

March 2, 2011

Representative Peter King
U.S. House Committee on Homeland Security
Washington, DC 20515

Dear Chairman King:

As organizations dedicated to protecting rights guaranteed under the U.S. Constitution, we write to express our concern that your Committee's planned hearings on the "radicalization of the American Muslim community" risk chilling fundamental First Amendment freedoms of religion, speech, and association. These freedoms occupy a special place in our history and in the Constitution. They define who we are as a country, and may not be set aside.

Our concerns are driven by your public statements justifying the basis for, and goals of, the Committee's proposed hearings, which raise significant and troubling issues.ⁱ Holding hearings based on a deeply flawed theory of "radicalization" that falsely conflates religious practices with preparation for terrorism and focuses exclusively on Muslim-Americans will burden the free exercise of religion, give the appearance of official endorsement of one set of religious beliefs over another and chill free association and free speech. We are also deeply troubled by your plan to use the hearing to air the unsubstantiated allegation that Muslim-American leaders are uncooperative with U.S. counterterrorism efforts, both because the allegation is demonstrably incorrect and because it will only sow discord when national unity is most needed.

At the outset, and as organizations devoted to the protection of free speech in particular and civil liberties in general, we want to emphasize that it is entirely appropriate for a member of Congress to express his or her views regarding issues of national interest, as you have done, including when such views are controversial. While we, in turn, challenge the factual basis supporting some of your arguments, your views and your speech are protected by the First Amendment.ⁱⁱ Indeed, as free speech organizations, we have and would defend the First Amendment rights of all individuals to express any, even hateful, views on matters of public debate, including whether particular religious or political beliefs are used to justify violence.

But when conducting official inquiries under the auspices of a standing committee of Congress, members have a higher duty to ensure that constitutional rights are not diminished under the weight of government scrutiny. While Congress has broad and necessary powers of oversight and inquiry, they are not unlimited. As the Supreme Court held in 1957 in one of the cases arising out of the House Un-American Activities Committee hearings, congressional inquiries, like legislation, may not entrench on First Amendment freedoms of religion, speech and association.ⁱⁱⁱ

In order to accomplish its goals in accordance with the Constitution, therefore, the Committee, like law enforcement, must distinguish between First Amendment-protected

ideological beliefs – whether radical or not – and criminal terrorist activity or plots. Only the latter may properly be the subject of official inquiry. Congress simply has no business examining Americans’ religious or political beliefs in official hearings – even if these beliefs are considered “radical” by some. Congress must also avoid giving the appearance of an official endorsement of one set of religious beliefs over another. It would be inappropriate and unwise for Congress to conduct an inquiry into the nature of Islam, the different interpretations of the faith among Muslims, whether there exists an “ideology” of “political Islam,” or whether some Muslims are more loyal Americans than others, just as it would be inappropriate for Congress to examine different interpretations of Christianity or debate whether Baptists or Catholics are more trustworthy.

Treating an entire community as suspect because of the bad acts or intolerant statements of a few is imprudent and unfair, and in the past has only led to greater misunderstanding, injustice and discrimination. Erroneous theories of eugenics supported racist immigration policies and Jim Crow anti-miscegenation laws for decades. Misguided “red” scares and racism drove abominable policies like blacklists, McCarthyism and Japanese internment, betrayed American values and did not improve security. To avoid the same mistakes, the Committee should rely on facts and scientifically rigorous analysis, not biased opinions or unsupported theories positing a discernable “radicalization” process that are belied by available evidence.^{iv} “Radicalization” is simply a euphemism for religious and ideological profiling, which can only lead to further discrimination.

Targeting a minority religious community for official scrutiny also poses a great risk of promoting divisiveness, rather than national unity, which can only impair the government’s national security efforts on behalf of us all. Avoiding religious divisiveness was a main objective of the Founders in drafting both the Establishment and Free Exercise clauses of the First Amendment.^v Official congressional inquiry only adds to divisiveness by putting enormous pressure on private groups and individuals who are singled out for scrutiny. Many American Muslim community and faith groups have objected that the Committee’s hearings will present a false or misleading picture both of Islam and of the various and diverse Muslim communities in our country.^{vi} Negative repercussions may be especially likely in the case of the American Muslim community, which has already been the target of both hate speech and actual violence. Recent media reports about the Committee’s proposed hearings demonstrate that they already have contributed to an atmosphere of increased religious animosity.^{vii}

Your Committee can carry out its important function in a wide variety of ways without trampling on the constitutional rights of American Muslims. The Committee may quite properly examine the continuing serious threat of domestic terrorism, and pursue broad areas of inquiry related to efforts by al Qaeda and others to commit acts of violence in the United States. Terrorist methodologies, including efforts to recruit individuals to carry out terrorist acts, are properly the subject of government scrutiny. Indeed, Congress has addressed these issues many times over the past several years, and many of the undersigned groups have long advocated that the proper focus of congressional hearings is on better understanding the nature and scope of the threat, vigorously exercising

Congress's authorities to oversee the government's response, holding our military, law enforcement and intelligence agencies accountable, and crafting sensible legislation to enhance security while protecting the rights of innocent persons. Many of us will continue to work with Congress to ensure our government's counterterrorism efforts are productive, effective, and legal. The Committee's hearing this month on "Threats to the Homeland" with Department of Homeland Security Secretary Janet Napolitano and National Counterterrorism Center Director Michael Leiter is an example of appropriate congressional inquiry, as are the hearings focusing on the domestic threat posed by Al Qaeda in the Arabian Peninsula, and the threat to air commerce.

Secondly, we are deeply concerned that a focus of your Committee's hearing is based on the mischaracterization of leaders in the American Muslim community as uncooperative with U.S. counterterrorism efforts. This allegation is demonstrably false. Numerous law enforcement officials have gone on the record to dispute this allegation,^{viii} academic studies have catalogued the assistance Muslims have provided to anti-terrorism efforts,^{ix} and many of the undersigned organizations work closely with many Muslim civil rights and advocacy groups that are deeply involved in efforts to improve security policies. Indeed, your Committee has heard testimony from several law enforcement witnesses regarding their engagement with Muslim-American communities on a host of issues.^x

Our concern is heightened by your statements implying that American Muslims' "cooperation" in national security efforts must be measured by their willingness to provide information voluntarily to counterterrorism enforcement agencies. Although warning law enforcement officials of threats is indeed a shared civic and social responsibility, it would be illegal, unfair and impractical for Congress or law enforcement officials to require any religious or belief community to prove its loyalty to this country by "informing" on its members. To the contrary, American Muslims, like the rest of this country's citizens, have the right to protest illegal, over-zealous or abusive government security measures and to vigorously exercise, and encourage others to exercise rights guaranteed in the Constitution. There are also legitimate concerns about whether individuals who volunteer information to law enforcement will find themselves threatened with legal jeopardy. Advising individuals to speak to lawyers before talking to law enforcement or even to refrain from talking to law enforcement is both prudent and completely legal speech protected by the Bill of Rights. We expect that many corporations, businesses and even congressional offices would advise their employees to consult a lawyer before speaking with law enforcement as well.

Recognizing and respecting the line between protected beliefs and illegal activity does not undermine our security, but rather strengthens it. Basing security policy on factually flawed "radicalization" theories will only waste precious security resources. Law enforcement has been successful in preventing terrorist plots many times over the past few years by focusing on facts and evidence. Inquiring into how many Muslims hold "radical" beliefs, however those are defined, will not aid those efforts. To the contrary, it will undermine the crucial bonds between communities and the government and law enforcement. Most dangerously, it is likely to undermine our efforts to demonstrate to Muslims at home and abroad that the United States seeks to live up to its ideals in its

treatment of all Americans, including Muslims, and is not engaged in a “war against Islam.”

As civil liberties and free speech organizations, we have fought for many years against government proposals to investigate the religious or political beliefs of any group of Americans. We subscribe to the views of the Attorney General that “law enforcement has an obligation to ensure that members of every religious community enjoy the ability to worship and to practice their faith in peace, free from intimidation, violence or suspicion. That is the right of all Americans. And it must be a reality for every citizen. In this nation, our many faiths, origins, and appearances must bind us together, not break us apart.” We hope that you will agree that this is also the obligation of the Congress.

We respectfully urge that your Committee treat unsubstantiated theories about “radicalization” with skepticism and focus its efforts on actual terrorist acts and those who commit them rather than on the adoption of beliefs or the expression of dissent. A fact-based approach enhanced with scientifically rigorous analysis will likely be more successful at providing a clear picture of the threats we face and the appropriate methods we need to employ to address them without violating the constitutional rights of innocent persons. Fear and misunderstanding should not drive our government policies.

We would be happy to supply any additional information and would welcome the opportunity to discuss this with you further. Please contact Michael W. Macleod-Ball at mmacleod@dcaclu.org or at 202-675-2309 if you have questions or comments. Thank you for considering our views.

Sincerely,

American Civil Liberties Union

Cc: Ranking Member Bennie Thompson
Members of the House Committee on Homeland Security
Speaker John Boehner
Democratic Leader Nancy Pelosi

ⁱ Peter King, “What’s Radicalizing Muslim Americans?,” *Newsday* (Dec. 17, 2010) available at http://www.house.gov/apps/list/speech/ny03_king/radicalizingmuslimamericans.html (hereinafter “*Newsday* op-ed”); Frank Gaffney Interview with Peter King, Secure Freedom Radio with Frank Gaffney (Jan. 6, 2011) available at <http://www.securefreedomradio.org/2011/01/06/january-6-2011-faith-mcdonnell-rep-pete-king-sara-carter/>.

ⁱⁱ We are disturbed, for example, by your unsubstantiated and divisive assertion that 85 percent of American mosques are run by extremists, especially given that experts on the subject have found that American

Muslims' attendance at mosques helps to prevent violent extremism. See David Schanzer, Charles Kurzman, and Ebrahim Mooza, *Anti-terror Lessons of Muslim-Americans*, National Institute of Justice, Bureau of Justice Assistance, U.S. Department of Justice, p. 1, (Jan. 6, 2010) available at <http://fds.duke.edu/db?attachment-34--4912-view-1255>.

ⁱⁱⁱ *Watkins v. United States*, 354 U.S. 178, 188 (1957).

^{iv} Recent “radicalization” theories are not supported by empirical evidence. For example, the 2007 New York Police Department (“NYPD”) report, *Radicalization in the West: The Homegrown Threat*, drew quick condemnation from the civil liberties and Muslim communities for its serious factual and methodological flaws. New York City Muslim and Arab community leaders formed a coalition in response to the NYPD report and issued a detailed analysis criticizing NYPD for wrongfully “positing a direct causal relation between Islam and terrorism such that expressions of faith are equated with signs of danger,” potentially putting millions of Muslims at risk. Muslim American Civil Liberties Coalition, *Counterterrorism Policy: MACLC’s Critique of the NYPD’s Report on Homegrown Terrorism* (2008) available at <http://maclcnypdcritique.files.wordpress.com/2008/11/counterterrorism-policy-final-paper3.pdf>. See also Aziz Huq, *Concerns with Mitchell D. Silber and Arvin Bhatt, N.Y. Police Dep’t, Radicalization in the West: The Homegrown Threat*, New York University School of Law, Brennan Center for Justice (Aug. 30, 2007) available at

http://brennan.3cdn.net/436ea44aae969ab3c5_sbm6vtxgi.pdf; American Civil Liberties Union et al., *Coalition Memo to the Senate Committee on Homeland Security and Governmental Affairs Regarding “Homegrown Terrorism”* (May 7, 2008) available at

<http://www.aclu.org/safefree/general/35209leg20080507.html>. NYPD added a “clarification” in 2009. See

<http://maclcl1.wordpress.com/2009/09/08/maclc-90809-letter-response-to-nypd-statement-of-clarification/>.

^v *Annals of Congress* (Sat., Aug. 15, 1789) pp. 730–31; *McCreary County v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 876 (2005) (“The Framers and the citizens of their time intended not only to protect the integrity of individual conscience in religious matters, but to guard against the civic divisiveness that follows when the government weighs in on one side of religious debate; nothing does a better job of roiling society, a point that needed no explanation to the descendants of English Puritans and Cavaliers (or Massachusetts Puritans and Baptists)”; *Lemon v. Kurtzman*, 403 U.S. 602, 622 (1971) (“political division along religious lines was one of the principal evils against which the First Amendment was intended to protect”).

^{vi} “51 Organizations Tell Congress that Hearings Targeting American Muslims are Divisive,” Muslim Advocates (Feb. 1, 2011) available at

http://www.muslimadvocates.org/latest/51_organizations_tell_congress.html

^{vii} Arun Venugopal, King’s Hearings on Radical Islam Draw Rival Protest Groups, *WNYC Newsblog* (Feb. 23, 2011) available at <http://www.wnyc.org/blogs/wnyc-news-blog/2011/feb/22/rival-protests-rep-kings-office-over-islam-hearings/>

^{viii} See Counterterrorism Experts Reject Peter King’s Targeting of Muslims, National Security Network (Jan. 28, 2011) available at <http://www.nsnetwork.org/node/1847>; “Baca: No Evidence Muslims Not Cooperating with Police,” CBS Los Angeles (Feb. 11, 2011) available at

<http://losangeles.cbslocal.com/2011/02/07/baca-no-evidence-us-muslims-not-cooperating-with-police/>

^{ix} See Charles Kurzman, “Muslim-American Terrorism Since 9/11: An Accounting,” Triangle Center on Terrorism and Homeland Security (Feb. 2, 2011) available at

http://sanford.duke.edu/centers/tcths/about/documents/Kurzman_Muslim-American_Terrorism_Since_911_An_Accounting.pdf

^x See, e.g., Hearing of the House Homeland Security Committee Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, “Working with Communities to Disrupt Terror Plots” (Mar. 17, 2010); Hearing of the House Homeland Security Committee Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, “Radicalization, Information Sharing and Community Outreach: Protecting the Homeland from Homegrown Terror” (Apr. 5, 2007).