

**PROTECTING RELIGIOUS FREEDOM AFTER BOERNE
V. FLORES (PART II)**

HEARING
BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTH CONGRESS
SECOND SESSION

—————
FEBRUARY 26, 1998
—————

Serial No. 55

DEPT. OF JUSTICE

AUG 06 1999

MAIN LIBRARY



*Legislative Office
Main Library
U.S. Dept. of Justice*

Printed for the use of the Committee on the Judiciary

—————
U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1999

57-221

COMMITTEE ON THE JUDICIARY

HENRY J. HYDE, Illinois, *Chairman*

F. JAMES SENSENBRENNER, JR.,
Wisconsin

BILL McCOLLUM, Florida

GEORGE W. GEKAS, Pennsylvania

HOWARD COBLE, North Carolina

LAMAR SMITH, Texas

STEVEN SCHIFF, New Mexico

ELTON GALLEGLY, California

CHARLES T. CANADY, Florida

BOB INGLIS, South Carolina

BOB GOODLATTE, Virginia

STEPHEN E. BUYER, Indiana

ED BRYANT, Tennessee

STEVE CHABOT, Ohio

BOB BARR, Georgia

WILLIAM L. JENKINS, Tennessee

ASA HUTCHINSON, Arkansas

EDWARD A. PEASE, Indiana

CHRIS CANNON, Utah

JAMES E. ROGAN, California

LINDSEY O. GRAHAM, South Carolina

JOHN CONYERS, JR., Michigan

BARNEY FRANK, Massachusetts

CHARLES E. SCHUMER, New York

HOWARD L. BERMAN, California

RICK BOUCHER, Virginia

JERROLD NADLER, New York

ROBERT C. SCOTT, Virginia

MELVIN L. WATT, North Carolina

ZOE LOFGREN, California

SHEILA JACKSON LEE, Texas

MAXINE WATERS, California

MARTIN T. MEEHAN, Massachusetts

WILLIAM D. DELAHUNT, Massachusetts

ROBERT WEXLER, Florida

STEVEN R. ROTHMAN, New Jersey

THOMAS E. MOONEY, *Chief of Staff-General Counsel*

JULIAN EPSTEIN, *Minority Staff Director*

SUBCOMMITTEE ON THE CONSTITUTION

CHARLES T. CANADY, Florida, *Chairman*

HENRY J. HYDE, Illinois

BOB INGLIS, South Carolina

ED BRYANT, Tennessee

WILLIAM L. JENKINS, Tennessee

BOB GOODLATTE, Virginia

BOB BARR, Georgia

ASA HUTCHINSON, Arkansas

ROBERT C. SCOTT, Virginia

MAXINE WATERS, California

JOHN CONYERS, JR., Michigan

JERROLD NADLER, New York

MELVIN L. WATT, North Carolina

KERI FOLMAR, *Chief Counsel*

JOHN H. LADD, *Counsel*

ROBERT J. CORRY, *Counsel*

CATHLEEN CLEAVER, *Counsel*

CONTENTS

HEARING DATE

February 26, 1998	Page 1
-------------------------	-----------

OPENING STATEMENT

Canady, Hon. Charles T., a Representative in Congress from the State of Florida, and chairman, Subcommittee on the Constitution	1
---	---

WITNESSES

Brooks, Donald W., Reverend, Diocese of Tulsa, Oklahoma	54
Brown, Suzanne, Brookline, New Hampshire	30
Hamlin, Richard, Reverend and Pastor, Evangelical Reformed Church, Tacoma, Washington	4
Mesiti, Jacob, Brookline, New Hampshire	29
Robb, Richard, Ypsilanti, Michigan	41
Rubin, Chaim, Rabbi, Congregation Etz Chaim in Los Angeles, California	32
Smith, Evelyn, Chico, California	25
Steel, Richard, Reverend and Pastor, Cedar Bayou Baptist Church, Baytown, Texas	49
Wigfall, Zari, Van Nuys, California	3
Wilson, III, Patrick, Reverend, on behalf of the Trinity Baptist Church of Richmond, Virginia, and the Richmond Affiliate of the Congress of Black Churches, Inc.	6
Wimberly, Jr., John, Reverend, Western Presbyterian Church, Washington, DC.	17

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Brooks, Donald W., Reverend, Diocese of Tulsa, Oklahoma: Prepared statement	58
Robb, Richard, Ypsilanti, Michigan: Prepared statement	43
Rubin, Chaim, Rabbi, Congregation Etz Chaim in Los Angeles, California: Prepared statement	34
Smith, Evelyn, Chico, California: Prepared statement	27
Steel, Richard, Reverend and Pastor, Cedar Bayou Baptist Church, Baytown, Texas: Prepared statement	51
Wilson, III, Patrick, Reverend, on behalf of the Trinity Baptist Church of Richmond, Virginia, and the Richmond Affiliate of the Congress of Black Churches, Inc.: Prepared statement	8
Wimberly, Jr., John, Reverend, Western Presbyterian Church, Washington, DC.: Prepared statement	19

APPENDIX

Material submitted for the record	67
---	----

**PROTECTING RELIGIOUS FREEDOM AFTER
BOERNE V. FLORES
(Part II)**

THURSDAY, FEBRUARY 26, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:03 a.m., in Room 2226, Rayburn House Office Building, Hon. Charles Canady [chairman of the subcommittee] presiding.

Present: Representatives Henry J. Hyde, Charles T. Canady, Bob Inglis, Ed Bryant, Asa Hutchinson, Robert C. Scott, and Jerrold Nadler.

Staff present: Keri Folmer, Chief Counsel; John Ladd, Counsel; Brett Shogren, Research Assistant; Michael Connolly, Staff Assistant; and Brian Woolfolk, Minority Staff.

OPENING STATEMENT OF CHAIRMAN CANADY

Mr. CANADY [presiding]. The subcommittee will be in order. This morning the subcommittee on the Constitution convenes to hear the real-life stories of individuals who have had their free exercise of religion substantially burdened by governmental action. These individuals have traveled to our nation's capital today from a variety of different regions of the country, and they come to us from a variety of different religious faiths.

In 1993, Congress passed the Religious Freedom Restoration Act, or RFRA, which required government to give a compelling reason for laws which substantially burden religious exercise. Unfortunately, the Supreme Court last June in *Boerne v. Flores* held that RFRA was not a valid exercise of Congress' power under section 5 of the Fourteenth Amendment.

The freedom to practice one's religion is a fundamental right and yet the *Boerne* decision has left men and women of faith, like those who have traveled to Washington to tell us their stories today, without adequate protection against laws that interfere with their religious practice.

We, in Congress, should work to restore protection of these men and women. America was founded upon the notion that Government should not interfere with the religious practices of its citizens. Constitutional protection for the free exercise of religion is at the core of the American experiment in democracy. I look forward to hearing from our witnesses today and I look forward to working

successfully in this Congress to preserve our first freedom, the freedom to practice one's religion without government interference. I'm very hopeful that we will be able to develop a consensus among members of the subcommittee and the full committee on this important subject, and move forward with legislation to address the issue. Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I appreciate the fact that were holding this hearing on real-life experiences of those who have had their religious expressions disrupted as a result of substantial burdens placed by government. Under the RFRA balancing test, government may substantially burden a person's right of religion only if it demonstrates that the application of the burden to the people, to the person, is in furtherance of a compelling governmental interest, and is the least-restrictive means to secure the right of that compelling governmental interest. Although the *Boerne* decision overturned parts of RFRA, we learned from the last hearing that there is ample opportunity to fix the constitutional deficiencies noted by the court. And this hearing is a necessary part of the establishing a record showing that religious practices can and are substantially burdened, and are deserving of our protection. I look forward to the witnesses testimony and I thank you again for holding the hearing. And, before we start, I ask unanimous consent that a statement from Reverend Barry W. Lynn representing Americans United for Separation of Church and State be entered into the record as part of the hearing record.

Mr. CANADY. Without objection, it will be entered. Thank you, Mr. Scott. We will now move to our first panel of witnesses, if those who are on the first panel would come forward to be seated. We will have three panels of witnesses today. I want to apologize to witnesses in advance. At some point later in the morning, I may have to be absent from the hearing from a period of time due to the fact there is a markup taking place in the Intellectual Property Subcommittee, of which I am also a member, on some quite significant bills, and my presence may be required there for some recorded votes that will take place. So, I do apologize for the conflict and if I leave, I will be back just as soon as I can. And I want to thank all you in advance for being here.

On our first panel today, the first to testify this morning will be Ms. Zari Wigfall. Ms. Wigfall is a college student from Van Nuys, California. Then we will hear from Reverent Richard Hamlin. Reverent Hamlin, pastor of the Evangelical Reformed Church comes to us from Tacoma, Washington. Next will be Reverend Patrick J. Wilson, III. Reverend Wilson serves as Minister of Community Development with the Congress of Black Churches, Incorporated, in Richmond, Virginia. Finally on our first panel, we will hear from Reverend John Wimberly, Jr. Reverend Wimberly is pastor of the Western Presbyterian Church here in Washington, DC.

Again, we thank you all for being here with us this morning. I would ask that each of you summarize your testimony in 10 minutes or less, and without objection, your written statements will be made a part of the permanent record of this hearing. Again, thank you for being with us. Ms. Wigfall.

STATEMENT OF ZARI WIGFALL, VAN NUYS, CALIFORNIA

Ms. WIGFALL. During the Spring of 1994, I was a college student at Sacramento City College, and I had a 4.0 grade average, and I was interviewed to be a peer counselor assistant. The job required that I take new students on tours of the college campus so that they could become more familiar with the campus.

When I went to fill out and sign the paperwork—that was necessary for my employment—included was an oath of allegiance. While I don't want to show any disrespect to the United States, I follow the Bible's command to be neutral when it comes to political issues, and not to engage in or fight against any human being. Because of this, I feel it's important that I bear faith and true allegiance to God and His word, the Bible. If I didn't do this, I would be in conflict with my principles, and my conscience.

To back up the reason why I feel this way, in the Bible at Luke Chapter 4 and Verse 8, Jesus himself said it is written, it is Jehovah your God you must worship, and it is to Him alone you must render sacred service. So as one of Jehovah's witnesses, I could not give that sacred service to anybody else, only to God. Also, in Matthew, Chapter 26 and Verse 52, Jesus also said that those who take the sword will perish by the sword. And for that reason, I wouldn't want to put myself in any position where I would have to kill another human being. Because of these reasons, I was unable to sign the oath. And the swearing of true faith and allegiance to the United States or to any other human government against all enemies foreign and domestic, is something that does go against my religion's principles and also my conscience.

But this doesn't mean that I'm disrespectful to the Government or to the United States. Instead, I try as much as I can to be helpful to the community, and even to be an asset to the community.

I told Mr. Downs, who was the person that interviewed me that this was the case and I couldn't sign the oath for these reasons. At the time he said that it wouldn't be a problem, so I went ahead and turned in the rest of the paperwork and started working. The job was great for me because I was able to take college students on tours of the campus. I was also able to fit this job in with my school schedule, work it around my school schedule, and this provided me with an income to support my college education.

But after I worked this job for a week, Mr. Downs met me and informed me that I no longer had the job. And the reason why was because the dean had gotten my paperwork, and had said that because I wouldn't sign the oath, then I couldn't have the job. So, I tried to make the oath in harmony with my religions beliefs. And I asked if I could amend the oath so that I could sign it and turn it in. But the dean said that I couldn't. Even though Mr. Downs who had interviewed me was just as surprised and frustrated that this was an issue and that they would actually take my job away, there was nothing that he could do about it, so he had to find another student who was just as qualified as I had been for the job, and I no longer had a job.

The other thing that happened to me was later in the fall of 1994. My stage makeup teacher, Judy Radue, asked me if I would like to be a theater house manager for her play for children's theater "Beauty and the Beast," and it ran for five consecutive weeks.

So I agreed to do that, and as things went, there was paperwork I also had to fill out for the position. When I went through the paperwork, as I was filling it out, there was the oath of allegiance again. So I explained to the secretary in the theater office that I couldn't sign this oath of allegiance, and she said that the dean had said that if someone didn't want to sign the oath of allegiance then they didn't want to work for the school.

So because of that I was, once again, denied a job that I was well-qualified for. And again, my teacher was really surprised that this was an issue and she was even kind of upset and frustrated, but there was nothing she could do, so she had to give my position to some other student who was just as qualified as I had been.

And I guess for me the thing that's also kind of frustrating is the fact that being in the United States, just didn't think that this would be an issue because, I mean, in history books I read that there were times when citizens didn't really have rights, when there was no Constitution, and when the law didn't work for people of certain ethnic groups. But living today in the 1990's, we do have the Constitution, citizens are entitled to certain rights, and also minorities, including religious minorities, are given certain guarantees. And I just didn't think that this would be such an issue, and that because of my religious beliefs I would have two jobs taken away from me.

And I guess that sums up what I have to say.

Mr. CANADY. Thank you, Ms. Wigfall. Reverend Hamlin.

**STATEMENT OF RICHARD HAMLIN, REVEREND AND PASTOR,
EVANGELICAL REFORMED CHURCH, TACOMA, WASHINGTON**

Mr. HAMLIN. My name is Rich Hamlin. I'm the pastor of Evangelical Reformed Church in Tacoma, Washington. I am an ordained pastor responsible for the preaching, worship and spiritual counsel of our church. As a regular part of my ministry, I meet with those who are troubled by matters of conscience, seeking the forgiveness and consolation of the gospel.

On July 1997, I received a phone call from a woman in great distress who was seeking a minister who would meet with her son. I agreed to meet with him and in less than an hour, I was sitting across the table from a young man obviously who was under a great deal of emotional pressure. I urged him to unburden his soul to me. Gradually, he confided in me and I provided him spiritual counsel, and we prayed together.

Three days later, this young man was arrested. In the last 7 months, while he has been incarcerated awaiting trial, I have met with him on several occasions. I've counseled with him and prayed with him on all those occasions.

On December 16 of last year, the county prosecutor in the furtherance of its case against this young man obtained an order from the court for my deposition. The prosecutor asked me during the deposition to disclose the confidential statements the young man had made to me during his confession. I respectfully refused to answer these questions, believing that as a minister of Christ's church I could not reveal the statements this young man had entrusted to me.

The prosecutor then brought me into court to seek an order of contempt from the judge. My attorney, Steven O'Ban, who is present with me today, asserted my First Amendment rights under the Free Exercise Clause. He argued that confessional statements made to me or any ordained minister or priest could not be compelled by the state without substantially interfering with the right to hold inviolate those matters that were entrusted to me. Without this protection, I could never assure those that seek spiritual consolation that the deepest matters of the soul would be held in the strictest confidence. And without such assurance, neither I nor any priest or minister could ever in good conscience urge complete candor. And without full and complete confession, true repentance is impossible, and true peace of conscience unattainable.

To our surprise, the judge held that there did not exist the constitutional right preventing the state from forcing from me this confession. The judge stated that the only law pertaining to confessions was a narrowly-written state statute that could be invoked by the penitent but not by the priest or minister.

The court then ordered me to disclose the confession of this young man in open court. When I answered that I could not without violating my own religious principles as a pastor, the court ordered that I be incarcerated until I disclosed the confession.

My attorney immediately appealed. One week later, the Washington State Court of Appeals stayed the judge's incarceration order. My appeal will be heard on May 5 of this year.

As a pastor, I meet with people all the time who seek spiritual counsel and wish to discuss highly personal and confidential matters, including to confess their sins and seek forgiveness from God. The assurance of confidentiality is absolutely indispensable.

A young man, in this case, confided in me because I am a minister. That is why I was sought out. To disclose matters entrusted to me as a minister would irreparably undermine the pastoral office. I must be able to provide spiritual counsel free from government intrusion or threat of government intrusion.

Recently, the Ninth Circuit Court of Appeals held that the fundamental need for confidentiality in confessional settings has been recognized in this country almost as long as we have been a country.

My responsibilities as a pastor would be seriously undermined if the confidential nature of confession could be destroyed by the government wielding a subpoena. There is no more important relationship than that between a man and his God. For many, that all-important relationship is facilitated by intimate confession to a minister of the gospel, and that communication is confidential.

If the trial judge was right and there is no constitutional protection regarding one of the most sacred roles of a minister or a priest, then all religious traditions that practice confession are in danger.

I don't believe that the prosecutor who petitioned the judge to put me in jail was anti-religious. He told my attorney he was just doing his job. There is a risk that what once may have been unthinkable may now become commonplace. It may become accepted prosecutorial practice to subpoena the priest or minister of the accused, unless a legal wall is quickly erected to protect priests and ministers receiving confessions. I urge this Congress to take action

to protect faiths, all faiths, from this very real threat to religious liberty.

Thank you for extending to me the privilege of addressing this honorable body, and I ask that this Congress act quickly on this important and sacred matter. Thank you very much.

Mr. CANADY. Thank you, Reverend Hamlin. Reverend Wilson.

STATEMENT OF PATRICK WILSON, III, REVEREND, ON BEHALF OF THE TRINITY BAPTIST CHURCH OF RICHMOND, VIRGINIA, AND THE RICHMOND AFFILIATE OF THE CONGRESS OF BLACK CHURCHES, INC.

Mr. WILSON. Good morning to this committee, good morning, Mr. Chairman, and, in particular, good morning to my congressman, Congressman Scott. To correct the record, I'm here both on behalf of the Richmond Affiliate of the Congress of National Black Churches, as well as my own church where I serve as Minister of Economic and Community Development, the Trinity Baptist Church of Richmond, Virginia.

We are here this morning because our situation in Richmond has developed because the city council in Richmond has chosen to limit ministry by passing a zoning ordinance which, while it makes some things convenient for some neighborhood residents, has attempted not just to regulate the religious expression of our church, but audaciously proceeded to codify the very definition of what a church is.

In the City of Richmond, the operative definition of a church is a place of prayer and worship *only*. This narrow definition is neither practical nor honest. It doesn't take into account the long history of ministry and public good performed by the church. It doesn't take into account the very real situation that in serving food to the hungry—which is what brought about this most recent ordinance, we are, in fact, and indeed engaging in worship. A final failure of this definition of church is much more practical. It seems to be utter nonsense for a governmental body, including the city of Richmond, who, on the one hand asks the church to pick up the slack that's created by dwindling budgets and emphasis on personal responsibility and self-help, and, on the other hand, handcuff the church in its sincere desire to accommodate government's request.

We would note that the Constitution is bereft of any definition of church. Religious freedom can perhaps be best served by *not* defining what it is and what it is not.

It is this attempt to define by legislative fiat what the church is and, therefore, control what the church might be, that seems to us to be patently offensive to the notion of free expression of one's religious beliefs. Such measures offend the very nature of our constitutional protections that the framers sought to provide.

What, unfortunately, is the case in Richmond, and what seems to illuminate the desires of some in the community, is the use of zoning regulation to accomplish a class-based economic cleansing of the downtown area, all in the name of an economic development plan which victimizes some citizens and makes others captains of industry. Not unlike the more familiar ethnic cleansings, persons are making class and religious based decisions about who is and who is not an acceptable participant in the progress of a city.

Specifically, the City of Richmond has by ordinance prohibited or limited the number of hungry persons, and in their statute it says, homeless persons, that may be fed in any 7 day period. By ordinance, the city has criminalized the very work for which the church was established. The ordinance in Richmond indicates that the temporary feeding and housing of not more than 30 homeless individuals within churches would be permitted. This means that if you are the 31st person, be you man, woman, boy, girl, angel, Jesus Christ, we would not be permitted under that statute to serve you a meal. It also requires us to perhaps ask you for homeless identification card to establish first that you are, indeed, homeless.

This kind of legislative scheme seems to fly in the face of the reason why we do these things. And that is perhaps best outlined in the 25th Chapter of Matthew, where we find Christians presented with a very clear choice. There is heaven and there is hell, there is a judgment which will be made. Part of how the judgment will be made will be based upon whether or not you did these things: If you were hungry and gave me food, if you were thirsty and you gave me something to drink. I would just direct your attention to that scripture, lest I turn this into a short sermon.

However, I have to note that the ordinance in Richmond does allow for a church to exceed those numerical limits through the payment of a \$1,000 conditional use permit fee and application to city council. The city council is under no obligation to grant that conditional use permit, and you don't get your \$1,000 back. So what we have here is a statutorily enforced fee for the exercise of a basic, fundamental tenet of the Christian faith.

I would submit that this regulatory formulation presents an undue burden upon our religious practice. As I noted, one unforeseeable consequence of this ordinance might be to have persons queuing up in front of the church from the very early hours in the morning, hoping that they would not be the unfortunate 31st person.

In addition, we are required by this law to withhold our expression of religion from some, based purely upon the happenstance of their socioeconomic condition.

Trinity Baptist Church feeds more than 15,600 persons each year. Some are homeless and some are hungry. And we are concerned also for those, certainly, that we do feed, but I would be concerned for the 7,800 that we have calculated the ordinance does not permit us legally to feed.

Something else we must point out is that this ordinance would allow the church to feed as many non-homeless, non-member persons as we wish. I am only limited in the number of homeless persons that I am allowed to feed.

In spite of our attempts to reach a compromise with the City of Richmond, we have been unable to do so. And, parenthetically, we did attempt to pass a state version in this year's legislative session of the RFRA which followed and tracked, by design, very closely the provisions of the Federal act and that law, unfortunately, was continued until the next legislative session. In the meantime, churches like Trinity Baptist Church are left with no choice but to continue to be in violation of the law. It is not the way that Chris-

tians choose to be in the church, but for now, it seems that this is all the law will allow.

We are concerned because there appears to be in our society a disturbing disposition by government to continue to encroach upon personal freedoms. Too often, we when look behind the obvious or better known rationales, we find a commercial or capitalistic cause. However, for the church, money is not what motivates us. The standard by which we are judged and the reason for our existence is presented not in statute, not in ordinance, but presented in the Bible itself. The consequence of Christians who choose not to obey this very basic tenet or our faith is as simple as, is there a heaven or is there a hell. If you're a Christian and believe those things, and you would also believe the command and the consequence that we find in the 25th Chapter of Matthew.

The city's ordinance in Richmond goes much, much further than it ought. It restricts and sometimes prohibits the exercise of faith and obedience to the word of God. It requires us to pick and choose who we will feed or clothe or shelter, and this is simply not for us to do.

Compliance with Richmond's ordinance places the church in direct conflict with the reasons for its existence: not to save the saints, but to save the "ain'ts," not to serve the haves, but to serve the have-nots. And this we have done, and this we will continue to do, notwithstanding the ordinance. It is unfortunate that economic development seems to be the preeminent value that has caused the city council to act. I would share anecdotally, the story of a prominent citizen in our community who is also the publisher of our local newspaper, who was quoted as having told the mayor of that city that all of this, this problem with homeless persons, is, "you people's fault." The mayor, who happened to have been black, was somewhat bridled about that and wanted to know what he meant by, "you people." This individual said, no, no, no, I don't mean black, I mean church people, you see, the homeless are like cats and if you keep feeding them, they will keep coming back.

We would offer, finally, that religion for us is not just a mountain of ideas and abstract concepts, but is expressed through our actions and our activities. Religion is not just what we think or believe, but it is also what we do. We ought not to allow the use of statutory plans like zoning board decisions to accomplish that which would not be permitted by the First Amendment.

I would say to this committee that we need your help. We appreciate this opportunity to share our situation. Thank you.

[The prepared statement of Mr. Wilson follows:]

PREPARED STATEMENT OF PATRICK WILSON, III, REVEREND, ON BEHALF OF THE TRINITY BAPTIST CHURCH OF RICHMOND, VIRGINIA, AND THE RICHMOND AFFILIATE OF THE CONGRESS OF BLACK CHURCHES, INC.

PREAMBLE

Pursuant to the terms of House Rule XI, clause 2(9)(4), the above-named witness is unaware of the receipt of any Federal grant, contract or subcontract received by him or any entity represented at the hearing to which this statement is directed, in the current or preceding two fiscal years. Additionally, the witness has attached a *curriculum vita* to this statement.

SUBSTANTIVE REMARKS

Good morning to the members of this subcommittee. On behalf of the members of the Trinity Baptist Church, its Pastor the Reverend A. Lincoln James, Jr., Reverend Nathaniel D. West, our Minister of Christian Education, Minister Debora K. Logan, our Minister of Music and Reverend James L. Miles, Sr., our Minister of Special Projects and Ministries, as well as on behalf of the Richmond Affiliate of the Congress of National Black Churches, Inc., it is a great pleasure to be with you this morning. I would like to thank the Chairman and the members of this subcommittee for this opportunity to discuss a matter of the utmost importance to all of the individuals whom I serve in the Metropolitan Richmond community, and indeed the entire community of faith.

I have been asked to share briefly our perspective on the subject of this hearing, "The Need for Federal Protection of Religious Freedom after *Boerne v. Flores*." It is my view that the course of events in Richmond as well as the course of conduct of elements of its local government demonstrate clearly why a comprehensive legislative schema is, at the least, extremely helpful and probably very necessary. My comments may at times touch upon the theological and philosophical but they will also lift up the practical, pragmatic and political realities of our condition of existence in Richmond and the tense relationship that the community of faith now has with local government. In short, our situation has developed precisely because in limiting ministry of the church to those things which may be convenient for a number of neighborhood residents, the government has attempted no mere regulation of expression, but has audaciously proceeded to codify the very definition of what the church is. At this moment, the operative definition of "church" in the City of Richmond is as a place of "prayer and worship" only. This narrow definition is neither practical nor honest, and does not take into account the long history of ministry and public good performed by the church. Neither does this definition take into account the very real concept that serving food to the hungry is, in fact and indeed, a form of worship. A final failure of this definition is altogether more practical. It is utter nonsense for government, Federal, state and local (including the City of Richmond) to ask the church on the one hand to "pick up the slack" created by dwindling budgets, selfish priorities, greater emphasis upon the concepts of self-help and personal responsibility and less governmental intrusion, and, on the other hand, handcuff the church in its sincere desire to accommodate the request.

It is no small point that the Constitution is bereft of such a definition. Freedom of religion can perhaps best be served by not attempting to define what it is or what it is not. A *priori* definition of the church is shortsighted and dangerous.

It is this attempt to define by legislative fiat what the church is and therefore, control what the church can and will be, that seems to us to be patently offensive to the notion of free expression of one's religious beliefs. Such measures offend very nature of the constitutional protections that the framers of our Constitution sought to provide through the establishment clause.

What our unfortunate history in Richmond, Virginia seems to illuminate is the desire of some in the community to utilize zoning regulation to accomplish a class-based, economic cleansing of the downtown area, all in the name of an economic development plan which victimizes some citizens, while making others captains of industry. Not unlike the more familiar "ethnic-cleanings," persons are making class and religion based decisions about who is and who isn't an acceptable participant in the progress of a city.

In brief, through a history of zoning regulation that has always proved to unduly impact the ability of the church to fulfill its biblical mandate of service, the City of Richmond has prohibited the church from feeding hungry persons without qualifications unrelated to health and safety concerns. By ordinance, the City has "criminalized" the very work for which the church was established.

In the Christian community in general, and at the Trinity Baptist Church in particular, we provide food to persons without pre-qualification because of biblical command. At the 25th Chapter of Matthew we find these very specific instructions, beginning at the 31st verse:

31 "When the Son of Man comes in his glory, and all the angels with him, then he will sit on the throne of his glory. All the nations will be gathered before him, and he will separate people one from another as a shepherd separates the sheep from the goats, and he will put the sheep at his right hand and the goats at the left. Then the king will say to those at his right hand, 'Come, you that are blessed by my Father, inherit the kingdom prepared for you from the foundation of the world; for I was hungry and you gave me food, I was thirsty and you gave me something to drink, I was a stranger and you welcomed me, I was naked and you gave me clothing, I was sick and you took care of me, I was in

prison and you visited me.' Then the righteous will answer him, 'Lord, when was it that we saw you hungry and gave you food, or thirsty and gave you something to drink? And when was it that we saw you a stranger and welcomed you, or naked and gave you clothing? And when was it that we saw you sick or in prison and visited you?' And the king will answer them, 'Truly I tell you, just as you did it to one of the least of these who are members of my family, you did it to me.' Then he will say to those at his left hand, 'You that are accursed, depart from me into the eternal fire prepared for the devil and his angels; for I was hungry and you gave me no food, I was thirsty and you gave me nothing to drink, I was a stranger and you did not welcome me, naked and you did not give me clothing, sick and in prison and you did not visit me.' Then they also will answer, 'Lord, when was it that we saw you hungry or thirsty or a stranger or naked or sick or in prison, and did not take care of you?' Then he will answer them, 'Truly I tell you, just as you did not do it to one of the least of these, you did not do it to me.' And these will go away into eternal punishment, but the righteous into eternal life."

It is against this most compelling theological background that the City of Richmond determined to instruct the church on how many people we are able to feed before we have fulfilled our obligations under scripture. In fairness, I must note that we can ask to exceed the limits imposed under this draconian ordinance upon the payment of a \$1,000.00 fee. A \$1,000.00 fee is beyond the means of most churches, which operate with memberships of less than 100 persons and is therefore prohibitive. Imagine that, a statutorily imposed fee for the exercise of a basic and fundamental tenant of the Christian faith!

For the sake of clarity I would like to provide you with a brief recounting of how we have found ourselves in the unenviable position of having to bring suit against the City of Richmond for a violation of our right to free expression of our religious beliefs. Beginning in 1976, the City of Richmond undertook to adopt a comprehensive zoning ordinance. State law requires that Zoning Ordinances must be interpreted and enforced by a Zoning Administrator who shall be an employee of the local government. The ordinance must be consistently interpreted as it is written. If the language is not clear in every case, then the Zoning Administrator must take into consideration previous interpretive decisions by the Board of Zoning Appeals and may consider any written documentation of the intent of a zoning provision from when the provision was adopted and other adopted policy documents such as the City Master Plan. One of the legal principium, which must apply when interpreting a zoning ordinance, is that the ordinance must be read as a whole. The zoning ordinance is inclusive. Only uses and activities listed are permitted. The ordinance also states that undefined terms "shall be interpreted in accord with such normal dictionary meaning or customary usage as is appropriate to the context."

An aggrieved party may challenge an interpretation of the Zoning Administrator to the Board of Zoning Appeals. An aggrieved party could be the owner of a property involved in a zoning decision or someone with a property interest nearby. The Board is a composed of five citizens who are appointed by the Circuit Court to hear requests for variances, special exceptions and appeals of zoning determinations. Only this Board may overrule "Zoning Administrator, Appeals of the Board's decisions are taken to the courts. The Board has ruled twice in crises involving the use of churches. The Zoning Administrator must abide by the rulings of the Board. If City Council does not agree with the results of an interpretation or Board ruling the appropriate action is to change the ordinance.

HISTORICAL BACKGROUND OF ORDINANCE PROVISIONS REGULATING CHURCHES

The first time a major zoning issue was raised involving church activities was in 1985. A local church purchased two abutting residential properties with the intention of using one building as a counseling office for both church members and non-church members and the other for offices and Sunday school activities. The Zoning Administrator, using the reasoning outlined above, ruled that these activities were permitted with the exception of the counseling services to non-church members. The church in question considered an appeal of this decision but chose not to do so and limited counseling to church members. However, the adjacent residential civic association appealed the decision to the Board of Zoning Appeals. They argued that none of the proposed uses should be permitted because accessory activities should be permitted only in the same building as the main sanctuary. They also questioned whether all of the proposed activities were permitted even within the sanctuary. The Board of Zoning Appeals upheld the Zoning Administrator, but the neighborhood civic association appealed, without success, all the way to the State Supreme Court.

In 1991, City Council initiated and adopted zoning ordinance amendments to permit the housing and feeding of up to thirty homeless individuals as an accessory use within churches in most districts for a maximum of seven days in a year. The purpose of this amendment was to authorize the CARITAS program in which local churches rotated to accommodate overflow from area shelters. It was recognized at the time that this amendment was necessary because the use was not permitted by the ordinance.

In 1996, the City zoning office received a complaint about a weekly feeding program at First English Lutheran Church located within a residential district. Most churches are located within residential districts. Stuart Circle Parish, an association of nearby churches, operated the program. The Zoning Administrator ruled that a regular feeding program serving non-church members was not permitted as a principal or accessory use in a residential district. Stuart Circle Parish appealed the Zoning Administrator's decision to the Board of Zoning Appeals, arguing that the feeding program was in and of itself a ministry and not the accessory use listed in the zoning ordinance. The Board upheld the determination of the Zoning Administrator and there was no appeal to Circuit Court. However, Stuart Circle Parish filed suit in Federal Court over the legality of the zoning ordinance limitations.

On July 28 of this year, Richmond City Council adopted zoning ordinance amendments which would permit, as an accessory use, churches to operate feeding programs which exceed the limitations in the then current ordinance, subject to obtaining a conditional use permit from City Council at a cost of \$1,000.00. The conditional use process affords the opportunity for City Council to ensure compatibility with adjacent properties by being able to place limitations or conditions on the feeding programs, when appropriate. The granting of a conditional use permit is not automatic and no refund of the permit fee is permitted even if the permit is not granted.

The ordinance adopted by Richmond City Council, a copy of which is attached, reads, in relevant part, as follows:

- (9) *Temporary feeding and housing of not more than thirty (30) homeless individuals within churches or other places of worship, subject to meeting applicable building and fire code requirements, for up to a total of seven (7) days and only during the time period beginning on October 1 of any year and ending on April 1 of the following year; (emphasis added)*

Feeding of homeless individuals within churches or other places of worship and involving greater numbers of individuals and/or involving greater or different time periods than specified in the preceding paragraph may be permitted by conditional use permit as set forth in Article X of this chapter, provided that:

- a. Applicable building and fire code requirements are met; and
- b. A management program shall be submitted as set forth in Section 32 1045.6(e)

Prior to July 28, 1997, the following regulations applied:

- (9) *Temporary feeding and housing of not more than thirty (30) homeless individuals within churches or other places of worship, subject to meeting applicable building and fire code requirements, for up to a total of seven (7) days and only during the time period beginning on October 1 of any year and ending on April 1 of the following year, provided, however, that for the period October 1, 1991, through April 1, 1992, such persons shall be allowed to stay for up to thirty (30) days;*

In any event, none of these formulations avoid presenting an undue burden upon our religious practice. In fact the most recent ordinance requires us comply by first determining whether the person that we are feeding is, in fact homeless, and secondly, whether he or she (be it man, woman, boy, girl) is the 31st person in line. After submitting these persons to this dignity robbing interrogation, we might be required to refuse to feed them. A foreseeable consequence of such administration would be lines of hungry persons who form a queue outside of the church hours before meals are to be served, each hoping that they are fortunate enough not to be the 31st homeless person in line.

In addition, this kind of mean-spirited regulation also requires the church to discriminate as to whom it will minister to. Under Richmond's ordinance, the church is permitted to feed as many "non-homeless, non-member" as it wishes, a function long recognized as a usual and customary use of church property. Thus, we are required by law to withhold our expression of religion from some, based purely upon the happenstance of their socio-economic condition.

Finding this situation to be untenable and contrary to our sense of higher law, on August 20, 1997 the Trinity Baptist Church, along with other impacted congregations and six persons from within the homeless community, filed suit against the City of Richmond in United States District Court. A copy of that action, *Trinity Baptist Church, et.al. v. City of Richmond*, is attached to this statement. The suit sought declaratory and injunctive relief confirming the right of churches to conduct their feeding programs and the right of poor and homeless persons to participate in those programs. Trinity serves approximately 60 meals per day, 5 days per week, 52 weeks a year. The delimiting by one-half the number of poor and homeless persons served would have a significant and terrible impact upon the community which churches, in their best moments, seek to serve. While serving food to 15,600 persons does not seem like much in the face of mounting homelessness and hunger, not serving food to 7,800 persons is, to us, an abandonment of our core beliefs.

The community of faith and the Plaintiffs continued their dialogue with the City in the hopes of reaching a compromise. At one point, the City Council publicly stated their intent to repeal the current ordinance and to replace it with one that met our objectives and responded favorably to our claim for relief. Plaintiffs even went so far as to agree (at the urging of the trial judge) to dismiss our case, based upon the representations of the City that they were going to meet our requests in their entirety.

In spite of many attempts at compromise, the City of Richmond has to date been unwilling to accommodate the churches demands with less burdensome regulation. All reasonable attempts to resolve this issue without litigation have been met with mischief and bad faith by the City. Without the force of a superseding state or federal mandate, we are left to believe that the City has no intention of honoring their commitment to repeal this ordinance. Parenthetically, our attempt at the passage of a state version of the Religious Freedom Restoration Act was continued to the next legislative session. In the meantime, churches like Trinity are left with little choice but to continue to be in violation of the law. It is not the way Christians choose to be the church, but for now it seems that it is all that the law will allow."

CONCLUDING REMARKS

There appears to be in present-day society a disturbing disposition by government to further encroach upon personal freedoms—freedom of expression, assembly and association and now, religious freedom. Too often when we look behind the obvious or better known rationales, we find a commercial or capitalistic cause. For the church, money is not what motivates us the most. It is impossible for any governmental entity to tell a Christian how to serve the Cause of Christ. We readily acknowledge and approve of reasonable restrictions regarding the exercise of religious freedom. However, what are reasonable restrictions is and must be relative to the standard against which it is to be measured. The standard that we in the Affiliate and we in Trinity are constrained to use is not the Constitution—although as one also trained in the law—I would find this to be of dubious constitutionality. The standard is not that which had been codified in the Religious Freedom Restoration Act, although that too causes me to pause. The standard by which the community of faith must apply is that found in the Holy Writ. We serve Christ and for us the Bible is not rhetoric! In this case, this standard by which we are bound is found in the Gospel of Mathew where we are not merely persuaded, not merely compelled but commanded and coerced by the words of Christ himself. We are told, in short, that there is judgement for God's people and that if we are to serve Christ (the word ministry translates from the Greek into "servant") then we must feed the hungry, give drink to those that thirst, take in those who are homeless and strangers, clothe the naked, visit the sick and those shut in. There are no restrictions or equivocations regarding this command. These are the obligations of the righteous and for them it is part and parcel of how we are to inherit the Kingdom of God—how we are to obtain salvation. The alternative consequence for our failure to do these things is equally unequivocal. We are admonished that we will be separated from God and sent to a place that makes our recent warm weather seem like a deep freeze. For the Christian, the Bible is the highest authority there is—its place in our lives is confirmed by the practice of prayer observed at the start of these proceedings. Our obligation to feed all who are hungry—without conditions and to the limit of our ability—is as fundamental to the church as is our obligation to pray, also commended in 1st Thessalonians to be without ceasing. Perhaps an ordinance limiting for whom the church can pray will be next.

Health and safety issues can and are addressed in less odious ways. Inspections of kitchen facilities are reasonable even by biblical standards as are those laws which would prohibit the distinction or vandalism of private property—but these are

already on the books. The City's ordinance goes much further—it restricts and in some instances will prohibit the exercise of faith and obedience to the word of God. It will require the church to pick and choose whom we will feed or clothe or shelter and that is not for us to do. As I said earlier, my failure to unconditionally feed all that are hungry makes hell a real possibility. And with all due respect to this august body, I or any Christian can get there all by ourselves. Compliance with Richmond's ordinance would place the church in direct conflict with the reasons for its existence—not to save the saints—but to save the aint's—not to serve the haves but to serve the have nots. This we have done. This we will continue to do.

What the church would hope to obtain, with the help of the Federal Government if necessary and constitutionally appropriate, are neutral ordinances of general application which do not unreasonably burden the free exercise of sincerely held religious beliefs, without their first being a showing of a compelling state interest. Matters of the burden of proof to be applied and whether the offending regulation is the least restrictive means of serving that interest can be worked out, if there is a sincere desire for conciliation. Economic development cannot and should not be the preeminent value of our society.

Religion is not just an amalgam of ideas and abstract concepts, but is best expressed through our actions and our activities. Religion is not just what we think or believe, but also what we do. We ought not to allow the use of statutory plans like zoning ordinances to accomplish that which would not be permitted by the First Amendment.

We need your help and appreciate this opportunity to share. Thank you and God bless you.

OFFERED JUN 23 1997

AN ORDINANCE No. 97-225-202

ADOPTED JUL 28 1997

To amend and reordain Sections 32-402.2 and 32-434.1 of the Code of the City of Richmond, 1993, to permit feeding the homeless within churches and other places of worship by Conditional Use Permit.

Patron - City Manager

Approved as to form and legality
by the City Attorney

PUBLIC HEARING JUL 28 1997 AT 8 PM

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That Section 32-402.2 of the Code of the City of Richmond, 1993, be and is hereby amended and reordained as follows:

Sec. 32-402.2. Permitted accessory uses and structures.

Accessory uses and structures, including the following, which are customarily incidental and clearly subordinate to permitted principal uses, shall be permitted in the R-1 District (see Section 32-680):

- (1) Private garages, garden, tool and storage buildings, boathouses, piers and docks;
- (2) Home occupations;
- (3) Day nurseries when located within churches, or other places of worship, community centers or school buildings, provided that the outdoor play area requirements applicable in the R-43 District and set forth in Section 32-414.1 shall be met;

- (4) **Parking areas;**
- (5) **Accessory [L] lodging units within single-family dwellings when such units are occupied by a total of not more than two (2) persons;**
- (6) **Swimming pools, tennis courts and similar recreational facilities;**
- (7) **Temporary structures, trailers and storage of equipment and materials incidental to construction activities taking place on the premises, provided that such shall be removed upon completion or abandonment of construction. In the case of public improvements construction taking place within a public right-of-way, such construction related activities shall be permitted on property abutting the construction site when approved by the Director of Public Works and when operated and maintained in accordance with standards established by said Director;**
- (8) **Raising or keeping of domestic animals for noncommercial purposes on lots occupied by single-family dwellings, provided that all pens, runs, out-buildings and other facilities for the housing or enclosure of such animals shall be located not less than two hundred (200) feet from all property lines. The restrictions set forth in this subsection shall not apply to the keeping of dogs, cats or other household pets (see Section 32-1220.35);**
- (9) **Temporary feeding and housing of not more than thirty (30) homeless individuals within churches or other places of worship, subject to meeting applicable building code and fire code requirements, for up to a total of seven (7) days and only within the time period beginning on October 1 of any year and ending on April 1**

- (3) Business, professional and administrative offices, medical and dental clinics and studios;
- (4) Churches and other places of worship, including as an accessory use the temporary feeding and housing of not more than thirty (30) homeless individuals within churches [and] or other places of worship, subject to meeting applicable building code and fire code requirements, for up to a total of seven (7) days and only within the time period beginning on October 1 of any year and ending on April 1 of the following year, [~~provided, however, that for the period October 1, 1991, through April 1, 1992, such persons shall be allowed to stay for up to a total of thirty (30) days;~~]

Feeding of homeless individuals within churches or other places of worship and involving greater numbers of individuals and/or involving greater or different time periods than specified in the preceding paragraph may be permitted by conditional use permit as set forth in Article X of this chapter, provided that:

- a. Applicable building code and fire code requirements are met; and
- b. A management program shall be submitted as set forth in Section 32-1045.6(e);
- (5) Communications centers and telephone repeater stations operated by public service corporations;
- (6) Custom dressmaking, tailoring and garment repair businesses employing not more than five (5) persons on the premises;

Mr. CANADY. Thank you, Reverend Wilson. Reverend Wimberly.

**STATEMENT OF JOHN WIMBERLY, JR., REVEREND, WESTERN
PRESBYTERIAN CHURCH, WASHINGTON, DC.**

Mr. WIMBERLY. Thank you for the opportunity to testify this morning. I'm John Wimberly. I'm pastor of Western Presbyterian Church, which is located in the Foggy Bottom neighborhood here in Washington, DC., just up the street from the Watergate complex.

In the fall of 1993, our congregation was completing our new building on Virginia Avenue, as part of the process in which we relocated from 19th and H near the White House, six blocks westward onto Virginia Avenue, staying in the same neighborhood where we've been 143 years.

We built our new church on a piece of property which is zoned to allow a church as a matter of right. It came as a shock, therefore, to receive a letter from the DC zoning administrator who, acting under intense political pressure, informed me that Western could not feed the homeless in our new church even though we had been doing so for a decade in the old church, unless we obtained a zoning variance.

The zoning administrator ruled that feeding the hungry is an activity inconsistent with the operation of the church, that it is neither a primary nor accessory use of the church, that it's not a customary or even incidental use of the church. Get a variance, he said, knowing that a variance is impossible to obtain with any community opposition. And obviously, from the story that we just heard from Reverend Wilson, we know that this is happening all around the country. There are many other cases besides Richmond and Washington.

We promptly appealed the ruling to the DC Board of Zoning Adjustment, thinking that we would win there with a broader audience and with an opportunity to present our case, but after hearing scholars testify about the 2,000 year history of Christians feeding the hungry, hearing the Biblical text which commands us to feed the hungry, hearing about the safe and sanitary operation of the existing feeding program that had been going on for 10 years, in January 1994, the politicized BZA sided with the small but politically potent group of neighbors who did not want the homeless fed in their backyard. The board voted that, indeed, feeding the homeless is neither a primary nor an accessory use of the church and would require a zoning variance.

Four months later, in the U.S. District Court for the District of Columbia, where we were requesting a permanent injunction to bar DC from interfering with our feeding ministry, U.S. Federal Judge Stanley Sporkin said to the corporation counsel for the District of Columbia: These people are not pornographers, these people are not unsavory, but you're turning church business into something that is wrong.

Invoking the First Amendment and the Religious Freedom Restoration Act, Judge Sporkin issued the injunction and under the protection of that injunction, Western has continued to this day feeding about 150 homeless people daily, although everyone else in the religious community is subject to the same thing because the

zoning code still has not been changed despite Judge Sporkin's ruling.

Our case is illustrative of what is happening around the nation. Neighbors are using zoning codes, they're using historic landmark laws, which were also used against us, and other civil laws in an effort to deny religious people the ability to practice our faith.

As Judge Sporkin rightly noted in his legal memorandum which was not only good law, but good theology, that if a group of neighbors acting through the city government can tell a church that they can't feed the hungry, how far is it before they can say, you can't say this prayer. It's all the same thing to people of faith. Praying, feeding, singing hymns, these are all pieces of the same garment.

The law, as it stands today, opens us up to the grossest kinds of government entanglements in the internal life of a religious community. The present standard of equating facially neutral laws with nondiscriminatory laws, the idea that if a law applies to everyone than it doesn't discriminate against anyone, simply does not recognize that religion is intrinsically idiosyncratic. Religion is inherently atypical. Most religious communities do not reflect the values and norms and society as a whole. As a result, what may be fair for the majority may well be discriminatory against the minority.

For example, an autopsy is not a religious issue for most people, however, in some faiths, it is banned and prohibited as a religious sacrilege and desecration. Or, in our case, the public as a whole may not feel obliged to feed the hungry, however, as an act of faith, our congregation does.

So if religious people are to exercise our faith freely, the law must allow for the exception rather than ruthlessly imposing a rule. It must make room for the atypical instead of dictating a norm. It must understand that religious life is often extra-ordinary, not ordinary.

The battle over our feeding program was not just a zoning battle. It was a battle of competing belief systems in which the zoning code was being used in an attempt to impose one of those beliefs. At Western, our faith commands us to feed the hungry. Others in our neighborhood have a different belief structure which does not compel them to feed the hungry and that's their right. However, they should not be able to use the zoning code to impose their faith, their belief, upon us.

Without RFRA, I would be in jail because I have to follow the law of God, not the law of the District of Columbia and I could not—I simply could not have allowed a government to come in and take out of my hands a plate of food that I'm giving to a hungry person. It would have made a mockery of my ministry, it would have made a mockery of our faith.

RFRA produced freedom in a very literal sense for me and for many others in my congregation who were prepared to go to jail over this matter.

Finally, it is important to know that it cost Western Church a little of \$200,000; \$200,000 to fight and win that zoning battle. It cost about an additional \$200,000 to fight off the historical designation thing where they tried to get the building declared a historic

landmark so that we wouldn't move down the street to a new location.

Few congregations have those kinds of financial resources to fight these kinds of battles and, as a result, many congregations of many faiths presently are being intimidated from exercising their faith. They're saying, you know, I've heard pastors say, I can't do that because I can't afford to get into that kind of regulatory battle. So the very presence of the threat is limiting the free exercise of religion.

Religious groups need national laws, the kinds of laws you create up here on Capitol Hill, comparable to our strong civil rights and fair housing laws, to protect us from the sometimes parochial politics of neighborhoods and cities and counties. We presently have a totally unacceptable situation in our neighborhoods, in our cities, and in our counties, that which really threatens the religious vitality and more, perhaps, important, the religious diversity of our country, our religious dynamism which has been a crucial main-spring of this nation's greatness. Thank you.

[The prepared statement of Mr. Wimberly follows:]

PREPARED STATEMENT OF JOHN W. WIMBERLY, JR., REVEREND, WESTERN
PRESBYTERIAN CHURCH, WASHINGTON, DC.

Thank you for the opportunity to testify today. I am John Wimberly, pastor of Western Presbyterian Church located in Foggy Bottom. In the fall of 1994, our congregation was completing a new building as part of a process in which we relocated six blocks westward in the Foggy Bottom neighborhood where we have ministered for 143 years. We built our new church on a piece of property which is zoned to allow a church as a matter of right. It came as a shock, therefore, to receive a letter from the Zoning Administrator of the District of Columbia who, acting under intense political pressure, informed me that Western could not feed the homeless in our new church, as we had been doing for a decade in the old church, unless we obtained a zoning variance. The Zoning Administrator ruled that feeding the hungry is an activity inconsistent with the operation of a church because it is was neither a primary or accessory use of a church nor a customary or even incidental use of a church. "Get a variance," he said, knowing that a variance is impossible to obtain with any community opposition. Lest you dismiss this as a bizarre, isolated incident, let me say clearly that zoning rulings such as this one are happening all over the nation.

We promptly appealed the ruling to the D.C. Board of Zoning Adjustment. After hearing scholars testify about the two thousand year history of Christians feeding the hungry, Biblical texts commanding Christians to feed the hungry, the safe and sanitary operation of our existing feeding program on H Street, in January, 1995, the politicized BZA sided with a small but politically potent group of neighbors who did not want the homeless fed in their back yard. The Board voted that, indeed, feeding the homeless is neither a primary nor accessory use of a church and requires a zoning variance. Four months later, in the U.S. Federal District Court for D.C. where we were requesting a permanent injunction to bar D.C. from interfering with our feeding ministry, U.S. Federal Judge Stanley Sporkin said to the corporation counsel for the District of Columbia, "These people are not pornographers. They aren't unsavory people. You're turning church business into something that is wrong." Invoking the First Amendment and the Religious Freedom Restoration Act, Judge Sporkin issued the injunction and under that protection, Western has continued to this day feeding about 150 homeless daily.

Our case is illustrative of what is happening to religious groups around the nation. Neighbors are using zoning codes, historic landmark laws, and other civil laws in an effort to deny religious people the ability to exercise our beliefs. As Judge Sporkin rightly noted in the memorandum which accompanied the permanent injunction, if a group of neighbors, acting through the city government, can tell a church not to feed the hungry, it is a short step to interference with how a congregation worships, what it prays. Our existing laws open the door to the grossest kind of government entanglement in the internal life of a religious community's life.

The Supreme Court's present standard of equating "facially neutral" laws with nondiscriminatory laws simply does not recognize that religion is intrinsically idiosyncratic, inherently atypical. Most religious communities do not reflect the values and norms of society as a whole. As a result, what may be fair for the majority of citizens may be discriminatory against citizens in a religious minority. For example, an autopsy is not a religious issue for most people.

"All the News
That's Fit to Print"

The New York Times

VOL. CXLIII . . . No. 49,648

Copyright © 1994 The New York Times

NEW YORK, SUNDAY, MARCH 27, 1994

Cold Shoulder to Churches That Practice Preachings

By KAREN DE WITT
Special to The New York Times

WASHINGTON, March 27 — Never mind the biblical injunctions to feed the poor and shelter the homeless. Increasingly, many Americans do not want the social service programs of religious institutions in their neighborhoods.

They frequently don't want the parking problems or peeing bells that come with churches. They don't want programs for alcoholics or drug addicts. They especially don't want the hungry and the homeless that these institutions often feed and shelter.

"Churches are no longer seen as assets to the community," said the Rev. Thomas Starnes of the Chevy Chase United Methodist Church in nearby Chevy Chase, Maryland. "Now it's 'There goes the neighborhood.'"

Battles Over Zoning

In Dallas, neighbors used the zoning code to try to force a Methodist church to end a program for assisting aliens seeking amnesty; a suburb of San Diego allowed a church to be built only after the congregation promised not to include a steeple.

And a clash here between a Presbyterian minister and the affluent neighbors of his church over feeding the homeless is looming as the first major test of a new Federal law meant to reduce government interference in religious practices.

For 10 years, the Rev. John

Wimberly has fed the homeless at Western Presbyterian Church four blocks from the White House. He expected to do the same a few blocks further away in the church's new quarters in a residential neighborhood of Foggy Bottom, a neighborhood of Government offices and expensive apartments, including the Watergate complex.

But the residents of Foggy Bottom do not want the soup kitchen or the 200 homeless people it feeds each day. Earlier this month, the local zoning board voted to bar the feeding program.

New Legal Territory

Lawyers for the church are expected to appeal the decision under the Religious Freedom Restoration Act, which was signed by President Clinton in December. The law limits government interference with religious practices except in cases of "compelling state interest." Lawyers for the neighbors are just as confident that their position will be upheld.

The law was passed in response to a series of recent Supreme Court rulings that many religious groups see as an erosion of their First Amendment right to the free exercise of religion.

At a time when the values of concern and helping those with troubles are being touted from

Continued on Page 19, Column 1

OVER

Construction Equipment Damage May Have Caused Gas Explosion

By CLIFFORD J. LEVY

Special to The New York Times

EDISON, N.J., March 26 — Federal hired apartments that seemed eerily restorable found evidence today, hours after the blast, of the

In North Bosnia, a Rising Tide

Refugees Forced Out in Systematic Drive of Ethnic Hatred

By JOHN KIFNER

Special to The New York Times

GASINCI, Croatia, March 23 — While the world's attention has been focused on the cease-fire in Sarajevo and diplomatic moves to broker peace elsewhere in the shattered former Yugoslavia, a savage Serbian campaign to drive Muslims and Croats from land seized in the last two years is continuing, even growing, in the Banja Luka region of northern Bosnia.

"It's business as usual in Banja Luka; it's even getting worse and worse," said Joren Bjallerstedt, the chief protection officer for the United Nations High Commissioner for Refugees in Zagreb, the capital of Croatia. "Ethnic cleansing, violence toward minorities has increased in the last month, clearly."

A dozen Muslims with haunted, numbly staring eyes, evacuated Tuesday night from Banja Luka on a Red Cross bus, sat slumped on bunks in a one-room wooden cabin in a refugee camp here the other day. There were apologies to a visitor, for there was no coffee to offer.

"We don't even have a coffee cup," said 65-year-old Kadira Beganovic.

Accounts of Rape

Emina Gasi, who is 15, faltered as she started to recount the night in late February when men in Serbian military uniforms, stockings over their faces, broke into her home in Banja Luka, slashed her grandfather's head and arms with knives and, as his blood poured forth, raped her.

"Yes, when they raped me and my sister, it was like that," Rasema Beganovic, 34, broke in sympathetically. "Two men, in uniforms, they had stockings over their heads. The Serbs came to our house; they raped me in front of all my family, including my 9-year-old daughter."

Such tactics have repeatedly been reported, investigated and documented



Nazir Beganovic, left, at Banja Luka, Bosnia, who

Nature and Devourin

The Washington

THURSDAY, OCTOBER 21, 1993



N Street Village, a block of row houses that provide shelter for homeless and mentally ill women, is run by Luther Place Memorial Church. The city recently fined the church for lacking proper permits for the program.

A Mission Not All Will Embrace

'Not in My Back Yard' Attitude Impedes Church Efforts for Poor

By Laurie Goodstein
Washington Post Staff Writer

A church's mission is to feed and clothe the hungry. Scriptures say. Not in my condo yard, neighbors say. Not without a zoning permit, city officials say.

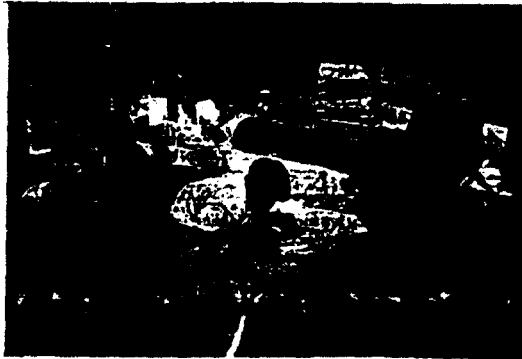
Increasingly, residential neighborhood groups are working through the D.C. Board of Zoning Adjustment in an effort to scale back programs offered by churches that have stepped forward to help the homeless as government agencies have retreated.

Among the recent cases:

• Western Presbyterian Church, in Foggy Bottom, responded to a letter this week from the city warning that church members cannot feed homeless men out of their new church six blocks away unless they apply for special permission from the zoning board—a move sure to be opposed by neighbors.

• Luther Place Memorial Church, near Logan Circle, received five \$500 fines from the city in recent weeks for not having the proper permits for long-established residential programs for homeless and mentally ill women.

• The Church of Jesus Christ, in Southeast Washington, postponed opening a new day-care center after facing opposition to its permit application from the area civic association.



Olga Diaz lives in one of the Luther Place shelters, which are the focus of a long-standing dispute between the church and its neighbors.

In cities and suburbs across the country, churches and other religious organizations that minister to the poor are the targets of the "not in my back yard" sentiments once reserved for public works projects.

Many churches invoke the constitutional separation between church and state, insisting that serving the poor is a biblical mandate. But some of their neighbors, who report finding homeless people drinking, taking drugs and defecating in their yards, demand that their families' safety be balanced with the needs of the homeless.

"Everybody likes the idea that churches are ministering to the poor [and] everybody wants a church to go to on Sunday . . . but no one wants one in their neighborhood," said Robert Boston, of Americans United for Separation of Church and State in Silver Spring. "Churches are not perceived as good neighbors the way they once were."

In the suburbs, zoning battles over churches, synagogues and mosques have escalated recently, but the complaints are more often about parking, how high a

See CHURCHES, A14, Col. 1

Church Allowed to Open Soup Kitchen in Foggy Bottom: *Feeding the Homeless Is 'God's Work,' Not Government's Business, Federal Judge Says*

By Laurie Goodstein
Washington Post Staff Writer

A federal judge ruled yesterday that Western Presbyterian Church can begin feeding the homeless Monday at its new site in Foggy Bottom, overriding the D.C. zoning board's decision to block the soup kitchen from opening without a special permit.

"We've got a church that's doing God's work," said U.S. District Judge Stanley Sporkin, who issued a preliminary injunction against the city. The judge noted that he drives through Foggy Bottom daily on his way to work and sees dozens of homeless people sleeping on the streets there.

"Till I'm overruled, I wish you good luck," Sporkin told the church's supporters. "That is a particularly troubled area, and your work is necessary."

So ended a decisive—but not final—chapter in the long running homeless feeding program that was based for 11 years in the basement of Western Presbyterian Church, at 19th and H streets NW. The city can appeal the injunction, even before a trial is held in the case. Meanwhile, the church's new neighbors say they will pursue other means to block the feeding program.

The church will hold its first services Sunday at its new Foggy Bottom site.

tom site, six blocks from its previous site, at 24th Street and Virginia Avenue NW. The new sanctuary, still under construction, is a replica of the old one, right down to the leading in the stained glass windows.

The church added a \$200,000 state-of-the-art kitchen capable of feeding more than 150 people daily.

The conflict arose because the church's new site is surrounded by apartment buildings and co-ops, many of them home to elderly people who say they fear the influx of homeless. The city's Board of Zoning Adjustment ruled that the church could not feed the homeless without first seeking a zoning variance.

"We've had victim after victim" of violence in the streets, said Barbara Kahlow, who serves on the executive board of the Foggy Bottom Association. "We very much support the continuation of the homeless feeding program, but we think it belongs where the majority of homeless live, which is downtown."

City officials are waiting to see Sporkin's written order before deciding whether to appeal yesterday's decision, said Anna Blackburn, spokeswoman for the D.C. corporation counsel. Sporkin has agreed to issue his written decision quickly, and then the city will have about 30 days to file an appeal, Blackburn said.

Meanwhile, the soup kitchen's opponents say they have another strat-

egy to prevent its opening. Kahlow says they have the support of D.C. Council Chairman David A. Clarke and six other council members to create another site for Miriam's Kitchen.

Rob Miller, an aide to Clarke, said the council had discussed the possibility of negotiating for funding for an alternative site with the International Monetary Fund, which is seeking the council's permission to close an alley adjacent to the IMF's building and next to the old Western Presbyterian church site. The IMF bought Western Presbyterian's old property, and the church used the money to build the new church.

But Miller said yesterday that Clarke's support for an IMF-funded feeding program near the old church site has nothing to do with the opening of Miriam's Kitchen in Foggy Bottom.

The Rev. John Wimberly, pastor of Western Presbyterian, said the kitchen's opponents "lost here in court and they're trying to keep the issue alive."

"Even if we wanted to give up the feeding program, we couldn't," Wimberly said, "because . . . a religious community cannot leave the impression that a neighborhood has a veto power over a church's activities. They have really painted us into a corner . . . and it's a corner out of which we cannot come."

The church has cast the conflict

as an infringement of the constitutional separation of church and state. Stephen Feldhaus, attorney for Western Presbyterian, argued yesterday that the city's zoning ruling violated the First and Fifth amendments, the federal Religious Freedom Restoration Act and D.C. law.

Feldhaus hailed yesterday's decision as a significant test of the Religious Freedom Restoration Act, passed by Congress last year. The act says a government can restrict religious freedom only if there is a "compelling state interest" and if it is done in the least restrictive way possible.

Sporkin bobbed in his chair and puffed out his cheeks yesterday when Michael F. Wasserman, D.C. assistant corporation counsel, argued that church members could feed the homeless at another location.

"You're telling churches" what they can do in their own church, Sporkin spat. "Why should the government get involved?"

Among those listening to the proceedings in the crowded courtroom was Charlie Michael Freedman, 49, dressed in an oversized jacket and taking his belongings in a plastic bag. He said he has been eating breakfast at Miriam's Kitchen for several months—"very gratefully," he said.

Of the judge, Freedman said, "He was great. A great show. I was with him all the way."

Chairman HYDE. Thank you. Mr. Canady had to leave the hearing for a brief time. He will return—yes, I'm sorry, Mr. Canady will back in a little while. We will proceed with Mr. Scott asking such questions as he may have.

Mr. SCOTT. Thank you, Mr. Chairman. First I'd like to welcome Reverend Wilson. I've attended several services at Trinity, and Reverend A. Lincoln James, the pastor there. And I've always been very much impressed with the number of young people in the church and their involvement. If we had a lot more churches like Trinity, Mr. Hyde, we wouldn't have as much work to do in this Judiciary Committee, so I want to welcome Reverend Wilson.

Reverend Wilson, the ordinance that Richmond passed, what did—did it aim at churches specifically or any feeding programs?

Mr. WILSON. Actually, ordinance by its terms, makes specific reference to churches. Its language, at paragraph 9—and I've attached a copy of the ordinance—it says, temporary feeding and housing of not more than 30 homeless individuals within churches or other places of worship. So, it very specifically was directed at churches. It's not in any way neutral.

Mr. SCOTT. Ms. Wigfall, you know when we take an oath in court and many other places, they have an alternative, you must solemnly swear or affirm. Were you given an alternative that was not religious in the oath that was offered to you?

Ms. WIGFALL. No, I was never given an alternative.

Mr. SCOTT. Are you getting the mic?

Ms. WIGFALL. The Religious Freedom Restoration Act, actually I took it to court and the judge did rule in my favor because of that. But now that it is thrown out, I'm back to square one.

Mr. SCOTT. Who authorized—where did this oath come from, was this something just at the college or something that was administered statewide to everyone that wants a state job?

Ms. WIGFALL. This is in all state and Federal positions.

Mr. SCOTT. All state and Federal? Was your position a state or Federal position?

Ms. WIGFALL. A state position, through the college.

Mr. SCOTT. If the alternative, were you given the opportunity to affirm rather than to swear, and leave out the reference to Almighty God, would that have caused a problem?

Ms. WIGFALL. If I had been able to amend it or given an alternative that I could sign where I didn't have to pledge allegiance to the United States or also that I wouldn't have to put myself in a position to kill another human being, then I wouldn't have had a problem with it.

Mr. SCOTT. Reverend Hamlin, there's a privilege that attorneys have in terms of what they can be forced to say about what their client said. That privilege is not the attorney's privilege, it's the client's privilege. I understand your state law has a privilege that the penitent could have invoked. Did he invoke his privilege?

Mr. HAMLIN. He did, and it was ruled by this particular judge that it did not apply. And the reason he felt that it did not apply in this case is he said the penitent needs to demonstrate a compellingness to confess or to speak with clergy, and I struggled with that ruling for obvious reasons. How does one prove that? How does one demonstrate that? And that was our question. Nev-

ertheless, it was thrown out for that reason and then that's when they pursued me.

Mr. SCOTT. So your suggestion is that the penitent should have the privilege. Are you suggesting that the minister should also have a privilege?

Mr. HAMLIN. Yes, I do.

Mr. SCOTT. If the penitent can invoke the privilege, why could he not, what would be the problem with him waiving the privilege and he would like to have what he said revealed?

Mr. HAMLIN. And I think those particular issues need to be thought through very carefully. The Ninth Circuit, for instance, that I made mention of, in that particular case, the penitent wanted the testimony from the clergy. The clergy person there did not. Yet the Ninth Circuit judge ruled in favor of the clergy person, that it is also the clergy's right to retain information. So I believe that it cannot be coerced out of me, it should be a matter deferred to clergy in these kind of issues, whether or not that information is given or not.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman HYDE. Thank you. Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman. I want to say, first, that I appreciate the convictions of each of our witnesses today. Society needs to see convictions, people standing on their beliefs, and you all demonstrate that, and I congratulate you for that, and I hope that all the young people in our nation can see this example. Secondly, this is a very important hearing as it deals with the issues of religious freedom which are critical to our society, to our constitutional government. It's something very important to our way of life; very precious to me. But it also deals with the relationship between Congress and the courts, that's the second reason it's so important. We have a fidelity to the Constitution here in Congress just as the court does, and there's a struggle between the two as to what the constitution means. So it's very, very important, what's happening. I congratulate Chairman Canady for holding this hearing, and thank you for your participation.

Now, if I understood right, three of you, anyway, had your issue resolved in court successfully, but Reverend Hamlin, yours is still pending. Is that correct?

Mr. HAMLIN. Correct.

Mr. HUTCHINSON. And Reverend Wilson, yours has not been resolved at all.

Mr. WILSON. No, it is not at all resolved.

Mr. HUTCHINSON. Okay, so we have two that have been resolved favorably in court. Now, Ms. Wigfall, yours was resolved favorably but at what cost?

Ms. WIGFALL. Well, now that the Religious Freedom Restoration Act is no longer around, I'm actually back to where I started.

Mr. HUTCHINSON. When you won your case, did you have your job available to you?

Ms. WIGFALL. Actually, at that point, I probably could have had it, if I needed to, but by the time it was resolved, I traveled through several semesters at school. So actually I don't even go to the same college anymore.

Mr. HUTCHINSON. Somebody who's fighting a battle for principle in which you conducted your legal appeal, obviously the point being that that remedy would not be available since the court has struck down RFRA.

And Reverend Wimberly, I think you indicated that the cost was, I believe \$200,000.

Mr. WIMBERLY. \$200,000 for the zoning battle, and even though we won at the district court level, it was appealed, initially, by the District of Columbia. Now we have no idea of how that would have worked out because we—when Mayor Barry was reelected, he dropped the appeal and agreed not to resurrect the issue again. So, there were a lot of people, including some of our own attorneys, who thought that Judge Sporkin might very well be overruled if it went any higher.

Mr. HUTCHINSON. Now, were you able to recover any of the attorneys fees that you paid out?

Mr. WIMBERLY. No.

Mr. HUTCHINSON. If that avenue had been open to you, would you have pursued that?

Mr. WIMBERLY. If we had allowed the thing to go through the entire system, in other words, go through the appeals and everything, reached a final decision then, under RFRA, you could have received legal fees, that is my understanding.

Mr. HUTCHINSON. So it was a compromise. It was more important you minister to the homeless than risk that by pursuing your rights to recover fees? But that is an important part of RFRA, is it not? Not only protecting constitutional liberties but also, there are going to be instances where those are going to have to be enforced, and the ability to recover attorney's fees and costs, would that be important, Reverend Wimberly?

Mr. WIMBERLY. It would be extremely—that would remove the threat, the intimidation factor, which we presently live under. Most religious communities just don't have the financial resources to do this. So, yes, sir.

Mr. HUTCHINSON. Well, thank you again, each of you, for your testimony today, and for your convictions and your example to America. I yield back the balance of my time, Mr. Chairman.

Chairman HYDE. Thank you. I want to thank the panel for a very substantial contribution to our deliberations. Thank you so much.

The second panel will please step up. On our second panel, we will hear first from Mrs. Evelyn Smith. Mrs. Smith comes to us from Chico, California. Next to testify will be Jacob Mesiti and his mother, Ms. Suzanne Brown. Mr. Mesiti and Ms. Brown come to us from Brookline, New Hampshire. Last to testify on our second panel will be Rabbi Chaim Rubin. Rabbi Rubin comes to us from Congregation Etz Chaim in Los Angeles, California. And we thank you for being with us today, and I request that you summarize your testimony in 10 minutes, and without objection, your written statements will be made a part of the permanent record. And so first, Mrs. Smith from Chico, California.

STATEMENT OF EVELYN SMITH, CHICO, CALIFORNIA

Ms. EVELYN SMITH. Mr. Chairman and members of the Constitutional Committee, thank you for the honor of speaking here today,

to testify. My story is a long one and if I knew what I know now, I would have prepared differently, but I'm going to go by the text because that's what I'm prepared to do.

In 1986, just before my husband died, he asked if I'd ever see him again. And I told him I would do everything I could to be with him in heaven some day.

Maybe I don't understand the Bible, but I do know right from wrong. And I take the words of Jesus seriously. In Luke 12:9: But he that denyeth me before man shall be denied before the angels of God. I am a practicing Christian.

Since Paul's death, my primary source of income has been two duplexes; they're 4 units, just one bedroom each. In selecting tenants, I never ask their marital status but, when appropriate, I tell that I am very uncomfortable renting to unweds and the Bible says that sex out of marriage is a sin.

On the morning of April 7, 1987, a couple claiming to be married signed a rental contract and gave me \$150 deposit. Gail Randal signed Ken Philips' last name. About 1 that same day, Gail called and said she didn't think I believed they were married, and I said if you say you are, and you're honest, that's all that matters. But she asked me at least three times if I wanted to see her marriage license, and the conversation ended. And he called back at 4 o'clock and said, you know we're not married, how do you want to handle it. And I said that I would be happy to refund your deposit and then I wrote a note. Just to show that I was sincere and I did treat them tactfully, this is what I wrote, the same day that I took the deposit, April 7, 1987, 4:30 p.m.: Dear Ken, enclosed is the \$150 rental deposit returned as promised in our phone call a few minutes ago. I do appreciate the truth. Thank you for the courage to right a wrong. My best wishes. Sincerely, Evelyn Smith.

I had returned the check immediately. Ten days later, the California Department of Employment and Housing served a complaint charging me with marital status discrimination. The California Housing Commission ruled against me and ordered me to pay Ken and Gail \$454 plus interest, and that I cease and desist from discriminating in my housing accommodations on the basis of marital status. I was to sign and post notices in my apartments informing the public about the outcome of this hearing.

To comply with that order would require me to violate my religious principles so I appealed to the California Court of Appeals which unanimously reversed that decision. That was a great victory for constitutional attorney Jordan Lawrence and me, but it didn't last long.

It was soon appealed to the California Supreme Court which ruled 4-to-3 to enforce the state's ban on housing discrimination on the basis of marital status. And, by the way, in California there is a law in the state university system that they cannot rent to unwed couples in their housing, but down the street, I was supposed to.

The supreme court cavalierly suggested I could sell my duplexes and find another investment if I did not want to rent to fornicators, and that's not fair. Rental property is the only way I know that will provide me the reasonably safe income. More than that, in Amer-

ica, I ought to be entitled to the free exercise of my religion while engaged in any lawful business.

Ten years and 3 months since my petition was in the court system, and it went to the supreme court and was denied in 1997, and it was in limbo for awhile at the supreme court. I was expecting to hear whether they would take it or not, but they were waiting for the Religious Freedom Restoration Act to be appealed, and when it was ruled on unfavorably, and I lost also. And it was not accepted by the U.S. Supreme Court.

This whole experience has been extremely draining on me. When I review the persecution I've endured over the past 10 years, my heart just beats. It really frustrates me. I've been so worried about being set-up again to try to rent my units. There are times I didn't list and left it vacant for months, and lost thousands of dollars. I even asked my granddaughter one time to answer my phone because I didn't want to listen to the phone calls, the harassing phone callers.

My only refuge has been my God, my family, and the many friends and Christian organizations that have provided me with emotional and legal support through this long ordeal.

What have I learned from all of this? I have learned that the Constitution no longer means what it says. The First Amendment, which guarantees freedom of religion, has been fraudulently interpreted to mean freedom from religion and as a result, Christians are now relegated to second-class status in America.

I agree that discrimination on the basis of race, religion and creed is morally wrong and should be punished by the government. However, my belief that sex outside of marriage is wrong is not bigotry; that's sound morality. The California law treated me equally to a Ku Klux Klan landlord who refuses to rent to minorities.

General Douglas MacArthur said, history fails to record a single precedent in which a nation subject to moral decay has not passed into political and economic decline. There's been either a spiritual awakening to overcome the moral lapse or a progressive deterioration leading to national disaster.

And I'm praying for a spiritual awakening and that Congress will take appropriate action to restore American's freedoms bequeathed to us by our God and the founders of this nation. Thank you.

[The prepared statement of Ms. Evelyn Smith follows:]

PREPARED STATEMENT OF EVELYN M. SMITH, CHICO, CALIFORNIA

Mr. Chairman and members of the subcommittee:

Thank you for inviting me to testify.

In 1986, after 31 years of marriage to my high school sweetheart, my husband, Paul, died. Shortly before his death, he ask me: "Will I ever see you again, Ev?" I promised that I would do everything I could to be with him.

I don't know what heaven is like but I do want to go there. Maybe I don't have the best understanding of the Bible, but I do know right from wrong. I take the words of Jesus seriously when He stated in Luke 12:9: *But he that denieth me before men shall be denied before the angels of God.*

After the death of my husband, my primary source of income comes from renting two duplexes (4 one-bedroom units).

In selecting tenants, I never ask about marital status, but I try to avoid renting to couples who are not married. If I become aware that a couple is not married, I tell them that I am very uncomfortable renting to "unweds," as I call them. I tell

them I am a Christian and that the Bible says sex outside of marriage is a sin and I do not want to condone it.

On April 7, 1987, at about 11:30 a.m., a young couple, who introduced themselves as Ken and Gail Phillips and claimed to be married, signed a rental agreement and left a cash deposit of \$150.00.

At about 1 p.m. on the same day, Gail phoned to say that she didn't think that I believed she was married. She asked me three times if I wanted to see their marriage license. I said it was not necessary. If they were telling the truth, that was all that was important.

At about 4 p.m. on the same day, Ken phoned and admitted that he and Gail were not married. He then asked, "How do you want to handle the situation?" I told him I would be happy to refund their money, which I did.

One week later, I was notified by the California Department of Employment & Housing that I was being charged with marital status discrimination. Two days later, on April 17, 1987, I was served with the Complaint.

From that date, for the next 10 years, until July 1997, I was in constant litigation.

The California Housing Commission ruled against me and ordered that I pay Ken Phillips and Gail Randal \$454.00, plus 10% interest; and that I "cease and desist from discriminating in my housing accommodations on the basis of marital status"; and that I post a signed notice for 1 year in a public part of each rental unit informing the public of the outcome of the hearing.

To comply with this order would require that I violate my commitment to my husband and to my God so I appealed to the California Court of Appeal, which unanimously reversed the decision of the California Housing Commission.

The victory was gratifying; however, it didn't last as the case was then appealed to the California Supreme Court, which ruled 4 to 3, enforcing the state's ban on housing discrimination on the basis of marital status.

The California Supreme Court cavalierly suggested that I could sell the duplexes and find a new job if I didn't want to rent to fornicators. But that is not true. Real estate is the only investment that I know of that will provide me with a reasonable, safe income. More than that, in America, I ought to be entitled to the free exercise of my religion while engaged in any lawful business of my choice.

My petition to the U.S. Supreme Court was denied in July 1997.

This whole experience has been extremely draining on me: the harassment and fear—the hardships and feelings of helplessness have caused me intense suffering. My heart pounds again as I review the persecution that I have endured for over 10 years.

I have often been too worried about being set up again to try renting my apartments. This has caused me to lose thousands of dollars. I even hired my 7-year-old granddaughter to answer the phone for me because of my anxiety about the rental problem.

My only refuge has been my God, my family, and the many friends and Christian organizations that have provided legal and emotional support through this long ordeal.

What have I learned from all of this? I have learned that our Constitution no longer means what it says. The First Amendment, which guarantees freedom of religion, has been fraudulently interpreted to mean freedom from religion, and as a result, Christians are now relegated to second-class status in America.

I agree that discrimination on the basis of race, religion or creed is morally wrong and should be punished by the government. However, my belief that sex outside of marriage is wrong is not bigotry but sound morality. The California law treated me and my actions as equivalent to a Ku Klux Klan landlord who refuses to rent to racial minorities or a Nazi landlord who refuses to rent to Jews. The Constitution should not allow California law to treat me like those landlords.

General Douglas MacArthur said, "History fails to record a single precedent in which nations subject to moral decay have not passed into political and economic decline. There has been either a spiritual awakening to overcome the moral lapse or a progressive deterioration leading to national disaster."

I am praying for a spiritual awakening and that Congress will take appropriate action to restore to America the freedoms bequeathed to us by our God and the founders of this nation.

BIOGRAPHY

I was born in Long Beach, California, on May 1, 1932. Most of my first 30 years I lived in Southern California. In 1955, I married my high school sweetheart, Paul Smith.

In 1962, with our first two children, we moved to Chico, California, where our last child was born. In 1986, my husband died, and I have continued to live in Chico. I now have seven grandchildren, and my family is the joy of my life.

I am interested in politics. I belong to three local political organizations. I was elected to our District Recreation Board where I served a 4-year term.

I also love to travel.

All of my life I have been a practicing Christian. I belong to the Presbyterian Church and serve on the Pastor Nominating Committee. I also belong to other church-related organizations.

Since my husband died, my principal source of income has been from renting two duplex apartments (four 1-bedroom units). Because of my Christian beliefs, I will not rent to unmarried couples.

After 31 and a half happy years of marriage, I became a widow. Just 6 months after my husband died, I was served a Complaint because I did not rent to an unwed couple. That case was in the court system for 10 years and 3 months, and I lived in spite of it.

Chairman HYDE. Thank you very much, Ms. Smith. Mr. Mesiti.

STATEMENT OF JACOB MESITI, BROOKLINE, NEW HAMPSHIRE

Mr. MESITI. Good morning. On April 8, 1992, I was only a 15-year-old sophomore at Chelmsford High School in Chelmsford, Massachusetts. The freshman and sophomore classes were called into an assembly in the gymnasium on that day, without any prior notification at all.

After the doors were shut and she was introduced, Susan Lindoffey of Hot and Sexy and Safer Productions began her interactive presentation with the statement: What we're going to is we're going to have a group sexual experience today with audience participation.

She also informed us with: I want to take 2 minutes out of our group sexual experience to talk about AIDs. The rest of the time, we'll just deal with sex.

The rest of the 90-minute presentation was sexually explicit in nature, with the frequent use of vulgar language. And during this presentation, she approved and advocated to students, minors, oral sex, masturbation, unlawful sex, sex with minors. She insinuated to two students that they needed to have more sex; both were minors. She continuously trivialized prohibitions regarding premarital sex. No moral limits on sexual intercourse outside of marriage were given. She trivialized the parent's role in teaching the child in regards to sexual matters. She repeatedly advocated bisexuality as a legitimate and even preferred activity, and repeatedly advocated sex with more than one partner, and group sex—she encouraged that.

During this time, no students were allowed to leave; some tried. I felt that my beliefs, along with many of my Christian friends, were degraded and even scoffed at during the times abstinence was looked at. She phrased it as, well, there's abstinence but—that is not having sex, but that's not having sex.

It was embarrassing to many of us. And I was just really angry that she spoke just so blatantly against even basic morality, let alone against scriptural mandates that are the basis of my faith.

The Bible is replete with, I mean, it's loaded with everything. The Bible is replete with mandates against all of these things, and I would just refer to First Corinthians 6:12-20, First Corinthians 6:18, it's all in Leviticus and proverbs 6:20, 5:19-21, First Corinthians. You can go on and on.

It's not—it's blatantly against the moral teachings, and it was not right for a public institution to give a presentation like this where, as students weren't allowed to leave. And the teachings were not only legally wrong in the respect that much vulgar language was used, it was also scripturally wrong and for many Christian people, many—or even Christian people that are—you go into school and it's very hard times and, you know, you're starting to get your sexual identity and getting through that stage, and, all of a sudden, to have someone come in and go through this, without any of the parents knowing. It's just wrong.

And I just hope that this ruling would allow some sort of Federal action so we can prevent this kind of thing from happening again.

Chairman HYDE. Thank you very much. Miss Suzanne Brown.

STATEMENT OF SUZANNE BROWN, BROOKLINE, NEW HAMPSHIRE

Ms. BROWN. Good morning. First of all, I'm Mrs. Suzanne Brown, and proud of it, so let's correct it. [Laughter.]

Chairman HYDE. I'm reading the name card that's put in front of you and—

Ms. BROWN. I understand that. This is what I'm trying to correct, the name card.

Chairman HYDE. I've called people, Mrs. who preferred Ms.

Ms. BROWN. Take the safe way.

Chairman HYDE. Yes.

Ms. BROWN. Okay. I'm Jason's mom and again, on that same date, April 8 of 1992, we were at dinner. Dinner is a very precious time in our family. We have a lot of children and this is kind of where we all connect. And as we were going around the table discussing our day, it came to Jason, and, well, how was your day. And he said it was the worst day in my life. That's always good for getting a parent's attention. [Laughter.]

But, then again, 15, maybe there was a nice-looking girl he liked, that he said something wrong. So, what do you mean, Jason. And he said, I was forced to listen to an hour-and-a-half of pornography. That gets your attention and stops you from eating dinner.

We went in the other room and we spoke, and he could not even tell me what was in there. But the main fact that he said, you will not allow me to talk like that, I don't feel like I should talk like that.

We went to see—there was a few parents that got together, and we went to see a video, because it's public property, of that presentation. At that video, my then-23-year-old daughter, married daughter, was there and we had all we could do to keep her seated. She was just embarrassed from watching this.

We asked the school if they would indeed just bring in a different viewpoint. Bring in the true viewpoint because not only was this woman pornographic in her actions and what she said, she was incorrect. She advocated to the children that they may get the HIV virus but they probably won't die as long as they stay away from stress, alcohol, drugs. And, by the way, a good way to stay away from stress was sexual matters because an orgasm had the same effect as 10 milligrams of Valium, so they couldn't not be stressed like this.

Other things that she said, she has little small suits against her like, making some recommendations of things for Saran Wrap, which Dow Chemical said, no, it's not made for that.

We asked the school to bring in the opposite view. We were totally, totally ignored. Because we felt that perhaps quickly they brought someone in with the right information, and that also told these children that the best way, the only way, is this way, and that is to keep the marriage bed pure, to wait until marriage. But they would not. They just simply would not do that.

We figured that if they would do it, maybe it would sidestep all the bad stuff that had happened. Frankly, I was not concerned about my son spending a lifetime of being affected by this presentation because he wouldn't be worth one of grain of salt in his faith if he couldn't withstand his faith with this kind of presentation.

But I was concerned about the young people there that were holding back, and they were holding back because they were fearful of disease. Now she gave them every reason why they didn't need to be fearful of it. And then on top of it, when the schools are also selling condoms to the young person who's embarrassed to go to the store to buy a condom, now all she has to do is get it off somebody in the halls. These are my real concerns.

What she said was so bad that it was not allowed to be put on radio due to FCC regulations. It was not allowed to be printed in the media in its entirety because of content.

We then felt that it was necessary to go through the Courts so that we could prevent this type of thing from happening again. Although I'm not prepared to give the details of which court, et cetera, et cetera, et cetera, I can say it was thrown out with everyone saying our religious rights were not affected by this.

People wonder, a lot of people I speak to wonder why there is such a changeover in this country to home-schooling. When we send our children, we expect our schools to uphold what this country was founded on. The laws that are right for the schools are to not sexually harass children, not to force issues.

These kids were 14 and 15-years-old. She graphically depicted on how a woman could indeed view and memorize her genitals. Now I'm sure there are many girls out there that still remember this; I do. It comes to mind every once in a while.

Yet the school presented that. The school, being a type of government institution, and the governments and courts through this whole thing out. My friend's little boy came home with his, in second grade, his books were, "I Have Two Moms" and "Dad's New Roommate." The parents threw a fuss about that.

I had a daughter who was required to read a book we did not consider upholding and vindicating, so we asked the teacher to give her another book. So he did. He gave her one with four times as many pages and was sarcastically through the year commented.

This country was founded on Judeo-Christian values and it's almost like we have an autoimmune disease, going through it. That's as simple as it gets. I'm sorry I don't have dates and the court things, but this is basically why I feel that certainly my religion and my son's were effected.

Chairman HYDE. Thank you very much. Rabbi Rubin.

**STATEMENT OF CHAIM RUBIN, RABBI, CONGREGATION ETZ
CHAIM IN LOS ANGELES, CALIFORNIA**

Mr. RUBIN. Mr. Chairman and honored members of the committee, good morning. First let me express my appreciation to you, Mr. Chairman, for inviting me here to testify before this honorable committee, to give me the opportunity to share our story. A story about a group of people who today in the United States of America are finding it very difficult to be able to practice the dictates of their faith.

Some 30 years ago, my parents, survivors of the Nazi Holocaust, moved into Hancock Park, an area of Los Angeles. All deeds on homes in Hancock Park carried a restrictive covenant, barring Jews, African Americans, Latinos, and other minorities from buying homes in the neighborhood. Fair housing legislation made it possible for Jews to move into Hancock Park, however, today local zoning laws are being used as latter day restrictive covenants making it essentially impossible for many Orthodox Jews to live in Hancock Park. Allow me to explain.

One of the most fundamental practices of an Orthodox Jew is the strict observance of the Sabbath. Refraining from using any mechanized modes of transportation is a basic tenet of our Sabbath observance. Consequently, wherever one sees Orthodox Jewish life, anywhere in the world, homes and houses of worship exist in close proximity to one another.

Shortly after my parents moved into Hancock Park, my grandfather, who was in his nineties at the time, came to live us. As he was too elderly to make the long walk to one of the synagogues adjacent to the area, a distance of two to three miles, my parents invited some of their neighbors into their home to make a quorum of ten men, in Hebrew, a minyan, so that my grandfather could pray with a congregation.

By the time my grandfather had passed away, more Orthodox families had moved into Hancock Park and my parents themselves had become older and found it difficult to walk long distances to walk long distances on the Sabbath and Jewish holidays and so the small minyan continued.

Several years ago, my parents, now in their eighties, found it increasingly difficult to continue to host this small minyan and I was faced with a dilemma. Do I close this minyan and therefore make it extremely difficult, if not impossible, for many residents of Hancock Park to fulfill their religious obligations, or do I simply relocate? As a rabbi, I realized that I had an obligation to my congregants, many of whom has also aged over years.

Let me say that from the very start I was aware of the importance of maintaining our neighborhood as the pleasant place that it is to live. I made every attempt possible to ensure that the house of worship we opened would conform to the residential character of our neighborhood, and be an enhancement to the area. We eventually acquired a home, actually adjacent to Hancock Park proper, at the corner of 2 secondary highway thoroughfares, traveled by some 84,000 cars daily. Our quorum of 10 men, sometimes up to 17 or 18, meet each morning for about a half-hour, and again at sundown for another half-hour, for daily prayer. On the Sabbath, perhaps 40 or 50 people—grandfathers, fathers and sons, grandmothers, moth-

ers and daughters—walk to the house, quietly engage in study and prayer and then they go home. That is all we do.

Nevertheless, the city of Los Angeles has taken the position allegedly relying on local zoning ordinances, that it will not allow any house of worship anywhere in Hancock Park, a vast residential area of some 9 square miles. This has been and continues to be the unchanging position of the city.

What I believe is unique about our situation is the following: While such a position on the part of the city of Los Angeles would not pose a threat to the practice of any other religion, it effectively locks out the Orthodox community from our neighborhood, or places an unfair burden on many of those who choose to live there. Fully one-quarter of my small congregation is elderly or disabled. Our repeated requests to talk, to dialogue, to entertain any mitigation proposals, to discuss concerns or issues, were greeted with a resounding “no”, and the declaration that the law was on their side, not ours, especially after the recent Supreme Court decision striking down the RFRA act.

The dictates of our religion, of our conscience, was irrelevant. Our right to pray in our neighborhood has been, at best, ignored, or probably more accurately, trampled upon.

Please understand that our minyan does not in any way negatively impact the neighborhood, nor was there any reason whatsoever for the city to deny our request. There was no parking impact, no noise impact, no pollution or traffic implications. Our immediate and abutting neighbors welcomed us with open arms. So what reason, what compelling interest was there or is there for the city to deny our request for a conditional use permit?

At this point, we have reached an impasse with the city. The position of the city of Los Angeles is that they are under no obligation to accommodate our religious needs. And yet they more than willingly grant permits and make accommodations for many other secular uses in the area: recreational facilities, private clubs, schools, book clubs, embassy parties, charitable events, motion picture and television filming, are all welcomed and permitted. But a religious use is forbidden and outlawed.

Why, in the United States of America in 1998, should I, a law-abiding, God-fearing citizen, looking to do no more than quietly conduct my religious life according to my beliefs, be under the threat at this very moment of arrest and criminal prosecution?

Sadly, this past winter, I became aware, after telling my story at a convention of the Agudath Israel of America, a major national organization of Orthodox Jews, that this problem is happening in a number of places throughout our country. In a community in Beachwood, Ohio, in Hewlet, New York, and elsewhere.

Chairman HYDE. Rabbi, I hate to interrupt, but we have a vote pending. If you would permit us, we will recess for the purpose of making a vote, and we will return and then you will certainly be permitted to finish. But this is the last vote for the day, they tell me, so if we could be in recess, and we will return to finish with your testimony.

Mr. RUBIN. Thank you.

Chairman HYDE. The committee will stand in recess.

[Recess.]

Mr. CANADY [presiding]. Our apologies to the rabbi for the interruption there for our vote. I apologize for interrupting your testimony and would be happy for you to resume. I believe you had a couple minutes left on your time. We'd be happy to hear from you.

Mr. RUBIN. Thank you.

Please understand that our minyan does not in any way negatively impact the neighborhood, nor was there any reason whatsoever for the city to deny our request. There was no parking impact, no noise impact, no pollution or traffic implications, our immediate and abutting neighbors welcomed us with open arms. So what reason, what compelling reason was there or is there for the city to deny our request for a conditional use permit? At this point, we've reached an impasse with the city. The position of the City of Los Angeles is that they are under no obligation to accommodate for our religious needs yet they more than willingly grant permits to make accommodations for many other secular uses in area, recreational facilities, schools, book clubs, embassy parties, charitable events, motion picture and television filming, all are welcome and permitted. But a religious use is prohibited and outlawed. Why is it that in the United States of America in 1998 should I, a law-abiding, God-fearing citizen, looking to do no more than quietly conduct my religious life according to my beliefs, be under the threat that this very moment of arrest and criminal prosecution?

Sadly, this past winter, I became aware, after telling my story at the Agudath Israel of America, a major national organization of Orthodox Jews, that this problem is happening in a number of places throughout our country. A community in Beachwood, Ohio, Hewlet, New York, and elsewhere, are confronting senseless obstacles to free practice of their faith.

When I return from this magnificent city, where I have had the opportunity to speak with this distinguished committee, what do I tell my congregants, what do I tell an 84-year-old survivor of the Auschwitz, a man who used to risk his life in the concentration camp—whenever possible, he gathered together a minyan to pray—do I tell him that because he is old and weak and an amputee, that he still make a walk of at least a mile-and-a-half in order to pray because to quietly gather down the block is illegal? What do I tell my father, a resident of Hancock Park for 34 years, that now that he is elderly and frail, he must either abandon his religious faith or abandon his home? What about my own young son, born with a disability, for whom a long walk is impossible? "Sorry, you can't come with the rest of the family to the synagogue because there is no protection of your rights to live as a Jew."

Distinguished members of the Judiciary Committee, I plead with you. I plead on the behalf of my young son, on behalf of my aged parents, on behalf of the aged and disabled and elderly across this great nation, please restore our right to practice our religion. Thank you.

[The prepared statement of Mr. Rubin follows:]

PREPARED STATEMENT OF CHAIM RUBIN, RABBI, CONGREGATION ETZ CHAIM IN LOS ANGELES, CALIFORNIA

MR. CHAIRMAN AND HONORED MEMBERS OF THE COMMITTEE: GOOD MORNING.

MY NAME IS RABBI CHAIM BARUCH RUBIN AND I AM THE RABBI AND SPIRITUAL LEADER OF CONGREGATION ETZ CHAIM OF HANCOCK PARK IN LOS ANGELES, CALIFORNIA

FIRST, LET ME EXPRESS MY APPRECIATION TO YOU, MR. CHAIRMAN, FOR INVITING ME HERE TO TESTIFY BEFORE THIS HONORABLE COMMITTEE, AND GIVING ME THE OPPORTUNITY TO SHARE OUR STORY—A STORY ABOUT A GROUP OF PEOPLE WHO TODAY, IN THE UNITED STATES OF AMERICA ARE FINDING IT VERY DIFFICULT TO BE ABLE TO FREELY PRACTICE THE DICTATES OF THEIR FAITH.

SOME THIRTY YEARS AGO, MY PARENTS, SURVIVORS OF THE NAZI HOLOCAUST, MOVED INTO THE HANCOCK PARK AREA OF LOS ANGELES. YEARS AGO, ALL DEEDS ON THE HOMES IN HANCOCK PARK CARRIED A RESTRICTIVE COVENANT, BARRING JEWS, AFRICAN AMERICANS, LATINOS AND OTHER MINORITIES FROM BUYING HOMES IN THE NEIGHBORHOOD.

FAIR HOUSING LEGISLATION MADE IT POSSIBLE FOR JEWS TO MOVE INTO HANCOCK PARK. HOWEVER, TODAY, LOCAL ZONING LAWS ARE BEING USED AS "LATTER DAY" RESTRICTIVE COVENANTS MAKING IT ESSENTIALLY IMPOSSIBLE FOR MANY ORTHODOX JEWS TO LIVE IN HANCOCK PARK. ALLOW ME TO EXPLAIN.

ONE OF THE MOST FUNDAMENTAL PRACTICES OF AN ORTHODOX JEW IS THE STRICT OBSERVANCE OF THE SABBATH. REFRAINING FROM USING ANY MECHANIZED MODES OF TRANSPORTATION IS A BASIC TENET OF OUR OBSERVANCE. CONSEQUENTLY, WHEREVER ONE SEES ORTHODOX JEWISH LIFE, ANYWHERE IN THE WORLD, HOMES AND HOUSES OF WORSHIP EXIST IN CLOSE PROXIMITY OF ONE ANOTHER.

SHORTLY AFTER MY PARENTS MOVED TO HANCOCK PARK, MY GRANDFATHER, WHO WAS IN HIS NINETIES AT THE TIME, CAME TO LIVE WITH US. AS HE WAS TOO ELDERLY TO MAKE THE LONG WALK TO ONE OF THE SYNAGOGUES ADJACENT TO THE AREA, A DISTANCE OF TWO OR THREE MILES, MY PARENTS INVITED SOME OF THEIR NEIGHBORS INTO THEIR HOME TO MAKE A QUORUM OF TEN MEN (A MINYAN) SO THAT MY GRANDFATHER COULD PRAY.

BY THE TIME MY GRANDFATHER PASSED AWAY, MORE ORTHODOX FAMILIES HAD MOVED INTO HANCOCK PARK AND MY PARENTS HAD THEMSELVES BECOME OLDER AND ALSO FOUND IT DIFFICULT TO WALK LONG DISTANCES ON THE SABBATH AND JEWISH HOLIDAYS AND SO THE SMALL MINYAN CONTINUED.

SEVERAL YEARS AGO, MY PARENTS, NOW IN THEIR EIGHTIES, FOUND IT INCREASINGLY DIFFICULT TO CONTINUE TO HOST THIS SMALL MINYAN AND I WAS FACED WITH A DILEMMA. DO I CLOSE THIS MINYAN, AND THEREFORE MAKE IT EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE FOR MANY RESIDENTS OF HANCOCK PARK TO FULFILL THEIR RELIGIOUS OBLIGATIONS, OR DO I SIMPLY RELOCATE? AS A RABBI, I REALIZED THAT I HAD AN OBLIGATION TO MY CONGREGANTS, MANY OF WHOM HAD ALSO AGED OVER THE YEARS.

LET ME SAY FROM THE VERY START, THAT I WAS AWARE OF THE IMPORTANCE OF MAINTAINING OUR NEIGHBORHOOD AS THE PLEASANT PLACE THAT THIS IS TO LIVE. I MADE EVERY ATTEMPT POSSIBLE TO ENSURE THAT THE HOUSE OF WORSHIP WE OPENED WOULD CONFORM TO THE RESIDENTIAL CHARACTER OF OUR NEIGHBORHOOD AND WOULD BE AN ENHANCEMENT TO THE AREA. WE EVENTUALLY ACQUIRED A HOME, ACTUALLY ADJACENT TO HANCOCK PARK PROPER, AT THE CORNER OF TWO SECONDARY HIGHWAY THOROUGHFARES, TRAVELED BY SOME 84,000 CARS DAILY. OUR QUORUM OF TEN MEN (SOMETIMES UP TO 17 OR 18) MEETS EACH MORNING FOR ABOUT A HALF HOUR, AND AGAIN AT SUNDOWN FOR ANOTHER HALF HOUR FOR DAILY PRAYER. ON THE SABBATH, PERHAPS 40 OR 50 PEOPLE (GRANDFATHERS, FATHERS AND SONS, MOTHERS AND DAUGHTERS) WALK TO THE HOUSE, QUIETLY ENGAGED IN STUDY AND PRAYER AND THEN GO HOME. THAT IS ALL WE DO.

NEVERTHELESS, THE CITY OF LOS ANGELES HAS TAKEN THE POSITION THAT IT WILL NOT ALLOW ANY HOUSE OF WORSHIP ANYWHERE IN HANCOCK PARK, A VAST RESIDENTIAL AREA OF SOME 6 SQUARE MILES. THIS HAS BEEN AND CONTINUES TO BE THE UNCHANGING POSITION OF THE CITY.

WHAT I BELIEVE IS UNIQUE ABOUT OUR SITUATION IS THE FOLLOWING: WHILE SUCH A POSITION ON THE PART OF THE CITY OF LOS ANGELES WOULD NOT POSE A THREAT TO THE PRACTICE OF ANY OTHER RELIGION, IT EFFECTIVELY LOCKS THE ORTHODOX COMMUNITY OUT OF THE

NEIGHBORHOOD, OR PLACES AN UNFAIR BURDEN ON MANY OF THOSE WHO CHOSE TO LIVE THERE. FULLY ONE-QUARTER OF MY CONGREGATION IS ELDERLY OR DISABLED. OUR REPEATED REQUESTS TO TALK, TO DIALOGUE, TO ENTERTAIN ANY MITIGATION PROPOSALS, TO DISCUSS CONCERNS OR ISSUES WERE GREETED WITH A RESOUNDING "NO" AND THE DECLARATION THAT THE LAW WAS ON THEIR SIDE, NOT OURS. THE DICTATES OF OUR RELIGION, OF OUR CONSCIENCE, WAS IRRELEVANT. OUR RIGHT TO PRAY IN OUR NEIGHBORHOOD HAS BEEN AT BEST IGNORED, BUT PROBABLY MORE ACCURATELY, TRAMPLED UPON.

PLEASE UNDERSTAND THAT OUR MINYAN DOES NOT IN ANY WAY NEGATIVELY IMPACT THE NEIGHBORHOOD, NOR WAS THERE ANY REASON WHATSOEVER FOR THE CITY TO DENY OUR REQUEST. THERE WAS NO PARKING IMPACT, NO NOISE IMPACT, NO POLLUTION OR TRAFFIC IMPLICATIONS. OUR IMMEDIATE AND ABUTTING NEIGHBORS WELCOMED US WITH OPEN ARMS, SO WHAT REASON, WHAT COMPELLING INTEREST WAS THERE, IS THERE, FOR THE CITY TO DENY OUR REQUEST FOR A CONDITIONAL USE PERMIT? AT THIS POINT, WE HAVE REACHED AN IMPASSE WITH THE CITY. THE POSITION OF THE CITY OF LOS ANGELES IS THAT *THEY ARE UNDER NO OBLIGATION TO ACCOMMODATE FOR OUR RELIGIOUS NEEDS*. YET, THEY MORE THAN WILLINGLY GRANT PERMITS AND MAKE ACCOMMODATIONS FOR MANY OTHER SECULAR USES IN THE AREA, RECREATIONAL ACTIVITIES, SCHOOLS, BOOK CLUBS, EMBASSY PARTIES, CHARITABLE EVENTS, MOTION PICTURE AND TELEVISION FILMING, ARE ALL WELCOMED AND PERMITTED. BUT A RELIGIOUS USE IS FORBIDDEN AND OUTLAWED. WHY IN THE UNITED STATES OF AMERICA, IN 1998, SHOULD I, A LAW ABIDING, G-D FEARING CITIZEN, LOOKING TO DO NO MORE THAN QUIETLY CONDUCT MY RELIGIOUS LIFE ACCORDING TO MY BELIEFS, BE UNDER THE THREAT AT THIS VERY MOMENT OF ARREST AND CRIMINAL PROSECUTION.

SADLY, THIS PAST WINTER I BECAME AWARE, AFTER ATTENDING A CONVENTION OF AGUDATH ISRAEL OF AMERICA, A MAJOR ORGANIZATION OF ORTHODOX JUDAISM, THAT THIS PROBLEM IS HAPPENING IN A NUMBER OF PLACES THROUGHOUT THE UNITED STATES—A RELIGIOUS COMMUNITY IN CLEVELAND, OHIO, IN LAWRENCE, NEW YORK, AND ELSEWHERE ARE CONFRONTING SENSELESS OBSTACLES TO THE FREE PRACTICE OF THEIR FAITH.

WHEN I RETURN FROM THIS MAGNIFICENT CITY, WHERE I HAVE HAD THE OPPORTUNITY TO SPEAK WITH THIS DISTINGUISHED COMMITTEE, WHAT DO I TELL MY CONGREGANTS—WHAT DO I TELL AN 84-YEAR OLD SURVIVOR OF AUSCHWITZ, A MAN WHO USED TO RISK HIS LIFE IN THE CONCENTRATION CAMP WHENEVER POSSIBLE TO GATHER TOGETHER A MINYAN TO PRAY—DO I TELL HIM THAT BECAUSE HE IS OLD AND WEAK AND AN AMPUTEE, THAT HE MUST WALK AT LEAST A MILE AND A HALF TO PRAY, BECAUSE TO QUIETLY GATHER DOWN THE BLOCK IS ILLEGAL? WHAT DO I TELL MY FATHER, A RESIDENT OF HANCOCK PARK FOR THIRTY-FOUR YEARS, NOW THAT YOU ARE ELDERLY AND FRAIL YOU MUST EITHER ABANDON YOUR RELIGIOUS FAITH OR ABANDON YOUR HOME? AND WHAT ABOUT MY OWN YOUNG SON, BORN WITH A DISABILITY, FOR WHOM A LONG WALK IS IMPOSSIBLE. "SORRY, YOU CAN'T GO WITH THE REST OF THE FAMILY TO SYNAGOGUE, THERE IS NO PROTECTION OF YOUR RIGHT TO LIVE AS A JEW."

OUR FOUNDING FATHERS CAME TO THIS GREAT LAND WITH A VISION—A VISION THAT IN THE UNITED STATES OF AMERICA EACH AND EVERY INDIVIDUAL WOULD HAVE THE INALIENABLE RIGHT TO PRACTICE HIS RELIGION AS HE OR SHE SAW FIT. THIS COUNTRY WAS FOUNDED ON THE PREMISE THAT THE UNITED STATES WOULD BE A COUNTRY WHERE THE OPPORTUNITY TO LIVE IN ACCORDANCE WITH ONE'S FAITH WOULD BE GUARANTEED BY THE CONSTITUTION. YEARS OF INTERPRETATION AND CHIPPING AWAY AT THIS FOUNDATION HAS LEFT US WITHOUT THE PROTECTION PROMISED US IN OUR CONSTITUTION. FREEDOM OF RELIGION IS THREATENED IN OUR COUNTRY TODAY. IT IS POSSIBLE TO SUFFER AN INSIDIOUS KIND OF RELIGIOUS PERSECUTION IN THE UNITED STATES TODAY. THE RELIGIOUS PERSECUTION OF TODAY HIDES BEHIND AN OVERLY SECULARIZED INTERPRETATION OF OUR CONSTITUTION. THE FOUNDATION OF RELIGIOUS FREEDOM IN THIS GREAT NATION MUST BE RESTORED!

ONCE AGAIN, I THANK THE COMMITTEE FOR GIVING ME THE OPPORTUNITY TO ADDRESS YOU TODAY.

Mr. INGLIS [presiding]. Thank you, Rabbi Rubin. Let's see. I think I'll recognize myself for a few questions.

Rabbi, what is the—what's their point of view? Why is it that they don't like your house of worship or congregation?

Mr. RUBIN. You know, that's a very good question. We were trying to obtain that answer from them as well. They have never pointed to any annoyance or nuisance of any kind whatsoever that bothers them because, if they would have, we would have remedied it, we would have mitigated it. The only thing the city has essentially condoned was the objection of the home owners association of Hancock Park and that was that we are a detriment to their quality of life. Period. That was their complaint. You know, I kept questioning them as to what is the problem and how are we a detriment to your quality of life, and that was the answer: We are a detriment to their quality of life.

And I even posed the question to them, isn't our quality of life, isn't that worthy of some consideration as well. We're residents and neighbors of the community. But it was just that, their quality of life, we're a detriment. That was it. There was nothing they could point to, at all, to deny the conditional use permit.

Mr. INGLIS. Due to the uniqueness of your circumstances, you can't say this of other practices. No one will be driving, so there was no traffic problem.

Mr. RUBIN. That's absolutely correct.

Mr. INGLIS. There was no parking problem.

Mr. RUBIN. That's correct.

Mr. INGLIS. There's no apparent use of the facility other than if you went inside, you found people praying. Is that right?

Mr. RUBIN. That is absolutely right.

Mr. INGLIS. Well, in answer to your question in your statement, help is hopefully on the way.

Mr. RUBIN. Thank you.

Mr. INGLIS. At this point, I'd be happy to recognize Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I'd like to follow up on that line of questioning. As I understand it, the location looks just like a house?

Mr. RUBIN. It is a house. It looks just like a house; it is a residence. There's no sign outside. We made sure that we confirmed with the residential character of the neighborhood. It's located on 2 secondary highways, a very busy intersection. Again, I can't stress this enough—

Mr. SCOTT. What is the—how do they articulate their objection of the use of a house?

Mr. RUBIN. Well, they first articulate it by the fact that nobody lives there, we're using it as a commercial enterprise. Since then, by the way, we have put in someone that resides in the house, a caretaker, to avoid that complaint. But, you know, the fact of the matter is that with nobody living in the house, and our tenets being a half-hour in the morning and a half-hour in the evening, we offer less of a disturbance than if somebody was living in the house.

Mr. SCOTT. With someone living in the house, how do they articulate their objection?

Mr. RUBIN. Well, we've notified them. They haven't responded to that. We've notified them that there's somebody now living in the house, residing in the house as a resident.

Mr. SCOTT. How do they differentiate what you do from any other gathering?

Mr. RUBIN. They haven't vocalized how they differentiate it, but it's simple: Our's is a religious gathering, theirs is a secular.

Mr. SCOTT. Do they restrict in any way the number of people that can gather in a private residence?

Mr. RUBIN. No.

Mr. SCOTT. Thank you. Miss Brown, how do you choose your school board there?

Ms. BROWN. Well, at the time, I believe this was brought on by the PTO. It was funded by a group of doctors in the town, and the principal okayed it. As far as the school board itself, it didn't like it.

Mr. SCOTT. You have an elected school board. Do they have some say on the curriculum?

Ms. BROWN. They should. I do believe they do. I know that they're—

Mr. SCOTT. Do you know whether this program had a provision—you mentioned you couldn't get out, you couldn't leave the room. Don't most of these programs have a provision where most of the debate is whether it can be opt-in or opt-out, but constitutionally there's very little argument about an opt-out system. Was that available to you?

Mr. MESITI. Usually, in school policy, if I remember correctly, when there is assembly, you're supposed to have to be there. No parental permission slips are given usually for any kind of almost always for any kind of curriculum or activity or even a class regarding any kind of sexual matters, at all. Usually they send the legal guardian or parent a permission slip of some sort or a—

Mr. SCOTT. Did your mother give you permission to be in this class?

Mr. MESITI. It wasn't a class, it was an assembly. It was taken out of our normal school hours, and there was no prior notification. Everyone, with the exception of some of the staff, and maybe one or two or three students, everyone had no idea why we had to go until the assembly began.

Mr. SCOTT. And once you got there, you couldn't leave?

Mr. MESITI. Right, because nobody was allowed to—

Mr. SCOTT. Was this a regular class or just once?

Mr. MESITI. No, it was a production that was paid for, that was a one-time—

Mr. SCOTT. What do you mean paid for? It was an outside group that put on the presentation?

Ms. BROWN. Actually, I'll answer that. It was actually a group of doctors in town that paid for it, it was the PTO that reviewed the presentation, and it was okayed by the principal of the school.

Mr. SCOTT. This was kind of like an outside activity. It wasn't part of the normal curriculum.

Ms. BROWN. They just decided, just for some reason which I cannot fathom, that they were going to do an assembly. They broke it in two. They had two assemblies; they had freshmen and sopho-

mores in one, in the big auditorium, and, again, the doors were closed.

Mr. SCOTT. Can I ask another question.

Mr. INGLIS. Sure, without objection, the gentleman has 2 minutes.

Mr. SCOTT. Ms. Smith, marital status is a protected class in the Fair Housing Act. Should people because of religious beliefs be able to pick and choose which protected classes they will respect and not respect as they rent and sell property?

Ms. EVELYN SMITH. I think they should, I think in reality that marital status should mean—unmarried couples should not be included.

Mr. SCOTT. Well, that debate—

Ms. EVELYN SMITH. In other words, I do rent to single people, and I do rent to married couples, I just don't rent to unmarried couples.

Mr. SCOTT. Okay, but that debate goes on before the bill is passed and once you decide what a protective class is—some people would have religious problems with mixed marriages—either racially or religiously mixed marriages—should they be able to, because of their religious beliefs, decide not to hone that part of the Fair Housing Act?

Ms. EVELYN SMITH. If it's morally against their religion, I guess they should. I'm not familiar with that religion. I just know from my own Christian religion that in the Bible it states very strongly that sex out of marriage is wrong.

Mr. SCOTT. And if someone had a religious problem with black people?

Ms. EVELYN SMITH. I don't think there's anything in the Bible against black people. And I'm certainly not against people—I judge mainly by character.

Mr. SCOTT. Well, different people have different religions, and that's the problem with religious freedom. If you just had one religion, then it wouldn't be a problem. But we allow people to believe what they want in America, and there are some that have serious problems with different racial groups, but our Fair Housing Act prohibits discrimination against protected classes—

Ms. EVELYN SMITH. I don't discriminate against racial groups. No, they can be protected, but why can't we protect the Christians?

Mr. SCOTT. I don't have any further questions.

Mr. INGLIS. The gentleman's time has expired. The gentleman from Arkansas.

Mr. HUTCHINSON. Ms. Smith, I wanted to follow up with a couple of questions to you. Do you know whether you were targeted in your investigation of—

Ms. EVELYN SMITH. I suspect I was.

Mr. HUTCHINSON. That was never particularly revealed though?

Ms. EVELYN SMITH. I heard them interviewed on something, I can't remember at this point.

Mr. HUTCHINSON. And after the Supreme Court of California reinstated the lower court decision that you had engaged in a discriminatory practice, what did this cost you? Was there relief granted against you?

Ms. EVELYN SMITH. The court said I owed them about \$500, a minor amount, but it was 10 percent interest for at least 10 years now, and they never asked to collect it, I think because they know—

Mr. HUTCHINSON. Did you have an attorney; any attorney fees?

Ms. EVELYN SMITH. Oh, yes. Fortunately I had constitutional and religious organizations supporting me, but it has cost me a great deal of my own.

Mr. HUTCHINSON. And was your defense in litigation and your reason for not wanting to rent to this unmarried couple based upon your commitment to your husband or based upon religious freedom or both?

Ms. EVELYN SMITH. It was both. We were very close and I want to be with him one day.

Mr. HUTCHINSON. And was that religious freedom defense argued on the appeal to the California Supreme Court?

Ms. EVELYN SMITH. It was based on the commitment. The appeals court was really wonderful, they understood. The state supreme court—four ruled wrong.

Mr. HUTCHINSON. Now, Rabbi, you were denied a conditional use permit for a place of worship?

Mr. RUBIN. That's correct.

Mr. HUTCHINSON. And were other conditional use permits granted?

Mr. RUBIN. Many conditional use permits have been granted throughout the City of Los Angeles for houses of worships, churches and temples throughout the entire city. This particular area of the City of Los Angeles, had said that no house of worship would be allowed.

Mr. HUTCHINSON. In your particular area, were any other conditional use permits granted, whether for a place of worship or other similar activities?

Mr. RUBIN. Yes, the permits were granted for the uses I articulated in my speech earlier, the filming, the other types of activities, recreational activity at schools, things that are allowed in residential areas are these particular uses, including houses of worship. They just need a conditional use permit. Others are granted, our's was denied.

Mr. HUTCHINSON. And to obtain a conditional use permit, did you have to pay costs?

Mr. RUBIN. We had to pay fees, the appeal fees and application fees, and all along through until we were denied by the full city council.

Mr. HUTCHINSON. And was that burdensome on your exercise of religion?

Mr. RUBIN. It was extremely burdensome and I have to tell you that we have taken this case further and actually initiated an action against the city for denying us our constitutional rights. We would not have been able to do that had it not been for a neighbor, Mr. Brian Cartwright, who happens to be non-Jewish, a jogger in the neighborhood, who received the letters from the Hancock Park Home Owners Association, and was outraged. And through his kindness, he was able to persuade his office and his partners in the law firm of Latham and Watkins to accept our case and go to bat

for us on a pro bono basis, otherwise we would never have been able to go to the courts.

Mr. HUTCHINSON. So it's on appeal right now?

Mr. RUBIN. It's not on appeal yet, we're still at first base of the litigation. One of the attorneys from the office has come out with me today, as well. She can probably answer questions regarding legalities.

Mr. HUTCHINSON. The ranking member, Mr. Scott, raised a very important question that really points out the difficulties, the thorniness of some of these issues, and Rabbi, I just wonder if you want to comment on that concern of balancing the freedom of religion versus the freedom from discrimination.

Mr. RUBIN. It's a thorny issue, a very difficult situation, when you have two sides both feeling they are protected classes, and such is the case with Mrs. Smith. On the other hand, between the two cases, our particular case, we don't impact others, just ask to be left alone and allow us our religion, in the case where one is practicing their faith. Perhaps it would impact somebody else's housing rights; it becomes a lot thornier. It becomes a lot more difficult to distinguish. I'd have to agree with Mrs. Smith that her position—and I congratulate her on it, because it is very, very difficult to give into one's religious principles. Even in such a situation as the Housing Act, one needs to stand up and say, "I can't allow that to happen in my home, in my business," unless there can be an intent of discriminatory purpose; I don't think there was in this particular case.

Mr. HUTCHINSON. Thank you very much, Rabbi.

Mr. INGLIS. The gentleman's time has expired.

Thank you to the members of the panel. At this point we will dismiss you all and call up panel three: Reverend Steel, Reverend Brooks, and Dr. Robb.

Mr. HUTCHINSON [presiding]. Our final panel today consists of three gentlemen, and thank you for being patient this morning. We'll first hear from Dr. Richard Robb. Dr. Robb is a dentist practicing in his home town of Ypsilanti, Michigan. He is also a long-time member of the First Presbyterian Church of Ypsilanti. Next will be Reverend Richard Steel. Reverend Steel is pastor of Cedar Bayou Baptist Church in Baytown, Texas. And finally today, the subcommittee will hear from Reverend Donald W. Brooks. Father Brooks, a Catholic priest since 1961, comes to us from the Diocese of Tulsa, Oklahoma, very close to my home, Fort Smith, Arkansas. So welcome to all three of you, thank you for being here. And I ask that each of you, as has been done this morning, would summarize your testimony in 10 minutes or less. Without objection, your written statements will be made a part of the hearing record. Dr. Robb.

STATEMENT OF RICHARD ROBB, YPSILANTI, MICHIGAN

Mr. ROBB. Thank you, Mr. Chairman, and members of the committee, for allowing me to speak today on the issue. Ours is a little bit different from those we heard previous, but I think it also is a concern.

In 1972, the church that I belong to purchased a piece of property that was adjacent to our church for the prospect of further expanding our facility. The church offered the building to any person

or organization that wished to improve it or use it until which time the church needed it or wanted to expand. The only stipulation was that they would maintain the building.

Two civic organizations did use the building and did little or nothing to maintain the building. In 1982, we requested to demolish the building. It was in such a state of disrepair, the cost to restore this 624 square foot structure would cost around \$150,000. No action was taken by the historical commission and since that time, it's been a continuing battle with the city and the historical commission, which includes hearings, lawsuits, and mediation.

I urge your attention to this troubling trend in our country today: The ability of government to unduly regulate and control property of religious organizations thereby often creating obstructive financial consequences which sorely weaken churches, synagogues, mosques, and allied ecclesiastical enterprises.

The history of the controversy between the First Presbyterian Church of Ypsilanti and our municipal government is classic example of the latter's unobstructed power to ignore the constitutional prohibition forbidding ex post facto laws. They have adopted laws purporting to protect historic structures and make it retroactive in a vain attempt to restore a past which never prevailed.

Our church was built in 1857 and we have done a commendable job of maintaining this house of worship. We have done more than our fair share for historic preservation for our community.

Now the city government is refusing to use any reason or logic in the name of preserving some especial architectural relic. And it if is truly valid, where are the preservationist pilgrims coming to view this irreplaceable treasure? Month after month goes by and nobody comes to visit this dilapidated building.

With the power to tax always available to replenish the city coffers, the city can finance a legal battle with the church, and our voluntary religious organization is dragged into a monetary struggle it cannot possibly win. This does not represent the doctrine of the separation of church and state, it represents an open hostility to our religious freedom to own and operate our church property as we deem appropriate. At no time have we ever done anything to compromise the public safety or good order of our neighborhood, the only legitimate issues the city can and should address.

A few months ago, a supposed homeless person being hosted by our church stole the purse of one of our volunteers and tried to forge a check to cash for her drug habit. She was apprehended and prosecuted. She was provided extensive legal representation, all at the taxpayer's expense. However, the church whose hospitality she abused is afforded no such assistance in trying to protect itself from the merciless domination of government and it has cost us close to \$60,000 in legal fees so far, the equivalent of 25 percent of our annual maintenance budget for the building.

This \$60,000 is lost to the worthwhile service the church could have otherwise performed for those in need in our community. Churches and other religious organizations are by far the most effective and efficient delivery mechanisms for social services in our society. It behooves government to subvert this.

A number of years ago, I served two terms on this very same city council, and I recognize and appreciate the continuing tension be-

tween strongly held points of view, but the final arbitrators should not be a handful of elected officials in league with the appointed commission far removed from public accountability. These commissions are generously populated with zealots wrapped in cloaks of false nobility telling the rest of us what is best for us in their highly selective and peculiar perspective.

The framers of our Constitution clearly understood this insidious potential for political mischief of the moment, and wisely provided us with stalwart principles of constitutionally-mandated protections from such vagaries.

We need your assistance once more in restoring and refreshing these protections to our religious communities who only want to serve a noble cause improving the human condition.

I also have a brief history of the ongoing saga, which I won't bore you with, and a picture of our church and the building in question. Again, thank you for this opportunity.

[The prepared statement of Mr. Robb follows:]

PREPARED STATEMENT OF RICHARD ROBB, YPSILANTI, MICHIGAN

Thank-you Chairman Hyde and members of the committee for allowing me to speak to you today on this very important issue.

My name is Richard Robb and I am a member of the First Presbyterian Church of Ypsilanti, Michigan and I have been a life long resident of the Ypsilanti community.

In 1972 the church purchased the piece of property that was adjacent to our church with the prospect of future expansion of our facilities. The church offered the building to any person or organization who wished to move it or to use it until such time as the church needed or wanted to expand. The only stipulation was that they would maintain the building. Two organizations did use the building and did little or nothing to maintain the building. In 1982 we requested to demolish the building. It was in such a state of disrepair and the cost to restore this 624 square foot structure would cost \$150,000. No action was taken by the Historical commission. Since that time it has been a continuing battle with the city and its Historical Commission which includes hearings, lawsuits and mediation.

I urge your attention to this troubling trend in this country today: the ability of government to unduly regulate and control properties of religious organizations thereby often creating destructive financial consequences which can sorely weaken churches, synagogues, mosques and allied ecclesiastical enterprises. The history of the controversy between the First Presbyterian Church of Ypsilanti and our municipal government is a classic example of the latter's unobstructed power to ignore the constitutional prohibition forbidding ex post facto laws. They have adopted laws purporting to protect historic structures and make it retroactive in a vain attempt to restore a past which never prevailed.

Our church was built in 1857 and we have done a commendable job of maintaining this house of worship to this day. We have done more than our fair share for historic preservation for our community.

Now the city government is refusing to use any reason or logic in the name of preserving some especial architectural relic. If this is truly valid where are all the preservationist pilgrims coming to view this irreplaceable treasure of the past? Month after month goes by and NOBODY comes to visit the structure in dispute.

With the power to tax always available to replenish the city coffers, the city can finance a legal battle with the church and our voluntary religious organization is dragged into a monetary struggle it cannot possibly win. This does not represent the doctrine of the separation of church and state, it represents open hostility to our religious freedom to own and operate our church property as we deem appropriate. At no time have we ever done anything to compromise the public safety or good order of our neighborhood, the only legitimate issues the city can and should address.

A few months ago a supposed homeless person being hosted by our church stole the purse of one of our volunteers and then tried to forge a check to cash for her drug habit. She was apprehended and prosecuted. She was provided extensive legal representation all at taxpayer expense. However, the church whose hospitality she abused is afforded no such assistance in trying to protect itself from the merciless

domination of government and it has cost us close to \$60,000 in legal fees thus far, the equivalent of 25% of our annual maintenance budget. This is \$60,000 lost to the worthwhile service the church could have otherwise performed for those in need in our community. Churches and other religious organizations are by far the most effective and efficient delivery mechanisms for social services in our society. It ill behooves government to subvert this.

A number of years ago I served two terms on this very same City Council. I recognize and appreciate the continuing tension between strongly held points of view, but the final arbiters should not be a handful of elected officials in league with appointed commission far removed from public accountability. These commissions are generously populated with zealots wrapped in cloaks of false nobility telling the rest of us what is best for us in their highly selective and peculiar perspective.

The framers of our Constitution clearly understood this invidious potential for political mischief of the moment and wisely provided us with stalwart principles of constitutionally mandated protections from such vagaries.

We need your assistance once more in restoring and refreshing these protections to our religious communities who only want to serve a noble cause for improving the human condition.

I have enclosed a very brief history of this on going battle, pictures of our church and building in question and a drawing of our total property.

Thank you again for this opportunity.

A BRIEF HISTORY OF OUR CHURCH'S OWNERSHIP OF 303 NORTH HURON

January 31, 1969

The property east of the church building, 303 North Huron, became available. The Church did not have funds to buy it. Four members of the church advanced their own funds to buy the property until the church would be able to finance the purchase.

July 17, 1972

Through the generosity of Lucille Ross Elliott the Church was able to buy 303 North Huron for \$61,741.78 for future development of church facilities.

June 10, 1974

The Session voted unanimously "to tear down the Huron Street property unless the Historical Society is interested in retaining and removing it."

November 1, 1974

The Ypsilanti Heritage Foundation leased 303 North Huron Street from the Church for the purpose of moving the house to another site.

June 9, 1978

The Historic District Ordinance took effect.

February 5, 1981

The Heritage Foundation refused to renew the lease with the Church.

January 12, 1982

The Church requested a permit for demolition of 303 North Huron to the Historic District Commission. The Commission took no action.

August 2, 1982

The Friends of the Towner House Children's Museum Committee signed a lease with the Church for the use of the House for ten years at a \$1 per year.

January 15, 1991

The Friends of The Towner House Children's Museum Committee terminated the lease for the house at 303 North Huron.

February 11, 1991

An inspector from the City's Building Inspection Division found twelve violations in the house, and gave the Church twenty one days for correcting these violations. Estimated costs were \$138,225 to \$141,450.

April 21, 1991

At a special meeting the congregation voted by secret ballot on the three available options with the following results: renovation, 21 (16%); demolition, 77 (58%); and removal, 35 (26%).

January 21, 1992

After a public hearing the Historic District Commission denied the Church's application for demolition or removal.

May 22, 1993

The Church received a letter from Monika H. Sacks, Assistant City Attorney, stating that if the Church did not present a plan for renovation of the house at 303 N. Huron within thirty days, she would begin legal action against the Church for demolition by neglect.

September 21, 1993

The Historic District Commission denied the Church's petition to remove the house and charged the Church with demolition by neglect.

November 11, 1993

The Church appealed these decisions to the State Historic Preservation Review Board, which held a hearing on December 20, 1993.

March 11, 1994

Historic Preservation Review Board denied the Church's appeal.

March 15, 1994

The Assistant City Attorney filed the City's Complaint against the Church in Circuit Court, charging the Church with demolition by neglect.

January 12, 1995

Representatives of the Church accompanied by Attorney Andrew Komblevitz appeared before the hearing officer of the Michigan Tax Tribunal to appeal the decision of the City Tax Assessor to place 303 North Huron on the City's tax roll.

April 30, 1995

At a special meeting the congregation considered an offer by the City to withdraw the complaint if the Church would agree to maintain the exterior of the whole house, excluding the garage. The cost of this exterior maintenance was estimated to be \$50,000. When the congregation voted by secret ballot, 93% of those present voted against the offer.

May 16, 1995

The Michigan Tax Tribunal notified the Church that the Church would not be assessed for its property at 303 North Huron.

October 6, 1995

Judge Shelton presented his fifteen page opinion with the following conclusion: "Summary disposition in favor of the City and counter-defendants is granted. The summary disposition motion of the Church is denied. Counsel for the City will prepare an appropriate Order."

December 7, 1995

Judge Shelton signed the Order, which stated in part, "*The First Presbyterian Church of Ypsilanti shall repair the Towner House to stop the ongoing demolition by neglect within thirty (30) days. If it fails to do so, the Ypsilanti Historic District Commission or its agents are authorized to enter the property and make such repairs as are necessary to stabilize the structure and to prevent demolition by neglect. The cost of the work shall be charged to the First Presbyterian Church and shall become a lien on the property if the costs remain unpaid thirty (30) days after the owner has been notified of the cost by the City.*"

December 22, 1995

The Church submitted a Claim for An Appeal to the State Court of Appeals.

April 2, 1996

The Church received from the Circuit Court an order granting a Conditional Stay of Enforcement of the Circuit Court's decision requiring the Church to restore the house, while the Church appeals the Circuit Court's decision to the Michigan Court of Appeals.

April 16, 1996

Historic District Commission held a Public Hearing on the Church's third petition to move the house, which was based on (1) a professional appraisal indicating the financial loss to the church of keeping the house on the church yard or selling a portion of the church yard, and on (2) the Federal 1993 Religious Freedom Restoration Act. The Historic District Commission rejected the Church's petition.

April 30, 1996

The Church submitted its appeal of the Washtenaw County Circuit Court's Order to restore the house to the Michigan Court of Appeal.

August 28, 1996

The Church appealed to the State Historic Preservation Review Board the Historic District Commission's decision, rejecting the Church's petition.

December 27, 1996

First meeting of the Church's negotiating team with Zena Zumeta, Ann Arbor Mediation Center, in an attempt to negotiate a settlement.

June 6, 1997

After two hearings (The tape recording of the first hearing was lost.) the State Historic Review Board denied the appeal of the Church.

July 31, 1997

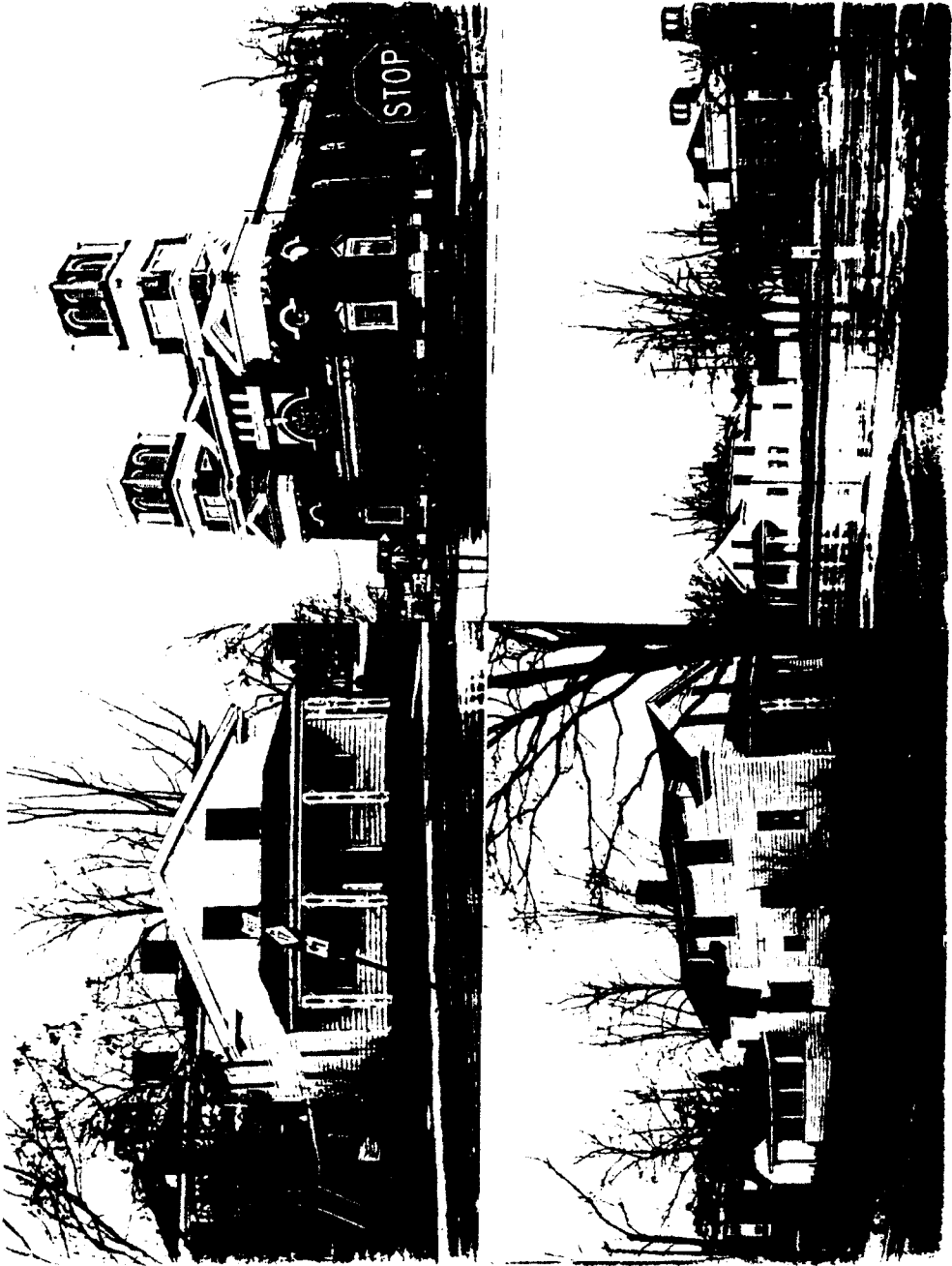
The Church submits a Petition for Review of the decision of the State Historic Review Board to the Washtenaw County Circuit Court.

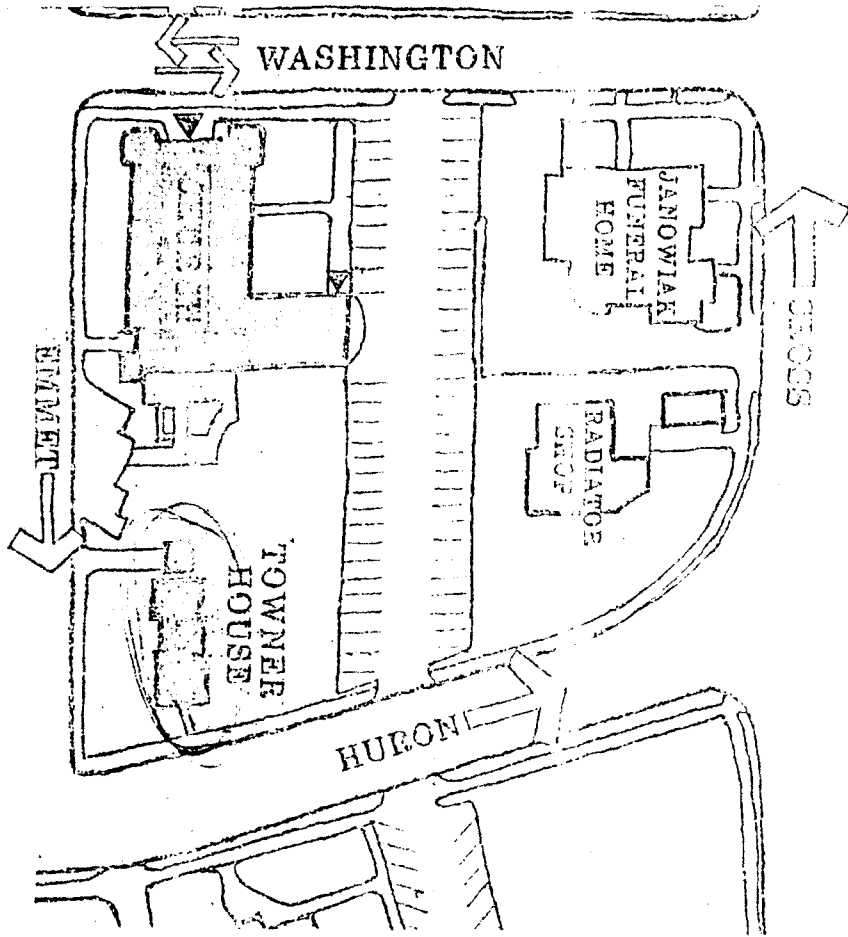
February 2, 1998

The Church's negotiating team makes its response to the mediator's fifth draft of a proposed agreement.

February 3, 1998

The Michigan Court of Appeals denies the Churches Appeal and affirmed the Circuit Court's decision in favor of the City.





1ST PRESBYTERIAN CHURCH OF YPSILANTI

RICHARD N ROBB, DDS
210 GREENSIDE
YPSILANTI MI 48197

Personal Data

Date of birth July 22, 1936
Marital Status Married, three daughters

Education

1954 to 1957 Eastern Michigan University
1959 to 1959

Military Service

United States Army
Honorable Discharge

Professional Organizations

1964 to present American Dental Association
1964 to present Michigan Dental Association
1964 to present Washtenaw District Dental Association
1980 to 1984 Secretary, Treasure, Vice-President,
President, Washtenaw District
Dental Asso.
1988 to 1994 Board of Governors, School of Dentistry,
University of Michigan
1994 to 1997 University of Michigan Alumni Board of
Directors

Community Activities

1964 to 1967 Ypsilanti Youth commission
1967 to 1970 Ypsilanti City Council member
1967 to 1971 Ypsilanti Jaycees
1967 to 1971 Co-chair of professional division of the
United Way
1975 to 1978 Deacon Presbyterian Church of Ypsilanti
Board of Directors of Ypsilanti Boys Club
1967 to 1993 Board of Regents Eastern Michigan
University
1975 to 1985 Chairman Board of Regents Eastern
Michigan University
1993 Co-Chair Community Taskforce on
Ypsilanti Public Schools
1995 to present Board of Directors of Eastern Michigan
University Foundation
1995 to 1998 Trustee Presbyterian Church of Ypsilanti
1998 Co-Chair Committee to pass millage for
Ypsilanti Area Library

Awards

1967 One of five Outstanding Young men of
Michigan, Michigan Jaycees
1993 Honorary Degree of Doctor of Science
Eastern Michigan University

Mr. HUTCHINSON. Thank you, Dr. Robb. Reverend Steel.

**STATEMENT OF RICHARD STEEL, REVEREND AND PASTOR,
CEDAR BAYOU BAPTIST CHURCH, BAYTOWN, TEXAS**

Mr. STEEL. Mr. Chairman and members of the House subcommittee on the Constitution, I thank you for the privilege of appearing before you today to speak to the need for Federal protection of religious freedom after *Boerne v. Flores*. I strongly believe that there's a vital need for Congress to address this important issue which affects millions of Americans.

There's a growing feeling among the religious bodies of our country and a fear that what we are guaranteed by the Constitution is being taken from us by the courts, including the highest court of the land. The establishment clause of the First Amendment was in-

tended to stop the formation of a national church. Time has eroded that precept and now the misinterpretation of the First Amendment has, in many cases turned the amendment against religion instead of protecting it.

In many cases, the court's attitude toward religion has been hostile rather than neutral and protective. It was in June 1994 that our church, the church where I've served the last 22 and a half years, the Cedar Bayou Baptist Church in Baytown, received notice that we were being sued by Gregory-Edwards Incorporated of Houston.

Our struggle for religious liberty begins in 1975 when three employees left a national air conditioning company to open and establish an air conditioning service department at Gregory-Edwards Incorporated. The verbal agreement was that these three employees would build up the business and share in the profits. They attempted to get Mr. Bill Gregory to execute a legal document of their business arrangements, but he refused to do so. On December 31, 1985, the three men left Gregory-Edwards Incorporated and two of them formed a new company.

Over 4 years later, in February 1990, Mr. Gregory filed suit against these 3 former employees contending that his new accountant had discovered the company had overpaid them by \$90,000. A 5-day jury trial resulted in a decision in favor of Gregory-Edwards based on the ruling that there was a partnership even though there was no legal contract. The suit granted a \$90,000 judgment jointly or severally against the three men. One of those men is a long-time member of Cedar Bayou Baptist Church, and on the advice of his attorney, because of his age, he was 59 or 60 at the time, he declared bankruptcy under Chapter 7. The case was settled in 1994.

Two months later, Mr. Gregory sued Cedar Bayou Baptist Church for the tithes of that individual that he had given between 1986 and 1992. He later amended that to 1988 to 1992 because of the statute of limitations in Texas. The suit declares that between July 1, 1986 to 1992, our church member made transfers to the defendant, Cedar Bayou Baptist Church, totaling more than \$30,000 without receiving a reasonably equivalent value in exchange for the transfer.

On September 13, 1994, the United States Bankruptcy Court, Southern District of Texas, Houston Division, dismissed the case on the grounds that the defendant had no standing in Federal bankruptcy court to sue the church. Mr. Gregory then purchased the cause of action from the Federal bankruptcy trustee and sued us in County Court at Low Number 2 in Houston. That case was tried September 10, 1997. Judge Tom Sullivan ruled in favor of the plaintiff and granted a judgment against Cedar Bayou Baptist Church in the amount of \$23,478.

The judge based his decision on that part of the Texas Business and Commerce Code called the Fraudulent Transfer Act, and in addition, the United States Bankruptcy Code. The court's decision states that one does not receive "equivalent value" for his tithes to his church, therefore a bankruptcy creditor can recover those tithes. One's house, his car, his retirement accounts are protected in a bankruptcy settlement, but according to Judge Sullivan, one's gifts to his church are not.

We, the members of Cedar Bayou Baptist Church, contend this is not a case about bankruptcy. The bankruptcy case of one of our members has been settled and legally recorded. The issue in our case is about religious liberty, about the First Amendment of the Constitution of the United States. If a court can declare that a church member does not receive any reasonably equivalent value for his tithes to his church, then the court is defining what is or is not of value to one's church membership and manner of worship.

The charge that a long-time tither is guilty of fraudulent giving because of a bankruptcy suit is to presuppose on the religious liberty of all American citizens. If one's gifts to his religion are not fraudulent before bankruptcy, then they're certainly not fraudulent after. We believe that the tithe is an important part of one's religious worship. The member of our church is a deacon; he's required by church bylaws to give a tithe and to deny him that right, even during bankruptcy makes him decide whether he will support the decision of the court or support his commitment to God.

We believe that Leviticus teaches us to tithe and we believe that where one's treasure is, there will his heart be also.

In conclusion, I want to quote from a letter that George Washington wrote to the United Baptist Churches in Virginia on May 10, 1789. The President wrote: "If I could have entertained the slightest apprehension that the Constitution framed at this convention, where I had the honor to preside, might possibly endanger the religious rights of any ecclesiastical society, certainly I would never have placed my signature to it."

It is our prayer that the attitude and interpretation of the Father of our country toward the Constitution will once again prevail in the courts of the land. If not, we appeal to you who represent us in Congress to redress our grievances in the area of religious liberty.

Thank you for hearing my testimony and letting me make my appeal for religious liberty.

[The prepared statement of Mr. Steel follows:]

PREPARED STATEMENT OF E. RICHARD STEEL, REVEREND AND PASTOR, CEDAR BAYOU BAPTIST CHURCH, BAYTOWN, TX

Mr. Chairman, Members of the House Subcommittee on the Constitution, I thank you for the privilege of appearing before you to speak to "The Need for Federal Protection of Religious Freedom after *Boerne v. Flores*." I believe strongly that there is a vital need for Congress to address this important issue which affects millions of Americans.

When the Supreme Court struck down the 1993 Religious Freedom Restoration Act (RFRA) on June 25, 1997, it was a severe blow to the Americans who belong to the churches, synagogues, and other religious organizations of this nation. It is sad that Congress has to fight the battle of religious liberty again, when that precious right is written into the most sacred of our political documents, The Bill of Rights of The Constitution.

We who are a part of the religious bodies of this country have a growing fear that what we are guaranteed by the Constitution is being taken from us by the courts, including the highest court of this land. The Constitution was not ratified by the states until some key provisions of freedom were guaranteed—first among them being the freedom of religion. For over two hundred years religious liberty was the bulwark of our freedoms. The turning point occurred in the 1947 Supreme Court ruling of *Everson v. Board of Education*. For the last fifty-one years, the fabric of religious liberty has been unwoven in one court decision after another.

The "establishment clause" of the First Amendment ("Congress shall make no law respecting an establishment of religion ") was intended to stop the formation of a national church. Time has eroded that precept and now the misinterpretation of the

First Amendment has, in many cases, turned the Amendment against religion, instead of protecting it. In many cases, the courts' attitude toward religion has been hostile rather than neutral and protective.

In recent days, I stood in the rotunda of the Capitol building and studied the huge mural of that little group of Pilgrims on board the Mayflower. That painting depicts those men and women on their knees on the deck of that tiny vessel. I thought how they braved insurmountable problems to come to this land so that they could worship God according to the dictates of their heart without interference of the state and without having to support a state church. My thoughts over whelmed me and I bowed my head in silent prayer: "O God, I pray that the reason they came will always be a part of the heritage of these United States." Religious liberty is the very heart of all our liberties.

I am sure that my prayer was colored by the experience suffered by the church I pastor and have served for the last twenty-two and one-half years. I thought it was a joke on that day in early June 1994, when Cedar Bayou Baptist Church of Baytown, Texas, received notification that we were being sued by Gregory-Edwards, Inc. of Houston.

Our struggle for religious liberty goes back to 1975. In that year, three employees left a national air conditioning company to establish an air conditioning service department at Gregory-Edwards, Inc. The verbal agreement was that the three new employees would work to build up the business and share equally in the profits with the owner of the company. Through the next 10 years, the three men asked the owner, Mr. Bill Gregory, to execute a legal document of their business arrangement. He refused to do so. On December 31, 1985, the three men left Gregory-Edwards, Inc. and two of them formed a new company.

Over 4 years later, in February 1990, Mr. Gregory filed suit against his three former employees, contending that his new accountant had discovered the company had overpaid them by \$90,000. A 5-day jury trial ended with a decision in favor of Gregory-Edwards, Inc., based on the ruling that there was a partnership involved even though there was no legal contract. The suit granted the \$90,000 judgment "jointly or severally." One of the men involved is a long-time member of Cedar Bayou Baptist Church. On the advice of his attorney, he declared bankruptcy under Chapter 7 of the Bankruptcy Law. This was settled in April 1994. Two months later, Mr. Gregory sued Cedar Bayou Baptist Church for the tithes that our member had given during the period of bankruptcy.

The suit declared that the former employee of Gregory-Edwards, Inc., "Between July 1, 1986 and October 14, 1992...made transfers to the Defendant (Cedar Bayou Baptist Church) totaling more than \$30,000 without receiving a reasonably equivalent value in exchange for the transfer." An amended complaint of July 12, 1994, argued that the \$30,000 in tithes that were given to the church, plus interest, should be given to Gregory-Edwards, Inc. because these gifts were fraudulently given.

On September 13, 1994, the United States Bankruptcy Court, Southern District of Texas, Houston Division, ruled in favor of Cedar Bayou Baptist Church and granted our motion to dismiss on the basis that the plaintiff had no standing or authority to sue the Church in Federal Bankruptcy Court. Mr. Gregory then bought the "cause of action" from the Federal bankruptcy trustee and sued Cedar Bayou Baptist Church in County Civil Court at Law No. 2, Harris County, Texas. Because of the statute of limitations, the plaintiff amended his original motion to seek those tithes given between October 15, 1988 and October 13, 1992.

After several delays, the case was tried September 10, 1997. Judge Tom Sullivan ruled in favor of the plaintiff and granted a judgment against Cedar Bayou Baptist Church in the amount of \$23,478. The judge based his decision on that part of the Texas Business and Commerce Code called the "Fraudulent Transfer Act" and the United States Bankruptcy Code. The Court's decision states that one does not receive "equivalent value" for his tithes to his church and therefore a bankruptcy creditor can recover those tithes. One's house, car, and retirement accounts (IRAs) are protected in a bankruptcy settlement, but according to Judge Sullivan, one's gifts to his church are not. In Cedar Bayou Baptist Church's case, some of those tithes were given over 9 years ago. Cedar Bayou Baptist Church is the first church in Texas to be sued for a return of the tithes of a bankrupt member.

We, the members of Cedar Bayou Baptist Church, contend that this is not a case about bankruptcy. The bankruptcy case of one of our members has been settled and legally recorded. The issue in our case is about religious liberty, about the First Amendment of the Constitution of the United States. If a court can declare that a church member does not receive any "reasonably equivalent value" for his tithes to his church then the court is defining what is or is not of value in one's church mem-

bership and the manner of his worship. We believe this interpretation disregards and negates the First Amendment.

No court has a right to define one's practice of religion and his attendant gifts in support of his religious faith. To charge that a long-time tither is guilty of fraudulent giving because of a bankruptcy suit is to presuppose on the religious liberty of all American citizens. If one's gifts to his religion are not fraudulent before bankruptcy, they are certainly not fraudulent during or after. Bankruptcy does not create fraud in a long-time tither whose gifts have been regular and consistent for over forty years.

When one gives to his church, he is practicing his very basic freedom of religious liberty. No court has the right to declare in the realm of religion what is or is not "equal value" for his tithes. The matter of what value one derives from the practice of his faith is not subject to the court, but to Almighty God.

Cedar Bayou Baptist Church believes that its tithing members do receive "equivalent value" of the highest order in the realm of the spirit and soul as well as the body, i.e. the spiritual and the temporal. We also believe that all our members should give at least 10 percent of their income to God through their church. Our church member involved in this suit is a deacon; he is required by church by-laws to give a tithe. In our case, church members are made to decide whom they will obey, God or the court. No citizen should be placed in such jeopardy.

On January 28, 1998, Cedar Bayou Baptist Church filed an appeal in the Fourteenth Court of Appeals in Houston. We were required to put up a bond of \$47,000 to make our appeal. This is the approximate amount of the \$23,478 judgment plus interest that goes back to 1988. It is our earnest hope and prayer that the Texas Fourteenth Court of Appeals will render a judgment that is based on religious liberty and strike down Judge Sullivan's ruling against our church.

Participating parties to an Amici Curiae brief in support of the appeal of Cedar Bayou Baptist Church include the Christian Life Commission of the Baptist General Convention of Texas, the Texas Catholic Conference, and the Texas Conference of Churches representing over 9.5 million Texas Christians from fifteen denominations. The religious community of Texas is deeply concerned about the implications of the judgment against Cedar Bayou Baptist Church and what it will mean if the judgment is not overturned. Will churches have to run credit checks on every donor? Will there be a growing trend allowing creditors to raid church collection plates? Will churches have to maintain a legal fund or buy an insurance policy to protect them in case of a lawsuit seeking the tithes of bankrupt members?

Such suits are being filed all over the country. I have received calls from pastors in Oregon and Pennsylvania and am aware of cases in at least eight other states. The pastor of the church in Oregon told me that an attorney for a creditor of one of his bankrupt church members wrote him threatening to sue the church if they did not pay \$5,000 which the member had given to his church. The attorney pointed out in his letter that the cost to the church to defend itself would be more than the \$5,000 and therefore it would be more economical to settle than to go to trial. That is legal extortion. That church lost in court.

The lawsuit against the Crystal Evangelical Free Church in New Hope, Minnesota, involves the same as Cedar Bayou's case, but it is in Federal court. Their case was won in the Eighth Circuit Court but returned to that Court when the Supreme Court struck down RFRA. That church has had friends-of-the-court briefs filed by Catholics, Southern Baptists, Mormons, Presbyterians, Jewish organizations, the ACLU, and the National Muslim Council.

When the Supreme Court declared that Congress had overstepped its authority by trying to establish "compelling interest" as a new constitutional standard, the Court took another step in denying religious liberty to the citizens of this country. We of the churches, synagogues and other religious organizations of America respectfully ask you of this Committee and the other Members of Congress to provide us the needed protection as we worship God and support our worship with our tithes and offerings, and to protect us from revisionists' interpretations of the First Amendment.

Our particular case is being addressed through H.R. 2604 that has been introduced by Rep. Ron Packard. Senator Charles Grassley has filed an identical Senate bill. The bill titled The Religious Liberty and Charitable Donation Protection Act will stop creditors from being able to seize tithes and donations made to non-profit entities by individuals who later file for bankruptcy. Congressman Packard was quoted in the Baytown Sun as saying, "We are allowing people (in bankruptcy) to take cruises, gamble, even call psychic hotlines, but denying them the right to exercise their faith through tithing or contributing to charities. This is just another example of how ludicrous the courts can be." I urge the support of each of you for H.R. 2604.

We ask for no special treatment. What we do ask for is the protection of our right of religious liberty that is guaranteed to us by the First Amendment to the Constitution of the United States. No judge, Federal or state, should be permitted to undo the most basic of all our constitutional rights, the right to practice our faith and support it with our tithes. Anything less is a disenfranchisement of the Pilgrims, those framers of the Constitution, all Americans who have gone before us, all present citizens, and those who will follow us in the generations to come.

In a May 10, 1789 letter to the United Baptist Churches in Virginia, George Washington wrote: "If I could have entertained the slightest apprehension, that the Constitution framed in the Convention, where I had the honor to preside, might possibly endanger the religious rights of any ecclesiastical Society, certainly I would never have placed my signature to it."

It is our prayer that the attitude and interpretation that the Father of Our Country had toward the Constitution will once again prevail in the courts of our land. If not, we appeal to you who represent us in the Congress to redress our grievances in the area of religious liberty.

Thank you for hearing my testimony and letting me make my appeal for religious liberty.

Mr. HUTCHINSON. Thank you very much, Reverend Steel. Reverend Brooks.

STATEMENT OF DONALD W. BROOKS, REVEREND, DIOCESE OF TULSA, OKLAHOMA

Mr. BROOKS. Thank you, I began my work in corrections in 1969. In those and the succeeding years, the variety of religious requests by inmates were proliferating. There was an upsurge of Fundamental Evangelical Christian activity among some. Others were filing lawsuits against the practice of hiring or paying certain people as chaplains, Protestant, Catholic and Jew, while feeling no need to provide leadership for religious expressions not served by the traditional three.

Some were creating their own religions. For example, the church of the New Song for which the practice of religious services entailed the eating of steak or the smoking of marijuana.

The Oklahoma State Penitentiary Protestant chaplain and I worked very closely together. It was he who began what would become the development of religious volunteers from neighboring communities for help in expanding the religious programming within the institution.

A common experience for me as a Roman Catholic was the nearly yearly battle over the Catholic use of sacramental wine. The first time that this happened between the Oklahoma State Penitentiary administration, and then in later years, the administration of most of the state's prisons, the use of the Sacramental wine for the celebration of mass by Catholics generated a very complex response.

I had been with the Oklahoma State Penitentiary for 9 years. Each weekend during those 9 years I had taken a small bit of sacramental wine with me as I entered for the weekly Catholic worship service. I made no secret of this. Being a maximum security prison, there was a routine and thorough inspection of both one's person and the content of anything one was carrying.

On the Saturday in question, as I always did, I noticed a new officer on duty. I drew his attention to the small bottle in my briefcase containing wine for sacramental purpose. He probably would have passed over it, had I not drawn his attention to it. The announcement confused him. He was aware that the contraband statute of the State of Oklahoma forbids the carrying of alcoholic bev-

erages into the prison. I could see that, confused by not wishing to offend me, he was unprepared to modify what he had been taught.

Noticing the director of security standing nearby, I called him to the gate through which I must pass. I had known him, and he me, at least 6 years. I described the dilemma being faced by the young, new officer, and asked the security officer to clear the wine for entrance. At this point, he acted as though he too was caught off guard.

Noting that things were only growing more complicated, I told him that I was leaving my briefcase in the inspection area, but intended to pass through the sliding door so that I could go to my office which was a few steps away. Once in my office where the security officer followed me, I called the warden to alert him to the problem. He cleared the wine's use. The security officer asked why I had not told him that this was my regular practice, since he was unaware of what Catholics did. The incident was not simply one of not knowing what Catholics did. It was charged with anti-Catholic religious bigotry.

I learned later that even the warden wished that he could have denied me access. This was one instance. There have been at least 12 others in the ensuing years.

In 1993, the year that RFRA was passed, the last serious incident occurred. I was notified by the priest assigned to one of our minimum security prisons that he had been stopped on his first trip in for worship. By this time, I had begun including an addendum to each year's Service Agreement which I negotiated. In the agreement, I indicated the material needed for each form of Catholic worship. The wine was included. I called the warden and was first give the deputy warden. Both knew me personally. And I was treated as if I did not know that there was a contraband statute in the State of Oklahoma.

Understanding well that there was an attempt being made to treat me as if I didn't know what I was doing, I advised that they had a copy of our service agreement on file and were in violation of the U.S. Constitution. Both the warden and deputy warden stated that they had not read the agreement. I instructed them to read the agreement, then call the Department of Corrections. I gave them the name of the person to call, and added they should clear this situation up before the following weekend.

When called, the person at the department level with whom I had discussed other similar instances, and the one responsible for our yearly service agreement, plead that he had no knowledge of the fact that Catholics used sacramental wine. Because of the pressure I continued to apply, and the existence of RFRA, the legal counsel for the department did the research necessary, after 20 years, to issue the opinion from an earlier precedent, that the contraband statute did not intend to exclude sacramental wine. One could already perceive the difference being made by the Religious Freedom Restoration Act.

Not satisfied then with the department's promise to personally advise each warden as he was provided the counsel's opinion and a copy of our service agreement, I wrote a letter to each asking that this information be included in the training of new officers that the upgrading of seasoned security staff.

Since then, only one incident has occurred and in this case, it was caused by a new institutional chaplain who had not been adequately prepared by the institution for which he worked. It was quickly resolved once I brought the question to the warden's office.

Most recently, the Oklahoma Interfaith Council on Prison Ministry, of which I'm Chair, was preparing a study on the feasibility of implementing the Oklahoma Department of Corrections' Policy on Common Fare Diets, or religious diets. To do this, we have prepared a presentation for the executive board of the Department of Corrections. In addition, we'd prepared a thoroughly researched list of religious articles that were essential to practice to each.

The occasion for the second study was the fact that the department was about to implement a new policy that would severely restrict the amount of personal property prisoners could possess. Not much to our surprise, we had discovered that no provisions had been made for the possession of religious articles. Our experience prompted us to take immediate action for we were well aware that there was little or no consistency in the present policy.

Both studies were presented at the same executive board meeting. The ensuing discussions revealed the diversity of opinions of those present. Of note was the fact that both the director and the general counsel of the department were in favor of both proposals.

The study on common fare, or religious, diets was greeted unenthusiastically by some and with contempt by others. The mention of the fact that lawsuits against states whose practices were similar to those of Oklahoma and those lawsuits were being upheld, did bring a bit of attention. The present situation was one in which some institutions had no special religious diets; some had one form and others yet another.

The fact that the Department of Corrections had a policy which stated that a common fare diet was available at each institution seemed of little importance. We were asked to prepare a workshop for deputy wardens, chaplains and food service personnel at which we would present the practical details that must be considered in the preparation of such diets, and then they would consider whether to do it or not.

For years, all of us who work as religious volunteers have been aware that there was no policy regarding the possession of religious items such as the Bible, the Koran, the Talmud or items needed by Native Americans. Some wardens permitted them, and at another institution, they would be confiscated as contraband.

During shake-downs, searches routinely conducted at every prison, religious items were frequently treated with contempt and were confiscated, damaged or discarded. It should take little imagination to understand the level of rage we encountered in prisoners when this sort of thing occurred. We had every reason to believe that some action was urgent and appropriate at this time.

It was the list of religious articles proposed for possession by individuals that drew the strongest objections by the executive board. Even when it was explained that we had done considerable research and were listing only those items considered important to one's faith or tradition, there was no lessening of the board's resistance.

One member remarked that he would permit such items if the Tenth Circuit Court of Appeals ordered him to do so. Another observed angrily that RFRA no longer existed and we needed to do nothing. The less familiar they were with a particular religious tradition such as Judaism, Islam, Native American practices or Roman Catholicism, the stronger the objection. We were invited to review the list in light of the amount of space that prisoners were being given in which they could store all of their possessions.

The approved listing was then revised for inclusion in an addendum to the religious programs operating procedures—I'll summarize—that was to be associated with the personal property that inmates were allowed to possess. When that order went out to restrict the inmate's property, it was in the new operations procedure. The addendum for the religious articles possessions was a little slower and the wardens had never seen it. Some are not aware of it.

They began to start the process of implementation right away. And what they did was inform each of the inmates that the religious items in their possession must be returned to their homes or discarded.

The religious addendum did catch up with the personal property operational procedures in time for implementation. By that time, the inmates had simply destroyed the articles or sent them to their homes. I learned of this, and others, from letters from families and from inmates themselves.

Finally, one must not look for the cause of the denial of religious freedom at the level of individual correctional institution, warden or correctional officer. Solutions applied with that presumption will not work. The problem is systemic. It is not found only in corrections, but in our broader social and political system. Many still live with the conviction that supporting other's right to believe and practice as they choose, when that choice is different from one's own, is supporting error and falsehood, or even heresy. That attitude is particularly alive where those on whom it is imposed are viewed as having few or abridged rights.

Finally, men and women in prison have committed crimes for which they should be punished. We must protect the general population from further such acts by confining them to prison. No matter what these men and women have done to violate the dignities of others, their own human dignity and its inviolability remain intact.

The nature of the human person is fundamental to the best in our social and political system. That dignity is always inviolable. We do not give it, nor can we take it. It is not diminished. It cannot be surrendered; and it cannot be abridged nor forfeited.

To presume that the commission of a crime renders one's life valuable or of less value, strikes at the heart of everything we believe. It is for these reasons that I would register strong opposition to any proposal that the religious freedom and practices of men and women in prison be restricted more than they already are. We must not let ourselves reach a stage of rage and helplessness in which we no longer believe that human beings are redeemable and can change.

[The prepared statement of Mr. Brooks follows:]

PREPARED STATEMENT OF DONALD W. BROOKS, REVEREND, DIOCESE OF TULSA,
OKLAHOMA

I am the Director of Prison Ministry for both Roman Catholic dioceses in the State of Oklahoma. I serve as the Liaison for the bishops with the Oklahoma Department of Corrections, Federal Bureau of Prisons and the Private Prisons of the State. I negotiate the yearly Service Agreements and oversee the Catholic Religious Programming designed by the priests assigned to each of twenty-three institutions. I am the Statewide Chair of the 2 year old Oklahoma Interfaith Council on Prison Ministry. Our central focus is on the quality of religious programming and religious freedom in those institutions under the authority of the Oklahoma Department of Corrections. While we are an independent expression of the religious communities of the State, we work closely with the Department of Corrections in an effort to ensure the maximum in religious freedom and expression.

I began my work with corrections in 1969. In those and the succeeding years the variety of religious requests by inmates were proliferating. There was an upsurge of Fundamental Evangelical Christian activity among some. Others were filing lawsuits against the practice of hiring or paying certain people as chaplains [Protestant, Catholic and Jew] while feeling no need to provide leadership for religious expressions not served by the traditional "three." Some were creating their own religions (e.g. The Church of the New Song) for which the practice of religious services entailed the eating of steak or the smoking of marijuana. The Oklahoma State Penitentiary Protestant Chaplain and I worked closely together. It was he who began what would become the development of religious volunteers from neighboring communities for help in expanding the religious programming within the institution.

A common experience for me as a Roman Catholic was the nearly yearly battle over the Catholic use of Sacramental Wine, the first time between the OSP administration, then with the administration of most of the State's prisons. The use of Sacramental Wine for the celebration of the Mass, by Catholics generated a very complex response.

I had been with Oklahoma State Penitentiary for 9 years. Each weekend during those 9 years I had taken a small bit of Sacramental Wine with me as I entered for the weekly Catholic worship service. I made no secret of that. Being a maximum-security prison there was a routine and thorough inspection of both one's person and the contents of anything one was carrying. On the Saturday in question, as I always did, when I noticed a new officer on duty, I drew his attention to the small bottle in my brief case containing wine for Sacramental purposes. He probably would have passed over it, had I not drawn his attention to it. This announcement confused him. He was aware that the Contraband Statute of the State of Oklahoma forbids the carrying of alcoholic beverages into the prison. I could see that, confused by not wishing to offend me, he was unprepared to modify what he had been taught. Noticing the Director of Security standing nearby, I called him to the gate through which I must pass. I had known him, and he me for at least 6 years. I described the dilemma being faced by the young, new officer, and asked the Security Officer to clear the wine for entrance. At this point, he acted as if he too was caught off his guard. Noting that things were only growing more complicated, I told him that I was leaving my brief case in the inspection area, but intended to pass through the sliding door so that I could go to my office which was a few steps away. Once in my office where the Security Officer followed me, I called the Warden to alert him to the problem. He cleared the wine's use. The very upset Security Officer asked why I had not told him that this was my regular practice, since he was unaware of what Catholics did. The incident was not simply one of not knowing what Catholics did. It was charged with anti-Catholic bigotry. I learned later that even the Warden wished that he could have denied me access. This was one instance. There have been at least twelve others in the ensuing years.

In 1993, the year that RFRA was passed, the last serious incident occurred. I was notified by the priest assigned to one of our medium security prisons that he had been stopped on his first trip for worship. By this time, I had begun including an addendum to each years Service Agreement. In it I indicated the material needed for different forms of Catholic services. Wine was included. I called the Warden, and was first given the Deputy Warden. Both knew me personally. I was treated as if I did not know that there was a Contraband Statute in Oklahoma.

Understanding well that an attempt was being made to treat me as if I didn't know what I was doing. I advised that they had a copy of our Service Agreement on file, and were in violation of U.S. Constitution. Both the Warden and Deputy Warden stated that they had not read the Agreement. I instructed them to read the Agreement, then call the Department of Corrections. I gave them the name of the

person to call, and added that they should clear this situation up before the coming weekend.

When called, the person at the Department level with whom I had discussed other such instances, and the one responsible for our yearly Service Agreement plead that he had no knowledge of the fact that Catholics used Sacramental wine. Because of the pressure I continued to apply, and the existence of RFRA, the Legal Counsel for the Department did the research necessary [after twenty years] to issue the opinion from an earlier precedent, that the Contraband Statute did not intend to exclude the use of Sacramental Wine. One could already perceive the difference being made by the Religious Freedom Restoration Act.

Not satisfied with the Department's promise to personally advise each Warden as he was provided the Counsel's opinion and a copy of our Service Agreement, I wrote a letter to each asking that this information be included in the training of new officers and the upgrading of seasoned security staff. Since then, only one incident has occurred. In this case it was caused by a new Institutional Chaplain who had not been adequately prepared by the institution for which he worked. It was quickly resolved once I brought the question to the Warden's Office.

In early 1997, I received a request from six prisoners housed in the "Protective Custody" Unit at our Maximum Security Prison. It asked that they be allowed to gather for Catholic Worship Services. Protective Custody Units house those whose lives would be in danger in the general population. The causes of this danger were many, but holding a special place among them was the crime of child molestation or brutality. Aware that the regulation forbidding worship was a pre-RFRA one, I wrote the Warden asking that we meet to consider the two central questions; one, of showing cause why this request could not be met; and two, selecting the least restrictive option available to us. It was some time before I received a call inviting me to such a meeting. The meeting took place 1 day after RFRA had been struck down by the U.S. Supreme Court.

Our conversation was a good one. We viewed the problem on purely Constitutional grounds, unofficially employing the RFRA guidelines. There were extenuating circumstances prompting me to agree that the real risk to the lives of prisoners and officers was substantial enough to prohibit the sort of movement that would have been necessary to allow those requesting it to gather for a worship service.

Most recently, the Oklahoma Interfaith Council on Prison Ministry, of which I am Chair, was preparing a study on the feasibility of implementing the Oklahoma Department of Corrections' Policy on Common Fare Diets. To do this we had prepared a presentation for the Executive Board of the Department. In addition, we had prepared a thoroughly researched list of religious articles that were essential to the practice of one's chosen faith tradition. The occasion for the second study was the fact that the Department was about to implement a new policy which would severely restrict the amount of personal property that a prisoner could possess. Not much to our surprise, we had discovered that no provision had been made for the possession of religious items. Our experience prompted an immediate action, for we were well aware that there was no present guideline for the possession of such items, and, that there was little or no consistency in the present policies. Both studies were presented at the same Executive Board meeting.

The ensuing discussion revealed the diversity of opinions of those present. Of note was the fact that both the Director and the General Counsel of the Department were in favor of both proposals.

The study on Common Fare Diets was greeted unenthusiastically by some and with contempt by others. The mention of the fact that lawsuits against States with practices similar to Oklahoma's were being upheld made the matter more a concern. The present situation was one in which some institutions had no special religious diets; some had one form and others yet another. The fact that the Department of Corrections had a Policy which stated that a Common Fare Diet was available at each institution seemed of little importance. We were asked to prepare a workshop for Deputy Wardens, Chaplains and Food Service personnel at which we would present the practical details that must be considered in the preparation of such diets.

For years all of us who work as Religious Volunteers have been aware that there was no policy regarding the possession of religious items such as the Bible, the Koran, the Talmud or items needed by Native Americans. Some wardens permitted them. At another institution they would be confiscated as contraband. During "shake-down" searches routinely conducted at every prison, religious items were frequently treated with contempt and were confiscated, damaged or discarded. It should take little imagination to understand the level of rage we encountered in prisoners when this sort of thing occurred. We had every reason to believe that some action was urgent and appropriate at this time.

It was the list of religious articles proposed for possession by individuals that drew the strongest objections by the Executive Board. Even when it was explained that we had done considerable research and were listing only those items considered important to one's faith tradition, there was no lessening of the Board's resistance. One member remarked that he would permit such items only when the 10th Circuit Court of Appeals ordered him to do so. Another observed angrily that RFRA no longer existed and we needed do nothing. The less familiar they were with a particular religious traditions such as Judaism, Islam, Native American Practices or Roman Catholicism, the stronger the objection. We were invited to review the list in light of the amount of space that prisoners were being given in which they could store all of their possessions.

The approved listing was revised for inclusion in an Addendum to the Religious Programs Operating Procedures. A problem occurred when the general property policy was nearing the date for its implementation. The Addendum on Religious Property was still in the process of being approved, but was not yet attached to the Religious Programs Procedures. Anticipating that property matrix implementation, several wardens who were unaware of the forthcoming Addendum on Religious Property, or of its existence, issued the order that all such property was to be disposed of before the official date of implementation. I began receiving letters from inmates and calls from their parents and friends. In some instances the orders were implemented meaning that men and women had to mail religious items to their families, destroy or discard them. The Addendum on Religious Property is now part of the general Property Matrix, but too late to make a difference for those who were forced to make disposition of such property before the date of implementation.

One must not look for the cause of the denial of religious freedom at the level of the individual correctional institution, warden or correctional officer. Solutions applied with that presumption will not work. The problem is systemic. It is not found only in corrections, but in our broader social and political system. Many still live with the conviction that supporting others' right to believe and practice as they choose, when that choice is different from one's own, is supporting error and falsehood [heresy]. That attitude is particularly alive where those on whom it is imposed are viewed as having few or abridged rights.

Men and women in prison have committed crimes for which they should be punished. We must protect the general population from further such acts by confining them to prison. No matter what these men and women may have done to violate the dignity of others in their communities, their own human dignity and its inviolability remain intact. The nature of the human person is fundamental to the best in our social and political system. That dignity is always inviolable. We do not give it nor can we take it. It is not diminished. It cannot be surrendered; and it cannot be abridged nor forfeited. To presume that the commission of a crime renders ones life violable [of less value] strikes at the heart of everything we believe. It is for these reasons that I would register strong opposition to any proposal that the religious freedom and practices of men and women in prison be restricted more than they already are. We must not let ourselves reach a stage of rage and hopelessness in which we no longer believe that human beings are redeemable and can change.

Mr. HUTCHINSON [presiding]. Thank you, Father Brooks. I recognize myself for a period of questioning. Father Brooks, if I understood your testimony correctly, that during the time that RFRA was in place, that was helpful in your negotiations with prison officials?

Mr. BROOKS. Yes.

Mr. HUTCHINSON. And at such time as the Supreme Court of the United States struck RFRA down, were you still in negotiation with the Department of Corrections?

Mr. BROOKS. Yes, on several levels.

Mr. HUTCHINSON. Did that change the tone of the Department of Corrections?

Mr. BROOKS. Yes, as I mentioned here, from the executive board, you could hear it very clearly. In other instances, it sort of hovered.

Mr. HUTCHINSON. And during the time that RFRA was in place, did you have any experience with abuse by the prisoners of their religious liberties under RFRA?

Mr. BROOKS. That was claimed by the governors who gathered and began to ask for restrictions. And our department, the Department of Corrections in Oklahoma, made a report to our governor who had asked for it, and they indicated that they had had perhaps one or none of what they call frivolous lawsuits based on RFRA.

Mr. HUTCHINSON. That was Governor Keating that requested that report?

Mr. BROOKS. That's correct.

Mr. HUTCHINSON. There could have been one frivolous lawsuit—

Mr. BROOKS. There are that many on all the other issues in the world.

Mr. HUTCHINSON. I fully understand that. But in balance, was RFRA helpful in protecting the religious liberties of prisoners?

Mr. BROOKS. Yes.

Mr. HUTCHINSON. Now, let me go back to Reverend Steel and the fascinating and distressful story you have related to us today. Am I correct that they brought suit against your church to recover the tithes that were paid only during the period of bankruptcy, or did they reach back prior to the period of bankruptcy?

Mr. STEEL. The bankruptcy period covered 1988 to 1992, at which time our church member did not know he was insolvent. He wasn't aware that the company had overpaid him by some \$30,000. And so he contested that in court. There was a 5-day jury trial that granted judgment against these three men due to the fact that there was a partnership, a verbal partnership rather than an documented partnership. The plaintiff went back to 1988, those 4 years—

Mr. HUTCHINSON. Because he was technically insolvent during that time—

Mr. STEEL. Technically insolvent, but unknown. He didn't know he was insolvent.

Mr. HUTCHINSON. And so do you believe there was any distinction—I believe your testimony was that you didn't—between trying to recover tithes before the declaration of bankruptcy versus tithes given during the period of bankruptcy?

Mr. STEEL. I believe that when one gives his tithe, that is a part of his right to worship. It's an expression of his worship and for a court to define how one can worship, whether it be tithing or singing or preaching, whatever, that is beyond the jurisdiction of the court, I think, according to the First Amendment.

Mr. HUTCHINSON. And this gentleman was a deacon, if I remember correctly, deacons in the Baptist church are supposed to tithe.

Mr. STEEL. Our church bylaws require it.

Mr. HUTCHINSON. Now, how is this matter being resolved? Is it still on appeal?

Mr. STEEL. Our brief of appeal was taken to the Fourteenth Court of Appeals on the 28th of January of this year. The plaintiff has 30 days to reply. We expect to hear somewhere around the first of March when the court will set a date to try the case.

Mr. HUTCHINSON. Thank you, Reverend Steel, and I hope that effort is successful, and I note that there's legislation in Congress that addresses that specific problem.

Mr. STEEL. Mr. Packard's bill, the Religious Liberty and Charitable Donations Act. I think it's H.R. 2604, or something like that, and an equivalent bill in the Senate.

Mr. HUTCHINSON. Dr. Robb, thank you for your testimony today, as well. It's my understanding from your testimony that after the church purchased the property in 1972, then the city adopted the ordinance that set up the historical commission.

Mr. ROBB. That's correct.

Mr. HUTCHINSON. And so that's what made it a retroactive impact on your property rights?

Mr. ROBB. We had that entire time anticipated tearing down or allowing someone to move it. In fact, we said that we would help defray the costs. The historical commission is adamant that it stay on its original foundation. I guess that's the new trend in preservation. We have Greenville Village down the road which is place to study history but that is out of vogue. But the point is that one of the groups that used the building is now, and did no repair to it, is now the historical commission almost in fact. And they kind of held us in obeysance thinking that they were going to take care of the building, and then they got the ordinance passed and now they go back to, it's your responsibility to fix it up and maintain it. It has no practical use for church's future plans.

Mr. HUTCHINSON. My time has expired. I'll recognize Mr. Scott.

Mr. SCOTT. Thank you, Dr. Robb, just following up on that. Has the city treated churches and other buildings differently in terms of historic designation?

Mr. ROBB. No, I would say that they've been pretty much zealots in their upholding of their interpretation.

Mr. SCOTT. But they haven't singled out churches for special treatment?

Mr. ROBB. No, I wouldn't say so.

Mr. SCOTT. Reverend Steel, one of the problems that we have with bankruptcy laws that allows you to go back and give gifts to relatives, to friends, to charitable—whether you're insolvent or not. Now, if someone had given an unusually large donation to the church, should that be recoverable in bankruptcy, as opposed to the tithe?

Mr. STEEL. Very definitely. I think that a creditor certainly has rights and had our church member come and said, hey, I've got \$30,000 that I want to give to keep my creditor from getting it, we would have not received it. But these are just tithes that were given over 4 years and he has a record of tithing that goes back 43 years. So it was not something unusual. He did not come with excessive amounts of money and say, I want to keep it from my creditors.

Mr. SCOTT. Suppose he had given an unusually large gift and then had some financial reversal like an automobile accident for which he was held responsible and had to pay, and he couldn't pay the damages. Should he be able to go back and get the unusually large gift.

Mr. STEEL. If it were a tithe, I would say, no, because we believe the tithe belongs to God as he expresses it through the church. I think that if that were to happen, the church would be more than sympathetic in trying to help him out at that point.

Mr. SCOTT. But, do you see a difference between an unusually large gift and a tithe?

Mr. STEEL. I don't know how to answer that. If it's a tithe, no matter the size of it, I believe it is inviolate. If it were a large gift above his tithe, yes, I would see a difference in that.

Mr. SCOTT. Reverend Brooks, you had mentioned that RFRA has made things better. Under RFRA, what has happened to the Church of the New Song that required eating steaks and smoking marijuana?

Mr. BROOKS. I don't think that lasted long enough for RFRA even to remember it, that was all pre-RFRA. But the questions that RFRA responded to were beginning to be discussed, what is a true religion.

Mr. SCOTT. How do you tell a true religion from a untrue religion.

Mr. BROOKS. This is the question that would take me all of next year to respond to.

Mr. SCOTT. You see the problem.

Mr. BROOKS. I think much has to do with personal choice, and also, the counterbalancing concern for the common good.

Mr. SCOTT. Well, you do recognize that sometimes it's a little tricky how to figure out whose conviction is true and whose isn't true. But they didn't litigate the issue of smoking marijuana that you know of?

Mr. BROOKS. I don't think it ever reached that point. That was one of those frivolous sort of pursuits.

Mr. SCOTT. And have there been other frivolous suits that were denied from a religious standing?

Mr. BROOKS. Not to my knowledge.

Mr. SCOTT. Okay, thank you.

Mr. HUTCHINSON. Thank you, Mr. Scott. Mr. Nadler.

Mr. NADLER. Thank you. I feel a little awkward having just walked in. And I apologize for being so late for this subcommittee hearing. Unfortunately the Judiciary Committee sees fit to schedule several hearings at the same time, and I'm the ranking Democrat on one of the other subcommittee, and we had a hearing that just ended and I had to be there since 10 o'clock.

Let me simply observe that I am proud to have been one of the main sponsors of RFRA back in 1993 like this year. Congress and I think the Supreme Court was wrong in deciding what it did, but we have to live with that. And I'm at a little loss for not having heard the testimony that everyone else has. I simply want to ask a question. Since the Supreme Court—I mean, we know all the problems, and one of the purposes of the hearing today is to make a record. The Supreme Court said that one of the problems was that we didn't have a record for all the problems. I'm very well aware of all the problems. I studied this issue for many years before I came to Congress. My question is, if any of the witnesses would try to answer it, and forgive me if it's repetitive, given the Supreme Court's decision in the *Boerne* case, what do you think Congress can do or should do, either statutorily or by way of constitutional amendment, to solve the problem presented by the Supreme Court's *Smith* case in 1990 which was the original sin in this area by its declaration that RFRA, which was the attempt to

solve the problem presented by the *Smith* decision, was unconstitutional. What can we do? Should we adopt a constitutional amendment? If so, what should it say? And if not, how can we help other than by saying what a terrible problem it is?

Mr. BROOKS. I would like to respond to that. First of all, one of the problems with RFRA was that it was so extremely general that it could be picked up and used by—without much crisis. The Supreme Court looked at that. My approach lately, and it draws an interesting response, is that RFRA may be dead but the Constitution is not and my feeling is that rather than an amendment let's take a look at what the Constitution guarantees there. If there's any way that we can—Constitution ensures we do have to show compelling reason and use the least restrictive means possible.

Mr. NADLER. You just stated, basically, that the whole question of the Free Exercise Clause, to make that meaningful, the Congress or the state legislature or the town board is dumb enough to pass some law directly aimed at saying, we don't like this religious congregation, therefore, don't build a church. It would be unconstitutional on its face; you couldn't get away with it. But if a local or state legislative body passes a law of general application which, as applied to religious institution says, you can't do that, the basic question is, in terms of the Free Exercise Clause, to say which prevails, the Free Exercise Clause or a legitimate law of general application. The question is what test do you apply. The Supreme Court, prior to *Smith*, said, well, you apply the test that you just articulated, that we'll permit the law to say you can't do that religious practice only if you can show that applying it that way serves a compelling state interest and is the least restrictive means of doing so. And with that, most religious practices would fall before the state law. In *Smith*, the Court said, no, that's not the right test. The right test is, does applying the law to ban the religious practice serve a rational relationship to a legitimate state interest. A rational relationship is almost any relationship you can think of, and with that test, there is no—almost every law would trump the religious practice.

RFRA simply said, no, we'll go back to pre-*Smith* and by statute will apply the compelling state interest test. Since RFRA was declared unconstitutional, can anyone suggest what Congress can do to repair the damage, short of a constitutional amendment or do you think a constitutional amendment is necessary.

Mr. BROOKS. I think what many people have expressed here this morning is that feeling of helplessness in the face of people that make statutes, make laws, make judgments. Often they do that with no accountability whatsoever for the decisions which they are making. In this sense, RFRA said you must show compelling reason why what you say is justified. And that's common sense that it seems like we ought to be able to just do that. But it isn't that simple. I don't know whether you can build that into—

Mr. NADLER. The whole point, obviously, of the First Amendment, and of any provision of the Bill of Rights, is to provide fundamental freedoms in the teeth of a hostile majority of people or a hostile majority of a legislative body. No body needs a constitutional protection for some group that's very popular to do something that's very popular. No one is going to try to stop them. The

question is when some group is unpopular, whether it's a group that wants to build an addition in a homeowner area that doesn't like additions, or whatever, or if it's just not a popular church, the Mormon Church in 1850. The question is how do you protect the religious exercise against a popular majority. A popular majority might be reflected in a local or state or even Federal legislative body that says, you can't do this, and it's smart enough not to be too explicit as to why it's saying that. The question is, and I don't know the answer, and so far I haven't heard any, maybe there isn't an answer. Short of a constitutional amendment, given what the Supreme Court said in *Boerne* is there anything we can do? Because I think that the Smith decision eviscerated the Free Exercise Clause of the First Amendment and made it almost meaningless. And the question is—unless you disagree with that thought, please say so. If you agree with it, is there anything that you can think of, because I don't know, to change that.

Mr. HUTCHINSON. The gentleman will have an additional 2 minutes.

Mr. NADLER. Thank you.

Mr. STEEL. In specific to our case, our case was a church member and the plaintiff sued for his tithes which were for 4 years.

Mr. NADLER. We're dealing with that in the other subcommittee.

Mr. STEEL. Yes, right, the Religious Liberty and Charitable Donations Act, in both Houses, and I understand that it has over 100 sponsors in the House, so we hope that will work. Another thing is the bankruptcy laws. The bankruptcy cases have ruled that donors or debtors can take cruises, they can gamble, they can call psychic hotlines, they can even consort with a prostitute, and that money is not recoverable. But one's tithes to his church has no reasonably equivalent value according to the rule of this court in Texas and, therefore, is recoupable. With this 10 year judgment on us, it goes back to 1986, our judgment now is some \$47,000. That's the amount that we had to put up to appeal this. So the bankruptcy laws can be changed to permit a member to give his tithes as an act of worship.

Mr. NADLER. Sir, I think we're going to change that law. Let me say that nothing is certain, but there are fairly good odds that that bill will go through both Houses this year.

Mr. STEEL. If you can write it so that the Supreme Court won't tear it down, good luck.

Mr. NADLER. Thank you.

Mr. ROBB. In our particular case—I don't envy you, I've sat in positions, certainly not of this magnitude of decision-making, the city council, and it's tough trying to come up with what is fair and right. But in our particular situation where a commission that is not answerable to the voters can dictate to us what we can do with our church property or can't do, to me that seems like it is a violation of a basic precept of our religious rights.

Mr. NADLER. From a religious rights point of view, even if that commission were answerable to the voters, it's just as much an infringement of religious liberty if they can tell you—if they can infringe on your liberty. The question isn't whether they're answerable to voters or not, the voters could be terrible on religious liberty too.

Mr. HUTCHINSON. I thank the panel for their strong testimony today and their helpfulness to this committee. I thank the panel members, and with that, this subcommittee will stand adjourned.

[Whereupon, at 12:42 p.m., the subcommittee adjourned subject to the call of the Chair.]

APPENDIX

FEBRUARY 26, 1998

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, DC, March 18, 1998.

Hon. CHARLES CANADY, *Chairman,*
Subcommittee on the Constitution,
House of Representatives, Washington, DC.

DEAR CHAIRMAN CANADY: On February 26, the House Judiciary Subcommittee on the Constitution heard troubling testimony from witnesses who have faced discrimination in the pursuit of free exercise of their religion. One of the most troubling accounts of such discrimination came from Rabbi Chaim Rubin of the Congregation Etz Chaim in Los Angeles. The Rabbi's Congregation has for the last 30 years gathered together in one of two residences in the Hancock Park area of Los Angeles. Most of his congregants are elderly and disabled, and in accordance with Jewish law, they walk and do not drive to services.

The Rabbi shared with us how the City of Los Angeles is now attempting to shut down Etz Chaim not because of any adverse impacts created by the use of this residence for prayer services, but rather, because the City does not want "church uses" in his neighborhood. Like many of the members of the committee, I was shocked to learn of the blatant discrimination against people seeking to exercise their constitutional rights—freedom of speech, freedom of assembly and the freedom of religion.

Unfortunately, as I have learned today, this is not an isolated incident. Indeed, in my own district, a pastor is being threatened with thousands of dollars of fines if he continues to hold Bible studies in his home. I have attached for your review a copy of the article which appeared today in the *Greenville News* which explains the plight of Rev. Orie Wenger.

I am deeply troubled and outraged that discrimination against people on the basis of their religious faith exists in America today. Incidents like these further underscore the need to restate authoritatively that in America we will not prohibit the free exercise of religion. Like you, I voted in favor of the Religious Freedom Amendment, H.J. Res 78 on March 4 and look forward to this measure coming before the House for consideration. With your leadership, I hope we can successfully pass this important legislation.

Sincerely,

BOB INGLIS, M.C.

The Greenville News

WEDNESDAY, MARCH 18, 1998 ■ FINAL EDITION

End home prayer meetings, pastor told

By Scott Wyman
STAFF WRITER

The Rev. Orle Wenger often met with friends and family around his dining room table to discuss the Bible and help them overcome life's troubles. That was until Greenville County ordered him to stop.

Wenger has threatened to fine Wenger up to \$1,000 a day because they say land-use laws prohibit him from using his home for "church-re" and activities.

They said his small prayer meetings turn his home into a church and said he lacks the special permission needed to set up a church.

Wenger's plight has blindsided and shocked pastors throughout Greenville's vast religious community of more than 600 churches. They say the county's stand will make criminals out of thousands of people who each week invite friends to their homes to study the Bible and discuss their faith.

"The reality is every day I'm disobeying the law because I have family devotions in my home and am doing ministry every day with my family," said Wenger, associate pastor of Mount Zion Christian Fellowship. "I'm breaking the law, but that's something I will not stop doing. This means the state can control not only your religion but who you socialize with in every way."

With churches mobilizing to fight and Wenger saying he'll probably sue, county officials are scrambling to find a way out of the decision. County Council Chairman Paul

PRAYER

FROM PAGE 1A

Wickhamer introduced legislation to allow prayer meetings in homes, while County Administrator Gerald Seals ordered his staff to find a solution by the end of the day today and asked the county's zoning board to reconsider its decision.

"Greenville County is not in the business of stopping religious gatherings, period," Seals said.

Their stand Tuesday is in stark contrast to the actions of their staff over the past two months.

The county code enforcement administrator after some of his neighbors complained about the number of cars parked on the street during the meetings in Simpsonville.

The official, Peter Nomiles, wrote Wenger that he must renounce his home as a church. His decision was upheld last week by a zoning board of appeals whose members have been largely appointed by the conservative County Council.

Rusty Burns, who has handled planning and zoning issues across the Upstate for more than a decade, said he has never heard of zoning rules being used to crack down on religious gatherings.

"It would appear that Jesus Christ and his disciples couldn't have the Last Supper if they were in Greenville County," Burns said.

Al Padgett, co-chairman of the Greenville County chapter of the Christian Coalition, and the Rev. Ron Davis, director of the Greenville Baptist Association, said the ruling violates Wenger's constitutional rights of free assembly and free speech and say it amounts to state interference with religion.

Steven Bates, state executive director of the American Civil Liberties Union, agreed. "It's outrageous. When the zoning administrator and members of County Council have cocktail parties and small gatherings at their homes, they

have no reason to treat religious gatherings differently," he said.

But Nomiles said he sees his decision as in a gray area between constitutional rights and county land-use restrictions and said he had to act because of complaints.

"It does get into First Amendment rights of free speech and freedom of religion and the right to assemble, and those are all guaranteed in the Constitution," he said. "I don't like getting into something that seems to be contradicting the Constitution, but there is a concern from the subdivision."

The dispute over Wenger's prayer meetings has centered not on religious freedom but how disruptive they were to the neighborhood.

That there were meetings up to three times a week and the streets were crowded with cars. But Wenger said he had between six and 15 people to his home for prayer meetings about three times a month and said he had people parked in his driveway after neighbors first complained to him last November.

To Wenger, the prayer meetings are essential to his ministry.

Meeting at home is more intimate and allows the people to become more of a family, he said. He said two couples who attend his prayer meetings have repaired rocky marriages.

Area religious leaders from across a spectrum of beliefs said the county's stand on ministry in the home is unreasonable.

The Rev. Jennifer Slade of the Unitarian-Universalist Fellowship said the ruling raises questions of whether pastors may invite church members to their homes, which she says is part of what it means to minister to a congregation.

© Staff writer Scott Wyman can be reached at 298-4212.

See PRAYER on page 1A

TOTAL P. 04

AMERICANS UNITED STATEMENT ABOUT HOUSE CONSTITUTION SUBCOMMITTEE HEARING
ON NEED FOR FEDERAL PROTECTION OF RELIGIOUS LIBERTY

The Rev. Barry W. Lynn, executive director of Americans United for Separation of Church and State, today issued the following statement about the House Constitution Subcommittee hearing on the need for federal protection of religious liberty:

Americans United has a long history of strong support for the free exercise of religion. We believe that the U.S. Supreme Court erred when it removed the judicial safeguards for religious freedom in the 1990 *Employment Division v. Smith* decision. That's why our organization endorsed the Religious Freedom Restoration Act (RFRA), and worked to achieve its enactment into federal law in 1993.

We believe the Supreme Court erred again when it struck down RFRA in 1997. Americans United believes that the principles incorporated into RFRA and the pre-*Smith* doctrine of the Supreme Court were sound. Before the government can "substantially burden" someone's religious practice, it must show its action serves a "compelling state interest" and that there is no less restrictive means of achieving that interest.

We are hopeful that both federal and state measures can be enacted to reestablish these principles in law. Americans United is participating in national and state coalitions comprised of liberal and conservative religious and public policy organizations working toward that end.

With this in mind, we are deeply concerned about two of the ten witnesses testifying before the House Subcommittee on the Constitution today.

Evelyn Smith will apparently testify about her case involving her religiously based claim to be exempt from the California Fair Employment and Housing Act. Smith, a Christian, refused to rent units in her apartment building to unmarried couples, despite the Act's ban on discrimination on the basis of marital status. The California Supreme Court on April 9, 1996, held against Smith, noting that complying with the law in her business dealings did not "substantially burden" her religious beliefs. (By so holding, the high court did not address the second issue of the state's compelling interest in eradicating discrimination, which would have served as an additional ground for overruling her free exercise claims.) The state court based its ruling on the Free Exercise Clause of the U.S. Constitution, the religious provisions of the California State Constitution and the Federal RFRA, which had not then been struck down. The U.S. Supreme Court denied review in the *Smith v. Fair Employment and Housing Commission* case, thus leaving the California Supreme Court decision in place.

As a result of the adjudication of Mrs. Smith's claims under the heightened standard, we are perplexed as to why she would be called to testify in this congressional hearing. Her complaint was analyzed by the California Supreme Court under RFRA and found wanting. There is no reason to believe that she or others similarly situated would or should prevail under a new version of RFRA.

The second witness, Jason Mesiti, was a student at a Massachusetts high school where a sexually explicit AIDS awareness assembly was held. Mesiti's mother Suzanne Brown and others brought suit, complaining that the assembly violated their families' free exercise of religion, their right to privacy and other rights. The U.S. 1st Circuit Court of Appeals ruled, however, on Oct. 23, 1995, that none of these rights were abridged. The U.S. Supreme denied review in the *Brown v. Hot, Sexy and Safer Productions, Inc.* case on March 4, 1996.

Without addressing the specifics of the Brown case, Americans United insists that the public school system must remain neutral when it comes to religion. The curriculum at public schools should not and must not be altered to satisfy the arbitrary demands of religious interest groups.

Americans United strongly believes that testimony from Smith and Mesiti today could be construed by the Federal Courts to suggest that Congress intends any new version of the Religious Freedom Restoration Act to broadly protect religious claims against federal and state anti-discrimination laws and against the religious neutrality of the public school system, regardless of the merits of the claims. We encourage the members of the House Subcommittee on the Constitution to flatly disavow any such intention and to ensure that the legislative history shows no such purpose.

Religious and advocacy groups from many diverse viewpoints have put aside their differences to press for federal and state protections of core religious liberty concerns. It would be extremely divisive and short-sighted for Members of Congress and allied Religious Right and sectarian organizations to attempt to address specific cases through Federal legislation.

Americans United for Separation of Church and State is a religious liberty watchdog group based in Washington, D.C. Founded in 1947, the organization represents

some 50,000 individual members and allied houses of worship in all 50 states. For further information on this or other church-state issues, please call the Americans United national office at 202/466-3234.
2/26/98

