



THE UNITED STATES DEPARTMENT OF JUSTICE
RELIGIOUS LIBERTY COMMISSION

Witness Testimony for Sept. 29, 2025 Hearing
Religious Liberty in Education:
Perspectives from Teachers, Coaches, and Leaders of Faith-Based Schools

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Forthcoming:

Panel III: Protecting Faith-Based Schools

1. *Fr. Robert Sirico*

Closing Remarks

2. *Hannah Ruth Earl*

PANEL II: TEACHERS AND COACHES PANEL

Marisol Arroyo-Castro

Good Morning. Buenos Días.

Thank you all for inviting me to speak here today. I am extremely grateful for this opportunity.

My name is Marisol Arroyo-Castro, and I have been a teacher for 33 years. I have a master's degree in education and a minor in child psychology. I have been blessed to work with children from kindergarten to 8th grade, and I am proud to say it has been the joy of my life. In all my years of service, I have never received a negative or "Developing" rating on any of my performance evaluations.

I am a God-loving and God-fearing person. It was my father, God, who motivated me to get an education. I grew up in Spanish Harlem, New York City—"El Barrio," as we called it. I learned early in life that God was, and still is, my only caretaker.

My grandmother taught me to respect God and by extension the crucifix which served as a reminder that Jesus died to save us. I share this with you to help you understand why the crucifix is so significant to me and why I will never hide it or put it away.

In December 2024, I received an email from our school's newly hired vice principal. He wanted to meet with me about a complaint he said he'd received regarding a "cross" by my desk in my classroom. My crucifix was hung in an area where teachers hang personal items like cards, photos, baseball team pennants and the like."

At that initial meeting, the vice principal told me the crucifix was of a religious nature so against the Constitution of the United States and had to be taken down by the end of the day. It seemed that my union representative, who was supposed to be there to protect my interests, actually agreed with him. When I asked what would happen if I didn't take it down, the VP explained it could be considered insubordination and could lead to my termination. I asked if I could have time to pray about it. He told me I could, but it wouldn't change anything; the crucifix still had to be brought down by the end of the day.

The next morning, he came into my room to check. He saw the crucifix still hanging by my desk. We made eye contact from across the room. But without saying a single word, he walked out.

Since I didn't take the crucifix down, I was called to a meeting with district's chief of staff, the principal, the vice principal, and the union representative. The chief of staff said I could put it in a drawer. I knew I couldn't do that because of what my grandma taught me about what the crucifix means and how we need to treat it with respect. But the chief of staff said that the Constitution said I had to take it down. My principal told me that "we're to worship no idols." He said that I should take the crucifix down to stay true to that as a Christian. That was

offensive to me as a Catholic. Still, I wanted to appease them and avoid any more threats or conflict. I just wanted to make things better, so when my union representative asked me if I could move it to a place where the students couldn't see it, I reluctantly agreed to move the crucifix. The district's chief of staff, the principal, the vice principal, and the union representative immediately walked with me to my classroom. They apparently wanted to approve where I would move the crucifix.

In my classroom, I suddenly felt anxious and scared. In my heart, I knew something was terribly wrong. When someone asked if the crucifix could go under my desk, all I could do was give a quick nod. I just wanted to get through this entire process so I could feel normal again. I wanted it to be over before I fell apart. I felt physically sick, as if I was in a terrible dream. I just wanted them to leave me alone and stop pretending everything was okay. They were all talking at the same time, telling me it was all for the best.

As I reached to put the crucifix under my desk, I became aware of how much it weighed and how strong the wood was. Then I remembered the scripture that says we should not hide our light under a bushel. While still partially under my desk, I got a glimpse of Jesus on the cross and remembered that he died for me and for everyone.

I started to cry, unable to stop. I asked them whether I should take down my Yankees sign too. They responded, "The Yankees are just a sports team, but the cross is a religious thing, Ms. Castro. We can't have our students looking at things like that."

I told them they were offended by Jesus.

The next thing I knew, they had all left. I was alone in my room, crying.

I went home and cried all night. I felt that after all this time with God as my father—after 62 years—I had let him down, and he knew it. I had actually put the sacred crucifix of Jesus under my desk. I had let my Papa God down. How could I have done that? I felt how disappointed he was in me. I had to make it right again. I promised I would move the crucifix back to exactly where it was. Immediately after making that promise, I felt better. The next morning, I made things right again.

That afternoon, the principal came into my classroom again to try to convince me to take it down. He told me that the Bible says that I should "give to Caesar what is Caesar's" and I should follow the example of Daniel in the Bible and take it down. He told me I needed to "live out my faith," and that's why he brought up the idol. I told him I couldn't take it down.

My union representative stopped by and said that if I did not take the crucifix down before leaving that day, I shouldn't even go to my classroom in the morning but should go straight to the office.

So, the next day I went to the office. The school leadership told me that I was going to get a two-day unpaid suspension. (This was during the Christmas season.) The chief of staff said maybe not being paid would help me reflect on my best interest. They wouldn't allow me to return to the classroom unless I hid the crucifix, for example by putting it in a drawer or in my

pocket.

Thankfully, First Liberty Institute and WilmerHale agreed to represent me. They put together an army to defend me, and I am grateful for their help.

Since I sued the district, the officials have continued to treat me badly. They reassigned me to a position in the administrative building where I am basically ignored and assigned busy work. The officials have lied about me in the media and are destroying the teaching reputation that I spent 33 years building. I have given you a small glimpse into my life since my crucifix was taken down and put in a box. And I was asked to leave the middle school where I taught seventh grade.

Seventh grade was actually my favorite grade to teach since they are old enough to get my jokes and still young enough to want to have lunch with me. I miss having them open my classroom door just to yell, “I love you, Ms. Castro.” I miss showing them what they called the “Old G games” like Jacks, Pick-Up-Sticks and Marbles. I miss when they didn’t want to stop playing. I even miss them teaching me their teenage slang like “you’re glazing.” Every day, I wonder how they are doing. I testify today in hope that no other teacher ever experiences such oppressive treatment in an American public school.

Please do what you can to educate America’s school districts about the true meaning of the Establishment Clause and the Free Exercise Clause. How can we do our jobs well when the leaders in education don't understand the Constitution? Our wonderful country must show that freedom of religion benefits all Americans.

Thank you and may God bless you all. Gracias, y que Dios me los bendiga.

Monica Gill

Thank you to President Trump and this Commission for your commitment to ensuring the next generation is free to live out their faith. I'm humbled to be here.

For over 30 years, I've had the privilege of serving as a high school teacher – 21 years in Loudoun County Public Schools in Virginia.

Teaching high school seniors is one of the greatest blessings of my life. It's also my mission field. While I thrive teaching U.S. history and government, my greatest joy is ensuring that my students know they are deeply loved. No matter what else might be going on in their lives, I want them to have at least one person who listened to them, cared for them, and loved them. Unconditionally.

I begin and end each class the same way:

"Mrs. Gill loves you."

And I mean it. A banner in my classroom above the door reminds them, *"You Are Loved."*

And at the bottom of every test, I include one final bonus question: *"Does Mrs. Gill love you?"* To earn the points, they must answer *yes*.

Over the years, I've built wonderful relationships with my students – learning their strengths, listening to their dreams, and walking with them in both struggles and victories.

My goal has always been to equip them – not just with facts, but with truth. Not just for a test, but for life.

Because if we can root the next generation in truth, we can help them live full and flourishing lives.

I always pray that God will use me to equip my students for the cultural battlegrounds they will encounter. But in the summer of 2021, I encountered a cultural battleground I didn't expect, nor did I initially feel equipped to take on.

The Loudoun County Public School Board adopted a policy that forced us as teachers to deny the most foundational truths of what it means to be human – to be created as men and women in the image of God. It forced us to speak falsehoods to our students, treating boys as girls and girls as boys.

Loudoun County Public Schools gave teachers a choice:

Deny truth – or risk everything.

Our jobs.

Our pensions.

Our students whom we loved.

For a moment, I was afraid. But as I prayed, a quiet conviction rose in me.

I knew one day I would stand before my Heavenly Father. I knew I couldn't say when He asked me, "Monica, did you care for my children?" – "Lord, I stayed silent because my pension was more important than your truth."

I knew: *If I say I love my students, the only right choice is to stand in love and truth for them. The most loving thing we can do is speak to others with words that are accurate and true.*

So I prayed for courage. And I remembered the words of Pastor Billy Graham:

"Courage is contagious. When a brave man takes a stand, the spines of others are stiffened."

With the help of Alliance Defending Freedom, I filed a lawsuit against the Loudoun County School Board – not out of anger, but out of love. Love for the students and families I serve.

The journey was hard. And at times, I wanted to give up. But God met me with small miracles and opportunities to see the power of sharing truth along the way.

One story I'll never forget is what happened with one of my students during the lawsuit. Share story in your own words...

I'll also never forget God's faithfulness as I was preparing to start a recent school year. I'd gone into school to set up my new classroom when I discovered something on the bottom bookshelf tucked away – a hardbound Bible. I thought, "Where did you come from??" I opened it and on the first page, in elegant penmanship, were the words: *"Presented by the Class of 1955."*

My first reaction was cynical: *"Look how far we've fallen—something like this would never happen today."*

But in that moment, the Lord spoke to my heart: *"Monica, I didn't place this gift in your hands for you to judge this place. I gave it to remind you that I have not abandoned this place. I've placed you here to be My salt and My light, and I'm calling you to stand—and to stay."*

Friends, this is our calling: to be salt and light!

God has not abandoned our schools and classrooms. He has not abandoned this generation. So neither can we.

We cannot let our children and grandchildren fall victim to lies – especially the lie that says they're born in the wrong body, that their identity is fluid, or that they're broken.

We must show our students love, truth, and the path toward true joy.

And hold accountable our public school system when it fails.

Thankfully, by God's grace, my suing Loudoun County just recently resulted in a victory for all teachers to be free to share truth.

We are at a tipping point. And I pray that in Charlie Kirk's honor, it will be a turning point.

Because for us to win back our country for truth and goodness, we must take a stand for truth without fear of the consequences. Even if that means risking our own jobs.

In closing, I want to speak directly to any young people watching today: *you are deeply loved*.

You also have a choice. A choice in how you will love one another—and how you will love this country.

A choice to stand for what is right, true, and noble, even knowing that it may cost you greatly.

My prayer is that you will remember courage is contagious and stand for truth and beauty. Look beyond your differences to what unites you: you are each made in the image of God.

Finally, to this Commission and to President Trump: thank you. Thank you for initiating this conversation, for pursuing dialogue, and for working to preserve a foundation for every young person in America to come to know the truth that will set them free.

Coach Joe Kennedy

Chair, Commissioners, thank you for the opportunity to testify.

My name is Joe Kennedy. I'm a Marine Corps veteran, a husband to Denise, father of 4, and the former football coach at Bremerton High School in Washington State. Ten football seasons ago, after the final whistle of a game, I took a knee at the 50-yard line and bowed my head in silent prayer of thanks—no microphone, no sermon, no students. That simple act set off a legal odyssey that lasted almost a decade, including seven losses through all the lower courts, two trips to the Supreme Court, and one final ruling in my favor.

I'm here today because while the Court's decision affirmed my rights, too many Americans still live as if that ruling never happened.

Let me first acknowledge what this journey cost. My wife Denise (who was the HR director for the school district) and I were stretched to the breaking point. I lost the life and team that I loved, and our community split into camps over something that should never have been controversial in the first place, an individual, quiet moment of gratitude. I never asked a student to pray with me nor turned anyone away. I simply exercised the same freedom every American possesses: the freedom to speak and the freedom to pray.

In 2022, in a landmark victory, the Supreme Court clarified that the Free Exercise and Free Speech Clauses protect personal religious observance from government punishment. The Court made clear that the Constitution neither mandates nor permits the government to suppress private religious expression. In plain English: silent prayer is not an establishment of religion.

And yet, in the months and years since my case, I still hear from players, coaches, teachers, and public employees from across the country—every month, not just during football season—who face disciplinary actions for quietly living their faith. In my home state and far beyond, some feel they must hide a Bible in a desk drawer, avoid bowing a head before lunch, or scrub any reference to faith from personal speech at work. That disconnect, between the highest law of the land and everyday life on the ground, is why I'm here.

So what do we do? I'm asking you to translate principle into practice so that no other family has to spend a decade fighting this fight.

First, I ask that you help issue clear, plain-language guidance from the Department of Justice to every public school district, agency, and municipality stating what *Kennedy v. Bremerton* confirmed: that brief, personal religious expression by public employees—cannot be disciplined merely because it appears to be religious. Model policies should explain the difference between

government-sponsored prayer and an individual's private speech, and they should include examples so principals, HR officers, and coaches aren't guessing.

Second, require training. Tie civil-rights compliance training to federal education and municipal grants. We train staff on countless policies every year; we can certainly train them on the First Amendment. Include real-world scenarios: a teacher reading a devotional at lunch, a coach bowing a head after a game, a student group meeting after school. The goal is simplicity and confidence, not fear and confusion.

Third, create a rapid-response hotline within DOJ's Civil Rights Division for time-sensitive school and workplace disputes. During seasons of competition or school calendars, delays immediately become denials and punishment. A clear escalation path can prevent litigation before it starts.

Fourth, track the data and publish an annual report on Free Exercise inquiries and resolutions at the state and local level, including anonymized examples. What gets measured gets managed—this does not just align with president Trump's administration for complete transparency but also deters repeat violations.

Fifth, clarify the interplay of recent Supreme Court decisions, including *Kennedy* and *Groff v. DeJoy*, so that employers understand their duty to reasonably accommodate religious practice and the limits of claiming "offense" as a compelling reason to restrict private speech. A complaint should not outweigh constitutional rights.

Finally, encourage state-level adoption of model policies. Many southern states have moved decisively to safeguard lawful religious expression in schools; we should be the United States on this, not 50 different rulebooks.

I want to be very clear about my intent. I am not asking the government to sponsor religious activity. I am asking the government to protect personal religious activity. Every American, of any faith, or no faith, should be equally free to give thanks after a victory, process a loss, or reflect quietly on the duties of the day. If a colleague wishes to bow, or a student wishes to stand aside, that is their right, too. Liberty protects us all.

There have been hopeful signs. Just last week, I received photos from my hometown: rival teams choosing on their own to meet at midfield and pray after the game. No orders. No coercion. Just young people exercising freedom the right way—voluntarily. That's what this should look like.

But I also received a call from a Tennessee coach who was told not to carry a Bible on the sideline and leave the game, and elsewhere students are blocked from writing a Scripture on a parking spot

that seniors get to decorate. The patchwork of fear persists. The message is mixed. And when the message is mixed, the safest course, in the minds of administrators, is often to ban it all. That is not neutrality. That is censorship.

The Supreme Court has spoken. Now it's time for implementation. I am asking you to make sure no one has to wage the same fight my family did just to enjoy the freedoms they already possess.

I'm grateful for the Court's decision. I'm grateful for the millions of people who stood with us. And I'm grateful for the chance to say to you today: we can fix this. With clear guidance, training, and accountability, we can ensure that the next coach's quiet prayer never becomes a national controversy—and that our public square remains a place where every American can live their convictions in peace.

The scripture that sustained us is **2 Timothy 4:7** "I have fought the good fight, I have finished the race, I have kept the faith." Almost a decade later, we know we have fought the good fight and kept the faith. Now, I challenge all of us to finish this race, once and for all.

Thank you for your time. I'm happy to answer your questions.

Keisha Toni Russell

My Testimony

In 2011, I earned a Master of Arts in Teaching and started my first year as a teacher in Atlanta Public Schools. Over the next few years, I experienced the high honor of teaching our nation's children, and I learned how much influence educators have over students. It was a challenging time because my students were behind grade level. But it was my faith that motivated me to fill in their reading gaps because I knew how much it would impact my students' lives if they couldn't read. I was successful. My 4th and 5th grade, self-contained, special education class achieved the highest reading increases in the school and many of them passed the state tests for the first time.

My love for teaching opened the door to my love for legal advocacy. Since graduating from Emory Law School in 2017, I've worked as a constitutional lawyer for First Liberty Institute, where we are committed to defending America's first freedom – religious liberty. I have represented both students and teachers against hostile public-school districts that brazenly bully people of faith.

First Amendment

Many public-school districts do not know what the Constitution says, which means that they are incapable of properly educating our students. School officials ban prayer and other private expressions in totalitarian fashion. In the process of demoralizing teachers and coaches, these officials simultaneously teach students that religion should not be tolerated. In other words, our public schools are responsible for educating our next generation of leaders, and they are teaching those future leaders to detest religious expression.

Most school districts misquote the law and sloppily proclaim the “separation of church and state” as if it provides any justification for their actions. The real meaning of Thomas Jefferson's phrase “the separation of church and state” is church autonomy. The phrase acknowledges that the religious should be able to operate in faith without government interference. The Constitution was meant to protect the religious from the government, not the other way around.

Kennedy v. Bremerton School District is the only case about teachers' religious expression in public schools. In it, the Court said that religious speech is doubly protected under the First Amendment. The Court upheld the right for a coach to say a quiet, silent prayer on the football field after games. But, even before *Kennedy*, decades of precedent prohibited viewpoint discrimination. But school officials continue to bully religious teachers and students to the detriment of our children and America's future. Based on my experience, public school leaders want to squelch the influence that religious teachers have over students.

Reflection

We've seen how devastating it can be when our culture rejects religious speech and sees it as worthy of punishment. We cannot allow public school educators to subscribe to ideals that are antithetical to the Constitution and American values. We cannot allow educators to encourage our future leaders to be intolerant of religious people. We need to ensure that America's public-school leaders understand the foundational principles and mandates of the First Amendment so that they can model them for our students. The Administration should continue to use its funding power to ensure that states and school districts honor the Constitution and commit to modeling it for America's students.

GUEST REMARKS: DR. LARRY P. ARNN

- America was founded by a people overwhelmingly Christian, led in the main, by Christians.
- When they first came here to the New World, they thought of setting up communities where their particular religion would be established, and by this means they would escape the persecution, which had been mild compared to many other places, that they had met in England. After 150 years of experience, they had seen that the new continent, though very large, was not large enough for this. No continent is big enough to compel people's service to God. They gravitated to the principle of religious freedom.
- They understood that the moral commandments we know from all decent philosophy and almost all philosophy are the same as those we know from the Bible. Moral commandments have to do with how we are to behave toward one another and the disposition about behavior we are to have internally. They are described, for example, in the Ten Commandments. They thought it best to build the law upon this moral understanding, which they summarized most famously in the expression, "the laws of nature and of nature's God."
- They also saw that Christianity was open about politics in a way that other religions had not been. Jesus said that His kingdom was not of this world. In one way, that Kingdom is very much of this world: Jesus is the Creator of the world, the sovereign of all, the only road to salvation. Most Americans believed this. A kingdom, however, is a certain kind of thing: laws, courts, enforcement, a whole structure of codes and requirements. Christianity contains structure, codes, and requirements, but it does not set up a system to enforce them by law.
- Therefore, the early Americans took pride to have realized, on both Christian and rational grounds, the full regime of religious freedom. One of the most beautiful expressions of that is in George Washington's letter to the Hebrew congregation at Newport.
- At the same time, the founders very much believed that Christianity needed to flourish in America for the Republic to be healthy. They also believed that the way was open for this, in part, because Christianity is, from the legal or political point of view, the least threatening of all religions. To fear or condemn it as oppressive, as many do today, is both illogical and wrong-headed.
- Most of the founders were prepared to take active steps to encourage the Christian faith and all faithfulness, so long as it was non-sectarian and did not compel any narrow belief. Most supported, for example, taxation to support the church of choice of each taxpayer. This was controversial with, for example, Madison and Jefferson, but for a long time they were in the minority.

- We should return to the practices of early America, to celebrate freedom and Christianity freely, compelling no one, understanding the partnership between the two.

PANEL III: PROTECTING FAITH-BASED SCHOOLS

Dr. Todd J. Williams

After more than thirty years in Christian higher learning, I must say, with candor and without hesitation, that I have never experienced a season more hostile to the faith and foundations upon which our work rests.

In recent years, regulatory and accreditation bodies, professional and academic associations as well as the broader academic “guild” have taken aim at unsettling and diminishing the deeply and long-held beliefs, and biblically integrated learning objectives and course content of institutions like Cairn University. They challenge the very distinctives our constituencies desire, and society needs. Our mission, ethos, and programs are, like our sister schools, intentionally Christian—rooted in and directed by Christian theology, Christian convictions, and Christian tradition. Things protected by the constitutional guarantee of religious liberty and embedded in America’s founding principles.

In implicit and explicit ways, pressure has been put upon institutions such as ours that put strain upon the security we cling to in those constitutional protections of religious liberty. From peer review site visit team members questioning the validity and wording of our mission and course objectives, to outright insistence from accreditation bodies and governmental departments' to create learning outcomes and student competency standards that are creedal in nature, there seems to be a lack of appreciation for institutional distinctives and autonomy. There is also a fierce determination to inculcate secular ideologies and sensibilities in students who have chosen to study at a Christian college. Let alone the threats to withdraw federal or state financial aid grants to students at institutions that do not comply with increasingly secularized standards.

In 2021, Cairn University chose to close its social work program, eliminating both the BSW degree and the MSW degree in light of the Council for Social Work Education's overreach. I have provided you with the detailed article I wrote for the James G. Martin Center for Academic Renewal. It outlines the specifics of the closure. The Council for Social Work Education, which accredits social work programs, has an inordinate degree of power for such a body. A student cannot become a licensed social worker without a degree from a CSWE-accredited institution. This organization has, for years, also stipulated a rigid faculty-student ratio and faculty credential requirements that were onerous to say the least. Steady pressure from that organization, “suggesting” and “recommending” that the administration empower the department of social work and its faculty to direct and oversee institution-wide diversity and inclusion efforts and concerns, was intrusive and divisive.

Finally, the organization drafted accreditation standards, which it has since partially pulled back on, designed to compel colleges and universities to teach an ideology rooted in cultural Marxism

and intersectionality, especially as applied to matters of human sexuality and gender. They attempted to mandate curricula design and learning outcomes that were creedal in nature and counter to our institution's beliefs and commitments regarding human sexuality and gender. It was the first time I had seen in three decades, learning outcomes requiring students to “believe” a particular way. That is not the language of competencies. It is the language of indoctrination. We deemed this untenable for our institution, and the administration took the matter to the board of trustees and submitted a proposal, which resulted in the elimination of the program.

The Council for Social Work Education, and its partner organization, the National Association of Social Workers, which is essentially a labor union, joined forces to launch a public relations campaign attempting to shame the University into reversing its decision. They incited our own alumni against us, ridiculed our rationale, and called for us to negotiate terms with them. We were labeled as racists, homophobes, and ignorant educators who didn't understand the issues or the importance of the social work profession. They insisted we violated professional integrity standards of our regional accrediting body, when in fact all we did was voluntarily withdraw from voluntary accreditation and eliminate a program that we believed was no longer serving our mission. For weeks after our decision, and after the Associated Press and other media outlets wrote articles criticizing and condemning our decision, I heard from a number of Christian college presidents and provosts who privately expressed concerns about the same issues and asked for advice and counsel on how to navigate the issues and/or close their own programs. To date, I am unaware of any other schools that have taken the course of action we did.

More recently, the Pennsylvania Department of Education attempted to impose cultural relevancy standards on public school teacher certification. Cairn University was bracing for a fight on this particular issue, consulting with legal professionals about appropriate courses of action and building contingencies to pivot in a direction other than educating students for the public school sector. The legal intervention of other private groups in Pennsylvania caused the state to retract its draft proposal and allow colleges and universities to opt out of the cultural relevancy standards.

In addition to the experiences and examples regarding regulatory and accreditation overreach, it may be helpful to hear our approach. I believe Cairn University can serve as an example of an institution that has undertaken the strategy of pushing back against these overreaches, intrusions, and assertions. We have leaned upon our protected religious liberties, the advice and counsel of organizations like the Alliance Defending Freedom, and the wisdom and resolve of the administration and board of trustees to do so.

The landscape of higher education in the United States is more robust and effective when institutions such as ours are not only permitted to exist but enabled to flourish according to our own commitments and convictions. We serve a distinct population of parents and students who desire and embrace the education we provide. We hold ourselves to the highest degree of

accountability and participate in accreditation compliance that ensures quality control, fiscal responsibility, and protection of our students.

It should be acknowledged that under this present administration, universities and colleges such as ours are experiencing some breathing room. The fever-pitched criticism and frenzied assaults on traditional Christian values and beliefs so pervasive in our culture have not necessarily subsided, but people of faith and institutions such as ours feel empowered to push back and hold to our convictions firmly and publicly. For the time being, the state and federal financial aid programs that benefit our students are not under threat because of our institution's beliefs and distinctives. But my concern as a long-serving president in this sector is that this diminishment of social and political threats, pressures, and coercions may be fleeting and/or dependent on a presidential administration being favorably inclined toward the protection of religious liberty. It is my hope and prayer that lasting protective legislation could be put in place to ensure nondiscrimination against organizations such as Cairn and the students they serve, that regulatory and accreditation overreach will be checked practically and legally by DOE and CHEA policy, and that there might be an increased understanding of and appreciation for what private faith-based colleges provide their constituents and a free society.

I look forward to answering any questions and providing any additional perspective that might be helpful to this commission's work.

Rabbi David Zwiebel

1. We are celebrating the 100TH anniversary of Supreme Court decision in *Pierce v. Society of Sisters*, establishing parents' constitutional right to enroll their children in nonpublic religious and independent schools. Two key sentences from Court ruling: "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."
2. From my perspective, *Pierce* is the single most important Supreme Court case ever decided. The post-Holocaust renaissance of Jewish religious life in America is largely attributable to Jewish schools. Jewish education equals Jewish continuity, creating a sacred link stretching all the way back to Sinai.
3. While there is considerable diversity among Jewish schools, almost all teach a dual curriculum of religious studies and secular studies. To accommodate this rigorous academic program, the Jewish school day typically stretches considerably beyond that of other schools.
4. The single largest number of Jewish elementary and secondary schools are in New York. New York has traditionally been hospitable to nonpublic schools of all denominations, and respectful of these schools' autonomy.
5. However, over the past decade, the New York State Board of Regents has taken a more hardline position on the issue. Citing a 19th century state statute that requires private schools to provide education that is "substantially equivalent" to that offered in local public schools, the Board of Regents has promulgated regulations that threaten to encroach upon the independence of nonpublic schools.
6. These developments have aroused considerable concern, particularly among Jewish schools in New York, which may be forced to increase the number of hours devoted to secular studies in order to be considered substantially equivalent – at the expense of religious studies, which will correspondingly need to be cut back. This would be an egregious affront to religious liberty.
7. Under the Regents' regulations, government regulators will be able to establish criteria for who is qualified to teach in a religious school, which subjects must be taught and how they must be taught. We are alarmed by reports from the UK that a Jewish religious girls' school was deemed to be non-compliant with federal law because it refused to teach its students about same-sex marriage. Will that be deemed a violation of the substantial equivalency law here in the USA?
8. Agudath Israel of America, the organization I am privileged to serve as executive vice

president, in collaboration with other organizations that share our concern for religious liberty and the autonomy of religious schools, have been active in both the legislative and judicial arenas in an effort to minimize or even eliminate the threat posed by over-zealous application of the substantial equivalency doctrine.

9. After all, hard-working parents who dig deep into their pockets to ensure that their children receive a traditional religious education do so precisely because they are looking for an education that is substantially un-equivalent to that offered in the public schools. To insist that private schools, including Jewish and other religious schools, become carbon copies of public schools, is just the latest iteration of the state's effort "to standardize its children." 100 years after *Pierce*, we should know better.

John Bursch

Good morning. It's an honor to be with you to discuss one of the most consequential legal and cultural issues of the day: whether religious schools, students, and families will enjoy the full promise of religious liberty in our country. I will briefly address five points.

1. Religious freedom is critical for faith-based schools

Religious liberty is not merely about the right practice your faith in your place of worship. It is about the right to live out religious truths in society. Faith-based schools exist precisely because parents, families, and communities, *want* education to be grounded in truth, virtue, and eternal goals. These schools are not just private versions of public schools; they have missions to cultivate wisdom, moral integrity, and service to others based on religious tenets.

Yet increasingly, government officials are attacking schools' religious freedom. For example, the Lyceum, a small, Catholic prep school in South Euclid, Ohio, was forced to sue to protect their rights when the local city council passed a sweeping ordinance that required the school to hire teachers and enroll students who disagree with its mission and teachings on matters of human sexuality, such as hiring teachers in same-sex relationships. Violations could be punished by fines and even jail time. Initial drafts of the ordinance contained an explicit religious exemption. But the city council chose to remove those protections from the final text, forcing the school to give up its faith—which it would not do—or close.

Religious education teaches character traits like seeking the good of others, provides a framework for understanding the world, strengthens community bonds, and offers a path to personal purpose and spiritual growth. Government officials should encourage schools that develop our citizens in such a positive way, not discriminate against them and their religious teachings.

2. Religious freedom is critical for families and children

The Supreme Court has long recognized that parents have a fundamental right to direct their children's upbringing, including their education. For many, this means sending their children to schools that integrate faith and learning. Yet there are many school-choice programs designed to exclude religious schools.

For example, the Supreme Court famously held that Maine improperly excluded religious schools from a Town Tuitioning voucher program in *Carson v. Makin*. What's less well known is that, while the case was pending before the high court, the Maine legislature amended its laws to make the vouchers contingent on schools complying with the State's LGBTQ orthodoxy in hiring and admissions. That litigation is ongoing.

And in Colorado, the State excluded Darren Patterson Christian Academy from a state-funded grant for pre-school programs unless the Academy agreed to hire employees who do not share its faith and to alter internal rules and policies based on the school's religious doctrines about

sexuality and gender—including those that relate to restroom usage, pronouns, dress codes, and student housing during field trips. Such laws punish families and children by depriving them of the religious schools they want to attend and of the religious education parents want their children to receive.

3. Religious liberty is under attack in schools

The United States is witnessing increasing attacks on our religious schools.

Michigan is a prime example. Following a Michigan Supreme Court decision holding that “sex” discrimination includes sexual orientation and gender ideology, the legislature amended its education laws to require all Michigan schools to hide the truth about marriage and gender ideology. Under the amended law, the school that Fr. Sirico founded, Sacred Heart Academy, must hire staff who seek to overturn the Catholic Church’s teaching about marriage, must use preferred pronouns, and must allow males who identify as girls to play on female athletic teams and change in girls’ locker rooms. The Academy must refrain from teaching—or even posting on the school’s website—Saint Pope John Paul II’s Theology of the Body or Pope Francis’s condemnation of gender ideology.

Yet when faith-based schools requested a religious exemption, the Legislature refused to grant one, and Governor Whitmer signed the discriminatory law. Attorney General Dana Nessel has fought ferociously to defend the law against Sacred Heart’s free-exercise and free-speech rights.

4. The President and his administration can do much to protect religious liberty

The President has the power to direct executive agencies to ensure that federal funds do not come with strings attached that violate conscience and to require that states and local governments respect religious liberty. He should exercise that power. The President can also appoint department leaders who will protect religious liberty instead of erode it. Most important, he can use the presidential platform to encourage Congress to enact laws that robustly protect religious schools’ ability to carry out their mission and to explain to the nation why protecting religious liberty is fundamental.

5. The Supreme Court has consistently acted to protect religious liberty in schools

The Supreme Court has spoken with clarity on these issues.

In *Our Lady of Guadalupe*, the Court reaffirmed the ministerial exception, recognizing that faith-based schools have autonomy to choose teachers who will pass on the school’s religious teachings. We are hopeful that the Supreme Court will supplement the ministerial exception by recognizing that religious organizations have the right to hire co-religionists, too. For example, if a Catholic school believes that *every* employee’s duties include inculcating the Catholic Church’s teachings in the school’s students, the school shouldn’t be forced to hire a secular atheist in the cafeteria who desires to turn students away from God and the Church.

In the trilogy of cases that began with *Trinity Lutheran*, the Court held that government officials cannot discriminate against religious schools in funding and other benefit programs. What started as a ruling supporting the right of a preschool to participate in a playground-resurfacing grant program grew to include the tax credits at issue in *Espinoza* and the tuition vouchers in *Carson v. Makin*. But as the Maine legislature's shenanigans to circumvent the *Carson* decision make clear, there is more work to do.

Just last Term, in *Mahmoud*, the Court definitively pronounced that parents have a First Amendment right to direct their children's upbringing and education consistent with the parents' faith. As the Court reasonably held in that case, a Maryland public school board's "introduction of [] 'LGBTQ+-inclusive' storybooks—combined with its decision to withhold notice to parents and to forbid opt outs—substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise that [the Court's decision in] *Yoder* found unacceptable."

"Many Americans, like the parents in this case," the Court continued, "believe that biological sex reflects divine creation, that sex and gender are inseparable, and that children should be encouraged to accept their sex and to live accordingly. But the challenged storybooks encourage children to adopt a contrary viewpoint." Parents have the right to know when public schools press sexual propaganda on students and to opt their children out of such indoctrination.

Together, these Supreme Court decisions instruct that church autonomy and the freedom of faith-based schools are central to our constitutional order. Yet pro-LGBTQ activists have decried decisions like *Mahmoud* and promised that their fight to make religious families bend the knee to LGBTQ orthodoxy will continue.

Conclusion

Religious liberty in education should not be a partisan issue. It is a matter of human dignity, family rights, and national flourishing. Our nation will continue to benefit from generations of young people formed in both knowledge and virtue if faith-based schools are free to live out their missions and families are free to choose them. Conversely, if that liberty is impaired, our country will be worse for it—educationally, culturally, and spiritually.

I encourage this Commission to advocate that the federal government protect religious liberty in education. Doing so will ensure that faith-based education remains a beacon of truth, hope, and human flourishing for generations to come.

Thank you.

PANEL IV: PARTNERSHIPS BETWEEN THE STATE AND FAITH-BASED SCHOOLS

Carroll Conley

Mr. Chairman, members of the Commission:

Thank you for the invitation to address you this morning.

Before I provide historical and legal context, I want to share that this issue is deeply personal to me. I was raised in a loving, consistent home by incredible Christian parents. But my early high school years were filled with dark, destructive behavior that I was able to keep hidden from my parents. At the end of my sophomore year, I begged my mom and dad to allow me to leave our public school and attend Bangor Christian Schools. I was weak, and I knew I needed faculty and classmates who would support my parents' worldview rather than oppose it. Those two years at Bangor Christian changed the trajectory of my life as I came "back home" to Christ.

During my freshman year of college, I responded to the call to offer a quality Christian education to any family. Upon graduating from college, I spent the next 19 years doing that in Massachusetts and Maine (with the last 8 years back home as the Headmaster of Bangor Christian). I remain closely involved with Bangor Christian as well as its host, Crosspoint Church. I'm honored to speak on their behalf today.

During my two years as a student at Bangor Christian Schools, many families took advantage of the program that allowed Maine municipalities without high schools to pay for their children's high school tuition at BCS. At that time, families enjoyed the benefits of the second-oldest school choice program in the country, initiated in 1873 (only Vermont's town-tuition program is older).

Unfortunately, that all changed in 1980, when our Attorney General issued an opinion that allowing sectarian schools to receive public funding was an infringement upon the Establishment Clause of the U.S. Constitution. Our legislature would amend the town-tuitioning policy, prohibiting so-called sectarian schools from participating in the school choice program. As an observer in Massachusetts and a direct participant during my years as the headmaster at BCS, time and again, I was so disappointed with the failed attempts to reverse that terrible decision and subsequent legislative action that discriminated against Maine families who desired sectarian education for their children for so long.

[A very helpful resource describing Maine's history of school choice has been provided by the Maine Policy Institute. It is called School Choice Map of Maine (<https://mainepolicy.org/school-choice-map/>)]

For the sake of transparency, when I heard that First Liberty Institute and the Institute for Justice were going to litigate against Maine, I was somewhat buoyed by recent decisions like *Espinoza* and *Trinity*, but I had been jaded by years and years of defeat. But because the suit involved my

alma mater, and the fact that I knew all three generations of Carsons (I hired Bonnie Carson as a second grade teacher; her son David, the plaintiff, is a former student of mine, and his daughter Oliva was the student whose tuition was being litigated), I paid close attention to the case as it proceeded.

I was exuberant the day SCOTUS ruled in favor of allowing religious schools to participate in Maine's town tuition program. I thought back to the tearful meetings in my office when parents informed me they were pulling their children from BCS because of finances. I thought of lower-income families I knew who were presently hoping and praying that a positive decision would open the door for their children to attend schools like BCS.

Unfortunately, not everyone shared in my jubilation. Our Attorney General, Aaron Frey, immediately released a statement expressing his disappointment with the decision. For me, other than his declaration of doing whatever it takes to "ensure that public money is not used to promote discrimination, intolerance, and bigotry," I found this quote most worrisome: "The education provided by the schools at issue is inimical to a public education."

Once again, for full transparency, even though my education career started as a high school English/History teacher, I had to look up what inimical meant: being adverse, hostile, or harmful, often by reason of hostility or malevolence. See AG Frey's full comment below:

I am terribly disappointed and disheartened by today's decision. Public education should expose children to a variety of viewpoints, promote tolerance and understanding, and prepare children for life in a diverse society. The education provided by the schools at issue here is inimical to a public education. They promote a single religion to the exclusion of all others, refuse to admit gay and transgender children, and openly discriminate in hiring teachers and staff. One school teaches children that the husband is to be the leader of the household. While parents have the right to send their children to such schools, it is disturbing that the Supreme Court found that parents also have the right to force the public to pay for an education that is fundamentally at odds with values we hold dear. I intend to explore with Governor Mills' administration and members of the Legislature statutory amendments to address the Court's decision and ensure that public money is not used to promote discrimination, intolerance, and bigotry."

The irony of AG Frey using a synonym for hostility when describing sectarian education did not escape me. His first response to the SCOTUS decision is evidence of the state's decade-long hostility against any effort to educate children in accordance with traditional Judeo-Christian values.

Unfortunately, the Maine Legislature adopted new legislation following *Carson v. Makin*. The legislature intentionally narrowed the state's religious exemption, forcing religious schools like Bangor Christian Schools to compromise their religious beliefs or face investigations, complaints, and large fines for offering instruction consistent with their sincerely held religious beliefs.

Thankfully, First Liberty Institute and Consovoy McCarthy have challenged that legislation in federal court. I am hopeful that the First Circuit will uphold what the U.S. Supreme Court has repeatedly held, including in *Carson v. Makin*, that Maine “violates the Free Exercise Clause when it excludes observers from otherwise available public benefits”—which includes schools like Bangor Christian Schools and benefits like Maine’s tuitioning program.

Despite measurable academic excellence and a myriad of other superior educational and social outcomes by schools like BCS, Maine families (especially those challenged by limited financial resources) continue to face blatant discrimination solely because they desire to have their children educated in accordance with their religious beliefs and values.

Again, based on the role Christian education played in my “rescue” story, this breaks my heart. I thank God for the Trump administration’s willingness to bring this to light via this assembled commission. Thanks to each of you for your commitment and participation in this process.

Nick Reaves or Laura Wolk Slavis

Mr. Chairman and members of the Commission, thank you for the opportunity to speak today.

As an attorney with the Becket Fund for Religious Liberty, I represent a group of Jewish families, all who have a child with disabilities, who were forced to sue the State of California in order to get equal access to the same federal and state special education funding as everyone else. I want to share their story with you today so that it may inform your work as a Commission and help ensure that public benefits are not withheld from families in the future because of religious discrimination.

All parents try to find the best educational fit for their children, but when children have disabilities, an added layer of resources and support is required. That's why Congress passed the Individuals with Disabilities Education Act, or IDEA, which provides grants to states that help pay for the technology, staff training, and special education programs that students with disabilities need. If a public school cannot offer this support, IDEA provides for students to be placed in private schools that can.

The Loffmans, the Taxons, and the Peretses are three Jewish families in California raising children with disabilities alongside their nondisabled siblings. As Jewish parents, these families have a religious requirement to provide all of their children with an education that reflects their religious values and that is structured around the Jewish tradition. The IDEA program should have been an incredible opportunity for these families to equip their children with the tools necessary to flourish both spiritually and academically. However, all three families were completely prevented from seeking the school placement that was best for their child solely because the schools best able to meet the totality of their children's needs were Jewish.

The reason for this discriminatory treatment, even in 2025, is because the California state legislature had prohibited religious parents and schools from asking their child to be placed in a religious school. California enforced this restriction even where a public school could not adequately meet their child's needs and the religious school can. That leaves families like the Loffmans, Taxons, and Peretses with an impossible choice: compromise your family's religious identity to receive special education services critical to helping your children grow and thrive, or preserve your child's religious development at the expense of their learning.

Forcing a Jewish child into public school because of his or her disability has costs even beyond the lost religious education. It also creates division and inequality within the family. While parents and siblings have a shared bonding experience in their religious education, the disabled child is unable to participate purely because of their additional needs and support. California's policy is therefore not only unconstitutional, it promotes inequity by separating a child from their religious community simply because of their disability.

With nowhere left to turn, and in partnership with Becket and Orthodox Union, the nation's largest Orthodox Jewish umbrella organization, these families were forced into federal court to defend their religious and parental rights against California's discriminatory policy. We argued that, under the Supreme Court's precedent in *Trinity Lutheran*, *Carson*, and *Espinoza*, the Free Exercise Clause of the United States Constitution prohibits the categorical exclusion of religious communities from publicly available benefits.

A Los Angeles federal district court disagreed, ruling that California was free to discriminate against religious families and schools because no public benefit existed.

But these brave parents didn't give up. We appealed their case and, in a unanimous decision, the Ninth Circuit Court of Appeals "easily concluded" that California's prohibition was unlawful because it "on its face burdens the free exercise rights of parents."

This is an important victory that will have beneficial impacts for others across the country. But the fight isn't over. This case involved just one unconstitutional prohibition on access to just one set of public benefits in just one state. It is not an isolated issue—it is replicated in other benefit programs and in other states.

The Constitution promises go much further. Our Constitution prohibits this kind of rank discrimination against religion. And yet, families like the Loffmans, the Taxons, and the Peretses are forced to spend years litigating in federal court in order to protect rights they already had and that the Supreme Court has already reinforced.

So what recommendations can this Commission make to ensure that government actors don't continue to thwart clear constitutional protections and Supreme Court precedent?

First, the Commissioners should urge the President to make clear in Department of Education regulations that religious schools are eligible for all IDEA programs and that parents have the right to access those funds on the same footing with secular parents.

Second, the Commission should recommend a comprehensive review of restrictions like California's that exist across the country—including the notorious "Blaine Amendments"—and urge the Department of Justice to actively challenge their legality, bringing the states in line with a developing and strengthening series of federal case precedents protecting the First Amendment.

Finally, the federal government should repeal arbitrary rules that restrict its ability to partner with faith-based organizations. It should explicitly offer religious protection in regulations for faith-based organizations, including schools, so they can feel confident they will not be punished for living out their authentic religious beliefs.

If we want to live up to the ideals and promises of our Constitution, we must recognize and respect the religious identities of all our citizens, especially the children who need us most.

Thank you for your time and commitment to religious liberty for all Americans and for the opportunity to share my clients' story. I look forward to your questions.

Public Comment on Parental Rights, Substantial Equivalency, and School Choice

As a Research Fellow at The Heritage Foundation’s Center for Education Policy, I submit this comment to express deep concern over rising threats to parental rights in education, particularly through the push to limit the right of parents to opt their children out of lessons in public schools that are inimical to their values, as well as the enforcement of “substantial equivalency” standards that threaten the autonomy of private and religious schools. I urge federal policymakers to ensure that states respect the fundamental rights of parents to direct the upbringing and education of their children, including the right to choose educational environments that differ substantially from government-run schools.

The Inherent Tension Between Government Schooling and Fundamental Freedoms

From the nation’s earliest days, America has striven to make education universal, viewing it as essential both for self-government and for individual advancement. In the words of Thomas Jefferson: “If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be.” The Northwest Ordinance of 1787 declared that “schools and the means of education shall forever be encouraged,” setting the tone for the rise of common schools across the states over the next century. Over time, states began to adopt compulsory education laws to ensure that all children learn the knowledge and skills necessary to be good citizens and productive members of their community.

There is, however, an unavoidable tension between compulsory schooling and the rights of parents, particularly in matters of speech, conscience, and religion. Government-run schools, by their nature, reflect the values and priorities of the state. As John Stuart Mill warned in *On Liberty*, government-run schooling runs the risk of “establishing a despotism over the mind, leading by natural tendency to one over the body,” especially where the government has a monopoly over education.

This tension is especially acute in areas involving moral and religious instruction. When public schools promote ideologies that contradict the deeply held beliefs of families, parents are placed in an impossible position: either surrender their children to an educational environment that undermines their values or bear the financial burden of seeking alternatives.

Parents Are the Primary Educators of Their Children

A century ago, the U.S. Supreme Court made clear in its unanimous decision in *Pierce v. Society of Sisters* (1925) that “the child is not the mere creature of the state” and that parents have a “right, coupled with the high duty, to recognize and prepare [their children] for additional obligations.” In striking down a Ku Klux Klan-supported law to ban private schooling in Oregon, the Supreme

Court recognized that parents—not the state—have the right and primary authority “to direct the upbringing and education” of their children.

This is not to say that the government has no role in education whatsoever. The *Pierce* decision affirmed the power of the state “to require that all children of proper age attend some school,” as well as the power to regulate schools to some extent. Nevertheless, the government’s role in education is limited and secondary at best.

Nearly 50 years later, the Supreme Court reaffirmed in *Wisconsin v. Yoder* (1972) that the “primary role” of parents in the upbringing of their children is “established beyond debate as an enduring American tradition.” The Court also clarified that the U.S. Constitution protects the “fundamental interest of parents... to guide the religious future and education of their children,” sometimes even against a compelling state interest, such as universal compulsory education. The Court stressed that only “interests of the highest order” can override the First Amendment’s guarantee of free exercise of religion, and found that forcing Amish children into high school would “contravene the basic religious tenets” of their faith while offering little benefit to the state. The Court concluded that a “way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different.”

School Choice Respects and Reflects America’s Freedom and Pluralism

In recent years, ideologues have coopted many public schools to push radical agendas on a captive audience of children. Parents have increasingly objected to lessons that are inimical to their values, especially those dealing with gender and sexuality. While some parents have sought to exercise their right to opt their children out of such instruction, as recognized in *Mahmoud v. Taylor* (2025), many schools have embedded the same ideological themes across the curriculum, leaving families with no meaningful escape. In effect, the only option left is to withdraw from the public school system entirely. However, this solution imposes a significant financial burden on parents who must shoulder the costs of private schooling or home education. As the Supreme Court held in *Mahmoud*, the “availability of [private and home schooling] is no answer to the parents’ First Amendment objections” as “many parents cannot afford such a substitute.”

The best way to resolve these tensions is through a robust system of universal school choice. As Nobel laureate economist Milton Friedman observed, the government’s interest in ensuring that every child has access to a quality education does not imply that the government should run the schools. Instead, public funds should follow the child to the educational environment that best meets their learning needs and aligns with their family’s values.

School choice respects parental rights and religious liberty, and fosters a more diverse set of schooling options that better reflects the great diversity of American families than the one-size-fits-some status quo. School choice also promotes educational excellence by encouraging

innovation and making schools directly accountable to parents. Research consistently shows that school choice programs improve academic outcomes, raise graduation rates, increase parental satisfaction, and boost civic knowledge and participation.

For School Choice to Be Meaningful, Private School Autonomy Must Be Preserved

In the landmark *Pierce* decision, the Supreme Court held that “the fundamental theory of liberty upon which all governments in this Union repose” prevents the government from attempts “to standardize its children by forcing them to accept instruction from public teachers only.” The same fundamental liberty should prevent the government from imposing regulations on private schools that would standardize private education.

Unfortunately, some states have sought to do just that. For example, New York has sought to impose public school curricular norms on private yeshivas serving Orthodox Jewish communities. State law requires that private schools provide an education that is “substantially equivalent” to that offered by the public schools. In recent years, the New York State Education Department has interpreted this statute to require private schools to provide instruction in eleven specific subjects for more than seven hours per day. Although the Court in *Pierce* held that states may require private schools to teach “certain studies plainly essential to good citizenship,” that is a far cry from requiring them to be “substantially equivalent” to public schools. Such burdensome requirements exceed a state’s constitutional authority. The Constitution protects the right of parents to choose schools that are substantially *different* from public schools.

This is not merely a local dispute. Just as the *Pierce* and *Yoder* cases had implications far beyond the Catholic and Amish communities, the New York yeshiva case concerns fundamental issues regarding parental rights, religious liberty, and the limits of state power in education. The federal government has a compelling interest in ensuring that states do not violate constitutionally protected parental rights. It should not stand idly by while states use regulatory tools to coerce conformity and suppress educational freedom and pluralism.

Conclusion

America’s constitutional tradition has long recognized that parents are the primary educators of their children. Parental rights and religious liberty place meaningful limits on state power over education. To honor those principles, policymakers must both safeguard the autonomy of private and religious schools against regulatory encroachment and ensure that public funding follows students to the schools of their families’ choice. Only by protecting parental rights and empowering parents with school choice can we ensure that America’s education system respects and reflects our deepest commitments to freedom, diversity, and self-government.

Professor Nicole Stelle Garnett

Mr. Chairman and Members of the Commission,

Thank you so much for inviting me to testify here today. I am honored and hope that I can contribute in some small way to your important deliberations.

I have spent the entirety of my professional life fighting for parental choice in education and for religious schools' rights to participate fully in parental choice programs.

This work has been animated by the understanding that the fight for parental choice is about far more than increasing test scores. It is fundamentally about empowering parents to fulfill their sacred obligations to help their children become the men and women that God has called them to be.

Giving parents the freedom to form their children, mind, body and soul, through the medium of faith-based schools, is critical for our nation's future.

Kids who participate in a parental-choice program, almost all of whom attend faith-based schools, are more likely to graduate from high school, go to college, graduate from college, get married, stay married, maintain stable employment, and avoid involvement with the criminal justice system. They are more involved in their communities, more tolerant of diversity, and better educated about our political system.

Why? Here's my intuition. Faith-based schools understand that their mission is about more than education—instruction that can be separated from faith—but rather it is about human formation, which cannot. They understand that the children entrusted to their care are made in the image and likeness of God and that they therefore have a moral obligation to bring them to their full, God-given, potential.

When the law deprives parents of meaningful choices, or strips faith based schools of their ability to be fully themselves, this crucial, transformative mission is compromised. And our families, our communities, and our nation suffer as a result.

In the past few decades, the landscape of K12 education has changed dramatically.

Importantly, many parents today are empowered to choose their children's schools, including through parental choice programs that enable them to use public funds to send their kids to private schools or educate them at home. \

All told, over 50 percent of American children are now eligible to participate in a private-school choice program, and over 1.5 million do. The inclusion of the first-ever federal private school choice program in the "Big Beautiful Bill" hopefully will bring private school choice to all states in 2027.

Moreover, a series of Supreme Court cases, culminating in 2022 in *Carson v. Makin*, have made clear that the Constitution demands the equal treatment of, and prohibits discrimination against, religious believers, institutions, and conduct.

These decisions clear away the rubble of past precedents that misunderstood the First Amendment to require religious discrimination, when in fact the opposite is true.

But this is not the time to declare victory. Important challenges remain, and, in the time left to me today, I'd like to highlight one in particular.

That challenge is this – although the Supreme Court has made clear, over and over again, that the First Amendment prohibits the government from discriminating against religion – there are hundreds of state and federal laws that continue to require the government to do exactly that.

As a website developed by Notre Dame Law School and the Orthodox Union's Teach Coalition – www.religiousequality.net – demonstrates, religious discrimination pervades state and federal laws.

These laws limit religious freedom across a wide array of public programs, but I will offer a few examples from education law. (You can find the rest on the website):

At the state level, we identified 364 statutes and 104 regulations that unconstitutionally discriminate against religion. A few examples: All states impose religious restrictions on charter schools, and many do the same for preK and special education providers. Many states allow high school students to enroll in college classes at public expense, but limit their freedom to choose religious colleges; some have college scholarship programs that exclude students attending religious colleges or students studying theology; others require students in work study programs to refrain from engaging in religious conduct.

At the federal level, we identified 135 unconstitutional statutes and regulations, 41 of which restrict the religious liberty of private educational institutions, typically by requiring them to refrain from engaging in religious conduct as a condition of receiving federal funds.

All of these restrictions are unconstitutional. This isn't a complicated legal question. It is a clear constitutional command.

There is no need to wait for lawsuits to obey this command. The Administration can and should take immediate action by issuing guidance clarifying that laws requiring religious discrimination in public programs will not be enforced. Governors and State Attorneys General should do the same. It's that simple.

I'd like to close on a personal note.

I am the product of public schools. As a child, my family suffered some pretty significant economic hardship, and I am grateful for the excellent education that I received in my public schools. I know that I would not be here today – that my life would have looked very different – but for that education.

But I am also a Catholic school mom. Our four kids have all attended Catholic schools. One of them still does.

Catholic education has transformed not just my kids' lives, but mine. In my 20 years as a Catholic school mom, I've learned that Catholic schools are places where families experience authentic Christian community, where the joy of vocation is modeled every day, where faith and reason are

integrated, and where teachers and administrators seek to bring children to wholeness in the image of the loving God who created them. They are places where children are formed – to borrow from Blessed Basil Moreau – to be useful citizens of this world and joyful citizens of the next.

I am here today because I want all families to have the freedom to choose their children's schools, including authentically religious ones. This has been my life's work. And I am grateful for the Commission's commitment to advancing it. Thank you.

CLOSING REMARKS: RELIGIOUS LIBERTY IN EDUCATION - OUR PAST AND FUTURE

Dr. Francis J. Beckwith

Thank you, Chairman Patrick, and Vice-Chair Carson. It is truly an honor to serve on the commission's advisory board of legal experts, and to share with you this afternoon my thoughts on the religious liberty challenges in our public schools and universities.

To fully appreciate these challenges, we have to remind ourselves why the US Constitution, and all state constitutions, protect religious liberty.

The American Founders sought to forge an understanding of religious liberty that was born of their experience under British rule and what they knew of the historical record of religious persecutions throughout Europe. Rejecting both religious indifferentism and theocracy, the Founders embraced a view that recognized that the government should not coerce a citizen's religious beliefs or practices, and in that sense, should remain neutral about religion. On the other hand, their view also recognized that human beings have a natural inclination to pursue a right relationship with the Creator, and that our temporal happiness and our eternal fate depend on it. But in that sense, the government should think of religion as a public good whose practitioners should be accommodated as long as they do not threaten the civil peace or public order. As James Madison put it: "Because we hold it for 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[, t]he 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. This right is in its nature an unalienable right.'"¹

For Madison, the preservation of religious liberty requires that the government acknowledge that it does not have absolute and universal jurisdiction over all matters of human life: "We maintain therefore that in matters of Religion, no man[']s right is abridged by the institution of Civil Society and that Religion is wholly exempt from its cognizance."²

What also stands out about the Founders' understanding of religious liberty is its epistemic modesty. Epistemic modesty refers to the humble recognition of our intellectual limits, that on matters of religion and religious belief, our fellow citizens can arrive at differing and sometimes contrary convictions even though they are just as reasonable and knowledgeable as we are. This is what we should expect in a free society.

¹ James Madison, *Memorial and Remonstrance Against Religious Assessments* (20 June 1785), quoting Article XVI of the Virginia Declaration of Rights of 1776 authored by George Masson, <https://founders.archives.gov/documents/Madison/01-08-02-0163>.

² Madison, *Memorial and Remonstrance*.

Figures like Madison did not see religion as just another exercise of personal preference, as some of our contemporaries see it. They understood religious belief to be a matter of “conviction and conscience,”³ not something one explicitly chooses, like a pair of slacks that one can have tailored for one’s own specifications. The Quaker or the Jehovah’s Witness, for example, does not reject military service because he does not *want to* participate in war; rather, he rejects military service because he *can not*, as a matter of conscience, participate in war.

We, of course, do not live in the world of the American Founding. At that time the religious divisions within the country were almost exclusively between differing confessional traditions of Protestant Christianity. But over the decades, as the nation expanded in size and population, it not only became more religiously diverse, the beliefs and practices of its elite class—in the university, the arts, media, and public education—became in general more secular and less welcoming of serious religious voices that dissent from the pieties of secular progressivism. As the sociologist Peter Berger once observed: if India is the most religious country in the world, and Sweden the most secular, then America is a country of Indians led by Swedes.

Virtually none of today’s religious liberty conflicts cut across conventional religious lines as they once did at the American Founding and well into the 20th century. Rather, they reflect the deep divisions between the moral and civic convictions of a secular elite and the moral and religious convictions of citizens across a diversity of faith traditions. We have seen this phenomenon played out in the testimonies you’ve heard (and will hear) in the two hearings on education. These witnesses provide shocking accounts of the religious persecution they have had to endure in our public schools and universities. In some cases, teachers and administrators refused to accommodate the religious convictions of students and staff members, while, in other cases, they marginalized and punished religious students and staff members because they had the temerity to insist they follow their conscience rather than acquiesce to the spirit of the age.

What is particularly striking about these cases is how the advocates for the government seemed incapable of envisioning how anyone could reasonably disagree with the burden they sought to place on their fellow citizens. In some of these cases, students were forced to participate in activities contrary to their religious convictions while their views were subjected to ridicule and disparaging comments by officials who seemed to harbor contempt for these students and their families. In other cases, the schools intentionally restricted religious speech and conduct for no other reason than that the speech and conduct was religious. This type of behavior on the part of these school officials is in stark contrast to the sort of civic virtues that the American Founders sought to cultivate in their compatriots: epistemic modesty, respect for conscience and conviction, and proper regard for how one’s neighbor understands her duty to God.

³ Madison, *Memorial and Remonstrance*.

Some school officials have claimed that their contested policies are neutral as to religion. But that defense does not ring true. When, for example, a school explicitly requires its students and staff members to assent to moral beliefs or engage in activities that are inherently hostile to the religious views of students and staff members across a diversity of faith traditions, the school is in fact not being neutral as to religion. This is why when a school accommodates religious students and staff members it is showing appropriate respect for what is the natural consequence of what happens to a free people living in a free society: citizens will come to different conclusions about their duty to God. But when a school rejects such accommodations and insists that its students and staff members assent and conform or suffer punishment, it is signaling to the rest of us that it does not want to serve a free people living in a free society, that, in fact, it sees its project as enforcing the doctrines of the secular equivalent of a confessional state.

To properly honor the memory of Charlie Kirk, this commission should recommend legislation and executive action that encourage our educational institutions to promote a culture of conversation and listening, one that rejects an unbending progressive orthodoxy that has effectively functioned for decades to undermine the kind of civic friendship that allows us to live and learn together in peace, despite our religious, and sometimes political, differences.

Thank you. And God bless you.