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**RULES FOR MIXING
RELIGION AND POLITICS**

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WITH A FOREWORD BY BILL MOYERS



FOREWORD

“Have you ever delved into the mysteries of Eastern religion?” one California weirdo asked another in the comic strip *Shoe*. “Yes,” came the reply. “I was once a Methodist in Philadelphia.”

For a long time that was about the extent of Americans’ exposure to the varieties of religious experience. As the scholar Diana Eck reminds us, for most of our history our religious discourse was dominated by a culturally conservative European heritage—people like me. Alternative visions of faith rarely reached the mainstream. That has changed markedly as we steam deeper into the twenty-first century. Almost 80 percent of Americans still identify themselves as Christians, but they are a far more motley lot than the mainstream media understand or report. Other faiths are now making their presence felt, and our religious landscape is being re-created right before our eyes.

Travel the country as I do as a journalist and you see an America dotted with mosques—in places like Toledo, Phoenix, and Atlanta. There are Hindu temples in Pittsburgh, Albany, and California’s Silicon Valley. You can visit Sikh communities in Stockton and Queens, New York, and Buddhist retreat centers in the mountains of Vermont and West Virginia. By one estimate, there are 335,000 religious congregations of one kind or another across the country, and that roughly 118 million people attend worship services regularly.

Furthermore, over 16 percent of Americans are “unaffiliated” and, according to a Gallup Poll, 7 percent of our population say they do not “believe in God.” Their numbers are growing as America increasingly becomes a secular society, making publicly religious conversation more

“delicate and dangerous,” in the words of Thomas Land of Emory University’s Candler School of Theology. Atheists, as well as agnostics, skeptics, and humanists, have a huge stake in how religion plays out in our democracy and are making their voices heard—“smashing idols in the sanctuary,” as Land writes in *Christian Century*.

Religiously, then, the “melting pot” is clearly not melting, and shouldn’t; instead, it bubbles and boils with ferment, conviction, diversity, and, yes, theological competition to shape the public sphere and government. The religious scholar Elaine Pagels once told me, “There’s practically no religion I know of that sees other people in a way that affirms the other’s choice.” Or its politics.

It is important, therefore, to keep reminding ourselves that in the Abrahamic tradition the first murder arose out of a religious act. Adam and Eve have two sons. Both brothers are rivals for God’s favor, so both bring God an offering. Cain, a farmer, offers the first fruits of the soil. Abel, a shepherd, offers the first lamb from the flock. Two generous gifts. But in the story God plays favorites, chooses Abel’s offering over Cain’s, and the elevation of the younger leads to the humiliation of the elder. Cain is so jealous that their rivalry leads to violence and ends in death. Once this pattern is established, it’s played out in the story of Isaac and Ishmael, Jacob and Esau, Joseph and his brothers, and down through the centuries in generation after generation of conflict between Muslims and Jews, Jews and Christians, Christians and Muslims, so that the red thread of religiously spilled blood runs to every place where religious folk turn from compassion to competition. Religion has a healing side; we know this. But it also has a killing side. In the words of Pennsylvania’s founder, William Penn, “To be furious in religion is to be furiously irreligious.”

Democracy tames the militancy of religious fervor as part of the Enlightenment tradition and on a more practical basis through a necessary tolerance for compromise (necessary to avoid what Europe experienced through long periods of religiously inspired strife). But because every religion conveys possible ways of expressing human experience and self-understanding, and because each can be utterly incomprehensible to the other, we are facing what Gerald Burns describes as a “contest of narratives.” Our country fairly seethes with talk about political religion and politics, much of it designed to confuse rather than clarify, to inflame rather than inform.

As I write, conservative Christians have been pressing their agenda toward political outcomes, first through the Republican primary campaign and in

local elections as well. For example, I read on the website bullyingstatistics.org that 9 out of 10 gay and lesbian teens report that they have been bullied at school. Yet, according to *The Guardian* newspaper, conservative Christian groups in several states are lobbying to kill anti-bullying legislation on the grounds that it promotes a tolerance for “alternative lifestyles.” Michigan last year even passed a bill with a provision that allows bullying based on “a sincerely held religious belief or moral conviction.”

Remarkably, some of these conservative Christians, when met by opposing views, claim their religious freedom is under attack. By now this is a familiar tactic: to treat fundamental disagreements as apocalyptic threats to religious liberty itself.

We Americans have wrestled from the very beginning of our country with the best ways to protect the church and state from encroaching on each other. Some of our forebears feared the church would corrupt the state. Others feared the state would corrupt the church. It’s been a real tug-of-war, sometimes quite ugly. Churches and religious zealots did get punitive laws passed against what they said were moral and religious evils: blasphemy, breaking the Sabbath, alcohol, gambling, books, movies, plays ... and yes, contraception. But churches also fought to end slavery, help workers organize, and pass progressive laws. Government had its favorites at times; for much of our history, it privileged the Protestant majority. And in my lifetime alone, it’s gone back and forth on how to apply the First Amendment to ever-changing circumstances among people so different from each other. The Supreme Court, for example, first denied, and then affirmed, the right of the children of Jehovah’s Witnesses to refuse, on religious grounds, to salute the flag.

As we argue over how to respect religious liberty, including the liberty not to believe, these thoughtful Rules for Mixing Religion and Politics call on us to acknowledge the tensions that are inherent to protecting in law and policy both freedom *of* religion and freedom *from* religion. We can simultaneously share a strong commitment to religious liberty, while disagreeing over the application of that principle in a given circumstance.

Over many years of covering these issues, I know that Americans can talk about their beliefs in public without politicizing religion or polarizing the community; I have seen and heard them do it. From experience I know that seriously religious people can press their argument in the public sphere without advocating injury to others. We can disagree passionately about things that matter without surrendering our own principled beliefs

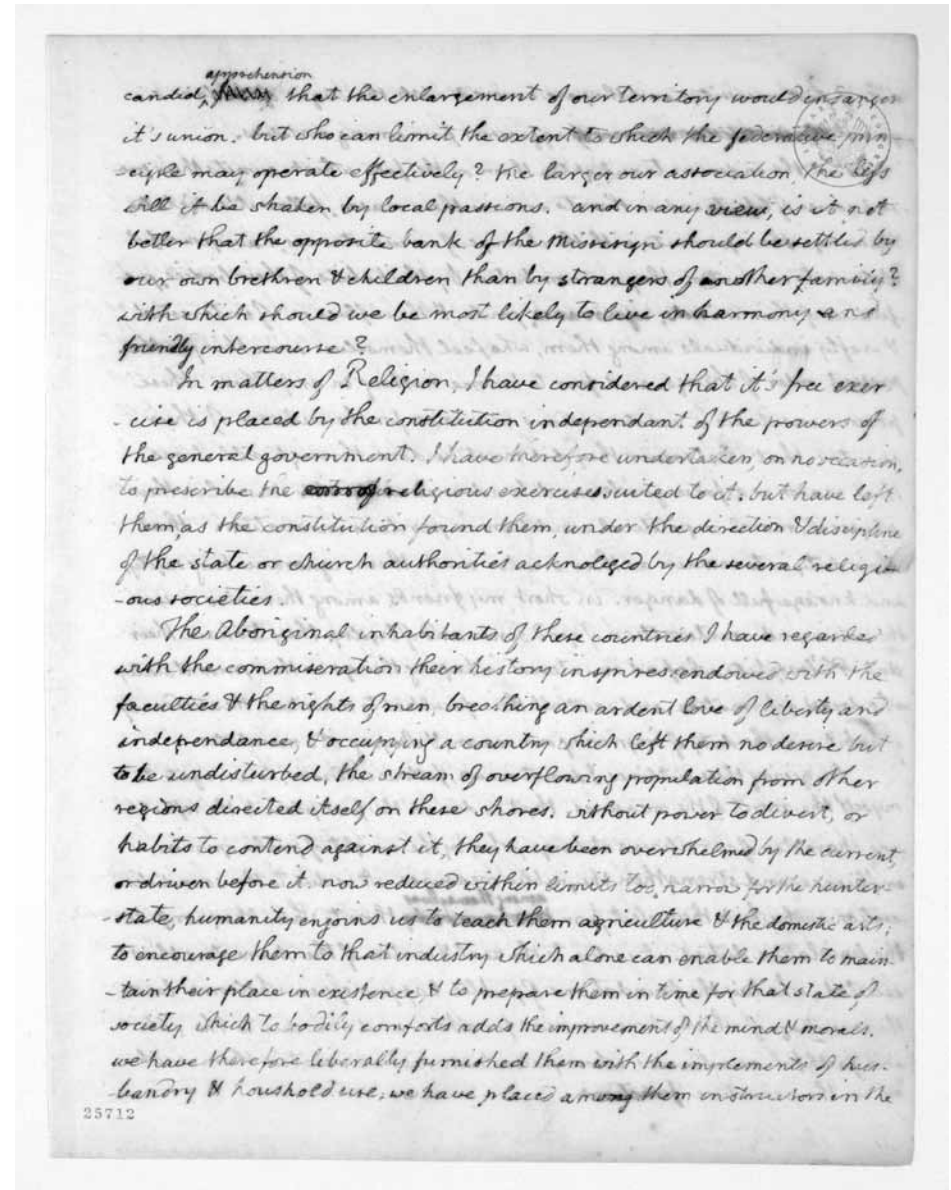
and without going for our neighbor's throat. And we can engage with others in serious conversation about the most deeply felt subjects and truly challenge each other, teach each other, and learn from each other. As Salman Rushdie told me in an interview:

Citizens of a free society do not preserve their freedom by pussyfooting around their fellow citizens' opinions, even their most cherished beliefs. In free societies you must have the free play of ideas, there must be an argument, and it must be impassioned and untrammelled. Free societies are dynamic, noisy, turbulent, and full of radical disagreement. You can't cry foul when your ideas are challenged, even when you assert your ideas of God.

So—let there be Rules. Here's a good place to start.

—Bill Moyers

“In matters of Religion, I have considered that its free exercise is placed by the Constitution independent of the powers of the general government. I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them, as the Constitution found them, under the direction and discipline of state or church authorities acknowledged by the several religious societies.” — *Thomas Jefferson's Second Inaugural Address, March 4, 1805*



INTRODUCTION

Religious liberty is at the heart of the American Way. In America, one's standing as a citizen, member of the community, or candidate does not depend on a profession of faith. The First Amendment to the Constitution guarantees the free exercise of religion and prohibits the establishment of religion by the government. These two principles work together to protect religious freedom and a thriving and diverse religious landscape.

Most Americans embrace freedom of religious expression and the separation of church and state, but the application of these principles in electoral, political and policy settings is a perennial source of controversy. The appropriate role for religion and religious language in political debate is often the source of confusion and conflict across the political spectrum, particularly as our communities grow more diverse religiously. The line between an appropriate accommodation of religion and an inappropriate establishment is not always clear; good faith policymakers frequently engage in complex efforts to balance competing interests. Unfortunately, some political and religious leaders are quick to portray policy disagreements as dire threats to religious liberty or even a "war on religion."

This third edition of People For the American Way Foundation's "Rules for Mixing Religion and Politics" is meant to generate a broader conversation about how we can create and sustain a civic space that reflects the principles of the Constitution and the values of respectful civic discourse, one that welcomes the participation of people of all faiths and people of none. These Rules reflect our understanding of the Constitution and the body of federal court cases on religious liberty as well as our judgment on issues beyond the law.

Some things that are legally permissible may still be damaging to religious tolerance and civic discourse, and should be discouraged. We do not believe it was unconstitutional, as some argued, for Texas Gov. Rick Perry to launch his 2012 presidential bid with an exclusionary prayer rally sponsored by religiously divisive voices; we do think it was an unfortunate, unwise, and inappropriate decision for someone who was seeking to be president of all Americans.

It is important to acknowledge that some situations bring the principles of free expression and nonestablishment into creative tension, and there is room for principled disagreement about just where the lines should be drawn in a given circumstance. Judges as well as policymakers wrestle with these complexities. In 2005, for example, the Supreme Court simultaneously upheld a display of the Ten Commandments on the grounds of the Texas State Capitol as part of a display that included various strands of the state's legal and political history, while rejecting the "non-neutral" display of the Ten Commandments in Kentucky courthouses because those displays were chosen "precisely because of their sectarian content" and were an unconstitutional endorsement of religion.

Other public officials, like teachers and school administrators, often face situations with more ambiguities than bright lines. That lack of clarity, especially when exacerbated by misleading political rhetoric, can lead to bad decisions. Teachers who mistakenly believe that church-state separation requires them to forbid students from reading the Bible during study hall may wrongly infringe on a student's religious freedom. School officials who are not familiar with court rulings on students' right to be free from religious coercion in public schools may mistakenly believe that it is appropriate for a public school to start the day with prayers over the intercom. Sometimes these mistakes are easily corrected; sometimes they are resolved through litigation. People For the American Way Foundation has participated in several projects over the years in which advocates from across the political and religious spectrum have worked to minimize these mistakes by clarifying the state of the law in legal guides for school officials.

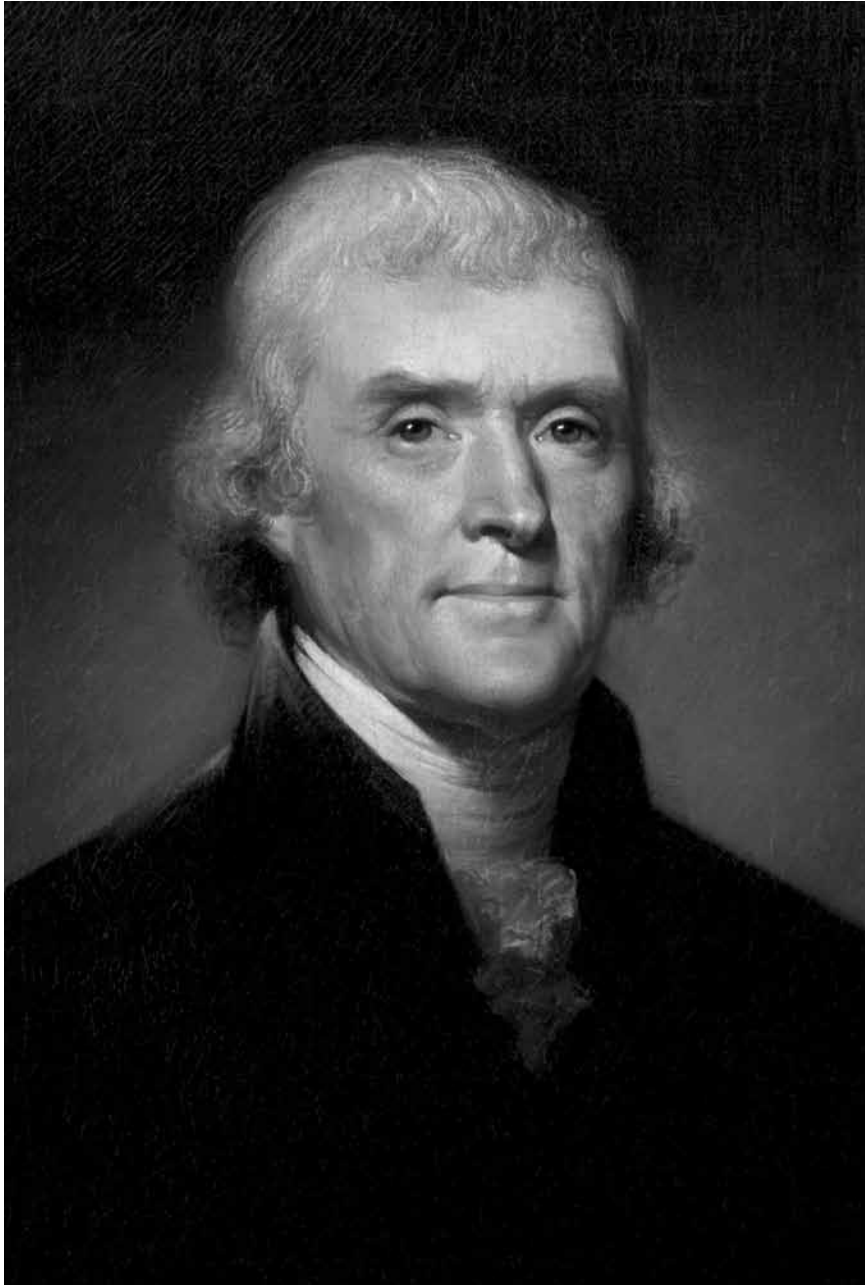
Misinformation and misunderstanding can also lead to divisive rhetoric. On one hand, some religious and political leaders declare that the separation of church and state is a myth, or even worse, a "lie of the left." Proponents of church-state separation are often caricatured as anti-religion, anti-Christian, and anti-religious freedom. Sometimes media wrongly portray policy debates as if there are religious voices on only one side of the issue. These are recurring issues. People For the American Way has been the

target of such charges over the years, which led founder Norman Lear and former President Carole Shields to write some years ago that "the news media have too often portrayed political battles as people of faith on one side and anti-religious zealots on the other. As leaders of an organization whose board and membership include Catholics, Jews and mainstream and evangelical Protestants, we feel this false dichotomy most strongly."

On the other hand, some critics of the ways that religion has been used in the political process may resort to rhetoric asserting that "religion has no place in politics." Political decisions are an expression of societal values. Because many Americans derive their values from their faith, religious people and religious beliefs have always played a significant role in American politics and culture, and in fact have been at the forefront of many justice-seeking movements. It is unavoidable that religion and politics will mix. The question is whether they will mix in ways that promote the common good and are true to the spirit of the Constitution, or whether they mix in ways that divide Americans along lines of faith and undermine our sense of community.

America is a religiously pluralistic country, with increasing numbers of adherents to minority faiths and a significant and growing number of people who claim no religious affiliation. At the same time, efforts to use religious language and imagery to motivate political involvement have flourished on all points of the political spectrum. All that civic engagement makes it even more important that Americans figure out how to mix religion and politics in ways that respect constitutional principles and democratic values. All Americans, religious or non-religious, should be welcomed to play an active role in their communities and the political life of our nation. These rules are an effort to create guidelines that can build a better, more productive, less divisive public conversation.

**ON THE ROLE OF RELIGION AND
RELIGIOUS BELIEFS ON POLITICAL
PARTICIPATION AND POLICYMAKING**



Thomas Jefferson
By Rembrandt Peale

1

THERE CAN BE NO RELIGIOUS TEST FOR PUBLIC OFFICE, NOR A RELIGIOUS TEST FOR PARTICIPATION IN THE POLITICAL PROCESS.

The Constitution specifies that “no religious test shall ever be required as a qualification to any office or public trust under the United States.” That declaration represents the clearest statement of the intentions of the Constitution’s authors to prevent the government from engaging in religious coercion and to ensure that all Americans are welcome to engage in politics whether or not they share the religious beliefs of the majority.

Even still, some states kept religious tests on the books well into the 20th century. In 1961, relying on the First and Fourteenth amendments, a unanimous Supreme Court overruled a Maryland law that required a person holding any “office of profit or trust” to declare a belief in God. While it seems clear that Maryland’s requirement was an unconstitutional religious test, some religious and political leaders have decried the Supreme Court’s ruling. For example, in their 2008 book, *Personal Faith, Public Policy*, Religious Right activists Tony Perkins and Harry Jackson called the Court’s decision an assault against the Christian faith.

Some religious leaders and public officials have asserted a *de facto* religious test for public office, insisting that American Christians must vote for Christian politicians. Some evangelical activists have suggested that it would be wrong, for example, for a Christian to vote for a Mormon presidential candidate, because having a Mormon president might lead people to adopt his faith. One declared candidate in the 2012 presidential race announced that he would not appoint a Muslim to his cabinet; other presidential candidates in the past have said they would not permit Hindus or atheists to serve.

Any kind of blanket declaration that a person’s religious beliefs would make them ineligible for service, regardless of their qualifications and background, clearly conflicts with the text and spirit of the Constitution, as well as with the basic American values of equal opportunity and equal treatment under the law. No American should be discouraged or barred from participation in the political process simply on account of their religious views.

As Republican President Teddy Roosevelt observed in the midst of anti-Catholic hysteria:

The Constitution explicitly forbids the requiring of any religious test as a qualification for holding office. To impose such a test by popular vote is as bad as to impose it by law. To vote either for or against a man because of his creed is to impose upon him a religious test and is a clear violation of the spirit of the Constitution. – Before the Knights of Columbus, New York City, October 12, 1915

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WHILE IT IS APPROPRIATE TO DISCUSS THE MORAL DIMENSIONS OF PUBLIC POLICY ISSUES, RELIGIOUS DOCTRINE ALONE IS NOT AN ACCEPTABLE BASIS FOR GOVERNMENT POLICY.

Because government represents all the people, not just those who share the faith of particular government officials, and because the First Amendment prevents the government from establishing religion, it is inappropriate for government policy to be based solely on religious doctrine. Debates over who speaks for God or who has a superior interpretation of scripture should not form the basis for policymaking.

This does not mean that government officials and other players in policy debates are expected to abandon their faith as the price for taking part in the political process—or that it is inappropriate to talk about moral or religious values in politics. There are moral dimensions to public policy, and not only on so-called “social issues.” Many social justice advocates, for example, argue that budgets are inherently moral documents and apply religious moral insights to contemporary moral dilemmas. Decisions about taxing and spending reflect a community’s priorities and affect people’s lives. Laws prohibiting murder and stealing, as well as laws protecting worker safety and the environment, reflect moral judgments. Those judgments may be rooted in specific religious teaching for some people, but they are also shared broadly across religious and secular lines.

A vivid example: civil rights leader Martin Luther King Jr. drew on his faith and used scriptural language in his speeches advocating for civil rights, but he also rooted his views in values contained in America’s founding

documents, such as equality under the law, that could appeal to, and were accessible to, all Americans.

In contrast, some elected officials have cited the Bible story of the great flood as a definitive argument against government policy to address global warming. At a 2009 hearing, Rep. John Shimkus cited God’s promise to Noah not to destroy the earth, saying “I believe that’s the infallible word of God and that’s the way it’s gonna be for his creation.” That argument may be compelling for people who read the Bible the same way, but it would be wrong to rely on a particular interpretation of any holy scripture to determine policy on any issue, whether on the environment or on U.S. foreign policy in the Middle East.

Some references to religious ideals may offer insight and moral inspiration even to those who do not share the speaker’s specific religious beliefs. But if only a religious justification is offered for a particular policy, such as a scriptural text or a claim to know God’s position on an issue, there is no real opportunity for debating the policy in the free market of ideas: someone with an opposing view is put in the position of being portrayed as an opponent of God and challenging a proponent’s understanding of God.

In 2006, Maryland State Senator and American University law professor Jamie Raskin was asked to testify before a Maryland senate committee considering a proposed amendment to the state constitution to prohibit same-sex couples from getting married. Sen. Nancy Jacobs declared, “As I read Biblical principles, marriage was intended, ordained, and started by God—that is my belief. For me, this is an issue solely based on religious principles.” Said Raskin, “People place their hand on the Bible and swear to uphold the Constitution; they don’t put their hand on the Constitution and swear to uphold the Bible.”

Politicians may discuss the impact of their religious beliefs on their approach to a given issue. But they must respect that not all Americans share their faith, and that even Americans who share their faith might well disagree with their political position on any given issue. As Mark Hall, a professor at George Fox University, a Christian school, stated at a Heritage Foundation event, “We need to be very careful judging whether or not someone is a sincere Christian based on their vote” on issues like health care and tax cuts. “In other words, I think good, sincere followers of Christ could disagree on those policies.” Too often, though, those who claim to speak for God portray their political opponents as not only wrong, but evil.

This is an area in which there is a clear distinction between what is legal and what is wise or responsible. Claims to speak for God in public policy are protected as free speech by the First Amendment, but that does not mean they will lead to constructive debate or effective policy.

3

PUBLIC OFFICIALS HAVE EVERY RIGHT TO EXPRESS THEIR PERSONAL RELIGIOUS BELIEFS, AND NO RIGHT TO USE THE POWER OF THEIR OFFICE TO PROSELYTIZE OR COERCE OTHERS TO ADOPT ANY RELIGIOUS BELIEFS OR PRACTICES

Public officials are free to talk about their faith, the role it plays in their lives, and how it influences their approach to issues, but must not use the power of their office to proselytize or impose particular religious beliefs or practices on others.

This principle is sometimes neglected by those who should know better. Some judges, for example, have inappropriately posted statements of religious dogma on the walls of their courtrooms. Former (and running again in 2012) Alabama Chief Justice Roy Moore was removed from office after he defied federal court orders to remove a religious display of the Ten Commandments that he had installed, in the middle of the night, in his courthouse rotunda. The federal courts have affirmed that it is essential to our system of justice that individuals appearing in court are not made to fear that the quality of justice they receive will depend on whether they share a judge's religious beliefs.

Public officials who assert the supremacy of their faith over the faith of others risk alienating some of their constituents. In 2011, the newly sworn in governor of Alabama, Robert Bentley, told the crowd at a Martin Luther King Day observance, "Now I will have to say that, if we don't have the same daddy, we're not brothers and sisters. So anybody here today who has not accepted Jesus Christ as their savior, I'm telling you, you're not my brother and you're not my sister, and I want to be your brother." After a public outcry, in which a spokesperson for the Anti-Defamation League said the governor's comments were "not only offensive, but also raise serious questions as to whether non-Christians can expect to receive equal treatment during his tenure as governor," Bentley apologized. Whatever

his intentions, Bentley's remarks turned what should have been a moment of unity into an occasion for divisiveness.

Courts have held that the Constitution does not prohibit officials from making references to religion in their official capacities. Non-denominational references seeking God's blessing or assistance in times of crisis, for example, are generally considered to be legally acceptable expressions of "civic religion." Legislatures are legally permitted to open sessions with prayer (courts are divided as to how nonsectarian such prayer must be), and presidents can choose to include prayer as part of their inaugural services. But even this kind of "civic religion" can provoke divisive controversy and trouble if lawmakers invite clergy who use the legislative platform to proselytize, divide the public or denigrate the beliefs of others.

**ON THE RELATIONSHIP BETWEEN THE
INSTITUTIONS OF CHURCH AND STATE**

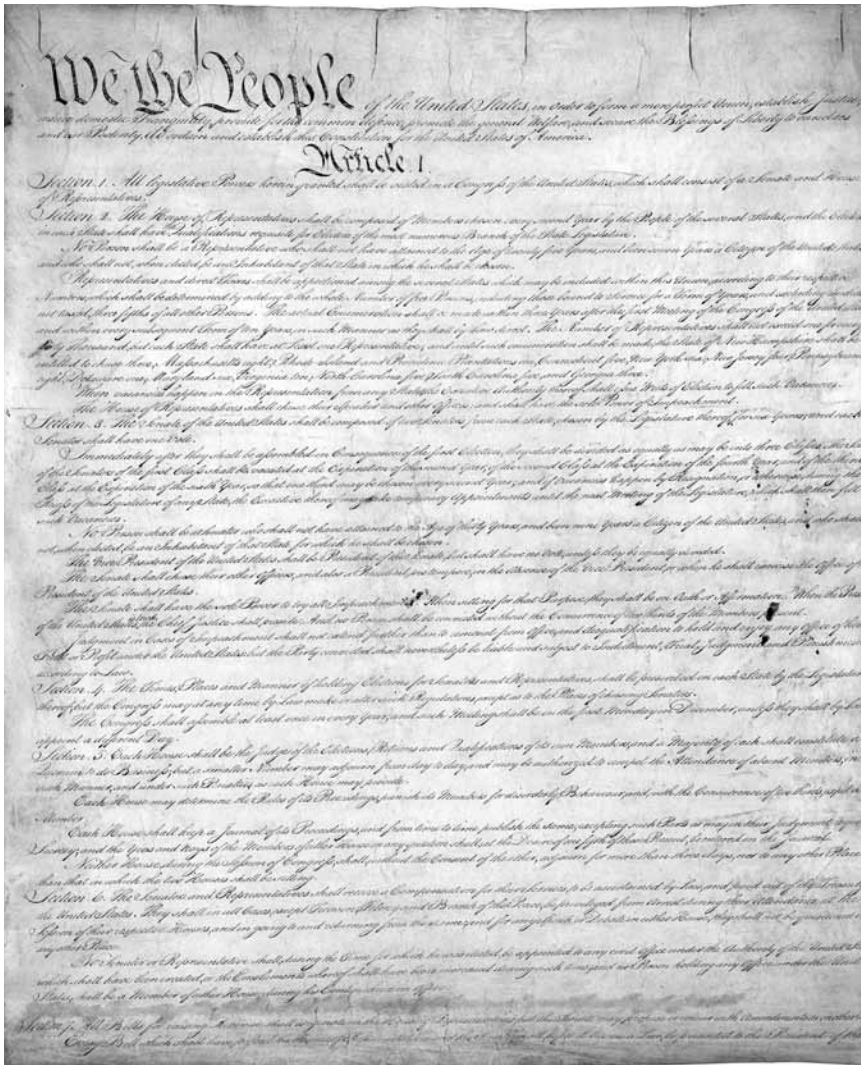
GOVERNMENT INSTITUTIONS MUST SHOW NEITHER OFFICIAL APPROVAL NOR DISAPPROVAL OF RELIGION, OR FAVOR ONE RELIGION OVER ANOTHER

Government should not take sides when it comes to religion, either to favor one particular religion or to favor religious people generally over nonreligious people. This fundamental principle finds its legal roots in the First Amendment to the Constitution. Former Supreme Court Justice Sandra Day O'Connor stated the principle this way in a 1984 case:

The Establishment Clause prohibits government from making adherence to a religion in any way relevant to a person's standing in the political community. Government can run afoul of that prohibition in two principal ways. One is excessive entanglement with religious institutions ... The second and more direct infringement is government endorsement or disapproval of religion. Endorsement sends a message to non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message.

This basic principle of church-state separation continues to be contested by some who argue that it is permissible and desirable for the government to promote or favor religion, a narrative of America going back to the Puritans. Recent policies that would reflect inappropriate government favoritism toward religion include prisoners getting favored treatment for enrolling in religious programs or most instances of government-funded religious organizations receiving special exemptions from laws and regulations that would reflect inappropriate government favoritism toward religion include prisoners getting favored treatment for enrolling in religious programs or most instances of government-funded religious organizations receiving special exemptions from laws and regulations that apply to other nonprofit organizations. Houses of worship are exempt from civil rights laws in some areas directly related to their religious mission—notably the hiring of clergy—but they do not and should not get a blanket exemption from government regulation.

Public schools are often an arena for conflicts on church-state issues. Students in public schools are free to share their faith with other students, to pray over lunch, and to start religious clubs if their high school permits other non-curricular clubs. But public schools may not require students to participate in any religious activity. Some religious leaders, policymakers, and school officials have repeatedly tried to use public schools as vehicles for



The Constitution of the United States

propagating religious beliefs and practices, such as having the school day start with prayer over the intercom, which is unacceptable. Such actions send a powerful and inappropriate message to young people who do not share the school administration's officially sanctioned religious beliefs that they are outsiders. In addition, federal courts have repeatedly ruled that public schools may not teach religious beliefs, such as religious creationism, as if it were science, even if those religious beliefs are disguised with terms such as "creation science" or "intelligent design." Public schools may offer students classes that teach about religion and the Bible if they are not taught as religious instruction; in practice, teaching appropriately about religion in public schools is a challenge that requires careful training and oversight.

5

RELIGIOUS INSTITUTIONS MAY COOPERATE WITH GOVERNMENT IN PROGRAMS SUPPORTING THE COMMON GOOD, BUT PUBLIC FUNDS MUST NOT BE USED TO SUPPORT PROSELYTIZING, RELIGIOUS EDUCATION, WORSHIP OR DISCRIMINATION

Religious organizations are vital partners with governments in providing many services, including disaster relief, feeding the hungry and housing the homeless, helping millions of needy Americans and individuals around the globe. Some would argue that the principle of church-state separation prohibits any cooperation between government and religious organizations. But People For the American Way has recognized that "faith-based organizations, with the support of federal funds, make an invaluable contribution to our society through the provision of much-needed social services." That cooperation, however, must not violate the Constitution's religious liberty provisions, including the principle of church-state separation. No one's access to government services should depend on their having to participate in religious activities. Nor should such religious charities allow discrimination to be supported with public funds.

Any government partnership with a religious organization, especially involving taxpayer dollars, ventures into tricky territory. Institutions accepting federal tax dollars must be able to be held accountable for how those funds are spent; some religious organizations choose not to seek

public funds because they believe audits of how funds are used would require too much entanglement between themselves and the government.

Partnerships between government and religious agencies can be structured in ways that allow society to benefit from organizations' energy and expertise, while upholding principles of religious liberty and accountability for the use of taxpayer funds. For years, to avoid direct government funding of religion and to protect religious entities from intrusive government financial inquiries, federal, state, and local governments did not fund pervasively sectarian entities. Houses of worship that wanted to tap into public funding could form a separate nonprofit organization to carry out services. These —nonprofits would abide by all the rules and regulations as other nonprofits. This step helped ensure federal dollars were not used in violation of church-state separation and helped insulate congregations themselves from the kind of oversight, audits and regulation that should come with the receipt of federal funds.

The administration of President George W. Bush, backed by then-recent Supreme Court decisions reinterpreting the First Amendment to not prohibit public aid to pervasively sectarian organizations, reversed these efforts. Following up on limited "charitable choice" legislation during the Clinton era, the Bush Administration set out to change the longstanding relationship between the federal government and private religious organizations by actively seeking opportunities to abolish safeguards that prevented government funding of houses of worship. The Bush administration also reinterpreted the law to allow recipients of federal funds to engage in religious discrimination when using tax dollars to hire social service providers, even where expressly prohibited by statute. A church getting tax dollars to support a feeding program, for example, could declare "Christians only" in hiring for cooks or janitorial staff.

President Obama campaigned on a pledge to reverse these Bush-era policies. His Office of Faith-based and Neighborhood Partnerships has received input from a diverse set of religious and civil rights organizations and has made some important changes meant to provide stronger accountability for the use of tax dollars and stronger protection for the religious rights of recipients of government services, though it is not clear if the implementation of those changes will mean a real difference in oversight. Unfortunately, the Obama administration failed to act on its pledge to prevent federally funded hiring discrimination and direct funding of houses of worship, over the repeated objections of many religious, education, civil rights, and health organizations.

It is essential that federal policy regarding taxpayer-funded partnerships with religious organizations be modified to strengthen accountability, uphold religious liberty and church-state separation, and prevent government-funded religious discrimination.

6

GOVERNMENT HAS A RIGHT TO DEMAND THAT RELIGIOUS INSTITUTIONS AND INDIVIDUALS COMPLY WITH REASONABLE REGULATION AND SOCIAL POLICY

The First Amendment’s twin religious liberty clauses provide that, generally speaking, government must neither promote nor interfere with religion. Of course, these principles can come into tension when religious beliefs and institutions are affected by generally applicable laws, such as the tax code, parking regulations, and pollution control laws. Sorting out conflicting constitutional claims regarding the establishment and free expression clauses is often complex. This is an area of law with which Congress and the federal courts have wrestled over the years.

During the 1980s, the Supreme Court began to allow the government greater leeway to pass laws that interfered with religious activities as long as the law was not targeted specifically at religious activity. In 1990, in the controversial *Smith* decision, the Court upheld an Oregon law that allowed no religious exemption to a ban on the use of peyote, a drug that is essential to some Native American religious practices. In the majority opinion, Justice Antonin Scalia wrote that requiring a religious exemption “would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.”

The decision disturbed many Americans who believed that it weakened protections for religious liberty. A religiously and politically diverse group of organizations, including People For the American Way, backed the Religious Freedom Restoration Act (RFRA), which was passed in 1993. RFRA stated that government could not substantially burden the exercise of a person’s religious beliefs without showing that the law advanced a compelling government interest in the least restrictive way possible.

Several years later, in 1997, the Supreme Court called RFRA’s application to state and local governments an unconstitutional overreach of congressional power; the law still applies to the federal government.

Efforts to find a balance between religious liberty and the government’s interest in preventing discrimination had also reached the Supreme Court in 1983, in a case testing whether the federal government could withdraw the tax exemption of Bob Jones University over racially discriminatory policies that school officials said were grounded in sincerely held religious beliefs. The Court found that the IRS and Congress had the authority to deny the school’s tax-exempt status.

More recently, courts and legislatures have been grappling with how to balance efforts to end legal discrimination against same-sex couples who want to get married with the rights of congregations and religious institutions that have religious objections to marriage by same-sex couples. There is virtually unanimous consensus that the First Amendment guarantees all houses of worship the right to decide which relationships will or will not get their religious blessing. State laws that grant same-sex couples the right to civil marriage do not require that any religious congregation perform or bless weddings for same-sex couples; many explicitly affirm the First Amendment right of denominations and congregations not to perform such ceremonies.

There is far less consensus on the application of laws that ban anti-gay discrimination or provide legal recognition to same-sex relationships. Among the states that have adopted some form of relationship recognition for same-sex couples—whether marriage equality, civil unions, or domestic partnerships—a range of “religious exemptions” has been adopted.

The U.S. Conference of Catholic Bishops and others argue that religiously affiliated institutions, or even individual business owners, should be permitted to refuse to recognize or do business with couples whose relationships have been granted legal recognition and protection. And they contend, for example, that religiously-affiliated adoption agencies should be free to discriminate against same-sex couples even if they receive funding from governments that ban such discrimination. The same kinds of issues arise in federal and state-level debates over so-called “conscience clauses,” which weigh competing interests such as a woman’s access to birth control, emergency contraception, and other reproductive health care services against the ability of religiously affiliated hospitals and individual pharmacists to claim religious grounds for refusing to provide

those services, such as filling a woman's prescription for birth control. Conservatives cried "war on religion" when the Obama administration promulgated rules requiring coverage of contraception in health care plans—and continued to protest after the administration broadened an exemption for religiously affiliated organizations—although more than half the states already had similar court-approved requirements in place and the Supreme Court has repeatedly held that women's access to contraception is a basic constitutionally protected right.

Similar debates were held during the 1960s over the applicability of civil rights laws to private businesses. A central question was whether the government could require restaurant owners not to discriminate on the basis of race. The nation and its courts decided then that society's interest in ending racial discrimination was more important than the right of a business owner to discriminate against patrons on the basis of race. People For the American Way believes that the same general principle should apply in cases involving legal recognition for same-sex partners and access to health care.

Another area of controversy concerns the regulation of nonprofit organizations' political activities. Churches and other houses of worship are tax-exempt nonprofit organizations, meaning they do not pay income taxes on funds they raise to support their religious operations or carry out charitable activities; donors can take a deduction on their taxes, as they can for contributions to other tax-exempt charities.

Tax-exempt charities that qualify to receive tax deductible contributions are prohibited from engaging in electoral politics; this provision applies to churches as well as to other kinds of charitable organizations. But some religious and political leaders argue that such regulations violate the First Amendment rights of religious leaders and congregations. Some conservative religious and legal groups are urging pastors and churches to defy regulations on political activity and endorse candidates in violation of their churches' tax-exempt status. They hope to win legal rulings that will give churches free rein to ignore restrictions on electoral policies that apply to tax-exempt groups across the board. Those efforts are misguided. Applying to churches and religious organizations the same rules that apply to other nonprofits that benefit from tax-exempt status is not an infringement on religious liberty; it is simply asking all tax-exempt organizations, religious and nonreligious, to play by the same rules. Further, allowing churches to engage in electoral activity would result in a massive run around some of the few key campaign finance restrictions

that remain after Citizens United, with contributors able to funnel tax-deductible campaign contributions through houses of worship.

7

PUBLIC OFFICIALS CANNOT USE THEIR RELIGIOUS BELIEFS AS A RATIONALE FOR FAILING TO UPHOLD THE DUTIES OF THEIR OFFICE

As individuals, public officials and public employees enjoy the same religious liberty protections as all Americans. It is appropriate, and required by law, for their agencies to make reasonable accommodation for employees' religious beliefs such as time off to celebrate religious holidays.

However, a public official has no right to cite religious beliefs as a reason for failing to uphold the duties of their office or for discriminating against some constituents in carrying out their official duties.

Former Virginia Gov. Tim Kaine made it clear during his 2005 campaign that he was personally opposed to the death penalty, in part because of the teachings of his Catholic faith. However, he pledged to voters that his religious beliefs would not prevent him from applying the death penalty when called for by the laws of his state; as governor he oversaw 11 executions.

As states have begun to adopt laws recognizing the right of same-sex couples to marry, some town clerks with religious objections have resigned; others, presumably, have decided that they are able to fulfill their civil duty to issue marriage licenses in spite of their own religious beliefs. But at least one town clerk in New York chose in 2011 to stay in office while refusing to carry out her duty to grant licenses as required by state law. No American should be denied access to services provided by the government—or fear that he or she will be treated differently—based on whether a particular civil servant personally disapproves of the law or of the recipients of those services. In 2009, a Louisiana Justice of the Peace admitted that he refused to marry interracial couples because, he said, "I just don't believe in mixing the races that way." After a public outcry, he resigned his position.



Ex-servicemen at dinner on Rosh Hashanah in front of a synagogue at Kings Park, NY, 1923

ON DISCUSSION OF RELIGION IN THE POLITICAL ARENA

POLITICAL DISCOURSE SHOULD RESPECT RELIGIOUS PLURALISM

Peaceful and respectful religious pluralism is a defining characteristic of the United States of America. Public officials and others should reject the divisive and historically inaccurate claim that the U.S. is or was founded to be a Christian nation. They should reject equally any suggestions that it is inappropriate for people with strong faith commitments or people with no faith commitment to be engaged in the political process.

In the current political climate, this rule is frequently violated. For example, in recent years, there has been a significant movement to demonize American Muslims. Some public figures, such as American Family Association spokesperson Bryan Fischer, have argued that Muslims should no longer be allowed to build mosques in America and should not be allowed to immigrate unless they convert to Christianity. These positions are directly contrary to the principles of religious liberty. Some activists even argue that the First Amendment was intended only to protect Christians and does not apply at all to Muslims. History clearly tells us otherwise; the founders were explicit that the kind of government they were creating would indeed protect the liberties of religious minorities like Jews, Muslims and Hindus, as well as Christians of all denominations.

Muslims are not the only target. As the 2012 presidential race heated up, a pastor who introduced Texas Gov. Rick Perry at a Religious Right political conference attacked the Mormon faith of former Massachusetts Gov. Mitt Romney, calling it a cult. A spokesperson for the American Family Association, one of the sponsors of the conference, asserted that Mormons' religious freedom is not protected under the First Amendment. Political commentators, both conservative and progressive, called such comments inappropriate and out of place for a political gathering.

But in March 2012, presidential candidate Rick Santorum appeared at a religious gathering applauding a speech in which the minister not only defined America as a Christian nation but also suggested that Muslims and Buddhists ought to leave the country—and then he bestowed his blessing on the former Senator.



Church in Fairfax, VA, 1861

American communities benefit from respectful interfaith cooperation on issues concerning the common good. Divisive rhetoric implying that people of any particular faith or of no faith are somehow more or less American, more or less entitled to equal treatment under the law, undermines that potential. Fortunately, according to a 2011 poll by the Public Religion Research Institute, most Americans agree that the country was founded to protect religious liberty for everyone, including those who belong to “unpopular” religions.

9

POLITICAL FIGURES AND THE MEDIA SHOULD NOT TREAT RELIGIOUS CONSTITUENCIES AS MONOLITHIC; POLITICAL AND RELIGIOUS LEADERS SHOULD NOT CLAIM TO SPEAK FOR AN ENTIRE RELIGIOUS COMMUNITY ON PUBLIC POLICY ISSUES

Reporters, politicians, and activists from across the political spectrum are often guilty of treating religious communities as monolithic. Some liberals may wrongly portray all evangelical Christians as anti-gay zealots. Conservatives may claim that they speak for the “Christian” position on an issue, or even more broadly that they represent “people of faith” in the political arena. America’s religious landscape is extraordinarily diverse, so no one can credibly claim to speak for all “people of faith” or even all people of a particular faith. Journalists have a responsibility not to simply accept or repeat, but rather to challenge, any leader’s claims to speak on behalf of an entire faith tradition.

Even within major religious groups such as Roman Catholics or Mainline Protestants, adherents hold diverse religious as well as political views. While evangelical Christians do tend to be more politically conservative and are more likely than others to vote Republican, some evangelical Christians are liberal Democrats. Younger evangelicals are far more likely to support equality for Lesbian, Gay, Bisexual and Transgender people than older evangelicals. And while Roman Catholic bishops side with conservatives in opposing reproductive choice and LGBT equality, they tend to take more liberal positions on issues such as economic justice, environmental protection, immigration and workers’ rights. Moreover, there is no one “Catholic” position on any of these issues: Surveys indicate that there is a wide range of opinion among American Catholics, and that on some



Mosque in Dearborn Heights, MI, US. Photo by Just Us 3

issues, like access to contraception and LGBT equality, the vast majority of American Catholics do not take the same political position as the church hierarchy. The U.S. Conference of Catholic Bishops may claim to speak for the church as a whole, but polls show that on many issues they do not speak for the majority of American Catholics.

10

POLITICIANS AND MEDIA SHOULD NOT EQUATE ORTHODOXY WITH AUTHENTICITY

Journalists and others should avoid falling into the trap of equating religious orthodoxy with religious authenticity. When religious voices are part of a public conversation, it is wrong, for example, to assume or imply that Orthodox Jews are somehow more religiously authentic than Reform Jews, or that “liberal” Christians are somehow less authentically Christian than those who claim to follow a literal interpretation of scripture.

All religious traditions have within them multiple streams of belief about the meaning of scriptures, the nature of the divine, the application of the faith’s teachings to contemporary social issues, and the proper role for religion in public life. And these beliefs can change over time: a century ago, many evangelical Christian leaders believed that it was wrong to be involved in politics; today, many evangelical leaders argue that political involvement is a religious duty. It is not the role of politicians or political reporters to assert whether or not someone in public life is a true adherent of a religion—a “real Christian,” for example—based on that person’s religious or political views.

11

RELIGIOUS AND POLITICAL LEADERS SHOULD NOT “CRY WOLF” ABOUT RELIGIOUS PERSECUTION

Too many people in American political life make irresponsible claims about religious persecution and threats to religious liberty. The *American Patriot’s Bible*, for example, declares “Our freedom to serve God and to promote the gospel in our land is disintegrating. We are engaged in

a great spiritual battle that threatens our country, our families, and our lives.” Some conservatives go so far as to claim that America is on the verge of criminalizing Christianity. During debate over federal hate crimes legislation in 2007 and 2009, some Religious Right leaders declared that the law’s passage would lead to preachers being dragged from their pulpits and thrown into jail if they preached what they believe the Bible says about homosexuality.

One significant example of crying wolf is the “Manhattan Declaration,” a 2009 manifesto produced by several conservative leaders, endorsed by hundreds of others, and signed (its backers claim) by hundreds of thousands of individuals. The Declaration and its authors suggest that the threat to religious liberty in America is dire and that Christians may soon be forced to engage in civil disobedience against a tyrannical government. Some even suggest that American Christians may be forced to pay the “ultimate price” of martyrdom. Given that in many parts of the world, Christians and people of other faiths are actively persecuted and killed for their religious beliefs, it’s shameful that these privileged and powerful public figures pretend they run the same risk for their anti-gay and anti-abortion advocacy in America. It isn’t anti-choice activists in America who have been paying the “ultimate price,” but doctors and other workers at clinics providing women in America with medical care. The rhetoric of the Manhattan Declaration and its authors demeans the real victims of religious persecution in areas of the world that are not blessed with the freedoms we enjoy as Americans, and it poisons our own political climate.

Another wolf-crier is former Sen. Rick Santorum, who in an address challenging John F. Kennedy’s historic speech affirming separation of church and state, charged that Kennedy emboldened secularists who want a public square “cleansed of all religious wisdom and the voice of religious people of all faiths.” Santorum warned against a movement that he said is “repressing or banishing people of faith from having a say in government.” These all-too-typical charges echo the claims made by some Religious Right groups that Democrats who opposed confirmation of some of President Bush’s judicial nominees were trying to keep people of faith off the courts. More recently, many critics of President Obama have attacked not only the sincerity of his faith, but also his commitment to religious liberty, accusing him of waging a “war on religion.” Such false charges are a form of religious McCarthyism that should be rejected as irresponsible public discourse.



Clinton County Courthouse, Courthouse Square, Clinton, IA

Supporting separation of church and state is not an attack on religious freedom. Disagreement is not the same as discrimination. Having your political positions, strategies, and tactics criticized publicly does not amount to religious persecution simply because you claim that your positions are grounded in religious belief. In addition, religious beliefs themselves are not immune from appropriate criticism when they are marshaled as arguments in policy debates. For example, it is not religious bigotry or intolerance to note that many Christians would disagree with activist David Barton's claims that Jesus and the Bible oppose progressive taxation and collective bargaining.

Inflammatory charges about religious persecution can lead to an angrier and more divisive political arena. If you believe your political opponents are actually out to take away your religious freedom, shut down your church, and literally criminalize Christianity—goals that some Religious Right figures attribute to political liberals—you have little reason to treat your opponents civilly or engage in a search for constructive common ground or compromise. Creating that kind of environment is not good for our country.

It is possible to have a vigorous debate about political issues and about the separation of church and state without resorting to falsehoods about religious persecution.

12

RELIGION SHOULD NOT BE USED AS A POLITICAL CLUB.

Most Americans are accustomed to a significant level of religious language in the public arena. Brian Taylor of James Madison University says, “the candidate talking the most about religion in the general campaign won in every cycle from 1976—2008.” Candidates should feel free to talk about their faith, but should also be free to choose not to talk about the details of their religious beliefs. Candidates should not denigrate the faith of others.

More than two hundred years ago, when Thomas Jefferson was campaigning for the presidency, his political foes launched vicious attacks on his religious beliefs. One even charged that if Jefferson were elected, “We may see the Bible cast into a bonfire, the vessels of the sacramental supper borne by an ass in public procession, and our children, either wheedled or terrified,

united in chanting mockeries against God.” Jefferson refused to be drawn into a public discussion of his religious beliefs, saying privately that the clergy attacking him “had got a smell of union between church and state.”

More than two centuries later, the spirit of Jefferson’s opponents lives on. Assem Shukla of the Hindu American Foundation has observed that “too many politicians are using their bully pulpits to bully those of other faiths.” Politicians should not declare or suggest in a political context that their religion is superior to all others, or that their religion is more authentic, or that their opponents’ faith is less sincere or significant. In America there is, and should be, no hierarchy of faith for political purposes. Some of President Obama’s critics suggest he is not a Christian, as he professes, but a “stealth” Muslim; others insist that he is not a “real Christian” based on his political positions. That kind of rhetoric has no place in our civic life.

Religious leaders who turn questions of faith into a political club should carefully consider the consequences of their actions. Some Catholic bishops, for example, have publicly declared that they would refuse to offer communion to public officials who vote for policies that allow women legal access to abortion; others disagree with the tactic. Bishops are, of course, free to make such decisions involving church matters. But those who use the sacraments to pressure politicians to vote a certain way on public policy issues should consider whether they risk fueling the kind of anti-Catholic sentiment that John F. Kennedy challenged 50 years ago. Some Kennedy opponents suggested that a Catholic president could not be trusted because he would take marching orders from the Vatican. In one of the most significant political speeches of the 20th century, Kennedy challenged such bigotry and affirmed both his faith and his commitment to the separation of church and state.

Unfortunately, some conservative Catholic leaders have repudiated Kennedy’s historic stance. But for Americans who cherish religious liberty and respectful pluralism, and who yearn for elections that do not devolve into religious competitions or name-calling, Kennedy’s call for a robust separation of church and state, and for candidates to be judged on their own merits without regard to their religious identity or beliefs, speaks compellingly to us today.

Americans who support religious freedom—and the pillars of church-state separation and free exercise of religion that uphold religious liberty—are inheritors of principles enshrined by our founders in the Constitution and Bill of Rights. These principles become ever more essential to the health of our civic discourse and the strength of our communities as we continue to become a more diverse and pluralistic nation.

