



Presidential Religious Liberty Commission

First Hearing Transcript

June 16, 2025

Museum of the Bible

Washington, D.C.

Morning Hearings

Mary Margaret Bush (Director and Designated Federal Officer): Good morning. Welcome to the inaugural meeting of the White House Religious Liberty Commission. I'm Mary Margaret Bush, the commission's director, and it's my honor to officially announce the opening of our proceedings today. We're doing important work this morning and this afternoon. We encourage you to share the story on social media. But in order to maintain an atmosphere of civil discourse, we do ask that you refrain from flash photography. We also ask that you refrain from both applause and any other type of interjections during the proceedings. Now, without further ado, I'll introduce our chairman, the Lieutenant Governor of Texas, Dan Patrick.

Texas Lieutenant Governor Dan Patrick (Chair): Hey, everyone. Welcome. Good to have you here to this historic first meeting of the Presidential Commission on Religious Liberty. The meeting comes to order, and I would ask Bishop Barron to lead us in prayer to start—Bishop?

Bishop Robert Barron: Heavenly Father, King of the universe, Lord Most High, we give You thanks and praise for all Your gifts to us on this day, as our Commission on Religious Liberty commences its work. We thank you, Lord, for our country, which is based upon the acknowledgment that our freedoms and rights come from You. We ask You to guide our efforts, to grant us the wisdom, the prudence, the courage, and the charity that we need to accomplish our goal, which is the enhancement

of our first freedom: the liberty to worship You in accord with the dictates of conscience. We ask You to forgive our sins and to remove those prejudices and attachments that would prevent us from giving honor and glory to You in all things. We make all these prayers in Jesus' holy name. Amen.

Texas Lieutenant Governor Dan Patrick (Chair): To those of you watching online, welcome. And to those in the live audience, we appreciate you traveling here. A little background on “how did we get here?” On November 19th of last year, after the election, President Trump and I had a conversation. And in the conversation, we talked about establishing a presidential commission on religious liberty, that the time was right in this country to do so. On that first day, within a very few minutes, we said we wanted a committee of about 12 or 13. We have 13. We have a few who are traveling today. Cardinal Dolan sends his regrets. His train was canceled, so he's hoping to catch the second one out of New York. And Franklin Graham, Reverend Graham, and Eric Metaxas are in Europe. Their schedules were already committed in advance, but we have a committee, an outstanding committee, as you will meet and hear today. Then we said, “who do we want on that committee?” We want faith leaders. We want scholars. We want historians. We want people who have been to the Supreme Court and been involved in a number of cases on religious liberty. Once the president was sworn in and his staff was in place and the cabinet members were confirmed, we started in earnest working on this commission in March. It took us several weeks to write the executive order, and on May 1st, the National Day of Prayer, we were in the Rose Garden, many of us. And the commission was officially announced with the executive order and the members of the Commission. We also have advisory boards that are made up of scholars, historians, clergy that will advise us along the way. And some of those are here with us today. I want to thank Susie Wiles, the Chief of Staff to the President, who set up the Faith Office of which Paula White, who is with us, is the Senior Advisor to the President. And I want to thank Vince Haley. He's in charge of domestic policy, who has been instrumental in establishing this with Paula and the Faith Office. I want to thank Brittany Baldwin and Mary Margaret Bush, who created this set for us today. I want to thank the Museum of the Bible for allowing us to hold this hearing here. And we're going to have someone from the museum speak a little later in the afternoon about a fascinating story of the Bible in America. And most importantly, I want to thank the President for entrusting all of us, inviting all of us to serve, and for me to chair this great commission.

Our plan is to have 7 to 9 hearings. The next hearing will be in September, and you'll get notice on that in October, November, then in February, March and April.

And our charter clearly says we have two roles: that is to advise and report to the President. The Presidential Commission does not report to Congress, but the findings from our committees will be reported to the President to see what action would happen after that. So, with that, I'm honored to introduce our vice chair, Dr. Ben Carson, my longtime friend, and we're going to go around and have every member give opening remarks. And I'll introduce each of you after Dr. Carson. Dr. Carson.

Dr. Ben Carson (Vice Chair): Human beings are more than flesh and blood. We have a spiritual component that is recognized by all religions. If we had only evolved from a slime pit filled with promiscuous biochemicals, there would be no mechanism or reason for a spiritual component. And we would be like all other animals. That distinction is a privilege and has led to many different belief systems. Virtually all of which influence behavioral norms. Those behavioral norms help establish a moral code, which in turn promotes civilization. Imagine trying to live in a society with no moral code. This commission promotes freedom of beliefs and that spiritual aspect of our existence that advances civilization. We will strive to facilitate the maintenance of one nation under God, indivisible, with liberty and justice for all.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, Dr. Carson. Next is Bishop Barron. He's an author, speaker, theologian. Bishop Robert Barron. Reaches millions of people around the world on his Word on Fire ministry since 2023. Bishop Barron has served as the Bishop of the Diocese of Winona-Rochester in Minnesota. Bishop.

Bishop Robert Barron: Thanks very much. Good morning, everybody. It's a privilege to serve on this commission, as I do. So, I'm standing in the tradition of Father Hesburgh of Notre Dame, who I understand was on 16 separate presidential commissions back in the 20th century. So, I think it's an important role that a church person can play in this lively public conversation, and especially around this issue of religious liberty, which has been very important for the U.S. Bishops for the past many decades. I've served on our Committee on Religious Liberty for the past about five years. So, we've taken it very seriously. My own conviction is that we've got a very special battle today. There's a texture to the way religion is being attacked in our society—it's coming from a philosophy that Joseph Ratzinger, Pope Benedict XVI, called the "dictatorship of relativism." I'd call it the culture of self-invention: the complete prioritization given to individual autonomy, that we decide value, we decide meaning, we decide purpose. And I think that philosophy—which is becoming, as I say, increasingly influential in our society—rightly sees the classical religions as the chief opponent. Because we stand for objective moral values. We stand for God as the ground of those values. We stand for a sense of a stable human nature. And I think the rival philosophy rightly sees that as the opposition. I've been watching this develop over many years - I was bishop out in California for six years - an attempt to get religion out of public life. To get religion out of health care, out of education. So, I think that's the battle we're in. And it is a battle. Put it in very American terms: it's a fight for religious liberty — our first freedom. And so, both as an American and as a Catholic bishop, I'm delighted to be part of that struggle, that conversation. So, that's why I'm happy to be on this commission.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, Bishop. Carrie Boller, former Miss California USA and Miss USA first runner-up in 2009, Boller is the author of "Still Standing: The Untold Story of My Fight Against Gossip, Hate, and Political Attacks."

Carrie Prejean Boller: Can you hear me? Yes. Thank you, members of the Commission. I come before you not just to speak about a constitutional right, but about a sacred trust — religious liberty — rooted in the very soul of our nation. From the beginning, Christian faith shaped our understanding of freedom, law, and human dignity. The Declaration of Independence affirms that our rights come from our Creator — not from government, but from God Himself. George Washington, in his farewell address, spoke plainly: “All the dispositions and habits which lead to political prosperity — religion and morality — are indispensable supports.” He urged us not to suppose that morality could be maintained without religion. John Adams warned that our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other. And John Jay, our first Chief Justice, reminded us: “Providence has given our people the choice of their rulers, and it is the duty to prefer Christians for their rulers.” These weren’t abstract ideals. They were lived convictions. For nearly 200 years, schoolchildren across this country learned to read from the New England Primer, a Christian textbook which taught them not just the alphabet, but the Word of God, moral lessons, and prayers. This was not indoctrination — it was formation. It was understood that a free people must be a virtuous people, and virtue begins with truth. Since prayer and the Bible were removed from our schools, morality has dropped across America. Today, as our culture questions the very foundation we were built on, we must ask: Do we want to leave our children and grandchildren a nation our founders did not create? Because protecting religious freedom isn’t just about securing a right — it is about guarding the spiritual legacy that has held this country together since its birth. We have a moral and religious duty to ensure religious freedom in America. And with that duty comes hope: for America, for our future, and for the enduring strength of religious liberty. Thank you.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you. Carrie. Dr. Ryan Anderson is the President of the Ethics and Public Policy Center. He is also the author or co-author of five books, including several related to religious liberty. Dr. Anderson.

Dr. Ryan T. Anderson: Thank you. And it’s a real honor and privilege to get to serve on this commission, and I’m grateful to President Trump for the appointment. I just wanted to highlight four things that I hope we, as a commission, will be able to explore during the coming year. First are the philosophical and theological roots of religious liberty. I think it’s important to understand that religious liberty matters because religion matters — because we are creatures, and we owe obligations to the Creator. This is how James Madison put it in his Memorial and Remonstrance — that there’s a duty that we, as creatures, owe to the Creator. And that’s what then creates the rights amongst men, which governments are then instituted to protect. Second, I think it will be important for us to defend a robust scope of religious liberty. Too many voices recently have reduced it merely to the freedom of worship. Or you see it in mainstream media referred to as so-called religious liberty, “religious liberty” in scare quotes. Other voices want to say religious liberty is only for people of my particular confession — whatever that confession happens to be. And then I just think of the startling rise —

the resurgence — of antisemitism that we have seen, particularly on college campuses, particularly on elite college campuses. I think George Washington's letter to the Hebrew Congregation of Newport, Rhode Island, is so important. It's no longer that toleration is spoken of — right? He's digging at John Locke right there. The Jewish people get to exercise their inherent, natural rights. The U.S. government gives to bigotry no sanction, to persecution no assistance. So: a robust scope for religious liberty. Third, that we explore the new threats to religious liberty. I think what we're seeing right now — the primary threats to religious liberty — are unjust laws in the first place. And so exemptions from unjust laws won't be a sufficient remedy. We actually need to think through what just laws would look like. And then lastly — and Carrie just touched on this — the importance of religious liberty in the public square. This isn't merely the right to worship in the privacy of your chapel or your home, but to bring your religious values into the public square for discussions of public justice and the common good. I think the attempts to create what my old boss referred to as the naked public square — by some secularist voices — has been a disaster. It, in essence, is denying robust religious liberty to people of faith to exercise their religious liberty in the public square. So, I hope we can touch on all four of those things in the coming year. And again, it's a real honor to be able to serve the country in this way.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, Doctor. Kelly Shackelford, my longtime friend back in Texas, is President and Chief Executive Officer of First Liberty Institute. He's a constitutional scholar who has argued before the Supreme Court a number of times on religious liberty issues. Kelly.

Kelly Shackelford: There we go. Okay. Thank you, Mr. Chair. By God's grace, we live in the greatest country on the face of the earth. And the reason for that is how we were created — by people fleeing other countries, coming to this country for freedom. And not just freedom — religious freedom. You know, Quakers, Baptists, Anabaptists, Congregationalists, and so on — I mean, they wanted a country where they could live with the fullest free exercise of religion possible, where the government didn't interfere between them and their relationship with God. And that makes this country really unique. It's why we actually believe, as a country, that our freedoms — our rights — come from God, and no government can take those away. You don't see that around the world. Sometimes people ask, they say, "Well, I'm not religious — so should I care about this?" And the answer is absolutely. Our founders called this our first freedom because they understood: if you lose this freedom, you will lose all of your freedoms. The best way I can describe why that's true is this: the one thing a totalitarian regime will never allow is citizens who hold an allegiance to one higher than the government. So, whenever that type of power of coalescing comes together, the first flashpoint is always going to be religious freedom. And if you lose there, you will lose everything else. So, what we're really dealing with here is the precipice of all our freedoms. And, so, what an honor that we get to do this on behalf of the American people. It's already been mentioned by the Chair; our specific responsibility is to deliver advice and specific recommendations to the President on how to secure and advance religious

freedom for all Americans and I just think it's an honor to work together with all of you for the American people. Thank you.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, Kelly. Our next guest needs little introduction: Dr. Phil — best-selling author and, of course, host of a decades-long television show, often number one in the ratings everywhere it airs. His most recent book, “We’ve Got Issues: How You Can Stand Strong for America’s Soul and Sanity,” encourages Americans to reclaim the principles of hard work, independence, and faith. Dr. Phil.

Dr. Phil McGraw: Thank you, Mr. Chairman. God save these United States and this honorable Court. In God we trust — on all of our currency. These are words that our Founding Fathers used and have used throughout the infancy of this country. The American experiment was built on many bold ideas and none more radical than this: we have inalienable rights that come from God. Our founders foresaw that a power-hungry federal government might try to take those God-given rights from us, so they wrote protections against that into our founding documents. Chief among those were protections of religious liberty. Just as Kelly said, that’s the underpinning to everything else. Our founders didn’t view religion as a threat to liberty. They saw it as liberty’s guardian. They didn’t create a secular state, they created a free one, where faith could flourish and shape public life. They were right to be concerned, because today, religious liberty is under assault. Now, I’ve been a mental health professional for 50 years, and it is clear to me that the family unit is the backbone of any society, none more than American society, and that liberty to freely practice a religion of choice is critical, because it is the glue that can hold that family together. I further believe that the family is under attack now more than ever. We are in a cultural war, and not one among us can afford to be a noncombatant as we fight for the soul and sanity of these United States. We all have to pay attention to this because if this one goes — if the ideologues are able to pull the rug out from under religious liberty — everything else comes tumbling down. I’m really proud that we are here and have the opportunity to talk about this and protect this liberty. And this isn’t nondenominational — it’s multi-denominational. It is for everybody, every belief. And I just want to thank Chairman Patrick, Vice Chairman Carson — thank you. And, of course, above all, President Trump, for creating this commission. I hope we all rise to the occasion. Thank you.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, Dr. Phil. Pastor Paula White is the founder and president of Paula White Ministries and the National Faith Advisory Board. She is the teaching pastor at StoryLife Church in Orlando, Florida. Pastor White was an advisor to President Donald Trump in the Faith and Opportunity Initiative during his first term, and now she serves as the Senior Advisor to the White House Office of Faith, which is the first faith office ever established by any President in the history of the country, just steps away from the Oval Office. Paula.

Pastor Paula White: Thank you so much, Mr. Chairman. It's so good to be with everyone this morning and I am so grateful today to be a member of this Religious Liberty Commission — with such brilliant minds, servant leadership, and with righteous hearts. It's truly an honor and to serve as Senior Advisor to President Trump over the White House — and I would say, the newly created and historic, as the Chairman said — White House Faith Office, is truly a joy and a pleasure. Thanks to the leadership of President Trump, there is now a White House Faith Office solely dedicated to people of all faiths, with religious liberty as our bedrock. It is our top priority — it is what we work on the most. Jenny Korn is here in the audience, and she is our Faith Director, and also part of the advisory board of this Religious Commission. But not only Jenny — we now have six in the Executive Office of the President, and we have faith directors in every agency and department. As Chairman said, the President elevated this to the highest level. He wanted to make sure it wasn't just window dressing to be in the West Wing — but that it was priority to him. And that he wanted to make it such an important part to people in America. Religious liberty is the bedrock of the founding of our country. It allows freedom to practice our faith — and every one of us has that right, as we've heard from so many members here — to approach God and worship Him freely. That's what's made our country flourish from the very beginning. President Trump has tasked the White House Faith Office with ensuring that religious liberty is protected for future generations. President Trump has tasked the White House Faith Office with ensuring that religious liberty is protected for future generations. But we see that in recent years — some federal, some state — many people have. Kelly, my friend here, has fought so many times in the Supreme Court and fought for people who were violated for this. Local policies have threatened America's beautiful tradition of religious liberty, and that should not be so. Houses of worship have been attacked, have been shut down. Employees have been fired over their faith. Religious liberties, or religious entities, have been debanked. Parental rights have been violated. Who would have ever thought that in the very beginning, President Trump would have to pardon 23 pro-lifers for standing outside of an abortion clinic and praying silently? Or that the FBI would spy on our traditional Catholic Church? Or that a coach who would kneel on the side of a football field would have to fight all the way up to the Supreme Court to silently pray? I'm 59 years old, and that's not the America that I grew up in. We have a lot of work to do, and I believe that this task force will do it — or this commission will do it. As President Trump has said in his speeches and presidential documents, he is committed to vigorously enforce all federal laws protecting religious liberty. He'll defend that fundamental freedom with absolute devotion. And this commission will play a crucial role in helping the president fulfill these commitments. While the president and the White House Faith Office are working quickly to eradicate immediate threats to religious liberty, the commission will focus on long-term strategies to secure religious freedom for future generations. We will gather data, conduct legal analysis, hold public hearings to capture the stories of everyday Americans related to religious liberty. And this work will ensure that the administration has the best research, most comprehensive understanding of the current state of America's religious liberty in our nation's history. The hearings held, research conducted, and data gathered by this commission will be invaluable to President Trump. And it's so vitally important to him and to the White House Faith Office to develop and execute a long-term strategy to protect religious freedoms for all Americans of all faiths, for all times. And in conclusion, we must protect and defend our freedom to practice religion

with every single fiber of our being, to keep people and the country strong, without fear of government discrimination. All people of faith have the right to have their voice in government. Forty years of ministry now — I've been all over the world to almost 140 countries — and my greatest fight has been for religious liberty. It's an honor, Chairman.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, Pastor. Rabbi Meir Soloveichik. Rabbi.

Rabbi Meir Soloveichik: Thank you, Chairman Patrick, for your leadership. Thank you to Vice Chair Carson, and to my distinguished colleagues on this commission. I want to begin by expressing my gratitude to the President of the United States for charging us with this important task. In 1788, a parade was held in Philadelphia to celebrate Pennsylvania's ratification of the Constitution. It was attended by Benjamin Rush — Founding Father, famous physician, devout Christian, signer of the Declaration of Independence. Rush recorded an aspect of the procession that impressed him above all, which was the participation of the city's clergy which included three individuals walking together - what Rush described as, "the Rabbi of the Jews, locked in the arms of two ministers of the Gospel." Rush reflected that this was, "a most delightful sight. There could not have been a more happy emblem contrived of that section of the new Constitution which opens its powers and offices alike not only to every sect of Christians, but [to] worthy men of every religion," so Rush wrote. This event truly captured, I think, the uniquely American understanding of religious freedom, which is that it does not seek a secular civic space. It welcomes faith into society in all of its multifaceted forms — never asking of Americans that, if we seek to be part of the polity, we check our observances at the door. For to do so would be to amputate the most essential part of ourselves. We bring our faith with us into society, for it is faith that fuels and inspires and guides our engagement with the civic realm. his, of course — as my friend Dr. Anderson mentioned — is the essential difference between so-called freedom of worship, which implies that religion is reserved for the sanctuary, and the genuinely American form of religious liberty that we know as free exercise. Yet over the years, this important distinction — and the founders' approach to faith and freedom — has been lost, or ignored, or elided, or deliberately denied within the academy, in many state legislatures, and — for some period of time — the same could be said, consequentially, for the courts. Recently, the Supreme Court has paved a path to a more accurate and original understanding of the American conception of liberty, as well as the role of faith in the fabric of our society. But there remains so much work still to be done. Benjamin Rush tells us that at the parade, "the clergy formed a very agreeable part of the procession. They manifested," he wrote, "by their attendance, their sense of the connection between religion and good government." It is rediscovering this connection that is the calling of our commission — and I feel profoundly privileged to be a part of it. Thank you.

Texas Lieutenant Governor Dan Patrick (Chair): Allyson Ho is partner of Gibson, Dunn, & Crutcher. Allyson Ho has established herself as one of the United States’ premier appellate lawyers. She has presented over 100 oral arguments in federal and state courts nationwide, including five cases before the U.S. Supreme Court. Allyson.

Allyson Ho: Thank you, Mr. Chairman. I’m profoundly grateful to President Trump for establishing this important commission and deeply humbled to serve on it. The First Amendment is often called the first freedom because it’s the foundation of individual liberty in our great nation. Courage is often called the first virtue because it’s the one that guarantees all the rest. As an attorney, I’ve been blessed to advocate for everyday Americans who exemplify the first virtue — courage — by fighting for the first freedom, religious liberty, often at great cost to themselves, their families, and their livelihoods. But too often, the courage of these individuals is woefully lacking in the judges who decide their cases. Some judges hide behind procedural rules and judge-made doctrines to avoid deciding these cases at all. In one case, about a veteran’s memorial in the shape of a cross, a judge suggested that the defenders of the memorial should appease those it offended by, quote, “chopping the arms off the memorial cross.” That’s not the Babylon Bee — that’s an Article III judge. I pray this commission will serve with the courage of the everyday Americans who fight for our first freedom, of our president who has made the first freedom a cornerstone of his administration, and of our founders who established a priceless legacy of religious freedom. Thank you, Mr. Chairman.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, Allyson. As Chair of this committee, when we were in the Rose Garden with the President, I couldn’t help but think of where I grew up — 48 miles north of the Rose Garden in inner-city Baltimore, in a 12-foot-wide home with marble steps. And how did I get to the Rose Garden? As a kid, I never thought I’d even meet a President or ever visit the White House. And how was I selected for this? Only in America — and only through God. We have one of the most robust religious communities of faith anywhere in the world. Our religious faith in this country lifts up people. It funds hospitals and food pantries. It helps the homeless, those addicted to alcohol and drugs. A community of faith is a great thing, not a good thing. And our founders knew that. We should take stock of: Why did that happen in this country? Why in this country and no other place in the world? We are the leaders in our charitable giving to countries all around the world. We are the first ones there. It wasn’t an accident. It was by design. Our founders based a government built on the Bible that protects the individual and their freedoms and their liberty to worship God as they choose, or not at all if they choose. But individual rights. And they wrote the First Amendment to protect our unalienable rights and of free expression. But they were wise enough not to have a government that dictated or established a religion. That was their wisdom — but rather, let it be to each individual, on their own conscience and their own beliefs, of how they should worship and how they should pray. Then they guaranteed this magnificent inheritance of religious liberty to us all. And this commission, in part with the President’s guiding, is so that we all in America can reclaim that inheritance our founders gave us. The Declaration of Independence is consistent with the Bible,

and the Bible is consistent with the Declaration of Independence. But many Americans are rightly confused. They don't know, because of decades of court cases — that often were in direct opposition to what our founders believed and said — have taken away their religious liberty. Where can I pray? When can I pray? Who can I pray to? Because this commission is about all faiths. Can I wear a religious symbol to work, and will the boss tell me to take it off? And is that his right or my right? Will the HOA tell me I can't display a symbol based on my faith on my own property? The commission will answer those questions — and many more questions — over the next year. We want to let America know: you have a great inheritance of religious liberty. And this commission over this time will free you to be free to pray where and when you want. The Book of Jude is one of the smallest books in the Bible. It's only 600 words. It's next to Revelation at the end. And it's different from the other books, because the other Gospels were, for the most part, for nonbelievers. But Jude spoke to the believers, and there's a line in there that I love. He says: "We must contend earnestly." In modern-day parlance, that would be: We must fight for our right. This commission — on behalf of the President, the people of this country, and God Almighty — will contend earnestly for religious liberty. A little bit later, we will have a guest, our Attorney General. It will be the Attorney General, Pam Bondi. We serve under the Department of Justice, so we are honored that she will join us. As you can imagine, she has a very busy schedule, and she will join us sometime a little bit later this morning or early afternoon. With that, I want to call our first two witnesses: Mark Rienzi and Professor Gerard Bradley. Would you step up to the witness table? Mark Rienzi is CEO and President of Becket, a nonprofit public interest law firm dedicated to defending the religious freedom of people of all faiths. Mr. Rienzi has successfully argued a number of First Amendment cases before the Supreme Court. He is a professor at Catholic University of America, Columbus School of Law. Professor Gerard Bradley is a renowned legal scholar and Professor Emeritus at the University of Notre Dame Law School. As Director of the Natural Law Institute and co-editor of the American Journal of Jurisprudence, Professor Bradley has published over 100 scholarly articles on constitutional law, legal ethics, and legal philosophy. The way the hearing will proceed is each witness has ten minutes, and they have a clock in front of them, and they'll get a two-minute warning. If they need two more minutes, they'll both speak, and then after that we will open up for questions from our committee members. So, Mark...

Mark Rienzi: Thank you, Mr. Chairman. Thank you, Members of the Committee. It is an honor to speak with you this morning about religious liberty. Our American commitment to religious liberty is essential for four reasons. First, religion is part of our human nature. History teaches that humans seek God. We look for something greater than ourselves. We naturally ask questions that government can't answer — and shouldn't try to answer. Second, religious liberty is woven into our founding. Many who came to these shores were religious refugees — people fleeing persecution, trying to live out their faith. Their pursuit of religious freedom helped create America. Third, religious freedom is a powerful force for peace and pluralism. A nation that respects conscience — even when we disagree — is better equipped to handle difference without division. Religious liberty thus makes us stronger and more unified. Fourth, religious liberty is both the basis and the bellwether for all other human rights. It is often the first right to be attacked — and when it falls, others inevitably follow. But the

opposite is also true and right — that is, where religious liberty is protected, other rights flourish. Religious liberty is thus foundational. It protects the broader architecture of liberty and human dignity for everyone — religious or not. And that is precisely why this Commission’s work matters so much. You all have the rare opportunity to stand for a right that transcends political divides, that benefits everyone, and that reflects the very best of the American experiment. At the founding — just like today — this was a nation of people with deeply held and deeply divergent opinions. In Europe, people were killing each other over these disagreements, using the power of government to crush disfavored ideas and disfavored people. But the genius of the American approach is that we took those disagreements, and we harnessed them to create a system of freedom and pluralism by which we all benefit. Religious liberty is the centerpiece of that system. Most people throughout history have lived under regimes that stifled differing opinions on big questions like religion. But that is not the American way. Our founders recognized that we have rights — not as a gift from government — but from the God who created us in His own image. And at the top of that list, with only rare limitations, is the freedom to live out one’s faith. That commitment to human rights and religious liberty makes the United States a beacon of hope and freedom for the entire world. Of course, our pursuit of those ideals has been imperfect. At various times, we have discriminated against virtually every group of religious people. It is crucial that we learn from those mistakes. Two contrasting Supreme Court cases help illustrate how important it is to get religious liberty right — and how dangerous it is to get it wrong. The first is one they don’t teach much in law schools these days anymore, but they should: *Minersville School District v. Gobitis*. The case illustrates what I would call the government-control approach to religious liberty. The *Gobitis* case actually has its roots in Nazi Germany. As Hitler’s Nazi party was gaining power, they clashed with a small religious group that had come from America called the Jehovah’s Witnesses in Germany. The Witnesses refused to do the “Heil Hitler” salute to the Nazi flag. They thought it was the equivalent of worshiping a false idol. Not surprisingly, the Nazi government was not pleased. They threw many Witnesses into concentration camps. They took their children away, sent them off to German schools to make them good nationalist Germans. The Nazis had government control — they knew how to use it — and they did not brook dissent. Back here in America, the Jehovah’s Witnesses heard about all this. And though they didn’t think our government was anything like the Nazis, they eventually decided that they shouldn’t salute the flag either. And when two young schoolchildren, Lillian and Billy Gobitis, told their teacher that they couldn’t salute the flag because of their religion, the Supreme Court got its first flag-salute case. Sadly, and wrongly, the Court said that the government gets to control — even in matters of conscience. The Court said that religious liberty was important, but then it said that legislatures — and even school boards — get to choose and have the power to decide when to coerce violations of faith. The Court’s ruling set off a wave of violence against Jehovah’s Witnesses. They were physically beaten. They were dragged out of their houses, dragged into the streets, and forced to salute the flag. Their houses of worship were burned to the ground. They were shot at. One sheriff explained why he wouldn’t intervene to help them: “They’re traitors. The Supreme Court says so.” Thankfully, just three years later, the Supreme Court reversed itself in *West Virginia v. Barnette*. While *Gobitis* had embraced government control over everything — including your relationship with God — *Barnette* rejects that stingy view of liberty. Here’s the famous quote: “If there is any fixed star in our constitutional constellation, it is that no

official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion — or force citizens to confess by word or act their faith therein.” In short, the Court said that some things are beyond the reach of politics and government. The Bill of Rights must be respected and protected at every level of government and for every person. As you all frame the work you will do on this Commission, I urge you to embrace the principled Barnette approach to liberty. That is not always easy. Governments often think some other value ought to rank higher than respecting religious freedom — especially for someone with unpopular religious beliefs. Please do not accept the sacrifice of religious liberty for political convenience. Don’t accept the government-control approach of Gobitis. That is a cheap counterfeit of liberty. And you all were not called to this Commission to serve a cheap counterfeit of liberty. America’s overall story of religious liberty is quite positive. But since you asked for recommendations, let me give you three recent examples of places where our society has fallen short. After the October 7th terrorist attacks in Israel, many American college campuses succumbed to horrific antisemitism. Jewish students were harassed. Swastikas became common. At UCLA, there was a “Jew Exclusion Zone” in the heart of the campus. Shockingly, UCLA used its police force to turn Jewish students away rather than helping them through. In another case, courts recently turned their backs on the Western Apache people — refusing to protect a sacred site where they have practiced their faith for generations. Now that holy ground is in danger of being destroyed so that a foreign-owned company can extract copper from it. And you are likely familiar with the plight of the Little Sisters of the Poor — Catholic sisters who provide loving homes for the elderly. State and federal governments have been trying for more than a decade to force the sisters to help distribute contraceptives and abortion-inducing drugs. Even after three wins at the Supreme Court, the Little Sisters are still fighting hostile state governments in court today. The greatest and freest nation on the face of the Earth can do better than fostering antisemitism, destroying sacred sites, or pretending we need to force nuns to give out birth control. Governments and bureaucrats will always come up with some reason they don’t need to respect religion. This Commission should make clear that conscience is sacred, and you should call our great and diverse nation to work with our religious differences rather than stamping them out. Remember the example of George Washington: even when our nation’s very existence stood in the balance, he respected the religious conscience of Quakers who could not bear arms. This Commission should call us all to live up to that legacy. Let me make one closing point about why protecting religious liberty is so important. The entire edifice of rights in America is based on the understanding that God created humans free and equal, and that our God-endowed inalienable rights come from that intrinsic human dignity which every person shares. We see this argument in foundational American documents like the Declaration of Independence. It was also the basis for the Quakers’ early petitions against slavery — petitions they were only around to make because of our early commitment to religious liberty. The late Rabbi, Lord Jonathan Sacks of the UK, put it this way when receiving the Canterbury Medal for Religious Freedom: “In America, the Tree of Liberty has religious roots. Don’t think you can sever those roots and have the Tree of Liberty survive.” Religion and religious liberty give us a foundational commitment of equal respect and human dignity for everyone — including the people with whom we disagree. If religion and religious liberty are wiped away, there is no reason to expect that people will operate from that same foundation of equal respect for the human dignity of all — especially when we disagree. We

don't want to live in that nasty world. And we don't want to leave it to our children and grandchildren either. The great American commitment to liberty means there are places in our lives where the government is not allowed to go. There are rights that the government is not allowed to take away. No other country in human history has protected human rights the way America has — and no other right is more essential to the perpetuation of that system than religious freedom. For all. That is the legacy of liberty to which all Americans are heirs. That is the legacy of liberty that all human beings deserve. May God bless the work of this Commission to advance and strengthen that legacy for future generations. Thank you.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, Mark. We will hold questions until our second witness, Gerard Bradley. Gerard.

Dr. Gerard Bradley: Thank you, Governor Patrick, and members of the commission. America's founders were pioneers of religious liberty. Unlike practically all societies before theirs, they rejected top-down control of the people's religion through princely imposition, or by the union of altar and throne, or by enforcement of some eclectic civil religion, or by all three, as in England circa 1776. The idea here, in these societies, was political prosperity through religious unity. Now, unlike most free societies after theirs, our founders did not secure religious liberty by erecting what Ryan Anderson's old boss, Richard Newhouse, dubbed the "naked public square" — a secularized space from which religion is banished. The idea here is political prosperity without religion. This idea was the Supreme Court's mid-20th-century point of departure, starting in earnest with the school prayer case in 1962. The founders rejected these false alternatives. For them, it was not either public religion without freedom or freedom without public religion. The founders went all in on both, and they steadily maintained — in the words of the First Congress, which wrote the religion clauses into the Bill of Rights — that religion was necessary to both the happiness of mankind and to good government. America's founders launched an epochal, novel experiment in human rights and civil liberty. An experiment which, by world-historical standards, has been a singular success. Now, what emboldened our founders to blaze the path of religious freedom? They were political savants, to be sure, but they knew their history too. They knew that the politically savvy move was to control religion from the top down. So, again, where did their extraordinary political courage come from? Well, their trust in Divine Providence is surely one reason. But Providence is fully compatible with human persons' free cooperation in God's plan. Indeed, Providence presupposes that freedom. God helps those who help themselves. The founders chose freely and without precedent the epochal, uncharted path of freedom, with eyes wide open. But why did they do that? Because they were convinced that government's obligation to preserve and protect religious liberty is true...is a true principle of justice and political morality. Freedom of religion for all is the only valid conclusion they could draw from a series of truths they held most firmly — though I think not, as a matter of fact, self-evidently. Call the nest of these truths, these propositions, the moral foundations of religious liberty. Now, where shall we look for a compact expression of them — those moral foundations? Well, we could look to the founding

generation's preeminent guide to constitutional meaning, to the guiding force behind our First Amendment, and to the author of what Supreme Court justices, liberal and conservative, have all treated as the Magna Carta of American religious liberty. I speak not of three men here, but of one: James Madison. And I speak of his 1785 pamphlet *Against the Virginia Tax for the Support of Ministers* — the pamphlet called the *Memorial and Remonstrance*. And indeed, I'll just talk about the very first paragraph of it. Madison wrote that religious liberty is not about the sovereignty of the human person, what we might call subjective right, much less was religious liberty about that idiosyncratic creativity expressed by the Supreme Court in 1992 in its infamous — or famous — mystery passage. For Madison and the founders, there was a sovereign in the picture — an omniscient and good one. Madison wrote: "Before any man can be considered a member of civil society, he must be considered as a subject of the Governor of the Universe." Now, this subject was not, for Madison or the other founders, a law unto himself. Religious liberty, as an inalienable right... or was an inalienable right because, Madison wrote: "What is here a right towards men is a duty towards the Creator." This obligation is not like other important moral duties, which one fulfills by inaction — "Thou shalt not." This duty to the Creator is a much heavier lift, and it's inalienable for a second reason, Madison wrote, because: "The opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men." This freedom of conscience...conscientious belief is not a license for indifferentism. It is an overriding moral call to knuckle down and get serious, to do some very hard thinking about divine realities. Central to religion is one conscientiously judging what is the case about ultimate matters — and then acting according to what one judges to be the case. Now, this obviously can only happen if people are free of coercion and manipulation. Madison wrote: "It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to Him." This is a duty that can only be fulfilled by free thought, judgment, decision, and subsequent action of each person. No one can perform it for you. If you don't do it, it don't get done. Now note well: these moral foundations were not held by the founders as truths of religion. That was about what the denominations and the sects taught: revealed doctrines, the deliverances of prophets and sacred texts, ceremonies and charisms and church precepts. The moral foundations to religious liberty, as we find them in Madison and across the founding, comprises truths about religion, about divine realities, human intelligence and free choice, and the political common good. These, the founders thought to be truths to be accessible to unaided human reason. They are really more truths of political theory...or actually, of philosophy, not religion. So, for that reason, there can be no sound argument — none that I can think of — that recovering these moral foundations of religious liberty, these truths about divine realities, human life, and the political common good, amount themselves to some sort of religious establishment. And we certainly should not suppose that Madison, for example, was foolish enough to argue for religious liberty in the *Memorial and Remonstrance* on grounds that would sound to people like a religious establishment. Now, the founders resolved to let the spirit of human inquiry and judgment blow where it wills. In the end, because they were obliged to do that. Obligated not by superior force or even (so far considered) by any revealed or revelatory act of God within human history. The founders were obliged by reason and conviction. They were compelled by truth. Now, the founders recognized two entailments, I'll call them, of what they wrought, their settlement, their experiment in religious liberty.

One thing they recognized is this: unleashing the potentially disruptive forces of felt spiritual imperatives is risky. It is. So, risky that no polity before theirs ever did it. Second, the founders recognized that in a free society like ours, the restraint, the virtue, really, necessary to good order has to come from the character of the people, not from government dictates. At the intersection of these two lines of thought, these two entailments, stood religion. The founding generation all but universally held that the political common weal...the common good...depended upon the piety of the people. This is the message not only of Washington's justly famous Farewell, the message of John Adams, it's the message also of Thomas Jefferson and pretty much everybody else at the founding. This pervasive judgment that religion supplies the ground for virtue and virtue is necessary for freedom...this pervasive judgment, I would say, is not quite a moral foundation of religious liberty. I'd rather think of it as a morally adjacent truth of political wisdom. But there it is, nonetheless. Now someone might now rehearse an anti-establishment objection and serve it up right here against what I've been saying. Someone might say: these affirmations about divine realities, etc., if they are a basis for government action, lack a secular purpose, which is required for every government action. Now, this was indeed a demand for an unfortunate season of the Supreme Court's late...and I dare say, unlamented...Establishment Clause test: the infamous three-part Lemon Test, which was a gigantic mistake. Which Justice Scalia, thirty years ago, likened it — in his usual colorful language, Scalia speaking: “The Lemon Test is like a ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad after being repeatedly killed and buried.” Well, to continue with the colorful prose: finally, the Lemon Test has a stake buried through its heart, and it's really, really dead now. Now the secular purpose objection — the secular purpose part of the Lemon Test, for that matter — I think is in any event question-begging wordplay. The wordplay goes like this: you see, religious and secular are opposites. So, if government should act for the sake of religion, they must not be acting for a secular purpose — even if acting for religion opens onto or produces what we might call “secular prosperity” in a wide sense. Well, we don't need to think that way. And the founders most certainly did not think that way. Let's instead work with the founders' words and concepts and think about government promoting religion for the sake of the common good. Now, the founders were keenly — even fearfully — aware of the divide between this passing veil of tears and what they ubiquitously referred to as (in the founders' terms) “a future state of rewards and punishments.” But the founders never used the term “secular” when they talked about religion and the polity. The closest they came to doing so was probably references to what they called worldly activities, which were mostly forbidden on the Sabbath. For the founders, proper government care for the temporal common good included encouragement and help and recognition of religion — albeit always respectful of persons' freedom and churches' autonomy. In the founders' world, deploying the word secular would have added nothing to the discussion and probably confused everybody party to it. Now, in conclusion, I haven't really spoken specifically about constitutional interpretation of the religion clauses, and I should like to close by noting two takeaways from my remarks that are pertinent to constitutional interpretation. One is this: it's folly to think we can jettison what I've called the moral foundations of religious liberty and its moral adjacent — the people's virtue. I think it's folly to think we can jettison that and banish it from our thinking and remain faithful to anything like the original understanding of the religion clauses. The other takeaway is that — no matter what is true with other constitutional

provisions — here, at the keystone of our constitutional civil liberties, here with religious liberty, there is no need for the contemporary interpreter, on or off a court... the interpreter of the constitutional language, to choose between history and justice — to choose between historical recovery of the plain meaning of the text and what surely appears to be the moral truth of the matter. For in the case of the religion clauses, the founders wove truth into the text in a tapestry for the ages.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you. Kelly?

Kelly Shackelford: I guess I have a question for each. First, Mark — first, thank you for literally a life of service for religious freedom and what you’ve done. I really do. I’m thankful for both of you. Mark, I want to start with you. I know Miss Ho mentioned in her opening remarks this issue — and since you litigated in this area — of judges trying to avoid and creating things so that they don’t rule for people in these cases. I’d just like you to give your experience on that, whether you think that’s true. And then, if there’s any recommendation or anything you have that we could recommend to the President. I don’t know if there is, I mean, but I think there could be. And then, Professor Bradley, I know this afternoon we’re going to get to more cases and all this, but you’ve had such a wide background on this. I would love to get your idea — you mentioned the Lemon case being overturned, and our Kennedy case that we did a few years ago — but what do you think is the next big thing that should go, if we’re going to have more religious freedom? And then, if you have any ideas on how to move us in that way, I’d love that as well.

Mark Rienzi: Thanks, Kelly. Happy to discuss it. You know, there’s something that I think is true of judges, but I think it’s also true of people who work in all levels of state and federal government, which is sometimes you get up, or sometimes you encounter a situation, and you’re just not all that eager to do the job. And I think one thing this commission can and should do is call on all of our public servants — and I really do think it’s across the board — to remind them that they have an obligation. Right? I mean, if you wear the robes, or if you took the oath of office to be a state legislator or a federal legislator, or you work in the agency someplace — you have a duty to advance and uphold religious freedom for everyone. And that means you have a job to decide the hard cases and to work through the difficult situations. Nobody ever said this was all easy or simple. Nobody ever said every case was easy or simple. But nothing gets better when you kick those cans down the road and say, “Well, you know, we’ll just — we’ll let a few more families get messed up, or a few more churches get closed.” That’s not a win for anybody. So, to the extent this commission can highlight those things and encourage people to really do the job and letting things linger for a long time, you know, choosing to not decide to let parents have their rights to raise their children the way they want, for example — that’s just harming people. And our whole system of government should do better.

Dr. Gerard Bradley: Kelly, to put it bluntly, I think it's time to kick in the rotten door that's barring religion from the public square. And what I mean — maybe a little bit more helpfully than that, or less cryptically than that — over the last 20 years, the Supreme Court, at the behest or at the urging of people like Mark Rienzi, the Becket Fund, ADF, First Liberty, has issued a series of rulings that, bit by bit, have reintroduced religion into the public square. And finally, the Court has overruled the Lemon test. And the first part of it is: government has to have a secular legislative purpose. But the Supreme Court has done everything to prepare the way for it — to say something now, which it has yet to say and should say — which is that promoting religion for the sake of religion and its ulterior benefits to the polity is fine. To date, even with the many good decisions we've had in the 21st century, the Supreme Court would still be — is — beholden to a view that I would describe as a kind of hangover of secularism. That it's always looking for a secular side benefit or collateral effect of action that government takes, which has, in some way, an effect of promoting religion. We're always looking to call legislative prayer, for example, a way to solemnize the occasion, for example, rather than say, "We're praying here." So, everything is set for the Court to do that, and I think it should do that at the earliest opportunity.

Texas Lieutenant Governor Dan Patrick (Chair): Dr. Anderson?

Dr. Ryan T. Anderson: Great. Thank you. I thought both opening remarks were outstanding, and so thank you both to Mark and Gerry. And I have a question for each of you. Mark, at one point you mentioned just in passing that, you know, government can't violate religious liberty except for certain rare exceptions. And sometimes I think thinking about those exceptions can actually be really helpful for highlighting what the foundation is. The way that I've thought about this in my own kind of research and writing is that all of our natural liberties have natural limits. And so, government isn't violating my natural right to free speech when it says you can't publish obscenity, because the right to free speech never included obscenity to begin with. It doesn't violate my liberty when it says you can't rape, pillage, and plunder, because I never had a liberty right to rape. So, what are those natural limits to religious liberty? Just so we can think through, like what is within the scope and what's outside of the bounds. And then, Gerry, I love your — you know, some people want to have public religion but no liberty, other people want to have liberty but no public religion — the founders wanted both. Can you help us think about how we've done that historically? How have we, as a nation, both promoted religion publicly and respected and protected religious liberty?

Mark Rienzi: Thank you, Ryan. Here's the way I would suggest thinking about the limits on religious liberty — like when can the government force somebody to violate his or her religion? The short answer is: it should be very, very rare. It should be where there's something the government needs to achieve, and the only way to do it is to force someone to violate his or her religion. So, if my religion is to sacrifice children to Moloch, or to drive the wrong way on the Beltway when I get out of here

this afternoon, I don't win that case. Right? The government has a compelling reason to stop me, and it really has to stop me. Otherwise, I'm going to kill other people. Otherwise, I'm going to do something terribly dangerous. That's almost never the case in most religious liberty cases, because thankfully, most people don't claim a religious right to kill their children or drive the wrong way on the Beltway. Here's one benefit to massive, overwhelming government that is involved in every aspect of every one of our lives. Right? We probably all have different opinions on that. My opinion is kind of negative toward that, but here's a positive about it. Right? The massive government that has 9,000 tentacles and has 50 zillion agencies you've never heard of — guess what? It can get its work done without forcing nuns to give out contraception. It can get its work done in almost every single case without forcing American citizens to violate their religion. And so, in an era of big, powerful government, the answer is: those limits are really rare, because almost all the time the government can get its job done without coercing violations of faith.

Dr. Gerard Bradley: So, the best way I can answer your question, Ryan, is to take two traditions which are vibrant traditions from the founding on until sometime within the memory of some people still living, like me. Now, these are two traditions that have been battered and limited and diminished by Supreme Court decisions, other court decisions, government action of general kind, and also the cultural drift away from religious observance. But I think both of these traditions are still alive and should be revived. Now, one is just the tradition of public recognition of truths about divine realities, starting with prayer in legislative assemblies, chaplains in the military, but also in public speeches and public expression. I mean, it's not that long ago where the terminology of Providence, and for the most part in fact, biblical faith, were a part of political discourse. And I don't mean just the high points like Lincoln's second inaugural, which is justly famous for its sort of awful rendition of Providence and divine judgment. But there is a tradition of recognition of these truths of philosophy — very often called natural religion — which were part of the civic furniture for hundreds of years and now remain almost as bleached or whited sepulcher. So, as I said not puckishly to Kelly — more seriously — the Supreme Court, has upheld legislative prayer on the ground that it's not really prayer. It's a kind of sacred-sounding verbal salad which has the effect intended to settle down people, to signal the meeting is beginning, and solemnize the occasion. So, we can revivify this tradition but not be embarrassed by it. And the other is to continue — revivify, but continue — the tradition of what you call government-religious partnerships, which are present at the beginning and at a time — and for most of our history — the federal government... I know it's hard to believe for people present, the federal government's budget wasn't in the trillions back in the Washington administration. The federal government had very little infrastructure or capacity to do anything that we would call social service work by itself. So, there was a tradition from the founding until the day before yesterday of creative partnership between government and religion — religious groups, religious bodies — to supply social services, education, etc. Now, that should be done — and all of this should be done — with respect for people's freedom. So, none of this suggests in the slightest, or I don't think it should suggest in the slightest, that Jehovah's Witnesses schoolchildren should actually be compelled to salute the flag, after all, because they're truths of natural religion. No. But all of this should be respectful of people's freedom, and also

of a kind of nondiscrimination among the religious groups. But both of those traditions still have enough life in them, enough of a pulse, that they could be revived, and should be, and would be with less effort if the Supreme Court finally pivoted and said, “You know what? We’re kicking in the rotten door. It’s fine if government works with religion, even for the sake of religion.”

Texas Lieutenant Governor Dan Patrick (Chair): Dr. Carson and then Rabbi and then Allyson.

Dr. Ben Carson (Vice Chair): Well, thank you both for the very enlightening answers. I have a question for each of you, but either can feel free to weigh in on the other’s question too. For Mr. Rienzi, you say we can learn a lot from what’s happened in the past. The Puritans were basically good people, and they wanted everybody to be good people. So, they kind of decided who would be the good people and what the criteria were for that. And they punished people who didn’t necessarily comply with that. What happened to them to make them so intolerant, and what can we learn from that? And then, for **Dr. Gerard Bradley:** Is it possible for the government to promote religion without infringing upon the rights of others?

Mark Rienzi: Thank you, Dr. Carson. Yeah, the Puritans are humans, right? They’re humans like the rest of us are humans. And they succumbed to what I think is a very common temptation that, in many ways, the experiment, the American experiment, fights against. Right? So, the Puritans come over here seeking religious freedom, but then when they get here, they don’t necessarily provide it to people who have different beliefs from them. And they’re bad to the Quakers, among others, when they get here. A similar thing happened in Maryland, which is established initially with religious tolerance and then kind of flips back and forth. So, I think our early history shows that there’s a long-standing aspect of human nature that says when you’re thinking about religious truth and you say, “I have figured it out and I know the truth,” then you say, “It’s my job to stop the other guy from doing other.” And I think that’s a bad path. And I think one of the great achievements of our country is that we eventually kind of, you know, restrained that aspect of human nature and said, actually, everyone should be able to freely seek God and freely, as Gerry was citing James Madison, freely respond to the duty to the creator, and that the power of government shouldn’t be crushing someone who has the wrong views. And I will say that that strain of human nature, right, which was initially wielded by the Puritans against the Quakers and others, and I think it originally comes from fervent religious belief. Right? Conviction that you’re right and therefore I must crush the guy who’s wrong — that has lasted. But these days, frankly, I don’t think it so much comes from religious people trying to use government to stamp out people with unpopular views. I think it’s now more often anti- or a-religious folks who want to wield the government to stamp out views that are wrong. And I think the truth is, whether it’s the religious people or the opponents of religion, it’s wrong. And it’s wonderful that the United States has moved away from that. And we should continue trying.

Dr. Gerard Bradley: Well, it's not only a terrific question, it's the question: how does a government which takes my advice and decides to reclothe the public square with religion avoid violating the rights of people? Maybe, especially—nonbelievers, but let's just say the rights of people. And that is the kind of thing where I think if I were watching a TV commercial, this is where it would say, you know, "This is an expert driver — don't try this at home." That is to say, before you try to promote religion, you better give up a lot of thought to how you're going to do it without compromising people's rights. Now, I think it can be done, but it is something that has to be considered carefully, for the very good reason that Madison cited. I mean, I don't think God wants insincere religious worship. I don't myself think God wants people to worship because that's what's done around here. I think worship that's pleasing to God — this is my own conviction, I don't know what Madison for sure thought — but my own conviction is, that's what God wants. He wants people to freely come to God with conviction, owning their religion, believing in what they're doing. So, you might say, I think believers need to constitute themselves and own their religion, and that can't be done save freely. So, for the sake of religion, it is religious freedom. But one way that we can promote — I think we can see our way to promote — religion respectful of freedom, but in a way that doesn't compromise anybody's rights, is to maybe repackage something that Madison said. He certainly held it, and what I was trying to say, which is this: we should come to recognize religion as a common good, even if not everybody's religious. And even if some people, maybe they're not religious, I don't think religion is a common good. Quite a lot like education — I mean, we do think of education as a common good, and government does a great deal to supply it, promote it, and pay for it. I'm not saying that's exactly what we should do with religion, but even people who don't believe in education or think that universities are half frauds and half dangerous — any number of people may have reasons to think that education, as it's practiced today, is not a common good but really just what some people have managed to get the government to pay for them. But I think that's false. No matter what you think of today's educational system, having an educated citizenry is good for all of us. It's good for democracy. And as the founders most certainly did think — and I think — having a religious and virtuous citizenry is good for everybody. Frankly, even people who lack virtue and don't believe in religion.

Texas Lieutenant Governor Dan Patrick (Chair): Yes, Dr. Phil?

Dr. Phil McGraw: In the interest of just kind of having a conversation, before we move on to the next question, can I ask a follow-up here?

Texas Lieutenant Governor Dan Patrick (Chair): Yes, yes.

Dr. Phil McGraw: Because we're talking about the government promoting religion, and that kind of gets a little scary sometimes — “promoting” — because nobody's a blank slate. And, excuse me, and everybody comes to a situation with a bias. Nobody is bias-free. Everybody has some preconceived notion of an issue when they come to it. And when you see people behaving some way, in pattern, then those in power are either eliciting, maintaining, or allowing that in some way. They're not neutral. They're either eliciting it, or they're doing something to maintain what's already happening, or they're at least passively allowing it to go on. There's some role. You cannot not choose. Not choosing is a choice, right? That's the fifth choice. You can come to the crossroads out in the middle of the country. You can go left, right, back, or forward, or you can just stand in the middle of the intersection and get run over. That's the fifth choice. You cannot not choose. So, — and when you say, “to promote,” are we talking about promoting religion, or are we talking about promoting liberty to choose religion, if that's what you choose? Because if we're promoting religion, that's different than promoting choice. And I'm curious, what is it we're promoting, if you're saying “promote”?

Dr. Gerard Bradley: Well. I think I might disagree with you. I think I understand what you're asking, and it deserves a better and richer answer than I can give it, at least in these time constraints. But I don't think I agree with you that there's tension or difficulty with envisioning promoting religion at the same time you're promoting its free observance and appropriation by people. And an example that may be illuminating — it's not an analog, but it's something similar — would be family and marriage. I mean, the government, a political community, ought to promote marriage and family as good things and help people who choose to be married and to have a family successfully do so. So, there are aids to education of children and all sorts of possibilities for benefiting married couples. But nobody has to get married in our country. You're free to reject marriage. You're free to think marriage is just another scam by the man. You're free to do that. But nonetheless, I think we do promote marriage and family. We should promote marriage and family. But I think it's fair to say you're free to decide that for yourself, not only in terms of getting married, but also whether you agree with the government's promotion of marriage as a good thing. You may think it's not.

Dr. Phil McGraw: But are you saying that's true for religion as well, that we should promote religion but yet people are free not to do it if they want to.

Dr. Gerard Bradley: Pretty much. Promote it as a good thing. It's a good thing, but it's not. It's only a good thing if people choose to buy into it. Education to some extent.

Dr. Phil McGraw: I, for one, think... my bias is that religion is a good thing. And for the first time in our country's history, participation in organized religion has dropped below 50%. For the first time in our country's history. There's a lot of reasons for that, and probably the most operative is that our

birth rate has dropped so low. And the reason — one of the primary reasons — people join the church is to have their children baptized or, you know, whatever. So, that may be the most operative reason. But nonetheless, it's dropped below 50% for the first time in our country's history, which I think is a very sad reality, because that's a great glue, as I said earlier, that holds the family together, and they worship together. And there's also the sense of community that comes with that quiet time together and coming together as a community. So, I personally... my bias is that it's a good thing, but I don't know that everybody would share that. That would be my bias if I was bringing it to the situation.

Dr. Gerard Bradley: I agree.

Dr. Phil McGraw: Thank you.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, Doctor Phil. Rabbi.

Rabbi Meir Soloveichik: Thank you, Chairman. I'd like — excuse me — I'd like to explore, building on the eloquent testimony of both witnesses, the connection between free exercise rights and other aspects of the Bill of Rights. So, Mr. Rienzi, you movingly refer to the story of the Gobitis case, and then the Barnette rectification of Gobitis. So, let's use that for a moment to explore the connection between free exercise and free speech. In one of the lamentable religious liberty decisions by the Court that still has yet to go, *Employment Division v. Smith*, the majority in that case argued, among other things, that the Barnette case — the pledging allegiance case, or saluting the flag case — is a case, is a special case, because it is what the Court called one of "hybrid rights." It involves not only religious liberty but also freedom of speech. To which Michael McConnell, I think rightly, responded that in truth, acts of religious exercise are very often, if not almost always, also forms of expression. If I am wearing a yarmulke, or one is wearing a cross, obviously one is not just engaging in a form of religious observance, but of expression of faith. Pastor White referred movingly to the case of one being prosecuted for silently praying, which is of course both a case of religious liberty as well as speech. So, I'm interested in the intersection of religious liberty and religious speech. And then regarding Professor Bradley's testimony, which I'm entirely in sympathy with, in terms of rediscovering a better understanding of the role of faith in society and government's role in helping to bring about that, I'd love some thoughts on: What would a better understanding of the Constitution's reference to a prohibition on religious establishment actually be? Members of the Commission have themselves referred to as Tocqueville did, the importance of the separation between what my colleagues called "altar and throne" in America. On the other hand, we've clearly gone wrong somewhere. I think George Washington, who wrote that wonderful letter to the Jews of Newport, would be kind of surprised to learn that the Supreme Court had decided that, say, a rabbi giving a nondenominational prayer in a high school graduation, or a state legislature creating a school district to help special-needs

Hasidic children, was considered by the courts a dangerous encroachment on constitutional boundaries. And yet, we've had those decisions. So, what would a better understanding of the reference to religious establishment be? And how would that relate to a better facilitation of faith in the public square? Mr. Rienzi, maybe we'll begin with you.

Mark Rienzi: Yeah. So, Justice Scalia, who wrote the Smith decision, which was a mistake, in a different decision said, "A Free Speech Clause without religious speech is like Hamlet without the prince." And he was right then. He was wrong in Smith, but he was right about speech. Free speech, parental rights, all sorts of other rights are very, very closely tied to religious liberty. And when you cut back on religious liberty, you endanger the others. Religious liberty also can't just be an equality right. It can't just be, "We got to treat everybody the same." That would work if we all had one religion, if we all had the same religion, then treating us all exactly the same would protect each of our free exercise. Like, that would be fine in a place where we were twins. But we're not, right? This is a religiously diverse place. And so, to protect religious liberty for a religiously diverse people, you're going to need to protect something different for the Muslim and for the Jew and for the Native American and for the Catholic and for the Protestant and everybody else. And so, when we artificially shrink our rights down, and when we cut them down to something like just an equality principle, and we don't give full protection to the free exercise of different religious faiths, we're really shortchanging the religious liberty, right? But also things like speech and parental rights that are really the bedrock of our civilization. Thank you.

Texas Lieutenant Governor Dan Patrick (Chair): Members, we're pushing the clock just a little bit here on our first set of witnesses, and we want to stay on time. So, Allyson and the Bishop will close it. And is everybody else okay with that? Allyson.

Allyson Ho: Thank you, Mr. Chairman. You know, ideas have consequences, and what happens in the ivory hallways of the academy and courtrooms doesn't stay there. It has real impacts on real people. And I was struck that both of you, when you were referring to religion — Mr. Rienzi, you spoke of it as a freedom to live out our faith; Professor Bradley, you talked about acting on what one believes — and it seems to me there's a misconception that religion in the clauses is really limited to worship. And I think that really expands the power of government and how it can intrude on the sphere. At the same time, it shrinks individual liberty and freedom. I'd love to hear both of your thoughts on that problem and what we can do to sort of restore a more proper and capacious understanding of religion.

Mark Rienzi: I'll just say simply that, one, that's a great point and one that it would be great for this commission to work on emphasizing and making it public quite a bit. And the easiest answer is that

the word is exercise, right? It's the free exercise of religion, which means not just you get to believe whatever you want in your head, but you get to act like it's true — within very, very broad limits. Right? For the most part, you get to do that. And so, if we're going to protect the free exercise of different religious beliefs, we're going to have to give room for people to act on them. And I agree with you — sometimes our courts historically have had a much smaller scope for that. Right? You can believe what you want, you can tell your kids when they get home that they were sinning, but when I get them back in the schoolhouse, I get to make them do what I want. That's, again, that's not liberty.

Dr. Gerard Bradley: I think it's probably true, Commissioner Ho, that at the founding, and for a long time thereafter, worship — public worship — was the quintessential religious activity or central religious activity. There was a way in which it had a certain priority of visibility and perhaps importance. So, there is some reason to treat it as primary, but not any reason I can think of that's a good reason to treat it as somehow exclusively what religion is about. Religion really, I think, is about self-constitution vis-à-vis a transcendent source of meaning and value, and whatever one holds that to be. So, it really involves organizing your entire life around a connection and an attempt to be in harmony with God, or the transcendent principle, or whatever you call it. Now, obviously, there are a dramatic number of limits on anybody's freedom to do what they want, but I do think that there is material in our tradition that should be emphasized, and it goes all the way back to the founding...religion being a kind of encompassing part, not an encompassing part, but really the encompassing canopy of one's entire perspective and existence. Again, this doesn't mean that it doesn't have any anarchic implications — there's order, and there's respecting other people's rights, to be sure — but I think we should treat worship as maybe even today somehow prototypical or central. But it's a mistake to make it the sum and substance of religion, and it's just a mistake.

Texas Lieutenant Governor Dan Patrick (Chair): Bishop. And if on your answers, you can give us good answers now, a little bit at the end. You guys have been terrific, so just...we'll make it a little succinct. Bishop?

Bishop Robert Barron: Yeah, thank you, Mr. Chairman. Thank you for the two presentations. I found them both really stimulating. As you were talking, I kept thinking about the great Vatican II statement *Dignitatis Humanae* on religious liberty, one of whose principal architects was the great Jesuit John Courtney Murray, who argued a long time ago that the principles of natural law provide a sort-of basis for peace among, let's say, the potentially warring religions — a sort of common moral consensus, natural religion if you want, and all that. It seems to me everyone around this table would kind of hold to the principles of natural law. But you also cited that famous, infamous Casey decision in 1992: "It belongs to the nature of liberty to decide the meaning of my own life and the meaning of the universe." You know, this wildly over-the-top statement, which is now, it seems to me, the default position of almost every teenager in America, right? "I decide everything." Here's my question: What

do we do when the natural law consensus has evanesced, which I think it largely has among a lot of people in our country, because religious liberty, as we've been talking about, as the founders talked about it, as John Courtney Murray talked about it, is grounded in this shared consensus. What do we do? I think that's our challenge. What do we do when *Casey v. Planned Parenthood* is now the default position of most people?

Mark Rienzi: You fight back against it with truth. The truth is, the *Casey* principle is an empty thing to organize your life around. And you stand up and you say it as often as you can until people see it and realize it.

Dr. Gerard Bradley: I agree. I mean, I think the *Casey* principle is basically a value judgment. It's not in any way neutral. The value judgment is: everything that counts in what you do and what you believe is authenticity — that it's really you. What it is you believe and do doesn't much matter at all as far as value is concerned. It's all about your individuality and asserting your stance and identity. I think besides refuting it with truth, and this is maybe not in a way helpful advice, but I think we're seeing it sort of run its course already. It's demonstrating itself to be an empty promise of creativity and authenticity. It's actually a dead end and kind of a prison of emotion and something else. So, again, I wish that the end of this course would come sooner rather than later, but I dare say we're on a course to kind of extinction.

Mark Rienzi: Last quick point I'd make is if you want to figure out what's been wrong for the last 30 or 40 years in our law, it was that *Casey* gives that view of liberty at the same time that until the last 15 years, we had a stingy view of religious liberty that was actually directly protected in the text of the Constitution. That's a problem. That's something this commission should help us straighten out.

Texas Lieutenant Governor Dan Patrick (Chair): I am going to recognize Carrie, because you were actually way in the queue earlier, and I missed you. So, go ahead.

Carrie Prejean Boller: Thank you. I wanted to know about the Supreme Court case in 1962 — the prayer case. Do you believe — I would like both of you to answer — do you believe and recognize that after that case, we saw a significant decline in morality? We saw suicide rates increase. We saw teenage pregnancies increase. We saw divorce rates increase. Do you believe that prayer should be included in school, as it was for 200 years, when the students used to read the New England Primer and obviously have prayer in school and have the Bible as their textbook? What significance do you believe, and detriment, did the 1962 Supreme Court case have on all Americans?

Dr. Gerard Bradley: Well, I myself treat that case — apart from its particular context, prayer in schools, which, as you're saying or suggesting, is an immensely consequential thing — I do think that was the real declaration of independence by the justices from the constitutional tradition. You know, they had indicated this direction as early as 1947, but the Engel case in 1962 was where the Supreme Court just cuts itself off from the tradition and declares itself the harbinger or custodian of secularism. So, I think it's a bad decision for that reason. The other thing I'd say — I don't myself know what the consequences are, what cause and effect is, with regard to the consequences after 1962. And I don't dispute or wonder about anything you said. But I would add this: that the Engel case, which is the '62 school prayer case — I should say the Supreme Court decided that on the assumption, they took it over as their given, that it was truly voluntary prayer. Now, some people may doubt that that's the way it works in a grade school classroom, but the Supreme Court decided that case on the grounds that it was voluntary prayer, which would have to be, in light of the Barnette case from 1943, and the content of the prayer, in 1962, the New York Regents Prayer, was little more — it wasn't anything more than a short collection, a compact collection of the truths that Madison and all of the founders affirmed: 'Almighty God, we thank you, and we implore your blessings upon our country, our families, and our, you know, community. Almighty God, we give our thanks to you.' And it really is just a recognition of God's existence and providential care for humankind. So, it wasn't a prayer that should be called sectarian, even in contrast to the 1963 case — the Schempp case — which had to do with Bible reading from the King James Version of the Bible. That's actually a different situation. But the New York Regents Prayer case, Engel, I think, was a sharp bad turn at several levels of thinking about it.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you. Thank you, Carrie. I just have one quick question with a short answer, if you can. Almost every decision that has been made regarding religious liberty has come from the courts. Almost every decision that has taken the wrong turn at the court level. The founders believed this should be left to the states and the state legislatures. Do you believe if the courts had stayed out of this — which they had for a long time — and left it to the will of those elected by the people, that the legislators in this country would have made these same decisions and passed these same laws? And I say that coming from Texas, where we just passed Senate Bill 10 to put the Ten Commandments in every classroom, and Senate Bill 11 to put prayer voluntarily back in our schools — because I question if the Congress or state legislatures would have done what the courts have done.

Mark Rienzi: I don't know if they would have done what the courts have done either, but I'd caution that I think it's a dangerous world to say we want the courts out of these things. I think the point of the Bill of Rights is that there are some principles that everybody is supposed to apply, but the courts ultimately do need to protect and step in occasionally. The law in *Gobitis* was from a local school board and legislature too. So, I think sometimes those entities will get it right. Sometimes they will get it wrong. But I do think we need a system that protects minority rights and sort of ensures that they

get it right. All that said, courts obviously quite often get it exactly wrong, and that's dangerous. And that's why we have to work hard to fix it.

Dr. Gerard Bradley: Yeah, I think there's an essential, an important role for courts. I agree completely with Mark Rienzi. The only thing I would add is an adaptation of something that is attributed, at least to Bill Buckley, which was Bill Buckley said at one point he'd rather be ruled by the first 200 people in the Cambridge phone book than the Harvard faculty. My adaptation of it is to say, I think over the last two generations we would have been much better off, all told, with regard to religion, if the people had had more to say about how we would integrate religion in public life than the courts, in fact, have had over the last two generations.

Texas Lieutenant Governor Dan Patrick (Chair): Well, at Harvard is obviously still a problem. I want to thank our two witnesses. Please give them a round of applause. Thank you. Thank you. You may be excused. I'm checking because I can't quite see it's dark backstage. If our Attorney General is here yet, do I have any staff update on that? I think I can do any witnesses. Our next witness is Doctor Mark David Hall, a professor of Regent University School of Government and an acclaimed expert in American political theory and church-state relations. Doctor Hall has authored or co-edited a dozen books on topics central to religious freedom. His work will provide essential context as we examine our founders' vision for religious freedom. Mark.

Dr. Mark David Hall: All right. Fantastic. Well, thank you, members of the Commission, for your very important work. It's my honor to be before you today. So, I've been asked to say a few words about the original understanding of religious liberty and church-state relations. And as a scholar, I'm happy just to do that. But my wife is always getting after me, asking: Why is it relevant? In this area of law, it's particularly relevant. If we go back to 1947, *Everson v. Board of Education*, Hugo Black for the majority, and Wiley Rutledge for the dissent, insisted that we must interpret what they called the religion clause in light of its generating history. A few years ago, I wrote a law review article where I went through every single religion clause decision of the United States Supreme Court, and I found that basically everyone is an originalist when it comes to the First Amendment. But there's a key difference between conservative and progressive justices. Conservatives tend to get the history right. Progressives tend to get the history wrong. And so I think in this area of law, it really is important to get it right. So, let me begin with religious liberty. An important thing to note just from the get-go is that in the ancient world, religious liberty simply does not exist. It is simply assumed that the community will share a religion, and that rulers will enforce that religion and punish dissenters from it. Robert Louis Wilkins, in a wonderful book *Religious Liberty and the Things of God*, demonstrates that it's really the early church that comes up with this idea of religious liberty. You could begin with Jesus Christ himself — “Render unto Caesar what is Caesar's, and to God what is God's.” Tertullian, the early Church Fathers, the first persons to ever use the phrase religious liberty. And yet, Wilken

recognizes, as he must, that when Christians came into political power, they succumbed to the temptation of using the power of the state and the power of civil rulers to promote their understanding of true religion. And so, from Per Constantine up to the early American colonies, it was too often the case that rulers would favor one manifestation of Christianity over others, punish dissenters, and this sort of thing. Fortunately, very fortunately, things began to change in the 17th century. Now, we're oftentimes told a tale that religious liberty comes about for prudential reasons. People get tired of fighting each other over religion. Or maybe the Enlightenment comes along and saves us from our bigotry. And there's something to both of these things, especially the prudential argument. But very, very important, I think, are arguments made by men like Roger Williams, William Penn, Isaac Backus, John Leland, Elijah Williams — people making explicitly Christian and biblical arguments in favor of the sacred right of conscience. Now, there are other sorts of arguments one could make, including excellent moral arguments. But in early America, where something like 98% of Americans of European descent were Protestant, 2% Roman Catholic, and you had about 2,500 Jews in 4 or 5 American cities, these sorts of biblical arguments were very, very persuasive. So, by the time we get to the late 18th century, and especially during the First Great Awakening — those great series of revivals that swept America in the 1730s and 1740s — a lot of these arguments were made. But by the time we get to the founding era, we have seen a major shift. So, in the early colonies, again, you don't really have religious liberty. Sometimes you have religious toleration, sometimes you don't. Right? Jews and Catholics are banned from both Massachusetts Bay and Virginia, for example. And yet, by the time we get to the founding era, something had changed. All colonies had come to accept religious toleration. They would put up with dissenters, and yet they're moving beyond that. They're moving to embrace religious liberty as a natural right. Let me give you my favorite illustration of this. As the American colonies are breaking from Great Britain, pretty much every state rewrites its constitution and laws. In Virginia, George Mason was tasked with writing a bill of rights, and he came up with a religious liberty provision. That's not bad. He writes: "Religion, or the duty which we owe to our divine and omnipotent creator, and the manner of discharging it, can be governed only by reason and conviction, not by force or violence, and therefore that all men should enjoy the fullest toleration of the exercise of religion according to the dictates of conscience, unpunished and unrestrained by the magistrate." Now, that's not a bad religious liberty provision. But James Madison, in his first public act, he objects to that word "toleration." He says that makes it sound as if we're just going to put up with the religious minorities. And he insisted instead that that word be replaced to make it crystal clear that people have a natural right to the free exercise of religion. And the convention went along with Madison. What we see in the founding era is that every state is coming to protect religious liberty. It's very common to have language like George Mason's. Note that he's making an argument. He's not saying for prudential reasons or because the Enlightenment is now here. He's saying because we have a duty to our divine and omnipotent creator, a duty that must be exercised in freedom and truth. Therefore, we must have this right. So, every state is protecting religious liberty. The federal Constitution does not, but only because its advocates said the federal government simply does not have the power to restrict religious liberty. The Anti-Federalists were not convinced, so they insisted on a Bill of Rights. Fortunately, they did. And, of course, we end up with the First Amendment, which begins: "Congress shall make no law respecting an establishment of religion, or prohibiting the free

exercise thereof.” The free exercise thereof. And we talked a little bit about that earlier. I think it’s crystal clear — absolutely clear — that religious liberty protects more than the freedom of worship. It clearly protects freedom of belief, clearly protects freedom of worship, but it protects more. And to get into this, what I want to look at a little bit is religious accommodations or religious exceptions. When you have a neutral law of general applicability, does the First Amendment require an exception? Now, that is hotly contested even among originalists, and I’m not going to go down that path right now. But I want to make the point that the founders absolutely understood religious exemptions or accommodations. The Constitution itself contains one right in each and every provision: people are given the ability to swear or affirm the oath, and the affirmation possibility is clearly aimed at Quakers and others who have religious scruples about swearing oaths. But I want to talk about something else, something even our libertarian friends would agree with. If the government has one job, it’s national defense — protecting either the colony, the state, or the nation. Now, how have governments gone about doing this? Well, in early America, especially the early American colonies generally, they required militia service. Every male must serve in the militia. And yet, again, you have those problematic Quakers, Brethren, and Amish. They say, “We can’t do this. We have religious objections to military service.” Well, think about this from the government’s perspective. What can the government do? It seems to me there are three obvious choices: One, the government could say, “Well, we really care about not making anyone go against their conscience, so we’ll remove this requirement altogether. No one has to serve in the military.” And yet, if conscription is really necessary for the national defense or colonial defense — and it really probably was for the early colonies — then you’re putting the community in jeopardy by removing this requirement. Well, another possibility would be to say, “The law is the law — everyone will serve.” Period. Too many countries do this, right? Can you imagine a Quaker saying to Vladimir Putin, “Excuse me, I can’t serve in the Russian military. I have a religious objection.” That person would probably not belong on this earth. Many countries have done this. Fortunately, in America, we have found a third way, beginning as early as the 1670s. What colonies would do is they would permit Quakers and others to do alternative service, or to hire a substitute, or something like this. By the time you get to the late 18th century, every colony and then every state is doing this. Congress affirms this in a statement on July 18th, 1775. Congress said: “As there are some people who, from religious principles, cannot bear arms, in any case this Congress intend no violence to their consciences, but earnestly recommend to them to contribute liberally in this time of universal calamity, to the relief of the distressed brethren in every several colony, and to do other services to their oppressed country, which they can consistently with their religious principles.” And that’s an important point: religious liberty is not a “get out of duty free” card. You still have to serve, but we’ll permit you to serve in a different way. Well, I could give a lot more evidence along these lines, but let me shift to a different question: who is protected? We’ve already talked about this a little bit, but I think it’s very critical to understand that even in the late 18th century, America’s founders understood that the answer to that is everyone. And so Article Six of the Constitution bans religious tests for office. The Anti-Federalists objected. They said, “Well, this means a Jew or Muslim or even an atheist could hold federal office.” And the Federalists had to say, “Yes, that’s a possibility.” Now, they would oftentimes go on to say, “Well, that’s unlikely to ever happen.” And of course, they didn’t understand how diverse our country would become, but they recognized it’s a possibility. What I want to do,

instead, is quote from... it's already been mentioned but it's such a great letter we should quote from it more than once... George Washington's famous letter to the Hebrew Congregation in Newport, Rhode Island. Now, I've already said, there's only about 2,500 Jews in America at that time. The really don't have much by way of political or economic power. This is not a constituency that needs to be cultivated. Now, they would oftentimes go on to say, well, that's unlikely to ever happen. And of course, they didn't understand how diverse our country has become. But they recognize it's a possibility. And what I want to do instead is quote from — it's already been mentioned, but it's such a good letter we should quote from more than once — George Washington's letter to the Hebrew Congregation in Newport, Rhode Island. I've already said there's only about 2,500 Jews in America at the time. They really don't have much by way of political or economic power. This is not a constituency that needs to be cultivated. But George Washington wrote to this tiny religious minority: "All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people that another enjoy the exercise of their inherent natural rights. For happily the government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it, on all occasions, their effectual support." A beautiful letter, a beautiful sentiment, an important commitment. But Washington goes on — and this will bring me to my last point — Washington goes on to write this: "May the children of the stock of Abraham, who dwell in this land, continue to merit and enjoy the goodwill of the other inhabitants; while everyone shall sit in safety under his own vine and fig tree, and there shall be none to make him afraid. May the Father of all mercies scatter light and not darkness in our paths, and make us all in our several vocations useful here, and in His own due time and way, everlastingly happy." So, there are nine separate allusions to Scripture in this short paragraph, including the Micah 4:4, which was George Washington's favorite verse. And this highlights the last point I want to make. The founders were committed to religious liberty. But in no way, shape, or form did they think that religion must be scrubbed from the public square. Now, jurists and academics — we can go back to Hugo Black in the 1947 decision — he seizes on a metaphor from Thomas Jefferson, from a letter Jefferson wrote to the Danbury Baptist Association, where he talks about a "wall of separation between church and state." And this is erroneous history that was embraced by far too many justices, far too many academics, far too many scholars, I'm sorry to say. Is this a useful metaphor? I want to suggest it is not. It's not even useful for Thomas Jefferson. You can see why the metaphor is appealing — it's one of the few documents that you could look at from this era to support anything approximating the strict separation of church and state. Jefferson — I'll skip ahead here, because I'm running out of time — as a member of the Continental Congress, Jefferson proposed that the nation adopt a seal containing the image of Moses extending his hand over the sea, casting to overwhelm Pharaoh. And the motto of the United States would be, "Rebellion to tyrants is obedience to God." Literally two days after Jefferson wrote this letter to the Danbury Baptists, he went to church services in the U.S. Capitol Building, where he heard John Leland, the great Baptist itinerant minister, and himself an opponent of establishments, preach. Jefferson also made the War Department Building and the Treasury Department Building available for church services. Now, my point is not that Jefferson was an Orthodox Christian who wanted a close cooperation between church and state. He was not an

Orthodox Christian. And he wanted a greater degree of separation between church and state than almost any other founder. But in his own actions, he did not act as if there was a wall of separation between church and state. And if we turn from Jefferson to the rest of the founders, we find no historical evidence that the founders wanted any sort of separation between church and state. So, I will stop there, and I would be happy to take questions — or as you will, Mr. Chair.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you. And, Paula.

Pastor Paula White: Thank you so much, Chairman, and thank you for your work and your clarity. Can you tell us what the Establishment Clause means, and have the courts gotten off on that?

Dr. Mark David Hall: Thank you very much for that question. If you think about the metaphor, the wall of separation between church and state, it really does not communicate at all the words of the Establishment Clause. The Establishment Clause begins, “Congress shall make no law respecting an establishment of religion.” That is a unilateral barrier. It’s a restriction on Congress, and through the doctrine of incorporation, now the states. In no way, shape, or form is it a restriction on churches, or synagogues, or mosques, or any other sort of religious organization. But the wall of separation metaphor, that suggests a bilateral barrier, right? That it’s a restriction on government, but it’s also a restriction on religion. In no way, shape, or form is it that. I’ve already suggested, in 1947, Hugo Black and Wiley Rutledge led us astray by adopting this wall of separation metaphor as the defining historical document to inform what the First Amendment means. One problem with that metaphor is no one ever really believed it, right? If you really take it literally, what—fire departments can’t put out fires in churches? And churches are somehow free of building codes? No one ever argued that. And so — well, if it’s not going to be a wall, what will it be? And the Court basically came up with a flawed analytical test known as the Lemon test that did a lot of damage until it was finally eliminated a few years ago in the *Coach Kennedy* case.

Texas Lieutenant Governor Dan Patrick (Chair): Dr. Anderson?

Dr. Ryan T. Anderson: Yeah. Thank you. Mark, I want to ask...right at the end when you were speaking about the flawed analogy of separation of church and state...this may be a historical period that stretches you beyond the founding. But I’m thinking of the civil rights movement, and I’m thinking of the Reverend Dr. Martin Luther King Jr. and his Letter from the Birmingham Jail, where he cites two Christian saints. First, Saint Augustine — to say an unjust law is no law at all. And then Saint Thomas Aquinas — to say, how do we know the difference? A just law is a man-made code that’s in harmony with the natural and the eternal law. Now there’s certain people for the separation

of church and state who would claim that he was, in essence, calling upon the government to violate the separation of church and state. You know, John Rawls works himself into all sorts of knots trying to figure out how we account for this, and his proviso of the concept of public reason. How would the founders have understood what MLK was doing? And do you see any problem with it? I mean, how has this played out in American history, with people seeing there's actually, I don't want to say there's a porousness, but the church can speak to the state, the state can speak to the church. It's meant to be a dialog.

Dr. Mark David Hall: Yeah. No, that's a wonderful question. Thank you. And again, if you took literally this metaphor of the wall of separation between church and state, then perhaps it's inappropriate for the Reverend Dr. Martin Luther King Jr. to be advocating for change for Christian reasons. And it would be wrong for a member of Congress to vote for the Civil Rights Act because he believed, or she believed, that it was required by faith or Christian morality. The founders would have thought this was utter nonsense. And it's fine to begin in the 1950s or 60s, but of course you could go back to the founding era, where many founders are coming to oppose slavery. Many founders never owned slaves. Many of those who did freed them voluntarily. John Dickinson, at one time the largest slave owner in Delaware, voluntarily freed all his slaves. And you have members of the founding generation like Ben Franklin, John Jay, that are leading manumission societies. Eight states voluntarily put slavery on the road to extinction. And believe me, these guys are making explicitly Christian arguments—as are the abolitionists of the 19th century, as are the civil rights leaders of the 20th century, from the early 20th century to the Reverend Dr. Martin Luther King Jr. And thank goodness they were. So, in no way, shape or form would any founder have thought this would be inappropriate. Now, you had some founders, of course, and we should be clear about this, and some Christians throughout American history who made Christian arguments in favor of slavery, Christian arguments in favor of Jim Crow legislation. We have to recognize this reality and then engage these folks—and if they still exist today, engage them today, and say, no, you're wrong. Christianity does not require it. In fact, the exact opposite.

Texas Lieutenant Governor Dan Patrick (Chair):Next question. Rabbi and Bishop we'll come to you next. But Rabbi.

Rabbi Meir Soloveichik: Just to build on the previous question — so, in rediscovering a better understanding of the relationship between government, religion, Constitution, and faith — what would the Establishment Clause mean? In other words, we know clearly something has gone awry. It doesn't mean — and I think Madison would be somewhat surprised to hear — that it's being utilized to prohibit the placing of Ten Commandments in schools, or to learn that the Supreme Court is deciding by 5–4 decisions, in which one justice breaks the vote by saying, “Well, I like these Ten Commandments here, but not here, because here it's just history, or it's more guidelines than

commandments — but here it's commandments," and so forth. So, what would it be? When and if we're applying, as you said, the incorporation — the doctrine of incorporation applied to both Congress and to the states — "Congress or state legislature shall make no law respecting the establishment of religion," what would violate that?

Dr. Mark David Hall: Yeah, thank you. So, I think the simplest answer to that is: the words mean what they say. "Congress shall make no law respecting an establishment of religion." So, Congress — and by extension, the states — cannot establish a faith. Now, that kind of begs the question: what then is an establishment of religion? Clearly, it would involve taking tax dollars and giving them to just one denomination or one religion — to give them only to Orthodox Jews, for example — that would be an establishment of religion. Here's a trivia question — you can win money at a cocktail party with this one: Was the church disestablished in Virginia? Almost everyone would say the Virginia Statute for Religious Liberty, 1786. And yet, in 1784, the House of Burgesses told the Anglican Church in Virginia how it was to govern itself — and it did not repeal this law until 1787. And so, this would be another manifestation of an established religion: when the state tells religion how it's going to govern itself. Yeah, we want the government out of that sort of business.

Rabbi Meir Soloveichik: So, you're arguing that, interestingly, that the Establishment Clause is actually there to protect faith itself and faith communities?

Dr. Mark David Hall: Yeah. No, I think that's exactly right. Yeah. You know, one could argue that there are ways in which the subsidy of one manifestation still allows other sorts of freedom to worship. And what's interesting is that by the time you get to the founding era, most states are actually moving away from the idea that only one denomination, say, would be subsidized. So, Patrick Henry's general assessment bill would have had people taxed to support the church they chose to attend — so Anglicans taxed to support Anglican churches, Baptists taxed to support Baptist churches, and so on. So, you could have multiple establishments. But I think it's fair to say that the Establishment Clause is saying: government, get out of that business altogether. The most persuasive arguments, I think, in these debates are that establishments hurt true religion. Whenever the government runs something, that does not work out well for whatever is being run. So, get the government out. Let churches — and eventually other religious groups — govern themselves, run themselves, be free of state subsidy, and things will be far better. Not perfect, but far better.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you. Bishop?

Bishop Robert Barron: It's kind of a curiosity question in a way. When I was coming of age, we heard a lot about the wall of separation. We tended to read things through the lens of Thomas Jefferson, and you and many others have helped us to see it's a much more textured story. And in some ways, Jefferson is very egregious among the founders, of course. How do you explain that? Is it Jefferson's reliance upon the French sort of understanding of revolution? Is it more the laissez approach? And have we been wrong all these years, in a way, trying to read our system through that more French revolutionary lens? Is that part of what explains Jefferson's egregious character?

Dr. Mark David Hall: You know, if I'd had more time, I would have given a lot more examples of Thomas Jefferson really not acting in any way, shape, or form as if there actually was a wall of separation between church and state. And so, one possible explanation that my friend Daniel Dreisbach of American University argues is that even in this metaphor, Jefferson really was thinking more in terms of federalism — that Congress is barred from having anything to do with religious establishments in the state. But it's absolutely not problematic for Thomas Jefferson as president to encourage people to pray with them, to go to worship services in Congress, to allow the War Department building to be used for church services, and on and on. You could go on now. He probably was more suspicious of religion, especially orthodox manifestations of religion, than almost any other founder. So, he is influenced by the more radical Enlightenment and probably is more of a secularist than most of the founders. But I think he's politically astute to know that if he acted or was too open with these sorts of views, he would get in trouble. And he did, right? When he says in the election of 1800 that, well, they're quoting the notes of the state of Virginia, "It does me no harm if my neighbor believes there are three gods or two gods or no god." That really got a lot of backlash and it really hurt him in that election. And so I think he kept his—he's not an Orthodox Christian, we know that—but he kept those views very, very private because America was a very, very Christian country at that time.

Texas Lieutenant Governor Dan Patrick (Chair): Questions on this row? Any questions? Kelly? Dr. Phil? Go ahead.

Dr. Phil McGraw: I'm talking about the Establishment Clause. The Supreme Court ruled in 1947 that the Establishment Clause, which limits what Congress can do, also limits what states can do. It did so by invoking the 14th Amendment, which says no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. But the Establishment Clause did not create a right in any individual, but rather protected the states' rights. So, and that's come into play now in Oklahoma and in Texas with Saint Isidore. What is your position on that? Because it seems to me that they're saying that Congress shall make no law. It doesn't say anything about states. In fact, it leaves it to the states, does it not?

Dr. Mark David Hall: So, everyone understood that the Bill of Rights originally was only a restriction on the national government. There's really no question about that. The only question comes with the 14th Amendment, where the relevant section begins — the relevant article: “No state shall... abridge the privileges or immunities” or abridge due process. And it's through that due process clause that the U.S. Supreme Court, one by one, applied the Bill of Rights to the states. Now, there are scholars and jurists who argue that this entire doctrine is flawed, and we should just be done with it altogether. And the state of Virginia would no longer be restricted by the freedom of speech, freedom of press, free exercise of religion. There are scholars who make that argument. I'm a little bit sympathetic to it, but I'm enough of a conservative to say that we have lived under this doctrine for so long that that ship has sailed — that we're stuck with it. Now, with the Establishment Clause, there is an additional argument, which is that it's only a matter of federalism. Akhil Amar has made this argument; Clarence Thomas has made this argument. And so it is, by definition, unincorporated. So, maybe all these other provisions of the Bill of Rights remain applied to the states, but the Establishment Clause should not be applied to the states. Justice Thomas seems to be the only justice that's open to that argument. And so I think we're stuck with the Establishment Clause applying to the states for the foreseeable future. And so I think what we need to insist upon is that justices get the Establishment Clause right. And so it was applied to almost any case you can think of, including Saint Isidore. I think there's no way, shape, or form that the Establishment Clause should be read to prohibit Oklahoma from creating a religious charter school on the same terms that it has created other charter schools. And, in fact, it's a violation of the Free Exercise Clause to say, “We're going to create all sorts of charter schools, but not a religious charter school.” So, I think there's a way around the incorporation doctrine—not that we're trying to get around anything—but just even with the incorporation doctrine, the Establishment Clause shouldn't prohibit a number of these things that you probably have in mind.

Dr. Phil McGraw: Can you not make the argument that they're actually discriminating against the religious school?

Dr. Mark David Hall: Absolutely. And there's this wonderful trinity of cases where the U.S. Supreme Court has said time and time again: states, you cannot discriminate on the basis of religion. Look at Maine — you cannot say that you'll pay to send kids to high schools in all sorts of places except for religious high schools. You can't do that. And that's why, really, the Oklahoma charter school should have been permitted to exist. I think when we get the next case, and Amy Coney Barrett doesn't have to recuse herself, we'll have at least a 5-to-4 vote — maybe a 6-to-3 vote — upholding religious charter schools, clearly constitutional, no question.

Dr. Phil McGraw: Thank you.

Texas Lieutenant Governor Dan Patrick (Chair): Kelly? We are just waiting for the attorney general, who is on her way and should be here very shortly. Kelly.

Kelly Shackelford: I know after lunch we're going to have people talk about cases — bad cases, where we are now, and all this — but since you wouldn't have the opportunity then, I want to ask you now: you talked about the Establishment Clause. What cases or areas do you think need to be changed or are currently wrong, where the court's gotten off track, at least until they change something? And secondly, I wonder...our duty is to provide recommendations to the president. I don't know if you have any in mind, but if the president said, "Hey, I'd like you to come to my office and give me a recommendation on how we can advance and secure religious liberty into the future," do you have any ideas? I'd love to hear them. If not now, maybe you can send them to us later but I just want to pose that.

Dr. Mark David Hall: Sure, I'll just highlight two things. There are a number of things we might be thinking of. Just a couple of weeks ago, we celebrated the 100th anniversary— to the day— of *Pierce v. Society of Sisters*. You have a wonderful trilogy of cases from the 1920s where the U.S. Supreme Court, at a time when it was not known for protecting individual rights, made it crystal clear that parents have a fundamental constitutional right—unenumerated but judicially enforceable— to control the moral upbringing of their children, to control the education of their children. So, in *Pierce*, the great state of Oregon, my home state more or less, decided it was going to ban all private schools. And lo and behold, almost every private school was a Roman Catholic school. The U.S. Supreme Court came back and said, no, you can't do that. Roman Catholic parents in Oregon have a right to send their kids to Roman Catholic schools if they want to. And the Court stuck with that and respected that. But if you think about it, that's a very limited right. It's a right that's useful for upper middle class parents, for rich parents. But a lot of parents can barely afford to pay rent and buy food. They cannot afford to pay their taxes and also send their kids to schools that reflect their worldview—Islamic schools, Jewish schools, Montessori schools, whatever that worldview might be. So, I think robust school choice is a way to address one of the key problems with respect to religious liberty. That would also get us out of some of these problems we're seeing coming out of Montgomery County, where the county is insisting on teaching pornography to three, four, five-year-olds. Parents are saying, no, let us at least opt out. And Montgomery County says, no, you can't opt out. You cannot opt out of all sorts of other things, but not this. Yeah, so to really empower parents to raise their children according to their religious convictions, really robust school choice is at least one thing. But also, protecting parental rights to opt their children out— to the extent that we're stuck with public schools for the foreseeable future, at least parents should be able to opt their children out of education that they find morally or religiously objectionable. So, I think those are both kind of tied together. Let me just say briefly, I'm not trying to be critical of anyone, but if you look at the Montgomery County case, which is only being litigated as a religious liberty case, I don't have any idea why it's not also being litigated

as a parental rights case. Now, I'm not an attorney, so there might be all sorts of great reasons for this, but I think this is something we need to resurrect in our current discourse, doctor.

Kelly Shackelford: Thank you. In fact, they were so difficult in Montgomery County that they forbade a young lady from graduating— which impacted her ability to go to college. And she was a top student, a top-tier student. She said she would attend the classes, but she would not stand by what they were teaching because it was against her religious beliefs. And they stopped her from graduating.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you for your testimony. Please give Dr. Hall your applause. And now we can switch the stage for the Attorney General. We will switch the stage while they're moving the chair. If you all— if you'll just follow— if you want to stand up really quick, like for 30 seconds, and then sit back down, because the Attorney General will be here. So, don't go anywhere, but stretch your legs for 30 seconds while we move.

I mentioned at the beginning that this commission serves under the Department of Justice, so it gives me another chance to spend time with and see a friend of several years. Our Attorney General Pam Bondi, was appointed as the 87th Attorney General in this country. Her background? She was a prosecutor in Florida for 18 years. She handled everything from domestic violence to capital murder. She was elected as the first woman attorney general in the state of Florida in history in 2011, where she served through 2019, and when she came on board, she took on the opioid industry of Florida at that time had 98 of the 100 pill mills, the biggest pill mills in the country, back in the days of oxy. And she came in and got tough legislation passed. We're focused on some of those things in Texas right now, as a matter of fact. And so she was very successful in taking that industry down. And then she was appointed under the president's first term to the Drug Abuse Commission. And then, as you know, she has just done an outstanding job as our attorney general. She is the sweetest person you'd meet and the toughest my friend, our attorney general, the 87th of the United States of America. Please stand for Pam Bondi.

United States Attorney General Pamela Bondi: Thank you all. Thank you. Hi. Thank you. Thank you, thank you, Chairman Patrick, for your leadership and for stepping forward to chair this great commission. The Commission's work not only comes at a time when the world so desperately needs it, but it's vital to addressing the emerging threats to religious liberty and protecting Americans First Amendment rights. I know we'll all continue to pray. It's been a very long weekend, given what's happening in Israel and Iran and also the horrible, horrible murders in Minnesota. So, I know we'll continue to keep all of them in our prayers. Hi, Doctor Carson. Chairman Patrick, your dedication to faith and freedom make you uniquely qualified to chair this. And thank you again for your friendship for all these years and for chairing this. And, Pastor Paula, I think this is the first time in our history that the office of Faith is located in the west wing of the white House. So, thank you. I'm profoundly

grateful to the members of this Commission and to the Advisory Board for generously offering your time, your insight, and your commitment to such an important topic. Your willingness to serve speaks volumes about your passion for one of humanity's most sacred rights, which has come under attack. On May 1st, President Trump took bold action and signed an executive order establishing the Religious Liberty Commission. President Trump's action reaffirmed our nation's enduring commitment to the freedoms of our founders. It reminded us that faith was not built into the. That faith was built into the foundation of our nation's founding documents. There was no mistake when it was included in the First Amendment. Our founding Fathers understood that every individual must be free to worship without fear, without coercion, and without government interference. They also understood the liberty of conscience is the cornerstone of religious freedom. A well-formed conscience is our God given ability to discern right from wrong and good from evil. James Madison referred to one's conscience as the most sacred of all property. From the start, the United States of America was envisioned as a place where religious liberty meant the freedom to discern good from evil without the heavy hand of the government weighing in. President Trump has charged this commission with helping all Americans become, and, I quote, reacquainted with our nation's superb experiment in religious freedom in order to preserve it from emerging threats. Sadly, over the last four years, that promise came under assault. The federal government became complicit in sheltering these threats, becoming the greatest threat itself. Pro-Life Christians were arrested for peacefully praying near abortion clinics. Violent radicals blocked access to synagogues, and religious services were shut down under the guise of safety. The FBI surveilled Catholics in their places of worship. Permits to build mosques were slow walked or disallowed without cause. And this past year, President Biden marked Easter Sunday, the holiest day in the Christian calendar, as Transgender Day of Visibility. No longer since January 20th. This is what President Trump's Department of Justice has done. We've dropped Face Act cases involving pro-life advocates. We're fighting for the rights of parents to protect their children from transgender books in schools that violate their religious faith. We're rooting out antisemitism in universities and other American institutions, and much more. Let this commission serve as a reminder elections have consequences. And this president and this administration are fully committed to restoring and defending religious liberty for all Americans. The Religious Liberty Commission will be the tip of the spear. Together, we will return America to the vision of our founders, a nation where faith merely isn't tolerated. But it's embraced and celebrated. I'm honored to serve as a member of this commission, but also to call the Department of Justice its home. I can assure you that DOJ will use every legal and constitutional tool available to ensure Americans can live out their faith freely, without fear. I am filled with hope for what lies ahead. I believe this commission has the authority and the experience. I'm looking at all of you. Thank you and thank you, Doctor Phil. Necessary to restore religious liberty to its rightful place and elevate solutions on the world stage. Thank you to each of you who answered this. Call your faith, your courage. Your conviction will leave a lasting legacy. Thank you Bishop. May God bless each of you, your families, our great country, and this noble endeavor. Thank you and have a great conference.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you very much. So, we are right on schedule. We have one more witness for our morning call, and we will have time for Professor Barbara Elliott once we reset the stage to come and speak and time for questions. And then at noon, we will break for lunch. For those of you who have not been to the Museum of the Bible before, welcome. And we thank them for allowing us to have our hearing here. For those of you who are watching online, it's a must place to visit when you're in DC. And for those of you here, if you haven't seen it and I forget what floor it's on, but it flies you over the city of Washington so you can see where all of the Ten Commandments and all of the inscriptions are on all of the buildings. So, as long as you don't get a little, you know, little sickness, which I don't go there. It's a great experience before you leave today. It's just wonderful. So, when we break for lunch, you can break for lunch. We're going to start, I believe, on keeping the trains running on time. So, we'll start exactly at 1:00. So, if you'll be back in your seats by then. And right now I'd like to introduce the chair in place. There we go. Professor Barbara Elliott serves as a fellow of the Dominican School of Philosophy and Theology, and an assistant professor of liberal arts at the Houston Christian University. Professor Elliott's work in human rights, including documenting the stories of those whose faith inspired them to resist communism and her experience in public policy, provide a unique and essential perspective on the role of religion and a vibrant and free society. Professor. Welcome. And the microphone is yours for the next 10 or 12 minutes.

Prof. Barbara Elliott: Thank you very much, Commissioner. And all of you. It's a delight to be here with you, to meet some of you in person. Yeah. This is marvelous. Thank you that we can talk about something that is really important to our country. People of faith have given our culture a unique strength throughout our history. Without their awareness of the transcendent realm, the American founders could focus beyond the temporal in a search for meaning and a purposeful existence. They knew that the moral and spiritual strength of the people was crucial in making civic order possible. Long before the Constitution, people of faith were forming small units of order, cells of civil society for their own self-governance and for helping one another before the first settlers even set foot on Plymouth Rock, they bowed themselves to each other and to God in a form of government derived from covenant theology of the Old Testament. The Mayflower Compact of 1620. This was derived directly from the covenant of the Old Testament, which bound Abraham, Isaac, and Jacob to the great I am. These people promised to live in accordance with his law. Our Constitution has the same roots. Faith and family were the bedrock of thriving communities where good character was instilled, along with personal responsibility and a willingness to help others. When a barn burned down, neighbors would band together to build a new one for them, or if parents were killed, parents of young children, a neighboring family would take them in as their own. That was a natural expression of their Christian charity. This vibrant goodwill in early America provided charitable assistance to the sick, the elderly, the senile, widows with children, unwed mothers and the unemployed. Education was also a high priority. People of faith in the colonies were instrumental in founding schools. Harvard College, for example, was founded in 1636, Saint John's College in 1696, Americans created voluntary civic organizations, hospitals, all kinds of things. When Alexis de Tocqueville visited the country in the

1830s, he was dazzled by this wide array of private voluntary associations and the goodwill that they harnessed to serve others. This was very different than the culture in Europe, where the government and the church were the prime movers. Now, I experienced this firsthand when I lived in Germany in the 1980s. I launched a small private initiative to reach out to people who were fleeing communism and coming to us in West Germany. My skeptical neighbors said, oh, that's so American. Somewhat disdainfully, well, yes, it is American. John Adams claimed our Constitution was made only for a moral and a religious people. It is wholly inadequate to the government of any other. Previous speakers have referenced this civic order has most often flourished where it has rested on the moral and spiritual strength of the people who are governed from within the most potent and powerful unit for shaping the culture is the family. It's the matrix of all primary beliefs, hopes, and aspirations that a person carries through life. The family is the core of civilization, the most important, irreplaceable primary unit through which God has granted man participation in creation and beyond the family. Tocqueville discovered a variety of private voluntary associations, associations, people putting their efforts together to solve a local problem. This is the principle of subsidiarity, and that is important to both Protestant and Catholic thinking. It places the resolution of human issues at the level closest to the people affected. I did research all over the country, interviewing more than 300 people for my book, *Street Saints Renewing American Cities*. I discovered people who are quietly renewing the nation, living their faith one by one, and in small groups, mending hearts and souls with love. Now, how can we evaluate the effectiveness of faith based organizations? Well, it's not easy. The great management guru, Peter Drucker was asked. He said the answer lies in changed human hearts. You can see tangible evidence of that in changed behavior. So, the most effective services are based on one on one face to face relationships over time. And this is true whether it's mentoring programs for prisoners or at risk kids or recovering drug addicts. If the relationship is rooted in God and anchored in prayer, the likelihood of transformation is very high. Now, this isn't just academic research. For me, my world expanded in very colorful directions that caused my family consternation. Occasionally, the people I wrote about became friends, so I found myself hanging out with a former gangster disciple in Fresno and a former meth cook in Houston. In San Antonio. When I drove up to Freddie and Ninfa Garcia's home, bullets were flying. Now, this was also an unusual sight because men's heads were bowed over Bibles where they were studying with Freddie and Ninfa. Anybody who wandered into their home late would see that Ninfa had a big pot of beans bubbling on the back burner. She would take in anyone who walked in off the streets, and that included guys who were strung out on meth or whatever, and people would stay up with them through the night, hold a basin for them to be sick in, find a blanket for them, and love them through the transition. The way she the way she explained it is it was love in action. Now, when a group of visiting philanthropists disembarked from their bus the next day, they looked somewhat out of place in this barrio. Freddy leaned over and whispered to me they would run out of here screaming if they knew how many felons were here in this room. Well, yeah, you kind of get used to that. The message that Freddy delivered that day was straightforward. He said, you can take a junkie and throw away his drugs, and all you have is a reformed junkie, but you can take an addict and give him Jesus Christ. And you have a totally transformed man. Freddy knows because he is one. He was a heroin addict, and he was so desperate for a fix that he laid his baby boy on the floor of a dirty men's station, and he was trying to shoot up. Now, in a lucid moment, which was rare for

him, he looked at himself and looked at this baby and said, what kind of father am I? My God, what kind of father am I? So, he asked God for help in kicking his addiction. There was a faith based program that took him in. He then started one in his own living room. They would take an addict in, pray with them, talk to him, nurture him through the withdrawal, and then make a disciple out of him to help others do the same. Now this is an old model. It goes back about 2000 years. You take people in, you spend time with them, you pray with them, and there are new people. Addicts also end up in prison. Often they'll tell you that starting a new life is really hard. When you get out, they drop you off, give you a few dollars, you get out of the bus, and good luck starting a new life. Almost nobody wants to hire a felon. That's a rough thing for them. So, I launched a program in Houston to help people in that situation become employable, to get ready for employment. We had interesting people there. A man named Michael had been in and out of prison his entire life, alternating incarceration with living under bridges. His parents had lived a similar life, so the idea of getting a job and leading a normal life was ludicrous to him. But there was a man from a church ministry that kept coming back to him and sitting down with him and giving him food and water and praying with him. This guy would not leave him alone. He just kept coming back. Well, eventually he convinced him to go into a homeless shelter and to then enter a program to get ready for work. Michael was a guy who would say exactly what he thought, and because he'd had kind of a rough life, you know, his father would put him in a burlap bag with his brother and a vicious animal and put them on top of a hot tin roof in Houston. This was for fun, right? So, Michael had been scarred by life. So, when he got up to speak in an unscheduled interruption of our graduation ceremonies, nobody knew what he was going to say. He said this I have lived like an animal my entire life, but I found my dignity this Thursday because you loved me. There was not a dry eye in the room, including mine. Love makes all the difference. Love is the ingredient that transforms, lifts up brokenhearted, restores hope, and heals all things. People of faith are taking their love into communities and they are lifting hurting people and loving them into wholeness. People like John Sage in Houston, his sister had been murdered, so he needed to get rid of the anger and the depression that he was carrying around with him. So, he talked about it with other people who'd had similar experiences. And from that came the awareness that there is healing in the telling. So, he started a program for people like himself to go into prisons. They would take people who had committed crimes and talked to people who were the victims of crimes and tell their stories to each other, and to do that in the context of Scripture on reconciliation. Now the prisoners are asked to write a letter to the person that they harmed, including someone who's no longer alive. They're also supposed to write a letter to someone in their family who is hurt by their absence. Often a child. The act of asking for forgiveness brings about profound changes. The need for reconciliation runs through the nation. The civil rights movement called Followers of Christ onto the streets to affirm the dignity and the rights of all men and women as spiritual brothers and sisters. As Martin Luther King reminded us, we are citizens of two kingdoms, the eternal and the temporal, knitted together by morality that transcends the boundaries between races. Man made laws may draw boundaries, but only the higher law produces love, and it is also the only thing that Doctor King said produces obedience to the unenforceable. The higher law demands restraint and courage. The civil rights movement trained people not to return evil with evil. So, if you got yanked off a drugstore counter, these courageous people were trained not to return evil with evil. It takes extraordinary self-

control not to ratchet up the violence. When Jesus said, love your enemies. Martin Luther King reminded us he was calling for agape, the love that is understanding and creative, redemptive goodwill for all men, an overflowing love that seeks nothing in return. Agape is the love of God operating in the human heart. Now, sometimes that fullness of love demands a response to wrong. People of faith led the way. Resisting communists. They risked their lives in a peaceful demonstration, facing down troops under orders to shoot them. And they ultimately brought about the fall of the Berlin Wall. I was in Germany at the time that this happened, and I interviewed people from Poland, East Germany, Czechoslovakia, Hungary, all the way to Russia, and I wrote about these courageous people in my book, *Candles Behind the Wall* Heroes of the Peaceful Revolution that Shattered communism. Tens of thousands of people poured onto the streets, facing down troops under orders to shoot them. And they did this because of their faith. They prayed. And the only defense they had was a small candle that they carried. And in the end, the forces of peace won, toppling the Berlin Wall and unraveling the Soviet Empire. It was a revolution of the spirit. First. Today in America, people of faith are binding up the unraveled fabric of civil society in tangible ways. We hold the threads individually, but when they're bound together, we can reweave a picture of order and beauty in human souls, woven in vibrant colors of love. This is the design of the creator for which we were always intended. Love can only be lived in relationship. Human persons are not designed to be merely clients of social services. We've been given life by our creator for so much more. We were made by love. For love. We've been given the capacity to receive love, which is poured out over us freely, and we are to share it with others. This is the essence of what it means to be human. Augustine knew our heart is restless until it rests in thee. Faith calls us to serve our Lord and our fellow creatures. We pray to live integrated lives rooted in the earth while reaching toward heaven. As my friend Joseph Pierce has written at the heart of all healthy societies and cultures is the presence of the good, the true, and the beautiful. The person of Christ is the way, the truth, and the life. The very life of beauty shining forth in the glory of creation as the word made flesh, as the poem that perfectly reflects the perfection of the poet.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, thank you. Barbara. You know, I was sitting here and remember a few decades ago when I came to your graduation and how you taught those felons, those who had spent time behind bars, how to even do a job interview. They didn't know. And I remember leaving something. I've always remembered that when you look at the maybe the background of a child or you look at the terrible epidemic of drugs, there's not a big difference between people living under the. Bridge and people driving over the bridge in a fancy car.

Prof. Barbara Elliott: Absolutely true.

Texas Lieutenant Governor Dan Patrick (Chair): And this is, as you know, how we opened this morning in our comments, we talked about this is the goodness of America. And it comes from faiths of all faiths. And as one of our witnesses said earlier, when George Washington was president, they

didn't have the money for these social services. It was the church. And again, this multifaceted church we have of so many faiths in our country today. Doctor Phil, you've had so many guests on your show. I'm just throwing this to you. You've had so many guests on your show that you've talked about their lives and God. And I know how that's impacted you. Even moving your studios at one point to Texas, which we're proud to have you. But I just want to give it to you for a moment.

Dr. Phil McGraw: Well, I just like to start by saying you are a great lesson, lesson in judgment, because you're a lot tougher than you look. Thank you. I just have to say, but you know, you are. I just want to echo that you are so right. Because when you deal with these addicts that truly have no purpose and they have no meaning, I've had so many relate to me when they relapse, they do so because they basically have no reason not to. I mean, they just basically say they have no reason not to. But for those who get on a path and, and find that higher purpose to, to serve God and to use their life in, in, in his service, you can't drag them back into that life because they don't have time for it. They don't have any justification for it. They've found a meaning. They found a purpose. They found a higher calling. And all of a sudden, they the number one need in all people is acceptance. And there are synonyms for that acceptance and belonging. And when they have a place to be a purpose in this life, and you just gave so many. Case histories that that prove, that doesn't mean it's success only journey. But when they find that connection, that's the ingredient. That's it. And you've proven that over and over. And God bless you for what you're doing. Thank you for what you're doing.

Prof. Barbara Elliott: Thank you. It is such a joy because people can discover that there is something beautiful inside through relationship, the work, faith, connection, the organization they practice hugging. There's a lot of hugging that goes on. And for these guys who have gotten out of prison, nobody's hugged them in years. And to have it in a chaste sense, you know, it's the kind of thing that we're just saying, hey, love your brother, you know? And that's sometimes life changing for them.

Dr. Phil McGraw: And eye contact. They make eye contact without challenge.

Prof. Barbara Elliott: Yes. That's one thing we teach them. When you're going to do an interview, you have to look that person in the eye. No, they can't. You know, they're used to looking down. You look up in prison, you're asking for trouble. Everybody keeps their eyes down.

Dr. Phil McGraw: It's eye contact without challenge. It's real intimacy. It's real intimacy with somebody.

Prof. Barbara Elliott: Yeah, yeah.

Dr. Phil McGraw: That's true. Thank you for sharing that.

Prof. Barbara Elliott: Oh, thank you.

Texas Lieutenant Governor Dan Patrick (Chair): Pastor Paula. And then we'll go to the bishop and Doctor Carson.

Pastor Paula White: Chairman. Thank you, Professor Elliott. I'm just so excited over here hearing your story and your life, work and all that you've done. You're just singing my tune for over 40 years. I think about ministry for myself, whether it was in the LA riots. I lived there two years after the Rodney King beatings or the church that we started in Tampa, Florida, in 91, they doused a man with gasoline because the color of his skin and ambulance would not go in without a police escort. And I started going in and feeding the hungry and telling them about the love of God. And it grew into the second largest church in the nation at the time, with 250 Outreach Ministries Hour. I was reminded how I started ministry here 41 years ago. I lived in Frederick in a trailer and someone brought me a turkey, and I was overwhelmed and felt like the most blessed person in the world. I'd just gotten saved about a year or so earlier, gave my life to the Lord, and I said, I've got to help someone. So, I got on the Bart, came down here to second and D in Anaconda with an advocate by the name of Mitch Schneider, and I took half that turkey and started feeding, and I prayed a little prayer and said, God, can I spend the rest of my life doing this? Well, 41 years later, I've gotten to do this and now at a level. And here comes the question. Comment. During Covid, we saw change because Covid changed everything, and that one turkey turned into a \$5 billion program for me. I served at that time with President Trump at the Faith Initiative and Opportunity, walked in his office when he was talking to the secretary of AG and saying, what are we going to do with this milk? What are we going to do with this pie? And I'm raising my hand. I said, I've got your answer, I've got your answer. He's like, Paula, you know nothing about supply. But I knew we had 384,000 houses of worship, and they were the ground army that could get it done. We cut out the middle man because we had to on all the supply was done and we did farmers to family. It was the first time churches had \$1 billion program go through, and was the most efficient, effective program to feed people. It was also the first time we could pray with people without being told by the middleman. That went down to the food bank that you can distribute food because they need the churches, the synagogues, the mosques, but you cannot pray for people. Quite a religious liberty issue, Kelly, but we saw how effective it was, and this is one of the reasons I believe President Trump and I, I'm serving in this white House faith office. We see so much discrimination against people of faith. I worked on the first step was a big proponent of getting that passed, work with Jared, with everyone. And yet we saw the same thing. Faith based programs are about 80% 88% successful, secular only under 20%. We see such a discrepancy. But when it comes to government and money, we see things like aid prior before it got dismantled, they checked off the box by giving money to two Christian organizations and one Catholic. That was it.

And the rest got untold billions of dollars. Same thing on a state level. Same thing in every. We don't just see discrimination in the court, Kelly. We see them in so many areas and yet we see people of faith, all faiths being the most successful at the ground game. Have you had any insight of what we can do to get that playing level or that playing field level?

Prof. Barbara Elliott: I think the most helpful thing would be to stop silencing the faith factor in organizations that are doing good work. The requirement in order to receive government money has often been take the faith factor out. You can't pray with the people you know in this facility. You can have no people of Christian persuasion. Get the priests out of here, no nuns here, you know. Or if you do have them, they have to be silent about their faith. I mean, I talked to nuns in New York who couldn't pray with the recipients of their work or living in a home. Actually, I said, do you pray with me? Oh, no, we can't do that. Really? I mean, if you silence the faith factor, you are taking out the one thing that makes Christian organizations uniquely effective. Mentoring programs. I've been in a mentoring program at the local school. So, the program that I was with, kids, hope you adopt a school near your church and you can send mentors in. They pick the kids so you get the worst, you know, the most maladjusted. And we start with them in the first grade, but we can't pray with them. So, we've had prayer partners off site pray. Prayer goes through. Walls are permeable, you know, to prayer. We found that. So, they pray off site for that partnership. And the mentor goes in and meets with the child once a week. It actually works in a strange way. I mean, because of the prayer permeable factor, but how much better would it be if we'd been able to sit down with the children ourselves and pray for them, person to person? So, that's the kind of thing that just puts a ludicrous constraint on the most effective, life changing factor. So, removing that would be helpful.

Texas Lieutenant Governor Dan Patrick (Chair): Bishop Barron.

Bishop Barron: Yeah, thanks so much for the presentation. I thought it was very thought provoking. And what it provoked in me was, was this that hospitals, as we know them came up out of the church universities. We know them. John Paul II reminded us, *ex corde Ecclesiae* from the heart of the church. The church has been bold in the way it moves into the public space. I wonder, have we religious people been too cowed by a secular society that wants us to privatize the faith, and that we haven't seized the opportunity of the of the First Amendment? So, we'll make no laws restricting the free exercise of religion. Good. Then we shouldn't stay in our little self-imposed ghettos, but rather no Congress will make no laws preventing it. So, let's invade that space. I wonder if we've been so affected almost psychologically by this, the wall of separation and the etiquette of privatizing our faith. That image of the nuns? No, I can't I'm not going to pray. Well, there's just something that's obviously opposed to religion, but also opposed to the best instincts of our own First Amendment. That's what it was, what was provoked in my mind during your talk.

Prof. Barbara Elliott: Well, thank you for that. I love your bold thought. Have we just been cowed? Because that is the ethos? Is that is that actually the law, the intention of the law? I'm inclined to say no. So, no law limiting the exercise thereof? Well, it seems to me that is the exercise thereof. The thing about the separation of church and state, that wall was not intended to inhibit the churches. The wall was to protect them. That's what Jefferson meant. That's what he was saying. The wall is there to protect the churches. We're taking it as a barrier that can't be breached for any reason. I even talked to a banker once asking him for a donation. He said, oh, I can't give to your nonprofit because of the separation of church and state. Wait a minute. You're not a church. You're not the state. And I'm not either. What? What is the problem? If you don't want to give, that's fine. But, I mean, this is a strange application that we think we have. So, I agree with you. We need to be more bold.

Texas Lieutenant Governor Dan Patrick (Chair): As Jude said, contend earnestly, Doctor Carson. And then I'll go to Carrie and we have a few minutes left. Doctor Carson.

Dr. Ben Carson (Vice Chair): Well, professor, I really appreciated that very positive spin that you put on everything. It's wonderful. You know, there's so much negativity associated with religion in many aspects. Even when you look at the Ten Commandments, the last half of them are things that you shouldn't do. And, you know, Jesus reversed that when he said, you know, love your neighbor as yourself. That encompasses everything. It's so important. But when I was secretary at HUD, there were so many restrictions in place when I first got there about things that you couldn't do, weren't supposed to do, particularly for faith based organizations. And we started a program called the Mustard Seed Program, in which we looked for faith based organizations that were doing very positive things in the community. And instead of giving them a checklist of things that they had to check off, we just said, the proof is in the pudding. It's what they're doing, and we can support that with federal dollars. Do you think that's a good use of federal money?

Prof. Barbara Elliott: What could they use it to do?

Dr. Ben Carson (Vice Chair): Programs that they were successfully conducting.

Prof. Barbara Elliott: Continue what they were doing that was successful? I mean, that seems good on the face of it. If they are given the latitude to be true to who they are, to do what they do, do it with integrity, do it in a way that is. Building civic virtue and changing lives in a tangible way for the good.

Dr. Ben Carson (Vice Chair): Exactly. And you know, the Bible says in the book of James, pure religion and undefiled before God and the father as to visit the fatherless and the widows, and to keep himself unspotted from the world, and I think when we look at all these various things that we've been talking about, it's the proof is in the pudding.

Prof. Barbara Elliott: I think that's true. I mean, the head of one of the foundations that I talked to several years ago said, look, all of these checklists, we go in and best practices and yada, he said, I just walk into a place and I can tell you, after 15 minutes of talking to the people who run it, are they people of integrity? Are they producing results? Give them the money, I said. I love your attitude.

Texas Lieutenant Governor Dan Patrick (Chair): Carrie will be our last question of the morning session. Carrie?

Carrie Prejean Boller: Thank you. I just want to say thank you for being here. You really, truly embody goodness, beauty and truth. And we need more professors like you in the world. So, my question to you is really and it's sort of a comment, I'm a young mother, 37 years, 38 years old, just turned 38. I don't know if your mother as well?

Prof. Barbara Elliott: Yes, and a grandmother.

Carrie Prejean Boller: Oh, and a grandmother. Okay. There's a lot of mothers that I think are burdened today, and we are burdened by this idea that truth is subjective. That is what our children are learning in school. That is what the culture is teaching them, that they can choose whatever they want to be today. They can be a cat. They can be a dog, they can be a monkey. They want what would you say? What would your what would be your advice if you could look mothers, American mothers in the face right now and talk to them and say, what would you tell them to make sure that their children don't sway, that they don't believe the lies that they're being told? And what can we do as a culture to bring back goodness, beauty and truth?

Prof. Barbara Elliott: Wow. Big, big question, big task. I think we are given the opportunity to instill in our children an understanding that there is truth and it doesn't vary, but we have to be able to talk about it in a way that makes it positive. Tell them about God from a very, very early age. Tell them about Scripture that that from a very early age, read it with them, introduce them to people who are doing good things to serve others, introduce them to people who are leading heroic lives of faith. They need to meet people of faith. And I think giving them an opportunity to try to do something

themselves very young, take one of their toys and bring it to a ministry where they can give it to a child face to face. Instill the habit of giving. But I think it's how you have to live it. First of all, you have to limit their intake of all of the other culture out there. We were very, very strict in what they could watch and what they could read. I mean, you know, it had to pass the parental filter test. And, you know, not a lot of movies made it through. But, you know, we controlled the cable and we unplugged it. I mean, there was a time we were just off cable television altogether. My son wanted to watch a soccer game from a European one, and it was on in the middle of the night because the time difference. And he went over to a friend's house to watch it. He said, 'Tommy, why don't you just watch it at home?' Well, my parents are Amish. We have to be able to instill an awareness in our children that they are swimming upstream and that they are tasked with a wonderful thing to do. They can be warriors against it. They're charged to speak the truth and live it and not care if everybody believes with them. They need to be able to gird up their loins and put on the armor and be warriors for the culture, but for truth be different. It's good to be different because, you know, the vast sea out there is a mess, you know? So, get in your lifeboat and row. They have to understand that they are special and precious, but definitely swimming upstream. And to just keep loving them, keep bolstering them, keep reading the books they're bringing home, keep talking to their friends. I mean, it's a war out there. We need to be fighting in a winsome way. But don't accept the great culture out there. Live in the culture that is true and beautiful and good.

Texas Lieutenant Governor Dan Patrick (Chair): Barbara, We have asked every witness today if you were sitting across from the president in the Oval Office, because we are going to advise and report to him at the end of this sometime about a year from now. What would you say to him that he should do as president to ensure that people of faith have the religious liberty to do all the things that you have talked about?

Prof. Barbara Elliott: Let faith based groups be true to their mission, true to their calling, and not be hindered by the government in any way. Don't make the mistake of thinking that giving funding is the most valuable thing the government can do. Getting out of the way is sometimes the most valuable thing they can do, but let them be true to who they are.

Texas Lieutenant Governor Dan Patrick (Chair): Barbara. Fantastic testimony. Please give her a round of applause.

Prof. Barbara Elliott: Thank you. Thanks.

Texas Lieutenant Governor Dan Patrick (Chair): We will just five minutes behind. Pretty good for everything that happened this morning. So, we'll break for lunch. Please be back in your seats at one. The commission stands in recess until 1 p.m.

(resuming after lunch, approximately 1pm ET)

Texas Lieutenant Governor Dan Patrick (Chair): All right. A little way to start this afternoon session. I was here in January for the inauguration, and I came over with my family, and it was the second time I'd been to the Museum of the Bible and for a tour. And there's so much to see. You don't see everything on one tour, but we had the story about a very unique Bible, and I wanted them to tell that story a little bit. If you're not aware, I was not aware at the time, and it was at that moment really, you know, we opened up, I said, the president and I first talked about this in November, and of course, the inauguration had a lot more things to do and get set before we could begin working on this in March. But it hit me then that this was the perfect place to host this. And again, I thank the Museum of the Bible, and for those just tuning in, it's a great place to visit. When you come to DC, I'd say it's a can't miss. I want to introduce Anthony Schmidt. He's the director of collections and curation. He has a PhD in American religion. He joined the museum almost eight years ago. And I welcome you to tell us the story of the Bible.

Dr. Anthony Schmidt: Thank you very much. Thank you for having me. And welcome to Museum of the Bible. Yes, I've been here eight years, and so that makes me a grizzly veteran at this organization. We opened in 2017. And so we're thriving here. And we're really happy to have you here today. And I'm thrilled to come and talk to you just a little bit, just for a few minutes, about one of the unique Bibles that we have in our collection. And that is known as the Aiken Bible, also has another name. It's the Bible of the revolution, is what it is often called to is often referred to. So, the Aiken Bible was published by Robert Aiken in 1782, and there are a few superlatives that we can attach to this particular Bible. As I mentioned, it's known as the Bible of the Revolution. So, 1782 it was published towards the end of the revolution, and it was the first English language Bible published in North America. Now, I'll talk a little bit about that here in just a second. So, the first English language Bible published in North America. Think about that 1782, though that seems kind of late. Right. So, 1782 and it's actually one of the rarest historical Bibles published in, in North America, and American history, essentially. So, the first Bible that was published, the Eliot Indian Bible, there's actually more, more surviving copies of that that we can count than the Aiken Bible, which is pretty unique, but it also represents a watershed moment in the history of the United States and the young republic. And so we'll walk through those in just a few minutes. As I speak here today. So, why, why did it take so long, 1782, to publish an English language Bible? Like I said, there had been previous Bibles published, the first Bible, 1663, the Eliot Indian Bible, 1663, that was published in in Wampanoag, though that was a dialect of the Algonquin language. Up in the American Northeast, the Boston area, the first European language Bible published in North America. That wasn't until 1743 1743, and that was in German, by the way, man by the name of Christoph Sauer in Germantown, Pennsylvania, outside of Philadelphia, published the first European language Bible. Okay, Robert Aiken, 1782. What's going

on? Well, if you wanted an English language Bible, you typically had to get it imported from Great Britain. Okay, so the Crown had essentially a monopoly, or they authorized certain printers to publish English language Bibles. And so you would have, you know, London based printer Edinburgh, Cambridge, Oxford, some of the university printers and all of those would be brought in to the colonies. Well, the revolution put a crimp in that, right along with a lot of other imports. And so all of a sudden, in the colonies, you had a shortage of English language Bibles that took place over the revolution. So, what do you do? What do you do? No one had ever printed an English language Bible over here prior to the revolution that we know of. Now, you could get some pirated copies, some Geneva Bibles. You can get those in to the colonies. But if you wanted the King James Version, you would have to import them. Well, in 1777, the shortage was getting pretty noticeable, and a few ministers petitioned Congress at that time to, you know, think about publishing some Bibles, because we needed to fill that gap. Well, Congress was short on funds. They were also at war, and they were about to be chased out of Philadelphia. This is 1777. So, they did pass a motion to go ahead and import some Bibles from Holland. But it really didn't go anywhere. It didn't go anywhere. There were just too many other competing priorities, we can call it that. But there was a need and there was a recognized need. So, Philadelphia printer, he was actually connected to Congress. His name was Robert Aitken, printed the Journal of the Proceedings of Congress and the pencil. Let's see the Pennsylvania magazine. So, he was a quite, a quite a prominent and established printer in the Philadelphia area, born in Scotland. 1734. So, he would he was kind of an older man by this time well established. And he decided in 1781, after having printed a New Testament just to kind of test the waters, he wanted to print a complete, complete edition of the Bible. So, the Old and New Testament he left out the Apocrypha this time. So, the Old and New Testament. And so he began work in 1781. And finally 1782, they began to roll off the press. Now, what does he do? Well, he goes to Congress, and he's kind of in this mindset. Well, you know, for hundreds of years, the central government has been authorizing the publication of the Bible. You know, we he just assumed that this would we would have some sort of similar model here in the United States. We kind of can infer that's what he was thinking. But it Congress didn't necessarily want a monopoly on Bibles, right. They, they it was that wasn't that wasn't in their in their realm of thinking there. And so I'm sure that there were some folks that would have preferred some sort of tight control over the publication of the Bible, but, you know, that's not the route they ended up going. So, what Robert did secure from Congress was an endorsement. This was the only Bible that was officially endorsed by Congress. And so it received an endorsement, and it also received he received permission to print that endorsement in his edition of the Bible. So, Aiken Bibles will have that congressional endorsement in the front. Was it a commercial success? Well, it came right at the end of the war. And what this would really signal, as I mentioned earlier, is a watershed moment in the history of Bible publishing in the United States. So, it wasn't really a commercial success because the embargo would be lifted and all of a sudden he'd be facing quite a lot of competition in the colonies from other printers. But what he did kind of trigger or start, would be picked up by other printers, and all of a sudden in the colonies, because of this lack of religious establishment, because of this open market, you had all these printers who saw a void and began to try to fill that void with different types of Bibles. And so in quick succession, quick succession, you have the first Catholic Bible, 1792 Carey Bible. We have the First Family Bible, 1791

first Illustrated Bible 1792. First Children's Bible, 1794. First Greek edition of the New Testament, 1800 by this guy named Isaiah Thomas, who was also connected to the founders, not the basketball player. He's the printer, but. And so on and so forth. And you have these benchmarks being set by this founding generation that would be triggered and kind of kicked off by Robert Aiken. And where you prior to Aiken, you had no Bibles being published in English in the colonies. Literally within 30 years after Robert Aiken, there are millions, millions flooding the market in the United States, laying the establishment of the early republic. Right. So, this is going to be a Bible saturated republic in a sense. And I could go on about the American Bible Society and all of their work that would come in 1812. And just the proliferation of the Bible throughout American culture then. So, Robert Aiken, the Aiken Bible is quite a gem. And we have, I'm happy to say, we have three in our collection and including an Aiken New Testament, which is quite rare. The New Testament that he printed prior to the to the Bible. And you can see those in person with your own eyes down on the second floor. And our Bible in America exhibition, we have a case dedicated to the American Revolution. So, that being said, I think I'm out of time already

Texas Lieutenant Governor Dan Patrick (Chair): Any questions? Carrie.

Carrie Prejean Boller: Okay, this might be a silly question

Dr. Anthony Schmidt: No silly questions

Carrie Prejean Boller: What makes Aiken Bible so special?

Dr. Anthony Schmidt: What makes it so special? Its rarity. Its being the fact that it's the first English language Bible published in North America. The fact that it was connected to so many other prominent people within our founding generation. It really is kind of a window into that time period that is unlike a lot of other objects. 99% of the objects out there in terms of just where religion fit within, within that time period

Texas Lieutenant Governor Dan Patrick (Chair): Any other questions? I have one. Did that become the school book for most of our schools at that time?

Dr. Anthony Schmidt: What's interesting is, is Robert Aiken intended for this to be used by schoolchildren? That was when he first petitioned Congress. He mentioned that specifically, he wanted

to create a book that could be used for in classrooms. And to my knowledge, the run that or the portion of the run that he ended up not being able to sell, he actually donated to schools in the Philadelphia region. So, just to find some use for them

Texas Lieutenant Governor Dan Patrick (Chair): Well, thank you for joining us and telling us that story on the second floor and the story of the American Bible.

Texas Lieutenant Governor Dan Patrick (Chair): All right. Thank you, thank you so much.

Dr. Anthony Schmidt: That was an honor. Thank you

Texas Lieutenant Governor Dan Patrick (Chair): Our first witness in this second portion of our first hearing, we have three witnesses this afternoon, Professor Stephanie Barclay is a professor of law at Georgetown Law School, where she also serves as faculty co-director of the Georgetown Center for the Constitution. Her scholarship focuses on the intersection of free speech and religious exercise. She has been cited numerous times. Excuse me, by the United States Supreme Court. Her background brings a timely and expert perspective to our proceedings. Doctor Barclay. And I'll also bring on at the same time, Professor Joshua Blackman. Professor Blackman holds the Centennial Chair of Constitutional Law at South Texas College of Law in Houston. Professor Blackman is nationally renowned leader on constitutional law and the Supreme Court. His extensive writing and analysis of emerging legal issues will provide insights critical to our understanding of where the law is now and where it may go in the future. And our third witness, Christian Wagoner, is the CEO, president and general counsel of Alliance Defending Freedom. She's one of the nation's most accomplished Supreme Court advocates, having successfully argued several landmark cases protecting free speech and religious freedom. Her extensive experience in ongoing leadership provide a practical and frontline perspective on the current threats to religious liberty, a topic to the directives of our Commission that the president has asked us to hold these hearings on. Welcome. And, Stephanie, you can begin.

Prof. Stephanie Barclay: Thank you, Mr. Chairman. It's an honor to get to speak before this distinguished commission today and to discuss the original meaning of the First Amendment's religion clauses, both the Free Exercise Clause and the Establishment Clause. In the spring of 1660, Mary Dyer climbed the steps of the gallows in Boston, returning to Massachusetts Bay colony in defiance of a Puritan order. Determined to preach the tenets of her Quaker faith, the colony had ordered her to conform, to renounce her faith, and to remain silent. She refused, and for that she was hanged. Mary Dyer may well be one of the first Americans who died for the cause of religious freedom. Before the United States existed, some of the American colonies and England itself were places where

religious dissent could cost you your home, your freedom, or your life. And that grave reality remains true in far too many countries today. It was against this sobering legacy that the framers of our Constitution took deliberate action. They resolved to found a republic where conscience would be protected, not punished. In the very words of what became the First Amendment, they offered a bold and unprecedented promise Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, as this Commission undertakes its vital work, I'd like to emphasize three foundational principles that should guide our understanding of this important constitutional provision. First, the Free Exercise Clause and the Establishment Clause were understood by the framers to work largely in tandem, not in tension with one another. After all, these two protections form part of the same cohesive sentence in the Constitution. Second, their unified aim was to prevent government from interfering with individual and institutional religious life as much as possible. Third, the Supreme Court's recent doctrine has largely returned to original meaning, moving away from decades of misinterpretation and ahistorical tests that artificially pitted these clauses against each other and provided far too crabbed of protections for religion in our society. The religion clauses represent one of America's greatest contributions to human liberty. They emerged from hard won experience with religious persecution and a deep understanding that faith touches the most fundamental aspects of human existence. As James Madison observed, torrents of blood have been spilled in the Old World by vain attempts of the secular arm to extinguish religious discord. As the principal architect of the First Amendment, Madison had witnessed religious persecution firsthand in Virginia, where Baptist preachers were jailed for preaching without a state license. Their imprisonment, following the dictates of their conscience, became for Madison, a vivid demonstration of what must never be allowed in a free republic. So, let me begin with the meaning of the Free Exercise Clause, which reads, Congress shall make no law prohibiting the free exercise of religion. The inclusion of the article, the in the text, let me suggest, is not just a rhetorical ornament. It may signal that the framers were aware that they were not inventing a novel liberty, but recognizing and securing a long standing one. George Washington expressed this understanding in his letter to the Quakers. Upon becoming elected president, he stated, quote, the liberty enjoyed by the people of these states, of worshiping Almighty God agreeable to their consciences, is not only amongst the choices of their blessings, but also of their rights. End quote Washington said this recognizing the existence of this natural and customary right to religious exercise before the First Amendment had even been drafted, the original understanding of this right was remarkably robust. It encompassed not just a right against religious discrimination, as important as that is, but also a right to live according to one's religious convictions, even when those convictions conflict with generally applicable laws. The case of the Quakers that you have heard earlier today provides a clear historical example of this. At the time of the founding, Quakers weren't willing to bear arms in the military service based on their religious convictions, and these laws were not discriminatory ones. But the government's ultimate response was not to force them to violate their conscience, but to recognize the futility and injustice of that sort of coercion. As Elias Boudinot, a prominent founding era figure, explained, quote, what justice can there be in compelling Quakers to bear arms when, according to their religious principles, they would rather die than use them? End quote. This reveals something crucial. Accommodating the religious exercise of sincere believers was understood to be necessary to reduce needless human

suffering. And that principle remains true today. These early accommodations also reflect the founders conviction that a healthy republic must cultivate principled citizens capable of dissenting on grounds of conscience. Of course, protection of religious exercise was not absolute. James Madison debated with George Mason about the limits of religious liberty, identifying a very limited category of government reasons for which government could regulate religious exercise. Madison rejected Mason's suggestion that we should be able to limit religious practices for the happiness of society, Madison said. That's far too broad. Regulation would need to be justified on much more limited bases, like the need to preserve equal liberty of other citizens, or because the religious practice could endanger the very existence of the state itself. Early state constitutional protections for religious exercise also contained provisos enumerating the types of government justifications that were appropriate for limiting religious exercise when necessary. Things like government action necessary to protect the public health or public safety of the community. The early 1813 New York case of *people versus Phillips*, the earliest example of a religious exemption being granted, illustrates this principle in the judicial context. This case dealt with whether the government could subpoena a Catholic priest who had received a confession about a crime and force him to testify. Now, you can understand why, for the government, you would be very interested in this evidence. Smoking gun evidence, if you can get it about the defendant and the crime that they may have committed. And the government argued this was necessary for reduction of crime and for safety. But even though this law was not discriminatory, the Phillips Court noted the burden the government's requirement would impose on the priest's ability to exercise his religion, requiring him to testify would place him between Scylla and Charybdis, where the priests would be forced to either suffer penalties for failing to comply with the law, or to violate his religious oath. In the face of this religious burden, the court demanded evidence that the government's actions would actually advance its stated interest in public safety and reduce crime, and the court found that evidence, lacking mere assertions of risk or slippery slope arguments were insufficient, and the court ruled for the priest granting a religious accommodation. An early case dealing with a nearly identical issue coming out of Virginia ruled the same way. The free exercise Clause, properly understood, was thus a guarantor of genuine religious pluralism. It was aimed at ensuring that America would be a nation where people of diverse faiths could live according to their religious convictions, even when those convictions set them apart from their neighbors or conflicted with generally applicable laws. This protection was seen as essential not only for the flourishing of religion, but for the preservation of a free society. Generally, some have pointed to historical evidence that the free exercise Clause should be interpreted more narrowly, but virtually all of that evidence also supports arguments being debated at the founding about whether the judiciary should protect constitutional rights at all. For better or for worse, we now live in a society where there has largely been constitutional settlement on that issue, and where we understand that our judiciary is in the business of protecting constitutional rights. And so may I respectfully submit that in that context, there is no constitutional right with a stronger historical support entitling it to robust protection than religious exercise. I'll now turn to the original meaning of the Establishment Clause, an issue that some of the astute members of this commission were asking about this morning. This constitutional provision emerged in large part from the framers experience with the Church of England, which served as a cautionary example of problematic church state relations. The framers did not view all

public roles for religion as problematic. Rather, they sought to prevent specific government actions that characterized formal religious establishments while still allowing religion to maintain an important role in public life. Professor Michael McConnell has identified six historic hallmarks that characterized religious establishments that the framers were seeking to prevent. So, beyond a formal declaration of an establishment, a prohibited establishment of religion could include one of the following number one control of church doctrine, leadership, or internal affairs. Number two compulsory religious exercise with penalties for noncompliance. Number three preferential financial support of just the established church and not other denominations. Number four prohibition of dissenting worship or punishment of dissenters. Number five use of church institutions for public functions in a monopoly capacity. Number six restriction of political offices to members of the established church. James Madison's Memorial and Remonstrance against Religious Assessments provides some crucial insights into the framers' views about these hallmarks of an established religion. Madison opposed Patrick Henry's proposed tax supporting Christian churches for two independent reasons, both relating to these hallmarks that I was just discussing. First, Madison objected to granting peculiar exemptions, as he called them to certain religious groups, the Quakers and the Mennonites. He viewed this sort of preferential treatment of some denominations over others as problematic denominational favoritism. Second, Madison argued that the religious taxes required by this law effectively forced everyone to engage in a religious observance, or, as professor Mark Stasi has written about, effectively, a tithe. Importantly, Madison's objection centered on the coerced religious participation rather than the government funding itself, which could be provided to religious entities for lots of other sorts of reasons. This explains why Madison and others who oppose church taxes in the form of tithes, did not oppose state funding of religious schools. The latter did not involve coerced religious observance. Early American practice demonstrates that the Establishment Clause was not understood to require strict separation of religion from public life. The same Congress that drafted the First Amendment appointed official chaplains and provided for their payment. President Washington and Jefferson both acknowledged religion in their official capacities, and the federal government funded religious schools and religious displays in government spaces. Finally, on some issues, the religion clauses speak powerfully with a unified voice. The original understanding of these clauses encompasses institutional church autonomy, the right of religious organizations to govern their internal affairs according to their own religious principles, including selecting ministers and establishing doctrines without government interference. When James Madison and the secretary that was the Secretary of State, for instance, the Catholic Church solicited the executive's opinion on who should be appointed to run the church affairs in a new territory. Madison responded that selection of church functionaries was an entirely ecclesiastical matter, left to the church's own judgment, and something over which government should have no say. In conclusion, in recent years, the Supreme Court's decisions have increasingly returned to this original understanding. The court's 2022 decision that has been discussed earlier, *Kennedy v. Bremerton School District* rejected the artificial tension between the religion clauses that had been caused by ahistorical doctrines like the Lemon Test. It adopted the six hallmark approach to the Establishment Clause, citing to Michael McConnell's work and a concurrence by Justice Gorsuch, highlighting in depth that approach. It also emphasized that the clauses work together towards the unified goal of protecting religious exercise and preventing

unnecessary government intrusion. In *Kennedy*, another case, the court has also interpreted narrowly cases like *Employment Division versus Smith*, which would not allow religious exemptions if a law is neutral and generally applicable. And now the Supreme Court has interpreted that case so narrowly that virtually no law at the Supreme Court, I would submit, could qualify as being neutral or generally applicable. Which means that if a law burdens religious exercise and can't satisfy strict scrutiny, the court will grant a religious exemption. Lower courts are not so clear on this subject and are not as protective. And in *Kennedy* in a footnote, the Supreme Court did leave open the possibility that they may yet overrule *Employment Division versus Smith* and make this reality crystal clear, offering more guidance for lower courts. The court has also recognized that government can accommodate religious exercise without impermissibly establishing religion. Religious expression in public settings is not presumptively unconstitutional. The court has finally recently emphasized, just this term that religious institutions have a robust right to autonomy in their internal affairs, and the Supreme Court did that in a unanimous decision. This return to original understanding creates space for genuine religious pluralism to flourish, and serves the cause of religious liberty for all Americans, regardless of their particular faith traditions, or none at all. But the important work of protecting religious liberty is never complete. Today, anti-Semitism is on the rise. Native American sacred sites are being threatened. There are many religious charities that face unnecessary obstacles to serving the most vulnerable amongst us. The Commission's work is vital to preserving and strengthening religious liberty for future generations. By understanding and applying the original meaning of the religion clauses, we can assure that America remains a nation where people of all faiths and those of no faith can live according to their deepest convictions while participating fully in our common civic life. I thank you for your attention to these important matters and for your service on the Commission

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, Professor Barclay. As we did this morning, we'll have another witness and then we'll open for questions, and then we'll have our last witness and ask questions instead of having three together. Joshua Blackman I introduced him as the centennial chair of constitutional law at South Texas School of Law. Joshua

Prof. Joshua Blackman: Thank you so much, Chairman Patrick, Vice Chair Carson, it's an honor to be here today and a point of privilege. I'm Jewish. Rabbi Soloveitchik is Jewish. There are many religions represented in this committee. I think that's a beautiful testament to the pluralism of our country. So, thank you very much for making such a wonderful board. And also, if we keep our brothers and sisters in Israel in our prayers today, they are under attack. At the moment. I have ten minutes. You get ten cases. So, it's going to be a very fast, fast, fast. But we will make this spin. The story begins in 1947. In case we've mentioned before, *Everson versus Board of Education*. This involves something benign school busses. My kids take the school bus all the time. So, in new Jersey, the school district had busses that took kids to Catholic schools on public busses. And Establishment Clause challenge was brought saying that this was unconstitutional. Now, the court upheld taking kids to the Catholic schools on the busses. But Justice Hugo Black, former U.S. Senator, said, but we know

the real meaning of the Constitution. It is not James Madison, Stephanie said. It's Thomas Jefferson with this metaphor of a separation of church and state. And he said, this is what it means. No other evidence, nothing to say. That's the real meaning. That's what it meant. And he says that this wall must be kept high and impregnable. It can't be breached. Not even the slightest breach we tolerated. So, black laid down the blueprints that the Establishment Clause means separation of church and state. We discussed this morning. That is not what the Constitution says. Not even close, my friends. So, then, about 15 years later, we get to a case mentioned earlier, the school prayer case. Engel against Vitale, 1962. My mom was actually a public school student in New York at the time. She actually remembers this. Schools began their day with the Pledge of Allegiance, which under Gobitis and Barnette you cannot say. But after there was a voluntary prayer, which, as I said before, was pretty frankly bland, thank you, God, we're here. Thank for the country and so on. Nothing particularly egregious in any definition. Yet by a 6 to 1 vote, 6 to 1 was even close. The court held that this was unconstitutional. Justice black for the majority, Justice Potter Stewart wrote the lone dissent, and Justice Black says, we breached this wall. The separation of church and state. There have been prayers in schools for generations. But suddenly in 1962, all of a sudden this wall was resurrected. Poor choice of words, perhaps in the Bible Museum. But the wall came back and he said, this wall has been breached. Justice Stewart dissent. He said, this is not in the Constitution. You're making this up. Stop it. But that was the law. Justice Black wrote. When the Constitution was adopted, there was an awareness of the dangers of the union of church and state. And the Justice Stewart said, what are you talking about? Go a few blocks that way to the US Supreme Court every day it begins. God save the United States and this honorable court every day. Just in Senate a couple blocks that way. Every day there's a prayer from a chaplain. A Stephanie said. The very first Congress that passed the First Amendment prayed for the chaplains in Congress. Every president, when they take the oath, they say, so help me God. They asked protection of God. George Washington on down, Pledge of Allegiance. One nation under God. In God we trust in every piece of currency. Right up there is history here that the Supreme Court just looked away at. This was the Warren Court. They were making stuff up a criminal procedure about rights of privacy. Penumbras. But God forbid, the thing is actually the Constitution. We're just going to push that aside. Then we get to 1971. This was a dark year for religious freedom. Roe came back two years later. So, this is a dismal time for the court. The court decides lemon versus Kurtzman. Those are an appropriate name for a case. This was it. This case gave a so-called lemon test. Again, it involved funding of religious schools. And the court puts forward this three part test, which they just made up of whole cloth. It didn't come from me. They said, here's the test. Decide they love tests back in the 70s. Here's the test to decide. So, first, the law must have a purpose that is not religious. If there's a religious purpose, you can't do it. We discussed this morning almost all of our laws have some basis in morality. This can't be the test. Number two, if law advances religion, you can't have that. This isn't consistent with two centuries of precedent. And third, this is my favorite one. You can't have an excessive entanglement, whatever that means. An excessive entanglement with church and state. So. So, even if, you know, the government had to monitor a school to make sure they're spending the money properly, oh, that's an entanglement. You can't have this. And what's fascinating is this was a test designed to protect religion. If you actually read the briefing, they said, we want to separate church and state to protect the religious, because we want to

protect people of faith from the government. If government gets into their hands, they'll corrupt the church. We don't want that. We are helping you. We're helping you. If you don't want the money, you can't have it. We're helping you. This was paternalism at its worst, lemon created a five decade reign of terror for the religion clauses. Justice Scalia, Jerry Bradley, the great line, this ghoul that creeps in the night and comes to haunt our nightmares. Right? This is how Justice Scalia described the lemon test. So, a couple of decisions that spawned from this one. You have stone against Graham. This was about whether you could post the Ten Commandments on the wall. Now I'm in Texas, governor Patrick is here. We pass a statute this year saying that the as we posted, we'll see what happens there. Another case called Wallace against Jaffree in 1985 says you can't have a moment of silence in school. Forget you don't have to pray. Just a moment of silence. They said that will be too coercive. And then in 1992, a case called Lee versus Weisman. This was, again, not about Christian nationalism. Whatever you might think it was about a rabbi, a rabbi in Rhode Island who wanted to give the most ecumenical prayer ever. And a student, Deborah. Deborah Weisman objected, saying that I feel coerced by the way she was Jewish. So, they brought a rabbi to give a speech, and Jewish objected. But she felt coerced by even having this present in her graduation. And the court said, no, we can't have this. Adolescents are susceptible to peer pressure. Right? And even being around aware of a prayer is too much, and the risk of indirect coercion is unconstitutional. Okay, so those are the battle days we'll get now to the better times, the current times, the things actually are in the upswing. So, again, 2014 Town of Greece versus Galloway. This is not from ancient Greece, is from upstate New York. The town council there began their sessions with a prayer. They had a practice where they would go through the phone book for children. There's a book. That phone number is in it, right? They go through the phone book and they would find all the numbers of parishioners in the area, and they would invite them to give an opening prayer. This case split 5 to 4. Justice Kennedy, the majority. And he said, this is okay. There's a long history of prayer going back to the time of the framing. No one's being forced to say the prayer. If you don't want to say it, you can just leave the room. And this is not a violation of the religion clauses. Justice Kagan dissented, and she objected, saying, you know what? I don't mind prayer. I just don't like these prayers. Why? Because the word Jesus, right. And they spoke of the Holy Spirit and things like this. We need just she said, prayers are acceptable to everyone. This is the solemnity point made earlier, right? Just prayers that speak to no religion is the only religion you can have. That's not a prayer. I don't know what that is. It's just like a, you know, like a pep talk, I don't know. Right. What is that? So, I think the court saw past that. But even Justice Kennedy said we can't have people coerced. I'm with you. I think it's a good test. Then we get to the trilogy. I think professor said earlier the trilogy of cases. So, 2017 Trinity Lutheran versus Comer, 2020 Espinosa versus Montana Department of Revenue and 2022 Carson against Macon. Boom, boom: the court cited three cases over the course of five years. That changed law a lot. In the past, any funding of religion was based on constitutional. You just couldn't do it. So, now the court's saying, wait a minute. If you're giving money to non-religious groups, you can't discriminate against religious groups. Those are good rules. But my goodness, we saw during Covid casinos open, churches closed. So, if we just apply this principle evenly, I think we're in a good place. I'm going to ask recommendations earlier. If we just treat religion the same way, everything else, we'd be a lot better off. Don't treat a liquor store, a marijuana dispensary better than a synagogue. That's a bad look. But we get to 2022 where things actually kind of right. My

good friend Stephanie mentions earlier Kennedy versus Bremerton School District. Kelly is a group helped litigate this case for a number of years. This was a football coach Kennedy. He you've seen him on TV. He gets around. He they're good at that media stuff right. He would give a prayer at the 50 yard line after the game. No one was required to say it to him. They sit down and pray, take a knee whatever and they can join if they want. The school said, we're afraid of getting sued, so you have to stop praying. That was actually the fear, right? They were afraid of the lemon test because the lemon test dilemma, they said, you cannot pray. This case goes up and down. The courts finally gets to the court in 2022. And miraculously, lemon was buried. Muzzle tough. It's gone no more, the court said. The test now is based on history and tradition, and in particular, is there coercion, not just peer pressure, coercion? Right. Are you forcing someone to pray? No. So, this is the rule we have now. I think the court still sort of figuring out where lemon goes is go here or does it go there? But that's a 50 year summary of the cases. I think if there's just one thought I can leave you with, it's this notion that merely being exposed to prayer, merely being exposed to religious symbol like a Ten Commandments display or something like that, that is not enough to trigger the Establishment Clause, right? And if we start from there, almost all the other cases of the Ten Commandments displays and this and that moment of silence, those cases go away. So, the court overruled Vitale. I don't know. Right. That's on the chopping block we have in Texas, a bill that just got passed this past session. But I think it's a sort of bold moment. There's a lot of change ahead. And I think this commission meeting had just the right time to give guidance to the government of how to how to deal with this new reality. So, thank you so much. Thank you to Stephanie. Thank you, Kristen, the commission I welcome your questions later

Texas Lieutenant Governor Dan Patrick (Chair): Thank you. We will take questions now. And then we will have Kristen come up last. And then we'll have questions for you after Kelly. You want to lead?

Kelly Shackelford: Yeah I know we just mentioned I mean some big cases that change things. I mean the Carson case is a case. We did the Kennedy case. But I wonder from you what's next? I think you've already said a little bit. And I want to follow up a little bit on Professor Bradley proposed. So, kind of under both clauses, I think, Professor Barclay, from what you said, you're obviously not in favor of Smith, which lays out that if the government lays out a neutral rule, it can there is no religious freedom violation. So, it could literally go into Catholic churches and start arresting priests for, you know, serving alcohol to minors. And So, there was there's no religious liberty if it's neutral. Is that do you think the you but you said it's been so narrowed. So, I'm wondering do you think that is the biggest sort of case, the next case to overturn, to restore free exercise because of all the lower courts and how they don't understand what's going on? Or do you think there's something else? And then the other question I'd ask both you and Josh, is this issue that was brought up earlier of that professor Bradley was saying we should be able to government should be able to promote religion in general. And I know Professor Barclay, you mentioned the religion clauses should be read together. And this idea

that you can't promote religion as the government is really weird saying that's a violation of the Establishment Clause. When the Free Exercise Clause promotes religion in general. And so I'm wondering, do you think we should start moving in that way under the Establishment Clause, more things where it's okay for the government to be promoted, religion in general, because it's a good

Prof. Stephanie Barclay: Thank you for those excellent questions. So, in terms of cases that I would like to see on the horizon, if there was a case that overruled *Employment Division versus Smith* and took the approach advocated by Justice Alito in his concurrence in *Fulton*, that was joined by Justice Thomas and Justice Gorsuch and replaced *Smith* with a form of strict scrutiny. I think we've learned from RFRA, and we've learned how to do strict scrutiny even more rigorously now. I think that would be a good thing for religious liberty, because, as I alluded to in my remarks, even if virtually no law is described as neutral or generally applicable at the Supreme Court level, an awful lot are viewed as neutral and generally applicable by lower courts. And there's a lot of evidence about ways in which protection of religious groups, and particularly religious minorities, went down after *Smith* was decided, leading to a lot of the same types of needless suffering that I think are religion clauses were meant to prevent against. I think it would also be good to see the court. You can see the court doing this in its recent Catholic charity cases, thinking more about how to develop the doctrine of church autonomy, that area that lies at the intersection of both religion clauses, and thinking more about the types of doctrinal protections beyond just the ministerial exception that will protect churches when it comes to the internal affairs of their church, how they're going to run different sort of staff or their programs. And I think that's an area where there's room for fruitful development under the Establishment Clause. I think more cases from the court making clear the different doctrines that it will adopt related to the different hallmarks of establishment, I think would be helpful. My read, based on the court's jurisprudence so far, is that the court really ought to be out of the business of policing Christmas displays and Hanukkah and ask, how many reindeer are there? Is that secular enough? That was never a question court should be asking. They're not good interior designers, and my hope is that after *Kennedy*, they've given up that business. But future cases, I think, will help to really make that clear and to point out ways in which the court still is going to rigorously police anti establishment Clause concerns, but not in ways that, as you suggest, prohibit religion from being part of the public square or from prohibiting important church state partnerships

Prof. Joshua Blackman: So, I think I agree with everything Stephanie said on this. I would just speak more broadly that the Supreme Court in recent years has been trending in the right direction. I think they could push a little further. And Alice made this point earlier. Sometimes judges kind of hesitate. I mean, even in *Fulton*, you know, this is a case involving Catholic services to Philadelphia. They've been doing adoptions there for like 200 years or more. And all of a sudden the city said, wait a minute, Catholic families, you won't put children with gay couples, you can't work with them. We're going to just shut you down. You should be more like Pope Francis Catholic. They said, be like Pope Francis and allow you to place children with gay couples, which is just was insane. So, the court unanimously said, okay, this goes too far. But yet three justices, Thomas, Alito and Gorsuch said, okay, *Smith* is at his time. Let's go. Two justices, Barrett and Kavanaugh said, well, we asked some questions. I think

they're answering those questions. We're still waiting to see what happens, but I don't know how far the court was going to go with this. Even this morning, we had a "GVR" in legal speak. There's a case from New York state, right, where New York mandates that employers provide abortions, including, apparently, the Diocese of Albany. This case has been pending for a decade, and the court sends it back to lower courts again. The court didn't just grant the case reverse that. Right. So, I think as far as the court's gone, they're still sort of pumping the brakes and maybe they're developing doctrine. Maybe something else is going on. But I think, you know, I think these commissions are helpful to signal that their support for these rulings, people, even non-lawyers, understand this doctrine and that that these rulings do, frankly, have consequences for people in the real world

Texas Lieutenant Governor Dan Patrick (Chair): Questions? Doctor Anderson.

Dr. Ryan Anderson: So, I have a question for each of you based upon this terms, Supreme Court rulings. Stephanie, I know you were litigating a case that just got denied cert, and there was a powerful dissent from denial of cert, that it was Gorsuch who wrote it. I was wondering, can you tell us a little bit about that case? And then since our job here is to give advice to the president, you know, are there steps that the Trump administration could take specifically on that case? And then, Josh, because Amy Coney Barrett had to recuse herself, the Saint Isidore case was deadlocked 4 to 4. How should that case have been decided had there been a fifth? If you were the fifth deciding vote

Prof. Joshua Blackman: Well, that's easy.

Dr. Ryan Anderson: So, tell us a little bit more than just the vote outcome.

Prof. Stephanie Barclay: So, thank you for the question, the case that Commissioner Anderson is asking about is a case called Apache Stronghold, where what is at issue is a Western Apache Native American sacred site in Arizona called Oak Flat, where they have performed sacred ceremonies since time immemorial. It's a portal to the divine. For them, it's a space where the women in the Apache tribe perform their coming of age sunrise ceremony. So, it's of critical importance, importance to them. And it's an area that has long been protected by many different political administrations. The threats to Oak Flat has not come from this administration. It originated in a law passed during the Obama administration, and under that law, our government traded away this very valuable and very sacred site of the Apache's to a foreign Chinese owned mining interest. What did we get in exchange for that? Some worthless land in the middle of the desert. So, one thing I would say about that religious liberty aside, I think President Trump should care about that because the man who knows the art of the deal should see that this was not a good deal for our country. Right. So, that's number one. Also,

the Native American people, there's one poll that shows that President Trump won 65% of their votes. This is a constituency that believed in this administration. And I think there's an opportunity for this administration to protect this sacred site where the courts and previous administrations have failed. So, Justice Gorsuch, as Commissioner Anderson referenced, drafted an opinion joined in full by Justice Thomas, saying that he thought the Supreme Court should take this case and say that this sacred site was protected under RFRA and offer protection. There wasn't enough votes to do that, but there is an opportunity for this administration to do something. So, under the statute, there is discretion provided to the Secretary of Agriculture to find mutually beneficial solutions in terms of the land exchange. That would still be as limited, as detriment as possible to the tribal people. And there are different sort of mining techniques that could be used that would not destroy the sacred surface of Oak Flat, but that could do mining underneath. It's also possible that President Trump could just decide he no longer wants to give away virtually for free, really valuable United States land to Chinese mining interests. And he could indefinitely not issue the federal environmental impact statement because he could decide that this does not comply with our environmental laws or our valuation laws requirements under the statutes. And he could take the position that the way that the mine is proposing to do this project is not the least restrictive means under RFRA. And so it doesn't comply with RFRA either. These are just a few discretionary options at the disposal of this administration. That's, again, a huge opportunity to protect a site that received broad bipartisan support of religious groups of all types and the amicus briefing, and to provide more religious liberty than predecessors or the courts have up until this point

Prof. Joshua Blackman: Thanks, Ryan. So, the case you mentioned was called Saint Isidore. This is a very innovative Oklahoma, established a religious charter school that's online for people who don't live in the city. It was managed by the Diocese of Cities in Oklahoma under the Oklahoma attorney general, who sees himself as this religious conservative. He's not said, basically, I'm not going to defend this law. So, Christians laughing. I'm not going to defend this law. I'm going to say it's unconstitutional. And the Oklahoma Supreme Court said it was unconstitutional. Okay. Goes to Supreme Court splits four-four with Justice Barrett recused. I'm not sure if she would have voted. I'm not sure I would have voted. I would said it was a valid exercise of the state's power. After the trilogy of Carson versus Machen, Trinity Lutheran and Montana, Espinosa versus Montana, you can't treat religion worse than Non-religion. That's a very big principle. If there are these nonreligious charter schools, a religious charter school gets the same benefit. This was not a hard case. Now, I don't know that any state has another case in the pipeline. Maybe Texas should look at something like this. I think with charter schools now with vouchers, but there's nothing else in the pipeline coming up. I think it's unfortunate for the children of Oklahoma. They lost this opportunity that they'll never get a chance to go to these schools

Texas Lieutenant Governor Dan Patrick (Chair): Let me go to Doctor Carson. I'll come to you. Rabbi. Doctor Carson?

Dr. Ben Carson (Vice Chair): Well, thank you for the illuminating discussion so far. A quick question for you regarding the Establishment Clause. I think most people would agree that it's not a good thing to kill people, or to steal, or to lie or to covet under those things, and yet there seems to be a component of our society who feels like posting the Ten Commandments is establishing religion. Is it establishing religion, or is it talking about what is common decency for civilized people?

Prof. Joshua Blackman: Yeah, I think there are two ways to look at it. And in one sense, the basis of our legal system is the Ten Commandments. It's if you go to the Supreme Court only a few blocks away, the Ten Commandments all over the place, they're everywhere. Right? And no one gave thought. This Moses was a giver of law. This is a very basic circle fact. But, more fundamentally, there is a religious aspect, right? You have no other god before me, right? No graven idol. These are messages that have been taught for millennia in all civilizations that we can think of. The way I look at this, Doctor Carson, is I think we should try to think about the culture. If we tell students that anything you see that bothers you have to eliminate not just religion, anything that bothers you, we have to eliminate that is breeding children, I think, in a very harmful way, versus if you see something you don't like, okay, you don't like it, look the other way, have a different message. But the answer is not just to cancel or delete things you don't like. And if we apply that principle to the Ten Commandments, I think things would be a lot easier. But that's a cultural change that I don't think we can affect. But we can, at least I think, discuss in this commission.

Prof. Stephanie Barclay: I would just add to that and say, I agree with you, Doctor Carson, that displaying the Ten Commandments doesn't violate the Establishment Clause for two different bases. I think schools should be able to teach about basic virtue ethics. All of the framers were well steeped in that thought. That was an important part of their own thinking, although they fell short, as we all do. But it was something that they thought should be an important part of teaching. And long was. But even aside from just human decency, I think it's permissible for there to be religious displays that are obviously religious in public life, so long as it's not as though what is going on is that the government is saying this is the one religious denomination that we support and not anything else. And the Ten Commandments falls far short of being anything like that.

Texas Lieutenant Governor Dan Patrick (Chair): Note before we get to Rabbi on the Ten Commandments bill that we passed Senate Bill ten, we do not fund those. And it's not an unfunded mandate to the schools, any church, any individual, any business can donate a 16, a 16 by 20 copy of the Ten Commandments, which is the exact copy of the Ten Commandments we have on the Capitol grounds. The Supreme Court upheld. So, that will be an interesting twist to this. But the schools are required, if you bring them the Ten Commandments, they must hang them in the classroom. Rabbi?

Rabbi Meir Soloveichik: Thanks first to you both. I'm a huge admirer of your writings and your scholarship, and it's a joy to speak with you today. And on a personal note, just want to thank Professor Blackman for mentioning the war. Many, many close family members right now, along with many millions of others, have spent much of the last couple of days in bunkers with ballistic missiles raining down on them. Thank you. It's appreciated very much. I wanted to ask about the subject of the course of the case law, which is what you both addressed so eloquently, it seems to me. And I'm not a lawyer, but correct me if I'm wrong. It seems to me that in the era of free exercise, there's been enormous amount of rollback in a positive way, but much less so on the establishment front. There have been moments where Town of Greece has one where the court said, okay, we're not going to go that far, but. *Plymouth Division versus Smith* aside. And like Professor Barclay, I, I look forward to its being consigned to the ash heap of, of legal history. But that aside, so much has been accomplished. Blaine Amendment is effectively dead. So, many, so many important achievements for religious liberty have occurred. And yes, there are more, but there's been enormous achievements in recent times. And yet, it seems to me, whether we're speaking about placing of religious objects in public squares, ten commandments, prayer, so many aspects. Even *Lee v. Weisman*, as far as I understand, is still the law of the land. And so why is that? Are we just is this just a pragmatic matter that it hasn't, that these cases have not come up as much? Is it because government has not acted with alacrity in pushing the envelope in this area, which is, of course, important to questions we face as a commission? Because maybe then they should. Our justices, more reluctant to grant cert to establishment cases, or do we have more cases to look forward to? I'm really interested in your thoughts on this question.

Prof. Joshua Blackman: So, I'll give you an example as abortion, right. *Roe v. Wade* was a law of the land for 50 years. How was it? Overruled. Our friends in Mississippi passed a statute that was inconsistent with *Roe*. The statute was facially unconstitutional because they want to set up a test case. For better or worse, lower courts are bound by the Supreme Court. And if you bring a case, they'll say, well, *Levy* is a precedent. And until the Supreme Court otherwise sets a precedent. And if the court keeps denying certain they deny way to many cases, it won't be reversed. Unfortunately, the only answer is legislatures who pass bills that perhaps are in tension with precedent. *Stone v. Graham* is one of them. The problem is qualified immunity, you're willing to pay damages and so on. But if you are willing to pass a statute that you think is inconsistent with the original meaning of the Constitution, you tell the lower court, your Honor, we stipulate the judgment. We want to seek cert. Right. I think that's going to happen more and more. Mississippi has done it. Louisiana has done it. Texas has done it. If you have a school district that's willing to have a good legal defense fund, they'll say, we'll have a rabbi give a prayer at this thing because we think *Levy Weisman* is wrong and decided that's the answer. And until that happens, you're sort of stuck under the specter of these old Warren Court precedents that have haunted us for decades. Lemons have been extirpated, right? The court killed lemon, but a lot of other cases are still floating in the in the in the ethos

Prof. Joshua Blackman: Let me just make a friendly amendment to that. I don't think that it's clear that *Lee v. Weisman* is the law of the land anymore. So, the Supreme Court, when it talks about coercion in *Kennedy*, says that it needs to be compulsory religious exercise and the hallmarks of religious establishment that *McConnell* and Justice Gorsuch talk about, that the court is siding to. They're referred to. And that type of coercion must be backed by penalties if there's noncompliance. There were no penalties in *Lee versus Weisman*. It was just, you know, well, I feel kind of sad if I have to go to this graduation and somebody is praying and that's not the same as the type of penalties that were relevant at the founding. So, I don't think you have to go as far, respectfully, as Josh is saying, if you're a municipality and say, well, we're just going to buck the Supreme Court, I think you could say we're reading *Kennedy*, and this seems to suggest that now, for it to be a historical hallmark of an establishment, it has to be more than peer pressure. It has to be real coercion, backed by penalties to participate in this religious exercise. And so *Lee* is out. *Graham* is out with the Ten Commandments. And then will those cases be litigated? Probably. Do we need more clarifying doctrines so that we're not in the gray zone? But it's crystal clear that those things are not the law in the land. Sure. But I think that what the Supreme Court did in the *Kennedy* case, where it did make crystal clear that *lemon* was dead, it was funny. They said, we've long ago overruled *lemon*. So, death for sure. Data and death uncertain. But we know it's the ghoul is finally gone. And I think we have yet to fully appreciate the seismic shift that that case has opened up for us.

Texas Lieutenant Governor Dan Patrick (Chair): We'll go to Allyson Ho, then. Bishop Barron. Allyson?

Allyson Ho: Thank you, Mr. Chairman. Professor Barclay, I want to go back and underscore something you said in your testimony that I thought was really, really important. And you talked you were talking about employment division versus *Smith*, which some have called the *Dred Scott* of, of the First Amendment. And you said, well, even though the Supreme Court has, you know, sort of made it a little bit by little, like death by a thousand cuts. Right? Right. It's still doing damage and causing harm in the lower courts. Right. Could you talk a little bit more? And, Professor Blackman, I'd love for it to hear from you too on this. On the human cost of sort of not being when judges aren't clear and decisive in terms of, you know, we're overruling this case, it's no longer the law of the land. Could you talk about the human cost in terms of that uncertainty and, and the and the gray area when we don't get that, that clarity, when, when courts sort of aren't willing to say, hey, this was wrong, we're going to correct the error and move forward

Prof. Stephanie Barclay: Yes, that's a great question. Thank you. So, let me address the human cost in two different ways. Think about *masterpiece Cakeshop*, a case where the court decided that case on narrow grounds, you know, and just sort of in a way that then kicks the can down the road. Well, that *Cakeshop* got sued again, right? Because the rule was not if government is burdening your

religious exercise religious individual, then the government is going to have to demonstrate strict scrutiny. It was just well, in this particular context, we could point to a double standard. And so we'll rule in your favor for now. But that's a much more limited protection. And it was a short lived protection right for that. Baker. So, that's true of the litigants in a case. And they're going to be in the way that Professor Chris Lund has talked about, subject to the constitutional luck of whether we can point to things like secular exemptions in their jurisdiction or not. But more than that, as Professor Laycock has talked about, even though the Supreme Court, you're likely to win by arguing that a law is not neutral, generally applicable. It's a very complicated set of legal arguments that need to be made, ones that, yes, excellent institutions like those represented by Christian and Becket and others know how to make well, but that a lot of ordinary litigants or government officials don't, and a lot of government officials are more likely to just assume that a law is neutral or generally applicable when it's not. And Doug Laycock has written about the real toll of human suffering that has come about because of that confusion, because of time wasted fighting about those things. So, there was a Jehovah Witness woman in Kansas, I believe, who was requesting to be able to have a medical procedure that did not involve a blood transfusion, which violates her faith. And while they were litigating about whether the law was neutral or generally applicable and wouldn't rule for her below, even though it was cheaper than the other type of procedure, eventually, when she won, it was too late, and Mary Simons died for her faith in the 21st century. Because we don't have a clear cut rule that says government, you've got to have a really good reason for burdening people's religious exercise. You've got to prove it with evidence. And when litigants can't walk in the door with that surety and they spend countless amount of hours and litigation resources fighting over neutrality in general applicability, that is the type of human cost we're talking about.

Prof. Joshua Blackman: Thank you. Allyson, a really good question. Time moves slowly for people who are seeking relief from the courts. Now, you mentioned the Roman Catholic Diocese of Albany for a moment. They've been fighting this abortion mandate for a decade, a decade. And the Supreme Court sent it back to the New York courts again for a second time. I think the court needs to grant more cases, and it's embarrassing of denials. They have, let's say, DOJ bring more religious liberty cases. The ASG filed amicus briefs in favor of certiorari to the Supreme Court that people are suffering. As Allyson said, people are seeking relief and in clarity. Lemon was never overruled. Right, Gorsuch said. Oh, it was abandoned. It wasn't abandoned, right. It was this weird...But for the years between American Legion, it was a Ten Commandments case I mentioned earlier. We saw the arms off the cross and Kennedy Lemon was law. Lower courts applied it to the court. Must be clearly on these issues. Right. Maybe overrule Fulton. Maybe we won't. Let's have some clarity on the issue. If you're not going to do it, get off the pot as they say, right. Don't leave this to some sort of academic exercise that might get resolved later when the votes simply aren't there. And if the votes aren't there, let us know that because we can focus on other things. Even with the major questions, the major questions, the most favored nation case during Covid, right. There are all these cases saying you can't do religion worse, but then the court doesn't really cite those cases in Fulton. So, I think there's just this maybe there's uncertainty in the court itself about where to go. But again, this is a presidential

commission. This is not for the courts. Bring more cases from the DOJ's perspective, have more amicus briefs. You know, has the DOJ said, we think be overruled. Have they said that yet? Maybe they can. Right. I think if the DOJ says Smith should be overruled. We've done, Stephanie said, for, you know, three decades, we know what it means to apply strict scrutiny. We know how this works. It's not like an unknown mystery of the world or the mysteries of the universe. We know this works and it's nothing in the world. Half the states have RFRAs in effect, right? So, there are ways that DOJ can do to sort of nudge forward.

Prof. Stephanie Barclay: I just want to cosign that point about if the DOJ was willing to file amicus briefs and look for good vehicles to overrule a case like Smith, or to broaden Establishment Clause jurisprudence, I think that would be a helpful recommendation from this commission.

Prof. Joshua Blackman: Amen.

Texas Lieutenant Governor Dan Patrick (Chair): And, Kristen, you haven't given your testimony. You will in a moment. We have a few more questions, but do you want to add anything? I should have introduced you into answering these questions as well

Kristen Waggoner: There is so much I would like to add, but it wasn't my turn. You know I agree fully with these comments that are being made. I think when we look at, you know, I'll talk in my remarks a little bit about masterpiece Cakeshop but three cases, ten years, actually 13 years in. And this is not uncommon. It's not rare. It is the normal thing that we endure and we see clients endure by not having their religious freedom rights vindicated. Even in the Drummond case, for example, why in the world would you resist including religious schools when, as our client had noticed when they approved the application, there's 100% graduation rate from the entity that wanted to do this, and a 98% college acceptance rate. And yet still Oklahoma officials, one in particular, the attorney general, resisted this, which is blatant discrimination. And the court has called it odious under the Constitution in the past. The last thing that I will echo again is just it's easy for us as lawyers to talk about what the Department of Justice can do, but who puts these officials in place, and what is the role of the non-lawyers? Because these fights don't just sit in courtrooms and in the legislatures of the United States. They sit at our dinner tables with our children, they sit in the workplaces that we go into and in the ways that we volunteer in engaging in a civil society that values freedom. So, I would just encourage that as well. That's my \$0.02. Thank you for the opportunity

Texas Lieutenant Governor Dan Patrick (Chair): Well, you'll get a few more cents here in a moment. Bishop Barron?

Bishop Robert Barron: Yeah, thanks very much for both presentations. I especially enjoyed that review of the cases as a non-lawyer, just to see it laid out that way and how we've evolved. I can't tell you how many people, knowing that I'm on this commission, have said to me from my Catholic colleagues, bring up this problem of the Washington state law about compelling priests to violate the seal of confession. We fought in California. I was an auxiliary bishop out there for six years. This came up in the legislature. We fought it. We stirred our people to resistance. They flooded Sacramento with complaints, and it never got out of committee. So, you know, we breathe a sigh of relief. Now it comes up again to my non-legal mind. It's the most outrageous violation of the free exercise clause that I can think of. Or the state involving itself illegitimately in the interior, interior working of a church. And I don't think anything will lead Catholics to more open opposition than if that stuff, you know, starts spreading across the country. Please tell me, assure me, that this is not going to survive a judicial review. I can't imagine. I just I'm curious to know. To me it seems so outrageous and so clear a violation, but help me understand that better.

Prof. Stephanie Barclay: I agree, but I want to punt this to Kristen. Kristen, you have some real expertise.

Kristen Waggoner: It is a violation. And there are a couple of cases I know that have already been filed, including one that we filed, but I do also, it is a violation of free exercise. But this is common, particularly in blue states where we see aggressive states like Washington try to limit religious freedom. And when we don't take those stands, when the Catholic Church doesn't stand up, when the evangelical church doesn't stand up in those moments because they're afraid of being labeled, for example, as being pro child molester, what happens is bad law is created, and then that law transcends to all the other states that are willing to pass it. And the last thing I just would say on that and punt the legal, more legal analysis to Stephanie is that the very first case that I litigated was a case involving the priest penitent statute in Washington state. I came from Washington state, practiced there for nearly 20 years. They have been going after the privilege for that long. And we see this again and again and again, which underscores the importance of us as people who believe in religion, helping the public and legislators understand the sacredness of that, why that privilege exists and the goodness behind it. And that's something that I think this committee can really focus on, as well as an educational component of the value of religious freedom.

Prof. Stephanie Barclay: Some cases, it might be a little tricky to know whether what the government's doing is neutral and generally applicable. That is not one of them. Right. And this actually reminds me of the case that I was talking about in my opening remarks of people versus Phillips, again, where we're trying to single out Catholic priests in that case. And there the arguments that apply there, I think you would also make here the government was saying, well, we need to take away the ability to reserve this sort of confidential testimony because of the need to reduce crime. And the court said, well, you have exceptions for a lot of other things, and yet you're still able to reduce crime. Why focus in on just this one? And I think that same question applies in this case. And I think the government will be hard pressed to have a good answer to that question.

Texas Lieutenant Governor Dan Patrick (Chair): Bishop, Kelly Shackelford's firm is actually handling this case. I'll ask him to weigh in for a moment.

Kelly Shackelford: Yeah, it's I mean, it's a pretty basic religious freedom. And Becket and first liberty. We're both on that case together. And that's sort of, I don't know, a theme that I wanted to bring out. And you're kind of bringing it out a little bit is the New York Times has written recently. Well, they're winning on religious liberty. They've won 12 of the last 15 cases, but that's 15 cases, not thousands and thousands of cases that die below that. They don't take that never get up, that people's lives are destroyed. And the process. And so, you know, it's really important that we the commission has a lot more work than just these Supreme Court cases that, you know, over the last 15 years might make up, you know, 12 wins at the Supreme Court. There's the ones people don't hear about. And as Alison Ho was bringing up, a lot of people know about Jack. I mean, he's a great client. We have a very similar clients, and they had their shop destroyed essentially because of what happened in Oregon. They were fined \$135,000 because they wouldn't do a same sex wedding cake because it violated their faith. Although they provided all kinds of accommodations for these people, it is now 13 years that they have been in litigation. They have been up to the Supreme Court twice. Had the court vacate the decision from the Oregon courts and sent it back down. And, you know, how long are we going to put these people through this? They've had to move states. They're now in Montana instead of Oregon. This is not religious freedom. Even if they win, this is not religious freedom. And so, I mean, I think an undercurrent theme to this is the courts need to do a better job. You know, they don't need to try to avoid having to make decisions. Their job is to make decisions and protect the Constitution.

Texas Lieutenant Governor Dan Patrick (Chair): So, were you finished? Paula?

Pastor Paula White: Thank you. This dialog and discussion is so vital and excellent. And I agree, Kelly, that the process is often the punishment. And I well, Kelly asked my question on the lemon test. So, I want to go back to you, Kristen. You talked about who puts these officials in place and you said how it's so important for the Catholic Church and the evangelicals to be involved and to stand up. So, number one, let's talk about how important is that and what's the pathway for them to do that. Because I know many faith leaders, and you have thousands and thousands. Number one, there's a fear because of intimidation by government. So, we've got to eliminate that fear. But also just there's also an ignorance. My people perish because of lack of knowledge. They sit in darkness. Let's bring that to light. What is the best pathway to be effective with those who are fighting these fights? >> Well, so I've been thinking about today, one of the things that I hope that this Commission recommends to the president is that he used the platform that he has in the administration's platform, as he has already begun to do through your office and other ways to help Americans understand what the threat is and the goodness of practicing one's faith from whatever perspective one's coming from. And that and also to educate Americans on what their rights are. I think that has been critical for so

long. We would see laws that were being passed that were blatant violations of constitutional rights, and yet people would forgo exercising their rights rather than have to stick their neck out and potentially subject themselves to government fines or even jail time, which is what some leading victims occurred or happened to receive. And that, for example, in 2012 is when we saw Jack Phillips was one, but there were 4 or 5 in that 2012 period that literally were defendants and that scared people. Now we see this vibe shift. But I would submit it's a temporary one. It's a change of power, not a change of heart. And we need a change of heart. And this commission can do a lot to help educate Americans on why religion is good. And the religious community themselves can actually model courage and charity. And there are many ways that we can do that. But I think that that would be one of the most significant contributions that this commission could make. I had a commissioner from the EEOC during President Trump's first term, talked to me about the fact that there were a number of minority religions that very much knew what their rights were, and repeatedly filed complaints, for example, when their rights were violated. And that allowed the federal government to address those things. But yet we see traditionally, frankly, in evangelical communities and Catholic communities, there is not that same level of willingness at this point to step out because they don't want to offend and certainly don't want to get in the crosshairs of hostile government officials

Texas Lieutenant Governor Dan Patrick (Chair): I want to move on to there are no more questions. Move on to Kristen, your testimony and Joshua and Stephanie if you'll stay there. And we may have some closing questions in addition to what Kristen is going to testify on. So, Kristen Waggoner again, the CEO, president of General Counsel of Alliance for Defending Freedom, one of the most accomplished Supreme Court advocates, having successfully argued, argued several landmark cases protecting free speech and religious freedom. All yours.

Kristen Waggoner: Well, good afternoon. I haven't said that yet, but good afternoon, Chairman Patrick and Vice Chair Carson. And to the members of this committee, it is truly an honor to be here with you. And thank you for your continued service to this nation. It's a vital effort. It's a privilege to be here today, and it's also a privilege to be able to serve as a member on the advisory board to the Commission as we do this important work to protect religious liberty. I also want to express my gratitude to President Trump for making this a priority in this moment, and to, again, making it a priority to trust you and to trust us in this moment to protect freedom. But I want to begin in a place maybe where most speakers haven't yet, which is not what our founding fathers, but actually, in 1974, Soviet authorities had arrested Alexander Solzhenitsyn, and in doing so, they were getting ready to send him into exile. He was a world famous dissident. He had become an unbearable threat to the Soviet regime. And the reason that he had become that threat was because he had spent eight years in the Soviet gulag. During that time, he had seen cruelty and oppression from communism firsthand, and he had dedicated the rest of his life to exposing it, to exposing the truth at great risk to himself. But what I find most interesting about Alexander Solzhenitsyn is that actually, he referenced the fact that the deepest rot in Soviet society wasn't just found in the government itself. He actually said that

it was a people who tolerated the government and a people who failed to confront it. And in fact, it was this critique that went all the way down to the ordinary Russian man on the street who kept his mouth shut and his head down, and sometimes even repeated the lies of the Soviet regime simply to avoid suffering repercussions. It was that lack of courage, the spiritual malaise that we saw that Solzhenitsyn referred to as an unconscionable gift to the Soviet regime and the deepest form of human slavery. And in fact, on the eve of Alexander Solzhenitsyn's exile, he gave a parting gift to the Russian people in the form of a letter. And I want to read those words to you, he said this we have so hopelessly ceded our humanity that for the modest handouts of today we are ready to surrender all principles, our soul, all the labors of our ancestors, all the prospects of our descendants, anything to avoid disrupting our meager existence seems appropriate, given all that we've heard today. To reference that, I know that much has changed since 1974, but I do believe that those prophetic words do ring true today. When we speak of religious freedom, America's legacy of strength, and its foundation for enduring greatness rests on how we protect the freedom to speak, to live, and to work consistent with our deepest beliefs, beliefs that point to a more noble and higher purpose and authority than what we ourselves can offer. Our Founding Fathers understood this, and that's why our Constitution references and guards these God given rights and requires our government to do the same. But I also want to remind you today that many other nations have protections like the ones we find in our First Amendment, but their courts and their people have stripped these promises of any meaning. Our international team at ADF sees this on a daily basis. In fact, we have cases on five different continents right now, and in the last year alone, we have represented nearly a dozen individuals in the UK alone for their willingness to speak their faith, including Adam Smith. Connor, who just recently was convicted in the UK for silently praying outside of an abortion clinic where his son was aborted. As we have referenced today, there is a human cost when government officials forget freedom and judges forget courage. But thankfully, as our two distinguished panelists have already shared, the US Supreme Court has worked to ensure that elected officials don't violate the Constitution, and they've generally upheld religious freedom. But it has been incremental at best, and we must do more. So, I would encourage us, before I move on from the international topic, to let this sink in. The United States right now is the last Western country in the world to provide robust religious freedom and free speech protections. Ponder that for a minute. The last Western country in the world, I've had the privilege of litigating more than a dozen Supreme Court cases that uphold our fundamental freedoms, and I have seen the clients relief when justice is done. After years of government harassment. But the fact that more and more justice requires a courtroom is a deep, deep warning to us. We are teetering on the edge of losing the freedoms that make America the freest, most exceptional nation in history. If we fail, if we fall silent now, we will fail the next generation. But we will do more than that. We will fail the soul of liberty itself. Because this is precisely how authoritarian regimes begin. They silence the soul. There is no greater threat to tyranny than the freedom to speak the truth. And yes, I know that today's tyrants, they don't wear crowns. They aren't kings, as we've heard. But they do often sit on our school boards and our civil rights commissions, and on our city councils. And they are openly hostile to freedom and unmoored from objective truth. They censor, they find, they even threaten jail time to Americans who dare to hold different beliefs than they do, especially if those beliefs have anything to do with the dignity of life, God's design for marriage, or the simple truth of what it means

to be a woman. Truth is the first casualty of tyranny, but the real cost it is always human. Imagine being so inspired by your faith that you dare to open a homeless shelter and give your life to it, only to have the state tell you that you either abandon that faith or cease serving those in need, or fostering children for years at a time. And you're the health department's first choice to place newborns that are addicted to drugs. Until you say boys are not girls, and the department then revokes your license. Or what if you escaped 20 years of sex trafficking and faced an unexpected pregnancy, only to be later targeted by your own state attorney general for helping other women in similar situations? Or your ministering to widows and orphans, only to have your bank account shut down and to be denied access to capital because of your faith. Or during Covid, your daughter chooses to wear a Jesus loved mask to school, but a school officials force her to remove it, even though it allows students wearing other messages in school. Or perhaps you served your country in uniform, risking your life to defend freedom, only to have officials deny you a public grant that is available to all other students, but not to you, because your desire to become a military chaplain and pursue that degree is simply too religious. Or your home state calls your faith a despicable piece of rhetoric, and then compares your timeless beliefs about marriage to perpetrators of the Holocaust. These stories are not from nations that are ruled by authoritarian regimes. Each of these, every single one of them, has happened in real time on our own soil, and we have been honored to represent these courageous Americans who are standing for freedom. But that stand does not come without a cost. One of the greatest privileges I have had in my life is to argue the masterpiece Cakeshop case at the Supreme Court, but the bigger privilege was to walk beside Jack Phillips through that 13 year crucible. He was a model of charity and a faithfulness. Thankfully, the court ruled 7 to 2 that the Colorado Civil Rights Commission showed impermissible hostility toward Jack's religious beliefs and that the Constitution commits Americans and government officials to religious tolerance, for it is in protecting unpopular religious beliefs that we prove this country's commitment to serving as a refuge for religious freedom. But as has been referenced, even a Supreme Court ruling wasn't enough. We had to go back up to the Supreme Court in a different decision, 303 creative and then back up to the Colorado Supreme Court. And at the end of the day, the financial, the emotional, the physical toll that that took on that family was incalculable and impossible to fully remedy. You see, no nation can survive, nor can its people flourish if its officials believe that they can regulate the soul and excise beliefs that are held sacred by all of the Abrahamic faiths. So, we must ensure that the United States remains that refuge for religious freedom. And it's why we gather today, because political and cultural winds should not shift. This is not a Republican or a Democrat issue. It is a moral and cultural imperative. As President Trump has said, in America, we don't worship government, we worship God, and we need leaders at every level of our government with the courage to resist the tyranny and respect the bedrock of American life. Every citizen's absolute right to peacefully live according to the teachings of their faith and the convictions of their heart. So, let me bring this home. How can the administration do that? I would submit a few recommendations to you first. Restore the Conscience and Religious Freedom Division at HHS and establish similar divisions within other departments, civil rights offices, and ensure equal access to federal funding is consistent with recent Supreme Court precedent that's been mentioned today. And enforce, enforce, enforce, enforce all federal conscience laws, holding accountable recipients that violate those laws. Support the Conscience Protection Act, and support the Families Rights and

Responsibilities Act. We've heard today about the importance of parental rights in protecting religious freedom. There is an act that is pending and introduced right now that can do that. Second, we must end the financial targeting of people of faith. Ensure the IRS doesn't discriminate against houses of worship or religious organizations, and protect these entities from unjust penalties under the Johnson Amendment. Guarantee that prior weaponization of financial regulations and markets against people of faith never, ever happens again. Support the safeguarding Charity act, which protects the independence and tax exempt status of charitable organizations. Third, protect people of faith from the regulatory state. Develop rules that prevent future administrations from labeling as domestic terrorists. Americans who simply purchased a religious text or spoke at a school board meeting and require religious training for FBI agents. Fourth, promote religious freedom on the international stage in collaboration with the Ambassador at Large for International religious freedom. Implement President Trump's 2020 Executive Order on Advancing International Religious Freedom to ensure that religious freedom remains a central priority of U.S. Foreign policy. Finally, a president's most lasting legacy, as we have heard so much indirectly about today, is the men and women that he appoints to the judiciary. President Trump must continue to do more than appoint originalists to the bench, but to appoint judges with an established record of courage, character and conviction. Who will apply the law without fear of public opinion? Our rights under the Constitution become meaningless without an independent and a virtuous judiciary. So, in closing, religious freedom built America. We've talked about that today, and it is sustained it through war, through depression, through dangerous division and faith filled leaders founded this nation. They've abolished slavery. They ended segregation. And even today, they continue to champion women and families and the most vulnerable. And it is that same faith, expressed freely and lived boldly, that will lead America to renewed greatness. Why? Well, because we can stand confidently that religious liberty is the essential way to pursue the truth. It's rooted in a love of neighbor and empowers every person, regardless of faith or party, to pursue truth without coercion. And along with free speech, we must recognize that it is the engine of self-governance and a bulwark against tyranny. It also fuels human flourishing, breathing oxygen into a free society, because where it is honored, we also need to recognize that families are strengthened. Churches and communities can better cultivate virtue in the citizens. That's not the government's job, and economies thrive, and individuals are able to freely share ideas and robustly debate those ideas, and to live for a purpose that is greater than themselves. Religious liberty is the American rebellion against every regime that has ever tried to own the human soul, undermine it. And we don't just violate the Constitution. We deny humanity its most sacred right, and we, frankly, will jeopardize all of Western civilization. So, I am thankful to you. I am encouraged that you are poised to meet this moment and to safeguard America's legacy of strength and greatness for generations to come. Thank you.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, Kristen. Questions? Dr. Anderson.

Dr. Ryan Anderson: Kristen, could I was struck by a lot of what you said, but I want to draw you out more on two points. It strikes me that there are at least two different types of religious liberty cases. Sometimes the underlying law is justified, but we're applying it in a way that unjustly burdens minorities. So, think of like traffic laws. You need to have headlights and electronic taillights, but the Amish don't use electricity. And we say, all right, well, we're not going to impose this on you. You can put that triangular, reflective thing on the back of your horse and buggy, and it's a win-win, right? We can accommodate the Amish and we can protect vehicular safety. But then it strikes me that there are other religious liberty violations where the problem is actually the underlying law. It's just unjust. The Montgomery County pornographic children's book. Right. That's not a religious liberty problem in the first place. The underlying problem is that they're assigning pornographic books to kids, right? You've had clients where religious schools were being told they would have to house boys that identify as girls in the girls dorms. Or I think of your Anchorage client, a battered women's shelter that was told you have to have an intoxicated male sleep in the same shelter, right, because he identifies as a woman. Right? So, I guess my question there is, how should we think about this other category of case where we're not just asking for an exemption, but at the end of the day, the unjust law is the problem and it's a problem for everyone. And then the other thing that came out in your comments is that it's not just government that is threatening religious liberty. We're also seeing this a lot in the private sector. And you had mentioned some of this with some of the technology, some of the debunking. Now, I think some of these cases, government has put private actors up to it. So, I know I have a colleague who was censored by Twitter during Covid. He was a medical doctor that was questioning the science, and you weren't allowed to question the science. And so Doctor Fauci and others from the Biden administration, he was on the list of doctors and scientists that they were supposed to censor. You know, I've had my own experience with Amazon, etc, etc. How should we think about the threats to religious liberty that are coming from the private sector, especially big tech, and especially when there is that intersection of government, you know, asking the private sector to do things that it would be illegal for the government itself to do.

Kristen Waggoner: Well, I think you're right to point out we do need religious exemptions, but we also need to have our officials and the public understand that we shouldn't be passing unjust laws in the first place, because unjust laws create real victims. And I think we're seeing that more and more play out, particularly as we look at gender ideology and the threat that gender ideology has posed to religious freedom, not just posed, but really the way that it has undermined First Amendment rights in many respects throughout the nation. From our viewpoint, it is based on a false anthropology and that false anthropology, meaning that it is a lie, means that the only way to tolerate that lie is through censorship itself. So, religious freedom and free speech are very much hand in glove. You cannot have one without the other. I would also say that on that front of gender ideology and these unjust laws that represent a flawed view of the human person, of common sense and biology, we know that you can ignore that truth, but you will never be able to ignore the consequences and those consequences we see every day. Certainly, we could go through the emotional and physical toll that it has taken on individuals and families who have been fooled by a medical establishment in what has been the most

disastrous medical experiment in a lifetime. But I also would say that when we look at censorship and the way that that is played out, it has crushed the rights of religious freedom and free speech in local and state, local and state levels in ways that has even surprised us. I think I'll mention a couple of policy ideas in that, you know, the again, HHS, the Department of Education and others, our center for policy has dove first place into this to be able to at the local, state and federal levels, ensure that laws don't get put in place that are bad and in fact have laws that represent the wholeness of the human person. Also, we need more robust religious freedom protections in those laws, because now it's no longer a question of bipartisan, believing that there should be exemptions. There literally are efforts to take away religious exemptions that are in place in the law right now. I also want to mention on the parental rights front, because this ideology is eviscerating parental rights as well, as well as the right of religious autonomy if it gains traction. And we are seeing a number of cases involving secret transmissions of children, where this is the formal policy in public schools right now, and it's not in places like, you know, New York and Washington state. I mean, it's there too, but it's in Kansas and Wisconsin and Arizona and all over at the local level. So, we have to stand for parental rights. And I encourage you in any recommendations you make to make sure you address that. The last thing that I will say on this unjust laws concept is that there are there's a case right now at the Supreme Court, the child's case, which again, the federal government cannot only address in terms of how the Department of Justice addresses it, but use the bully pulpit and a voice of leadership to talk about the fact that children who are experiencing gender dysphoria should be able to get help for that and not be sent down. A one way treadmill that essentially makes them lifelong patients. And a number of states have actually, right now, outlawed, literally told counselors they will lose their licenses if they try to help children live at peace with their bodies. So, those are some ideas on that. Briefly, I'll just touch on the censorship issue, because it also has led us to the center for Corporate Engagement is a new area we've gone into because as we want to be fighting these issues in legislatures and in litigation where the fight belongs, we're seeing the fight move into the corporate boardroom, and that means that the First Amendment doesn't generally apply unless there's collusion there. So, moving these companies back to a place where they feel the public's pressure, where shareholders are engaged in this process is extremely important to the point of we have reached 92% of the large online platforms right now, have hate speech policies or vague standards that they're using to discriminate against conservative and religious folks, and they're relying on the Southern Poverty Law Center's list. And that list is horrendous in terms of who it affects it. It's not just alliance defending freedom, but it's Family Research Council. This last two weeks, it's been focused on the family that is now moms for Liberty, Turning Point USA. Do no harm. So, this commission can do a lot to recommend to the president to take whatever steps necessary to rid the government at all levels and urge states to do the same of these concepts, because they're doing nothing but forcing people from the market of ideas and actually the financial markets, because they have traditional religious beliefs.

Rabbi Meir Soloveichik: Thank you so much for your presentation. It was very, very moving. You spoke about the intersection between law and society. And so I want to ask a little bit about that. The rights that we that we seek to defend impact and are important for every religious community, every community of faith in America, and the threat to the liberty of one community threatens everyone. And at times it seems we understand this either because of contiguity and geography, or for some

other reason. So, thus, during the pandemic, when Supreme Court granted relief to our religious communities, when it came to houses of worship being closed and liquor stores being open, I think a relief which was issued by the Supreme Court on Thanksgiving, I think, appropriately, the two cases were Catholic Diocese of Brooklyn versus Cuomo and Agudath, Israel of America versus Cuomo, so that the very names of the cases should teach us something. And so, because you're seeing religious liberty cases around the country, the question then is, on a social level, obviously, when if you see a certain case, you're thinking about what that can mean as a future precedent for everyone. But if you see a small community impact, a church impacted here, synagogue impacted there, a store owner impacted, is there anything in place now that that can allow that person, that litigant, that community to feel they are not alone and to allow other communities around America to really understand that this impacts all of us. And we need to stand with these people that are heroic, standing up for the rights of us all. So, that's a question. I was wondering if you had any thoughts about that.

Kristen Waggoner: Well, I think it's something that we need to do more to ensure. The most common comment that I get from clients, including churches and synagogues, and they say that they feel alone. And when you, as an example, stand up for your faith or your religious convictions, it can create hostility from civil servants in your community. It can also mean that you receive death threats aside from just the normal cancel culture. So, I do think it's important that the American public stand up. We've done some things at ADF to help draft letters, help bring religious communities and pastors around those others when we have cases. But I think that there could be something more formal. I think back to, you know, days when I think it was the around the time of the Manhattan Declaration and when that was created, and how Chuck Colson and other leaders of all different faiths came together to stand together for certain things. And there really was an effort to be ecumenical in that stand. But I truly believe that we stand or fall together, and we need to recognize that same precedent applies to every denomination and every faith.

Texas Lieutenant Governor Dan Patrick (Chair): Thank you, Professor Barclay, please.

Prof. Stephanie Barclay: Can I just add something?

Texas Lieutenant Governor Dan Patrick (Chair): Yeah, please.

Prof. Stephanie Barclay: So, in that case, the Agudath Israel case, during that time, I was at Notre Dame a professor, and I also directed the Religious Liberty Clinic, and we filed an amicus brief representing Muslim scholars and organizations who spoke out in defense of the Jewish community. And they said, we remember what it felt like during 9/11 to be scapegoated and treated unjustly. And

that is happening to the Jewish community now. And it's wasn't okay then. It's not okay now. We want to stand with our Jewish brothers and sisters and just acknowledge the injustice of what's going on right now. And this had to be filed quickly. It was an emergency briefing, but it meant a lot to the clients and Agudath Israel. They asked us to file that again as it went up in the Supreme Court, just to have other communities, you know, this Catholic institution, Muslim groups who this was not their fight, but they were saying, we stand in solidarity with you. And to me, that's the best of our American religious tradition.

Rabbi Meir Soloveichik: Thank you. Just to speak in agreement, I remember when I testified about the threat to religious liberty to Christian universities during the. Health law, the mandate case in 2012. And I was asked about why I was testifying, and I said, well, what impacts Notre Dame today essentially could impact Yeshiva University in the future, sure enough. But we rise and fall together, as you are all saying.

Prof. Joshua Blackman: Just a brief point. So, during the Covid scare, I worked with the Becket Fund. I'm with a group, a group called the Jewish Coalition for Religious Liberty, and we represented a Jewish school in New York. Remember, there were these zones. If you were on this side of the street, it was a red zone. There was yellow zone. And magically all the Jewish schools were within the red zone. Just amazing how they drew these lines. It's just amazing how that works. And we actually sued. We sued them on Earth. So, it was on a Friday afternoon. We filed a lawsuit. And I think by Monday, Governor Cuomo just changed the line to put our school outside the red zone. And so maybe a topic of future discussion is the Covid cases, where a lot of these governments knew they were getting in trouble, and they kept changing the policy over and over again so they could never get caught in court in these cases. Oh, oh, there's all this moot. We can't do anything, but we can do stuff, right. This body can investigate, I think could be a worthwhile discussion of how to sort of look back at the awful Covid days and realize how never, ever, ever do that again

Kristen Waggoner: Absolutely. Of course, just to emphasize again, I'm not suggesting this is all about self-interest. It's not -- none of us are a violation of anyone's faith is an injustice in and of itself. But we do need to, I think, do a better job of ensuring that heroic litigants are not alone, and that we all realize that we are in the same boat

Texas Lieutenant Governor Dan Patrick (Chair): Carrie.

Carrie Prejean Boller: Thank you. I want to say thank you so much. As a mother of small children, you have more courage than most men in our country and I want to applaud you for that. One thing

that you touched on that I think is really important is courage. And I think so many people fear man more than they fear God. And we really need to stop doing that. We need to stop fearing public opinion versus fearing one day being told, depart from me, I never knew you. I would like you to touch on the Johnson Amendment briefly. I think that's very important. I think that so many pastors we're talking about courage and the unwillingness to speak out publicly, whether it's, you know, to endorse a candidate. Kelly, you've touched on this before, the rights of pastors and priests, the rights that they have to endorse candidates and stuff like that. But I want you to touch on the Johnson Amendment and kind of the what that did to the church and what that did to Christians and Catholics, really silencing them and basically telling them that they don't have a place in, in the, the political sphere, because I think that was really damaging. And I think that's caused many people to live in fear of consequences, financial consequences and things like that.

Texas Lieutenant Governor Dan Patrick (Chair): So, we are going to have--the list is not out, but we're going to have a full hearing on that.

Carrie Prejean Boller: Very exciting.

Texas Lieutenant Governor Dan Patrick (Chair): Half of a hearing. So, but if you'd like to answer kind of a short answer, be fine.

Kristen Waggoner: Sure. I would just say that I think that the Johnson Amendment laid a foundation for churches and religious leaders to decline to engage in the political system, and it's very unfortunate. It's also unconstitutional, in our view, and deserves to be challenged. I think that the IRS, over the years has played a game in not allowing it to be challenged in how they've navigated that. But the other part I want to go back to is what you began with, which is courage, because more and more, we're seeing legislation that is impacting the heart of the religious tenants, not just of one faith, but of all faiths, things that we have held dear, how we hold our families, how we raise our families, what we believe about God even, and the way to salvation. And as the government has spread into these other areas, that it has no business being in, religious leaders have hidden behind the Johnson Amendment to decline to speak and to make the words of God the words be true in their lives and make them relevant. So, again, I think it's something that has to do with helping people understand the impact of what they've done, and instilling a moral courage that gives a spine of steel and allows people of faith and their leaders to stand up for what they know is right, and to realize that it is unloving not to do so. At this point, people are being harmed and families and generations are ravaged as a result

Texas Lieutenant Governor Dan Patrick (Chair): Allyson.

Allyson Ho: Thank you, Mr. Chairman. Kristen, thank you for your really inspiring remarks today. You have blessed all of us, and we're grateful you began with Solzhenitsyn. And thank you for reminding us that he stood not just against government, not just against communism, but against culture as well. And I'm wondering how can we better sort of equip and empower the next generation to cherish the First Amendment and the freedoms it protects? Because I do worry, with all of these decades and decades of court cases and assaults and individuals that have been put through the wringer, I worry about the next generation and their commitment to continue the fight. So, I'd just love to hear your thoughts on that.

Kristen Waggoner: I think for me, we talk a lot. I mean, we've given our lives to the study of the law and advocating the law. Kelly has as well, and it's a critical endeavor. But in some ways, it feels like you're putting your finger in the hole of a dike. If the next generation doesn't appreciate these civil liberties and doesn't appreciate the fact that there's a higher power, and what it looks like to believe that not everything has to do with us, we're part of a bigger story in doing that. I think that that work starts, of course, with constitutional literacy, and there are groups that are engaging in that. And this commission could recommend that the federal government do more to help with constitutional literacy, which teaches human frailty and human dignity limitations of powers. We cannot have a robust civil society without limited government. And there are profound reasons that have to do with correct human anthropological reasons for why we need that. So, that is an important piece, I think, constitutional literacy and an appreciation of the First Amendment. The second thing that I would say, and this has been touched on here, one of our cases was the Drummond case, which involves Saint Isidore. We have to expand choice. There will always, first of all, be parents who will send their children to public schools. They just will. And that's why Becket's Mahmoud case is so important, and why we must continue to support those efforts to have opt ins, opt outs, to give parents authority and transparency in the classrooms. But we also must ensure that religious schools and first Liberty has done a good amount of work here, as have we, on ensuring they have autonomy in how they're operating and that they can operate consistent, whether it's a Catholic school, a Jewish school, a Muslim school and lastly, educational choice when it comes to charter schools and the I believe that that case is going to come back up in a different form to the US Supreme Court. But we need more state officials and more people that understand what's at stake and are willing to pass laws. All of these laws that go to the US Supreme Court, they come from state and local levels. So, we all have a role to play in this. And then lastly, and I promise I'll be quiet after this because this is what I'm most passionate about, which is this happens at our kitchen tables. It happens with our children. The highest call we can have is the call of being a father and a mother and influencing the next generation. And if we raise them in our faith and we raise them to respect the dignity and other people, and that they are made in God's image and raise them to understand the Constitution, then the work we're doing now is going to endure. And that, I think, is truly inspiring and something this commission can also emphasize in its report to the President.

Texas Lieutenant Governor Dan Patrick (Chair): Are there any other questions? I'm going to finish with three quick ones. First of all, I was going to mention this earlier when I think it was Mark Hall who talked about school choice, and I didn't want to elongate it, but and I'm not underscoring Texas, we just came out of 140 day session. So, we passed a lot of legislation, but we passed the largest school choice launch in the history of the country, \$1 billion for 100,000 students. But I want to say this, and this is not a plug for the person who appointed me chair or any of us. But if President Trump had not engaged in the state of Texas in 15 elections, taking out those who opposed it, we would not have school choice in Texas today. And that is one of his. It will be one of his many legacies that he has fundamentally changed the direction of education in the country by supporting school choice in every state. So, I thank him for that question. There are talking about one big, beautiful bill over at the Capitol. Is there one big, beautiful case that would solve this? Because and I say that in looking at Roe versus Wade, there was one case, the Mississippi case that solved that problem, returning it to the states. Or is it this long road of having the Supreme Court take more cases, more briefs? The Department, of all the things that you've recommended? Or could one big, beautiful case address many of these ills?

Kristen Waggoner: Well, these are the professors, but I will tell you, my viewpoint is I think that the I don't think that there is one big case or one big bill that can do that. First of all, the Supreme Court moves incrementally, and there are a number of religious doctrines involved. And I think that in many ways we begrudge that it moves incrementally in some respects, and in others, we should be very thankful that it is thoughtful in how it is deciding these cases. I think there are a number of cases, though, that can be brought involving educational choice, the inclusion of religious schools and charter school programs and things like that. And that requires local officials to do what they do, and that requires people to help those local officials have the courage to do what they do, because long culture moves hand in hand. I don't believe one is exclusive of the other.

Prof. Joshua Blackman: I agree with Kristen. So, I also work in the Second Amendment and we've had big Second Amendment cases. Heller and McDonald, Bruen and the lower courts resisted. And I think even if you had one big, beautiful case that overruled Smith. Overruled. Lemon. Lower court judges are stuck in their ways. They still resist. It might take a generation to excavate these cases. So, it will be, as Christine said, a cultural change and a judicial nomination change and not just a change of one big, beautiful precedent.

Prof. Stephanie Barclay: We've touched on a few of the types of cases that would be helpful. I'm hopeful that we'll see in the future. I think another one that we didn't mention is that the Supreme Court ought to overrule Boerne. That was the case where the court struck down half of RFRA, the half that applied to state and local governments. Whereas Christians talking about a lot of these threats come from Michael McConnell and other scholars have written about how that was a gross overreach

of judicial power, a misinterpretation of the original meaning of section five of the 14th Amendment, and an area where we should encourage political actors like Congress to want to be more protective of religious exercise. So, that's another area I would point to. I wish there was one silver bullet. But I do have to say for the Supreme Court that I think our precedent has never been more protective of religious exercise, because even though we did have robust religious exercise protections after *Barnette* and leading through the 1970s, for a long time we didn't have very good Establishment Clause precedent. And so, of course, there's always room for them to do more. And we would like them to move quickly because we're impatient. But I just want to give credit where credit's due, that they're doing a lot. And we're lucky to have a Supreme Court that cares so much about this principle.

Texas Lieutenant Governor Dan Patrick (Chair): Maybe they're watching today. I don't know what their Monday was like.

Prof. Joshua Blackman: They're not watching me

Texas Lieutenant Governor Dan Patrick (Chair): Yeah. So, lastly on that with *Roe v Wade*, they returned it to the States. Why doesn't the court return these issues to the states? Because wasn't that our founders purpose. And let the states decide all of these.

Prof. Stephanie Barclay: Well, so we learned that the states were not very good at protecting religious exercise. We learned that in part, that was part of the motivation for the 14th amendment. The states were violating not just religious exercise, but freedom of speech and other due process rights for a number of Americans, newly freed slaves, but also just all Americans. And it was something that Bingham talked about during the reconstruction era that the Fugitive Slave Act, a law that was, by the way, neutral and generally applicable, was being used to prosecute religious believers who wanted to try and just offer food or aid to fleeing slaves or recently enslaved people. And they were being prosecuted for doing so. And this was something that Bingham said was the 14th amendment will make sure that those state and local governments can't engage in that sort of activity anymore. It will protect that sort of religious exercise, which is further evidence beyond Founding era, but reconstruction era evidence of why robust religious exemptions, even in the face of neutral and generally applicable laws, were understood to be protected by our Constitution.

Texas Lieutenant Governor Dan Patrick (Chair): Kristen?

Kristen Waggoner: I do want to just emphasize, too, that in many of our cases, well, pretty much almost all of them at this point, we find the relief from the Supreme Court. The issues that we're

having are bubbling up at the local and the state level. So, I would be careful to try to not to remove try to remove that jurisdiction or somehow suggest that the court hasn't been protective. They haven't been protective enough, though.

Prof. Stephanie Barclay: So, one small thing I'll add, I do think that the court needs to set a minimum protection, but I think Bernie's an example. They should not slap down legislators who are trying to go above what they view as the minimum, which is precisely what they did. And there are some states, like Texas that are going above and beyond, and we should encourage that sort of political protection. It's a good thing in our democracy.

Texas Lieutenant Governor Dan Patrick (Chair): So, I'll close with this. And to the audience, thank you. You've been very patient and very respectful. And to all the committee members, it was if we had done this before, but this was the first gathering of the team, and I thank all of you for the time you've given. So, I don't know what the name of the report will be, but the first name in the hat, because it's a long time away, ten months, 11 months. But one of the names that must be considered, I think members is we are the last Western country in the world protecting religious freedom as a pretty powerful statement and makes me even more thankful that the president said, go forth and do this. So, thank you. Please give our witnesses an applause.

Thanks again to the Museum of the Bible. Thank you for being here. Our next hearing will be September 8th, I think is the date, and we'll notify you. This hearing is adjourned.

Thank you.