

# Elder Dallin H. Oaks: “Religious freedom said at risk in U.S.”

*Church News*, May 16, 1992, 7.

WASHINGTON D.C.

Religious freedom in the United States may be diminished if Congress doesn't pass legislation to reverse a recent Supreme Court Decision, said Elder Dallin H. Oaks of the Council of the Twelve.

Elder Oaks defended constitutional freedom of religion in testimony May 13 before the U.S. House Subcommittee on Civil and Constitutional Rights.

Religious persecutions in the past by government have been a “dark chapter in the history of religious freedom in this nation,” he said.

Elder Oaks, an expert on Constitutional law with extensive experience regarding freedom of religion, represented the Church in hearings on a proposed Religious Freedom Restoration Act (H.R. 2797). This legislation would restore freedom of religion that was diminished by a 1990 Supreme Court ruling, “*Employment Division v. Smith*.”

In that decision, the court abandoned the usual restraint, called “compelling government interest,” that legislators have had, said Elder Oaks. Up until 1990, governments had to demonstrate a “compelling interest” before interfering with religious freedom. This restriction “provided an essential protection for the free exercise of religion.”

Those words help restrain powerful government forces from abusing the religious rights of weak minorities, explained Elder Oaks. The proposed legislation would restore the three words.

The legislation is endorsed by a coalition of religion and civil liberties groups, as well as the First Amendment Congress, a group of media organizations including The Associated Press, the National Association of Broadcasters and the American Society of Newspaper Editors.

Elder Oaks, a member of the council of the Twelve for eight years, is a former Utah Supreme Court justice, president of BYU, and law professor at

the University of Chicago, and once served as executive director of the American Bar Foundation.

In his testimony, Elder Oaks recounted historical experiences of the Church with government persecution.

“I know of no other major religious group in America that has endured anything comparable to the officially sanctioned persecution that was imposed upon members of my church by federal, state and local government officials,” he said.

“In the 19th century our members were literally driven from state to state, sometimes by direct government action, and finally expelled from the existing borders of the United States.”

He cited the “exterminating order” of Missouri Gov. Lilburn W. Boggs to the state militia that Mormons must be treated as “enemies and must be exterminated.” The subsequent killing of 17 Mormons at Jacob Haun’s Mill by the Missouri militia led to the driving of 10,000 Mormons from the state.

Persecution of the Church continued with the president of the United States sending Gen. Albert Sidney Johnston’s army to Utah in 1857, and with the confiscation of Church property in 1890.

“Most of these denials of religious freedom received the express approval of the United States Supreme Court,” said Elder Oaks.

Elder Oaks said that the persecution of the Mormons is analogous to the compelled migration to this country of its founding settlers--the Pilgrims, Separatists, Quakers, Catholics, and Puritans.

Yet the conflict remains today between individual rights and government attempts to regulate.

The protection of the compelling interest test is vital, he affirmed. “There is nothing more private or personal than the relationship of an individual to his or her God.”

But by abandoning the “compelling governmental interest” test, the Supreme Court “allows a greatly increased latitude to restrict the free exercise of religion,” said Elder Oaks.

“We feel that the end result will be a serious diminution of the religious freedom guaranteed by the United States Constitution.”

He pointed out that most court cases regarding religious freedom involve practices that appear out of the ordinary to many. This is because legislators are unlikely to interfere with mainstream religions that possess power at the ballot box.

“But political power or impact must not be the measure of which religious practices can be forbidden by law,” he said. “The Bill of rights protects principles, not constituencies.”

He said that when the Supreme Court determines that a right is guaranteed by the Constitution, “it has routinely imposed the compelling governmental interest test to prevent undue official infringement of that right.

“It is nothing short of outrageous that the Supreme Court continues to apply this protection to words that cannot be found within the Constitution, such as the ‘right to privacy,’ and yet has removed this protective standard from application to the express provision in the Constitution’s Bill of Rights that guarantees the free exercise of religion,” he said.

While the Constitution provided that religious freedom was to have a preferred position, it now has an inferior one, he said.

Elder Oaks concluded that the proposed “Religious Freedom Restoration Act” would implement in federal law the principles contained in the Church’s 11th Article of Faith, written in 1842. “We claim the privilege of worshipping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may.”