PREPARED WRITTEN TESTIMONY OF

Craig L. Parshall, J.D.

Special Counsel, American Center for Law and Justice

Committee on the Judiciary
Subcommittee on the Constitution and Civil Justice

February 13, 2015

"Oversight of the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act**"**

Chairman Franks, Ranking Member Cohen, and distinguished Members of the Subcommittee, on behalf of the American Center for Law & Justice, thank you for allowing me to address the subject of religious freedom under the Religious Freedom Restoration Act ("RFRA") and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). My testimony will focus primarily on RFRA, and only incidentally on RLUIPA. Other, highly capable witnesses today, will undoubtedly be addressing RLUIPA.

This hearing is about one of the most fundamental rights known to this constitutional Republic: the right to fully and freely exercise one's religious faith and one's rights of religious conscience, free of unreasonable government interference. If we fail to uphold those rights, the civil liberties of our nation, and in fact, the entire fabric of our Bill of Rights, could be deeply imperiled. On the other hand, a broad, healthy protection of religious freedom could, and likely would, advance America's future in substantial, even remarkable ways.

When our Founders signed the Declaration of Independence, risking all, and, in their words, pledging " our Lives, our Fortunes & our sacred Honor" in pursuit of freedom, they also declared something else: a "firm reliance on Divine Providence …" Religious faith, and its free and full exercise, was for them a co-equal partner to political liberty. If our Republic is to remain healthy and strong, that must also be true for our generation as well. We have inherited a sacred trust. The question now is whether we will honor that trust.

The Important Role of Congress in Protecting Religious Freedom

Last year, the United States Supreme Court rendered its decision in *Burwell v. Hobby Lobby Stores, Inc.*, [1] vindicating the religious rights of conscience of closely-held, faith-based, businesses not to be forced to provide insurance coverage for abortion-inducing services or drugs to their employees under the HHS mandate of the Patient Protection and Affordable Care Act, 124 Stat. 119. That Supreme Court decision was made, not on the Free Exercise Clause of the First Amendment, but under the Religious Freedom Restoration Act of 1993, as amended, 42 U.S.C. § 2000bb-1 (2006). [2] RFRA was enacted to remedy the extreme limitations placed on religious liberty rights under the Free Exercise Clause of the First Amendment as a result of the Court's decision in *Employment Div., Dept. of Human Relations of Ore. v. Smith*. [3]

Two ancillary benefits flow from the *Hobby* Lobby decision, which transcend the precise factual context regarding the private companies at issue in that case. First, the Court noted: "Congress enacted RFRA in 1993 in order to provide *broad protections* for religious liberty." [4] Second, the opinion of the Court is in perfect symmetry with the congressional record that amply illustrates regarding the bipartisan intent of both Congress and the witnesses who supported it from across a wide spectrum of religious, philosophical, and legal perspectives. For instance, during the congressional hearings on RFRA before its enactment, Nadine Strossen, prior president of the ACLU, an organization long known for an expansive view of abortion rights, testified:

> And going to the abortion issue, Congressman Hyde, of course this legislation is completely neutral on the abortion issue. All it does is restore religious liberty, freedom of conscience, and I think that is a liberty that can enhance the rights and in many situations will enhance the rights of those who conscientiously and religiously are opposed to abortion … This law would give them a defense based on religious freedom. [5]

In other words, Congress "got it right" in 1993, with legislative language that was logical, clear, and fit to the religious liberty dilemma that it sought to remedy. We permit any lessening of the protections of RFRA at our peril. At the same time, Congress ought to look, proactively, to future threats to religious freedom. The time may have come for the fashioning of RFRA-like remedies against those threats as well. But whether

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[1] *Burwell v. Hobby Lobby Stores, Inc.*, 573 U. S. ___ (2014).

[2] The Court has held that the protections of RFRA, however, do not apply to the actions of *state* agencies or state regulations. *City of Boerne v. Flores*, 521 U.S. 507 (1997).

[3] *Employment Div., Dept. of Human* Relations *of Ore. v. Smith*, 494 U.S. 872 (1990).

[4] *Hobby Lobby*, at slip op. 4 (emphasis added).

[5] Religious Freedom Restoration Act of 1991: Hearings on H.R. 2797 before the Subcommittee on Civil and Constitutional Rights, of the House Committee on the Judiciary, 102nd Cong. 100 (1992) (testimony of Nadine Strossen, National Board of Directors, ACLU).

Congress chooses to address the risks posed by a dilution of RFRA, or chooses to expand the RFRA paradigm to meet other threats to religious freedom, or both, one thing is clear: American stands to benefit from a strong protection of religious liberty. Some of those benefits are outlined below.

A Broad Protection of Religious Liberty Grants Broad Benefits to America

Religious Liberty Increases Economic Growth and Innovation

As religious liberty flourishes, it can create an environment where citizen patterns of reliable work habits and industriousness, financial stability, and an entrepreneurial spirit can also flourish. On the other hand, there are competing forces at work in America: the drive for personal self-actualization, if not moderated by altruistic values, can lead to social myopia, selfishness, lack of motivation in the work place, dishonesty, and greed, traits which are detrimental to the common good. As religious liberty expands, faith-based values can act as a check against those excesses, and can reinforce personal responsibility and industriousness. As law professor and economist Harry Hutchison sees it, the current trend toward a secular restlessness of the American spirit, perhaps brought on by a hyper-individualism (not to mention the individual drive to meet individual desires) –

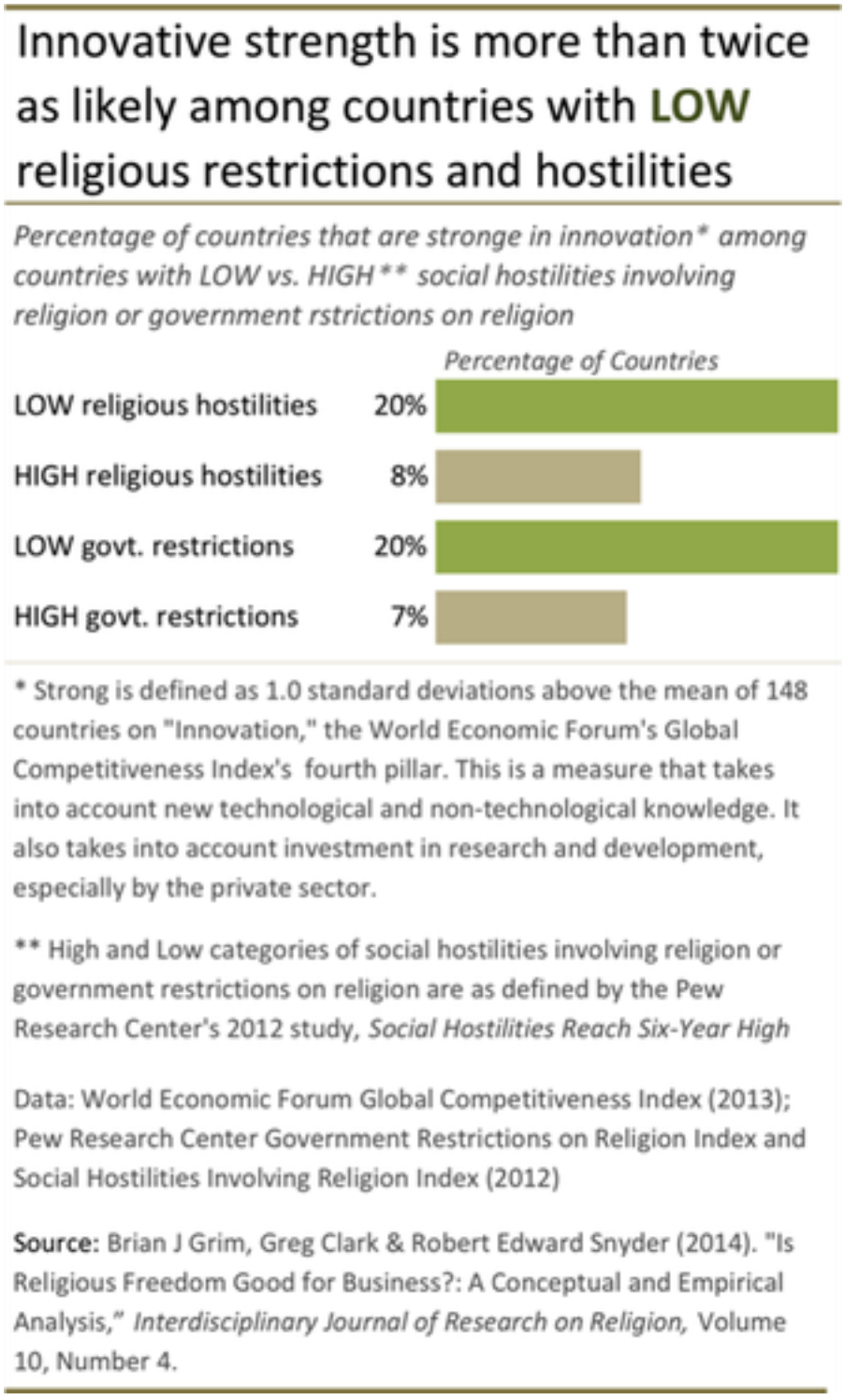
> "… gives rise to inconstancy that disables democratic man from understanding how his public and private work contribute to and sustain social and political life and how one's most important activities are reflections of deeper commitments of the soul that *contribute to the common good*. Religion and religious life exemplified by the Green family in Hobby Lobby thus operate as an antidote to a complete focus on individualism and [acts] as a *spur to human flourishing* …" [6]

One kind of "human flourishing," the type that increases where there is an abundance of religious liberty, is that of economic growth. This is borne out by a May 29, 2014 report. There, Brian J. Grim of Georgetown University's Berkley Center for Religion, Peace & World Affairs, and Greg Clark and Robert Edward Snyder of Brigham Young University's International Center for Law and Religion Studies, reviewed the chief factors behind the financial success of nations. Their research determined that *religious freedom* is one of only three primary factors significantly associated with the global economic growth of nation-states. Their study looked at GDP growth for 173 countries in 2011, employing as a control, some two-dozen different financial, social, and regulatory influences. [7] Finding a positive relationship between religious freedom and ten of twelve pillars of the World Economic Forum's Global Competitiveness Index, they note that nations with *the lowest amounts of hostility toward religious freedom* experience *twice the degree of innovational strength in matters of business*. The chart below of the World

[6] Email dialogue, Professor Harry Hutchison, George Mason University School of Law, to Craig Parshall, ACLJ Special Counsel, November 23, 2014 (emphasis added).

[7] "Is Religious Freedom Good for Business? A Conceptual and Empirical Analysis," available on the website of the Interdisciplinary Journal of Research on Religion (IJRR).

Economic Forum, illustrates this religious freedom/ economic dynamic:



Source: https://agenda.weforum.org/2014/12/the-link-between-economic-and-religious-freedoms/

It is no wonder then, that here in America, where religious liberty has been historically given substantial protection we have, at the same time, experienced economic and innovational expansion. Further, one of the happy consequences of The *Hobby Lobby* case, and the publicity that followed it, was the public attention given to the vast network of faith-based businesses that have developed across America.

Hobby Lobby and Conestoga Wood Specialties where not the only faith-based, closely held businesses in America. As press coverage of the case demonstrated, included also in that category of national, religious businesses were Covenant Transportation, a trucking company, retail clothing stores Forever 21, fast-food chains Chick-fil-A and In-N-Out Burgers, as well as Tyson's Foods. [8] Other nationally known, faith-founded companies operating across America include Marriot Hotel, Curves (the weight loss and fitness franchise), burger fast food company Carl's Jr., Alaska Airlines, Jet Blue, eHarmony.com, Whole Foods Market, George Foreman grilling products, Timberland shoes, Tom's of Maine, Anschutz Entertainment Group, Interstate Batteries, Trijicon weapons manufacturer, and Mary Kay cosmetics.[9] If we fail to understand the true value of religious liberty, America will end up crippling the religious conscience and the moral operations of numerous U.S. companies that employ millions.

Religious Liberty Encourages the Charitable Impulse Among Americans

Research data indicates that religious-minded citizens give more to charitable causes than their secular counterparts. *Connected to Give: Faith Communities* is a 2013 research study, the third in a series of reports based upon the wealth of data drawn from the National Study of American Religious Giving (NSARG) and the National Study of American Jewish Giving (NSAJG).

That data shows that religious-minded citizens give more to charity, on average, than do secular Americans: 65% of those who assert religious affiliation give to charity, while only 56% of those citizens who have no religious affiliation give to non-profit, charitable causes; and among those who say they do not attend religious worship services regularly, less than half of them regularly support any charity, even secular ones. [10] The survey of more than 5000 households also showed basic uniformity of giving among the religiously-minded: among Americans affiliated with the five largest religious groups analyzed in this report—Black Protestants, Evangelical Protestants, Jews, Mainline Protestants, and Roman Catholics—there were no statistically significant differences in giving rates on a general basis. [11] Even more significant is this finding: "Among

[8] Mark Oppenheimer, "At Christian Companies, Religious Principals Compliment Business Practices," New York Times.com, August 2, 2013.

[9] Sarah Petersen, "20 Companies with religious roots," Deseret News.com, accessed at: http://www.deseretnews.com/top/1700/1/In-N-Out-Burger-20-companies-with-religious-roots.html.

[10] Alex Daniels, "Religious Americans Give More, New Study Finds," The Chronicle of Philanthropy, November 25, 2013.

[11] Report at: ConnectedToGive_FaithCommunities_Jumpstart2014_v1.3-3.pdf (page 8 of 32).

Americans who give, *more than half say their commitment to religion is an important or very important motivation for charitable giving …* [and] *motivations related to moral values are important to all groups*." [12]

When America allows religious liberty to flourish it also waters the landscape from which non-profit charitable organizations are grown, and that, in turn, will benefit the citizens, communities, states and regions where those charities perform their services.

The Continued Need for the RFRA Framework: Future Threats

International Terrorism and Global Threats to Religious Freedom

The threat to the freedom of religious belief from jihadist groups around the world is almost too obvious to require citation. Since 9/11, America already experienced the brutal affects of ISIS, the newest face of jihadist terror, with the horrific beheadings of American journalists James Wright Foley and Steven Sotloff and former Army Ranger-turned-humanitarian worker Peter Kassig. On American soil we have seen the terrible bombing at the Boston marathon, followed by the more recent beheadings and hatchet attacks on U.S. citizens by Islamic extremists. These events have been a wake-up call to those citizens who assumed wrongly that, since the 9/11 attacks and the wars in Afghanistan and Iraq, the threat to freedom by such jihadist groups was an "over there" problem. ACLJ Chief Counsel Jay Sekulow and his Law of War Team, Jordan Sekulow, Robert Ash, and David French, have documented this new threat in the recently published book, Rise of Isis - A Threat We Can't Ignore. [13]

Meanwhile, the parade of jihadist terror, focused against religious adherents of other faiths, continues unabated, including the slaughter of Jewish congregants in a synagogue in Jerusalem – three of them American-Israelis – in November of 2014. In January of 2015 a Paris magazine, Charlie Weekly, was raided by Islamic terrorists who shot and killed numerous people and injured others, in retaliation for satirical pieces that had been printed against Islam. [14]

In order to help influence the "hearts and minds" of peaceful Islamic adherents who must weigh the heavy risk of opposing and even exposing the violent elements in their midst, America must be able to demonstrate what true religious liberty truly looks like, and why it is worth fighting for, and perhaps even, regrettably, dying for.

The U.S. still remains the most effective, and compassionate voice to the rest of the world regarding religious liberty. When Saudi blogger Raif Badawi criticized Islamic

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[12] Ibid at page 9.

[13] Jay Sekulow, Jordan Sekulow, Robert Ash, and David French, Rise of Isis - A Threat We Can't Ignore. [13] (New York: Howard Books, a Div. of Simon Schuster, 2014).

[14] Nicholas Vinocur, Anthony Paone, "Suspected Islamists kill 12 in Paris attack on satirical magazine," Reuters.com, January 7, 2015.

clerics, and was sentenced by the government in Saudi Arabia to 1000 lashes as his punishment (50 per week for 20 consecutive weeks) he recently found a remarkable source of support from American religious leaders. Seven of the members of the U.S. Commission on International Religious Freedom, which included Christians, Jews and a Muslim, after pleading for the sentence to be dropped, offered to accept 700 of Badawi's lashes themselves. [15]

The American Center for Law and Justice (ACLJ) has fought a continuous battle for years to free American pastor Saeed Abedini from his inhumane, outrageous, and illegal imprisonment in Iran. When the pastor's wife, Naghmeh, recently met with President Obama, the President promised to make Saeed's release a "top priority," a result that a result that could not have happened without the support of millions of faith-minded Americans who have responded to the work of ACLJ and to the reports in the religious media, and as a result, who have been supporting this effort. [16]

It would be a tragic irony if, in pursuit of America's desire to authentically export the idea of liberty to the nations around the world, it ends up with its own credibility overshadowed by its failure to practice robust, vibrant religious liberty here at home.

Domestic Threats to Religious Liberty

The Executive Branch, the HHS Mandate, and the Supreme Court

Last month the Supreme Court rendered its opinion in *Holt v. Hobbs.* [17] The case involved the rights of a Muslim prisoner to maintain a one-half inch beard for faith-related reasons. The Court ruled, in light of the prison's history of allowing one-quarter inch beards for prisoners for medical reasons, and the total absence of any meaningful security threat to prison personnel, that the prohibition against short beards for religious purposes violated RLUIPA. Unlike *Hobby Lobby*, where Justice Ginsburg dissented, in *Holt* she joined the majority. However, she gave a short concurring opinion that explained the reasons for her different treatment of the two cases:

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[15] Lori L. Marcus, "Americans offer to take 100 lashes each for Saudi blogger," The Jewish Press, January 23, 2015. Accessed at: http://www.jewishpress.com/news/breaking-news/americans-offer-to-take-100-lashes-each-for-saudi-blogger/2015/01/23/

[16] "Obama to imprisoned pastor's wife: saving Saeed Abedini in Iran is 'a top priority,'" Christianity Today.com, January 21, 2015. Accessed at: http://www.christianitytoday.com/gleanings/2015/january/obama-to-imprisoned-pastors-wife-save-saeed-abedini-naghmeh.html?paging=off.

[17] *Holt v.* Hobbs, 574 U.S. ___ (2015).

> Unlike the exemption this Court approved in *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U. S. ___ (2014), accommodating petitioner's religious belief in this case would not detrimentally affect others who do not share petitioner's belief. See *id.*, at ___, ___–___, and n. 8, ___ (slip op., at 2, 7–8, and n. 8, 27) (GINSBURG, J., dissenting). (slip op., at 2, 7–8, and n. 8, 27) (GINSBURG, J., dissenting). [18]

There is a central idea in that approach, suggesting that RFRA (or RLUIPA for that matter) can be emasculated whenever there is a real or perceived disadvantage caused to third parties. In an abstract sense, there is a necessary corollary that with the recognition of rights to one group, there will always be other parties with some interest in the matter who will be, however remotely, inconvenienced by that recognition. A prime example of how extreme, and illogical that kind of inquiry can become, is *Lee v. Weisman*. [19]

While that case was an Establishment Clause case under the First Amendment, and not a Free Exercise case, let alone a RFRA case, it illustrates how problematic it is when courts intuit vague, psychological "harm" or "offense" as a reason to prohibit religious speech; as was the case there, where the Supreme Court held that the Establishment Clause was violated by a public school inviting a private citizen, a Rabbi, to deliver an innocuous prayer at a graduation ceremony because the complainants might feel compelled to sit quietly and respectfully and listen to religious content that they do not agree with. Happily, the Supreme Court has rectified part of this problem of shutting down religious speech where there is a bare assertion of discomfort to others. In *Town of Greece, New York v. Galloway*, the Court held that, at least in the context of public government meetings, private religious expression in the form of prayer, in itself, would not constitute the kind of coercion of others that would trigger a violation of the Establishment Clause. [20]

The question remains, in the more Free Exercise-type of paradigm that characterizes RFRA, whether allegations of remote inconvenience or indirect disadvantage to the rights of others – whether it is women who wish to have completely unhindered access to abortion or it is secularists who want no exposure to religious expression – will be enough to result in a slow, steady diminution of the rights of religious persons under RFRA as courts continue to construe and apply *Hobby Lobby*.

The Executive Branch and EEOC Regulations

The current Solicitor General's Office represented the Equal Employment Opportunity Commission (EEOC) in the case of *Hosanna-Tabor Evangelical Lutheran*

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[18] *Holt v. Hobbs*, 574 U.S. ___ (2015) (Ginsburg, J. concurring), slip op. at 1.
[19] *Lee v. Weisman*, 505 U.S. 577 (1992).
[20] *Town of Greece, New York v. Galloway*, 572 U.S. ___ (2014).

Church and School v. EEOC.[21] Those lawyers likely did not anticipate the push-back from the Supreme Court in response to their astonishing argument that the Religion Clauses of the First Amendment *did not* protect the hiring decisions of private religious schools. But they should have. During oral arguments that amazing position of the Assistant Solicitor General, when articulated, met with immediate disbelief, even from Justices not known for their protection of religious freedom. When the decision of the Supreme Court came down in that case, it was unambiguous, and unanimous in holding that the First Amendment exempts a religious organization from federal regulations that conflict with its faith-based employment decisions regarding key staff, like the religiously "called" teacher in that case, who have important spiritual duties.

The court rebuffed the argument from the Solicitor General's office that the First Amendment Religion Clauses gave no guidance regarding the right of a religious school to hire or fire, free of government interference, members of its own faith to serve in leadership positions. Labeling "remarkable" the government's argument that the Religion Clauses really have "nothing to say" about the right of religious organizations to enjoy autonomy in making internal decisions, the entire Court noted:

> "The EEOC and [the complainant employee] thus see no need – and no basis – for a special rule for ministers grounded in the Religion Clauses themselves.
>
> We find this position untenable. The right to freedom of association is a right enjoyed by religious and secular groups alike. It follows under the EEOC's [and the complaining employee's] view that the First Amendment analysis should be the same whether the association in question is the Lutheran Church, a labor union, or a social club … That result is hard to square with the text of the First Amendment itself, which gives special solicitude to the rights of religious organizations."[22]

While the victory in this case is gratifying, what is truly disturbing is the fact that the White House, and its Supreme Court advocates were willing to advance such a bizarre reading of the Religion Clauses. That kind of institutional hostility against religious freedom is a warning that needs to be headed. Congress, whenever possible, should mandate those legislative protections for religious liberty that are necessary and sufficient to counter any arbitrary decisions of the Executive Branch regarding the most basic freedoms of faith.

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[21] *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. ___, 132 S. Ct. 694 (2012).

[22] *Hosanna-Tabor,* 565 U.S. ___, 132 S. Ct. 694, 706 (2012).

Harmonizing the Existing Religious Exemption in Title VII with RFRA

Although the Supreme Court has settled one issue in federal employment discrimination law regarding the fate of religious employers – namely, the ministerial exception" that applies under *Hosanna-Tabor* to adverse decisions on staff positions that have an important spiritual component – the legal landscape for faith-based organizations is still uncertain. One such question, still undetermined as a result of that Supreme Court decision, is how courts will determine that level of spiritual leadership in a given employment position that is sufficient to trigger *Hosanna-Tabor*.

A recent 2015 decision by the 6th Circuit Court of Appeals illustrates the point. In *Conlon v. InterVarsity Christian Fellowship/USA* the court held that a Christian ministry not controlled by a church or denomination could still qualify in order to assert the "ministerial exception" recognized in *Hosanna-Tabor*. [23] The court also ruled that the group was immune from the suit regarding its dismissal of one of its staff for violating its faith-based policy on divorce, finding, amidst some admitted uncertainty however, that under *Hosanna-Tabor* an employee's position is sufficiently spiritual enough to permit the employer to raise the ministerial exception as a defense when *two out of the four circumstantial factors* mentioned by the Supreme Court are present. However, the 6th Circuit judges noted the divergence among the Supreme Court justices on that point:

> Justice Thomas's concurring opinion in *Hosanna-Tabor* looks solely to a broad reading of the first factor, positing that whenever a religious employer identifies an individual as a minister, courts should "defer to a religious organization's good-faith understanding of who qualifies as its minister." *Id.* at 710 (Thomas, J., concurring). Justice Alito—joined by Justice Kagan—instead posits that the ministerial exception "should apply to any 'employee' who [1] leads a religious organization, [2] conducts worship services or important religious ceremonies or rituals, or serves as a [3] messenger or [4] teacher of its faith." *Id.* at 712 (Alito, J., concurring).

Conlon, slip op. at page 8.

Congress should consider whether to codify the *Hosanna-Tabor* rule, and clarify its factual parameters within the framework of Title VII of the Civil Rights Act. [24] Beyond that, given the historical success of RFRA in creating a coherent and consistent protection of religious liberty, consideration could be given to a RFRA-like paradigm within Title VII's religious exemption section, as informed by *Hobby Lobby*, augmenting the existing, somewhat troublesome exemption for faith-based employers under Section

[23] *Conlon v. InterVarsity Christian Fellowship/USA*, appeal no. 14-1549 (6th Cir. Feb. 5, 2015). The American Center for Law & Justice filed a brief in that case as Amicus Curiae on behalf of InterVarsity.

[24] 42 U.S.C. 2000e et seq.

702, providing some needed clarity and protection for religious employers. [25] This *troublesome* history of the Title VII religious exemption is described below.

Under Section 702 of Title VII, the general mandate against religious discrimination in employment does not apply to "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." [26] The intent was clearly to permit qualifying faith-based employers to making hiring and firing decisions on the basis of creed, religious doctrine, or other spiritual criteria, free of the threat of federal employment discrimination lawsuits.

However, the question regarding exactly which religious employers can qualify for the religious exemption, and which cannot, is still an unsettled question, leaving the field of employment law a complex, and uncertain one for religious groups. The statute does not define what constitutes "a religious corporation, association, educational institution, or society." Rather, "[a]ll significant religious and secular characteristics must be weighed to determine whether the corporation's purpose and character are primarily religious." *EEOC v. Townley Eng. & Mfg. Co.* (denial of protection under the religious exemption of Title VII for a *for-profit*, thoroughly *faith-based* machine shop). [27]

As a result, there are inconsistent legal decisions regarding a wide variety of religious employers. In addition to the question of for-profit religious employers, as was the case in *Townley*, the courts have rendered opinions that seem to defy logic: *Fike v. United Methodist Children's Home of Virginia, Inc.* (Methodist orphan home dedicated to instilling Christian beliefs in its children held not to qualify as a "religious corporation …" etc. after it sought, following a period of more secular leadership, to return to its original spiritual mission); [28] *EEOC v. Kamehameha School/Bishop Estate*, (private protestant religious school denied religious exemption under Title VII despite various religious characteristics and activities); [29] *Pime v. Loyola University of Chicago*, 585 F. Supp. 435 (N.D. Ill. 1984) (Catholic college not qualified for religious exemption regarding its preference for hiring Jesuit professors rather than professors from other

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[25] However, because Title VII deals with private, *non-federal* employers and employees, any use of an RFRA-type auxiliary to fortify the Section 702 religious exemption would have to satisfy the rule in *City of Boerne v. Flores*, 521 U.S. 507 (1997). See, note 1, *infra*. On the other hand, the Supreme Court there did note, generally, the broad powers of Congress under the Fourteenth Amendment to "enforce" fundamental liberties even it they has an effect on the states.

[26] 42 U.S.C. §2000e-1(a).

[27] *EEOC v. Townley Eng. & Mfg. Co.* 859 F.2d 610, 618 (9th Cir. 1988).

[28] *Fike v. United Methodist Children's Home of Virginia, Inc.* 547 F. Supp. 286 (E.D. Va. 1982).

[29] *EEOC v. Kamehameha School/Bishop Estate*, 990 F. 2d 458 (9th Cir. 1993), *cert. den.* 510 U.S. 963 (1993).

religions). [30] On appeal, *Pime* was reversed on other grounds. In his concurring opinion, Judge Posner noted that regarding the religious exemption question about what kind of religious entity can qualify under Title VII, "the statute does not answer it" and the "legislative history … is inconclusive." [31]

Lastly, a March 2013 employment discrimination settlement between the EEOC and a private, faith-based employer illustrates the continuing lack of clarity regarding what, if any, religious liberties are owed to for-profit companies under Title VII.

The case was *EEOC v. Voss Electric Co.*, commenced in the U.S. District Court of the Northern District of Oklahoma. [32] The EEOC charged the supplier of electric lighting products with religious discrimination because it posted a job position at a local church, inquired about a job applicant's church attendance and discussed a before-hours Bible study with the applicant that the employer conducted on its premises; as a result of the litigation, the employer agreed to a consent decree, requiring it to pay $82,500 to the non-hired applicant, and mandated to undertake specified company-wide actions designed to prevent future religious discrimination, which included the posting of an EEOC notice prohibiting employment discrimination on the basis of religion at all its locations, re-dissemination of anti-discrimination policies, periodic reporting to the EEOC of specified hiring information, religion-neutral job advertising and the training of management on religious discrimination. [33]

The regional EEOC attorney in the St. Louis District Office said of the settlement: "Refusing to hire a qualified job applicant because his religious beliefs do not comport with those of the employer's leadership is illegal, *even if the for-profit company purports to have a religious mission or purpose*." [34] While that case was litigated under Title VII, rather than RFRA, the question remains: what effect if any could, or should, *Hobby Lobby* and its construction of RFRA have on the religious freedom rights of private, faith-based companies in their hiring and firing? Certainly, the detractors will argue that it should have no effect; that Title VII occupies the field and should be unencumbered by RFRA; that that the decision of the Supreme Court in applying the protections under RFRA to religion-founded, for-profit businesses in *Hobby Lobby* was premised, at least in part, on the absence of *any harm* to the interest of third parties. [35]

It is interesting, however, in the case of Voss Electric Co, d/b/a Voss Lighting,

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[30] *Pime v. Loyola University of Chicago*, 585 F. Supp. 435 (N.D. Ill. 1984), rev'd other grounds, 803 F. 2d 351 (7th Cir. 1986).

[31] *Pime*, 803 F. 2d at 357, Posner, J., concurring.

[32] *EEOC v. Voss Electric Co.*, civil case no. 4:12 -cv- 00330-JED-FHM, U.S. District Court, N. D. Oklahoma.

[33] EEOC Press Release, March 13, 2013, accessed at: http://www.eeoc.gov/eeoc/newsroom/release/3-19-13a.cfm.

[34] EEOC Press Release, ibid.

[35] See, my discussion of Justice Ginzburg's point in that regard, at pages 7-8, *infra.*

that its public mission statement [36] and the "personal statement" of its president [37] are forthright in their faith-based, Bible-oriented approach to business, and bear a close resemblance to the kind of faith-driven philosophy that guided *Hobby Lobby* and that influenced the decision of the Supreme Court in that case.

Conclusion

Those of us who have ever attended a religious liberty rally, or visited a church function, have benefited, of course, from freedom of religion protections under the First Amendment, as well as the congressionally enacted RFRA. But in truth, we have also benefited from the remaining provisions of the First Amendment at the same time: *free speech* for the opinions voiced at such a rally or gathering; the *free press* rights of publicity and media coverage for the event; and *freedom of assembly* and *freedom of association* protecting the rights of like-minded persons to gather together for a common cause.

The Bill of Rights may have enumerated those First Amendment rights separately, thus causing our Supreme Court to analyze them individually, but they all pour out of a common well of liberty. Law professor and former Watergate Special prosecutor Archibald Cox has noted that, at the Founding, in order "[f]or the genius of American constitutionalism to develop, the [Supreme] Court had first to assert, and then win, the people's support for the Court's power of interpretation 'according to law.'" [38]

Our task today is similar: to "win the people's support" for an understanding of the true value of fundamental rights, beginning with the cornerstone - religious liberty, whether the protection comes from Congress in the form of RFRA, or through the First Amendment decisions of the Supreme Court. If we accomplish that, our citizenry is bound to gain a greater understanding of the entire Bill of Rights as well as the principles of constitutional governance. Religious liberty was *at the very core* of the Bill of Rights, and bore a relationship to other rights. As Professor Cox goes on to write:

> "Concern for a broader spiritual liberty [at the Founding] expanded from the religious core. The thinking man or woman, the man or woman of feeling, the novelist, the poet or dramatist, the artist, like the evangelist, can experience no greater affront to his or her humanity than denial of freedom of expression." [39]

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[36] Accessed at: http://www.vosslighting.com/storefrontB2BWEB/showpage/missionstatement.html.

[37] Accessed at: http://www.vosslighting.com/storefrontB2BWEB/showpage/HistoricalHighlightsPersonalStatement.html.

[38] Archibald Cox, The Court and the Constitution (Boston: Houghton Mifflin Company, 1987) page 43.

[39] Ibid, page 187 (referring to English poet of Biblical and Christian themed works, John Milton, as a kind of seventeenth century religious inspiration for the later free speech ideas of the Founders).

Religious freedom should not only be viewed as a preeminent right; it must also be viewed as part of an organic whole with other liberties; the first ten Amendments to our Constitution were drafted at the same time by the same men who shared, despite a diversity of political leanings, a similar vision of America's new Republic, and of the various freedoms that needed to be secured to the people. Fortifying religious liberty, the "core" of America's founding, will help us today fortify the whole of all those other rights and privileges envisioned by the Founders, while also reaping to our nation the blessings that accompany a wise respect for freedom of religious conscience.