



Annual First Amendment Conference

## Annual First Amendment Conference

Story and **Photos** by Hank McIntire  
**Video** of Presentations

The Center for Constitutional Studies held its annual First Amendment conference Feb. 23, 2023, in the Clarke Building on UVU Campus. Top constitutional scholars and experts spoke on topics related to the conference theme: "Tied in a Single Garment of Destiny": The Founders, Natural Rights, and Religious Liberty Today."

Dr. Martin Luther King in his Letter from Birmingham Jail wrote that "all men are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly." This idea connects to the freedom-of-religion protections enshrined in the First Amendment of the Constitution, where all Americans share the freedom to worship—or not—as they choose.

Presenters and panelists included Dr. Phillip Muñoz, Notre Dame; Dr. Tony Peacock, Utah State University; Dr. Ralph Hancock, Brigham Young University; Dr. Leslie Griffin, UNLV Law School; and Daniel Benson, of Becket Law.

In the first session, Muñoz summarized his recent book, *Religious Liberty and the American Founding: Natural Rights and the Original Meanings of the First Amendment Religion Clauses*.

Muñoz referenced the 1879 U.S. Supreme Court case, *Reynolds v. United States*, which he described as "the first major case in the free exercise of religion, but the word *religion* is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning," he said.

The purposes of his research for the book, Muñoz explained, are to "uncover what we can and cannot determine about the original meaning of the First Amendment's Religion clauses, to document and explain the Founders' understanding of religious liberty as an inalienable natural right, to construct a natural-rights jurisprudence for the First Amendment's religion clauses, and see how the approach could adjudicate First Amendment church-state issues."

"When the Founders talked about religious liberty, they said it was a natural right," added Muñoz. "Natural rights are those you have on account of your human nature. They are not endowed and created by the government, so the purpose of government is to secure our natural rights."

Dr. Anthony Peacock, director of the Center for the Study of American Constitutionalism at Utah State, offered a critique of Muñoz's work.

"It is a fine and provocative book, but I find it problematic to advocate that natural-rights clauses apply only to freedom of religion and not to the other clauses of the First Amendment," he said.

"The First amendment was very categorical that 'Congress shall make no law,' Peacock continued, "but that also applies to free speech and free press. We have lots of qualifications for those, such as obscenity and libel. Why can't that apply to the religion clauses as well?"

Ralph Hancock, professor of political science at Brigham Young University, focused on Muñoz's philosophical approach to the subject of his book.

The natural-rights philosophy is a prominent and impressive feature of the Founders' argument, but it is not the *only* feature," he observed. "Why would we choose the Founders' theory over their practice?"

Hancock suggested that natural rights depend upon a political community that shares some substance—moral or religious—that cannot be derived from pure natural rights.

"Madison reminds us in *The Federalist Papers* of the practical need a constitutional order has for the veneration that time bestows for a kind of authority that cannot be derived from the sheer logic of individual dominion," he said. "The pure and absolute natural right of individuals cannot be the whole truth. Every true political philosophy involves some view of the whole, which is irrepressible."

Muñoz, in his rebuttal, thanked Peacock and Hancock for their thoughtful reviews of his work and clarified his goals for the book. "My aim is not to defend the Founders; rather, if we are going to go back to the Founders, we should at least get them right."

"You have to go beyond the Constitution to something [else] to actually interpret the text of the Constitution. So the question is, where do we go?" Muñoz asked. "My answer is that we should go to the natural-rights philosophy that was clearly the animating spirit behind the Constitution."

"Natural-rights philosophy is about what the government can't do to you," he concluded. "It's a way to let us govern ourselves, and in governing ourselves we learn of our mutual dependence and need for one another."

In Session 2 of the conference, Leslie Griffin and Daniel Benson analyzed the 2022 U.S. Supreme decision in *Kennedy v. Bremerton School District*, where high-school football coach Joseph Kennedy was fired in 2015 by Bremerton (Wash.) School District for violating district policy by leading postgame prayers at the 50-yard line with his players.

In June 2022, the U.S. Supreme Court reversed a lower-court decision and found that the school district incorrectly terminated Kennedy by violating his rights under the free-speech and free-exercise clauses under the First Amendment of the Constitution.

In her analysis of the case, Griffin agreed with the dissenting minority opinion of Justices Sotomayor, Kagan, and Breyer, citing the 1962 *Engel v. Vitale* case. "Prayer is a religious activity," she said. "Government has no business with prayer because of the establishment clause," arguing that as an employee of a school district, Kennedy represented the government in leading his players in prayer.

"The First Amendment is supposed to protect individual religion, not government religion," said Griffin. "The establishment clause means the government is not allowed to practice religion. Prayer is the practice of religion, so if the government prays, it takes sides."

Daniel Benson, legal counsel for Becket Law, which specializes in religious-liberty cases, observed that there is much that the majority and the dissent agreed on in this case and went on to list several examples.

The basis for the majority opinion in *Kennedy v. Bremerton*, said Benson, was that "religious expression is not something dangerous or shameful that we must protect people from being exposed to. Your expression of your view doesn't threaten mine."

"Seeing someone else express their religious faith does not force me to join them," he continued. "Prohibiting religious expression is dangerous to minority faiths that are less understood and rely on external symbols to practice their faith."

Dr. Jacqueline Rivers, of the Seymour Institute, keynoted the conference in Session 3 and spoke on the theme of "Justice and Race: Enacting Religious Freedom."

"I'm going to offer a different take on religious freedom," said Rivers, citing her own experience as a member of the Black community and a Christian believer living in the eastern United States.

Rivers shared historical examples of Harriet Tubman, Sojourner Truth, and Robert Allen, who experienced significant racism in their efforts to help slaves escape, abolish slavery, and establish a Methodist congregation in the North, respectively.

Each of these individuals were "enacting" their religious freedom, which to Rivers meant they were simply "acting on deeply held religious beliefs, assuming the freedom to do so."

Rivers called on those in the faith community to defend religious freedom and "to advance it in the culture by standing up for their commitments even when they are unpopular and to recognize that religious commitments consist of justice and service to the poor."

And Rivers was encouraged by several examples from today, where thousands march against racism, businesses and companies observed Juneteenth (which commemorates the emancipation of enslaved African Americans) even before it was made a federal holiday in 2021, and that our country is embracing Black culture and building support for racial justice.

To contextualize her passion for advocating for racial justice within her faith identity, Rivers quoted Luke 4:18, her husband's favorite passage in the Bible:

"The Spirit of the Lord is upon me, because he hath anointed me to preach the gospel to the poor; he hath sent me to heal the brokenhearted, to preach deliverance to the captives, and recovering of sight to the blind, to set at liberty them that are bruised."

Rivers concluded with this plea, in response to a question from a student in attendance, who asked what she and her peers could do to help defend religious freedom nationwide: "We could do more to be identified in the public eye as standing up for justice and fighting for the poor, then people would be more able to see the value of our religious commitments."

## Schedule

### 10:00 a.m. – Session 1: The Founding and Religion: Phillip Muñoz, Author of *Religious Liberty and the American Founding*, Meets Critics Panel

- Moderator: Matthew Brogdon (Miller Family Foundation Senior Director, UVU Center for Constitutional Studies)
- Panelist 1 (author): Phillip Muñoz (Notre Dame)
- Panelist 2 (critic): Tony Peacock (Utah State University)
- Panelist 3 (critic): Ralph Hancock (Brigham Young University)
- Phillip Muñoz Responds to critics
- Q & A from students/audience

### 11:30 a.m. – Lunch Break

### 1:00 p.m. – Session 2: Discussion of Religious Liberty at the Supreme Court: *Kennedy v. Bremerton School District*

- Moderator: Rick Griffin (Wood Distinguished Professor of Law and Constitutional Studies Utah Valley University)
- Discussant 1: Daniel Benson (Counsel - Becket Law)
- Discussant 2: Leslie C. Griffin (UNLV - Law)
- Q & A

### 2:30 p.m. – Session 3: Keynote, Justice and Race: Enacting Religious Freedom

- Dr. Jacqueline Rivers (Executive Director, Seymour Institute)

Posted by Kari Dennis on February 23, 2023.

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