

Duquesne University

## Duquesne Scholarship Collection

---

Hallowed Secularism

The Collective Works of Bruce Ledewitz, Adrian  
Van Kaam C.S.Sp. Endowed Chair in Scholarly  
Excellence and Professor of Law

---

12-31-2011

### December 31, 2011: The Conflict Between the Catholic Church and Government Regulations

Bruce Ledewitz

*Duquesne University*, ledewitz@duq.edu

Follow this and additional works at: <https://dsc.duq.edu/ledewitz-hallowedsecularism>



Part of the [Constitutional Law Commons](#), and the [Law and Philosophy Commons](#)

---

#### Repository Citation

Ledewitz, B. (2011). December 31, 2011: The Conflict Between the Catholic Church and Government Regulations. Retrieved from <https://dsc.duq.edu/ledewitz-hallowedsecularism/607>

This Article is brought to you for free and open access by the The Collective Works of Bruce Ledewitz, Adrian Van Kaam C.S.Sp. Endowed Chair in Scholarly Excellence and Professor of Law at Duquesne Scholarship Collection. It has been accepted for inclusion in Hallowed Secularism by an authorized administrator of Duquesne Scholarship Collection. For more information, please contact [beharyr@duq.edu](mailto:beharyr@duq.edu).

12/31/2011—The Illinois adoption controversy illustrates an important difference between accommodating religion and discriminating against taxpayers. Religious accommodation occurs when generally applicable laws contain religious exemptions. The classic case of accommodation occurred during Prohibition when religious use of wine was permitted. Accommodation is no longer usually constitutionally required under *Employment Division v. Smith* (1990)—although that may change with the decision of a pending case involving the ministerial exception—but accommodation is still widely practiced and is often required by statute. Accommodation, such as not forcing doctors to perform abortions, enhance religious liberty. But what Catholic Charities in Illinois is seeking is in principle quite different. When President George W. Bush expanded faith-based programming, he did so with the clear understanding that religious groups that took government money to provide services, must serve all clients without religious distinction. There was no accommodation in the original program, nor could there be since the point was to allow religious groups to participate in public programs on an equal basis. In contrast, Catholic Charities takes public money to provide adoption services but wants to exclude same-sex couples who have a legal right to adopt. This is a case of taking taxpayer money to discriminate against taxpayers. In any context other than gay rights, this idea would be instantly rejected. Imagine if a church that opposed interracial marriage wanted public money to provide adoption services only to same race marriages. The idea would be rejected, of course. Undoubtedly the Church here is sincere and in general no one wants to exclude religious organizations from providing public services (or at least I don't). But the exception for religious conscience being considered by the Illinois legislature—"to allow faith-based agencies like Catholic Charities to decline to provide foster care and adoption services to applicants who 'would constitute a violation of the organization's sincerely held religious beliefs' and refer them to other agencies" (quoting a story on Huff Post)—would allow all kinds of discrimination that the public would find repugnant and should not have to pay for.