

RELIGIOUS LIBERTY OR RELIGIOUS PRIVILEGE?: RECONCILING  
THE RELIGIOUS LIBERTY TASK FORCE WITH THE FIRST  
AMENDMENT

*Steven Chintaman\**

I. INTRODUCTION

Since the inception of the United States of America, the Founding Fathers sought for the concept of religious freedom to be made panned in iron as one of our nation's most sacred principles. Indeed, the First Amendment of the Constitution states that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."<sup>1</sup> Even now, the principles of separation of church and state are contradictory in many respects.<sup>2</sup> Questions still arise regarding the prohibition of the government from officially favoring or disfavoring particular religions or officially advocating particular religious points of view, and President Trump's administration does not turn a blind eye to this concept.

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\* Associate New Developments Editor, *Rutgers Journal of Law and Religion*; J.D. May 2019, *Rutgers Law School*.

<sup>1</sup> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." U.S. CONST. amend. I.

<sup>2</sup> Derek H. Davis, *The Separation of Church and State in the US*, OXFORD UNIVERSITY PRESS (April 23, 2017).

On July 30, 2018, United States' Attorney General, Jeff Sessions, announced at the Department of Justice's Religious Liberty Summit, that the Department of Justice ("DOJ") will be enforcing the creation of a Religious Liberty Task Force.<sup>3</sup> This move by the DOJ prioritizes religious freedom over civil liberties in some cases.<sup>4</sup> According to the memorandum accompanying the announcement, workplace discrimination would be secondary to an employer's rights to hire people who share their beliefs.<sup>5</sup>

The creation of this Religious Liberty Task Force does not seem to give all religions equal footing, but instead seems to be an extension of President Trump's promise to extend protection for Christian values.<sup>6</sup> It follows that the question then turns to whether the DOJ is violating the Establishment Clause of the First Amendment; based on case law it seems that the mission of the Religious Liberty Task Force is severely entangled with religious freedom that may violate the Establishment Clause of

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<sup>3</sup> Tara Isabella Burton, *Jeff Sessions Announces a Religious Liberty Task Force to Combat "Dangerous" Secularism*, VOX (July 31, 2018, 12:10 PM), <https://www.vox.com/identities/2018/7/31/17631110/jeff-sessions-religious-liberty-task-force-memo-christian-nationalism>.

<sup>4</sup> Annalisa Merelli, *Jeff Sessions's New Task Force Puts Freedom of Religion First*, QUARTZ (Aug. 1, 2018), <https://qz.com/1335106/the-department-of-justices-religious-liberty-task-force-will-enforce-these-20-principles/>.

<sup>5</sup> U.S. Dep't of Justice, Memorandum For All Executive Departments And Agencies (2017), <https://www.justice.gov/opa/press-release/file/1001891/download>; Merelli, *supra* note 6.

<sup>6</sup> Burton, *supra* note 5.

the First Amendment.<sup>7</sup> Particularly given the fact that the Supreme Court of the United States and other federal courts have found that exercise of “excessive government entanglement” violated the Establishment Clause.<sup>8</sup>

The announcement of this new Religious Liberty Task Force by the Jeff Sessions is a Trojan Horse claiming to defend religious rights, but instead infringing on the Establishment Clause and effectively declaring that the United States is a nation that promotes one brand of religion.<sup>9</sup> Consequently, the task force will place anti-discrimination laws on a lower tier.<sup>10</sup>

This article will explore two specific issues, first discussing at what point the federal government crosses the line from protecting religious liberties to violating the Establishment Clause of the First Amendment, and whether enforcing the principles of the Religious Liberty Task Force will have the effect of disproportionately favoring or disfavoring other religious groups. Second, this piece will explore Jeff Sessions’ plan to have

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<sup>7</sup> See *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 325, 327 (1987); *Awad v. Ziriax*, 670 F.3d 1111 (10<sup>th</sup> Cir. 2012).

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

<sup>9</sup> Katherine Stewart, *Whose Religious Liberty Is It Anyway?*, NY TIMES (Sept. 8, 2018), <https://www.nytimes.com/2018/09/08/opinion/kavanaugh-supreme-court-religious-liberty.html>.

<sup>10</sup> Merelli, *supra* note 6.

government agencies uphold religious liberties even if it conflicts with anti-discrimination policies.

## II. LEGAL BACKGROUND

The Establishment Clause of the First Amendment was created to protect religious liberty, as “[i]t prohibits government from establishing a religion and coercing Americans to follow it.<sup>11</sup> The Establishment Clause restricts the government from interfering with the decision-making process and internal governance of religious organizations.<sup>12</sup> It also prohibits the government from officially favoring or disfavoring religious groups and advocating specific religious viewpoints.<sup>13</sup> The intent of the Establishment Clause is to keep government on neutral footing when examining religious issues.<sup>14</sup>

In *Lemon v. Kurtzman*, both Pennsylvania and Rhode Island adopted statutes which provided for the state to pay for aspects of non-secular, non-public education.<sup>15</sup> The Pennsylvania statute provided funding for non-public elementary and secondary school teachers’ salaries, textbooks, and instructional materials for

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<sup>11</sup> See *Town of Greece, NY v. Galloway*, 134 S. Ct. 1811, 1819-20 (2014).

<sup>12</sup> *Hosanna-Tabor Evangelical Luthern Church & Sch. v. EEOC*, 132 S.Ct.694, 965 (2012).

<sup>13</sup> *Larson v. Valente*, 456 U.S. 228, 244-46 (1982).

<sup>14</sup> *Id.*

<sup>15</sup> *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

secular subjects.<sup>16</sup> Under the Pennsylvania statute, in order to qualify for reimbursements from the state the school must maintain, “[p]rescribed accounting procedures that identify the separate costs of secular educational services.”<sup>17</sup> The District Court found that appellants, including Lemon, failed to state a claim for relief and held that the act did not violate the Establishment Clause.<sup>18</sup>

The Rhode Island statute provided financial support for non-public elementary schools by supplementing fifteen percent of teachers’ annual salaries.<sup>19</sup> To be eligible for the Rhode Island salary supplement, the recipient must teach in a nonpublic school at which, “[t]he average per-pupil expenditure on secular education is less than the average in the state’s public schools during a specified period.”<sup>20</sup> The state also requires eligible schools to submit financial data.<sup>21</sup> If there were any discrepancies regarding the expenditures in excess of statutory limitations the school’s records were examined in order to access how much of the expenditure was attributed to secular education and to religious

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<sup>16</sup> *Id.* at 609.

<sup>17</sup> *Id.* at 610.

<sup>18</sup> *Id.* at 611-12.

<sup>19</sup> *Id.* at 607-08.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

activity.<sup>22</sup> Additionally, the statute required that any teacher applying for salary supplements must agree in writing to not teach a religious course while receiving such funds.<sup>23</sup> The District Court found that the Rhode Island statute violated the Establishment Clause due to the oversight constraints it placed on teachers, and held that it fostered “excessive government entanglement” between the government and religion.<sup>24</sup>

On appeal to the Supreme Court of the United States, plaintiffs claimed that both statutes violated the separation of church and state and the Establishment Clause of the First Amendment.<sup>25</sup> The Court claimed that the statute must pass a three-prong test in order to avoid violating the Establishment Clause, thereafter known as the *Lemon* test: 1) the statute must have secular purpose; 2) its principal or primary effect must be one that neither promotes nor inhibits religion; and 3) it must not foster “excessive government entanglement.”<sup>26</sup> The Rhode Island statute detailed a level of oversight of teachers and curriculum that required no unnecessary influence of religion into secular

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 609.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 602-03.

subjects that would require the government to become excessively engaged in the education within religious schools.<sup>27</sup> The entanglement of the Pennsylvania statute arises from the restrictions and oversight necessary to ensure teachers play a strictly non-ecclesiastical role.<sup>28</sup> The Court found that both statutes have a secular purpose of ensuring secular education requirements of non-public schools but found the statutes constituted “excessive government entanglement” with religion.<sup>29</sup>

Similarly in *Awad v. Ziriax*, the District Court ultimately ruled that an Oklahoma ballot question embodied a severe degree of “excessive government entanglement.”<sup>30</sup> In *Awad*, Oklahoma had a question on its ballot which would amend its state constitution to prevent the state courts from considering international law or Sharia Law when rendering decisions, and requiring that such courts must rely solely on federal or state law.

<sup>31</sup> The ballot question passed and plaintiff, Muneer Awad, brought suit alleging that the amendment to the state constitution violated the Establishment Clause of the First Amendment.<sup>32</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Awad v. Ziriax*, 670 F.3d 1111, 1117-18 (10th Cir. 2012).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

The District Court applied the *Lemon* test and found that the ballot question fostered an “excessive government entanglement with religion”.<sup>33</sup> Sharia Law involves religious traditions of the Muslim faith that constrain Awad’s practice of his Islamic faith.<sup>34</sup> The District Court claimed that the ballot question identified no other religion and solely restricted the effect of the Muslim faith.<sup>35</sup> Accordingly, the District found “excessive government entanglement” with religion in violation of the Establishment Clause of the First Amendment.<sup>36</sup>

On appeal, the appellants argued there was no discrimination because the amendment banned all religious laws from being considered in Oklahoma courts.<sup>37</sup> Awad made the argument that the amendment singled out Muslims in particular and “stigmatize[d] him and others by inhibiting the practice of Islam”, thus fostering “excessive government entanglement”.<sup>38</sup>

The United States Court of Appeals, Tenth Circuit applied the *Larson* test to determine whether the amendment violated the

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<sup>33</sup> *Id.* at 1128.

<sup>34</sup> *Id.* at 1120.

<sup>35</sup> *Id.* at 1123.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 1119.

Establishment Clause.<sup>39</sup> The *Larson* test provides that when a law discriminates among religions, it can only survive if it is closely fitted to the furtherance of any compelling interest under a strict scrutiny standard.<sup>40</sup> Ultimately, the provisions of the amendment were not narrowly tailored, as it clearly identified Sharia law and no other religion, and the Circuit Court found lack of evidence to show a compelling government interest, thus violating the Establishment Clause.<sup>41</sup>

In *Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, the Supreme Court of the United States held that applying religious exemption to Title VII's prohibition against religious discrimination in employment to secular non-profit activities of a religious organization did not violate the Establishment Clause.<sup>42</sup> In *Amos* a non-profit, The Church of Jesus Christ of Latter-day Saints, fired Frank Mayson because he failed to obtain a certificate authorizing him to attend the Church's religious temple or certifying him as member of the Church.<sup>43</sup> Mayson and others filed a class action lawsuit claiming

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<sup>39</sup> *Id.* at 1127.

<sup>40</sup> *Id.* See also *Valente*, 456 U.S. 228, 244-46 (1982).

<sup>41</sup> *Id.* at 1128-30

<sup>42</sup> *Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 325, 327 (1987).

<sup>43</sup> *Id.*

that the non-profit violated § 703 of the Civil Rights Act of 1964 by dismissing him from non-religious employment because he did not satisfy certain religious conditions.<sup>44</sup> Mayson also brought suit claiming that § 702 violated the Establishment Clause of the First Amendment by allowing religious organizations to use discriminatory hiring practices for nonreligious jobs.<sup>45</sup>

The District Court agreed that Mayson's job was nonreligious, and that § 702 violated the Establishment Clause because it allowed members of the Church to exclusively participate in nonreligious activities.<sup>46</sup> However, the Supreme Court of the United States claimed that Section 702 passed the *Lemon Test* and did not violate the Establishment Clause.<sup>47</sup> The Court found that Section 702 established a secular legislative purpose as it ensured the government would not determine religious activities for religious organizations.<sup>48</sup> The Court also found that the government did not advance nor inhibit religion because it allowed a church to advance its religion without intervention.<sup>49</sup> All these cases express a common theme of whether

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<sup>44</sup> *Id.* at 331.

<sup>45</sup> *Id.* at 332.

<sup>46</sup> *Id.* at 333.

<sup>47</sup> *Id.* at 339.

<sup>48</sup> *Id.* at 336-37.

<sup>49</sup> *Id.*

the government exercised “excessive government entanglement” with religion in violation of the Establishment Clause.<sup>50</sup>

### III. DISCUSSION

#### A. CROSSING THE LINE

Jeff Sessions claims that his Religious Liberty Task Force (Task Force) was created in order to defend the religious rights of American citizens; however, instead the Task Force effectively declares that the United States is a nation that promotes one brand of religion.<sup>51</sup> Despite the Task Force enforcing the principles listed by the religious liberty memo, Sessions’ rhetoric characterizes “America as an implicitly conservative Christian nation.”<sup>52</sup> For example, even within his announcement speech, Sessions claimed that with the creation of his Task Force, “[w]e will once again be able to say, ‘Merry Christmas.’”<sup>53</sup> While Christmas is a holiday that may be celebrated by many Americans, it is nevertheless a significant Christian holiday that celebrates the birth of Jesus Christ. How can this task force be impartial when its message is based in Christianity?

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<sup>50</sup> *Id.* at 339.

<sup>51</sup> Stewart, *supra* note 11.

<sup>52</sup> *Id.*

<sup>53</sup> Jeff Sessions, Attorney General, U.S. Dep’t of Justice, Address at the Dep’t of Justice’s Religious Liberty Summit (July 30, 2018).

Moreover, Sessions introduced Archbishop Joseph Kurtz as a leader who understands the need to enforce religious liberty during his announcement.<sup>54</sup> Again, if this task force is supposed to be unbiased towards various religions, why is Sessions introducing a Christian leader? Based on his rhetoric, it seems that the DOJ is advancing Christianity, and as a result, is infringing on the Establishment Clause. The principles the Religious Liberty Task Force is charged with enforcing also advance Christianity over other religions.<sup>55</sup> For example, both principles nine and nineteen of the Task Force refer to Christianity.<sup>56</sup> Principle Nine states, “Government may not interfere with the autonomy of a religious organization.”<sup>57</sup> The principle further states that the government may not impose its nondiscrimination rules to require Catholic seminaries to accept female priests.<sup>58</sup> Principle Nineteen states, “[r]eligious employers are entitled to employ only persons whose beliefs and conduct are consistent with the employers’ religious precepts.”<sup>59</sup> Principle Nineteen further states that “Lutheran

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<sup>54</sup> *Id.*

<sup>55</sup> Memorandum for All Exec. Dep't And Agencies (Oct. 6, 2017) (on file with the U.S. Dep't of Justice).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 3.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 6.

secondary schools may choose to employ only practicing Lutherans, only Christians, or only those willing to adhere to a code of conduct that is consistent with the precepts of the Lutheran community.”<sup>60</sup> By advancing Christianity the federal government is violating the Establishment Clause.

In *Awad*, the Circuit Court used the *Larson* test and applied strict scrutiny to determine where a law discriminates among religions.<sup>61</sup> The Court found the provisions of the Oklahoma amendment were not narrowly tailored as it clearly identified Sharia law twice without identifying any other religion.<sup>62</sup> The Circuit Court also found no compelling government interest and ruled that the amendment violated the Establishment Clause.<sup>63</sup> The Principles of the Religious Liberty Task Force, which are regulations set forth by the President that must be enforced on all government agencies, clearly advance Christianity over other religions.<sup>64</sup> The Religious Liberty Task Force fails the strict scrutiny test set forth in *Awad*, which begs the question of what evidence the government can establish to show a compelling

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<sup>60</sup> *Id.*

<sup>61</sup> *Awad*, 670 F.3d *Id.* at 1127, (citing *Larson v. Valente*, 456 U.S. 228, 244-46 (1982)).

<sup>62</sup> *Id.* at 1131.

<sup>63</sup> *Id.* at 1130.

<sup>64</sup> *See* Memorandum *supra* note 57.

governmental interest, particularly given the fact that Sessions makes no reference to any compelling interest in particular.<sup>65</sup>

Furthermore, Sessions stated, “There is a dangerous movement, undetected by many, is now challenging and eroding our great tradition of religious freedom . . . [There is] significant evidence of a country suffering from a changing cultural climate change with religious people of all faiths under fire.”<sup>66</sup> Sessions offered no evidence to support this claim and provides no compelling government interest. Instead, the Religious Liberty Task Force seems to be fulfilling the promises President Trump has made to conservative Christians.<sup>67</sup>

The recent trends of the Trump administration support policies closely aligned with conservative Christian values that advance a cultural attack on the United States.<sup>68</sup> For example, in January 2018, the Department of Health and Human Services created an office to streamline the process of health care professionals.<sup>69</sup> Depriving their clients of medical services,

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<sup>65</sup> Burton, *supra* note 5.

<sup>66</sup> Sessions, *supra* note 56.

<sup>67</sup> Stewart, *supra* note 11; MSNBC, *Serious Questions Raised About Sessions’ ‘Religious Liberty’ Task Force*, YOUTUBE (Aug. 6, 2018), <https://www.youtube.com/watch?v=sp9RpEeNn70>.

<sup>68</sup> Stewart, *supra* note 11.

<sup>69</sup> Stewart, *supra* note 11.

including birth control and other forms of reproductive care based on religion, a move heavily supported by conservative Christians.<sup>70</sup> The Trump administration also pushed back against LGBTQ rights by attempting to ban transgender people from the military and supporting Colorado baker Jack Phillips who refused to provide service to a gay couple due to his Christian beliefs.<sup>71</sup>

Sessions also used Bible verses to justify separating migrant families at the US-Mexico border, a controversial issue that is interpreted by many people and religious groups as an issue of human morality and dignity.<sup>72</sup> These actions by the Trump administration support policies closely held by conservative Christians that may not be held by other minority religions.<sup>73</sup> Actions like these suppress religious minority groups' beliefs and members. There is no doubt that Sessions is using the Religious Liberty Task Force as a mechanism to justify policies that undermine basic religious liberty, human rights, and civil rights that in turn open the door for excessive discrimination.<sup>74</sup>

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<sup>70</sup> *Id.*

<sup>71</sup> Merelli, *supra* note 6; Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n, 138 S.Ct. 1719 (2018); Doe v. Trump, F.Supp.3d 1045 (W.D.Wash. 2017).

<sup>72</sup> Burton, *supra* note 5.

<sup>73</sup> *Id.*

<sup>74</sup> Elizabeth Boylan, *Attorney General Session's "Religious Liberty Task Force": DOJ Evangelists for the Religious Right*, COLUMBIA LAW SCHOOL: PUBLIC RIGHTS & PRIVATE CONSCIENCE PROJECT (Aug. 1, 2018), <http://blogs.law.columbia.edu/publicrightspriateconscience/>.

B. THE ADVANCEMENT OF DISCRIMINATION

President Trump's and Jeff Sessions' interpretation of "religious liberty" is being used to undercut anti-discrimination policy and the rights of marginalized individuals in the United States.<sup>75</sup> The Religious Liberty Task Force is being used as a tool to elevate a particular right-winged view of religion over equality rights of women, LGBTQ people, people of color, and religious minorities.<sup>76</sup> Principle Five and Nineteen of the Religious Liberty Task Force both place excessive anti-discrimination power in the hands of religious organizations.<sup>77</sup> Principle Five forbids the government from restricting acts or abstentions of religious organizations based on their beliefs.<sup>78</sup> Principle Nineteen summarizes the power of religious employers to employ persons whose beliefs and conduct are consistent with the employers' religious precepts.<sup>79</sup> This means that a religious organization can remove or deny employment based on an individual's sexual orientation.<sup>80</sup>

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> U.S. Dep't of Justice, Memorandum For All Executive Departments And Agencies (2017), <https://www.justice.gov/opa/press-release/file/1001891/download>.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

In fact, lawsuits supported by the Trump administration have inferentially shown to give individuals and businesses the right to deny rights and services to people based on their religious beliefs that undercut equality.<sup>81</sup> For example, the Trump administration supports the defendants in *EEOC v. RG & GR Harris Funeral Homes*, in which a funeral home fired a transgender employee for expressing her gender identity through clothing, and asserted that she was in violation of the funeral home's religious beliefs.<sup>82</sup> Similarly, Trump and Sessions supported baker Jack Phillips when he refused to bake a wedding cake for a same-sex couple on the basis that doing so would burden his religious beliefs".<sup>83</sup>

Nevertheless, Principle Five and Nineteen of the Task Force violate the Establishment Clause by providing more deference to certain religions. In *Lemon*, the Supreme Court of the United States found both the Rhode Island and Pennsylvania statutes violated the Establishment Clause of the First Amendment.<sup>84</sup> The Court claimed that the statutes must pass a

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<sup>81</sup> Boylan, *supra* note 74.

<sup>82</sup> *Id.*; *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018).

<sup>83</sup> *Id.*; Merelli, *supra* note 5; *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S.Ct. 1719 (2018).

<sup>84</sup> *Lemon*, 403 U.S. at 607-08.

three-prong test in order to avoid violating the Establishment Clause 1) the statute must have secular purpose; 2) its principal or primary effect must be one that neither promotes nor inhibits religion; and 3) it must not foster “excessive government entanglement.”<sup>85</sup> It is clear that Principles Five and Nineteen violate the *Lemon* Test, as they place excessive anti-discrimination power in the hands of religious organizations by forbidding the government from restricting acts of religious organizations and empowering religious organizations to employ based on their beliefs. <sup>86</sup> There is no doubt that Principles Five and Nineteen constitute “excessive government entanglement,” as they protect and promote religious privileges over human rights.

In addition, the Principles of the Religious Liberty Task Force undoubtedly encourage federal agencies to give large amounts of deference to the religious beliefs of federal employees and contractors.<sup>87</sup> They also attempt to minimize third-party harm as a consideration when weighing religious objections against other

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<sup>85</sup> *Id.* at 612-13.

<sup>86</sup> See U.S. Dep’t of Justice, Memorandum For All Executive Departments And Agencies (2017), <https://www.justice.gov/opa/press-release/file/1001891/download>.

<sup>87</sup> Sharita Gruberg *et al.*, *Religious Liberty for A Select Few: The Justice Department is Promoting Discrimination Across the Federal Government*, CENTER FOR AMERICAN PROGRESS (April 3, 2018, 11:47 AM), <https://www.americanprogress.org/issues/lgbt/reports/2018/04/03/448773/religious-liberty-select/>.

protected rights.<sup>88</sup> However, the “Supreme Court of the United States has repeatedly held that religious freedom should not be interpreted to allow for the infliction of harm on others” and has invalidated exemptions that would impose substantial burdens on third parties, “noting that courts must take adequate account of the burdens a requested accommodation may impose on beneficiaries, unjustifiable awards of assistance to religious organizations, and cannot convey a message of support to slighted members of the community.”<sup>89</sup>

There is no doubt that the Principles of the Religious Liberty Task Force give way to discrimination by specifically placing vulnerable minority populations at risk.<sup>90</sup> Principle Four of the task force ensures Americans, individuals and businesses, participating in the marketplace and interacting with government will not give up their freedom of religion.<sup>91</sup> This means that the instruction to federal agencies to protect religious liberty at all cost will violate anti-discrimination laws on the basis of religion, which

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> MSNBC, *Serious Questions Raised About Sessions’ Religious Liberty’ Task Force*, YOUTUBE (Aug. 6, 2018), <https://www.youtube.com/watch?v=sp9RpEeNn70>.

<sup>91</sup> Gruberg *et al.*, *supra* note 87; U.S. Dep’t of Justice, Memorandum For All Executive Departments And Agencies (2017), <https://www.justice.gov/opa/press-release/file/1001891/download>.

disproportionately affect underserved minority communities.<sup>92</sup> Consequently, contractors seeking to business with the government may reject minority participation if it contradicts their religious beliefs, thus making millions of dollars unavailable to minority employees on the basis religious freedom.<sup>93</sup> In fact, the Department of Labor is currently assuring federal contractors that it is okay to violate anti-discrimination laws as long as they can claim that they are doing so on the basis of religious freedom or a deeply held moral belief.<sup>94</sup>

This policy has the potential to harm our great and diverse country in the long run. Minority participation leads to greater and stronger discussions that improve local economies and communities. Strong minority participation and anti-discrimination laws must be enforced to support greater representation. In a community where the minority population is the majority, there must be defined minority participation goals.

Nevertheless, in *Lemon*, upon applying the *Lemon* Test, the Supreme Court found that both the Pennsylvania and Rhode Island statutes in question had a secular purpose of ensuring

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<sup>92</sup> Gruberg *et al.*, *supra* note 87.

<sup>93</sup> *Id.*

<sup>94</sup> Stewart, *supra* note 11.

secular education requirements of non-public schools but found the statutes constituted “excessive government entanglement” with religion.<sup>95</sup> Here, by allowing government contractors to resist anti-discrimination laws by claiming a religious liberty, by denying business opportunities for LGBTQ persons, and denying women basic human rights based on a religious privilege it appears that the Religious Liberty Task Force is engaged in “excessive government entanglement.”

The Religious Liberty Task Force interferes with the government’s ability to be impartial towards religious rights and instead promotes an attitude of absolutism in favor of religion, therefore, violating the Establishment Clause. Ultimately, the unjust principles of the Religious Liberty Task Force should improve human and civil rights, not denounce them.

#### IV. CONCLUSION

In the end, the First Amendment of the Constitution states that, “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . .”<sup>96</sup> But even

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<sup>95</sup> Lemon, 403 U.S. at 602-03.

<sup>96</sup> “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .” U.S. CONST. amend. I.

now, the principles of separation of church and state are contradictory in many respects.<sup>97</sup> The Trump administration consistently questions the prohibition of the government from officially favoring or disfavoring particular religions or officially advocating particular religious points of view.<sup>98</sup> The Religious Liberty Task Force put forth by President Trump and Jeff Sessions is a deliberate attempt to undermine legal equality and dignity of the LGBTQ community, women, marginalized minority communities and religious organizations.<sup>99</sup>

There is no doubt that protecting conservative Christian values and advocating for one brand of religion is a clear violation of the Establishment Clause. The so-called “religious freedoms” enforced by the principles of the task force come with a steep price of ignoring anti-discrimination protections.<sup>100</sup> The Religious Liberty Task Force should instead be used to renew the vision of America, a vision that protects the dignity, equality, and equity of its citizens.<sup>101</sup> After all, Americans are free to exercise their religion as they see fit, but not to impose it on others.<sup>102</sup>

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<sup>97</sup> Davis, *supra* note 3.

<sup>98</sup> Burton, *supra* note 5.

<sup>99</sup> Boylan, *supra* note 74.

<sup>100</sup> *Id.*

<sup>101</sup> Gruberg *et al.*, *supra* note 87.

<sup>102</sup> *Id.*