



April 20, 2013

U.S. Commission on Civil Rights  
1331 Pennsylvania Ave., NW, Suite 1150  
Washington, DC 20425

**Re the March 22, 2013, Commission briefing on the growing conflicts between nondiscrimination principles and civil liberties**

Thank you for the opportunity to submit comments with regard to the pressing issue of the expanding conflicts between nondiscrimination requirements and civil liberties, in particular the freedoms of religion, speech, and association.

The Institutional Religious Freedom Alliance works with a wide and multi-faith range of faith-based service organizations, from colleges and k-12 schools to rescue missions, pregnancy resource centers, substance-abuse treatment programs, and many others. All of them are dedicated to serving their neighbors.

They serve due to their religious commitment, and whether or not they receive any government funds, they count on donors, staff, and volunteers to serve with excellence and passion because of their religious inspiration. Their respective faith commitments shape what they do and how they do it—it makes them what they are—filling a particular role in civil society, attractive to particular staff and volunteers, a magnet for particular donors, a valued resource for particular people in need.

These distinctive characteristics—their religious identity, their faith-based internal practices, their faith-shaped way of offering services—ought to be protected in law even when they do not conform to majority practices in our society. Distinctive service institutions are a fundamental aspect of the diversity of America and should not be undermined in the name of promoting equality or eliminating discrimination.

Institutional religious freedom and the associational rights of private organizations should not be undermined as our society seeks to become more just by eliminating wrongful discrimination.

I commend to you in particular the testimony offered at the March 22 briefing by Kim Colby (Christian Legal Society); Ed Whelan (Ethics and Public Policy Center); Marc O. DeGirolami (St. John's University School of Law); Lori H. Windham (Becket Fund for Religious Liberty); and Michael A. Helfand (Pepperdine University School of Law).

I recommend in addition the comments submitted to the Commission by John D. Inazi (Washington University in St. Louis) and by the Alliance Defending Freedom.

I further commend to the Commission on the topic of the March 22 briefing these important publications:


Gregory S. Baylor and Timothy J. Tracey, "Nondiscrimination Rules and Religious Associational Freedom," *Engage*, 8/3 (June 2007). <http://www.fed-soc.org/publications/detail/non-discrimination-rules-and-religious-associational-freedom>

Steven H. Aden and Stanley W. Carlson-Thies, "Catch or Release? The Employment Non-Discrimination Act's Exemption for Religious Organizations," *Engage* 11/2 (August 31, 2010). <http://www.fed-soc.org/publications/detail/catch-or-release-the-employment-non-discrimination-acts-exemption-for-religious-organizations>

Richard W. Garnett, "Religious Freedom and the Nondiscrimination Norm," Notre Dame Legal Studies Paper no. 12-65; a chapter for *Matters of Faith: Religious Experience and Legal Response*, ed., Austin Sarat (Cambridge Univ. Press, forthcoming). [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2087599](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2087599)

Thank you for holding the important briefing on the growing conflicts between antidiscrimination requirements and civil liberties. The right to be free of illegitimate discrimination must not be advanced at the expense of the constitutional freedom of religion.

Sincerely,

  
Stanley Carlson-Thies  
President