

A. Background

Religious liberty has often been called our “first freedom,” since it is the first right listed in the First Amendment. As the Founders recognized, it is an integral and foundational element of freedom itself. James Madison stated succinctly that “conscience is the most sacred of all property.”¹ Many came to America precisely because of the recognition of religious liberty and the protection of this most basic of human rights. As George Washington said in his letter to the Hebrew Congregation at Newport: “It is now no more that toleration is spoken of as if it were the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights, for, happily, the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support.”²

“The right to religious freedom is a foundation of America. . . . Our Founding Fathers knew the importance of freedom of religion to a stable democracy, and our Constitution protects individuals’ rights to worship as they choose. We reject religious discrimination in every form, and we continue our efforts to oppose prejudice and to counter any infringements on religious freedom.”

– President George W. Bush,
Religious Freedom Day Proclamation,
January 13, 2006

James Madison’s Memorial and Remonstrance Against Religious Assessments explained that religious liberty is a right that belongs to all people. He wrote that it is a “fundamental and undeniable truth ‘that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence.’ The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate.”³

The United States Department of Justice’s Civil Rights Division enforces a wide range of federal statutes that protect religious freedom. The Civil Rights Division, founded in 1957, is best known for its historic and

ongoing work toward ending racial discrimination in education, voting, employment, housing, and other areas. Today the work of the Civil Rights Division encompasses many other areas of civil rights as well, such as the Americans with Disabilities Act,⁴ the Civil Rights of

¹ James Madison, *Essay on Property* (1792), reprinted in 14 THE PAPERS OF JAMES MADISON 267 (Rutland *et al.* eds., University Press of Virginia 1983).

² George Washington, *Letter to the Hebrew Congregation in Newport, Rhode Island* (1790), reprinted in George Washington, WRITINGS 766, (Rhodehamel ed., The Library of America 1997).

³ James Madison, *Memorial and Remonstrance Against Religious Assessments* (1785), reprinted in Adams and Emmerich, A NATION DEDICATED TO RELIGIOUS LIBERTY 104 (Univ. of Penn. Press 1990).

⁴ 42 U.S.C. § 12101 *et seq.*

Institutionalized Persons Act,⁵ the Trafficking Victims Protection Act,⁶ and many others. The Division also enforces statutes that prohibit religious discrimination in a variety of contexts, criminalize



Attorney General Alberto R. Gonzales speaking at the Orthodox Union's annual dinner in June 2005 about the Justice Department's enforcement of religious freedom laws.

interference with religious rights through threats or violence, and ensure that certain federal constitutional rights to religious freedom are protected.

Most of the provisions of the landmark Civil Rights Act of 1964 bar discrimination based on religion along with other suspect criteria such as race, national origin, or sex: Title II of the Civil Rights Act of 1964⁷ bars discrimination based on religion in public accommodations like restaurants and hotels; Title III⁸ bars discrimination based on religion in public facilities such as municipal recreation facilities and senior centers; Title IV⁹ bars discrimination based on religion in public elementary and secondary schools, as well as in public colleges and universities; and Title VII¹⁰ bars discrimination based on religion in employment. Title VII also has two unique provisions protecting religious liberty. In addition to making outright discrimination illegal, such as refusing to hire persons of a particular religion, Title VII also requires that employers make a reasonable accommodation of the religious observances and practices of employees, such as accommodating Sabbath observance or religious dress, unless the employer can demonstrate that doing so would be an undue hardship.¹¹ And § 702 of Title VII protects the independence and autonomy of religious institutions by

⁵ 42 U.S.C. § 1997, 1997a-1997j.

⁶ Pub. L. No. 106-386 (codified as various sections of 18 U.S.C. Chapter 77).

⁷ 42 U.S.C. § 2000a *et seq.*

⁸ 42 U.S.C. § 2000b *et seq.*

⁹ 42 U.S.C. § 2000cc *et seq.*

¹⁰ 42 U.S.C. § 2000e *et seq.*

¹¹ 42 U.S.C. § 2000e(j).

exempting them from the general restriction on consideration of religion in hiring.¹² The Fair Housing Act¹³ and the Equal Credit Opportunity Act (ECOA)¹⁴ also protect persons from discrimination based on religion. Title IX of the Civil Rights Act of 1964¹⁵ permits the Attorney General to intervene in federal court cases seeking relief from denial of equal protection of the laws under the Fourteenth Amendment to the Constitution on account of religion. All of these non-discrimination laws are enforced by the Department of Justice's Civil Rights Division.

In addition to these anti-discrimination laws, the Civil Rights Division also enforces a number of statutes designed to protect the religious liberty of citizens more broadly. The Division can bring actions against state and local governments for violations of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).¹⁶ The first part of RLUIPA protects houses of worship and religious schools from abusive land-use regulations, and the second protects the religious rights of inmates and other institutionalized persons. The Civil Rights Division also enforces the religious freedom rights under the Constitution of persons confined to institutions through enforcement of the Civil Rights of Institutionalized Persons Act (CRIPA),¹⁷ and prosecutes

arson and vandalism of houses of worship and religion-based bias crimes against individuals under a variety of federal criminal statutes.

B. Responding to a Need

Prior to 2001, except for prosecution of religious bias crimes and employment cases, the Civil Rights Division exercised its jurisdiction to enforce civil rights laws with respect to religion sparingly, and had never had an attorney charged with ensuring that these laws were comprehensively enforced. However, as the United States becomes more religiously diverse, preventing discrimination based on reli-



Worshippers at Hale O Kaula Church in Maui, Hawaii, who were able to expand their sanctuary with help from a Civil Rights Division lawsuit.

¹² 42 U.S.C. § 2000e-1(a).

¹³ 42 U.S.C. §§ 3601-3619.

¹⁴ 42 U.S.C. §§ 1691, 1691a-1691f.

¹⁵ 42 U.S.C. § 2000h-2.

¹⁶ 42 U.S.C. § 2000cc-1.

¹⁷ 42 U.S.C. § 1997 *et seq.*

gion has become even more important. The United States today is home to more than 2,000 different faiths and denominations.¹⁸ Religious discrimination is a growing problem. For example, from 1992 to 2005, complaints of religious discrimination in employment filed with the Equal Employment Opportunity Commission went up 69%.¹⁹ During this same period, sex discrimination complaints rose 6%,²⁰ national origin discrimination complaints rose 8%,²¹ and racial discrimination complaints actually decreased by 9.5%.²² Similarly, in enacting RLUIPA in 2000, Congress found widespread discrimination against religious institutions by state and local officials regarding land-use decisions.²³ The attacks of 9/11, and the resulting increase in bias crimes and discrimination against Muslims, as well as Sikhs and others mistakenly perceived to be Muslim, underscored the need for rigorous enforcement of religious civil rights laws.

In addition to being religiously diverse, the United States is also a nation of deeply religious people, and conflicts can arise when people feel they should not have to check their faith at the door when they go to school or work, or participate in activities in the public square. Citizens using community centers and other public



Department of Justice attorneys (l-r) Irfan Saeed, Shaarik Zafar, and Special Counsel for Religious Discrimination Eric Treene at the 2004 Islamic Society of North America Convention in Chicago, Illinois.

facilities, and especially students at public schools, often are told by government officials that they cannot express their religion while on public property or in government-sponsored programs, based on a mistaken belief that the Constitution's prohibition on state establishment of religion bars individual religious expression. But as the Supreme Court has stressed, "there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect."²⁴ Schools, senior centers, public parks, and

¹⁸ *The Religious Landscape of the United States*, U.S. Society and Values Vol. 2 (U.S. Information Agency 1997) (available at <http://usinfo.state.gov/journals/itsv/0397/ijse/ijse0397.htm>).

¹⁹ EEOC Enforcement Statistics – Religion (available at <http://www.eeoc.gov/stats/religion.html>).

²⁰ EEOC Enforcement Statistics – Sex (available at <http://www.eeoc.gov/stats/sex.html>).

²¹ EEOC Enforcement Statistics – National Origin (available at <http://www.eeoc.gov/stats/origin.html>).

²² EEOC Enforcement Statistics – Race (available at <http://www.eeoc.gov/stats/race.html>).

²³ See H.R. Rep. No. 219, 106th Cong., 1st Sess. 18-24 (1999).

²⁴ *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 302 (2000); *Board of Education of Westside Community School v. Mergens*, 496 U.S. 226, 250 (1990) (plurality opinion).

other public facilities are not religion-free zones, and individuals may not be denied access, or have their expression censored, simply because of their religion.

To meet all of these concerns, in 2001 the Department of Justice began to step up enforcement of civil rights laws protecting persons from religious discrimination and violence. Then, in 2002, the Department of Justice created the position of Special Counsel for Religious Discrimination. The Special Counsel is charged with coordinating enforcement of the civil rights laws addressing religious freedom and religious discrimination within the Civil Rights Division. The Special Counsel also is charged with engaging in outreach to religious organizations, civil rights organizations, attorneys, and the general public to educate them about the Department of Justice's jurisdiction in this area and how to file complaints.

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The record of the Civil Rights Division shows a dramatic increase in the number of religious liberty cases from the period 1995-2000 to 2001-2006.²⁵ For example, education discrimination cases

involving religion increased from one case reviewed and no investigations in the earlier period to 82 cases reviewed and 40 investigations in the most recent six years; religion cases under the Fair Housing Act and ECOA rose from four investigations and one lawsuit in 1995-2000 to 18 investigations and six lawsuits from 2001-2006; religion-related appellate friend-of-the-court, or *amicus curiae*, briefs rose from one to 16; and enforcement of RLUIPA, enacted in 2000, included 118 cases reviewed and 26 investigations from 2001-2006, resulting in 15 favorable outcomes prior to litigation and 4 lawsuits.

But the record cannot be measured in numbers alone. The Civil Rights Division's efforts, as set forth in this report, have resulted in victories that have demonstrated to government officials, the courts, and the public that religious rights in the United States are rights that should be, and will be, protected. They include winning the right for a Muslim girl to wear a headscarf to school — a case that was reported throughout the world. They include winning the right of seniors at a Texas senior center to say prayers before meals, sing gospel music, and hold Bible studies — a case demonstrating that private religious speech that takes place on public property is not government religious speech forbidden by the Constitution. And they include multiple

²⁵ All numbers are for fiscal years.

cases winning the right of religious groups to equal access to public facilities. The following report details the successes of the Department's religious liberty enforcement in the full range of jurisdictional areas: education, employment, housing and credit, public accommodations and public facilities, zoning and landmarking, the rights of institutionalized persons, and bias crime prosecutions.