



The United States Department of Justice
Religious Liberty Commission – First Hearing – Executive Summaries
June 16, 2025

Executive Summary: Testimony of Mark Rienzi, CEO, Becket

Our American commitment to religious liberty is essential for four reasons.

First, religious liberty is woven into the very fabric of our Founding. Many who came to these shores were religious refugees—people fleeing persecution in search of the freedom to live out their faith. Their pursuit of religious freedom helped create America.

Second, 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 gives us a stronger and more unified America.

Third, religious liberty is both the basis of and 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 cause for great hope**: where religious liberty is protected, other rights flourish. In this way, religious freedom is a foundational right—its protection secures the broader architecture of liberty and human dignity for everyone, religious or not.

Fourth, religious liberty is a fundamental human right. Man cannot live on materialism alone. We are creatures born with our eyes on the far horizon. We inherently ask questions that government not only can't answer but shouldn't try.

Let me make one final point about why protecting religious liberty is so important. As I mentioned at the outset, the entire edifice of rights in America—and in some ways the entire international human rights system—is based on a *religious* idea: that God created humans free and equal, and that our God-endowed inalienable rights come from this human dignity. 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.”

The 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 right is more important to the perpetuation of this system than religious freedom. That is the legacy we have been given to steward for future generations. That is the ideal that you, as a Commission, have been tasked with continuing to perfect.

Thank you in advance for your commitment to these principles and for your service on this Commission.

Executive Summary – Testimony of Prof. Gerard Bradley

The **main message** of Gerard Bradley's talk is that the American founders established a unique and successful model of religious liberty built on specific philosophical and moral principles, which he terms the “moral foundations.” He argues that modern jurisprudence, particularly from the mid-20th century Supreme Court, has abandoned these foundations in favor of a “naked public square,” fundamentally misinterpreting the First Amendment and undermining a key pillar of American success. He calls for a return to the founders' original understanding, which he asserts is both historically accurate and morally true.

The **core points** supporting this message are:

1. **The Founders' “Third Way”:** Bradley argues the founders rejected two extremes: (1) a top-down, state-controlled religion (like England) and (2) a public square scrubbed clean of religion (the modern “secularist” view). Their unique path was to champion *both* religious freedom *and* the public importance of religion, believing it “necessary” for good government.
2. **The “Moral Foundations” are Philosophical, Not Sectarian:** The core of the argument rests on James Madison's “Memorial and Remonstrance.” Bradley distills its key principles:
 - **Duty to God Precedes Duty to the State:** A person is first a “subject of the Governour of the Universe,” and this duty is paramount.
 - **A Right Based on a Duty:** Religious liberty is an inalienable right *because* it stems from the inalienable *duty* of each person to render homage to the Creator. The right serves to protect the fulfillment of this duty.
 - **Primacy of Reason and Conscience:** This duty can only be fulfilled freely, through uncoerced reason, conviction, and individual judgment, not by the dictates of others.
 - **These are Truths of Reason:** Bradley emphasizes that the founders held these not as revealed religious doctrines, but as philosophical truths accessible to “unaided human reason.” Therefore, acknowledging them is not a religious establishment.
3. **Critique of Modern Constitutional Interpretation:** He directly attacks the Supreme Court's mid-20th century shift, starting with the 1962 school prayer case. He specifically identifies the “naked public square” concept and the *Lemon* test's “secular purpose” requirement as profound errors that create a false and unhelpful dichotomy between “religious” and “secular.”
4. **Religion as Essential for the Republic:** He highlights the “morally adjacent” belief, held almost universally by the founding generation, that the virtue and character required for a self-governing republic depend on the piety of the people. This is not about a “civil religion” but about the genuine religious life of the citizenry.
5. **The Goal of Constitutional Interpretation:** The ultimate takeaway is that fidelity to the original meaning of the First Amendment's Religion Clauses is impossible without understanding and embracing these moral foundations. For Bradley, in this specific area, history and moral truth are not in conflict; they point in the same direction.

Executive Summary – Testimony of Dr. Mark David Hall, Professor, Regent University

The subject of the founders' understanding of religious liberty and church state relations is important not just as a matter of history, but because United States Supreme Court justices have insisted that, in the words of Wiley Rutledge, "no provision of the Constitution is more closely tied to or given content by its generating history than the religious clause of the First Amendment. It is at once the refined product and the terse summation of that history." As I documented in a law review article a few years ago, virtually all justices are originalists when it comes to the religion clauses. But many of them profoundly distort the founders' views of religious liberty and church state relations.

Religious liberty, or even religious toleration, simply did not exist in the ancient world. It was simply assumed that a community would embrace the same faith and that rulers would favor it above all others. In his wonderful book *Liberty in the Things of God*, Robert Louis Wilken demonstrates that religious liberty has its origins in Christianity. Jesus Christ himself encouraged his followers to give "unto Caesar what is Caesar's, and to God what is God's" and the early church father Tertullian is the first person "in the history of western civilization to use the phrase 'freedom of religion.'"

But Wilken recognizes that when Christians came into power, they often did not live up to these ideals of religious liberty for all. From 325, when Emperor Constantine called the council of Nicaea, to the founding of the American colonies, it was common for civic authorities to promote what they considered to be true religion. This often included discriminating against or even persecuting those who deviated from the rulers' understanding of Christian orthodoxy. America's earliest colonists, from north to south, were not immune from this temptation.

Fortunately, the way Americans approached religious liberty changed in important ways between the early colonies and the Founding era.

Moreover, by the American Founding, many civic leaders were coming to understand religious liberty to be a *natural right*, not simply a gift of the state.

By the end of the revolutionary era every state offered significant protection of religious liberty.

At a bare minimum, the Free Exercise Clause forbids Congress from, in the words of James Madison, compelling "men to worship God in any manner contrary to their conscience." It certainly means more than that, but exactly how much more is controversial. Particularly divisive, even among originalists, is the question of whether the Free Exercise Clause requires religious exemptions to general, neutrally applicable laws. But there is no doubt that the founders believed legislatures could craft such exemptions to protect religious minorities. This can be illustrated in multiple ways,

including by reference to the US Constitution which contains an accommodation to protect individuals with religious scruples against swearing oaths.

I could give many more examples of the founders and later civic leaders crafting religious accommodations, but let me turn to the question of whose religious liberty should be protected. Fortunately, by the late 18th century the answer was “everyone.”

Executive Summary - Testimony of Kristen Waggoner, CEO, President & Chief Counsel, Alliance Defending Freedom

America's legacy of strength—and foundation *for enduring greatness*—rests on how we protect the freedom to speak, live, and work consistently with our deepest beliefs.

There is a human cost when government *officials* forget freedom, and *judges* forget courage.

This is precisely how authoritarian regimes begin: by silencing the soul. There is no greater threat to tyranny than each person's freedom to speak the truth.

Today's tyrants don't wear crowns—they sit on school boards, city councils, and civil rights commissions. They are openly hostile to freedom and unmoored from objective truth. They censor, fine, and even threaten jail time for anyone who dares to hold a belief they dislike. Especially if those beliefs affirm 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 is always human.

As I stood before the U.S. Supreme Court to argue *Masterpiece Cakeshop* representing its owner Jack Phillips, I remember thinking: *no nation can thrive—nor will its government remain limited—if its officials believe they can regulate the soul.*

Thankfully, the Court ruled 7-2 that the Colorado Civil Rights Commission showed “impermissible hostility” toward Jack's religious beliefs and that the “Constitution commits government 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.*”

Ensuring the U.S. remains *a refuge for religious freedom* is why we gather today. Political and cultural winds shift, but protecting the First Amendment *is not a partisan issue. It is a moral and cultural imperative.*

As President Trump has said, “In America, we don't worship government—we worship God.” We need leaders at every level with the courage to resist tyranny and respect “the bedrock of American life” – “every citizen's absolute right to live according to the teachings of their faith and the convictions of their heart.”

So, how can this administration do that?

- First, fully protect freedom of conscience:
- Second, end financial targeting of people of faith.

- Third, protect people of faith from the regulatory state.
- Fourth, promote religious freedom on the international stage:
- Finally, a president's *most lasting legacy* is the men and women he appoints to the judiciary.

Religious liberty is the *American rebellion* against every regime that ever tried to own the human soul. Undermine this foundational freedom, and we don't just violate the Constitution – we deny humanity its most sacred right.

Together, let us safeguard America's legacy of strength and greatness for generations to come. Thank you.