

# FREEDOM FROM RELIGION *foundation*

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October 28, 2021

**SENT VIA EMAIL & U.S. MAIL: [governoroffice@iq.ok.gov](mailto:governoroffice@iq.ok.gov)**

The Honorable J. Kevin Stitt  
Governor  
State of Oklahoma  
Oklahoma State Capitol  
2300 N. Lincoln Blvd.  
Oklahoma City, Oklahoma 73105

Re: Religious justification for condemning non-binary birth certificate

Dear Governor Stitt:

We are writing on behalf of the Freedom From Religion Foundation (FFRF) and our Oklahoma membership to object to your recent religious statements against the issuance of a non-binary birth certificate. FFRF is a national nonprofit organization with more than 35,000 members across the country, including in Oklahoma. FFRF's purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

As you know, the Oklahoma State Department of Health recently entered into a settlement that included issuing a gender-neutral birth certificate. You reportedly responded by saying, "I believe that people are created by God to be male or female. Period. There is no such thing as non-binary sex and I wholeheartedly condemn the purported OSDH court settlement that was entered into by rogue activists who acted without receiving proper approval or oversight."<sup>1</sup> You also reportedly stated that you would take any action necessary to protect "Oklahoma values and our way of life."<sup>2</sup>

We have written to you repeatedly to explain why it is unconstitutional to use your public office to advance your personal religion. Your recent comments underscore the importance of honoring the constitutional principle of separation between state and church because you are now vowing to undermine official state action based solely on your personal religious beliefs.

A basic tenet of the Establishment Clause of the First Amendment, and the first prong of the *Lemon* test, is that government actions must have a "secular purpose."<sup>3</sup> The assertion that "people are created by God to be male or female" is *your* religious belief, not that of the State of Oklahoma (which may not take sides on religion) or of all Oklahomans. It is beyond your authority as a secular government official to take any governmental action based on a personal religious belief.

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<sup>1</sup> Carmen Forman, *Political fight brewing after Oklahoma issues first gender neutral birth certificate*, The Oklahoman (Oct. 21, 2021), [www.oklahoman.com/story/news/2021/10/21/oklahoma-birth-certificate-non-binary-gender-sex-lgbt/6112334001/](http://www.oklahoman.com/story/news/2021/10/21/oklahoma-birth-certificate-non-binary-gender-sex-lgbt/6112334001/).

<sup>2</sup> *Id.*

<sup>3</sup> 403 U.S. 602 (1971) ("First, the [government action] must have a secular legislative purpose").

Issuing gender-neutral birth certificates has the clear benefit of accurately reflecting non-binary individuals' gender identities. This avoids confusion created by inaccurate birth certificates and helps to de-stigmatize gender nonconforming people, a marginalized minority who constantly have to confront religious zealots saying things like, "People are created by God to be male or female." Around the globe, passports are increasingly being offered with gender-neutral options.<sup>4</sup>

The only legitimate reason to challenge such a decision would be if there were some practical, secular problem with issuing gender-neutral birth certificates. If there were such arguments, you would make them. Instead, you point to your god. This is yet another reason why our Founders were wise to steer clear of theocratic rule by officially separating state and church.

You represent *all* Oklahomans. Twenty-four percent of Americans identify as nonreligious, and another six percent are non-Christians.<sup>5</sup> Forty-four percent of millennials and younger who are non-Christian, most of them likewise without religion.<sup>6</sup> Oklahomans who do not share your religious beliefs are entitled to a secular government by the U.S. Constitution, a godless document that you swore to uphold when you took office.

Please remember that the separation between state and church is one of the most fundamental principles of our system of government. The Supreme Court has specifically stated, "If there is any fixed star in our constitutional constellation, it is that **no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.**" *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) (emphasis added). The same document that protects your right to hold religious beliefs, and to share them in your personal capacity, prohibits you from using those beliefs as the basis for government action.

Please don't allow personal religious beliefs to interfere with your judgment of what is best for all Oklahomans based on reason, science, and facts.

Very truly,



Annie Laurie Gaylor & Dan Barker  
Co-Presidents  
ALG/DB:rdj

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<sup>4</sup> Joe Hernandez, The State Department issues the first passport with a nonbinary gender "X" option, National Public Radio (Oct. 27, 2021),

[www.npr.org/2021/10/27/1049690803/state-department-first-passport-with-nonbinary-gender-x-option](http://www.npr.org/2021/10/27/1049690803/state-department-first-passport-with-nonbinary-gender-x-option).

<sup>5</sup> Robert P. Jones; Daniel Cox, America's Changing Religious Identity, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at [www.prrri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf](http://www.prrri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf).

<sup>6</sup> America's Changing Religious Landscape, PEW RESEARCH CENTER (May 12, 2015), available at [www.pewforum.org/2015/05/12/americas-changing-religious-landscape/](http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/).