Testimony of

Ms. Melissa Rogers

Professor
Wake Forest University Divinity School
June 8, 2004

I. Introduction

Thank you, Mr. Chairman and Members of the Subcommittee, for this opportunity to speak with you about religious expression in the public square. I am Melissa Rogers, and I currently serve as a visiting professor of religion and public policy at Wake Forest University Divinity School. I formerly served as the founding executive director of the Pew Forum on Religion and Public Life, an organization supported by The Pew Charitable Trusts that is dedicated to exploring the way in which religion shapes American institutions and ideas. During my service at the Pew Forum, I had the rewarding opportunity to organize many educational events, including events focusing on accommodation of religious practices in the private workplace and teaching about religion in our nation's public schools. I also brought together some of the nation's top church-state scholars to produce a joint statement describing the state of the law on school vouchers in the wake of the U.S. Supreme Court's 2002 decision on this issue, Zelman v. Simmons-Harris.

Previous to my time with the Pew Forum, I served as general counsel of the Baptist Joint Committee on Public Affairs. In that capacity, I had the great privilege of helping to lead a remarkable coalition that included Methodists, Mormons and Muslims, as well as organizations ranging from the American Civil Liberties Union and People for the American Way to Chuck Colson's Prison Fellowship and the National Association of Evangelicals. This coalition urged Congress to pass the Religious Land Use and Institutionalized Persons Act (RLUIPA) -- a bill that was signed into law in 2000. RLUIPA provides heighten protection for the fundamental right to exercise religion in two ways. First, it creates a stronger legal shield for houses of worship and other religious institutions from zoning and land use regulations that substantially burden religious exercise without a compelling reason. Second, it allows prisoners greater opportunities to practice their faith in ways that do not undermine prison security and order. Many of the members of this Committee were critical to the passage of that Act, particularly Senators Hatch and Kennedy, who served as the lead co-sponsors of the Senate bill.

During my service at the Baptist Joint Committee, I also contributed to amicus curiae briefs in favor of the prevailing parties in Santa Fe Indep. Sch. Dist. v. Doe and Good News Club v. Milford Central School Dist., among other cases heard by the U.S. Supreme Court. Further, I was honored to have the opportunity to work on many public education projects about the law of religious freedom, including statements on religious expression in the public schools, religious expression and exercise in the federal workplace and religious organizations' delivery of government-funded social services.

Finally, I should note that I am a Baptist and a youth Sunday school teacher. I speak today not for any of the institutions with which I have been or am now affiliated, but as an attorney, a Christian and someone who has been deeply involved in issues at the intersection of religion and public affairs for many years.

I believe religion can and should play a vital role in American public life. The rights to free speech and the free exercise of religion are fundamental to American citizenship and human dignity. These rights allow religious people to live in fidelity to their faith and their nation, a treasure many in this world do not enjoy. The Constitution wisely recognizes that people cannot be expected to limit their religious expression to their homes or places of worship -- faith informs many Americans' daily lives and decision-making on public as well as private matters. Indeed, our national dialogue would be impoverished and distorted if religion were to be excluded from the public square, and our work together as a nation would be less just, humble and kind. These rights have helped to create an American landscape in which religious freedom and religion are strong.

I also believe that the constitutional prohibition on governmental establishment of religion plays an equally important role in protecting religious freedom. The Establishment Clause of the First Amendment prohibits the government from promoting religion or sponsoring religious activities and exercises. This prohibition not only protects the right of all Americans to choose in matters of faith, it strengthens the American public square and religion in other ways. By insisting that the government stay neutral between religion and religion, it creates confidence among those of minority faiths that they will have equal rights as citizens. This safeguards our nation's stability amidst growing religious diversity. By securing governmental neutrality between religion and non-religion, the Establishment Clause builds solidarity among all Americans, regardless of their faith or lack thereof. By ensuring that religious, rather than governmental, authorities define religion and shape its course, the prohibition on governmental establishment of religion, no less than the rights to free exercise and free speech, protects religion's vitality and integrity.

In its decisions regarding religious expression in the public square, the U.S. Supreme Court has struck a wise balance by protecting the right of citizens and religious groups to promote their faith and prohibiting the government from doing so. When the Court has found certain religious expression to be unconstitutional, I believe the evidence demonstrates that it has been motivated by a desire to protect choices in matters of faith from government's coercive influence, not by hostility toward religion or religious expression.

Moreover, it has been my general experience that, on those occasions when other governmental bodies over-interpret the law prohibiting governmental establishment of religion, those misinterpretations are due to ignorance of or confusion about this complex area of law rather than to bad intent. I also should note that I have encountered situations in which governmental bodies under-interpret the Establishment Clause, which results in another kind of serious deprivation. Both kinds of violations should be viewed as matters that are equally troubling. Both kinds of violations should be swiftly rectified through education about and enforcement of the law.

I do not believe, therefore, that there is persistent or frequent governmental hostility toward religious expression in the public square. Indeed, it strikes me that religious freedom is something America usually gets remarkably right.

My testimony is divided into two parts. The first part explores the claim that the decisions of the U.S. Supreme Court are hostile to religious expression in the public square. The second part explores the claim that other governmental bodies have taken actions that are hostile to faith and to public religious expression.

II. Do the Decisions of the U.S. Supreme Court Reflect Hostility to Religious Expression in the Public Square?

Do the decisions of the U.S. Supreme Court reflect hostility to religious expression in the public square? My answer to this question is "no" for at least two reasons. First, the Court has ruled in favor of protecting religious expression in public places many times. Second, when the Court has found that religious expression is unconstitutional because it constitutes governmental promotion or sponsorship of religion, its reasoning has not reflected or been rooted in hostility toward religious expression. The following two sections expand on these issues.

A. The Public Role Religion May Play Under the U.S. Constitution

The U.S. Supreme Court has said: "[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause [of the First Amendment] forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses [of the First Amendment] protect." This reference to "private speech" is not limited to speech "in private," of course, but describes religious expression attributable to private individuals and groups rather than to the government. Thus, under the First Amendment, the government has two principal responsibilities regarding religious expression: it must not endorse religion itself, but it must protect the right of citizens and religious groups to do so.

Using this reasoning, the Court has made it clear that there is a role for public religious expression on government property, in policymaking and politics. For example, while public school teachers cannot lead their classes in prayers or Bible readings, the Court's decisions leave room for public school students to say grace over their lunches and to read their Bibles at school. As the Court has said: "[N]othing in the Constitution . . . prohibits any public school student from voluntarily praying at any time, before, during or after the schoolday." It is widely agreed that these decisions also allow public school students many other opportunities to express and exercise their faith, including the right to "express their religious beliefs in the form of reports, homework and artwork" and to "distribute religious literature to their schoolmates, subject to those reasonable time, place and manner or other constitutionally acceptable restrictions imposed on the distribution of all non-school literature."

It also should be noted that, while these rulings prohibit public schools from engaging in devotional teaching of religion, they allow public schools to teach about religion in an academic way. As the Court said decades ago:

[I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that the study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.

Comments such as these have opened the door to a movement to teach about religion in the public schools, a movement that has had added vigor since the attacks of September 11, 2001, when it became painfully clear that we cannot understand our world or our nation without understanding religion.

The Supreme Court also has generally embraced a broad equal access policy that essentially allows religious groups to express themselves on public property when a wide range of other non-governmental groups are permitted to do so. Not only has the Court required a state university to open its facilities to student-organized religious clubs when it made those facilities available to a wide range of other student clubs, it also has upheld a federal law that essentially applies this same policy to public secondary schools. Further, Supreme Court rulings have extended this general principal to community groups' after-hours use of public school property. The Court also has held that a cross sponsored by private citizens may be temporarily erected in a city park if other symbols also were permitted this access and it was otherwise clear that the displays were not endorsed by the government. In many ways, these public spaces represent the quintessential American public square, and it is particularly important that the Court has found that the government generally must welcome religious groups and expression here when it welcomes non-religious groups and expression.

As discussed in greater detail below, there are times when the Court has found that even religious expression by a citizen or private group can be so closely associated with the government that it is properly attributable to the state and thus unconstitutional, but this is not a hostile attempt to cleanse public property of religious speech. Rather, it is a careful effort to avoid governmental promotion or endorsement of religion. Unlike France, for example, which is moving toward the adoption of a legal ban on the wearing of "conspicuous religious symbols" by students in its public schools, the key question in our country is to whom the speech is attributable, not where the speech takes place. This constitutional standard captures the common-sense truth that when a Muslim girl wears a headscarf to public school, it is abundantly clear that the headscarf is her religious expression, not that of the government. Thus, this standard protects the crucial right of individual and corporate religious expression while also guarding against the damaging impression that the state favors certain religions over others, or religion over non-religion.

The Supreme Court's decisions also preserve a public role for faith in the realm of politics and policymaking. Private citizens clearly have a constitutional right to comment on issues of public concern in religious terms, as do non-governmental organizations. The Court said in 1970: "Adherents of particular faiths and individual churches frequently take strong positions on public issues . . . . Of course, churches as much as secular bodies and private citizens have that right." Moreover, religion may inform public policy, as long as religion is not the "preeminent" reason

for the government's action and the action has a clear, bona fide non-religious purpose and primary effect.

Furthermore, the Constitution protects the right of all Americans to hold public office, regardless of their faith or lack thereof. More specifically, the Court has found that a state law disqualifying ministers from holding public office violated the Constitution. And, although the Court has not directly addressed this issue, many agree that the Constitution provides political candidates and public officials with a great deal of freedom to talk publicly about their religious convictions.

B. Where the U.S. Supreme Court Has Drawn the Line

Thus, the Supreme Court has protected religious expression in the public square on many occasions. But it is also true that the Court has sometimes found certain religious expression unconstitutional because it is properly attributable to the government rather than to private citizens and groups.

Do these rulings reflect hostility toward religious expression in the public square, or are they rooted in animus toward faith? The list that follows is a very brief and informal attempt to demonstrate some of the basic reasons why I answer these questions negatively. It describes some of the cases in which the Court found that the religious expression involved was unconstitutional, and discusses a few of the ways in which these rulings reflect benevolent motivations, rather than hostility to religion or religious speech.

? In its 1962 decision in Engel v. Vitale, the Court held unconstitutional a New York law that directed the principal of each school district to ensure that a state-written prayer was said aloud by each class at the beginning of every school day. The Court said: "[W]e think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government." Furthermore, the Court noted:

[The] first and most immediate purpose [of the Establishment Clause] rested on the belief that a union of government and religion tends to destroy government and to degrade religion. . . . It has been argued that to apply the Constitution in such a way as to prohibit state laws respecting an establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer. Nothing, of course, could be more wrong.

This decision safeguards religious freedom and religion. If public school teachers lead their classes in prayer, it inevitably results in governmental favoritism for some faiths over others. The teacher must determine whose prayer to pray and which faiths will have more public prayer opportunities. In some school districts, for example, scores of religions are represented, which highlights the unwieldiness of this task. Even in places that are not as religious diverse, there are usually at least several different faiths represented, along with multiple theological interpretations of each of these faiths.

Furthermore, allowing public schools to engage in the explosive task of picking and choosing among prayers and sacred texts invites political divisiveness along religious lines. It also sends

the message that public schools only belong to those who hold certain religious beliefs, rather than to all students and all who support these schools with their tax money.

And when the state is permitted to prescribe prayers, the state also is allowed to usurp the rights of parents to direct the religious upbringing of their children. More broadly, this permits the state to have a role in shaping religious expression, a prospect that should frighten all religious people, but especially those who support a more limited government.

Finally, it should be noted that school-sponsored prayer usually produces one of two bad results. Sometimes this practice results in prayers that are specific to a particular religious tradition and thus have the tendency to upset those outside the faith who are pressured to participate. At other times, this practice results in an effort to make public prayer please everyone. In these cases, worship of and dialogue with God is reduced to, as some have said, a "nice thought" that actually offends many people of faith.

? In its 1968 decision in Epperson v. Arkansas, the Court held unconstitutional an Arkansas law that prohibited the teaching in its public schools and universities of the theory of evolution. In its opinion, the Court stated:
Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.

The Court specifically noted that "study of religions and of the Bible from a literary and historic viewpoint, presented objectively as part of a secular program of education, need not collide with the First Amendment's prohibition, [but] the State may not adopt programs or practices in its public schools or colleges which 'aid or oppose' any religion." This reasoning conveys a respect for the neutral role of the state rather than hostility to religion.

? In its 1985 decision in Wallace v. Jaffree, the Court struck down an Alabama moment-of-silence statute. The Court's opinion did not indicate that all moments of silence laws were unconstitutional, but that this particular Alabama measure must be invalidated because it "was not motivated by any clearly secular purpose - indeed the statute had no secular purpose."

As Justice O'Connor has emphasized, requiring a law to manifest a secular purpose "is not a trivial matter"; instead, it "serves [the] important function" of "remind[ing] government that when it acts it should do so without endorsing a particular religious belief or practice that all citizens do not share." Consistent with this reasoning, other commentators have explained:
[I]f government (a state legislature, say) makes a coercive political choice requiring or forbidding persons to do something, and if the only reason or reasons that can support the political choice are religious - if no plausible secular rationale supports the choice - then government has undeniably imposed religion on those persons whom the choice coerces. That is so whether or not the political choice compels persons to engage in what is conventionally understood as an act of religious worship.

Moreover, the other guidance the Court has offered regarding the requisite "non-religious purpose" reveals that, while the balance the Court has struck is not perfect, it is fair-minded.

? In its 1989 decision in Allegheny County v. ACLU, the Court held that a crèche placed on the "Grand Staircase" of a county courthouse was unconstitutional because it constituted a government endorsement of religion. Given the centrality and importance of the Grand Staircase in the city building, the Court found that "[n]o viewer could reasonably think that [the creche] occupied [its particular location there] without the support and approval of government."

The Court majority noted that dicta from its previous opinions spoke approvingly of the pledge of allegiance and the national motto. The Court observed that "there is an obvious distinction between crèche displays and references to God in the motto and the pledge[;] [h]owever history may affect the constitutionality of nonsectarian references to religion by the government, history cannot legitimate practices that demonstrate the government's allegiance to a particular sect or creed." The majority opinion concluded:

[O]nce the judgment has been made that a particular proclamation of Christian belief, when disseminated from a particular location on government property, has the effect of demonstrating the government's endorsement of Christian faith, then it necessarily follows that the practice must be enjoined to protect the constitutional rights of those citizens who follow some creed other than Christianity. It is thus incontrovertible that the Court's decision today, premised on the determination that the creche display on the Grand Staircase demonstrates the county's endorsement of Christianity, does not represent a hostility or indifference to religion but, instead, the respect for religious diversity that the Constitution requires.

Further, in a later ruling, the Court made it clear that religious symbols can be displayed on public property if the setting is open to other privately sponsored symbols and if it is otherwise clear that the government is not endorsing religion.

? In its 1992 decision in Lee v. Weisman, the Court invalidated a public middle school's policy of including clergy-led prayer as part of the official school graduation ceremony. The Court found that "[t]he government involvement with religious activity in this case is pervasive, to the point of creating a state-sponsored and state-directed religious exercise in a public school," and that the state-sponsored ceremony was "in a fair and real sense obligatory [for the students] . . . " The Court also noted the "heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." Writing for the Court majority, Justice Anthony Kennedy said:

The First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the [government.] The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to [the non-governmental] sphere, which itself is promised freedom to pursue that mission.
Furthermore, the Court concluded:

Our society would be less than true to its heritage if it lacked abiding concern for the values of its young people, and we acknowledge the profound belief of adherents to many faiths that there

must be a place in the student's life for precepts of a morality higher even than the law we today enforce. We express no hostility to those aspirations, nor would our oath permit us to do so. A relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution. We recognize that, at graduation time and throughout the course of the educational process, there will be instances when religious values, religious practices, and religious persons will have some interaction with the public schools and their students. But these matters, often questions of accommodation of religion, are not before us. The sole question presented is whether a religious exercise may be conducted at a graduation ceremony in circumstances where, as we have found, young graduates who object are induced to conform. No holding by this Court suggests that a school can persuade or compel a student to participate in a religious exercise. That is being done here, and it is forbidden by the Establishment Clause of the First Amendment.

Thus, this case stands for the important proposition that the state cannot direct prayer and religious activities and coerce citizens, particularly students, to participate in such activities. This ruling helps to prevent the government from creating a union between church and state while it allows other graduation-related religious expression to occur on public property, such as a voluntarily attended, privately sponsored baccalaureate services that use school facilities.

? Finally, in Santa Fe Indep. Sch. Dist. v. Doe, the Court held facially invalid a public school policy that established a student vote regarding "a brief invocation and/or message" to be delivered during the pre-game ceremonies of home varsity sporting events because "it establishe[d] an improper majoritarian election on religion, and unquestionably ha[d] the purpose and creates the perception of encouraging the delivery of prayer at a series of important school events. Before 1995, the student council chaplain delivered prayers over the public address system before each varsity home football game. This policy was later revised to include a school-sponsored election to designate one student to deliver the "brief invocation and/or message" at home games during a particular football season. The Court found that the school's involvement in this process was substantial, and that, '[i]n this context[,] the members of the listening audience must perceive the pregame message as a public expression of the views of the majority of the student body delivered with the approval of the school administration."

It also noted:

The Religion Clauses of the First Amendment prevent the government from making any law respecting the establishment of religion or prohibiting the free exercise thereof. By no means do these commands impose a prohibition on all religious activity in our public schools. Indeed, the common purpose of the Religion Clauses "is to secure religious liberty." Thus, nothing in the Constitution as interpreted by this Court prohibits any public school student from voluntarily praying at any time before, during, or after the schoolday. But the religious liberty protected by the Constitution is abridged when the State affirmatively sponsors the particular religious practice of prayer.

Both the Court's rationales and its words, therefore, demonstrate that its decisions do not reflect hostility toward religious expression.

II. Do the Actions of Other Governmental Bodies Reflect Hostility to Religious Expression in the Public Square?

This section examines some of the other claims of governmental hostility toward religious expression in the public square. Current information about some of these cases is incomplete, so I discuss them only briefly and with that caveat.

A. Nashala Hearn

The case of Nashala Hearn appears to be one in which school administrators made a serious mistake about the law and attorneys, including those at the United States Department of Justice, moved quickly to rectify that mistake. A Department of Justice press release states that "while Hearn was prohibited from wearing her hijab, the school district allowed certain other students to wear head coverings for non-religious purposes." There is "generally . . . no Federal right to be exempted from religiously-neutral and generally applicable school dress rules based on their religious beliefs or practices," but the law prohibits schools from "singl[ing] out religious attire in general, or attire of a particular religion, for prohibition or regulation." It also prohibits public schools from making exceptions to general rules for secular but not religious reasons.

Other than the fact that a settlement agreement was reached, I have no information about the school's motivation for its actions. The evidence of which I am aware suggests to me not generalized hostility toward religious expression, but perhaps an instance of particularized hostility toward the Muslim faith. In the wake of the September 11, 2001, attacks, there is a need to educate the American people about Islam and the Sikh religion, which is often confused with Islam. President Bush deserves great credit for his sensitivity to this issue in the immediate aftermath of the attacks, and I applaud the action of his Department of Justice in the Hearn matter. Programs sponsored by the Sikh Mediawatch and Resource Task Force and the Council on Islamic Education also have helped to educate the public and local law enforcement on these issues. The remedy for problems such as these should focus principally on continued leadership by President Bush and his administration through rhetoric and enforcement of legal rights, as well as through private and public education programs.

B. Balch Springs Senior Center

According to the U.S. Department of Justice, the Balch Springs Senior Center case stems from the city's decision in August 2003 "to stop allowing seniors at the city owned multi-purpose senior center to pray before meals, sing gospel songs and listen to a weekly devotional speech given by a Protestant minister who was also a member of the center." In November 2003, the Justice Department opened an investigation into this matter. Shortly after the Department of Justice opened its investigation, the Balch Springs City Council "voted unanimously to lift the ban on religious activity at the center and to adopt a policy that [would] permit speakers to address center members without regard to the content or viewpoint of the address." The Department reports that it closed its investigation into this matter in January, 2003, because the city and the seniors reached a settlement agreement.

The Justice Department notes that "[a]ll of [the religious] activities were voluntary and run by involved seniors at the center, and not by the city or its employees." Thus, this settlement and the city's revised policy would appear to be consistent with the broad equal access principles articulated by the Supreme Court.

It appears, therefore, that this case was resolved rather quickly and clearly. The problem that this case seems to represent is not a problem with the law, but with understanding of it. To the extent that these non-public-school-related equal access principles are not well-understood, I would suggest better public education regarding these principles and their application.

C. Judge Roy Moore

While serving as Chief Justice of the Alabama Supreme Court, Roy Moore installed a two-and-one-half ton monument to the Ten Commandments as the centerpiece of the rotunda in the Alabama State Judicial Building. Moore did so at night "without the advance approval or even knowledge of any one of the other eight justices of the Alabama Supreme Court." According to the federal court of appeals that heard Moore's case, "[n]o one who enters the [judicial] building through the main entrance can miss the monument [--] [i]t is in the rotunda, directly across from the main entrance, in front of a plate-glass window with a courtyard and waterfall behind it." Moore "rejected a request to permit a monument displaying a historically significant speech in the same space on the grounds that 'the placement of a speech of any man alongside the revealed law of God would tend in consequence to diminish the very purpose of the Ten Commandments monument.' "

The 11th Circuit Court of Appeals affirmed the lower court's finding that the placement of the monument in the state judicial building violated the Establishment Clause. It found that the facts of this case clearly indicated that the monument did not have the requisite secular purpose and that its primary effect was to promote religion.
The appellate court emphasized that, "factual specifics and context are nearly everything when it comes to applying the Establishment Clause to religious symbols and displays." It noted that it recently had upheld the constitutionality of a state seal with an image of two tablets, the first with Roman numerals I through V and the second with numerals VI through X. The 11th Circuit also emphasized the fact that various federal appellate courts had come to different conclusions about Ten Commandments displays depending on their specific facts and circumstances. It favorably referenced a recent ruling of another appellate court, for example, that upheld a Ten Commandment plaque that had been on the outside wall of a "historically significant courthouse" for more than eighty years. The 11th Circuit quoted this court's finding that "a new display of the Ten Commandments is much more likely to be perceived as an endorsement of religion" by the government than one in which there is a legitimate "preservationist perspective." Furthermore, the court emphasized:
We do not say, for example, that all recognitions of God by government are per se impermissible. Several Supreme Court Justices have said that some acknowledgments of religion such as the declaration of Thanksgiving as a government holiday, our national motto "In God We Trust," its presence on our money, and the practice of opening court sessions with "God save the United States and this honorable Court" are not endorsements of religion.

But, Moore's case was fundamentally different from these cases in more ways than one, the court noted.

Moore's case does not stand for the proposition that all Ten Commandments displays are unconstitutional. This case does not prohibit public officials from acknowledging God. This case does not reflect hostility to religion. Instead, this case stands for the proposition that the American government will not endorse the majority Christian faith over other faiths. It stands for the principle that the government will not become involved in the propagation of religion, but will leave that task to citizens and houses of worship. This case stands for the notion that American courts belong to all of us, and not just those who believe certain things.

In addition to justifying its conclusion regarding the constitutional impropriety of Judge Moore's Ten Commandment's monument, the 11th Circuit Court of Appeals also highlighted the ramifications of Moore's theory of the case:

The breadth of the Chief Justice's position is illustrated by his counsel's concession at oral argument that if we adopted his position, the Chief Justice would be free to adorn the walls of the Alabama Supreme Court's courtroom with sectarian religious murals and have decidedly religious quotations painted above the bench. Every government building could be topped with a cross, or a menorah, or a statue of Buddha, depending upon the views of the officials with authority over the premises. A creche could occupy the place of honor in the lobby or rotunda of every municipal, county, state, and federal building. Proselytizing religious messages could be played over the public address system in every government building at the whim of the official in charge of the premises.

In my opinion, using government power to pressure fellow citizens along religious lines it is not only unconstitutional, it is also wrong. It is a failure of compassion, among other things, for Christians to ignore the impact this kind of state endorsement of religion would have on our own lives if it involved a religion other than our own. If we were faced with such governmental pressure to acknowledge Islam, for example, it would create a profound crisis of conscience for us. Perhaps this explains why it seems that some are so anxious to encourage the separation of mosque and state in other nations, but less anxious to support separation of church and state here at home. Instead, we should fight to extend to others the religious freedom we demand for ourselves.

Further, the Moore case points to a troubling tendency among some to claim that anytime religious expression is prohibited on the grounds that it constitutes governmental endorsement of religion, or anytime the government denies funding for religious activities, it is tantamount to hostility toward or discrimination against religion. The failure to consider benevolent explanations for these actions reflects a lack of understanding of American law and history.

IV. Conclusion

Religion plays a vital role in public life, but religion's public role is not limitless, nor should it be. Rather than criticizing the constitutional prohibition on governmental promotion of religion, we should honor it for the way in which it guarantees equality for all, freedom of choice in religious matters and basic autonomy for the religious sphere.