

*Testimony of
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*On behalf of the
United States Conference of Catholic Bishops*

*Before the Judiciary Committee of the
United States House of Representatives,
Subcommittee on the Constitution*

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Mr. Chairman and distinguished members of the Subcommittee, allow me to thank you for the invitation and opportunity to be with you today to offer testimony on religious liberty. Let me also express my appreciation to you for calling this hearing on a topic of fundamental importance to our Church and to our Nation.

I am here today representing the United States Conference of Catholic Bishops (USCCB). I serve as Bishop of the Diocese of Bridgeport, and as the newly appointed Chair of the USCCB's Ad Hoc Committee for Religious Liberty. I will summarize my remarks and ask that my full written testimony be entered into the record.

I hope to address three topics today. First, I would like to offer a few brief reflections on the Catholic vision of religious freedom for all, as rooted in the inherent dignity of every human person, and this vision's deep resonance with the American experiment. Second, I would like to identify certain threats to religious liberty that have emerged with particular urgency in America today. And third, I would urge you to action in support of particular legislative measures that would secure religious liberty against these threats.

I.

Religious liberty is not merely one right among others, but enjoys a certain primacy. As the Holy Father, Pope Benedict XVI recently explained: "It is indeed the first of human rights, not only because it was historically the first to be recognized but also because it touches the constitutive dimension of man, his relation with his Creator." (Pope Benedict XVI, *Address to Diplomatic Corps, 10 Jan. 2011*.) The late Pope John Paul II taught that "the most fundamental human freedom [is] that of practicing one's faith openly, which for human beings is their reason for living." (Pope John Paul II, *Address to Diplomatic Corps, 13 Jan. 1996*, No. 9.) Not coincidentally, religious liberty is first on the list in the Bill of Rights, the charter of our Nation's most cherished and fundamental freedoms. The First Amendment begins: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." It is commonly, and with justice, called our "First Freedom."

Religious liberty is also prior to the state itself. It is not merely a privilege that the government grants us and so may take away at will. Instead, religious liberty is inherent in our very humanity, hard-wired into each and every one of us by our Creator. Thus government has a perennial obligation to acknowledge and protect religious liberty as fundamental, no matter the moral and political trends of the moment. This insight as well is reflected in the laws and traditions of our

country from its very inception. The Declaration of Independence boldly proclaimed as a self-evident truth that our inalienable rights are endowed by our Creator—not by the State.

Religious freedom is most commonly understood as an individual right, and it certainly is that. Religious freedom proceeds from the dignity of each person, and so protects each person individually. “[T]he exercise of religion, of its very nature, consists before all else in those internal, voluntary and free acts whereby man sets the course of his life directly toward God” (Second Vatican Council, *Dignitatis Humanae*, No. 3). Therefore individuals are not to be forced to act in manner contrary to [their] conscience, nor restrained from acting in accordance with [their] conscience. (Ibid.) Congress has shown special vigilance in protecting these individual rights of conscience, for example, in the form of the Religious Freedom Restoration Act (RFRA), which forbids the federal government from imposing any substantial burdens on religious exercise absent the most compelling reasons.

But religious freedom also belongs to churches and other religious institutions, comprised of citizens who are believers and who seek, not to create a theocracy, but rather to influence their culture from within. The distinction between Church and State, between God and Caesar, remains fundamental to Christianity (Pope Benedict XVI, *Deus Caritas Est*, No. 28). We look to the State not to impose religion but to guarantee religious freedom, and to promote harmony among followers of different religions. The Church has a proper independence and is structured on the basis of her faith as a community the State must recognize (Ibid.). An indispensable element of this independence is the right of churches not to be hindered, either by legal measures or by administrative action on the part of government, in the selection, training, appointment, and transferral of their own ministers (Second Vatican Council, *Dignitatis Humanae*, No. 4). We are grateful that federal courts in the United States—at least to date—have uniformly recognized this core protection under the Religion Clauses of the First Amendment.

Finally, the Church teaches that these rights of religious freedom—prior to all other rights and even to the State, and protecting both individuals and institutions—are held not just by Catholics, but by *all* people, by virtue of their common humanity. Government has the duty to assume the safeguard of the religious freedom of *all its citizens*, in an effective manner, by just laws and by other appropriate means (Second Vatican Council, *Dignitatis Humanae*, No. 6 (emphasis added)). Even in societies where one particular religion predominates, it is imperative that the right of all citizens and religious communities to religious freedom should be recognized and made effective in practice (Ibid.). The United

States stands strongly for the principle that these rights of freedom are also rights of equality that government should not impose any special civil disadvantages or otherwise discriminate against its citizens based on religion. And although it may not have always lived up to this or other religious freedom principles in practice, our country's unique capacity for self-correction has always provided avenues to repair to these principles that have made it a great nation.

II.

Regrettably, now is the time for such self-correction and repair. In the recent past, the Bishops of the United States have watched with increasing alarm as this great national legacy of religious liberty, so profoundly in harmony with our own teachings, has been subject to ever more frequent assault and ever more rapid erosion.

As I mentioned previously, I am the Chair of the USCCB's new Ad Hoc Committee for Religious Liberty, which was instituted precisely to help resist these assaults and reverse this erosion. The Bishops of the United States decided in principle to institute a committee like this in June of this year, based on developments over the months and years preceding that date. That I am already appointed as Chair represents action at near light-speed in Church time, and attests to the urgency of the matter from the Bishops' perspective.

Although the Bishops' decision was based on facts arising before June, I am here today to call to your attention grave threats to religious liberty that have emerged even since June—grim validations of the Bishops' recognition of the need for urgent and concerted action in this area. I focus on these because most of them arise under federal law, and so may well be the subject of corrective action by Congress.

- In August, the U.S. Department of Health and Human Services (HHS) issued regulations to mandate the coverage of contraception (including abortifacients) and sterilization as "preventive services" in almost all private health insurance plans. There is an exception for certain religious employers; but to borrow from Sr. Carol Keehan of the Catholic Health Association, it is so incredibly narrow that it would cover only the "parish housekeeper." And the exception does nothing to protect insurers or individuals with religious or moral objections to the mandate. The "preventive services" mandate is but the first instance of conscience problems arising from the Patient Protection and Affordable Care Act

enacted in March 2010 ó an act whose goal of greater access to health care the Bishops have long supported, but that we had persistently warned during the legislative process did not include sufficient protections for rights of conscience.

- In May, HHS added a new requirement to its cooperative agreements and government contracts for services to victims of human trafficking and to refugees who are unaccompanied minors, so that otherwise highly qualified service providers, such as USCCB's Migration and Refugee Services (MRS), will be barred from participation in the program because they cannot in conscience provide the "full range" of reproductive services— namely, abortion and contraception. This requirement is exactly what the American Civil Liberties Union (ACLU) has urged HHS to adopt in a lawsuit challenging the constitutionality of MRS's longstanding contract with HHS to serve victims of human trafficking. Ironically, ACLU has attacked the Church's exemplary service to these victims as a violation of religious liberty. Already, HHS has taken its major program for serving trafficking victims away from MRS and transferred it to several smaller organizations that frankly may not be equipped to assume this burden.
- The State Department's U.S. Agency for International Development (USAID) is increasingly requiring contractors, such as Catholic Relief Services (CRS), to provide comprehensive HIV prevention activities (including condom distribution), as well as full integration of its programs with reproductive health activities (including provision of artificial contraception) in a range of international relief and development programs. Under this new requirement, of course, some of the most effective providers helping to prevent and treat AIDS in Africa and other developing nations will be excluded.
- The federal Department of Justice (DoJ) has ratcheted up its attack on the Defense of Marriage Act (DOMA) by mischaracterizing it as an act of bigotry. As you may know, in March, DoJ stopped defending DOMA against constitutional challenges, and the Conference spoke out against that decision. But in July, the Department started filing briefs actively attacking DOMA's constitutionality, claiming that supporters of the law could only have been motivated by bias and prejudice. If the label of "bigot" sticks to our Church and many other churches— especially in court, under the Constitution— because of their teaching on marriage, the result will be church-state conflicts for many years to come.

- DoJ has also undermined religious liberty in the critically important ministerial exception case now pending before the Supreme Court, *Hosanna Tabor v. EEOC*. DoJ could have taken the position that the ministerial exception, though generally providing strong protection for the right of religious groups to choose their ministers without government interference, didn't apply in the case before the court. This would be consistent with the uniform judgment of the federal Courts of Appeals for decades, as well the DoJ itself until now. Instead, DoJ needlessly attacked the very existence of the exception, in opposition to a vast coalition of religious groups urging its preservation through their *amicus curiae* briefs.
- At the state level, religious liberty protections associated with the redefinition of marriage have fallen far short of what is necessary. In New York, county clerks face legal action for refusing to participate in same-sex unions, and gay rights advocates boast how little religious freedom protection individuals and groups will enjoy under the new law. In Illinois, Catholic Charities has been driven out of the adoption and foster care business, because it recognizes the unique value of man-woman marriage for the well-being of children.

III.

These are serious threats to religious liberty, and as I noted previously they represent only the most recent instances in a broader trend of erosion of religious liberty in the United States. The ultimate root causes of these threats are profound, and lie beyond the scope of this hearing or even this august body to fix—they are fundamentally philosophical and cultural problems that the bishops, and other participants in civil society, must address apart from government action. But we can—and must—also treat the symptoms immediately, lest the disease spread so quickly that the patient is overcome before the ultimate cure can be formulated and delivered.

As to the preventive services mandate, and related problems under the health care reform law, there are three important bipartisan bills currently in the Congress: the Protect Life Act (H.R. 358), the Abortion Non-Discrimination Act (H.R. 361), and the Respect for Rights of Conscience Act (H.R. 1179). All three go a long way toward guaranteeing religious liberty and freedom of conscience for religious employers, health insurers, and health care providers. United with my brother bishops, and in the name of religious liberty, I urge these three bills be swiftly passed by Congress so they may be signed into law. We welcome the fact that H.R. 358 was recently approved by the House in a bipartisan vote, and that the

text of H.R. 361 has been included in the House subcommittee draft of the Labor/HHS appropriations bill for Fiscal Year 2012.

As to the illegal conditions that HHS and USAID are placing on religious providers of human services, this may call for a Congressional hearing or other form of investigation to ensure compliance with the applicable conscience laws, as well as to identify how these new requirements came to be imposed. Additional statutes may be appropriate, possibly to create new conscience protections, but more likely to create private rights of action for those whose rights under the existing protections have been violated. Unfortunately, the authority to enforce the applicable conscience protections now lies principally with the very federal agencies that may be violating the protections.

As to the attack on DOMA, this body should resist legislative efforts to repeal the law, including the Respect for Marriage Act (H.R. 1116). We also applaud the decision of the House to take up the defense of DOMA in court after DoJ abandoned it, and we urge you to sustain that effort for as long as necessary to obtain definitive confirmation of its constitutionality. Moreover, DoJ's decisions to abandon both DOMA and the "ministerial exception" seem to warrant congressional inquiry.

The religious freedom threats to marriage at the state level may fall beyond the scope of authority of Congress to control — except to the extent that state adoption and foster care services are federally funded. We believe this avenue for protecting the religious liberty of faith-based service providers should be explored more fully.

Thank you for your attention, and again, for your willingness to give religious freedom the priority it is due.