

UNRELIABLE

Exposing the *flaws and lies*
in First Liberty Institute's
"Survey of Hostility to Religion in America"
entitled *Undeniable*

An investigation and report by the

FREEDOM
FROM RELIGION
foundation

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Each year, First Liberty Institute publishes an increasingly sensationalist "survey" called "Undeniable." Jeff Mateer, who President Trump has nominated to be a federal judge—a

lifetime appointment—was the executive editor of this deceptive document for a number of years. The Institute was founded to “promote Judeo-Christian values.”¹

Far from living up to its title, the “survey” is neither objective nor reliable. Instead, it sells a seductive, yet false narrative: that the Christian majority in America, some 70% of the population, is persecuted. The Institute insists this persecution is on the rise and has developed a lucrative fundraising structure to capitalize on this persecution myth.

Even the most cursory examination of the report shows significant problems. First, the Institute has no criteria for what constitutes an “attack” on religion. No slight is too small. For instance, the Institute counts the following among its “attacks”: mockery, negative reactions to politicians saying they favor religious candidates,² and criticism of legislation that would make the bible a state book.³

Many of these named “attacks” are final court decisions in which the court upheld the rule of law, protecting citizens’ religious freedom, including Supreme Court decisions. Amazingly, the Institute even includes Supreme Court decisions that uphold the Institute’s positions, such as the unanimous 2012 *Hosanna-Tabor* case, which is included in the 2017 edition as an attack on religion.

Second, the report does not actually catalog annual statistics. Instead it is a cumulative list of court cases, news releases, and online stories that the Institute adds to with no regard for date or merit. In other words, the Institute adds stories from before 2016 into the 2017 edition, then counts those stories when trying to show that hostility has increased since 2016.

1. The report manufactures hostility.

The only goal of the Undeniable report is to show increasing hostility toward religion. In addition to playing loosely with the numbers, the Institute is undiscerning when it comes to identifying “attacks” on religion.

The Institute’s methodology is suspect. Legitimate researchers and think tanks, such as Pew, which releases reports on “Religious Restrictions and Hostilities,” look at FBI hate crime reports and Department of Justice newsletters and reports to determine trends in religious hostility.⁴ The Institute instead scours news releases of civil rights organizations like the ACLU and right-wing conspiracists like Todd Starnes. The report is simply a copy-and-paste job of press releases, right-wing blogs, and court cases involving religion, no matter what the court’s final decision.

¹ LIBERTY INSTITUTE (2010), available at web.archive.org/web/20101004162906/http://www.libertyinstitute.org:80/about_main.php.

² FIRST LIBERTY INSTITUTE, Undeniable, 2017 ed. (hereafter “2017 edition”) at 81 (“Clinton said that she favored a president ‘who will pray with you, and for you’ while walking ‘humbly with our God.’ The FFRF reacted negatively”).

³ 2017 edition at 117. See *infra*.

⁴ See, e.g., Pew Research Center, Feb. 26, 2015, “Latest Trends in Religious Restrictions and Hostilities,” page 36, at www.pewforum.org/files/2015/02/Restrictions2015_fullReport.pdf. Pew looks to reports by the UN, Human Rights Watch, Freedom House, the International Crisis Group, and the U.K. Foreign & Commonwealth Office. *Id.* at 38.

There are at least four deep flaws with what the Institute considers an “attack” on religion.

First, the report lists court decisions that protect religion as attacks. For instance, the Supreme Court unanimously decided that anti-discrimination laws, such as the Americans with Disabilities Act, did not apply to hiring and firing in a religious organization’s hierarchy.⁵ This 2012 case is listed as an attack on religion in the 2017, 2016, 2014, 2013, and 2012 editions.⁶ Including this case is not an outlier. Many cases where the Supreme Court is sympathetic to the Institute’s mission are listed as attacks, even when the Institute couches them in terms that are not antagonistic. One page in the 2017 edition lists three such cases:⁷

Right to Pray Before Government Meetings Without Government Censorship Protected

Town of Greece, New York v. Galloway, 134 S. Ct. 1811 (2014)

...

World War I Veterans Memorial Preserved from Being Demolished

Salazar v. Buono, 130 S. Ct. 1803 (2010)

...

Right of Local Communities to Choose Which Monuments to Display Protected

Pleasant Grove City et al. v. Summum, 555 U.S. 460 (2009)

The next page lists “attacks” such as “Prisoners’ Religious Freedoms Protected” and “Texas Ten Commandments Monument Allowed to Remain.”⁸ In short, the Institute considers the Supreme Court vindicating religious arguments as attacks on religion.

Second, the Institute also includes cases in which courts disagree with its position, such as when courts strike down clear Establishment Clause violations. **This means that any court case involving religion is counted as an attack, no matter what the outcome.**

These “attacks” are legitimate legal challenges brought to ensure that the government complies with the Establishment Clause, thereby ensuring that the religious freedom of all citizens is protected, not just Christians. The clear implication of including these cases in the report is that the Institute views the Establishment Clause of the First Amendment itself as hostile to religion, at least when applied to Christianity. Such a skewed perspective of the First Amendment’s religious freedom protections is patently ridiculous. It might be comical were the editor of the “report” not nominated for a lifetime federal judgeship, entrusted with protecting and upholding the Establishment Clause.

⁵ *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 565 U.S. 171 (2012).

⁶ 2012 edition at 74; 2013 edition at 145; 2014 edition at 280; 2016 edition at 286; 2017 edition at 321.

⁷ 2017 edition at 26.

⁸ 2017 edition at 27.

In *Santa Fe I.S.D. v. Doe*, for instance, the Supreme Court held that the Establishment Clause prohibits school districts from projecting amplified prayers, even when led by students, to the students and spectators at high school football games. 530 U.S. 290 (2000). In every edition, the Institute counts this as an attack on religion and omits crucial facts in describing the case, wrongly suggesting that the court prohibited private student prayers during football games: “A lawsuit was filed to challenge a school district policy permitting student-led prayer prior to football games.”⁹

In fact, the court’s opinion emphasized that the prayers were unconstitutional *only because* they were perceived as being “delivered with the approval of the school administration.” *Santa Fe*, 530 U.S. at 308. The court held that the Establishment Clause prohibits the government from imposing prayers on students—protecting students’ religious freedom—but the Institute nevertheless counts this as a hostile attack on religion.

A court order keeping state and church separate is not hostility toward religion. The Supreme Court has essentially laughed off this argument:

It should be unnecessary to observe that [a curative] holding does not declare that the First Amendment manifests hostility to the practice or teaching of religion, but only applies prohibitions incorporated in the Bill of Rights in recognition of historic needs shared by Church and State alike.

Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 232 (1963) (Brennan, J., concurring).

The Establishment Clause protects religion from the government by prohibiting the government from favoring any one religion over another. This is not hostility, as the Institute claims, but neutrality.

Third, the Institute includes lighthearted mockery, irreverence, and fair criticism as “attacks” on religion. When Wisconsin Gov. Scott Walker claimed that God told him to run for president, an open records request was filed and produced no such communications. The Institute calls this an attack:

After [Walker] noted that as a Christian he seeks God’s guidance and comfort through prayer, Freedom From Religion Foundation demanded that Walker’s office provide copies of all correspondence between Walker and God. After the office responded that they did “not have records responsive to your request,” media journalists mocked Governor Walker by saying that the lack of written correspondence proves that “Walker has not communicated with God.”¹⁰

⁹ 2017 edition at 172.

¹⁰ 2017 edition at 105.

The “mockery” by “media journalists” consisted of two tweets.¹¹ One tweet was later deleted, and the other simply observed, “I see conservatives will not allow us to poke gentle fun at fact that so many GOP prez hopefuls claim God told them to run,” which, given that the Institute included this tweet as an attack on religion, proves the point.

Another “attack” on religion involved a state-church nonprofit “criticizing” presidential candidates Clinton and Trump for stating that they favored religious candidates.

In the 2016 presidential election, both Donald Trump and Hillary Clinton discussed their religious beliefs. Clinton said that she favored a president “who will pray with you, and for you” while walking “humbly with our God.” The FFRF reacted negatively to the candidates’ statements of faith, saying “[W]e don’t need pious politicians who spend valuable time on their knees. . . . Prayer doesn’t fix anything, but it does waste time and energy.”¹²

The Institute also counted criticism of a government actor’s daily religious emails to President Obama, which “were condemned . . . as an inappropriate use of government time and money,” as an attack on religion itself, rather than an abuse of a government office.¹³

Even criticism of unconstitutional bills is counted as an “attack” on religion.¹⁴

Finally, much of what the Institute labels “hostility” is actually fairness. The Institute deemed citizens exercising free speech in an open forum an attack on religion because a religious group was also using the forum.

When the Florida Prayer Network (FPN) obtained permission to erect a Nativity scene in the Florida Capitol, various antireligion groups and individuals pitched in to mock FPN, constructing displays right beside the Nativity such as a six-foot tall “Festivus” pole made from empty beer cans and a banner reading: “At this season of the Winter Solstice, we celebrate the Birth of the Unconquered Sun—the TRUE reason for the season.”¹⁵

In other words, the Institute believes the inclusion of minority viewpoints in the public square is an “attack” on religion. There is room at the inn for religion; everyone else is unwelcome.

¹¹ See <https://twitter.com/ThePlumLineGS/status/570291915628912640>, <https://twitter.com/politicalwire/status/570286584463011840>.

¹² 2017 edition at 81.

¹³ 2017 edition at 129.

¹⁴ “Louisiana Representative Thomas Carmody proposed making the Bible the official state book of Louisiana. However, atheist groups like the Freedom From Religion Foundation criticized the bill, and Carmody scrapped the plan before it could go to a vote.” 2017 edition at 117.

¹⁵ 2017 edition at 121–22.

The Institute includes halting violations of the Civil Rights Act and state civil rights acts as “attacks,” including instances where places of public accommodation stopped offering discounts to customers based on their religion.¹⁶

Even vetoing a law that was admittedly unconstitutional is an attack on religion. In 2013, Rhode Island Gov. Lincoln Chafee vetoed an unconstitutional bill that would have authorized a license plate design reading, “Choose Life,” as a fundraiser for religious anti-abortion organizations. The Institute acknowledged that “Chafee stated that this type of funding would violate the separation of church and state,”¹⁷ since the bill would use state funds to promote a particular religious message.

Given the nonexistent standard for what constitutes a genuine attack, it’s amazing that the Institute couldn’t find more “examples”. This simply shows that the “evidence” supporting its central premise—that attacks on religion in America are increasing—is fabricated and unreliable.

2. The report’s methodology is deeply flawed.

As the previous section shows, many of the so-called attacks in the 2017 edition are from long before 2016. The Institute’s sole concern in producing this report is to claim that attacks on religious liberty are increasing. Everything is manipulated to reach that end. The methodology is aimed entirely at building quantity; quality and reality are irrelevant.

One news outlet relied on the 2016 edition and was misled into reporting: “1,285 Attacks on Religion in US in 2015, 100 Percent Increase Since 2013.” But the report says something slightly different: “More than 1,200 cases *are documented in* this 2016 edition of Undeniable.” However, most of the cases documented in the report did not occur that year. It’s easy to see why the media gets confused, since nobody presenting real data would count it this way. The Institute’s peculiar math makes the cumulative total appear to be the annual total. In reality, every year the new edition just adds to the previous year’s edition while allowing everyone to believe all those so-called attacks happened that year.

For example, the 2017 edition cites the ACLU’s case against Birmingham, Ky., for its illegal nativity scene—which the ACLU won at the federal circuit court level because it was unconstitutional—as evidence that attacks on religion “in the public arena” are increasing. But the court decided that case in 1986, thirty years ago. (*ACLU v. City of Birmingham*, 791 F.2d 1561 (6th Cir. 1986)).¹⁸

These dubious artifacts add up. Fully 86 percent of cases marked as “Attacks in the Public Arena” in the 2017 edition predate the report by more than a year, but all 215 are counted to bolster the story that these “attacks” increased from the previous year.

¹⁶ I.e., “Bring in your church bulletin and get 10% off your meal” See, e.g., 2017 edition at 140.

¹⁷ 2017 edition at 139–40.

¹⁸ 2017 edition at 48.

More importantly, the Institute’s own claims belie its narrative that hostility is increasing. Using previous editions and press releases, here is what the Institute claims:

Report Year	Number of claimed “attacks”
2012	600
2013	“almost 1,200” ¹⁹
2014	“almost 1,400” ²⁰
2015	No report
2016	1,285 ²¹
2017	1,400 ²²

The claim of “almost 1,200” in the 2013 edition is simply false. Apparently, the Institute hoped that no one would hand count the items in its report, but FFRF did. Even with generous counting, we identified fewer than 980 “attacks” in a report that is supposed to have “almost 1,200.”²³ Moreover, only 288 “attacks” listed in the 2013 edition actually occurred in that year.

The jump from 600 in 2012 to “almost 1,200” in 2013 is disingenuous and is attributable to much older issues presented as new attacks. In other words, the 2012 edition went to press before the authors had finished scouring history for attacks and they continued their search after publication, putting all their new historical finds in the next edition and then claiming “almost” 600 new attacks. To take but two examples, a 2nd Circuit case decided in 2005 was not in the 2012 edition, but the Institute snuck it into the 2013 edition as a new “attack” that occurred between 2012 and 2013.²⁴ The Institute also included a news item from a decade before the 2012 edition as a new attack in the 2013 edition.²⁵

FFRF highlighted the problems with the Institute’s “report” in March of 2016,²⁶ including its deceptive methodology. As a result, the Institute quietly added a brief concession of their

¹⁹ 2013 edition at 1, available at https://www.libertyinstitute.org/document_doc?id=22 (“*Undeniable: The Survey of Hostility to Religion in America*, while not exhaustive, now records almost 1,200 incidents of hostility to religion in America—approximately double the number of incidents in last year’s *Survey of Religious Hostility in America*.”).

²⁰ First Liberty Institute, “Latest ‘Undeniable’ Reveals 133% INCREASE in Religious Hostility Attacks in America,” (February 12, 2015) Press Release. Available at <https://firstliberty.org/newsroom/latest-undeniable-reveals-133-increase-in-religious-hostility-attacks-in-america/>.

²¹ First Liberty Institute, “First Liberty’s Annual Survey Reveals Attacks on Religious Freedom Doubled,” (February 26, 2016) Press Release. Available at <https://firstliberty.org/newsroom/first-libertys-annual-survey-reveals-attacks-on-religious-freedom-doubled/>.

²² The 2017 edition claims 1,400 “Attacks on Religious Liberty” in 2016 (at 8).

²³ See note 5.

²⁴ *Hindu Temple Society of N. Am. v. Supreme Court of the State of NY*, 142 Fed.Appx. 492 (2d Cir. 2005); 2013 Report at 151.

²⁵ *Mitchell County, Texas, Library Refuses Access to Religious Groups*, dated July 22, 2002; 2013 Report at 186.

²⁶ Andrew Seidel, *Undeniably awful: Lobbyists for Christian privilege issue fallacious ‘report,’* FREETHOUGHT NOW! (March 1, 2016), available at www.patheos.com/blogs/freethoughtnow/undeniably-awful-lobbyists-for-christian-privilege-issue-fallacious-report/.

cumulative “sleight-of-hand” to the 2017 edition, while continuing to suggest that the report shows a dramatic increase in “attacks” on religion.²⁷

The dishonest methodology and flat-out lies underscore one plain fact: There is no evidence that attacks on religion are occurring, let alone increasing. If this evidence existed, the Institute would not have to torture facts and scour history to continually boost its total number of attacks—it could simply present an honest accounting of reality. The Institute’s own report belies the claims it makes, but it tries to sell that story anyway.

Conclusion

In summary, the Institute’s annual “report” is grossly and intentionally misleading. It is a fundraising tool meant to scare donors with false cries of Christian persecution in a country where Christians are overrepresented at every level of government and make up 70% of the population. Such a deceptive publication stains the integrity of its authors, who should unequivocally repudiate the “report’s” dishonest agenda before being confirmed for any public office, much less a federal judgeship.

²⁷ 2017 edition at 8.