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Reply to: Virginia

**Senate Judiciary Committee**  
**Subcommittee on the Constitution, Civil Rights and Property Rights**  
**“Paying Your Own Way: Creating a Fair Standard for Attorneys’ Fees Awards in**  
**Establishment Clause Cases”**  
**August 2, 2006**

**Questions Submitted by U.S. Senator Russell D. Feingold**

Answers to Questions for Mr. Mathew Staver

1. **Has Liberty Counsel represented plaintiffs in religious freedom cases? What percentage of your litigation in such cases is handled by staff lawyers and how much by affiliated attorneys?**

Yes, Liberty Counsel has represented plaintiffs in religious freedom cases. A staff attorney is assigned to and does the primary research for one hundred percent of the litigation in religious freedom cases.

2. **Please describe Liberty Counsel’s policies regarding seeking attorney’s fees in cases where it participates either directly or through the work of an affiliated attorney.**

When representing a plaintiff in a case involving a fee shifting statute, Liberty Counsel has asked for attorney’s fees, but it is not the policy of Liberty Counsel to do so in every case.

3. **Has Liberty Counsel sought attorney’s fees under 42 U.S.C. § 1988 or the Equal Access to Justice Act when your client was the prevailing party in litigation?**

Liberty Counsel has sought attorney’s fees under 42 U.S.C. § 1988, but not under the Equal Access to Justice Act when our client was the prevailing party in litigation.

4. **Has an attorney or law firm affiliated with or referred by Liberty Counsel sought fees when its client was the prevailing party? Has Liberty Counsel received any fees from such affiliated attorneys?**

An affiliate attorney would not be involved in a case without the presence of a Liberty Counsel staff attorney; however, an affiliate attorney has in a few cases, sought attorney's fees. Liberty Counsel has never received any fees from such affiliated attorneys.

5. **Please provide the subcommittee with a list of attorney's fees awards Liberty Counsel or an affiliated attorney has received under 42 U.S.C. § 1988 or the Equal Access to Justice Act from January 1996 to the present. For each award of fees, provide a brief description of the case and the amount awarded. In cases where fees were awarded to affiliated attorneys, indicated what portion of the fees was ultimately provided to Liberty Counsel.**

This list of cases must be compared to the total number of cases litigated by Liberty Counsel. The number of cases in which Liberty Counsel has received attorney's fees under 42 U.S.C. § 1988 represents only a small fraction of the total number of cases litigated and represents an even smaller fraction of the number of cases resolved without filing suit.

On average, Liberty Counsel represents approximately seventy litigated cases and over two hundred non-litigated cases. Of the total non-litigated cases, approximately ninety-five percent resolve without litigation, resulting in no lawsuit or claim for attorney's fees. Liberty Counsel has handled thousands of non-litigated cases in which a suit was never filed and there was never a claim for attorney's fees.

Please see attached chart for list of attorney's fees awards.

6. **Please provide the subcommittee with copies of all letters dated January 1, 2001 to present that were sent to a public authority by Liberty Counsel or an affiliated attorney demanding a change in policy that discusses the possibility of litigation if the public authority refuses to change its policy.**

It would be too burdensome to provide copies of all letters dated January 1, 2001 to present that were sent by Liberty Counsel or an affiliate attorney to a public authority. We would have to read a very large volume of letters to determine if there are any that discuss the possibility of litigation if a policy is unchanged. Most of the letters sent by Liberty Counsel are educational or informational in nature and do not discuss the possibility of filing a lawsuit. Most letters focus on the facts of the case and asking the particular public authority to comply with the current state of the law. In rare cases, a demand letter has at most stated that failure to comply with the law will result in the plaintiff seeking any and all legal recourse. We do not use the threat of attorney's fees in demand letters.

We are enclosing, as a sample, copies of two letters we sent to the City of Deltona, Florida before we filed a lawsuit in February 2006 on behalf of an artist after his religious art was censored from a Black History Month display. The first was an informational letter wherein we informed the City of its unconstitutional actions, urged it to reconsider allowing the religious art, and offered free legal assistance if the painting display was challenged by other parties. We also contacted the City by telephone. The second letter was sent after the artist requested help from Liberty Counsel. The letter states that our client will seek a temporary restraining order and pursue all other available legal remedies. A lawsuit was filed in that case. The City then complied and followed the law by reinstating the paintings. We did not

pursue damages, attorney's fees, or costs.

7. **Would you support legislation that would prohibit the awarding of attorney's fees under 42 U.S.C. § 1988 and the Equal Access to Justice Act in both Establishment Clause and Free Exercise Clause cases?**

Yes, Liberty Counsel would support legislation that would prohibit the awarding of attorney's fees under 42 U.S.C. § 1988 and the Equal Access to Justice Act in both Establishment Clause and Free Exercise cases.