



THE UNITED STATES DEPARTMENT OF JUSTICE

RELIGIOUS LIBERTY COMMISSION

Witness Testimony for Sept. 8, 2025 Hearing

Religious Liberty in Public Education: Student and Parent Perspectives

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 - 3. Lana Roman – Plaintiff in *Mahmoud v. Taylor*
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K-12: STUDENT PERSPECTIVES

SHEA ENCINAS

Mr. Chairman, members of the commission, thank you for the opportunity to share my story. My name is Shea, and I am from Carlsbad, California. I am here today in the hope that what happened to me and my family will never happen to another child like me or their family.

First, a little about myself. I've been a Christian for as long as I can remember. My parents instilled a deep faith in me and my siblings from a young age. My Lord and Savior, Jesus Christ, means everything to me. Some of my earliest and happiest memories are from attending Christian preschool, Sunday school, and my parents' Bible study. I believe that God creates every person—male and female—on purpose, in His image, and without mistakes.

Growing up, I looked forward to summer camps every year and loved inviting friends to church events and Vacation Bible School. When my family checks in at Sunday school, it probably looks like I have 20 brothers and sisters because I bring so many friends with me. I've always wanted to “make Heaven crowded” with the people I love.

I also loved school. I attended La Costa Heights Elementary in the Encinitas Union School District from kindergarten through fifth grade. The early years were great—I had good grades, lots of friends, and was involved in programs like the Lighthouse Leader program, Special Education, and Kindergarten buddy programs, as well as the California Garden Initiative Committee. I was even chosen to represent my school as a tour guide for new families. I felt proud of my school and trusted it was a safe place to be myself, including living out my faith. But the school broke that trust was when I was in fifth grade.

May 1, 2024, started out like any other Wednesday. Wednesdays were buddy days—one of my favorite parts of the week—when we spent time with our kindergarten buddies. I had grown close to mine. He loved Spider-Man, and I still remember the handmade Spider-Man Christmas card he gave me.

That morning, before heading to see our buddies, my teacher told us he wanted to read a book to us—something new he wanted us to share with the kindergarten class. This was unusual because

normally, we picked our own books and read one-on-one. The book was *My Shadow Is Pink*. As he read, I could tell immediately that the message went against my beliefs. It taught that gender could be chosen based on feelings rather than the way God created us.

I didn't have any choice – I had to participate. We were then told to line up and head to our buddy class, where we watched a cartoon version of the book. I felt sick. I wanted to protect my buddy—cover his eyes even—but I didn't want to get in trouble. Then, we went outside to trace our buddies' shadows with chalk. The teacher told each child to pick a color to “represent” him or her. My buddy chose red. I felt upset and confused, but I stayed quiet because I was afraid of getting in trouble. I didn't know this was coming. I wish I could have opted out.

After school, my dad picked me up and I told him everything. He was shocked and promised to talk to the school. I hoped that would make things better. Instead, it made things worse. Much worse.

In the days that followed, my teacher left the book on display and brought in another titled *My Shadow Is Purple*. Then, some of my closest friends—friends I had gone to church with and taken to Christian camp—turned against me. One of my best friends sent a group text to the entire fifth grade saying the teacher and principal had called him at home and told him I was lying and trying to get the teacher fired. He told everyone to wear pink on May 10th to support the teacher and the book.

The school and community organized an event called “Pink Out the Hate.” That day, I felt like the entire school—including teachers, administrators, and classmates I counted as friends—were standing against me and ridiculing my beliefs. My little brother, who was also being bullied by that time because of our beliefs, refused to go to school. I cried that morning but decided to try and be brave and see who would stand with me. But over half the school wore pink. I felt completely alone.

The rest of the school year didn't improve. Some of my friends' parents even told them not to spend time with me. It was painful and confusing, but I kept trusting God. I knew He was with me and would carry me through.

Sadly, my family felt we had no choice but to withdraw from the school district I had loved. We transferred to a Catholic school where we now feel loved, supported, and safe. Every day, I thank God for giving me a new place to grow, learn, and be myself.

Looking back, my experience at La Costa Heights still makes me sad. But it also reminds me how strong my faith is and how faithful God has been to me. Because we didn't want anyone else to go through what we did, my family filed a lawsuit in federal court. Our Constitution should protect kids like me who want to live out our faith at school and not be forced to say or do things that go against our beliefs. I'm sharing my story not for attention, but in the hope that no other child or family has to go through what mine did.

Thank you for listening.

LYDIA BOOTH

Thank you for the opportunity to share my story with you today.

I was in third grade at a public elementary school in Simpson County, Mississippi, when schools reopened during the Covid-19 Pandemic. That year was hard for everyone. We had to wear face masks all day, keep our distance, and things didn't feel normal. But I found something that gave me comfort – my favorite face mask. It was black with hot pink letters that had three simple words on it: **“Jesus Love Me.”**

For me, those words meant something really special. As a Christian, I believe that Jesus loves all of us deeply. And He's always with us, especially when life is scary or confusing. And during that time, everything felt uncertain. My mask reminded me that I wasn't alone. I was deeply loved. And I hoped it might remind others of that too.

At first, I wore it to school without any problems. Other kids were wearing masks with words and logos on them. Students had masks with a Jackson State University logo, a New Orleans Saints logo, and a “Black Lives Matter” logo... to name a few.

But one day in October, my teacher told me I wasn't allowed to wear my favorite mask anymore because it had words on it. I was really sad and confused. Sad, because I loved the words on my mask and the reminder that Jesus was with me always just as the Bible says. But also confused because I didn't know why the school was forcing me to take it off after I'd worn it many times since school started.

Why was my message – a message about faith, hope, and love – not welcome, when other messages were?

When my mom picked me up from school that day, I told her what happened. As wise moms do, she didn't get angry. She got curious. That night and the rest of the week, she read every school policy, the school handbook, and school directives on COVID. But she couldn't find anything saying that masks with words weren't allowed. She talked to other parents and even asked some staff. No one had heard of a rule that said masks with words weren't allowed.

So we thought maybe it was just a misunderstanding and my teacher was confused, so I wore my “Jesus Loves Me” mask again.

But a few days later, I'll never forget what happened. Right before lunch, a school official pulled me aside and told me to quickly take off my mask before the other kids got to lunch so that "no one would see." I was so embarrassed and hurt. The school official made me feel like I had done something wrong even though I hadn't.

They gave me a plain replacement mask for the rest of the day.

When I got in my mom's car that afternoon, I told her what happened and that the school told me my mask was against the rules. She told me right away, "You didn't do anything wrong. We'll work through this together."

Earlier that day, the school principal had called my mom to say that the student handbook prevented "religious or political things on masks at school." But when my mom asked to see the rule in the handbook, they couldn't find any such rule.

Later that afternoon, my mom sent an email to the school district asking about the mask policy. The assistant superintendent called her. He said that while the rule about no words on masks wasn't in the handbook, the district's Covid Restart Plan *did* prohibit masks with "political, religious, sexual or inappropriate statements." He then emailed a copy to my mom.

But when my mom compared this plan from the superintendent to the original one approved by the school board on the school district's website...they weren't the same.

The difference? The sentence about religious statements on masks.

And to my mom's greater shock, the version the assistant superintendent sent had been *modified right before* he called my mom. He had literally edited the document to stop a nine-year-old from wearing a mask that said "Jesus Loves Me."

That's when my family knew this wasn't just about a mask. The school was violating my First Amendment rights – and the rights of other students too.

So, with the help of some amazing people at Alliance Defending Freedom, my family and I took a stand and filed a lawsuit against the school district.

Thankfully, the school soon agreed to allow me to wear my “Jesus Loves Me” mask again. But it never admitted it had violated my religious freedom. And it took over two years before the district finally agreed to a settlement – one that protects every student’s right to express their faith.

PAUSE

I was only nine years old when this happened. But through it all, I learned something I’ll never forget: You’re never too young for your voice to matter.

If I had stayed silent, nothing would’ve changed. But because we spoke up, now other students can wear messages of faith and love without fear of being silenced.

It was scary at times. But I’ve come to understand that doing the right thing isn’t always easy...and God can use even something as small as **this mask** [show the mask] – to help ensure our incredible nation remains free and flourishing.

Thank you for all each of you do to stand for freedom. I am praying for you and President Trump.

VALERIE CLEVERINGA

Hi, my name is Valerie,

Thank you for inviting my family and I here to D.C. I am speaking on behalf of my younger brother and me. This last spring, our school was doing a talent show. My brother and I love Christian music, so we decided to pick our favorite songs to sing at the show. We were given the talent show slips a month before auditions. On the slip we had to let the teachers know what our talent was and the songs we were singing. I chose my favorite song, "Up and Up" by Colton Dixon. My brother chose the song, "That's Who I Praise" by Brandon Lake.

A few days before auditions, my mom received a phone call from a teacher at our school, stating there was an issue with my brother's song. She stated it strongly mentioned God and it violated the separation of church and state. She pointed out that the title alone was what caught their eye. They wanted my brother to change his song. But if he changed his song, he would want to choose another Christian song because that's what he loves to sing about. The teacher stated they would have to go back through my song, but it should be ok because it doesn't go into detail like my brother's song choice. The same night, my parents had a phone call with the principal. They wanted to hear from her why she wanted my brother had to change his song and what the actual issue was. The principal stated the song was "too Christian" and they were worried about what other students would think. The principal also started picking out words in my brother's song, like the word "slave". She stated they had an issue with that word, but the song says "no longer slaves," referring to Moses and the Promised Land in the Bible. She finally agreed to let my brother try out with the song but said he would have to change it if he made it into the talent show. My parents disagreed because there was nothing bad about the lyrics, and he would only have a couple days to learn a different song. Mind you, this was my brother's first talent show; he was so excited and even emotional when practicing. My parents mentioned to her that my song Up and Up also mentioned God. She was unaware and stated they would have to revise my song as well.

The next day at school, the same teacher that contacted my mom found me and told me that there were issues with our songs because "not everyone believes in God." My brother stated that the same day, the same teacher told him that he had picked a really hard song. He felt pressured to sing something different.

HANNAH ALLEN

In 2019, I was a student at Honey Grove middle school. Myself and a group of about 30 students prayed for a former classmate who had been severely injured in a motor vehicle accident. We went to an unoccupied side of the cafeteria out of the way of any other students and said a short prayer. At no point did we cause a disruption or force others to join. After our prayer, our principal addressed the group and said “don’t do that again”. Myself and others were confused and some upset parents called about the incident.

The following day our principal informed us that we could pray but we had to do so behind closed doors or behind a curtain. By doing this he violated our right to freely exercise our religion. After a little research my mom found First Liberty who quickly got to work on our case. They helped us at every step. A letter was sent to the school informing them that they needed to amend this rule and apologize for their actions against our rights. While our principal was “apologizing “ he made the whole situation seem like it was my misunderstanding and I had blown the situation out of proportion. The principal and school never accepted fault for what they had done, however the only thing that mattered to me was the protection of students rights. There was a sacrifice in standing up for these rights. I no longer felt welcome at a church that I grew up going to. Teachers and parents stopped talking to my mom. I also felt as though I was treated differently from other students.

Later on in January of 2020 I was invited to tell my story in the Oval Office. I told my story to President Trump, and did a brief interview with Fox News. I shared my story because what happened at my school wasn’t right and I know that it is going on in other schools as well. I was extremely blessed with the opportunity and honored to be a part of something bigger. The reaction of my community was not what I had expected. Before I even returned from Washington, the teachers and parents of the school district began saying very negative things about me on social media. My family was bombarded with messages and posts saying my story is not true and that I make the school and community look bad. I was a freshman in high school at the time and I even had seniors talking about me and staring at me as I walked down the halls. They called me a liar and said that I just wanted my “5 minutes of fame”. People that I had known my entire life said very hurtful things.

I went back to school despite the backlash I had received. I chose to face the same people who were trying to tear me down. Not long after my superintendent issued a letter to the entire school district stating “The public and social media criticism of the school district and, in particular, our administrators has been unfair and based upon false information. I would ask that members of our community refrain from repeating this false information on social media, as it distracts our focus from our students and their education.” The day it was sent out the superintendent went to every class except mine. He read the letter to every class but couldn’t read it to mine. When that letter was handed to me I read a few sentences and walked out of the classroom. I called my mom and told her what was happening. She immediately came to the school and picked me up when we got to the office to sign out my superintendent was waiting for us. He told us that this wasn’t a personal attack, and that he would stop anyone who said negative things about me. My mom stated that people were already saying horrible things and that he only added fuel to their fire. They took my words as a personal attack on their image, rather than what they truly were. My mom asked me if I wanted to move schools, because of the backlash. I thought about it for a while, but then I realized that with God I was strong enough to face these people. I felt like an outcast in my school and my community. Some days were harder than others, but I knew that I had done the right thing. God gave me the strength to be a voice for those who didn’t have one. I am honored to be that voice.

JUSTIN AGUILAR

“Good morning, members of the Committee. Thank you for having me here today.”

“My name is Justin Aguilar, and I recently graduated as valedictorian from a high school in North Carolina. In the lead up to graduation this past May, censorship of my Christian religious beliefs did occur, but my story has a positive outcome that I hope provides insight for the Committee, and will provide encouragement to other teachers and students.

“I’m here today not to criticize, but to share my personal story in hopes that it provides a data point to the Committee, so it can provide encouragement to school officials across the country to trust the Constitution and the First Amendment —and know they don’t have to be afraid of student religious expression, or misinformation from those who want to see censorship of student religious expression.

I hope my testimony informs the Committee's recommendations and future policy positions of the Administration. I hope it serves as a vehicle for the Administration to let local school officials and teachers know that if they face pressure to censor private student religious speech, they have allies to whom they can turn for accurate information about First Amendment rights.

I also hope that my testimony gives courage to students like myself, to be able to share their values with their fellow classmates and simply be who they are.”

“When preparing my high school valedictorian graduation speech, I included a few sentences to express my gratitude to God and his Son Jesus Christ—because He gave me the ability to succeed in my education, and He has carried me through some serious medical hardships.”

“School administrators initially told me to remove references to God and Jesus, citing ‘separation of church and state.’ My speech was sent back to me with both instances of ‘Jesus Christ’ struck through, and two out of four instances of the name of God struck out as well.”

“With the help of legal counsel at Liberty Counsel, I respectfully appealed the decision, and left the references to God and Jesus Christ intact.”

“Ultimately, the school allowed me to deliver my speech unchanged. From a portion of the speech originally lined out, I said, “I want to thank my Lord Jesus Christ for getting me through because if it weren’t for Him, I don’t know how I would’ve gotten through life...Jesus Christ has always loved me.”

After the speech, something amazing happened—many staff and students were moved, not divided.

“I spoke honestly, not forcefully. I didn’t shame or preach—I simply shared who I am and how faith and the providence of God helped me through. I simply gave credit to my Lord Jesus Christ - in whom I live, move, and have my being.”

My teachers and administrators have poured their lives into me - I had no desire to embarrass them, or put them in a bad situation. But I knew that I could not deny my Lord. This created a very difficult situation for me. But I felt that I must do the right thing, regardless of what the consequences were. Afterwards, one of my teachers thanked me for going through with the original speech. She had not wanted to censor my speech, but had experienced some level of coercion from outside our high school. That coercion directed against my principal and teachers was wrong.”

I hope the Commission encourages greater understanding of the law: “The First Amendment protects private religious speech— even at a public school graduation. The law is clear: it’s government endorsement of religion that is restricted, not student expression. But there is still so much misinformation out there. Many school officials want to do the right thing, but feel pressured or coerced to censor student speech from faith references at graduation. I believe if more teachers and school officials knew what the law ACTUALLY requires, they would feel more confident to reject calls for censorship.”

The Commission can highlight recent guidance and administration support: “It is so comforting to know that the Trump Administration has made it clear that school officials are not required to censor students out of fear.”

The Commission can emphasize mutual respect: “Freedom of religion doesn’t threaten public education—it enriches it.””

“My faith isn’t a side note in my life—it’s foundational. Asking me to cut it out of my story is like asking me to not be myself.”

“Students of all beliefs deserve to speak authentically. If we start editing faith out of personal stories, we silence stories of hope, resilience, and a critical part of the human experience.”

“To educators and administrators: You can protect religious liberty *and* maintain neutrality. Censorship is not your obligation. To the Trump Administration: thank you for hearing our stories, and for emphasizing the importance of religious freedom. Thank you for being a bulwark for Liberty, and for standing up for teachers who stand up for student freedoms. To future students: live out your faith, and when you are given a platform after your academic success, know that you can always thank the One who has given you everything.”

“Thank you, committee members, for giving me the chance to speak today. I hope my experience helps inform your recommendations to the Administration and that we see continued growth in religious freedom.”

JEREMIAH G. DYS

Mr. Chairman, members of the Commission:

Thank you for the invitation to address you this morning.

In my dozen years of civil rights litigation, I have had the sincere privilege of representing students just like the ones you have heard from this morning. In their stories, you hear the many benefits of religious liberty as well as the burdens wrought upon real people when religious liberty is denied by school officials.

These students join others like Kendra Turner from outside of Memphis whose teacher banned the use of the phrase “bless you” from her classroom and then disciplined Kendra for using it.

John Raney and Liz Loverde, both from Long Island, New York, who were told that they could not form religious clubs in their respective Long Island high schools. In John’s case, school officials said it would be illegal to allow him to form “Students United in Faith” alongside the school’s Frisbee Club.

Liz’s principal labeled her club a “non-starter” because it exclusively studied the Christian Bible and didn’t have the requisite fifteen members to start a club—apparently not even Jesus and the Twelve Disciples could’ve formed a club with Liz!

The Beaver Area School District in Pennsylvania told Moriah Bridges that she could not reference her faith in giving closing remarks at her graduation ceremony and that she “most certainly may not recite a prayer that excludes other religions” in doing so.

Erin Shead, just 10-years old, decided to write about how God was her hero in a class assignment in Tennessee, but school officials rejected her assignment, requiring her to pivot to Michael Jackson instead.

In learning the art of PowerPoint at a Las Vegas area school, MacKenzie Fraiser elected to reference John 3:16, but school officials told her she could not quote from the Bible or any other religious text.

After Giovanni Rubeo's church in Florida gifted him a Bible, he elected to read it silently during his fifth-grade class's free reading time. But, his teacher told him he could not read "that religious book" in her classroom.

Gabriella Perez just tried to do what her parents taught her to do: she tried to pray before her school lunch near Orlando. When school officials told her she could not, she replied simply, "But, it's good to pray."

Just last month, a high school in New York told rising senior Sabrina Steffans that she couldn't include Jeremiah 29:11 on her decorated parking space because it was a Bible reference.

In Minnesota, even though state law required school officials to give parents of school children the opportunity to review the content of instructional materials, devout Muslim mothers of third and fourth graders knew nothing about the books discussing human sexuality and pushing objectionable gender ideologies taught to their children.

And, as you heard from Shea Encinas, even after a district court judge recognized that students should not be forced to speak a message that violates their conscience and the Supreme Court handed down its decision in *Mahmoud*, we are still litigating in California to preserve the right of parents to opt out from teaching and activities that violate their faith.

The list could continue. Each of these cases represent students from elementary to high school facing situations the Constitution guaranteed them that they should never have to face.

Rather than uphold these guarantees, too often school districts weaponized the Establishment Clause against them.

Instead of recognizing the demands of the Equal Access Act (“EAA”) that religious students be given the opportunity to form religious clubs in the same way secular clubs may meet, school officials labeled our clients as lawbreakers.

Even though the First Amendment guarantees the right of parents to direct their children’s education and religious upbringing—without government interference—school officials far too often place obstacles in the way of parents having a say in such things after school drop off.

For instance, in Ohio, some school districts grudgingly complied with state law to allow parents to send their children off campus to receive religious education during the school day—an accommodation that the Supreme Court has upheld since 1952 as reflecting “the best of our traditions.” But some school districts mandated by state law to allow release time religious instruction simply banned such programs from sending back handouts and Bibles with the students.

Yet federal law requires that public schools certify compliance with the Constitution’s guarantees on matters of religious liberty in order to receive funding under the Elementary and Secondary Education Act of 1965 (“ESEA”).

Allow me to turn from stories to specific proposals that this Commission might consider to further strengthen this nation’s commitment to religious liberty.

First, this Commission should recommend that the federal government publicly report which states are compliant in the protection of religious liberty at school—and which are not.

Even though the ESEA requires state and local educational agencies to certify compliance with the Constitution’s guarantees of religious liberty in public schools, the public has no transparent means of knowing who is and is not compliant and, thus, who is and is not entitled to their tax dollars under the ESEA. A simple website reporting who has or has not so certified would give much confidence to parents and students across the country.

Second, extend the protections of the EAA to elementary students and tie compliance to funding under ESEA.

The EAA has prevented many school districts from denying student religious clubs, but only for those clubs for students typically between grades 6-12. Elementary students, like those before you today, are equally entitled to the law's protections. And, state and local educational agencies should be required to certify compliance with the EAA too.

The American taxpayer should not be required to fund schools that welcome secular clubs on campus, but are unwilling to allow students of any age to form clubs related to their faith tradition.

Third, celebrate, provide clear guidance on, and rigorously enforce the protections regained in such cases as *Kennedy v. Bremerton School District*, *Carson v. Makin*, and *Mahmoud v. Taylor* among others.

Each of these cases restored rights to students, teachers, and parents that were long laid aside under past, erroneous, and damaging interpretations of the Constitution. These cases overturned harmful precedents that caused the denial of the many protections of rights flowing from the First Amendment, and also led to students, parents, and teachers being ridiculed, singled out, and ostracized for their religious convictions.

The promise of the Constitution applies to the students of our nation's public schools at every level. That "charter of rights" extends respectfully to parents whose right and privilege it is to direct the religious upbringing of their children. Protecting, and where necessary restoring, those rights should be the goal of this Commission.

As was said by the U.S. Supreme Court so many years ago, the students of our nation's public schools "do not shed their constitutional rights at the schoolhouse gate," neither are our nation's schools to be "enclaves of totalitarianism." Rather, as another court has said, under the Constitution school officials may not "confine religious speech to whispers or banish it to broom closets." For, if it did, "the exercise of one's religion would not be free at all."

Thank you. I am pleased to take whatever questions you may have.

K-12 PARENT PERSPECTIVES

JENNY ENCINAS

Mr. Chairman, members of the commission, thank you for the opportunity to share my story. My name is Jennifer Encinas. Alongside my husband Carlos, we strive to live out our Christian faith daily—not just in worship but in raising our three beautiful children. We teach our children that God made them with intention and purpose, and that He created humans as male and female—a truth unaltered by feelings or social trends.

Carlos and I have always supported our school community. We volunteered regularly, and our oldest son Shea thrived—academically, socially, and in leadership roles—until the 2023-24 school year at La Costa Heights Elementary School in the Encinitas Union School district.

On May 1, 2024, Shea came home visibly disturbed. His normal fifth-grade “buddy” time with kindergartners was replaced by a reading, video and chalk activity of *My Shadow is Pink*, a book on gender identity. Shea was forced to participate in an activity promoting the book’s message and teaching his kindergarten buddy about gender ideology—against his beliefs.

School officials never notified us, even though we had just opted Shea out of the school’s health unit for this very reason. When we brought our concerns to his teacher, he claimed the book wasn’t about gender. Yet the author calls it a story about gender identity, and district documents show an effort—supported by groups like Trans Family Support Services—to promote this ideology without parental input or awareness.

After getting nowhere with Shea’s teacher, we emailed Principal Christie Kay and Superintendent Andree Grey. Instead of responding, Principal Kay contacted several of Shea’s closest friends and their families, suggesting we were trying to get teachers fired, that we were hateful, and that we wanted to remove books about kindness and inclusivity. But all we wanted was to opt out.

We were told by several community members that Principal Kay coordinated with the PTA board, room parents and others to plan a “Pink Out the Hate Day” on May 10—specifically to shame our children for objecting to being used to promote this political agenda.

On May 8, I received a group text from the “room mom” of our younger son’s class that went out to most parents in third grade saying: “I just asked Christie Kay how we can help. She said express your support for our school and teachers. Be a louder voice. Wear pink, send messages to Mrs. West and Mr. Murphy or if you see them tell them we support them and the message of equity and inclusion.” Similar texts went to all grades through PTA members and room parents.

Also on May 8, Carlos received text messages from someone posing as a friend but who turned out to be the husband of the kindergarten teacher who introduced *My Shadow is Pink*. He insulted Carlos repeatedly, told him to “move to a remote island,” and called him a little weasel. When Carlos reported this to Superintendent Grey she advised “contacting local authorities” but offered no help.

On May 9, the PTA president and others posted on Instagram urging participation in the “Pink Out the Hate” event. This was especially hurtful as her husband was a rugby coach for my younger son for years, and we thought this family valued our children. This Instagram post spread quickly throughout the community.

One mom who our family had been very close to since our kids were in preschool and who knew how kind my children are even wrote a condescending poem about her shadow with the caption “TEACH YOUR KIDS INCLUSIVITY”—a clear reference to our parenting, again targeting our children and our religious beliefs.

These were the absolute hardest days of my life as a mother. All the while I was at home taking care of our newborn daughter. I felt like I couldn’t breathe, I couldn’t sleep, all I could do was pray. How could this school and these people treat our family like this? They know my children, our kids have grown up together and instead of defending them they were acting with such hate towards them.

But, beyond our circle of friends, why was the school spreading lies and promoting the bullying of my 9 & 11 year old sons over their religious beliefs? For example, the daughter of school board member Tom Morton messaged me, saying our family was a “disgrace” to the community, telling us to pull our kids out, and warning that teachers would know we were “hateful hypocrites.”

On May 10, the Pink Out the Hate day, our boys woke up crying and afraid to go to school. Our third grader refused, overwhelmed by hostility toward his beliefs. Shea was brave enough to go to

school that day but came home in tears, saying, “I feel like everyone who wore pink today hates me.” Nearly half his school wore pink, and most teachers wore matching “Choose to Include” shirts, failing to appreciate the cruel irony: those who wore pink were included and tolerated, but my kids? They were excluded and targeted.

We formally requested that Shea be excused from future gender identity lessons. The district denied our request—twice—claiming opt-outs only apply to health education. The district made their position crystal clear: gender identity instruction would continue, and we would not be notified or allowed to opt out.

On May 21, Carlos and other parents attended a school board meeting. Most seats were “reserved” for teachers wearing matching shirts, purposely excluding many parents who shared our concerns from speaking. Carlos sat on the floor waiting to speak. He asked for notice and opt-outs. Teachers responded by labeling his concerns as “hate,” ignoring the bullying our children endured and further fueling hostility. Meanwhile, the school continued to openly celebrate those teachers who chose *My Shadow is Pink*.

With our children’s safety at risk, we withdrew them from Encinitas Union School District. This was a heartbreaking decision—we had loved this community until the district pushed radical gender ideology and punished dissent.

Also, with the help of First Liberty Institute, we filed a lawsuit to make sure parents in the future have the right to know and opt-out of situations like this in the future. Still, even after leaving and successfully asserting our rights, the harassment continues.

Our hope is that sharing our story today will help preserve the rights of parents to direct their children’s moral and religious upbringing—especially on sensitive topics like sex and gender. If the school wants to continue teaching things like *My Shadow is Pink* because they believe they are teaching kindness, so be it. All we have ever asked is for them to show us the same kindness by respecting and tolerating our religious beliefs and letting us opt our children out. We pray that no other families have to experience the kind of hostility that we faced because we stood up for our religious beliefs. Thank you for your time.

JENNIFER MEAD

Thank you for the opportunity to share our story today.

There's nothing more precious to a mother and father than their child. There's nothing we wouldn't sacrifice to help them thrive. And it is our God-given duty to guide them – emotionally, spiritually, and physically – through life's joys and sorrows.

As a mother, when I place my children in the temporary care of others – a school, daycare, youth group – I do not surrender my rights as her parent. Like most parents, my husband Dan and I expect transparency and truth about how our children are doing in school to enable us to best help them along the way.

Tragically, this was not our story.

Soon after our 11-year-old daughter started sixth grade East Rockford Middle School, we noticed some changes—she seemed anxious, often sad, more withdrawn. We thought it might be the stress of middle school which can be a hard transition for many kids. So we continued to encourage her, support her, and make sure she knew how deeply she was loved.

As the school year went on, she started to fall behind academically, so I began working closely with her teachers and the school counselor.

We wanted to do everything we could – including working closely with her school – to ensure she flourished. I wanted her to know we were in her corner and would help her navigate any problem she faced, and that Jesus was right beside her every step of the way.

During this time, I became particularly grateful for the school counselor's help and valued the connection she had made with my daughter. We even met over the summer for ice cream with both of our daughters. I grew to trust her given the seemingly regular and transparent communication that Dan and I had with her.

Throughout seventh grade, we remained in close contact with the school. Still struggling, my husband and I took our daughter to see a psychologist who diagnosed her with autism. We shared that very personal information with the school to ensure she received the support and accommodations she needed to flourish. It felt like a partnership.

Until everything changed.

In the fall of eighth grade, the school sent us an academic report with notes from her various teachers. Oddly, some of the teacher notes talked about a boy – or at least referred to a boy's name and used male pronouns.

I assumed it must be a mistake. So I emailed the school to see if they'd just given us the wrong child's report.

They hadn't.

My husband and I discovered that the school—including the counselor we had put so much trust in—was secretly “socially transitioning” our daughter.

For months, we later found out, teachers and staff had been treating our daughter as a boy without our knowledge-while continuing to use her real name and accurate pronouns when communicating with us.

I was stunned. Betrayed. Heartbroken. We immediately withdrew our daughter to protect her from further harm. And I was left in shock at how the school I had worked so hard to collaborate with had so severely violated our family’s trust and our rights as her parents

Soon after, we met with the school principal, who made clear that it was District policy to “socially transition” our daughter—and to conceal their actions from us. He also told us that the District understood the Michigan Department of Education guidance to require this.

We were devastated. I think Dan and I had hoped the principal would be as shocked and concerned as we were. That this was a couple rogue teachers with an agenda.

But that wasn’t the case. It was the school district’s formal policy.

PAUSE

There are really no words to capture the catastrophic impact of the school’s actions on our young daughter. In the days and weeks that followed, it was like she was emerging from a cult. Multiple times a day, she would ask us if we loved her. She’d been taught not to trust us. That we didn’t understand her and wouldn’t accept her. Which of course isn’t true.

But what really broke my heart is that my sweet girl was led to believe she was broken. And she’s not. She is beautiful, intelligent, and kind. Every single day, it has taken immense effort to rebuild her confidence in herself and her trust in us.

Witnessing the devastating harm our daughter suffered drove my husband and I, with the help of Alliance Defending Freedom, to file a lawsuit against Rockford Public School District. We knew that we could never look another parent in the eyes if they shared with us that their child was transitioned behind their backs that we had experienced this too and done nothing. We knew we had to stand up.

As a very private person, I was nervous at first but God has given me the courage and strength to stand and hold accountable the school that wreaked havoc on my daughter and our family’s life.

No school district has the right to make life-altering decisions for a child without talking to their parents let alone concealing those decisions from them.

The Rockford Public School District robbed us of these fundamental rights and hurt our daughter.

As John 8:32 says, “Then you will know the truth, and the truth will set you free,” and we believe this wholeheartedly for our family, for our daughter, and for every family in this country.

Thank you for the opportunity to share our family's story with you today. I pray it will help ensure no other families suffer.

SAMEERAH MUNSHI

بسم الله الحمد لله والصلاة والسلام على رسول الله

My name is Sameerah Munshi. I am an activist and advocate for the Muslim community in America. I was invited to speak today because of my work with families and students in Montgomery County, Maryland, during the 2023 school district opt-out protests. The efforts of these families ultimately led to the Supreme Court case that recently ruled in favor of the rights of those families. Today, I want to share more about what we experienced during that time, why it matters not just for Muslims but for all Americans, and what I believe this Commission can do to meaningfully protect freedom of conscience and freedom of speech, especially in the classroom.

To begin, I'll offer some background. In 2023, the Montgomery County Public School system, while instituting mandatory classroom content on issues of gender and sexuality, stated they would no longer allow parents to opt their children out of such content. Many families, including Muslim and Christian parents, expressed concerns about the timing, language, and framing of these materials, especially in elementary classrooms, and the less-than-transparent methods that administration was using to curb objections from the students and parents. We didn't ask for censorship; we only wanted accommodation. As Muslims and people of faith, we wanted the right to guide our children's moral development in accordance with our faiths, but that right was denied.

Despite a general lack of experience in independent organizing as a community, Muslims quickly realized that if no one else was going to speak out, we had to do it ourselves. So Muslim leaders reached out to other faith communities to altogether petition the school board, submit legal appeals, and speak out at public meetings. What we asked for was respect for our beliefs, and the basic constitutional right to opt out of instruction that conflicts with our deeply held religious beliefs. Yet, we faced a lot of backlash from the school board, public officials, and even from parts of our own community. And in that backlash, we were reminded that Muslims are not only marginalized religiously, but every move we make is racialized. We are always treated as outsiders whose rights are conditional.

At that point our protest was not just about curriculum. It became a referendum on who is allowed to dissent and who is not. It wasn't allowed to just be a disagreement over ideas. Instead, it became about us as a people. The labels used to describe Muslims were "extremist," "backward," "white supremacist". All labels that carried racial and Islamophobic undertones and from people who claimed to value and honor our other identities as racial minorities and immigrants. "Diversity and

inclusion” is not a bad thing until it imposes a hierarchy of who we are allowed to be at what times and in what settings.

To understand the nuance of the situation, we need to understand who Muslim Americans are. Our community is very politically, ethnically, and ideologically diverse so it’s very tough to lump us all together on a lot of views. Pew Research’s 2023–24 Religious Landscape Study reported that 53% of Muslims lean left, 42% lean right, and 6% are politically independent. On issues like LGBTQ rights, the Muslim community holds a wide range of views. While these are conversations that are currently ongoing in our community, what is important is to accommodate Muslim Americans and other practitioners of religion within the law, regardless of their political affiliation or diversity of views, especially when they believe their religion to directly influence their views. And it is generally because our religion influences both our outward practices and our principles that we are often doubly marginalized.

Islam is a particularly revealing case study in religious liberty. In American law and culture, it’s often easier to accommodate external signs of religion like wearing hijab than it is to tolerate internal convictions that conflict with dominant ideologies. People may celebrate our diversity of dress or food, but become upset when we express moral disagreement. And yet, for most Muslims, religion cannot be compartmentalized. It shapes both what we wear and what we believe. And when the state only protects one while penalizing the other, it fails its duty to uphold religious freedom in any meaningful sense.

What happened in Montgomery County was not about Muslims and other people of faith trying to impose their values on others. It was about refusing to have others’ values imposed on us. It was also about the right to dissent without being demonized. Freedom of speech means little if certain communities are socially or legally punished for using it.

This all highlights the urgent need to preserve freedom of conscience, particularly in schools. Classrooms are not neutral spaces. Those in authority transmit and legitimize values. And when those values conflict with a student’s or family’s religious beliefs, there must be room for discussion and accommodation that is not just tolerance of identity, but respect for true dissent. Protecting the rights of religious individuals to dissent from prevailing cultural norms is not an attack on inclusion—it *is* inclusion.

Given these challenges, I'd like to offer several concrete recommendations. First, opt-out protections must be made clear, accessible, and enforceable. Too often, rights exist on paper but not in practice. For example, I have family members who are legally entitled to attend Jummah prayers on Friday during work or school, but are made to jump through so many administrative hoops that they give up. Religious freedom without functional access is not real freedom.

Second, bureaucratic barriers to religious accommodation must be addressed. Laws must be implemented with transparency and consistency. Public institutions need guidance and accountability to ensure that minority communities are not sidelined through inertia or bad faith.

Third, and perhaps most urgently, minority religious voices must be included in future hearings, especially those focused on education and public policy. Muslim communities and other religious minorities are too often left out of national conversations on religious liberty. This Commission has an opportunity and a responsibility to ensure our perspectives are heard, not just as a matter of fairness, but because our stories offer insight into how liberty is preserved or eroded in real life.

Finally, we need a space where deep, even uncomfortable conversations about religion in America can happen. We need conversations that go beyond slogans and social media framing. That space must be intellectually rigorous and ethically serious. I hope this forum can be one such space. And I thank you for allowing me to speak today.

إِنَّ لَا أَنْتَ وَأَسْتَغْفِرُكَ وَأَتُوبُ إِلَيْكَ أَشْهَدُ أَنَّ لَا إِلَهَ

HIGHER EDUCATION PERSPECTIVES

NORVILIA ETIENNE CAIN

“The tongue has the power of life and death.” That’s not just a verse from Proverbs—it’s my story. Words saved my life.

When I was 16 years old, I learned just how close I came to never being born. My mom was 17 when she found out she was pregnant with me. She was already raising my older brother alone. Scared and overwhelmed, she was convinced she had no choice but to end my life through abortion.

But God intervened through the voice of a woman. My grandmother. She empowered my mom to know she wasn’t alone. Because of my grandmother’s faith and my mother’s bravery, I am alive. And incredibly privileged to speak to you to today.

My mom’s story ignited a passion in me to empower other young women. And instilled in me a desire to use my story to share God’s truth: that every person is created in the image of God and has intrinsic dignity from the moment of conception.

When I started college at Queens College in New York, I knew God was calling me to be that voice. To walk alongside young women facing what my mom faced so they would know: *You are not alone. There is hope. You can choose motherhood and live a flourishing life!*

My college campus became my mission field.

With the help of Students for Life of America, several classmates and I began the process of forming an official pro-life club to support young pregnant women and new parents on campus through resources, baby showers, scholarships, and community.

But to my dismay, we faced opposition at every turn. The Student Life Office discouraged us from even applying.

But we persevered and carefully crafted a constitution and submitted our application.

When we met with the Campus Affairs Committee, we shared that we wanted our club to offer support to pregnant women, promote women’s health, and cultivate a community that celebrates the dignity of every life.

After cutting our presentation short, the Committee said we’d hear back by the end of the day.

We didn’t.

A week passed. Other student groups were approved. Crickets for us. Finally, I reached out to the head of the Student Development Department.

Without explanation, she told me that the College was denying us official status as a student group.

I was stunned. This meant:

No meeting spaces.

No access to campus resources.

No student activity funds – which our tuition helped pay for – to host diaper drives or start a scholarship fund.

No ability to host speakers and freely dialogue.

Public universities are supposed to be marketplaces of ideas, where all students are free to share their beliefs, opinions, and worldviews. And Queens approves a wide diversity of student groups every year, including pro-abortion groups.

It was hard experiencing such blatant discrimination against my faith. Queens wasn't just silencing our student group. They were silencing help. Silencing hope. Silencing *our voice*.

As I considered what to do, I remembered my mother's courage. I recalled my grandmother's voice. I knew I had no choice but to speak up for women and their unborn children.

So with the help of Alliance Defending Freedom, I filed a lawsuit against my college. Not out of anger—but out of conviction that every student deserves the right to speak, to serve, and to stand for what they believe.

It wasn't easy being a college kid taking on my alma mater. But the incredible gift of life is worth standing for.

Eventually, Queens changed its policy and officially recognized our club. When I graduated, our group was changing lives and had even launched a scholarship fund for pregnant women and new parents. This scholarship fund has now become its own foundation run by the young woman who succeeded me as president of our Students for Life group.

And thankfully, our club is still going strong at Queens. It stands as a beacon of hope that *every life* has inherent dignity and that women deserve better than abortion—providing them with the resources to finish school and embrace parenthood.

I pray that my story will inspire college students for generations to courageously and winsomely live out their faith. And I hope that this administration will continue its bold efforts to ensure free speech and religious freedom are alive and well at colleges across our country. So that every student will be free to speak without fear of government punishment or discrimination.

Because words have the power to end a life. But they also have the power to save one.

Thank you for the opportunity to speak here today.

MAGGIE DEJONG

Good morning. Thank you so much to this Commission for holding this hearing and for all your work on religious liberty. I am deeply grateful and humbled to be here today.

PAUSE

I never expected that pursuing my dream to help hurting children would lead to a legal battle for our most basic freedoms.

I graduated from Southern Illinois University Edwardsville with a master's in Art Therapy and Counseling in May 2022. I chose this path because God gave me a passion for helping children, especially those who've experienced deep trauma – survivors of sex trafficking and exploitation. Through art therapy, I've seen how creativity can bring peace to chaos, giving people a way to process pain when they don't have the words.

But while I was studying how to help others heal, I found myself betrayed by the very institution that was supposed to equip me for that mission.

My program was small – just ten students – and we became very close. Some of the girls even asking me to be in their weddings.

But about a year in, something shifted. I came to Southern Illinois thinking I was there to become a counselor. But I soon realized the University expected me to adopt and promote a specific ideology—one rooted in Marxism and Critical Race Theory. Even when it conflicted with my religious and professional beliefs.

These ideologies weren't just classroom content—they were embedded into our professional standards of ethics.

When called on in class, I shared my perspective respectfully, asking whether these ideas served the best interests of our future clients.

But instead of respectful dialogue, my Christian and conservative beliefs were met with hostility—not only from classmates but even professors.

One of the most painful moments came when a classmate and former friend created an art display titled *The Crushing Weight of Microaggressions*. It featured a private text I'd sent her where I shared that even if we might disagree on some things, I cared about her and that "[M]y personal beliefs are grounded in objective truth by the Gospel of Jesus Christ."

I was heartbroken to see my words maligned and so misunderstood. I loved my classmates including this girl. To this day, I wish we could have shared our diverse beliefs with mutual respect and kindness.

But that was sadly not my experience.

The art display didn't just break my trust—it broke my spirit.

I started having trouble sleeping. I lost my appetite. And I began to fear what might happen if my professors—who clearly disapproved of my views—decided to block me from graduating or finding a job.

But I didn't expect what came next.

Just weeks before graduation, the University issued three no-contact orders against me. You might wonder what a no-contact order is. I did too. It's essentially a restraining order and it applied on and off campus. It meant I couldn't talk to, sit near, or even be in the same coffee shop with the three classmates who had filed the complaints.

I was shocked. I asked what I'd done. The University admitted I hadn't violated any policy. There was no hearing, no investigation, no warning. Just a threat of “disciplinary consequences” if I violated the no-contact orders. And they even copied a university police officer on each order to drive this threat home.

I stopped speaking in class. I was isolated and scared. Like I was in a relationship with abusers—trapped in a system that punished me for having different beliefs.

I thought back through every conversation I'd had with my classmates. I couldn't think of anything I'd done that could be taken as offensive, let alone aggressive. I became afraid. I'd been maligned and my words twisted before. What might they have said this time?

With fear came a sense of powerlessness.

I reached out to ADF, and they sent a demand letter to the University. Five days later, the University rescinded the no-contact orders. Two weeks later, it finally told me what the accusations were.

Three classmates had complained about some social media posts where I'd expressed my Christian and conservative views on current events. They claimed the mere expression of my views were “microaggression[s].” One student said I was “threatening” because I couldn't embrace Critical Race Theory, which I had described as divisive and contrary to treating people with dignity regardless of race.

Ironically, in the same conversation I had praised her for having a “beautiful heart,” with a deep “compassion for children.”

But even after the no-contact orders were lifted, the attacks continued.

The University held a “community meeting” where students publicly attacked my faith and accused me of being racist, oppressive, and creating a toxic learning environment.

University officials refused to tell students that I hadn't broken any University policies. Instead, they emailed faculty, students, and alumni, implying that I had engaged in “oppressive acts” and “misconduct.”

I wasn't punished for harming anyone—I was punished for having a different perspective, for being a Christian, for asking honest questions.

At a public university—which is supposed to be a marketplace of ideas—I was silenced for sharing mine.

I knew I couldn't just walk away. I had to stand up—not just for myself, but for future students. Our freedoms are too precious not to defend.

So with ADF's help, I filed a lawsuit.

After the University tried – and failed – to dismiss my case, it agreed to settle. It changed its policies to ensure all students, regardless of political or religious beliefs, are welcome. And it revised how no-contact orders are used, so they can't be weaponized to punish simple differences of opinion.

But what weighs on my heart to this day: I should never have had to sue.

Public universities have a constitutional duty to protect open dialogue, not punish it. They should welcome differences, not erase them. And no student should be shamed or silenced for their faith.

Looking back, I can see how what was meant to break me—God used to shape me.

Through the fear and betrayal, He gave me the courage to speak, even when my voice shook. He taught me to love—even those who misunderstood or maligned me.

I'm so grateful to President Trump and this Commission for your bold work to protect our First Amendment freedoms—freedoms that belong to all of us regardless of faith, race, or creed.

The truth is: Freedom is fragile. Silence is Costly. But courage is contagious.

Thank you.

CHIKE UZUEGBUNAM

I appreciate the opportunity to share my story with you this afternoon—and for what each of you is doing to protect religious liberty.

Growing up, my parents often told my siblings and me stories of the magnificent freedoms America offers. These freedoms—and the opportunities they provide—are what brought my parents here from Nigeria. They taught us that freedom is a rare gift—one to be defended at all costs.

That’s why I’m here today.

In 2013, I enrolled at Georgia Gwinnett College in Lawrenceville, Georgia. It was during my time there that I became a Christian—a decision that brought me such joy that I felt compelled to share it with others.

My campus offered plenty of opportunities for this. Students were often out in public areas, sharing their views, advocating for causes, or handing out literature on topics that were important to them. I did the same—respectfully speaking about my faith with interested students. It was a chance to meet new people and share how Jesus had changed my life.

But one day in 2016, a college administrator approached me and told me to stop. He said that if I wanted to share my faith with those who stopped by, I needed to reserve one of the school’s two “speech zones.”

These zones made up *just 0.0015% of campus*—about the size of a sheet of paper on a football field. And they were open only *10% of the week*.

Still, I honored the policy. I made my reservation, showed up on time, and began sharing my faith again. But within a few minutes, campus police stopped me again. They said someone had complained, and under the College’s speech code, I had to stop—or face disciplinary action.

I was surprised and confused – here I was in the “free speech zone,” following all the rules. And yet, officials silenced me.

At that moment, I realized: I could not speak outside the speech zones, and I could not speak within them either.

I contacted Alliance Defending Freedom and learned that my experience sadly wasn’t unique. Many public colleges and universities use similar speech zones and speech code to silence students—in violation of their constitutionally protected freedoms.

I was deeply concerned. I thought back to the stories my parents told me about the unique freedoms the United States offers—the promise that every American is free to speak without fear of government censorship. I knew I had to play my small part in preserving this legacy of freedom.

So, with the help of ADF, I sued Georgia Gwinnet.

The College first said that my speech – sharing the words of Scripture – qualified as “fighting words” and therefore wasn’t protected by the First Amendment.

Later, the school switched strategies and tried to avoid accountability altogether. It revised its speech policies and asked the court to dismiss my case, insisting that it should no longer be held accountable for silencing me.

Even though the College had censored me under its previous policies, both the district court and the Eleventh Circuit said that the College could escape accountability simply by changing its policy after the fact.

Justice delayed is justice denied suddenly took on a new meaning for me.

If government officials can violate our rights, and then walk away with no consequences, the Constitution is an empty promise. I knew that wasn’t the legacy of freedom I wanted for my future kids.

So I persevered. To make sure no other student—on any campus—would be silenced by school officials for sharing their faith.

My case went all the way to the United States Supreme Court. Georgia Gwinnett’s actions were so troubling that people from diverse political and religious backgrounds – Christian, Muslim, Jewish, atheist, liberal, conservative – all supported my case. They knew the right to speak freely was at risk.

Thankfully, in a resounding 8-1 decision, the Supreme Court ruled that public university officials must be held accountable when they violate someone’s constitutional rights—even if they change their policy after the fact.

For me, the victory was deeply personal.

When I heard the Court’s decision, I thanked my Lord and Savior Jesus Christ. I also thought of my parents—how they had believed in the promise of this country, how they had sacrificed for us to grow up with freedom.

But we still have work to do. Many students today feel pressure to remain silent about their faith. Many are afraid of being labeled, canceled, or punished—simply for speaking truth in love.

That’s not the America I want for my two kids. Which is why I’m so grateful to President Trump and this Commission for working to preserve our cherished freedoms.

Free speech should not depend on the popularity of your views.

Religious Liberty should not be confined to zones.

And the First Amendment doesn’t end where a college campus begins.

Almost 250 years ago, our founders declared that our freedoms come not from government, but from God—and that government exists to protect those freedoms, not restrict them.

That's the America my parents came to. That's the America I love. And that's the America I want to help preserve.

Thank you.

KIMBERLEE WOOD COLBY

I would like to thank the Commission for holding these vital hearings on protecting religious freedom for all Americans, particularly the religious freedom of students on college and high school campuses. Thank you for inviting me to testify today.

As an attorney for the Christian Legal Society's Center for Law and Religious Freedom, I have worked for over 40 years to protect religious students' right to meet on college and high school campuses. Christian Legal Society, or "CLS," has law student chapters at approximately 130 public and private law schools nationwide. CLS student chapters typically are small groups of students who meet for prayer, Bible study, and worship. All students of any faith or no faith are welcome at CLS meetings. As Christian groups have done for 2000 years, CLS student chapters require their leaders to agree with the CLS statement of faith, signifying their agreement with the traditional Christian beliefs that define CLS.

Hundreds of thousands of college students meet on campuses nationwide in religious student groups. Some are church-affiliated, such as Catholic, Baptist, Lutheran, Assemblies of God, and Seventh-day Adventists. Some are nondenominational, including Cru, InterVarsity, and the Navigators. And some serve Jewish, Muslim, Hindu, and other students of faith.

Religious groups provide spiritual community for students and contribute positively to their campuses. Typically, these groups have religious leadership requirements that help "preserve the integrity of the group's religious identity and mission."¹

But for 50 years now, religious groups have been discriminated against on both high school and college campuses. School administrators tell religious groups they cannot meet on campus if they require their leaders to agree with their religious beliefs. According to these administrators, it is religious discrimination for a *religious* group to require its leaders to agree with its *religious* beliefs. But it is common sense—and basic religious freedom—for a religious group to expect the students who lead its Bible studies and prayers to share the group's religious beliefs. Indeed, 73% of Americans agree that a religious student group should not be kicked off campus for "requir[ing] its leadership to be members in good standing of its faith community."²

¹ Benjamin A. Fleshman, *How Do You Solve a Problem Like Martinez?*, 29 Tex. Rev. L. & Pol. (forthcoming 2025) (manuscript at 1), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5176047 ("For the student groups, this requirement is a critical expression of their faith designed to preserve the integrity of the group's religious identity and mission.").

² Becket Fund for Religious Liberty, *2022 Religious Freedom Index: American Perspectives on the First Amendment*, 4th ed. (Dec. 2022), at 34 (finding 73% support in the university setting and 72% support in the public high school setting), <https://becketnewsite.s3.amazonaws.com/20221207155617/Religious-Freedom-Index-2022.pdf>.

1. Two cases exemplify the exclusion religious student groups face because of their leadership requirements.

University of Iowa: The University of Iowa recognizes over 600 student organizations. A student group must obtain recognition from the university in order to reserve meeting space, communicate with fellow students through the school’s website and activity fair, and apply for student activity fee funding. Without recognition, it is virtually impossible to exist on campus.

Since the 1980s, a CLS student chapter has been recognized at the University of Iowa. Beginning in 1999, on at least 4 occasions, CLS was threatened with derecognition because of its statement of faith. Each time, the University backed down and said CLS’s religious standards did not violate its nondiscrimination policy.

But that changed in 2017 when a student applied to be a leader of Business Leaders in Christ, or BLinC. During the interview process, the student made clear that he disagreed with, and would not abide by, BLinC’s religious beliefs regarding marriage and sexual conduct. He was told he was welcome to remain a member—but not a leader. In response, the student did the right thing and formed his own religious student group with beliefs he favored. The University recognized his group. Regrettably, however, the student filed a discrimination complaint with the University, which revoked BLinC’s recognition.

The University then launched an inquisition into other religious groups on campus. InterVarsity Christian Fellowship was quickly derecognized. After months of trying to reason with University officials, both BLinC and InterVarsity asked a court to protect their First Amendment rights.

During litigation, the University produced a remarkable document, listing the student groups that would be derecognized if the court ruled in favor of the University. The 32 student groups on the chopping block were religious, including Jewish, Muslim, Sikh, Baha’i, and Christian student groups. The only religious group not threatened with derecognition was the religious group founded by the student who complained against BLinC.³ After four years of litigation, the courts required the University to restore recognition.⁴

California High School: For nearly two decades, students had met at Pioneer High School in San Jose, California, as a chapter of the Fellowship of Christian Athletes or “FCA.” Student leaders, but not members, were required to agree with FCA’s religious beliefs.

³ The court document is at https://becketnewsite.s3.amazonaws.com/2019-02-01_UI-Notice_and_RSO-Registration-List.pdf. Excluded groups included: Chabad Jewish Student Association; Christian Legal Society; Christian Medical Association; Cru; Hillel; Imam Mahdi Organization; J. Reuben Clark Law Society; Latter-day Saint Student Association; Muslim Students Association; Multiethnic Undergrad Hawkeye InterVarsity; Newman Catholic Student Center; Orthodox Christian Fellowship; Sikh Awareness Club.

⁴ *Business Leaders in Christ v. Univ. of Iowa*, 991 F.3d 969 (8th Cir. 2021); *InterVarsity Christian Fellowship/USA v. Univ. of Iowa*, 5th F.4th 855 (8th Cir. 2021). See also, *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 534 F. Supp. 3d 785 (E.D. Mich. 2021) (Wayne State University’s derecognition of InterVarsity, which had been on its campus for 75 years, violated First Amendment).

In April 2019, a teacher posted FCA's religious beliefs regarding marriage and sexuality on his classroom whiteboard. Next to FCA's beliefs, he wrote, "I am deeply saddened that a club on Pioneer's campus asks its members to affirm these statements. How do you feel?" The two FCA student leaders sitting in his class were insulted and deeply hurt to see FCA's religious beliefs being publicly disparaged by their teacher during class.⁵

The school "Climate Committee" determined that FCA's requirement that its leaders agree with its religious beliefs clashed with the "core values of [Pioneer High School] [such as] inclusive[ness] [and] open-mindedness." The District revoked FCA's recognition.

At the beginning of the next school year, the FCA students again sought recognition. Their request was denied. However, the new Satanic Temple Club was recognized the same day. FCA students continued to meet unofficially but were denied the benefits of recognition. Throughout that school year, student protestors disrupted FCA meetings. Other students harassed FCA student leaders in the hallways. The school newspaper harassed the students by taking hundreds of close-up photos of students attending an FCA meeting. Daily, the FCA student leaders dreaded going to school.

After trying to reason with their school, two student leaders and FCA sued under the Free Speech and Free Exercise Clauses, as well as under the federal Equal Access Act of 1984. The school district claimed that its nondiscrimination policy outweighed the students' rights.

The district court sided with the school district. But on appeal, a 3-judge panel and an 11-judge panel, ruled in favor of the FCA students. After four years of negotiations and litigation, FCA was finally again recognized.⁶

2. In the mid-1990s, education officials turned from the Establishment Clause to nondiscrimination policies to justify their discrimination against religious student groups.

In the 1970s, school administrators began to discriminate against religious student groups. University of Missouri administrators denied a religious student group recognition and meeting space because its meetings included religious worship and teaching. Providing an empty classroom's heat and light to a religious group, in the University's view, violated the Establishment Clause. In 1981, the Supreme Court rejected this twisting of the Establishment Clause. Instead, it ruled that freedom of speech and association required the University to recognize religious student groups.⁷ In 1995, the Court similarly required the University of Virginia to give religious student groups the same access to student activity fees that other groups enjoyed.⁸

⁵ *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Ed.*, 82 F.4th 664, 672-679 (9th Cir. 2023) (en banc).

⁶ An FCA student chapter was derecognized at a Washington, D.C. public high school after a teacher filed a discrimination complaint against the group because of FCA's religious beliefs. *Fellowship of Christian Athletes v. District of Columbia*, 743 F. Supp. 3d 73 (D.D.C. 2024) (derecognition violated the Religious Freedom Restoration Act and the Free Exercise Clause).

⁷ *Widmar v. Vincent*, 454 U.S. 263 (1981).

⁸ *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995).

Congress required public high schools to allow religious student groups to meet when it passed the Equal Access Act of 1984.⁹ The Supreme Court upheld the Act and gave it a broad interpretation to end school officials' discrimination against religious students.¹⁰

With the Establishment Clause no longer a credible mechanism for discriminating against religious groups, some administrators turned to nondiscrimination policies to exclude religious groups. Nondiscrimination policies intended to *protect* religious students on campus were misused to *punish* students for being religious.

3. In 2010, a closely divided Supreme Court blindsided religious student groups in *Christian Legal Society v. Martinez*.¹¹

A CLS student chapter turned to the Supreme Court when it was denied recognition because a law school claimed its religious requirements for its leaders violated its nondiscrimination policy.¹² But rather than address whether the school's *written* nondiscrimination policy could be used to deny CLS recognition, the Court sidestepped the issue by focusing solely on an *unwritten* and novel "all-comers" policy that first appeared during litigation. The law school claimed its "all-comers" policy denied to all student groups the right to have belief-based leadership requirements. Purportedly, the "Democratic Caucus cannot bar students holding Republican political beliefs from . . . seeking leadership positions."¹³

Justice Ginsburg's majority opinion was joined by Justices Stevens, Kennedy, Breyer, and Sotomayor. Justice Ginsburg emphasized that the Court was not ruling on the law school's nondiscrimination policy, as written, but only on the novel "all-comers" policy. The Court said that an "all-comers" policy was constitutionally permissible, but not required. The Court held that the "all-comers" policy must be applied uniformly to all student groups and sent the case back for the lower courts to determine whether the law school had selectively enforced its "all-comers" policy, which would be unconstitutional.¹⁴

Justice Alito, joined by Chief Justice Roberts and Justices Scalia and Thomas, dissented. They explained that a nondiscrimination policy could not violate a religious student group's free speech and association.¹⁵ They believed the "all-comers" policy was pretextual and selectively enforced.

In reality, "all-comers" policies are virtually non-existent because they are inherently unworkable. An "all-comers" policy must be applied uniformly and without exception to all

⁹ 20 U.S.C. §§ 4071-74.

¹⁰ *Board of Education of Westside Comm. Sch. v. Mergens*, 496 U.S. 226 (1990).

¹¹ *Christian Legal Society, Chapter at University of California, Hastings Law School v. Martinez*, 561 U.S. 661 (2010). For a detailed analysis of the numerous flaws in the *Martinez* decision, see U.S. Commission on Civil Rights, *Peaceful Coexistence: Reconciling Nondiscrimination Principles with Civil Liberties* 181-212 (2016) (statement of Kimberlee Wood Colby), <https://www.usccr.gov/files/pubs/docs/Peaceful-Coexistence-09-07-16.pdf>.

¹² At the time, CLS required leaders and members of its law school chapters to agree with its Statement of Faith but has since changed its policy to require only leaders to agree.

¹³ *Martinez*, 561 U.S. at 675.

¹⁴ *Id.* at 697.

¹⁵ *Id.* at 706, 738 (Alito, J., dissenting).

student groups. Schools cannot do this because they are unwilling to shut down fraternities and sororities that select leaders and members on the basis of sex.

Scholars have characterized *Martinez* as an “outlier” and “an anomalous exception.”¹⁶ Leading religious freedom scholars have criticized the Court’s disturbing departure from 30 years of decisions protecting students’ free speech and association.¹⁷

Indeed, only two years after *Martinez*, the Court unanimously upheld religious organizations’ right to choose their leaders without interference from federal nondiscrimination laws.¹⁸ The Court acknowledged that nondiscrimination laws are “undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission.”¹⁹

4. Many schools have relied on *Martinez* to justify their discrimination against religious student groups.

A recent, comprehensive study “confirms that in the fifteen years since *Martinez*, more than twice as many religious student groups have been derecognized than in the twenty years beforehand.”²⁰ In addition, “more than three times as many student groups have faced intense pressure from their schools because of their religious membership or leadership criteria.”²¹ As the study concludes, “*Martinez* may not have started the fire. But it *did* pour on the gasoline, leading to an explosion of derecognitions across the United States.”²²

¹⁶ Thomas C. Berg, *Religious Liberty in a Polarized Age* 102-103 (2023) (“The Court has ruled that the government can’t exclude religious groups because of their speech but can exclude them because they use religiously based criteria to select their leaders—the very persons who present the group’s speech.”).

¹⁷ See, e.g., Michael W. McConnell, *Freedom of Association: Campus Religious Groups*, 97 Wash. U. L. Rev. 1641 (2020); Michael Stokes Paulsen, *Disaster: The Worst Religious Freedom Case in Fifty Years*, 24 Regent U. L. Rev. 283, 296-301 (2012); John D. Inazu, *Justice Ginsburg and Religious Liberty*, 63 Hastings L.J. 1213, 1233-1242 (2012); John D. Inazu, *The Unsettling “Well-Settled” Law of Freedom of Association*, 43 Conn. L. Rev. 149, 196 (2010); Richard W. Garnett, *Religious Freedom and the Nondiscrimination Norm*, ch. 4 in Austin Surat, ed., *Legal Responses to Religious Practices in the United States* 194, 197 (Cambridge Univ. Press, 2012); Douglas Laycock, *Sex, Atheism, and the Free Exercise of Religion*, 88 U. Det. Mercy L. Rev. 407, 428-29 (2011); Mary Ann Glendon, *Religious Freedom: A Second-Class Right?*, 61 Emory L. J. 971, 978 n.26 (2012); Carl H. Esbeck, *Defining Religion Down: Hosanna-Tabor, Martinez, and the U.S. Supreme Court*, 11 First Amendment L. Rev. 1 (2012); William E. Thro & Charles J. Russo, *A Serious Setback for Freedom: The Implications of Christian Legal Society v. Martinez*, 261 W. Educ. L. Rep. 473, 481-95 (2010).

¹⁸ See *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732 (2020); *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Ind. Rev. Comm.*, 605 U.S. 238 (2025); Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000e-1(a) (religious associations’ right to employ only “individuals of a particular religion”); 2000e-2(e)(2) (same for religious educational institutions); 2000e-2(e)(1) (any employer with a bona fide occupational qualification). See also, *Of Priests, Pupils, and Procedure: The Ministerial Exception as a Cause of Action for On-Campus Student Ministries*, 133 Harv. L. Rev. 599 (2019).

¹⁹ *Hosanna-Tabor*, 565 U.S. at 196

²⁰ Fleshman, *supra* note 1, (manuscript at 2).

²¹ *Id.*

²² *Id.* (manuscript at 20) (emphasis in original).

Many education officials view *Martinez* as a green light to exclude religious groups. Some claim to have an “all-comers” policy even though they don’t. Others believe that *Martinez* approved using nondiscrimination policies to exclude religious groups. It did not.

Martinez has done serious harm to religious students. When a recognition issue arises, negotiating with administrators can consume an entire academic year. The derecognized group experiences great difficulty reaching new members and organizing activities.²³ “Derecognition challenges the validity of the group and its beliefs, branding the group and its members with the stigma of official disapproval.”²⁴ Student governments conduct inquisitions into religious student groups’ beliefs.

Student leaders are distracted from their coursework. Many fear that defending their disfavored religious beliefs will harm their grades, consideration for honors and scholarships, and graduate school or job references.²⁵

Litigation, which is lengthy, burdensome, and costly, is particularly unattractive when students are unlikely to see its fruits during their short time at the school. After *Martinez*, litigation requires extensive discovery to show selective enforcement or pretext.²⁶ Student leaders are subject to grueling depositions, facing hours of hostile questions about their religious beliefs.

5. Religious groups benefit students and their campuses.

Religious student groups contribute immense good to their campuses. They enhance genuine campus diversity. But more importantly, they provide emotional and spiritual support for the students who participate in their activities. Their weekly meetings provide a spiritual home for students adjusting to college for the first time. They provide a place where students can be open about their faith (and their doubts) and learn what faith teaches about problems they face.

According to a 2019 Pew Research Center report, “[p]eople who are active in religious congregations tend to be happier and more civically engaged than either religiously unaffiliated adults or inactive members of religious groups.”²⁷ It notes that “one factor may be particularly

²³ *InterVarsity Christian Fellowship/USA*, 5 F.4th at 862 (8th Cir. 2021) (“InterVarsity struggled with recruiting members, organizing activities, and spent money and other resources in fighting its deregistration.”).

²⁴ Fleshman, *supra* note 1 (manuscript at 32). For a powerful, first-person account of the stigma attached to derecognized religious student groups, see Tish Harrison Warren, *The Wrong Kind of Christian*, Christianity Today (Aug. 27, 2014) (Vanderbilt University “[a]dministrators compared Christian students to 1960s segregationists.”), <https://www.christianlegalsociety.org/wp-content/uploads/2025/08/Christianity-Today-Article.pdf>.

²⁵ Student testimony concerning such negative effects appears in *First Amendment Protections on Public College and University Campuses: Hearing Before the Subcomm. on the Const. & Civil Justice of the H. Comm. on the Judiciary*, 114th Cong. 94808 (2015), <https://www.govinfo.gov/content/pkg/CHRG-114hhrg94808/pdf/CHRG-114hhrg94808.pdf>. The students’ statements are at <https://bit.ly/39Dg1EL> (pp.48-75).

²⁶ In one case, “over 23,000 pages of documents were exchanged during litigation and eight depositions were taken” along with “two motions for preliminary injunction, cross-motions for summary judgment, and an appeal.” Order, *BLinC v. Univ. of Iowa*, 3:17-cv-00080 (S.D. Ia. Nov. 10, 2021), ECF No. 147, at 3.

²⁷ Pew Research Center, *Religion’s Relationship to Happiness, Civic Engagement and Health Around the World: In the U.S. and Other Countries, Participation in a Congregation is a Key Factor* 5 (2019), <https://www.pewresearch.org/wp-content/uploads/sites/20/2019/01/Wellbeing-report-1-25-19-FULL-REPORT-FOR-WEB.pdf>.

important: The social connections that come with regular participation in group events, such as weekly worship services, Bible study groups, Sabbath dinners and Ramadan iftars.”²⁸ Another study concluded, “[r]eligious participation on campus is itself a form of social integration. Faith communities are instrumental in the formation of friendships and intimacy with other people, and these supportive networks, in turn, provide a wide range of psychological and spiritual benefits.”²⁹

Religious participation “improves academic performance of [high school] kids from all social class backgrounds by boosting their grades and preparing them for college.”³⁰ And “[a]s emerging adults, [religiously intense students] experienced few symptoms of emotional, physical, and cognitive despair.” Other “research focused on student involvement in college suggest[s] that quality involvement leads to higher levels of student learning and development.”³¹

Religious groups are one part of the solution to the loneliness epidemic young people face. A 2023 Harvard report on young adults’ loneliness offered this conclusion:

[W]hile we are not arguing here for or against young people becoming more religious, there are important structures, traditions, and practices in many religious communities that create meaning and purpose, that enable young people to feel part of a larger human experience that transcends their achievements, and that mitigate loneliness. We need to more intentionally cultivate these practices in secular life.³²

Finally, our civil society benefits when religious student groups are welcome to campus. The lessons taught *and modeled* on campus about free speech and free exercise of religion permeate our broader civil society. Colleges must *model* for their students the crucial lesson that the First Amendment protects every person’s free speech and religious exercise, especially the speech and beliefs of those with whom we disagree. Cancelling a religious student group because of its religious beliefs is precisely the wrong lesson for school administrators to teach students.

And what lesson are international students learning when they see American government officials dictating to religious student groups what qualifications they may—and may not—have

²⁸ *Id.* at 12.

²⁹ Alyssa N. Bryant, *The Effects of Involvement in Campus Religious Communities on College Student Adjustment and Development*, 8 J. of College & Character 1 (2007).

³⁰ Ilana M. Horwitz, *God, Grades, and Graduation: Religion’s Surprising Impact on Academic Success* 175 (2022); *id.* at 176 (calling for “an openness by college admissions counselors to view religious and ideological diversity as valuable when admitting applicants.”).

³¹ Cindy A. Kilgo *et al.*, *The Estimated Effects of College Student Involvement on Psychological Well-Being*, 57 J. of Coll. Student Dev. 1043 (Nov. 2016).

³² Richard Weissbourd, *et al.*, Harvard Grad. Sch. of Ed., *On Edge: Understanding and Preventing Young Adults’ Mental Health Challenges* 4 (2023), <https://mcc.gse.harvard.edu/reports/on-edge>. See Horwitz, *God, Grades, and Graduation*, at 179-80 (“As emerging adults, [religiously intense students] experienced fewer symptoms of emotional, physical, and cognitive despair. . . . They feel less anxious, healthier, and more optimistic about life. . . . [They] are simply more resilient. This is driven by their involvement in a religious social community but also their steadfast belief in God.”).

for their leaders? Many international students come from countries where the government does just that. It is essential that they learn on American campuses that religious groups have the God-given right to determine their leadership without government interference.

6. Policy recommendations:

1. Congress should pass the Equal Campus Access Act (lead sponsors Senator Lankford and Chairman Walberg) to protect religious student groups on public college campuses.
2. The Department of Justice should urge the Supreme Court to overrule *Christian Legal Society v. Martinez* and *Employment Division v. Smith* (the case *Martinez* cites to deny CLS's free exercise claim) in all Supreme Court briefs involving religious organizations' right to determine their leaders and employees outside the education context. It should file Statements of Interest in any lower court case, either within or outside of the education context, in which a governmental entity invokes *Martinez* to justify its actions.
3. The Department of Education should strengthen current regulations (34 C.F.R. §§ 75.500 (d) & 76.500(d)) that protect religious student groups. These regulations were finalized in November 2020 but were threatened with rescission in 2023-24.
4. The Department should restore the religious leadership protections found in its 2020 *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools*, 85 Fed. Reg. 3257, 3272 (Jan. 21, 2020).

EXPERT GUEST

FRANCIS J. BECKWITH

Thank you, Chairman Patrick, and Vice-Chair Carson, for inviting me to address the Religious Liberty Commission this morning.

We are all familiar with those words that stand at the beginning of the First Amendment of the U.S. Constitution: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” But most of us are unfamiliar with the underlying reason why the Founding Generation was convinced that religious belief and practice should be singled out for special protections.

To help us grasp that underlying reason, we need to take a brief excursion into the other part of the First Amendment that prohibits the government “from abridging the freedom of speech, or of the press; or the right of the people to assemble, and to petition the Government for a redress of grievances.” The point of each provision—its underlying reason—is tightly tethered to what the Founding Generation believed was true about our nature as human beings. Because we have the power to reason, to engage in abstract thought, to communicate with others, to cultivate friendships, to participate in civic life, to build political alliances for the common good, and to seek and know the truth, the American Founders believed that the federal government ought to secure those rights that allow its citizens to exercise those powers that are essential to our pursuit of happiness. In other words, a world in which the people do not have the liberty to speak, to propagate and debate their beliefs in various media, to congregate in public and organize with their compatriots, or to effectively request from the political authorities remedies for wrongs done to them and their neighbors is a world that is inhumane and inimical to the common good. Thus, for the American Founders, their underlying reason for the First Amendment was ultimately grounded in *who and what we are*. This is why they sought, by means of the amendment, to insulate the most consequential aspects of a citizen’s political and social life from the incursions of a government that could use its powers to suppress dissent or enforce conformity.

The religion clauses were fashioned with the same underlying reason in mind. One can find it virtually everywhere in the early Republic, including in state constitutions and in the words of some of the most influential figures at the American Founding. The 1780 Constitution of Massachusetts, for example, affirms that “it is the right as well as the duty of all men in society,

publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments, provided he doth not disturb the public peace or obstruct others in their religious worship.”³³ One can find similar articulations of religious liberty in other early state constitutions as well.

In a notable passage in which he quotes George Mason, James Madison writes: “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.”³⁴ To say that a right is unalienable is to say that it is inherent to our nature; that it is neither merely a precept issued by government fiat nor just an idiosyncratic construction of American culture. This is why the Founders concluded that as a matter of public justice the government should by its laws protect that unalienable right. So, just like the part of the First Amendment that protects freedom of speech, freedom of the press, freedom of assembly, and freedom to petition the government, freedom of religion is grounded in a recognition of something true about human beings: we have a natural inclination toward the transcendent source of all that exists, combined with a sense that having a right relationship to that transcendent source is essential to our temporal happiness and our eternal fate. Or, as St. Augustine once put it: “You have made us for Thyself, and our heart is restless until it rests in thee.”

There are, of course, a few of our fellow citizens who reject religion entirely, often claiming that they can neither detect in their own hearts any inclination to the transcendent nor feel the pull of any duty to their Creator. But they are, nevertheless, protected by the same First Amendment as well, since religious liberty as a right does not depend on whether you as an individual believe you have a duty to a divine sovereign, just as the freedom of speech does not depend on whether you have anything controversial or interesting to say. What the freedom of religion recognizes is something true about human life and civilization that is universal and undeniable, even if there are particular instances that we acknowledge as exceptions. To use an analogy: just because not everyone falls in love, doesn’t mean love isn’t real or is not entitled to special legal recognition when it results in a marriage or the gift of children.

³³Constitution of Massachusetts (1780), Part the First, Article II, <http://www.nhinet.org/ccs/docs/ma-1780.htm>

³⁴James 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>

Given their experience under British rule and what they knew about the historical record of religious persecution in Europe that accelerated significantly after the Reformation, the American Founders wanted to forge an understanding of religious liberty that rejected both religious indifferentism and theocracy. Madison, for example, recognized that one's duty to God takes precedence over one's temporal obligations: "Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe."³⁵ Thus, 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."³⁶ This idea eventually becomes an integral part of American constitutional law in cases involving the ministerial exception,³⁷ church autonomy,³⁸ and parental rights.³⁹

What also stands out about this 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 equally rational and informed citizens can come to different and sometimes contrary conclusions without being wicked, stupid, or insincere. It is something we readily recognize in so many other areas of life. But because many of us think that the stakes are so much higher when it comes to religious belief and practice, we often find it difficult to cultivate in ourselves sympathy for those whose faith we don't share. Madison, recognizing this difficulty, reframes it by suggesting that one's disrespect for another citizen's religious conscience may not be looked upon too kindly by God on Judgment Day. Writes Madison:

³⁵Madison, *Memorial and Remonstrance*.

³⁶Madison, *Memorial and Remonstrance*.

³⁷See *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission* 565 U.S. 171 (2012); *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. ____ (2020); *DeMarco v. Holy Cross High School* 4 F.3d 166 (2nd Cir. 1993); *Orr v. Christian Brothers High School Inc.*, 9th Cir., No. 21-15109 (Nov. 23, 2021).

³⁸See *Watson v. Jones* 80 U.S. 679 (1871); *Kedroff v. St. Nicholas Cathedral* 344 U.S. 94 (1952); *Serbian Eastern Orthodox Diocese for United States and Canada v. Milivojevic*, 426 U. S. 696, 715, n. 8 (1976) ("It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own" (quoting *Watson v. Jones*, 13 Wall. 679, 729 (1872))

³⁹See *Meyer v. Nebraska* 262 U.S. 390 (1923); *Pierce v. Soc'y of Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925); *Wisconsin v. Yoder* 406 U.S. 205 (1972). "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." *Pierce*, 268 U.S., 535 (1925). "[T]he Court's holding in *Pierce* stands as a charter of the rights of parents to direct the religious upbringing of their children." *Wisconsin*, 406 U.S., 233 (1972). See also, *Mahmoud v. Taylor*, 606 U.S. ____ (2025) (Court appeals to *Pierce* and *Wisconsin* as precedents to establish the rights of parents to remove their children from sex education classes or lessons that are contrary to their religious beliefs).

Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to man, must an account of it be rendered.⁴⁰

For figures like Madison in the founding generation, each citizen has two sets of duties to two different sovereigns, God and government. But because our duty to God is a matter of “conviction and conscience,”⁴¹ and because it is outside the jurisdiction of the state unless it puts at risk civil peace, the end of any just law or constitutional provision to safeguard religious freedom must ensure for the citizen that there are as few conflicts as possible between these two sets of duties.

We, of course, no longer live in the world of the American Founding in which the religious divisions within the country were almost exclusively between differing confessional traditions of Protestant Christianity, with Catholics and Jews making up a small percentage of the nation’s inhabitants. But over time as the U.S. expanded in size and population, it not only became more religiously diverse, the beliefs and practices of its elite class—in the academy, the arts, media, and public education—became in general more secular and less welcoming of serious religious voices that dissented from the pieties of 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 all of today’s religious liberty conflicts seem not to cut across conventional religious lines as they once did at the American Founding and well into the 20th century. Rather, they reflect deep divisions between the moral convictions of a secular elite and the moral convictions of religious citizens across a diversity of faith traditions. We have seen this phenomenon played out in recent years in a variety of Supreme Court cases, including *Masterpiece Cakeshop*,⁴² *Hobby Lobby*,⁴³ *Carson v. Makin*,⁴⁴ *Little Sisters of the Poor*,⁴⁵ and *Mahmoud v. Taylor*.⁴⁶ These cases involved governments that refused to accommodate the convictions of religious citizens on matters on which almost all faith traditions have for millennia issued authoritative pronouncements: the nature of

⁴⁰Madison, *Memorial and Remonstrance*.

⁴¹Madison, *Memorial and Remonstrance*.

⁴²*Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm’n*, 138 S. Ct. 1719, 1723 (2018).

⁴³*Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

⁴⁴*Carson v. Makin*, 596 U.S. 15 (2022)

⁴⁵*Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 451 (2020)

⁴⁶*Mahmoud*, 606 U.S.

marital union, the sanctity of human life, the morality of reproductive technologies, and the obligations attendant to educating one's children.

What is particularly striking in these cases is how the advocates for the government's positions seemed incapable of envisioning how anyone could reasonably disagree with the burden the government sought to place on their religious compatriots. In two of these cases, public officials addressed their fellow citizens, who were exercising their First Amendment right to petition the government with their grievances, by hurling insults, imputing bad motives, and making other disparaging remarks about them. This is in stark contrast to the sort of public virtues that the American Founders sought to cultivate in their fellow citizens: epistemic modesty, respect for conscience and conviction, and proper regard for how one's neighbor understands her duty to God.

As you, the commissioners of this body, listen intently to the testimonies that we will witness today, I urge that you carefully consider how you may incorporate in your final report—which will be delivered to the President on the occasion of our nation's 250th anniversary—a recommendation that will encourage the federal government, through its many departments and agencies, to advance the spirit of the right to religious liberty endorsed by our Founders. Thank you.