

## International Consortium for Law and Religion Studies

Call for Papers for the Third ICLARS Conference, "Religion, Democracy, and Equality"

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### Unveiling Freedom: Bans on Teachers' Religious Garb

Before stepping onto the grounds of U.S. public schools, should teachers who identify as Christians bury their cross necklaces inside their shirts? Should educators who practice Islam, Judaism, Hinduism, and Sikhism leave their head coverings at the schoolhouse gate? Different worldviews will result in different responses; however, most can agree that the issue of public school teachers' religious expression derives from the inexorable tension between the free exercise and establishment clauses of the First Amendment. History reveals that this tension is not easily alleviated.

In 1894, the Pennsylvania Supreme Court upheld the rights of a Catholic nun to wear a habit in the public classroom. Specifically, the Court held that the garb-wearing Catholic nuns teaching in public schools did not constitute sectarian teaching unless the nuns explicitly conveyed religious instruction during school hours. In response to this unpopular ruling, the Pennsylvania General Assembly enacted a religious garb statute prohibiting public school teachers from wearing "any dress, mark, emblem or insignia indicating... that such teacher is a member or adherent of any religious order, sect or denomination" and providing criminal penalties for any public school administrator who fails to suspend or terminate the offending teacher after notice of a violation. Fifteen years later, the garb statute was challenged but this time the Pennsylvania Supreme Court upheld the ban. The anti-garb statute was then reenacted in 1949, updated in 1982, and remains in effect today.

By the end of World War II, Pennsylvania was one of thirty-six states to legally ban teachers' religious clothing. From 1906 to 1965, in states where no garb statutes existed at the time, the courts in Connecticut, Indiana, Iowa, Kentucky, North Dakota, and Ohio all permitted Catholic teachers to wear habits, whereas the courts in Nebraska, New Mexico, and New York did not. More recent rulings on teachers' religious garb are equally inconsistent in their application of constitutional law. For instance, in 1986, the Third Circuit and in 1992, the Oregon State Supreme Court upheld the dismissal of Muslim and Sikh teachers for wearing head coverings. However, in 2003, a District Court for Western Pennsylvania overturned the decision to dismiss a teacher's aid for wearing a cross necklace because the aid did not meet the statutory definition of a full-time teacher, therefore, the ban remained in effect. In 2010, the Oregon Legislative Assembly repealed its 87-year-old ban on teachers' religious garb, whereas Arkansas and Tennessee recently enacted statutes that explicitly permit, and some read as *encourage*, teachers to wear religious garb in the public classroom.

To date, Pennsylvania and Nebraska are the last remaining states with legal bans on religious garb. This paper explores whether these bans are consistent with federal and state laws that protect one's free exercise of religion.

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