Testimony of
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Subcommittee on the Constitution and Civil Justice

Excerpted Written Statement
"*The State of Religious Liberty in the United States*"
June 10, 2014

Chairman Franks, Ranking Member Nadler, and Members of the Subcommittee, thank you for the opportunity to participate in this important hearing on the state of religious liberty in the United States. I have worked on religious liberty issues for over three decades and currently serve as the Director of the Center for Law and Religious Freedom of the Christian Legal Society.

The Christian Legal Society ("CLS") has long believed that pluralism, essential to a free society, prospers only when the First Amendment rights of all Americans are protected regardless of the current popularity of their speech or religious beliefs. For that reason, CLS was instrumental in the passage of three landmark federal laws that protect religious liberty: 1) the Equal Access Act of 1984 that protects the right of all students, including religious groups and LGBT groups, to meet for "religious, political, philosophical or other" speech on public secondary school campuses;[1] 2) the Religious Freedom Restoration Act of 1993 that protects the religious liberty of all Americans;[2] and 3) the Religious Land Use and Institutionalized Persons Act of 2000 that protects religious liberty for congregations of all faiths and for prisoners.[3]

Religious liberty is America's most distinctive contribution to humankind. The genius of American religious liberty is that we protect every American's

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[1] *See, e.g.*, 128 Cong. Rec. 11784-85 (1982) (Sen. Hatfield statement).

[2] *See* Brief Amicus Curiae of the Baptist Joint Committee, the National Association of Evangelicals and other Religious and Public Policy Organizations in Support of Respondents, 2005 WL 2237539 at *1 (2005), *filed in Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. 418 (2006). *See also,* Thomas C. Berg, *What Hath Congress Wrought? An Interpretive Guide to the Religious Freedom Restoration Act,* 39 Vill. L. Rev. 1, 1 n.a (1994) (thanking the Center for Law and Religious Freedom, "one of the prime proponents of the Religious Freedom Restoration Act," for research assistance).

[3] *See, e.g.*, *Protecting Religious Freedom After* Boerne v. Flores *(Part III):* Hearing Before the Subcommittee on the Constitution of the House Committee on the Judiciary 26-37 (1998) (testimony of Steven McFarland, Director, Center for Law and Religious Freedom of the Christian Legal Society); *Religious Liberty Protection Act:* Hearing Before the Subcommittee on the Constitution of the House Committee on the Judiciary on H.R. 1691 151-59 (1999) (testimony of Steven McFarland, Director, Center for Law and Religious Freedom of the Christian Legal Society); *Religious Liberty:* Hearing Before the Senate Committee on the Judiciary on Issues Relating to Religious Liberty Protection, and Focusing on the Constitutionality of a Religious Protection Measure 4-18 (1999) (testimony of Steven McFarland, Director, Center for Law and Religious Freedom of the Christian Legal Society).

religious beliefs and practices, no matter how unpopular or unfashionable those beliefs and practices may be at any given time. By protecting all religious beliefs and practices regardless of their popularity or political power, religious liberty makes it possible for citizens who hold very different worldviews to live peaceably together.[4] Robust religious liberty avoids a political community riven along religious lines.

But religious liberty is fragile, too easily taken for granted and too often neglected. A leading religious liberty scholar, Professor Douglas Laycock of the University of Virginia, recently warned: "For the first time in nearly 300 years, important forces in American society are questioning the free exercise of religion in principle – suggesting that free exercise of religion may be a bad idea, or at least, a right to be minimized."[5] Other respected scholars share the assessment that the future of religious liberty in America is endangered. [6]

I. Congress's Passage of the Religious Freedom Restoration Act was a Singular Achievement that Protects All Americans' Religious Liberty.

Congress's passage of the Religious Freedom Restoration Act of 1993 (hereinafter "RFRA"), 42 U.S.C. §§ 2000bb (1)-(4), was a singular achievement. For two decades, RFRA has stood as the preeminent federal protection of all Americans' religious liberty. RFRA ensures a level playing field for Americans of all faiths. It puts "minority" faiths on an equal footing with any "majority" faith.[7]

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[4] Douglas Laycock, *Religious Liberty and the Culture Wars*, 2014 U. Ill. L. Rev. 839, 840-41 (2014) (forthcoming 2014) ("Religious liberty has largely ended religious warfare and persecution in the West. It has enabled people with fundamentally different views on fundamental matters to live in peace and equality in the same society. It has enabled each of us to live, for the most part, by our own deepest values.")

[5] Douglas Laycock, *Sex, Atheism, and the Free Exercise of Religion,* 88 U. Det. Mercy L. Rev. 407, 407 (2011). *See generally,* Laycock, *supra* note 4.

[6] *See generally, e.g.,* Michael W. McConnell, *Why Protect Religious Freedom?,* 123 Yale L.J. 770 (2013); Michael Stokes Paulsen, *Is Religious Freedom Irrational?,* 112 Mich. L. Rev. 1043 (2014); John D. Inazu, *The Four Freedoms and the Future of Religious Liberty,* 92 N.C. L. Rev. 787 (2014); Thomas C. Berg, *Progressive Arguments for Religious Organizational Freedom: Reflections on the HHS Mandate,* 21 J. Contemp. Legal Issues 279 (2013).

[7] An excellent introduction to RFRA's importance to religious Americans is a ten-minute video that features Native Americans, Presbyterians, Jews, and Sikhs recounting RFRA's importance

Yet RFRA has recently become a prime target for those who would deny robust protection to religious liberty. This hearing is timely because it is possible that, within the next few weeks, this Congress will come under pressure to amend RFRA and diminish its protection, if the Supreme Court upholds RFRA's protection of Americans whose religious consciences will not allow them to comply with the HHS Mandate.[8] Congress should withstand such pressure for a number of reasons that are critical to the future of American religious liberty, as this testimony will briefly discuss.

The Need for RFRA: RFRA was an urgent response to the Supreme Court's decision in 1990 in *Employment Division v. Smith,* 494 U.S. 872 (1990), authored by Justice Scalia, which dealt a serious setback to religious liberty. Before the *Smith* decision, the Supreme Court's free exercise test had prohibited the government from burdening a citizen's religious exercise unless the government demonstrated that it had a compelling interest that justified overriding the individual's religious practice.[9] The *Smith* decision reversed this traditional presumption. The government no longer had to show an important reason for overriding a person's religious convictions, but instead could simply require a citizen to violate her religious convictions no matter how easy it would be for the government to accommodate her religious conscience.

Broad Bipartisan Support for RFRA: In response to the *Smith* decision, a 68-member coalition of diverse religious and civil rights organizations, including such groups as Christian Legal Society, Baptist Joint Committee for Religious Liberty, Americans United for Separation of Church and State, National Association of Evangelicals, American Jewish Congress, and American Civil Liberties Union,[10] coalesced to encourage Congress to restore substantive

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to their religious practices. The 2013 video, produced by The Becket Fund for Religious Liberty, is available at http://www.youtube.com/watch?v=J3TbItCxWdk (last visited June 8, 2014).

[8] The Supreme Court is expected to hand down its decisions in *Sebelius v. Hobby Lobby Stores, Inc.,* No. 13-354, and *Conestoga Wood Specialties Corp. v. Sebelius,* No. 13-356, on or before June 30, 2014.

[9] *Sherbert v. Verner,* 374 U.S. 398 (1963); *Wisconsin v. Yoder,* 406 U.S. 205 (1972).

[10] The following religious and civil rights organizations formed the Coalition for the Free Exercise of Religion to secure RFRA's passage: "Agudath Israel of America; American Association of Christian Schools; American Civil Liberties Union; American Conference on Religious Movements; American Humanist Association; American Jewish Committee; American Jewish Congress; American Muslim Council; Americans for Democratic Action; Americans for

protection for religious liberty.[11] RFRA restored the "compelling interest" test by once again placing the burden on the government to demonstrate that a law is sufficiently compelling to justify denial of citizens' religious freedom.[12]

Religious Liberty; Americans United for Separation of Church and State; Anti-Defamation League; Association of Christian Schools International; Association on American Indian Affairs; Baptist Joint Committee on Public Affairs; B'nai B'rith; Central Conference of American Rabbis; Christian Church (Disciples of Christ); Christian College Coalition; Christian Legal Society; Christian Life Commission of the Southern Baptist Convention; Christian Science Committee on Publication; Church of the Brethren; Church of Jesus Christ of Latter-day Saints; Church of Scientology International; Coalitions for America; Concerned Women for America; Council of Jewish Federations; Council on Religious Freedom; Episcopal Church; Evangelical Lutheran Church in America; Federation of Reconstructionist Congregations and Havurot; First Liberty Institute; Friends Committee on National Legislation; General Conference of Seventh-day Adventists; Guru Gobind Singh Foundation; Hadassah, The Women's Zionist Organization of America, Inc.; Home School Legal Defense Association; House of Bishops of the Episcopal Church; International Institute for Religious Freedom; Japanese American Citizens League; Jesuit Social Ministries, National Office; Justice Fellowship; Mennonite Central Committee U.S.; NA'AMAT USA; National Association of Evangelicals; National Council of Churches; National Council of Jewish Women; National Drug Strategy Network; National Federation of Temple Sisterhoods; National Islamic Prison Foundation; National Jewish Commission on Law and Public Affairs; National Jewish Community Relations Advisory Council; National Sikh Center; Native American Church of North America; North American Council for Muslim Women; People for the American Way Action Fund; Presbyterian Church (USA), Social Justice and Peacemaking Unit; Rabbinical Council of America; Traditional Values Coalition; Union of American Hebrew Congregations; Union of Orthodox Jewish Congregations of America; Unitarian Universalist Association of Congregations; United Church of Christ, Office for Church in Society; United Methodist Church, Board of Church and Society; United Synagogue of Conservative Judaism." Douglas Laycock & Oliver S. Thomas, *Interpreting the Religious Freedom Restoration Act,* 73 Tex. L. Rev. 209, 210 n.9 (1994) (listing these groups and noting that "[t]he American Bar Association did not formally join the Coalition, but repeatedly endorsed the bill.")

[11] On November 7, 2013, the Newseum co-sponsored an event in observance of the twentieth anniversary of the passage of RFRA, entitled "*Restored or Endangered? The State of Free Exercise of Religion in America.*" During the event's first panel, several participants in the RFRA coalition walked through the key events that led to RFRA's passage. The panel's discussion is available at http://www.newseum.org/programs/2013/1107-institute/the-state-of-free-exercise-of-religion-in-america.html (last visited June 4, 2014). *See also*, Baptist Joint Committee for Religious Liberty, "*The Religious Freedom Restoration Act: 20 Years of Protecting Our First Freedom,*" *available at* http://bjcmobile.org/wp-content/uploads/2013/11/RFRA-Book-FINAL.pdf (last visited June 9, 2014).

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Senator Edward Kennedy and Senator Orrin Hatch together led the bipartisan effort to pass RFRA in the Senate.[13] RFRA passed by a vote of 97-3 in the Senate and a unanimous voice vote in the House.[14] President Clinton signed RFRA into law on November 16, 1993. In his signing remarks, President Clinton observed, "We all have a shared desire here to protect perhaps the most precious of all American liberties, religious freedom." He noted that the Founders "knew that there needed to be a space of freedom between Government and people of faith that otherwise Government might usurp." President Clinton attributed to the first amendment the fact that America is "the oldest democracy now in history and probably the most truly multiethnic society on the face of the Earth." He explained that RFRA "basically says [] that the Government should be held to a very high level of proof before it interferes with someone's free exercise of religion."[15]

RFRA in the Supreme Court: Although it has excluded state and local laws from RFRA's scope,[16] the Supreme Court has interpreted RFRA to provide potent protection for religious liberty at the federal level. In *Gonzales v. O Centro*

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[12] *See* Richard Garnett and Joshua Dunlap, *Taking Accommodation Seriously: Religious Freedom and the O Centro Case,* 2006 Cato Sup. Ct. Rev. 257, 259 (2006) ("By enacting RFRA, however, Congress codified an apparently broad, bipartisan, and ecumenical consensus that the *Smith* rule does not adequately protect and respect religious liberty."). *See generally,* Douglas Laycock and Oliver S. Thomas, *supra* note 10; Michael Stokes Paulsen, *A RFRA Runs Through It: Religious Freedom and the U.S. Code,* 56 Mont. L. Rev. 249 (1995); Berg, *supra* note 2.

[13] *See The Religious Freedom Restoration Act:* Hearing Before the Senate Committee on the Judiciary on S. 2969, A Bill to Protect the Free Exercise of Religion 2 (1992) (statement of Sen. Kennedy) ("The Religious Freedom Restoration Act, which Senator Hatch and I, and 23 other Senators have introduced, would restore the compelling interest test for evaluating free exercise claims."); *id.* at 7 (statement of Sen. Hatch) ("I want to thank you, Senator Kennedy. I appreciate your leadership on this vital legislation, and I am pleased to be a principal co-sponsor with you of the Religious Freedom Restoration Act of 1992.").

[14] 139 Cong. Rec. 26,416 (cumulative ed. Oct. 27, 1993); 139 Cong. Rec. H8715 (daily ed. Nov. 3, 1993).

[15] President William J. Clinton, *Remarks on Signing the Religious Freedom Restoration Act of 1993,* Nov. 16, 1993, *available at* http://www.gpo.gov/fdsys/pkg/WCPD-1993-11-22/pdf/WCPD-1993-11-22-Pg2377.pdf (last visited June 8, 2014).

[16] *City of Boerne v. Flores,* 521 U.S. 507 (1997).

Espirita Beneficente Uniao do Vegetal,[17] the Court *unanimously* held that RFRA requires the federal government to demonstrate an actual compelling interest, unachievable by less restrictive means, before it may restrict a citizen's religious practice. The Court required the government to show that granting an exemption to the *specific individual* citizen would actually undermine the government's ability to achieve its compelling interest.[18]

What RFRA Does Not Do: RFRA does not predetermine the outcome of any case or claim. As Senator Kennedy accurately predicted during hearings on RFRA, "Not every free exercise claim will prevail."[19]

Instead, RFRA implements a *sensible balancing* test by which a religious claimant first must demonstrate that the government has substantially burdened a sincerely held religious belief.[20] The government then must demonstrate a compelling interest that cannot be achieved by a less restrictive means. As the Supreme Court explained in *O Centro,* "Congress has determined that courts should strike *sensible balances,* pursuant to a compelling interest test that requires

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[17] 546 U.S. 418 (2006).

[18] Nineteen states have enacted state RFRAs, modeled on the federal RFRA, to require state and local governments to comply with the "compelling interest" standard. Those states are: Alabama, Arizona, Connecticut, Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia. Laycock, *supra* note 4, at 845 n.26 (providing the statutory citations for each state RFRA). In fourteen states, the state courts have interpreted state constitutions to protect religious conduct from generally applicable laws. Those states are: Alaska, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New York, North Carolina, Ohio, Washington, and Wisconsin. *Id.* at 844 n.22. Thus, a total of 31 states generally provide religious exemptions as a matter of state law. (Two states overlap both categories.)

[19] *The Religious Freedom Restoration Act:* Hearing Before the Senate Committee on the Judiciary on S. 2969, A Bill to Protect the Free Exercise of Religion 2 (statement of Sen. Kennedy).

[20] 42 U.S.C. § 2000bb(a)(5) ("the compelling interest test as set forth in prior Federal court rulings is a workable test for striking *sensible balances* between religious liberty and competing prior governmental interests") (emphasis supplied).

the Government to address the particular practice at issue."[21] As a RFRA scholar explains, "[t]he compelling interest test is best understood as a balancing test with the thumb on the scale in favor of protecting constitutional rights."[22]

In the final analysis, after hearing both sides, a court determines whether the government interest is strong enough to override the religious exercise in question. In the twenty years that RFRA has been in place, judges frequently have ruled in favor of the government, finding either that the government had not substantially burdened the religious exercise at issue or that the government had a compelling interest.

Rather than giving religious citizens a free pass, RFRA gives citizens much needed leverage in their dealings with government officials. RFRA ensures that the government must explain its action if it restricts citizens' religious exercise. By requiring government officials to explain their unwillingness to accommodate citizens' religious exercise, RFRA enhances governmental transparency and accountability.

As Chief Justice Roberts observed for the unanimous *O Centro* Court, RFRA rebuffs the "classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions."[23] Or as scholars have observed, "boilerplate findings and assertions by the government about a program's aims and importance are not enough to sustain its burden in RFRA cases."[24] Instead, RFRA incentivizes government officials to find mutually beneficial ways to accomplish a governmental interest while respecting citizens' religious exercise – a win-win solution for all.

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[21] 546 U.S. at 439 (emphasis supplied). *See also id.* ("Congress . . . legislated 'the compelling interest test' as the means for the courts to 'strik[e] *sensible balances* between religious liberty and competing prior governmental interests.'") (emphasis supplied).

[22] Douglas Laycock, *The Religious Exemption Debate,* 11 Rutgers J.L. & Religion 139, 151-52 (2009).

[23] 546 U.S. at 436 . *See also, id.* at 438 ("under RFRA invocation of such general interests, standing alone, is not enough").

[24] Garnett and Dunlap, *supra* note 12, at 271.

What RFRA Does:

RFRA creates a level playing field for Americans of all faiths: RFRA puts "minority" faiths on an equal footing with "majority" faiths. Essentially RFRA makes religious liberty the default position in any conflict between religious conscience and federal regulation. Without RFRA, a "minority" faith would need to seek individual exemptions every time Congress considered a law that might unintentionally infringe on its religious practices. With RFRA, a "minority" faith is automatically *presumed* to be entitled to an exemption from a law that infringes its religious practices, unless the government demonstrates that such an exemption would violate a compelling governmental interest. [25]

The default posture can be overridden if Congress chooses to do so,[26] or if a court determines the government's interest is compelling and unachievable by a

[25] As Professor Michael McConnell explained at the time RFRA was being debated, the Supreme Court's *Smith* ruling gave "a decided advantage to 'majority' religions . . . . [which,] because their numbers give them substantial political influence, will be able to enter and win protection in the political arena. In addition, their members are often involved in the drafting of legislation, and they generally design the laws (consciously or unconsciously) in light of their religious mores." Michael W. McConnell, *Should Congress Pass Legislation Restoring the Broader Interpretation of Free Exercise of Religion?,* 15 Harv. J.L. & Pub. Pol'y 181, 186-87 (1992). *See also,* Garnett and Dunlap, *supra* note 12, at 260 (The Constitution "allows – and even invites –governments to lift or ease the burdens on religion that even neutral official actions often impose. Notwithstanding our constitutional commitment to religious freedom through limited government and the separation of the institutions of religion and government, it is and remains in the best of our traditions to 'single out' lived religious faith as deserving accommodation.").

[26] Congress has never exercised its option under 42 U.S.C. § 2000bb-3(b) to "explicitly exclude[]" a law from RFRA's application. The philosophical underpinnings of RFRA have always weighed strongly against any carve-out because there is no limiting principle for why any particular governmental interest should be given a special permanent exemption, or a carve-out, from RFRA. Any carve-out would immediately result in the disadvantaging of some faith(s) in relationship to other faiths, precisely the result that RFRA was intended to prevent. The Newseum panelists repeatedly emphasized how loath the RFRA Coalition was to create any carve-out whatsoever. *See supra* note 11.

As was explained soon after its passage, RFRA's sponsors "insisted instead on a unitary standard for evaluating all free exercise claims" because:

> "The bill's sponsors, as well as the Coalition supporting the bill . . . felt strongly that Congress had no business picking and choosing which religious claims should be protected and which should not. . . . [T]he bill's supporters feared that an exemption for prisons would lead to other exemptions, possibly jeopardizing

less restrictive means. RFRA simply makes religious liberty the default position, which is as it should be for a country that values religious liberty. [27]

RFRA protects America's religious diversity: If Americans belonged to only one religion, RFRA might not be necessary. In that case, the government might realistically be expected either to exempt the monopolistic religion's practices from any law they would otherwise violate, or to not pass the law in the first place.

But America is a country of tremendous religious diversity.[28] As a result, "it is not surprising that well-intentioned, broadly-applicable legislation often conflicts, sometimes severely, with the religious beliefs of certain groups of people."[29] Rather than force religious people to a choice between obeying their government or obeying God, "it makes sense to create exceptions for those groups whenever that can be reasonably done," especially in light of "our society's dedication to religious toleration and pluralism." [30]

For this reason, the oft-heard argument that America must *limit* religious freedom *because* it has become more religiously diverse has it precisely

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> the bill's passage. Similar exemptions had already been demanded by pro-life groups, public schools, landmark commissions, and other interest groups."

Laycock and Thomas, *supra* note 10, at 240.

[27] "What is at stake in the debate over religious exemptions is whether people can be jailed, fined, or otherwise penalized for practicing their religion in the United States in the twenty-first century." Laycock, *supra* note 22, at 145.

[28] *See also,* Mark L. Rienzi, Why Tolerate Religion? By Brian Leiter. Princeton, N.J.: Princeton University Press. 2013. Pp. Xv, 187. $24.95. Defending American Religious Neutrality. by Andrew Koppelman. Cambridge, Mass.: Harvard University Press. 20, 127 Harv. L. Rev. 1395, 1395 & n.1 (2014) (("The United States is a place of enormous religious diversity."), *citing* The Pew Forum on Religion & Public Life, U.S. Religious Landscape Survey 10 (2008), archived at http://perma.cc/L58D-977M ("The Landscape Survey details the great diversity of religious affiliation in the U.S. at the beginning of the 21st century. The adult population can be usefully grouped into more than a dozen major religious traditions that, in turn, can be divided into hundreds of distinct religious groups.")).

[29] McConnell, *supra* note 25, at 184. As Professor McConnell notes, "[f]rom the point of view of religious believers, it does not really matter whether a law is directed at them; the injury to their religious practice is the same regardless of the legislators' motivation." *Id.* at 185.

[30] *Ibid.*

backwards. Robust religious liberty is the reason for America's dramatic diversity and remains essential to maintaining that diversity. RFRA ensures religious diversity by protecting all religions, including the hundreds of numerically disadvantaged faiths, by increasing the likelihood that those faiths will obtain sensible exemptions from well-intentioned laws that unknowingly restrict their religious practices. In short, "[a]ccommodations are a commonsensical way to deal with the differing needs and beliefs of the various faiths in a pluralistic nation."[31]

RFRA allows Congress to legislate without fear that it unknowingly will burden a religious practice: RFRA is a commonsense approach that allows Congress to legislate without holding extensive hearings on every potential effect that a bill might have on Americans' religious liberty. This is particularly comforting given that much legislation is significantly changed as it wends its way through the legislative process, often after hearings have been held. RFRA also helps to protect against administrative abuses of delegated rulemaking authority.

RFRA reduces long-term social and political conflict: In the long-term, RFRA maximizes social stability in a religiously diverse society. Simultaneously, it minimizes the likelihood, in the long-term, of political divisions along religious lines. The reason is simple: "religious liberty reduces social conflict; there is much less reason to *fight* about religion if everyone is guaranteed the right to *practice* his religion."[32] In other words, RFRA implements the Golden Rule in the context of religious liberty: in protecting others' religious liberty, we protect our own religious liberty. Just as controversy frequently flares when free speech protections are triggered for an unpopular speaker, so controversy will sometimes accompany a particular application of RFRA. But our society has prospered by protecting all Americans' free speech, and it will prosper only if all Americans' free exercise of religion is protected.

RFRA honors the deep American tradition of granting exemptions for religious citizens: Religious liberty is embedded in our Nation's DNA. Respect for religious conscience is not an afterthought or luxury, but the very essence of our political and social compact.

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[31] Michael W. McConnell, *Accommodation of Religion: An Update and a Response to the Critics,* 60 Geo. Wash. L. Rev. 685, 694 (1992) ("Exemptions from such laws are easy to craft and administer, and do much to promote religious freedom at little cost to public policy.").

[32] Laycock, *supra* note 4, at 842 (original emphasis).

RFRA embodies America's tradition of protecting religious conscience that predates the United States itself. In seventeenth century Colonial America, Quakers were exempted in some colonies from oath taking and removing their hats in court.[33] Jewish persons were sometimes granted exemptions from marriage laws inconsistent with Jewish law. Exemptions from paying taxes to maintain established churches spread in the eighteenth century.

Perhaps most remarkably, when America was fighting for its liberty against the greatest military power of that time, Congress stalwartly adopted the following resolution:

> As there are some people, who, from religious principles, cannot bear arms in any case, this Congress intend no violence to their consciences, but earnestly recommend it to them, to contribute liberally in this time of universal calamity, to the relief of their distressed brethren in the several colonies, and to do all other services to their oppressed Country, which they can consistently with their religious principles.[34]

RFRA protects the right of all women and men to seek the truth and live lives of authenticity: Perhaps most importantly, religious exemptions allow human beings to seek the truth. As Professor Garnett eloquently posits, "human beings are made to seek the truth, are obligated to pursue truth and to cling to it when it is found, and [] this obligation cannot meaningfully be discharged unless persons are protected against coercion in religious matters." Therefore, "secular governments have a moral duty . . . to promote the ability of persons to meet this obligation and flourish in the ordered enjoyment of religious freedom, and should

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[33] *See, e.g.,* Michael McConnell, *The Origins and Historical Understanding of Free Exercise of Religion,* 103 Harv. L. Rev. 1409, 1466-73 (1990) (discussing religious exemptions in early America); Douglas Laycock, *Regulatory Exemptions of Religious Behavior and the Original Understanding of the Establishment Clause,* 81 Notre Dame L. Rev. 1793, 1804-1808 (2006) (same); Laycock, *supra* note 22, at 139-153 (same).

[34] McConnell, *supra* note 25, at 186 n.20 (*quoting* Resolution of July 18, 1775, *reprinted in* 2 Journals of the Continental Congress at 187, 189 (1905)).

therefore take affirmative steps to remove the obstacles to religion that even well meaning regulations can create."[35]

RFRA reinforces America's foundational commitments to religious liberty as an inalienable right, to a government that recognizes limits on its power, and to a healthy pluralism essential to a free society: RFRA is remarkable not only for Congress's renewal of its pledge to respect and protect religious liberty – first given in 1789 when Congress framed the First Amendment – but also for Congress's renewed pledge to the constitutional principle that our government is to be one of limited power. Rarely does any government voluntarily limit its own power, but RFRA stands as such a too-rare reminder that America's government is a limited government that defers to its citizens' religious liberty except in compelling circumstances. By evenhandedly protecting religious freedom for all citizens, RFRA embodies American pluralism.

In RFRA, Congress re-committed the Nation to the foundational principle that American citizens have the God-given right to live peaceably and undisturbed according to their religious beliefs. In RFRA, a Nation begun by immigrants seeking religious liberty renewed its pledge to be a perpetual haven for persons of all faiths.[36]

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[35] Garnett and Dunlap, *supra* note 12, at 281. *See also,* Laycock, *supra* note 4, at 842 ("Protecting religious liberty reduces human suffering; people do not have to choose between incurring legal penalties and surrendering core parts of their identity.")

[36] *See* Hearing, *supra* note 13, at 8 (statement of Sen. Metzenbaum) ("We all know that America . . . was founded as a land of religious freedom, as a haven from religious persecution. . . . I am proud to be an original cosponsor of the Religious Freedom Restoration Act, which restores the high standards for protecting religious freedom.")