

# Capitol Comments



American Association of Christian Schools

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## RELIGIOUS LIBERTY ON TRIAL

One of the many battles being waged in our country is simmering in our Nation's Capitol. It's largely unseen; but behind closed doors, it continues nonetheless. It's a philosophical battle, but the issue has tremendous practical implications. It's not too dramatic to say that the result of the battle will determine what sort of country we will become. Unfortunately the battle isn't between sworn enemies; but rather, it is between friends. In some senses it is a secondary battle that has developed in

wake of the momentous June Supreme Court decision. The rapid shift in our culture and laws resulting from the case have created a crisis of courage for many religious liberty advocates. They have begun to wonder out loud if it is politically possible to maintain the cultural understanding and jurisprudence that the First Amendment protects an individual right to religious liberty. Their main contention is that it is too late to pass laws that protect an *individual* right and have begun to advocate within religious liberty groups for immediate action to carve out a narrow legal right to religious liberty protecting only the *collective* right of religious organizations and leaving individuals to the dictates of the government. In generic terms these two ideas are sometimes characterized as Freedom to Worship vs. Individual Religious Liberty.

In spite of this development, many still believe that any fair reading of the First Amendment within historical and constitutional contexts leaves no doubt that the First Amendment was written to protect an *individual* right to religious liberty. The argument that seeks to limit the protections of the First Amendment or even the Bill of Rights to organizations or groups is not new. In times past, our nation has struggled to work out the extent of individual liberty, and this work continues today. Fifty years ago much of our jurisprudence on the Second Amendment was informed by the idea that it protected only a

*collective* right for the purpose of maintaining state organized militias. Fortunately, freedom loving Americans and strong national organizations have been very successful over time in reasserting the principle that the Second Amendment protects an *individual* right to keep and bear arms. This effort has been so successful that the cultural understanding of the Second Amendment, recent court decisions on multiple levels, and legislative efforts swing heavily in favor of asserting and protecting this individual right.

AACS believes the Second Amendment fight should be instructive in the current battle and should renew courage for those defending the First Amendment. We must be clear when we speak about the very important individual protections guaranteed to us by the Bill of Rights. It is important to remember that should interpretations of the Bill of Rights advocating for collective rights prevail, this view also would be extremely problematic for free speech, judicial, and privacy rights. We encourage all citizens to continue working to educate, inform, and fight in the world of ideas for a reassertion of the proper understanding of our First Freedom—individual religious liberty. It is the heart and soul of our country, unique in all the history of the world, and the best protection of a person's conscience before his Maker.

*The First Amendment was written to protect an individual right to religious liberty.*

reaction to the larger cultural war over religious liberty. This larger battle pits the newly minted "civil right" of gay marriage against any expression of religiously motivated dissent. We see this battle in the multiple cases of bakers, photographers, florists, and other wedding related service providers being sued, fined, and pilloried for following their religious sensibilities as they seek to earn a living and run their businesses. Those who support gay marriage appeal to the Supreme Court decision in Obergefell, as well as using our natural sensitivity and aversion to bigotry, in order to justify restrictions of religious liberty as necessary for the common good and to protect homosexuals from discrimination.

This simmering secondary battle has developed quickly in the

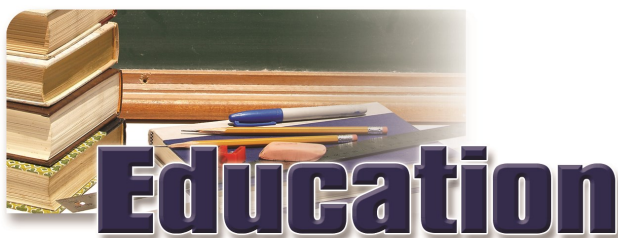
### The AACCS is a service organization that exists

- To provide legislative oversight.
- To promote high-quality Christian educational programs.
- To encourage the goal of producing Christ-like young people.
- And to provide related institutional and personnel services to its constituency.

## AACS WELCOMES A NEW LEGISLATIVE ASSISTANT

Josh Frampton spent much of his childhood with his missions minded family in Johannesburg, South Africa. Developing an interest in politics and government, he pursued a major in political science at Pensacola Christian College and is currently completing his bachelor's degree through Liberty University online. As the legislative assistant, he works to inform AACS member schools of important national issues and to influence the legislative process on AACS core issues: educational freedom, religious liberty, the traditional family, and life issues.

*Indeed, the best way to expand early education opportunities for families is to enact programs that allow funds to flow directly to parents allowing them to have a real choice in the education of their children.*



## EARLY EDUCATION, THE GOVERNMENT, AND THE CHRISTIAN SCHOOL

At the beginning of his second term, President Obama proclaimed his vision for expanding early education programs as a top priority, calling it a moral imperative to provide this education for the nation's children. Former Secretary of Education Arne Duncan and now incoming Secretary John King have made publicly funded early education a federal priority. Recent public statements and proposed legislation all indicate growing momentum on state and federal levels to pass legislation establishing permanent public funding for public early childhood education. The steady drumbeat is that the federal government must fund early education so that all children have access to "quality, affordable" early education. Indeed, supporters have even argued that the government can either "pay for preschool or pay for prison," asserting that federally funded preschool education will help to deter disadvantaged children from following a life of crime as they grow older.

However, these statements obscure the reality that nearly 74% of 4-year-olds are already enrolled in some form of preschool, including children enrolled in private or publicly funded preschool. The fact that so many children are already receiving a preschool education leads many to believe that the Administration's plan for early education is really to move children in privately run day

care centers into state-run schools, and not necessarily to build overall enrollment. Even if this is not the intended objective, government funding and regulation will definitely ensure this result. Further, examinations of President Obama's Preschool for All plan, the programs already proposed by the Administration, and multiple public statements show that the President's agenda for early education includes close monitoring of the health and socio-emotional development of our youngest children (birth to age five) in addition to educational instruction at public day care centers.

Unable to advance Preschool for All legislation through Congress, President Obama has instead used discretionary funds through four different competitions enticing states to enact early education reforms in exchange for temporary federal funding. The Department of Education joined with the Department of Health and Human Services and awarded over \$1 billion to 20 states through three different Race to the Top-Early Learning Challenge competitions, and an additional \$250 million to 18 states through the recent Preschool Development Grant competition. In order to win money from these competitions, a state's reforms were required to meet extensive guidelines set forth by the federal government, including setting standards for

data collection, professional development and teacher training, and the establishment and growth of a Tiered Quality Rating and Improvement System (TQRIS). Furthermore, in December 2014, the White House hosted a Summit on Early Education where the President announced an additional \$1 billion of public and private funds available for preschool expansion and for the education of parents of preschoolers. It should be noted that, historically, federal dollars have been designated for programs that assist low-income families; however, these new programs are targeted towards middle-income families as well.

AACS has represented the interests of Christian schools by submitting oral and written comments to the Department of Education for multiple programs, expressing concerns that as government programs and regulations increase, the autonomy of Christian preschools is threatened and the number of real options available to parents is decreased. Indeed, in states where universal public preschool programs have already been enacted, private and faith-based preschools have seen a significant drop in enrollment. Furthermore, AACS worked with members of Congress and the Department of Education in securing clarification that states do not have to include religiously exempt schools in the TQRIS requirement for the federal competitions listed above.

AACS regularly communicates with legislators, congressional staffers, and regulators about the success Christian preschools have enjoyed and illustrates that these successes are due largely to the autonomy and freedom of these schools to follow a faith-based mission. Indeed, the best way to expand early education opportunities for families is to enact programs

that allow funds to flow directly to parents, providing them a real choice in the education of their children. This family-centered approach not only recognizes the God-given role that parents have as the primary caretakers of children, but it also protects private schools from becoming direct recipients of government funds. States that have established these types of programs are providing a myriad of choices for families and have also strengthened the existing successful early education programs.

When the government seeks to increase its role in education, especially early education, it becomes a threat to parental rights, parental options, and the liberty and freedom of Christian preschools. Recently, the AACS submitted public comments related to the federal government's involvement in early education that included the following statement:

Federal policy that supersedes or supplants parental choice and decision-making does not well serve children or our nation. We ask . . . that policies are written to protect and promote parental rights and responsibility. Policies should not diminish a parent's ability to make decisions for the welfare of his or her children. We believe the basic truth that no one cares more deeply about the health and welfare of a child than the parents of that child. We ask that policies be carefully constructed so that they do not overreach into family or independent school decision-making.

AACS believes that the primary responsibility for educating children ultimately rests with parents. Student care and learning as well as educational outcomes are best achieved when individual institutions are accountable to parents, not to government orders and edicts enforced by overreaching bureaucracies.

## EDUCATION SAVINGS ACCOUNTS: A NEW WAVE OF SCHOOL CHOICE

While advocates for public education see public schools as the primary way our society puts into practice broad civil rights principles, school choice programs, in allowing parents flexibility and choice in educational decision-making, more fully carry out a true civil rights paradigm. This is why many now refer to school choice as the civil rights issue of the 21st century. No other government education program yet proposed has the ability to ensure that children have equal access to quality education suited to their individual needs and aspirations. Since 1989 when the first voucher program was established in Wisconsin, 58 additional school choice programs in 28 states have been established. The majority of these are either voucher or tax credit scholarship programs; but in recent years, five states have adopted a new type of program that promises to offer more innovative educational opportunities for students: education savings accounts (ESA's).

A relatively new idea, education savings accounts are proving to be the new wave for school choice programs by providing a wide variety of benefits to the parents and children they serve, while protecting the autonomy of participating private schools. ESA programs are established when public education funds are placed into a type of debit account and assigned to parents who are permitted to access these funds for their children's educational expenses. The funds can be used for a myriad of educational options including private school tuition, textbooks, therapies, tutor payments, and online learning programs. Funds that

are not used by the parents are rolled over for the following year and often can be saved and used for a student's college expenses. By directing the money to the family, the program empowers parents—the ones who know the child best—to make decisions regarding the best educational program(s) for their child's success. Furthermore this method of assigning funds to families ensures that participating private schools and programs are not direct recipients of government funds and thus protects the autonomy and mission of schools that accept these funds.

To date, five states have established ESA's. Arizona established the first ESA program in 2011 for students with disabilities and has since expanded the program to include kindergarteners, and children from military families, underperforming schools, or foster care. For each qualifying student, parents have access to 90% of the educational funds allotted for a student in the public school system. Florida established a similar program in 2014 for students with special needs. In April 2015, Mississippi and Tennessee both established ESA programs for students with special needs (Mississippi) and disabilities (Tennessee). The broadest ESA program was created in June 2015, when Nevada's Governor Brian Sandoval signed into law a groundbreaking program designed to provide universal school choice, placing no cap on the number of students enrolled or the income level of participating families. The one requirement is that a student be enrolled in a public school for 100 days before applying for the ESA scholarship.

Despite efforts of school choice opponents to stop these programs, a court ruling has already declared that ESA's are constitutionally sound. In spite of this precedent, the ACLU recently filed a lawsuit against the Nevada program, claiming that it violates the Nevada state constitution's Blaine amendment that prohibits public funds from supporting sectarian religious schools. However, in a similar case in Arizona, the Arizona Supreme Court threw out that argument, charging that since the money goes to the parents first, it does not violate any constitutional limitations. Specifically, the court stated, the "ESA is neutral in all respects toward religion and directs aid to a broad class of individuals without reference to religion." The court further emphasized that "the specified object of the ESA is the beneficiary families, not private or sectarian schools."

The 2015 *School in America Survey* found that more than 60% of those questioned specifically support ESA's, with a strong majority believing such a program should be universal. The poll also found that the majority of Americans believe the best way to increase accountability for under-performing public schools is to implement choice. Indeed, by empowering parents, enabling students, and ensuring protection for a private school's autonomy, education savings accounts offer true educational choice and could revolutionize the educational system in America.

AACS believes that the freedom of parents to choose where and how their children are educated is the most effective and equitable way to improve the quality of K-12 education. ESA programs create an environment in which diversity, individual choice, educational quality, and high student achievement can flourish.



## Capitol Comments

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During a busy and exciting year, the AACS Legislative Office continued efforts defending our ministries from legislative and regulatory intrusion. In **January**, AACS joined an amicus brief on behalf of the North Carolina school choice program, stating in part that the program “establishes no particular religion but does establish an environment in which diversity, individual choice, and educational quality can flourish.” In early **February** Josh Frampton joined the office as the legislative assistant.

In the **Spring** AACS participated in strategy meetings with conservative organizations and Education Committee staff on how to advance the reauthorization of the Elementary and Secondary Education Act (ESEA), attended debates regarding the marriage case, and wrote letters supporting legislation protecting religious liberty. Specifically, AACS authored a letter to Congress expressing concern and urging action against the Reproductive Health Nondiscrimination Act (RHNDNA), an anti-religious freedom law recently passed in the city of D.C. Rep. Diane Black (TN) introduced H.J. Res. 43 to block RHNDNA, and House leadership brought the resolution to the floor for a vote. The resolution passed 228-192 but was not signed by the president. AACS sent a letter to Congress in **May** urging support for the Marriage and Religious Freedom Act (MARFA), a bill that would protect all persons and organizations who hold to traditional beliefs on marriage

from discrimination by the federal government. This legislation, now called the First Amendment Defense Act (FADA), has yet to be passed.

The Legislative Office also hosted its annual AACS Lobbying Days in **April** and **May** to introduce Regional Legislative Directors to new members of Congress, establish relationships with congressional offices, educate congressional staffers about current legislative priorities, and reinforce the daily work and initiatives of the legislative office. Together, over 100 contacts were made on the Hill.

Joining Sen. Mike Lee (UT) at a **June** press conference discussing how a Supreme Court ruling redefining marriage could impact religious educational institutions, Dr. Keith Wiebe, AACS president, stated, “The federal government should not discriminate against people simply because they believe in a natural marriage. We strongly believe and teach that marriage is between one man and one woman. These beliefs require the freedom to hire as we choose based on these beliefs.”

Over 40 AACS high school juniors and seniors attended the 21st annual Youth Legislative Training Conference in **July**. The week-long conference included workshops from top conservative leaders, a Day on the Hill, a mock senate, and tours of historical sites.

The theme for the **September** National Legislative

Conference was “Let us be strong.” Highlights of the conference included a congressional briefing, a monument tour, and opportunities for attendees to meet with their congressmen to educate them about issues that affect Christian schools. During the fall, the AACS Legislative Office offered public comments at a meeting hosted by the Early Learning Interagency Policy Board. The purpose of the meeting was to gain public input for a federal policy statement on the health and wellness of young children. While the majority of the organizations represented urged further involvement of the federal government, Jamison Coppola, AACS legislative director, spoke to the concern that increased federal involvement in the health and wellness of early learners threatens not only parental rights but also the autonomy of Christian preschools. In **October**, the D.C. office authored a letter of support for SOAR, a bill that would keep the D.C. school choice program in operation.

**November** was filled with activity once the conference committee announced that a compromise between the House and Senate ESEA reauthorization bills had been reached. AACS staff attended a committee hearing and worked to communicate AACS priorities to members’ offices. The conference committee reached a final compromise, entitled the Every Student Succeeds Act (ESSA), which was approved by the House and Senate and was signed into law by President Obama. **December** activities included attending meetings and communicating with Department of Education officials as they prepare to issue regulations to carry out the ESSA law.