

Our First, Most Cherished Liberty

A Statement on Religious Liberty

United States Conference of Catholic Bishops Ad Hoc Committee for Religious Liberty

We are Catholics. We are Americans. We are proud to be both, grateful for the gift of faith which is ours as Christian disciples, and grateful for the gift of liberty which is ours as American citizens. To be Catholic and American should mean not having to choose one over the other. Our allegiances are distinct, but they need not be contradictory, and should instead be complementary. That is the teaching of our Catholic faith, which obliges us to work together with fellow citizens for the common good of all who live in this land. That is the vision of our founding and our Constitution, which guarantees citizens of all religious faiths the right to contribute to our common life together.

Freedom is not only for Americans, but we think of it as something of our special inheritance, fought for at a great price, and a heritage to be guarded now. We are stewards of this gift, not only for ourselves but for all nations and peoples who yearn to be free. Catholics in America have discharged this duty of guarding freedom admirably for many generations.

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In 1887, when the archbishop of Baltimore, James Gibbons, was made the second American cardinal, he defended the American heritage of religious liberty during his visit to Rome to receive the red hat. Speaking of the great progress the Catholic Church had made in the United States, he attributed it to the “civil liberty we enjoy in our enlightened republic.” Indeed, he made a bolder claim, namely, that “in the genial atmosphere of liberty [the Church] blossoms like a rose.”¹

From well before Cardinal Gibbons, Catholics in America have been advocates for religious liberty, and the landmark teaching of the Second Vatican Council on religious liberty was influenced by the American experience. It is among the proudest boasts of the Church on these shores. We have been staunch defenders of religious liberty in the past. We have a solemn duty to discharge that duty today.

We need, therefore, to speak frankly with each other when our freedoms are threatened. Now is such a time. As Catholic bishops and American citizens, we address an urgent summons to our fellow Catholics and fellow Americans to be on guard, for religious liberty is under attack, both at home and abroad.

This has been noticed both near and far. Pope Benedict XVI recently spoke about his worry that religious liberty in the United States is being weakened. He called it the “most cherished of American freedoms”—and indeed it is. All the more reason to heed the warning of the Holy Father, a friend of America and an ally in the defense of freedom, in his recent address to American bishops:

Of particular concern are certain attempts being made to limit that most cherished of American freedoms, the freedom of religion. Many of you have pointed out that concerted efforts have been made to deny the right of conscientious objection on the part of Catholic individuals and institutions with regard to cooperation in intrinsically evil practices. Others have spoken to me of a worrying tendency to reduce religious freedom to mere freedom of worship without guarantees of respect for freedom of conscience.

Here once more we see the need for an engaged, articulate, and well-formed Catholic laity endowed with a strong critical sense vis-à-vis the dominant culture and with the courage to counter a reductive secularism which would delegitimize the Church’s participation in public debate about the issues which are determining the future of American society.²

Religious Liberty Under Attack: Concrete Examples

Is our most cherished freedom truly under threat? Sadly, it is. This is not a theological or legal dispute without real world consequences. Consider the following:

HHS mandate for contraception, sterilization, and abortion-inducing drugs. The mandate of the Department of Health and Human Services has received wide attention and has been met with our vigorous and united opposition. In an unprecedented way, the federal government will both force religious institutions

¹Cardinal James Gibbons, Address upon taking possession of Santa Maria in Trastevere, March 25, 1887.

²Benedict XVI, *Ad limina* address to bishops of the United States, January 19, 2012.

to facilitate and fund a product contrary to their own moral teaching and purport to define which religious institutions are “religious enough” to merit protection of their religious liberty. These features of the “preventive services” mandate amount to an unjust law. As Archbishop-designate William Lori of Baltimore, Chairman of the Ad Hoc Committee for Religious Liberty, testified to Congress: “This is not a matter of whether contraception may be *prohibited* by the government. This is not even a matter of whether contraception may be *supported* by the government. Instead, it is a matter of whether religious people and institutions may be *forced* by the government to provide coverage for contraception or sterilization, even if that violates their religious beliefs.”³

State immigration laws. Several states have recently passed laws that forbid what the government deems “harboring” of undocumented immigrants—and what the Church deems Christian charity and pastoral care to those immigrants. Perhaps the most egregious of these is in Alabama, where the Catholic bishops, in cooperation with the Episcopal and Methodist bishops of Alabama, filed suit against the law:

It is with sadness that we brought this legal action but with a deep sense that we, as people of faith, have no choice but to defend the right to the free exercise of religion granted to us as citizens of Alabama. . . . The law makes illegal the exercise of our Christian religion which we, as citizens of Alabama, have a right to follow. The law prohibits almost everything which would assist an undocumented immigrant or encourage an undocumented immigrant to live in Alabama. This new Alabama law makes it illegal for a Catholic priest to baptize, hear the confession of, celebrate the anointing of the sick with, or preach the word of God to, an undocumented immigrant. Nor can we encourage them to attend Mass or give them a ride to Mass. It is illegal to allow them to attend adult scripture study groups, or attend CCD or Sunday school classes. It is illegal for the clergy to counsel them in times of difficulty or in preparation for marriage. It is illegal for them to come to Alcoholics Anonymous meetings or other recovery groups at our churches.⁴

Altering Church structure and governance. In 2009, the Judiciary Committee of the Connecticut Legislature proposed a bill that would have forced Catholic parishes to be restructured according to a congregational model, recalling the trusteeism controversy of the early nineteenth century, and prefiguring the federal government’s attempts to redefine for the Church “religious minister” and “religious employer” in the years since.

Christian students on campus. In its over-100-year history, the University of California Hastings College of Law has denied student organization status to only one group, the Christian Legal Society, because it required its leaders to be Christian and to abstain from sexual activity outside of marriage.

Catholic foster care and adoption services. Boston, San Francisco, the District of Columbia, and the state of Illinois have driven local Catholic Charities out of the

³Most Rev. William E. Lori, Chairman, USCCB Ad Hoc Committee on Religious Liberty, Oral Testimony Before the Judiciary Committee of the United States House of Representatives, February 28, 2012.

⁴Most Rev. Thomas J. Rodi, Archbishop of Mobile, August 1, 2011.

business of providing adoption or foster care services—by revoking their licenses, by ending their government contracts, or both—because those Charities refused to place children with same-sex couples or unmarried opposite-sex couples who cohabit.

Discrimination against small church congregations. New York City enacted a rule that barred the Bronx Household of Faith and sixty other churches from renting public schools on weekends for worship services even though non-religious groups could rent the same schools for scores of other uses. While this would not frequently affect Catholic parishes, which generally own their own buildings, it would be devastating to many smaller congregations. It is a simple case of discrimination against religious believers.

Discrimination against Catholic humanitarian services. Notwithstanding years of excellent performance by the United States Conference of Catholic Bishops' Migration and Refugee Services in administering contract services for victims of human trafficking, the federal government changed its contract specifications to require us to provide or refer for contraceptive and abortion services in violation of Catholic teaching. Religious institutions should not be disqualified from a government contract based on religious belief, and they do not somehow lose their religious identity or liberty upon entering such contracts. And yet a federal court in Massachusetts, turning religious liberty on its head, has since declared that such a disqualification is *required* by the First Amendment—that the government somehow *violates* religious liberty by allowing Catholic organizations to participate in contracts in a manner consistent with their beliefs on contraception and abortion.

Religious Liberty Is More Than Freedom of Worship

Religious liberty is not only about our ability to go to Mass on Sunday or pray the Rosary at home. It is about whether we can make our contribution to the common good of all Americans. Can we do the good works our faith calls us to do, without having to compromise that very same faith? Without religious liberty properly understood, all Americans suffer, deprived of the essential contribution in education, health care, feeding the hungry, civil rights, and social services that religious Americans make every day, both here at home and overseas.

What is at stake is whether America will continue to have a free, creative, and robust civil society—or whether the state alone will determine who gets to contribute to the common good, and how they get to do it. Religious believers are part of American civil society, which includes neighbors helping each other, community associations, fraternal service clubs, sports leagues, and youth groups. All these Americans make their contribution to our common life, and they do not need the permission of the government to do so. Restrictions on religious liberty are an attack on civil society and the American genius for voluntary associations.

The Union of Orthodox Jewish Congregations of America issued a statement about the administration's contraception and sterilization mandate that captured exactly the danger that we face:

Most troubling, is the Administration's underlying rationale for its decision, which appears to be a view that if a religious entity is not insular, but engaged

with broader society, it loses its “religious” character and liberties. Many faiths firmly believe in being open to and engaged with broader society and fellow citizens of other faiths. The Administration’s ruling makes the price of such an outward approach the violation of an organization’s religious principles. This is deeply disappointing.⁵

This is not a Catholic issue. This is not a Jewish issue. This is not an Orthodox, Mormon, or Muslim issue. It is an American issue.

The Most Cherished of American Freedoms

In 1634, a mix of Catholic and Protestant settlers arrived at St. Clement’s Island in Southern Maryland from England aboard the *Ark* and the *Dove*. They had come at the invitation of the Catholic Lord Baltimore, who had been granted Maryland by the Protestant King Charles I of England. While Catholics and Protestants were killing each other in Europe, Lord Baltimore imagined Maryland as a society where people of different faiths could live together peacefully. This vision was soon codified in Maryland’s 1649 Act Concerning Religion (also called the “Toleration Act”), which was the first law in our nation’s history to protect an individual’s right to freedom of conscience.

Maryland’s early history teaches us that, like any freedom, religious liberty requires constant vigilance and protection, or it will disappear. Maryland’s experiment in religious toleration ended within a few decades. The colony was placed under royal control, and the Church of England became the established religion. Discriminatory laws, including the loss of political rights, were enacted against those who refused to conform. Catholic chapels were closed, and Catholics were restricted to practicing their faith in their homes. The Catholic community lived under these conditions until the American Revolution.

By the end of the 18th century, our nation’s founders embraced freedom of religion as an essential condition of a free and democratic society. James Madison, often called the Father of the Constitution, described conscience as “the most sacred of all property.”⁶ He wrote that “the Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate.”⁷ George Washington wrote that “the establishment of Civil and Religious Liberty was the Motive that induced me to the field of battle.”⁸ Thomas Jefferson assured the Ursuline Sisters—who had been serving a mostly non-Catholic population by running a hospital, an orphanage, and schools in Louisiana since 1727—that the principles of the Constitution were a “sure guarantee” that

⁵ Union of Orthodox Jewish Congregations, Statement, January 24, 2012.

⁶ James Madison, “Property,” March 29, 1792, in *The Founding Fathers*, eds. Philip B. Kurland and Ralph Lerner (Chicago: The University of Chicago Press, 1987), accessed March 27, 2012, <http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>.

⁷ James Madison, “Memorial and Remonstrance Against Religious Assessment,” June 20, 1785, in *The Founding Fathers*, accessed March 27, 2012, http://press-pubs.uchicago.edu/founders/documents/amendI_religions43.html.

⁸ Michael Novak and Jana Novak, *Washington’s God*, 2006.

their ministry would be free “to govern itself according to its own voluntary rules, without interference from the civil authority.”⁹

It is therefore fitting that when the Bill of Rights was ratified, religious freedom had the distinction of being the First Amendment. Religious liberty is indeed the first liberty. The First Amendment guarantees that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

Recently, in a unanimous Supreme Court judgment affirming the importance of that first freedom, the Chief Justice of the United States explained that religious liberty is not just the first freedom for Americans; rather it is the first in the history of democratic freedom, tracing its origins back the first clauses of the Magna Carta of 1215 and beyond. In a telling example, Chief Justice Roberts illustrated our history of religious liberty in light of a Catholic issue decided upon by James Madison, who guided the Bill of Rights through Congress and is known as the architect of the First Amendment:

[In 1806] John Carroll, the first Catholic bishop in the United States, solicited the Executive’s opinion on who should be appointed to direct the affairs of the Catholic Church in the territory newly acquired by the Louisiana Purchase. After consulting with President Jefferson, then-Secretary of State James Madison responded that the selection of church “functionaries” was an “entirely ecclesiastical” matter left to the Church’s own judgment. The “scrupulous policy of the Constitution in guarding against a political interference with religious affairs,” Madison explained, prevented the Government from rendering an opinion on the “selection of ecclesiastical individuals.”¹⁰

That is our American heritage, our most cherished freedom. It is the first freedom because if we are not free in our conscience and our practice of religion, all other freedoms are fragile. If citizens are not free in their own consciences, how can they be free in relation to others, or to the state? If our obligations and duties to God are impeded, or even worse, contradicted by the government, then we can no longer claim to be a land of the free, and a beacon of hope for the world.

Our Christian Teaching

During the civil rights movement of the 1950s and 1960s, Americans shone the light of the Gospel on a dark history of slavery, segregation, and racial bigotry. The civil rights movement was an essentially religious movement, a call to awaken consciences, not only an appeal to the Constitution for America to honor its heritage of liberty.

In his famous “Letter from Birmingham Jail” in 1963, Rev. Martin Luther King Jr. boldly said, “The goal of America is freedom.” As a Christian pastor, he argued that to call America to the full measure of that freedom was the specific

⁹ Anson Phelps Stokes, *Church and State in the United States* (New York: Harper and Brothers, 1950), 678.

¹⁰ *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. ____, 132 S. Ct. 694, 703 (2012).

contribution Christians are obliged to make. He rooted his legal and constitutional arguments about justice in the long Christian tradition:

I would agree with Saint Augustine that “an unjust law is no law at all.” Now what is the difference between the two? How does one determine when a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of Saint Thomas Aquinas, an unjust law is a human law that is not rooted in eternal law and natural law.¹¹

It is a sobering thing to contemplate our government enacting an unjust law. An unjust law cannot be obeyed. In the face of an unjust law, an accommodation is not to be sought, especially by resorting to equivocal words and deceptive practices. If we face today the prospect of unjust laws, then Catholics in America, in solidarity with our fellow citizens, must have the courage not to obey them. No American desires this. No Catholic welcomes it. But if it should fall upon us, we must discharge it as a duty of citizenship and an obligation of faith.

It is essential to understand the distinction between conscientious objection and an unjust law. Conscientious objection permits some relief to those who object to a just law for reasons of conscience—conscription being the most well-known example. An unjust law is “no law at all.” It cannot be obeyed, and therefore one does not seek relief from it, but rather its repeal.

The Christian church does not ask for special treatment, simply the rights of religious freedom for all citizens. Rev. King also explained that the church is neither the master nor the servant of the state, but its conscience, guide, and critic.

As Catholics, we know that our history has shadows too in terms of religious liberty, when we did not extend to others the proper respect for this first freedom. But the teaching of the Church is absolutely clear about religious liberty:

The human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that in matters religious no one is to be forced to act in a manner contrary to his own beliefs . . . whether privately or publicly, whether alone or in association with others, within due limits. . . . This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed. Thus it is to become a civil right.¹²

As Catholics, we are obliged to defend the right to religious liberty for ourselves and for others. We are happily joined in this by our fellow Christians and believers of other faiths.

A recent letter to President Obama from some sixty religious leaders, including Christians of many denominations and Jews, argued that “it is emphatically not

¹¹ Martin Luther King Jr., “Letter from Birmingham Jail,” April 16, 1963.

¹² Second Vatican Council, *Declaration on Religious Liberty (Dignitatis humanae)*, no. 2, in *The Documents of Vatican II*, ed. Walter M. Abbott (New York: Guild Press, 1966).

only Catholics who deeply object to the requirement that health plans they purchase must provide coverage of contraceptives that include some that are abortifacients.”¹³

More comprehensively, a theologically rich and politically prudent declaration from Evangelicals and Catholics Together made a powerful case for greater vigilance in defense of religious freedom, precisely as a united witness animated by the Gospel of Jesus Christ.¹⁴ Their declaration makes it clear that as Christians of various traditions we object to a “naked public square,” stripped of religious arguments and religious believers. We do not seek a “sacred public square” either, which gives special privileges and benefits to religious citizens. Rather, we seek a civil public square, where all citizens can make their contribution to the common good. At our best, we might call this an American public square.

The Lord Jesus came to liberate us from the dominion of sin. Political liberties are one part of that liberation, and religious liberty is the first of those liberties. Together with our fellow Christians, joined by our Jewish brethren, and in partnership with Americans of other religious traditions, we affirm that our faith requires us to defend the religious liberty granted us by God and protected in our Constitution.

Martyrs around the World

In this statement, as bishops of the United States, we are addressing ourselves to the situation we find here at home. At the same time, we are sadly aware that religious liberty in many other parts of the world is in much greater peril. Our obligation at home is to defend religious liberty robustly, but we cannot overlook the much graver plight that religious believers, most of them Christian, face around the world. The age of martyrdom has not passed. Assassinations, bombings of churches, torching of orphanages—these are only the most violent attacks Christians have suffered because of their faith in Jesus Christ. More systematic denials of basic human rights are found in the laws of several countries, and also in acts of persecution by adherents of other faiths.

If religious liberty is eroded here at home, American defense of religious liberty abroad is less credible. And one common threat, spanning both the international and domestic arenas, is the tendency to reduce the freedom of religion to the mere freedom of worship. Therefore, it is our task to strengthen religious liberty at home, in this and other respects, so that we might defend it more vigorously abroad. To that end, American foreign policy, as well as the vast international network of Catholic agencies, should make the promotion of religious liberty an ongoing and urgent priority.

¹³ Letter from Leith Anderson et al. to President Obama, December 21, 2011 (available at <http://www.becketfund.org/wp-content/uploads/2011/12/To-President-NonCatholics-RelExemptionSigned.pdf>).

¹⁴ Evangelicals and Catholics Together, “In Defense of Religious Freedom,” *First Things*, March 2012.

“All the Energies the Catholic Community Can Muster”

What we ask is nothing more than that our God-given right to religious liberty be respected. We ask nothing less than that the Constitution and laws of the United States, which recognize that right, be respected.

In insisting that our liberties as Americans be respected, we know as bishops that what our Holy Father said is true. This work belongs to “an engaged, articulate and well-formed Catholic laity endowed with a strong critical sense vis-à-vis the dominant culture.”

As bishops we seek to bring the light of the Gospel to our public life, but the work of politics is properly that of committed and courageous lay Catholics. We exhort them to be both engaged and articulate in insisting that as Catholics and as Americans we do not have to choose between the two. There is an urgent need for the lay faithful, in cooperation with Christians, Jews, and others, to impress upon our elected representatives the importance of continued protection of religious liberty in a free society.

We address a particular word to those holding public office. It is your noble task to govern for the common good. It does not serve the common good to treat the good works of religious believers as a threat to our common life; to the contrary, they are essential to its proper functioning. It is also your task to protect and defend those fundamental liberties guaranteed by the Bill of Rights. This ought not to be a partisan issue. The Constitution is not for Democrats or Republicans or Independents. It is for all of us, and a great nonpartisan effort should be led by our elected representatives to ensure that it remains so.

We recognize that a special responsibility belongs to those Catholics who are responsible for our impressive array of hospitals, clinics, universities, colleges, schools, adoption agencies, overseas development projects, and social service agencies that provide assistance to the poor, the hungry, immigrants, and those faced with crisis pregnancies. You do the work that the Gospel mandates that we do. It is you who may be forced to choose between the good works we do by faith, and fidelity to that faith itself. We encourage you to hold firm, to stand fast, and to insist upon what belongs to you by right as Catholics and Americans. Our country deserves the best we have to offer, including our resistance to violations of our first freedom.

To our priests, especially those who have responsibility for parishes, university chaplaincies, and high schools, we ask for a catechesis on religious liberty suited to the souls in your care. As bishops we can provide guidance to assist you, but the courage and zeal for this task cannot be obtained from another—it must be rooted in your own concern for your flock and nourished by the graces you received at your ordination.

Catechesis on religious liberty is not the work of priests alone. The Catholic Church in America is blessed with an immense number of writers, producers, artists, publishers, filmmakers, and bloggers employing all the means of communications—both old and new media—to expound and teach the faith. They too have a critical role in this great struggle for religious liberty. We call upon them to use their skills and talents in defense of our first freedom.

Finally to our brother bishops, let us exhort each other with fraternal charity to be bold, clear, and insistent in warning against threats to the rights of our people. Let us attempt to be the “conscience of the state,” to use Rev. King’s words. In the aftermath of the decision on contraceptive and sterilization mandates, many spoke out forcefully. As one example, the words of one of our most senior brothers, Cardinal Roger Mahony, thirty-five years a bishop and recently retired after twenty-five years as archbishop of Los Angeles, provide a model for us here: “I cannot imagine a more direct and frontal attack on freedom of conscience than this ruling today. This decision must be fought against with all the energies the Catholic community can muster.”¹⁵

A Fortnight for Freedom

In particular, we recommend to our brother bishops that we focus “all the energies the Catholic community can muster” in a special way this coming summer. As pastors of the flock, our privileged task is to lead the Christian faithful in prayer.

Both our civil year and liturgical year point us on various occasions to our heritage of freedom. This year, we propose a special “fortnight for freedom,” in which bishops in their own dioceses might arrange special events to highlight the importance of defending our first freedom. Our Catholic institutions also could be encouraged to do the same, especially in cooperation with other Christians, Jews, people of other faiths, and indeed, all who wish to defend our most cherished freedom.

We suggest that the fourteen days from June 21—the vigil of the Feasts of St. John Fisher and St. Thomas More—to July 4, Independence Day, be dedicated to this “fortnight for freedom”—a great hymn of prayer for our country. Our liturgical calendar celebrates a series of great martyrs who remained faithful in the face of persecution by political power—St. John Fisher and St. Thomas More, St. John the Baptist, SS. Peter and Paul, and the First Martyrs of the Church of Rome. Culminating on Independence Day, this special period of prayer, study, catechesis, and public action would emphasize both our Christian and American heritage of liberty. Dioceses and parishes around the country could choose a date in that period for special events that would constitute a great national campaign of teaching and witness for religious liberty.

In addition to this summer’s observance, we also urge that the Solemnity of Christ the King—a feast born out of resistance to totalitarian incursions against religious liberty—be a day specifically employed by bishops and priests to preach about religious liberty, both here and abroad.

To all our fellow Catholics, we urge an intensification of your prayers and fasting for a new birth of freedom in our beloved country. We invite you to join us in an urgent prayer for religious liberty:

¹⁵ Cardinal Roger Mahony, “Federal Government Mandate for Contraceptive/Sterilization Coverage,” *Cardinal Roger Mahony Blogs L.A.* (blog), January 20, 2012, <http://www.cardinalrogermahonyblogspot.com/2012/01/federal-government-mandate-for.html>.

*Almighty God, Father of all nations,
For freedom you have set us free in Christ Jesus (Gal 5:1).
We praise and bless you for the gift of religious liberty,
the foundation of human rights, justice, and the common good.
Grant to our leaders the wisdom to protect and promote our liberties;
By your grace may we have the courage to defend them, for ourselves and
for all those who live in this blessed land.
We ask this through the intercession of Mary Immaculate, our patroness,
and in the name of your Son, our Lord Jesus Christ, in the unity of the Holy Spirit,
with whom you live and reign, one God, for ever and ever. Amen.*

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The document *Our First, Most Cherished Liberty: A Statement on Religious Liberty*, was developed by the Ad Hoc Committee for Religious Liberty of the United States Conference of Catholic Bishops (USCCB). It was approved by the Administrative Committee of the USCCB at its March 2012 meeting as a statement of the Committee and has been authorized for publication by the undersigned.

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