Bill as Introduced

HB 1330 – AS INTRODUCED

2010 SESSION

10-2213
05/10

HOUSE BILL ***1330***

AN ACT relative to the preservation of religious freedom.

SPONSORS: Rep. Wendelboe, Belk 1

COMMITTEE: Judiciary

ANALYSIS

This bill restricts government action from burdening a person's free exercise of religion.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

10-2213
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to the preservation of religious freedom.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Preservation of Religious Freedom. Amend RSA by inserting after chapter 546-B the following new chapter:

CHAPTER 546-C

PRESERVATION OF RELIGIOUS FREEDOM

546-C:1 Definitions. In this chapter:

I. "Demonstrates" means meets the burden of persuasion under the standard of clear and convincing evidence.

II. "Exercise of religion" means the exercise of religion under Part 1, Article 5 of the New Hampshire constitution and the First Amendment to the United States Constitution.

III. "Fraudulent claim" means a claim that is dishonest in fact or that is made principally for a patently improper purpose, such as a to harass the opposing party.

IV. "Frivolous claim" means a claim that completely lacks merit under existing law and cannot be supported by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law.

V. "Government entity" means any branch, department, agency, or instrumentality of state government, or any official or other person acting under color of state law, or any political subdivision of the state.

VI. "Prevails" means to obtain "prevailing party" status as defined by courts construing the federal Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. section 1988.

VII. "Substantially burden" means to inhibit or curtail religiously motivated practice.

546-C:2 Religious Freedom Preserved.

I. Except as provided in paragraph II, no government entity shall substantially burden a person's free exercise of religion, even if the burden results from a rule of general applicability.

II. No government entity shall substantially burden a person's free exercise of religion unless it demonstrates that application of the burden to the person is:

(a) Essential to further a compelling governmental interest; and

(b) The least restrictive means of furthering that compelling governmental interest.

546-C:3 Restrictions.

I. Nothing in this chapter shall be construed to:

(a) Authorize any government entity to burden any religious belief; or

(b) Affect, interpret, or in any way address those portions of Part I, Article 5 of the

New Hampshire constitution and the First Amendment to the United States Constitution that prohibit laws respecting the establishment of religion.

II. Granting government funds, benefits, or exemptions, to the extent permissible under RSA 546-C:2, II shall not constitute a violation of this chapter.

III. As used in this section, "granting" used with respect to government funding, benefits, or exemptions, shall not include the denial of government funding, benefits, or exemptions.

546-C:4 Claims and Awards. A person whose religious exercise has been burdened by government in violation of this chapter may assert that violation as a claim or defense in any judicial or administrative proceeding and may obtain such declaratory relief and/or monetary damages as may properly be awarded by a court of competent jurisdiction. A person who prevails in any proceeding to enforce this chapter against a government entity may recover the person's reasonable costs and attorney's fees. Standing to assert a claim or defense under this section shall be governed by the general rule of standing under Part I, Article 5 and Part I, Articles 31 and 32 of the New Hampshire constitution. The provisions of this section relating to attorney's fees shall not apply to criminal prosecutions.

546-C:5 Penalties. Any person found by a court with jurisdiction over the action to have abused the protections of this chapter by filing a frivolous or fraudulent claim may be assessed the government entity's court costs, if any, and may be enjoined from filing further claims under this chapter without leave of court.

2 Effective Date. This act shall take effect January 1, 2011.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1330 Date 1-19-10

Committee Judiciary

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
STEVE L. MIKE KAPPLER	ROCK DIST 2			X	
GREGORY SOUL	EASTON NH	823-8856		X	
Rich Tomasso	Manchester		LPA10	X	
BOB DUNN	DMB	926-1000	Roman Catholic Bishop of manchester	✓	
REP STEVE PALMER	HILLS DIST 6			✓	
Rep. David Bates	Rockingham 4			✓	
~~Kay Healle Jencks~~	~~18 Low Ave Concord~~		~~RPNH~~		~~X~~
NO BAXLEY	18 LOW AVE		DHFTM		X

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1330

BILL TITLE: relative to the preservation of religious freedom.

DATE: January 19, 2010

LOB ROOM: 208 Time Public Hearing Called to Order: 10:10 a.m.

Time Adjourned: 10:55 a.m.

(please circle if present)

Committee Members: Reps. D. Cote, Wall, Potter, Hackel, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Perkins, Silva, W. Smith and Mead.

Bill Sponsors: Rep. Wendelboe, Belk 1

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Fran Wendelboe, sponsor
Comments on Constitutional protection and presents example of Jewish students allegedly being 'forced' to eat pork. Wants to protect someone who refuses to do an act (abortion, capital punishment, assisted suicide) that is contrary to their religion. Says that the only protections for these people are in regulations, not law. Cites court decision that lowers protection, also restrictions in camps and schools. Provided files of cases of religious discrimination/persecution. Described Laconia court case which ordered a child taken out of home schooling and placed into public school because one of the divorced parents did not agree to the other's religious instruction.

Rep. Frances Potter: How does this bill relate to family planning? Ans. No bearing.

Rep. Robert Rowe: Lines 23-26: What about zoning regulations prohibiting a religious structure? Ans. OK, if restriction is not related to religious rational. Q: Would like to have a definition of 'compelling interest' which he could bring forth as an amendment.

Rep. Gary Richardson: Other NH cases? Q: Not aware of specific cases, but believes issues do exist. Q: Would this bill give preference in divorce cases where religious upbringing is an issue? Ans. This was an unnecessary meddling in the exercise of custodial care.

Rep. Rick Watrous: Would this bill allow restriction in accommodations? Ans: Yes, if an inn is advertised as a religious institution, but she is unsure of the impact of housing discrimination laws.

*Kevin Smith, Cornerstone Action - supports
Protects the most basic Constitutional freedom. Mentions medical issues (being forced to perform abortions, prescribe drugs). Claims court has eroded religious freedom. 'Compelling interest' 1990 Supreme Court case restored some religious protections, but ruling does not apply to state laws.

Rep. William O'Brien: Our government does not endorse or promote a religion but it does show respect in such instances as oaths of office by using the Bible? Ans. Coinage, oaths are acceptable, do not promote a religion.

Rep. Gary Richardson: Asks for copy of Laconia & Smith decisions. Q: Are there NH examples of situations where the government has substantially burdened someone's freedom to practice religion? Ans. Just mentions home schooling decision. There may be on-going cases.

Rep. William Smith: Number of states with similar statutes? Ans. 13 states have religious protection acts, and 12 states have had favorable court decisions that have required states to enact compelling interest statutes. So the number of states is 20 with good law protecting religious freedom.

Rep. Frances Potter: Says, Smith case view is narrow, regarding home schooling case. If the father had made some other request, the court might have ruled in some other way, and looking at it from the standpoint of the father. Would you believe. Ans. No.

*Denis Goddard, New Hampshire Liberty Alliance - supports
Supports pro-choice, gay rights, but says he is supportive because he only has as much freedom as he is willing to grant to those who do not agree with him. The legislature is often asked to redraw the line between the interest of the state and the deeply held religious convictions of its citizens. Discusses issue of compelling interest of state (Historically, a militia to protect the nation vs an individual's beliefs). Recommends striking Page 1, Section 546-C:2, Lines 22-27: and in the Definitions section, 546-C:1, leaving in only III, IV and V. This would allow individuals to bring suit in cases where they believe the state has infringed upon their rights and allow those specific cases to be heard by a jury of their peers.

Claire Ebel, Executive Director, New Hampshire Civil Liberty Union - opposed
Bill attempts to amend constitution by statue. It attempts to redefine 'substantial burden' and other aspects of Constitutional interpretation that rest with the court. Believes court would declare it unconstitutional because it attempts to substitute the judgment of the legislature on Constitutional matters.

Respectfully submitted,

Phil Preston

Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1330

BILL TITLE: relative to the preservation of religious freedom.

DATE: ~~1-20-10~~ 1-19-10

LOB ROOM: 208 **Time Public Hearing Called to Order:** 10:00

Time Adjourned: 10:55 pm

(please circle if present)

Committee Members: Reps. B. Cote, Wall, Potter, Hackel, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Perkins, Silva, W. Smith and Mead. Read

Bill Sponsors: Rep. Wendelboe, Belk 1

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

FROM: Rep. Philip Preston, Clerk

DATE: Public hearing January 19, 2010

SUBJECT: Meeting minutes on HB 1330, relative to the preservation of religious freedom.

HB 1330 relative to the preservation of religious freedom 10:10 am

Rep. Fran Wendelboe, sponsor
Comments on Constitutional protection and presents example of Jewish students allegedly being 'forced' to eat pork. Wants to protect someone who refuses to do an act (abortion, capital punishment, assisted suicide) that is contrary to their religion. Says that the only protections for these people is in regulations, not law. Cities court decision that lowers protection, also restrictions in camps & schools. Provided files of cases of religious discrimination/persecution. Described Laconia court case which ordered a child taken out of home schooling and placed into public school because one of divorced parents did not agree to the other's religious instruction.
Rep. Frances Potter: How does this bill relate to family planning? Ans. No bearing.
Rep. Robert Rowe: Lines 23-26: What about zoning regulations prohibiting a religious structure? Ans. OK if restriction is not related to religious rational. Q: Would like to have a definition of 'compelling interest' which he could bring forth as an amendment.
Rep. Gary Richardson: Other NH cases? Q: Not aware of specific cases, but believes issues do exist. Q: Would this bill give preference in divorce cases where religious upbringing is an issue? Ans. This was an unnecesary meddling in the exercise of custodial care.
Rep. Rick Watrous: Would this bill allow restriction in accommodations? Ans: Yes, if an inn is advertised as a religious institution, but she is unsure of the impact of housing discrimination laws.

*Kevin Smith, Cornerstone Action - supports
Protects the most basic Constitutional freedom. Mentions medical issues (being forced to perform abortions, prescribe drugs). Claims court has eroded religious freedom. 'Compelling interest' 1990 Supreme court case restored some religious protections, but ruling does not apply to state laws.
Rep. William O'Brien: Our government does not endorse or promote a religion but it does show respect in such instances as oaths of office by using the Bible. Ans. Coinage, oaths are acceptable, do not promote a religion
Rep. Gary Richardson: Asks for copy of Laconia & Smith decisions. Q: Are there NH examples of situations where the government has substantially burdened someone's freedom to practice religion? Ans. Just mentions home schooling decision. There may be ongoing cases.
Rep. Will Smith: Number of states with similar statutes? Ans: 13 states have religious protection acts, and 12 states have had favorable court decisions that have required states to enact compelling interest statutes. So the number of states is 20 with good law protecting religious freedom.
Rep. Frances Potter: Says, Smith case view is narrow, regarding home schooling case. If the father had made some other request, the court might have ruled in some other way, and looking at it from the standpoint of the father. WYB. Ans. No.

*Denis Goddard. NA Liberty Alliance - supports
Supports pro-choice, gay rights, but says he is supportive because he only has as much freedom as he is willing to grant to those who do not agree with him. The legislature is often asked to redraw the line between the interest of the state and the deeply held religious convictions of its citizens. Discusses issue of compelling interest of state (Historically, a militia to protect the nation vs an individual's beliefs). Recommends striking Page 1, Section 546-C:2, Lines 22-27: and in the Definitions section, 546-C:1, leaving in only III, IV & V. This would allow individuals to bring suit in cases where they believe the state has infringed upon their rights and allow those specific cases to be heard by a jury of their peers.

Claire Ebel, Executive Director, NHCLU - opposed

Bill attempts amend constitution by statue. It attempts to redefine 'substantial burden' and other aspects of Constitutional interpretation that rest with the court, believes court would declare it unconstitutional because it attempts to substitute the judgment of the legislature on Constitutional matters.

12:00pm

Testimony

Kevin Smith
Cornerstone - Action
HB 1330

WHY DOES NH NEED A RELIGIOUS FREEDOM STATUTE?

The free exercise of religion is, in a literal sense, our first and most basic freedom as Americans. The right to worship in accordance with the dictates of our own conscience is a liberty given to us by our creator. No man, and no government, should have the authority to take it away. For most of our country's history, our laws and our courts recognized and protected that right.

But today this historical right to freely exercise religious faith is under increasing attack by government. Religious discrimination, even against mainstream faiths, is becoming more and more common. Nurses are being fired and demoted for expressing religious objections to participating in certain medical procedures; religiously-motivated home-schoolers are being harassed (and in the case of NH, forced to send their child to public school strictly on the basis of religion); the religious expression of college and university students is being silenced by draconian campus speech codes; and churches and private business owners are being penalized for simply opposing the increasingly radical demands of activists (such as the advocates of same-sex mariage). For most of our history, and until recently, the courts would never have tolerated such infringements of our religious freedoms.

Over the past two decades, however, the U.S. Supreme Court has significantly reduced the religious freedom guarantees of the First Amendment to the U.S. Constitution. Prior to 1990 it was well understood that neither the state nor federal government could impose a burden or limitation upon the fundamental right to freely exercise religion *unless the government could show it had a compelling interest in doing so, and no less restrictive means was available to accomplish that compelling interest.* This is known as the "compelling interest" test. Under this high standard of review, religious freedom usually prevailed over restrictive state regulations. Courts around the country had no problem applying that standard of review, yielding consistent and easily-understood results which provided a wide safety net for our religious liberties.

However, in 1990, the U.S. Supreme Court tragically reduced the level of protection historically afforded religious freedom. In *Employment Division v. Smith*, the Court held that the "compelling interest" test can only be applied if a state action or law *directly targets religion,* and not where an action or law is *generally applicable* with only an "incidental" adverse effect on the free exercise of religion. In the latter scenario, the state is merely required to show a *rational basis* for its action, a much lower threshold of government interest. There is really no protection at all for religious liberty under that minimal test, and the result has been the increasing frequency of religious freedom defeats such as those discussed above. The clear threat to our religious freedoms from the *Smith* decision was evident even back then. The public, and Congress, were moved to action.

In response to *Smith,* Congress passed the 1993 Religious Freedom Restoration Act (RFRA), to restore the "compelling interest" test to restrictions placed on religious freedom. But the Supreme Court later held that the federal RFRA did not apply to the

states. This left state citizens vulnerable to ill-conceived actions of their own state government that infringed upon religious liberty. However, the good news is that ***states are free to enact their own legislation to strengthen religious liberty*** and restore the "compelling interest" test that has served the country so well in the past. In fact, *some states have already done so* – 13 have enacted so-called "mini-RFRAs" and another 12 have favorable state court decisions which require the "compelling interest" test that was discarded by the U.S. Supreme Court in 1990.

As we have seen over the last several years (see the examples discussed above), states without "mini-RFRAs" or sufficiently broad state constitutional protections are at the complete mercy of activist courts when religious liberty comes into conflict with radical social agendas. The typical "freedom of religion" constitutional language found in most state constitutions is not helpful in this battle because of the *Employment Division v. Smith* decision. However, a well-drafted state religious freedom statute provides a bolstered guarantee of lasting protection for citizens' religious liberties from an overreaching legislature, government bureaucracy, or court system.

Now is the time for religious freedom to regain the protected status that it once held in this country by restoring what has been lost through an unfortunate Supreme Court decision. The proposed piece of legislation protecting religious liberty is the result of the collective efforts of First Amendment experts from across the nation – constitutional law professors, trial practitioners and public policy professionals – using tested concepts and relevant language from U.S. Supreme Court decisions. It is designed to maximize our religious freedoms while giving judges very little wiggle room to interpret the Constitution at will. This religious protection ~~amendment~~ statute will ensure that our religious freedom remains as our "first liberty."

Examples of recent violations of religious freedom:

1) In May 2009, the La. Supreme Court ruled that summary judgment was not warranted for the state hospital defendants who demoted and penalized a nurse for stating a religious objection to dispensing the "morning after" abortion pill. The case is proceeding to trial.

2) In Jefferson Parish, pro-life persons participating in a somber "prayer walk" on the anniversary of *Roe v. Wade* were halted and threatened with arrest for failing to first obtain a permit under the local Mardi Gras parade and circus ordinance.

3) On some Louisiana college campuses, draconian "speech code" policies prohibit religious persons from sharing a biblical view on controversial social issues without fear of disciplinary action.

4) At Southeastern Louisiana University campus police prohibited four students from sharing their faith on open areas of campus without applying for a speech permit, and perhaps paying a fee, at least one week in advance.

5) Students in public secondary and elementary schools are commonly prohibited from starting pro-life student organizations, and sometimes bible clubs, on the same basis as all other student organizations. Student-organized and initiated See You at the Pole and National Day of Prayer events are routinely proscribed.

6) In Ocean Grove, New Jersey, a United Methodist Association lost its property tax exemption and was subjected to a state investigation for declining to rent its private facility as a location for a same-sex "civil commitment" ceremony.

7) In Albuquerque, New Mexico, a young couple who owned and operated a photography studio were fined $6,000 by a state commission for "sexual orientation discrimination" because their Christian faith required that they decline a lesbian couple's request to hire them to photograph their "civil commitment" ceremony.

8) In Norfolk, Virginia, Christians were prohibited form engaging in some forms of public speech during the annual Harborfest event, including wearing sandwich boards and the distributing religious literature.

9) In Pensacola, Florida, police recently halted Thursday night fellowships at a local Catholic church because the picnics were attracting too many "undesirables" (i.e., local homeless people).

10) In Mt. Juliet, Illinois, students and their parents were ordered to cover up references to God and prayer and any Scripture passages on the posters they made or else they could not be posted. Each year, students and parents have placed posters in the hallways of the school informing students of the "See You at the Pole" event on the National Day of Prayer. Court ruled school could not require references to be excluded.

11) In Balch Springs, Texas, a senior center used its facility for social programs and recreational events. A group of Christian seniors had also gathered at the center to sing gospel songs and hear the Word of God from a retired pastor. These seniors quietly say a word of thanks to the Lord when they receive their meals at the center. In August 2003, the city of Balch Springs enacted a new policy demanding that all mealtime prayers, gospel music, and "religious messages" cease immediately. No other group was silenced, only Christians.

12) While distributing literature on several occasions at the City College of San Francisco's Ocean Campus in 2007 and 2008, a Jews for Jesus employee was approached by campus security officers who told him he couldn't distribute literature without a permit and threatened him with arrest if he continued. Wertheim did not comply. Police arrested and handcuffed him, searched him and detained him for more than three hours. The charges were dropped the next day.

13) Local authorities in the village of Fife Lake, near Grand Rapids, Michigan, have graciously made the town's Municipal Building meeting room available for free to local community organizations. However, Forest Area Bible Church was required to pay rent. With the public room now closed to them, and no other suitable alternative, the church has stopped meeting.

14) On March 3, 2005, an FAA's civil service supervisor received a letter of reprimand from his regional manager. The document accused the supervisor of engaging in "unbecoming conduct" for several friendly conversations he had with un-offended co-workers regarding his Christian beliefs. For his actions, the supervisor was punished with a seven-day suspension without pay and a forced relocation from his position in Louisville, Ky. to Birmingham, Ala. A settlement agreement cleared the supervisor's record and required the government to pay attorneys' fees and costs.

15) A Christian man reached a favorable settlement with the New York Department of Transportation, which agreed to allow his trailer donning a gospel message to remain on his private business property along a public highway. The trailer had previously been cited as a "public nuisance," and NYDOT warned the man that it would be forcibly removed if the Christian message remained visible from the highway. Settled.

16) Spokane Falls Community College officials threatened a young female student and members of a Christian student group with disciplinary measures, including expulsion, if they chose to hold a pro-life event on campus to share information with other students because the message was "discriminatory" and did not include a pro-abortion viewpoint.

17) American Atheists sued the Utah Highway Patrol and the Utah Transportation Department seeking a court order to remove roadside cross memorials placed to honor fallen state highway patrol officers.

Kevin Smith
Cornerstone Action
HB 1330

WHY DOES NH NEED A RELIGIOUS FREEDOM STATUTE?

The free exercise of religion is, in a literal sense, our first and most basic freedom as Americans. The right to worship in accordance with the dictates of our own conscience is a liberty given to us by our creator. No man, and no government, should have the authority to take it away. For most of our country's history, our laws and our courts recognized and protected that right.

But today this historical right to freely exercise religious faith is under increasing attack by government. Religious discrimination, even against mainstream faiths, is becoming more and more common. Nurses are being fired and demoted for expressing religious objections to participating in certain medical procedures; religiously-motivated home-schoolers are being harassed (and in the case of NH, forced to send their child to public school strictly on the basis of religion); the religious expression of college and university students is being silenced by draconian campus speech codes; and churches and private business owners are being penalized for simply opposing the increasingly radical demands of activists (such as the advocates of same-sex mariage). For most of our history, and until recently, the courts would never have tolerated such infringements of our religious freedoms.

Over the past two decades, however, the U.S. Supreme Court has significantly reduced the religious freedom guarantees of the First Amendment to the U.S. Constitution. Prior to 1990 it was well understood that neither the state nor federal government could impose a burden or limitation upon the fundamental right to freely exercise religion *unless the government could show it had a compelling interest in doing so, and no less restrictive means was available to accomplish that compelling interest.* This is known as the "compelling interest" test. Under this high standard of review, religious freedom usually prevailed over restrictive state regulations. Courts around the country had no problem applying that standard of review, yielding consistent and easily-understood results which provided a wide safety net for our religious liberties.

However, in 1990, the U.S. Supreme Court tragically reduced the level of protection historically afforded religious freedom. In *Employment Division v. Smith*, the Court held that the "compelling interest" test can only be applied if a state action or law *directly targets religion,* and not where an action or law is *generally applicable* with only an "incidental" adverse effect on the free exercise of religion. In the latter scenario, the state is merely required to show a *rational basis* for its action, a much lower threshold of government interest. There is really no protection at all for religious liberty under that minimal test, and the result has been the increasing frequency of religious freedom defeats such as those discussed above. The clear threat to our religious freedoms from the *Smith* decision was evident even back then. The public, and Congress, were moved to action.

In response to *Smith,* Congress passed the 1993 Religious Freedom Restoration Act (RFRA), to restore the "compelling interest" test to restrictions placed on religious freedom. But the Supreme Court later held that the federal RFRA did not apply to the

states. This left state citizens vulnerable to ill-conceived actions of their own state government that infringed upon religious liberty. However, the good news is that ***states are free to enact their own legislation to strengthen religious liberty*** and restore the "compelling interest" test that has served the country so well in the past. In fact, *some states have already done so* – 13 have enacted so-called "mini-RFRAs" and another 12 have favorable state court decisions which require the "compelling interest" test that was discarded by the U.S. Supreme Court in 1990.

As we have seen over the last several years (see the examples discussed above), states without "mini-RFRAs" or sufficiently broad state constitutional protections are at the complete mercy of activist courts when religious liberty comes into conflict with radical social agendas. The typical "freedom of religion" constitutional language found in most state constitutions is not helpful in this battle because of the *Employment Division v. Smith* decision. However, a well-drafted state religious freedom statute provides a bolstered guarantee of lasting protection for citizens' religious liberties from an overreaching legislature, government bureaucracy, or court system.

Now is the time for religious freedom to regain the protected status that it once held in this country by restoring what has been lost through an unfortunate Supreme Court decision. The proposed piece of legislation protecting religious liberty is the result of the collective efforts of First Amendment experts from across the nation – constitutional law professors, trial practitioners and public policy professionals – using tested concepts and relevant language from U.S. Supreme Court decisions. It is designed to maximize our religious freedoms while giving judges very little wiggle room to interpret the Constitution at will. This religious protection ~~amendment~~ Statute will ensure that our religious freedom remains as our "first liberty."

Examples of recent violations of religious freedom:

1) In May 2009, the La. Supreme Court ruled that summary judgment was not warranted for the state hospital defendants who demoted and penalized a nurse for stating a religious objection to dispensing the "morning after" abortion pill. The case is proceeding to trial.

2) In Jefferson Parish, pro-life persons participating in a somber "prayer walk" on the anniversary of *Roe v. Wade* were halted and threatened with arrest for failing to first obtain a permit under the local Mardi Gras parade and circus ordinance.

3) On some Louisiana college campuses, draconian "speech code" policies prohibit religious persons from sharing a biblical view on controversial social issues without fear of disciplinary action.

4) At Southeastern Louisiana University campus police prohibited four students from sharing their faith on open areas of campus without applying for a speech permit, and perhaps paying a fee, at least one week in advance.

5) Students in public secondary and elementary schools are commonly prohibited from starting pro-life student organizations, and sometimes bible clubs, on the same basis as all other student organizations. Student-organized and initiated See You at the Pole and National Day of Prayer events are routinely proscribed.

6) In Ocean Grove, New Jersey, a United Methodist Association lost its property tax exemption and was subjected to a state investigation for declining to rent its private facility as a location for a same-sex "civil commitment" ceremony.

7) In Albuquerque, New Mexico, a young couple who owned and operated a photography studio were fined $6,000 by a state commission for "sexual orientation discrimination" because their Christian faith required that they decline a lesbian couple's request to hire them to photograph their "civil commitment" ceremony.

8) In Norfolk, Virginia, Christians were prohibited form engaging in some forms of public speech during the annual Harborfest event, including wearing sandwich boards and the distributing religious literature.

9) In Pensacola, Florida, police recently halted Thursday night fellowships at a local Catholic church because the picnics were attracting too many "undesirables" (i.e., local homeless people).

10) In Mt. Juliet, Illinois, students and their parents were ordered to cover up references to God and prayer and any Scripture passages on the posters they made or else they could not be posted. Each year, students and parents have placed posters in the hallways of the school informing students of the "See You at the Pole" event on the National Day of Prayer. Court ruled school could not require references to be excluded.

11) In Balch Springs, Texas, a senior center used its facility for social programs and recreational events. A group of Christian seniors had also gathered at the center to sing gospel songs and hear the Word of God from a retired pastor. These seniors quietly say a word of thanks to the Lord when they receive their meals at the center. In August 2003, the city of Balch Springs enacted a new policy demanding that all mealtime prayers, gospel music, and "religious messages" cease immediately. No other group was silenced, only Christians.

12) While distributing literature on several occasions at the City College of San Francisco's Ocean Campus in 2007 and 2008, a Jews for Jesus employee was approached by campus security officers who told him he couldn't distribute literature without a permit and threatened him with arrest if he continued. Wertheim did not comply. Police arrested and handcuffed him, searched him and detained him for more than three hours. The charges were dropped the next day.

13) Local authorities in the village of Fife Lake, near Grand Rapids, Michigan, have graciously made the town's Municipal Building meeting room available for free to local community organizations. However, Forest Area Bible Church was required to pay rent. With the public room now closed to them, and no other suitable alternative, the church has stopped meeting.

14) On March 3, 2005, an FAA's civil service supervisor received a letter of reprimand from his regional manager. The document accused the supervisor of engaging in "unbecoming conduct" for several friendly conversations he had with un-offended co-workers regarding his Christian beliefs. For his actions, the supervisor was punished with a seven-day suspension without pay and a forced relocation from his position in Louisville, Ky. to Birmingham, Ala. A settlement agreement cleared the supervisor's record and required the government to pay attorneys' fees and costs.

15) A Christian man reached a favorable settlement with the New York Department of Transportation, which agreed to allow his trailer donning a gospel message to remain on his private business property along a public highway. The trailer had previously been cited as a "public nuisance," and NYDOT warned the man that it would be forcibly removed if the Christian message remained visible from the highway. Settled.

16) Spokane Falls Community College officials threatened a young female student and members of a Christian student group with disciplinary measures, including expulsion, if they chose to hold a pro-life event on campus to share information with other students because the message was "discriminatory" and did not include a pro-abortion viewpoint.

17) American Atheists sued the Utah Highway Patrol and the Utah Transportation Department seeking a court order to remove roadside cross memorials placed to honor fallen state highway patrol officers.

Testimony in support of HB1330, relative to the preservation of religious freedom
Denis Goddard
757 Penacook Rd, Hopkinton, NH 03229
603 892-9266
Representing the NH Liberty Alliance

Ultimately, this bill is asking you, as legislators, to clarify the balance between the legitimate needs of the State, and the sincerely held religious convictions of citizens. This is a line that will shift over time as societal needs change, and that periodically needs such clarification.

Fortunately, you do not need to make this call solely on intuition. There is Constitutional guidance on the general nature of this balancing act.

When the New Hampshire Constitution was ratified in 1784, the state was under the constant and very real threat of attack from multiple nations: the native American Indians, the French, and potentially, the British. As such, every able-bodied man was required to participate in regular military training sessions, should he need to be called to duty to defend his town, State, and country. Such individuals were not full-time military; rather, every able-bodied man formed the "militia." To this end, the New Hampshire Constitution, Part I Art 24 states:

[Art.] 24. [Militia.] A well regulated militia is the proper, natural, and sure defense, of a state.

It is difficult for us, in this time of relative peace, to imagine such a state of pervasive military readiness. The need for such was so great that even indigent individuals who could not afford a firearm would be provided with one, at public expense. No person could be spared.

And yet, preceding Article 24, we find Article 13:

[Art.] 13. [Conscientious Objectors not Compelled to Bear Arms.] No person, who is conscientiously scrupulous about the lawfulness of bearing arms, shall be compelled thereto.

Where should the line be drawn between the needs of the many, and the deeply held convictions of the few? According to the New Hampshire Constitution, maximizing the assured existence of the State itself is insufficient to compel conscientious objectors to participate in the Militia.

The worst-case scenario with HB1330 is that some individuals might bring frivolous claims, which the bill itself addresses in 546-C:5, to ensure such claims do not pose a significant drag on the court system.

The New Hampshire Liberty Alliance urges you to vote OTP on HB1330 and clarify the proper balance between deeply held convictions, and *potential* minor inconvenience to the State.

Diocese of Manchester
Diane Murphy Quinlan, Esq.
Chancellor

153 Ash Street - Box 310
Manchester, N.H. 03105-0310
(603) 669-3100
Fax: (603) 669-0377
dquinlan@rcbm.org

January 19, 2010

Representative David E. Cote,
Chair House Judiciary Committee
Legislative Office Building
Room 208
Concord, NH 03301

Re: HB 1330

Dear Representative Cote:

As Chancellor of the Roman Catholic Diocese of Manchester, and on behalf of Bishop John McCormack, I want to register our support for HB 1330, which seeks to restrict the State from burdening the free exercise of religion.

Religious freedom is at the heart of our nation's founding principles and is the first of the freedoms recognized in the Bill of Rights. It lies at the heart of human rights from the perspective of Catholic teaching. As the United States bishops have said:

> Faith is oriented to the ultimate concern and purpose of human life. To deny religious freedom is to rob human persons of the ultimate meaning and direction of their lives. Constraining religious liberty diminishes our humanity.

While we continue to vigorously oppose measures such as the same sex marriage law, the concerns presented by those laws relate not just to the substance of the laws, but the dilemma which they present for people with religious beliefs contrary to what those laws stand for. As the Pontifical Council for Justice and Peace has said, these laws "pose dramatic problems of conscience for morally upright people." It is a tenet of Catholic belief, and we think it is also a basic principle of the civil rights of all Americans, that people be allowed to refuse to cooperate in acts which they believe are morally wrong.

Given the fact that over the past several years the legislature has enacted laws which indisputably have run contrary to the historical and moral traditions of Western civilization, it is all the more important that the legislature protect the rights of those who seek nothing more than to adhere to those religious and moral beliefs.

Accordingly, we urge the Committee to vote in favor of HB 1330.

Thank you for your service to the people of New Hampshire.

Very truly yours,

Chancellor

LIBERTY LEGAL INSTITUTE

Religious expression in public is attacked daily across our country. This document contains an extensive list of disturbing assaults on such freedoms. It was originally produced in 2004 in response to questions presented by the U.S. Senate Judiciary Subcommittee on the Constitution on the topic of Hostility to Religious Expression in the Public Square. Due to overwhelming demand, we have updated this document with new cases within the past three years. In addition to the media source or case cite listed on the header of each case, further and more complete background information is also available.

Cases mentioned were reported in legal or media sources. Additional cases may be brought to our attention by contacting our office.

For further information or copies of this document please contact us at

Liberty Legal Institute
903 E. 18th St. Ste 230, Plano, Texas 75074
(972) 423-3131 or info@libertylegal.org
www.libertylegal.org

Liberty Legal Institute is a 501(c) (3) organization that provides pro bono legal assistance to individuals and groups to protect First Amendment rights and religious freedoms.

LIBERTY LEGAL INSTITUTE

903 E. 18th St. Ste 230, Plano, Texas 75074
(972) 423-3131

EXAMPLES OF HOSTILITY TO RELIGIOUS EXPRESSION IN THE PUBLIC SQUARE

(Reported Cases, Media Articles, Unreported Cases, and Law Review Articles)

CONTENTS

(Some of these cases were resolved correctly, many were not, but they all show the ongoing nationwide hostility to religious freedom.)

INTRODUCTORY CASES

• *Morgan, et al., v. Plano I.S.D.*

A 3rd grade boy was told by school officials that he could not include a religious message in the goodie bags he was bringing to the "Winter Party" to share with his classmates. Other children were told they could not hand out pencils with "God" on them and students writing letters to soldiers in Iraq were prohibited from writing "Merry Christmas." A lawsuit was filed against the school district to defend the students' rights. While a federal judge issued an immediate Temporary Restraining Order to allow students to bring religious items to the "Winter Party", the District is still fully opposing the students in federal court.

• Lynne, Diane "*Petition Posted to Defend 'God Bless America'*", WorldNet Daily, Jan. 31, 2003

Military honor guardsman, Patrick Cubbage, was fired for saying "God bless you and this family, and God bless the United States of America" to families as he presented a folded flag in honor of a fallen veteran. Though the families did not object to the practice, Cubbage's co-guardsmen complained to their supervisor, and Cubbage was warned not to say the blessing to the families. Later Cubbage gave the blessing to a family after a request from the fallen veteran's son, and shortly thereafter Cubbage was fired for giving the blessing.

• *From Lynn Lucas Middle School in Houston, Texas*

A school teacher threw away two students' Truth for Youth Bibles and took the students to the principal's office where she threatened to call CPS on their parents for permitting them to bring their Bibles. Later at the same school, different officials threw away students' book covers showing the Ten Commandments, claiming the commandments were hate speech and could offend students.

• *Gray v. Kohl*

A Gideons' group distributed Bibles on a public sidewalk outside Key Largo School. In accordance with the group's policy, they did not step on to school grounds, and they had notified the sheriff's office and school officials of their plans ahead of time. Both said the

activity was permissible. During the distribution two of the members were arrested and mocked by an officer who said they could "pray to Jesus all the way to jail."

- *From Balch Springs, Texas (Barton v. City of Balch Springs)*

  Senior citizens were told to stop their 20-year-old practices of praying before their meals, hearing an inspirational religious message, and singing gospel songs in their Senior Citizens Center because of a new city policy banning religion in public buildings. A lawsuit was filed to defend the seniors' rights. The Department of Justice also opened an investigation. The seniors were also told that if they won their suit, their meals would be taken away since praying over government funded meals violates the "separation of church and state."

- *Shatkin, et al. v. University of Texas at Arlington*

  Two women filed suit against the University of Texas at Arlington (UTA) for religious discrimination, after UTA denied all administrative appeals of their termination. The women were fired from their jobs in the Development Department of UTA because they privately prayed together after work for an absent co-worker.

- Little, Joan. "*City Schools Issue Rules About Students, Religion*", St. Louis Post-Dispatch, and legal documents

  Elementary school student Raymond Raines was "caught" praying over his meal at his elementary school. He was lifted from his seat and reprimanded in front of all the other students, then taken to the principal who ordered him to cease praying in school.

- *Peck v. Baldwinsville School District*

  Antonio Peck's kindergarten teacher instructed her class to draw a poster about how to save the environment. Antonio's first poster contained several religious figures and the statement: "The only way to save the world." The poster was rejected. Antonio's second poster included cutout figures of children holding hands around the world, people recycling trash, and children picking up garbage. On the left side of the poster was a picture of Jesus kneeling, with his hands stretched toward the sky. The poster was displayed along with 80

other student posters, but unlike the other posters, school officials folded Antonio's poster in half so that the figure of Jesus could not be seen.

- *Walz v. Egg Harbor Township*, 342 F.3d 271 (3rd Cir. 2003)

  A pre-kindergarten student, Daniel Walz, was prevented from giving out pencils with the message "Jesus Loves the Little Children" engraved on them and later as a first grader was prevented from distributing candy canes with "The Candy Maker's Witness" attached to the candy. A lawsuit was filed to protect Daniel's rights to give gifts at school just like other children could, but the Third Circuit refused to uphold Daniel's rights to give his gifts and instead upheld the school's discrimination.

- *Denooyer v. Merinelli,* 1993 U.S. App. LEXIS 20606

  When Kelly Denooyer was selected as her class' "VIP of the Week" she brought a video of her singing a solo at church to share with her class, but the teacher refused to play the tape for a variety of reasons, including concern about the videotape's religious message. A lawsuit was filed to protect Kelly's rights, but the court upheld the censorship of the video.

- *Settle v. Dickson County Sch. Bd.*, 53 F.3d 152

  Ninth grader Brittney Settle selected Jesus Christ as the topic for her open research project, but her teacher later refused to approve the subject, gave Brittney a zero for her grade and did not permit her to submit another project. A lawsuit was filed to protect Brittney's free expression rights, but the court refused to uphold Brittney's rights and ruled in favor of the school.

- *Duran v. Nitsche*, 780 F. Supp. 1048 (E.D. Pa. 1991)

  Diana Duran, a fifth grader and member of the Academically Talented Program, was assigned an independent study project, which she completed on the power of God, a topic originally approved by her teacher. Her research included a survey of her classmates' religious beliefs, and the assignment included presenting her project to the class. However, school officials intervened and prevented Diana from successfully completing the project. A lawsuit was filed to protect her First Amendment freedoms, but the court held that she had no

such rights in the classroom.

• *From Kettering City School District, Ohio*

A teacher prevented a kindergartener from giving out bags of jelly beans with a religious poem to classmates around Easter, in accordance with the school policy which prohibited students from distributing religious literature in the classroom, but permitted secular messages.

• *From Vancouver, Washington*

Students tried to start a prayer club that would meet before school, but they encountered resistance from the vice principal. Since the school would not permit a club, the students decided to gather together as individuals in the cafeteria before school to pray, but they were sent outside by the vice principal after one Satanist student complained to school officials. After the students insisted on praying in the cafeteria, they were suspended.

• *Geardon v. Loudon County Sch. Bd.*, 844 F. Supp. 1097 (E.D Va.)

Parents and students filed a lawsuit challenging prayer at a high school graduation, and the court permanently enjoined the school from permitting prayer at graduation ceremonies.

• Murray, Frank J. "*Federal Court Hears Lawsuit Over Kindergarten Christian; New York Schools May Relent, May Let Tot Say Grace at Meals*", The Washington Times, April 12, 2002

Kindergartner Kayla Broadus prayed, "God is good. God is great. Thank you, God, for my food," with two classmates at her school in Saratoga Springs, New York at the snack table before they ate their snack. Her teacher silenced the prayer, scolded Kayla and informed the school lawyer. A lawsuit ensued over the child's prayer.

• *From Aledo Independent School District, Aledo, Texas*

Katherine Furley was elected to give the invocation at her graduation ceremony and was ordered to submit any prayer to officials. School officials then proceeded to edit, word by word, which words she could and could not pray. A lawsuit was filed to protect Katherine's right to pray without being edited by the government. The Court ruled against her right to pray without government editing.

• *Barrow v. Greenville Indep. Sch. Dist*, 332 F.3d 844 (5th Cir. 2003)

Karen Jo Barrow was denied an assistant principal position because she refused to remove her children from a private Christian school. A lawsuit had to be filed to protect her rights to select a religious education for her children. Nine years later, her lawsuit is still continuing.

• *Roberts v. Madigan*, 921 F.2d 1047 (10th Cir. 1990)

Mr. Roberts' class had a silent reading period daily, and Mr. Roberts had a library of 239 books, two of which dealt with Christianity, from which the students could select reading material. Mr. Roberts participated in the reading period, often choosing to read his Bible, and he kept the Bible on his desk during the school day. The school principal censored Mr. Roberts, forbade him from placing his Bible on his desk during the school day and from reading it during the school day, and forbade him from keeping the two Christian books in the library. A lawsuit was filed to end the religious bigotry against Mr. Roberts, but the court upheld the school's action and even awarded the school district court costs.

• *From Viroqua, Wisconsin*

Viroqua High School planned a diversity day which included sessions that presented the viewpoints of Hmong, Jews, Muslims, Native Americans, African-Americans, homosexuals, Latinos, Buddhists, the physically disadvantaged, and the economically disadvantaged. A school official stated that the viewpoints of Christians and former homosexuals would be excluded. After being confronted with legal precedent showing such discrimination to be unconstitutional, the school decided to cancel the Diversity Day rather than include Christians' and former homosexuals' viewpoints.

• *From Orlando, Florida*

Management at Calvary Towers, a HUD senior housing facility, sent a memo to the residents advising that religious decorations of any kind would not be allowed on the premises. In a similar situation Orlando Cloisters residents found that management had issued a directive to strip the common areas of religious symbols or words. At the management's direction, an employee at Orlando Cloisters cut the wings off the angel that was on top of the Christmas

tree. Later, the angel was replaced with a Santa Claus. The management issued a directive to the residents explaining that "Christmas trees, Santa Claus, wreaths, Chanukah Menorahs and 'Seasons Greetings' are all acceptable, as these items are not considered religious symbols."

• *Calvary Chapel Church, Inc. v. Broward County*, 299 F. Supp. 2d 1295 (S.D. Fla. 2003)

Broward County, Florida hosts the Holiday Fantasy of Lights in a public park as a city fundraiser. A church wanted to contribute to the event and have a display that included the words, "Jesus is the Reason for the Season," but the city refused to allow it. The church filed a lawsuit in order to protect their constitutional rights to participate in the city event without having their message being censored because it was religious.

• *Mercier v. City of La Crosse,* 276 F. Supp. 2d 961 (W.D. Wis. 2003)

In the 1960s the Fraternal Order of the Eagles (FOE) donated a Ten Commandments display to the City of La Crosse, and in the 1980s citizens complained about the display. The city sold the portion of land on which the monument was located to FOE and placed signs stating that FOE owned the property and that the city did not endorse religion. Nevertheless, a lawsuit was filed to strike down the display. The court held that despite the fact that the city had sold the land to a private organization, the Ten Commandments monument still implied that the city was endorsing religion and ordered FOE's land be returned to the city and the monument removed.

• *Girl Barred from Singing Kum Ba Yah,* Washington Post, Aug. 14, 2000 at A2

An eight year old girl was barred from singing "Kum Ba Yah" at camp in a talent show because the song included the words "My Lord." The camp director said, "...you have to check your religion at the door."

STUDENTS

• *Harper v. Poway Unified School District*

In a public school, students were allowed a special day to celebrate homosexuality. A Christian student wearing a T-shirt with an opposing view mentioning God, was banned from

wearing the shirt. The lower court ruled that the student's speech was not protected because it offended the "identity" of another person.

- *Students v. Conroe I.S.D*

  Students handing out flyers to their friends to invite them to a church event were ordered by school officials to stop and were told it was a violation of "separation of church and state." The students were also told they could never hand out religious materials while they were at school. Only after an attorney's letter was sent, were the students allowed to exercise their constitutional rights.

- *Roberts v. Texas Tech University*

  The University speech code denied all students the right to free speech except in a small gazebo area in one spot on the campus. The code also stated that students could not speak in a way that caused shame or humiliation to another student. Any speech outside the designated area required advance permission. A lawsuit had to be filed to force the school to change its policy.

- *Pounds, et al. v. Katy I.S.D.*

  A Houston-area school district put in writing that it would allow no religious items at Christmas and banned certain Valentine's Day cards at school, simply because they were religious. The school district has a long history of anti-religious acts, telling one student she could not say the word "Jesus" when asked what Easter meant to her. A temporary restraining order has been issued against the district and the suit is ongoing in a Federal District Court.

- *SWAT v. Plano I.S.D.*

  A Christian student group was banned from using the school district website, solely because it was a religious group. Plano I.S.D. continually refused to change their discriminatory policy until a federal court judge held that they were violating the Constitution.

• *Burch v. Mansfield I.S.D*

Two days before Christmas break, 10 year-old Jaren Burch was banned from bringing his gifts to the "Winter Party" because of their religious content. Each pupil was encouraged to bring small gifts for his or her classmates, and Jaren wanted to give out candy canes with a religious message attached, entitled "Candy Cane Story." Mansfield I.S.D. changed its policy after receiving a demand letter from Jaren's attorneys.

• *From Comstock Park, Michigan*

The Comstock Park High School choir decided to sing "The Lord's Prayer" at their graduation. The song was to be in honor of a member of the choir who died during the school year. However, after receiving legal counsel that "we are better off not to go down there", the Comstock Park School superintendent banned the song despite the fact that the choir had sung "The Lord's Prayer" at other school functions and graduation was being held in a church building.

• *Arthurs v. Sampson County Board of Education*

Benjamin Arthurs, a high school student, was suspended for distributing materials outside of class time during the "Day of Truth" event, which allowed students to present a Christian viewpoint on homosexual behavior. School officials banned Ben from handing out the cards, because they believed he would be "pushing his religion on others" and that "religion is not allowed in school." A lawsuit was filed to affirm Arthurs' right to free religious speech.

• *From Victor, Iowa*

Valedictorian Mathew Reynolds was told by school officials that his speech must be "secular" and not mention his Christian faith, even if he made it clear at the beginning of his speech that his opinions were personal and did not represent those of the school. Reynolds was only allowed to speak about his faith after an attorney's letter was sent to the school explaining Reynold's constitutional rights.

• *MB v. Liverpool Central School District*

Michaela Bloodgood, a student at Nate Perry Elementary School, asked permission to give a flyer to her friends and classmates during non-instructional time. The flyer detailed the changes in Michaela's life since she had become a Christian. School officials prohibited Michaela from distributing the flyers because of the potential for divisiveness, the risk of litter, and the possibility that students might believe the school was endorsing a religious message. A lawsuit had to be filed to protect Michaela's free speech rights.

• *From Wilkesboro, North Carolina*

On the day before Valentine's Day, Adam Prevette brought Bibles to school for two of his friends. Adam's second-grade teacher explained that he could not give the Bibles to anyone unless he brought enough for the entire class. So, on Valentine's Day, Adam brought Bibles to school to give to each of his 25 classmates as his Valentine's Day gifts to them, while others were giving out cards as gifts. The school, however, would not allow Adam to distribute the Bibles. Adam's parents were forced to pursue the matter with the school to stop the discrimination.

• *From Atlanta, Georgia*

Michelle Heinkel, a seventh grader at Cypress Lake Middle School, was denied permission to distribute religious and pro-life literature about the Day of Remembrance, a day to remember unborn children who lost their lives through abortion. The next year Heinkel's request was again denied, along with the request of Nate Cordray, a student at Riverdale High School. The school board's policy prohibited students from distributing literature that was political, religious or proselytizing.

• *From Terrytown, Louisiana*

A kindergarten class planned to sing the song "I Can't Give Up Now," written by Mary Mary, at an end-of-year event. Although the song did not mention God, the school principal objected to it because she construed the word "he" to refer to God and therefore considered

the song to be inappropriate. Parents of the kindergartners had to take action as a group to avoid attempted religious censorship.

• *From Ft. Lauderdale, Florida*

Christine, a student at Driftwood Middle School in Hollywood, Florida, took flyers to school to pass out to her friends. The flyers were invitations to hear a Christian youth speaker at her church. She was told by school authorities that she could not distribute the flyers or she would be "written up." A lawsuit had to be filed to stop the censorship.

• *From Charlottesville, Virginia*

Gabriel and Joshua Rakoski requested permission from their teacher at Hollymead Elementary to distribute flyers announcing a church-sponsored Vacation Bible School. Their teacher refused permission. The district's literature policy prohibited distribution of literature that was religious.

• *C.H. v. Oliva*, 226 F. 3d 198 (3rd. Cir. 2000)

Zachary Hood brought his Beginner's Bible to school to share a story about Jacob and Esau called "A Big Family" as part of class activities, but Zachary's teacher refused to allow the story to be read because it was religious. Zachary's mother had to file a lawsuit to allow Zachary to share his story, just as the other students were permitted to share theirs.

• *Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98 (D. Mass. 2003)

Students started a religious club and wanted to hand out candy canes with a religious message at school. The school denied the students' permission and suspended the students for distributing their candy canes. The students were forced to file suit in federal court to protect their rights without facing suspension.

• *Hsu v. Roslyn Union Free Sch. Dist.*, 85 F.3d 839 (2nd Cir. 1996)

Students Emily and Timothy Hsu wanted to form a student Bible club at school, but were denied club recognition because the students insisted on a policy permitting only Christians to serve as officers. A lawsuit was filed to protect the club's right to pick leaders in accordance with their faith.

• *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993)

Through the Individuals with Disabilities Education Act (IDEA), a deaf student was entitled to assistance from a sign-language interpreter during the school day and the student asked the Catalina Foothills School District to provide such an interpreter. However, the student attended Catholic school, and the district refused to provide an interpreter. A lawsuit had to be filed to uphold this religious student's rights.

• *Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004)

University of Utah acting student Christina Axson-Flynn had to withdraw from the acting program and leave the university after her instructors heavily pressured her to perform scenes that required her to say profane words. Axson-Flynn, a Mormon, had informed the instructors of her religious objections to profane phrases during her audition for acceptance to the acting program but her objections were ignored.

• *From Northwest Elementary School in Massachusetts*

Seven-year-old Laura Greska brought a book called *'The First Christmas'* to fulfill an assignment that asked students to share with the class about their family's Christmas traditions, but was forbidden from sharing it with the class because it was "religious" as it centered on Jesus Christ's birth.

• *From Walker County School District in Birmingham, Alabama*

Eleven-year-old Kandice Smith was told that she was not permitted to wear her cross to school because it would violate the dress code. The dress code was devised to hinder gang activity at the school, and only after a lawsuit was filed did the school finally decide to incorporate an exception compatible with the Alabama Religious Freedom Amendment.

• *From the Flagstaff, Arizona Unified School District*

Sixth-grader Caitlin Ribelin wanted to tell classmates about her church youth group, but her school principal prevented her from doing so because of school policies preventing distribution of religious materials not authored by students. A lawsuit had to be filed against the school district to allow religious literature to be treated in the same manner as secular

literature.

• *From Muskogee Public School District, Oklahoma*

An 11-year-old Muslim student was suspended for wearing her religious hair covering to school, in violation of the school's dress code. A lawsuit was filed to protect the student's religious rights in federal court in Oklahoma, and the school district only settled the case after the U.S. Department of Justice opened an investigation.

• *From Cushing Elementary School, Delafield, Wisconsin*

An eight-year-old student was denied the opportunity to share the Valentines that she had made by hand for her classmates because they included religious messages that would "violate the separation of church and state" if they were handed out. A lawsuit had to be filed to protect the student's rights.

• *From the Boulder Valley School District, Colorado*

For a class project, students were asked to select their favorite book for an oral book report, and 11-year-old student Elizabeth Johnson selected the Bible, specifically Exodus, to share with the class. Her teacher rejected the choice, saying that the Bible may be "offensive" to some. Additionally, Elizabeth was told that she could not bring her Bible to school. An attorney sent a letter to the district explaining how Elizabeth's rights had been violated and a television station contacted the school about the events. Twenty minutes after the news station called, the district relented and permitted Elizabeth to select the Bible as the subject of her book report.

• *From Miami-Dade, Florida*

Students at Miami-Dade Community College tried to distribute business-sized cards to other students on campus; the cards had a number for people to call where they could hear a recorded message about Jesus Christ. Campus security officers approached and told the students that they couldn't pass out the cards. Later, the students returned to resume handing out their cards and were approached by security officers and an administration official. When the students tried to leave, more security officers and a police officer were summoned

and they threatened to arrest the students. A lawsuit had to be filed to protect the students' rights.

• *From Boca Raton School District, Florida*

Members of the Fellowship of Christian Athletes (FCA) were denied the opportunity to share a religious message on construction panels in the school. Though other students were allowed and students were only told that no profane or obscene messages were permitted, no policy was mentioned regarding religious messages. The students' messages were edited to eliminate "God" and "Jesus." A lawsuit had to be filed to stop the discrimination and censorship.

• *From Asa Adams School in Orono, Maine*

Third grader Gelsey Bostick wore a t-shirt and sweatshirt that said "Jesus Christ" on them. Her teacher asked her to turn both articles inside out because they were causing a commotion and offended one of the students. Further, some students construed the words "Jesus Christ" as swear words. The school reversed itself only after a religious liberties law firm intervened.

STUDENT PRAYER

• *From Barnegat, New Jersey*

Three students at Russell O. Brackman Middle School met at the flagpole and started to pray. They were interrupted by a school administrator who thought their activity looked "suspicious." She reportedly told the students that not only could they not participate in "See You at the Pole" but that their audible prayers were creating a "disturbance" and they would have to cease as they were "mixing" religion and school.

• *From Omaha, Arkansas*

Two members of the Omaha High School senior class, chosen by their classmates to open and close their graduation ceremony, were initially told by school administrators not to pray, despite the unanimous approval of the senior class. School administrators also denied the students' request to have a youth ministry leader be the commencement speaker.

Correspondence with the school's attorney was necessary before the school stated they would allow prayers and agreed to allow the speaker that the students had chosen, with no religious discrimination.

• *From Ouachita, Louisiana*

Seniors at the six high schools in the Ouachita Parish School District voted to have a fellow student give a message during the graduation ceremonies. Concerned over the possibility the students would include religious themes or prayer at graduation, the ACLU issued a letter pushing the District to censor religious messages or speakers.

• *John Doe v. Darren Gossage*

Judge Joseph McKinley entered an emergency order restraining the principal of Russell County High School from allowing prayer at the graduation ceremony. Despite the judge's order barring the valedictorian from including prayer at the graduation ceremony, the senior class spontaneously stood during the opening remarks of the principal and recited the Lord's Prayer.

• *Goulba v. Sch. Dist. of Ripon,* 45 F. 3d 1035 (7th Cir. 1995)

After students recited the Lord's Prayer on their own accord before the opening of graduation ceremonies, student Nikki Goulba filed a civil contempt motion against the school district of Ripon and the Ripon High School principal. The motion claimed the officials violated a permanent injunction that prevented them from allowing prayer during school graduations by allowing the students to recite the prayer.

• *ACLU v. Black Horse Pike Reg'l Bd. of Educ.*, 84 F.3d 1471 (3rd Cir. 1996)

A lawsuit was filed challenging a school policy that permitted the graduating class a vote to determine if there would be student-led prayer during graduation ceremonies. The court struck down the policy, determining it violated the Constitution and ordered the school to forbid the prayer.

• *Adler v. Duval County Sch. Bd.*, 250 F.3d 1330 (11th Cir. 2001)

A lawsuit was filed to challenge a school policy permitting high school seniors to use a

popular vote to select a graduation speaker who could deliver a message of their choosing, without approval by school officials. The lawsuit sought to ban the students because some students might use their speech to express religious thoughts.

- *Chandler v. Siegelman,* 230 F.3d 1313 (11th Cir. 2000)

  A principal and student filed suit to challenge an Alabama statute, which allowed student-initiated prayer during school events.

- *Jones v. Clear Creek Indep. Sch. Dist.,* 977 F.2d 963 (5th Cir. 1992)

  A Clear Creek I.S.D. parent filed suit to stop a policy permitting high school seniors to select student volunteers to give nonsectarian, non-proselytizing invocations at graduation ceremonies.

- *Mellen v. Bunting,* 327 F.3d 355 (4th Cir. 2003)

  Two students brought suit challenging the practice of having a supper prayer at a military school in Virginia on the grounds that it violated the Establishment Clause and the court struck down the practice and banned the prayers.

- *Santa Fe Indep. Sch. Dist. v. Doe,* 530 U.S. 290 (2000)

  A lawsuit was filed to challenge a school district policy permitting student-led, student-initiated prayer prior to football games. The court struck down the policy, determining that it violated the Establishment Clause. In the lower court in this same case, the Judge ordered students not to pray in Jesus' name and told them that federal marshals would be on hand to take students to the county jail, saying "Anyone who violates these orders, no kidding, is going to wish that he or she had died as a child when this court gets through with it."

- *Lee v. Weisman,* 505 U.S. 577 (1992)

  In Providence, Rhode Island, principals of a public school were permitted to ask clergy to give invocations and benedictions at graduation exercises, but when a middle school principal invited a rabbi to give a nonsectarian prayer, a student's parent got a temporary restraining order to prevent the prayer and sought a permanent injunction to prevent the practice of inviting clergy to perform prayers. The U.S. Supreme Court upheld the banning of prayer.

• *Wallace v. Jaffree,* 472 U.S. 38 (1985)

A resident brought suit to challenge the practice of having a period of meditation and voluntary prayer in schools in Alabama and won.

• *From Norfolk High School, Nebraska*

A student complained to the ACLU after graduating seniors voted to include prayer in their graduation. The ACLU threatened legal action against the school if they permitted the prayer. At the graduation ceremony, school officials announced that there would be no prayer during the ceremony.

SCHOLARSHIP AWARDS & SCHOOL CHOICE

• *Locke v. Davey,* 540 U.S. 712 (2004)

Josh Davey received a Promise Scholarship, which was awarded to academically gifted students with postsecondary education expenses, to use at any college in the state. He decided to pursue a double major in pastoral ministries and business management and administration. Davey was told that he could use the scholarship for any major unless he was devoted to becoming a pastor. The U.S. Supreme Court ruled his money could be withdrawn.

• *Eulitt v. Me. Dept of Educ.,* 307 F. Supp. 2d 158 (D. Me. 2004)

Though Maine state law required free public education for children through the 12th grade, the town of Minot only had schooling through the eighth grade, and the town was contracted to send their students elsewhere for high school, public school or other schools if the student had "educational program requirements that may not be offered in association with PRHS." A Minot family was denied access to public funding for their child's tuition to a Catholic high school, despite the fact that the state had the authority to approve payments to alternative schools. A lawsuit was filed and the court of appeals ruled the state does not have to provide tuition for religious sectarian education.

• *Zelman v. Simmons-Harris,* 536 U.S. 639 (2002)

An Ohio voucher program was enacted because the public school system was in a "crisis of

magnitude," and families were given voucher funds to use toward a school of their choosing. Many families elected to use their vouchers for religious schools. As a result, a lawsuit was filed to challenge the program, claiming it was unconstitutional, since parents were allowed to choose religious or secular schools.

• *From Michigan*

A Cornerstone University graduate student received a tuition grant from the state of Michigan, but when the student decided to pursue a pastoral studies divinity degree, the financial aid office of the university informed him that he was no longer eligible for the grant because it could not be used for divinity, theology, or religious instruction.

SCHOOL FACULTY & OTHER GOVERNMENT EMPLOYEES

• *Shrum v. City of Coweta,* 449 F.3d 1132 (10th Cir. 2006)

An employee of the police department was scheduled to work on Sunday because the police chief knew that it conflicted with the employee's religious convictions and he wanted the employee to resign. The district court ruled that mere refusal to accommodate the employee's religious scheduling needs did not establish a constitutional violation. The court did rule in favor of the employee since the police chief's decision was not neutral but singled out the employee. The appellate court affirmed the district court ruling in this regard.

• De Fiebre, Conrad. "*Suit Claims Man's Religious Freedom is Being Thwarted; A Revenue Employee Says He's Not Allowed to Display Signs on His Car or Cubicle*", Star Tribune (Minneapolis) July 2, 2004 at 3B

A Minnesota state Department of Revenue employee was barred from parking his car in the state parking lot because of religious and political stickers placed on the car (examples include: "God is a loving and caring God," "God defines marriage as a union between a man and a woman. He also says sex is to be enjoyed between a husband and wife only"). A lawsuit was filed in support of the employee's rights to express his beliefs in this way.

• *Lister v. Defense Logistics Agency*

A federal employee was denied a request to post a flyer warning that donations made to a federal charitable contribution program may be used to support abortion, sexual promiscuity, the homosexual agenda, and New Age mysticism. Agency policy prohibited "items of religious preference" from being posted on employee bulletin boards.

• *From Janesville, Wisconsin*

Officer Sean Jauch of the Janesville, Wisconsin police department regularly posted announcements on the department bulletin board about his off-site prayer group, just like the other officers who were allowed to use the board for matters of concern or interest to them. However, after someone claimed this notice was "harassment" and that it "offended" them, the chief of police ordered that the prayer group announcement be removed because it violated the "separation of church and state."

• *Fraternal Order of Police v. City of Newark,* 170 F.3d 359 (3rd Cir. 1999)

Two Muslim police officers in Newark were required to shave their beards after the city issued an order requiring all police officers to be clean shaven. The order permitted a medical exemption, but not a religious exemption. The officers had to file a lawsuit to protect their constitutional right to free exercise of their religion.

• *Nichol v. Arin Intermediate Unit 28,* 268 F. Supp. 2d 536 (W.D. Pa. 2003)

The school district suspended an elementary school instructional assistant for wearing a cross necklace, finding her in violation of a district policy which prohibited teachers and other public school employees from wearing religious emblems or insignia. A lawsuit was filed to remedy the policy, which was overtly and openly hostile to religion, and to prevent the district from forbidding symbolic speech by employees from a religious viewpoint.

• *Peloza v. Capistrano Unified Sch. Dist.,* 37 F.3d 517 (9th Cir. 1994)

A biology teacher was forbidden from discussing religious matters with students while on the school campus, even if the discussion occurred outside of class time and was student-initiated. A lawsuit was filed to protect his constitutionally-protected free speech and equal protection rights, but the court dismissed the complaint finding that the school district's

interest in avoiding an unlikely Constitutional violation trumped the teacher's rights.

- *Lee v. York County School Division,* 484 F.3d 687 (4th Cir. 2007)

  A teacher was made to remove religious materials from his classroom including a picture of George Washington praying, an article showing religious differences of political candidates, and an article dealing with missionary activities of a student. The district court awarded summary judgment to the school district. The appellate court ruled that the teacher was not protected by the First Amendment and affirmed the district courts ruling.

- *Berry v. Department of Social Services,* 447 F.3d 642 (9th Cir. 2006)

  A county social services employee was prohibited from discussing religion with clients, displaying religious items in his cubicle, and using the conference room for voluntary employee only prayer meetings. The district court ruled that since he was an employee of a public entity, the employer could restrict his exercise of religion so the employer would not appear to endorse religion and thus violate the Establishment Clause. The appellate court affirmed.

- *Hinrichs v. Bosma,* 440 F.3d 393 (7th Cir. 2006)

  Four taxpayers brought suit seeking an injunction to prohibit opening the Indiana House of Representatives with Christian prayer by saying it violated the Establishment Clause of the First Amendment. The district court ruled that the historical opening prayer at the House was unconstitutional because of its sectarian nature and enjoined further sectarian prayer (e.g. praying in Jesus' name). The Appellate court cited the Supreme Court in denying a stay to the House because prayers of one religion like the ones observed in the Indiana House of Representatives are prohibited.

- *Veitch v. England,* 471 .F3d 124 (D.C. Cir. 2006)

  Reverend D. Philip Veitch, a Navy chaplain, refused to participate in multi-denominational services and eventually resigned. Veitch sued the Navy, arguing that his First Amendment rights were violated. The appeals court ruled that Veitch's resignation was voluntary and affirmed the lower court decision granting summary judgment to the defendants.

• Gray, Jeremy. "*Man Fired Over Lapel Pin Garners Support*", Birmingham News, June 27, 2004

The Hoover Chamber of Commerce fired employee Christopher Word because he wore a Ten Commandments lapel pin.

• *Piggee v. Carl Sandburg College*, 464 F.3d 667 (7th Cir. 2006)

A student at Carl Sandburg College complained when cosmetology teacher Martha Louise Piggee gave him tracts which called homosexuality a sin and called for people to read the Bible and be baptized. Piggee was told she could not hand out the material and that her action qualified as sexual harassment. Piggee went to court accusing the college, the board of trustees and five college administrators of violating her due process rights and her constitutional rights to free speech. The suit said that the college's sexual harassment policy was not clear. A lower court ruled against her and, the case was appealed to the 7th Circuit. The appellate court ruled that the college had a right to insist Piggee refrain from proselytizing while serving as an instructor because her expression of religious beliefs had nothing to do with her job of teaching cosmetology.

• McAllister, Bill. "*Gearing Up for Christmas*", Washington Post, Sept. 29, 1995 at N66

The Post Office issued guidelines advising clerks to use words like "Happy Holidays" and to avoid any decorations with a religious theme.

• *From Logan, Kentucky*

A public library policy prevented employees from wearing religiously-oriented jewelry, and an employee was fired for wearing a cross. A lawsuit was filed to protect the employee's right to free speech and religious freedom.

• *From Honolulu, Hawaii*

Honolulu city employee Kelly Jenkins was prohibited from posting religious literature, like an invitation to his church, in common areas of the employee break room and employee bulletin boards because of "separation of church and state" concerns. A lawsuit had to be filed to protect Jenkins' rights.

IN THE SCHOOLHOUSE – Free Speech

• Jones, Carolyn. "*Brentwood: Returning God to yearbook ad would cost high school thousands*", San Francisco Chronicle, March 7, 2007

The yearbook staff at Liberty High School changed a parent's ad for his son's graduation from "May God bless your life" to "May He bless your life."

• *From Fort Defiance, Virginia*

A Fort Defiance High school sophomore was suspended for three days for handing out religious leaflets.

• *John Doe v. Tangipahoa Parish School Board*

A Louisiana school board was sued by the ACLU for allowing prayers before school board meetings. A federal Court of Appeals panel ruled prayers could only be allowed if they didn't mention Jesus and were nonsectarian.

• *Ector County I.S.D. (Odessa, Texas/National Council on Bible Curriculum)*

The ACLU and People for the American Way Foundation filed suit in federal court against the Ector County I.S.D. in Odessa, Texas to stop a course taught on the Bible's influence in our history and literature as an elective in two of the district's high schools.

• *Gilles v. Blanchard*

James Gilles attempted to express his ideas about faith and the moral issues of the day in a public, open, grassy area at the center of the Vincennes campus where people often engaged in public discourse. He was ordered by a campus security officer to "register" his speech by filling out a "Request for Solicitation Approval" form. Gilles complied with the officer's directive, though he had no interest in soliciting. Afterward, Vincennes University Dean of Students relegated Gilles' speech to a narrow area known as the "brick walkway," located next to a busy street on the outskirts of campus, where vendors sell products or services, a noisy area not conducive to public speaking. A lawsuit was filed, and a 7th Circuit panel ruled in favor of the university.

• *From Oswego, Illinois*

Melissa Yates, a student at Thompson Jr. High School and a member of the school's art club asked permission to paint a mural on the wall of the school hallway using the theme, "We all come together at Thompson." The mural was divided into "puzzle" pieces, and each student in the club painted and signed their name to a piece of the puzzle. Melissa painted a picture of the cross and included a personal message regarding her faith which read "I believe, do you?" Her piece was painted over the next day with blue paint at the direction of the school principal. According to the principal, Melissa's painting was censored due to the "separation of church and state" and a concern that it would "offend" other students. A letter had to be sent by attorneys explaining that the law protected Melissa's free speech.

• *Seidman v. Paradise Valley Unified Sch. Dist. No. 69, et al.*, 327 F.Supp. 2d 1098 (D. Az. 2004)

Paul and Ann Seidman of Scottsdale, Arizona, wanted to purchase tiles encouraging their children in the hallway of their local elementary school. They wanted the tiles to say "God bless Quinn, We love you Mom & Dad" and "God bless Haley. We love you Mom & Dad." However, the mention of the word "God" caused the Pinnacle Peak School District to reject the tile messages. Other tiles were accepted, and in the federal judge's words, "some nearly identical to the Seidmans' messages only from a secular viewpoint." The school refused to change their position, despite this being a clear case of viewpoint discrimination. The Seidmans eventually received a court ruling in their favor, but by this time the case had lasted almost two years.

• *Fleming v. Jefferson County Sch. Dist. R-1*, 298 F.3d 918 (10th Cir. 2002)

Columbine High School hosted a tile-painting project so students could express themselves following the school's tragedy. Some students expressed themselves with religious symbols, including a victim's sister who incorporated a small yellow cross in her tile design. After the tiles were posted, the school officials eradicated the religious symbols from the tile display. A lawsuit was filed to prevent the school officials from censoring the religious expression of the students. Unfortunately the court chose not to uphold the students' expression rights, and

instead validated the school's censorship.

- *Demmon v. Loudoun County Pub. Sch.*, 279 F. Supp. 2d 689 (E.D. Va. 2003)

  For a school fundraiser, people could purchase bricks and have text and symbols inscribed on them to be used in a sidewalk surrounding the school's flagpole. Some purchasers elected to have a Latin cross inscribed. A parent complained, so the school district removed all the crosses. A lawsuit was filed to protect this religious expression from censorship.

- *Selman v. Cobb County Sch. Dist.*, 2004 US Dist. LEXIS 5960 (N.D. Ga. 2004)

  A Georgia School District decided to place a sticker in new science textbooks explaining that evolution was theory rather than fact, and encouraging students to study with open minds and critical thinking skills. A handful of parents complained that the sticker restricted teaching evolution and promoted creationism and filed a lawsuit to prevent its use, claiming that such a sticker violated the Establishment Clause.

- *Wigg v. Sioux Falls Sch. Dist.*, 274 F. Supp. 2d 1084 (D.S.D. 2003)

  The school district refused to allow a teacher to participate in a Good News Club meeting at the school after school hours, so the teacher filed suit to protect her right of assembly with the religious group. The court only partially protected her rights, ruling that she could attend Good News Club meetings, but arbitrarily determining that she only had the protected right to participate in meetings at schools other than the one that she taught in.

- *Edwards v. Aguillard,* 482 U.S. 578 (1987)

  A suit was filed to challenge Louisiana's Creationism Act. The Creationism Act provided that if evolution is taught in public schools, creation science must also be taught and if creation science is taught, then evolution must also be taught. The suit sought to strike down the act as a violation of the Establishment Clause. The Supreme Court obliged, striking down the law.

- *Bauchman v. West High Sch.*, 132 F.3d 542 (10th Cir. 1997)

  A school choir's repertoire included Christian music and on occasion the group sang at a church. A Jewish choir student's family filed a lawsuit, essentially asking the court to censor

the choir from singing any religious music. The case had to be fought all the way to the Tenth Circuit to prevent unlawful religious censorship.

• *Chandler v. James,* 985 F. Supp. 1068 (D. Ala. 1997)

Civil liberties activists filed a lawsuit because school officials permitted prayer at school functions, excused students from school for baccalaureate services, and permitted religious study with non-school persons during school hours. The court determined that this behavior violated the Establishment Clause and permanently enjoined the school board and public officials from accommodating religious activity in schools.

• *Daugherty v. Vanguard Charter Sch. Acad.,* 116 F. Supp. 2d 897 (W.D. Mich. 2000)

Parents of children attending the academy claimed that the school violated the Establishment Clause because a mom's prayer group met in the parent room, teachers and staff prayed on their own accord on school property, religious materials were distributed in student's folders; a content neutral forum, and the school taught morality. These parents filed a lawsuit to prevent the school from permitting the religious activity at the school.

• *Doe v. Duncanville Indep. Sch. Dist.,* 70 F.3d 402 (5th Cir. 1995)

A student and her father filed a lawsuit because the school permitted employees to be involved with student prayer after basketball games, permitted the choir to use a Christian song as its "theme song," and permitted the distribution of Gideon Bibles to fifth grade classes. The court upheld the right of the choir to sing the religious song but struck down the employees' involvement with prayer, determining that such an exercise violated the Establishment Clause.

• *Peck v. Upshur County Bd. of Educ.,* 155 F.3d 274 (4th Cir. 1998)

A school board policy permitted religious groups to provide religious materials and Bibles to students on one designated day each school year. A lawsuit was filed to strike down the policy.

• *Powell v. Bunn,* 185 Ore. App. 334 (Or. Ct. App. 2002)

An Oregon school district allowed the Boy Scouts to present information on membership to

students. A parent filed suit, claiming the policy violated the Establishment Clause.

• *Rusk v. Crestview Local Schs.*, 220 F. Supp. 2d 854 (N.D. Ohio 2002)

A school permitted nonprofits, including religious nonprofits, to submit flyers to the school for distribution to the students' mailboxes. A parent filed a lawsuit, objecting to the religious groups being able to submit flyers, even though the flyers did not advocate religion and were not proselytizing. The court halfheartedly upheld the religious groups' rights to utilize the mailbox distribution, but only permitted the groups to distribute certain messages and censored information relating to a religious or sectarian event.

• *Washegesic v. Bloomingdale Public Schs.*, 33 F.3d 679 (6th Cir. 1994)

A portrait of Jesus Christ hung in a hallway of a school along with other portraits of famous individuals, and a former student filed suit against the school, asserting that the portrait was an Establishment Clause violation. The court agreed and ordered the picture removed.

• McCarthy, Ryan "*School Rallies to Retain Sign; The ACLU Says the Message 'God Bless America' Divides Kids by Religion and is Unconstitutional*", The Sacramento Bee, Oct. 6, 2001

In the wake of Sept. 11, 2001, Breen Elementary School posted a sign that said 'God Bless America'. The ACLU intervened in an attempt to have the sign removed, calling it a clear violation of the U.S. and California constitutions.

• Vobejda, Barbara "School Officials Weigh Sachs' Ruling on Religious Gatherings", Washington Post, Dec. 8, 1984 at B3

Maryland's Attorney General ruled that Catonsville High School students could continue their informal religious activity of gathering to read the Bible during their Thursday lunch hours. School administrators were worried about the ruling because they feared it would create problems in a "sensitive area." Additionally, in Prince George's County, school administrators renamed Christmas trees and the Christmas pageant to holiday trees and the holiday pageant respectively.

• *From Oswego County, New York*

The Mexico Academy High School decided to remove bricks that had been purchased and inscribed as part of a school fundraiser if the brick contained a Christian message. A lawsuit

had to be filed to protect the free speech and equal protection of citizens who had purchased the bricks and to prevent the religious censorship and discrimination.

• *From Crosby-Ironton High School in Crosby, Minnesota*

The Crosby-Ironton High School censored the Lunch Bunch, a Christian group, from using fliers to describe their group and to promote the "See You at the Pole" event. A lawsuit had to be filed to protect the students' rights.

• *From Dillon, Montana*

A motivational speaker was prevented from speaking at an assembly in the Dillon Middle School because he was affiliated with a nationally recognized Christian organization, despite the fact that he had previously spoken in over 200 secular schools, and that he agreed to omit discussions of his religious faith and references to a youth rally being held nearby. A lawsuit had to be filed to protect the speaker's rights.

• *From Reno, Nevada*

School officials sought to prevent a Bible club from distributing candy canes with the message "Jesus Loves You" attached to it.

• *From Beaumont Independent School District, Texas*

The superintendent started a "clergy-in-schools" program, which allowed clergy to mentor students who so desired, but the Americans United for Separation of Church and State filed suit seeking to strike down the program.

IN THE SCHOOLHOUSE – Equal Access

• *Parents & Students v. Richardson I.S.D.*

Richardson I.S.D. prohibited student bible groups from using daily announcements and weekly video announcements, posting announcements with a message and using a bus at the junior high. Other student groups, however, were allowed to do these things. The administration even pressured faculty not to attend "See You at the Pole." The administration took down the bible club posters, and the superintendent removed a bible club

ad from the student handbook when advertising was open to the public. The clubs were also told they could not hand out fliers announcing their meetings. A lawsuit was filed against this unconstitutional discrimination.

- *Students Standing Strong (SSS) v. Grapevine-Colleyville I.S.D.*

  The school district surprised SSS on a Friday with an ultimatum that it must sign away its right to be a student club and pay fees in order to hold its previously approved club meeting on the following Monday, treating the Christian club different from the other clubs. After a demand letter was sent, the school district eventually agreed to allow SSS to meet without signing an additional form or paying additional fees.

- *Vision America v. Angelina College*

  Vision America contacted Angelina College to rent space from the public institution for an upcoming conference. Angelina College refused because Vision America was a religious organization and the written policy of Angelina College prohibited renting facilities to religious organizations. Angelina College agreed to change its policy and allow religious groups to use its facilities only after attorneys intervened.

- *Greater St. Paul Area Evangelicals, Inc., dba Crossroads Ministries v. Independent School District No. 625*

  A Minnesota school district refused to allow a group to distribute fliers containing religious content even though other groups were permitted to do so. The school district's policy specifically prohibited materials of a "sectarian nature" for distribution.

- *McKee v. Pleasanton Unified School District*

  Students in the school district formed a Fellowship of Christian Athletes (FCA) chapter on their school campus and were recognized as an official student club on campus. However, a new superintendent and school board stripped FCA of their official status and refused to recognize them as a school club. A lawsuit was filed to restore the group's recognition as an official student club.

- *Christian Legal Society at Southern Illinois University School of Law v. Walker*

Southern Illinois University revoked the Christian Legal Society (CLS) student chapter's registration and all of the associated benefits because the group's "Statement of Faith" and sexual morality policy for its voting members and leaders violated a university affirmative action policy prohibiting discrimination on the basis of religion and "sexual orientation." A lawsuit was filed to reestablish CLS' official recognition.

- *University of Wisconsin-Madison Roman Catholic Foundation v. Walsh*

  The University of Wisconsin refused to recognize the school's Roman Catholic Foundation, the successor to a group that has served over 50,000 students at the university since its inception in 1883. The school contended that the foundation was in violation of the school's "non-discrimination policy" by adhering to a set of religious beliefs. A lawsuit was filed to restore the group's official recognition.

- *Intervarsity Christian Fellowship-UW Superior v. Walsh*

  The University of Wisconsin-Superior refused to recognize the Intervarsity Christian Fellowship chapter at the school. Only after a lawsuit was filed did the University agree to officially recognize the chapter.

- *Child Evangelism Fellowship (CEF) v. Anderson School District Five*

  CEF was charged a fee to use school facilities, although the district waived fees whenever deemed "in the best interest of the district." After filing suit, the district changed its policy and sought to "grandfather" free use to the previously authorized groups.

- *Doe v. South Iron R-1 School District*

  The South Iron R-1 School District had a long-standing open access policy that allowed many groups to present literature and information to students at district schools. The ACLU filed suit, seeking to prohibit the Gideons from distributing Bibles under the policy. The judge issued a preliminary injunction prohibiting the distribution of the Bible, and ruled the open access policy unconstitutional under a novel and unconstitutional theory that it must allow a private third party the opportunity to veto the distribution request of the private applicant. The case is under appeal.

• *From San Fernando Valley, California*

The Child Evangelism Fellowship (CEF) applied to the Los Angeles Unified School District to use an elementary school to host a Good News Club. The school policy permitted use by civic and community groups, but prohibited use by "sectarian of denominational religious exercises or activities." In response, CEF applied through the Real Estate branch and was willing to pay application and rental fees, which is not required of all other groups, but CEF was still denied. A lawsuit had to be filed to gain equal access for the religious group and to prevent the school district's religious discrimination.

• *From Clinton County, Pennsylvania*

Child Evangelism Fellowship (CEF) had been holding Good News Clubs in two elementary schools after school in Clinton County for a number of years. At one point, CEF was advised that, unlike other groups, they would have to pay a fee for the use of school facilities. They were first told that they would be charged a fee because CEF was not local. After CEF showed that it had a local office, they were told that CEF must pay because the Good News Clubs were "sectarian." After receiving an attorney's letter, the school superintendent informed CEF they would not impose a fee.

• *From Carteret, New Jersey*

After learning that the Good News Club teaches morals and character development from a Biblical perspective, the principle of Minue Elementary School tried to block club meetings on the school premises. She first refused to allow fliers to be sent home with parents to inform them about the club, and then told the club they could not use school premises, even though they paid the usage fee. After receiving an attorney's letter, the school attorney informed the club that they could meet and distribute fliers.

• *From Milwaukee, Wisconsin*

The Hi-Mount Elementary School limited the number of school children who could attend the Good News Club and refused to allow permission slips to be sent home to parents, informing them about the club and requesting permission for their children to attend. Good

News Club coordinators tried unsuccessfully on numerous occasions to resolve the issue and were forced to file a lawsuit to convince the district to end the discrimination.

• *From Milwaukee, Wisconsin*

The Good News Club was allowed to meet at the Congress Street School, but unlike the secular groups which met immediately after school, the Christian club was not permitted to meet until one hour after the end of the school day. After correspondence with attorneys, the school ended the discriminatory practice.

• *From Stow, Ohio*

CEF's Good News Clubs were denied the right to distribute information and parent permission slips to students. Since the parents were not informed of the opportunities to send their children to the after school Christian clubs, attendance would be limited. After attorneys threatened to take legal action, Akron City Schools reversed its decision.

• *From Wolcott, Connecticut*

CEF held Good News Club meetings at Wolcott elementary schools and was charged only the minimal charges applicable to local nonprofit or "Group I" organizations, such as the Boy Scouts. When CEF applied for a new facilities use, district officials insisted that CEF must be charged as a "non-Wolcott" "Group II" organization. Following an attorney's letter the Wolcott School District reversed its decision.

• *From San Diego, California*

In July 1999, CEF of Greater San Diego requested to use district facilities to hold a Good News Club after school hours. From 1999 until 2004-2005 school years, CEF had been charged fees to use the school facilities when other similar secular groups had not been charged. Each year the district increased the cost of the fees, and the fees became so large that CEF was forced to discontinue the Good News Clubs. District employees and parents pleaded for the Good News Clubs to return, but the increased usage costs prohibited the meetings. Even after CEF provided district officials with Supreme Court and federal cases

which stated that Good News Clubs are entitled to equal treatment, the district refused to listen. The group was left no alternative but to file a lawsuit.

• *From Sacramento, California*

In November 2004, when CEF of Butte-Tehama-Glenn requested to use district facilities to hold a Good News Club, the district informed them that they would pay higher usage fees than secular groups would. Under protest, CEF paid the fees. However, since the local CEF operates on a limited budget, it had to discontinue the GNC meetings in several schools. Although the local CEF chapter advised the district of the Supreme Court and federal cases recognizing the equal access rights of Good News Clubs, district officials refused to listen and CEF was forced to file a lawsuit.

• *From Riverside, California*

The Bear Valley Unified School District granted free use of the school facilities to certain secular groups, but required CEF to pay usage fees for its Good News Clubs because of their religious nature. After CEF filed suit, the district passed a resolution in response that stated "so as to avoid the demands of [CEF] that it should be allowed use of facilities free of charge," and the district decided to charge certain secular groups. CEF amended their complaint and challenged the new policy, arguing that it also was unconstitutional. The district eventually settled the lawsuit agreeing that CEF would be provided free use of the school facilities.

• *From Marysville, Washington*

The Marysville School District told CEF that Washington state law required the district to charge CEF more for its use of school facilities than it charged similar secular clubs because the Good News Club was religious. After an exchange of letters, with attorneys pointing out that state law does not require this, the district reversed their position.

• *Bronx Household of Faith v. Bd. of Educ.*, 331 F.3d 342 (2003)

The Bronx Household of Faith filed suit to prevent the New York public schools from discriminating against churches. The public schools refused to allow churches to use school

facilities, but permitted other community groups to have access. Several years and court decisions and appeals later, the church's constitutional rights were eventually upheld.

• *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993)

A New York school board denied a church after-hours access to a school to exhibit a film series about Christian family values because of a policy prohibiting use by any group for religious purposes. A lawsuit was filed to protect the church's right to have equal access to the school premises.

• *Liberty Christian Center v. Bd. of Educ.*, 8 F. Supp. 2d 176 (N.D.N.Y 1998)

The Board of Education of Watertown, New York denied the Liberty Christian Center access to the Watertown High School Cafeteria during non-school hours. A lawsuit was filed to prevent the Board from discriminating against a religious group and denying the group's rights to equal access.

• *Ford v. Manuel*, 629 F. Supp. 771 (N.D. Ohio 1985)

The Findlay Board of Education permitted the Findlay Weekday Religious Education Council to operate before and after school hours in the public schools in accordance with "Community Use of School Facilities." Parent-taxpayers complained about the program because of concerns regarding the Establishment Clause and filed a lawsuit to strike down the program.

• *From the Dallas Independent School District in Texas*

Reunion Church leased an empty high school on Sunday mornings for services, but the school district evicted the church in the middle of the lease, citing the "separation of church and state." A lawsuit had to be filed to protect the church's equal access rights and to prevent the church from being thrown out on the street for no reason other than religious discrimination.

• *From the Cave Creek School District, Arizona*

The Cave Creek public school district passed a policy that allowed non-profit community groups to meet in public schools without charge, but the policy excluded churches. A church

was charged $1,200 under the policy to access the school. An attorney explained the constitutional issues associated with the policy and also requested records under the Freedom of Information Act to determine how much the school had charged other groups during the previous three years. Only as a result of this intervention did the school district decide to revise the discriminatory policy and reimbursed the church their money.

- *Good News Club v. Milford Central School,* 533 U.S. 98 (2001)

  The Milford Central School denied the Good News Club use of the school's facilities after school. A lawsuit was filed to protect the religious group's right to use the school's facilities just like other organizations could, without being discriminated against. The case had to go all the way to the Supreme Court before the religious group was vindicated because both lower courts upheld the school's unlawful religious discrimination.

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

  The University of Missouri at Kansas City refused to allow a religious student group equal access to university facilities like other student groups. The students were forced to file a lawsuit in order to protect their rights to equal access and to stop the religious discrimination.

- *Bd. of Educ. v. Mergens,* 496 U.S. 226 (1990)

  The school board refused to allow students to form an extra-curricular Christian club, claiming such a club would violate the Establishment Clause, despite the fact that various other clubs met at the school. A lawsuit had to be filed to protect the Christian group from being unlawfully discriminated against by the school board.

- *Ceniceros v. Bd. of Trs. of the San Diego Unified Sch. Dist,* 106 F.3d 878 (9th Cir. 1997)

  The school district refused a religious club the opportunity to meet during lunchtime, though other groups could. A lawsuit was filed on behalf of the students to prevent the district's unlawful discrimination and to uphold the students' rights under the Equal Access Act.

- *Rosenberger v. Rector & Visitors of Univ. of Va.,* 515 U.S. 819 (1995)

  A student was denied journal funding from the school's student activity fund because of the journal's religious viewpoint. The student filed a lawsuit to challenge the fund's

disbursement guidelines that discriminated against religious viewpoints. The case traveled all the way to the Supreme Court to stop the religious discrimination.

• *Child Evangelism Fellowship v. Montgomery County Pub. Schs.*, 373 F.3d 589 (4th Cir. 2004)

The Montgomery County Schools refused to allow Child Evangelism Fellowship (CEF) to participate in the district's take-home flyer forum to distribute flyers about the Good News Club, citing fears about the separation of church and state. A lawsuit had to be filed to end the religious discrimination.

• *Child Evangelism Fellowship of New Jersey v. Stafford Township,* 233 F. Supp. 2d 647 (D.N.J. 2002)

Child Evangelism Fellowship (CEF) was denied permission to post fliers, pass fliers out, staff tables at the back-to-school-night event, or allow students to pass materials to other students about a religious club forming in schools. A lawsuit was filed to protect the right of CEF to utilize the same forums that were afforded to other groups and to prevent viewpoint discrimination.

• *Skoros v. City of New York,* 2004 U.S. Dist. LEXIS 2234 (E.D.N.Y. 2004)

A Catholic parent objected to a policy of excluding a crèche from the schools' holiday displays while permitting menorahs, the Star and Crescent, and Christmas trees. A lawsuit was filed to remedy the exclusion of the crèche. The court determined that it was appropriate to exclude the crèche as it was still a religious symbol while the others had become secularized, and that a child would not perceive an endorsement of Judaism or Islam or disapproval of Christianity. After an appeal, the appellate court affirmed the district court's ruling.

• Falkenberg, Lisa "*Policy Involving Evolution Prompts Federal Inquiry*", Associated Press, Jan. 29, 2003, BC cycle

A Texas Tech professor discriminated against students on the basis of their religion. The university stood behind the professor, saying the professor's policies were not in conflict with those of Texas Tech.

• *From Los Angeles Unified School District*

The Los Angeles Unified School District tried to force a Good News Club to pay fees to utilize school facilities, but did not require fees from the Boy Scouts or the YMCA. A law suit was filed, seeking to grant religious groups equal access to school facilities.

• *From Montgomery County Public Schools, Maryland*

A school policy prevented students from receiving credit for their religious community service to fulfill the 60-hour community service graduation requirement. Students who worked at a Vacation Bible School on an Indian Reservation were not permitted to count that time toward their hourly requirement. Attorneys intervened and the students were permitted to count the hours, but, unfortunately, the policy remains and continues to discriminate against students who participate in religiously-based community service.

• *From Northville High School in Michigan*

A Bible club was told it would have to meet before or after school and not during seminar period as other groups were permitted to do because the group was religious. Bible club members filed suit to protect their right to meet without being discriminated against on the grounds of religion.

• *From Panama City, Florida*

A school principal changed the name of the Bible Club from Fellowship of Christian Students to Fellowship of Concerned Students without conferring with student members.

• *From South Tama Community School District, Iowa*

The community center denied the Fellowship of Christian Athletes (FCA) access to facilities, so an FCA member complained. Only after a demand letter was sent to the school district, did the district back down and change their policy to stop discriminating against religiously affiliated groups.

REGULAR CITIZENS

• *Colston v City Of Arlington*

Mrs. Colston was banned by a police officer from passing out Christian literature on a public sidewalk and from going door-to-door to pass out Christian leaflets. She was told she would have to obtain a "peddler's" permit, even though she was not asking anyone for money. She had to contact attorneys to be advised of her constitutional rights so that she could correspond with the police department and convince them they had to change their policy.

• *Cutter v. Wilkinson,* 544 U.S. 709 (2005)

Current and former Ohio prison inmates filed suit when prison officials would not accommodate their exercise of religion. The lower courts split over whether the government needed to accommodate the inmates' exercise of religion. The Supreme Court's ruling indicated that the government's accommodation of individual exercise of religion did not violate the Establishment Clause.

• *Steiger v. University of Wisconsin, Eau Claire et al.*

Resident assistant, Lance Steiger, was told he could not lead a Bible study in the basement of the dormitory where he was living. He was forced to file a federal lawsuit to protect his right to lead Bible studies in the dorm.

• *Hood v. Keller,* 2007 U.S. App. LEXIS 8097 (6th Cir. 2007)

A man was arrested for publicly preaching without a permit. He filed a lawsuit seeking declaratory and injunctive relief, compensatory damages, costs, and attorney's fees from public officials for violating his First Amendment rights to freedom of speech and free exercise of religion.

• *Teen Ranch, Inc. v. Udow,* 479 F.3d 403 (6th Cir. 2007)

A faith-based child services provider filed suit against the Family Independence Agency (FIA) when the FIA decided to discontinue referring children to the provider based on its incorporation of religion into its programming. The district court ruled in favor of the FIA.

On appeal, the court affirmed, stating that funding for placements of children with Teen Ranch would violate the Public Act and the Establishment Clause.

- *Colston v. Crowley I.S.D.*

  Mrs. Colston was banned from handing out religious literature on a public sidewalk in front of a public high school. The school district only allowed her to do so after she filed suit to protect her constitutional rights.

- *Deegan v. City of Ithaca,* 444 F.3d 135 (2nd Cir. 2006)

  The city warned a minister that he would be arrested if he persisted in preaching loudly in the public commons. The minister sued for First Amendment violations and the court ruled in favor of the city on summary judgment.

- *City of Cumming v. Baumann*

  Baumann was arrested for distributing religious tracts on a public sidewalk outside the city of Cumming's fairgrounds. It was alleged he had violated a city ordinance requiring parade and demonstration organizers to obtain a permit before engaging in such activities. However, the permit requirement only applied to private organizations or groups of more than three persons. Baumann's multiple requests to view a copy of the ordinance were denied. After serving two days in jail, he was convicted before a municipal court judge, and sentenced to time already served. Baumann was not notified that he would stand trial that day nor was he given the opportunity to obtain legal counsel.

- *Colston v. Fort Worth I.S.D.*

  Fort Worth I.S.D. officials prevented Mrs. Colston from passing out Christian literature on public sidewalks near several schools. The school officials even called the police to remove her from the public sidewalk. Facing the threat of a lawsuit, the district recognized her constitutional rights and allowed her to continue passing out the literature.

- *Sewell v. City of Jacksonville*

  Reverend Wesley Sewell stood at the local post office on a public sidewalk to share his Christian faith with those who passed by. He used limited amplification - a single 10-inch

speaker. He was told he could not use his speaker and that he would have to get a permit to share his faith on the public sidewalk. Police directed Sewell to the director of Parks and Recreation, who told him that no written application or guidelines existed for issuing a permit. Nonetheless, the director said Sewell could only preach in one location with the volume set so low that only people who approached him could hear his message. A lawsuit was filed to protect Rev. Sewell's right to share his beliefs without excessive restriction.

• *Denham v. City of Goldsboro*

Anthony Denham attempted to share his religious message and distribute religious literature on a street corner but he was told by a Goldsboro police officer that a permit was required prior to engaging in public speech. Denham was forced to file a lawsuit to guarantee his First Amendment right to speak in a public area regarding his faith without restriction.

• *Schaffer v. City of Jacksonville*

Schaffer was standing on public property at the Jacksonville Landing shopping center speaking to others about his faith in Jesus Christ. Officers approached Schaffer as he was talking with a passerby and told him to either stop speaking or leave the premises. When Schaffer attempted to tell the officers that he had the constitutional right to speak in public just like any other citizen, he was arrested and jailed overnight.

• *From Canon City, Colorado*

Norman Robinovitz and Bill Phillips stood on public sidewalks talking to people about their Christian faith and handing out literature. One evening, after they shared their Christian faith with individuals outside of two local bars, someone called police to investigate their activities. The men were threatened with arrest for disorderly conduct and were told if they continued their activities they were "headed for jail time."

• *From Timberville, Virginia*

An employee of an agricultural foods company was fired over the display of a sign on his private vehicle. The sign said "please vote for marriage on November 7." The statement reflected the employee's religious conviction that marriage should remain a union of one man

and one woman. The company tried to force him to remove the hand-painted sign from his rear window after other employees claimed to be offended.

• Spino, Jeffrey *"Banned Yarmulke Leads to Judicial Conduct Commission Complaint"*, Texas Lawyer, Sept. 30, 1996 at 5

A Texas judge ordered a Jewish attorney to remove his yarmulke in Texas Court when he was serving as an expert witness.

• *From Vermont*

Nancy Zins attempted to purchase specialty plates in Vermont for herself and for her husband with the messages "ROMANS8" and "ROMANS5" on the plates, but her request was denied by the Vermont DMV, which claimed that the messages might be offensive. After first going through the Agency of Transportation, a lawsuit was filed to protect her free speech rights and her ability to select a message for her license plate, just as other non-religious citizens were free to do.

• *From Northglenn, Colorado*

A coach shared his faith as he coached swimming in the city recreation facility. The city recreations director sent the coach a letter, informing him that he was no longer welcome on the premises of the city recreation facility. A concerned parent inquired to the city to find out why the coach had been banned and was told that the coach used offensive language, but upon further investigation the parent discovered that the coach's preaching was the problem. A lawsuit was filed to protect the man's right to access the city recreation facility.

CHURCH GOVERNANCE

• *Doe v. Watermark Community Church*

A judge prohibited a Texas church from religious speech in following Jesus' words in Matthew 18. The church was sued by a member who sought to stop the church disciplinary process. A restraining order was issued against the church, prohibiting the leaders from speaking about sin and from following the Matthew 18 model of restoring a member to the

body of Christ. The restraining order was ultimately reversed and the case dismissed on appeal.

• *Penley v. Westbrook*

A member of a church had a relationship with a man other than her husband and desired to divorce her husband without a biblical reason. She refused to repent of her sin and the church, through its church disciplinary process according to the book of Matthew, sent a letter to the congregation informing them of the former member's lack of repentance and the unacceptability of her behavior. She sued the church, the elders and the pastor, dragging secular courts into an internal church matter. The Texas Court of Appeals ruled in Penley's favor, so the church was forced to appeal to the Texas Supreme Court, where the lower court's ruling was overturned in a 9-0 decision.

• *Kliebenstein v. Iowa Conference of the United Methodist Church*

A church parishioner sued her church for referring to her divisive actions as acting within "the Spirit of Satan." The Iowa court's decision to allow such a suit violated the First Amendment rights of the church to speak about behavior from a biblical perspective.

• *From the Church of Christ in Hollywood, California*

Former church member Lady Cage-Barile began to intimidate and harass members of the church and interrupt and disrupt Bible studies, so the church informed her she was no longer welcome on church property. When the church sought an order barring Cage-Barile, the court denied it, and the church was forced to go to the California Court of Appeals to enforce its right to exclude trespassers from church premises.

EQUAL ACCESS AND RELIGIOUS GROUP DISCRIMINATION

• *Willow Creek Fellowship v. City of Plano*

Officials of the City of Plano prohibited an all Christian alliance from renting its facilities for the National Day of Prayer, insisting that other faiths be required to share the space as a condition for use.

• *Falun Gong*

The Department of Justice investigated religious discrimination concerning Falun Gong members who were refused hotel accommodations because of their religious beliefs.

• *Cottonwood Creek Church v. City of Allen*

The City of Allen denied a church the right to lease property for church use, even though it had previously allowed secular groups to lease the same space. The ordinance applied by the City clearly targeted churches for unfair treatment and exclusion, but they would not allow the church to lease the space until after lengthy discussions with the church's attorneys.

• *Purpose Life Church v. City of Terrell*

The City of Terrell prohibited the Purpose Life Church from meeting in a city owned building stating that, "local governments are not allowed to have church activities in a city owned building. This is consistent with city policy. The city has denied these types of request of other church events. We are governed in this area by both state and federal law." Only after attorneys filed a lawsuit and the Department of Justice investigated the city did the city settle the lawsuit and pay damages to the church.

• *Cmty. House, Inc. v. City of Boise*, 2007 U.S. App. LEXIS 13377 (9th Cir. 2007)

The city leased a homeless shelter to a non-profit Christian organization which provided voluntary chapel services and other religious activities at the shelter. Then the city sought to bar religious activities from the shelter. The organization was forced to file a lawsuit to protect its right to conduct religious activities at the shelter.

• *Summum v. Duchesne City*, 482 F.3d 1263 (10th Cir. 2007)

A religious organization wanted to display its beliefs on city property along with the Ten Commandments. The court held that the city's refusal to display the group's beliefs violated the organization's First Amendment rights. The appeals court affirmed the decision.

• *Alpha Iota Omega Christian Fraternity, et al. v. James Moeser, et al.*

The Alpha Iota Omega (AIO) fraternity sued the University of North Carolina after being denied official recognition and funding because the organization limited its membership to

those of the Christian faith. A federal lawsuit was filed in AIO's behalf and the University changed its policy and reinstated funding and official recognition status to the fraternity.

- *Faith Center Church Evangelistic Ministries v. Glover*

  County Library officials forbade the Faith Center Church Evangelical Ministries from continuing to meet, while all other groups were allowed, in the library's community room after the first meeting, citing their policy of prohibiting any "religious services" on the premises. A lawsuit was filed stating the policy amounted to religious discrimination and was unconstitutional. The appeals court ruled against Faith Center.

- *Relevant Church v. Egan*

  Relevant Church's request to rent the Dulles building for Easter services was denied by a state official, who claimed that fulfilling the request would violate the "separation of church and state" and the state policy prohibiting religious services in its buildings. After the church's attorneys filed suit, officials reversed course and allowed the church to use the building and also changed the state policy to allow religious services in state office buildings.

- *Rosenbaum v. City and County of San Francisco*

  Rosenbaum and Livingston had been sharing the Gospel message with amplified sound in the streets and parks of San Francisco since 1978. But starting in 1995 many of their permit applications for sound amplification were either denied or issued with significant restrictions. San Francisco police arrested Livingston on numerous occasions in response to hecklers' complaints about the content of Livingston's message. On one occasion, police issued a citation against Livingston but at the same time refused to cite officials with 'Reckless Records', who were using an 80-watt amplifier 15 feet away from Livingston without a permit. On more than a dozen occasions, the city denied permits requested by Rosenbaum and Livingston. A lawsuit was filed and the 9th Circuit failed to sanction this unlawful discrimination and issued a ruling in favor of the San Francisco officials.

• *Geneva College v. Chao*

Members of Geneva College and Association of Faith-Based Organization (AFBO's) were denied access to post employment opportunities because of a governmental "nondiscrimination policy" prohibiting the listing of religious staffing requirements. After a lawsuit was filed, the federal government and the Commonwealth of Pennsylvania conceded that the policy did not apply to Geneva College or AFBO's members, and they are no longer prohibited from posting job listings.

• *Care and Share Ministry v. Village of South Orange*

Members of a local Christian ministry called Care and Share wanted to hold an event at a public square, where members would perform skits, live music, and puppet shows for local children. Village officials denied Care and Share access to the public square, saying only private or public non-religious groups would be allowed to use the space. Though Village officials denied Care and Share's request, they granted the request for use of public space by an organization known as "Road Devils, NJ." The Road Devils event included public consumption of alcohol, live bands using vulgar language with electronic sound equipment, and female mannequins dressed only in underwear. After a lawsuit was filed, Village officials backed down and said they would not discriminate against a religious organization based on viewpoint.

• *Barkey v. City of Idaho Springs*

A coordinator for the National Day of Prayer and others planned to observe the event in a park area outside city hall, but reserved the council's meeting room in case of inclement weather. After rain forced the group inside on the day of the event, a city administrator informed them of a city policy barring use of the space for religious purposes. After a lawsuit was filed, city officials decided to close the city council chambers for general use by the public and the city constructed a new room to be used by the public as a meeting room, including religious groups.

• *From Youngstown, Ohio*

A Christian group requested access to a community room in the Newton Falls Library for a meeting about the biblical perspective of traditional marriage. The library director denied the request because the library's policy required that any time a "controversial subject" was discussed the opposing viewpoint must also be presented. The policy was revised only after a lawsuit was filed.

• *From Aberdeen, Washington*

When CEF of Pacific Harbors, Washington, inquired about posting an announcement on a public reader board about a public showing of the "Jesus" film, the organization was told that because of "separation of church and state," the city could not permit the word "Jesus" to be posted on the board. After receiving an attorney's letter pointing out the unconstitutionality of this policy, the city allowed the posting.

• *Church of the Lukumi Babalu Aye, Inc v. City of Hialeah,* 508 U.S. 520 (1993)

The Church of the Lukumi Babalu Aye sought to set up a church in Florida; the church practices Santeria, a religion which incorporates animal sacrifice into its religious practices. Upon hearing of the church's plan to develop a church in the city, the city counsel held an emergency meeting and passed ordinances which would prevent the church from practicing the animal sacrifice, an essential part of the church's free exercise. A lawsuit had to be filed to protect the church's right to free exercise.

• *Church on the Rock v. City of Albuquerque,* 84 F.3d. 1273 (10th Cir. 1996)

The city prevented a senior citizens groups from presenting a Jesus video, giving Bibles away, or having sectarian instruction and religious worship at the senior center. A lawsuit was filed to challenge the city's policy, which was unconstitutionally restricting religious expression.

• *Moore v. City of Van,* 238 F. Supp. 2d 837 (E.D. Tex. 2003)(mem.)

The City of Van had an unwritten policy that would not permit a group to access the Van Community Center if the use was for a religious purpose. Citizens seeking to use the center

for religious purposes had to file a lawsuit.

• *From New York City*

A New York City pastor wanted to use the Woodside Community Center, located in a public housing development, to host a Bible study for New Yorkers following the attacks on September 11, 2001. The pastor was denied his request because religious services (unless connected to a family oriented event like a wedding) were prohibited. A lawsuit was filed to prevent the community center from treating religious groups differently than other groups.

• *From Mitchell County, Texas*

The public library in Mitchell County, Texas tried to deny Rev. Seneca Lee access to a room where he planned to hold a meeting about political and social issues from a Christian perspective because a library policy prevented religious groups from using the meeting room. Only after a lawsuit was filed did the library change their policy of discriminating against religious groups.

• *From Lebanon, Indiana*

A minister and a church member from Grace Baptist Church were prohibited from distributing religious literature in a public park, though the minister had distributed materials in the park for years. A lawsuit was filed to protect the minister's rights.

• *From Dunedin Public Library in Tampa, Florida*

A Christian legal organization was denied access to the library's community meeting room for a meeting relating to America's Christian History and the influence of the Ten Commandments.

ZONING LAWS, PERMITS, TAX EXEMPTIONS & STATE FUNDING

• *Pastor Rick Barr and Philemon Homes, Inc. v City of Sinton*

Pastor Barr's Christian organization was completely banned by the City of Sinton from existing anywhere in its city limits because the organization provides housing and religious instruction to men after being released from prison for misdemeanor offenses. The

organization was forced to file a lawsuit and the case was presented before the Texas Supreme Court.

- *From Bedford County, Virginia*

  A private landowner agreed to allow The Cowboy Church of Virginia to conduct services on his property. After a few months the landowner received a Notice of Violation, stating that his barn could not be used for religious services and that his property wasn't zoned for religious meetings.

- *Templo La Fe v. City of Balch Springs*

  The Balch Spring's city council prevented Templo La Fe from building a church on its own land. The city's experts on the Planning and Zoning Commission voted unanimously to approve the building, but four city council members decided to override their own experts. The church was forced to file a lawsuit and only after the Department of Justice opened an investigation, did the city settle the lawsuit and allowed the church to proceed with its plan to build.

- *Full Gospel Powerhouse Church of God in Christ v. City of Wichita Falls, et al.*

  An African-American church bought a church building that subsequently burned down. The tax appraisal district denied them a tax exemption because they could no longer meet on the property for services and assessed back taxes for non use because of the fire. There were other churches, however, with open land not being used that were granted exempt status. The church was forced to file a lawsuit to protect its very existence.

- *Digrugilliers v. Consolidated City of Indianapolis*

  A Baptist church was told the church's "religious use" of its property violated the city's zoning code which prohibited "religious use" of property in a commercial district. City officials told the church it would need to obtain special permission to use the building for religious purposes and threatened the church with a lawsuit, fines of up to $2,500 for each violation, and court costs.

• *Christianson v. Leavitt*

The Northwest Marriage Institute provides both biblically-based and secular marriage education workshops throughout the Pacific Northwest. Over the past two years, the Institute has been awarded three federal grants, enabling it to provide the secular workshops at no charge to low-income families. None of the funds were used for the biblically-based workshops. Nevertheless, Americans United for Separation of Church and State, representing 13 Washington taxpayers, filed a lawsuit seeking to force the institute to repay the funds it had received and block all future funds.

• *American Jewish Congress v. Bost, et al*

"Separation of church and state" groups sued the State of Texas in federal district court for its charitable choice program. The lawsuit was an attempt to strike down the charitable efforts of several businesses and churches involved in a program to move people off welfare roles into paying jobs.

• *Petra Presbyterian Church v. Village of Northbrook*, 489 F.3d 846 (7th Cir. 2007)

Following a purchase of property by a church, Northbrook changed the zoning ordinance to prevent churches from operating within its zone. The town obtained an injunction to prevent the church from meeting. The district court held that the church failed to show that the altered zoning ordinance burdened the church's exercise of religion even though they had to meet elsewhere. After an appeal, the appellate court affirmed the district court's ruling.

• *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643 (10th Cir. 2006)

The city of Cheyenne denied a non-profit church's request for a variance to operate a daycare in a residential zoning area. The district court ruled and appellate court affirmed that exercise of a daycare was not a sincere exercise of the church's religion and that the city properly denied the church's daycare request in the interest of the health, safety, and welfare of citizens.

• *American Atheists v. City of Detroit*

St. John's Episcopal Church entered into a contract with the City of Detroit Development Authority to improve its exterior appearance in order to enhance the city's image prior to the 2006 Super Bowl and to spur economic development in the area. The contract provided for reimbursement of half of the church's expense, up to $180,000. After the American Atheists filed suit against the city, city officials withheld the reimbursement promised to the church.

• *Konikov v. Orange County*

Rabbi Joseph Konikov was ordered by the county code enforcement officials to stop holding prayer meetings in his home, alleging that he was in violation of local laws prohibiting "operating a synagogue or any function related to a synagogue and/or church services..." He was ordered to stop the prayer meetings or face daily fines totaling nearly $56,000. Only at the Court of Appeals were the ordinance and fines overruled.

• *From Titusville, Pennsylvania*

The Lighthouse Christian Center wanted to lease a building within Titusville's C-1 commercial zone. However, the Titusville zoning code did not allow churches, but permitted theaters, clubs, lodges, bars and amusements in its commercial districts. Lighthouse was forced outside the City of Titusville, where it rented a temporary building that lacked heat and insulation. After a lawsuit was filed the city settled and agreed to amend the zoning code.

• *From Panama City, Florida*

A Bay County's property appraiser, Rick Barnett, developed a new standard for determining whether to grant tax exemptions to church property. Barnett was the only Florida property appraiser to refuse to exempt church parsonages that are not adjacent to houses of worship. Barnett denied the church's application for a tax exemption on its parsonage and assessed property taxes on the property. The church was forced to file a lawsuit.

• *From Quakertown, Pennsylvania*

Quakertown Community School District officials were informed by a zoning officer to stop leasing space to Harvest Community Fellowship Church because the church was using space at the school to hold a Sunday church service. The church's use qualified as "principal use" of the facilities, even though the church only used the facilities for a few hours on Sundays. Under the unmodified zoning code, only one principal use can be made of a property without obtaining a variance. The church had to seek help from attorneys to correspond with the township officials until they agreed to amend the zoning code.

• *H.E.L.P.S. and Family Life Church v. City of Elgin*

H.E.L.P.S., a Christian homeless ministry, operating out of a church building was told that the city required the church to obtain a building occupancy permit and zoning permission to keep the ministry open. Elgin's city manager informed them that a conditional use permit would also be necessary and told them that the chances of obtaining one from the city council were "a million to one." After the city drove the organization from the Family Life Church, H.E.L.P.S. began ministering at a camp 20 minutes outside the city, on weekends at other churches, or on their bus.

• *Green v. Garriott*

The ACLU and others filed suit to declare Arizona's corporate tax credit tuition program unconstitutional because it allowed tuition scholarships to be used at private religious schools. The lawsuit, an attempt to discriminate against religious schools rather than grant them equal treatment, was dismissed by the court.

• *Moeller v. Bradford County*

A faith-based program located in Bradford County that provided construction skills, life skills, and mentoring to incarcerated persons, came under attack from an ACLU and AUSCS lawsuit that sought to stop support of the program.

• *Hein v. Freedom from Religion Foundation*, 127 S. Ct. 2553 (2007)

The Freedom from Religion Foundation filed a lawsuit against the White House claiming the Establishment Clause bars faith-based charities from receiving government funding. In a 5-4 decision, the U.S. Supreme Court ruled that an atheist organization lacked taxpayer standing to challenge a White House conference that informed both faith-based and secular organizations about federal funding for programs that help the poor.

• *From Hollywood, Florida*

An Orthodox Jewish Synagogue moved into two houses and started remodeling one of the houses into a synagogue, angering neighbors. A zoning board granted the synagogue a permit, but just 53 days later, the city commissioners voted 4-3 to revoke the special permit, citing zoning issues. A lawsuit was filed and the case was eventually settled, with the city agreeing to rewrite their codes.

• *From Orlando, Florida*

The Holy Land Experience is a living Biblical museum that conveys its religious message through teaching, preaching, dramatic enactments, special music and performances, and multimedia presentations. After almost 4 years of litigation, the Orange County Circuit Court issued an order stating the property on which The Holy Land Experience sits is exempt from ad valorem taxation. However, following this ruling the county property appraiser continued to refuse to recognize The Holy Land Experience as tax exempt. The museum was eventually forced to file for contempt of court for this blatant violation of a court order.

• *Freedom From Religion Found. v. McCallum*, 324 F.3d 880 (7th Cir. 2003)

The Freedom from Religion Foundation filed a lawsuit to prevent correctional authorities from directing inmates to Faith Works because the halfway house incorporates Christianity into its program.

• *From Madison, Wisconsin*

The Freedom from Religion Foundation challenged the constitutionality of a faith-based program working to rehabilitate and treat prisoners who have drug and alcohol addictions.

The Foundation claimed that, because the program was an option for prisoners and state funding was used by the program, it was a "separation of church and state" violation.

- *Mitchell v. Helms,* 530 U.S. 793 (2000)

  Under the Education Consolidation and Improvement Act of 1981, government aid for materials and equipment was provided to public as well as private schools. A lawsuit was filed against the Act because that would allow private schools, which are religious schools, to receive a benefit.

- *Amandola v. Town of Babylon,* 251 F.3d 339 (2d Cir. 2001)

  Roman Chapter Ten Ministries, Inc. had obtained a permit to use the Babylon's Town Hall Annex to hold worship services, but when an angry resident called the city to complain about the facilities being used for church services, the town revoked the permit. The church had to file a lawsuit to protect their right to access the community facilities and to end the religious discrimination.

- *Ehlers-Renzi v. Connelly Sch. of the Holy Child,* 224 F.3d 283 (4th Cir. 2000)

  An ordinance in Montgomery County, Maryland accommodated churches by exempting them from acquiring a special permit before constructing a school on church property. A lawsuit was filed to attempt to strike down the law.

- *From Plano, Texas*

  The City of Plano attempted to prevent the Willow Creek Fellowship from opening because of the slant of the roof even though no ordinance existed relating to the angle of the roof and despite the fact that a school just down the street from the church had an identical angle. Only after threat of a lawsuit did the city relent and permit the church to open.

- *From Ontario, California*

  The Church of the Light bought some land in Ontario after determining that the property was zoned so that it could contain religious assembly. However, the city passed an ordinance requiring new churches to obtain a permit before building, and five days after the ordinance was passed, Ontario's Development Advisory Board denied the church's permit applications,

claiming the denial was based on allegations that the church was a cult. A lawsuit was filed to protect the church's rights to build their church.

RELIGIOUS HOLIDAY OBSERVATION

• *Metzl v. Leininger,* 57 F.3d 618 (7th Cir. 1995)

A teacher filed suit in objection to a policy that allowed teachers to take Good Friday off with pay, claiming the practice violated the Establishment Clause.

• *Bridenbaugh v. O'Bannon,* 185 F.3d 796 (7th Cir. 1999)

A citizen filed suit to challenge the Indiana policy of allowing state employees to observe Good Friday as a day off with pay, claiming that the policy established religion.

• *From Garden City Long Island, New York*

Teachers in Garden City Long Island wanted to use personal days to observe religious holidays, which is one of the listed permissible uses for a personal day, but when some Catholic teachers requested to use a personal day for Holy Thursday and some Jewish teachers wanted to use a personal day during Passover, they were denied and were forced to use arbitration to prevent the religious discrimination.

RELIGIOUS HOLIDAY DISPLAYS & CELEBRATIONS

• *From Olympia, Washington*

Governor Chris Gregoire lit a Menorah in a celebration at the state Capitol, and accepted the gift of a Menorah for her home. The Menorah that was lit during the ceremony was displayed in the Capitol rotunda with a Christmas tree. However, when a local resident asked for a Nativity scene to be displayed with the Menorah and the tree, the Governor refused.

• *From Fayetteville, Arkansas*

McNair Middle School removed a teacher's Nativity scene and Star of David from a larger display that also included secular holiday decorations. School officials were concerned about the religious aspects of the display. After the school was shown a legal memorandum explaining the display was constitutional they changed their position.

• *From Cumberland County, Tennessee*

Cumberland County received a threatening letter from the ACLU about a Nativity scene outside the county courthouse, eventhough the county created an open forum for the public and local businesses to display business logos, statues and other items.

• *From Chicago, Illinois*

The City of Chicago told organizers of the annual "Christkindlmarket" (Christ child market) festival not to allow the showing of clips of "The Nativity Story."

• Liberty Counsel News Release, " *The war against Christmas rages in schools and public places" & "Growing Public Support for Christmas Forces Retailers, Government Officials and Employers to Take Notice*" Nov. 11 & 29, 2006

- A high school in Wisconsin told student leaders that religious symbols, decorations or wording relating to Christmas would not be permitted.
- In Ohio, a public school told teachers not to say "Merry Christmas."
- A public school teacher in North Carolina was told not to display anything in class with the word "Christmas" on it and not to tell students "Merry Christmas."
- A city in New Mexico didn't want the name of Jesus used in the Christmas parade.
- The New York Parks Department decided to have a "Holiday Tree" instead of a "Christmas Tree."
- A manufacturer in Virginia told employees to only use "Happy Holiday" as a telephone greeting, not "Merry Christmas."
- A school in Wisconsin wanted to move a musical program from a church to another location.
- In Florida, a student was chosen to be Mrs. Claus in an after-school choral group, but the principal later told her that the play would not take place because a parent complained about Santa Claus. The same group learned songs for Kwanzaa and Chanukah.
- In another Florida public school, the calendar of holidays lists Christmas as "Winter" and Thanksgiving Day as "International Festival."
- The words to "Silent Night" were changed to "Candle Light" in an elementary school

program in a New York school.

- Teachers at a Tennessee public school were told to keep Christmas out of their plans for this year.
- A clothing store worker in Virginia was advised by her supervisor that the company mandates that the employees use "Happy Holidays" as their greeting over the phone.

• *From Winter Park, Florida*

Seniors living in The Housing Resource Development Corporation facility were told neither they nor outside groups could sing Christmas carols. Following an attorney's demand letter, the facility reversed its decision.

• *From Mechanicsburg, Pennsylvania*

Bethany Towers provides housing to low-income seniors and persons with disabilities. Residents were told by management at Bethany Towers that they could not display any religious decorations in any common area. Management removed nativity scenes and other religious decorations set up by the seniors and then issued a written directive. Even angels were removed from the Christmas tree.

• *From Dodgeville, Wisconsin*

Ridgeway Elementary School wanted to perform "Cold in the night", a secularized version of "Silent night." The plan was abandoned after the school received an avalanche of phone calls and emails opposing the violation of this traditional and historic Christmas song.

• *From New York City, New York*

The NYC Environmental Protection Agency allowed Chanukah banners and in the past allowed employees to celebrate the Indian festival of Diwali. The agency banned Christmas banners, red and green decorations and even removed the "holiday trees." Staff members obtained 115 petitions demanding that the agency back down. The agency allowed the Christmas decorations and issued an apology to employees.

• *From Indianapolis, Indiana*

Employees at the Indiana State Department of Health were told that they could not have

Christmas parties during lunch hours. The parties had to be "holiday" rather than "Christmas" parties, and the employee-initiated parties could have no religious content. After receiving a letter from an attorney, the department allowed employees to have their own Christmas parties with religious content.

• *From Fort Lauderdale, Florida*

Teachers and children at Boulevard Heights Elementary School were instructed to say "Happy Holidays" instead of Merry Christmas."

• *From Weston, Wisconsin*

The D.C. Everest Senior High School announced a "Winter Spirit Week Door Decorating Contest". The rules were that the doors could be decorated to depict "[a]ny winter scene," so long as there were "[n]o religious ties." Principal Thomas Johansen said that any doors with religious themes would be disqualified. After receiving more than 200 student petitions and an attorney's letter, as well as legal advice of their own, the school changed the rules to allow religious depictions.

• *From Jacksonville, Florida*

A Town Center Park contained a 25-foot-tall Christmas tree and a large Menorah. But when a request was made to display a private nativity scene, measuring a mere 40 inches tall, the request was denied because 'religious symbols' were not permitted. After a lawsuit was filed, the nativity scene was permitted.

• *From Auburn, Alabama*

From its inception as a Methodist University in the 1800s, Auburn University students have celebrated Christmas and have historically lit a Christmas tree every year in the first part of December. In 2005 the Student Government Association changed the name from Christmas tree to "Holiday tree."

• *From Glendale, Wisconsin*

The Glendale-River Hills School District expressly prohibited songs that had a religious "motive or theme," but allowed secular holiday songs as well as songs celebrating Chanukah.

• *ACLU of N.J. v. Township of Wall,* 246 F.3d 258 (3d Cir. 2001)

The ACLU, along with some citizens, filed a lawsuit to challenge a holiday display consisting of a crèche with traditional figures, a lighted tree, urns, candy cane banners, a menorah, and signs commenting on celebrating diversity and freedom.

• *Amancio v. Town of Somerset,* 28 F. Supp. 2d 677 (D. Mass. 1998)

A Somerset resident filed a lawsuit challenging Somerset's Christmas display, which included a Nativity crèche, holiday lights, a wreath, a Christmas tree and a plastic Santa Claus. The display had been a Somerset tradition for 60 years.

• *Lynch v. Donnelly,* 465 U.S. 668 (1984)

In a Pawtucket shopping district, there was an annual Christmas display owned by a non-profit organization. The display included a Santa house, a Christmas tree, a "Seasons Greetings" banner, and a crèche, which had been a staple of the display for over 40 years. A lawsuit was filed to challenge the display, specifically the inclusion of the crèche.

• *ACLU v. City of Birmingham,* 791 F.2d 1561 (6th Cir. 1986)

The ACLU filed suit to expel a crèche from the annual holiday display at city hall, claiming it violated the Establishment Clause.

• *ACLU of New Jersey v. Schundler,* 168 F.3d 92 (3d Cir. 1999)

The ACLU filed suit to challenge a holiday display, which included a crèche and a menorah, claiming the display violated the Establishment Clause.

• *ACLU of Kentucky v. Wilkinson,* 701 F. Supp. 1296 (E.D. Ky. 1988)

The ACLU filed suit to challenge a nativity scene on the Kentucky Capitol, seeking an injunction preventing the continued use of the nativity scene, claiming the nativity scene was an endorsement of religion.

• *ACLU v. City of Florissant,* 186 F.3d 1095 (8th Cir. 1999)

The ACLU filed suit to challenge a holiday display at the city Civic Center in Florissant, Missouri on behalf of a resident who was offended by the inclusion of the crèche in the holiday display.

• *Americans United for Separation of Church and State v. City of Grand Rapids,* 1992 U.S. App. LEXIS 7513 (6th Cir. 1992)

AUSCS filed suit to prevent a menorah from being placed at Calder Plaza during the Chanukah celebration, claiming the placement of the menorah established religion. The court agreed, determining that the city appeared to be endorsing religion because of the display.

• *Capitol Square Review & Advisory Bd. v. Pinette,* 515 U.S. 753 (1995)

The Ohio State Capitol Square Review Board refused a permit to a group wanting to display a cross during the 1993 Christmas season, so a lawsuit was filed.

• *County of Allegheny v. ACLU,* 492 U.S. 573 (1989)

The ACLU filed a lawsuit against the county stating two of the county's holiday displays were unconstitutional. One of the displays was a nativity scene at the county courthouse. The other display was a menorah placed alongside a Christmas tree at the City-County building. The Supreme Court held that a menorah in front of the City-County Building for a seasonal display did not violate the Establishment Clause, though the nativity scene in the county courthouse did.

• *Doe v. Small,* 934 F.2d 743 (7th Cir. 1991)

A city annual yuletide display included 16 large paintings showcasing events in the life of Jesus Christ. A lawsuit was filed to eradicate the religious expression from the public square and end the yuletide display. The court struck down the long-standing tradition of including the pictures, finding that such a display endorsed religion and violated the Establishment Clause.

• *Doe v. City of Westland,* 1987 U.S. Dist. LEXIS 15321 (E.D. Mich. 1987)

Doe, supported by the ACLU, brought a lawsuit to challenge a Christmas display in the Westland central city complex because it included a nativity scene.

• *Kaplan v. City of Burlington,* 891 F.2d 1024 (2d Cir. 1989)

A lawsuit challenged a menorah display during the month of December and the court struck down the display of the menorah on the grounds that such religious expression violated the

Establishment Clause.

• *King v. Village of Waunakee,* 517 N.W.2d 671 (Wis. 1994)

Citizens filed a lawsuit challenging a crèche display during the Christmas season, seeking to eradicate the religious symbol from the public square.

• *Mather v. Village of Mundelein,* 864 F.2d 1291 (7th Cir. 1989)

Rachel Mather challenged a holiday display in front of Village Hall in Mundelein, alleging that the display included a crèche and gave her a sense of inferiority because she's Jewish.

• *Soc'y of Separationists, Inc. v. Clements,* 677 F. Supp. 509 (W.D. Tex. 1988)

The Society of Separationists filed a lawsuit challenging the "Christmas Carol Program." The program is an annual event in the Texas Capitol when a Christmas tree is presented to Texas, politicians make speeches, the Texas Public Employees Association presents money to charity, Santa visits, singers perform Handel's Messiah, and two religious carols are performed. The Separationists asserted that the program violates the Establishment Clause and sought a preliminary injunction to prevent the program from occurring.

• Mattingly, Terry "*On Religion: Things Got Rough on Church-State Front This Holiday Season*", Naples Daily News, Jan., 17, 2004

- Firefighters in Glenview, Illinois took down Christmas lights after neighbors complained of being offended.
- When a pastor in Chandler, Arizona complained that the public library display excluded Christmas and only included Chanukah and Kwanzaa, the library took down the entire display, rather than add any information about Christmas.
- In Tallahassee, Florida, controversy erupted when a Jewish Chabad offered to help purchase a menorah for the courthouse yard and the ACLU threatened suit.

CITY SEALS, MOTTOS, SCULPTURES, & THE PLEDGE

• *Staley v. Harris County, Texas,* 485 F.3d 305 (5th Cir. 2007)

A lawsuit was filed against Harris County to have a Bible removed from a portion of a monument dedicated to a prominent and charitable citizen, William S. Mosher. The

monument was donated and erected by the Star of Hope mission, a Christian outreach organization that assists the homeless and jobless in the Houston area. The district court ordered the Bible be removed from the monument and the Court of Appeals panel agreed before the case became moot.

- *ACLU v. Capitol Square Review and Advisory Bd.*, 243 F.3d 289 (6th Cir. 2001)

  The ACLU filed a lawsuit challenging Ohio's motto, "*With God, All Things Are Possible.*"

- *ACLU v. City of Stow*, 29 F. Supp. 2d 845 (N.D. Ohio 1998)

  The ACLU challenged the placement of a cross on Stow's city seal, claiming that the use of such a symbol served as an establishment of religion. The ACLU prevailed in the lawsuit because the court found that a reasonable observer would perceive the cross on the seal as an establishment of religion with the effect of advancing or promoting Christianity. The city was forced to remove the cross.

- *Harris v. City of Zion*, 927 F.2d 1401 (7th Cir. 1991)

  The Society of Separationists and some other citizen plaintiffs challenged the use of religious symbols on city seals in Rolling Meadows and Zion, Illinois. The Rolling Meadows seal contained a Latin cross and was adopted in 1960. Zion's seal contained a Latin cross and a dove carrying a branch and was adopted in 1902. The court ordered the cities to stop using the long-standing seals, considering the use of the religious symbols to violate the Establishment Clause.

- *King v. Richmond County*, 331 F.3d 1271 (11th Cir. 2003)

  A small group of citizens filed suit and claimed that the 130-year-old seal of the Superior Court of Richmond County violated the Establishment Clause and was unconstitutional because the image included a portrayal of the Ten Commandments tablets.

- *Robinson v. City of Edmond*, 68 F.3d 1226 (10th Cir. 1995)

  Plaintiffs filed suit to challenge the use of a Latin or Christian cross on the Edmond's city seal, which was adopted in 1965 by a competition through the city council and the local newspapers. The cross reflected the historical importance of the Catholic Church in the

development of the southwest, but the court held that the seal established religion and struck down the use of the cross.

• *Lambeth v. Bd. of Comm'rs,* 2004 U.S. Dist. LEXIS 11195 (M.D.N.C. 2004)

A pair of attorneys filed suit claiming that a display of the national motto on the Davidson County Governmental Center violated the Establishment Clause.

• *Alvarado v. City of San Jose,* 94 F.3d 1223 (9th Cir. 1996)

The City of San Jose installed and maintained a sculpture ("Plumed Serpent" - of Aztec mythology) to commemorate the Mexican and Spanish contributions to the city's culture. When people began to bring flowers and burn incense at the sculpture, citizens filed suit claiming the sculpture violated the Establishment Clause, but the court upheld the sculpture.

• *Mendelson v. City of St. Cloud,* 719 F. Supp. 1065 (M.D. Fla. 1989)

A citizen sued the city claiming an illuminated Latin cross on a city water tower violated the Establishment Clause. The court determined that the cross did violate the Establishment Clause and ordered the cross removed from the water tower.

• *Murray v. City of Austin,* 947 F.2d 147 (5th Cir. 1991)

The Society of Separationists filed suit challenging Austin's city insignia because it included a cross, but the court upheld the city's insignia against the censorship attempt.

• *Myers v. Loudoun County Sch. Bd.,* 251 F. Supp. 2d 1262 (E.D. Va. 2003)(mem.)

A lawsuit was filed challenging the constitutionality of two Virginia statutes, one that required students in public schools to say the pledge of allegiance and the other requiring the national motto to be posted at Virginia schools.

• *Elk Grove Unified Sch. Dist. v. Newdow,* 542 U.S. 1 (2004)

Atheist Michael Newdow filed suit to remove the words "under God" from the Pledge of Allegiance. Newdow's daughter attended public elementary school where students recited the Pledge as part of the morning activities. Newdow filed suit claiming that his daughter was injured because she was compelled to witness her teacher lead her classmates in a ritual where they proclaimed there is a God and that our nation is under God.

• *Paulson v. City of San Diego*, 294 F.3d 1124 (9th Cir. 2002)

A citizen challenged the constitutionality of a cross erected in Mount Soledad Natural Park, which is owned by the City of San Diego. The court found that the city violated the California Constitution by keeping the cross and forbade the city from maintaining the cross. A stay of the dismantling of the cross was won at the U.S. Supreme Court.

• Martin, Hugo "*Facing ACLU Complaint, City to Drop Seal's Cross*", L.A. Times April 29, 2004 at B1

The City of Redlands was threatened with a lawsuit if the city did not remove a cross from the city's seal. The city decided to remove the cross rather than fight a legal battle against the ACLU, despite many protests from citizens who wanted the cross to stay on the city seal.

• Fox, Sue "*Facing Suit, County to Remove Seal's Cross*", L.A. Times Jne 2, 2004 at B1

A Los Angeles county was threatened with a lawsuit if the county did not remove a cross from the county's seal. The county succumbed to the ACLU's pressure and decided to remove the cross. The cross had adorned the seal since 1957 along with a cow, tuna fish, Spanish galleon, the Hollywood Bowl, and the Goddess Pomono. The region was settled by Catholic missionaries and the cross memorialized that historical fact.

• *From Springfield, Missouri*

The ACLU filed a lawsuit challenging the use of an ichthus (i.e. a Christian fish symbol) on the City of Republic's seal, and a federal judge ordered the city to remove the symbol.

TEN COMMANDMENTS

• *James Green and ACLU of Oklahoma v. Board of Cty. Comm. of the Cty. of Haskell*

The ACLU filed a lawsuit to have the Ten Commandments and Mayflower Compact monument removed from the Haskell County courthouse lawn, claiming that it violated the 'Establishment Clause.' The monuments were erected at the request of a resident of Haskell County, who wanted to honor the historical and legal traditions represented by the monument. The county has a longstanding policy and practice of permitting citizens of Haskell County to display monuments on the county courthouse lawn.

• *From Cross City, Florida*

Dixie County permitted a local company to erect a Ten Commandments monument near the county courthouse. The ACLU filed a lawsuit, seeking removal of the monument, damages and attorney's fees.

• *Harvey v. Cobb County*, 811 F. Supp. 669 (N.D. Ga. 1993), aff'd per curiam, 15 F. 3d 1097 (11th Cir. 1994)

Plaintiffs filed suit challenging a framed panel of Ten Commandments and the Great Commandment displayed at the county courthouse. The court concluded that the displays were unconstitutional, but the court allowed a stay so that the county could incorporate non-religious, historical items, which according to the court would transform the display to fit within constitutional guidelines.

• *Ind. Civ. Liberties Union v. O'Bannon*, 259 F.3d 766 (7th Cir. 2001)

The Fraternal Order of the Eagles donated Ten Commandment plaques to communities across the U.S. in the 1950s, including one to the Indiana Statehouse in Indianapolis, which was destroyed in 1991 by a vandal. An Indiana State Representative planned a replacement monument consisting of the Ten Commandments, the Bill of Rights, and the Preamble to the Indiana Constitution, but a lawsuit was filed challenging the proposed monument on the grounds that it would establish religion.

• *Kimbley v. Lawrence County, Ind.*, 119 F. Supp. 2d 856 (S.D. Ind. 2000)

Civil liberties groups filed suit in response to a proposed Ten Commandments display, which had been authorized by state law, seeking to prevent the display.

• *ACLU of Kentucky v. Grayson County*, 2002 WL 1558688 (W.D. Ky. 2002)

The ACLU filed a lawsuit challenging a county courthouse display containing various historical documents about the founding of America and the Ten Commandments. The court censored the use of the Ten Commandments in the display.

• *ACLU Neb. Found v. City of Plattsmouth*, 358 F.3d 1020 (8th Cir. 2004), vacated, reh'g granted 2004 U.S. App. LEXIS 6636

The ACLU filed suit complaining that the city's Ten Commandment display violated the

Establishment Clause. The display was donated to the city in 1965 by the Fraternal Order of the Eagles. The court ordered the display removed, determining that it promoted religion.

- *Adland v. Russ,* 307 F.3d 471 (6th Cir. 2002)

  The governor of Kentucky signed a resolution that permitted public school teachers to display the Ten Commandments in their classroom. He also authorized the display of the Ten Commandments monument on Capitol grounds as part of a display that would showcase Kentucky's Biblical historical heritage. Citizens protested the proposed display and filed a lawsuit to challenge the resolution, and the court determined that the proposal was unconstitutional.

- *Baker v. Adam County/Ohio Valley Sch. Bd.,* 2004 U.S. App. LEXIS 481 (6th Cir. 2004)

  A school board erected Ten Commandment monuments bought by a county ministerial association and a suit was filed, challenging the constitutionality of the monuments. The school board added other historical documents relating to the development of American law and government to the displays, but the lawsuit continued anyway. The court ordered that the monuments be removed.

- *Books v. City of Elkhart,* 235 F.3d 292 (7th Cir. 2001)

  A lawsuit was filed in objection to a Ten Commandments display at the Elkhart's Municipal Building, claiming the display violated the Establishment Clause. The Seventh Circuit struck down the display.

- *ACLU v. McCreary County,* 545 U.S. 844 (2005)

  The ACLU filed suit to challenge Ten Commandment displays in three Kentucky county courthouses, seeking to have the displays removed. Both the Sixth Circuit of Appeals and the U.S. Supreme Court ruled that the Ten Commandments displays were unconstitutional.

- *ACLU of Ohio v. Ashbrook,* 211 F. Supp. 2d 873 (N.D. Ohio 2002)

  The ACLU brought a lawsuit seeking the removal of the Ten Commandments from a state courtroom display which featured the Ten Commandments along with the Bill of Rights, and the court struck down the display.

• *ACLU of Tenn. v. Hamilton County,* 202 F. Supp. 2d 757 (E.D. Tenn. 2002)

The ACLU filed suit challenging the Ten Commandment displays in county courthouses.

• *ACLU of Tenn. v. Rutherford County,* 209 F. Supp. 2d 799 (M.D. Tenn. 2002)

The ACLU sued Rutherford County to challenge the Ten Commandments display in the county courthouse lobby.

• *Chambers v. City of Frederick,* 292 F. Supp. 2d 766 (N.D. Md. 2003)(mem.)

A Frederick resident objected to the Ten Commandments display in the city park that the Fraternal Order of the Eagles (FOE) had donated in 1958. In response, the city sold that portion of the park to the FOE, but a lawsuit was filed anyway.

• *DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.,* 196 F.3d 958 (9th Cir. 1999)

A school's baseball booster club raised funds by selling ads on the baseball field fence for $400. Mr. DiLoreto, CEO of Yale Engineering, bought an ad in which he wanted to use to display the Ten Commandments, but the sign was rejected and Mr. DiLoreto's money was returned. A lawsuit was filed to protect Mr. DiLoreto from viewpoint discrimination.

• *Doe v. Harlan County Sch. Dist.,* 96 F. Supp. 2d 667 (E.D. Ky. 2000)

A Harlan student's parents filed suit to challenge the public schools' practice of posting the Ten Commandments in classrooms. In response to the lawsuit, the school district added other historical documents to the displays, but the lawsuit continued.

• *Freethought Soc'y v. Chester County,* 334 F.3d 247 (3rd Cir. 2003)

A lawsuit was filed to challenge the Ten Commandments display on the county courthouse facade, but the court allowed the display to remain.

• *Grassroth v. Moore,* 335 F.3d 1282 (11th Cir. 2004)

Alabama Supreme Court Chief Justice Roy S. Moore installed a Ten Commandments monument in the state's judicial building. A lawsuit was filed to challenge the display and the monument was forcibly removed.

• *Summum v. City of Ogden,* 297 F.3d 995 (10th Cir. 2002)

The Summum Church asked the City of Ogden to replace a Ten Commandments display that

the Fraternal Order of the Eagles had donated to the city with a monument to the Summum religion. The church filed a lawsuit.

• *Turner v. Habersham County,* 290 F. Supp. 2d 1362 (2003)

Citizens challenged the display of the Ten Commandments at the Habersham County Courthouse.

• *Van Orden v. Perry,* 545 U.S. 677 (2005)

An atheist filed suit against the State of Texas to have the Ten Commandments monument on the grounds of the state Capitol removed. The Fraternal Order of Eagles donated the monument many years ago to the State of Texas as a symbol to battle against juvenile delinquency.

• *Young v. County of Charleston,* 1999 WL 33530383 (S.C. Com. Pl. 1999)

A court struck down a city courthouse Ten Commandments display as a violation of the Establishment Clause.

• Buzzard, Nicole "*A youth with a Mission: A Santiago High School Junior seeks to post the Ten Commandments at Corona-Norco Campuses*" The Press Enterprise Co. (Riverside, CA), June 30, 2004 at BO1

High school junior Jason Farr wanted to post the Ten Commandments in his high school, Santiago High School, and other schools in his district. He posted fliers of the Ten Commandments, which resulted in a threat of a five-day suspension. Additionally, Farr was informed that the Bible was not suitable material for the silent reading period, despite the fact that it fulfilled page and genre requirements.

• *From Manhattan, Kansas*

The ACLU and the Americans United for Separation of Church and State challenged a Ten Commandments monument at the city hall in Manhattan. After the lawsuit was filed, the City Commission decided to settle and remove the display.

• *From Everett, Washington*

The Americans United for Separation of Church and State filed suit challenging a Ten Commandments Display donated by the Fraternal Order of Eagles.

OTHER

• *From Miami, Florida*

The NFL demanded that Fall Creek Baptist Church in Indianapolis, Indiana, cancel its advertised Super Bowl party. In addition to objecting to the church's use of the words "Super Bowl" in promotions, the league objected to use of a screen larger than 55 inches and disliked the church's plans to show a video highlighting the Christian testimonies of Colts coach Tony Dungy and Chicago Bears coach Lovie Smith. The NFL freely admits it routinely makes exceptions for bars and other commercial establishments to show its games with big screen televisions and projection systems.

• *Reed v. Town of Gilbert*

A Gilbert sign ordinance discriminated against certain signs based on the content of the signs. According to the code, religious assembly signs were required to be smaller in size, fewer in number, and displayed for much less time than similar non-religious signs. Also, the ordinance allowed ideological and political signs to be posted without a permit, whereas a permit was required to post religious assembly signs.

• *From Clovis, New Mexico*

The Curry County Detention Center refused to permit baptism by immersion at the detention center. A local prison ministry offered to provide a mobile baptismal tank in a secure area of the facility and to pay any additional security costs. Ministry leaders also advised the warden that a prison ministry in a neighboring city had utilized a similar procedure without incident. The prison authorities only agreed to allow the baptism service after they were warned a lawsuit would ensue if they continued to refuse.

• *From Deltona, Florida*

One of the first changes the new mayor of Deltona made following his election to office was to change the "Silent Invocation" at the beginning of the city commission meetings to a "Moment of Silence." He also censored the paintings from a Black History Month display

due to their religious content. A lawsuit was filed against the city, and immediately the commissioners convened an emergency session where they voted to override the decision to remove the "silent invocation."

• *Marsh v. Chambers,* 463 U.S. 783 (1983)

A member of the Nebraska legislature filed suit challenging the longstanding practice of employing a chaplain to pray before the opening of each legislative session, claiming the practice was unconstitutional.

• *Barnes-Wallace v. Boy Scouts of America,* 275 F. Supp. 2d 1259 (S.C. Cal. 2003)

An agnostic family sued San Diego and the Boy Scouts because the city had leased some public parkland to the Boy Scouts, claiming the lease violated the Establishment Clause.

• *HEB Ministries v. Texas Higher Educ. Coordinating Bd.,* 114 S.W.3d 617 (Tex. App.– Austin 2003)

Texas passed a law forcing all seminaries to get state approval of their curriculum, board and professors. Tyndale Seminary was fined $173,000 by the state for using the word "seminary" and issuing theological degrees without government approval. A suit had to be filed to prohibit the government attempts to control religious training. Both the district court and the Court of Appeals upheld the law and the Seminaries only won protection after nine years of suffering and losses.

• *Doe v. Vill. of Crestwood,* 917 F.2d 1476 (7th Cir. 1990)

A long-standing tradition of the Village of Crestwood's "A Touch of Italy" festival was to include an Italian Mass, but a citizen filed suit challenging the mass tradition.

• *Freedom From Religion Found. v. Romer,* 921 P.2d 84 (Colo. Ct. App. 1996)

After the Pope visited Denver for World Youth Day, The Freedom from Religion Foundation filed a lawsuit against the City of Denver, council members and Arapaho County officials. They asserted that using a state park for religious services, temporarily closing the park to the public and the use of state funds to facilitate the visit violated the First and Fourteenth Amendments.

• *North Carolina Civil Liberties Union Legal Foundation v. Constangy*, 947 F.2d 1145 (4th Cir. 1991)

The ACLU and some citizens challenged a judge's practice of opening his session with a prayer, seeking to forbid the judge from continuing the practice.

• McAllister, Bill "*Postal Service Ends Christ Camp Stamp Series*", Washington Post, Nov. 19, 1994 at Fl

The Post Office replaced its Madonna and Child stamp in the holiday stamp collection with an angel stamp after using the Madonna and Child for 28 years. The Post Office resumed the stamp after there was a public outcry.

• *Grace Community Church, et al. v. City of McKinney, et al. (Civil Action No. 4:04CV251)*

The City of McKinney had an ordinance that prohibited religious meetings in a home in a residential neighborhood. Grace Community Church was told by the City of McKinney that the church could no longer meet in the home despite equal size groups being allowed to do the same. A lawsuit was filed on behalf of the church, alleging a violation of the church's right to meet in the pastor's home under federal law.

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1330

BILL TITLE: **relative to the preservation of religious freedom.**

DATE: February 4, 2010

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, (ITL,) Interim Study (Please circle one.)

Moved by Rep. Richardson

Seconded by Rep. Weber

Vote: 12-6 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1330

BILL TITLE: relative to the preservation of religious freedom.

DATE: February 4, 2010

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, (ITL), Interim Study (Please circle one.)

Moved by Rep. Richardson

Seconded by Rep. Weber

Vote: 12/6 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: {Type VOTE}

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

OFFICE OF THE HOUSE CLERK 2010 SESSION

JUDICIARY

Bill #: HB 1330 **Title:** _____

PH Date: ___/___/___ Exec Session Date: 02/04/10

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
Cote, David E, Chairman	Y	
Wall, Janet G, V Chairman	Y	
Potter, Frances D	Y	
Hackel, Paul L	Y	
Preston, Philip, Clerk	Y	
Richardson, Gary B	Y	
Weber, Lucy M	Y	
~~Brown, Brenda~~ Read, Robin	Y	
Nixon, David L	Y	
Thompson, Robert B	Y	
Watrous, Rick H	Y	
Rowe, Robert H	Y	
Elliott, Nancy J		N
DiFruscia, Anthony R obs		
Mead, Robert D		N
O'Brien, William L		N
Hagan, Joseph M obs		
Perkins, Lawrence B		N
Silva, Peter L		N
Smith, William B		N
TOTAL VOTE:	12	6

Printed: 12/18/2009

Committee Report

REGULAR CALENDAR

February 10, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on JUDICIARY to which was referred HB1330,

AN ACT relative to the preservation of religious freedom.

Having considered the same, report the same with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Gary B Richardson

FOR THE MAJORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MAJORITY
COMMITTEE REPORT

Committee:	JUDICIARY
Bill Number:	HB1330
Title:	relative to the preservation of religious freedom.
Date:	February 10, 2010
Consent Calendar:	NO
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

HB 1330 would prohibit a government entity from "substantially burdening" the exercise of religion. Unfortunately "substantially burden" is defined very broadly as any action that would tend to "inhibit or curtail religiously motivated practice". In addition, the bill fails to define what would constitute a compelling governmental interest. As such the bill is overly broad and could result in unintended consequences. For example, the bill could be interpreted to exempt religious institutions from zoning regulations. Religious freedom is already protected in our constitution, and if those protections are inadequate, the changes should be made by a specific law directed at the perceived inadequacy, or if it is felt that the constitution is inadequate, by constitutional amendment.

Vote 12-6

Rep. Gary B Richardson
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB1330, relative to the preservation of religious freedom. **INEXPEDIENT TO LEGISLATE.** Rep. Gary B Richardson for the **Majority** of JUDICIARY. HB 1330 would prohibit a government entity from "substantially burdening" the exercise of religion. Unfortunately "substantially burden" is defined very broadly as any action that would tend to "inhibit or curtail religiously motivated practice". In addition, the bill fails to define what would constitute a compelling governmental interest. As such the bill is overly broad and could result in unintended consequences. For example, the bill could be interpreted to exempt religious institutions from zoning regulations. Religious freedom is already protected in our constitution, and if those protections are inadequate, the changes should be made by a specific law directed at the perceived inadequacy, or if it is felt that the constitution is inadequate, by constitutional amendment. **Vote 12-6.**

Original: House Clerk
Cc: Committee Bill File

REGULAR MAJORITY REPORT

HB 1330, relative to the preservation of religious freedom.

RECOMMENDATION: INEXPEDIENT TO LEGISLATE

VOTE: 12-6

REP. GARY B. RICHARDSON

HB 1330 would prohibit a government entity from "substantially burdening" the exercise of religion. Unfortunately "substantially burden" is defined very broadly as any action that would tend to "inhibit or curtail religiously motivated practice". In addition, the bill fails to define what would constitute a compelling governmental interest. As such the bill is overly broad and could result in unintended consequences. For example, the bill could be interpreted to exempt religious institutions from zoning regulations. Religious freedom is already protected in our constitution, and if those protections are inadequate, the changes should be made by a specific law directed at the perceived inadequacy, or if it is felt that the constitution is inadequate, by constitutional amendment.

REGULAR CALENDAR

February 10, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on JUDICIARY to which was referred HB1330,

AN ACT relative to the preservation of religious freedom.

Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.

Rep. William B Smith

FOR THE MINORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MINORITY
COMMITTEE REPORT

Committee:	JUDICIARY
Bill Number:	HB1330
Title:	relative to the preservation of religious freedom.
Date:	February 10, 2010
Consent Calendar:	NO
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

The free exercise of religion is basic, and not government should have the authority to take it away. Prior to 1990, it was understood that government couldn't limit religious freedom unless it could show a "compelling interest" in doing so and no less restrictive means are available to accomplish that interest. However, in Employment Division v Smith, the Supreme Court in 1990 held that the "compelling interest" test could only be applied if a law directly targets religion, and not in cases where the law is generally applicable, with only incidental adverse effect on the free exercise of religion. In 1993, Congress passed the Religious Freedom Restoration Act to restore the "compelling interest" test for federal law. States are free to enact their own legislation to strengthen religious liberty. Thirteen states have enacted such laws, and another twelve states have favorable state court decision to require the "compelling interest" test. The minority believes that the recent infringements on freedom of religion in New Hampshire point to the need to join the states that have enacted the restoration

Rep. William B Smith
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB1330, relative to the preservation of religious freedom. **OUGHT TO PASS.**

Rep. William B Smith for the **Minority** of JUDICIARY. The free exercise of religion is basic, and not government should have the authority to take it away. Prior to 1990, it was understood that government couldn't limit religious freedom unless it could show a "compelling interest" in doing so and no less restrictive means are available to accomplish that interest. However, in Employment Division v Smith, the Supreme Court in 1990 held that the "compelling interest" test could only be applied if a law directly targets religion, and not in cases where the law is generally applicable, with only incidental adverse effect on the free exercise of religion. In 1993, Congress passed the Religious Freedom Restoration Act to restore the "compelling interest" test for federal law. States are free to enact their own legislation to strengthen religious liberty. Thirteen states have enacted such laws, and another twelve states have favorable state court decision to require the "compelling interest" test. The minority believes that the recent infringements on freedom of religion in New Hampshire point to the need to join the states that have enacted the restoration

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR MINORITY REPORT

HB 1330, relative to the preservation of religious freedom.

REP. WILLIAM B. SMITH

The free exercise of religion is basic, and not government should have the authority to take it away. Prior to 1990, it was understood that government couldn't limit religious freedom unless it could show a "compelling interest" in doing so and no less restrictive means are available to accomplish that interest. However, in *Employment Division v Smith*, the Supreme Court in 1990 held that the "compelling interest" test could only be applied if a law directly targets religion, and not in cases where the law is generally applicable, with only incidental adverse effect on the free exercise of religion. In 1993, Congress passed the Religious Freedom Restoration Act to restore the "compelling interest" test for federal law. States are free to enact their own legislation to strengthen religious liberty. Thirteen states have enacted such laws, and another twelve states have favorable state court decision to require the "compelling interest" test. The minority believes that the recent infringements on freedom of religion in New Hampshire point to the need to join the states that have enacted the restoration of the "compelling interest" test, which is what this bill would do.