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RWU First Amendment Blog: Diana Hassel's Blog: Is The Wall Between Church And State Crumbling? 10-07-2017

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October 7, 2017



Is the Wall Between Church and State Crumbling?

October 7, 2017 Edward Fitzpatrick

Diana Hassel, law professor and associate dean for academic affairs at the RWU School of Law:

The First Amendment provides that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” This clause has been understood to both keep religion out of government and to keep the government out of religion. That is, to erect a wall of separation between church in state. In recent years, this prohibition against the mingling of government and religion has been loosened. This process has accelerated in the first months of the Trump administration.

Recently, President Trump expressed his hostility to the Johnson Amendment, a statute which provides that churches, as well as other nonprofit organizations who receive tax exempt status, cannot engage in partisan politics. That is, government tax benefits could not be used to champion a particular

candidate or party. The president characterized the statute as “censoring sermons and targeting pastors” and signed an executive order aimed at limiting enforcement of the prohibition on partisan speech by church leaders. Decreasing any likelihood that churches that do engage in partisan politics would lose their tax exempt status.

In another move to fulfill promises made to the religious right by the Trump administration, the Department of Health and Human Services has allowed employers providing health insurance to remove birth control from the plans. Under the Affordable Care Act, employers are generally required to provide low-cost contraceptive coverage in the health insurance plans offered to employees. The new rules issued by the Department of Health and Human Service now allow contraceptive coverage to be removed from the plans because of the religious belief or moral conviction of the employer. This religious exemption could result in hundreds of thousands of women losing inexpensive access to birth control.

Secretary of Education Betsy DeVos, as well as other key members of the Trump administration, has deep connections with conservative religious organizations. One of her aims is to ease the transfer of government benefits to religious organizations. She has promoted the use of public money to fund education at religious schools. She argues that public monies should be used to promote school choice – including the choice of a religious school rather than a public school. Critics argue that such programs take funds away from public schools and allow tax dollars to be spent on religious indoctrination.

These most recent examples of the promotion and public funding of religion by government institutions come on the heels of the 2014 U.S. Supreme Court decision, *Burwell v. Hobby Lobby*. That decision established that certain types of for-profit corporations could assert the right to be free from government burdens on the practice of religion. This right would allow corporations not to follow otherwise applicable general laws, such as the obligation of an employer to provide contraceptive coverage in employee health insurance plans. These same arguments have been used to assert that the religious beliefs of service providers, such as cake bakers, should relieve them of the obligation to follow laws that prohibit discrimination based on sexual orientation.

At the same time, barriers to government support and funding for religious organizations are weakening, the legitimacy given to certain religious objections to government policy is growing. Both

of these developments look likely to lead to a continued and increasing intermingling of government and religion.