

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
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Statement of Senator Patrick Leahy,  
Ranking Member, Senate Judiciary Committee  
"Beyond the Pledge of Allegiance:  
Hostility to Religious Expression in the Public Square"  
Hearing Before the Subcommittee on the Constitution, Civil Rights & Property Rights  
June 8, 2004

In light of recent events, one might expect that a Senate subcommittee charged with ensuring civil rights would be holding oversight hearings on our government's controversial interrogation tactics. Yet today's hearing is the latest in a series of hearings on matters seemingly chosen not for their legislative urgency but because of their great political significance to some members of the Republican Party. We have already held a number of hearings this year on rewriting the Constitution to limit the first Amendment and stigmatize certain Americans. Today we will follow that pattern by focusing on another aspect of the First Amendment - the freedom to practice religion - and how some apparently perceive our independent federal courts as a threat to this constitutional right.

It is not surprising that during this election year, some who wish to divide our nation are trotting religion out with the hope that it will reap benefits on Election Day. Some partisan strategists seem to want to use religion the same way they have tried to use patriotism as a precinct organizing tool. Such abuses are insulting to the intelligence of the electorate and the deeply held personal beliefs of our nation's dedicated public servants. Faith was very important to our Founding Fathers, as it is today to so many of us. That is why they were so careful in framing our government to allow for religious freedom and to provide for the separation of church and state.

Unfortunately, last year's religious rhetoric was injected into a political debate with outrageous consequences. It started when the Chairman of the Judiciary Committee asked a controversial nominee about his religious affiliation during a confirmation hearing. Freedom from religious persecution is one of the pillars upon which our Nation and its Constitution rest. In fact our Founding Fathers thought it necessary to encapsulate that concept into the very text of the Constitution itself, in Clause 3 of Article VI. That clause reads: "..... no religious test shall ever be required as a qualification to any office or public trust under the United States."

Despite this constitutional prohibition, the question was asked and answered. Partisan political groups then used the guise of religious intolerance and bigotry to raise money and to broadcast dishonest ads that falsely accused Democratic senators of being anti-Catholic. I cannot think of anything in my almost 30 years in the Senate that has angered me more. One recent Sunday I

emerged from Mass to learn that one of these advocates had been on C-SPAN at the same time that morning to brand me an anti-Christian bigot. These partisan groups are trying to divide us as a nation, and they threaten the very constitutional process designed to protect all Americans from prejudice and injustice. In a naked attempt to curry political favor, these religious smears hurt the whole country. They hurt believers and non-believers alike. I might add that a recent analysis of votes and actions of Catholic Senators based on the official positions taken on legislation by the United States Conference of Catholic Bishops also demonstrates the absurdity of the charges made against me and some of my Judiciary Committee colleagues.

As legislators we must respect the genius of our Founding Fathers and tread lightly in the area of religion when it comes to government action. I urge my colleagues to refrain from continuing to play politics with religion.

I expect that some of today's witnesses will address legislation endorsed by several of my colleagues that would create new limits on federal court jurisdiction over religious matters. Like previous attempts to circumscribe the role of a co-equal branch of government, attempts to carve up federal jurisdiction based on subject matter are a threat to the structure of our constitutional system of government. The arguments for such a dramatic action have not changed since Senator Helms' similar attempts during the 1980s. The fundamental principle we upheld then and must uphold now is that our courts, the branch of government devoted to interpreting our Constitution and laws, must remain free of the pressures of the majority of the moment. A healthy and independent judiciary sometimes is never more necessary than at times when there is impatience with the way the Supreme Court chooses to interpret the Constitution.

No one can safely predict whose rights will depend on that independence in the future. Therefore, we favor a strong judiciary, under law, rather than a judiciary that bends first in one popular direction, then in another. But to make this system work, we can't look to the courts for a quick fix. No one should support legislation that would make courts follow the howls rather than the law.

We should not adopt proposals that will whittle away at the First Amendment for the first time in our history. We act here as stewards of the Constitution, guardians and trustees of a precious legacy. The truly precious part of that legacy does not lie in outward things - in monuments or statutes or flags. All that those tangible things can do is remind us of what is precious - our liberty.

If, God forbid, some disaster swept away all the monuments of this country, the Republic would survive just as strong as ever. But if some failure of our souls were to sweep away the ideals of Washington, Jefferson and Lincoln, then not all the rock, not all the marble, not all the flags in the world would restore our greatness. Instead, they would be mocking reminders of what we had lost.

As Americans, diversity of belief is one of the things that make us the free nation that we are. The First Amendment encompasses so many different things: the freedom of speech, the freedom to practice any religion you want, or none if you want. We are not a theocracy, we are a democracy. And because we are a democracy, all of us, especially those who may practice a minority religion, get a chance to practice it.

More than 40 years ago Justice Hugo Black, writing for the Supreme Court, noted that "a union of government and religion tends to destroy government and to degrade religion." My faith and my patriotism mean more to me because they are my choice and not manipulated by my government. In honor of the Constitution's framers, let us not abuse this forum with any more public exhibitions of who is the most pious in the land. Let's not play politics with the First Amendment or with the separation of powers.