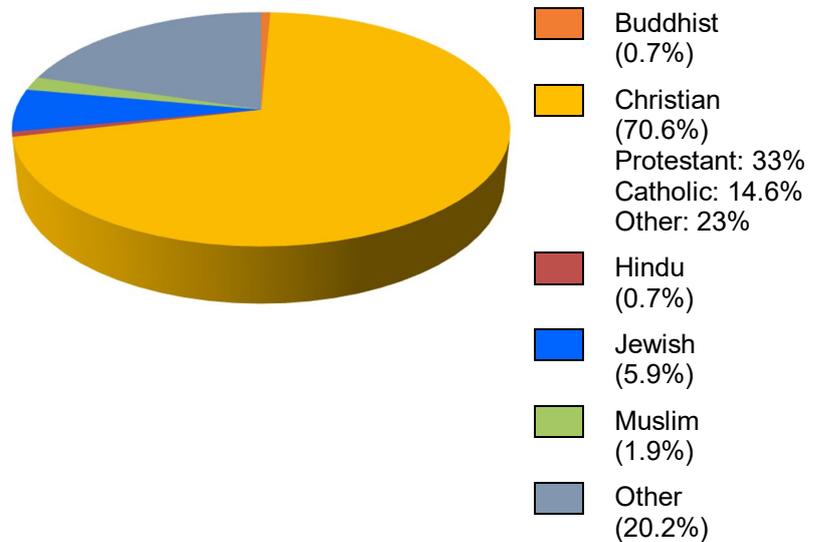


# UNITED STATES OF AMERICA



Area:	Population:	Political system:	Major Language(s):
9.9 million km <sup>2</sup>	318.9 million	Democracy	English

## Legal framework on freedom of religion and actual application

Constitutional and statutory law relating to religious freedom

The law governing the guarantee of religious liberty in the United States is best understood as a framework in which “the People of the United States” have divided the power and responsibility to protect religious freedom between the individual states and the federal government. In order to understand that framework, and the dynamic nature of the political relationships it creates, one must begin with state constitutions, statutes, administrative policies and state court decisions governing freedom of religion. Every state protects religious liberty, but the constitutional, statute, and case law of each state reflect its own unique history and demographics.

The structure of the United States constitution reflects this political dynamic. Ratified in 1787, it contains several important measures for the protection of religious liberty, but only one of them is explicit. The Delegates to the Constitutional Convention were well acquainted with state laws that limited religious freedom. They wanted a federal government whose offices and programmes were open to all American citizens, regardless of their religious beliefs. They therefore omitted religion as a qualification for Members of Congress, Senators and the President. They also added two explicit provisions to Article VI to ensure that “no religious test shall ever be required as a qualification to any office or public trust under the United States”; and ensured that individuals whose religious beliefs forbid the taking of oaths would have the option to “be bound by oath or affirmation, to support this Constitution.”

Two additional provisions in the United States constitution provide protection for religious liberty. Read together, the First Amendment and the Fourteenth Amendment give Congress the power to legislate with respect to religious liberty in individual states. It has done so repeatedly, in both general and specific terms. Among the most important of these legislations are:

- The general civil rights statute, 42 U.S.C. §1983, which permits the bringing of a lawsuit by any person who alleges that “any State or Territory or the District of Columbia,” enacts laws that result in the “deprivation of any rights, privileges, or immunities secured by the Constitution and laws”;

- The Religious Freedom Restoration Act, 42 U.S.C. §§ 2000(bb) 1-4, (RFRA), which provides that the “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless the government can prove that the burden on religious liberty: 1) “is in furtherance of a compelling governmental interest;” and 2) “is the least restrictive means of furthering that compelling governmental interest;”
- Title VII of the Civil Rights Act of 1964, which makes it “an unlawful employment practice for an employer” to discriminate on the basis of (among other things) “religion;”
- The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc, protects individuals, houses of worship and other religious institutions from discrimination when they are institutionalized, and in property cases; and
- The American Indian Religious Freedom Act, 42 U.S.C. §1996, which provides that “it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the[ir] traditional religions . . . , including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.”

## Incidents

### The State of Religious freedom – U.S.A 2015-2016

Religious freedom cases in the United States tend to reflect three broad social indicators: 1) Immigration trends; 2) The cultural demographics of American political communities; and 3) The opinions and practices of America’s cultural, academic and political elites.

Because the religious and cultural demographics of a community shape both the number and nature of cases concerning religious freedom that arise there, two reports published in 2015 by the Pew Forum on Religion & Public Life provide a demographic context for the information available online.<sup>1</sup>

The overall conclusion is that the Christian faithful are declining in number, for example between 2007 and 2014 there was a decline of 7.8 percent, while non-Christian faiths are growing (up 1.2 percent), as are “unaffiliated” (up 6.7 percent). According to this research, citizens identifying themselves as Christian represent 70.6 percent of the population, “unaffiliated” are 22.8 percent and other non-Christians (including Jews, Muslims and Buddhists) are 5.9 percent. Over the seven years reviewed, the Muslim population increased by 0.5 percent and Hindus by 0.3 percent.

By the same token of increase of the “unaffiliated” category, the second report, published in November 2015, notes that, “by some key measures of what it means to be a religious person”, the American public is becoming “less religious.”<sup>2</sup>

### Immigration Data

The United States is a nation of immigrants. Much of the history of religious liberty in America tells the story of the challenges faced by successive waves of immigrants as they sought to defend that religious freedom, while seeking to live their lives and raise their children as citizens with equal rights and opportunities.

There is no evidence that the United States Government has any form of religious test for immigration status. The Pew Forum on Religion in Public Life’s May 2013 report, *The Religious Affiliation of U.S. Immigrants: Majority Christian, Rising Share of Other Faiths* observes that “all of the estimated change in the religious makeup of legal immigrants reported in this study is a result of shifts in their geographic origins.”

While the number of immigrants from the Americas and Europe declined in the period under review (1992-2012), others increased their share within the “legal permanent residents belonging to non-

Christian faiths”,<sup>3</sup> particularly those coming from Asia (from 36 percent to 38 percent), the Middle East and Africa (from 5 percent to 15 percent).

### Statistics on Religious Discrimination Cases

Reliable statistics on the number of religious freedom cases in the United States are not easy to find. The statistics summarised in this section are informative, but do not provide a solid basis from which general conclusions can be drawn. The available data deals with reported incidents, rather than concluded cases. The Federal Bureau of Investigation (FBI), for example, qualifies its statistics with the following caveat: “Because motivation is subjective, it is sometimes difficult to know with certainty whether a crime resulted from the offender’s bias.”<sup>4</sup>

### Hate Crimes

Federal law requires that the Attorney General of the United States should “acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, gender and gender identity, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.” (28 U.S.C. §534) Under the FBI’s survey methodology, “the victim of a hate crime can be an individual, a business, an institution, or society as a whole.”<sup>5</sup>

The most recent year for which statistics are available is 2014. The available data show that there was a total of 1,092 incidents in which there was sufficient evidence for law enforcement officials to classify and report them as religiously motivated crimes. More than half (62.2 percent) of the alleged crimes were directed at property; the remainder included assaults, intimidation, and robbery.

<b>Targeted Religious Group<sup>6</sup></b>	<b>Number</b>	<b>Percentage</b>
Anti-Jewish	635	62.3
Anti-Islamic (Muslim)	178	17.5
Anti-Other Religion	120	11.8
Anti-Catholic	67	6.6
Anti-Multiple Religions, Group	51	5.0
Anti-Protestant	28	2.7
Anti-Atheism/Agnosticism/etc.	13	1.3
Total	1,092	100

These aggregate data are revealing in several respects. The first is that racial bias, not religion, remains the single greatest motivation for alleged hate crimes.

Race:	3,081
Sexual Orientation:	1,178
Religion:	1,092

The second is that crimes aimed at Jews or Jewish-owned property occur at nearly four times the rate as crimes aimed at the second-highest targeted group: Muslims.

## Employment Statistics

Like crime data, information on religious discrimination in the American workplace is based largely on alleged incidents (charges) filed with the federal Equal Employment Opportunity Commission (EEOC) and its state counterparts. EEOC data are readily accessible, and show that religious discrimination claims comprise between two and four percent of all employment discrimination cases filed with the agency between 1997 and 2015.<sup>7</sup> State-level data must be extracted on a state-by-state basis. Data for the four largest states are presented below:

State	Population <sup>8</sup>	Basis of Discrimination Claim		
		Religion	Total Filed	Percentage
California	37,253,956	878	66,289	1.3 <sup>9</sup>
Texas	25,145,561	346	9,668	4 <sup>10</sup>
New York	19,378,102	258	5,102	6.9 <sup>11</sup>
Florida	18,801,310	53	2,545	2.08 <sup>12</sup>

## Religious Freedom Issues Linked to Cultural Demographics

The second key indicator is related to the cultural demographics of American political communities – from small towns in rural parts of the country to the composition of the U.S. Congress. These are the venues in which religious minorities and religious communities (including NGOs) must seek redress for their grievances or accommodations for their beliefs and practices from public authorities or private parties (usually employers) who may not be inclined to make exceptions from what they consider to be “neutral rules of general applicability”.

Three cases decided in the Supreme Court of the United States since 2013 illustrate that the court is willing to intervene in cases that raise barriers to the assimilation or equal treatment of religious minorities.

In *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, 135 S.Ct. 2028 (2015), the court held that a young Muslim woman who, in accordance with her religious beliefs, wears a headscarf (*hijab*) had stated a claim of intentional religious discrimination under Title VII of the Civil Rights Act of 1964, and reaffirmed the principle that “[a]n employer may not make an applicant’s religious practice, confirmed or otherwise, a factor in employment decisions.”

The court also required North Carolina state prison officials to accommodate for the religious grooming requirements of a Muslim prisoner, who argued that his religious beliefs required him to grow a one-half inch (1.27 cm) beard. Holding that the Religious Land Use and Institutionalized Persons Act (RLUIPA) requires accommodation of the religious beliefs of prisoners, the Court rejected the prison’s argument that a beard of this length posed a realistic threat of smuggling. *Holt v. Hobbs*, 134 S.Ct. 1811 (2015).

Jewish prisoners were not as successful. In *Ben Levi v. Brown*, 2014 WL 7239858 (E.D.N.C. 2014), *aff’d mem.* 600 Fed. Appx. 899 (4th Cir., 2015), *cert. denied* 136 S.Ct. 930 (2016), Justice Samuel Alito dissented from the court’s refusal to review a lower court decision upholding a prison warden’s decision to refuse “to authorize [the Jewish prisoner’s] access to a quiet room for a Jewish Bible study, despite inmates practicing other faiths being afforded similar privileges” because “no orthodox Rabbi currently serves as volunteer [at the prison].” Since the prison officials did not question Ben Levi’s sincerity, and based their decision on their own understanding of the commands of the Jewish faith, Justice Alito wrote, the onus was on the State of North Carolina to “demonstrate[] that the burden on Ben–Levi’s religious exercise was reasonably related to legitimate penological interests.” (*Id.*, 136 S.Ct. at 935)

Religious Freedom Issues Linked to the Opinions and Practices of America's Cultural, Academic and Political Elites.

The third key indicator in religious freedom cases is the evolution of attitudes and beliefs among America's cultural, academic and business elites about religion, religious teachings and the role of religion in a pluralistic society. Two examples illustrate the breadth and depth of the threat that arises when a majority refuses to tolerate, or reject outright, the teachings or beliefs of religious groups and institutions.

### Religious Speech in Official Settings

Religious speech in official settings has long been a target for advocates of religious freedom, who contend that the government must not solemnize official occasions with prayer or other religious activities. To do so, they argue, impermissibly "endorses" religion and is, therefore, a violation of the Establishment Clause.

In *Town of Greece, New York v. Galloway*, 134 S.Ct. 1811 (2014), the Supreme Court upheld the town board's practice of opening its monthly meetings with a roll call, recitation of the Pledge of Allegiance to the flag, and a prayer by a local clergy member. The lead plaintiff, Galloway, told the board that "she found the prayers 'offensive,' 'intolerable,' and an affront to a 'diverse community.'" The court was asked to require the town to "limit all prayers to 'inclusive and ecumenical' prayers that referred only to a 'generic God' and would not associate the government with any one faith or belief." (134 S.Ct. at 1817) The court held that the government has no authority "to hold that invocations must be nonsectarian ... [or] to act as supervisors and censors of religious speech ...." (134 S.Ct. at 1818)

*Compulsory Participation in Activities Religious Groups Hold to be Immoral:* Prior U.S. country reports have discussed the ongoing dispute between the Obama Administration and a large number of organisations claiming that compulsory payments for contraceptive drugs and devices violates their religious freedom. That dispute is ongoing.<sup>13</sup>

The same issue appears in *Chamorro v. Dignity Health*, San Francisco Superior Court # CGC 15-549626, a case filed late in 2015 by the American Civil Liberties Union (ACLU), a major Washington, DC law firm; an NGO called "Physicians for Reproductive Health"; and the California Medical Association. Their goal is a judicial decree ordering Dignity Health-Mercy Medical Center in Redding, California to permit the use of its facilities to perform a postpartum tubal ligation (sterilisation). Dignity Health is a Catholic organisation founded by the Sisters of Mercy. Now that California has become the fourth and largest state to legalise physician-assisted suicide, similar attempts will be made to require religiously affiliated hospitals to permit that practice as well.

Similar challenges to the mission and identity of religiously affiliated schools are taking place across the country. In these cases, the issues are same-sex marriage and equal access to restroom and sports locker rooms for transgender students.

### Prospects for freedom of religion

Americans of all religious faiths – or none – enjoy broad-based legal and political respect for their right to religious freedom. Both Houses of Congress have passed resolutions condemning the genocide and persecution of minority religious groups in the Middle East, Africa and South Asia. In the United States, religious "persecution" is non-existent, and claims of religious discrimination and intolerance are consistently low. Individuals and religious associations are free to run every sort of evangelistic endeavour – from churches and schools to charities and humanitarian organisations. Religious tests for public office are forbidden by the United States Constitution and the constitutions of all 50 states. Employment discrimination laws at the state and federal level forbid religious discrimination in employment and require employers to make "reasonable accommodations" for their

employees' religious practices. Similar laws prohibit religious discrimination in housing and public accommodation.

In summary, the situation is improving. In a clear sign that the integration of American Muslims into the framework of religious liberty is proceeding on many levels, the Supreme Court of the United States has reaffirmed not only its commitment to protect the religious liberty of minority faith traditions, but also the religious freedom of much larger organisations like the Catholic Church.

The challenges facing religious believers in the United States at the time of writing are largely demographic and political. With the legalisation of same-sex marriage and physician-assisted suicide, Americans have witnessed a new challenge to religious liberty, and multiple overt attempts to compel religious organisations to conform to the state's moral code, rather than to their own. It is safe to predict that there will be an increase in both laws and litigation framed by organisations that reject traditional religious views on bioethics, sexual behaviour and the role of religion in public life.

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<sup>1</sup> See Alan Cooperman, Gregory Smith, Katherine Ritchey, *America's Changing Religious Landscape: Christians Decline Sharply as Share of Population; Unaffiliated and Other Faiths Continue to Grow* (May 12, 2015) at: <http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/> (accessed May 30, 2016).

<sup>2</sup> See Alan Cooperman, Gregory A. Smith, Stefan S. Cornibert, *U.S. Public Becoming Less Religious: Modest Drop in Overall Rates of Belief and Practice, but Religiously Affiliated Americans Are as Observant as Before* (3<sup>rd</sup> November 2015) at [http://www.pewforum.org/files/2015/11/201.11.03\\_RLS\\_II\\_full\\_report.pdf](http://www.pewforum.org/files/2015/11/201.11.03_RLS_II_full_report.pdf) (accessed 10<sup>th</sup> June 2016)

<sup>3</sup> <http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/>

<sup>4</sup> Federal Bureau of Investigation, Criminal Justice Information Services Division, 2014 Hate Crime Statistics at [https://www.fbi.gov/about-us/cjis/ucr/hate-crime/2014/resource-pages/methodology\\_final](https://www.fbi.gov/about-us/cjis/ucr/hate-crime/2014/resource-pages/methodology_final) (accessed 10<sup>th</sup> June 2016). See also Federal Bureau of Investigation, Criminal Justice Information Services Division, 2014, *Crime in the United States* at <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2014/crime-in-the-u.s.-2014/additional-reports/federal-crime-data/federal-crime-data.pdf> (accessed 10<sup>th</sup> June 2016)

<sup>5</sup> Ibid.

<sup>6</sup> Federal Bureau of Investigation, Criminal Justice Information Services Division, 2014 Hate Crime Statistics at <https://www.fbi.gov/about-us/cjis/ucr/hate-crime/2014/tables/table-4> (accessed 10<sup>th</sup> June 2016).

<sup>7</sup> See U.S. Equal Employment Opportunity Commission, Charge Statistics FY 1997 through FY 2015 at: <https://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm> (accessed 30<sup>th</sup> May 2016)

<sup>8</sup> US Census Bureau American Fact Finder at: <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (accessed 30<sup>th</sup> May 2016)

<sup>9</sup> California Department of Fair Employment & Housing, *2015 Annual Report* (2016) p. 7 at <http://www.dfeh.ca.gov/res/docs/Annual%20Report/DFEH%202015%20Annual%20Report.pdf> (accessed 30<sup>th</sup> May 2016)

<sup>10</sup> Texas Workforce Commission, *Commission on Human Rights Annual Report, Fiscal Year 2014* (2015) p 13 at <http://www.twc.state.tx.us/files/twc/annual-human-rights-report-2014-twc.pdf> (accessed 30<sup>th</sup> May 2016)

<sup>11</sup> New York State Division of Human Rights, *Annual Report FY 2014-2015* (2016) p. 5 at: (accessed 30<sup>th</sup> May 2016)

<sup>12</sup> Florida Commission on Human Relations, *Annual Report 2014-2015: A Fiscal Year in Review* (2016) p. 11 at [http://fchr.state.fl.us/fchr/content/download/9870/55740/file/FCHR\\_annual%20report%20FINAL%20reduced%20size.pdf](http://fchr.state.fl.us/fchr/content/download/9870/55740/file/FCHR_annual%20report%20FINAL%20reduced%20size.pdf) (accessed 30<sup>th</sup> May 2016 May 30, 2016).

<sup>13</sup> See *Zubik v. Burwell*, 136 S.Ct. 1557 (2016)