Religious Discrimination in the Workplace:
An Epidemic in Need of a Legislative Cure

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Introduction
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- A flight attendant who had been with an airline for 12 years was terminated after reading her Bible during her spare time and talking about her religious beliefs.

- An employee of the State of California Department of Education was reprimanded for discussing religion with his co-workers and for keeping religious pamphlets in his work cubicle. His employer told him not to discuss religion in the workplace.

- An AT&T employee was told by his employer to sign a document concerning the gay lifestyle, which the employee felt contravened the Bible—or be fired. The employee refused and was terminated.

These are just a few examples of the numerous instances involving discrimination against religious employees in the workplace. Indeed, for years Christians and Jews, among others, have filed complaints with the U.S. Equal Employment Opportunity Commission (EEOC) about being forced to work on their day of Sabbath, some of which have generated lawsuits. And with the increasing involvement of Muslims, Sikhs and other religions in the workforce, complaints concerning the wearing of turbans, beards and hijabs have caused complaints and controversy. Indeed, worker reports of religious discrimination to the EEOC have jumped more than 20 percent in the last several years—driven primarily by claims of retaliation against Muslims.

The increase reflects the changing face of America and the growing interjection of religion into the workplace, which is obviously creating new challenges for employers. The change is due in part to the nation's increasing religious diversity and the fact that employees who take their religion seriously are willing to resist attempts to stifle it. Indeed, there are changing expectations by workers who are openly bringing a religious identity to the job.

Federal law requires an employer to make reasonable accommodation for a worker's religious needs, unless it imposes an undue hardship on the company. Most cases that end up in court involve disputes over what constitutes an undue hardship—a barrier that has proven difficult for religious employees to hurdle. In fact, the courts have interpreted federal law so narrowly as to impose little constraints on an employer's ability to refuse accommodation for an employee's religious practices.

Proposed legislation that is co-sponsored by Senators John Kerry (D-Mass.) and Rick Santorum (R-Pa.) would go a long way toward remedying the discrimination faced by religious employees. In a recent speech to the Anti-Defamation League, Kerry told his Jewish audience that he co-sponsored the Workplace Religious Freedom Act (WRFA) after hearing about a company that fired two Christians who had arranged for other workers to take their place on Christmas Day. Backed by the Interfaith Alliance, which consists of more than 40 diverse religious organizations, the WRFA changes federal law in several important ways.

First, the WRFA addresses the judicial interpretation that regards as an "undue hardship" anything more than a small cost or difficulty to the employer. WRFA defines undue hardship as "an action requiring 'significant difficulty or expense'" and requires that, in order to be considered an undue hardship, the cost of accommodation must be quantified and considered in relation to the size of the employer.

Second, the WRFA requires that in order to qualify for reasonable accommodation, an arrangement must actually remove the conflict. For example, a neutral rotating shift arrangement or an "attempt to accommodate" that fails to provide an actual reconciliation or workplace rule with religious practice is not viewed as a reasonable accommodation.

The religious diversity of the United States is continually increasing. Therefore, it is past time that our laws reflect this change and ensure that our religious citizens are treated fairly. As such, the WRFA creates a meaningful requirement of reasonable accommodation which ensures that all members of society, whatever their religious beliefs and practices, are protected from a form of discrimination that counters our basic belief in religious liberty.

As Senator Kerry said when he proposed the new law in April 2003: "Over the last year and a half, we've been reminded that America is the most free, the most tolerant, and to the chagrin of terrorists, the most religious nation on the face of this planet. With all we know and love about our country, it should be clear in our laws that no worker should ever have to choose between keeping a job and keeping faith with their cherished religious beliefs. This legislation asks only that employers make reasonable accommodations for an employee's religious observance—and that we protect the best of America's spiritual life even as we leave employers the flexibility they need to run their businesses."

The Workplace Religious Freedom Act:
Restoring Protection for Religious Employees

A person's religion cannot be turned on and off like a light switch. Nor is religion like a raincoat that can be taken off as soon as someone enters his or her place of work. Recognizing this fact, many employers respect their employees' religious beliefs by adjusting work expectations. Unfortunately, not all employers are willing to accommodate an employee's religious beliefs. As amended by the Equal Employment Opportunity Act of 1972, Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees on the basis of religion.[1] Employers must "reasonably accommodate" their employees unless such accommodation will cause an "undue hardship" to the employer.[2] Unfortunately, Congress provided little guidance to courts faced with interpreting this language, and court decisions have substantially weakened the religious accommodation provisions of Title VII. The proposed Workplace Religious Freedom Act would restore much of the original force of Title VII's protections for religious employees.

In 1977, the Supreme Court dealt one of the harshest blows to the religious accommodation provisions of Title VII in *Transworld Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977). In *Hardison*, the Court declared that to force a corporation to bear anything more than a *de minimis* cost in order to accommodate a religious employee would be an "undue hardship."[3] Even the most minor burdens—financial or otherwise—on an employer were sufficient to permit the employer to avoid Title VII liability. Thus, the Court strengthened the hand of employers who refused to accommodate their employees' religious beliefs.

Nine years after *Hardison*, the Supreme Court continued to weaken the power of Title VII to protect employees on the basis of religion. In *Ansonia Board of Education v. Philbrook*, 479 U.S. 60 (1986), the Court held that once an employer makes a "reasonable accommodation" inquiry into the case, it ends.[4] In other words, an employer need not choose any particular accommodation, even if the chosen accommodation is unsatisfactory to the employee and the employee's preferred accommodation would place no more burden on the employer.[5]

The "Workplace Religious Freedom Act," bipartisan legislation that has been introduced into the Senate by Senators John Kerry (D–Mass.) and Rick Santorum (R–Pa.), would restore Title VII's protections to those for whom Congress initially intended it.[6] The primary effect of WRFA would be to redefine "undue hardship" as "significant difficulty or expense." It would sensibly take into account factors such as the quantitative cost of the accommodation, the size of the employer, and the overall financial resources of the employer. This definition would restrict an employer's defense of "undue hardship," forcing employers to accommodate employees more fully and more often. In fact, *Hardison* itself might have turned out differently had the Court not read this *de minimis* standard into "undue hardship." The actual financial loss that TWA would have suffered by exempting Mr. Hardison from Saturday work (his Sabbath day) was only $150 for the three months before he could be transferred to a position where he did not have to work on Saturdays.[7] While this amount, coupled with the concerns over other employees' rights, might

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1 42 U.S.C. § 2000e-2 (2004).
2 § 2000e(j)
3 432 U.S. at 84.
4 479 U.S. at 68.
5 Id.
6 S. 893, 108th Cong., 1st Sess. (2003).
7 Hardison at 92 n.6 (Marshall, J., dissenting)

be more than a *de minimis* hardship, it probably does not amount to the level of "significant difficulty or expense."

WRFA would also prohibit employers from imposing as essential functions restrictions on clothing, taking time off, or other practices that have only a "temporary or tangential" effect on an employee's ability to perform job functions and that restrict religious duties. Some courts have ruled against employers who refused to accommodate employees' wearing of clothing that is mandated by their religion (i.e., a yarmulke). In response to these decisions, some employers have included clothing restrictions in an employee's job description. WRFA would serve to buttress these types of religious accommodation claims by preventing an employer from declaring such requirements essential job functions and thereby claiming that accommodating the employee would result in an "undue hardship."

A third and final change that WRFA would impose on Title VII involves the definition of "reasonable accommodation." For an accommodation to be considered reasonable, thus discharging the employer's duty, the WRFA would require that it "remove the conflict" existing between the employee's religious practice and the employer's requirements. This change would not affect the holding in *Ansonia* that, once the employer made a "reasonable accommodation," his duty ends. Nor would it provide a court with a broad grant of power to find the most beneficial resolution for the employee. However, it would change the analysis of what is reasonable on the part of the employer by ascertaining whether the conflict truly has been ended. Policies that only temporarily stay or mitigate the dispute but do not fully resolve it, such as rotating shift arrangements, would no longer be considered "reasonable accommodations" since the conflict would not have been removed.

Religious employees should not be required to check their faith at their employer's door. Title VII's religious accommodation provisions once protected religious employees, but three decades of case law have eroded those protections. By passing the WRFA, Congress would once again truly prohibit religious discrimination in the workplace.

A 10-Year Overview of Religious Discrimination in the Workplace (1993-2003)

Following is a sampling of the numerous cases handled by The Rutherford Institute.

1993

Hospital Worker Fired for Religious Breakroom Discussions. Hospital employee Terence P. Silo was fired for sharing his faith during his lunch hour. Silo had been ordered by officials at Mercy Medical in Fair Oaks, Calif., not to have religious discussions with other employees or patients unless it was with a willing participant in the employees' break room. In April 1993, an employee complained that she felt harassed after Silo approached her as she was standing in front of the hospital. Officials fired Silo on April 30, 1993, but he was initially granted unemployment benefits. However, Mercy Medical challenged his receipt of unemployment benefits on the grounds that he had been terminated for misconduct due to his religious activities. A California Employment Development Department administrative law judge in Sacramento ruled that Silo could receive unemployment benefits, stating that "[Silo's] conduct constituted at most an error in judgment but does not establish that [he] in a willful or wanton manner breached a substantial duty owed to the employer."

Pastor Fired from Government Post for Expressing Religious Views. Eugene Lumpkin, pastor of Ebenezer Baptist Church in San Francisco, was fired from his paid position of Commissioner on the Human Rights Commission after responding to questions about his religious beliefs during a television interview on August 20, 1993. San Francisco Mayor Frank Jordan subsequently fired Lumpkin on the basis of his expression of his religious convictions, specifically his religious beliefs about homosexuality. The complaint filed on Lumpkin's behalf in San Francisco County Superior Court asked that Lumpkin be reinstated to his former position as Commissioner and that Jordan be enjoined from engaging in unlawful discriminatory policies and practices. The case reached the Ninth Circuit Court of Appeals, which ruled against Lumpkin. The court stated that "the First Amendment does not assure [Lumpkin] job security when he preaches homophobia while serving as a city official charged with the responsibility of 'eliminating prejudice and discrimination.'"

1994

Woman Fired for Refusing to Plan Halloween Activities. Sheila Naghshpour of Pass Christian, Miss., was fired from her position at a nursing home after expressing religious objections to planning Halloween activities at the facility. The controversy began in October 1993 when authorities at the Woodland Village Nursing Center asked Naghshpour to plan Halloween activities. Naghshpour told the nursing home that she would plan activities based on some other theme but that hanging up pictures of witches and spirits was against her religious beliefs. Naghshpour was then fired and initially denied unemployment benefits because the state said she was fired for failing to do her job. The Rutherford Institute assisted Naghshpour in filing an appeal with the Mississippi Employment Security Commission, and in December of 1993, the Commission ruled that she was entitled to the benefits. This decision was appealed at the nursing home's insistence, only to be reaffirmed on January 18, 1994. The appeals period expired, and the decision to award Naghshpour benefits became final.

Virginia Teacher Fired for Discussing Religious Beliefs. A Fairfax County, Va., public school teacher was fired for responding to students' questions about her religious beliefs. The case began in 1987 when Carol Gratchen, a seventh-grade science teacher at Sydney Lanier Intermediate School, answered student-initiated questions concerning her personal beliefs. Although her school district had no written restrictions on employee expression, Gratchen's discussion with her students resulted in her placement on administrative leave in May 1987 and her dismissal one year later. According to the brief filed with the Virginia Supreme Court, Gratchen's principal had created a policy that discriminated solely against Carol Gratchen, prohibiting her from discussing her religious beliefs with students. Later, based upon the principal's recommendation, the Fairfax County School Board broke its contractual agreement with the tenured Gratchen and fired her on grounds of "repeated discussion of religion with students."

Psychologist Loses License for Praying with Patient. A psychologist's license was revoked because he prayed for his patient, a child who had been placed in foster care because his parents, who were Satanists, had allegedly physically and sexually abused him. The foster parents put the child in psychiatric care at the Arizona State Hospital after he became violent and destructive. When the hospital's treatment proved to be unsuccessful, the foster mother took the boy, with permission from the hospital and the Arizona Department of Economic Security, to see Dr. Kenneth Olson. During one session, Dr. Olson prayed for the boy and reportedly saw an immediate impact in the child's disposition, which continued to show progress. In 1992, two ADES employees filed a complaint with the Arizona Board of Psychologist Examiners, alleging that Dr. Olson was unable to separate his work as a psychologist from that of a religious minister, and Dr. Olson's license to practice psychology was revoked by the Board. The Rutherford Institute filed suit against the ABPE and ADES on behalf of Dr. Olson. His suit, however, was ultimately unsuccessful at both the district and appellate court levels.

Hospice Worker Fired for Faith. Debra Kelly, a hospice volunteer coordinator at the Visiting Nurse Association, was fired after she voiced concerns about the appropriateness of a state and federally funded agency distributing to all AIDS patients materials published by ACT UP, a homosexual activist group. Kelly's supervisor informed her that she would never have hired her had she known Kelly was a Christian. With the assistance of Rutherford Institute attorneys, Kelly reached an out-of-court settlement in which the Visiting Nurse Association agreed to award her a monetary sum of $28,000, an amount that exceeded her actual lost wages.

Christian Outreach Ministry's Hiring Practices Challenged. Youth Outreach, a religious organization based in Vancouver, Wash., came under investigation by the Equal Employment Opportunity Commission for its practice of hiring only Christian counselors. In need of a residential counselor, Youth Outreach, a nonprofit that assists troubled youth in the areas of crisis intervention, family counseling, foster care, and residential group care, had placed a help wanted advertisement in the *Portland Oregonian*. After interviewing Natasha Lenhart for the position, Youth Outreach declined to hire her because she said she was not a Christian. Lenhart then filed a discrimination complaint with the EEOC, alleging that the Civil Rights Act of 1964 had been violated. In response, The Rutherford Institute demanded that the EEOC dismiss the complaint because religious organizations are exempt from that discrimination law. The EEOC

in Seattle upheld the right of a religious organization to only hire employees with similar religious beliefs and dismissed Lenhart's complaint.

1995

Grocery Store Cashier Fired for Wearing Pro-Life Button. DeAnn Supple, a cashier at Dave's Shurefine grocery store in Manchester, Iowa, was fired for wearing a pro-life button. The button depicted a 17-week-old unborn child in its mother's womb with the words "Stop Abortion—They're Forgetting Someone." When her employer demanded that she remove the button, Supple refused because she had made a religious vow to wear the button in support of the sanctity of human life. A month later, Supple was denied unemployment benefits by a Job Service of Iowa representative. The Rutherford Institute requested a hearing, at which Iowa's Administrative Law Judge Thomas Rowe denied Supple unemployment benefits, labeling her action as "misconduct." However, on appeal, the Iowa Employment Appeal Board ruled that DeAnn Supple could receive unemployment benefits.

Religious Employer Punished for Inviting Employee to Church. Religious employer James Meltebeke faced charges of religious harassment after inviting an employee with poor work performance to church and pointing out the employee's sinful conduct. The employee, who was eventually fired, filed a complaint with the Bureau of Labor and Industries (BOLI), claiming religious harassment. BOLI found that Meltebeke's conduct created an "intimidating, hostile, or offensive working environment" and ruled that he owed the employee $3,000 in compensatory damages, plus interest. But the Oregon Supreme Court held that BOLI's rule concerning harassment on the basis of religion was unconstitutional. In its ruling, the court stated that the Oregon Constitution is "remarkable in the inclusiveness and adamancy with which rights of conscience are to be protected from governmental interference."

1996

Postal Worked Fired for Refusing to Work on Sabbath. Postal worker Gordon Bailey had worked as a flat-sorter machine operator with the U. S. Postal Service for six years until his employment was terminated, effective January 16, 1995. During that time, his religious beliefs prevented him from performing secular work on the Sabbath. The U.S.P.S eventually fired Bailey because of his absences, all of which occurred on the Sabbath. The Administrator of the Ohio Bureau of Unemployment Services initially granted Bailey unemployment benefits, finding that his absences and subsequent discharge were due to his religious beliefs. But Board of Review Hearing Officer Dana McCue overturned this decision, holding that the U.S.P.S. had "just cause" to discharge Bailey. The Rutherford Institute filed suit in federal district court against the Ohio Unemployment Compensation Board of Review on behalf of Bailey.

Blockbuster Employee Fired for Wearing Cross. A religious employee was fired by Blockbuster Video for refusing to cut his hair and beard and hide his cross necklace under his shirt. When Gerald Vislocky, a lay novice in the Greek Orthodox Monastery, began working at Blockbuster Video in 1993, he informed the store that his religious beliefs required him to grow his hair and beard long and wear a cross symbolizing his devotion to Jesus Christ. The store assured him that this would be acceptable. But in August 1994, the store demanded that he cut

his hair and beard and hide his cross under his shirt. When Vislocky refused, he was fired. Vislocky filed a complaint with the Equal Employment Opportunity Commission and was issued a "right to sue" letter. The Rutherford Institute then filed suit against Blockbuster on behalf of Vislocky. A jury ruled against Blockbuster Video, finding the video chain guilty of religious discrimination.

Nurse Fired for Bible Pointing. Lindiwe Hall, a nurse at Rolling Hills Hospital, was fired after patients in her care complained that she was preaching to them and would raise her Bible whenever she passed them. Hall worked with patients who were in the custody of the Oklahoma Department of Human Services and who a judge had determined were "in need of treatment." Some of these patients were self-described "Satanists" and would often taunt Hall, saying, "Satan loves you, Lindi." Hall often carried a Bible to provide spiritual assistance to those who requested it. Rolling Hills Hospital policy states that nurses are to provide holistic care, addressing both the physical and spiritual needs of their patients. The Rutherford Institute filed suit in federal district court on behalf of Hall.

State Employee Threatened with Suspension for Religious Screen Display. State employee Monte Tucker was threatened with suspension for placing "By Monte Tucker, SOTLJC" in a computer screen program he designed. The acronym stands for "Servant of the Lord Jesus Christ." Tucker's supervisor threatened him with suspension if he refused to remove the acronym. The department then issued a policy forbidding religious advocacy during work hours and storage or display of any religious artifacts except in closed offices. The Ninth Circuit Court of Appeals ruled that a California state agency's policy against religious advocacy and display of religious artifacts was unconstitutional.

Seattle City Employee Fired After Requesting Union Dues Go to Religious Charity. A city employee and union member was fired after a dispute over the allocation of his union dues. After being hired as a building inspector 13 years earlier, Ralph Bresee was forced to join the union to keep his job. However, Bresee, who had religious objections to his union membership, had attempted through the years to have his dues allocated to a charity of his choice. The union continually objected to Bresee's charity choice because of its religious nature. The Rutherford Institute filed a complaint against Public Employees' Relations Commission, Pacific Northwest Division of Carpenters on behalf of Bresee, who ultimately settled the case against the union and the county.

Employee Threatened with Disciplinary Action for Nativity Display and Christmas Music. Patricia Coons displayed a nativity scene on her desk in 1994 and again in 1995. In 1995, her supervisor told her to remove it and threatened disciplinary action. In October 1996, in anticipation of the upcoming Christmas season, Coons requested legal assistance from The Rutherford Institute. The Institute sent a letter advising the county of Coons' rights. Coons found out soon after that the department effectively amended its policy to allow her to display a nativity scene and play Christmas music.

Kentucky School Bus Drivers Prohibited from Saying "Merry Christmas." Kentucky's Fayette County newsletter for bus drivers, "The Yellow Sheet," stated, "The Board Attorney has advised that any greeting directed toward students which includes a particular religious

significance should be avoided.... The word 'Christmas' is, albeit loosely, associated with the Christian religion." After public outcry over the advisory, school officials claimed that it was not binding as an "edict." The wording of the advisory, however, strongly implied that bus drivers could face disciplinary action for noncompliance. Rutherford Institute affiliate attorneys contacted the school board attorney's office to ensure that the advisory would be dropped. Officials backed down and, through a letter to the newspaper and a memo to Fayette County school district employees, made it clear that no bus driver would be punished for using the greeting "Merry Christmas."

1997

Employee Fired for Refusing to Work on Sunday. Robert Cardenas, an ordained Southern Baptist minister and an employee of 11 years standing, had an arrangement with the Oklahoma City-based branch of Brinks, which allowed him not to work on Sunday for religious reasons. Cardenas stipulated his refusal to work on Sundays before being hired in May 1983. At the time, Brinks did not require Sunday work from any of its employees. When company policy changed in 1993, Cardenas was exempted from Sunday work. But upon returning from disability leave in September 1994, Brinks refused to honor the agreement and fired him. Upon termination from Brinks, Cardenas filed for unemployment compensation. He lost, but won on appeal. The Rutherford Institute helped Cardenas in his suit, claiming reinstatement and compensatory and punitive damages.

College Professor Fired for Religious Involvement in Campus Group. Jerrold Warner received glowing annual reviews until he became involved with the Christian Student Union. After Warner posted announcements for a video entitled "America in Peril" which was to be shown at a CSU club meeting, his department chair grew hostile. Marshall Olp, chairperson for the Division of Social Sciences and Fine Arts, demanded that Warner remove the posters. Olp also refused to allow Warner to host CSU meetings in his classroom without prior permission from the vice-president's office—even though other faculty routinely hosted club meetings in their classrooms without prior permission. In March 1995, Warner received notice that his contract would not be renewed. In December 1996, the EEOC gave Warner a "right to sue" letter. The Rutherford Institute filed suit against Arizona Western College after the school did not renew the contract of Jerrold Warner.

Housekeeper Terminated for Refusing to Work Sundays. On August 23, 1993, housekeeper Wilma Prins was fired because she refused to work on Sundays, her Sabbath day. When Prins was challenged by her employer about her stance on Sabbath day work, she replied, "This kid will not work on Sunday." Sunset Manor refused to offer Prins accommodation without requiring her to quit or rely on the availability of an on-call employee. The Rutherford Institute asked a jury to find, and the court ultimately to hold, that the nursing home violated federal law by failing to accommodate Prins' Sabbath day requirements

1998

Teacher Fired for Reference to Religion. In September 1994, public school teacher Thomas Marchi was issued a directive ordering him to cease from using "any references to religion in the

delivery of [his] instructional program" unless it was approved or required by the course. Later, Marchi wrote a letter to a friend and parent of a student that contained the phrases "thank the Lord" and "God bless you." Marchi was reported to his supervisor, who warned him that references to God in letters to parents were part of the instructional program thus forbidden under the directive. Marchi was warned that he would be fired if the behavior continued. Marchi filed a civil rights complaint in federal district court against the school, alleging that the directive was vague and overbroad and that it violated his First Amendment rights. The district court judge threw the case out before trial, even though school officials testified in depositions that they interpreted the directive to mean that Marchi was forbidden to talk to students about religion, even after school, off school grounds.

1999

BellSouth Employee Suspended for Attending Sunday School. William Shannon began working for BellSouth in 1973 and never had difficulty getting time off to attend church on Sundays. But in January 1997, Shannon's new supervisor gave him a two-week suspension for alleged misuse of company time while attending Sunday School. Distraught and confused over the change of policy and suspension, Shannon suffered severe medical problems and was hospitalized. Shannon's doctor mandated that he lighten his workload, but BellSouth refused to accommodate. Shannon and his attorneys argued that BellSouth's actions violated Title VII and the Americans with Disabilities Act. The Rutherford Institute filed suit in a Florida district court on behalf of Shannon. The court found for BellSouth on the religious discrimination claim but found for Shannon on a retaliation claim and awarded him damages. The Eleventh Circuit upheld the district court's decision.

Pro-Life Postman Fired for Presence Outside Abortion Clinic. During a lunch break in May 1998, John Tuttle noticed a friend handing out pro-life literature outside an abortion clinic. Tuttle stopped his vehicle, stepped out, and spoke to his friend for approximately ten minutes. He then proceeded to McDonald's for lunch and returned to his postal route after being gone for no more than twenty minutes total. Soon afterwards, the post office received a call concerning Tuttle's presence at the clinic. Tuttle was immediately terminated for "deviation from the assigned route," even though the employee manual does not state that mail carriers may not leave their route for lunch. The Rutherford Institute helped Tuttle file a complaint with the Postal Service's Employment Commission. After reviewing the file, the Commission scheduled a meeting for late December between Tuttle and his former supervisor to try to reach a compromise. After the meeting, Tuttle was offered his position back with the same salary.

Security Guard Fired for Requesting Sundays Off to Pastor Church. Before accepting a job in the security division of the Atlanta airport, Cyril Daniel informed the airport administration that he could not work on Sundays because he pastored a church. The administration initially agreed to accommodate Daniel. However, shortly after he began work, Daniel's supervisor advised him that the airport could no longer accommodate him and he would have to work every Sunday. Daniel filed a religious discrimination claim with the Equal Employment Opportunity Commission and contacted The Rutherford Institute for assistance. Institute attorneys filed a lawsuit on Daniel's behalf, alleging that Atlanta International had violated Title VII of the Civil Rights Act by requiring Daniel to work on Sundays. According to Title VII, an employer must

make a "reasonable accommodation" unless it would result in an "undue hardship" on the employer. Rutherford Institute attorneys negotiated a settlement agreement on behalf of Daniel.

Delaware State Police Dept. Admits to Religious Discrimination. Rutherford Institute attorneys filed a civil rights lawsuit on behalf of a police recruit, challenging the legality of certain questions contained in the Minnesota Multi-Phasic Personality Inventory-I psychological screening test (MMPI). The test asked police recruits if they read the Bible, went to church, believed in the second coming of Jesus Christ, or in the teaching of the prophets. Recruit Hawkins stated that he did and was denied a chance to become a trooper because his score on the screening exam determined that he had strong religious beliefs. The U. S. District Court entered a judgment against the Delaware State Police Department because of its discriminatory hiring practices against individuals who stated a belief in religion. The Police Department agreed to change its hiring practices and pay $50,000 to Hawkins.

High School Teacher Fired for Taking Religious Stand. For safety and security reasons, Randolph County Schools initiated a mandatory ID badge policy in November 1998 for students and teachers. Mr. Hudok, because of his sincerely held religious beliefs against "the numbering of God's people" and the wearing of the "mark of the Beast," requested an exemption from having a bar code on his ID tag and from having to compel his students to wear their ID tags in his classroom. The school refused to accommodate Hudok's conviction that he could not force students to wear the tag. Hudok was subsequently fired for insubordination and willful neglect of duty. A Rutherford attorney filed a grievance, and the West Virginia Education and State Employees Grievance Board ruled that the Randolph County Board of Education violated the rights of the high school physics teacher. Hudok was given full back pay and benefits, plus interest, and his suspension and termination were expunged from personnel records.

Christian Probation Officer Fired for Religious Counseling. Ronald J. Asselin began working for Santa Clara County as a probation officer in 1985. Over the next ten years of his employment, he received good performance evaluations, promotions, and raises. In 1996, Asselin had a religious discussion with a juvenile ward while transporting him to one of the County's juvenile ranches. About two months later, the County fired Asselin for violating the County's policy against imposing beliefs or providing religious counseling to minors. After the County rejected Asselin's claim for damages, he filed suit in federal district court. However, the court upheld the County's actions as constitutional and dismissed Asselin's case. Asselin appealed to the Ninth Circuit. The court issued an unpublished decision in favor of Asselin, holding that he was entitled to proceed to trial on his claim of wrongful discharge on the basis of religious discrimination.

School Teacher Fired For Praying with Students After Tragic Accident. Mildred Rosario was employed as a teacher in the South Bronx during the 1997-98 school year, when an emotionally distraught student questioned Rosario about where a classmate was who had died in a drowning accident. Stating that the student was "in heaven," Rosario's comment caused a flood of questions from other students in the class about heaven and God. Rosario provided students who were not interested in discussing spirituality an opportunity to do other activities. She then answered her students' questions and prayed with those who asked "that God would protect them and their families." Rosario was subsequently interrogated about the incident by school officials

and stripped of her job and her license by the New York City Board of Education. Rutherford Institute attorneys filed suit. A district court ultimately rejected Rosario's claim, saying that there was not sufficient evidence connecting the firing to any discrimination.

Maryland Trucking Company Refuses to Accommodate Employee's Sabbath Observance. Edward Pipkin asked The Rutherford Institute for assistance after he was forced to quit his job because of his refusal to compromise his Sabbath observance. Despite assurances from D.M. Bowman at his job interview and afterward that his religious beliefs would be accommodated, Pipkin was nonetheless scheduled for Sunday hours. Pipkin also faced abusive verbal retaliation by his employer for his insistence on abiding by his beliefs. In their complaint, attorneys for The Rutherford Institute asked the court for economic damages to compensate for back pay and lost benefits, as well as damages for emotional pain and anguish caused by the hostile environment at D.M. Bowman, Inc. Pipkin's efforts at trial were ultimately unsuccessful.

2000

School Teacher Denied First Amendment Rights. In December 2000, Michelle Frilot repeatedly replaced a laminated icon of the Virgin Mary and Jesus Christ that she kept on her desk as an expression of her faith after a fellow teacher persisted in taking the icon off of Frilot's desk. Frilot met with school administrators, who treated her in a threatening manner, informing her that her actions in displaying the religious material were inappropriate for a school setting. In February, Frilot resigned due to the mental and emotional stress that threatening remarks and the increasingly hostile work environment had caused her. Attorneys for The Rutherford Institute filed suit, charging school officials with religious discrimination under Title VII of the Civil Rights Act of 1964. A district court threw Frilot's case out, and she decided to drop the appeal of the case.

2001

Police Officer Fired for Wearing Small Cross on Uniform. The U.S. Supreme Court declined to hear the case of Sgt. George Daniels, a decorated former police officer in the Arlington, Texas Police Department. Daniels was fired in 1998 for wearing a small cross pin on his uniform. Institute attorneys were attempting to challenge a decision by the Fifth Circuit Court of Appeals that upheld a federal trial court's decision to dismiss Daniels' claim of religious discrimination. Institute attorneys argued that Daniels' firing was a violation of his rights of free speech and freedom of accommodation. But the Fifth Circuit found that the department's decision had not violated Daniels' constitutional rights. The Department argued that the cross might offend someone and also stressed a desire for its officers to remain neutral with regard to religious expression on the job.

Lab Worker Fired for Religious Discussion with Co-Worker. Kenneth Weiss, a former employee of REN Laboratories of Florida, Inc., was fired after having a religious discussion with a co-worker. An appeals court decision overturned the $129,000 jury verdict for Weiss for wrongful termination based on religious discrimination. The appeals court cited several instances of what it regarded as "inappropriate" workplace behavior by Weiss, including offering a Bible to a Muslim co-worker and praying for another co-worker who was sick. Rutherford attorneys

had asked the U.S. Supreme Court to review the case to clarify where protected religious expression leaves off and prohibited religious harassment of co-workers begins.

Woman Denied Employment Due to Religious Beliefs. Bobbie Grant, a prospective employee of Joe Myers Toyota, Inc., was denied employment with the Houston car dealership when she was dismissed from a sales training class for refusing to participate in exercises that violated her religious beliefs. During a mandatory two-week sales training course, Grant faced an instructor openly hostile to Christianity. In addition, Grant was required to read material that conflicted strongly with her religious beliefs. A Texas appeals court reversed an unfavorable decision by a lower state court and said that the instructor's actions violated Grant's right to have her sincere religious beliefs accommodated by her prospective employer. The case was sent back to the lower court for trial but was settled immediately before the trial began.

2002

New Jersey State Corrections Worker Denied Basic First Amendment Freedoms. On February 17, 1999, Peter Lightfoot was hired by the New Jersey Department of Corrections as a "needle trade instructor" to train inmates to sew at the South Woods facility. Lightfoot was criticized for "proselytizing" to inmates when they asked him spiritual questions and reprimanded by his supervisor for using biblical terms in his normal manner of speech. On August 31, 1999, his employment with the Department of Corrections was terminated. Institute attorneys filed a complaint in New Jersey Federal Court, alleging that the state had violated Lightfoot's rights to free exercise and free speech and was guilty of religious discrimination under federal and state codes. A court granted summary judgment in favor of the New Jersey Department of Corrections, and Rutherford attorneys appealed to the Third Circuit, which also ultimately sided with the Department of Corrections.

Evangelical Chaplains File Suit Against U.S. Navy for Discrimination in Hiring. Four military veterans who had completed their religious instruction and were sponsored by their respective religious denominations, applied for commissions with the Navy, and were turned down for a variety of reasons. Among the justifications offered by Navy hiring personnel was that the Navy has "no quota" for the ministers' particular religious denomination, that their denomination didn't fit "the needs of the Navy," and that the Navy had filled its quota for age waivers. They filed suit alleging that the Navy violated their First and Fifth Amendment rights, maintained an unconstitutional religious quota system, violated the Religious Freedom Restoration Act, and fraudulently concealed evidence of the violations against the ministers. The suit charges that this culture of prejudice is manifested in the Navy's preference for Roman Catholic and Protestant liturgical clergy, despite the relatively small number of Navy personnel who identify themselves as belonging to those faith groups. This litigation is currently ongoing.

Fighter Pilot Forced to Wear Muslim Garb. Lt. Col. Martha McSally, a decorated commander with the U.S. Air Force, objected to a military policy that forced servicewomen in Saudi Arabia to wear the traditional Muslim *abaya*, a black head-to-toe robe worn in certain Muslim cultures. Wearing the *abaya* is perceived as a sign of subordination to men. McSally, a Christian, argued that dressing in the garb conflicted with her religious beliefs and undermined her authority as a superior officer. Cooperating attorneys for The Rutherford Institute filed suit in an effort to have

the policy declared unconstitutional. On June 24, 2002, Congress stepped in on behalf of McSally and other servicewomen, as the Senate voted 93-0 in favor of an amendment to prohibit the Department of Defense from requiring or even formally urging servicewomen stationed in Saudi Arabia to wear the Muslim *abaya*. This vote followed on the heels of a unanimous vote in the House of Representatives in May 2002.

2003

Indiana State Trooper Fired for Requesting Religious Accommodation. In March 2000, the Indiana State Police gave Benjamin Endres a one-year assignment as a Gaming Commission Agent to the Blue Chip Casino in Michigan City, Indiana. Both before and after receiving the assignment, Endres informed his supervisors of his sincere religious objection to working on the riverboat as an agent of the Gaming Commission. The State Police Department made no effort to accommodate Endres and fired him for insubordination after an administrative hearing. The Seventh Circuit Court of Appeals affirmed the dismissal and ruled that a police officer has no right to request accommodation of religious beliefs that conflict with a general order, even if the accommodation would place no burden on the employer. Attorneys for The Rutherford Institute asked the U.S. Supreme Court to hear the case, but the high court declined.

Honor Guardsman Fired for Saying "God Bless America" at Graveside Military Funerals. As part of a settlement with Patrick Cubbage, a Vietnam combat veteran who was fired from his job as an honor guardsman at a Veterans Memorial Cemetery for adhering to military tradition and protocol by saying the "Flag Blessing," the New Jersey Department of Military and Veterans' Affairs (DMAVA) had agreed to revise its operations manual to respect the religious preferences of veterans' family members by allowing an Honor Guardsman to say "God bless you and this family, and God bless the United States of America" as part of the formal color guard flag ceremony for deceased veterans. SSgt. Cubbage was ordered in mid-October 2002 to stop giving the blessing because his supervisor believed it might "offend" other guardsmen and members of the public and was fired after his refusal to comply. Cubbage was reinstated to his position on August 11, 2003, with back pay. Despite repeated assurances that the cemetery would provide the Flag Blessing, however, the DMAVA has continued to refuse to do so. The Rutherford Institute asked President Bush to intervene in the situation, to no avail.

2004

Maintenance Worker Prohibited from Posting Religious Literature. Kelly Jenkins, a maintenance worker for the City of Honolulu, was prohibited from placing religious literature in common areas at work and on an employee bulletin board. Following a complaint filed by Institute attorneys on behalf of Jenkins, Honolulu officials apologized for any violation that might have occurred and agreed to issue guidance on the City's and County's responsibility to provide reasonable accommodation for religious beliefs and practices in the workplace. Working closely with attorneys for The Rutherford Institute, the City of Honolulu's Department of Human Resources drafted comprehensive new guidelines protecting religious expression in the workplace.

Religious Employee Fired for Refusing to Share Company's Views on Homosexuality. Albert Buonanno, a "Quota Specialist" with AT&T Broadband, started work for AT&T in

January 1999. In January 2001, the company published a new employee handbook, requiring an employee to sign a written acknowledgment that they had received it, as well as a "Certificate of Understanding." The Certificate contained a statement that the employee signing it "agreed with and accepted" all of the terms and provisions of the 84-page handbook, including its policies and rules. However, upon reviewing the 84-page handbook, Buonanno, a Christian with sincerely-held religious beliefs regarding homosexuality, found several things he could not, in good conscience, agree to. Buonanno was informed that AT&T would terminate his employment if he refused to sign the Certificate. Upon his refusal, he was indeed fired. The U.S. District Court for the District of Colorado ruled in favor of Buonanno, awarding him with back pay and lost 401(k) matching contributions arising out of AT&T's refusal to accommodate his religious beliefs.