

THROUGH THE VEIL: AN INTERNATIONAL COMPARISON ON RELIGIOUS FREEDOM AND THE *HIJAB* IN THE ISLAMIC REPUBLIC OF IRAN, FRANCE, AND THE UNITED STATES

ALISHAH C. SALMAN*

“[W]e’re crushed not only by the government but by the weight
of our traditions!”

—Marjane Satrapi, *Persepolis 2: The Story of a Return*¹

I. INTRODUCTION

Religious freedom has been a significant pillar of United States history, as far back as the Pilgrims who set sail on the Mayflower so that they might escape religious persecution.² American elementary schools have frequently taught students the significance of the United States being a refuge for individuals around the world who faced religious persecution of some type.³ At the formation of the United States, the Founders wanted to withdraw religion from the authority of the new federal government to allow for greater individual religious practice.⁴ Nearly 250 years after its formation, it appears that religious freedom is unequally distributed among American citizens. While Christianity is widely accepted in the United States and represented in the government, other religions are often underrepresented, misunderstood, and demonized.

This Note specifically compares religious freedom through the lens of how Muslim women who wear the *hijab* are treated in France, the Islamic Republic of Iran, and the United States. These countries offer a useful basis for a comparative analysis, as France and Iran are at opposite ends of the spectrum of religious freedom, and the United States tends to oscillate between both extremes without ever fully reaching either. By acknowledging the need for stronger protections for Muslim American women, especially those who wear *hijabs*, this Note further recommends broadening the federal prosecution of hate

* J.D. Candidate, 2026, Indiana University Robert H. McKinney School of Law; Bachelor of Arts in International Studies, 2016, from University of Southern Indiana. This author would like to thank her father who inspired this note by reflecting that when he fled Iran, he left one theocracy to end up in a different theocracy decades later. She would also like to thank her dog, Mina, who kept her company during late nights of writing. She would also like to thank Dr. Frank Emmert for his guidance in developing this note and the Vol. XXXVI executive board, student note candidates, and associate members of the Indiana International and Comparative Law Review for all their feedback and support. Finally, this author would like to draw attention to the gender apartheid in Iran which recently gained attention through the “woman, life, freedom” movement following the tragic murder of Mahsa Jina Amini.

1. MARJANE SATRAPI, *PERSEPOLIS 2: THE STORY OF A RETURN* 185 (Pantheon 2004).

2. *Freedom of Religion*, HISTORY (May 28, 2025), <https://www.history.com/topics/united-states-constitution/freedom-of-religion> [<https://perma.cc/RN36-5JDB>].

3. Kenneth C. Davis, *America’s True History of Religious Tolerance*, SMITHSONIAN MAGAZINE (Oct. 2010), <https://www.smithsonianmag.com/history/americas-true-history-of-religious-tolerance-61312684/> [<https://perma.cc/U49G-278E>].

4. Holly Hollman, *Understanding America’s First Freedom*, AM. BAR ASS’N (July 5, 2022), <https://www.americanbar.org/groups/crsj/resources/human-rights/archive/understanding-americas-first-freedom/> [<https://perma.cc/X3UA-R67X>].

crimes, establishing an interfaith council to better represent minority religions, and allowing the Religious Freedom Restoration Act to better protect American Muslim women. Religious freedom, this Note argues, cannot fully be recognized in the United States until religious minorities, including Muslims, are better protected in ways that avoid the extreme secularism of France or a Christian theocracy with a similar foundation to Iran.

II. BACKGROUND

Internationally, religious freedom is recognized through the International Covenant on Civil and Political Rights.⁵ Article 18 § 1 of this covenant states,

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.⁶

France, Iran, and the United States have each ratified this treaty and therefore have an obligation under international law to uphold the right to “freedom of thought, conscience, and religion” in their respective countries.⁷ The Human Rights Committee, an organ of the United Nations, is responsible for observing whether State parties are following the International Covenant on Civil and Political Rights.⁸ The Human Rights Committee released an opinion in 2004 addressing an allegation that Uzbekistan violated a citizen’s rights under the International Covenant on Civil and Political Rights.⁹ The plaintiff claimed that Uzbekistan violated the covenant when she was expelled from her public university for choosing to wear a headscarf.¹⁰ The Human Rights Committee found that the state violated the plaintiff’s right to express her religion under the International Covenant on Civil and Political Rights.¹¹ The committee ordered Uzbekistan to provide a remedy and to take measures within 90 days of its opinion to ensure compliance with the Covenant.¹²

France and the Islamic Republic of Iran are good choices for a comparative analysis of religious freedom in the United States because they are on different

5. International Covenant on Civil and Political Rights, art. 18, *adopted* Dec. 16, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171.

6. *Id.*

7. *Id.*

8. *Human Rights Committee*, U.N. HUM. RTS. TREATY BODIES, <https://www.ohchr.org/en/treaty-bodies/ccpr#:~:text=The%20Human%20Rights%20Committee%20is,Rights%20by%20its%20States%20parties> [https://perma.cc/8EXM-L86K].

9. *Hudoyberganova v. Uzbekistan*, Communication No. 931/2000, U.N. Doc. CCPR/C/82/D/931/2000, at 3 (Nov. 5, 2004).

10. *Id.* at 5.

11. *Id.* at 7.

12. *Id.* at 7-8.

ends of the spectrum regarding the presence of religion in government. France is a secular state.¹³ Secular states have four components: “the moral equality of persons; freedom of conscience and religion; State neutrality towards religion; and the separation of Church and State.”¹⁴

On the opposite end, the Islamic Republic of Iran is an Islamic Theocracy where the Supreme Leader has ideological and political control over the entire government, with clerics who are also involved with every state function.¹⁵ A theocracy is a form of government in which power is held by the clergy of a religion.¹⁶ The clergy acts based on what their particular divinity requires, according to the guidelines of that specific religion.¹⁷ Generally, theocracies are most common in the Muslim world.¹⁸ This trend in the Muslim world is interpreted as a reaction by the Muslim peoples against Western colonialism, as well as the failure of new forms of self-rule, which were often led by corrupt, authoritarian, and incompetent leaders who were still supported by Western politics, including military intervention by Western powers.¹⁹

The United States falls somewhere on the range between a secular state and a theocratic state. In the United States, the government is not supposed to exercise religious authority, and spiritual entities are not permitted to have any governmental authority.²⁰ Politicians can still openly practice their religions, and religious organizations are still able to be involved in politics, but the government is meant to stay out of religion.²¹ However, even with these strict laws regulating religious influence on the United States government, there are still many instances where laws are passed that contradict the Constitutional protections of freedom of religion.²² Furthermore, the steady increase of religiously motivated hate crimes indicates that the United States government is failing to protect its citizens, which is perhaps the most important role of any

13. Arthur Kutoroff, *First Amendment versus Laicite: Religious Exemptions, Religious Freedom, and Public Neutrality*, 48 CORNELL INT’L L.J. 247, 249 (2015), <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1861&context=cilj> [<https://perma.cc/2CV2-BZ48>].

14. Javier Martínez-Torrón & W. Cole Durham, Jr., *Religion and the Secular State/ La religion et l’Etat laïque*, INT’L CTR. FOR L. & RELIGION STUD. 3 (Dec. 14, 1999), <https://classic.iclrs.org/content/blurb/files/General%20Report.pdf> [<https://perma.cc/99YJ-G68U>].

15. *The Structure of Power in Iran: An overview of the Iranian government and political system*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/tehran/inside/govt.html> [<https://perma.cc/TXL8-SFPT>] (last visited Oct. 28, 2025).

16. Nick Megoran, *Theocracy*, 11 INT’L ENCYCLOPEDIA OF HUM. GEOGRAPHY 223 (2009), <https://www.staff.ncl.ac.uk/nick.megoran/pdf/theocracy.pdf> [<https://perma.cc/GRK2-GQD2>].

17. *Id.* at 226-27.

18. *Id.* at 227.

19. *Id.* at 227-28.

20. Kent Greenawalt, *Secularism, Religion, and Liberal Democracy in the United States*, 30 CARDOZO L. REV. 2383, 2384 (2009), <https://larc.cardozo.yu.edu/cgi/viewcontent.cgi?article=3583&context=clr> [<https://perma.cc/4T8C-48HF>].

21. *Id.*

22. *Which US states have passed religious laws?*, BBC (Apr. 7, 2016), <https://www.bbc.com/news/world-us-canada-35990353> [<https://perma.cc/B9KR-HU79>].

government to its citizens.²³

A. Religious Freedom and France

France has a bicameral parliamentary democracy and is a republican state.²⁴ There are three levels of governance in France: the *régions* (the Regions), *départements* (the Departments), and *communes* (the Municipalities).²⁵ There is no hierarchy among these governments, and local authorities can enact short-term policies they do not usually have the authority to enact.²⁶ French law is applied universally, without consideration of citizens' religion, race, or socioeconomic status.²⁷ The central government, or the Parliament, holds all responsibility regarding national sovereignty matters and has the power to pass laws.²⁸ The regional authority is responsible for regional transportation, departmental transportation, education, vocational training, culture, regional planning, economic development, environmental protection, and scientific development.²⁹ The Department is responsible for departmental transit, education, vocational training, inclusion and social welfare, public health, planning, economic development, environmental protection, rural development, tourism, and business development.³⁰ The Municipalities are responsible for municipal transport, culture, public health, economic development, the environment, and housing.³¹ While the French government does not recognize or promote any religion and is supposed to respect all beliefs, it also holds freedom and protection of religion relevant at each level of government.³²

In 1905, France enacted a law that separated the Church and the State, and it is commonly referred to as *laïcité*, or secularism.³³ This term refers to the official secularism that permeates the French government, encompassing both the public's neutrality towards religion and the guarantee of religious freedom.³⁴ *Laïcité* reflects how France's relationship with the church has evolved over

23. *Report to the Nation 2023: Faith Under Fire*, CTR. FOR THE STUDY OF HATE & EXTREMISM CAL. ST. UNIVERSITY SAN BERNARDINO (2023), <https://www.csusb.edu/sites/default/files/2023-03/REPORT%20TO%20THE%20NATION%202023%20Relig4PM.docx.pdf> [https://perma.cc/67M5-E52X].

24. *France*, EUR. COMM. OF THE REGIONS, <https://portal.cor.europa.eu/divisionpowers/Pages/France-Introduction.aspx> [https://perma.cc/RC4D-BTZW] (last visited Oct. 28, 2025).

25. *Id.*

26. *Id.*

27. Dominique Decherf, *French Views of Religious Freedom*, BROOKINGS (July 1, 2001), <https://www.brookings.edu/articles/french-views-of-religious-freedom/> [https://perma.cc/RN5T-Z8X3].

28. *France*, *supra* note 24.

29. *Id.*

30. *Id.*

31. *Id.*

32. Decherf, *supra* note 27; *France*, *supra* note 24.

33. Anastasia Colosimo, *Laïcité: Why French Secularism is So Hard to Grasp*, INSTITUT MONTAIGNE (Nov. 12, 2017), <https://www.institutmontaigne.org/en/expressions/laicite-why-french-secularism-so-hard-grasp> [https://perma.cc/N5VR-WEQA].

34. Kutoroff, *supra* note 13, at 249-50.

several centuries, and the 1905 law had the effect of losing a portion of France's religious cultural identity.³⁵ *Laïcité* is also enshrined in the First Amendment of the French Constitution, which states,

France shall be an indivisible, secular, democratic and social republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organized on a decentralized basis. Statutes shall promote equal access by women and men to elective offices and posts as well as to positions of professional and social responsibility.³⁶

Under *Laïcité*, private parties are meant to be free to act as they wish, but the public must not be biased toward or against religion.³⁷ In France, religious freedom is a human right, but it is not independent of other human rights and does not get special status over other human rights.³⁸

While France's government is meant to be neutral towards religion, its current stance on the Muslim headscarf, or *hijab*, demonstrates a clear stance on religion by the French government.³⁹ If religions are protected, then French women should be allowed to wear a headscarf for religious purposes; however, the French government has instead broadly interpreted *Laïcité* and restricted French citizens from legally expressing their religion in certain spaces.⁴⁰

France has enacted laws that have suppressed Muslim women multiple times. The French government has weaponized its secularism to pass laws that disproportionately affect Muslim women and girls.⁴¹ Prejudice, racism, and Islamophobia have driven lawmakers to regulate Muslim women's and girls' clothing.⁴²

In 2010, France passed a law, commonly referred to as the "burqa ban," which prohibited French women from wearing full head and body veils while in public spaces.⁴³ Before passing the law, President Nicolas Sarkozy justified the policy and said, "[The burqa] is not a religious symbol. It is a symbol of servitude and humiliation...We cannot accept, in our country, women imprisoned behind a mesh, cut off from society, deprived of all identity...that is

35. Colosimo, *supra* note 33.

36. 1958 CONST. art. 1 (Fr.).

37. Kutoroff, *supra* note 13, at 250.

38. Decherf, *supra* note 27.

39. *Id.*

40. *Id.*

41. *France: Hijab bans in French sport expose discriminatory double Standards ahead of Olympic and Paralympic Games*, AMNESTY INT'L (July 16, 2024), <https://www.amnesty.org/en/latest/news/2024/07/france-hijab-bans-olympic-and-paralympic/> [<https://perma.cc/R4NR-BJ3F>].

42. *Id.*

43. Adam Scott Kunz, *Public Exposure: Of Burqas, Secularism, and France's Violation of European Law*, 44 GEO. WASH. INT'L L. REV. 79 (2012), [https://heinonline-org.proxy.ulib.uit.edu/HOL/Page?handle=hein.journals/gwlr44&id=95&collection=journals&index=\[https://perma.cc/AV3U-DTY8\]](https://heinonline-org.proxy.ulib.uit.edu/HOL/Page?handle=hein.journals/gwlr44&id=95&collection=journals&index=[https://perma.cc/AV3U-DTY8]).

not the French Republic's idea of women's dignity."⁴⁴ France has justified the burqa ban by saying that the law would protect Muslim women from being forced under the supposed domination of the burqa.⁴⁵ Additionally, the ban was also meant to support national security by allowing enforcement officers to identify women's faces more easily.⁴⁶ While most French citizens supported the burqa ban when it came out, international organizations and non-profit organizations condemned the ban and called it a violation of a Muslim woman's right to freedom of expression.⁴⁷

In 2023, France banned Muslim schoolchildren from wearing *abayas*, which are loose-fitting garments that cover a woman's entire body except for her head, hands, and feet.⁴⁸ The French Education Minister at the time, Gabriel Attal, said, "Schools of the Republic are built on very strong values and principles, especially *laïcité*. For me, *laïcité*, when put in the framework of a school, is very clear: you enter a classroom, and you must not be able to identify the religious identity of students just by looking at them."⁴⁹

In 2024, France prohibited Muslim women from wearing head veils during the 2024 Summer Olympics and Paralympics.⁵⁰ In fact, France has banned Muslim women from wearing a *hijab* while participating in several sports, including football, basketball, and volleyball.⁵¹ This ban was enacted both in professional sport leagues and amateur leagues.⁵² As a result of these bans, Muslim women are not able to play sports they enjoy, and some Muslim women have even left France to pursue their sports.⁵³

Laïcité has conflicted with international law and, under international law, is not an accepted reason to restrict freedom of religion or freedom of expression.⁵⁴ *Laïcité* also contradicts France's First Article by enacting statutes that unequally affect its citizens based on religion.⁵⁵ State-sponsored secularism in France has not coexisted with a Muslim woman's full freedom to practice her faith, and it also has contradicted France's obligation to protect religious freedom under international law.

44. *Id.* at 80.

45. *Id.* at 83.

46. *Id.*

47. *Id.*

48. Rob Picheta et al., *France to ban the wearing of abayas in schools, fueling accusations of Islamophobia*, CNN (Aug. 28, 2023, at 09:00 EDT), <https://www.cnn.com/2023/08/28/europe/france-abayas-schools-ban-intl> [<https://perma.cc/HR6N-8ZPH>]; *What is an Abaya*, HIKMAH BOUTIQUE (Mar. 8, 2024), https://hikmahboutique.com.au/blogs/useful-articles/what-is-an-abaya-a-comprehensive-guide?srsId=AfmBOop_V7DMylqLYkYGEWJXHhUs6UcwUrgHc7xpQocxCU7mZX8l2Gz- [<https://perma.cc/SRN2-9QRH>].

49. Picheta et al., *supra* note 48.

50. *France: Hijab bans in French sport expose discriminatory double standards ahead of Olympic and Paralympic Games*, *supra* note 41.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. 1958 CONST. art. 1 (Fr.).

B. Religious Freedom and the Islamic Republic of Iran

Women in Iran, prior to the 1979 revolution, had the same freedoms as women in most Western societies.⁵⁶ In fact, throughout most of the 20th century, leading up to the 1979 revolution, Iran was viewed as a secular, Western society.⁵⁷ Western states, such as the United States and the United Kingdom, even supported Iran's last Shah, Mohammad Reza Pahlavi, because he was viewed as a Western, progressive ally, and Western leaders shared powerful alliances with the Shah.⁵⁸ On January 8, 1936, however, Shah Pahlavi banned all Islamic veils in a mandate known as *Kashf-e Hijab*.⁵⁹ This decree was the antithesis of a mandated *hijab*.⁶⁰ Police were authorized to remove *hijabs* from any women wearing them in public physically, and some women who did not comply were beaten.⁶¹

In the 1970s, as anti-government movements grew in anticipation of the revolution, Iranian women began wearing *hijabs* and *chadors* as a protest against the secular government of Shah Pahlavi.⁶² The *hijab* was used as a symbol of opposition against the Pahlavi rule, and many female followers of Ayatollah Khomeini, the next leader of Iran after the removal of Shah Pahlavi, wore *chadors* while they rallied against the monarchy.⁶³

Following the 1979 Islamic Revolution, the Shah was removed from power and subsequently exiled from Iran. Post-revolutionary Iran mandated that women dress modestly and cover their hair with a *hijab* or *chador*.⁶⁴ The Islamic Penal Code of the Islamic Republic of Iran detailed the legal punishment Iranian women may face when they are unveiled in Book Five, Chapter Eighteen, Article 638 which states, "Women, who appear in public places and roads without wearing an Islamic *hijab* shall be sentenced from ten days to two months' imprisonment or a fine of fifty thousand to five hundred Rials."⁶⁵ Ayatollah Khomeini also segregated beaches and sports based on gender, banned married women from attending regular schools, and prohibited women

56. Nicolas Garon, *Veiling Laws Throughout Iranian History: The Relationship to Religion, Before and During Islamic Law*, 38 CONN. J. INT'L L. 50, 53 (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4933290 [<https://perma.cc/PNG8-PERT>].

57. *Id.*

58. *Id.*

59. Sara Atta, *Iranian women in Pahlavi regime; isolation or advancement?*, TEHRAN TIMES (May 17, 2023, at 16:39 EST), <https://tehrantimes.com/news/484810/Iranian-women-in-Pahlavi-regime-isolation-or-advancement> [<https://perma.cc/E257-PDKS>].

60. Garon, *supra* note 56, at 56.

61. Atta, *supra* note 59.

62. Garon, *supra* note 56, at 53.

63. Yoonji Han, *Women in Iran are burning headscarves and cutting their hair in protests over the hijab. They follow a long history of rising up for a woman's right to choose*, BUS. INSIDER (Sep. 28, 2022, at 13:30 EDT), <https://www.businessinsider.com/hijab-protests-iran-veiling-mahsa-amini-history-womens-rights-2022-9#unveiling-was-met-with-opposition-from-the-religious-establishment-and-many-iranian-women-2> [<https://perma.cc/3CD5-SJA8>].

64. Garon, *supra* note 56, at 53.

65. *Id.* at 53-54.

from becoming judges.⁶⁶ Many of the women rallying for Ayatollah Khomeini did not expect the mandatory *hijab*, and several of them did not support this law.⁶⁷ Today, ironically, Iran has similarities to France in its low levels of religious freedom as it pertains to a Muslim woman's choice to wear a *hijab*.⁶⁸

Religion was unsurprisingly mentioned several times in Iran's Constitution following the Islamic revolution, where Iran became a Muslim theocracy with the Ayatollah, who communicates Allah's commands for Iran to the elected officials, having the ultimate authority.⁶⁹ Article 12 of the Iranian Constitution states:

The official religion of Iran is Islam and the Twelver Ja'fari school, and this principle will remain eternally immutable. Other Islamic schools are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites. These schools enjoy official status in matters pertaining to religious education, affairs of personal status (marriage, divorce, inheritance, and wills) and related litigation in courts of law. In regions of the country where Muslims following any one of these schools constitute the majority, local regulations, within the bounds of the jurisdiction of local councils, are to be in accordance with the respective school, without infringing upon the rights of the followers of other schools.⁷⁰

Article 14 of the Iranian Constitution lays out the treatment of non-Muslims in Iran by saying:

In accordance with the sacred verse 'God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and who have not expelled you from your homes' [60:8], the government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran.⁷¹

Article 72 of the Iranian Constitution details the significance of Islam in enacting laws and states, "The Islamic Consultative Assembly cannot enact laws contrary to the official religion of the country or to the Constitution. It is the

66. Han, *supra* note 63.

67. *Id.*

68. Kutoroff, *supra* note 13, at 250.

69. QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980] art. 12, 14, 72, 115.

70. *Id.* art. 12.

71. *Id.* art. 14.

duty of the Guardian Council to determine whether a violation has occurred, in accordance with Article 96.”⁷²

Finally, Article 115 of the Iranian Constitution lays out qualifications for the elected president and states, “The President must be elected from among religious and political personalities possessing the following qualifications: Iranian origin; Iranian nationality; administrative capacity and resourcefulness; a good past record; trustworthiness and piety; and convinced belief in the fundamental principles of the Islamic Republic of Iran and the official madhhab of the country.”⁷³

So, not only is Islam enshrined in several places in the Iranian Constitution, but there are also clarifications on how to treat non-Muslims, as well as clarifications on the significance of Islam to the Iranian presidency role.⁷⁴ A *hijab* mandate contradicts Article 14 of the Iranian Constitution by forcing all Iranian women, including those who are not Muslim, to practice an act specific to the Islamic faith.⁷⁵ Additionally, because the Islamic Republic of Iran ratified the International Covenant on Civil and Political Rights, its mandatory *hijab* and mistreatment of women who choose not to wear a *hijab* violate Iran’s obligations under the treaty and are a violation of international law.

C. Religious Freedom and the United States

Religious freedom in the United States, like that in Iran, shares similarities with France’s *laïcité*.⁷⁶ In response to religious persecution, immigrants fled from Europe to the United States, and thus the American concept of secularism was built around individual religious freedom rather than the collective freedom from religious institutions that is embedded in the French *laïcité*.⁷⁷ Because of this history of religious persecution, the United States Constitution’s Establishment Clause prevents the federal government from participating in individual religious practices.⁷⁸ The First Amendment of the United States Constitution says, “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.”⁷⁹ The First Amendment of the United States Constitution directly conflicts with the approaches to religious freedom in both France and Iran.⁸⁰ “Congress shall make no law respecting an establishment of religion”⁸¹ conflicts with Iran’s state-established religion of

72. *Id.* art. 72.

73. *Id.* art. 115.

74. *Id.* art. 12, 14, 72, 115.

75. *Id.* art. 14.

76. Nicolas Cadène, *French Secularism Isn’t Illiberal*, FOREIGN POL’Y (Apr. 7, 2021, at 12:15 ET), <https://foreignpolicy.com/2021/04/07/french-secularism-isnt-illiberal/> [https://perma.cc/4XE6-DVVQ].

77. *Id.*

78. *Id.*

79. U.S. CONST. amend. I.

80. *Id.*

81. *Id.*

Islam.⁸² “Congress shall make no law prohibiting the free exercise [of religion]”⁸³ conflicts with France’s *laïcité* and enactment of laws regulating French Muslim women from expressing their religion.⁸⁴ The Supreme Court has held that the Fourteenth Amendment extends the majority of the Bill of Rights, including the First Amendment, to the states as well as the federal government.⁸⁵

Although the United States and France both deal with the paradox between public neutrality and religious freedom, they each resolve the tension differently.⁸⁶ The United States values religious freedom more than public neutrality toward religion by protecting religious beliefs more than it protects secular beliefs.⁸⁷ On the other hand, France prioritizes public neutrality towards religion by protecting secular beliefs more than it protects religious beliefs.⁸⁸

The United States Constitution is the supreme law of the land and details the powers of the American government.⁸⁹ In *McCulloch v. Maryland*, Chief Justice John Marshall, the first Chief Justice of the United States Supreme Court, amplified the significance of the Constitution when he wrote in his opinion, “This provision is made in a Constitution intended to endure for ages to come and, consequently, to be adapted to the various crises of human affairs.”⁹⁰ In theory, the American people have the final authority to amend the Constitution through their elected and appointed government officials.⁹¹ The Constitution has been amended twenty-seven times since it was enacted, with the most significant changes happening when the first ten amendments, the Bill of Rights, were added to the Constitution.⁹² This is where freedom of worship, freedom of speech, freedom of the press, the right of peaceful assembly, the right to protest, the right to bear arms, and other rights were enshrined for the American people.⁹³ A majority of the twenty-seven amendments expanded individual freedoms, while only a few expanded governmental power.⁹⁴

The United States is a constitutional federal republic in which the people elect officials to serve in political capacities for specific terms, and the Constitution binds these officials.⁹⁵ The federal government holds restricted

82. QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980] art. 12, 14, 72, 115.

83. U.S. CONST. amend. I.

84. Kutoroff, *supra* note 13, at 250.

85. Greenawalt, *supra* note 20, at 2385.

86. Kutoroff, *supra* note 13, at 250.

87. *Id.*

88. *Id.*

89. *The Constitution: An Enduring Document*, INFOUSA: U.S. DEP’T OF ST., <https://usinfo.org/enus/government/overview/ch1.html> [<https://perma.cc/45D3-6355>] (last visited Oct. 28, 2025).

90. 17 U.S. 316, 415 (1819).

91. *The Constitution: An Enduring Document*, *supra* note 89.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Section 1: Principles of the American Republic*, ARIZ. ST. U. CTR. FOR AM. CIVICS, <https://civics.asu.edu/civic-literacy-curriculum/section1> [<https://perma.cc/NLB8-FY4P>].

power, and state governments retain the remainder of governmental power.⁹⁶ While there is technically no state religion, and while the First Amendment prohibits the government from making any laws that favor or prohibit any religion, some scholars have described the United States under the George W. Bush administration as a Christian theocracy due to the morphing of Republican policies to satiate the conservative Christian base.⁹⁷

The United States was so concerned with protecting the exercise of religion that in 1993, Congress enacted the Religious Freedom Restoration Act, which applied the strict scrutiny standard to all assertions that the government has in any way burdened the exercise of religion.⁹⁸ The Religious Freedom Restoration Act has two defining principles: First, the standard it sets for governments is consistent with the fundamental nature of the right to the free exercise of religion; Second, by applying the standards to all government action, the Religious Freedom Restoration Act is not meant to be outcome-determinative.⁹⁹ However, more recently, the significance of religious freedom overall has declined, and some political officials in the United States government with legislative powers have sought to remove the protection of the Religious Freedom Restoration Act from broad categories of government action, categorizing religious freedom as negative, oppressive, or worse.¹⁰⁰

Even though the United States government is hesitant to enact laws that better protect minorities, the Federal Bureau of Investigation (“FBI”) has been investigating hate crimes against minority communities for over 100 years.¹⁰¹ The FBI defines a hate crime as a crime “against a person or property motivated in whole or in part by an offender’s bias against race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.”¹⁰² A prosecutor must prove two elements for a hate crime conviction to be upheld.¹⁰³ First, the prosecutor must prove that the defendant committed a crime.¹⁰⁴ Second, the prosecutor must prove that the defendant committed the crime because of the victim’s “race, religion, ethnicity, gender, sexual orientation, or disability.”¹⁰⁵ Because of the rising popularity of Christian Nationalism in the United States, American

96. *Id.*

97. Megoran, *supra* note 16, at 224.

98. THOMAS JIPPING & SARAH PARSHALL PERRY, THE RELIGIOUS FREEDOM RESTORATION ACT: HISTORY, STATUS, AND THREATS, LEGAL MEMORANDUM NO. 284, at 1 (Heritage Found., May 4, 2021), <https://www.heritage.org/sites/default/files/2021-05/LM284.pdf> [<https://perma.cc/XH76-ZCJF>].

99. *Id.* at 17.

100. *Id.* at 29.

101. *Hate Crimes*, FED. BUREAU OF INVESTIGATIONS, <https://www.fbi.gov/investigate/civil-rights/hate-crimes> [<https://perma.cc/6KJK-KGCD>] (last visited Mar. 9, 2025).

102. *Id.*

103. Mokhtar Ben Barka, *Religion, Religious Fanaticism and Hate Crimes in the United States*, 4 REVUE FRANÇAISE D’ÉTUDES AMÉRICAINES 107, 108 (2006), <https://shs.cairn.info/journal-revue-francaise-d-etudes-americaines-2006-4-page-107?lang=en&tab=texte-integral> [<https://perma.cc/5KX7-UX2Z>].

104. *Id.*

105. *Id.*

Christians are more emboldened to physically attack religious minorities.¹⁰⁶ Because of the apparent issue of hate crimes in the United States and the rise of a desire for a state-sponsored religion, the United States is not sufficiently protecting Muslim women. Additionally, because Muslim women who wear a *hijab* are easily identifiable, their religious freedom is at stake and needs to be better protected due to the United States' obligation under the International Covenant on Civil and Political Rights.

III. ANALYSIS

A. *The Hijab in France*

Although there is no definitive data on the number of Muslim women in France due to France not using religion as a category in census or population registers, it is estimated that French Muslims make up about 8% of the French population.¹⁰⁷ Most of the French Muslim population is composed of migrants and their children, and between 43% and 45% of all French migrants are Muslims.¹⁰⁸ Muslim immigrant women are unemployed at a higher rate than non-Muslim immigrant women, and there are many complaints of discrimination in access to employment.¹⁰⁹ Additionally, research conducted in 2015 found that French candidates with Muslim-sounding names were 2.5 times less likely to receive a job interview callback than comparable applicants with Christian-sounding names.¹¹⁰

In 2014, Muslim women were targeted for Islamophobic acts in France more than Muslim men, when it was reported that 81.5% of Islamophobic acts and speech targeted Muslim women.¹¹¹ Muslim women account for almost 100% of Muslim victims of physical aggression, especially Muslim women who wear a *hijab*, as they are more easily identifiable.¹¹² In the two weeks following the Paris attacks in January of 2015, there were 128 Islamophobic incidents, and most of the verbal or physical aggressions were towards women wearing some sort of Muslim veil.¹¹³

106. Nilay Saiya and Stuti Manchanda, *Christian Nationalism and Violence Against Religious Minorities in the United States: A Quantitative Analysis*, 64 J. SCI. STUDY RELIG. 3 (2024), <https://onlinelibrary.wiley.com/doi/10.1111/jssr.12942> [<https://perma.cc/G5DK-F2MW>].

107. *Forgotten Women: The Impact of Islamophobia on Muslim Women in France*, EUR. NETWORK AGAINST RACISM, https://www.enar-eu.org/wp-content/uploads/factsheet_france_-_en.pdf [<https://perma.cc/AFS4-ZTSM>] (last accessed Nov. 24, 2024, 21:33 EST).

108. *Id.*

109. *Id.*

110. Claire Adida, David Laitin & Marie-Anne Valfort, *Research Suggests Discrimination Against Muslims in France Likely to Worsen*, IPI GLOB. OBSERVATORY (Jan. 23, 2015), <https://theglobalobservatory.org/2015/01/research-suggests-discrimination-against-muslims-in-france-likely-to-worsen/> [<https://perma.cc/W7DS-VC9M>].

111. *Forgotten Women: The Impact of Islamophobia on Muslim Women in France*, *supra* note 107.

112. *Id.*

113. *Id.*

Secularism has also been used in court cases in France as a way to restrict Muslim women.¹¹⁴ In the *Baby Loup* case, the applicant was fired from her job at a nursery called Baby Loup for violating the establishment's rules by wearing a *hijab*.¹¹⁵ Baby Loup claimed that the *hijab* violated the principles of *laïcité*.¹¹⁶ The case made it to the French Supreme Court twice, and the Court initially held that the Muslim employee could not be fired because the prohibition on the *hijab* contradicted the employee's religious freedom.¹¹⁷ The second time, the Court reversed its decision and held that the restriction was allowed because the daycare's employees were in constant contact with children and their parents, and they had a legitimate interest in accepting families from all religious backgrounds.¹¹⁸

Religious freedom in France is not equally applied to all of its citizens, as Muslim women do not get the same protection as the rest of the population. France has obligations both under its own Constitution and under international law to protect freedom of religion. For this reason, the French government must stop passing laws that disproportionately affect the rights of Muslim women.

B. The Hijab in Iran

Iran continues to draft and enact laws that are aimed at further suppressing and controlling women, and, in April of 2024, Tehran's head of the Islamic Revolutionary Guard Corps announced that a new police group was created solely to enforce the *hijab* mandate.¹¹⁹ This body was going to be retrained to enforce the *hijab* mandate in an even more severe way in public locations.¹²⁰ Previously, hundreds of businesses were closed when their owners did not enforce the *hijab* mandate.¹²¹

Additionally, Iran's newest *hijab* law, consisting of 71 articles, strengthens government control over women's lives and threatens businesses that fail to

114. See Stephanie Berry, *Eroding Religious Freedom Step by Step: France and the Baby Loup Case*, EJIL: TALK!: BLOG EUR. J. INT'L L. (July 1, 2014), <https://www.ejiltalk.org/eroding-religious-freedom-step-by-step-france-and-the-baby-loup-case/> [https://perma.cc/97RW-Z8ZB].

115. *Id.*

116. *Id.*

117. Vivian Grosswald Curran, *Guest Post by Professor Vivian Grosswald Curran: The French Supreme Court Reverses Itself in an Islamic Veil Case in L'Affaire Baby Loup*, CONFLICT OF L. (June 26, 2014), <https://conflictoflaws.net/2014/guest-post-by-professor-vivian-grosswald-curran-the-french-supreme-court-reverses-itself-in-an-islamic-veil-case-in-laffaire-baby-loup/?print=print> [https://perma.cc/47DY-URCC].

118. *Id.*

119. Jeremy Laurence, *Iran: Crackdown on hijab law*, U.N. HUM. RTS. OFF. HIGH COMM'R (Apr. 26, 2024), <https://www.ohchr.org/en/press-briefing-notes/2024/04/iran-crackdown-hijab-law> [https://perma.cc/53VP-Z2PD].

120. *Id.*

121. *Id.*

enforce it with fines or forced closures.¹²² This law was introduced as a reaction to the “Women, Life, Freedom” movement in Iran, and Nahid Naghshbandi, a researcher on Iran at Human Rights Watch, said, “[r]ather than responding to the Women, Life, Freedom movement with fundamental reforms, the autocratic government is trying to silence women with even more repressive dress laws. This law will only breed fierce resistance and defiance among women in and outside Iran.”¹²³ The law also details what acceptable covering of Iranian women looks like and states that unacceptable covering is defined as “revealing or tight clothing, or clothing that shows parts of the body lower than the neck or above the ankles or above the forearms.”¹²⁴ The punishment for *hijab* violations might be a financial penalty, but it could also include imprisonment for violations committed in an organized manner, involving contact with the media or other governments.¹²⁵ This bill has been viewed as a “form of gender apartheid.”¹²⁶

This bill was passed nearly one year after the death of Mahsa Amini, a Kurdish Iranian who Iran’s morality police murdered for incorrectly wearing her *hijab*.¹²⁷ In September of 2022, Mahsa Amini was visiting Tehran, Iran’s capital, when the morality police stopped her.¹²⁸ The police pushed her into a van, beat her, tortured her, and she fell into a coma before dying three days later in custody at Kasra Hospital in Tehran.¹²⁹

Following Amini’s death, Iran erupted into protests, and security forces beat, kicked, and slapped women and girls for not complying with the *hijab* mandate.¹³⁰ The Iranian government has also used the threat of the death penalty as a deterrent for Iranians protesting and expressing themselves.¹³¹ Because of the lack of deterrence for the Iranian government to stop violating human rights, the United Nations Office of the High Commissioner does not believe that Iranians, specifically women and girls, will be able to realize their fundamental rights and freedoms.¹³²

122. *Iran: New Hijab Law Adds Restrictions and Punishments*, HUM. RTS. WATCH (Oct. 14, 2024, 00:00 EDT), <https://www.hrw.org/news/2024/10/14/iran-new-hijab-law-adds-restrictions-and-punishments> [<https://perma.cc/T5HH-N3D7>].

123. *Id.*

124. Maziar Motamedi, *Iran’s parliament approves ‘hijab bill’; harsh punishments for violations*, AL JAZEERA (Sep. 20, 2023), <https://www.aljazeera.com/news/2023/9/20/irans-parliament-approves-hijab-bill-harsh-punishments-for-violations> [<https://perma.cc/6H4F-GAYD>].

125. *Id.*

126. *Id.*

127. *Id.*

128. *What Happened to Mahsa/Zhina Amini?*, AMNESTY INT’L (Sep. 15, 2023), <https://www.amnesty.org/en/latest/news/2023/09/what-happened-to-mahsa-zhina-amini/> [<https://perma.cc/M9VL-N8WH>].

129. *Id.*

130. Press Release, U.N. Off. of the High Comm’r for Hum. Rts., *Iran Intensifying Efforts to Repress Women and Girls on Second Anniversary of Nation-Wide Protests*, UN Fact-Finding Mission Says (Sep. 13, 2024).

131. *Id.*

132. *Id.*

Iran has a duty to adhere to international law, including the rights to freedom of religion and expression as outlined in the International Covenant on Civil and Political Rights.¹³³ A *hijab* mandate rooted in Islam directly conflicts with a woman's freedom of expression and religion. Additionally, Iran has punished all Iranian women and girls as if they were Muslims, which conflicts with its own Constitution.¹³⁴ Iran must allow women to choose whether to wear a *hijab* so that they can fully recognize their religious freedom.

C. The Hijab in the United States

The United States Constitution guarantees individuals' freedom to practice religion and prohibits the government from establishing or favoring any religion.¹³⁵ However, Muslim women have faced discrimination for their *hijab* by being prohibited from wearing a head covering, facing harassment, being terminated from jobs, being excluded from public places, and facing other forms of discrimination that are traced to the *hijab*.¹³⁶ Recently, in *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, a Muslim applicant named Samantha Elauf was refused employment for a position in a retail store because her *hijab* conflicted with Abercrombie's employee dress code.¹³⁷ The district manager said, "Elauf's headscarf would violate the Look Policy, as would all other headwear, religious or otherwise."¹³⁸ The Supreme Court held that the district manager's actions violated Title VII of the Civil Rights Act of 1964 and that an applicant's religious practice cannot be used as a factor to determine if they should be hired.¹³⁹ Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against their employees, or prospective employees, based on several factors, including religion and sex.¹⁴⁰

Following the horrific September 11th attacks in 2001, Muslim women who wear a *hijab* have experienced a significant increase in harassment.¹⁴¹ From 2000 to 2006, one Muslim civil rights advocacy group's complaints increased by 674%.¹⁴² Additionally, 69% of Muslim women who wear a *hijab* reported at least one incident of discrimination, compared to only 29% of Muslim women

133. International Covenant on Civil Political Rights, *supra* note 5.

134. QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980] art. 14.

135. U.S. CONST. amend. I.

136. *Discrimination Against Muslim Women – Fact Sheet*, AM. C.L. UNION (May 29, 2008), <https://www.aclu.org/documents/discrimination-against-muslim-women-fact-sheet#:~:text=Muslim%20women%20have%20been%20prohibited,against%20because%20they%20wear%20hijab> [https://perma.cc/DWA9-6LQU].

137. 575 U.S. 768, 769 (2015).

138. *Id.* at 770.

139. *Id.* at 774-75.

140. Title VII of the Civil Rights Act of 1964, Pub. L. No. 88-352 78 Stat. 241 (1964) (codified as amended at 42 U.S.C. §§ 2000e to 2000e-17).

141. *Discrimination Against Muslim Women – Fact Sheet*, *supra* note 136.

142. *Id.*

who do not wear a *hijab*.¹⁴³ 69% of Muslim women reported discrimination in 2018.¹⁴⁴ American Muslim women have been denied their right to wear headscarves or *hijabs* as police officers, public school teachers, jail and courthouse attendees, prison visitors, and even while being arrested or seeking police help, leading to firings, harassment, and exclusions.¹⁴⁵ At school, American Muslim girls have been harassed, assaulted, denied the right to wear a *hijab*, and banned from participating in certain extracurricular activities.¹⁴⁶ Muslim women and girls have been excluded from entering public buildings, malls, pools, and parks unless they agree to be searched by male guards or remove their head coverings.¹⁴⁷ Muslim women have also been denied driver's licenses for failing to remove their *hijab* for the photograph.¹⁴⁸

The mistreatment of Muslim women is a violation of the International Covenant on Civil and Political Rights and, as such, the United States is obligated to enact changes to better protect Muslim women.¹⁴⁹ It is also a violation of the United States Constitution, as Muslim women and girls are not entirely free to exercise their religion.¹⁵⁰ The United States must make changes so that Muslim women can realize their religious freedom fully.

D. American Christian Nationalism

Christianity has influenced the United States since its beginning, as most of the Founders were Protestants.¹⁵¹ Christianity was used as a justification for taking land from the Indigenous Peoples of the United States through *Johnson v. M'Intosh*, where Chief Justice Marshall wrote:

The right of discovery given by this commission, is confined to countries 'then unknown to all Christian people;' and of these countries Cabot was empowered to take possession in the name of the King of England. Thus asserting the right to take possession, notwithstanding the occupancy of the natives, who were heathens, and, at the same time, admitting the prior title of any Christian people who may have made a previous discovery.¹⁵²

143. *Id.*

144. Dalia Mogahed, *Six Facts Key to Understanding American Muslim Women*, INST. FOR SOC. POL'Y & UNDERSTANDING (Mar. 1, 2021), <https://ispu.org/six-facts-about-muslim-women/> [<https://perma.cc/MJ3N-5YT7>].

145. *Discrimination Against Muslim Women – Fact Sheet*, *supra* note 136.

146. *Id.*

147. *Id.*

148. *Id.*

149. International Covenant on Civil Political Rights, *supra* note 5.

150. U.S. CONST. amend. I.

151. David L. Holmes, *The Founding Fathers, Deism, and Christianity*, BRITANNICA (Dec. 21, 2006), <https://www.britannica.com/topic/The-Founding-Fathers-Deism-and-Christianity-1272214> [<https://perma.cc/W65F-W6JU>].

152. 21 U.S. (8 Wheat.) 543, 576-77 (1823).

In *Loving v. Virginia*, the Supreme Court held that statutory bans on interracial marriages were unconstitutional.¹⁵³ Chief Justice Warren, writing for the majority, referenced the trial judge's opinion, which used religion as a rationale for miscegenation statutes that prohibited sexual relationships between individuals of different races.¹⁵⁴ The trial judge wrote in his opinion:

Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.¹⁵⁵

Although this opinion was struck down at the Supreme Court, it is another example of a United States court basing part of an opinion on Christianity.

During the Jim Crow era, segregation seeped into Christianity in the form of "Jim Crow Bibles."¹⁵⁶ Jim Peck, an activist who was arrested for disobeying segregation laws, described his encounter with such Bibles, saying:

In the courtroom where we were tried, I saw the most fantastic extreme of segregation in my experience—Jim Crow Bibles. Along the edges of one Bible had been printed in large letters the words 'white.' Along the page edges of the other Bible was the word 'colored.' When a white person swore in he simply raised his right hand while the clerk held the Bible. When a Negro swore in, he had to raise his right hand while holding the colored Bible in his left hand. The white clerk could not touch the colored Bible.¹⁵⁷

Christianity has rationalized many of America's darkest historical moments, and powerful American figures today continue invoking it to justify ongoing hatred.

Christianity has maintained its significance in today's American government, as illustrated by President Trump's signing of an executive order in early February 2025 aimed specifically at combating anti-Christian discrimination.¹⁵⁸ President Trump also paved the way for a Muslim ban in early February of 2025, which had the potential to be even stricter than the travel ban on Muslims enacted in his first

153. 388 U.S. 1 (1967).

154. *Id.* at 3.

155. *Id.*

156. RAYMOND ARSENAULT, *FREEDOM RIDERS: 1961 AND THE STRUGGLE FOR RACIAL JUSTICE* 49 (Oxford University Press, 1st ed. 2006).

157. *Id.*

158. Nandita Bose & Doina Chiacu, *Trump to create religious office in White House, target 'anti-Christian bias'*, REUTERS (Feb. 6, 2025, at 17:55 EST), <https://www.reuters.com/world/us/trump-says-he-will-sign-order-targeting-anti-christian-bias-2025-02-06/> [<https://perma.cc/64A6-2BCA>].

term.¹⁵⁹ This focus on anti-Christian discrimination is particularly interesting against the backdrop of a 2019 poll, which found that only 18% of Americans believe Evangelical Christians face a lot of discrimination, while 56% of Americans believe Muslims face a lot of discrimination in the United States.¹⁶⁰

President Trump also announced his choices for the White House Faith Office, which was reestablished as a part of a personnel order on February 7, 2025, and included Pastor Paula White-Cain, Jennifer S. Korn, and Jackson Lane.¹⁶¹ All three of the appointees identify as Christian.¹⁶² The Protestant evangelical right has spewed a false narrative of persecution, and President Trump, appealing to his large Evangelical voter base, weaponized this false fear and built his anti-Christian bias task force and Faith Office through executive order.¹⁶³ Christians make up approximately two-thirds of the United States, and are therefore categorically not the “embattled minority” the Trump administration and his Evangelical supporters have painted them to be.¹⁶⁴

Christian nationalism has existed long before the Trump administration, and it encompasses the idea that America is essentially a Christian theocracy.¹⁶⁵ The normalization of Christian nationalism encourages bigotry against actual religious minorities, such as Muslim and Jewish Americans.¹⁶⁶ Christian nationalism also clashes with the Establishment Clause of the First Amendment by promoting the ideology that the United States is fundamentally a country for

159. Press Release, Don Beyer, Congressman, As Trump Administration Prepares Revamped Muslim Ban, Bicameral Delegation Reintroduces Bill to Prevent Presidents from Enacting Religious Travel Bans (Feb. 5, 2025), <https://beyer.house.gov/news/documentsingle.aspx?DocumentID=6364> [<https://perma.cc/JN52-ATA3>].

160. *Sharp Rise in the Share of Americans Saying Jews Face Discrimination*, PEW RSCH. CTR. (Apr. 15, 2019), <https://www.pewresearch.org/politics/2019/04/15/sharp-rise-in-the-share-of-americans-saying-jews-face-discrimination/> [<https://perma.cc/49UB-B78F>].

161. *President Trump Announces Appointments to the White House Faith Office*, THE WHITE HOUSE (Feb. 7, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/president-trump-announces-appointments-to-the-white-house-faith-office/> [<https://perma.cc/5VL5-9N5L>].

162. Monica Sager, *Who is Paula White-Cain? Trump's Pick to Lead White House Faith Office*, NEWSWEEK (Feb. 7, 2025, at 12:52 EST), <https://www.newsweek.com/paula-white-pastor-trump-white-house-faith-office-2028007> [<https://perma.cc/TXM6-9GSZ>]; See Jenny Korn (@JennySKorn), X (Apr. 20, 2025 at 12:26 EST) <https://x.com/JennySKorn/status/1913992657841660103> [<https://perma.cc/W5AY-F6EX>]; Nathan Layne & Alexandra Ulmer, *How Trump netted evangelical votes in Iowa, with help from a young Christian operative*, REUTERS (Dec. 14, 2023, at 10:17 EST), <https://www.reuters.com/world/us/how-trump-netted-evangelical-votes-iowa-with-help-young-christian-operative-2023-12-14/> [<https://perma.cc/5KT3-T83P>].

163. Jason DeRose, *Here's how Trump's Faith Office and task force against 'anti-Christian bias' may work*, NAT'L PUB. RADIO (Feb. 14, 2025, at 16:31 EST), <https://www.wlrn.org/2025-02-14/heres-how-trumps-faith-office-and-task-force-against-anti-christian-bias-may-work> [<https://perma.cc/AP4S-BTGN>].

164. *Id.*

165. Guthrie Graves-Fitzsimmons & Maggie Siddiqi, *Christian Nationalism Is 'Single Biggest Threat' to America's Religious Freedom*, CTR. FOR AM. PROGRESS (Apr. 13, 2022), <https://www.americanprogress.org/article/christian-nationalism-is-single-biggest-threat-to-americas-religious-freedom/> [<https://perma.cc/B7JR-ZC3B>].

166. *Id.*

Christians.¹⁶⁷ While Christian nationalism traces back to the late 1600s in the United States, it tends to amplify when white Christians feel threatened by war, increased immigration, or economic instability.¹⁶⁸

Project 2025 is a nearly 900-page document created by far-right, conservative Americans that essentially detailed a plan for the first 180 days of President Trump's second term, and the Heritage Foundation, a far-right organization, spearheaded the drafting of this document.¹⁶⁹ Not all of the document is blatantly Christian nationalistic; still, there are parts of the text that strongly support Christian-centric beliefs and put other religions, or nonreligions, in inferior positions to Christianity by imposing it on everyone.¹⁷⁰ Project 2025 added a religious interpretation to the "pursuit of happiness" as mentioned in the Declaration of Independence and stated that this pursuit can only be achieved when one lives as their Creator decreed.¹⁷¹ In case there was a possibility of interpreting this statement not to be religious in nature, the document goes on to state, "Religious devotion and spirituality are the greatest sources of happiness around the world."¹⁷² To further demonstrate the intended audience of Project 2025, the word "church" is mentioned nine times throughout the document, the word "synagogue" is mentioned once, and nowhere in the document are the words "mosque" or "temple" mentioned.¹⁷³

During the 2024 presidential campaign, President Trump denied having any connections to Project 2025, even though 140 former Trump administration staffers helped draft the document.¹⁷⁴ Several such authors, including Russell Vought, are also serving in President Trump's second term.¹⁷⁵ Furthermore, many of the executive orders President Trump drafted in the first days of his second term were Project 2025 policies.¹⁷⁶ Even if President Trump claims to have no connection to Project 2025, this denial does not hold much weight when Project 2025's authors now occupy key roles in his administration, and his policies mirror its Christian nationalist agenda.¹⁷⁷

167. *Id.*

168. *Understanding White Christian Nationalism*, YALE UNIV.: YALE INST. FOR SOC. & POL'Y STUD. (Oct. 4, 2022), <https://isps.yale.edu/news/blog/2022/10/understanding-white-christian-nationalism> [https://perma.cc/5757-B28K].

169. Andra Watkins, *Project 2025: A Christo-fascist manifesto designing a theocracy*, FULCRUM (Aug. 19, 2024), <https://thefulcrum.us/democracy/project-2025-christian-nationalism> [https://perma.cc/W7HD-J8TT].

170. THE HERITAGE FOUND., MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE 480-81, 589 (Paul Dans & Steven Groves eds., 2023), https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf [https://perma.cc/7TCT-2MU6].

171. *Id.* at 13.

172. *Id.* at 13-14.

173. *Id.* at 4, 9, 16, 276, 453, 481, 493.

174. *Project 2025, Explained*, AM. C.L. UNION, <https://www.aclu.org/project-2025-explained> [https://perma.cc/WFC3-5WLX] (last visited Oct. 9, 2025).

175. Melissa Quinn, *Where Trump policies and Project 2025 proposals match up*, CBS NEWS (Feb. 3, 2025, at 17:02 EST), <https://www.cbsnews.com/news/trump-project-2025-playbook/> [https://perma.cc/5Q5X-TQA4].

176. *Id.*

177. *Id.*

Christian nationalist ideas embedded within Project 2025, such as banning information access in schools or attempting to prohibit members of the LGBTQ community from exercising their fundamental right to marriage, are particularly contradictory to a functioning democracy.¹⁷⁸ The ultimate goal of Christian nationalism is a society with two groups: real Americans who subscribe to a Christian American culture, and the rest of Americans who will lose their voices entirely.¹⁷⁹ Ironically, although they would never admit a similarity with a country they hate, Christian nationalists want a Christian version of the Islamic State of Iran, where, as written in Article 14 of the Iranian Constitution, non-Christians still have a place in the country but are not able to perform in the same capacity within the American government.¹⁸⁰ Like Iran after the Islamic Revolution, if Christian nationalism succeeds, the rights for which Americans have fought so hard will disappear and be replaced with biblical law. Rights will only be those granted by God.¹⁸¹

Project 2025's underlying Christian nationalism contravenes international law, specifically the International Covenant on Civil and Political Rights. It also violates the Establishment Clause of the United States Constitution. Finally, by focusing on protecting an unoppressed group, Project 2025 invites further acts of violence against those in minority religious communities.

III. RECOMMENDATION

To better protect Muslim women and ensure that Christianity does not become a state-sponsored religion in the United States, as Islam is in Iran, or that the United States does not adopt such a strict form of secularism as to ban religious acts, as in France, the United States government should work to protect minority religions. A diverse interfaith council, composed of leaders representing all religions, should be implemented at the federal level. Federal hate crime prosecutions should also increase to deter individuals from committing hate crimes. Finally, the Religious Freedom Restoration Act should be amended to cease being a weapon used by a religious majority against already marginalized groups.

A. Interfaith Council

For over two decades, presidents of the United States, beginning with

178. THE HERITAGE FOUND., *supra* note 170 at 5, 451.

179. Caroline Mala Corbin, *The Supreme Court's Facilitation of White Christian Nationalism*, 71 ALA. L. REV. 833, 834 (2020).

180. QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980] art. 14.

181. Donald J. Trump, *Remarks by President Trump at the 66th Annual National Prayer Breakfast*, TRUMP WHITE HOUSE ARCHIVES, [https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-66th-annual-national-prayer-breakfast/#:~:text=Each%20year%2C%20this%20event%20reminds,\(Applause.\)](https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-66th-annual-national-prayer-breakfast/#:~:text=Each%20year%2C%20this%20event%20reminds,(Applause.)) [https://perma.cc/9XXC-GPGM] (stating that Creator gives rights, not man).

President Bush, have utilized the White House Office of Faith-Based and Neighborhood Partnerships to work across federal agencies and ensure that such agencies can best serve Americans.¹⁸² The federal agencies which have previously utilized a Faith-Based and Neighborhood Partnership include: the Department of Agriculture, the Department of Health and Human Services, the Department of Justice, the Department of Homeland Security, the Department of Housing and Urban Development, the Department of Labor, the Department of Commerce, the Environmental Protection Agency, the Department of Education, the Corporation for National and Community Service, the Department of Veterans Affairs, the Department of Small Business Administration, and the United States Agency for International Development.¹⁸³ In addition to working with federal agencies, the White House Office of Faith-Based and Neighborhood Partnerships has also previously coordinated with the President's Advisory Council, which advises the federal government on how it can best work with religious organizations.¹⁸⁴ This council is composed of leaders with diverse religious backgrounds, including secular individuals, who serve one-year terms.¹⁸⁵

The Obama Administration utilized this office, and the Biden Administration re-established the office one month into its term.¹⁸⁶ The Office of Faith-Based and Neighborhood Partnerships played a crucial role in various areas during the Biden Administration, including the distribution of COVID-19 vaccines and the development of strategies to combat Islamophobia and antisemitism.¹⁸⁷ However, instead of the White House Office of Faith-Based and Neighborhood Partnerships, the Trump Administration opted for the White House Faith Office,¹⁸⁸ which does not represent any minority religion; instead, its leaders all identify as Christians.¹⁸⁹

Interfaith involvement is important at the federal level because it encourages dialogue across different religions, including with those people who choose not to

182. *Office of Faith-Based and Neighborhood Partnerships*, U.S. DEP'T OF COM., <https://www.commerce.gov/bureaus-and-offices/os/faith-based-and-neighborhood-partnerships> [<https://perma.cc/S47A-K6ZA>] (last visited Feb. 17, 2025) (due to a change in administration, this website has been updated and currently omits information which previously displayed information about previous administrations' utilization of Faith-Based and Neighborhood Partnerships; the archived permalink provides this information); *Center for Faith-Based and Neighborhood Partnerships*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/about-usda/general-information/staff-offices/office-congressional-relations/office-external-and-intergovernmental-affairs/center-faith-based-and-neighborhood-partnerships> [<https://perma.cc/WP2T-Q4KK>] (last visited Oct. 9, 2025).

183. *Center for Faith-Based and Neighborhood Partnerships*, *supra* note 182.

184. *Id.*

185. *Id.*

186. *Office of Faith-Based and Neighborhood Partnerships*, *supra* note 182.

187. Mark Silk, *The White House has a Faith Office!*, RELIGION NEWS SERV. (Feb. 13, 2025), <https://religionnews.com/2025/02/13/the-white-house-has-a-faith-office/> [<https://perma.cc/B4AY-W2NC>].

188. *President Trump Announces Appointments to the White House Faith Office*, *supra* note 161.

189. See e.g., Sager, *supra* note 162; Korn, *supra* note 162; Layne & Ulmer, *supra* note 162.

practice any religion.¹⁹⁰ This dialogue is necessary to achieve genuine religious freedom because it fosters harmony among religions.¹⁹¹ David Saperstein, the former Ambassador-at-Large for International Religious Freedom, said, “Interfaith engagement unites people across faith and ideological lines and encourages mutual trust, shared values, and understanding.”¹⁹² During the Obama Administration, interfaith religious leaders collaborated to combat rising Islamophobia in the forms of Qur’an burnings, protests against mosque constructions, and efforts to prevent Muslims from entering the United States.¹⁹³

By only focusing on the religion of the majority, the Trump Administration is leaving a necessary need unmet. Community leaders of minority religions, as well as nonreligious leaders, must also have a voice at the federal level.¹⁹⁴ An interfaith council that accurately reflects all faith options in the United States is necessary to achieve religious freedom and unite Americans across all religions.¹⁹⁵ An interfaith council would benefit Muslim women because there would be actual representation at the federal level to address the struggles of Muslim women. Religious freedom cannot be achieved if the only religion represented is the religion of the majority.¹⁹⁶ In fact, the opposite is more likely to be true; by only representing the Christian faith, the United States is more likely to adopt the worst parts of the governments of Iran and France regarding religious expression.¹⁹⁷ The American government will be a Christian theocracy, with the American Christian having more rights than any other group, and it has the potential to infringe on American Muslims’ ability to practice their religion, as France has done with its treatment of Muslim women who choose to wear a *hijab*.¹⁹⁸ If the government represents any religion, then all religions must be represented by the government, or freedom of religion is at stake.¹⁹⁹ If any religion is represented in the government, all religions should be represented to protect religious liberty.

190. David N. Saperstein, *Living Together in Peace: The Importance of Interreligious Harmony for Religious Freedom*, U.S. DEP’T OF ST. (Sep. 21, 2016), <https://2009-2017.state.gov/j/drl/rls/rm/2016/263725.htm> [<https://perma.cc/NP3V-ZP5C>].

191. *Id.*

192. *Id.*

193. *Id.*

194. See David Saperstein, *Too Few Faiths in a Nation of Many*, BERKLEY CTR. FOR RELIGION, PEACE & WORLD AFFS. (Aug. 22, 2025), <https://berkeleycenter.georgetown.edu/responses/too-few-faiths-in-a-nation-of-many> [<https://perma.cc/964P-D54G>].

195. Saperstein, *supra* note 190.

196. See Saperstein, *supra* note 194.

197. See *supra* Part II.A–B (summarizing that when one religion is represented or targeted, citizens of those countries are not able to fully express their religious freedoms).

198. See *supra* Part II.A–B (summarizing that the United States might develop a Christian theocracy similar to Iran’s theocracy which would ultimately mirror France’s treatment of Muslim women).

199. See Saperstein, *supra* note 194.

B. Federal Hate Crime Prosecution

Under 18 U.S.C. § 245, it is a crime to use or threaten force against a person based on religion.²⁰⁰ Most states have hate crime statutes as well that criminalize hate crimes based on religion, except for South Carolina and Wyoming, which do not have local hate crime statutes for any groups.²⁰¹ Religious hate crimes have the second-highest incident rates, with 23.5% of the 11,323 single-bias hate crime incidents in 2024 motivated by religious hatred.²⁰²

Unfortunately, a large majority of hate crime suspects face no punishment, with just 17% of suspects being prosecuted between 2005 and 2019.²⁰³ However, of the suspects prosecuted from 2015 through 2019, 94% were convicted of hate crimes.²⁰⁴ This statistic does not accurately portray hate crime incidents aimed at potential Muslim Americans. Many Americans mistakenly interchange the labels “Arab American” and “Muslim.”²⁰⁵ However, of the 3.7 million Arab Americans in the United States, only about 25% practice Islam.²⁰⁶ This means that 925,000 Arab Americans are Muslim. This is significant because until 2015, anti-Arab incidents were not reported as hate crimes after the FBI quietly removed the category two years after its implementation in 1990.²⁰⁷ Because of the ignorant belief that “Arab” and “Muslim” identities are interchangeable, hate crimes against Arab-Americans were not reported as hate crimes, even though a rise in anti-Arab hate did occur after 9/11.²⁰⁸

Furthermore, many Arab and Muslim communities underreport hate crimes even more than other groups due to a lack of trust in the government stemming from the United States implementing stronger surveillance measures on Arab and Muslim Americans following 9/11.²⁰⁹ In 2012, a national survey showed that approximately 60% of hate crime victimizations were not reported to the

200. 18 U.S.C. § 245(b)(2).

201. *Laws and Policies*, U.S. DEP’T OF JUST. (Jan. 24, 2025), <https://www.justice.gov/hatecrimes/laws-and-policies> [https://perma.cc/5KLP-BYX7].

202. *Facts and Statistics*, U.S. DEP’T OF JUST. (Sep. 25, 2024), <https://www.justice.gov/hatecrimes/hate-crime-statistics> [https://perma.cc/84PY-5CY2].

203. Annika Kim Constantino, *Justice Department declined to prosecute 82% of hate crime suspects investigated from 2005 to 2019*, CNBC (July 9, 2021, at 08:25 EDT), <https://www.cnbc.com/2021/07/08/doj-declined-to-prosecute-82percent-of-hate-crime-suspects-from-2005-to-2019.html> [https://perma.cc/H8GA-24XZ].

204. *Id.*

205. *National Arab American Heritage Month*, INSIGHT INTO DIVERSITY (Mar. 16, 2021), <https://www.insightintodiversity.com/national-arab-american-heritage-month/> [https://perma.cc/N4P5-QYLD].

206. *Id.*

207. Odette Yousef, *For years, the FBI quietly stopped tracking anti-Arab violence and hate crimes*, NAT’L PUB. RADIO (Dec. 1, 2023, at 05:00 ET), <https://www.npr.org/2023/12/01/1215840101/for-years-the-fbi-quietly-stopped-tracking-anti-arab-violence-and-hate-crimes> [https://perma.cc/3P5K-X6M9].

208. *Id.*

209. *Id.*

police and were, therefore, not included in the FBI's hate-crime data.²¹⁰ Additionally, there are further complications with reporting hate crimes for Muslims, as they may often have language barriers as well as complicated relationships with immigration authorities and law enforcement.²¹¹

To receive a conviction for a hate crime, federal prosecutors must prove beyond a reasonable doubt the underlying crime and that the suspect was motivated by bias.²¹² It is normal in a hate crime case for the victim not to know the perpetrator, and this makes it more difficult for violent hate crimes to result in an arrest.²¹³ Violent crimes where hate is not involved are three times more likely to result in an arrest than violent crimes that are the result of a hateful bias.²¹⁴ Because of the need to prove the biased motivation beyond a reasonable doubt, investigators are hesitant to apply hate crime charges before thoroughly investigating.²¹⁵

The biggest hurdle to prosecuting hate crimes is a lack of evidence.²¹⁶ When an attacker uses hate speech during a crime, it is easier to prosecute and convict an individual for a hate crime.²¹⁷ However, this does not always happen, and so the bias element can be extremely challenging to prove. Additionally, states often cannot prosecute hate crimes due to a lack of resources to gather sufficient evidence of a hateful bias.²¹⁸

In 2009, 18 U.S.C. § 249, also known as The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act ("Shepard-Byrd Act"), was enacted and "provides funding and technical assistance to state, local, and tribal jurisdictions to help them to more effectively investigate and prosecute hate crimes."²¹⁹ The Shepard-Byrd Act also authorizes the federal government to prosecute some hate crimes where local prosecutors are either unable or unwilling to prosecute such crimes.²²⁰ To step in, though, the Department of Justice must assert one of the following: that the state lacks jurisdiction to prosecute the hate crime, that the state has asked the federal government to take the case, that a verdict under

210. Eric Levenson, *Why prosecuting hate crimes can be difficult*, CABLE NEWS NETWORK (Oct. 31, 2018, at 09:59 EDT), <https://www.cnn.com/2018/10/31/us/hate-crimes-charges-motive> [<https://perma.cc/A725-F2EC>].

211. *Id.*

212. Michael Lieberman, *Hate Crimes, Explained*, S. POVERTY L. CENTR. (Oct. 1, 2024), <https://www.splcenter.org/resources/reports/hate-crimes-explained/#:~:text=Hate%20crimes%20are%20difficult%20to,it%20is%20a%20difficult%20hurdle> [<https://perma.cc/FCX5-2FJK>].

213. *Id.*

214. *Id.*

215. Levenson, *supra* note 210.

216. Lieberman, *supra* note 212.

217. *Id.*

218. *Id.*

219. *The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009*, C.R. DIV. U.S. DEP'T OF JUST. (May 30, 2023), <https://www.justice.gov/crt/matthew-shepard-and-james-byrd-jr-hate-crimes-prevention-act-2009-0> [<https://perma.cc/4NLC-KEYZ>]; 18 U.S.C. § 249.

220. Lieberman, *supra* note 212.

the state charges would inadequately punish hate crime-related violence, or that it is in the public's interest for the United States to prosecute the defendant.²²¹

A prosecutor's predisposition towards the available evidence in a case influences the investigation into hate crime allegations.²²² If a prosecutor believes the evidence is insufficient to secure a hate crime conviction, that belief inevitably becomes a self-fulfilling prophecy, as the availability of evidence is what motivates law enforcement to investigate a crime.²²³ Prosecutors usually will not attempt to prosecute a crime if they believe they will not be able to convict a suspect, and they usually only bring hate crime charges "in cases entailing injury and clear evidence that racial, religious, or other slurs were written or uttered during the offense."²²⁴ When discussing the determination of whether a case is worth prosecuting, one prosecutor stated:

What I think makes a hate crime more difficult is...getting the jury to understand. What do I mean by that? Let's talk about an LGB [sic] hate crime. I don't know if this is going to be the first time that a juror has ever interacted with someone who's gay. That's legitimately a concern that I have. I try to vet all that out in jury selection, but you only get so much.²²⁵

The biggest hurdle to reaching a hate crime conviction once a case enters the criminal justice system is the prosecutor.²²⁶ In cases where attackers do not make hateful statements during the crime, three factors reduce the likelihood that the prosecution will bring hate crime charges.²²⁷ The first is that law enforcement generally believes a higher burden of proof is necessary than what is actually required.²²⁸ The second is that police officers and prosecutors do not coordinate effectively, and often hate crime charges are not brought when there is no evidence of the hate crime at the time of the arrest.²²⁹ The third reason is that there is frequently a cultural distance between investigators and victims.²³⁰ Because of the more masculine and conservative mindset in law enforcement, police officers often lack "the development of soft skills to uncover bias as a

221. *Id.*

222. Ryan D. King & Besiki L. Kutateladze, *A Higher Bar: Institutional Impediments to Hate Crime Prosecution*, 57 L. & SOC'Y REV. 489, 490 (2023), <https://www.cambridge.org/core/journals/law-and-society-review/article/higher-bar-institutional-impediments-to-hate-crime-prosecution/D1ADB3AE0FA28C59CD4A1519642BA408> [<https://perma.cc/5AH5-P7S4>].

223. *Id.* at 491.

224. *Id.*

225. *Id.* at 496.

226. Tiên Nguyễn, *Why are hate crimes so hard to convict in court?*, CTR. FOR PUB. INTEGRITY (May 9, 2024), <https://publicintegrity.org/inequality-poverty-opportunity/addressing-anti-asian-hate/why-are-hate-crimes-so-hard-to-convict-in-court/> [<https://perma.cc/L2L2-2P XK>].

227. King & Kutateladze, *supra* note 222, at 497.

228. *Id.*

229. *Id.* at 499.

230. *Id.* at 500.

motive, especially for crimes perpetrated against LGBTQ victims.”²³¹ Muslim victims are especially less likely to report hate crimes as they generally feel “especially disconnected from the law enforcement community.”²³²

For Muslim women to be better protected by federal hate crime statutes, they need to feel safer and more comfortable reporting their hate crimes.²³³ There needs to be better training for police officers to handle hate crimes more efficiently, so this is attainable.²³⁴ Suppose local departments were to focus more attention and sensitivity on how to spot potential instances of hate crimes or speak to minority groups in general. In that case, likely, there would at least be an increase in the reporting of hate crimes against Muslim women. Police officers and prosecutors must also be better trained to ask questions about an attacker’s possible motive, especially when the victim does not know the instigator.²³⁵ Local law enforcement departments should also establish a standard for investigative procedures, clearly communicate with prosecutors when handing off a case, and step in to help with investigations when possible.²³⁶ Finally, the federal government should recognize that it is always within the public interest to prosecute hate crimes and should assist in whatever way possible to help local governments convict hate crime offenders.²³⁷

An increase in hate crime prosecutions would provide a much-needed deterrent to anti-Muslim hate crimes against Muslim women. Suppose a Muslim woman is unable to practice her religion without fear of violent acts of bigotry. In that case, she is not fully able to recognize her religious freedom as enshrined in the United States Constitution. As such, it is a matter of religious liberty to prosecute religious hate crimes better, and, therefore, there must be an increase in federal prosecution of hate crimes.

C. Religious Freedom Restoration Act of 1993

The Religious Freedom Restoration Act (“RFRA”) was passed in 1993 and imposes a higher standard of review when the government substantially encroaches on an individual’s religion.²³⁸ A substantial burden is generally inferred when an individual has to choose between possible legal repercussions and adhering to their religious beliefs.²³⁹ For an action burdening an individual’s

231. *Id.*

232. *Id.*

233. Yousef, *supra* note 207.

234. King & Kutateladze, *supra* note 222, at 500 (demonstrating how cultural distance keeps officers from effectively questioning victims and suggests a need for better training to bridge cultural gaps).

235. Lieberman, *supra* note 212.

236. King & Kutateladze, *supra* note 222, at 500.

237. *See id.* at 491.

238. Whitney K. Novak, *The Religious Freedom Restoration Act: A Primer*, CONG. RSCH SERV. (Apr. 3, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF11490> [<https://perma.cc/Q4RZ-HXT2>].

239. *Id.*

religion to be upheld, the government must show that its actions were in pursuit of a compelling government interest and there was no other reasonable alternative for the government to carry out that particular interest.²⁴⁰ Congress's RFRA initially applied only to the federal government, as it was an overreach of Congressional power to apply it to the states; however, many states have passed their own versions of RFRA with local applicability.²⁴¹

RFRA was initially passed with the intention of protecting minority religious groups from religious persecution.²⁴² In *Employment Division v. Smith*, the Supreme Court held that Indigenous Americans in Oregon were not allowed to use the Free Exercise Clause as a means to participate in ceremonial ingestions of peyote.²⁴³ Following the *Employment Division* case, Congress sought to value free exercise more than the Supreme Court allowed, passed RFRA, and chose to apply strict scrutiny to government actions that burden an individual's free exercise of religion rather than the rational basis test.²⁴⁴

Today, RFRA is "used as a vehicle for institutions and individuals to argue that their faith justifies myriad harms."²⁴⁵ In *Burwell v. Hobby Lobby Stores*, for example, Hobby Lobby claimed that, because of RFRA, it did not have to comply with the Affordable Care Act's requirement that it provide contraceptives through its employee insurance.²⁴⁶ The Court ruled in favor of Hobby Lobby and held that requiring the business, a closely held corporation, to give up its religious freedom violated RFRA.²⁴⁷ This is just one example of how RFRA can be used to exclude rather than protect. The Trump Administration has also previously allowed for RFRA to be a basis for federally funded foster care agencies, one of which received nearly \$1 million from the federal government, to discriminate against Catholic, Jewish, and LGBTQ families by allowing these agencies to discriminate against potential adopters based on the agency's religious affiliation.²⁴⁸

In *Jama v. Peters*, a District Court in the Eighth Circuit ruled against

240. Memorandum from the U.S. Att'y Gen. to all Exec. Dep'ts and Agencies, Federal Law Protections for Religious Liberty (Oct. 6, 2017), <https://www.justice.gov/crt/page/file/1006786/dl> [<https://perma.cc/QF8N-ZZXW>].

241. Novak, *supra* note 238.

242. *Do No Harm Act*, HUM. RTS. CAMPAIGN (Mar. 28, 2025), <https://www.hrc.org/resources/do-no-harm-act#:~:text=What%20is%20the%20Do%20No,of%20harm%20on%20other%20people> [<https://perma.cc/9Y74-ZHSG>].

243. 494 U.S. 872, 890 (1990) (holding that states can deny unemployment benefits to individuals fired for using illegal drugs for religious purposes).

244. Jake Greenblum & Ryan Hubbard, *Should Employment Division v. Smith be Overturned?*, 23 AMA J. ETHICS 864, 865 (2021), https://journalofethics.ama-assn.org/sites/joedb/files/2021-10/hlaw1-peer-2111_0.pdf [<https://perma.cc/ZJE5-LDDY>].

245. *The Religious Freedom Restoration Act is discriminatory. Let's fix it*, RELIGION NEWS SERV. (May 18, 2016), <https://religionnews.com/2016/05/18/the-religious-freedom-restoration-act-is-discriminatory-lets-fix-it/#> [<https://perma.cc/32LG-TNE4>].

246. 573 U.S. 682, 736 (2014).

247. *Id.*

248. Robert C. "Bobby" Scott, *Do No Harm Act*, ED & WORKFORCE DEMOCRATS (Apr. 19, 2023), https://democrats-edworkforce.house.gov/imo/media/doc/do_no_harm_fact_sheet.pdf [<https://perma.cc/7AFD-F6TK>].

protecting an incarcerated Muslim woman's right to wear her *hijab*.²⁴⁹ Muna Jama was an incarcerated Muslim woman who was coerced into removing her *hijab* for her booking photo through a threat of solitary confinement.²⁵⁰ The picture showed Jama without her *hijab*, even though she explained to the officers that it went against her religion to be seen without her *hijab*.²⁵¹ The photo was used on Jama's ID card, which she carried at all times and was consistently visible to everyone around her; it also appeared in a book officers used during bed count and was displayed on her locker.²⁵² After filing a complaint at the prison, the officers took two new photos of Jama—one of her with a *hijab*, and one of her without a *hijab*.²⁵³ The photo of her in the *hijab* was used on her ID card until she lost her ID card.²⁵⁴

After replacing her ID photo with the uncovered photo, Jama filed an action alleging that the officers violated her religious rights under RFRA and asked the federal court to issue an order requiring the prison to replace her uncovered photo in the database with a photo of Jama in her *hijab*, stop using the uncovered photo to identify Jama in her daily activities, and replace Jama's ID card with the photo of her where she is wearing her *hijab*.²⁵⁵ The Court decided that Jama did not point to a binding authority demonstrating that the officers had fair warning that their ID policy violated Jama's rights under RFRA.²⁵⁶ The Court concluded that removing a *hijab* for booking photos and identification did not violate a clearly established religious right and that, therefore, the prison officials had qualified immunity.²⁵⁷

Some federal districts, however, have ruled in favor of the RFRA protecting Muslim women. In *Forde v. Zickefoose*, the Second Circuit had to determine if Beverly Forde's religious exercise was substantially burdened while she was in prison and, if it was, if the government had a compelling interest and was using the least restrictive means to further that interest.²⁵⁸ Forde was an incarcerated Muslim woman at FCI Danbury in Connecticut, and was required to use an identification photograph that showed her without a *hijab*, even though it went against her religion.²⁵⁹ Forde was forced to humiliate herself and disrespect her religion by showing this photo to various men regularly; the government claimed that it was justified because of the State's interest in having updated, uncovered pictures for security purposes.²⁶⁰ The District Court determined that

249. No. 23-CV-03075, 2024 WL 4444710, slip op. at *5-6 (D. Minn. Oct. 7, 2024).

250. *Id.* at *1.

251. *Id.*

252. *Id.* at *2.

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.* at *6.

257. *Id.* (explaining that officials are not entitled to qualified immunity unless plaintiff states “a plausible claim for violation of a constitutional or statutory right” and the right is “clearly established at the time of the alleged infraction”).

258. 612 F. Supp. 2d 171, 177 (D. Conn. Apr. 2, 2009).

259. *Id.*

260. *Id.* at 179.

the State's interest could have been met by keeping an uncovered photo of Forde in a locked office and allowing her to wear her *hijab* in her identification photo.²⁶¹ The Court then said that the State did not show that requiring Forde to carry a photograph of herself without her *hijab* was the least restrictive means of addressing security concerns.²⁶² If more courts followed the Second Circuit's approach when deciding on religious discrimination cases, then Muslim women could have better judicial protection.

The Do No Harm Act ("DNHA") was first introduced in the House of Representatives in May of 2016.²⁶³ DNHA is a proposed amendment to RFRA and would protect religious freedom with a crucial clarification: religious freedom cannot be used as a means to harm others.²⁶⁴ Under DNHA, RFRA could not be used as a justification for violating: "nondiscrimination laws; employment laws governing wages and collective bargaining; child labor and protection laws; access to health care; services provided through a government contract or grant; and services by government officials."²⁶⁵ This would allow for better protection of religious minorities, including Muslim women. DNHA's necessity is best illustrated by a recent amicus brief filed by the Church of Jesus Christ of Latter-day Saints.²⁶⁶ While the argument is not related to Muslim women's religious rights, it still illustrates how RFRA can be used to harm a marginalized community.²⁶⁷ In this brief, the Mormon church argued that allowing transgender individuals heightened scrutiny under the Fourteenth Amendment would chill the exercise of religion.²⁶⁸ Minority groups will continue to be the victims of RFRA until the statutory protections of DNHA are implemented.

Although DNHA has not been passed, it was reintroduced to the House of Representatives and the Senate in March 2025.²⁶⁹ While it is unlikely to pass until there is a power shift, especially since it does not align with the Christian nationalistic policies of the Trump Administration, Congress should reintroduce DNHA to the House of Representatives.²⁷⁰ Suppose individuals, businesses, or nonprofits can use RFRA to withhold health care or further discriminate against members of marginalized communities. In that case, others can use that same discriminatory basis to exclude Muslim women. The same justification Hobby

261. *Id.*

262. *Id.*

263. *The Do No Harm Act*, AMS. UNITED FOR SEPARATION OF CHURCH & ST., <https://www.au.org/how-we-protect-religious-freedom/do-no-harm-act/#:~:text=May%202016,in%202018%20and%202019> [<https://perma.cc/A632-25ME>] (last visited Oct. 29, 2025).

264. *Id.*

265. Scott, *supra* note 248.

266. Brief of the Church of Jesus Christ of Latter-Day Saints; National Association of Evangelicals; Ethics & Religious Liberty Commission of the Southern Baptist Convention; Coalition for Jewish Values; and Jewish Coalition for Religious Liberty as Amici Curiae Supporting Petitioners, at 24-43, *Little v. Hecox*, 145 S. Ct. 2871 (2025) (No. 24-38), 24-43.

267. *Id.*

268. *Id.* at 2.

269. *Do No Harm Act*, *supra* note 242.

270. See *supra* Part II.D.

Lobby used to justify disobeying the Affordable Care Act could also be used to harm Muslim women.²⁷¹ The *hijab* does not usually allow Muslim women, specifically Muslim women who choose to wear a veil, to hide their religion. As such, Muslim women are particularly vulnerable to discrimination. A business owner could say that it is against their religion to hire or serve a Muslim woman until RFRA is amended to become a shield for religious minorities instead of a sword for religious majorities. This is why the United States legislative branch must work together to pass the DNHA and promote RFRA's original intention of protecting religious minorities.

IV. CONCLUSION

The United States has historically emphasized the separation of church and state and the right of individuals to practice the religion of their choice.²⁷² This freedom of religion cannot be fully recognized, though, when individuals of minority religions are targeted for their beliefs. Muslim women are particularly at risk of religious hate crimes as they often wear a veil and are easily identifiable to non-Muslims.

Dialogue between community leaders is necessary, especially in areas across the United States with little diversity, as many misconceptions about Islam allow people to act out of ignorance and hate.²⁷³ The establishment of an interfaith council at the federal level is crucial, as the current administration prioritizes using Christian leaders to advise on religious matters.²⁷⁴ An interfaith council could assist with the underreporting of hate crimes, especially by Muslim women, as it would encourage more dialogue and could empower Muslim women to feel more comfortable coming forward after experiencing what might be a hate crime.²⁷⁵ Additionally, prosecutors and local law enforcement officers need better training on how to identify and gather evidence of possible hate crimes.²⁷⁶ Hate crimes are not prosecuted nearly as much as they could be, and this is primarily due to a lack of evidence.²⁷⁷ Prosecutors need to better work with police officers to gather more evidence establishing the bias component of a hate crime.²⁷⁸ If more hate crime convictions take place, there is a more substantial likelihood that potential attackers would be less emboldened and more deterred from acting upon their hate.²⁷⁹ Finally, the Religious Freedom Restoration Act needs to be amended so that it ceases to be a weapon used against minority religions and can instead be

271. See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 736 (2014).

272. John A. Ragosta, *A Wall Between a Secular Government and a Religious People*, 26 ROGER WILLIAMS U. L. REV. 545, 545-48 (2021).

273. See *supra* Part III.A.

274. See e.g., Sager, *supra* note 162; Korn, *supra* note 162; Layne & Ulmer, *supra* note 162.

275. King & Besiki, *supra* note 222.

276. Lieberman, *supra* note 212.

277. *Id.*

278. *Id.*

279. See *supra* Part III.B.

used as it was intended when drafted in the early 90s.²⁸⁰ By passing the DNHA, the RFRA would instead be a shield used to protect minority groups from the religious majority, using the Act as a tool for discrimination.²⁸¹

Until every individual feels safe and comfortable practicing their religion, the United States will not fully achieve religious freedom. Like the Islamic Republic of Iran and France, when Muslim women are forced to wear a *hijab* or not to wear a *hijab*, there can be no religious freedom. The United States government needs to address minority religions and protect a Muslim woman's right to practice her religion through wearing a *hijab*, or the very fundamental religious freedom that was articulated in the First Amendment cannot be fully realized by all Americans.

280. *See supra* Part III.C.

281. *Id.*