



**Testimony of the Rev. Jimmie Hawkins,
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**Before the
U.S. House Committee on Education and Labor**

**Hearing on
Do No Harm: Examining the Misapplication of the
Religious Freedom Restoration Act**

June 25, 2019

Good morning Chairman Scott, Ranking Member Foxx, and Committee members. Thank you for the opportunity to testify today.

I am an ordained minister with the Presbyterian Church (U.S.A.) and am the Director of the church's Office of Public Witness. Religious freedom is sacred to me and my church. For more than 200 years, our Historic Principles have recognized the importance of religious freedom. And of course, it is a fundamental – patriotic – American value.

The Presbyterian Historic Principles of Church Order calling for religious freedom and the separation of church and state actually pre-date the adoption of the Bill of Rights. In 1788 our principles declared: "We do not . . . wish to see any religious constitution aided by the civil power . . ." (F-3.0101b). Over the years, the church has adopted various policies and resolutions that demonstrate our commitment to religious freedom in our country and abroad.

The Presbyterian Church (U.S.A.) supported the Religious Freedom Restoration Act (RFRA) when it was adopted in 1993 because we supported its original intent: to allow persons and religious groups to practice their faith without constraint of the government, particularly Native American and other minority faiths. Unfortunately, since then, RFRA has become a weapon aimed at excluding, marginalizing, and discriminating against vulnerable populations. This misinterpretation of RFRA runs counter to religious freedom and the teachings of my faith.

Religious freedom gives each of us the right to believe in accord with our own conscience and practice our faith – so long as we don't hurt others. We believe it

weakens religious freedom when it is invoked in ways that deprive people of their civil and human rights to equal protection under the law or seek to justify exclusion and discrimination.

In our commitment to be disciples of Jesus Christ, my church is called to stand against oppression and in support of human dignity for all people. The fundamental principle of universal human dignity rests on the Biblical foundation that humankind is created in the image of God (Genesis 1:27). From this *imago Dei*, we conclude that no form of discrimination is defensible on religious grounds. When Presbyterians confess our faith in A Brief Statement of Faith (Book of Confessions), we affirm our calling to “hear the voices of people long silenced and to work with others for justice, freedom, and peace.”

Presbyterians have historically valued religious liberty and continue to support the freedom to act according to one’s religious beliefs. There can be no religious freedom without equal respect for the dignity of all persons, a dignity that is denied when services are denied. When claims of “religious freedom” become public efforts to exclude and discriminate, we are called to speak up for justice and stand with the oppressed.

Indeed, religious freedom must be “equal and common to all,” as our Historic Principles from 1788 state – it cannot be maintained as a matter of privileged exemption for powerful individuals or groups.

That’s why it was wrong when in battles over slavery and racial segregation, religion and scripture were often cited as justification for maintaining inequality. People heard it from the pulpits on Sunday mornings. Until the civil rights era, refusals to serve African Americans were often cloaked under the guise of religious freedom – the owner of the Piggie Park Barbecue Restaurants in South Carolina claimed he could refuse to serve African Americans in violation of the Civil Rights Act because his “religious beliefs compel him to oppose any integration of the races whatever.” And when Meredith and Richard Loving appealed their conviction for violating Virginia’s anti-miscegenation laws, the trial court ruled against the couple, asserting that “Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. . . . The fact that he separated the races shows that he did not intend for the races to mix.”

In the end, the Lovings’ conviction was overturned and Piggie Park could no longer refuse service to African Americans. The United States civil courts rightly rejected the claims of those who said racial integration would violate their religion.

But that's not the end of the story. Invoking religious freedom to deprive people of their rights is still going on. Today we see RFRA being misused to cause harm.

Individuals and businesses have found ways to circumvent the original purpose of RFRA to discriminate against persons and to impose their religious beliefs on those who believe otherwise or who don't believe at all. Personal prejudices have been enforced under the guise of religious sentiment. In this way, some dominant religious groups that have not been able to persuade us to stop the march to greater equality are now claiming discrimination, trying to use religious freedom as their last refuge.

We do not view LGBTQ rights to be at odds with our church's teachings. The Presbyterian Church has as its theme, "Church Reformed, Always Reforming," for we believe that while God does not change, God's revelation is revealed in contemporary society in new and revelatory ways. Therefore, as the decades have progressed, the church has followed the Spirit of God as it has shed light upon past mistakes. In 1978, Presbyterians concluded that the denial of human rights to gay, lesbian, bisexual and transgender persons on the basis of religious belief was inconsistent with our Christian faith, as well as with our commitment to the principles of equality under the law as Americans. In 1987, the 199th General Assembly called for "the elimination . . . of laws governing the private sexual behavior between consenting adults [and the passage] of laws forbidding discrimination based on sexual orientation in employment, housing, and public accommodations."

In 2018, to effectuate our church principles, based upon legal and theological understandings of the First Amendment and free exercise of religion, and motivated by this misuse of RFRA and other "religious freedom" laws and policies, the Presbyterian Church (U.S.A.) passed an important resolution. The church decided "to stand against any invocation of 'religious freedom' that deprives people of their civil and human rights to equal protection under the law, or that uses 'religious freedom' to justify exclusion and discrimination." (Religious Freedom Without Discrimination (2018)).

Legitimizing these kinds of claims as cases of protected religious freedom would undermine years of progress in state and federal civil rights and anti-discrimination law. The key distinction lies in whose choice is being limited or protected. Personally choosing not to have an abortion or use birth control, for example, is religious freedom. Making that choice for someone else, on the basis of one's own religious principles, is religious oppression – as is done when an insurance company denies health care coverage for birth control or a doctor refuses to prescribe contraceptives. Using one's own idea of "religious freedom" to limit the lawful choices of others through your own economic leverage creates a dense pattern of religiously sanctioned discrimination.

In fact, the misuse of “religious liberty” is costing lives and depriving individuals of basic human rights. Policies adopted under the guise of religious freedom are in reality nothing more (or less) than a targeted attempt to promote a singular religious viewpoint that does not believe LGBTQ individuals are entitled to the full scope of human rights to employment, healthcare, and parenting rights. These policies give businesses, service and healthcare providers, government workers, and private citizens engaged in commercial activities the unfettered right to discriminate against others, deny them needed services, and impose their own religious beliefs on others, so long as they cite their religious or moral belief as the reason for doing so. Similarly, individuals found to have violated laws guaranteeing against discrimination in public accommodations and the delivery of commercial services are claiming a right to assert religious freedom as a shield against liability for such discrimination.

And we see examples in government contractors who are supposed to ensure everyone who wants and needs to participate in the taxpayer-funded program impose religious litmus tests to determine eligibility.

From the Supreme Court’s decision in *Hobby Lobby* to the Franciscan Alliance case in Texas to the Harris Funeral Home case in Michigan and the Aimee Maddonna case in South Carolina, we see RFRA being misused.

The initial intent of “religious freedom” was to be like a defensive shield protecting the diverse practices of religious faith. It was not intended to be used as a hostile sword to discriminate against people seeking legal services and equitable resources. Historically, religious freedom has meant protection from oppression, rather than economically imposing one’s religious convictions on others. Such practices of inequality perpetuate second-class citizenship in the name of religion, a violation of the First Amendment’s prohibition of government establishment of religion.

For these same reasons, the Presbyterian Church (U.S.A.) supports the Do No Harm Act, which will return RFRA to its original intent: It will protect religious freedom, but not be used to harm others.

The Do No Harm Act provides protections for vulnerable populations and ensures RFRA cannot be used to get out from the protections in our law for equal employment and non-discrimination, health care, access to government services, and against child labor. The Do No Harm Act therefore safeguards that religious freedom is used as a shield to protect the Constitutional right to free exercise of religion and not a sword to discriminate.

“Religious freedom” can never be a pretext for denying all of God’s children basic human rights and freedom from discrimination in secular employment or benefits, healthcare, public or commercial services or goods, or parental rights.

We are committed to defend real religious freedom and fight against efforts to misuse it. Passing the Do No Harm Act would be an important step.