

Understanding Conscience Clause Legislation in the context of Religious Liberty Traditions in the United States

This document is one of a series of resources created by a joint work group of the Board of Educational Affairs and Board of Professional Affairs of the American Psychological Association (APA) to inform and guide practitioners, educators, graduate students, and policy makers about the topic of conscience clause legislation. Some conscience clause bills permit practicing psychologists or those who are training to become psychologists to refuse to provide treatment they deem to be contrary to their religious beliefs without adverse consequences. In this document we highlight historical factors that have influenced the development of religious freedom in the United States as embodied in First Amendment Rights, describe how these factors relate to conscience clause legislation and professional training for competence, and then provide a brief overview of common tensions. To engage effectively in policy debates regarding conscience clause legislation in their states, psychologists can benefit from understanding relevant historical contexts and tensions.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

First Amendment to the United States Constitution (1791)

Highlighting Historical Factors Impacting Early Religious Liberty Traditions

- **European precipitants:** European immigrants came to the new world after a protracted series of religious wars.
 - European nations held the ancient and widespread view that religious uniformity was essential for kingdoms and any threat to state religion was also a threat to the state itself.
 - European settlers initially came to the U.S. for freedom to practice their own faith, but not for religious liberty per se. They expected a common faith to be practiced in their new communities.
 - The Radical Reformation, including groups that later became known as the Mennonites or Amish, cultivated a dissenting view arguing that the state should not compel or force compliance in matters of religious belief and practice.
- **Religious liberty traditions:** Roger Williams left Plymouth Bay, a Puritan settlement, to build another colony (Rhode Island) that would recognize the right of people to follow their own free conscience in matters of religious belief. William Penn adopted this same principle of freedom of conscience in Pennsylvania and that colony became a mecca for religious dissidents from many areas.
- **Federalizing religious liberty:** When the U.S. won its independence, state churches were still in place in most colonies representing groups as divergent as Catholic, Anglican, or Congregational. There was no way to establish one sect as the religion of the new country without plunging America back in the religious

conflicts of Europe. To avoid this problem, the religious liberty model of Roger Williams and William Penn inspired the new federal government's approach to these matters. This meant that freedom of belief on religious matters without any state compulsion became federal law.

- **The first liberty:** This religious liberty tradition embodied in the first amendment has been called the "first liberty." It grants freedom of conscience on religious beliefs, prohibits establishment of religion by the government, and implicitly acknowledges the U.S. as a place that accommodates religious pluralism.
- **Freedom of religion as freedom of belief and practice:** Freedom of religion has subsequently been interpreted by the Supreme Court to mean freedom of belief for the religious and non-religious alike. It is freedom of belief or "soul liberty" that allows dissenting minorities to be protected in their beliefs rather than forced to conform to majority religious beliefs or practices.

Conscience Clause Legislation

- The Supreme Court of the United States has interpreted the First Amendment to require that state actors maintain a non-hostile neutrality towards religion and ensure freedom of conscience.
- Yet, the right to *free exercise of religion* does not require a state to accommodate religious practices in opposition to a valid rule or law that is neutral, generally applicable, and does not target any particular religious group.
- Conscience clause initiatives have arisen over time, from the freedom to be a conscientious objector during wartime to the freedom from having to engage in professional practices not consistent with one's faith.
- Although educational and practice settings are generally expected to respect or accommodate the religious liberty rights for students and employees, protections for conscience are not absolute and a wide range of court decisions has limited these rights. When there is compelling public interest, such as access to quality health care, or quality assurance in education, certain accommodations may not be required.

Common Tensions Impacting Mental Health Professions

- **Training competence and religious liberty:** Institutions with training programs have a joint obligation to instill minimum profession-wide competencies in graduate students and respect their religious liberty.
- **Freedom of religion and non-discrimination:** It is a complex issue as to whether there should be limits to the accommodation of religious beliefs when religious beliefs and practices potentially result in a discriminatory impact. Whereas some have argued that conscience clauses sanction unfair discrimination, others argue that not making room for conscience is itself discriminatory against religious beliefs. These worldviews can include biases and stereotypes about others that exacerbate tensions and polarize dialogue.
- **Psychologists accept public oversight:** Licensed mental health professions are regulated by state jurisdictions for the purpose of public protection. Graduate

students in training programs and practitioners licensed in a regulated profession accept public oversight to protect the general welfare of those they serve. Although training programs and employment settings may infringe upon religious practices to achieve important educational and public welfare interests, such as ensuring the non-injurious and competent care of clients, they must also be mindful of the religious liberties of graduate students and psychologists,

This document was prepared as an informational summary by the BEA/BPA Joint Working Group, and reviewed by the [Board of Educational Affairs](#) and [Board of Professional Affairs](#) in March 2017. The document was not reviewed by APA Council and thus not adopted as APA policy.

For more information about conscience clause matters as related to psychological practice and graduate training, we provide four resources:

Advocacy Tips for Conscience Clause Legislation:

<http://www.apa.org/ed/graduate/conscience-clause-advocacy.aspx>

Practice Statement about Serving a Diverse Public:

<http://www.apa.org/ed/graduate/diversity-preparation.aspx>

Education and Training Statement about Serving a Diverse Public:

<http://www.apa.org/ed/graduate/diversity-preparation.aspx>

Wise, E. H., Bieschke, K. J., Forrest, L., Cohen-Filipic, J., Hathaway, W. L., & Douce, L. A. (2015). Psychology's proactive approach to conscience clause court cases and legislation. *Training and Education in Professional Psychology*, 9, 259-268. <http://dx.doi.org/10.1037/tep0000092>.

For more information or assistance, contact: [Susan R. Lazaroff, J.D.](#), Director, State Advocacy, American Psychological Association. Phone: 202-336-5868 Email: slazaroff@apa.org