
Prepared Testimony and Statement for the Record of

**Hiram S. Sasser, III
Executive General Counsel
First Liberty Institute**

**At the
Hearing on “Oversight of the Civil Rights Division of the Department of Justice”**

**Before the House Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
September 24, 2020**

Curriculum Vitae

Hiram Sasser is the Executive General Counsel of First Liberty Institute, a public interest law firm that focuses on religious liberty issues for people of all faiths. Mr. Sasser also serves as an adjunct professor of law at the University of Texas at Austin School of Law as well as an adjunct professor of law at Oklahoma City University School of Law.

Introduction

Throughout my almost two decades of litigation experience, the Department of Justice Civil Rights Division has proven itself a consistent and stalwart ally in the fight to prevent religious discrimination by enforcing the strong civil rights protections in the Constitution and federal law. When governments threaten religious liberty, the Department of Justice is there.

DOJ's History of Protecting Liberty for All Faiths

To enforce federal civil rights protections, DOJ wields a variety of tools, such as conducting investigations, filing statements of interest or intervening in pending litigation, or filing independent lawsuits. The following provide only a few examples of DOJ's long history of protecting essential liberty for people of all faiths.

Nashala Hearn

In 2003, Nashala Hearn began sixth grade at a public school in Muskogee, Oklahoma.¹ Nashala wore a hijab in accordance with her Muslim faith.² However, the school district suspended Nashala twice for wearing her hijab, citing its dress code policy prohibiting head coverings.³ The school argued that prohibiting her hijab was necessary to prevent “unnecessary disruption” and “to maintain a religion-free zone.”⁴ Even so, the school made other discriminatory exceptions to the dress code. For instance, students could wear “Cat in the Hat” hats to celebrate Dr. Seuss’s birthday, hats in support of anti-drug programs, and headgear as part of Halloween costumes or play costumes.⁵ Both students and teachers made insensitive comments to Nashala, and on one occasion another student even ripped off her hijab.⁶

The Department of Justice sued the Muskogee School District in 2004 for discriminating against Nashala because of her religious beliefs.⁷ As a result of DOJ’s efforts, the school district

¹ U.S. DOJ, “Justice Department Reaches Settlement Agreement with Oklahoma School District in Muslim Student Headscarf Case,” May 19, 2004, https://www.justice.gov/archive/opa/pr/2004/May/04_crt_343.htm [hereinafter Hearn Press Release].

² Intervenor’s Br. in Supp. of Mot. for Summ. J. at 4, *Hearn v. Muskogee Public Sch. Dist. 020*, No. CIV 03-598-S (E.D. Okla. May 6, 2004), available at <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/hearnokbrief.pdf> [hereinafter Hearn MSJ].

³ Hearn MSJ, *supra* n. 2, at 5–6.

⁴ Hearn MSJ, *supra* n. 2, at 7.

⁵ Hearn MSJ, *supra* n. 2, at 3.

⁶ Hearn MSJ, *supra* n. 2, at 7.

⁷ Hearn Press Release, *supra* n. 1.

agreed to a consent decree protecting Nashala and other students of faith.⁸ The six-year agreement required the school district to make individual exceptions to its dress code for religious head coverings.⁹ The agreement mandated that the school district provide proper training and information to teachers and students.¹⁰

Falun Gong

In 2004, First Liberty Institute represented practitioners of a spiritual practice called Falun Gong, which blends aspects of Taoism, Buddhism, and meditation techniques of the traditional martial art quigong.¹¹ Practitioners of the Falun Gong face severe persecution in China, which banned the Falun Gong in 1999.¹² Adherents have suffered arrest, detention, imprisonment, torture, and abuse, as well as “severe societal discrimination in employment, housing, and business opportunities.”¹³ Members of the Falun Gong in the United States alleged that the Chinese government took steps to prevent them from protesting at the President of China’s visit to Houston in 2003.¹⁴

After First Liberty Institute submitted a complaint to the Department of Justice on behalf of several Falun Gong members, the Department of Justice Civil Rights Division opened an investigation.¹⁵ First Liberty also investigated to determine whether a hotel chain unlawfully evicted members of the Falun Gong who were staying near the President of China as a staging area for peaceful protests. While the Falun Gong did not succeed in their case, First Liberty believes it was the DOJ’s investigation that led to the hotel chain guaranteeing the Falun Gong that such actions would never take place in the future.

Islamic Association of Collin County, Texas

In 2015, the Islamic Association of Collin County (IACC) purchased property in the extra-territorial jurisdiction of Farmersville, Texas to develop a cemetery for its members to bury loved ones according to the requirements of their Muslim faith.¹⁶ Despite initial approval by the City of Farmersville’s Planning and Zoning Commission, the City Council denied IACC’s preliminary

⁸ Hearn Press Release, *supra* n. 1; Consent Order, *Hearn v. Muskogee Public Sch. Dist. 020*, No. CIV 03-598-S (E.D. Okla. May 20, 2004), available at <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/hearnokor2.pdf> [hereinafter Hearn Consent Order].

⁹ Hearn Consent Order, *supra* n. 8, at 3.

¹⁰ Hearn Consent Order, *supra* n. 8, at 4.

¹¹ See *Brief Introduction to Falun Dafa*, <https://en.falundafa.org> (last visited Sept. 22, 2020); J.Y., *What is Falun Gong?*, THE ECONOMIST, Sept. 5, 2018, <https://www.economist.com/the-economist-explains/2018/09/05/what-is-falun-gong>.

¹² U.S. State Dep’t, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2019: CHINA (June 10, 2020), <https://www.state.gov/reports/2019-report-on-international-religious-freedom/china/>.

¹³ *Id.*; U.S. State Dep’t, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2003: CHINA, <https://2009-2017.state.gov/j/drl/rls/irf/2003/23826.htm>.

¹⁴ See Pls.’ Original Compl. at 1–2, *McCoy, et al. v. Homestead Studio Suites, et al.*, No. CIV-H-03-3648 (S.D. Tex. Sept. 11, 2003), ECF No. 1.

¹⁵ Yvonne Marcotte, *Department of Justice Investigation of U.S. Hotel Touches a Bigger Issue*, THE EPOCH TIMES, Mar. 17, 2005, republished at <http://en.minghui.org/html/articles/2005/3/19/58596.html>.

¹⁶ Case Page: Islamic Association of Collin County, First Liberty Institute, <https://firstliberty.org/cases/icc/#simple1>.

plat application multiple times. Farmersville provided vague and shifting reasons, some of which conflicted with the testimony of the City's own engineers, to justify the denial.¹⁷

The Department of Justice began investigating the City in 2017 and concluded that the City's actions violated the Religious Land Use and Institutionalized Persons Act (RLUIPA).¹⁸ As a result of DOJ's efforts, in 2018 the City unanimously voted to allow the IACC to develop its cemetery.¹⁹ Unfortunately, the religious land use discrimination IACC faced occurs frequently in cities across the country.²⁰

Airmont, New York

For almost thirty years, DOJ fought tirelessly to protect Orthodox Jewish congregations in Airmont, New York. Over the years, Airmont used various discriminatory zoning practices to prevent local Jewish congregations from meeting together on the Sabbath.²¹ Airmont incorporated in 1991, and that same year DOJ filed suit challenging Airmont's discriminatory zoning laws.²² In 1995, the Second Circuit Court of Appeals upheld the finding that "animosity towards Orthodox Jews as a group" motivated Airmont's zoning restrictions.²³ Airmont later adopted new zoning restrictions, and DOJ sued again in 2005.²⁴ Ultimately, DOJ obtained a consent decree that protected Airmont's Orthodox Jewish residents until it expired in 2015.²⁵

First Liberty Institute represents several Orthodox Jewish congregations in the latest lawsuit challenging Airmont's zoning practices.²⁶ Each congregation fruitlessly labored for years through Airmont's onerous and expensive zoning process seeking the permits necessary to meet in accordance with their faith.²⁷ Faced with no other option and the possibility of criminal punishment, the congregations challenged Airmont's zoning practices in 2018 under the First Amendment, RLUIPA, and the Fair Housing Act.²⁸

¹⁷ *Id.*

¹⁸ U.S. DOJ, "Justice Department Settles Claims Against Farmersville, Texas, Involving Denial of Islamic Cemetery," April 16, 2019, <https://www.justice.gov/opa/pr/justice-department-settles-claims-against-farmersvilletexas-involving-denial-islamic-cemetery>.

¹⁹ *Id.*; Settlement Agreement between the United States and the City of Farmersville, Texas (Apr. 16, 2019), <https://www.justice.gov/opa/press-release/file/1154896/download>.

²⁰ See, e.g., U.S. DOJ, "Place to Worship Initiative," <https://www.justice.gov/crt/place-worship-initiative>.

²¹ See *Leblanc-Sternberg v. Fletcher*, 67 F.3d 412, 419 (2d Cir. 1995); Consent Decree at 2, *United States v. Village of Airmont, et al.*, No. 05-cv-5520 (S.D.N.Y. Apr. 25, 2011), available at <https://firstliberty.org/wp-content/uploads/2018/06/2011-DOJVA-Consent-Decree.pdf> [hereinafter Airmont Consent Decree].

²² See *id.*

²³ *Leblanc-Sternberg*, 67 F.3d at 431.

²⁴ See Airmont Consent Decree, *supra* n. 21.

²⁵ See *id.*

²⁶ See Pls.' Original Compl., *Congregation of Ridnik, et al. v. Village of Airmont, et al.*, No. 7:18-cv-11533 (S.D.N.Y. Dec. 10, 2018), ECF No. 1, available at https://firstliberty.org/wp-content/uploads/2018/06/Airmont_Complaint_Redacted.pdf.

²⁷ *Id.* at 27–56.

²⁸ *Id.* at 2, 62, 77.

Last September, DOJ filed a statement of interest in the case highlighting Airmont’s “history of non-compliance with antidiscrimination laws.”²⁹ By its continued vigilance over thirty years and five presidential administrations, DOJ has proven itself a staunch defender of religious liberty for the Orthodox Jewish congregations forced underground by Airmont’s discriminatory zoning practices.

DOJ Fought to Protect Religious Liberty During COVID-19

DOJ maintained its vigilance over civil rights during the extraordinary challenges posed by the COVID-19 pandemic. While acknowledging the necessity of appropriate safety measures, DOJ recognized the risk that local and state governments would abuse their emergency authority to engage in religious discrimination.³⁰ As a result, DOJ structured its enforcement to balance reasonable, temporary emergency measures with Constitutional and statutory civil rights protections.³¹

Across the country, DOJ filed statements of interest supporting religious congregations challenging discriminatory restrictions. For example, DOJ filed a statement of interest in a lawsuit challenging Greenville, Mississippi’s restrictions targeting churches with special prohibitions on drive-in worship.³² DOJ emphasized that the City failed to apply its restrictions evenhandedly—the City allowed drive-in restaurants and other similar establishments to operate in parking lots across the city.³³ Churches, instead, faced fines for providing drive-in services, even though they complied with CDC guidelines.³⁴ While emphasizing “that during this period there is a sufficient basis for the social distancing rules that have been put in place,” DOJ committed to “ensur[ing] that religious freedom remains protected if any state or local government, in their response to COVID-19, singles out, targets, or discriminates against any house of worship for special restrictions.”³⁵

Likewise, DOJ filed a statement of interest supporting a small church in Chincoteague, Virginia when it challenged discriminatory meeting restrictions.³⁶ The small church’s specialized ministry serving the socioeconomically disabled lacked the resources to provide drive-in or virtual

²⁹ United States Statement of Interest, *Congregation of Ridnik, et al. v. Village of Airmont, et al.*, No. 7:18-cv-11533 (S.D.N.Y. Sept. 30, 2019), ECF No. 54, available at <https://firstliberty.org/wp-content/uploads/2018/06/DOJ-Letter-Redacted.pdf>.

³⁰ Attorney General William P. Barr, *Memorandum: Balancing Public Safety with the Preservation of Civil Rights* (April 27, 2020), <https://www.justice.gov/opa/page/file/1271456/download>.

³¹ *See id.*

³² U.S. DOJ, “Attorney General William P. Barr Issues Statement on Religious Practice and Social Distancing; Department of Justice Files Statement of Interest in Mississippi Church Case,” Apr. 14, 2020, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-issues-statement-religious-practice-and-social-distancing-0> [hereinafter Mississippi Press Release].

³³ United States Statement of Interest at 8–9, *Temple Baptist Church v. City of Greenville*, No. 4:20-cv-64-DMB-JMV (N.D. Miss. Apr. 14, 2020), ECF No. 6, available at <https://www.justice.gov/opa/press-release/file/1268651/download>.

³⁴ Mississippi Press Release, *supra* n. 32.

³⁵ Mississippi Press Release, *supra* n. 32.

³⁶ U.S. DOJ, “The Department of Justice Files Statement of Interest in Support of Church That Ministers to Underserved Communities,” May 3, 2020, <https://www.justice.gov/opa/pr/department-justice-files-statement-interest-support-church-ministers-underserved-communities> [hereinafter Chincoteague Press Release].

services.³⁷ The church faced criminal penalties for holding a socially distanced, sixteen-person worship service, even though Virginia allowed gatherings of more than ten workers in various secular businesses.³⁸ DOJ did not take a position on whether in-person gatherings were advisable but emphasized that state authorities must not discriminate against churches in enforcing necessary restrictions.³⁹

Similarly, DOJ filed a statement of interest supporting a Colorado church challenging discriminatory restrictions.⁴⁰ Although Colorado limited churches to ten worshippers, it exempted restaurants, marijuana dispensaries, and other businesses from the public gathering restrictions.⁴¹ In filing the statement of interest, DOJ explained, “Unlawful discrimination against people who exercise their right to religion violates the First Amendment, whether we are in a pandemic or not.”⁴²

Finally, DOJ filed a statement of interest supporting a congregation in Washington, because Washington’s COVID-19 restrictions treated gatherings at places such as restaurants, taverns, and protests more leniently than churches.⁴³ Unless the state can demonstrate some material difference between religious services and other similar gatherings, religious services must be treated equally.⁴⁴ These examples demonstrate that throughout the COVID-19 pandemic’s unusual challenges, DOJ vigilantly stepped in to prevent religious discrimination.

The need for such vigilance remains. On September 22, First Liberty and attorneys at Wilmer Cutler Pickering Hale & Dorr LLP filed suit on behalf of Capitol Hill Baptist Church.⁴⁵ The lawsuit challenges the District of Columbia’s discriminatory restrictions on church gatherings.⁴⁶ While outdoor restaurants may open with appropriate social distancing, D.C.’s four-

³⁷ United States Statement of Interest at 4, *Lighthouse Fellowship Church v. Northam*, No. 2:20-cv-00204-AWA-RJK (E.D. Va. May 3, 2020), ECF No. 19, available at <https://www.justice.gov/opa/press-release/file/1273211/download> [hereinafter Chincoteague Statement of Interest].

³⁸ Chincoteague Press Release, *supra* n. 36; Chincoteague Statement of Interest, *supra* n. 37 at 6–7.

³⁹ Chincoteague Statement of Interest at 2–3.

⁴⁰ U.S. DOJ, “The Department of Justice Files Statement of Interest in Support of Freedom of Religion for Colorado Church,” May 29, 2020, <https://www.justice.gov/opa/pr/department-justice-files-statement-interest-support-freedom-religion-colorado-church> [hereinafter Colorado Press Release].

⁴¹ *Id.*; United States Statement of Interest at 2, *High Plains Harvest Church, et al. v. Polis, et al.*, No. 20-cv-1480-RM-MEH (D. Colo. May 29, 2020), ECF No. 28, available at <https://www.justice.gov/opa/press-release/file/1281611/download>.

⁴² Colorado Press Release, *supra* n. 4040.

⁴³ U.S. DOJ, “The Department of Justice Files Statement of Interest in Support of Equal Treatment of Washington State Church Based on Recent Supreme Court Ruling,” June 11, 2020, <https://www.justice.gov/opa/pr/department-justice-files-statement-interest-support-equal-treatment-washington-state-church> [hereinafter Harborview Press Release]; United States Statement of Interest at 1–2, 9–10, *Harborview Fellowship v. Inslee*, No. 3:20-cv-05518, (W.D. Wash. June 11, 2020), ECF No. 20, available at <https://www.justice.gov/opa/press-release/file/1284756/download> [hereinafter Harborview Statement of Interest].

⁴⁴ Harborview Press Release, *supra* n. 4343; Harborview Statement of Interest, *supra* n. 4343 at 9–11.

⁴⁵ Michelle Boorstein, *Prominent Evangelical Church is the First to Sue D.C. Over COVID-19 Worship Limits*, THE WASHINGTON POST, Sept. 22, 2020, <https://www.washingtonpost.com/religion/2020/09/22/dc-mayor-bowser-sued-church-coronavirus-covid-restrictions/>.

⁴⁶ Pl.’s Original Compl. at 1–3, *Capitol Hill Baptist Church v. Bowser*, No. 1:20-cv-02710 (D.D.C. Sept. 22, 2020), ECF No. 1, available at <https://context-cdn.washingtonpost.com/notes/prod/default/documents/eccc2501-3017-43a4-97fd-c8b7f579497c/note/2cf9ae61-0a27-41f8-aa3a-d0cc4d520c0d.#page=1>.

stage pandemic plan prohibits churches from gathering in person, even outdoors, until a COVID-19 vaccine or therapeutic is developed.⁴⁷ This effectively means that religious services are suspended indefinitely.⁴⁸ The persistence of religious discrimination cases like this one demonstrate the critical importance of DOJ's mission to enforce federal law safeguarding religious liberty for people of all faiths.

Conclusion

The Department of Justice Civil Rights Division has a long and distinguished record of protecting religious liberty for people of all faiths. It continues to discharge its duty to enforce federal civil rights laws by stopping acts of discrimination.

⁴⁷ *Id.* at 2, 9, 12.

⁴⁸ *See id.*