The National Center for Lesbian Rights (NCLR) is a non-profit, public interest law firm that litigates precedent-setting cases at the trial and appellate court levels, advocates for equitable public policies affecting the lesbian, gay, bisexual, and transgender (LGBT) community, provides free legal assistance to LGBT people and their legal advocates, and conducts community and public education on LGBT issues. NCLR has been advancing the civil and human rights of LGBT people and their families across the United States through litigation, legislation, policy, and public education since it was founded in 1977.

We appreciate the opportunity to provide this statement for the record on the state of religious liberty in America in 2017, to help shine a light on how a doctrinally and historically unsupported notion of religious liberty is being mobilized to support proposed laws and policies that would inflict harm on religious and other minorities.

Religious liberty is a bedrock freedom in the United States, but like other rights enshrined in our Constitution, it is not absolute. The freedom to practice one’s religion is not an unfettered license to impose one’s beliefs on others or inflict harm. And while government must allow for the free exercise of religion, it must not favor one faith over others, or over those of no faith. Our public policies must protect the freedom of religion without permitting the beliefs and practices of some to deprive others of their fundamental civil rights.

We can look to the landmark Virginia Statute for Religious Freedom penned by Thomas Jefferson for the core principles we must bear in mind as we craft public policy that respects both religious belief and civil rights.

One such principle is that religious freedom is an inalienable right that must be protected in order to ensure equality. “All men shall be free to profess, and by argument to maintain, their opinions in matters of Religion.”
Another is that “our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry.” Those of all faiths and no faith are to be treated equally under our laws, and religion should not be used to deprive anyone of their basic civil rights.

A third principle relates to the proper boundaries between religion and government. “No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever. ... To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical.” The machinery of the state should not be used to favor one set of religious beliefs over others, or to allow religious beliefs to be used to harm others.

In recent years we have seen a troubling trend of religion being cited as a justification to oppose civil rights, particularly for the LGBT community. This follows on a longstanding body of public policy allowing religious objections to thwart access to comprehensive reproductive health care. We face legislative proposals that would:

- Allow government officials to deny marriage licenses to same-sex couples, despite the Supreme Court’s affirmation of the fundamental constitutional right to marriage equality, and permit government employees to discriminate against married same-sex couples and their families in other ways — for example, federal employees could refuse to process tax returns, visa applications or Social Security checks for all married same-sex couples;
- Allow pharmacists to refuse to fill valid prescriptions for contraception;
- Allow federal contractors or grantees, including those that provide important social services like homeless shelters or drug treatment programs, to turn away LGBT people or anyone who has a sexual relationship outside of a marriage;
- Permit public-facing businesses to deny services to patrons based on religious beliefs;
- Allow businesses to discriminate by refusing to let employees care for a sick same-sex spouse, in violation of family and medical leave laws;
- Let commercial landlords violate longstanding fair housing laws by refusing housing to a single mother based on the religious belief that sexual relations are properly reserved to marriage; and
- Permit houses of worship and religiously affiliated charitable organizations to use taxpayer dollars to advance sectarian religious tenets.

What unites these and other dangerous proposals is the use of religion to harm others or deprive them of rights, truly a distortion of the notion of “religious liberty.” In the past several years, several state legislatures have introduced bills purporting to protect religious liberty.
that have elicited nationwide opposition and concern. For example, following enactment of Indiana’s so-called “religious freedom” law in 2015, both business leaders and members of the general public expressed such serious concerns about the law that the legislature was forced to quickly pass, and the governor (now Vice President) to sign, an amendment to ensure legal protection for LGBT people. Measures in other states have been defeated after similarly encountering significant bipartisan opposition. One of the very few such measures to be enacted into law, HB 1523 in Mississippi, was struck down by a federal district court judge, who found that it violated both the Establishment Clause and the Equal Protection Clause of the U.S. Constitution. U.S. District Court Judge Carlton W. Reeves, in a lengthy and detailed opinion, found that HB 1523 ran afoul of the First Amendment in two ways – by establishing “an official preference for certain religious beliefs over others” and because “its broad religious exemption comes at the expense of other citizens.”¹

These state legislative proposals have been widely recognized, condemned and rejected as the broad attack on LGBT people that they are. And yet in 2017 we have already seen 40 such bills introduced in sixteen states. Under the guise of invented threats to religious freedom, opponents of LGBT equality are similarly attempting to bring this misguided effort to enshrine discrimination to the federal level, through both amendments to appropriations measures stand-alone legislation. These efforts should be rejected.

Perhaps even more distressing is the overt targeting of members of certain faiths for discriminatory treatment in recent executive branch policy pronouncements. Not only are such policies deeply offensive and contrary to the U.S. Constitution, they are passionately opposed by the citizens of this country. When the President sought to bar travelers, including U.S. Lawful Permanent Residents, from certain majority Muslim nations from entering the United States, the public reaction was swift. Protests erupted around the country, lawyers mobilized to aid those trapped by these cruel policies, and legal actions were filed to enjoin their further harm. The use of religion to divide and discriminate is being vocally and publicly rejected from coast to coast, as the citizenry recognizes such acts as the threats to the liberty of all that they are.

True religious freedom means that the same right that protects the liberty of a sincere religious believer to pray, attend services, and promote their views in public also protects the right of a nontheist to not support religious institutions, and to oppose them publicly; the right of an LGBT individual to exercise legal rights and access public goods without facing discrimination based on another’s religious belief; the right of a woman to be free to make personal decisions about her own reproductive health without interference; and the right of every taxpayer to keep public dollars from being funneled to religious organizations and schools that are unwilling to serve everyone equally.

Religious freedom is a cornerstone of our nation. But that venerable and foundational freedom has never been—and must not become—a license to mistreat and discriminate against others. The term “religious freedom” should not be misused to justify laws designed to stigmatize, isolate, and harm vulnerable and marginalized groups. We urge you to reject misguided attempts to invoke religious liberty as a justification for discrimination or harm to others and instead support the pluralistic foundation and spirit of this nation, and protect true religious freedom for all.