

GLANCING BACK



LOOKING AHEAD

2021 Presented Unprecedented Challenges To Americans United – But Also Rays Of Hope

By **liz Hayes**

The year 2021 was full of ups and downs – for the country, and for church-state separation.

It marked the end of the Trump administration and its alliance with religious extremists who want to force everyone to live by their beliefs. But it also began with attacks on our very democracy, including the Jan. 6 insurrection at the U.S. Capitol that helped to push white Christian nationalism further into the spotlight.

The Biden administration and Congress began righting some of the wrongs of the previous four years. But their hands may be tied by the U.S. Supreme Court with its majority of justices who are hostile to church-state separation and are poised to turn religious freedom on its head.

Many thought the rollout of COVID-19 vaccines would be the pandemic's death knell. But the politicization of the pandemic that began under President Donald Trump has hampered public health efforts – especially amid the push to grant harm-

ful religious exemptions to orders requiring vaccines, masks and social distancing.

We look back at the top 10 highs and lows last year for church-state separation – and what they might mean for the year ahead.

10. Starting Strong With Biden Administration

As soon as the 2020 presidential election results were announced, Americans United issued an “Agenda to Restore & Protect Religious Freedom” for the Biden-Harris administration. The 10-point agenda included Trump-era actions that needed to be reversed or rescinded, as well as steps President Joe Biden should take to advance the foundational principle of religious freedom as the right for all of us to live as ourselves and believe as we choose.

Biden got off to a strong start: The same day he was inaugurated, as part of a slew of executive orders, Biden ended Trump's Muslim and African bans; disbanded Trump's 1776 Com-

mission aimed at promoting a white-washed, Christian nationalist narrative of U.S. history and began to restore and expand anti-discrimination protections for LGBTQ people. He has appointed public officials who respect church-state separation. And he ended the year by taking strides toward stopping discrimination in the name of religion in taxpayer-funded foster care services and federal contracting – both reversals of Trump policies.

There is more Biden can do – such as ending Trump rules that invited health care providers, employers and universities to cite religious beliefs to deny patients, workers and students access to health care; restoring religious freedom protections for vulnerable people who rely on taxpayer-funded social services; and better enforcing the Johnson Amendment to protect houses of worship from being corrupted by partisan politics. And Americans United will continue its advocacy to urge the Biden administration to address these issues. But considering what Biden has accomplished in less than a year to shield our secular laws from the influence of religious extremists, there is hope for what his administration can do in the next three years.

9. Challenging Trump-Era Policies In Court

Much of what the Biden adminis-

tration has not yet fixed on the church-state front, Americans United is working in the courts to address.

On the last day that Trump was in office, AU and allies filed two lawsuits challenging Trump policies that misused religious freedom to harm others. In *Mazon v. U.S. Department of Health and Human Services*, a coalition of service and advocacy groups challenged the rollback of religious freedom protections that required faith-based organizations providing critical, taxpayer-funded services (like food and shelter) to inform recipients of their legal rights to be free from discrimination, not to have to attend religious programming and to have the opportunity to get a referral for an alternative provider.

In *Secular Student Alliance v. U.S. Department of Education*, AU and American Atheists challenged a regulation that forced universities and their students to financially support religious student groups that discriminate. Both lawsuits continue, though in August the Biden administration announced that it was reviewing and anticipates rescinding parts of the U.S. Department of Education regulation.

Also continuing are AU lawsuits filed earlier in the Trump presidency that challenge the Denial of Care Rule (which invites health care workers to deny care to patients, even in emergencies, based on religious beliefs) and the Trump rules that allow employers and universities to cite religious beliefs to deny employees and students access to birth control guaranteed by the Affordable Care Act.

8. Urging Congress To Pass The Do No Harm Act

Americans United continued to push Congress to pass the Do No Harm Act (DNHA), a critical bill that

will preserve the Religious Freedom Restoration Act's power to protect religious freedom, while also clarifying that it may not be used to harm others.

Both chambers of Congress re-introduced the DNHA in 2021. Long-time sponsor U.S. Rep. Bobby Scott (D-Va.), joined by Reps. Steve Cohen

the DNHA had 143 co-sponsors in the House and 32 in the Senate.

AU also is urging Congress to pass other bills that would protect religious freedom, including the NO BAN Act, which strengthens the Immigration and Nationality Act to prohibit discrimination on the basis of religion and limits overly broad executive authority to issue future travel bans, and the Equality Act, a landmark civil rights bill that also ensures religious freedom is not misused to undermine antidiscrimination protections.

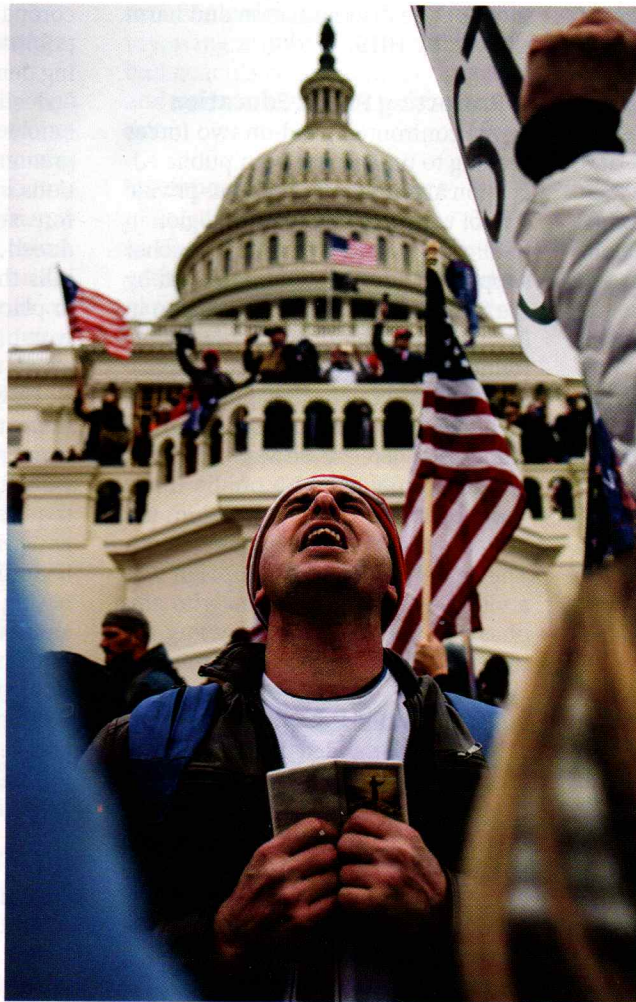
7. Preventing Overly Broad Interpretation Of The Ministerial Exception

The ministerial exception is legal doctrine meant to ensure that houses of worship can freely choose their clergy. It was never intended to be a free pass for any religious employer to discriminate against their entire workforce.

However, thanks to two Supreme Court decisions that broadened the interpretation of this doctrine, religious extremist groups are urging the courts to broaden it even more. They want it applied not just to clergy and some private school educators with significant religious duties, but to all employees at religious organizations – from schoolteachers and guidance counselors to receptionists, janitors and even nurses in religiously affiliated hospitals.

AU is pushing back against this gross misinterpretation of religious freedom that would deny basic workplace protections to a huge portion of the American workforce and would especially harm LGBTQ people, women, people of color, religious minorities and the nonreligious.

Following the Supreme Court's last troublesome ministerial exception decision in 2020, AU began representing several workers who have been fired,



New scrutiny: AU put the spotlight on Christian nationalism in 2021

(D-Tenn.), Jamie Raskin (D-Md.) and Mary Gay Scanlon (D-Pa.), re-introduced the bill as H.R. 1378 in the House in February. In September, U.S. Sen. Cory Booker (D-N.J.) became the new lead sponsor in the Senate when he re-introduced the bill as S. 2752. Booker takes over the lead sponsor role from Vice President Kamala Harris, who was the last sponsor in 2018 when she represented California in the Senate. At press time,

harassed or otherwise discriminated against by employers who wrongly claim our clients are ministers with no civil rights protections.

Our clients include Gregg Tucker, an exemplary teacher and student life director fired by a private Christian school in Colorado for trying to combat pervasive racism in the school; Shelly Fitzgerald, a beloved and trusted high school guidance counselor who was fired by a private Catholic school in Indiana because of who she loves – her wife and partner of 25 years; and Margaret DeWeese-Boyd, a professor of social work at a Christian liberal arts college in Massachusetts who was denied a promotion after opposing the school's policies on LGBTQ rights.

6. Fostering Equality In Taxpayer-Funded Foster Care

Americans United continued to fight religious discrimination in taxpayer-funded foster care services last year. In addition to federal lawsuits representing Aimee Maddonna of South Carolina and Fatma Marouf and Bryn Esplin in Texas – all rejected by faith-based, government-contracted foster care agencies because the women didn't pass religious litmus tests – AU joined Lambda Legal to file a new lawsuit representing Kelly Easter of Tennessee. Like Marouf and Esplin, Easter was unable to foster refugee children because the federally contracted agency near her home won't accept LGBTQ people.

The Biden administration so far has a mixed record on stopping religion-based discrimination in government-contracted foster care. In November, the U.S. Department of Health and Human Services (HHS) took a positive step when it rescinded exemptions granted by the Trump administration that allowed child welfare providers to use religion to discriminate against potential foster parents in several states, including Maddonna's home state of South Carolina. But just a few weeks earlier, in the Marouf-Esplin case, the government announced its intention to contract with a "third-party entity" to identify same-sex foster parent applicants in the Dallas-Fort Worth area and direct them away from a discrim-

inatory provider and toward an alternative grantee willing to accept LGBTQ applicants. But filtering discrimination through a third-party entity does not cure HHS's misconduct – the Constitution has never allowed the government to do indirectly what it is forbidden to do directly. The proposed scheme (as it has been articulated) would reinforce and further sanction the discrimination and harm allowed by HHS.

5. Protecting Public Education

AU confronted head-on two forces seeking to undermine both public education and religious freedom: private school vouchers and forced religion in public schools. Knowing that voucher supporters have been emboldened by the Supreme Court's 2020 decision in *Espinoza v. Montana Dept. of Revenue* (which said that states that fund private school voucher programs must include private religious schools), AU launched a "Free to Be Me" campaign to educate people why public funds should support public education, not private education at religious schools. The centerpiece of the campaign was a video featuring teenagers who emphasized the diverse, welcoming nature of public schools and the discrimination often practiced by voucher-funded private religious schools. (The video is available at stopschoolvouchers.org.)

As many schools returned to in-person education amid the COVID-19 pandemic, AU knew the reports of religious freedom violations in public schools would increase. As the 2021-22 school year began, AU distributed new "Know Your Rights" guides for students, their parents and guardians, and teachers to educate them of their rights and responsibilities to ensure children of all religions and none feel welcome in their own public schools. (The guides are available at au.org/knowyourrights.)

4. Countering Demands For COVID Religious Exemptions

Americans United spent much of the first year of the COVID-19 pandemic urging government officials and courts to protect both public health and religious freedom by declining to grant houses of worship

and other religious organizations exemptions from in-person gathering limits. In dozens of friend-of-the-court briefs filed with courts around the country, and in letters to elected officials, AU stressed that the Constitution does not mandate such exemptions – particularly when they threaten the health of other people.

The arrival of vaccines for the coronavirus early in 2021 meant such public health orders – and the resulting demands for religious exemptions – declined significantly, though not before the U.S. Supreme Court granted a few more harmful exemptions in California cases. And not before several state legislatures introduced, and, in a few cases, passed, bills that limit the ability of officials to place any restrictions on houses of worship in future public health or safety crises.

However, as vaccines became more available, vaccine resistance became more entrenched and demands for religious exemptions from vaccine requirements grew. AU has filed several briefs in COVID-19 vaccine cases, including before the Supreme Court, noting that a long line of court decisions makes clear that the Constitution does not require religious exemptions from vaccination orders. The Supreme Court so far has declined to grant religious exemptions to COVID vaccine orders in cases out of Maine and New York.

3. Exposing White Christian Nationalism

If there is any silver lining to the attack on the U.S. Capitol on Jan. 6, it was that it helped expose the influence of white Christian nationalists and how their agenda to force everyone to live by their beliefs is a threat to our democracy. Americans United has been warning about this small, but powerful, faction of religious extremists for years, and after the insurrection, AU ramped efforts to educate the American public.

A lot of pages in *Church & State* were dedicated to exposing Christian nationalism this year (in particular, see the April 2021 issue and its cover story, "White Christian Nationalists: Who Are They? What Do They Want? Why Should You Care?"). In multiple

media interviews, Laser and other AU experts have demonstrated how groups like Project Blitz and the National Association of Christian Lawmakers fit into this movement, and how their agenda includes undermining church-state separation, reproductive freedom, LGBTQ equality, racial justice, public education, voting rights and so much more.

2. Limiting The Potential Damage By The Supreme Court

With an ultra-conservative faction that has shown itself to be hostile toward church-state separation, this Supreme Court term is poised to turn the foundational American principle of religious freedom on its head. Through amicus and other briefs, public education and working in coalitions with allies, Americans United is working overtime to limit the potential damage.

AU has filed friend-of-the-court briefs in two cases and was about to file a third at *Church & State's* press

time. Those cases dealt with a Mississippi 15-week abortion ban that attempts to codify religious extremists' views on abortion; forcing Maine taxpayers to fund religious education; and forcing Boston to fly the Christian flag at city hall. The court also could well decide to grant review of a few more cases with grave implications for church-state separation, including cases AU is litigating involving a public high school football coach's coercive prayer practice and misuse of the ministerial exception.

1. Preparing For The Future

From worrisome Supreme Court cases to rampaging white Christian nationalists to a seemingly unending pandemic being helped along by religious extremists, the present can feel bleak at times. And while AU is working to combat these problems now, we're also laying the groundwork to ensure church-state separation remains a valued principle long into the

future – complete with a community of committed supporters to defend it. This year marks the 75th anniversary of Americans United, and we'll be working to honor the past while preparing for the future.

We completed a new round of thorough public opinion research and message-testing in the last year, and you'll be seeing more fruits of that labor very soon. Later this year, we'll be sponsoring the Summit for Religious Freedom, a virtual, collaborative conference aimed at unifying a diverse community around the understanding that so many issues – from reproductive freedom and LGBTQ rights to a strong democracy and public school system – intersect with and depend on a strong separation between church and state.

We're continuing our efforts to build networks of youth leaders and faith voices to be passionate advocates for church-state separation. And we have a few more plans in the works, too. Stay tuned! □

Together We Will Protect the Separation of Religion and Government

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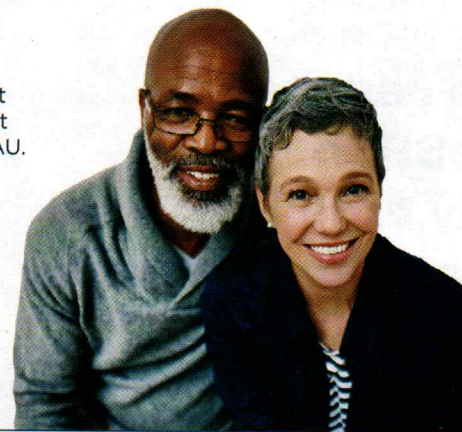
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To get started, visit www.au.org/beneficiaries. You will be able to list your retirement accounts and insurance policies, and will be given detailed instructions on where to update your policies.



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