

# Q & A: Melissa Rogers on religious liberty

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WASHINGTON (ABP) — [Melissa Rogers](#) is a veteran religious-liberty attorney and nationally recognized expert in church-state law. She currently is director of the Center for Religion and Public Affairs at the Wake Forest University School of Divinity. She also serves as [a non-resident senior fellow](#) at the Brookings Institution in Washington, and recently [completed a term](#) as the first chair of President Obama's Advisory Council on Faith-Based and Neighborhood Partnerships. She has served as general counsel of the Baptist Joint Committee for Religious Liberty. In an e-mail interview, she reflects on some major developments in her field over the last decade and where things might go in the decade that just began:



Melissa Rogers

**Q: What have been the most important developments for religious liberty - legally, politically and culturally - in the last decade?**

A:

- More types of government funding flowing to more kinds of religious institutions. (This is courtesy of a continuing trend at the Supreme Court toward interpreting the First Amendment's Establishment Clause in ways that place fewer restrictions on government funding and religious institutions and activities.)
- A trend toward limiting taxpayer standing to challenge certain potential Establishment Clause violations. (The Supreme Court [kicked off this trend](#) by placing more restrictions on the types of challenges that may be brought regarding potential Establishment Clause violations.)
- Continued ability of states and localities to maintain policies that are more restrictive regarding government funding [of] religious institutions and activities than what the First Amendment's Establishment Clause requires, as long as those policies do not violate the federal Constitution (e.g., [Locke v. Davey](#)).
- The debate over the free-exercise rights of American Muslims intensifies.
- The increasing prominence of a group of evangelicals that has a different set of priorities than the so-called "Religious Right." The "Religious Right" movement still exists, and many evangelicals continue to be at least somewhat sympathetic with a number of its positions on church-state issues. But a significant number of evangelicals — many of them young — are prioritizing issues such as care for God's creation, concern for the poor and vulnerable, and nuclear disarmament.
- The growth in the number or prominence of secular organizations playing roles in this field, such as the Secular Coalition for America and the Freedom From Religion Foundation, and the aggressive campaigns of "new atheists" like Sam Harris and Richard Dawkins.
- Public schools take more steps to encourage academic teaching about religion.

**Q: What issues, trends or potential battles do you see on the horizon in 2011?**

A:

- A continuing [debate over plans for an Islamic center in Lower Manhattan](#) and plans for mosques in some American cities. The court battle will continue over [the Oklahoma measure](#) that bars state courts from considering Sharia, while other states are likely to consider similar measures. [New York Republican and House Homeland Security Committee Chair] Rep. Peter King's hearings on "Islamic radicalization" will likely reignite a bitter national debate over the place of Islam in America, terrorism, and free exercise rights.
- Battles over policies requiring nondiscrimination on the basis of sexual orientation and the extent of exemptions for religious organizations from such policies.
- Continued debate over conscience clause issues in the health-care arena. The Department of Health and Human Services may complete a rule-making process on these issues in early 2011.
- The interagency working group established by President Obama's November 2010 executive order [in response to the recommendations of the faith-based advisory council] will submit a report regarding implementation of the terms of the executive order and related matters in mid-March 2011. Advisory Council members and others who care about these issues will watch this process carefully.
- There will be mounting pressure on the Obama administration to implement a campaign promise to prohibit all organizations, including religious ones, from discriminating on the basis of religion in government-funded jobs. At the same time, a different coalition will fight hard to maintain the status quo.

- A Supreme Court decision by summer in the [Arizona Christian School Tuition Organization](#) v. Winn case.
- Lawsuits will continue over sectarian references in official prayers before legislative meetings.

**Q: Expanding that into the following decade, where do you see trends taking the United States and the rest of the world in 2011-2020 in terms of religious freedom?**

A: I'm limiting myself here to the United States, and I'm mostly raising questions instead of trying to forecast trends:

- What stamp will the Roberts Court put on establishment and free-exercise issues? Will it continue to limit standing to challenge alleged Establishment Clause violations? Will it revisit the endorsement test formulated by former Justice Sandra Day O'Connor? Will at least certain members of the court call for it to revisit its 1990 [Employment Division v. Smith](#) decision?
- What role [will Justice Elena Kagan play](#) on religious-liberty issues?
- Will the numbers of [the "nones"](#) (those who claim no religious affiliation) continue to grow at a rapid pace, and, if so, how will this affect law, public policy, and politics? What will be the trajectory of evangelicals who distinguish themselves from the "Religious Right" movement?
- If Mitt Romney runs for president in 2012, we will once again debate whether his Mormon faith is relevant to his candidacy, and, if so, how.
- How will the Tea Party movement incorporate those who have been pushing for a much weaker interpretation of the First Amendment's Establishment Clause? How much attention will be given to themes like these in upcoming elections and in law and policy at other times?
- As more religious institutions receive more types of government

funding, how will it affect their ability to be true to their missions and to raise private money?

- How will limits on lawsuits brought to enforce the Establishment Clause affect the degree to which Establishment Clause values are honored by government?
- To what extent will religion be viewed and treated as distinctive in law and policy? Will current trends toward treating religion and religious institutions more like secular ideas, institutions, and pursuits expand? And, if so, how will that change religious liberty, religion, and religious institutions?

— *Robert Marus is managing editor and Washington bureau chief for Associated Baptist Press.*