



**TO: THE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE CONSTITUTION
UNITED STATES HOUSE OF REPRESENTATIVES
HONORABLE TRENT FRANKS, CHAIRMAN
HONORABLE JERROLD NADLER, RANKING MEMBER**

**RE: HEARING ON THE STATE OF RELIGIOUS LIBERTIES IN
THE UNITED STATES**

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DATE: OCTOBER 26, 2011

Thank you Chairman Franks, Ranking Member Nadler, and the members of the Constitution Subcommittee for the opportunity to participate in this important hearing on the state of religious liberty in the United States today. As Edmund Burke rightly noted during the time of the American founding, “eternal vigilance is the price of liberty,” and today’s hearing is a necessary and valuable part of that vigilance.

I am the Senior Counsel and Director of the American Center for Law and Justice’s Washington Office (ACLJ), and my testimony today is provided in that capacity. The ACLJ defends religious liberties throughout the world. Nowhere is our effort more profound, however, than here at home. This nation’s founders cherished religious liberty. In fact, the Founding Fathers built this nation with the assurance that an American would be free to practice the religion of his or her choice without the fear of government interference. But although the liberty to practice one’s religion is greater in this country than in any country in the world, conflicts between religious liberty and other interests do exist. In this conflict, many of our fundamental religious liberties are sustained through the efforts of Congress and state legislatures. Others must be defended daily in the courts across our nation.

In several areas, Congress and the courts have successfully protected the religious liberties of individuals and organizations. Legislation such as the Religious Land Use and Institutionalized Persons Act (RLUIPA) and Title VII of the Civil Rights Act of 1964, as amended, has solidified the legal protection of religious liberty. As a result of RLUIPA, religious believers may no longer be targeted for disparate treatment with regard to land use because of their religion or religious denomination. Because of Title VII, employees across the nation may observe fundamental tenets of their faith while earning a living. In the halls of public schools, students are free to pray voluntarily and generally to engage in religious expression. And, thanks to the Equal Access Act, student religious groups may meet on school grounds on the same terms as other extracurricular student groups. Additionally, conscience statutes have ensured healthcare professionals the right to refuse to perform abortions and sterilization procedures that violate their religious beliefs.

With these successes, however, have come issues of controversy and contention where courts have curtailed religious liberties. Among the most controversial are within the public schools and universities of our nation, where the effects of recent decisions on the young minds of our nation may adversely impact religious liberties in the future. For instance, university speech codes, meant to create an environment in which all students can partake in the educational experience free from discrimination and harassment, have severely undermined religious liberties. In fact, religious students and groups can be prevented from sharing beliefs with other students out of fear of being charged with harassment. Vague policies deter students from espousing beliefs on issues of public concern such as the definition of marriage, gender roles, and absolute religious truth. Courts have given public university officials the power to punish students on the grounds that their religious speech is insulting or that it disrupts communal living. These speech codes have the capacity to significantly burden religious expression in venues that should be open to the expression of the widest variety of ideas.

Decisions such as *Christian Legal Society v. Martinez* (Sp. Ct. 2010), *Truth v. Kent School District* (9th Cir. 2008), and *Alpha Delta v. Reed* (9th Cir. 2011) also have restricted religious freedoms on public college and school campuses. In upholding school policies that require religious groups to open their leadership positions to students who do not share the group's beliefs, these decisions essentially destroyed the right to associate freely with like-minded individuals as a recognized religious school group. Religious groups must now open their doors to those who revile and ridicule their deeply held religious beliefs, or they must cease to exist. Or, if they exist, they must do so as second-class citizens, ineligible for the benefits received by others, officially-recognized groups.

Court decisions adverse to religious liberties are not confined to college campuses. The right of parents to teach their children religiously-based morals has become a new battleground. Religious parents who choose to send their young children to public schools now find their religious morals contradicted by sex education courses. Courts have allowed school districts to expose young children to sexual behavior that many religious parents oppose. Who can forget the 1st Circuit's ruling in *Brown v. Hot, Sexy and Safer Productions* (1995), where during a mandatory attendance AID's prevention presentation students were informed they were going to have a "group sexual experience with audience participation"; where profane, lewd, and lascivious language was used to describe body parts and excretory functions; and where oral sex, masturbation, homosexual sexual activity, and condom use during promiscuous premarital sex were advocated and approved. Few school districts provide opt-out options for parents to protect the religious beliefs taught at home. Fewer schools inform parents as to when such controversial courses are taught. In fact, the 1st Circuit's ruling in *Brown* held that children have no right to be free from "exposure to vulgar and offensive language" or "debasing portrayals of human sexuality."

These issues provide merely a glimpse into the many areas where religious liberties will face problems in our country. In light of ever changing discrimination laws and harassment policies, religious people often face a troublesome choice: violate deeply held religious beliefs or receive punishment from state or local officials. Undoubtedly religious adherents will continue to face such dilemmas in the future.

The courts and the judges that preside over them will largely determine the strength of America's religious liberties. The battle to maintain broad and robust religious liberties, however, falls on each of us. As explained by President John Adams in an address to the military:

"We have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry, would break the strongest cords of our Constitution, as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."

(Pres. John Adam's October 11, 1798 address to the military, *The Works of John Adams*, 1854, by Charles Francis Adams, Little, Brown & Co.)

I thank the Subcommittee for its part in protecting the religious liberties of the American people, and for its continued vigilance. I have also provided as part of my testimony a copy of ACLJ's recently completed "Religious Liberty in America: A comprehensive Analysis of Current Case Law and Legislation" (Fall 2011). I look forward to any questions Members may have. Thank you.