STATE OF FLORIDA

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ATTORNEY GENERAL

April 2, 2026

As Attorney General of the State of Florida, I tasked my staff with researching the constitutionality of Florida laws that mandate religious discrimination. Based on this research, I requested and am now giving an official opinion on questions of law relating to my official duties.[1]

There are two relevant questions of law presented here: (1) are Florida laws that facially discriminate against religious identity constitutional; and (2) is the provision of article I, section 3 of the Florida Constitution requiring that "[n]o revenue" be used "directly or indirectly in aid of any church" or any other religious organization constitutional? The answer to both questions is no. Any laws that prevent religious individuals or organizations from accessing otherwise generally available State benefits are presumptively unconstitutional under the First Amendment of the U.S. Constitution. To the extent article I, section 3 prohibits State funds from going to religious entities, it is also unconstitutional and will not be enforced by my office.

ANALYSIS

I. The Federal Constitutional Framework for Religion

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." So reads the opening line of the U.S. Constitution's First Amendment. Proper exegesis of this text begins with the recognition that "the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him." *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 213 (1963). These basic truths impose obligations on the individual and on the Nation. Or, as President George Washington himself explained: "it is the duty of all Nations to acknowledge the providence of Almighty God, to obey his will, to be grateful for his benefits, and humbly to implore his

[1] As Florida's chief legal officer and a member of the Florida Cabinet, it falls to me to facilitate executive branch compliance with the U.S. and Florida Constitutions and to provide legal guidance to that end. *See* § 16.01, Fla. Stat.

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protection and favor."[2] *Thanksgiving Proclamation, 3 Oct. 1789*, Nat'l Archives, Founders Online, https://founders.archives.gov/documents/Washington/05-04-02-0091 (last visited Mar. 30, 2026). Many have tried to force a modern, secularist gloss upon the First Amendment, but that reading cannot be squared with the overwhelming evidence of religion's—and specifically Christianity's—influence at the Founding and its intended role within our constitutional order. Both the Free Exercise and Establishment Clauses, properly understood, honor this reality.

A. The Free Exercise Clause

The Free Exercise Clause protects "not only the right to harbor religious beliefs inwardly and secretly," but also the right of people "to live out their faiths in daily life." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022). It stretches far beyond, in other words, the right to think as one wishes. This protection recognizes that one's ultimate duty lies with "his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will." *Davis v. Beason*, 133 U.S. 333, 342 (1890). This duty one bears to God "is precedent both in order of time and degree of obligation, to the claims of Civil Society," James Madison, *Memorial and Remonstrance Against Religious Assessments, [ca. 20 June] 1785*, Nat'l Archives, Founders Online, https://founders.archives.gov/documents/Madison/01-08-02-0163 (last visited Mar. 30, 2026), which necessarily limits government's jurisdiction over religious activity. *See Sherbert v. Verner*, 374 U.S. 398, 403 (1963) (limiting government prohibitions of religious action to those which "invariably posed some substantial threat to public safety, peace or order"); *see also Fulton v. City of Philadelphia*, 593 U.S. 522, 567 (2021) (Alito, J., concurring) (similar).[3]

The First Amendment's focus on religion was intentional: actions motivated by non-religious beliefs (be they philosophical, political, ideological, or social) do not receive the same protection. *See Wisconsin v. Yoder*, 406 U.S. 205, 215–16 (1972); Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1491–93 (1990). Atheists therefore cannot claim a Free Exercise exemption from generally applicable laws. *See* McConnell, *Historical Understanding of Free Exercise*, 103 Harv. L. Rev. at 1500 ("Unbelievers undoubtedly make judgments of right and wrong that sometimes conflict with generally applicable law. But if these do not stem from obedience to a transcendent authority prior to and beyond the authority of civil government, they do not receive exemption under the free exercise clause."). The Free Exercise Clause does, of course, protect the right *not* to believe in any particular faith, *see Van Orden v. Perry*, 545 U.S. 677, 711 (2005),

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[2] Saint Paul noted the same obligation two millennia earlier on Mars Hill: "And [God] made from one man every nation of mankind to live on all the face of the earth, having determined allotted periods and the boundaries of their dwelling place, that they should seek God, and perhaps feel their way toward him and find him." Acts 17:26–27 (ESV).

[3] Article I, section 3 of Florida's Constitution states that "[t]here shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof." The Florida Supreme Court has suggested that these provisions should be interpreted similarly to the First Amendment. *See Warner v. City of Boca Raton*, 887 So. 2d 1023, 1030 (Fla. 2004). That way lies peril. The U.S. Supreme Court has gutted the Free Exercise Clause, *see Employment Div., Dept. of Hum. Resources of Or. v. Smith*, 494 U.S. 872 (1990), and turned the Establishment Clause into a secularizing force, *see, e.g., McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844 (2005). Florida's Constitution demands no such thing.

but it does not privilege actions motivated by unbelief in the same way it privileges actions motivated by belief.[4]

B. The Establishment Clause

The Establishment Clause likewise protects an individual's ability to honor the duties God places upon him. It "protected States, and by extension their citizens, from the imposition of an established religion by the Federal Government." *Zelman v. Simmons-Harris*, 536 U.S. 639, 678 (2002) (Thomas, J., concurring). Born of "a dread by the people of the influence of ecclesiastical power in matters of government," the Establishment Clause prevented a nationally established church that—if English and Colonial history proved any guide—could lead to "religious persecutions" and a breakdown in republican good order. Joseph Story, Commentaries on the Constitution of the United States § 441 (1833). It did not impose the same restriction on the states. In fact, many states at the Framing had established churches. *See Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 50 (2004) (Thomas, J., concurring).

Establishment and encouragement are not the same, and no Framer would have conflated the two. The First Amendment prohibits the former (at the federal level), but not the latter. Government encouragement of religion acknowledges that "piety, religion, and morality are intimately connected with the well being of the state, and indispensable to the administration of civil justice . . . . It is indeed difficult to conceive how any civilized society can well exist without them." Story, Commentaries § 442. Far from the overly pluralistic and religiously agnostic conception of the Clause commonly offered today, the Framers adopted it to safeguard "the right of private [religious] judgment," "the freedom of public worship," and the right to heed the "dictates of one's conscience" against the dangers potentially posed by any particular Christian sect's obtaining national ascendency. *Id.*

It is clear, then, that the First Amendment did not displace Christianity as the center of the nation's religious identity. At the Framing, "the general, if not universal, sentiment in America was, that Christianity ought to receive encouragement from the State, so far as such encouragement was not incompatible with the private rights of conscience, and the freedom of religious worship. *An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation.*" Story, Commentaries § 444 (emphasis added). John Jay, the First Chief Justice of the Supreme Court, likewise remarked that "Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, *professing the same religion* [and] attached to the same principles of government." *The Federalist* No. 2, at 9 (John Jay) (Jacob Cooke ed., 1961) (emphasis added).

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[4] Cases suggesting otherwise are incorrect. *See, e.g., Janny v. Gamez*, 8 F.4th 883, 917 (10th Cir. 2021) ("And it was also clear that atheism is fully protected by the religion clauses."); *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1102 n.91 (9th Cir. 2010) ("The Supreme Court has always held that atheists (and, *a fortiori,* agnostics) enjoy the same First Amendment protections as everyone else."); *Kaufman v. McCaughtry*, 419 F.3d 678, 681 (7th Cir. 2005) ("Without venturing too far into the realm of the philosophical, we have suggested in the past that when a person sincerely holds beliefs dealing with issues of 'ultimate concern' that for her occupy a 'place parallel to that filled by . . . God in traditionally religious persons,' those beliefs represent her religion.").

A thin metaphor repeatedly misapplied is that the Establishment Clause "command[s] a separation of church and state." *Kennedy*, 597 U.S. at 558 (Sotomayor, J., dissenting) (quotation omitted). Insofar as it describes the prohibition on a national established church, the metaphor can be useful, but beyond that context it misguides. It is often used as a rhetorical cudgel for modern secularists bent on forcing believers to act as if their faith is meaningless while serving in public office.[5] It has also been used to justify the Blaine Amendments in many states, including Florida, that purport to impose blanket prohibitions on the receipt of government funds by religious schools.[6]

The origin of this misunderstanding is Thomas Jefferson's 1802 letter to the Danbury Baptist Association, in which he wrote:

> Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church & State.

References to Jefferson's letter are commonplace in the anti-canon of Supreme Court case law perverting the First Amendment. *See, e.g.*, *People of State of Ill. ex rel. McCollum v. Bd. of Educ. of Sch. Dist. No. 71, Champaign Cnty.*, 333 U.S. 203, 211 (1948) (invalidating religious instruction in public school); *Lee v. Weisman*, 505 U.S. 577, 599, 112 n.1 (1992) (Blackmun, J., concurring) (invalidating prayer at high school graduation ceremony).

Jefferson's letter, however, cannot possibly bear the constitutional weight that separatists have placed upon it.[7] Taking the letter on its own terms, it does not advocate for the strict separation often attributed to Jefferson. Best understood, the letter reflects the constitutional structure at the founding in which religious matters were left to states, not the

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[5] Witness the consternation expressed during now-Justice Amy Coney Barrett's confirmation hearings because she was a lawyer who practiced her Roman Catholic faith. *User Clip: Dianne Feinstien: "The Dogma Lives Loudly Within You*, C-Span (Sept. 6, 2017), https://www.c-span.org/clip/senate-committee/user-clip-dianne-feinstein-amy-coney-barrett-the-dogma-lives-loudly-within-you/4909644 (Senator Feinstein notifying now-Justice Barrett that "[t]he dogma lives loudly within you").

[6] *See Lemon v. Kurtzman*, 403 U.S. 602, 653 (1971) (Brennan, J., concurring) ("The universality of state constitutional provisions forbidding [subsidies to religious schools], as well as the weight of judicial authority disapproving such aid as a violation of our tradition of separation of church and state, reflects a time-tested judgment that such grants do indeed constitute impermissible aid to religion."); *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (Thomas, J., plurality) (recounting how Blaine amendments "arose at a time of pervasive hostility to the Catholic Church and to Catholics in general, and it was an open secret that 'sectarian' was code for 'Catholic'" (citing Green, *The Blaine Amendment Reconsidered*, 36 Am. J. Legal Hist. 38 (1992))).

[7] For starters, "Thomas Jefferson was . . . in France at the time the constitutional Amendments known as the Bill of Rights were passed by Congress and ratified by the States." *Wallace*, 472 U.S. at 92 (Rehnquist, J., dissenting). Not only that, but "[h]is letter . . . was a short note of courtesy, written 14 years after the Amendments were passed by Congress." *Id.* Jefferson therefore "would seem to any detached observer as a less than ideal source of contemporary history as to the meaning of the Religion Clauses of the First Amendment." *Id.*

federal government. *See* Daniel L. Dreisbach, John D. Whaley, *What the Wall Separates: A Debate on Thomas Jefferson's "Wall of Separation" Metaphor*, 16 Const. Comment. 627, 649 (1999). It is anachronistic to read Jefferson's letter as espousing a separatist view on behalf of the Framers. "As intellectual heirs of a tradition which had entwined republicanism and Christian theism," many at the Founding were convinced "from their own experience that 'Rational Freedom cannot be preserved without the aid of Christianity.'" *ACLU of Ky. v. McCreary Cnty.*, 354 F.3d 438, 470 (6th Cir. 2003) (Ryan, J., dissenting) (citing Nathan O. Hatch, *The Sacred Cause of Liberty: Republican Thought and the Millennium in Revolutionary New England* 168 (Yale Univ. Press 1977)) (footnotes and citations omitted). The same was true for our legal system: "The Christian religion was always recognized in the administration of the common law; and so far as that law continues to be the law of the land, the fundamental principles of that religion must continue to be recognized in the same cases and to the same extent as formerly." *Id.* (citing Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 205–06 (1880) (The Lawbook Exchange 2000)). To put it plainly, as Justice Scalia once did: "With all of this reality (and much more) staring it in the face, how can [anyone] *possibly* assert that the First Amendment mandates governmental neutrality between religion and nonreligion?" *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 889 (2005) (Scalia, J., dissenting) (cleaned up).

Nor is the Danbury letter even a definitive statement on Jefferson's views. Before the Framing, for instance, Jefferson himself acknowledged the centrality religion must play in American public life when he asked: "can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God?"[8] And years later—as President of the United States—Jefferson ended his second inaugural address by soliciting prayer from the Nation:

> I shall need, too, the favor of that Being in whose hands we are, who led our fathers, as Israel of old, from their native land and planted them in a country flowing with all the necessaries and comforts of life; who has covered our infancy with His providence and our riper years with His wisdom and power and to whose goodness I ask you to join in supplications with me that He will so enlighten the minds of your servants, guide their councils, and prosper their measures that whatsoever they do shall result in your good, and shall secure to you the peace, friendship, and approbation of all nations.[9]

Jefferson further proposed that the Nation's "seal depict Moses leading Israel through the wilderness under the protection of God, with the motto, 'Rebellion to Tyrants is Obedience to God.'" *McCreary Cnty.*, 354 F.3d at 469 (Ryan, J., dissenting) (citing James H. Hutson, *Religion and the Foundation of the American Republic* 50–51 (1998)). All said, his actions cannot be reconciled with a reading of his letter as advocating the "high and impregnable" wall of

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[8] Thomas Jefferson, *Notes on the State of Virginia, 1781, in The Classical and Christian Origins of American Politics: Political Theology, Natural Law, and the American Founding* 227 (Kody W. Cooper & Justin Buckley Dyer, Cambridge Univ. Press 2022).

[9] Thomas Jefferson, *Second Inaugural Address, 4 March 1805*, Nat'l Archives, Founders Online, https://founders.archives.gov/documents/Jefferson/01-45-02-0637-0014#:~:text=Second%20Inaugural%20Address%2C%204%20March%201805,-XIII (last visited Mar. 30, 2026).

separation between church and state that too many post-World War II decisions have casually embraced. *See Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947).

Properly understood, the Religion Clauses work together to ensure people can live out their religious obligations to God. Nothing less is tolerable given that "[w]e are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952); *see also* John Adams, Letter to the Massachusetts Militia (Oct. 11, 1798) ("Our Constitution was made only for a moral and religious People. It is wholly inadequate to the government of any other."); George Washington, Farewell Address to the People of the United States (Sept. 19, 1796) ("Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports."). We fortunately are not, and have never been, France. *See* Fr. Const. art. 1 ("France shall be a secular Republic." (cleaned up)).

C. Implications of the Religion Clauses

One modest implication of the Religion Clauses is that religious individuals and entities cannot be excluded from generally available public benefits programs. "To condition the availability of benefits upon a recipient's willingness to surrender his religiously impelled status effectively penalizes the free exercise of his constitutional liberties." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017) (cleaned up). Indeed, the U.S. Supreme Court "has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion" and is therefore subject to the "most exacting scrutiny." *Id.* at 458, 462; *see also Carson v. Makin*, 596 U.S. 767, 778 (2022). Conversely, "the Establishment Clause is not offended when religious observers and organizations benefit from neutral government programs." *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 474 (2020).

So when a state decides to fund a general program, "it cannot disqualify some private [entities] solely because they are religious." *Espinoza*, 591 U.S. at 487. Any attempt to discriminate against otherwise qualifying religious entities is "odious to our Constitution and could not stand." *Carson*, 596 U.S. at 779 (quotation marks omitted). The U.S. Supreme Court has repeatedly invalidated the exclusion of state benefits from religious entities. *See id.* at 789 (invalidating Maine's exclusion of religious schools from tuition assistance program); *Espinoza*, 591 U.S. at 468 (invalidating Montana's exclusion of religious schools from student scholarship program); *Trinity Lutheran*, 582 U.S. at 467 (invalidating Missouri's exclusion of a church from a playground resurfacing grant program).

Such laws cannot survive the "most exacting" scrutiny demanded by the Free Exercise Clause for discrimination on the basis of religious identity. *Trinity Lutheran*, 582 U.S. at 450. The U.S. Supreme Court has yet to find that any law denying religious entities access to a general aid program survives strict scrutiny. *See, e.g.*, *Carson*, 596 U.S. at 781. Importantly, the government may not withstand this "most exacting" scrutiny merely by asserting an interest in "separating church and State 'more fiercely' than the Federal Constitution." *Espinoza*, 591 U.S.at 484 (2020); *see also Trinity Lutheran*, 582 U.S. at 466. Such a claim relies on an incorrect view of the First Amendment.

A further and more significant implication of the Religion Clauses is that the government cannot decide to provide assistance to a certain area of private life, like private schooling, and then deny funding to religious *activities* within that area of private life. Thus in

Carson, the Supreme Court struck down a Maine statute that provided tuition assistance for parents of children in school districts that did not operate a secondary school of their own, as long as the parents sent their children to a school, public or private, that was "nonsectarian." 596 U.S. at 789. Maine argued that the restriction was justified because it did not discriminate against religious schools on the basis of their religious *status* but rather their religious *use*. In other words, a church could still operate a secondary school, and parents who sent their children to that school could still receive tuition assistance, as long as the school curriculum was non-religious. The Supreme Court ruled that this distinction was not good enough. "In *Trinity Lutheran* and *Espinoza*," the Court explained, "we held that the Free Exercise Clause forbids discrimination on the basis of religious status. But those decisions never suggested that use-based discrimination is any less offensive to the Free Exercise Clause." *Id.* at 787. The problem with drawing such a line in Free Exercise Clause jurisprudence was that it would invite government agencies to "scrutiniz[e] whether and how a religious school pursues its educational mission," "rais[ing] serious concerns about state entanglement with religion and denominational favoritism." *Id.* "That suggests that any status-use distinction lacks a meaningful application not only in theory, but in practice as well. In short, the prohibition on status-based discrimination under the Free Exercise Clause is not a permission to engage in use-based discrimination." *Id.* at 787–88.

The only departure from this principle has come in *Locke v. Davey*, where the Court upheld a ban on scholarships used for "pursuing a degree in devotional theology." 540 U.S. 712, 715 (2004). That decision has since come under heavy criticism, *see, e.g.*, *Trinity Lutheran*, 582 U.S. at 469–70 (Gorsuch, J., concurring in part), and has ultimately been confined to the circumstance where taxpayer funds are used to support training for the ministry. *Id.* at 464; *Carson*, 596 U.S. at 788. In that one area, the Supreme Court has recognized a "historic and substantial state interest" that would withstand the most exacting scrutiny demanded by the Free Exercise Clause for religious discrimination. *Locke*, 540 U.S. at 725. It remains to be seen whether the Supreme Court stands by that narrow exception to the general free exercise rule. In any event, "*Locke* cannot be read beyond its narrow focus on vocational religious degrees to generally authorize the State to exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits." *Carson*, 596 U.S. at 789.

II. Florida Statutes that Discriminate Based on Religion

Several Florida statutes violate the core protections offered by the Religion Clauses. For example, Florida has created the William L. Boyd, IV, Effective Access to Student Education grant to facilitate access to higher education. The department can issue the grant to "any full-time degree-seeking undergraduate student" so long as the institution he or she attends "has a secular purpose" and the funds "would not have the primary effect of advancing or impeding religion or result in an excessive entanglement between the state and any religious sect." § 1009.89(3), Fla. Stat.; *see also* § 1009.51, Fla. Stat. The statute thus prevents a student from using a grant for a degree at a religious college or university, simply because the school is religious, and irrespective of what kind of degree the student wishes to

pursue.[10] For the reasons explained above, excluding religious institutions from this otherwise available program violates the First Amendment.

Another example is the legislative framework regarding Florida's charter school system. Florida has broadly authorized any "individual, teachers, parents, a group of individuals, a municipality, or a legal entity" to apply to create a charter school. § 1002.33(3)(a), Fla. Stat. Yet it requires that any charter school "shall be nonsectarian in its programs, admission policies, employment practices, and operations." *Id.* § 1002.33(9)(a); *see also id.* § 1002.34(3)(a) (similar requirement for charter technical career centers). This blanket exclusion of all religious entities also violates the First Amendment. *See Carson*, 596 U.S. at 778 (noting the Supreme Court has "repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits").

An illustrative list of other laws that, for the same reason, violate these religious protections are listed in the **Appendix**.[11]

III. The "No Aid" Provision of the Florida Constitution

In addition to Florida statutes that specifically prevent religious entities from receiving public benefits, article I, section 3 of the Florida Constitution has a "no aid" provision: "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution." This constitutional provision reads as a prohibition barring religious entities from partaking in *any* grant program, no matter how they would use the funds, even when the statute itself does not exclude religious entities.

If so interpreted, Florida's "no aid" provision violates the First Amendment. The U.S. Supreme Court specifically held that the First Amendment barred application of Montana's nearly identical "no aid" provision when it was used to prevent a generally available scholarship from being used at religious schools. *See Espinoza*, 591 U.S. at 470 (citing Mont. Const. art. X, § 6(1) (prohibiting "any direct or indirect appropriation or payment from any public fund or monies . . . for any sectarian purpose or to aid any church")). At best, these provisions arose from a fundamental misunderstanding of the meaning and purpose of the Religion Clauses. More often, they were "born of bigotry and arose at a time of pervasive hostility to the Catholic Church and to Catholics in general." *Id.* at 482 (quotation marks omitted).[12] They fail the test, however, not because of their prejudicial objectives but because of their unconstitutional operation. These provisions therefore have no place in our constitutional order. And as explained above, they actively undermine the central place religion plays in our Republic, which the Framers sought to guarantee by deploying the Religion Clauses.

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[10] The statute thus does not fall within whatever safe harbor might arguably remain as a result of *Locke*.

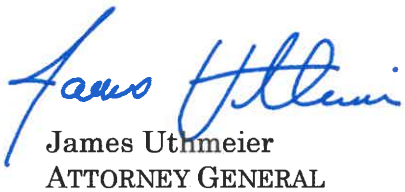
[11] To be clear, only the portions of these statutes that violate the First Amendment will not be enforced by my office, not the laws in their entirety.

[12] The Supreme Court found this discrimination unconstitutional even if some states adopted the "no aid" provisions later in their history "for reasons unrelated to anti-Catholic bigotry." *Espinoza*, 591 U.S. at 482.

Any Florida cases holding otherwise are incorrect. In *Bush v. Holmes*, for example, the First District Court of Appeal concluded that Florida's "no-aid" provision was consistent with the Free Exercise Clause. 886 So. 2d 340, 362–63 (Fla. 1st DCA 2004), *aff'd in part*, 919 So. 2d 392 (Fla. 2006). Yet its reasoning is flatly inconsistent with later Supreme Court cases such as *Trinity Lutheran*, *Espinoza*, and *Carson*—all of which confirm that the Free Exercise Clause forbids the denial of funds to a religious institution because it is religious. The *Holmes* court, moreover, relied almost exclusively on *Locke v. Davey*, 540 U.S. 712 (2004), which, as explained above, addressed an entirely different issue and may not survive these more recent decisions. Similar critiques can be leveled at *Council for Secular Humanism, Inc. v. McNeil*, 44 So. 3d 112, 115–16 (Fla. 1st DCA 2010), which denied public funds for "faith-based substance abuse transitional housing programs." Both cases singled out religious entities for exclusion in violation of the First Amendment.

CONCLUSION

Florida's Constitution rightly recognizes that "[w]e, the people of the State of Florida," are "grateful to Almighty God for our constitutional liberty." Preamble, Fla. Const. That constitutional liberty includes the right for religious people and entities to participate in public programs and benefits like everyone else. Any law, or any interpretation of the State Constitution, that violates this basic right will not—consistent with my oath—be enforced or defended by my office.



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APPENDIX[13]

§ 1009.521(2), Fla. Stat.: An institution that meets the criteria specified in paragraph (1)(a) or paragraph (1)(b) may not be a state university or Florida College System institution. In addition, the institution must have a secular purpose, and the receipt of state aid by students at the institution may not have the primary effect of advancing or impeding religion or result in an excessive entanglement between the state and any religious sect.

§ 1009.89(3), Fla. Stat.: The department shall issue through the program a William L. Boyd, IV, Effective Access to Student Education grant to any full-time degree-seeking undergraduate student registered at an independent nonprofit college or university which is located in and chartered by the state; which is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools; which grants baccalaureate degrees; which is not a state university or Florida College System institution; and which has a secular purpose, so long as the receipt of state aid by students at the institution would not have the primary effect of advancing or impeding religion or result in an excessive entanglement between the state and any religious sect.

§ 1011.51(3)(e), Fla. Stat.: The matching endowment grants made available under this section shall be made available to any independent nonprofit college or university which ... [h]as a secular purpose, so long as the receipt of state aid by students at the institution would not have the primary effect of advancing or impeding religion or result in an excessive entanglement between the state and any religious sect.

§ 1011.51(6), Fla. Stat.: Matching endowment grants made pursuant to this section to a qualified independent nonprofit college or university shall be placed in a separate restricted endowment by such institution. The interest or other income accruing from the endowment shall be expended exclusively for professorships, library resources, scientific and technical equipment, and nonathletic scholarships. Moreover, the funds in the endowment shall not be used for pervasively sectarian instruction, religious worship, or theology or divinity programs or resources. The records of the endowment shall be subject to review by the department and audit or examination by the Auditor General and the Office of Program Policy Analysis and Government Accountability. If any institution receiving a matching endowment grant pursuant to this section ceases operations and undergoes dissolution proceedings, then all funds received pursuant to this section from the state shall be returned.

§ 1002.33(9)(a), Fla. Stat.: CHARTER SCHOOL REQUIREMENTS.—

> (a) A charter school shall be nonsectarian in its programs, admission policies, employment practices, and operations.

§ 1002.34(3)(a), Fla. Stat.: DEFINITIONS.—As used in this section, the term:

> (a) "Charter technical career center" or "center" means a public school or a public technical center operated under a charter granted by a district school board or Florida College System institution board of trustees or a consortium, including one or more district school boards and Florida College System institution boards of trustees, that

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[13] This list is illustrative, not exhaustive.

includes the district in which the facility is located, that is nonsectarian in its programs, admission policies, employment practices, and operations, and is managed by a board of directors.

§ 1003.499(3)(a)1., Fla. Stat.: (3) PROVIDER REQUIREMENTS.—

(a) To be approved by the Department of Education, an individual provider must provide all the following documentation that demonstrates that he or she: 1. Is nonsectarian regarding courses, enrollment policies, employment practices, and operations.