



**Testimony of Amanda Tyler,
on behalf of the Baptist Joint Committee for Religious Liberty**

**Before the
Senate Judiciary Committee's Subcommittee on the Constitution**

Hearing on Threats to Religious Liberty Around the World

October 2, 2018

On behalf of the Baptist Joint Committee for Religious Liberty (BJC), an 82-year-old agency serving 15 Baptist bodies on legal and policy matters relating to religious liberty and the separation of church and state, I appreciate the opportunity to submit this testimony. Our mission is to defend and extend God-given religious liberty for all, bringing a uniquely Baptist witness to the principle that religion must be freely exercised, and it must not be advanced or inhibited by the government. The BJC has a consistent record of supporting both of the First Amendment's religion clauses—No Establishment and Free Exercise. Our commitment stems from the historical experiences of early Baptists, who suffered the pain of persecution from religious fervor coupled with the coercive power of the state.

It is undeniable that threats to religious liberty continue to be a pervasive problem around the world. In a study released in June, The Pew Research Center estimates that 83% of the world's population lived in countries with high or very high levels of religious restrictions in 2016.¹ This number has steadily increased over the last few years, up from 79% in 2015 and 74% in 2014.

Congress has shown leadership in this area for many years and should be praised for passing the International Religious Freedom Act of 1998, which created the Office of International Religious Freedom in the U.S. Department of State and the position of United States Ambassador-at-Large for International Religious Freedom. Commitment to international religious freedom has been a bipartisan issue that has seen strong support from every administration and has benefited from the leadership of Ambassadors Bob Seiple, John Hanford, Suzan Johnson Cook, and David Saperstein. Secretary Mike Pompeo and Ambassador Sam Brownback have vigorously continued this commitment, most noticeably by hosting this past July, the Ministerial to Advance Religious Freedom in Washington – the first such foreign minister level gathering of its kind.

¹ <http://www.pewforum.org/2018/06/21/global-uptick-in-government-restrictions-on-religion-in-2016/>

For us as Baptists, religious liberty is an issue of fundamental importance. From the beginning of the Baptist movement, its differences from Catholicism and other emerging and larger Protestant traditions resulted in discrimination and persecution of our ancestors. This was particularly acute whenever those religious strands enjoyed linkage, preference, or support of the state and could utilize the coercive power of the state to impose their views on Baptists and other minorities.

Today, there are 100 million Baptists worldwide, found in the vast majority of nations – everywhere a small minority. The United States enjoys the largest Baptist community with 50 million who identify with one strand or another of the Baptist community. Here, we flourish because of the protections of free exercise and separation of church and state. But in too many other countries, Baptists face continuing discrimination and persecution. Even Baptists in countries with large communities, such as Nigeria, Myanmar, Russia, Congo, and Ukraine, face serious challenges. Some of this involves tensions against Christian in general such as tensions between Muslims and Christian communities in Nigeria. In countries with blasphemy laws, Baptists often find themselves pacing peril. Because of the Baptist commitment to share the Gospel, anti-proselytization laws, such as the one recently passed in Bolivia, limit freedoms. Relatedly, converts to the Baptist movement are often targeted, particularly in countries with anti-apostasy laws. In areas of Ukraine, once a bastion of a robust, vibrant and large Baptist community, Baptists have come under enormous pressure. In July of this year, the Baptist World Alliance, representing half the world’s Baptists, issued the following statement regarding a resolution passed at their annual convention:

The first resolution expressed concern about the curbing of religious freedom in an occupied area of the Lugansk region in eastern Ukraine, where Russian forces have taken control of the area and abetted its reorganization as the “Lugansk People’s Republic” (LPR).

The “Resolution on the Freedom of Religion in the Lugansk Region in Eastern Ukraine” notes that a new law imposed by the LPR requires that “all religious organizations within the LPR, except the Moscow Patriarchate of the Russian Orthodox Church (ROC), must now prove their loyalty to LPR authorities through a re-registration procedure in order to maintain their legal status,” as well as “to report in detail their activities.”

The statement observes that the law “violates universal human rights, restricts religious freedom, and threatens the existence of existing religious groups and organizational networks,” which violates several articles of international law. Enforcement of the law threatens the futures of 43 Baptist churches in the area.²

So we come here today to urge continued congressional support for robust U.S. efforts on behalf of religious freedom worldwide.

² <https://www.bwanet.org/news/news-releases/684-bwa-speaks-on-religious-liberty-women-immigrant-families>

Let me now turn my focus to the United States. Since the founding of this country, the United States has been a world leader in protecting religious liberty. The framers of our Constitution first protected religious freedom with Article VI's prohibition of religious tests for public office, establishing the principle that full participation in American government and citizenship is not contingent on one's theological views or religious affiliation. Drawing from, among others, the writings of seminal 18th century American Baptist thinkers on church-state issues such as Isaac Backus and John Leland, robust religious freedom was then enshrined in the first 16 words of the First Amendment, which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Vigorous enforcement of both of these two protections – the "no establishment" clause and the "free exercise" clause – is crucial to ensuring religious freedom is protected in our pluralistic society.

Despite the fact that protecting religious liberty has been woven into our constitutional fabric from the beginning, there is now rampant confusion about what the interchangeable terms of "religious liberty" and "religious freedom" even mean. We appreciate the opportunity this hearing provides to discuss threats and to help Congress defend our nation's commitment to religious freedom at home and abroad.

The American legal tradition protects religious liberty in a distinct way that has served this country well. Whatever threats this committee may focus on today, we must begin with our foundational principles. "No establishment" means that the government's role in religion is limited. The government should neither promote nor inhibit any one religion or religion over irreligion. Picking and choosing religions for official favoritism or disfavor violates a central premise of "no establishment." Instead, the government must be neutral toward religion and avoid interference in religion.

"Free exercise" also involves protecting against government intrusions into religion. The government cannot interfere with religious practices or target religious practices and, at times, must provide exemptions for religiously motivated practices in the face of facially neutral laws by the government, which would have the impact of interfering or targeting. Our laws provide special solicitude for sincerely held religious beliefs, taking seriously and treating respectfully free exercise claims – but not granting automatic exemptions based on those claims.

Maintaining the United States' strong leadership in defending religious liberty around the world requires that we attend to religious liberty challenges at home as well as abroad. Today, I will highlight five current threats to religious liberty.

1. Harm to the Reputation of the U.S. in Wake of President Trump's Statements Against Muslims and Travel Ban Policy

One of this Administration's first actions was to issue an Executive Order halting travel and immigration to this country from seven majority-Muslim nations, as well as temporarily suspending the U.S. Refugee Admissions Program.³ This Order directed the Secretary of State

³ Exec. Order No. 13,769, 82 Fed. Reg. 8977, "Protecting the Nation from Foreign Terrorist Entry into the United States."

and the Secretary of Homeland Security, upon resumption of the refugee program, “to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual’s country of nationality.” As the ensuing litigation showed, this scheme was blatantly and facially unconstitutional, as it based immigration policy on religion. The original order also sent the un-American message that only certain faiths are welcome here.

Thankfully, this language was removed from subsequent versions of the travel ban, though the policy remained controversial and objectionable, particularly given statements made by President Trump against Muslims, both before and after his election. The [Pew Research Center](#) cited some of his statements against Muslims in its recent report, in which the United States is included as one of the countries that had nationalist political parties or politicians targeting religious groups with rhetoric.

While the U.S. Supreme Court upheld the constitutionality of the Administration’s third iteration of the travel ban, the harm to religious liberty remains. As Justice Anthony Kennedy warned in his concurring opinion: “An anxious world must know that our Government remains committed always to the liberties the Constitution seeks to preserve and protect, so that freedom extends outward, and lasts.”

2. Violence and Rhetoric Directed Against Religious Minorities in the United States and Abroad

The importance of Justice Kennedy’s words is magnified by the challenges minority religions face today. Religious liberty can be threatened not only by government action but also by the acts of private individuals and organizations. This is both a global and domestic issue. The Pew Research Center found that global reports of religiously motivated harassment are at their highest levels since 2007. In recent years, there have been noticeable increases in hate crimes in Europe against Muslims and Jews. Ethnic cleaning and genocidal activities against religious minorities in countries like Iraq, Syria, and Myanmar have left millions displaced and millions seeking shelter outside their home nations as refugees – often in unsafe conditions leading to human trafficking, illness, and death as victims of civil war and violence from both state and non-state actors.

The United States is included as one of the countries with high levels of social hostilities involving religion, with nationalist organizations targeting Muslims and Jews in particular. Although the overall crime rate has been declining since the 1990s, hate crimes, particularly in this country’s largest cities, have been increasing over the past four years according to the FBI’s statistics on reported hate crimes.⁴ Religion is the second largest hate crime classification, behind only race.⁵ In 2016, 21% of the reported hate crimes were motivated by religious bias and 4% of

⁴ Abigail Hauslohner, *Hate crimes jump for fourth straight year in largest U.S. cities, study shows*, Wash. Post, May 11, 2018, https://www.washingtonpost.com/news/post-nation/wp/2018/05/11/hate-crime-rates-are-still-on-the-rise/?noredirect=on&utm_term=.e5edd78abcff (last visited Aug. 22, 2018).

⁵ Press Release, Anti-Defamation League, ADL Calls for Action After New FBI Data Shows Rise in Hate Crimes (Nov. 13, 2017) (<https://www.adl.org/news/press-releases/adl-calls-for-action-after-new-fbi-data-shows-rise-in-hate-crimes>) (last visited Aug. 22, 2018).

the crimes happened at houses of worship.⁶ For almost 2 decades, more than one-half of the religiously motivated hate crimes have been against Jews.⁷ Between 2015 and 2016, Muslims saw a 19% increase in the number of hate crimes motivated by anti-Islamic sentiment.⁸ Importantly, the FBI only began tracking anti-Islamic, anti-Hindu, and anti-Sikh crimes in 2015, so comparing 2016 to 2015 was the first time law enforcement could compare the number of crimes against these religious communities.⁹ Each category saw an increase in the number of crimes committed in 2016.¹⁰

3. Overreaching on Religious Liberty Exemptions Threatens Widespread Support for Religious Freedom

Thanks to the wisdom of our forebears in crafting the First Amendment, and to efforts like those that culminated in the federal Religious Freedom Restoration Act (1993) and the Religious Land Use and Institutionalized Persons Act (2000), religious liberty in America is flourishing in many ways. However, recent developments in federal and state legislatures and courts raise concerns about a lack of attention to “no establishment” principles as well as growing confusion around proper legal accommodations for the free exercise of religion. As the BJC has often noted, religious liberty is sometimes thwarted by government hostility or inattention; but it can also be endangered by over-the-top, all-or-nothing demands from those who claim their liberty is being denied.

Religious exemptions have a strong history in our legal tradition, but they must be carefully crafted and considered. Claims for exemptions that fail to take into account other important government interests – including the rights of third parties such as those ensured by our core civil rights laws, the protection of which is a compelling state interest of the government – inevitably calls for balancing and in some cases narrowly limiting valid religious liberty claims.

Some fail to appreciate that the free exercise rights enjoyed by individuals and institutions are *not* a right to use the government to advance religion. Many also fail to recognize that a law does not violate free exercise rights merely because it does not comport with one’s religious beliefs, just as a law does not establish religion merely because it is consistent with some legislators’ religious beliefs. Some assert a right to exemptions of unprecedented breadth without recognizing the competing government interests or effects on third parties that must necessarily be considered in a pluralistic democracy. These represent a growing misunderstanding—and sometimes willful distortion—of the Free Exercise Clause.

The BJC took strong issue when the administration’s religious liberty guidance was issued last year, in both the oversimplification of unsettled legal questions involving the free exercise of

⁶ Press Release, Federal Bureau of Investigation, FBI Releases 2016 Hate Crime Statistics (Nov. 13, 2017) (<https://ucr.fbi.gov/hate-crime/2016/resource-pages/hate-crime-2016-summary>) (last visited Aug. 22, 2018).

⁷ Anti-Defamation League, Comparison of FBI Hate Crime Statistics (2016-2000), <https://www.adl.org/sites/default/files/documents/Final%20PDF%20FBI%20Hate%20Crime%20Statistics%20Comparison%202000-2016%20%282%29.pdf> (last visited Aug. 22, 2018).

⁸ Press Release, Anti-Defamation League.

⁹ Anti-Defamation League, Comparison of FBI Hate Crime Statistics.

¹⁰ Id.

religion and the lack of any concern for government promotion of religion, which the Establishment Clause of the First Amendment prohibits. Ensuring religious freedom requires dutiful enforcement of both.

In aligning the government closely with a narrow viewpoint on religious freedom – which fails to balance concern for the protection of the rights of others with the right to exercise one’s religion –we have seen our government sow division instead of unity on our first freedom.

4. Backtracking on Religious Liberty Protections for Social Service Beneficiaries

This year we also witnessed a troubling reversal of religious liberty protections for beneficiaries of government social services. On May 4, President Trump established the White House Faith and Opportunity Initiative, an effort similar to those of Presidents George W. Bush and Barack Obama, both of whom had White House offices tasked with strengthening partnerships with faith-based and other community organizations working to meet the needs of Americans.

Government and religious organizations can partner in constitutional ways to deliver social services. The BJC, along with a number of diverse religious and church-state groups, worked with prior administrations to find ways to protect the religious liberty of program beneficiaries. An Executive Order issued by President Obama and federal regulations promulgated by the Obama Administration included important safeguards, such as protections for an individual seeking services to receive a referral to an alternative service provider if he objects to the religious nature of the original agency, as well as written notice of such protections.

Referrals and notices exist to ensure that everyone seeking government services is served on a non-discriminatory basis, and that receipt of government-funded benefits is never conditioned upon one’s religion or participation in religious activities. These basic principles protect the free exercise rights of all Americans and unite groups that may disagree on other details.

In the Executive Order President Trump issued in May of this year, he strikes notice requirements and functionally limits the protections of religious freedom for those seeking government services. Instead, the Trump Administration has prioritized the faith-based providers of government services over the needs and rights of marginalized communities they receive tax dollars to serve, promising to identify and reduce both burdens on providers’ free exercise rights as well as barriers to getting government contracts and grants. This shift of priorities from tending to the needs of the people served toward protecting those of the providers is a dramatic change in focus from prior Republican and Democratic administrations. Congress should consider ways to restore these protections through legislation to ensure that no American is forced to choose between having her needs met and practicing (or choosing not to practice) her faith.

5. Using “Religious Liberty” Language Loosely to Promote Bad Policy and Undercut Important Safeguards

Finally, we should be concerned about the use of the term “religious liberty” to promote bad policy. One such example is President Trump’s campaign “to destroy the Johnson Amendment,” the provision in the tax law that separates partisan campaigning from 501(c)(3) organizations. President Trump has even said that repeal of the Johnson Amendment will be his “greatest contribution to Christianity—and other religions—is to allow you, when you talk religious liberty, to go and speak openly, and if you like somebody or want somebody to represent you, you should have the right to do it.” In May 2017, Trump also claimed to change how the Johnson Amendment is enforced in an Executive Order purporting to protect religious liberty, but the Department of Justice disavowed that this Executive Order had any impact on that law.

The President, some Members of Congress, and the interest groups supporting their bid to change the tax law continue to blur the lines between being generally “political” – which is permitted – and taking a partisan position for or against a candidate’s campaign for office – which is not. Nothing in the tax code prevents the church from speaking to issues, no matter how controversial. Additionally, faith leaders, in their personal capacity, can endorse and oppose candidates without running afoul of the tax law.

In talking with religious leaders across the country, the religious liberty issue I have heard in this context is the concern that changing the law would threaten the independence of the church from government interference and control. Changing the law to encourage partisan campaign involvement by churches would endanger the prophetic voices of houses of worship by tying them too closely to government or a particular officeholder or party. It would also distract them from the work of the church by bringing partisan divisions into their church family. These concerns are widely held among Americans. Polls repeatedly show that such changes in the current law are not favored,¹¹ with large majorities of churchgoers and pastors opposing pulpit endorsements.¹²

The BJC recognized that the faith community’s position was being misrepresented and joined with more than 100 other religious and denominational organizations in support of current law that keeps partisan campaigning out of our houses of worship. Additionally, more than 4500 faith leaders from across the country have asked Congress to keep this important protection in the tax law.

¹¹ Daniel Cox, Ph.D. and Robert P. Jones, Ph.D. *Majority of Americans Oppose Transgender Bathroom Restrictions*, Public Religion Research Institute (March 10, 2017), <http://www.prrri.org/research/lgbt-transgender-bathroom-discrimination-religious-liberty/> (finding 71% of Americans and all major religious groups in the country oppose allowing churches to endorse political candidates while retaining their tax-exempt status).

¹² E.g., Bob Smietana, *Skip the Endorsements in Church, Say Most Americans*, LIFEWAY RESEARCH (Sept. 8, 2016), <http://lifewayresearch.com/2016/09/08/skip-the-endorsements-in-church-say-most-americans/> (finding 79% of Americans believe it is inappropriate for a pastor to publicly endorse political candidates during a church service and 75% agreeing that churches should steer clear of endorsements); National Association of Evangelicals, *Pastors Shouldn’t Endorse Politicians*, Evangelical Leaders Survey (February 2017), <https://www.nae.net/pastors-shouldnt-endorse-politicians/> (finding 89% of evangelical leaders oppose pastors endorsing candidates from the pulpit).

Thankfully, efforts to change the law have failed to date, despite a concerted effort to add it to last year's tax bill and various appropriations measures. Congress should be wary of efforts to use "religious liberty" as a misleading sound bite to push for this unnecessary and exceedingly troublesome proposed change in tax policy.

Respectfully submitted,

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