the medical neglect of children.

## **POLICY RECOMMENDATION**

All clergy should be held to the same requirements as all other persons of authority for reporting child abuse. While the confidentiality of pastoral communications is well recognized, because the unique and vulnerable position of children, religious communication must not be exempted from mandatory child abuse reporting statutes.

## **ADDICTION RECOVERY PROGRAMS**

While trying to address the addiction epidemic, courts sentencing individuals to substance abuse recovery programs are often violating those persons' First Amendment right to religious freedom.

Twelve-step programs, including Alcoholics Anonymous and Narcotics Anonymous, have been judged "pervasively religious" in every federal appeals court and state supreme court that has reviewed pertinent cases.<sup>86</sup> If the federal government requires a person to participate in a recovery program (such as in drug court, in prison, or through a probation department) there must be a secular program offered for the order to be constitutional.<sup>87</sup> Not only is it unconstitutional for a person to be forced to attend religious recovery treatment, but the National Association of Drug Court Professionals recognizes that "[d]rug courts must offer a secular alternative to 12-step programs ... because appellate courts have interpreted these programs to be deity-based, thus implicating the First Amendment."<sup>88</sup>

Forcing a person to attend religious substance recovery programs against her sincerely held convictions and threatening or imposing jail for refusing to do so in violation of her First Amendment rights or requiring her to participate in any further religious recovery programs would be a miscarriage of justice.<sup>89</sup>

A growing number of mutual support recovery organizations do not require religious beliefs or acknowledgment of a higher power. These programs include:

- SMART Recovery teaches participants tools for recovery based on the latest scientific research and participation in a worldwide community.
- Women for Sobriety (WFS) is a program for women with problems of addiction. WFS' purpose is to help all women recover from problem drinking through the discovery of self, gained by sharing experiences, hope, and encouragement with other women in similar circumstances.
- LifeRing offers secular self-help to abstain from alcohol and illegal drugs through peer-to-peer support.
- Secular Organizations for Sobriety is a nonprofit network of local groups dedicated to helping individuals achieve and maintain sobriety from alcohol, drug, and food addictions.

## **POLICY RECOMMENDATION**

Wherever recovery programs are offered or permitted by the government, a secular option should be available.

# EDUCATION



Students are constitutionally protected from religious coercion in public schools. Public school endorsement of any religion is unconstitutional and violates the rights of secular students, and those of religious students whose faiths are not privileged by school officials. Individual students have the right to express their religious beliefs in non-disruptive ways. Out of respect for these rights, public school teachers and administrators must remain neutral toward all forms of religion when acting in their official capacities.

## SCHOOL VOUCHER SCHEMES

The public school system is a bedrock of American society, providing a pluralistic, democratic, and accountable education to millions of children. School voucher schemes seek to take taxpayer funding from public schools, which serve roughly 90% of all students, to send a select few students to private, usually religious, schools. Indeed, 76% of private schools in America, serving 80% of private school students, have a religious affiliation,<sup>94</sup> which means taxpayer dollars for private schools help subsidize sectarian education. In 2001, in *Zelman v. Harris*, a closely divided Supreme Court rejected an Establishment Clause challenge to vouchers. The Secular Coalition believes *Zelman* was wrongly decided and stresses that the Court ruled only on the constitutionality of voucher programs, rather than their wisdom or unintended consequences in a pluralistic nation.

There are several ways in which school voucher schemes take shape. Several states have school voucher programs, which some members of Congress seek to emulate at the federal level. They have been successful in one regard, which is the creation of the D.C. school voucher program, which polls found most D.C. residents did not want.<sup>95</sup> But, these schemes also take the shape of tuition tax credits, which reduce the amount of funding allocated to public schools and shift the money to a private school. More recently, “portability” programs that seek to make taxpayer funding dedicated for public schools follow students wherever they decide to attend school – public or private.<sup>96</sup>

There are many reasons to oppose school voucher schemes. First, they violate the separation of church and state by providing taxpayer support for sectarian religious education. Second, they fund discriminatory practices, as private and religious schools are not held to the same nondiscrimination standards as public schools, and can refuse admission to students based on religion – including refusing admission to students of LGBT or nontheistic families. Third, they don't work. As numerous studies have found, voucher programs such as those in D.C. and Louisiana, have not improved math and reading scores.<sup>97</sup> And, in doing so, they drain public schools of important resources.

### **POLICY RECOMMENDATION**

Public dollars should go to public schools. Taxpayer dollars for education should never fund religious education or a religious educational institution.

### **SECULAR STUDENT GROUPS**

Nonreligious secular student groups are entitled to the same rights and protections as other extra-curricular student groups. At the college level, secular student groups occasionally face harassment, discrimination, and limitations on available funding and other resources.<sup>98</sup> Public colleges and universities are obliged under the Fourteenth Amendment to provide equal protection to all students and their groups. Additionally, they must follow the First Amendment's requirement for religious neutrality toward student groups and to protect the rights of nonreligious students to freedom of religion, freedom of speech, and freedom of assembly. In secondary schools, secular student groups are protected by the Equal Access Act, which ensures that all student groups are treated equally and enjoy equal access to resources. Public institutions of higher education also must remain viewpoint-neutral toward religion and other ideologies in providing resources for student groups.<sup>99</sup> Secular student groups deserve equal access and protection.

### **POLICY RECOMMENDATION**

All students and student groups, regardless of their religious or nonreligious beliefs, should be treated equally and should enjoy equal access to institutional resources and protections on campuses.

### **SEX EDUCATION**

Students deserve sex education programs that provide the information and skills necessary to make informed, responsible, and healthy decisions to reduce unintended pregnancy, partner-on-partner violence, STIs and HIV. Sex education in publicly funded schools must be medically accurate and free from religious influence.

Abstinence-only sex education materials often "blur religion and science,"<sup>100</sup> use fear and shame, and contain medical misinformation.<sup>101</sup> Such programs often provide misinformation about STIs and contain material that stigmatizes LGBT youth and reinforces harmful gender stereotypes. Eighty-eight percent of students break their abstinence pledges.<sup>103</sup>

Comprehensive sex education leads to a measurable reduction in early sex, unprotected sex, and number of sexual partners.<sup>104</sup> Abstinence-only programs lead to no measurable reductions in early sex or number of sex partners and lead to a measurable increase in unprotected sex.<sup>105</sup> American youth deserve medically sound sex education programs that address their needs.



## POLICY RECOMMENDATION

All students should receive unbiased, medically accurate sex education through programs that give them the tools to make informed decisions concerning their sexual and reproductive health irrespective of their religious affiliation or the religious affiliation of those providing the programs.

## SECULAR SCHOOL CURRICULUM

As taxpayer-funded institutions, public schools are constitutionally obligated to teach a religiously neutral curriculum based on the best available evidence and science. This principle has been consistently upheld, as laws banning the teaching of evolution have been ruled unconstitutional<sup>106</sup> and “balanced treatment” laws that require teachers to give “creation science” or “Intelligent Design” equal classroom time to evolution were also ruled equally unconstitutional.<sup>107</sup>

The controversy surrounding the teaching of evolution is a political one, not a scientific one. Evolution is a sound and basic scientific principle that belongs in every state’s curriculum and textbooks. Federal courts have consistently defeated attempts to explicitly incorporate creationism in science classrooms. As a result, creationists no longer approach policymakers using “creation science” terminology. Instead, they advocate for state laws that mandate teaching the various theories regarding topics such as evolution and climate change and encourage students to debate and discuss them. The wording of these so-called “academic freedom” bills would allow for faith to be taught as fact in public schools.<sup>108</sup> If government-funded schools teach religious ideology such as creationism, such actions would amount to government endorsement of religious beliefs, trampling on the principle of separation of religion and government and effectively coercing students to subscribe to religious beliefs.

While attacks on the integrity of science in public schools has been commonplace, sectarian interests have successfully expanded their agenda into social studies and world history curriculum. The content of public school curriculum should be driven by subject matter experts, not politicians. To withhold information or allow ideology to be taught on equal footing or in place of established scientific and historical consensus robs our nation’s youth of their right to a quality education.

## POLICY RECOMMENDATION

All schools funded with taxpayer dollars should teach an evidenced-based and nonsectarian curriculum that incorporates the best available scientific theories, including evolution and comprehensive medically accurate sex education.

## SCHOOL PRAYER

The Supreme Court has repeatedly struck down as unconstitutional attempts to inject prayer or other forms of devotional practices into public schools. The Establishment Clause forbids school-sponsored prayer.<sup>109</sup> Classroom prayers and Bible readings are unconstitutional, even if students are excused from participating.<sup>110</sup> Inclusion of prayer as part of the official school program gives government power over religion. Even supposedly neutral prayers privilege religion over nonreligion and are unacceptable.

Public school teachers and administrators must remain neutral concerning religion while carrying out their duties. It is unconstitutional for teachers or school employees to pray with or out loud in the presence of students or to encourage religious activities in school. At the same time, school officials may not impede upon voluntarily self-initiated student prayer sessions, so long as the school officials are not directly involved.<sup>111</sup> Teachers and other school officials have no individual

First Amendment right to use their official positions to proselytize in school.<sup>112</sup>

Public schools cannot include invocations or benedictions at graduation ceremonies, regardless of who delivers the prayer.<sup>113</sup> It does not matter whether or not attendance at the graduation ceremony is voluntary, since the pressure for students to attend this milestone event is effectively coercive. School-sponsored prayers at other school events, including athletic events, are likewise unconstitutional, even if the prayers are student-led.<sup>114</sup>

## **POLICY RECOMMENDATION**

As representatives of the government, teachers and administrators may not lead students in prayer; however, the right of a student to voluntarily engage in a non-disruptive private prayer has never been, and should never be, infringed.

## **PLEDGE OF ALLEGIANCE**

The current language of the Pledge of Allegiance as written in our federal laws states, “I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.”<sup>115</sup>

Forty-four states have laws that require that public school classes recite the Pledge of Allegiance or have mandates to school districts to set aside time for its recitation.<sup>116</sup> Three of the six states without these laws have bills in their legislatures to mandate recitation.<sup>117</sup> Children who attend public school from kindergarten through 12th grade hear that we are a nation, “under God” more than 2,000 times.<sup>118</sup> Although the Supreme Court has ruled students cannot be required to recite the Pledge of Allegiance,<sup>119</sup> a daily recitation declaring the nation is “under God” sends the message to students that the government endorses theistic religion and nontheistic students are outsiders to patriotism.

Although history and tradition are often cited as support for religious references in government action, neither the original version of the Pledge of Allegiance, written in 1892 by Francis Bellamy,<sup>120</sup> nor the version Congress recognized in 1942 as the official national pledge of the United States, contained any reference to God.<sup>121</sup> “Under God” was added to the Pledge of Allegiance in 1954<sup>122</sup> after the Knights of Columbus, the world’s largest Roman Catholic fraternal organization, persuaded members of both houses of Congress that the suggested religious reference would combat the threat of communism.

## **POLICY RECOMMENDATION**

The Pledge of Allegiance should be returned to its original form, as the inclusion of “under God” in the daily patriotic school exercise isolates nontheistic students or unfairly and unnecessarily compels them to comply. Furthermore, students should not be required to participate in the Pledge of Allegiance and should be protected from retaliation or punishment for declining to participate.

# DISCRIMINATION



Discrimination takes many forms, and the targets of discrimination are as diverse as the motivations behind it. A secular approach to dealing with discrimination reflects the duality of the religious clauses of the First Amendment. Discrimination is unlawful when it targets an individual for their beliefs, or lack thereof. It is also improper to exempt religiously motivated actions from an otherwise valid anti-discrimination statute, thereby using government protection to endorse a particular religious belief.

History shows that, at times, only force of law can effectively prevent discrimination based on popular prejudices. American society has made vast improvements in the past 50 years in combating discrimination, and more Americans are choosing not to hide identities that may target them for abuse and ridicule. As we conquer new grounds of acceptance, conflicts emerge when rights are at odds with each other: namely, that operating in the public square requires compliance with all public laws and religion is only a valid justification for discrimination in the most limited of contexts.

## EMPLOYMENT DISCRIMINATION

Our government has a long history of subsidizing the efforts of organizations providing social services.<sup>124</sup> Historically, the same laws and regulations regarding how government funds were utilized, and the hiring and firing practices for such programs, applied to both secular and religious groups. Unfortunately, executive orders from President George W. Bush allow federally funded faith-based organizations to discriminate on the basis of religion in their hiring practices. This is an exemption to Title VII of the Civil Rights Act of 1964, which makes it unlawful for an employer to refuse to hire or fire any individual based on their religion.

Religious organizations providing social services to U.S. citizens should be held to the same nondiscrimination policies required of every other federal contractor and grantee. Religious organizations have a right to promote their beliefs and to ask their followers to live lives based on these beliefs. However, when religious organizations accept money from the federal or state governments to provide publicly accessible social services, they must agree to abide by regulations prohibiting discrimination against the very taxpayers who fund such activities. Faith-based organizations are not required to apply for or accept taxpayer funds if they believe their religious rights will be compromised.

These principles extend to employment protections for LGBT Americans. In many states it is currently legal for an employee to be fired solely for their sexual orientation or gender identity. In many of the states that have laws protecting LGBT employees there is an exemption for houses of worship, religiously affiliated nonprofits, and businesses. It is important to note that houses of worship are protected by the Constitution and do not require a legislative carve out. However, religiously affiliated hospitals and businesses should be held to the same standards of equality as other employers. No other class of citizens protected by anti-discrimination legislation is subject to such an exemption. Discrimination in hiring and firing on the basis of gender identity or sexual orientation is wrong no matter the motivation. Laws that put religious exemptions in place set a dangerous precedent that religion is a valid justification for hate.

## **POLICY RECOMMENDATION**

Nondiscriminatory hiring practices should be required of any federal or state contractor accepting government funds. Laws protecting employees from discrimination should not contain any religious exemptions.

## **HOUSING DISCRIMINATION**

The Fair Housing Act of 1968 contains several important protections to ensure that U.S. citizens are able to purchase housing free from discrimination. However, while the Act protects against discrimination against any one person because of race, color, religion, sex, familial status, or national origin, it does not protect against discrimination on the basis of gender identity or sexual orientation. Unfortunately, this lack of protection has led to numerous cases in which a landlord uses religious reasons, such as a scriptural prohibition on homosexuality, to discriminate against potential and current tenants on the basis of their sexual orientation or gender identity. A 2017 study by the Urban Institute found that in three major metropolitan areas (Los Angeles, Dallas, and Washington D.C.), gay men and transgendered people were quoted higher prices, given fewer appointments, and told of fewer available rental units than their straight or non-transgendered counterparts. This reinforces the results of an earlier, national study by the Department of Housing and Urban Development which found that landlords and realtors favored straight couples over gay couples nearly 16% of the time.<sup>126</sup>

Four states prohibit housing discrimination based on sexual orientation. Seventeen states and the District of Columbia prohibit housing discrimination based on both sexual orientation and gender identity. Still, most states still allow for discrimination against LGBTQ Americans, which can take several forms, including but not limited to: preventing same-sex couples from sharing a lease, preventing same-sex couples from both being on a homeowner's insurance policy, and the refusal to rent or sell property to same-sex couples or transgender U.S. citizens. Most often, the reason for this discrimination is religious in nature, with landlords claiming that renting to an individual "living in sin" would be a violation of their religious beliefs.

The ability to purchase housing free from discrimination must be a fundamental right for all U.S. citizens, regardless of how they look, who they love, or how they identify. Discrimination in housing on the basis of gender identity or sexual orientation is wrong no matter the motivation.

## **POLICY RECOMMENDATION**

A federal law, or amendment to the original Fair Housing Act, should be introduced to add LGBTQ Americans to the classes protected from housing discrimination. This law or amendment should not contain any religious exemptions.

## RELIGIOUS FREEDOM RESTORATION ACT OF 1993

Since its passage, the Religious Freedom Restoration Act of 1993 (42 U.S.C. ch 21B §2000bb et seq.) (RFRA) has been the basis for nearly 20 state religious freedom bills, which have been broadly aimed at allowing for discrimination in public accommodations, such as restaurants, bakeries, and florists.<sup>127</sup> Among the most controversial state religious freedom laws is Senate Bill 101 in Indiana (Religious Freedom Restoration Act), which allows individuals and companies to assert that their exercise of religion has been, or is likely to be, substantially burdened as a defense in legal proceedings. Additionally, while the intent of the federal RFRA was to protect private citizens from potential government overreach, several of the state RFRAs instead have sought to ensure the right of a private citizen or privately owned business to use their religious beliefs as a basis for discrimination against individuals without fear of a civil lawsuit or other adverse consequence.

Senator Chuck Schumer, who sponsored the federal RFRA in 1993 as a U.S. representative, stated in comparing the federal law to the Indiana Religious Freedom laws that, “If ever there was a compelling state interest, it is to prevent discrimination. The federal law was not contemplated to, has never been, and could never be used to justify discrimination against gays and lesbians, in the name of religious freedom or anything else. The federal RFRA was written to protect individuals’ interests from government interference, but the Indiana RFRA protects private companies and corporations. When a person or company enters the marketplace, they are doing so voluntarily, and the federal RFRA was never intended to apply to them as it would to private individuals.”<sup>128</sup>

In 2014, the Supreme Court handed down the *Burwell v. Hobby Lobby Stores, Inc.* decision, which significantly expanded the application of the federal RFRA. The Supreme Court held that RFRA’s protections should be applied to closely held for-profit corporations, meaning such entities may be exempt from federal laws if the owners have a sincerely held religious objection. The Court expanded the exemption that allowed religious employers to opt-out of providing employee insurance coverage for contraceptives.

Nineteen of the original sponsors of the federal RFRA, including Senator Schumer, stated in a brief to the Court that, “Congress could not have anticipated, and did not intend, such a broad and unprecedented expansion of RFRA. Nor did Congress intend for courts to permit for-profit corporations and their shareholders to use RFRA to deny female employees access to health care benefits to which they are otherwise entitled.”<sup>129</sup> In 2015, the Supreme Court consolidated seven cases where lower courts disagreed about whether the notification of using the contraceptive exemption was a burden on religious exercise. In a Per Curiam decision, the Supreme Court vacated a lower court’s decision in *Zubik v. Burwell* and returned the other six cases back to their respective appellate courts for reconsideration.

The secular community strongly disagrees with the application of the Religious Freedom Restoration Act that allows for the discrimination against any person by privileging religion above the law. We aim to repeal the Religious Freedom Restoration Act, as well as similar state laws that endeavor to privilege an individual or company’s religion over the fairness and equality that must be shown to all citizens of the United States.

## POLICY RECOMMENDATION

Congress should repeal or significantly reform the Religious Freedom Restoration Act of 1993 (42 U.S.C. ch 21B §2000bb et seq.) to ensure that the current law protects only the religious exercise rights of individuals, and only in cases of a significant burden that is imposed by the government. As such, federal and state RFRAs should not apply to for-profit companies, nor should they be used as a tool to allow otherwise illegal discrimination between private citizens.



# TAX POLICY



## TAX LOOPHOLES FOR RELIGIOUS ORGANIZATIONS

Total charitable contributions by individuals, foundations, bequests, and corporations reached \$358.38 billion in 2014, with religious organizations and houses of worship receiving the largest share – 32 percent – of total estimated contributions.<sup>131</sup> Holding houses of worship to the same tax filing standards as other charitable and educational institutions ensures that the nearly \$100 billion being donated to houses of worship is accounted for in the same transparent manner as other charitable organizations.

Yet houses of worship are automatically tax-exempt and entitled to the benefits of 501(c)(3) status without applying for such status from the IRS. All other organizations must fill out the 31-page Form 1023 to apply to receive nonprofit status. Once the IRS grants a secular organization tax-exempt status pursuant to §501(c)(3), the organization must file a Form 990 annual tax return with the IRS. The IRS uses the information provided in the Form 990 to ensure that an organization granted tax-exempt status remains so qualified. But houses of worship are exempt from filing 990 returns.<sup>133</sup>

Houses of worship also receive practical immunity from IRS auditing based on procedures set forth in the Church Audit Procedures Act (CAPA).<sup>134</sup> CAPA requires that before the IRS may begin an inquiry into the tax status of any organization claiming to be a church, the IRS must satisfy certain prerequisites, including articulating a reasonable belief in the need for an investigation, providing special notice to the church, and having a high-level Treasury official conduct the inquiry.

Under current law, churches receive substantial tax benefits while remaining insulated from public or government review. When select organizations are shielded from any investigation, it is impossible to know whether these organizations are using their funds for benevolent action.

Religious privileges nonessential for accommodating free exercise should be removed from the tax code, including the initial 501(c)(3) application exemption for churches, the annual Form 990 filing exemption for churches, and the restrictions on IRS investigations of churches known as the Church Audit Procedures Act (CAPA).<sup>135</sup>

## **POLICY RECOMMENDATION**

A simpler and fairer tax code can be achieved by removing the following three provisions:

1. §508(c)(1)(A), which awards houses of worship §501(c)(3) status without application;
2. §6033(a)(3)(A)(i), which exempts houses of worship from the requirement to file annual IRS reports; and
3. §7611, which shields houses of worship from IRS investigation.

## **POLITICAL ENDORSEMENT FROM THE PULPIT**

Congress has considered proposals that would permit all 501(c)(3) organizations, including houses of worship, to endorse political candidates while receiving §501(c)(3) benefits. IRS rules prohibit partisan politicking by any organization – religious or secular – that receives tax exemptions under §501(c)(3). Houses of worship, like secular nonprofit organizations, have the option of forgoing tax-exempt status if they wish to endorse politicians, but taxpayer money in the form of tax exemptions for §501(c)(3) organizations cannot be used for partisan political activity. Notwithstanding current law, the Alliance Defending Freedom repeatedly has asked religious leaders to defy the prohibition on political endorsements on what it calls “Pulpit Freedom Sunday.”<sup>136</sup> However, despite this open defiance of federal law, the IRS and federal government has refused to enforce the prohibition on political endorsements, and as a result, houses of worship have been able to endorse candidates free from sanctions, audits, or other punishments.

Fundamental fairness requires that the U.S. tax code apply the same rules to all §501(c)(3) organizations, including registration and auditing requirements. Requiring compliance with regulations in order to show entitlement to tax-exempt status is a minimal but necessary burden on religious organizations – a burden all other §501(c)(3) organizations already face. The courts must constantly balance the right to free exercise with the substantial secular interest in preventing illegal activity and preserving the national interest in the separation of church and state.

## **POLICY RECOMMENDATION**

Religious organizations, including houses of worship, which voluntarily opt in to a tax-exempt status, should follow existing §501(c)(3) regulations, which strictly ban partisan politicking and the IRS should enforce existing law.

# IMMIGRATION



The United States is a nation of immigrants, full of individuals who came from other countries that seek a better life and the freedom that the United States can provide. Unfortunately, recent proposals made in Congress and in state legislatures to limit immigration on the basis of religious identity have left many questioning who can still safely immigrate to our country.

Discrimination in immigration proceedings on the basis of religious identity has been proposed most recently for Muslims, including calls to ban all Muslim immigration or to ban immigration from specific Muslim-majority countries. In addition, preferential treatment has allegedly been given to Christian refugees, who are seen as less of a security risk or as more similar to the average U.S. citizen than potential Muslim immigrants.

However, legislation like the *Freedom of Religion Act of 2016*, would prohibit the use of religious litmus tests as a means to ban immigrants, refugees, and international visitors trying to enter the United States. This legislation not only prohibits discrimination against religious minorities, but also against nontheists such as atheists, humanists, agnostics, and others who do not maintain a religious belief.

Immigration to the United States should not be prohibited or expedited on the basis of an individual's religious identity, except for special circumstances in which a specific community is being targeted for persecution by state or societal actors.

## POLICY RECOMMENDATION

Bills such as the *Freedom of Religion Act*, as well as any other legislation that seeks to prohibit religious discrimination in the evaluation of immigration petitions, should become law, while efforts to support discrimination in immigration on religious grounds should be opposed.

# MILITARY



The military presents a unique situation in which the government is intricately involved in daily life for more than a million active duty personnel. While providing service members with access to religious materials and services to fulfill their own personal beliefs, the government must ensure it displays neutrality toward religion and belief in the military. Humanist and other nontheists in the armed forces deserve equal access to support and equal respect for their service.

More self-identified atheists serve in the military than any other non-Christian denomination.<sup>137</sup> Military chaplains, as they should, show their respect for Buddhists, Hindus, Muslims, and Jews through special dietary and uniform accommodations and special chaplain accession policies. Wiccans have lay leaders, a facility at the Air Force Academy, and advertised chaplain-sponsored services. Yet even though nontheists serve in larger numbers than any of these groups, humanists enjoy no recognition or accommodation. Support for nontheists puts all service members on equal terms and legitimizes the religious facilities, events, and support programs provided for those who prefer religious affiliation.

Religion, and Christianity in particular, is afforded special privileges within the U.S. military. This can be clearly seen in the military chaplaincy program, which is 98% Christian, the special accessions for Catholic chaplains, the use of ceremonial prayer, and the inculcation of God (and Christianity) into all aspects of military care programs. Our military should be neutral toward religion and avoid religious privileging or proselytizing of any kind.

## PROVIDE FOR HUMANIST CHAPLAINS

While our military is making substantial progress integrating gay, lesbian and female Americans into its ranks, it continues to discriminate against nontheists. The chaplaincy has never had any formal training in nontheistic beliefs and practices, leaving them unqualified to extend their services to nontheists.

Chaplains are explicitly given responsibility, on behalf of their commanders, for free exercise of religion and belief in the military. In the modern military, chaplains have expanded responsibilities for morale activities, advice to the chain of command, marriage retreats, and suicide prevention briefings, in addition to their free exercise responsibilities. They proudly proclaim their support and care for all military personnel and they are given a budget and access to support all. Unfortunately, chaplains have denied lay leader appointments, program involvement, chaplaincy appointment, and chaplain services to humanists.

Chaplains have a varied and complex list of duties, including responsibility for morale support, advice on ethical decisions, and a variety of training. None of these duties requires a certain type of belief, either theistic or nontheistic. Humanists are capable of performing these duties and should not be excluded because of their beliefs. Humanists constitute 3.6% of the general population<sup>138</sup> yet have no chaplains. Christian denominations make up 98% of all military chaplains, even though less than 70% of the military identifies as Christian.<sup>139</sup> Humanists should be properly identified as a critical shortage in the chaplaincy. There are special accession programs for Jewish and Catholic chaplains, and Humanists should be added to the list for these programs until the shortage is resolved.

The Humanist Society in particular is recognized as a church by the IRS, meets all requirements of the Department of Defense to endorse military chaplains, and is recognized as an endorser by the Association of Professional Chaplains. All chaplains will benefit from at least one colleague, a Humanist Chaplain, who can best represent a portion of the population found in essentially every unit served by a chaplain.

## **POLICY RECOMMENDATION**

Humanist chaplains should be added to diversity priorities for chaplain recruiting alongside Catholics, Jews, and other critical shortage chaplaincies.

## **CHAPLAIN TRAINING ON THE NONTHEIST PERSPECTIVE**

Chaplains currently have training about the diversity of belief systems they will encounter in the military as well as the requirement to serve this wide diversity, from Wiccan to Muslim to Christian Science to Sikh. Chaplains have no such training for the nontheist perspective so they are ill-equipped to provide referrals and appropriate resources or even to be effective in basic counseling services.

## **POLICY RECOMMENDATION**

Nontheist-developed training on the nontheist perspective (e.g., atheist philosophy, humanist values, beliefs, history, and practices, and nontheistic grief counseling) should be added to the Chaplain Corps College program of instruction in each branch of the military.





Whether through bi- or multilateral initiatives or at the United Nations (UN), the United States has long been a leader in global efforts to advance fundamental human rights. In particular, the U.S. has been on the forefront of defending and promoting the rights to freedom of religion, belief, and expression. There is a reason for this: these rights are fundamental American values enshrined in the First Amendment to the U.S. Constitution. However, deep U.S. respect for individual liberty has caused our country to lead on a number of other important human rights issues, including the advancement of the rights to sexual orientation and gender identity, reproductive health care, and the protection of civil society.

## THE RIGHTS TO FREEDOM OF RELIGION, BELIEF, AND EXPRESSION

Secular organizations across the United States engage on a variety of international human rights issues, but freedom of religion, belief, and expression is a core concern. These fundamental freedoms include but are not limited to the rights, either individually or in community with others, to believe or not believe, to question and change one's religion or belief, to live according to one's religion or belief, and to promote one's religion or belief.

It is often argued that the rights to freedom of religion, belief, and expression are Western ideals. But these freedoms are not simply enshrined in our U.S. Constitution – they also are protected as universal human rights in key international treaties. The UN's foundational document – the Universal Declaration of Human Rights (UDHR), which adopted by the UN General Assembly in 1948 – states that:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance (Article 18).

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (Article 19).<sup>140</sup>

Many of the provisions in the UDHR gained the force of international law in 1966 under the International Covenant on Civil and Political Rights (ICCPR), which echoes and expands upon the UDHR language. The ICCPR not only protects the right to believe in and practice a religion – it also protects the rights to not believe in a religion, to actively identify as nonreligious, and to express criticisms of religions. As the United Nations Human Rights Committee, a group of experts charged with interpreting the ICCPR, explained in its 1993 commentary:

The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters .... Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.<sup>141</sup>

In 2011, the Committee released a new commentary that expanded on these sentiments, especially concerning freedom of expression:

Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant ... Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.<sup>142</sup>

As an international treaty, the ICCPR is binding on its signatories, which include most, but not all, member states at the UN.

International agreements and guidelines are one area in which the UN addresses freedom of religion, belief, and expression. This UN Human Rights Council and General Assembly also consider a variety of resolutions. Both have made progress. Between 1999 and 2010, the General Assembly and Council approved non-binding resolutions condemning criticism of religions.<sup>143</sup> These resolutions eventually lost support – thanks, in part, to growing pressure from both U.S. government and secularist nongovernmental organizations (NGOs) – and was replaced by a resolution that respects a human rights approach to combating intolerance and discrimination (commonly referred to as the “16/18” resolution).<sup>144</sup> As a result of this and ongoing advocacy, a significant number of member states now recognize that blasphemy and similar laws violate basic human rights.

Domestically, the U.S. government also has a role to play in advancing freedom of religion, belief, and expression globally. The State Department can and should use diplomatic trips, annual human rights reports, and press statements to call attention to both specific cases and emerging patterns.

In addition, members of Congress can and should use their platforms to spotlight under-discussed issues or take positions the administration cannot. For example, members of the U.S. Senate have

sent letters to foreign governments condemning the jailing of dissidents in countries which the sitting administration would not criticize due to economic or political arrangements. And, members of the House of Representatives have offered measures calling for an end to laws which criminalize blasphemy (House Resolution 290, 114th Congress), highlighting particular countries that are the worst offenders; and offered measures to strengthen the International Religious Freedom Act of 1998, in part by including language referring to nonreligious individuals and communities being protected by freedom of religion (H.R. 1150, 114th Congress).

## OTHER AREAS OF HUMAN RIGHTS

Beyond freedom of religion, belief, and expression, the American secularist community is active in many areas of human rights advocacy. These areas include the rights of sexual and gender minorities and women, both of which are related to the rights to freedom of religion, belief, and expression.

In 2011, the UN Human Rights Council officially recognized the rights of sexual and gender minorities by approving a resolution expressing “grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.”<sup>145</sup> A similar measure passed in 2014, and then in 2016, which also included creation of the position of an independent expert on sexual orientation and gender identity at the UN. These votes were applauded by secularist groups, who urge the U.S. government to use such international agreements in pressuring foreign countries to protect the rights of of sexual and gender minorities.<sup>146</sup>

The secularist community has also spoken out on various issues related to women’s rights, including the practice of early and forced marriage, restrictions on reproductive health, and other basic freedoms. In particular, secularist groups have argued that early and forced marriages are a violation of children’s rights and not a legitimate use of the individual or collective right to freedom of religion.<sup>147</sup> Groups have also argued that women should have access to reproductive health care, regardless of the religious dogmas of organized religions or elected officials. And, groups have argued that religious traditions should not be used to restrict the rights of women to live out their full citizenship or to justify subjecting women to barbaric practices such as female genital mutilation.

## CIVIL SOCIETY

The U.S. government has both a moral and a legal duty to defend and advance human rights around the world. It also has an interest and an obligation to protect and work with civil society, including NGOs. NGOs are an essential part of the fabric of any democratic society. They can also often help governments communicate with people on the ground in foreign countries – including persecuted dissenters, their families, friends, and legal experts.

There is an active network of secular NGOs committed to protecting human rights abroad. These NGOs include the American Humanist Association, Ex-Muslims of North America, Center for Inquiry, International Humanist and Ethical Union, Secular Coalition for America, among others. These organizations often work with religious groups to achieve common goals. The State Department and members of Congress can and should seek to protect and work with secularist NGOs just as they work with religious NGOs when abroad.

## **POLICY RECOMMENDATION**

The U.S. government should incorporate human rights concerns into regular dialogue and apply political pressure whenever possible on governments violating their international human rights obligations. In addition, U.S. diplomatic staff should work with secularist NGOs, just as they work with religious NGOs, to remain informed on human rights situations and take action when necessary. And, as a global leader, the U.S. should remain engaged in international forums and aggressively seek to protect fundamental human rights.

## **CLIMATE CHANGE**

Climate change is not a political position or personal belief, but an explanation consistent with the scientific method, supported by a consensus of 97% of climate scientists, of the gradual increase in the Earth's temperature. The research shows that it is caused largely by human activities, primarily the use of fossil fuels which release carbon dioxide and other greenhouse gases into the air, and poses significant risks for – and, in many cases, is already affecting – a broad range of human and natural systems.<sup>148</sup> Yet, despite the certainty behind the science, nearly one-quarter of Americans polled said they were not worried at all about climate change.<sup>149</sup>

Unfortunately, both members of Congress and the current administration have sought to downplay or obstruct the scientific evidence for climate change, or else subject research by federal agencies such as the EPA to political demands. Some have done this based on their rejection of science, or else misunderstanding of scientific data. Others have done it based on personal religious beliefs that God would not cause harm to the world. But political positions and personal beliefs are not reasons to reject overwhelming empirical evidence.

## **POLICY RECOMMENDATION**

Members of Congress should recognize the scientific evidence of climate change and explore actions that would mitigate and prevent further harm to the environment.

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- 2 Ibid
- 3 Jefferson’s Letter to the Danbury Baptists. Jan. 1, 1802. Retrieved June 9, 2017 from <http://www.loc.gov/loc/lcib/9806/danpre.html>
- 4 *Reynolds v. United States*, 98 U.S. 145, 164 (1879).
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- 6 The Founders’ Constitution. Volume 5, Amendment I (Religion), Document 43. Retrieved June 9, 2017 from [http://press-pubs.uchicago.edu/founders/documents/amendl\\_religions43.html](http://press-pubs.uchicago.edu/founders/documents/amendl_religions43.html). The University of Chicago Press.
- 7 See *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 638 (1943) (stating that “[t]he very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts”). The Establishment Clause protects just such a fundamental right. See e.g. *McCreary County v. ACLU of Ky.*, 545 US 844, 884 (2005) (O’Connor, J., concurring) (stating that courts “do not count heads before enforcing the First Amendment”).
- 8 Deism is the clockmaker god belief. That a supernatural being created this universe and does not concern itself in the affairs of this world. Theism is the belief that some god intervenes in this world. We do not trust in or ask for help from or pray to a god that we believe does not intervene. Ceremonial Theism would be the more appropriate moniker.
- 9 *Aronow v. United States*, 432 F.2d 242, 243-44 (9th Cir. 1970).
- 10 “It is quite obvious that the national motto and the slogan on coinage and currency ‘In God We Trust’ has nothing whatsoever to do with the establishment of religion. Its use is of a patriotic or ceremonial character and bears no true resemblance to a governmental sponsorship of a religious exercise.” *Aronow v. United States*, 432 F.2d 242, 243 (9th Cir. 1970).
- “It is not easy to discern any religious significance attendant the payment of a bill with coin or currency on which has been imprinted ‘In God We Trust’ or the study of a government publication or document bearing that slogan. In fact, such secular uses of the motto was viewed as sacrilegious and irreverent by President Theodore Roosevelt. Yet, Congress has directed such uses. While ‘ceremonial’ and ‘patriotic’ may not be particularly apt words to describe the category of the national motto, it is excluded from First Amendment significance because the motto has no theological or ritualistic impact. As stated by the Congressional report, it has ‘spiritual and psychological value’ and ‘inspirational quality.’”
- “‘In God We Trust’ has nothing whatsoever to do with the establishment of religion. . . . the primary purpose of the slogan was secular; it served a secular ceremonial purpose in the obviously secular function of providing a medium of exchange. As such it is equally clear that the use of the motto on the currency or otherwise does not have a Primary effect of advancing religion.” *O’Hair v. Blumenthal*, 462 F. Supp. 19, 20 (W.D. Tex. 1978), *aff’d sub nom. O’Hair v. Murray*, 588 F.2d 1144 (5th Cir. 1979)
- “The motto’s primary effect is not to advance religion; instead, it is a form of ‘ceremonial deism’ which through historical usage and ubiquity cannot be reasonably understood to convey government approval of religious belief.” *Gaylor v. United States*, 74 F.3d 214, 216 (10th Cir. 1996)
- “Aronow held the national motto is of a ‘patriotic or ceremonial character,’ has no ‘theological or ritualistic impact,’ and does not constitute ‘governmental sponsorship of a religious exercise.’” *Newdow v. Lefevre*, 598 F.3d 638, 646 (9th Cir. 2010).
- “The [Supreme] Court’s Justices have distinguished our currency from improper governmental endorsements of religion.” *Newdow v. Peterson*, 753 F.3d 105, 108 (2d Cir. 2014), *denied*, 135 S. Ct. 1008, 190 L. Ed. 2d 839 (2015)
- 11 *Elk Grove v. Newdow*, 542 U.S. 1, 41 (2004). (O’Connor, J., concurring).
- 12 *Lynch v. Donnelly*, 465 U.S. 668, 716 (1984) (Brennan, J. dissenting ).
- 13 *Elk Grove v. Newdow*, 542 U.S. 1, 41 (2004). (O’Connor, J., concurring)
- 14 *Everson v. Bd. of Ed. of Ewing*, 330 U.S. 1 (1947).
- 15 *Allegheny Co. v. Greater Pittsburgh ACLU*, 492 U.S. 573, 590-91 (1989).
- 16 *Id.*, quoting *Everson*.
- 17 See *Everson*, 330 U.S. at 15-16.
- 18 *McCreary County, Ky. v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005).
- 19 *Wallace v. Jaffree*, 472 U.S. 38, 52-54 (1985).
- 20 *Lemon v. Kurtzman*, 403 U.S. 602 (1971).
- 21 *Lynch v. Donnelly*, 465 U.S. 668 (1984).
- 22 See e.g., *Stone v. Graham*, 449 U.S. 39, 41 (1980) (per curiam ) (striking down state law that required posting of Ten Commandments displays in schools because “[t]he pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature”).
- 23 See *McCreary County v. ACLU*, 545 U.S. 844, 869 (2005); accord *ACLU of Ohio Foundation v. Deweese*, 633 F.3d 424 (6th Cir. 2011); *Green v. Haskell County Board of Com’rs*, 568 F.3d 784 (10th Cir. 2009). Certain longstanding displays of the Ten Commandments (approximately 50 years or more) on public property have been grandfathered-in.
- 24 See *County of Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573 (1989); *Lynch v. Donnelly*, 465 U.S. 668 (1983).
- 25 *Id.* at 615, 617.



26 The one exception is *Weinbaum v. City of Las Cruces*, 541 F.3d 1017 (10th Cir. 2008). In that case, the court found that a city's symbol, which included three crosses, represented the city's name—which translated into "The Crosses"—and the city's unique history, as the city was founded near the site of a cemetery. 541 F.3d at 1033-35. Even there, the court recognized: "The Christian or Latin cross – a cross with three equal arms and a longer foot – reminds Christians of Christ's sacrifice for His people. . . . [I]t is unequivocally a symbol of the Christian faith." *Id.* at 1022-23.

27 See e.g., *Trunk v. San Diego*, 629 F.3d 1099 (9th Cir. 2011), cert. denied, 132 S.Ct. 2535 (2012); *Carpenter v. City and County of San Diego*, 93 F.3d 627, 632 (9th Cir. 1996); *Friedman v. Bd. of County Comm'rs*, 781 F.2d 777, 778 (10th Cir. 1985) (en banc); *ACLU v. Rabun County Chamber of Commerce*, 698 F.2d 1098, 1111 (11th Cir. 1983); *ACLU v. Eckels*, 589 F. Supp. 222, 241 (S.D. Tex. 1984); *Am. Humanist Ass'n v. City of Lake Elsinore*, 2014 U.S. Dist. LEXIS 25180, \*42 (C.D. Cal. Feb. 25, 2014); *Jewish War Veterans v. United States*, 695 F. Supp. 3, 14 (D.D.C. 1988). See also *Am. Atheists, Inc. v. Duncan*, 616 F.3d 1145, 1161 (10th Cir. 2010) (privately erected roadside memorial crosses for state troopers unconstitutional). In *Am. Atheists, Inc. v. Port Auth.*, 760 F.3d 227, 232 (2nd Cir. 2014), however, the court held that the decision to display "a particular artifact recovered from World Trade Center debris, a column and cross-beam from one of the Twin Towers" in a public museum was not unconstitutional. 760 F.3d at 232. The "column and cross-beam" along with thousands of "other Ground Zero artifacts" were given to the "September 11 Memorial and Museum Foundation." *Id.* 234-35. The plaintiffs even conceded that the cross "is an historic artifact worthy of display[.]" *Id.* 233.

28 *Washegesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679 (6th Cir. 1994) (portrait of Jesus Christ in public school held unconstitutional pursuant to each prong of *Lemon*); *Roberts v. Madigan*, 921 F.2d 1047, 1056-58 (10th Cir. 1990) (a teacher's display of a Bible in his classroom "had the primary effect of communicating a message of endorsement of a religion"); *Ahlquist v. City of Cranston*, 840 F. Supp. 2d 507 (D. R.I. 2012); *Joki v. Bd. of Educ. of Schuylerville Cent. Sch. Dist.*, 745 F. Supp. 823, 829-30 (N.D. N.Y. 1990) (portrait of Jesus in public school unconstitutional); *Doe v. Aldine Indep. Sch. Dist.*, 563 F. Supp. 883, 884 (S.D. Tex. 1982).

29 *Bowen v. Kendrick*, 487 U.S. 589, 621 (1988).

30 *Committee for Public Education v. Nyquist*, 413 U.S. 756, 777 (1973) (struck down repair grants meant to renovate parochial schools because the buildings were used for sectarian purposes). See also *Tilton v. Richardson*, 403 U.S. 672 (1971) (unanimous holding that government construction subsidies are unconstitutional if the buildings are ever used for religious activities); *Hunt v. McNair*, 413 U.S. 734 (1973) (upheld government construction bond because bond financed buildings were barred from being used for religious activities).

31 *Town of Greece v. Galloway*, 134 S.Ct. 1811 (2014).

32 *Marsh v. Chambers*, 463 U.S. 783 (1983).

33 See *Joyner v. Forsyth County*, 653 F.3d 341 (4th Cir. 2011); *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004); *Galloway v. Town of Greece*, 681 F.3d 20 (2nd Cir. 2012).

34 *Employment Div., Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872, 879 (1990). Following *Smith*, Congress passed the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb-1 ("RFRA"), which requires the application of "strict scrutiny" to government action "substantially burdening a person's exercise of religion." The Supreme Court struck down RFRA as applied to state governments as unconstitutional. *City of Boerne v. Flores*, 521 U.S. 507 (1997).

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37 *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005).

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and does not wish to be a part of TC for reasons of religious freedom, the prison's actions violate the Establishment Clause of the

First Amendment."); *White v. Spikes* , 2015 U.S. Dist. LEXIS 12019, \*16-17 (N.D. Tex. Jan. 9, 2015) ("The clearly established precedent

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<https://www.atheists.org>

**American Ethical Union**

<https://aeu.org>

**American Humanist Association**

<https://americanhumanist.org>

**Atheist Alliance of America**

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**Institute for Humanist Studies**

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<http://www.shj.org>

**Unitarian Universalist Humanists**

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