

Attacks on Your Religious Freedom and How We've Fought Back

Attacks on Religious Liberty are coming more frequently and cover a variety of topics.

Alliance Defense Fund cases

1. Protecting small-business owners

Jon and Elaine Huguenin, co-owners of Elane Photography in Albuquerque, were asked to photograph a “commitment ceremony” between two women. The Huguenins declined because their Christian beliefs are in conflict with the message communicated by the ceremony. One of the women filed a complaint with the New Mexico Human Rights Commission, accusing Elane Photography of discrimination based on sexual orientation. *Neither marriage nor civil unions are legal between members of the same sex in New Mexico.* Nonetheless, the commission held a one-day trial and issued an order finding Elane Photography guilty of “sexual orientation discrimination,” ordering it to pay \$6,637.94 in attorneys’ fees. ADF continues to defend the Huguenins in court.

2. Equal Access for Houses of Worship

Bronx Household of Faith is an inner-city New York City church that sought to rent a public school building on Sundays to hold its weekly worship service but had its request rejected by the New York City Department of Education. This led to an ongoing, nearly two-decade-long legal battle in the federal court system to secure equal access to public facilities not only for Bronx Household of Faith, but for other churches as well. The case, *Bronx Household of Faith v. Board of Education for the City of New York*, originally filed in 1994 by ADF attorney Jordan Lorence, was recently denied a hearing at the U.S. Supreme Court, letting stand a federal appeals court ruling that cleared the way for New York City to eject churches from public school buildings. However, a City-wide uprising of faith leaders elected officials has led to legislation being introduced that would allow the houses of worship to stay. Additionally, new life was breathed into the legal challenge when ADF won a preliminary injunction February 24 allowing churches to meet as the lawsuit continues.

3. Fighting healthcare mandates that goes against religious belief

ADF filed suit late February on behalf of Louisiana College (*Louisiana College v. Sebelius*) and Geneva College (*Geneva College v. Sebelius*) challenging the Obama Administration’s unconstitutional mandate that religious employers provide abortifacients, sterilization, and contraception at no cost to employees regardless of religious or moral objections.

The Alliance Defense Fund also joined several allies to file a brief with the U.S. Supreme Court challenging the constitutionality of the Obama Care individual mandate in *U.S. Department of Health and Human Services v. State of Florida*. The individual mandate requires that beginning in 2014 Americans purchase federally-approved health insurance or pay a heavy fine. Many of the required insurance plans include an “abortion premium.” No American should be forced to pay for someone else’s abortion.

4. Defending Christian university students' freedom

Eastern Michigan University expelled Julea Ward from its graduate counseling program in March 2009 because she was unwilling to change her religious beliefs as a condition to getting her degree. In January 2009, Ward was assigned a potential client seeking assistance regarding a homosexual relationship. Consistent with ethical and professional standards regarding referral, Ward was advised to reassign the potential client to a different counselor. Shortly thereafter, EMU informed Ward that the only way she could stay in the counseling program would be if she agreed to undergo a “remediation” program. Its purpose was to help her “see the error of her ways” and change her “belief system.” The U.S. Court of Appeals for the 6th Circuit reversed a district court decision in favor of the university, writing “a reasonable jury could conclude that Ward’s professors ejected her from the counseling program because of hostility toward her speech and faith” and “tolerance is a two-way street.” A bill named for Ward prohibiting religious discrimination against college students studying counseling, social work and psychology was recently passed out of a House Committee in the Michigan state legislature.

5. Parents' rights to choose Christian schools for their children

In *Arizona Christian School Tuition Organization v. Winn*, ADF scored a huge victory for proponents of parental choice in education at the United States Supreme Court. The high court agreed 5–4 with the arguments of Alliance Defense Fund attorneys and dismissed an American Civil Liberties Union lawsuit against an Arizona program that promotes school choice. The court also took away one of the ACLU’s favorite legal strategies – the use of so-called “offended” taxpayers in establishment clause cases. The program, like others across the country, allows state residents to claim a tax credit for donations to private organizations that provide scholarships to private schools, including religious schools.

Liberty Institute cases

1. Censor what pastors can and cannot say in reference to their faith.

In *Rainey v. U.S. Department of Veterans Affairs*, Liberty Institute won a victory for Pastor Scott Rainey, who was able to pray—without government interference--in Jesus’ name at a Memorial Day service at the Houston National Cemetery.

2. Silence veterans and their families from mentioning “God” at funerals.

The Department of Veterans Affairs banned the mention of God at military funerals. Liberty Institute amended its federal lawsuit in *Rainey* to add the Veterans of Foreign Wars, The American Legion, the National Memorial Ladies, and families of deceased veterans. The Department of Veterans Affairs then entered into a landmark consent decree that restores First Amendment rights of religious liberty for the families of deceased veterans by allowing them to refer to God at military funeral services..

3. Deny political leaders of faith their right to pray in public forums.

In *Staley v. Perry*, the Freedom From Religion Foundation (FFRF) filed a lawsuit to prevent Texas Governor Rick Perry’s participation in The Response prayer event, arguing that Perry’s attendance violated the Establishment Clause of the First Amendment. With the

help of Wilmer Hale, Liberty Institute successfully fought this lawsuit, allowing Governor Perry to deliver his powerful prayer and encourage a packed stadium in Houston, Texas.

4. Tear down memorials with religious imagery.

For over twenty years, the Mt. Soledad Veterans memorial has been the subject of a lawsuit brought by an atheist and the ACLU, and in December 2010, the Ninth Circuit Court of Appeals ruled that the cross is unconstitutional. Liberty Institute has appealed to the U.S. Supreme Court in an effort to save this memorial. If the ACLU gets their way with the Mt. Soledad Memorial Cross, what happens to the crosses at Arlington National Cemetery or the tomb of the unknown soldier which says, “Known but to God”?

5. Threaten students with jail for praying at their own valedictory address.

In *Schultz v. Medina Valley I.S.D.*, Liberty Institute filed an emergency appeal of a district court’s decision that kept Angela Hildenbrand, a high school senior, from praying or mentioning Jesus during her valedictorian address at graduation. The district court had threatened to imprison Angela if she prayed during her address. As a result, the Fifth Circuit reversed the district court, and Angela was free to pray and talk about Jesus at her graduation.

6. Remove First Amendment protections for forty-two million elementary school children.

In *Morgan v. Plano ISD*, better known as the Candy Cane Case, school officials wrongfully argued that elementary students have no First Amendment rights, and, therefore, discrimination against them is okay. Liberty Institute brought in former U.S. Solicitor General Paul Clement and former US. Solicitor General and Special Prosecutor Ken Starr to argue for religious liberty rights for elementary public-school students. As a result, the full Fifth Circuit Court of Appeals decided that elementary students do indeed have First Amendment rights and, therefore, cannot be subjected to discrimination because of their religious viewpoint. In addition, a majority of the Court held that the school officials’ actions in this case were violations of the Constitution.

7. Abolish the National Day of Prayer.

In *Freedom from Religion Foundation v. Obama*, Liberty Institute represented Dr. James Dobson, the Family Research Council, Focus on the Family, and twenty-nine state family policy councils in an amicus brief challenging President Obama’s proclamation of a National Day of Prayer. The Seventh Circuit Court of Appeals upheld the constitutionality of the National Day of Prayer.

8. Censor the right to publically discuss our beliefs and share our faith.

Liberty Institute provided legal support and preparation for Sports Fan Outreach International (SFOI), laying the groundwork for SFOI’s ongoing evangelistic outreaches at the Super Bowl and Major League Baseball’s All Star Game. As a result of the work of SFOI and Liberty Institute, thousands of fans heard the Gospel preached without government interference.

The Becket Fund for Religious Liberty Cases

1. Force ministries and religious schools to hire people who disagree with their faith.

In *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, the Becket Fund for Religious Liberty and Professor Doug Laycock of UVA Law School secured the most significant religious liberty decision in the past half-century when the U.S. Supreme Court unanimously agreed with their position and upheld the right of religious organizations to choose their own ministers and ministerial employees. In a stinging rebuke of the Obama administration's position, all nine justices rejected its arguments to do away with the ministerial exception to the federal anti-discrimination laws as "extreme," "remarkable," and "untenable." The Supreme Court affirmed that the government may not interfere with a church's employment decisions regarding their ministers or those who "personify their beliefs."

2. Remove the words "under God" from the Pledge of Allegiance.

In 2010, the Becket Fund succeeded in convincing the U.S. Court of Appeals for the Ninth Circuit to reverse itself and uphold the words "under God" in the Pledge of Allegiance against an Establishment Clause challenge. Representing schoolchildren, their parents, and the Knights of Columbus, the Becket Fund secured a favorable decision in *Newdow v. Carey*, where the Ninth Circuit adopted the Becket Fund's reasoning that the phrase "under God" affirms the Founding Father's political philosophy and the foundational premise in the American tradition of law and rights, namely that "God granted certain inalienable rights to the people which the government cannot take away." *Newdow v. Cary*, 597 F.3d 1007, 1028 (9th Cir. 2010).

3. Prevent religious individuals from worshipping freely in their own homes.

Protecting the right to freely worship at home, the Becket Fund represented a Santeria priest in Texas who—because of discriminatory state action—was unable to perform certain religious rituals in his own home. In an important ruling under the Texas Religious Freedom Restoration Act, a unanimous panel of the U.S. Court of Appeals for the Fifth Circuit agreed with the Becket Fund and found in favor of the Santeria priest, holding that the city ordinances forbidding the slaughter of certain animals prevented the Santeria priest from performing ceremonies essential to his faith, causing a substantial burden on his religious exercise.

4. Discriminating against religious reasons for accommodations while permitting secular ones from government policies.

In an opinion frequently cited in First Amendment casebooks, the U.S. Court of Appeals for the Third Circuit followed the Becket Fund's lead, setting a remarkable precedent in favor of religious freedom, holding that when government grants accommodations for non-religious purposes, it must provide similar accommodations for religious ones too. Two Sunni Muslim police officers—whose religion required them to wear beards—sought an exemption from their government employer's "no-beard" policy. The policy permitted some exemptions for secular reasons (for example, a medical condition) but none for religious reasons. The Becket Fund represented a group of amici—including the ACLU and the Anti-Defamation League—and argued before the three-judge panel that the City had not proven a compelling governmental interest in preventing officers

from wearing beards. The Court of Appeals agreed, and the officers were able to continue to serve the public without violating their faith.

5. Require religious charities to alter their religious mission.

When a taxpayer-funded housing rights advocacy group came after a privately-funded Christian homeless shelter, the Becket Fund fought back to protect the shelter's right to minister to the homeless in an atmosphere of religious values. The Boise Rescue Mission serves hundreds of thousands of homeless individuals by providing a Christian environment for lodging, addiction recovery programs, and other social and vocational services. In *Intermountain Fair Housing Council v. Boise Rescue Mission*, the U.S. Court of Appeals for the Ninth Circuit agreed with the Becket Fund's arguments, holding that, under a religious exemption in the Fair Housing Act, the Mission has the right to offer its services to members of its own faith. This victory ensures that this Christian shelter will continue to protect the homeless in an environment based on its Christian principles.

6. Censoring military chaplains in their sermons to service members.

Muzzled military chaplains enlisted the Becket Fund for an assault on Pentagon censorship. Representing a group of Catholic, Jewish, and Muslim chaplains and service members, the Becket Fund championed the rights of military chaplains to preach freely without government interference. A Pentagon gag order had barred military chaplains from preaching about legislation during sermons. Although two chaplains—a Catholic priest and an Orthodox Jewish rabbi—wanted to support the Partial-Birth Abortion Ban Act of 1997, the gag order forbade them from doing so in their sermons. The U.S. District Court for the District of Columbia agreed with the Becket Fund that the gag order was an unconstitutional restriction of their free speech and free exercise rights. Thanks to the Becket Fund, the military chaplains could preach according to their conscience.

Pacific Justice Institute cases

1. Public prayer at official events

A large contingent of Atheists, Agnostics and Secular Humanists, along with their organizations, sought an injunction to prevent public acknowledgments of God at President-Elect Obama's inauguration ceremony. The suit filed in federal District Court in the District of Columbia sought to enjoin Chief Justice Roberts from using the phrase "so help me God" in the presidential oath. PJI represented Drs. Rick Warren and Joe Lowery who were also personally named in the suit as defendants for offering the invocation and benediction. The trial court denied the motion for a preliminary injunction and dismissed the case. Later the Court of Appeals affirmed in *Newdow v. Roberts*, 603 F.3d 1002 (D.C. Cir. 2010).

2. Churches growth and property rights

A church was denied use of a building it had purchased in an area zoned for light industry. That area allowed other secular assembly uses such as musical performances, big screen events, and wrestling yet religious assembly was banned. The church was left with a large mortgage for a building that it could not use. As such, the church filed suit alleging unequal treatment and that the actions of the

municipality substantially burdened the congregation's religious exercise. The trial court found for the City. Violating the principles of separation of church and state, the lower court rejected the church's characterization of its core beliefs. PJI, which represents the church, filed an appeal and the Ninth Circuit reversed the District Court's decision and remanded for trial. *International Church of the Foursquare Gospel v. City of San Leandro*, 634 F.3d 1037 (9th Cir. 2011).

3. Student religious clubs at high schools

A high school student applied to start a Christian club at her high school. The club's proposed purpose was for students to: (1) study the Bible and other related pieces of literature, (2) worship, fellowship and pray together, (3) provide volunteers to soup kitchens at Christmas and Thanksgiving, and (4) use the club as a forum to discuss diverse issues, including faith and religion, human sexuality, human rights, and bullying and taunting. Although numerous other clubs were allowed at the school (e.g. National Honor Society, California Scholarship Federation, Best Buddies Club, Red Cross Club) the application for the club was denied. PJI represented the student and the club and obtained a preliminary injunction against the school district. *Bible Club and R.G., a Minor, by and through her next friend v. Placentia-Yorba Linda School District*, 573 F.Supp.2d 1291 (C.D. Cal. 2008). The District settled shortly thereafter.

4. The national motto

An Atheist filed suit in federal court seeking to remove the national motto – In God We Trust – from U.S. coins and currency. PJI intervened as a defendant and, along with the U.S. Dept. of Justice, won a dismissal in the district court. The Ninth Circuit affirmed in *Newdow v. Congress*, 598 F.3d 638 (9th Cir. 2010).

5. Prison ministries

A prison ministry sought to provide Bible study materials to inmates without charge. The prison only allows religious materials from approved vendors. Most prison ministries are nonprofit organizations, often affiliated with a church, and thus are not engaged in the sale of their materials. PJI represented the prison ministry and won summary judgment against the Department of Corrections. The Department settled shortly thereafter rather than appeal. *Jesus Christ Prison Ministries v. CA Dept. of Corrections*, 456 F. Supp. 2d 1188 (E.D. Cal. 2006).

6. Home Bible studies

A family was cited and fined \$100 and then another \$200 for conducting weekly Bible studies in their home without a permit. The municipality then determined to fine them at \$500 per incident. Representing the homeowner, PJI filed an appeal in state court, *Fromm v. City of San Juan Capistrano*, Case #: 30-2011-00504840 (2011). As a result, the City dropped the case refunded the money.

7. Freedom to evangelize without fear of arrest

PJI successfully represented a youth pastor who had been arrested for sharing his faith in casual conversations at a shopping mall. (A shopping mall is deemed a public forum under California law). In a landmark opinion written by the now Chief Justice of the California Supreme Court, the state court of appeals established that sharing one's beliefs with willing listeners is not just for union picketers or political activists--it also belongs to people of faith. *Snatchko v. Westfield LLC*, 114 Cal. Rptr. 3d 368 (Cal. Ct. App. 3d Dist. 2010).

8. Academic Freedom

PJI currently represents a respected, longtime professor at a community college who was disciplined and censored for in-class comments that were claimed to be "homophobic" and overly religious. The third-hand complaint process was initiated by a student who was not part of the class, on behalf of another student who claimed to be offended on behalf of still other, unnamed LGBT students who also were not present. Despite the questionable origin of the allegations, the ACLU pushed for discipline and the college obliged. This would never have happened absent the professor's faith and political incorrectness. The federal court recently rejected the government defendants' attempts to dismiss the case. *Lopez v. Fresno City College*, WL 844911 (E.D. Cal. Mar. 12, 2012).

9. Religious Freedom in the Workplace

In the last several years, PJI has advised and represented thousands of employees who cannot conscientiously fund union activities that contradict their beliefs. In securing these religious accommodations, PJI has diverted hundreds of thousands of dollars in mandatory dues away from big labor unions and into effective non-profit charities. PJI has also helped a number of workers to obtain religious accommodations to attend church services on their day of worship.