



# ISSUE BRIEF

## Family Research Council: Fighting for Religious Liberty in the Courts

*Travis Weber*

Religious liberty encompasses more than the right to merely attend a private worship service. Rather, it informs all areas of life – the personal, professional, private, and public. Our Founders understood that duty to God comes before duty to the state, and that, as our Declaration of Independence indicates, our rights are derived from him, not any human government. The Center for Religious Liberty at the Family Research Council (FRC) works tirelessly to defend the legal rights of all those who seek to freely practice their faith.

The legal issues surrounding religious liberty are implicated in a host of different factual scenarios. FRC has worked to protect religious freedom in the areas and cases outlined below:

### **Infringement on religious liberty by the Affordable Care Act:**

**January 28, 2014:** Family Research Council filed an amicus brief supporting Hobby Lobby in *Sebelius v. Hobby Lobby*,<sup>1</sup> a case in which the Green family, Christians who operated Hobby Lobby, had objected to supplying four drugs which can destroy human embryos as required by the Affordable Care Act (ACA). The Greens had agreed to make available many of the contraceptives and care provided under the ACA, but objected to four of the drugs because they had the potential to cause an abortion. Nevertheless, the government refused to provide an exemption for Hobby Lobby, and the Greens were forced to file suit under the Religious Freedom Restoration Act (RFRA) and the Free Exercise Clause of the First Amendment.

At issue before the Supreme Court is whether a private corporation (like Hobby Lobby) is a “person” for purposes of RFRA, and is therefore entitled to the statute’s protections which prevent the government from substantially burdening the exercise of religion. FRC’s brief focused on explaining to the Supreme Court how vocation and work could not be disentangled from the rest of the duties of life, and therefore, just as the duties of life reflect religious belief, the way a person runs a business can reflect their religious beliefs. If the Supreme Court agrees with the ideas put forward by FRC, it is more likely to come down on the side of Hobby Lobby in this case, which will impact how business owners of faith can run their business affairs in the future.

### **To Protect Religious Liberty in Government Settings:**

**August 6, 2013:** FRC filed an amicus brief with the U.S. Supreme Court on behalf of 85 Members of Congress in *Town of Greece v. Galloway*.<sup>2</sup> In *Galloway*, the U.S. Court of Appeals for the Second Circuit ruled that the use of public prayer before town meetings in the town of Greece was a

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violation of the First Amendment's Establishment Clause. The Second Circuit ruled this way despite the town's highly inclusive policy that allowed even Wiccans and atheists to offer civic prayers. FRC argues that the town's prayer policy is constitutional, and also asks that the Supreme Court adopt a rule that an Establishment Clause violation only occurs when the government coerces religious activity. If the Court decides in favor of the town of Greece, the decision could become the most significant religious liberty victory in half a century.

**November 30, 2011:** FRC filed an amicus brief on behalf of FRC and 15 Members of Congress in *Forsyth v. Joyner* supporting the petitioner's writ of certiorari asking the Supreme Court to take the case.<sup>3</sup> The issue in *Forsyth* was whether the use of the name "Jesus" in prayers offered at government meetings violated the Establishment Clause. Though the Supreme Court ultimately decided not to review the case, FRC argued that Courts should not decide whether legislative prayer is "sectarian" and whether the name of "Jesus" could be eliminated from a legislative prayer. FRC also argued that legislative immunity and the political question doctrine preclude the courts from reviewing legislative prayers in a situation like this one.

### **To Protect Religious Symbols on Public Lands:**

**March 14, 2012:** FRC filed an amicus brief on behalf of FRC and 20 Members of the Senate and House of Representatives in *Mt. Soledad Memorial Association v. Trunk* supporting the petitioner's writ of certiorari asking the Supreme Court to take the case.<sup>4</sup> The cross on Mt. Soledad has stood since 1913, and in 1954 was dedicated as part of a war memorial to all those who perished defending America during wartime. In 2006 Congress placed the memorial under the federal government's control, making it a national veterans' memorial. However, because there is still a cross in the center of the memorial, the Ninth Circuit has held that it is an unconstitutional endorsement of religion, and must be removed.

FRC has worked very closely with the lawyers representing the Mt. Soledad Memorial Association, which petitioned the Supreme Court to take the case. We wanted to send the clear message that the same Congress that federalized this memorial wants the Supreme Court to take this case and vindicate Congress's intent. We also asked the Supreme Court to take this case as a perfect opportunity to set aside the "endorsement test" regarding the First Amendment's Establishment Clause, which has been used to shut the public square to common expressions and displays of faith, and instead hold that the Establishment Clause is only violated when the government either directly declares a state religion or coerces citizens to participate in religion against their will. Although the Supreme Court declined to review the case, this litigation is still unresolved and ongoing in the lower courts.

### **To Defend Religious Liberty with Respect to the Placement of Roadside Crosses:**

**May 23, 2011:** FRC joined the Law Enforcement Legal Defense Fund and 15 Members of the Senate and House of Representatives on an amicus brief filed with the U.S. Supreme Court in *Davenport v. American Atheists* supporting the petitioner's writ of certiorari asking the Supreme Court to take the case.<sup>5</sup> The case was intended to determine whether fourteen crosses bearing

the names of fallen Utah state troopers that had been placed at the roadside locations where the troopers perished constituted violations of the First Amendment's Establishment Clause. FRC asked the Court to reject the vague and malleable "endorsement test" for Establishment Clause cases and simply look to whether the government is coercing religious activity to determine whether there is an establishment of religion. Ultimately, these issues never reached the Court, for it declined to review the case.

### To Safeguard the National Day of Prayer:

**July 7, 2010:** In *Freedom from Religion Foundation v. Obama*, the Freedom from Religion Foundation (FFRF) challenged the constitutionality of the National Day of Prayer and sought to prevent President Obama from initiating or participating in such an event in his official capacity as president of the United States. The U.S. District Court for the Western District of Wisconsin sided with FFRF. FRC got involved on appeal, and the amicus brief filed by FRC and many other organizations with the U.S. Court of Appeals for the Seventh Circuit argued that the court lacked jurisdiction to consider the merits of the instant case.<sup>6</sup> The Seventh Circuit agreed, and ordered the case dismissed because FFRF lacked standing to bring the challenge. FRC as Amicus Curiae, *Freedom from Religion Foundation v. Obama*.

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<sup>1</sup> "Brief of the Family Research Council as *Amicus Curiae* in Support of Hobby Lobby and Conestoga, *et al.*" Family Research Council, accessed April 7, 2014, <http://downloads.frc.org/EF/EF14A67.pdf>.

<sup>2</sup> "Brief for Members of Congress as *Amicus Curiae* in Support of Petitioner, *Town of Greece v. Susan Galloway and Linda Stephens*," Family Research Council, accessed April 7, 2014, <http://downloads.frc.org/EF/EF13H12.pdf>.

<sup>3</sup> "Brief of the Family Research Council and 15 Members of the United States House of Representatives as *Amici Curiae* in Support of Petitioners, *Forsyth County v. Janet Joyner and Constance Lynne Blackmon*," Family Research Council, accessed April 7, 2014, <http://downloads.frc.org/EF/EF11K51.pdf>.

<sup>4</sup> "Brief of the Family Research Council and 20 Members of the Senate and House of Representatives in the United States Congress as *Amici Curiae* in Support of in Support of Petitioners, *Mount Soledad Memorial Association v. Steve Trunk, et al.*," Family Research Council, accessed April 7, 2014, <http://downloads.frc.org/EF/EF12C37.pdf>.

<sup>5</sup> "Brief of the Family Research Council and, Law Enforcement Legal Defense Fund, and 15 Members of the U.S. Senate and U.S. House of Representatives as *Amici Curiae* in Support of Petitioners, *Lance Davenport, et al., v. American Atheists, Inc., et al.*," Family Research Council, accessed April 7, 2014, <http://downloads.frc.org/EF/EF11E68.pdf>.

<sup>6</sup> "Brief of Dr. James C. Dobson, The Family Research Council, etc, *Freedom from Religion Foundation, Inc., et al., v. Barack Obama, et al.*," Family Research Council, accessed April 7, 2014, <http://downloads.frc.org/EF/EF14D10.pdf>.