

# POLICY PAGES

## Rights of Conscience for Professionals

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### OVERVIEW

Every American citizen should be free to peacefully live and work according to the dictates of his or her conscience without the fear of unjust government punishment. This freedom equally applies to professionals. Licensed professionals, like teachers, doctors, and lawyers should not be denied a professional license or be penalized in their profession because of their religious convictions.

The U.S. Constitution, the Arizona Constitution, and several Arizona laws provide important protections for professionals to live out their faith in the public square.

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### ANALYSIS

Constitutional and statutory protections enable all Arizonans, including professionals, to live out their religious faith in the public square. Under the [First Amendment](#), “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech.” Similarly, [Article 20, Section 1](#) of the Arizona Constitution states, “Perfect toleration of religious sentiment shall be secured to every inhabitant of this state, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship, or lack of the same.” These constitutional provisions protect the right not only to believe and worship as one chooses, but to live consistent with one’s religious beliefs.

Arizona’s Religious Freedom Restoration Act provides even broader protections. The act recognizes that the “[f]ree exercise of religion is a fundamental right.” Therefore, the government may not burden (anything beyond ‘trivial, technical or de minimis infractions’) a person’s or a religious organization’s exercise of religion unless the law furthers a compelling governmental interest and it is the least restrictive means of furthering that interest ([A.R.S. §§ 41-1493, -1493.01](#)).<sup>1</sup>

In addition to these constitutional and statutory religious freedom protections, three recent Supreme Court decisions and profession-specific Arizona statutes further strengthen the rights of conscience for professionals.

### RECENT SUPREME COURT CASES PROTECTING PROFESSIONAL SPEECH



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In 2018, the U.S. Supreme Court handed down three significant decisions that further protect professional speech under the First Amendment.

- In *National Institute of Family Life (NIFLA) v. Becerra*, 138 S. Ct. 2361 (2018), the court rejected the idea that state-licensed professionals receive *less* First Amendment protection. Instead, it said, “This Court has not recognized ‘professional speech’ as a separate category of speech. Speech is not unprotected merely because it is uttered by ‘professionals.’” *Id.* 2371-72. The Court went on to state that “regulating the content of professionals’ speech ‘poses the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.’” *Id.* at 2374. The Court concludes, “‘the best test of truth is the power of the thought to get itself accepted in the competition of the market,’ and the people lose when the government is the one deciding which ideas should prevail.” *Id.* at 2374-75. Based upon this reasoning, the Court ruled it was unconstitutional for California to compel pro-life pregnancy centers to promote abortion in its facilities.
- In *Janus v. American Federation of State, County, & Municipal Council 31*, 138 S. Ct. 2448 (2018), the Court held Illinois could not require public employees to pay an “agency fee” to a designated union (used in part for lobbying, advertising, conventions, etc.) because the government cannot “compel[] individuals to mouth support for views they find objectionable.” *Id.* at 2463. The Court made clear that when the government “prevents individuals from saying what they think on important matters or compels them to voice ideas with which they disagree, it undermines” the right to free speech. *Id.*
- In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Court ruled the Colorado Civil Rights Commission violated Jack Phillips’s religious freedom because it showed “clear and impermissible hostility toward [his] sincere religious beliefs” regarding marriage and it unequally applied Colorado’s nondiscrimination law against him. *Id.* at 1729. In so holding, the Court established: 1) when laws and policies treat people unequally because of their religious convictions it is evidence of unconstitutional religious hostility, and 2) speech regarding marriage, sexuality, and gender are protected under the First Amendment. *Id.* at 1727.

More recently, the Supreme Court handed down two cases providing more clarity to free speech rights of professionals as well as one case requiring employers provide reasonable accommodation for religious employees.

- In *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022), the court held that the Free Exercise and Free Speech Clauses of the First Amendment protected the prayers offered by high school football coach, Joseph Kennedy. The Court first examined the “nature of the speech at issue” and then asked whether Coach Kennedy’s speech interests were outweighed by the interests of the public school in providing a public service. *Id.* at 2423. Looking at the timing and circumstances of Coach Kennedy’s prayers, which occurred during the postgame period, the Court determined his speech was private speech. *Id.* at 2425. On the question of whether the public school had an interest that overrode Mr. Kennedy’s speech rights, the Court rejected the

school’s concern about “establishing a religion” simply because students and others could see or hear him pray. Instead, the Court concluded that “[r]espect for religious expressions is indispensable to life in a free and diverse Republic—whether those expressions take place in a sanctuary or on a field, and whether they manifest through the spoken word or a bowed head.” *Id.* at 2432-33.

- In 2023, the Supreme Court again took up the issue of the rights of creative professionals. Unlike *Masterpiece* that dealt primarily with the religious liberty of creative professionals, the Court in *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023), considered the free speech rights of those professionals. The question posed was whether the Free Speech Clause protected a website and graphic designer from a state law forcing her to create designs that carry meanings that go against her beliefs. The law of her state, Colorado, prohibited businesses from discrimination when selling goods and services. As a wedding website creator, she did not want to create websites that promoted same-sex unions. The Court held in her favor, writing, “The First Amendment envisions the United States as a rich and complex place where all persons are free to think and speak as they wish, not as the government demands.” *Id.* at 26.
- Also in 2023, in *Groff v. DeJoy*, 143 S. Ct. 2279 (2023), the high court made it easier for employees to obtain religious accommodation from their employers. The court overturned the standard for determining whether an employer must provide accommodation. Previously, an employer only had to show that the accommodation imposed an “undue hardship,” defined as anything more than a minimal cost for the employer. As a result, religious accommodation was nearly nonexistent. The Supreme Court said the “undue hardship” standard requires the employee accommodation the employee unless it incurs “substantial additional costs.” *Id.* at 17. Other employees being upset does not bear on “substantial costs.”

## **PROTECTIONS FOR LICENSED PROFESSIONALS**

In 2012, Center for Arizona Policy (CAP) worked with the Arizona Legislature to pass a law to protect the rights of conscience for Arizona professionals regulated by the state, including doctors, nurses, pharmacists, social workers, lawyers, counselors, psychologists, architects, funeral directors, and a variety of other healthcare professionals. Under [A.R.S. § 41-1493.04](#), the government cannot “deny, revoke or suspend a person’s professional or occupational license, certificate or registration” for any of the following reasons:

- Declining to provide or participate in providing any service that violates the person’s sincerely held religious belief (except performing the duties of a peace officer).
- Refusing to affirm a statement or oath that is contrary to the person’s sincerely held religious beliefs.
- Expressing sincerely held religious beliefs in any context, including professional context, as long as the services provided otherwise meet the current standard of care or practice for the profession.
- Providing faith-based services that otherwise meet the current standard of care or practice for the profession.

- Making business related decisions in accordance with sincerely held religious beliefs such as:
  - Employment decisions, unless otherwise prohibited by state or federal law
  - Client selection decisions
  - Financial decisions

## **PROTECTIONS FOR EDUCATORS**

In addition to the protections discussed above, public educators have additional statutory protections that ensure they are not penalized for their religious beliefs or affiliations. K-12 certified teachers may not be dismissed or suspended because of their “religious or political beliefs or affiliations unless they are in violation of the oath of the teacher” ([A.R.S. § 15-541](#)).

Likewise, a state university or community college may not make faculty employment decisions on the basis of a faculty member’s political or religious beliefs. Nor may the institutions “exclude a faculty member from tenure or search committees or hiring committees on the basis of that faculty member’s political or religious beliefs” ([A.R.S. § 15-1896](#)).

## **PROTECTIONS FOR HEALTHCARE PROFESSIONALS**

Arizona law also protects the rights of conscience for healthcare professionals specifically relating to abortion, abortifacients, and end-of-life issues.

**Abortion and Abortifacients** ([A.R.S. § 36-2154](#)): Hospitals, clinics, and healthcare workers can refuse to facilitate or participate in a medical or surgical abortion if they state in writing their objection to the abortion on “moral or religious grounds.” In addition, pharmacies, hospitals, and healthcare professionals and their employees “who state[] in writing an objection to abortion, abortion medication, emergency contraception or any medication or device intended to inhibit or prevent implantation of a fertilized ovum on moral or religious grounds,” can refuse to facilitate or participate in the provision of such. Nor does the law compel them to facilitate the abortion through a referral; rather, they simply have to return the written prescription to the patient.

**End-of-life Issues** ([A.R.S. §§ 36-1321](#), [-1322](#), [-1323](#)): The law prohibits work-related discrimination against healthcare institutions and professionals that exercise their conscience rights by declining to “provide, assist in providing or facilitate in providing any health care item or service for the purpose of causing or assisting in causing the death of any individual, such as by assisted suicide, euthanasia or mercy killing.” For example, a doctor or nurse may not be fired, transferred, demoted, or otherwise penalized for declining to participate in treatment that is meant to cause or facilitate in causing the patient’s death. And, if healthcare providers are penalized for exercising their conscience, they have a civil cause of action for violation of the statute.

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## **TALKING POINTS**

- **The Constitution guarantees not only our “freedom to worship” but also our freedom to practice and promote our faith.** Americans do not have to leave their faith and convictions at their houses of worship; we have the right to carry it with us in all aspects of our lives.
- **The First Amendment protects the free exercise of religion.** An individual should not be denied a professional license or certificate required to do their job because of the exercise of their religious beliefs.
- **Participation in religious communities should be celebrated, not penalized.** Punishing individuals for their religious beliefs creates second-class citizens who are seen as less valuable to their industry because of their faith.
- **Denying religious people the right to practice their profession not only flies in the face of the First Amendment, but it robs society of the contributions of a large group of Americans.** Doing so would deny such people as Isaac Newton and George Washington Carver.

## CONCLUSION

The growing discrimination against professionals because of their religious views requires action to proactively preserve their rights of conscience. State law must ensure no individuals in Arizona will be forced to choose between their career and their sincerely held religious beliefs.

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## Endnotes

<sup>1</sup> In 2019, the Arizona Supreme Court considered FERA and the Arizona Constitution’s religion clause in the context of the rights of creative professionals. In that case, Joanna Duka and Breanna Koski, the co-owners of Brush & Nib Studios, provided custom wedding invitations to clients. However, they did not want to provide invitations for same-sex couples as required by a city ordinance because of their religious belief that marriage is only between one man and one woman. The Court concluded that the ordinance as applied to their invitations violated the Arizona Constitution’s free speech clause and FERA. *Brush & Nib Studios, LC v. City of Phoenix*, 247 Ariz. 269, 52 (2019).