

Annual Report
on the
**State of Religious Liberty
in the United States**

January 16, 2024



The Committee for Religious Liberty
of the U.S. Conference of Catholic Bishops

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The Annual Report on the State of Religious Liberty in the United States was developed by the Committee for Religious Liberty of the United States Conference of Catholic Bishops (USCCB). It was approved by Bishop Kevin Rhoades of Fort Wayne–South Bend, Chair of the Committee for Religious Liberty.

Fr. Michael Fuller, S.Th.D.
General Secretary, USCCB

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Executive Summary

This report summarizes developments in religious liberty at the federal or national level here in the United States in 2023. After previewing likely developments in 2024, it identifies the five greatest threats to religious liberty in the coming year and recommends responses to each threat.

Because control of the two chambers of Congress was divided in 2023, most introduced bills that threatened religious liberty languished. Rather, the vast majority of threats to religious liberty at the federal level last year came in the form of proposed regulations by federal agencies. These heavily focused on imposing requirements regarding abortion, “sexual orientation,” and “gender identity.”

The Supreme Court of the United States only heard two cases implicating religious liberty in 2023, but in each case the Supreme Court ruled for broader protections — for religious exercise in the workplace, in *Groff v. DeJoy*, and for free speech based on religious beliefs, in *303 Creative LLC v. Elenis*.

The issues of abortion and gender identity were at the heart of key cultural trends affecting religious liberty. Opposition to Christians’ witness against abortion continued to motivate vandalism against churches and pro-life pregnancy centers. The celebration of “Pride Month” generated numerous controversies, including protest and counterprotest of the Los Angeles Dodgers’ decision to honor an anti-Catholic group as part of the baseball team’s “Pride Night” festivities.

Religious charities serving newcomers found themselves the targets of intense anger, largely motivated by misinformation and partisan rhetoric related to the U.S.–Mexico border. Dramatic, conspiratorial

claims about religious charities’ ministry to newcomers led to calls for the government to penalize them, primarily through proposed restrictions on their access to programs and funding opportunities, and eventually to a call for violence against the charities’ employees.

The terrorist attacks against Israel and ensuing outbreak of war caused antisemitic incidents in the United States to skyrocket, including shocking displays of open hatred, with acts of anti-Muslim hatred committed as well.

These trends will likely continue into 2024, and election-year dynamics will serve only to intensify them. This report identifies the top five threats to religious liberty in 2024 as follows:

- attacks against houses of worship, especially in relation to the Israel-Hamas conflict
- the Section 1557 regulation from the U.S. Department of Health and Human Services, which will likely impose a mandate on doctors to perform gender transition procedures and possibly abortions
- threats to religious charities serving newcomers, which will likely increase as the issue of immigration gains prominence in the election
- suppression of religious speech on marriage and sexual difference
- the EEOC’s Pregnant Workers Fairness Act regulations, which aim to require religious employers to be complicit in abortion in an unprecedented way

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Foreword

In 2012, the United States Conference of Catholic Bishops formed the Ad Hoc Committee for Religious Liberty, which subsequently published *Our First, Most Cherished Liberty*, a statement that charted a course for the USCCB's work in religious liberty. That document outlines a history and a theology of religious freedom. American Catholics have a long and proud history of promoting religious freedom. We have done so not in order to protect private interests but to foster the common good. Religious freedom "is not a Catholic issue. . . . It is an American issue."

In some ways, much has changed since 2012. After six years, the bishops voted to make the ad hoc committee a standing Committee for Religious Liberty, and in the years since, the work of this committee has become more strongly incorporated into the regular work of the USCCB. The Committee for Religious Liberty has seen and responded to multiple shifts in the political and cultural landscape. When the ad hoc committee was formed, church vandalism did not seem to be a pressing issue. In recent years, it has become a significant concern. It would be another three years before the Supreme Court found a constitutional right to civil marriages for same-sex couples, and questions of gender identity seemed a distant concern. Although these kinds of questions are, in a sense, perennial, they were not the primary ones the ad hoc committee was considering when it was formed.

Even so, much remains the same.

The ad hoc committee was formed, in part, as a response to the contraceptive mandate issued by the Department of Health and Human Services. That regulation generated a great deal of controversy, and federal regulations have continued to be a problem. The ad hoc committee also expressed concerns about laws that, in attempting to deal with the issue of immigration, encroached on religious freedom. Immigration-related laws continue to be of concern.

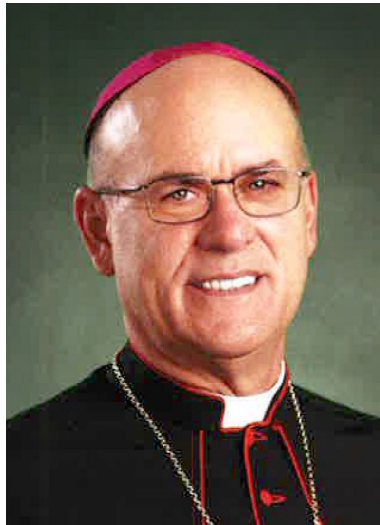
The Ad Hoc Committee for Religious Liberty was concerned about attempts of some state governments to interfere in church governance. While those particular efforts seem to have been abandoned, civil authorities continue to interfere in intra-church issues in particularly egregious ways. For example, some states, in hopes of uncovering crimes of sexual abuse against children and vulnerable adults, have attempted to force priests to violate the seal of sacramental confession. This is a remarkable development, considering that the issue of clergy-penitent privilege occasioned possibly the first court case on the free exercise of religion in the United States. While some facts change, the underlying issues crop up again and again.

Much as *Our First, Most Cherished Liberty* identified key areas of concern to the bishops, this report outlines the major issues that have occupied the

Committee for the Religious Liberty over the past year. It reveals a wide range of concerns, such as federal agencies misusing laws meant to aid pregnant women in order to promote abortion, threats to the safety of our Jewish and Muslim neighbors, and the FBI's suspicion of Catholics who worship in the traditional Latin Mass.

Since this committee's work began, the U.S. bishops have sought to raise awareness about our religious liberty concerns, and it has been gratifying to see how the people of God have, indeed, become more engaged in promoting our first freedom. This annual report represents one more resource to help all Catholics, as they seek to live out their faith in this great country.

Today, January 16, the United States celebrates Religious Freedom Day. While most of the Founders were not Catholic, there is much in their vision that resonates with a Catholic understanding of religious freedom. At the same time, we have our own distinctive voice and tradition, particularly with our understanding of human dignity, faith and reason, natural law, the common good, and the heritage of Catholic social teaching.



8 *Foreword*

I pray that this annual report will serve, alongside the great work that many other Catholic and religious liberty organizations are doing, as a contribution to the common good of these United States. We are Catholics.

We are Americans. We are proud to be both.

Bishop Kevin C. Rhoades
Chairman, Committee for Religious Liberty

I – The Role of the Committee

The U.S. Conference of Catholic Bishops (USCCB) is the assembly of the Catholic bishops of the United States, and the vehicle by which they act collaboratively on vital issues confronting the Church and society. The USCCB's Committee for Religious Liberty works to strengthen and sustain religious freedom by assisting the U.S. bishops, individually and collectively, to teach about religious freedom to the faithful and the broader public, and to promote and defend religious freedom in law and policy. Resources on numerous aspects of the committee's work can be found at www.usccb.org/committees/religious-liberty.

This committee focuses on religious liberty issues that fall within certain parameters, which also define the scope of this report.

First, the committee works on religious liberty here in the United States. This does not reflect a lack of concern by the bishops for religious liberty abroad — rather, international religious liberty issues fall under the purview of the Committee on International Justice and Peace. And the state of religious liberty in many other countries is indeed dire. While religious liberty has come under increasing pressure in the United States in recent years, Americans remain blessed by our country's tradition of honoring this natural right. The work of the Committee for Religious Liberty on domestic issues helps to ensure that the United States continues to be an example for other governments.

Second, the committee addresses religious liberty issues at the federal, or national, level. Primarily, this consists of federal legislation, actions of the federal executive branch, and decisions by the U.S. Supreme Court. The committee also addresses matters occurring at the state or local level when they represent national trends or are matters of national importance. State and local religious liberty issues, and religious liberty court cases that have not yet reached the Supreme Court, are generally outside the scope of the committee's work.

The USCCB's Committee for Religious Liberty works to strengthen and sustain religious freedom by assisting the U.S. bishops, individually and collectively, to teach about religious freedom to the faithful and the broader public, and to promote and defend religious freedom in law and policy.

This report will thus omit discussion of many lower court rulings on religious liberty in 2023.

Third, the committee actively upholds and protects religious liberty for all faiths, but the committee naturally has a special role, expertise, and interest in protecting the free exercise of Catholicism. So, while this report includes discussion of religious liberty issues affecting other faiths, it is not intended to be an exhaustive treatment of all challenges to religious liberty in the United States.

Last, when a government infringes on the religious liberty of Catholics, it is typically in furtherance of a worldview or policy priority that is itself contrary to, or to degrees at variance with, Catholic social teaching. But governments also often advance such objectionable policies in ways that do not infringe our religious liberty — take, for example, recently proposed federal regulations that restrict states' ability to enforce their laws that protect preborn children from abortion. Those proposed regulations are wrong and harmful, but they do not pressure people of faith to violate their beliefs. On matters of this sort, other committees of the bishops' conference take the lead with the consultation and support of the Committee for Religious Liberty as necessary.

II – What Is Religious Liberty and Why Does It Matter?

The work of the Committee for Religious Liberty is guided by Catholic social teaching, particularly the Second Vatican Council and the teaching of its declaration on religious liberty, *Dignitatis Humanae* (DH).

Religious liberty means freedom from coercion in religious matters. The Church teaches that human persons should not be forced to act contrary to their religious convictions, “whether privately or publicly, whether alone or in association with others, within due limits” (DH, 2). This right to religious freedom “has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself” (2).

In Catholic teaching, rights and duties are reciprocal. So, while people have a right not to be coerced on religious issues, this right carries with it the responsibility to seek the truth about God and to live in accordance with that truth.

“The root reason for human dignity lies in man’s call to communion with God” (*Gaudium et Spes*, 19). The human person — created in the image of God with intellect and free will — naturally desires to know the truth about matters pertaining to religion, such as: *How did everything that exists come to be? What is the Creator like? What happens when I die? How ought I to live in light of the answers to these questions?*

Religious freedom protects the space for both individuals and groups to ask these questions honestly. As law professor and religious liberty scholar Richard

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Garnett puts it, “The appropriately secular and limited state will not prescribe the path this search [for truth and for God] should take, but it will take steps — positive steps — to make sure that ‘freedom for’ religion, and the conditions necessary for the exercise of religious freedom, are nurtured.”¹

This point about necessary conditions indicates the importance of religious freedom for the common good. One definition of the common good is that it is the set of conditions necessary for a society to flourish. According to Catholic scholar Joseph Capizzi, “Catholic social teaching on the common good presents as a task of political communities their support of all those institutions necessary for the protection and flourishing of individuals and their rights.”²

Since human persons naturally desire to know and adhere to religious truth, their flourishing goes hand in hand with religion and religious institutions. Thus, *Dignitatis Humanae* teaches:

Government is also to help create conditions favorable to the fostering of religious life, in order that the people may be truly enabled to exercise their religious rights and to fulfill their religious duties, and also in order that society itself may profit by the moral qualities of justice and peace which have their origin

in men's faithfulness to God and to his holy will. (6)

A government that promotes the common good will recognize that religious individuals, communities, and institutions need space to flourish, and such flourishing ultimately redounds to the benefit of the broader



CNS photo/Lola Gomez

political community. This means that the government does not force its citizens to conform to one particular religion, but neither does it treat religion as a private matter or religious institutions as mere voluntary associations. As Pope Francis teaches:

A healthy pluralism, one which genuinely respects differences and values them as such, does not entail privatizing religions in an attempt to reduce them to the quiet obscurity of the individual's conscience or to relegate them to the enclosed precincts of churches, synagogues, or mosques. This would represent, in effect, a new form of discrimination and authoritarianism. (*Evangelii Gaudium*, 255)

This committee strives to promote this kind of healthy pluralism in the United States today.

III – Religious Liberty and Congress

A. *The State of Play on Religious Liberty in Congress in 2023*

The U.S. Congress was divided in 2023, with Democrats holding a narrow majority in the Senate, and Republicans holding a small majority in the House of Representatives. The division of control between the two chambers made it difficult for Congress to pass legislation that affected religious liberty; whether for good or bad — the two chambers could rarely agree.

It is unusual for legislation to be solely about religious liberty. Instead, the more common scenario is that a bill addresses a particular issue, such as abortion or immigration, and one effect of the bill would be to protect or restrict the free exercise of religious beliefs about that issue. Because of the tendency toward partisan division on subjects of religious belief, it is rare for such bills to have bipartisan support.

Occasionally, however, there are bills that specifically address religious liberty. When Congress passed the landmark Religious Freedom Restoration Act (RFRA) in 1993, all but three members of Congress voted for it. The prime example of a current bill that focuses mainly on religious liberty is the Do No Harm Act, which has the express and sole purpose of reducing the protections for religious liberty secured by RFRA. The Do No Harm Act has 125 cosponsors in the House and 29 in the Senate, all Democrats, reflecting the increasing polarization around the topic of religious liberty.

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B. *Bills on Life Issues*

1. **The Equal Rights Amendment**

The Equal Rights Amendment (ERA), a proposed amendment to the U.S. Constitution, states: “Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.” Congress sent the ERA to the states for ratification in 1972. Thirty-eight states are needed to ratify the ERA for it to be adopted, but by the time the thirty-eighth state ratified it in 2020, the deadline for ratification had long since passed (and five states that initially ratified it had since rescinded their ratification). Nonetheless, in April 2023, the Senate considered a resolution to declare the ERA to be ratified. The measure failed by a vote of 51 to 47.

The simplicity of the ERA’s text, and the positive concept that it invokes of equality between the sexes, concealed a number of dire consequences its passage would have had.

One consequence of the ERA would have been the likely requirement of federal funding for abortions. At least two states have construed their own equal rights amendments, with language analogous to that of the federal ERA, to require government funding of abortion. Both supporters and opponents of abortion believe that the federal ERA would have this effect, as well as restrain the ability of federal and state governments to enact other measures regulating abortion, such as third-trimester or partial birth abortion bans, parental consent, informed consent, conscience-related exemptions, and other provisions.

Advocates have also argued that laws forbidding sex discrimination also forbid discrimination based on “sexual orientation,” “gender identity,” and other categories. To take one example, it is argued that bans on sex discrimination set out in the Affordable Care Act and Title VII, respectively, require health care professionals to perform, and secular and religious employers to cover, “gender



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transition surgery.” In 2020, the Supreme Court ruled in *Bostock v. Clayton County* that the sex discrimination provisions of Title VII apply to “sexual orientation” and “transgender status,” but left many questions unanswered.³ In fact, that year’s House Judiciary Committee report on H.J. Res. 79, a resolution purporting to remove the ERA’s ratification deadline, stated “the ERA’s prohibition against discrimination ‘on account of sex’ could be interpreted to prohibit discrimination on the basis of ‘sexual orientation or gender identity.’”⁴ These claims heightened the concern about a federal constitutional provision that, in broad fashion, would have purported to forbid the abridgement of rights based on sex. The consequences could have reached how Americans must treat and speak about gender in public schools at every level, hospitals, government workplaces, social welfare agencies, and more.

In particular, the ERA would have likely hampered the ability of churches and other faith-based organizations to obtain and utilize conscience protections whenever there is a claimed conflict with the sexual nondiscrimination norms that the ERA would have adopted. The ERA could have likewise made it more difficult for faith-based organizations to compete on a level playing field with secular organizations in qualifying for public resources to provide needed social services. For example, the government could have argued that a decision not to perform an abortion or gender-related surgery is constitutionally prohibited sex discrimination, so that a health care provider is ineligible to em-

ploy otherwise available federal funds if it declines to perform or refer for such a procedure.

2. FACE Act Repeal

The Freedom of Access to Clinic Entrances Act, or FACE Act, is a 1994 law that criminalizes 1) certain kinds of interference with access to reproductive health services or churches, and 2) intentional damage to the property of reproductive health clinics or churches.⁵ The term “reproductive health” has long been understood to refer to abortion clinics, although it can also apply to pro-life pregnancy resource centers.

Historically, the FACE Act has been used almost exclusively to protect abortion clinics and has never been used to protect a church. Certainly, some prosecutions under the FACE Act have been just — for arson or for bomb threats, for example — but in other cases the penalties have seemed disproportionate to the conduct in question — for example, peacefully sitting and praying in front of the doors of an abortion clinic.

The lopsided enforcement of the FACE Act has long been noted but received renewed attention in 2023, as increasing attacks on pro-life pregnancy resource centers went largely unpunished, while some actions brought against protesters outside abortion clinics seemed unjustifiably severe.⁶ During appearances on Capitol Hill, Attorney General Merrick Garland and FBI Director Christopher Wray drew the ire of congressional Republicans, who have been especially incensed by the case of Mark Houck, whose house was raided by the FBI after he got into a physical altercation with an abortion clinic staffer whom, Houck claims, was

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threatening his son. Houck was later found not guilty of charges brought against him under the FACE Act.

In September 2023, Rep. Chip Roy (R-TX) and Sen. Mike Lee (R-UT) introduced a bill to repeal the FACE Act. As of this writing, it has thirty-one cosponsors in the House and five cosponsors in the Senate, all Republicans.

3. The Women’s Health Protection Act

The Women’s Health Protection Act (WHPA) would impose abortion on demand nationwide at any stage of pregnancy through federal statute. Immediately upon passage, the WHPA would invalidate state laws protecting the preborn from abortion, even late in a pregnancy, and including laws that prohibit abortion based on race, sex, disability, or other characteristics. It would likely override conscience laws, state and federal, that protect the right of health care providers and professionals, employers, and insurers not to perform, assist in, refer for, cover, or pay for abortion. WHPA expressly eliminates defenses under the Religious Freedom Restoration Act.

The House passed the Women’s Health Protection Act in 2021 and in 2022, but it stalled in the Senate. Introduced by Rep. Judy Chue (D-CA) and Sen. Tammy Baldwin (D-WI), the current WHPA has 212 cosponsors in the House (every House Democrat but one, no Republican cosponsors) and 48 cosponsors in the Senate (45 Democrats and three Independents). President Biden has called for its passage.

C. Bills on Human Sexuality Issues

1. The Equality Act

The Equality Act raises the greatest threat to religious freedom currently before Congress. It is a sweeping bill that would amend numerous federal

nondiscrimination laws to prohibit “sexual orientation and gender identity” discrimination, and impose an abortion mandate, while explicitly exempting itself from the bipartisan Religious Freedom Restoration Act. Its negative impact would be widespread. Specifically, the Equality Act:

- Would likely require taxpayers to fund elective abortions, because of the way it redefines “sex” discrimination.
- Would also likely force doctors and hospitals to perform abortions even if against their conscience or beliefs.
- Would likely require all employers with more than fourteen employees, including religious organizations, to cover abortions in their health insurance plans.
- Would restrict people who are struggling with their gender, including children and teens, from accessing needed help in loving themselves and their bodies; and would instead falsely present life-altering attempts to change sex as their only social and medical option.
- Would mandate that doctors and counselors must perform and promote life-altering gender transitions, even when they do not think it is in the best interests of their patient.
- Would require even religious organizations to cover gender “transition” procedures in their employee health insurance plans, and to retain employees who publicly contradict the organizations’ teachings and beliefs.
- Would force girls and women to compete against males in school sports for limited positions on women’s teams and opportunities for college scholarships.
- Would force girls and women to share locker rooms, gym showers, restrooms, and dorm rooms with males who self-identify as girls or women.
- Would force vulnerable, sometimes traumatized, girls and women in shelters or social services programs to share sleep-

The Equality Act raises the greatest threat to religious freedom currently before Congress.

ing, shower, and other spaces with men (and many religious charities that disagree would be shut down).

- Could force women’s prisons to be open to men who self-identify as women.
- Would shut down Catholic foster care and adoption agencies, which have helped children in need for over a century without discrimination, just for protecting children’s rights to be in a home with a married mother and father.
- Would mandate that schools fully embrace and impose some children’s professed “gender identity” on other children (in conversations, restrooms, etc.).
- Could make schools change their curricula to falsely teach children that they can change their sex, and that doing so and that having same-sex sexual relationships are the only way for some of them to be healthy.
- Could close girls’ schools and boys’ schools or force them to become coed.
- Could put parents’ custody over their own children at risk by sending a powerful signal to the state governments that the only kind of people fit to be parents are those who give unquestioning affirmation to LGBT self-identification.
- Would force small business owners, such as wedding or event vendors and custom-product makers, to support events or positions that violate their beliefs or be put out of business.
- Could force some church-owned halls and properties to host same-sex ceremonies and other events that violate the venue owners’ faith and require them to open restrooms to the opposite sex.
- Would reinforce already-mounting efforts to strip churches, religious schools, hospitals, and other charities of their federal tax exemptions on the basis that their beliefs on marriage, sex, and gender are mere bigotry.
- Would prohibit free and truthful speech by requiring everyone to use others’ “preferred pronouns” and show other support for gen-

der transition in workplaces, schools, and more.

In 2021, the House passed the Equality Act, but it stalled in the Senate. The reintroduced bill is led in the House by Rep. Mark Takano (D-CA) and is co-sponsored by every Democrat and no Republicans; Sen. Jeff Merkley (D-OR) leads the bill in the Senate, where it is cosponsored by forty-six Democrats, three Independents, and no Republicans. President Biden has repeatedly called for its passage.

D. Bills on Immigration

The situation at the U.S.–Mexico border is complex and presently untenable, and while nearly all agree that Congress needs to pass immigration reform, there is wide disagreement between Democrats and Republicans over solutions.⁷ Recently, rhetoric from some Republicans about immigration has included sharp criticism of the work of nonprofit organizations, especially religious charities, in ministering to and serving new-



CNS photo/courtesy Catholic Charities of Oregon

The most prominent legislative effort that would restrict religious organizations from accessing federal funding is the Secure the Border Act (SBA),

comers. In some cases, this has escalated into demonstrably false accusations that religious charities serving newcomers are motivated by monetary gain rather than their sincerely held religious beliefs. In response to perceived misconduct and mal-intent, Republican policy proposals have included stripping religious charities of funding they receive from the government to provide humanitarian aid to migrants in cooperation with local, state, and federal officials.

Some Republicans in Congress and public figures have called for formal hearings and investigations into the USCCB, Catholic Charities USA, and other religious charitable groups like Jewish Family Services and Lutheran Immigration and Refugee Service. They have attempted to blame these organizations for facilitating illegal immigration through the services they provide. They have even falsely accused Catholic Charities, specifically, of being complicit in the sex and labor trafficking of unaccompanied migrant children. Some conservative political advocacy organizations — traditionally allies of the Church on most religious liberty issues — have encouraged and promoted these defamatory assertions and attempted to legitimize hostilities toward Catholic ministries serving newcomers. In October, an online personality with 900,000 followers on social media, discussing these conspiratorial claims about Catholic Charities, explicitly called for “shooting everyone involved” with Catholic Charities and other religious charities serving migrants.

1. The Secure the Border Act

The most prominent legislative effort that would restrict religious organizations from accessing federal funding is the Secure the Border Act (SBA), which passed the House in 2023 by a vote of 219 to 213, but not the Senate. Congressional Republicans also attempted to attach numerous provisions from the Secure the Border Act onto appropriations leg-

islation necessary to keep the federal government from shutting down.

SBA has two provisions aimed at organizations serving newcomers. Section 115(b) of the bill presents a square religious liberty issue. It would defund any organization that “facilitates or encourages unlawful activity, including unlawful entry.” (The text also lists a number of other illegal acts, such as drug smuggling, the facilitation or encouragement of which are not a religious liberty issue.) Some Republicans in Congress have made clear that they think the mere provision to migrants of basic humanitarian aid like food, water, and shelter constitutes facilitation of unlawful entry, and that the religious charities’ assistance to migrants encourages them to cross the border illegally in the first place. This bar on funding would apply to all funds from the U.S. Department of Homeland Security, including disaster relief and grants to help nonprofits make their facilities safe from mass shootings, even if the religious charity is providing this humanitarian aid entirely outside of any government-funded program.

The other section, 115(c), defunds particular programs rather than particular charities. It would zero out any funding from the Department of Homeland Security for “transportation, lodging, or immigration legal services to inadmissible aliens.”

2. The Protecting Federal Funds from Human Trafficking and Smuggling Act

Another bill introduced by House Republicans, the Protecting Federal Funds from Human Trafficking and Smuggling Act, prohibits *any* federal funds from being distributed to any nonprofit organization unless the organization certifies that it is in compliance with a federal law that imposes criminal penalties on anyone who “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.” Here, again, some supporters of this bill take the position that the mere knowledge that religious charities will meet newcomers’ basic human needs induces them to cross the border illegally. The bill would also revoke the tax exemption

of any nonprofit organization determined by the White House’s Office of Management and Budget to have committed such an offense — which would place a powerful and unaccountable weapon in the hands of future administrations.

E. Other Bills

A number of other bills of note for religious liberty were introduced or reintroduced in Congress in 2023 but have not yet received a hearing or vote.

1. Lifting Local Communities Act

The Lifting Local Communities Act, introduced by Sen. Marco Rubio (R-FL), seeks to ensure that faith-based social-service providers can participate in government programs without sacrificing their religious commitments or identities.

2. Equal Campus Access Act

The Equal Campus Access Act, introduced by Sen.

James Lankford (R-OK) and Rep. Tim Walberg (R-MI), would prohibit universities receiving federal funds from the U.S. Department of Education from discriminating against religious student groups.

3. Save Oak Flat from Foreign Mining Act

The Save Oak Flat from Foreign Mining Act, introduced by Rep. Raul Grijalva (D-AZ), would repeal the congressional act giving a mining company the rights to Oak Flat, an area of land in Arizona that is sacred to the Apache tribe.

4. Right to Contraception Act

The Right to Contraception Act, introduced by Sen. Edward Markey (D-MA) and Rep. Kathy Manning (D-NC), would effectively mandate all health care entities to provide contraceptives and all health insurance plans to cover contraceptives. It explicitly exempts itself from the Religious Freedom Restoration Act.

IV – Religious Liberty and the Executive Branch

In a political environment where bipartisan cooperation in Congress to pass legislation is rare, especially on bills that implicate religious liberty, it has been the executive branch — the White House and federal agencies — that has taken the most consequential actions on religious liberty.

This is mainly done through regulations. Regulations are how federal agencies establish and enforce binding interpretations of laws passed by Congress, and they are the most common way that federal agencies infringe upon religious liberty. In some cases, an agency’s authority to issue regulations about a law is explicitly established in the law itself. In others, an agency may argue that the law gives the agency implicit authority to issue regulations. A particular set of regulations issued by an agency is often called a “rule.”

In many cases, regulations follow a pattern in which each new presidential administration reverses the position taken by the previous administration. For example, the Conscience Rule, discussed below, was first issued by President George W. Bush’s Administration in 2008, essentially revoked by the President Barack Obama’s Administration in 2009, reinstated and expanded by President Donald Trump’s Administration in 2019, and is now subject to a substantial proposed revision issued under President Joseph Biden in January 2023. The process of drafting a proposed rule, receiving comments from the public on it, and drafting a final rule takes months, sometimes over a year. As of the date this report went to print, only one of the regulations discussed below is a final rule — all the rest

have been proposed, and the window for the public to submit comments on them has closed, but they have not yet been finalized.

A. Regulations on Life Issues

1. HHS Contraceptive Mandate

The U.S. Department of Health and Human Services’ (HHS) contraceptive mandate has a long and tortured history. At its core, the controversy has been over whether employers that believe that contraception, sterilization, and abortion-inducing drugs are wrong can be forced to facilitate their use through the health insurance plans they provide for their employees. The rules surrounding this mandate have been changed with each succeeding administration.

When HHS published the first version of the mandate in 2011, the religious exemption in it was exceptionally narrow. Eventually, HHS devised an “accommodation” that forced religious employers to deputize their health plan administrators to deliver contraception, abortion-inducing drugs, and sterilization procedures to the religious organization’s employees. Lawsuits challenging the mandate went to the Supreme Court in *Zubik v. Burwell*, a case that included among the challengers the Little Sisters of the Poor — a religious institute of women religious who provide nursing care for

In a political environment where bipartisan cooperation in Congress to pass legislation is rare, especially on bills that implicate religious liberty, it has been the executive branch — the White House and federal agencies — that has taken the most consequential actions on religious liberty.



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the elderly poor.⁸

The Supreme Court in *Zubik v. Burwell* did not resolve the question of whether the so-called accommodation for religiously objecting employers violated the Religious Freedom Restoration Act, a federal law that protects religious freedom. Instead, the Court sent the challengers' cases to the circuit courts with instructions to give the federal government and the challengers time to find a compromise.⁹ No compromise was found.

The Trump Administration inherited the regulations and revised them to add outright exemptions for employers with religious or moral objections. Those revisions were also litigated up to the Supreme Court, which upheld them as valid exercises of HHS's regulatory authority but declined to rule on whether they are required by law. It is those revisions — the religious and moral exemptions to the requirement to cover contraceptives in employer health plans — that HHS has now proposed to revise once again.¹⁰

The new proposed contraceptive mandate regulations from HHS appear to finally relieve religious employers of any requirement to be involved in the provision of contraceptives, sterilization procedures, and abortion-inducing drugs. The proposal identifies a way for employees of religious employers to obtain those things without the employers' involvement. It is notable that, in defending the original contraceptive mandate over the course of nearly a decade, HHS argued that no such way was possible.

There are nonetheless concerns about the proposal. First, for no coherent reason, it eliminates the Trump Administration's regulations' exemption for employers with nonreligious, moral objections to the mandate. Second, the preamble to the proposed rule suggests that HHS might still change its position and require any third party assisting a religious employer with administration of its health plan to ensure that the religious employer's employees can receive contraception through the plan — effectively rendering the employers' exemption meaningless.

2. EEOC Pregnant Workers Fairness Act Regulations

In December of 2022, with the support of the USCCB, Congress passed the Pregnant Workers Fairness Act (PWFA) as part of the Consolidated Appropriations Act of 2023.¹¹ The law became effective in June 2023.

PWFA has the commendable goal of advancing the well-being of pregnant women and their preborn children, and ameliorating challenges associated with having children. Specifically, PWFA requires employers to grant pregnant women reasonable workplace accommodations for “pregnancy, childbirth, or related medical conditions.” It delegates authority to the Equal Employment Opportunity Commission (EEOC) to issue regulations to enforce this requirement.

PWFA says nothing about abortion and imposes no requirements with respect to abortion. In order to assuage concerns that the EEOC would nonetheless misinterpret the law to require accommodations for abortion — and in order to garner



In complete disregard of the intent of Congress, the EEOC issued proposed regulations for PWFA that construe it to require accommodations for abortion, in vitro fertilization, and contraception, and possibly other procedures or arrangements that go against the beliefs of Catholics and other faith groups, such as sterilization and surrogacy.

the bipartisan support necessary for the bill to pass — both the lead Democrat and Republican sponsors of PWFA stated on the Senate floor that PWFA cannot be construed to cover abortion. As a way to mitigate the harm should the EEOC adopt an unlawful interpretation of PWFA, the bill also incorporates the exemption for religious employers in Title VII of the Civil Rights Act of 1964.

In August 2023, in complete disregard of the intent of Congress, the EEOC issued proposed regulations for PWFA that construe it to require accommodations for abortion, in vitro fertilization, and contraception, and possibly other procedures or arrangements that go against the beliefs of Catholics and other faith groups, such as sterilization and surrogacy.¹² These requirements would most typically arise in the case of employees' requests for leave to obtain and recover from such procedures.

The proposed regulations' interpretation of PWFA's religious exemption, while ambiguous, appears to render it completely ineffective. The EEOC argues that the exemption only protects against claims of discrimination on the basis of an employee's religion. But nothing in PWFA prohibits discrimination on the basis of religion, so an exemption from such claims would be wholly inapplicable to PWFA's requirements.

B. Regulations on Human Sexuality Issues

1. HHS Grants Rule

The HHS Grants Rule is a particular provision

embedded within the sprawling regulations that govern grants, contracts, and other financial assistance from the U.S. Department of Health and Human Services (HHS). With little fanfare, late in 2016, the Obama Administration's HHS added provisions prohibiting recipients of such funding from discriminating on the basis of religion, "sexual orientation," and "gender identity," and requiring recipients to treat same-sex civil marriages as valid in keeping with the Supreme Court's decisions on same-sex marriage in *U.S. v. Windsor* and *Obergefell v. Hodges*.¹³ These two paragraphs in the Code of Federal Regulations became known as the "Grants Rule."

Under the Trump Administration, HHS replaced the Grants Rule's list of nondiscrimination requirements with a more general provision requiring recipients to abide by applicable federal civil rights law, and a provision stating that HHS would follow all applicable Supreme Court rulings.¹⁴ The revisions were immediately challenged in court.



The new proposed Grants Rule from HHS is a slightly scaled-back version of the 2016 rule.¹⁵ Instead of imposing a prohibition on “sexual orientation and gender identity” discrimination on *all* funds from HHS, it imposes such a prohibition on any funds from HHS that are governed by a statute that prohibits sex discrimination, arguing that the Supreme Court’s decision in *Bostock v. Clayton County, Georgia*, means that any sex discrimination law also prohibits “sexual orientation and gender identity” discrimination. In essence, HHS is acknowledging that the 2016 rule exceeded HHS’s statutory authority but is pursuing the same substantive goal.

Catholic health and social service organizations either already receive funding or may plausibly seek funding under virtually every statute subject to the proposed rule. Their operation of these charitable ministries presents numerous fact-patterns that could create conflicts between the proposed rule’s requirements and Catholic teaching.

For example, Catholic charitable agencies provide emergency shelter for victims of domestic violence. Some of those shelters are single-sex facilities for women, in order to offer an environment that is as safe and comfortable as possible for women who have been abused by men. Instead of offering agencies that operate these shelters flexibility to respond to the unique circumstances and needs of those in their care, the proposed rule would arguably mandate them to house biological men who identify as women in single-sex facilities. Catholic charitable agencies will continue endeavoring to meet the needs of all who come to their doors and should be allowed the flexibility to provide shelter in a way that best serves those in their care and honors their Catholic beliefs, which include both the call to shelter those in need and the recognition of the immutable difference between, and dignity of, men and women.

Similar situations may arise in the context of the placement of unaccompanied migrant children (UC) and unaccompanied refugee minors (URMs). A UC or URM who identifies as the opposite of his or her biological sex may be referred for placement in a shelter designated for children

Catholic charitable agencies provide emergency shelter for victims of domestic violence. Some of those shelters are single-sex facilities for women, in order to offer an environment that is as safe and comfortable as possible for women who have been abused by men. Instead of offering agencies that operate these shelters flexibility to respond to the unique circumstances and needs of those in their care, the proposed rule would arguably mandate them to house biological men who identify as women in single-sex facilities.

of the child’s nonbiological sex. The proposed rule could require Catholic agencies serving UC and URMs to accept that referral, even when appropriate accommodations cannot be made, and thereby endorse a view of human embodiment and sexual difference contrary to Catholic teaching.

Catholic charities serve everyone in need — no one is turned away because of their self-determined “sexual orientation or gender identity,” or any other characteristic. The proposed rule could drive Catholic charities and other religious organizations out of service in their communities not because they want to be able to discriminate, but because they do not want to be forced to violate their beliefs.

2. USDE Title IX Athletics Rule

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance. The Title IX statute includes a provision exempting any educational institution controlled by a religious organization from the statute’s requirements to the extent they conflict with the organization’s religious tenets.¹⁶ The U.S. Department of Education (USDE) has regulations that interpret and implement these provisions of the Title IX statute, with legally binding effect on



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covered schools and other organizations engaged in education.

In 2022, USDE published a proposed rule interpreting Title IX to prohibit discrimination on the basis of “sexual orientation and gender identity” [see discussion of this rule in Section VII(B) (2)].¹⁷ The proposed rule disclaimed any application to school athletic programs, instead reserving that topic for a future rulemaking.

In April 2023, USDE published its proposed rule on how Title IX governs school athletics programs.¹⁸ The rule would forbid schools from having a categorical policy of separating their teams based on biological sex. It would technically permit schools to maintain sex-separate teams in some circumstances, but the rule is unclear about what exactly those circumstances are.

Although the rule briefly acknowledges the existence of Title IX’s exemption for religious schools, it does not address how that exemption interacts with the rule’s requirements and prohibitions. For instance, the rule prohibits separation of teams by sex for the purpose of “communicating or codifying disapproval of a student or a student’s gender identity.” This is, of course, not the purpose of any Catholic school’s policy of maintaining sex-separate teams. However, as the USDE is surely aware, that is exactly how many who oppose such policies describe them.

3. HHS Section 504 Rule

Section 504 of the Rehabilitation Act of 1973 prohibits recipients of federal funds from discriminating on the basis of disability. Unlike the Americans with Disabilities Act, Section 504 has no exemption for religious organizations.

In September 2023, the U.S. Department of Health and Human Services (HHS) proposed various revisions to their regulations that implement Section 504.¹⁹ Most of the proposed changes are positive — by enhancing nondiscrimination requirements and emphasizing safeguards for particularly vulnerable populations, the proposed rule protects the dignity of the human person and counteracts societal tendencies to discredit the value of the lives of persons with disabilities.

However, HHS also proposed to interpret Section 504 to prohibit discrimination on the basis of gender identity, under the theory that gender dysphoria qualifies as a disability. The proposed rule offers no indication that HHS has considered how such an interpretation will burden religious liberty.

4. HHS Adoption & Foster Care Rule

In September 2023, HHS’s Administration for Children and Families (ACF) published proposed rules governing how adoption and foster care agencies receiving funding from HHS handle the placement of children who suffer from gender dysphoria or experience same-sex attraction.²⁰ In some respects the proposed regulations establish laudable norms. The regulations would, for example, require placements that are “safe” and “appropriate,” an environment free of “hostility,” “mistreatment,” and “abuse,” and access to services that support the child’s “health” and “well-being.” Of course, this should be the case for *all* children.

However, other provisions of the proposed regulations are problematic because they propose, incorrectly, that unquestioning affirmance is the only and best response to a child who presents an issue with regard to “sexual orientation or gender identity” (SOGI). ACF asserts that gender affirmance is in the “best interests” and meets the “special needs of the child.” The regulations would therefore require agencies to ensure that children “who iden-

tify as LGBTQI+” have access to “services that are supportive of their sexual orientation and gender identity, including clinically appropriate mental and behavioral health supports.” At the same time, the regulations would prohibit attempts to “undermine, suppress, or change the sexual orientation or gender identity of a child.” These provisions, read together, mean not that children as persons must be affirmed and supported, as they should, but that specific inclinations or behaviors with respect to SOGI — and only those inclinations and behaviors, no matter how confused, inconsistent, transitory, or ambivalent — must be affirmed.

The preamble to the proposed regulations includes many positive statements about religious liberty and other freedoms. For example, ACF notes the importance of “ensuring that religious organizations are eligible on the same basis as any other organization to participate in child welfare programs administered with title IV-E and IV-B funds.” ACF states that it “takes seriously its obligations to comply with the Constitution and federal laws that support and protect religious exercise and freedom of conscience,” including the First Amendment and RFRA. ACF states that it “will continue to operate the title IV-E and IV-B programs in compliance with these legal requirements.”

To be sure, these and similar statements in the preamble are helpful, but they are relegated to the preamble and not actually replicated in the text of the proposed regulations. Statements in a regulatory preamble function much like legislative history in relation to statutory text, and are not legally binding.

5. OMB Guidance on Federal Award Requirements

The White House’s Office of Management and Budget (OMB) plays a major role overseeing the operations of the various federal agencies. As part of that role, it publishes model regulations for federal agencies’ use in setting the requirements for administration of awards of federal grants and contracts. In October 2023, OMB published proposed changes to a section of those model regu-

lations that establishes public policy requirements that federal agencies must adhere to in the administration of federal awards.²¹

One current paragraph of that section identifies various public policy requirements for the administration of federal financial assistance, “including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.” The proposed rule would delete this reference to public policy requirements, retaining only a general reference to discrimination.

The proposed rule deletes another paragraph that requires nonfederal entities receiving federal awards to comply with all requirements of the award, including requirements concerning executive compensation and whistle-blower protections. In its place, the proposed rule adds a new paragraph that requires federal agencies or pass-through entities administering a federal award to construe applicable sex nondiscrimination statutes to prohibit discrimination on the basis of “sexual orientation or gender identity” (SOGI) “consistent with the Supreme Court’s reasoning in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).”

Finally, the proposed rule adds a new paragraph (c) that requires federal agencies administering awards to “take account of the heightened constitutional scrutiny that may apply under the Constitution’s Equal Protection clause for governmental action that provides differential treatment based on sexual orientation or gender identity.”

In sum, the proposed changes would remove provisions intended to promote the public welfare, protect the environment, and prevent unlawful suppression of free speech or religious exercise, and in their place prioritizes prohibition of SOGI discrimination above any other form of discrimination. The proposed rule provides virtually no explanation for these changes.

C. Rules on Other Subjects

1. HHS Conscience Rule

Numerous federal laws protect the right of organizations and individuals engaged in health care to

follow their conscience. Chief among those statutes are the Weldon Amendment, prohibiting discrimination against individuals and entities that do not provide, cover, pay for, or refer for abortions; the Church Amendments, protecting religious and moral objections to abortions, sterilizations, and in some cases any other religious or moral objection (such as to gender identity interventions); and the Coats-Snowe Amendment, protecting religious and moral objections to abortion in medical school and training programs. Courts have held that these statutes do not authorize a private right of action, meaning that health care workers cannot go to court to enforce their own rights under the statutes. The only way they can be enforced is by the U.S. Department of Health and Human Services' (HHS) Office for Civil Rights (OCR).

In 2008, for the first time, HHS promulgated a regulation to clarify the meaning of Weldon, Church, and Coats-Snowe and to establish mechanisms for their enforcement.²² However, in 2009, the Obama Administration rescinded that regulation, replacing it with a single paragraph stating that HHS OCR is authorized to receive complaints under those statutes.²³

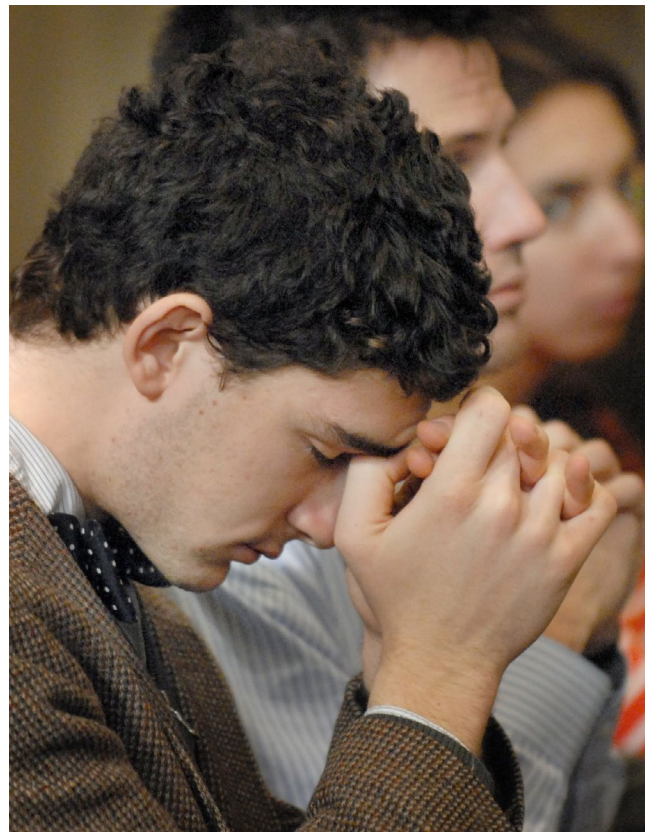
Under the Trump Administration, HHS went further than the 2008 rule, publishing a regulation known as the Conscience Rule that implemented not only Weldon, Church, and Coats-Snowe, but over a dozen other federal conscience statutes.²⁴ The rule had two main parts — a set of definitions for terms used in the statutes, in order to ensure that the statutes are properly understood to provide broad protections for conscience rights; and a set of provisions that gave HHS the tools necessary to enforce the statutes effectively, such as a requirement that entities under investigation for violating conscience rights must respond to HHS's requests for information. The Conscience Rule was immediately challenged in court and was struck down in its entirety.

The new proposed Conscience Rule²⁵ has positive and negative aspects. On the one hand, it retains reference to all of the statutes implemented under the Trump-era rule, and still provides mechanisms for enforcement, albeit less robust than be-

fore. It also notes that protecting conscience rights benefits liberty, human dignity, and the medical profession. On the other hand, it does not define any of the statutes' terms, thus offering no guidance on what the statutes mean; its enforcement mechanisms have significant gaps; and it appears to suggest that conscience rights can be overridden by a patient's desire to receive a particular procedure. *[Editor's note: The week prior to publication of this report, HHS finalized the Conscience Rule largely as proposed.]*

2. USDE Equal Campus Access Rule

In 2020, U.S. Department of Education issued the Religious Liberty & Free Inquiry Rule, a patchwork of regulatory provisions related to freedom of speech and religion in education.²⁶ Among other things, the rule requires public universities to treat faith-based student organizations equally with secular student organizations. This requirement, known as the Equal Campus Access (ECA) provisions, is primarily intended to protect religious



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student groups that require their leaders to affirm the beliefs of the group’s religion. In recent years, numerous public universities have discriminated against Christian student groups because of the groups’ policies requiring their leaders to affirm the belief that sex is reserved for marriage between a man and a woman.²⁷ The universities regarded such policies as discriminatory against students who identify as gay or lesbian.

In February 2023, USDE issued a proposal to rescind the ECA provisions.²⁸ The justifications offered for the proposal are thin, focusing mainly on purported confusion among public universities about how to apply the ECA provisions. What is clear is that, if the rescission of the ECA provisions is finalized, student faith groups will be especially vulnerable to discrimination by their school administrations.

3. EEOC Harassment Guidance

The Equal Employment Opportunity Commission (EEOC) enforces the employment nondiscrimination provisions of Title VII of the Civil Rights Act, which prohibits discrimination on the basis of sex, among other things. In October 2023, the EEOC issued proposed guidance — a nonbinding notice to the public of what the EEOC understands the law to mean — regarding what constitutes harassment that is prohibited under Title VII.²⁹ The guidance states that sex-based harassment includes harassment based on (1) “a woman’s reproductive decisions, such as decisions about contraception or abortion,” and (2) “sexual orientation and gender identity.”

The proposal would chill or prohibit speech that upholds the sanctity of life, the nature of conjugal relationships, and the created, bodily reality of human beings, such as by requiring the use of “preferred pronouns.” It also would require employers, in the name of prohibiting harassment, to allow employees who identify as transgender to use bathrooms, locker rooms, and other private spaces reserved for members of the opposite sex. Aside from being an improper interpretation of the text of Title VII, the guidance likely runs afoul of constitutional rights of speech, expressive asso-

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ciation, and religious exercise.

4. Department of Justice/Multiagency Rule on Faith-Based Partnerships

The Equal Treatment for Faith-Based Organizations regulations were first promulgated in the first term of the George W. Bush Administration³⁰ and have been the subject of back-and-forth revisions by successive administrations. The currently planned revisions³¹ would be a joint rulemaking across nine federal agencies, helmed by the U.S. Department of Justice, setting out each agency’s separate but mostly identical protections and conditions for faith-based organizations’ participation in federally funded social service programs.

Throughout their various iterations, the Equal Treatment regulations have stood for the basic proposition that faith-based social service providers must be eligible for federal awards on equal terms with secular providers.

Part of the disagreement has been about what that equality looks like. When HHS revised its Equal Treatment regulations in 2020 to better facilitate faith-based organizations’ involvement, it made a few main changes to the previous regulations aimed at removing requirements that the regulations imposed only on faith-based providers but not secular providers (such as an obligation to refer beneficiaries to a secular provider upon request, even though secular providers bore



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no obligation to refer beneficiaries to religious providers upon request). With some tinkering around the edges, the new proposed rule would generally reinstate those requirements.

Another area of disagreement has been on the right of religious providers who receive federal awards to ensure that their employees are faithful to the providers' religious beliefs. The proposed rule would reinstate a restrictive view of the scope of the Title VII religious exemption — under the proposal, providers would only be protected in cases where they prefer to hire individuals of the same religion, and not in cases where employment decisions motivated by the providers' religious beliefs are characterized as discrimination on the basis of another protected class, like sex.

5. Department of Labor Rule on Religious Exemption for Federal Contractors

Signed by President Lyndon B. Johnson in 1965, Executive Order 11246 prohibits employment discrimination by federal contractors. It expressly imports the standards established in Title VII of the

Civil Rights Act of 1964, which has an exemption for religious employers. In 2020, the U.S. Department of Labor (DOL) issued a regulation affirming the right of religious employers who contract with the federal government to ensure that their employees are faithful to the employers' religious beliefs.³² In 2023, DOL rescinded that regulation, stating that religious employers that contract with the federal government may not require employees to abide by the employers' religious tenets if such a requirement would amount to discrimination on the basis of, for example, sex or "sexual orientation."³³

6. HHS Rule on Unaccompanied Refugee Minors

In October 2023, HHS's Office of Refugee Resettlement (ORR) published a proposed rule that would make numerous changes to the foundational rule governing treatment of unaccompanied refugee and migrant children in ORR's Unaccompanied Children (UC) Program.³⁴ The proposed rule's approach to abortion, in the context of female UCs who are pregnant, raises significant religious liberty concerns, as does its ambiguity on the subject of UCs who have gender dysphoria or who experience same-sex attraction.

On abortion, the proposed rule would prioritize the taking of preborn human life by defining "medical services requiring heightened ORR involvement" to specifically include abortion and then, *inter alia*, requiring the provision of interstate transportation for such "services." The regulations would continue and formalize ORR's practice of transferring pregnant minors to ORR facilities in states that allow abortion, circumventing state laws that protect preborn human life, and providing or paying for transportation to abortion providers.

On gender dysphoria and same-sex attraction, the proposed rule uses language that could be construed to impose requirements with regard to "gender affirming care." It also lists "gender" and "LGBTQI+ status" as factors relevant to placement of UCs, but fails to clarify service providers' obligations in that regard.

The proposed rule's preamble implicitly ac-



CNS photo/Gregory A. Shemitz

knowledges that certain aspects of the proposed rule may raise religious liberty concerns, noting the applicability of federal statutory protections for religious liberty. But these mere observations are insufficient to ensure that the religious liberty rights of faith-based service providers in the UC Program are protected.

D. Possible FBI Surveillance of Traditionalist Catholic Parishes

In January 2023, a website published a leaked internal memo from the Federal Bureau of Investigation’s field office in Richmond, Virginia, which discussed “the increasingly observed interest of RMVEs [racially motivated violent extremists] in RTC [radical traditionalist Catholic] ideology.”³⁵ The memo described “radical

traditionalist Catholics” as “typically characterized by the rejection of the Second Vatican Council (Vatican II) as a valid church council; disdain for most of the popes elected since Vatican II, particularly Pope Francis and Pope John Paul II; and frequent adherence to anti-Semitic, anti-immigrant, anti-LGBTQ, and white supremacist ideology.” It distinguished between RTCs and traditionalist Catholics who “prefer the traditional Latin Mass and pre-Vatican II teachings and traditions, but without the more extremist ideological beliefs and violent rhetoric.”

The memo recommended outreach to traditionalist Catholic parishes and development of sources “with the placement and access to report on RMVEs seeking to use RTC social media sites or places of worship as facilitation platforms to promote violence.”

Some passages of the leaked memo were redacted. An unredacted section of the memo cited the discredited Southern Poverty Law Center as an authority on the subject of RTCs, as well as to articles in *Salon* magazine and *The Atlantic*.

The FBI quickly retracted the memo, telling a news outlet that it “does not meet the exacting standards of the FBI” and affirming that the FBI “will never conduct investigative activities or open an investigation based solely on First Amendment protected activity.”³⁶

The U.S. House’s Select Subcommittee on the Weaponization of the Federal Government sought information from the FBI on the memo. As part of its public correspondence to the FBI, the subcommittee has revealed additional details about the Richmond memo — most notably that the Los Angeles and Portland (Oregon) field offices were involved in its creation, it was distributed to FBI field offices across the country, and an internal FBI inquiry after the leak found that the evidence did not support investigative activity into Catholic parishes.

V – Religious Liberty and the Supreme Court

Strictly speaking, the Supreme Court only heard one case on religious freedom in 2023: *Groff v. DeJoy*, which concerned rights to accommodations for religious exercise in the workplace. But the decision of the Court in *303 Creative LLC v. Elenis* does impact religious freedom as well. However, the Court declined to hear another case with religious liberty implications, *Tingley v. Ferguson*, which leaves in place a ruling upholding a state law that forbids so-called conversion therapy for minors.

A. *Groff v. DeJoy* (U.S. No. 22-174)

The Supreme Court ruled 9-0 in favor of Gerald Groff, a postal worker who observes Sunday Sabbath as part of his Christian faith.³⁷ When his office began Sunday deliveries, it failed to accommodate his unavailability on Sundays, and subjected him to progressive discipline until, on the brink of termination, Groff resigned and sued the U.S. Postal Service under Title VII of the Civil Rights Act of 1964.

Title VII requires employers to make reasonable accommodations for employees' religious exercise. However, the Supreme Court's 1977 decision in *Trans World Airlines, Inc. v. Hardison* had been widely interpreted by lower courts to mean that employers need not make such accommodations if doing so would impose more than a *de minimis* hardship on the employer. This insufficient standard has largely gutted the protections that Title VII provides for religious employees.

The case presented two questions to the Court: first, whether the Court should disapprove the more-than-*de-minimis*-cost test for refusing Title VII religious accommodations stated in *Hardison*; and, second, whether an employer may demonstrate “undue

hardship on the conduct of the employer's business” under Title VII merely by showing that the requested accommodation burdens the employee's coworkers rather than the business itself.

Justice Samuel Alito's majority opinion did not explicitly overrule *Hardison* but clarified that the appropriate interpretation of the “undue hardship” standard is whether the employer would incur “substantial increased costs in relation to the conduct of its particular business.” Justice Sonia Sotomayor's concurrence argued that burdens on coworkers can generate such costs.

B. *303 Creative LLC v. Elenis* (U.S. No. 21-476)

The Supreme Court ruled 6-3 in favor of Lorie Smith, a website designer in Colorado, who wished to expand her business to include designing wedding websites.³⁸ Because she holds a religious belief that marriage is reserved for the union of one man and one woman, she sought a pre-enforcement determination from the Colorado Civil Rights Commission of her desire to say on her business's website that she will only design websites for such marriages. The commission said no, that to do so would violate state nondiscrimination law. The Tenth Circuit Court of Appeals concluded that

When his office began Sunday deliveries, it failed to accommodate his unavailability on Sundays, and subjected him to progressive discipline.



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the government may, based on content and viewpoint, force Smith to convey messages that violate her religious beliefs and restrict her from explaining her faith. The Supreme Court reversed the Tenth Circuit Court decision.

Before the Supreme Court, the question presented was whether applying a public accommodations law to compel an artist to speak or stay silent violates the Free Speech Clause of the First Amendment. The Court had not agreed to hear arguments on the Free Exercise Clause aspects of the case. However, the implications of the ruling for religious freedom are clearly positive.

Justice Neil Gorsuch’s majority opinion set out an impassioned defense of free speech, but also grounded itself firmly in the facts of the case. One especially important fact was that Colorado had conceded that Ms. Smith was willing to design other kinds of websites for customers who experience same-sex attraction, just not wedding websites. This emphasis on the facts of the case served as a rebuttal to the dissent by Justice Ketanji Brown Jackson, who argued that the Court’s decision would sanction invidious discrimination of all sorts.

C. *Tingley v. Ferguson* (U.S. No. 22-942) (*cert. denied*)

The Supreme Court declined a request to consider a ruling from the Ninth Circuit Court of Appeals that upheld a Washington state law that forbids licensed therapists in the state from practicing therapy



OSV News photo/Mark Thomas, Pixabay

that assists minors who are struggling with unwanted same-sex attraction, or who want help accepting their God-given bodies.³⁹ Brian Tingley, a therapist in Washington, argued that the law unconstitutionally restricts his rights under the Free Speech Clause and the Free Exercise Clause of the First Amendment.

Justice Brett Kavanaugh would have granted the petition to hear the case, and Justices Samuel Alito and Clarence Thomas each issued dissents from the denial. Justice Thomas wrote that, under the Washington law, “licensed counselors can speak with minors about gender dysphoria, but only if they convey the state-approved message of encouraging minors to explore their gender identities. Expressing any other message is forbidden — even if the counselor’s clients ask for help to accept their biological sex. That is viewpoint-based and content-based discrimination in its purest form.”⁴⁰

VI – National Trends in Politics, Culture, and Law

A. Politics and Culture

1. Antisemitic and Anti-Muslim Sentiment

The vicious terrorist attacks by Hamas against Israel on October 7, 2023, and the tragic conflict that has ensued in Israel and Gaza, have unleashed waves of antisemitic and anti-Muslim prejudice and hate here in the United States and across the globe. The Anti-Defamation League and the Council on American-Islamic Relations have each reported dramatic increases in bias incidents against Jews and Muslims since October 7.⁴¹ FBI Director Christopher Wray stated in a Senate hearing that antisemitism in the United States is reaching “historic levels.”⁴² It has been particularly shocking to witness open, unchecked calls for the genocide of our Jewish brothers and sisters — a stark reminder of the persistence of one of humanity’s oldest and darkest prejudices.

While the current manifestations of antisemitic and anti-Muslim sentiments have complex roots that are partially geopolitical, there is an inextricable anti-religious element to them, and they may manifest in ways that imperil the exercise of religion. For instance, a Jew may fear for his safety wearing a yarmulke in public or while attending services at his synagogue, or a Muslim may fear harassment for engaging in daily prayer at work.

2. Vandalism and Attacks on Churches and Pro-life Pregnancy Centers

Recent years have seen an alarming rate of vandalism, arson, and other property destruction at Cath-

olic sites. In the annual hate crimes statistics for 2022 that the FBI released in October 2023, a higher proportion of anti-Catholic crimes were property crimes — nearly 75% — than for any other bias.⁴³

Before the Supreme Court’s 2022 decision in *Dobbs v. Jackson Women’s Health Organization*,⁴⁴ the bulk of offenses occurred at churches and often involved defacement of religious icons or images, such as statues of Jesus or Mary. After *Dobbs*, and continuing into 2023, the offenses increasingly involved pro-abortion messages, such as spray-painting the slogan, “If abortion isn’t safe, then neither are you.” Many such offenses targeted pro-life pregnancy centers rather than churches. Catholic churches in Ohio saw a notable uptick in vandalism in the weeks preceding the state’s vote



OSV News photo/courtesy Diocese of Brooklyn

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on a referendum to enshrine a right to abortion in the Ohio state constitution.⁴⁵

The general failure, with two exceptions, of the federal government to apprehend and prosecute the perpetrators of such attacks, in contrast with the numerous charges brought against pro-life protestors outside abortion clinics, received significant attention in Congress.⁴⁶ In hearings in both the House and the Senate, Republicans accused the Department of Justice and the FBI of bias against Catholics and Christians.

3. Pride Month

In recent years, the celebration of June as “Pride Month” has become an annual flashpoint for conflicts over issues of “sexual orientation and gender identity.” The year 2023 was notable for featuring perhaps the first two successful boycotts of brands that embraced Pride Month messaging — Target, which featured children’s clothing with pro-LGBT slogans and designs, and Bud Light, which ran endorsements from an activist who identifies as transgender. One of the most significant controversies, and the one that implicated religious liberty concerns most directly, was the decision by the Los Angeles Dodgers baseball team to honor an anti-Catholic group.

The “Sisters of Perpetual Indulgence” is a group of men who dress as nuns and put on blasphemous and deeply offensive displays mocking Jesus, Mary, and the Catholic Church. On May 4, Major League Baseball’s Los Angeles Dodgers announced that, as part of the team’s annual “pride night,” the team would award the Los Angeles chapter of the Sisters of Perpetual Indulgence a “Community Hero Award.”

Sen. Marco Rubio (R-FL) and Catholic League president Bill Donohue each sent letters to the MLB expressing their concern that the Dodgers were honoring an anti-Catholic group. In response, the Dodgers rescinded the invitation for the group to receive the award. That decision was met with fierce backlash from the LGBT community and Los Angeles-area politicians, and the Dodgers then reversed course again, reinviting the group.

The controversy quickly gained national atten-

The year 2023 was notable for featuring perhaps the first two successful boycotts of brands that embraced Pride Month messaging.

tion in mainstream media and among politicians. Former Vice President Mike Pence, for example, tweeted a statement calling on MLB to apologize to Catholics. The Archdiocese of Los Angeles issued a statement, as did the Diocese of Orange (where the Dodgers’ stadium is located) and several bishops of other dioceses. Three MLB players, two of whom are Dodgers, issued statements critical of the Dodgers for their decision to honor the group. One of the Dodgers players announced that the team had agreed to reinstitute a “Christian Faith and Family Day.”

Others rallied to the group’s support. The California State Senate honored a prominent member of the group at a Pride Month ceremony, where he received a standing ovation.

4. State Bills Violating the Seal of the Confessional

The Sacrament of Reconciliation, sometimes called confession or the Sacrament of Penance, brings healing to relationships damaged by sin. The basic parts of the sacrament are simple and relatively well-known. The penitent searches his conscience to consider how he has sinned. He confesses his sins to a priest, and the priest tells the penitent what he must do as his penance. He makes an act of contrition — essentially expressing his sorrow for his sins, promising to do penance, and with the resolution to try not to sin again — and then the priest absolves him of his sin, acting in the person of Christ and in the name of the Church.

For Catholic priests, breaking the confidentiality of statements made during the Sacrament of Reconciliation — that is, breaking the seal of the confessional — is a grave offense, resulting in automatic excommunication from the Church. The clergy–penitent privilege is a legal recognition of

this obligation of confidentiality, not just in the context of Catholic practice, but in similar practices of other faiths as well.

Aside from avoiding intrusion of the state into the practice of a religious sacrament, there is also a commonsense reason to protect the seal of confession. If priests were required to report crimes heard during confessions, penitents would likely stop confessing them. The opportunity that the sacrament presents for healing — not just of the penitent’s soul, but of the wounds that the penitent’s sin has inflicted on others — would be lost. While a priest may not oblige a penitent to turn himself in as a condition for receiving absolution, priests can encourage the penitent to report crimes to the proper authorities.

At least three states — Washington, Vermont, and Delaware — have introduced bills to eliminate the clergy–penitent privilege. These bills are primarily aimed at compelling priests to testify about confessions of sexual abuse of minors, or to report such confessions to law enforcement.

5. Schools as a Battleground in the Gender Identity Debates

The ongoing debate over issues of gender identity spans many areas — the workplace, the medical profession, social media — but perhaps has manifested more intensely in schools than in any other.

In public schools, teachers have sued — some successfully, some not — over requirements that they abide by policies that require them to affirm students’ asserted gender identities, such as by the use of preferred pronouns.⁴⁷ Meanwhile, a middle school student sued after his principal ordered him to remove a T-shirt that said, “There are only two genders.”⁴⁸ School curricula and libraries have come under intense scrutiny for including books

that promote gender ideology, leading to accusations of book banning.

There has been a particular emphasis on the rights of parents to be informed of and consent to aspects of their children’s schools’ handling of gender identity issues. Multiple lawsuits have alleged that schools have intentionally kept parents in the dark about their children’s efforts to socially transition from one gender to another. Parents in Maryland filed a major lawsuit for the right to opt their children out of classes that promote views of sex and gender that conflict with their religious beliefs.⁴⁹ A father in New Jersey has recently filed suit against his public school district over a policy that allows teachers and administrators to affirm a child’s use of “gender pronouns” or “gender transition” without parental consent or notification.⁵⁰

Of course, the questions of how to accommodate individuals with gender dysphoria in the contexts of bathrooms, locker rooms, and sports pertain in a particular way to schools. A split has emerged among the federal courts of appeal on whether public schools can maintain bathrooms separated by sex rather than asserted gender identity, potentially teeing up Supreme Court review on this contentious issue.⁵¹

The controversies over public schools’ embrace of gender ideology has lent momentum to the push for school choice, as religious parents look for school environments that are compatible with their beliefs. In the state of Oklahoma, its two dioceses, the Archdiocese of Oklahoma City and the Diocese of Tulsa, opened the nation’s first public religious charter school. In response, the American Civil Liberties Union, Americans United for Separation of Church and State, and other groups filed a lawsuit arguing, among other things, that the state would be funding a school that discriminates on the basis of “sexual orientation and gender identity.”⁵²

In that respect, it is notable that three federal actions in 2023 may affect private schools’ ability to abide by traditional beliefs about sex and sexual differentiation — both of the proposed Title IX rules from the USDE and the proposed 504 rule from HHS.

Multiple lawsuits have alleged that schools have intentionally kept parents in the dark about their children’s efforts to socially transition from one gender to another.

B. Litigation

1. The Meaning of the Title VII Exemption for Religious Employers

Title VII of the Civil Rights Act of 1964 is one of the nation’s most significant civil rights protections. It prohibits employment discrimination on the basis of race, color, national origin, religion, and sex. Recognizing that religious employers often need to make employment decisions motivated by their religious beliefs in order to maintain the religious identity and integrity of the organization, Congress had the good sense to include an exemption in Title VII for religious employers.

Because Title VII is so central to the national legal framework of anti-discrimination laws, interpretations of its meaning have broad effects. Numerous federal rulemakings in 2023 involved the scope of the Title VII exemption — the EEOC’s Pregnant Workers Fairness Act regulations, the Department of Labor rule on religious exemptions for federal contractors, and the multiagency rule on partnerships with faith-based organizations, for example.

While federal agencies were taking a narrow view of the exemption, courts reached their own conclusions. At the Seventh Circuit Court of Appeals in *Fitzgerald v. Roncalli High School*, Judge Michael Brennan’s concurrence concluded that Title VII’s religious exemption provides a defense not just to religious discrimination claims under Title VII, but to all Title VII claims when the religious employer has acted on the basis of its religious beliefs.⁵³ This result, Judge Brennan explained, is required by the text of the Title VII religious exemption. In a similar case before the Seventh Circuit Court just a year earlier, Judge Frank Easterbrook concurred to say the same.⁵⁴

The federal district court for the Northern District of Texas reached the same conclusion in *Bear Creek Bible Church v. EEOC*: “The plain text of this exemption ... exempts religious employers from other forms of discrimination under Title VII, so long as the employment decision was rooted in religious belief.”⁵⁵

These decisions deepen an existing divide

The Satanic Temple — which has frequently sought to be a poison pill in religious freedom debates, in this case by creating a Satanic abortion ritual for which it claimed religious freedom protections — saw its lawsuit in Indiana dismissed in October 2023.

among courts on the question of what the Title VII religious exemption means, potentially increasing the likelihood of an eventual Supreme Court review.

2. Litigation Seeking Religious Exemptions to Abortion Restrictions

After *Dobbs*, many states passed laws to protect children in the womb, and supporters of abortion fought those laws through a variety of tactics. One was for plaintiffs to file lawsuits claiming that obtaining an abortion was an exercise of their religious beliefs, and therefore state religious freedom laws require they be granted an exemption from state abortion restrictions.

In 2022 and 2023, lawsuits of this nature have been brought in at least eight states. The Satanic Temple — which has frequently sought to be a poison pill in religious freedom debates, in this case by creating a Satanic abortion ritual for which it claimed religious freedom protections — saw its lawsuit in Indiana dismissed in October 2023.⁵⁶ Other claims were brought, in Florida for instance, asserting that Jewish teaching not only permits but requires abortion in some circumstances.⁵⁷ (Many within the Jewish community have strongly disputed this interpretation of Jewish teaching.)⁵⁸

3. Litigation Over the Scope of the Ministerial Exception

The ministerial exception doctrine is a constitutional principle that the government cannot interfere with a religious organization’s choice of who will be ministers of its faith. Under the doctrine, religious organizations are generally immune from claims of employment discrimination from indi-

viduals employed as ministers. Since the Supreme Court first recognized the ministerial exception in the landmark *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* case in 2012, legal battles large and small have been fought over the scope of the doctrine — who counts as a “minister,” and how broad are the protections afforded by the doctrine.⁵⁹

The year 2023 was no different in this regard, as substantial disagreement remains over various applications of the doctrine. For instance, one Connecticut state court held in *Sklar v. Temple Israel, Westport Incorporated* that the ministerial exception barred the plaintiff’s breach of contract claim, while another Connecticut court, in *Gackenheim v. Southern New England Conference of the United Church of Christ, Inc.*, ruled that the doctrine barred the plaintiff’s claim of slander but not his breach of contract claim.⁶⁰

4. Exclusionary Conditions Attached to Government Assistance

Governments award grants or enter contracts with private charities to perform social services and offer aid to private schools for the safety and education of their students, and it is not uncommon for religious schools and charities to participate in these public benefit programs. The Federal Emergency Management Agency, for instance, provides disaster relief funding for rebuilding religious schools destroyed by natural disasters, and grants to houses of worship to better secure their facilities from a mass shooting.

Often among the numerous strings attached to government aid are exclusionary conditions that make it hard if not impossible for some religious organizations to participate in government programs. This past year saw several lawsuits filed to



OSV News photo/CNS file, Bob Roller

challenge such conditions.

Two lawsuits were filed in Colorado over conditions in funding for the state’s new universal pre-K program that would require all participating schools to affirm tenets of gender ideology. In October, a court ruled that Colorado’s conditions violate the schools’ right to expressive association and their protections under the ministerial exception doctrine.⁶¹

In Maine, two religious schools filed lawsuits challenging state criteria that exclude them from participating in the state’s school voucher program — a requirement that participating schools treat all religious expression the same, and again a requirement to affirm tenets of gender ideology.⁶² Maine instituted those requirements after the Supreme Court, in *Carson v. Makin*, struck down the state’s exclusion of any school that would use the tuition assistance funds for religious instruction.⁶³

Further, nearly all of the regulations discussed above in Section IV operate as conditions attached to funds from the federal government — only the HHS contraceptive mandate and the EEOC’s Pregnant Workers Fairness Act regulations do not.

Section VII – The Religious Liberty Forecast for 2024

Building on the developments and trends outlined in the previous section, here are some areas to watch in terms of religious liberty in the United States for the upcoming year.

A. Election Year Dynamics

As with past presidential election years, the political landscape of 2024 will be dominated by November’s election. Partisanship, already at historically high levels,⁶⁴ will only increase, and it is likely that the civility and sincerity of public discourse will deteriorate even further. Efforts to work across the aisle, whether in Congress or in state or local legislatures, will become increasingly difficult. In cases where power is split between parties, this may lead to paralysis; where one party controls the levers of power, it may lead to more extreme policies being enacted.

1. Hostility toward Ministries Serving Newcomers Will Continue

Immigration, particularly the situation at the U.S.–Mexico border, will be one of the dominant issues of the presidential election. The platform of at least one major party candidate includes defunding nonprofit organizations that serve migrants, and it is possible that the party’s nominee — whoever it is — will endorse this measure to some degree.

Efforts in Congress to investigate Catholic ministries serving newcomers may receive new momentum if the Republican nominee adopts a similarly hostile position. Inflammatory rhetoric from some members of Congress and advocacy organizations will likely escalate, especially if the situation at the U.S.–Mexico border deteriorates further. Beyond legal threats to religious liberty, the physical safety of staff, volunteers, and clients of Catholic ministries and institutions that serve newcomers may be jeopardized by extrem-

ists motivated by the false and misleading claims made against the Church’s ministries.

In Congress, must-pass legislation will continue to be seen as an opportunity to attach conditions perceived to reduce immigration across the U.S.–Mexico border, which may include threats to the religious liberty of faith-driven ministries.

2. Abortion and *Dobbs* as a Campaign Issue

Abortion remains a primary focus of the national political debate; for the bishops, it remains the preeminent issue.⁶⁵ Support for abortion enjoyed success in the November 2023 elections, and candidates will likely attempt to replicate that success in 2024.

Promotion of access to abortion tends to be associated with hostility toward the exercise of beliefs about abortion, such as religious and conscientious objections to participating in or facilitating abortion. After *Dobbs*, the Committee for Religious Liberty braced for a wave of efforts to curtail the exercise of religious objections to abortion. This did not materialize to the extent feared, but there are some notable examples. The Women’s Health Protection Act (discussed earlier in this report), a federal bill introduced in 2023 and previous years that would create a nationwide right to abortion until the moment of birth, contains a provision that specifically overrides the

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To make a convincing case for religious freedom in the court of public opinion, the Church cannot function as a mere political advocacy group or a proxy for one party or another.

protections afforded under the Religious Freedom Restoration Act. In October 2023, a federal district court struck down, on religious freedom grounds, a Colorado law that prohibited pregnancy resource centers from offering treatments that can reverse the effect of chemical abortions.

Supporters of abortion are also often hostile toward the idea that morality can be a basis for public policy. Access to abortion is often framed as “freedom from religion,” characterizing religion as oppressive; a familiar slogan in the abortion debates has been “keep your rosaries off my ovaries.”

3. Gender Ideology as a Campaign Issue

The topic of gender ideology will likely play a similarly prominent role in the presidential campaign as the topic of abortion. As with abortion, support of gender ideology tends to be associated with hostility to the exercise of religious beliefs and moral convictions upholding the sexual difference between men and women.

In the arena of messaging, those who promote affirmance of LGBT identities tend to frame their position as one of love, acceptance, and equality, while those who oppose gender ideology generally argue that their position is foremost a matter of truth and common sense. Catholicism maintains the reciprocal relationship between both love and truth. As such, the Church and individual Catholic faithful will be challenged to maintain this authentic voice as the two competing narratives dominate the conversation on this issue.

4. Partisanship and Division within the Church

Catholics will, as much as ever, be seen as a tar-



CNS photo/Valaurian Waller, Detroit Catholic

get demographic for partisan appeal during the 2024 election. The pressures of the election will exacerbate trends of partisan division within the Church, and the pull of party over faith.

To make a convincing case for religious freedom in the court of public opinion, the Church cannot function as a mere political advocacy group or a proxy for one party or another. Yet, increasingly, some Catholics tend to regard their political affiliation as a more integral aspect of their identities than their Catholic faith.⁶⁶ The positions of the two political parties, and the rhetoric on liberal and conservative media outlets, often form Catholics’ opinions on matters of faith more than Church teaching.⁶⁷ The Church cannot offer an effective witness to religious liberty if we are beholden more to a political party than to God and the teaching of the Church, and if our beliefs are more political than religious.

This dynamic is not new, is not unique to Catholics, nor will it disappear anytime soon. But it will be especially salient in 2024, and the long-term standing of the Church in the public square requires a conscious and sustained turn — away from partisanship and toward the Gospel.

5. Congressional Deadlock and the Lame-duck Session

At least until newly elected members of Congress take office in January 2025, Congress will likely remain unable to pass bills that affect religious liberty, whether for good or bad. On top of election year partisanship, Senate Republicans will be especially reluctant to cooperate with Senate Democrats on any sensitive legislation, after the EEOC’s betrayal of the bipartisan effort behind the Pregnant Workers Fairness Act. The primary avenue for advancing partisan goals will be in the context of must-pass appropriations legislation.

The period between the November elections and when new members of Congress take office in January 2025 will be a lame-duck session of Congress. These sessions have a distinct political dynamic because members who were not reelected are still in office and may be inclined to vote based on their personal views rather than the will of their constituents. Because the majorities in both the House and the Senate are slim, a small number of flipped votes could make the difference for any bill.

While 2024’s lame-duck session will warrant additional vigilance like any other, the landscape in Congress suggests there is a low risk of legislative action that would threaten religious liberty. The Equality Act or similar bills might find support in a closely divided Senate, but it is unlikely that enough House Republicans would break ranks based on personal support of such bills’ policy goals. And while the House has already passed the Secure the Border Act and may revisit other similar measures, it is unlikely that a small cadre of Senate Democrats would, based on personal sentiment, side with Senate Republicans to pass such a bill into law. A separate concern is whether some Senate Democrats in border states, feeling pressure from their constituents to take action on the border crisis, might flip their positions.

B. Federal Regulations Expected in 2024

It is nearly certain that federal agencies will issue numerous final regulations in 2024 that threaten religious liberty. In some cases, those threats will likely

be severe. In addition to the proposed regulations described above, two major regulations that were first proposed in 2022 are slated to be finalized in 2024.

1. Section 1557

The forthcoming regulation of primary concern is the U.S. Department of Health and Human Services’ (HHS) regulation implementing the non-discrimination provisions in Section 1557 of the Affordable Care Act. Section 1557 incorporates the nondiscrimination requirements of a number of other civil rights laws by reference and applies them to the Affordable Care Act. Among those is Title IX, which prohibits sex discrimination but also has a religious exemption. HHS issued its proposed version of the rule in 2022⁶⁸ and has stated in court filings that it intends to publish the final version in early 2024.

Under the rule as proposed, HHS interprets Section 1557’s sex nondiscrimination requirement to prohibit discrimination on the basis of “sexual orientation and gender identity.” Thus it would be considered discrimination for a health care worker to categorically object to performing gender transition procedures, regardless of whether that objection is a matter of religious belief or clinical judgment. The proposed regulations would also require most health insurance issuers to cover gender transition procedures, so the regulations may make it difficult for religious organizations as employers to find companies who will provide insurance coverage that is consistent with their religious beliefs.

The issue of how the regulations will address abortion is a major concern. The text of the proposed rule is unclear about what requirements it will impose with regard to abortion. Its preamble, however, suggests that at least some such requirements are possible (such as a prohibition on discrimination on the basis that a person has

The proposed regulations would also require most health insurance issuers to cover gender transition procedures.

The U.S. Department of Education plans to finalize a separate rule that covers all other aspects of how gender identity issues arise in the educational setting.

received or is seeking an abortion) and requests public comment on whether an abortion-neutrality provision in Title IX applies to Section 1557. This creates room for HHS to adopt more expansive abortion requirements in the final rule — potentially even a mandate to perform abortions.

The proposed rule argues that, even though Section 1557 incorporates the sex nondiscrimination requirement of Title IX by reference, it does not incorporate the religious exemption in Title IX. Although the proposed rule would invite health care workers or organizations to notify HHS of their view that other existing legal protections for conscience and religious freedom exempt them from particular requirements, the regulations offer no guarantee that HHS would ever agree that anyone has the right to follow their beliefs or convictions.

2. Title IX

In addition to the proposed rule specifically governing issues of gender identity in school athletics, the U.S. Department of Education plans to finalize a separate rule that covers all other aspects of how gender identity issues arise in the educational setting.⁶⁹

Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance, includes a provision exempting any educational institution controlled by a religious organization from the statute's requirements to the extent they conflict with the organization's religious tenets.

The Department of Education issued a proposed rule on Title IX in 2022 that governed all applications of Title IX other than athletic programs, which were reserved for a separate rule.

The proposal would revise the concept of “discrimination on the basis of sex” to include “sexual orientation” and “gender identity.” While covered schools would be allowed to have sex-separate activities and facilities for certain purposes, they would generally be required to let students participate in activities and access facilities according to their asserted gender identity.

The definition of “discrimination on the basis of sex” would also include on the basis of “pregnancy or related conditions,” which itself would be defined to include “termination of pregnancy.” This has potential implications involving abortion, but the proposed rule offered no insight into what those implications might be.

An unexpected and positive aspect of the proposed rule was that it would not revise the existing provisions in USDE's regulations that interpret the religious exemption in Title IX. However, that exemption applies only to religious schools, not to individuals who have religious beliefs that the regulations would infringe. For example, the exemption would not protect a public school teacher who acts in accordance with her religious belief that people cannot change their sex.

C. Supreme Court – The Loper Bright Case

Although it is not directly about religious liberty, the *Loper Bright Enterprises v. Raimondo* case that has been taken up by the Supreme Court may have a major impact on the legal landscape of religious liberty.⁷⁰ The case presents the question of whether the Court should discard what is known as *Chevron* deference, a legal doctrine that directs courts to defer to federal agencies' interpretations of laws passed by Congress. (*Chevron* is a 1984 Supreme Court decision.)

As discussed above, it is regulations issued by federal agencies, much more so than laws passed by Congress, that have threatened religious liberty in recent years. While the balance of power between the judiciary and executive branches naturally implicates issues other than religious freedom, if federal agencies' power to interpret the law is significantly reined in, religious freedom problems created by federal regulation will likely diminish.



CNS screen grab/Facebook, Lennon Pregnancy Center

D. Vandalism and Arson of Churches and Pregnancy Resource Centers

It is difficult to predict whether the rate of anti-Catholic and generally anti-Christian property crimes will rise or fall in 2024. While the rate seems unlikely to equal the burst of attacks that were carried out in 2022 after the *Dobbs* decision was issued, the presidential election may generate an increase, as hostility toward anti-abortion Republicans may manifest as hostility toward socially conservative Christians, the party's per-

A threat to the safety of a house of worship is a threat to religious liberty.

ceived constituency.

Although the trajectory of this phenomenon remains uncertain, it is more likely to escalate in 2024 than deescalate.

E. Continuing Antisemitic and Anti-Muslim Sentiment

The ongoing war between Israel and Hamas will likely continue to fuel antisemitism and anti-Muslim sentiment here in the United States.

A particular concern is the potential for an attack on a synagogue or mosque. A threat to the safety of a house of worship is a threat to religious liberty. The possibility that the elevated tensions will produce terrorist attacks like the Tree of Life Synagogue mass shooting in Pittsburgh in 2018, or the mass shooting at a mosque in Christchurch, New Zealand, in 2019, is painfully real.

VIII – The Five Largest Threats to Religious Liberty in 2024, and Five Ways to Respond

#1 Attacks on Houses of Worship

The Committee on Religious Liberty regards attacks on houses of worship as the largest threat to religious liberty in 2024.

Were this threat limited to a continuation of the property crimes that have been perpetrated on Catholic churches over recent years, perhaps it would not be the committee’s chief concern. However, boiling tensions over the Israel–Hamas conflict have elevated the chances of a terrorist attack on a synagogue or mosque.

Meanwhile, the highly charged atmosphere around the 2024 election might lead far-left extremists to escalate the severity of attacks on Catholic churches, and far-right extremists may view Catholic churches and Catholic Charities facilities as targets for anti-immigrant sentiment or, worse, violent action.

The committee was founded in response to increasing *legal* threats to the free exercise of religion that the U.S. bishops discerned at the time, so it is unusual for the committee to be compelled to decry foreseeable threats to the very *lives* of people of faith here in the United States. But there is no greater threat to religious liberty than for one’s house of worship to become a place of danger, and the country sadly finds itself in a place where that danger is real.

How Individuals and Communities Can Respond:

We can each do our part to foster a society free of hatred. Speak up for the equal and inherent dignity of all people. Bear public witness to Christ’s call to show care and compassion for the vulnerable. Pray for

There is no greater threat to religious liberty than for one’s house of worship to become a place of danger, and the country sadly finds itself in a place where that danger is real.

peace.

Meanwhile, help keep your neighbors and your own house of worship safe. [Recognize and report](#) signs of potential attacks, and encourage your pastor to utilize the “[Protecting Houses of Worship](#)” resources published by the U.S. Department of Homeland Security.⁷¹

#2 The Section 1557 Regulation

No foreseeable legal development in 2024 poses a greater threat to religious liberty than HHS’s Section 1557 regulation. Despite lip service paid to concerns of religious liberty, it appears to be specifically intended to force Catholic hospitals and religious health care workers to perform harmful gender transition procedures, including on children. Among the various federal regulations advancing gender ideology, its harms are the most severe. The final regulation may also include a mandate to perform abortions.

It is a near certainty that the Section 1557 regulation will be challenged in court within days of being published. When HHS first attempted to impose a gender transition mandate in its 2016 version of the 1557 regulation, religious freedom challenges to it prevailed. While there is reason for optimism that such lawsuits would be ultimately successful once again, the regulation as proposed would undoubtedly exert a major chilling effect on the exercise of faith and conscience in health care, and would mark a regrettable entrenchment against the clear protections of the Constitution and the Religious Freedom Restoration Act.

How Individuals and Communities Can Respond:

While litigation against the Section 1557 regulation is inevitable, it is not the only available means of opposition. Federal law provides a mechanism, known as a disapproval resolution, for Congress to invalidate a federal regulation. Congressional Republicans will almost certainly introduce such a resolution in response to the Section 1557 regulation. To receive notifications

about how to support it, sign up for USCCB action alerts at our [Action Center](#).⁷²

#3 Threats to Catholic Ministries Serving Newcomers

Welcoming the stranger, feeding the hungry, sheltering the homeless — these fundamental calls to Christian service are at the heart of Catholic service to newcomers, which is itself a core ministry of the Church. Denying public aid to a religious charity because it heeds this Gospel call is a paradigmatic example of an unconstitutional condition on government funds.

While the Secure the Border Act (SBA) is highly unlikely to pass the Senate in the regular course of business, attempts to include problematic provisions from SBA, or SBA in its entirety, as part of must-pass appropriations legislation may be more viable. It is important for elected representatives in Congress to be vigilant against the use of this tactic. Those who claim to defend religious liberty in Congress must also stand against their colleagues' efforts to intimidate and denigrate religious charities striving to meet newcomers' basic human needs.

How Individuals and Communities Can Respond:
[Let your representatives in Congress](#) know that you support immigration reform for the common good of all, but not violations of the religious freedom of charities striving to serve newcomers in need.⁷³

#4 Suppression of Religious Speech Upholding Marriage and Sexual Difference

The right to free exercise of religion and the right to free speech often intersect on matters of sexual orientation and gender identity. In numerous settings — schools, the workplace, health care — individuals are being pressured to conform to the orthodoxy of gender ideology. In 2024, this pressure may have the force of law via various federal agency actions, including the Title IX regulation and the EEOC's enforcement of its guidance on workplace harassment.

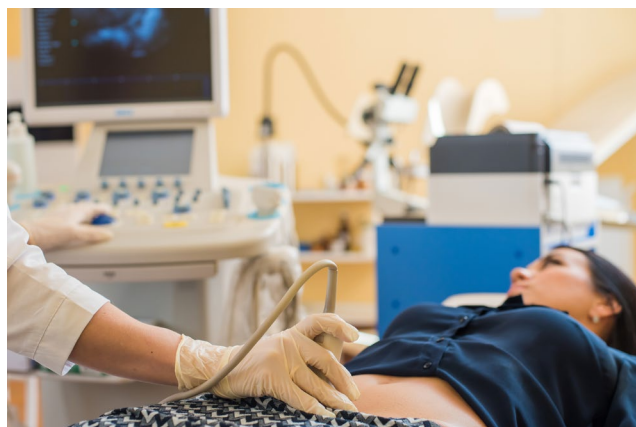
There are few freedoms more basic, or more inherent to the American political and social order, than the right to say what is true and not to be compelled to profess what is false. People of faith must guard against erosion of this right.

Those who claim to defend religious liberty in Congress must also stand against their colleagues' efforts to intimidate and denigrate religious charities striving to meet newcomers' basic human needs.

How Individuals and Communities Can Respond:
Be an example of how people of faith can voice beliefs about marriage and sexual difference with clarity and compassion. The USCCB initiative "[Marriage: Unique for a Reason](#)" is a valuable resource for understanding Church teaching on marriage and how to talk about it; the USCCB Committee on Doctrine's "[Doctrinal Note on the Moral Limits to Technological Manipulation of the Human Body](#)" offers an excellent summary of Church teaching on the immutability of sex.⁷⁴

#5 The EEOC's Pregnant Workers Fairness Act Regulations

Whereas it is merely possible that the Section 1557 final rule will include an abortion mandate, it is highly likely that the EEOC's final rule on the Pregnant Workers Fairness Act (PFWA) will retain its requirement that employers give employees paid leave for the purposes of obtaining an abortion. A federal mandate that private entities be complicit in second- and third-trimester abortions is unprecedented. And while some other proposed regulations from other agencies technically leave the possibility for religious exemptions open, the EEOC's stated interpretation of



PWFA's religious exemption effectively forecloses any protection under the regulations.

How Individuals and Communities Can Respond:

Sign up for [action alerts](#)⁷⁵ from the USCCB so you can join the committee's efforts to encourage congressional action responding to the EEOC's PWFA regulations.

Meanwhile, religious employers should honor the pro-woman, pro-life intent of the law Congress passed, and grant pregnant employees reasonable accommodations that allow them to have healthy pregnancies. It will make for a stronger case in the event an employee asks for leave to get an abortion. It is also the right thing to do.

Notes

1. Richard Garnett, “What is Religious Freedom?” *USCCB First Freedom Blog*: www.usccb.org/committees/religious-liberty/first-freedom-blog/Garnett-what-is-religious-freedom.
2. Joseph Capizzi, “The Common Good and Religious Liberty,” *USCCB First Freedom Blog*: www.usccb.org/committees/religious-liberty/first-freedom-blog-common-good-and-religious-liberty.
3. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020).
4. U.S. House Committee on the Judiciary, Removing the Deadline for the Ratification of the Equal Rights Amendment, with Dissenting Views (H. R. Rep. No. 116-378): <https://www.congress.gov/116/crpt/hrpt378/CRPT-116hrpt378.pdf>.
5. 18 U.S.C. § 248.
6. Ryan Bangert, “The Justice Department’s Pro-Abortion Bias Threatens Civil Liberties,” *Newsweek*, June 1, 2023: www.newsweek.com/justice-departments-pro-abortion-bias-threatens-civil-liberties-opinion-1803410.
7. See, for example, J. Baxter Oliphant and Andy Cerda, “Republicans and Democrats have different top priorities for U.S. immigration policy,” *Pew Research Center*, September 8, 2022: www.pewresearch.org/short-reads/2022/09/08/republicans-and-democrats-have-different-top-priorities-for-u-s-immigration-policy/.
8. *Zubik v. Burwell*, 578 U.S. 403 (2016).
9. *Id.* at 408 (“The parties on remand should be afforded an opportunity to arrive at an approach going forward that accommodates petitioners’ religious exercise while at the same time ensuring that women covered by petitioners’ health plans receive full and equal health coverage, including contraceptive coverage”) (cleaned up).
10. 88 FR (Federal Register) 7236 (February 2, 2023).
11. Pub. L. 117-328, Div. II, 136 Stat. 6084 (December 29, 2022).
12. 88 FR 54714 (August 8, 2023).
13. 81 FR 89393 (December 12, 2016); *United States v. Windsor*, 570 U.S. 744 (2013); *Obergefell v. Hodges*, 576 U.S. 644 (2015).
14. 86 FR 2257 (January 12, 2021).
15. 88 FR 44750 (July 13, 2023).
16. 20 U.S.C. § 1681(a)(3).
17. 87 FR 41390 (July 12, 2022).
18. 88 FR 22860 (April 13, 2023).
19. 88 FR 63392 (September 14, 2023).
20. 88 FR 66752 (September 28, 2023).
21. 88 FR 69390 (October 5, 2023).
22. 73 FR 78072 (December 19, 2008).
23. 74 FR 10207 (March 10, 2009).
24. 84 FR 23170 (May 21, 2019).
25. 88 FR 820 (January 5, 2023).
26. 85 FR 59916 (September 23, 2020).
27. See, for example, Debbie Kelly, “Christian group at UCCS to be granted student club status under lawsuit settlement,” *The Denver Gazette*, May 14, 2019: https://gazette.com/education/christian-group-at-uccs-to-be-granted-student-club-status-under-lawsuit-settlement/article_7dee9546-7692-11e9-aa5b-c72fe401f86b.html.
28. 88 FR 10857 (February 22, 2023).
29. 88 FR 67750 (October 2, 2023).
30. See, for example, 69 FR 42586 (July 16, 2004).
31. 88 FR 2395 (January 13, 2023).

32. 85 FR 79324 (December 9, 2020).

33. 88 FR 12842 (March 1, 2023).

34. 88 FR 68908 (October 4, 2023).

35. U.S. Department of Justice, Federal Bureau of Investigation, Interest of Racially or Ethnically Motivated Violent Extremists in Radical-Traditionalist Catholic Ideology Almost Certainly Presents New Mitigation Opportunities, January 22, 2023: <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/fbi-anti-catholic-memo.pdf>.

36. Kayla Bailey, “FBI labeling Catholics as possible violent extremists is an excuse to oppress ‘political enemies’: Evita Duffy,” Fox News, February 12, 2023: <https://www.foxnews.com/media/fbi-labeling-catholics-possible-violent-extremists-excuse-oppres-political-enemies-evita-duffy>.

37. *Groff v. DeJoy*, 600 U.S. 447 (2023).

38. *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

39. *Tingley v. Ferguson*, 47 F.4th 1055 (9th Cir. 2022), cert. denied, 144 S. Ct. 33 (2023).

40. *Tingley v. Ferguson*, 144 S. Ct. 33, 34 (2023) (Thomas, J., dissenting)..

41. Chelsea Bailey, “Reports of antisemitism, anti-Arab and anti-Muslim bias continue to surge across the US, new data shows,” CNN, December 11, 2023: www.cnn.com/2023/12/11/us/adl-cair-hate-crimes-bias-incidents-reaj/index.html.

42. Stephen Collinson, “A new wave of antisemitism threatens to rock an already unstable world,” CNN, October 31, 2023: www.cnn.com/2023/10/31/politics/antisemitism-unstable-world-analysis/index.html.

43. See Federal Bureau of Investigation Crime Data Explorer at <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime>.

44. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

45. “More than a Dozen Vandalism and Theft Reports of Issue 1 Signs,” *The Catholic Telegraph*, October 31, 2023: [www.thecatholictelegraph.com/more-than-a-dozen-vandalism-and-theft-reports-of-issue-1-signs/93956](http://thecatholictelegraph.com/more-than-a-dozen-vandalism-and-theft-reports-of-issue-1-signs/93956).

46. Mary Margaret Olohan, “Republicans to Hold Hearing on DOJ Targeting Pro-Lifers,” *The Daily Signal*, May 12, 2023: <https://judiciary.house.gov/media/in-the-news/republicans-hold-hearing-doj-targeting-pro-lifers>. The Department of Justice has brought FACE Act charges against perpetrators of vandalism at a pregnancy resource center in Miami, Florida (U.S. Department of Justice Office of Public Affairs, “Two Additional Defendants Charged with Civil Rights Conspiracy Targeting Pregnancy Resource Centers,” March 29, 2023: <https://www.justice.gov/opa/pr/two-additional-defendants-charged-civil-rights-conspiracy-targeting-pregnancy-resource>, and obtained a guilty plea to FACE Act charges from a woman who vandalized a pregnancy resource center in Ohio (U.S. Department of Justice Office of Public Affairs, “Ohio Woman Pleads Guilty to Freedom of Access to Clinic Entrances (FACE) Act Violation for Damaging Pregnancy Center,” December 8, 2023): see <https://www.justice.gov/opa/pr/ohio-woman-pleads-guilty-freedom-access-clinic-entrances-face-act-violation-damaging>.

47. *Kluge v. Brownsburg Cmty. Sch. Corp.*, 64 F.4th 861 (7th Cir. 2023), vacated on denial of reh’g, No. 21-2475, 2023 WL 4842324 (7th Cir., July 28, 2023); *Vlaming v. W. Point Sch. Bd.*, No. 211061, 2023 WL 8634968 (Va., December 14, 2023).

48. *L.M. v. Town of Middleborough*, No. 1:23-CV-11111-IT, 2023 WL 4053023 (D. Mass., June 16, 2023).

49. *Mahmoud v. McKnight*, No. CV DLB-23-1380, 2023 WL 5487218 (D. Md., August 24, 2023).

50. Associated Press, “New Jersey dad sues state, district over policy keeping schools from outing transgender students,” October 20, 2023: <https://apnews.com/article/new-jersey-transgender-students-cherry-hill-1d3b8094490aeea363ea9399e-fa80013>.

51. See *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791 (11th Cir. 2022) (holding that school bathroom policy that required students to use the bathroom that corresponded to their sex assigned at birth or use sex-neutral bathroom did not violate Title IX); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), as amended (August 28, 2020) (holding that school policy requiring students to use bathrooms based on their biological sex violated Title IX).

52. Complaint, *OKPLAC, Inc. v. Statewide Virtual Charter School Board*, July 31, 2023: <https://www.aclu.org/cases/okplac-inc-v-statewide-virtual-charter-school-board?document=Complaint-OKPLAC-Inc-v-Statewide-Virtual-Char>

ter-School-Board.

53. *Fitzgerald v. Roncalli High Sch., Inc.*, 73 F.4th 529 (7th Cir. 2023) (Brennan, J., concurring).
54. *Starkey v. Roman Cath. Archdiocese of Indianapolis, Inc.*, 41 F.4th 931 (7th Cir. 2022) (Easterbook, J., concurring).
55. *Bear Creek Bible Church v. Equal Emp. Opportunity Comm'n*, 571 F. Supp. 3d 571, 591 (N.D. Tex. 2021), aff'd in part, vacated in part, rev'd in part sub nom. *Braidwood Mgmt., Inc. v. Equal Emp. Opportunity Comm'n*, 70 F.4th 914 (5th Cir. 2023).
56. *Satanic Temple, Inc. v. Rokita*, No. 1:22-CV-01859-JMS-MG, 2023 WL 7016211 (S.D. Ind., October 25, 2023).
57. Second Amended Complaint, *Generation to Generation, Inc. v. Florida*, No. 2022-ca-000980 (Fla. Cir. Ct. 2d, August 9, 2022), <https://www.brennancenter.org/sites/default/files/2022-11/Generation%20to%20Generation%20v.%20Florida%20%5BComplaint%5D.pdf>.
58. See, for example, Howard Slugh & Tal Fortgang, "Abortion Arguments That Misinterpret Judaism," *The National Review*, June 22, 2022, <https://www.nationalreview.com/2022/06/jewish-arguments-against-pro-lifers-misunderstand-judaism/>.
59. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012).
60. *Sklar v. Temple Israel, Westport Inc.*, No. X08FSTCV216053761S, 2023 WL 3071355 (Conn. Super. Ct., April 21, 2023); *Gackenhaimer v. S. New England Conf. of United Church of Christ, Inc.*, No. 06UWYCV226070183SC43, 2023 WL 4322814 (Conn. Super. Ct., June 29, 2023).
61. *Darren Patterson Christian Acad. v. Roy*, No. 123CV01557DDDSTV, 2023 WL 7270874 (D. Colo., October 20, 2023); see also Complaint, *St. Mary Catholic Parish in Littleton, et al. v. Roy* (D. Colo., filed August 16, 2023).
62. Complaint, *St. Dominic Academy, et al. v. Makin, et al.* (D. Me., filed June 13, 2023); complaint, *Crosspoint Church v. Makin, et al.* (D. Me., filed March 27, 2023).
63. *Carson as next friend of O. C. v. Makin*, 596 U.S. 767 (2022).
64. University of Virginia Center for Politics, "New Initiative Explores Deep, Persistent Divides Between Biden and Trump Voters," September 30, 2023: <https://centerforpolitics.org/crystalball/articles/new-initiative-explores-deep-persistent-divides-between-biden-and-trump-voters/>; Frank Newport, "Update: Partisan Gaps Expand Most on Government Power, Climate," August 7, 2023: <https://news.gallup.com/poll/509129/update-partisan-gaps-expand-government-power-climate.aspx>.
65. U.S. Conference of Catholic Bishops, *Forming Consciences for Faithful Citizenship – Introductory Note*: <https://www.usccb.org/issues-and-action/faithful-citizenship/forming-consciences-for-faithful-citizenship-introductory-letter>.
66. Pew Research Center, "Like Americans overall, U.S. Catholics are sharply divided by party," January 24, 2019: <https://www.pewresearch.org/short-reads/2019/01/24/like-americans-overall-u-s-catholics-are-sharply-divided-by-party/>.
67. Ryan Burge, "Religious Democrats and Secular Republicans," *Graphs About Religion*, January 1, 2024: <https://www.graphsaboutreligion.com/p/religious-democrats-and-secular-republicans>.
68. 87 FR 47824 (August 4, 2022).
69. *Supra* note 17.
70. *Loper Bright Enterprises, Inc. v. Raimondo*, 45 F.4th 359 (D.C. Cir. 2022), cert. granted in part sub nom. *Loper Bright Enterprises v. Raimondo*, 143 S. Ct. 2429, 216 L. Ed. 2d 414 (2023).
71. Department of Homeland Security, "Recognize Suspicious Activity," December 4, 2023: <https://www.dhs.gov/see-something-say-something/recognize-the-signs>; Cybersecurity & Infrastructure Security Agency, "Protecting Houses of Worship": <https://www.cisa.gov/topics/physical-security/protecting-houses-worship>.
72. USCCB Action Center: <https://www.votervoice.net/USCCB/home>.
73. USCCB Action Alert, Tell Congress You Support Immigration Reform that Respects Religious Liberty: <https://www.votervoice.net/USCCB/Campaigns/110091/Respond>.
74. Marriage Unique for a Reason, An Initiative of the U.S. Conference of Catholic Bishops: <https://www.marriageuniqueforareason.org/>; U.S. Conference of Catholic Bishops, Committee on Doctrine, Doctrinal Note on the Moral Limits to Technological Manipulation of the Human Body, March 20, 2023: <https://www.usccb.org/resources/Doctrinal%20Note%202023-03-20.pdf>.
75. USCCB Action Center: <https://www.votervoice.net/USCCB/home>

