

# FREEDOM FROM RELIGION *foundation*

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October 21, 2021

## SENT VIA U.S. MAIL

The Honorable Joseph Biden  
The President  
White House  
1600 Pennsylvania Avenue  
Washington, DC 20500

The Honorable Antony Blinken  
Secretary of State  
US Department of State  
2201 C Street NW  
Washington, DC 20520

Re: Severing diplomatic ties with the Holy See

Dear Mr. President and Mr. Secretary:

On behalf of our 35,000 nonreligious members, our national state/church watchdog respectfully requests that you discontinue the unconstitutional and inappropriate ambassadorship to the “Holy See.” This state/church entanglement was unwisely created by the Reagan Administration in 1984, largely to partner against the Soviet Union, and it is long past time to sever it.

FFRF objected strenuously to this unprecedented entanglement between the government of the United States and the hierarchy of one sectarian denomination. As we pointed out then to President Reagan, official diplomatic relations between our country and the Vatican inevitably prefers and favors Roman Catholicism over other religions and religion over nonreligion. The U.S. Department of State website refers to the Holy See as “the universal government of the Catholic Church . . . the supreme body of government of the Catholic Church.”<sup>1</sup> It is neither the business nor the concern of the U.S. government to recognize the authority, jurisdiction or sovereignty vested in the pope and his advisers to direct the worldwide Roman Catholic Church.

We take the occasion of the nomination of Joseph Donnelly to be Vatican ambassador to renew our objections and request that the U.S. government end diplomatic ties with a church denomination—not a country, particularly as it is a religious institution that abuses the diplomatic privilege to obstruct justice and progress.<sup>2</sup> There are grave

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<sup>1</sup> “U.S. Relations With the Holy See,” Bureau of European and Eurasian Affairs Fact Sheet April 16, 2015, *available at* [www.state.gov/r/pa/ei/bgn/3819.htm](http://www.state.gov/r/pa/ei/bgn/3819.htm).

<sup>2</sup> Brian Roewe, “Memo: Vatican nuncio quashed sexual misconduct inquiry of Archbishop Nienstedt,” *The National Catholic Reporter*, July 21, 2016, *available at* [bit.ly/2nwrX5M](http://bit.ly/2nwrX5M).

constitutional concerns raised by granting a particular Christian denomination and only that denomination privileges otherwise reserved solely for world nations.

Your nominee is Roman Catholic, and most peculiarly, if he is confirmed he will follow in the footsteps of every prior ambassador to the Vatican, 11 so far, who all “happen” to be Catholic. Yet our Constitution precludes any religious test for public office.<sup>3</sup> As a columnist for a Catholic periodical revealingly observes, “Donnelly likely will pass muster with the Vatican on moral grounds, as an anti-abortion Democrat and a faithfully married father of two. . .”<sup>4</sup> It is unseemly to say the least to fill this position only with Roman Catholics who presumably “pass muster” with a religious leader.

**The Vatican has used its diplomatic privileges to obstruct justice by protecting child rapists and war criminals.**

The Roman Catholic Church has routinely behaved as if it believes itself to be above secular law. It shields criminals, including rapists and war criminals, from secular authorities. Instead, the church hierarchy has historically shuffled predators from parish to parish, and the Vatican has used its international reach and diplomatic ties to protect them.

The U.S. government, in recognizing the diplomatic status of the Vatican, is aiding this criminality. The U.S. recognizes papal ambassadors, called “nuncios,” granting immunity to these officials. The nuncios are taking advantage of that status. For instance, during the investigation of child rape and sexual abuse in the Archdiocese of St. Paul (Minn.):

. . . in April 2014 Archbishop Carlo Maria Vigano, apostolic nuncio to the U.S., ordered two auxiliary bishops to have a St. Paul law firm quickly wrap its investigation and later that month instructed them to destroy a letter they had sent Vigano pushing back on his request.<sup>5</sup>

The nuncio, who has privileges such as diplomatic immunity solely because of the U.S.’s official recognition of his church, ordered evidence of child rape to be destroyed. Attorneys for the church and a priest in the church called the action a “cover-up.”<sup>6</sup>

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<sup>3</sup> U.S. Const. Art. 6 cl. 3.

<sup>4</sup> John L. Alley Jr., “With solid Vatican pick, Biden misses chance to think outside the box,” *Crux: Taking the Catholic Pulse*, available at [cruxnow.com/news-analysis/2021/10/with-solid-vatican-pick-biden-misses-chance-to-think-outside-the-box/](https://www.cruxnow.com/news-analysis/2021/10/with-solid-vatican-pick-biden-misses-chance-to-think-outside-the-box/).

<sup>5</sup> Roewe, “Memo: Vatican nuncio quashed sexual misconduct inquiry of Archbishop Nienstedt.”

<sup>6</sup> Marino Eccher, “Vatican ambassador sought to bury Nienstedt misconduct, documents say,” *Pioneer Press*, July 20, 2016, available at [www.twincities.com/2016/07/20/vatican-ambassador-sought-to-bury-nienstedt-misconduct-documents-say/](https://www.twincities.com/2016/07/20/vatican-ambassador-sought-to-bury-nienstedt-misconduct-documents-say/).

This is only one recent instance in which the Catholic Church has abused its unwarranted diplomatic status. During the Murphy Commission’s investigation into the institutionalization of child rape and cover-ups of those crimes in Dublin, Ireland, the Vatican balked at having to answer the Commission’s questions. According to the U.S.’s own cables, which labeled the extent of these crimes “horrific and endemic,”<sup>7</sup> the Vatican sought to shield itself by insisting that the criminal investigation go “through diplomatic channels via letters rogatory.”<sup>8</sup>

The Vatican avoided answering questions by forcing the investigation through opaque, diplomatic processes: “In the end, the Irish government decided not to press the Vatican to reply.”<sup>9</sup>

The Vatican has explicitly relied on this diplomatic status to thwart lawsuits by American victims of priestly abuse and assault. One U.S. cable recounts a 2005 meeting between the U.S. Ambassador James Nicholson and Cardinal Angelo Sodano, Pope John Paul II’s last Secretary of State:

Sodano complained about the “aggressive attorneys” who had started in on the Vatican with the sexual abuse scandal and had also filed suits about Nazi-era gold allegedly acquired by the Holy See. Sodano was confident that, due to the truth of the matters and the principle of sovereign immunity, the Holy See would emerge unscathed from these suits. But the way it was all happening was unsettling to him. “It’s one thing for them to sue bishops,” Sodano said, “but another thing entirely to sue the Holy See.” He asked the Department to urge a respect for the sovereign immunity of the Holy See (as any foreign government) so as to avoid these incidents.<sup>10</sup>

Put even more simply, the Roman Catholic Church has no desire to cooperate with investigations into its finances and crimes. This has been reaffirmed yet again recently when the Archdiocese of Milwaukee announced that it would not fully cooperate with a Wisconsin state DOJ investigation into church abuse.<sup>11</sup> Our government is giving that obstinacy power and even immunity by maintaining diplomatic ties.

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<sup>7</sup> Cable from the American Embassy, Vatican, to U.S. Department of State, Secretary of State, Feb. 26, 2010, *available at* [wikileaks.org/plusd/cables/10VATICAN33\\_a.html](http://wikileaks.org/plusd/cables/10VATICAN33_a.html).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Cable from the American Embassy, Vatican, to U.S. Department of State, Secretary of State, Nov. 25, 2005, *available at* [wikileaks.org/plusd/cables/05VATICAN538\\_a.html](http://wikileaks.org/plusd/cables/05VATICAN538_a.html).

<sup>11</sup> Todd Richmond, “Milwaukee archdiocese won’t cooperate with Wisconsin sex abuse probe,” *Wisconsin State Journal*, June 4, 2021, *available at* [madison.com/wsj/news/local/govt-and-politics/milwaukee-archdiocese-wont-cooperate-with-wisconsin-sex-abuse-probe/article\\_dcb95795-a15d-577f-a830-fc97457af0e7.html](http://madison.com/wsj/news/local/govt-and-politics/milwaukee-archdiocese-wont-cooperate-with-wisconsin-sex-abuse-probe/article_dcb95795-a15d-577f-a830-fc97457af0e7.html).

This obstruction goes back to the most pivotal moments in history. According to Marquette historian Michael Phayer, “with the exception of the very guarded terms of the 1942 Christmas message, Pope Pius did not speak out publicly about the Holocaust; **nor did he disseminate information about it privately through the Vatican’s effective network of nuncios.**”<sup>12</sup> During the earlier Croatian genocide, when the pope might have “restrained the country’s Catholic regime from slaughtering Jews and Orthodox Serbs, he said nothing” and “said nothing about the atrocities against the Poles even when the victims themselves begged him.”<sup>13</sup> They knew, and didn’t tell the world.

After WWII, many governments worked to track down the billions Nazis stole from their victims. In 1998, Israel published a short list of Holocaust-era archives that “have refused or have been uncooperative in sharing information,” a list that included the Vatican. The Vatican ignored the request.<sup>14</sup> As author and journalist Gerald Posner put it, “ultimately, all the Vatican gave survivors and Jewish groups was John Paul’s personal statement of regret over the church’s long role in fostering anti-Semitism.”<sup>15</sup>

Rather than helping to end war crimes and their effect, the Vatican used its international privilege to help war criminals flee and protect them from extradition. From WWII to the Rwandan genocide, the Vatican has used this privilege to frustrate rather than foster justice.<sup>16</sup> Our government should not aid the church in this one-sided, leech-like relationship.

The Vatican’s obstruction and abuse of its diplomatic status occurs at nearly every level, including, as the earlier examples made clear, in the Vatican’s handling of child rape cases, which the New York Times dubbed “denial, legalistic foot-dragging and outright

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<sup>12</sup> Michael Phayer, *The Catholic Church and the Holocaust, 1930–65*, (Indiana University Press, 2000) 54, emphasis added.

<sup>13</sup> *Id.* at 55.

<sup>14</sup> Gerald Posner, *God’s Bankers: A History of Money and Power at the Vatican, 391–92* (Simon & Schuster, 2015).

<sup>15</sup> *Id.* at 394.

<sup>16</sup> *See, e.g.*, Chris McGreal, “The Catholic church must apologise for its role in Rwanda’s genocide,” *The Guardian*, April 8, 2014, “After the genocide, a network of clergy and church organisations brought priests and nuns with blood on their hands in Rwanda to Europe and sheltered them. They included Father Athanase Seromba who ordered the bulldozing of his church with 2,000 Tutsis inside and had the survivors shot. Catholic monks helped him get to Italy, change his name and become a parish priest in Florence.” Available at [www.theguardian.com/commentisfree/2014/apr/08/catholic-church-apologise-failure-rwanda-genocide-vatican](http://www.theguardian.com/commentisfree/2014/apr/08/catholic-church-apologise-failure-rwanda-genocide-vatican). This is an op-ed, but refers and links to many other supporting articles, making it a good place to start on this particular issue.

obstruction.”<sup>17</sup> In early 2014, The UN Committee on the Rights of the Child commented on the Holy See’s second periodic report, which was 14 years late. The CRC noted:

[C]lerics have been involved in the sexual abuse of tens of thousands of children worldwide. The Committee is gravely concerned that the Holy See has not acknowledged the extent of the crimes committed, nor taken the necessary measures to address cases of child sexual abuse and to protect children, and has adopted policies and practices which have enabled the continuation of sexual abuse by clerics and impunity for the perpetrators.<sup>18</sup>

The report also correctly maligned the obstructionist tactics of the church, including:

- “Well-known child sexual abusers have been transferred from parish to parish or to other countries in an attempt by the Church to cover-up such crimes.”
- “the Holy See . . . has declined to provide the Committee with data on all cases of child sexual abuse brought to its attention over the reporting period, and the outcome of the internal procedure in these cases.”
- “In cases where child sexual abuse has been addressed by the Holy See, it has been treated as a grave delict against the moral [a crime the Vatican considers serious] through confidential proceedings providing for disciplinary measures which have allowed the vast majority of abusers and almost all those who have concealed child sexual abuse to escape judicial proceedings in States where the abuses were committed.”
- “Due to a code of silence imposed on all members of the clergy under penalty of excommunication, cases of child sexual abuse have hardly ever been reported to the law enforcement authorities in the countries where the crimes were committed. On the contrary, cases of nuns and priests who were ostracized, demoted and defrocked for not respecting the obligation of silence . . .”
- “Reporting to national law enforcement authorities has never been made compulsory and was explicitly rejected in an official letter . . .”

In 2016, the Roman Catholic Church funneled millions into an effort to prevent victims of priestly rape from seeking justice in Pennsylvania, and funded similar efforts in New York, New Jersey, and Maryland.<sup>19</sup> Just a few weeks ago, a new report emerged from

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<sup>17</sup> Laure Goodstein and David Halbfinger, “Church Office Failed to Act on Abuse Scandal,” NYT (July 1, 2010), available at [www.nytimes.com/2010/07/02/world/europe/02pope.html](http://www.nytimes.com/2010/07/02/world/europe/02pope.html).

<sup>18</sup> U.N. Committee on the Rights of the Child, Concluding observations on the second periodic report of the Holy See, ¶ 43, U.N. Doc.CRC/C/VAT/CO/2 (February 25, 2014).

<sup>19</sup> See, e.g., George Joseph, “US Catholic church has spent millions fighting clergy sex abuse accountability,” THE GUARDIAN (May 12, 2016), available at [www.theguardian.com/us-news/2016/may/12/catholic-church-fights-clergy-child-sex-abuse-measures](http://www.theguardian.com/us-news/2016/may/12/catholic-church-fights-clergy-child-sex-abuse-measures).

France estimating that church officials abused more than 300,000 children over the course of 70 years.<sup>20</sup>

The Vatican is an organization—not a country—that wields its political clout for self-preservation, and to push an agenda that is theocratic and antithetical to American values and our Bill of Rights. It is waging a global campaign not just against abortion rights but access to contraception. It does not recognize marriage equality and casts as “sin” LGBTQ relationships. The U.S. government should not and cannot constitutionally aid a religious organization—a church—in such missions.

### **Appointing a church ambassador raises serious constitutional concerns.**

Just as this government would not recognize the authority, jurisdiction, and sovereignty of the Church of Scientology or of the First Presidency and the Quorum of the Twelve Apostles of the Mormon Church,<sup>21</sup> it should never have recognized the political sovereignty of the Roman Catholic Church. There is no legitimate rationale to distinguish the Roman Catholic Church — by bestowing upon the Holy See the status of a sovereign state with international legal personality — from every other religion.

Most religions possess government bodies that exert their authority over millions of members around the globe and control untold wealth, in the form of real property, corporations (both for and nonprofit), artifacts, art and currency. The Watch Tower Bible and Tract Society is a vast, international publishing and construction empire. The LDS Church is the same. Multinational corporations also have international legal personality and effect agreements with states. Should the federal government of the United States establish diplomatic relations with McDonalds? Or Facebook?

In the past, courts have treated the Holy See as a sovereign for limited purposes, such as the Foreign Sovereign Immunities Act, and have said that taxpayers lack standing to challenge expenditures funding this diplomatic relationship. But none of these decisions requires the federal government to maintain a diplomatic relationship and it’s possible that such outcomes would change without that relationship.<sup>22</sup>

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*See also*, U.N. Committee on the Rights of the Child, Concluding observations on the second periodic report of the Holy See, ¶ 60(c), U.N. Doc.CRC/C/VAT/CO/2 (February 25, 2014).

<sup>20</sup> Sylvie Corbet, “French report: 330,000 children victims of church sex abuse,” Associated Press, Oct. 5, 2021, *available at* [apnews.com/article/europe-france-child-abuse-sexual-abuse-by-clergy-religion-ab5da1ff10f905b1c338a6f3427a1c66](https://apnews.com/article/europe-france-child-abuse-sexual-abuse-by-clergy-religion-ab5da1ff10f905b1c338a6f3427a1c66).

<sup>21</sup> *See, e.g., Mormon Church v. United States*, 136 U.S. 1, 45 (1890) (“Deseret, or Utah, had ceased to belong to the Mexican government by the Treaty of Guadalupe Hidalgo, and in 1851 it belonged to the United States, and no government without authority from the United States, express or implied, had any legal right to exist there. The Assembly of Deseret had no power to make any valid law.”).

<sup>22</sup> *See, e.g., O’ Bryan v. Holy See*, 556 F.3d 361, 372 (6th Cir. 2009); *Dale v. Colagiovanni*, 337 F.Supp.2d 825, 832 (S.D.Miss.2004) (vacated on other grounds); *English v. Thorne*, 676 F.Supp. 761,

It is precisely because the recognition of sovereigns is constitutionally committed to the president, without a check from the judiciary, that it is all the more important for the executive branch to tread carefully—to err on the side of the Constitution.

There is simply no legitimate reason for granting Roman Catholicism this special privilege. More importantly, granting this privilege to one particular religion over others creates serious First Amendment problems. This can be seen by imagining the backlash if the U.S. were to grant one branch of Islam this favor.

This unprecedented relationship between the United States and a head of a world religion seriously politicizes the relationship between the United States and one religion. As one former U.S. Ambassador to the Holy See said when opposing the possibility of the nomination of someone like Caroline Kennedy or other pro-choice Catholics to the ambassadorship, “It’s imperative, it’s essential that the person who represents us to the Holy See be a person who has pro-life values. I hope the President doesn’t make that mistake.”<sup>23</sup> Similar attacks have already been mounted against your current nominee, claiming that Donnelly is a poor choice because he is a “rogue” Catholic due to his pro-choice views.<sup>24</sup> We hardly need point out that there can be no office reserved for a Roman Catholic, much less for an anti-abortion Roman Catholic. Doing so is an unmitigated attack on Article VI of the United States Constitution, which bars religious tests for public office.

The unconstitutional nature of this relationship is exemplified in its short history. Diplomatic ties were only officially established by Reagan in 1984 and this was done to help fight Russia during the Cold War. Congress even made such a relationship illegal in 1867, deciding that “no money hereby or otherwise appropriated shall be paid for the support of an American legation at Rome, from and after the thirtieth day of June, eighteen hundred and sixty-seven.”<sup>25</sup> This wasn’t repealed until Reagan wanted to establish the relationship.<sup>26</sup>

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764 (S.D.Miss.1987) (all three of these cases treated the Vatican as a foreign state for the purposes of the FSIA); *Americans United for Separation of Church & State v. Reagan*, 786 F.2d 194, 197 (3d Cir.1986) (no taxpayer standing), *cert. denied sub nom*; *Am. Baptist Churches in the U.S.A. v. Reagan*, 479 U.S. 914 (1986); *Phelps v. Reagan*, 812 F.2d 1293 (10th Cir. 1987).

<sup>23</sup> Alex Spillius, “Vatican blocks Caroline Kennedy appointment as US ambassador,” *The Telegraph*, Apr. 11, 2009.

<sup>24</sup> The Catholic League for Religious and Civil Rights, “Rogue Catholic Picked for Holy See Post,” Oct. 14, 2021, available at [www.catholicleague.org/rogue-catholic-picked-for-holy-see-post/](http://www.catholicleague.org/rogue-catholic-picked-for-holy-see-post/).

<sup>25</sup> Act of Feb. 28, 1867, ch. 99, 14 Stat. 412, 413.

<sup>26</sup> See Act of Nov. 22, 1983, Pub.L. No. 98–164, § 134, 1983 U.S.Code Cong. & Ad.News (97 Stat.) 1017, 1029.

Compounding these constitutional pitfalls is the fact that the Roman Catholic Church attempts to interfere with the secular laws of our nation. The Holy See has used its sovereignty to impose religious law upon the citizens of secular states, to meddle in the political affairs of actual nation-states, to maintain the subhuman status of women around the globe, to thwart consensus and progress at the United Nations, and to shield itself from having to answer for the horrific and systemic campaign of child on a global scale and perpetuated for decades.

The Vatican issues absolutist doctrinal decrees, which include official opposition to many human, civil, and constitutional rights, such as gay marriage, birth control, abortion, embryonic stem cell research, and euthanasia. The church demands that Catholic citizens and Catholic legislators vote en masse, in strict accord with these decrees and in direct contravention of the U.S. Constitution. And, in disgrace to our secular Constitution and our sovereignty as a genuine nation-state, the United States government ostensibly acquiesces in the Roman Catholic Church's usurpation of its own authority, jurisdiction, and sovereignty to govern America. It is a shameful and constitutionally impermissible abdication of authority, jurisdiction and sovereignty. And, it isn't yours to abdicate. It belongs to We the People.

### **Conclusion**

In a letter written shortly after he assumed the Office of the President for the first time in history, George Washington explained that "Religious controversies are always productive of more acrimony and irreconcilable hatreds than those which spring from any other cause: And I was not without hopes that the enlightened and liberal policy of the present age would have put an effectual stop to contentions of this kind."<sup>27</sup> We urge you to reconsider and abolish the Ambassadorship to the Holy See. Your constitutional obligations demand no less.

Most respectfully,



Dan Barker & Annie Laurie Gaylor  
Co-Presidents  
Freedom From Religion Foundation

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<sup>27</sup> From George Washington to Edward Newenham, 22 June 1792. Founders Online, National Archives, [founders.archives.gov/documents/Washington/05-10-02-0324](https://founders.archives.gov/documents/Washington/05-10-02-0324).