



July 24, 2007

Mr. Kenneth L. Marcus
Staff Director
U.S. Commission on Civil Rights
624 Ninth Street, NW Room 700
Washington, DC 20425

Re: Hearing on Blaine Amendments and Anti-Catholicism

AMERICAN CIVIL
LIBERTIES UNION

Dear Mr. Marcus:

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We are writing to comment on the Commission's June 1, 2007, hearing on the "Blaine Amendments and Anti-Catholicism." Although the ACLU believes that many of the historical arguments traditionally employed to attack the Blaine amendments are not well-founded (we would have been pleased to have been invited to testify on this and related issues in more depth), there is one important point that is frequently overlooked in discussions of the Blaine amendments on which the Commission should certainly focus its attention.

While opponents of the Blaine amendments typically decry the anti-Catholic bias behind the amendments, *we have yet to see them identify even one example of anti-Catholic discrimination in the last hundred years where a "Blaine amendment" was used as legal justification for such discrimination.*

While raising the specter of anti-Catholic bias, Blaine amendment opponents typically fail to cite *any* court decision where anti-Catholic bias was identified as underlying a legislative decision at *any* time since the 19th century. Nor do they identify *any* enacted law that used a "Blaine amendment" rationale to justify discrimination against Catholics. Nor do they identify *any* example where an administrative body accepted discrimination against *any* particular religion on the grounds that the Blaine amendments permitted it.

We urge you to examine carefully the witnesses' written statements (which we have not seen) to see if those who decry the anti-Catholic bias of the Blaine amendments actually offered any example from the 20th or 21st centuries to support it. In short, the loaded term "anti-Catholicism" (which appears in the title of the Commission's own hearing), is a red-herring.

While “anti-Catholic bias” has become the rhetorical justification for attacking the amendments, *the real agenda, without any question, is the wish to use taxpayer dollars to support religious activities.* The goal is not to rectify any current bias directed against Catholics (or other religious minority), but to promote the spending of taxpayer dollars on religious programs, an idea that the founding fathers eloquently opposed.

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In his *Memorial and Remonstrance*, for example, James Madison, the principal drafter and legislative proponent of the First Amendment, opposed a bill in Virginia in 1785, that would have instituted a small three pence tax to support teachers of religious education.¹ Madison believed that such a tax, although very small, would nevertheless be an “encroachment” on the rights of citizens, that it would violate the “equality” of citizens, and that it would be abusive to tax everyone to support the religious activities of some. He used the pejorative terms “establish” and “establishment” ten times in the *Memorial* to refer to this tax scheme, and he later proposed exactly the same word for the First Amendment. Whatever other motivations some supporters of the Blaine amendments might have possessed, they codified the same constitutional doctrine that Madison articulated one hundred years earlier.

The ACLU of course is strongly opposed to discrimination against any religious minority and we have engaged in hundreds of cases defending such minorities — including Catholics. We would be pleased to send the Commission members a list of several recent cases if the Commission were interested. But the Blaine amendment challenges are not really about anti-Catholicism, they are about seeking taxpayer support for religious education.

It is no doubt ironic that at the very time that the current Administration has been advocating a reduced role for government in the economy, in private enterprise, and in the regulation of the airways, and at the same time that the Administration has been advocating tax cuts, the startling and inconsistent exception to this broad ideological trend is its efforts to promote increased spending of taxpayer dollars for religious activities — exactly the danger identified by the founders.

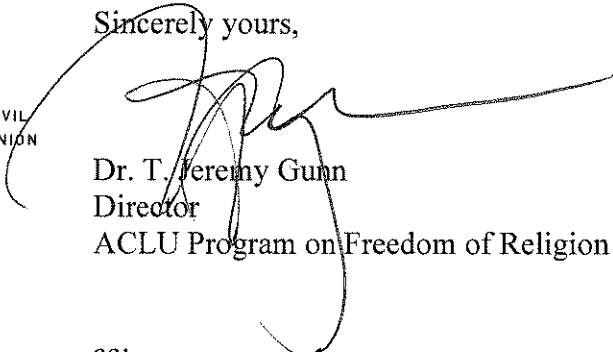
There are, of course, important public policy arguments about government funding of religious schools that presumably were made by your June 1 witnesses. But such public policy arguments are, by themselves, not part of the traditional mandate of the U.S. Commission on Civil Rights.

¹ http://religiousfreedom.lib.virginia.edu/sacred/madison_m&r_1785.html

Unless the U.S. Commission on Civil Rights can specifically identify actual cases of discrimination against Catholics or other religious minorities during the last 100 years that have been justified on Blaine amendment grounds, then *it should not use pretext arguments about the Blaine amendments – as the very title of your hearing suggests – to advance other ideological objectives.*

Sincerely yours,

AMERICAN CIVIL
LIBERTIES UNION



Dr. T. Jeremy Gunn
Director
ACLU Program on Freedom of Religion and Belief

cc:

Hon. Gerald A. Reynolds, Chair
Hon. Abigail Thernstrom, Vice-Chair
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Hon. Peter N. Kirsanow
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