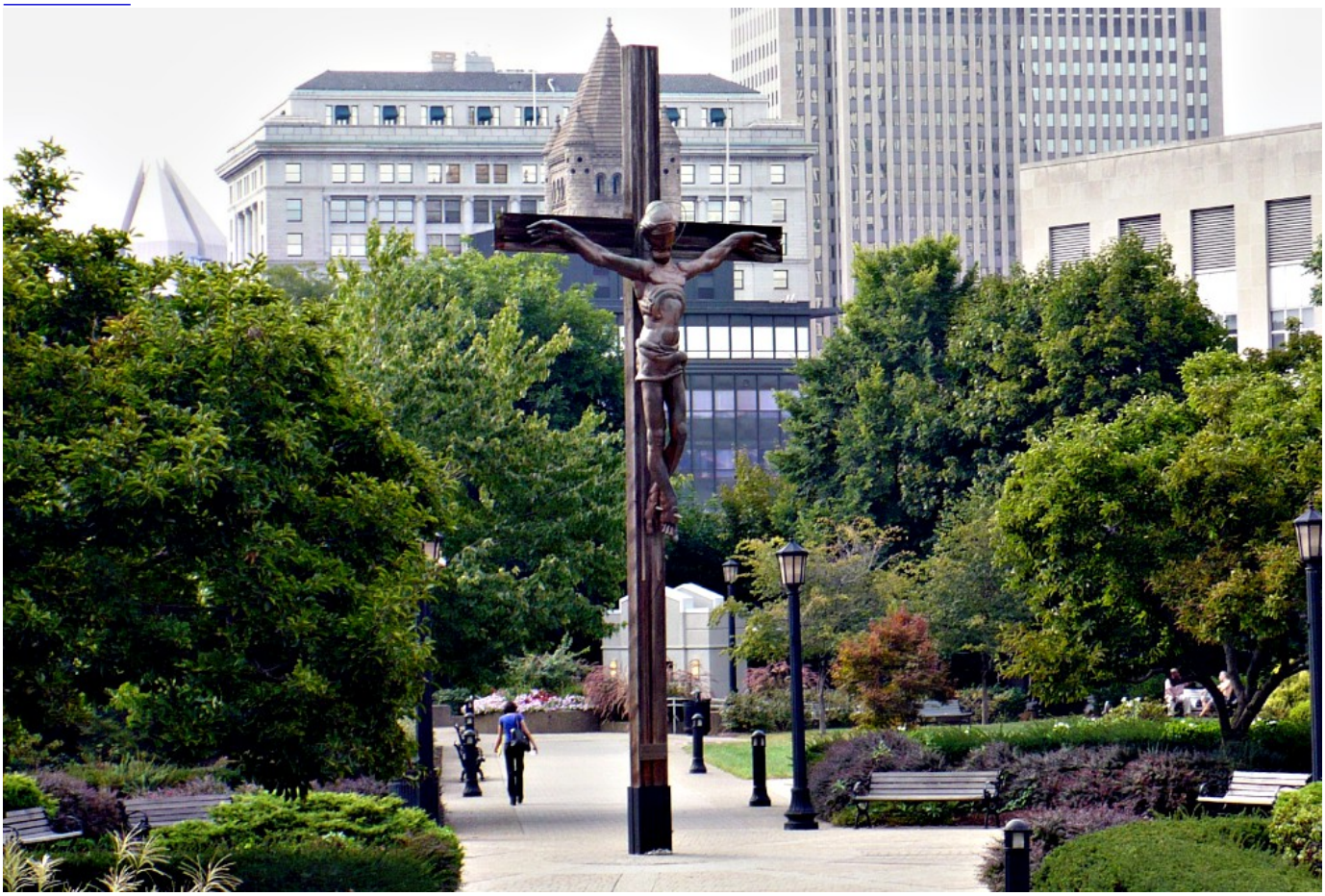
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A crucifix created by Austrian artist Jos Pirkner is seen on the campus of Duquesne University in Pittsburgh. (Wikimedia Commons/Alekjds)

by NCR Editorial Staff

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The First Amendment enshrines principles that our nation needs to uphold even when we deplore the outcome. The protections of speech and of the press allow Fox News or talk radio hosts to say deplorable things. The right to assembly extends to the Ku Klux Klan, and the right to petition the government can result in lobbyists seeking preferential treatment for their clients that hurts the common good.

No rights are absolute, however. The people's right to life limits anyone's right to shout "Fire!" in a crowded auditorium when there is no fire. The KKK can gather, but their gatherings cannot incite violence. A lobbyist can seek to persuade a public official, but cannot offer a bribe. When rights conflict with one another, the courts must step in to adjudicate.

In recent weeks, the courts rendered decisions in two cases involving First Amendment guarantees of the free exercise of religion. We agree with both decisions, but we deplore one of the outcomes.

In Arizona, four activists who belong to the group "No More Deaths/No Más Muertes," an official ministry of the Unitarian Universalist Church of Tucson, were charged with breaking the law when they placed water and food for migrants crossing the U.S.-Mexico border in Arizona's Cabeza Prieta National Wildlife Refuge.

The plaintiffs argued that they could not be prosecuted because the 1993 Religious Freedom Restoration Act bars the federal government from placing a substantial burden on their exercise of their religion in the absence of a compelling state interest. What is more, the government must pursue that compelling interest in a manner that least burdens the religious exercise in question.

The Hebrew and Christian Scriptures are exceedingly clear on the moral necessity of caring for the migrant. Matthew 25 — "I was hungry and you gave me food, I was thirsty and you gave me drink ... a stranger and you welcomed me" — is presented by Jesus as the measure by which we shall be judged. There is no more central ethical command than this.

The government failed to provide any good, let alone compelling, rationale for its action against the activists. At one point in the case, the government argued it had a compelling interest in preventing littering in the refuge. U.S. District Judge Rosemary Marquez was not buying it: "The Court finds that Defendants demonstrated that their

prosecution for this conduct substantially burdens their exercise of sincerely held religious beliefs, and that the Government failed to demonstrate that prosecuting Defendants is the least restrictive means of furthering any compelling governmental interest."

The other case started in 2012, when adjunct faculty of Duquesne University in Pittsburgh voted to form a union, and the local labor relations board certified the election. In 2018, a panel at the National Labor Relations Board agreed with the local decision, and the university sued, citing its First Amendment right to freely exercise religion without government interference, also appealing to the Religious Freedom Restoration Act.

Earlier this month, the U.S. District Court of Appeals for the District of Columbia sided with the university, citing multiple precedents denying the NLRB jurisdiction over religious institutions.

We appreciate the constitutional rationale for keeping the government out of religious institutions' business, but unlike the activists in Arizona, Duquesne University was not exercising the Catholic faith, nor acting in accord with a sincerely held religious tenet, when it refused to allow its workers to unionize.

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In fact, Duquesne and other Catholic schools that have fought adjunct unions are opposing a long-held tenet of Catholic social teaching: that workers have a right to form unions and bargain collectively for a just wage, as Pope Leo XIII wrote in his 1891 encyclical *Rerum Novarum*. Pope John Paul II called unions "indispensable" and dedicated his first social encyclical to the dignity of work. Pope Benedict XVI, in his encyclical *Caritas in Veritate* wrote:

> The repeated calls issued within the Church's social doctrine, beginning with *Rerum Novarum*, for the promotion of workers' associations that can defend their rights must therefore be honored today even more than in the past, as a prompt and far-sighted response to the urgent need for new forms of cooperation at the international level, as well as the local level.

The lack of a "deeply held belief" is one of the requirements to defeat a claim under the Religious Freedom Restoration Act. There is no "deeply held belief" that is also Catholic that justifies Duquesne's stance. The courts should be skeptical when a religious organization fails to live up to the standards set by its own most obvious teachers.

The last thing we want is for the federal government to begin deciding what is and is not an orthodox belief in our church or in any other. But it is well past time that the myriad organizations of the Catholic Church — most especially schools and hospitals — stop providing a counterwitness to the teachings of the church by blocking workers' attempts to organize.

This is especially acute, given that the workers in this case are among some of the most mistreated in what some call the "gig academy." Contingent faculty — including part-time adjuncts paid by the course and graduate students who teach — make up 70% of all higher education faculty, according to data shared at a 2018 meeting of the College Theology Society.

The average adjunct in the U.S. earns less than $3,000 per class and receives no benefits. If they are able to patch together a full course load, adjuncts still make only $25,000 a year or less. Nearly a third of part-time faculty live near or below the poverty line, and a quarter receive Medicaid or food stamps, according to the 2018 College Theology Society presentation.

The U.S. bishops have made the protection and promotion of religious liberty a central concern in the past decade. When their pursuit of that principle leads them to look the other way when their organizations run roughshod over their own social teachings, something is awry.

If they want the social teachings of the church to be taken seriously, they should begin practicing what they preach. The protection of religious liberty they claim to want is surely most endangered by the kind of rank hypocrisy on display at Duquesne University.

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