

THE Future of Religious Freedom in America



Chicago
October 10-11, 2005

A conference sponsored by the McCormick Tribune Freedom Museum
in collaboration with the First Amendment Center

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Foreword

For more than a decade, the McCormick Tribune Foundation has brought together thought leaders and experts to identify and discuss significant issues affecting today's democratic society. The McCormick Tribune Freedom Museum, as part of the foundation family, carried on this tradition with its sponsorship of the "Future of Religious Freedom in America" conference.

In collaboration with the First Amendment Center, the McCormick Tribune Freedom Museum assembled some of the leading policy experts on religious freedom, top academics and subject-matter experts not only to discuss religious freedom and its challenges, but also recommend strategies for protecting it in the future.

That's why I am pleased to share this report with the hope that it inspires further dialogue and compels others to respond and act. A special thanks to senior scholar Charles Haynes with the First Amendment Center and all the conference participants. As a result of their commitment, stellar work and valuable contributions, the conference and its report were made possible.

A handwritten signature in black ink, reading "David L. Grange". The signature is fluid and cursive, with a large initial "D" and "G".

David L. Grange
President and Chief Executive Officer,
McCormick Tribune Foundation

*“Congress shall make no law
respecting an establishment of
religion, or prohibiting the free
exercise thereof...”*

Religion clauses,
First Amendment,
U.S. Constitution

Executive summary and recommendations

By Charles C. Haynes

More than 200 years after their enactment, the first 16 words of the First Amendment define and sustain the American experiment in religious freedom. It must be acknowledged that the United States failed to live up to its founding principles in 1791, and that the nation still has a distance to go in the 21st century. Nevertheless, the principles of “no establishment” and “free exercise” continue to guide the ongoing effort to extend the promise of religious freedom more fully and fairly to each and every citizen.

In the coming decades, upholding religious freedom for Americans of all faiths and none will be no easy task. The United States is today the most religiously diverse society on Earth and, among developed countries, the most religious. Expanding religious pluralism combined with culture wars involving religious differences are making our public square an increasingly crowded and sometimes hostile arena.

To explore how Americans might address these challenges, the McCormick Tribune Freedom Museum in collaboration with the First Amendment Center convened a group of religious leaders, scholars, legal experts, journalists and educators in October 2005 for a two-day dialogue about the future of religious freedom in America. The aim of the conference was to take stock of where we are as a nation under the First Amendment — and to consider where we are going.

In accepting the invitation to attend, many participants noted both the timeliness and urgency of the topic. The war on terrorism, bitter church-state conflicts over everything from religious symbols to government funding, growing religious diversity, and changes at the U.S. Supreme Court are among the important reasons why the future of religious freedom is a critical issue at this moment in our history.



Co-moderators Charles Haynes, left, and Oliver Thomas

It might be said that the most significant outcome of the conference was the conference itself. First Amendment principles are upheld and strengthened whenever Americans representing a broad spectrum of religious and ideological convictions engage in civil discourse and find some common ground. Around the conference table were people with Christian, Jewish, Muslim, Hindu, Native American and humanist perspectives as well as individuals from advocacy groups ranging from the American Civil Liberties Union to the American Center for Law and Justice. Although the conference addressed real differences, the dialogue was a model of civility and respect.



Winnifred Sullivan, University of Chicago

Given the divergent views represented at the conference, it was not surprising that participants vigorously disagreed about where to draw the line between church and state. What some described as mere acknowledgement by government of America's "religious heritage," others saw as government establishment of religion. While some supported government funding to religious groups for social services as a

matter of equal treatment, others argued that such programs must have more safeguards to prevent discrimination in religious hiring and use of tax money for specifically religious purposes.

But disagreement about how to apply the First Amendment's establishment clause did not prevent a shared understanding of the core principle of "no establishment." Most participants from across the spectrum agreed that government should not endorse religion. When someone remarked that "the last thing people of faith should want is government-sponsored religion," most heads around the table nodded in agreement. Several participants pointed out that the confusion of government speech with private speech is the cause of many unnecessary conflicts. While government is prohibited from inculcating or inhibiting religion, private citizens are free to express their faith in the public square. The First Amendment separates church from state, but not religion from politics or public life.

When the discussion turned to free exercise of religion, there was far more consensus: To the extent possible, every person should be free to practice his or her faith openly and freely without government interference. Most of the conference participants agreed that free exercise of religion needs more protection, especially the free exercise of Native American religions and other minority faiths. As the United States grows increasingly diverse in the 21st century, so will the need for more accommodation of religious practice

in the workplace, public schools, prisons and elsewhere. Meeting the challenges of religious diversity — and creating a level playing field for all — will require a strong national commitment to religious freedom and liberty of conscience for people of all faiths and none.

Although the conference focused primarily on the United States, participants agreed that any discussion of the future of religious freedom at home must include consideration of religious freedom abroad. At a time when millions of people around the world are victims of sectarian violence and state repression of religious faith, it is vitally important that American foreign policy reflect a commitment to religious freedom. What this means in practice — and how the U.S. should address specific issues such as tensions between freedom and security — was the subject of much debate.

Recommendations for action

At the last session of the conference, participants identified areas of general agreement and recommended the following strategies for protecting the future of religious freedom in America.

Update and disseminate consensus guidelines on religion and public schools.

Over the past decade, a broad range of religious and civil liberties groups have developed consensus guides on the constitutional place of religion in the public schools. Unfortunately, the fact that many schools are still unfamiliar with the guidelines leads to conflicts and unnecessary lawsuits. The various consensus statements should be updated to reflect changes in the law and widely disseminated to key constituencies including government officials, educators, religious groups, the media and school board attorneys.

Develop and disseminate a consensus statement on the role of religion in the public square under current law.

A broad range of religious and civil liberties groups such as those represented at this conference have a shared understanding of current law concerning equal access for religious groups and individuals to the public square of America. But many Americans remain confused and conflicted about the role of religion in public life under the First Amendment. There is a need for a joint statement on the state of current law with respect to equal access for religious groups and individuals to public facilities and discourse. Once developed, the guidelines should be widely disseminated to government officials, religious leaders, journalists, lawyers and other constituencies.

Develop and disseminate guidance on religious accommodation in the workplace.

As America's religious diversity continues to expand, requests for religious accommodation in the workplace will increase. Consensus legal guidelines are needed to help private-sector employers understand appropriate ways to address issues such as religious garb and holidays. Guidance also is needed on constitutionally permissible religious accommodation in other government settings such as prisons and the military.

Provide First Amendment education for public officials.

Although the organizations represented at the conference sometimes differ on how to interpret the religion clauses of the First Amendment, they do agree on many aspects of current law as it applies to religious freedom issues in public education, the government workplace, the private-sector workplace and other arenas. A broad coalition of legal experts should be formed to provide continuing legal education on establishment and free-exercise issues to municipal attorneys, school board members, zoning officials and others in order to prevent violations rooted in ignorance of agreed-upon current law.

Establish a religious-freedom speakers' bureau to educate the public about the challenges of religious diversity and the meaning of the clauses of the First Amendment.

The future of religious freedom in America is threatened by the ignorance and contention surrounding the clauses of the First Amendment. Many Americans are unprepared for the challenges of religious diversity and unclear about the guiding principles of religious freedom that enable us to understand one another and to negotiate our differences. A speakers' bureau with panels of experts from various faiths and perspectives could serve as a resource for informing the public about the meaning of the First Amendment and the implications of religious diversity for our nation's future. As this conference demonstrated, Americans with divergent views on particular religious-freedom issues can often find common ground on guiding principles — and are able to model how to disagree with civility and respect.

Convene a task force to propose recommendations for addressing religious-freedom issues faced by Native Americans.

Although the principles of religious freedom are embedded in America's framing documents, they have not been fully and fairly applied to all. This is especially true for Native Americans. A task force should be convened that would make recommendations to government officials on ways to ensure greater protection for Native American religious practices and traditions.

Develop and disseminate recommendations for government officials on additional ways to balance the need for national security as part of the battle against terrorism with a strong commitment to protect the rights of religious individuals and groups.

Since the events of Sept. 11, 2001, the United States has struggled with the question of how to provide more security while simultaneously guarding First Amendment rights and civil liberties. A broad coalition of groups committed to religious freedom needs to take stock of where the nation is today on this issue and make specific recommendations for ensuring the religious freedom of domestic religious groups during the ongoing fight against terrorism at home and abroad.

Convene a working group of individuals and organizations concerned about international religious freedom to explore issues surrounding U.S. efforts to foster democracy and Western ideas of religious freedom in the non-Western world.

Although the focus of the conference was on First Amendment issues in the United States, participants recognized that any consideration of religious freedom in this country must take into account America's relations with the world. Widely divergent views were expressed about difficult issues such as proselytizing and conversion, tensions between religious freedom and national security abroad, and the meaning of religious freedom in other nations. Some participants argued that in the arena of religious freedom the United States should listen more and prescribe less in our relations with the world. Others agreed that the United States should prescribe less, but not with respect to religious freedom. A working group should be created to give fresh consideration to American foreign policies and practices concerning religious freedom.



A break-out group discusses challenges to religious freedom.

Encourage civil discourse and civic responsibility across religious and ideological differences.

Laws and courts alone cannot ensure religious freedom. In a pluralistic democracy, Americans must be prepared to do not only what is legal, but also what is right. To that end, a diverse coalition of advocacy groups and religious organizations should be convened to prepare a joint statement in support of civil discourse and principled debate. All sides should agree to discuss differences with fairness and respect and to take responsibility to protect the rights of others, including those with whom we deeply disagree.

Conference excerpts and highlights

By Robert Marus

Challenges and opportunities: The establishment clause

“Congress shall make no law respecting an establishment of religion...”

One of the most controversial issues concerning religious freedom in America is how the First Amendment’s establishment clause should be interpreted and applied. On one end of the spectrum, some people believe that any government action that could be viewed as supportive of religion is strictly prohibited. On the other end, others believe that “no establishment” only means that the federal government cannot establish an official state religion. In between are a range of more nuanced interpretations.

In order to stimulate discussion, the moderators invited people with different perspectives on church-state issues to give brief overviews on the current status of religious freedom under the First Amendment. On the establishment clause, participants heard and discussed presentations from Richard Land of the Southern Baptist Convention and Steven Green of the Willamette University College of Law.

At the outset, Land made clear that he defined the challenges facing America more in terms of free exercise than establishment:

“I think the greatest threats to religious liberty in the United States for the remainder of my lifetime are going to be attempts to suppress the free exercise of religion, not attempts to have the government establish a religion,” Land said.

Land said some officials and activists, in an attempt not to offend minority religions, have chosen to suppress all religious expression



Richard Land, Southern Baptist Convention

equally — thus risking an “artificially sanitized public square” when it comes to matters of faith. However, Land added, maintaining a proper balance between barring government establishment of religion and providing full protection for the free exercise of religion is paramount.

“The last thing that people of faith should ever want is government-sponsored religion. It’s like getting hugged by a python — it squeezes all the life out of you,” he said. “The history of that relationship is one where the state always dominates the church group and controls it — and, ultimately, drives all the life out of it.”

Steven Green, however, conveyed far more concern that the establishment clause is under threat, especially by majority-religion adherents’ demands for government sponsorship: “We’ve seen increasing pressure on the establishment clause by those who want to see the government affirm their faith,” he said. “By what right does government have to speak religiously?”

Green and other participants pointed to recent battles over government monuments or speech that some believe unconstitutionally endorses religion — such as monuments to the Ten Commandments in government buildings and school-orchestrated prayer at high school football games. Such government actions, they argued, not only risked “dumbing down” the religious references to make them constitutionally palatable, but also bore the taint of “majoritarianism” — where government endorses a religious view held by a majority of citizens in one municipality, state, or nation.

Brent Walker, executive director of the Baptist Joint Committee for Religious Liberty, quoted Justice Sandra Day O’Connor’s recent opinion in one of the Ten Commandments cases. “As Justice O’Connor said, ‘We don’t count heads before enforcing the First Amendment,’” he said.

Land countered: “I’m not arguing for majoritarianism, but I am arguing that a minority doesn’t have the right to silence a majority.”

This discussion exposed differences about where to draw the line on religious expression in government settings. When is such expression merely “acknowledgement” of America’s history and traditions and when does it rise to the level of government endorsement of religion? Colby May of the American Center for Law and Justice said people of all faiths should have respect for the aspects of American government and history that are rooted in the Judeo-Christian tradition as well as for the democratic will of the people. “We do have a representative form of government, and when Congress acts ... we have to assume that they’re

“We’ve seen increasing pressure on the establishment clause by those who want to see the government affirm their faith,” he said. “By what right does government have to speak religiously?”

— Steven K. Green,
Willamette University
College of Law

entitled to the presumption that they are speaking on behalf of the people,” he said.

But Richard Foltin of the American Jewish Committee cautioned about where such a view could lead. He pointed out that the purpose of the Bill of Rights was to protect individual rights from the dangers of majoritarianism. Even if the vast majority of the people wanted to impose their religion through government, they may not violate the religious freedom of the minority.

Some in the group wanted to emphasize what Land described as the difference “between sponsoring and acknowledging” religion.

Joe Loconte of the Ethics and Public Policy Center noted the context of student-led prayers at high school graduation ceremonies. “I’m just going to expect and hope that a high school senior at this stage in his civic development can stand respectfully and listen to a prayer,” he said. “You simply don’t have a First Amendment right, as a citizen, to not encounter religious speech that you don’t like.”



Joe Loconte, Ethics and Public Policy Center

Religious conservatives view objections to student-led prayer and religious symbols in government places as part of an effort by some “separationists” to scrub all references to religion from the public square.

“I do think that there are rabid secularists that are out there that are trying to trample out anything they can see that offends them as an expression of religion in the public square,” May said. “That’s a kind of totalitarianism that we have to resist.”

Several participants from the separationist side took strong exception to that characterization.

When he hears such statements, said Jeremy Gunn of the American Civil Liberties Union, “I think, ‘Where are they getting this from?’ If I look at the ACLU Web page, there is nothing like that,” he said. “I don’t know whether it comes from fundraising letters or whether it comes from an ill-informed media, but I think there is a willingness of people in the country to [believe that] in order to defend your own beliefs, you have to vilify and polarize the other. When we get to religion, [it] becomes an intense fight about what can often be small issues.”

Cardinal Francis George, archbishop of Chicago, speaks on religious freedom. Richard Foltin of the American Jewish Committee responds.

On the first night of the conference, Cardinal Francis George shared with participants his thoughts about religious freedom in America. Richard Foltin of the American Jewish Committee gave a response. Their exchange underscored the challenge of articulating a shared definition of religious freedom in a pluralistic democracy.

George grounded his understanding of religious liberty in *Dignitatis Humanae*, a statement from the Second Vatican Council of the Roman Catholic Church. He compared the principles outlined in the document to the U.S. Supreme Court's decisions on religious freedom, pointing out areas of agreement and disagreement.



Cardinal Francis George

For the cardinal, a major area of concern is the way in which the Supreme Court has come to view government's role as being neither to inhibit nor advance religion. *Dignitatis Humanae*, he noted, views religion as an essential good that government should encourage, as long as it does so in ways that are non-coercive and that maintain public order:

"Since religion is an essential aspect of the good of persons and therefore of the common good, the government has a duty to promote the religious life of its people. ... The Court seems to have assumed that the end or goal of the First Amendment is *not* that everyone should be assisted in accepting the fullness of truth, religious and otherwise, free of discrimination or favor to one religion over another, but rather to require the creation of a secular public culture marked by indifference to religion."

According to George, this jurisprudence has placed unjustified limits on religious expression in public life and contributed to the creation of an increasingly secular public square.

In his response, Richard Foltin said that he was concerned about the increasing crudity of public discourse, a phenomenon to which critics of the secularization of society often point — but that this problem wouldn't be remedied by increasing government

religion. "The question is not that this is a problem, but how one is to respond to that problem," he said. "Concerns about the secularization of our society should not be cited as a basis for undermining the principles of secularism on which that society is built."

It serves the common good and ensures religious freedom for all, argued Foltin, for government not to endorse any particular religion — or religion in general. Government endorsement of religion, he said, violates liberty of conscience, especially for those groups not favored by the state.

The cardinal also argued that the Supreme Court's definition of religion was itself a difficulty. "The Court correctly says that it has no role in determining the truth claims of various religions," George said. "This is proper so far as it goes, since governments lack the competence to judge transcendent religious matters. But the Court has taken this sensible restraint to an extreme point that makes it all but impossible to define what counts as 'religion.' Several holdings suggest that any and all kinds of belief, no matter whether they are totally irrational or wildly idiosyncratic, are 'religion,' even when those who hold the views themselves disavow any religious belief. Some cases have even included secular humanism under the rubric of religion."

George said such a view of religion creates incoherence in the Court's rulings on religion — an incoherence that could be remedied by returning to the view of religion that the "founding generation" held — an essentially theistic one. "Such a definition, which goes beyond the merely ethical, would at least be a starting point for building a coherent scope to the First Amendment, in which to ground free-exercise and non-establishment protections," he said.

But Foltin countered that he didn't think the nation's founders had such a definition of religion in mind — and defining religion so narrowly in our ever-more-diverse society is dangerously unworkable. "The idea of courts determining what is and is not religion, beyond an inclusive core definition, is troubling," he said. "We do have to make room in our society for different communities ... to live in accordance with the objective truth as they see it."

Charles Haynes of the First Amendment Center noted that, while many cases that trigger establishment clause disputes may seem like ‘small issues’ to an audience of policy experts, they are big issues to many Americans. “These symbolic fights aren’t only about the Ten Commandments, ‘under God’ in the Pledge, or the crèche,” he said. “They are really, more deeply, about, ‘What kind of nation are we?’ And, ‘What kind of nation are we going to be?’”

Despite the depth of the emotions about the establishment clause, a wide array of participants expressed pleasant surprise at the level of agreement in the group on what the establishment clause does mean: no direct government sponsorship of religion.

“I find it very useful to see a consensus here that government should not promote religion,” said People for the American Way’s Elliot Minberg. “The issue, of course, is what does it mean for the government to promote? And, what is religion?”

Nonetheless, Minberg said he thought grassroots public perceptions, in some quarters, of the meaning of the establishment clause weren’t likely on the same page as the consensus of the leaders in the room. “If a number of folks from some conservative groups heard what people here have said about the government not being in the business of promoting religion, they’d be outraged,” Minberg said.

Challenges and opportunities: the free-exercise clause

On free-exercise issues, there was more agreement in the room. Anthony Picarello of the Becket Fund for Religious Liberty and the ACLU’s Gunn presented brief overviews of the current status of the free-exercise clause. Both agreed that the federal courts interpret the clause much more weakly now than they did prior to the Supreme Court’s 1990 decision in *Employment Division v. Smith*.

“After *Smith*, religion can get the back of the hand — and it’s gotten the back of the hand very vigorously since then,” Picarello said.

Gunn noted the wide support in the religious-freedom community for reclaiming lost protections for free exercise. “[As to] whether there is going to be some kind of privileged status for free exercise ... this is an issue that I assume for all practical purposes that probably most people at this conference agree on,” he said.

With the opinion in *Smith*, the high court essentially shifted much of

the burden of proof away from government entities when they choose to limit an individual or group's free exercise. This means, for instance, that zoning laws may be more restrictive on houses of worship with less government justification.

The jurisprudence that led to *Smith* included several decisions endorsing the idea of government "neutrality" among religions, or between religion and non-religion. Such neutrality reduced emphasis on both of the First Amendment's religion clauses as special protections for religion.



Anthony Picarello, Becket Fund for Religious Liberty

But, according to Picarello, more recent decisions — 2004's *Locke v. Davey* and 2005's *Cutter v. Wilkinson* — mean devotion to neutrality may be wavering on the Court.

"With the combination of *Locke* and ... *Cutter v. Wilkinson*, the Court has established more 'play in the joints'" between the establishment clause and the free-exercise clause, Picarello said. "That principle (neutrality) seems to be breaking

down a little bit — there now seems to be a little bit of room for religion to be treated differently — a little room to be treated worse, as in *Locke*, a little room to be treated better, as in *Cutter*. On a good day, I hope that this is the beginning of the end for *Smith*."

For Picarello and some other conference participants, that is a two-edged sword. Those who support some forms of government funding for education or social services through religious institutions view such funding as more of a free-exercise issue — why should religious institutions be treated differently from other charitable organizations?

For advocates of a strict interpretation of the establishment clause on funding issues, the opposite is the case: They believe that government funding of religion is a form of establishment that violates a core principle of religious freedom.

The discussion about this issue also raised a recurring controversy in religious-funding debates: How proponents and opponents use the term "discrimination" when talking about funding religious organizations.

For supporters of government funding for religious social services, the practice of denying funding to them amounts to government discrimination against religion in general. But opponents of

government funding to religious groups that perform social services often note that such groups, under the Civil Rights Act of 1965, have the right to discriminate in hiring on the basis of faith and ideology — and that government shouldn't be funding such discrimination.

Several participants noted the plight of members of minority communities whose rights of conscience are not often embraced by the wider culture or government officials in the same way as the rights of members of larger or more powerful faiths or ethnic groups.

The ACLU's Gunn noted the case of atheists and humanists. "Where is the problem in the United States? There *are* some rabid secularists out there — some may even belong to my organization," he said, to laughter. "But the problem is less there than on the other side of the equation — and that is non-believers who are essentially excluded from public office in the United States."

Gunn said the alleged secularists "probably aren't too much of a danger right now in a country that is just completely infused with religion." He continued: "I would hope that all of us who should be promoting this issue and interested in this issue of the free exercise of religion would do this because of our profound respect for the consciences of individuals. ... That we would respect those rights for an evangelical Christian, for a Muslim and for somebody who does not believe in God as well — that they all should have a place in American civil life."

Participants spent significant amounts of time discussing how to protect the rights of

A dialogue about 'discrimination' and religious liberty

What's in a word? In the case of the term "discrimination" used in the context of debates about government funding of religious groups, the word has various meanings depending on how one understands the controversy.

For supporters of government funding for religious social services, the practice of denying funding to religious institutions amounts to government discrimination against religion in general. Meanwhile, opponents of any government funding for houses of worship or other deeply religious organizations note that such groups, under the Civil Rights Act of 1965, have the right to discriminate in hiring on the basis of faith and ideology — and that government shouldn't be funding such discrimination.

Representatives of each side say their opponents' use of the term to describe their view bothers them deeply. "If you use the term 'discrimination' as opposed to, say, promotion of religion, it becomes loaded," said Oliver Thomas, executive director of the Niswonger Foundation.

But Joe Loconte, of the Ethics and Public Policy Center, noted that opponents of government funding for religious groups that are allowed to discriminate in their hiring regularly raise the rhetorical specter of government funding Jim Crow-style discrimination. "That is destructive of civic discourse — I wish more of my friends on the left would pay attention to that," he said.

To Cole Durham, a law professor and director of the International Center for Law and Religion Studies at Brigham Young University, the use of the "discrimination" rhetoric is an indication of a legal trend of recent decades — viewing non-discrimination as a higher legal value than inherent freedom. "The religion clauses are being turned into non-discrimination clauses," he said. Durham noted competing views over the meaning of the First Amendment's religion clauses: Whether the Constitution treats religion as something special, set aside for special protection (free exercise) and special disfavor (non-establishment) — or as just another civil right. "If the freedom domain shrinks and we continue to have equality, reduced though still equal shares of freedom will not mean as much."

America’s religious minorities, such as Muslims, in the future.

“The vast majority of Americans are extremely confused about what they can and cannot do about religion in the public square, or whether they can practice their faith in public,” Maha ElGenaidi, founder and president of the Islamic Networks Group, told her fellow participants. “These issues are not filtering down to the community at large, and a lot of people are getting their signals from the media.”

ElGenaidi said that, in her group’s educational efforts for employers about Muslims and Islamic practices, she sometimes runs into opposition from evangelicals, who believe that such sensitivity training unfairly features Muslims and their needs for workplace accommodations or amounts to unwelcome Islamic proselytizing.

Other participants noted that violations of workplace religious freedom continue to grow for Muslims and other religious minorities. The ever-increasing religious pluralism in the country, and the continuing evolution and internationalization of the way Americans do business, may only make such conflicts more frequent.

“It is increasingly difficult for people of religious faith who have limitations on what days they can work, what garb they can wear, what duties they can perform — it is increasingly difficult for them to participate in the workplace and practice their faith,” said the AJC’s Foltin.

Melissa Rogers of Wake Forest Divinity School noted the wide agreement in the room on protecting freedom of conscience for people of all faiths — but that such agreement may not be reflected in the wider culture.

“One can have a belief in exclusive truth and still believe in religious freedom ... and there’s a crisis in the Christian community about not understanding that principle,” she said. “You can believe your religion is the right religion and still defend the right of other people to express their faith to the fullest extent. And there’s a yawning gap — a huge gap — between the people in this room and the people in the pews. And that’s scary.”

ElGenaidi said she was worried about a future backlash against U.S. Muslims’ religious freedom in the event of future domestic terrorism perpetrated by radicals.

“My greatest fear as an American and a practicing Muslim is to possibly suffer the same predicament that other ethnic and religious groups have suffered when a member of their community commits an atrocity such as Pearl Harbor or 9/11,” she said.

“My greatest fear as an American and a practicing Muslim is to possibly suffer the same predicament that other ethnic and religious groups have suffered when a member of their community commits an atrocity such as Pearl Harbor or 9/11.”

— Maha ElGenaidi,
Islamic Networks Group

Haynes summed up the discussion noting that many minority communities will have to be accommodated to maintain religious freedom for all in the future. “The religion clauses really are about freedom of conscience for everyone — and what does that look like?” he said.

Religious freedom in America: What is the future?

In order to explore the future of religious freedom in the United States — and to identify areas of agreement for action — participants divided into three groups to discuss challenges and opportunities in courts and legislatures; neighborhoods and community institutions; and the international community.

In the courts and legislatures

In spite of differences about how to interpret and apply the First Amendment in particular cases, participants agreed that public officials, religious leaders and the general public must be better informed about the current state of the law concerning religious expression and practice.

Participants noted that various consensus statements on religion in the public schools developed in the 1990s could help prevent unnecessary fights and lawsuits. Unfortunately, however, many educators and parents are still unaware of these agreements. It is time to update these statements and disseminate them more widely.

Wake Forest’s Rogers called for similar joint statements on issues such as equal access for religious groups to public facilities, accommodations for religious exercise in the workplace, and “a statement that would delineate the rights of religious people to participate in public discourse.” She said that “all of us in this room know there is that right to participate, but there is some confusion about this.”

Once the agreements are reached, it is essential to “attach really specific plans of dissemination that are tailored to different religious communities and other groups.” She noted that some of the specific communities to be targeted included policymakers, teachers, religious leaders and media representatives.



Shabbir Mansuri of the Council on Islamic Education, left, and Maha ElGenaidi of the Islamic Networks Group

A discussion of free exercise for Native Americans

Protecting religious freedom for America's native communities has been a struggle for the nation since the founding – and continues to be.

Many of the courts' most important decisions on religious freedom – such as *Employment Division v. Smith* in 1990 – have their roots in conflicts over American Indian religious practices. Conference participants discussed native peoples' needs for protection in the future, noting the need to take into consideration how Native Americans understand “religion.” As Ines Talamantez of the University of California-Santa Barbara put it: “Religion in native communities permeates everything. ... It isn't a separate category in the same way that we compartmentalize everything in the Western tradition.”

Michael McNally, an expert on Native American religions at Carleton College in Minnesota, said his fellow participants seemed to have reached “a sort of hasty agreement on what [freedom of conscience] means,” because native peoples often have a more communitarian and less individualistic view of the concepts of conscience and religious practice.

Talamantez said that, during much of the conference, she felt like an observer of a colloquy among experts speaking “legalese” about religious-freedom issues that arise only under Western definitions of liberty. “I've had to learn American history; I've had to learn about this culture. And yet this culture has not had to learn about my history,” she said. “How are we going to communicate these kinds of issues to the general public when these issues aren't being really discussed in this forum?”

Nonetheless, Talamantez said she understood the broader principle other participants were trying to protect. “What we're talking about is the human spirit and how we want our country to recognize the powerful commitment that the founding fathers had toward this,” she said.

Another conference participant likened the concerns over the native view of religious freedom to his own African-American experience.

Jeffrey Haggray, executive director of the District of Columbia Baptist Convention, said he grew up in Savannah, Ga., in the 1960s. “My very first religious experience ... was seeing teardrops fall from my father's face when I was 6 years old ... when he was pulled over by a white cop who looked into the window of our car and looked at my father and said, ‘Where are you going, boy?’” he said.

Haggray said his father responded, “The boy is going with me.” That assertion of his human dignity in the face of discrimination was, in itself, an expression of his religious liberty, he said.

“I've reflected on those words for the last 36 years,” Haggray said. “Part of what my father was doing was asserting his humanity and his adulthood, which for him was part of his Christianity. The lines of demarcation and separation between justice, politics, economy ... which are drawn by the majority so often, are not really lines of demarcation for the minority.”

In addition, participants articulated a need for ongoing legal education on First Amendment issues for government attorneys, public school officials, prison officials and others whose decisions affect the religious freedom of others, including vulnerable groups. “There are some fairly egregious abuses that can be avoided fairly easily with an effort along those lines,” said the Becket Fund’s Picarello.

In the neighborhood

A more difficult challenge, participants generally agreed, will be encouraging a more informed and civil public discourse on issues related to religion in American public life.

Some participants decried the heated pronouncements from some conservative religious leaders about the “secular” attack on religion and “hostility” to religion in the public square. Others, such as the Ethics and Public Policy Center’s Loconte, were critical of how some separationists characterize religious groups. Using the debate about government funding for religious groups that practice religious “discrimination” in hiring as an example, Loconte said: “The language that many on the left are using to describe what happens in the life of these religious organizations ... is not just the language of discrimination, but (the hiring policies of faith-based groups are being) likened to the racist bigotry of the Jim Crow South. And I think that that is profoundly offensive to most religious Americans. That is destructive of civic discourse. I wish more of my friends on the left would pay attention to that.”

Participants on all sides recommended the development of a consensus set of guidelines to encourage civility in public discourse about religious matters.

Participants also agreed that better education for employers — in particular, guidelines for the private sector — on accommodation for religious practices of employees is essential as workplace diversity continues to increase.

In the world

Going forward, perhaps the greatest challenge for religious freedom will be maintaining it in a world that, while it grows smaller by the day, also often seems to grow more hostile to religious freedom.

While too vast a topic to tackle adequately in a day-and-a-half-long conference, America’s role in the world as a model of religious freedom was often on the minds of participants.

In particular, many worried that America could be viewed by other nations as not living up to the very ideals it purports to export to the world.

“The No. 1 complaint about Americans in the Muslim world is that Americans do not have a clue about Islam, (about majority-Muslim) countries or circumstances — therefore, Americans do not have the authority to export anything to [a culture] which they do not understand,” the Islamic Networks Group’s ElGenaidi said. “So, I



Anuttama Dasa of the International Society for Krishna Conscienceness speaks during a break-out session.

would like to see us increasing global studies in elementary schools, high schools, and colleges and universities, so Americans could develop a greater understanding and appreciation for the rest of the world — particularly the Muslim world, which is a priority right now.”

Winnifred Sullivan of the University of Chicago led a small group in discussing challenges for international religious freedom. “Overwhelmingly, what our group kept coming back to was the importance of listening to people outside of the United

States — listening generally in the context of global dialogue to people of different religious traditions, people from different countries, people from different parts of the world,” she said. Some participants warned against imposing Western ideas of religious freedom without paying more attention to the traditions and needs of other peoples and nations.

But the SBC’s Land, who also sits on the U.S. Commission on International Religious Freedom, spoke for others in the room when he talked about the need for the United States to speak out for religious freedom around the world: “If we ought to be about anything, we ought to be about that. ... If every human being has an inherent, unalienable right to freedom of conscience ... then we ought to be saying that.”

The group did agree on one aspect of international religious freedom: Clear guidance on balancing America’s commitments to both security in an age of terrorism and religious freedom for individuals and groups will be absolutely necessary for the future.

Concluding thoughts

Nathan Diament of the Union of Orthodox Jewish Congregations summed up a key outcome of the conference this way: “Really, what this all comes down to is educating different constituency groups about religious freedom and religious communities. ... What all of us in this room have in common is that we have had an opportunity to understand religious diversity in America. ... How can we ensure that more people become aware of this diversity and its implications for religious freedom in the future?”

Participants at the conference represented perspectives from across the religious and ideological spectrum. But in the spirit of the First Amendment, they were able to debate differences, understand one another and find areas of common ground. This was made possible, in part, by a shared commitment to religious freedom for all. But it was also grounded in personal relationships forged over the years by people who respect one another even as they may sometimes deeply disagree about how to apply the First Amendment.

In a personal moment during the conference, Colby May of the American Center for Law and Justice and Shabbir Mansuri of the Council on Islamic Education talked about their friendship and working relationship. Their comments followed a debate about remarks from some conservative Christian leaders attacking Islam.



Colby May of the American Center for Law and Justice

“What we’re trying to do here collectively is to provide a civic framework for the communities to sort out their own differences,” Mansuri said.

“I should not ask the other side to change their mind; that’s not the idea. But we can engage one another with civility and respect.”

“What Shabbir and I have been able to recognize is that he holds within himself some very wonderful convictions that I do too,” May said. “I think it is part of having an ordered liberty and a civil society.”

May concluded: “All the effort here is to try to find the things that bring us together.”

Excerpts from statements by participants on the future of religious freedom*

“As we reflect on the *future* of religious liberty in America, we must ask ourselves, *why* ‘Congress shall make no law’ The answers are clear from history. The framers of the Constitution, the Bill of Rights, and every subsequent amendment were seeking, each in his or her own imperfect way, to give life and substance to the words of the Declaration of Independence, which states that ‘all Men are created equal, [and that] they are endowed by their Creator with certain unalienable Rights.’ They understood well that no government body, especially unelected judges, can be trusted always to act in good faith.”

Robert A. Destro
Catholic University of America

“The challenge is to maintain a series of crucial balances. First, we need the balance of secularity. In a world that respects both religion and religious difference, it is vital to preserve the secularity of the state — to maintain the qualities of neutrality and impartiality that allow respectful non-identification of the state with religious institutions and that resist the dominance of any particular faith — without promoting secularism or secularization. Second, we need the balance of equality and freedom. In a world committed to equality, it is vital to remember that equality without freedom is empty. At worst, it amounts to equal-opportunity oppression, and, at best, it amounts to an empty space that only freedom can fill with meaning. This is particularly true when it comes to freedom of religion. The absence of religious discrimination is important, but it is not the same as religious freedom. Neutral and general laws that proclaim equality for all too often mean non-freedom for some. In our increasingly constricted societies,

it is vital to remember that equality alone is no guarantor of justice, and that we need to find ways to strengthen freedom against the pressures of a tightening world.”

W. Cole Durham
Brigham Young University

“The fundamental meaning of your life is for you to choose, and the choice is sacred ground. I may be free to comment on it, but I and my majority cannot deprive you of your expression of that belief. You, in your turn, must reciprocate our forbearance, leaving us to freely make our choices. If, under the best of circumstances, we thoroughly explore our differences and yet reach an impasse, set the arguments aside and build on that soil where commonality is possible. A mutual respect and a generosity of mind have been achieved. Unless this step is made, our proclaimed tolerance is hollow.”

Thomas Ferrick
Harvard University

“Religious freedom is and has been supported by a diverse and often silent group. This diverse core of supporters continues to exist today, despite the fact that it is obscured by partisan rhetoric. In our future, we must strengthen this core, so that we can rely upon it to buoy and propel religious freedom through our own period of turmoil. ... The future of religious freedom depends on our ability to revive this core and its disparate yet unheard members. We must re-engage them in public discourse, and reawaken their commitment to this ideal by stirring imaginations, hearts and minds.”

Isabelle Kinnard
Council for America’s First Freedom

**Quotes taken from statements submitted by some participants prior to the conference.*

“Religious conviction has profoundly influenced our nation throughout its history. There would have been no abolitionist and anti-slavery movement without the leadership and support of people of faith. There would have been no child-labor reform movement without the impetus of religious conviction. There would have been no civil rights movement without the moral imperatives provided by people of religious conviction. Our Baptist ancestors were active in all of these movements. They believed their moral convictions left them no choice but to be involved. They found no contradiction between such action and their commitment to church-state separation. Clearly, as American citizens we have the *right* to be involved in the public and legislative arena. As obedient Christians, we have the *responsibility* to be involved.”

Richard Land
Southern Baptist Convention

“Public support for religion has been eroded as interest-group politics seeks to cast religion as if but one or more among several competing interest groups vying to legitimate self-interested ‘rights.’ ... The challenge we face for the future of religious liberty will require us to reinvigorate the constituencies of churches to see the protection of religious liberty for persons of every faith as a foundational concern. Inter-religious insensitivity dismissing high-energy religious groups as ‘cults,’ the naïve assumption that large, ‘historic’ or ‘mainline’ denominations will be left alone and even the dangerous acceptance of second-class constitutional or societal status must each be addressed from within the churches. The liberty of any depends on the reality of liberty for the many.”

N.J. L’Heureux Jr.
National Council of Churches

“Today the outworking of disestablishment is commonly known as the ‘separation of church and state.’ This separation is of the institutions of government and organized religion, not a bar to government and religious organizations communicating and certain kinds of cooperation (such a bar is impossible without violating speech and associational rights). When separation of church and state is mistakenly taken to mean a socially or juridically enforced separation of religious values from public affairs and law formation (privatization of religion), then the concept has no antecedent in the early American states. Indeed, in the new republic, religion was widely expected to serve as a seedbed of civic virtue, from which a people acquired the knowledge to properly exercise the office of citizen and the self-restraint to not let liberty careen into license.”

Carl H. Esbeck
University of Missouri-Columbia

“While there have been significant incremental improvements in the sensitivity of educators to religion and religious liberty (a hopeful sign), I worry that the deep-seated secularism of the educational establishment, often uncritically endorsed by religious liberals, will continue to marginalize and discredit religion. By excluding religious voices from the curricular conversation, public (and much private) education restricts the freedom of the marketplace of ideas, nurturing an uncritical secular mentality among students.”

Warren A. Nord
University of North Carolina, Chapel Hill

“The future of religious freedom in the United States is intimately bound up with the future of religious freedom everywhere. Not that Americans should try to export their own distinctive version of religious freedom to other countries ... but that Americans will have to learn in the area of the regulation of religion, as in so many other areas, that a peaceful global future demands conversation and dialogue with citizens of other countries. There are myriad traditions in the world’s political and religious histories of ways in which multiple religious communities have been and are governed and how they have learned to live together. America would do well to listen to those myriad voices as it learns to live with the complexity of an increasingly diverse and virtually unregulated religious landscape at home.”

Winnifred Fallers Sullivan
University of Chicago

“The preservation of true religious freedom will require the diminishment of religion as a political tool and the recognition that true believers of many faiths may use their faith to honestly arrive at very different political convictions Majorities, especially culturally dominant ones, always resist change, and American culture has been in a period of accelerated change and reaction for half a century. The preservation of religious freedom will require that current majorities accept the inevitability of cultural change.”

Mitchell Tyner
General Conference of Seventh-day Adventists

“The future of religious freedom in America looks very promising, the future for religious freedom in Washington, D.C., less than promising. In America at large, religious diversity, inclusion and tolerance continue to grow and flourish. In large cities and smaller towns, people of many faiths interact often in the workplace and the marketplace, and, generally, respect one another’s beliefs and practices. ... But in Washington, D.C., the outlook is less sunny. In the capital, special-interest groups on poles of the political spectrum, and the senators and congressmen with whom they work, and the broadcast, print and web media monsters which must daily display ‘both sides,’ all have an incentive in highlighting extreme positions and fostering disagreement rather than compromise.”

Nathan Diament
Union of Orthodox Jewish Congregations of America

“Religious freedom in America is threatened by a pervasive belief that religious disputes should be settled by a majority vote. Although majoritarian principles are fundamental in a democracy, the Bill of Rights generally and the First Amendment’s religion clauses in particular are ‘counter-majoritarian.’ They ensure the rights of minorities and protect against the tyranny of political majorities. ... I would like to propose a Golden Rule for church and state which says: ‘I cannot ask government to promote my religion if I don’t want government to promote someone else’s religion; I cannot permit government to hinder someone else’s religion if I don’t want government to hinder my religion.’”

J. Brent Walker
Baptist Joint Committee for Religious Liberty

“Religion in the curriculum of the public schools will continue to be an issue that troubles the nation. The relationship between religion and the biology curriculum has been and is a source of tension as theories of evolution, intelligent design theory and other theories of human origin compete for a hearing in the classroom. One of the contributing causes to the conflict is the lack of clear articulation and critique of philosophies of knowledge, of methodologies used to gain the various sorts of knowledge and of the limits of knowledge. Church-state conflicts then grow out of inadequate theories of knowledge. Textbook writers and publishers can help solve an unnecessary church-state problem, as well as produce some better thinking American citizens, by introducing some philosophy of knowledge, some epistemology, into their texts. In the meantime, the courts are asked to solve problems for which there are no thoughtful resolutions.”

James Halstead
DePaul University

“The future of religious freedom in America is uncertain. As a result of our Constitution’s protection of both religious free exercise and religion-state separation, and the nature and diversity of our people and our social and political system, America has seen tremendous religious freedom. Threats to that tradition, however, are posed by several factors. First, we have already seen erosion in our Constitution’s protection of religious freedom, especially concerning religion-state separation. ... With the retirement of Justice O’Connor, who has been a key voice on the Supreme Court on such issues, there is further, serious jeopardy in this

area. In addition, religion has in some ways become or has been used as a divisive political issue, which can lead to such problems as decreased respect for religions as well as political differences.”

Elliot Minberg
People for the American Way Foundation

“It seems an increasing number of religious people are engaging in debates about policy and politics without making needed distinctions between the religious and governmental realms. For example, some appear to believe that religious convictions alone are a sufficient justification for governmental action. Some seem to have fused, and thus confused, the Christian cross and the American flag. If serious efforts aren’t made within religious communities to highlight distinctions between the religious and governmental spheres, I fear this confusion ultimately will damage religious freedom.”

Melissa Rogers
Wake Forest University Divinity School

“As we discuss the future of religious freedom, it remains troubling to discover that no United States court has cited the International Religious Freedom Act of 1998 (IRFA). Although several courts have examined the Department of State’s Annual Report on International Religious Freedom that investigates factual conditions in other nations, none have cited IRFA’s call for asylum adjudication reform. Instead, Courts of Appeals continue to apply tests that find no violation when laws are determined to be neutral and generally applicable. Most recently, the Fifth

Circuit in *Li v. Gonzales* denied the asylum claim of a Chinese Protestant who refused to register his house church under China's registration policy which included oversight by a patriotic board of review. The applicant's refusal to register led to detention, beatings and subjection to electric shock as well as loss of employment. The court, noting that prosecution for violation of laws of general applicability does not constitute persecution, concluded that Mr. Li was prosecuted for his activities and not persecuted on account of his religion. ... The failure of advocates and courts to raise IRFA reveals one additional obstruction to the future protection of religious liberty."

Craig B. Mousin
DePaul University College of Law

"Religious liberty — as a fundamental right within America's system of values — cannot be taken for granted in the future; nay more, Americans must strive more vigorously now than at any time in our history to interpret, defend, and advance religious liberty as a first principle of our heritage, identity, and legacy. ... Much of the classical discussion of religious liberty that is held occurs just up above the heads of certain segments of the population in American life who are unaware that an entire arsenal of protections, case law, debates, and rights exists to assist them in pursuing a full quality of life in this country. Many are simply unaware that they have the freedom and the right to worship, dress, associate, contribute, advocate, and so on in a variety of ways and arenas. Consideration must be given to popularizing the discourse and the images regarding religious liberty among emerging populations in new ways so as to eradicate the deliberative divide."

Jeffrey Haggray
District of Columbia Baptist Convention

"If the Council on Islamic Education's experience ... in the education arena is any indication, the principles of separation of church and state and respect for religious pluralism embodied in the First Amendment remain a strong and valuable part of the American system of policymaking. The establishment clause provided a perfect foundation for addressing concerns about the appropriate place of religion in K-12 curriculum, and for further strengthening U.S. education in this regard. The uniquely American idea that all religions are equal in the eyes of government has legitimized the concept of teaching about all faith traditions equally in an academic and respectful way."

Shabbir Mansuri
Council on Islamic Education

"Every country in the world has laws and practices that govern the relationship between religion and the state. Perhaps more than any other legal field, laws relating to religion touch upon peoples' sense of identity. The way in which the state articulates and regulates its relationship to religion (and the relations of religions with each other) is likely to be felt viscerally by the populace probably more than any other legal topic, whether it be commercial law, criminal law, or property law. ... The United States is no exception. Aside from abortion and the legal status of homosexuals (both of which are closely tied in much of the public mind with religious beliefs), the most salient and emotional constitutional conflicts typically revolve around religion: prayers and Bibles in schools, state funding of religious institutions, 'under God' in the Pledge of Allegiance, and the posting of the Ten Commandments on public property. ... While people legitimately may differ on the extent to

which these topics are symbolic and which are more substantive, the subjects galvanize partisans and feed the flames of culture wars.”

T. Jeremy Gunn
American Civil Liberties Union

“Today, the First Amendment fails to protect the free exercise of religious traditions of over five hundred Native American nations, a human rights concern that has brought Native communities to seek redress in international arenas and elsewhere in U.S. law. This is, to be sure, in part a result of the Rehnquist Court’s restrictions on the scope of free-exercise protection generally. But it is also much a part of a long history of willful discrimination against and broad misconstruals of Native religious and cultural traditions. ... While the possibilities of the Free Exercise clause for any minority religion seem limited in the near term, there is ample room to raise the level of sophistication with which courts of law and public opinion understand the proliferation of Native claims to religious freedom today, for they are similar to but legally and substantively distinct from other minority religions and new religious movements of vocal concern to critics of expansive free-exercise protection.”

Michael D. McNally
Carleton College

“(The religion) clauses work together to assure that government does not put its thumb on the scales in favor of either religion or secularism; rather, they provide rules of the road that will allow the nation’s citizens to make a better society together in the face of deep and fundamental differences — in other words, a secular but not a secularist society. I believe that this end is best served by a strong interpretation of both the Free Exercise and Establishment

clauses, an approach that protects members of minority faiths from the encroachments of untethered majoritarianism, as well as protects the autonomy of religious institutions from undue state interference and guards against the danger of religions seeking access to the levers of governmental power. Unfortunately, the Supreme Court seems more and more to be moving in the opposite direction, toward a weak interpretation of both clauses that may ultimately present no significant bar to majority action at all.”

Richard Foltin
American Jewish Committee

“America’s Founders were among the most realistic political leaders in history. No generation thought more deeply about how to reconcile human nature with the idea of representative government. ‘Even if every Athenian citizen had been a Socrates,’ warned James Madison in *The Federalist Papers*, ‘every Athenian assembly would have been a mob.’ Democracies depended on citizens of virtue, they reasoned, and religion was the surest way to produce them. That’s why they made religious liberty the linchpin of democratic government: to create as much civic space possible for religious institutions to impart the virtues necessary for citizenship. ... All of this suggests that as the future of religious freedom in America goes, so goes the future of America. It is hard to imagine that American democracy could retain its vigor and essential integrity utterly divorced from its founding ideals.”

Joe Loconte
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First Amendment Center

The First Amendment Center works to preserve and protect First Amendment freedoms through information and education. The center serves as a forum for the study and exploration of free-expression issues, including freedom of speech, of the press and of religion, and the rights to assemble and to petition the government.

The First Amendment Center, with offices at Vanderbilt University in Nashville, Tenn., and Arlington, Va., is an operating program of the Freedom Forum and is associated with the Newseum. Its affiliation with Vanderbilt University is through the Vanderbilt Institute for Public Policy Studies.

McCormick Tribune Freedom Museum

The McCormick Tribune Freedom Museum inspires generations to understand, value and protect freedom. Through interactive explorations, visitors gain a greater understanding of the struggle for freedom in the United States and the role the First Amendment plays in society. The McCormick Tribune Freedom Museum is part of the McCormick Tribune Foundation family, which also includes the Robert R. McCormick Museum, Cantigny Park and Golf, the Cantigny First Division Foundation and five grant making programs.

A focus on children, communities and country binds the Foundation and its many parts and keeps us true to our mission of advancing the ideals of a free and democratic society. To learn more, please visit www.mccormicktribune.org.



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