



Agenda to Restore & Protect Religious Freedom

The separation of church and state is the cornerstone of religious freedom. Core to our founding and enshrined in the First Amendment to our Constitution, it is central to who we are as a nation and why we are recognized around the world as a beacon of religious freedom. Separation safeguards both religion and government by ensuring that one institution does not control the other, allowing religious diversity in America to flourish. That is why Americans United for Separation of Church and State has been safeguarding this fundamental principle since 1947.

Religious freedom means that everyone should be able to practice their religion or no religion at all—without government interference, preference, or disfavor—so long as they don't harm others. This do-no-harm principle, enshrined in the Establishment Clause of the First Amendment, ensures that religious freedom is a shield that protects the rights of everyone to practice their faith or not to practice any faith at all, and not a sword to harm others or to discriminate.

Over the last four years, however, the Trump administration has turned the principle of religious freedom on its head. It has manipulated religious freedom in unprecedented ways to sanction discrimination, deny access to healthcare, require taxpayers to fund religion, and allow houses of worship to endorse political candidates. The administration's misuse of religious freedom has endangered us all.

President Trump has wrongly claimed to be a champion of religious freedom, yet he also called for a "total and complete shutdown of Muslims entering the United States," and implemented his Muslim Ban. He also has favored conservative evangelical Christians over all others when it came to access, outreach, decision making, and policies.

The Trump administration has attacked the separation of religion and government, even though 60 percent of likely voters said protecting the separation of religion and government is either one of the most important issues to them personally or very important to them.¹

The Biden-Harris administration now has the opportunity and the moral obligation to right the wrongs of the Trump administration and build a better future—one that values religious freedom and equality for all. We call on the Biden-Harris administration to take immediate action to restore church-state protections and safeguard everyone's religious freedom.

November 7, 2020

Here are the 10 things the Biden-Harris administration must do to protect religious freedom:

1. **Repeal the Muslim Ban.**
 2. **Sign an Executive Order to Restore and Protect Religious Freedom for All Americans.**
 3. **Protect the Religious Freedom of People Who Use Government-Funded Social Services.**
 4. **Protect Federally Funded Employees from Religious Discrimination.**
 5. **Ensure People Are Not Denied Healthcare Based on Someone Else's Religion.**
 6. **Support the Do No Harm Act.**
 7. **Fund Public Schools—Not Private Schools—with Public Funds.**
 8. **Protect and Enforce the Johnson Amendment.**
 9. **Ensure that Our Government Reflects Our Nation's Religious Diversity.**
 10. **Nominate Federal Judges Who Respect the Separation of Church and State.**
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1. Repeal the Muslim Ban.

The Muslim Ban is a breach of the American promise of religious freedom for all. No one should be banned from our country because of their religious beliefs. Because of Trump's Muslim and African bans, countless families have been separated, people have been denied access to lifesaving medical treatments, talented students and researchers have been denied permission to study here, and even in the midst of a pandemic when first responders are overwhelmed, doctors and medical professionals who could help care for patients have been prohibited from entering the country. These bans are morally wrong and betray our national values.

Action Item:

- ➔ Repeal the Muslim and African bans and send a message to the country that religious discrimination is unacceptable.

2. Sign an Executive Order to Restore and Protect Religious Freedom for All Americans.

Religious freedom is a fundamental American value. It protects your right to believe—or not—so long as you don't harm others. The Trump administration, however, has misused religious freedom to score political points, cause harm, discriminate, and divide our country.

It's time to restore our nation's promise of religious freedom for all. The Biden-Harris administration must sign an executive order that sets out the fundamental principles of religious freedom. The order must reflect the current state of the law: it must incorporate the do-no-harm principle and affirm that the government has a compelling interest in upholding protections for civil rights and access to healthcare. The agencies must follow the order and rescind existing policies, regulations, guidance, memoranda, and opinions that wrongly assert that religious freedom can be used to undermine nondiscrimination laws and access to healthcare. The executive order and its principles will also guide agencies as they adopt new policies to right the wrongs of the Trump administration.

Action Items:

- ➔ Sign an executive order setting out the fundamental principles of religious freedom. The order must reflect current law, including the Constitution's do-no-harm principle. It must also make clear that the government has a compelling interest in upholding protections for civil rights and access to healthcare.
- ➔ Rescind and replace Department of Justice legal memoranda and opinions that serve as the basis for existing federal policies and proposed rules that misuse religious freedom to harm others. These include:
 - The Attorney General "[Memorandum on Federal Law Protections for Religious Liberty](#)" (Oct. 6, 2017); and
 - The Office of Legal Counsel memorandum opinion, "[Re: Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act](#)" (June 29, 2007).
- ➔ Direct all agencies to enact regulations, policies, and guidance that embody the fundamental principles in the Biden-Harris executive order, and rescind those that conflict with the order.
- ➔ Suspend action to finalize any regulations and policies that conflict with these fundamental principles.

3. Protect the Religious Freedom of People Who Use Government-Funded Social Services.

When the government funds faith-based organizations to deliver social services—such as food banks, homeless shelters, job training, and elder care—it must protect peoples' religious freedom and ensure that they can get the services they need. Robust church-state safeguards will ensure that people seeking taxpayer-funded social services will never face religious discrimination or be forced to worship or pray in order to get these services. And a person who is uncomfortable with the religious character of a provider will be able to ask for help in finding an alternative.

The Trump administration has repeatedly put the interests of taxpayer-funded entities, some of which receive millions of dollars each year of government money, ahead of the needs of people, often vulnerable and marginalized, seeking critical social services. It has proposed rules to strip religious freedom protections from vulnerable people who need social services, taking away people's access to vital government services and even requirements that they be notified of their rights. It has also granted an exemption to allow providers to use a religious litmus test to decide who can participate in taxpayer-funded programs. This has led to discrimination against Catholic, Jewish, and LGBTQ families who want to help children who are in foster care. The Biden-Harris administration must reverse this.

Religious freedom protections must be restored to ensure that the government funds only evidence-based programs; to prohibit discrimination against people who seek services; to guarantee that those using the services are not compelled to participate in religious activities; and to protect people's access to vital government services, including finding an alternative provider.

Action Items:

- ➔ Suspend action to finalize the faith-based regulations proposed by nine agencies, which would strip away religious freedom protections from people who use government-funded social services, and strengthen existing policies so that people seeking services have robust protections ([Agriculture](#), [Education](#), [Health & Human Services](#), [Homeland Security](#), [Housing & Urban Development](#), [Justice](#), [Labor](#), [USAID](#), [Veterans Affairs](#)).
- ➔ Rescind the [HHS waiver granted under the Religious Freedom Restoration Act \(RFRA\)](#) that allows taxpayer-funded child placement agencies to turn away potential parents and volunteers who don't meet a religious test.
- ➔ Rescind the [Notice of Nonenforcement](#) and suspend action to finalize [the proposed rule to eliminate the nondiscrimination in 45 CFR § 75.300](#).

4. Protect Federally Funded Employees from Religious Discrimination.

Religious organizations have a longstanding tradition of providing services to people in need, including in some cases, with the use of government funds. Effective government partnership with faith-based groups, however, does not require the sanctioning of federally funded religious discrimination. The Trump administration, however, not only maintained controversial policies allowing taxpayer-funded employment discrimination, but also expanded them.

The government should never fund discrimination, and no one should be disqualified from a taxpayer-funded job funded because they are the "wrong" religion. That's why the Biden-Harris administration must revoke these policies and replace them with policies to

protect the employees of federal contracts and grants from discrimination in the name of religion.

Action Items:

- ➔ Reinstating protections for the employees of federal contractors.
 - Restore Executive Order 11246’s nondiscrimination protections for all employees, eliminating the religious exemption that sanctions religious discrimination.
 - Suspend action to finalize the proposed rule, “[Implementing Legal Requirements Regarding the Equal Opportunity Clause’s Religious Exemption](#),” which seeks to vastly expand the religious exemption for federal contractors in Executive Order 11246.
- ➔ Reinstating protections for employees working in federal grant programs.
 - Suspend action to finalize the proposed faith-based regulations and support the repeal of Charitable Choice statutes that permit federal grant recipients to engage in federally funded employment discrimination.
 - Revisit the Office of Legal Counsel memorandum opinion, “[Re: Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act](#)” (June 29, 2007), which wrongly asserts that RFRA requires that federal agencies exempt religious organizations from federal nondiscrimination provisions tied to grant programs.

5. Ensure People Are Not Denied Healthcare Based on Someone Else’s Religion.

Religious freedom means letting people make their own healthcare decisions based on their conscience, free from interference by the government or their employers. When religion is used as a justification to deny healthcare, it puts patients’ health and well-being in jeopardy, and can cause catastrophic harm to those critically in need of care. Yet the Trump administration advanced policies that allow healthcare workers to cite their religious beliefs to deny Americans—particularly women and LGBTQ Americans—healthcare and health insurance they need. No one’s access to health care should be blocked by someone else’s religious beliefs.

Action Items:

- ➔ Rescind the [Denial of Care Rule](#), which empowers virtually any healthcare worker—doctors, surgeons, nurses, receptionists, orderlies, and more—to deny care to any patient, no matter how dire the patient’s medical needs, based on personal religious objections. Even hospitals and insurance companies are covered by the rule and could deny patients care.

- ➔ Rescind the regulations creating sweeping [religious](#) and [moral](#) exemptions to the Affordable Care Act's birth control benefit and implement new regulations that maximize the number of people who get coverage.

6. Support the Do No Harm Act.

This bill, sponsored by Vice President-elect Harris in the Senate, is designed to restore RFRA to its original intent. It will preserve the law's power to protect religious freedom, but also clarify that it may not be used to harm others. Under the bill, people could still use RFRA to protect religious exercise, including the right to wear religious attire and observe religious holidays. But it could not be used to bypass federal protections in ways that harm other people. It would help to undo the Trump administration policies that have misused RFRA to justify harmful and discriminatory policies.

In the 116th Congress, the Do No Harm Act has more than 200 cosponsors in the House and more than 30 in the Senate, and it is endorsed by more than 80 organizations, including religious, secular, civil rights, labor, and healthcare groups.

Action Item:

- ➔ Support passage of the Do No Harm Act in Congress ([HR 1450](#) / [S 593](#)).

7. Fund Public Schools—Not Private Schools—with Public Funds.

Open and nondiscriminatory in their acceptance of all students, public schools are a unifying factor among diverse communities in our society. Private school vouchers—including tuition tax credit vouchers and education savings accounts—undermine this vital function by diverting desperately needed public resources away from the public school system to fund private, often religious schools. Voucher schemes, historically rooted in efforts to evade desegregation orders after *Brown v. Board of Education*, still further discrimination. In addition, studies have shown that vouchers do not improve educational outcomes and lack accountability. Furthermore, school vouchers, which primarily fund religious schools, violate fundamental principles of religious freedom, including that no taxpayer should be forced to fund the religious education of others.

Nonetheless, President Trump and Betsy DeVos wrongly prioritized private school vouchers and other types of funding for private schools through federal grant programs, even exploiting the pandemic to do so. The government would better serve all students by using federal funds to make the public schools—which educate 90% of the country's students—stronger, rather than funneling money to unaccountable private schools.

Action Items:

- ➔ Zero out funding for the federally funded District of Columbia private school voucher program.

- ➔ Prioritize funding for public schools and oppose policies that divert taxpayer-funded resources away from the public school system.

8. Protect and Enforce the Johnson Amendment.

The Johnson Amendment is a provision in the tax code that protects the integrity and autonomy of tax-exempt organizations, including houses of worship, by ensuring they do not endorse or oppose political candidates. This law is a valuable safeguard that protects the independence of houses of worship, charitable and nonprofit organizations, and the fairness of our electoral process. The [vast majority](#) of Americans—including Democrats, Independents, and Republicans, faith leaders, religious and denominational organizations, and secular nonprofits and charities—support the Johnson Amendment. They do not want our charities and houses of worship to be torn apart by partisan campaign politics. Yet, President Trump has falsely bragged that he “got rid” of the Johnson Amendment and has stopped enforcement of the law. And, he and members of his administration have encouraged and even participated in campaign events that clearly violated the law.

Action Item:

- ➔ Protect the Johnson Amendment and direct the IRS to enforce it.

9. Ensure that Our Government Reflects Our Nation’s Religious Diversity.

The Trump administration has surrounded itself with only members of one particular segment of a single faith—conservative evangelical Protestants—and has elevated their opinions and political interests above all others. President Trump has given them unprecedented access, such as through his Faith Advisory Council. And he has also gone out of his way to deride and disparage people of other faiths and the nonreligious. The people who serve in and advise an administration are a reflection of its priorities. President-elect Joe Biden and Vice President-elect Kamala Harris should build an administration that mirrors the religious diversity of our nation and maintains an expertise in church-state separation.

Action Items:

- ➔ Select staff that reflects our nation’s religious diversity and include experts in religious freedom and church-state separation.
- ➔ Partner with and seek the opinions of people of all faiths and the nonreligious, as well as church-state experts.
- ➔ Ensure that partnership offices, if maintained, focus exclusively on delivering services to people in need. Staff must be qualified experts and policy makers who know how to implement effective, evidence-based social service programs. They must also understand their duty to protect the rights of

beneficiaries, uphold the Constitution, and work with all partners, not just faith-based providers.

10. Nominate Federal Judges Who Respect the Separation of Church and State.

Federal judges are confirmed for lifetime appointments. It is critical that these judges, who decide constitutional questions, respect the separation of religion and government and have a record that demonstrates they will uphold the principle that religious freedom protects the right to believe—or not—without government interference, but it should never be used to harm others. During the Trump administration, 220 federal judges were confirmed, many of whom have demonstrated that they will undermine this principle.

Action Item:

- ➔ Expediently fill federal court vacancies with nominees who have a demonstrated commitment to church-state separation.

¹ Anzalone Liszt Grove Research, *Findings and Recommendations from a Nationwide Poll of 2020 Voters: Poll Conducted for Americans United for Separation of Church and State* (2019).