

Subject: PUBLIC COMMENT – Draft Report – Freedom From Religion Foundation

The Freedom From Religion Foundation (FFRF) respectfully submits the following comments regarding the draft report issued by the Religious Liberty Commission.

FFRF is a national nonprofit organization with more than 40,000 members and several chapters nationwide. Our purposes are to protect the constitutional principle of separation between state and church and to educate the public on matters relating to nontheism. Our legal department has assisted thousands of Americans whose religious liberty has been infringed by government favoritism toward religion, and we have successfully litigated numerous cases in federal and state courts. Our experience demonstrates that religious liberty is best protected when the government remains neutral toward religion, rather than privileging one faith over others.

Unfortunately, the Commission's draft report does not present a balanced or historically accurate assessment of religious liberty in the United States. Instead, it advances a predetermined ideological agenda that repeatedly mischaracterizes the Establishment Clause, minimizes the rights of religious minorities and nonreligious Americans, and recommends sweeping changes that would erode one of the Constitution's most important protections for individual freedom.

At its core, the report rests on a false premise: that the constitutional separation between religion and government is somehow hostile to religion. The opposite is true. The Establishment Clause protects religious liberty by ensuring that the government neither favors nor disfavors religion. This principle has safeguarded both believers and nonbelievers throughout our nation's history and has helped foster one of the most religiously diverse societies in the world.

The report repeatedly dismisses the longstanding understanding of the Establishment Clause while failing to acknowledge the overwhelming historical evidence that the Framers intentionally supported a broad separation between religion and the government. James Madison warned that government involvement in religion corrupts both institutions. Thomas Jefferson described the First Amendment as building a "wall of separation between church and state." The constitutional commitment to government neutrality toward religion is firmly rooted in our nation's founding principles.

The report also repeatedly conflates private religious exercise with government-sponsored religious activity. Individuals unquestionably possess robust rights to pray, worship, speak about their faith, and exercise their religion. Government officials likewise retain their individual religious rights outside of their official duties. Those rights, however, do not authorize government entities to sponsor religious observances, coerce participation in religious exercises, or use governmental authority to promote one faith over others. The report largely ignores this critical constitutional distinction.

Equally troubling is the Commission's treatment of Americans who do not subscribe to the Commission's preferred religious viewpoint. The report gives scant attention to the rights of atheists, agnostics, humanists, religious minorities, and those who simply wish to be free from

government-sponsored religion. Religious liberty belongs equally to every American, including those who practice no religion at all. A government that favors Christianity necessarily diminishes the equal citizenship of everyone else.

Many of the report's recommendations would further entangle government with religion rather than protecting religious freedom. Among other proposals, it calls for abandoning longstanding First Amendment principles, expanding governmental promotion of religion in public institutions, weakening restrictions on partisan political activity by tax-exempt churches, creating new federal mechanisms dedicated to advancing preferred religious claims, and encouraging judicial appointments based on a particular ideological vision of religious liberty. Taken together, these proposals threaten the constitutional commitment to religious pluralism and equal treatment for believers and nonbelievers alike. **Because these proposals threaten the constitutional rights of millions of Americans, FFRF provides below a point-by-point response to each of the Commission's 12 recommendations.**

The report relies heavily on testimony from witnesses representing one side of deeply contested constitutional questions while giving comparatively little attention to scholars, historians, civil rights advocates, religious minorities, or organizations dedicated to preserving governmental neutrality toward religion. As a result, the report cannot claim to be an objective examination of religious liberty but only an advocacy document supporting a specific political and theological movement.

True religious liberty does not require government support and promotion of religion. It requires government restraint. Americans remain free to pray or not pray, attend religious services or abstain, preach, evangelize, criticize religion, change beliefs, or reject religion altogether precisely because the Constitution prohibits government from taking sides in matters of faith.

For more than 200 years, the First Amendment has safeguarded our nation's extraordinary religious diversity by ensuring that the government neither promotes religion nor interferes with its free exercise. That constitutional balance has enabled Americans of every faith—and none—to live together as equal citizens. The Commission should reaffirm that enduring principle, not undermine it.

Accordingly, FFRF respectfully urges the Commission to substantially revise or withdraw those portions of the draft report that seek to redefine the Establishment Clause, diminish governmental neutrality toward religion, or recommend policies that would privilege particular religious beliefs through governmental action. Any final report should accurately reflect the constitutional text, the historical record, and the equal rights of all Americans, regardless of their religious beliefs or lack thereof.

Respectfully submitted,

The Freedom From Religion Foundation

FFRF's Response to the Commission's 12 Recommendations

1. Instruct the Department of Justice to issue guidance clarifying the proper understanding of the Establishment Clause and separation of church and state.

The commission does not seek clarification; it seeks an administrative end-run around longstanding constitutional doctrine. For decades, the Establishment Clause has protected Americans of every faith and none by preventing the government from officially supporting religion. The commission instead urges the Department of Justice to abandon longstanding constitutional safeguards in favor of an interpretation that permits extensive government promotion of religion, particularly Christianity. Such guidance would erode religious equality, invite government favoritism, and increase constitutional conflict rather than resolve it.

2. Require the DOJ, HHS and EEOC to issue "Know Your Rights" posters regarding religious liberty.

Americans should certainly understand their constitutional rights, but these materials must accurately explain both the Free Exercise Clause and the Establishment Clause. The commission's report consistently presents religious liberty as protecting only religious believers while largely ignoring the equally important rights of nonreligious Americans and religious minorities to be free from government-sponsored religion. Public education materials should emphasize that religious freedom includes the right not to participate in religion and that public officials may not use their positions to promote their personal faith.

3. Require written notice before disciplining public employees for allegedly improper religious expression.

Government employees already enjoy extensive due process protections. This proposal creates a unique procedural privilege for religious expression that is unavailable for virtually any other workplace misconduct. More importantly, it blurs the distinction between private religious expression, which is protected, and official government action, which is not. Public school teachers, coaches, judges, and other officials do not possess a constitutional right to use their governmental authority to promote religion while performing official duties.

4. Create religious liberty hotlines and reporting portals.

Existing federal civil rights enforcement mechanisms already investigate legitimate violations of religious liberty. Creating specialized "religious liberty" hotlines only encourages frivolous complaints whenever government officials comply with constitutional limits on religious promotion. Experience has shown that organizations advocating for expanded religious privilege

frequently characterize neutral enforcement of the Establishment Clause as discrimination. Federal resources should protect everyone's constitutional rights rather than creating redundant systems designed to privilege one category of claims.

5. Nominate judges committed to deciding religious liberty cases “on the merits.”

Judicial nominees should be selected for their commitment to faithfully applying the Constitution, not for advancing any ideological vision of religious liberty. The commission's recommendation implicitly equates deciding cases “on the merits” with reaching outcomes favorable to religious claimants. Courts should remain independent and impartial, applying constitutional text, precedent, and facts without political pressure from either branch of government.

6. Create a DOJ Religious Liberty Task Force.

The Department of Justice already possesses ample authority to enforce federal civil rights laws. Recreating the Justice Department's failed 2018 “Religious Liberty Task Force” would merely repeat a costly exercise in promoting religious privilege rather than protecting genuine religious liberty. The previous task force was largely devoted to advancing claims that individuals and institutions should be exempt from generally applicable laws based on religious objections, while giving scant attention to Establishment Clause violations or the rights of those harmed by government-sponsored religion. A new task force would predictably skew enforcement priorities in the same direction. The federal government should devote equal attention to protecting citizens from government-imposed religion, not merely defending those seeking exemptions from generally applicable laws.

7. Combat antisemitism.

FFRF strongly supports vigorous enforcement of civil rights laws against antisemitism and protection from religious discrimination. Genuine religious liberty requires protecting Jewish Americans, Muslims, Sikhs, Hindus, Christians, atheists, and members of every other belief system from discrimination, harassment, and violence. However, efforts to combat antisemitism should not become a vehicle for restricting protected political speech or criticism of governments or religious institutions.

8. Protect religious Americans from government-led litigation targeting free exercise.

The government should never target individuals because of their religious beliefs. However, governments may and sometimes must enforce neutral laws against religious organizations and individuals when they violate civil rights laws, labor protections, child welfare laws, or other generally applicable statutes. Religious belief does not create immunity from the law. Characterizing ordinary law enforcement as persecution undermines legitimate civil rights protections.

9. Repeal the Johnson Amendment.

The Johnson Amendment protects both churches and the integrity of elections by ensuring that tax-exempt charitable organizations do not become vehicles for partisan political campaigning. Religious organizations remain entirely free to speak about public issues, advocate policy positions, and address moral questions. If churches wish to engage in partisan electoral politics, they may either relinquish their tax-exempt status or establish separate political organizations to conduct that activity, as countless other organizations already do. Taxpayer subsidies should not finance partisan electioneering.

10. Streamline religious accommodations within the military.

Military personnel should receive reasonable religious accommodations whenever doing so does not undermine military readiness, unit cohesion, discipline or the rights of fellow service members. The military's unique mission requires balancing individual liberty with operational effectiveness. Religious accommodations should not permit discrimination, refusal to perform essential duties or conduct that jeopardizes military effectiveness or equal treatment.

The commission's call for expanded religious accommodations is also difficult to reconcile with the Defense Department's recent decision to eliminate approximately 180 recognized religious and nonreligious belief systems from its official affiliation codes. Those codes help ensure that service members' religious needs are identified and accommodated. Removing dozens of minority faiths and nonreligious worldviews makes it more difficult for affected personnel to identify themselves and request appropriate accommodations. Rather than strengthening religious liberty, the administration appears to be privileging favored religious traditions while making it harder for members of minority faiths and nonreligious service members to receive equal recognition and equal treatment. A genuine commitment to religious liberty must protect the rights of all service members, not merely those who adhere to the majority's faith.

11. Restore benefits to service members separated over COVID-19 vaccine objections.

This recommendation ignores the extraordinary public health and national security circumstances surrounding the pandemic. Military vaccination requirements have existed for generations because infectious diseases pose a direct threat to military readiness. While legitimate religious accommodation requests deserve careful consideration, blanket restoration of benefits regardless of individual circumstances would undermine commanders' ability to protect the health and operational readiness of the armed forces and would disregard those who complied with lawful military requirements.

12. Create a Presidential Medal of Religious Liberty and First Freedom Hero Awards.

A government-sponsored award devoted specifically to “religious liberty” risks becoming a vehicle for recognizing individuals who seek religious privilege rather than equal liberty. Existing civilian honors already recognize extraordinary public service. If such an award were created, it should celebrate those who defend the religious freedom of all Americans—including those who uphold church-state separation—not merely those advancing one ideological vision of religious liberty.