



A Publication of the American Association of Christian Schools

**The Washington Flyer**  
**May 1, 2015**

*I consider the government of the United States as interdicted by the Constitution from intermeddling with religious institutions, their doctrines, discipline, or exercises. This results not only from the provision that no law shall be made respecting the establishment or free exercise of religion, but from that also which reserves to the States the powers not delegated to the United States. Certainly, no power to prescribe any religious exercise or to assume authority in any religious discipline has been delegated to the General Government. It must then rest with the States.*

*Thomas Jefferson*

**Administration Admits Marriage Decision Could Affect Religious Liberty of Faith-based Schools**

On Tuesday, the Supreme Court heard oral arguments for the case from the 6th Circuit Court which ruled last November to uphold the laws and amendments in Michigan, Ohio, Tennessee, and Kentucky which define marriage as between one man and one woman. While people on both sides of the issue seem to believe that the High Court will overturn the 6th Circuit decision and rule in favor of gay marriage, the statements and questions [posed](#) by some of the Justices during the arguments reveal that such a ruling should not be a foregone conclusion. Justice Kennedy noted, “This definition has been with us for millennia. And it— it’s very difficult for the Court to say, oh, well, we—we know better.” Justice Breyer pointed out that marriage between one man and one woman “has been the law everywhere for thousands of years among people who were not discriminating even against gay people, and suddenly you want nine people outside the ballot box to require states that don’t want to do it to change...what marriage is to include gay people...Why cannot those states at least wait and see whether in fact doing so in the other states is or is not harmful to marriage?” Perhaps most revealing was the chilling response by Solicitor General Donald Verrilli to a question from Justice Alito concerning the ramifications for religious institutions and non-profits should gay marriage be legalized on a national level. Justice Alito [asked](#): “In the Bob Jones case, the Court held that a college was not entitled to tax-exempt status if it opposed interracial marriage or interracial dating. So would the same apply to a university or college if it opposed same-sex marriage?” Verrilli, who represented the Obama Administration during the arguments, responded, “It’s certainly going to be an issue. I don’t deny that. I don’t deny that, Justice Alito. It is—it is going to be an issue.” The freedom of individual business owners has already been attacked when they have declined to perform services for gay wedding ceremonies on the basis of religious convictions. Conservatives have long pointed out that redefining marriage could also negatively affect the religious liberty of faith-based schools and other religious institutions; but this is the first time that an Administrative official has publicly admitted the threat is real, heightening the religious liberty concerns in the issue. According to Carrie Severino, chief counsel for the Judicial Crisis Network, Verrilli’s answer, in truth, [reveals](#) that the Administration wants to “preserve the ability to remove tax-exempt status from institutions, like religious universities,” since his answer did not add to the “furtherance of [their] winning the case.” Rather, Severino points out, such a grave religious liberty concern would give weight to a ruling against gay marriage. The Supreme Court is expected to announce the decision this June.

## **Secretary Duncan Threatens Withholding Funds if States Boycott Common Core Testing**

Education Secretary Duncan recently [issued a veiled threat](#) to states where students are conducting mass boycotts of the new Common Core-aligned assessments. In New York, Texas, and Washington, reports show that in several school districts [large percentages](#) of students are refusing to take the exams, with parents (and students) complaining about the loss of local control, the increase of federal control, and a lack of student and teacher preparation for the tests. At a recent Education Writers Seminar, Secretary Duncan responded to a question about a No Child Left Behind (NCLB) law and waiver requirement that 95% of students participate in testing with this statement: “States are supposed to work with districts....But if states don’t do whatever then we have an obligation to step in....This is really about not just an assessment, it’s about a civil rights issue.” At the federal level, Congress is seeking to overhaul NCLB and NCLB waivers through reauthorization of the Elementary and Secondary Education Act (ESEA). A key element of ESEA reauthorization bills in both the House and the Senate is language which limits the power of the Secretary of Education to mandate or enforce a national standard, such as Common Core, and any related assessments. While some conservatives are holding out for a more conservative version of ESEA, others are urging the passage of the current version in an effort to curb the power of the Secretary over education standards and tests.

## **Religious Liberty Victory for Kentucky-based Business**

This past Monday, conscience rights were reaffirmed in Kentucky when a [court ruled](#) in favor of a T-shirt company that had declined to print messages that conflicted with the owner’s religious beliefs. This decision is the result of an appeal filed after a previous ruling by the Lexington-Fayette Urban County Human Rights Commission that the company, Hands On Originals, had to print anything a customer wanted, regardless of religious objections. Last year, Blaine Adamson, the owner of the company, declined to print T-shirts promoting the Lexington Pride Festival, hosted by the Gay and Lesbian Services Organization (GLSO). Although Adamson recommended a different company to GLSO, the group filed a complaint with the Human Rights Commission, which in turn issued a ruling against Hands On Originals for illegal discrimination. However, the court decided that because Adamson regularly does business with customers who identify as homosexual, that his decision was not based on the identity of the customer but rather on his constitutionally protected freedom to refuse to promote any message with which he disagrees. Alliance Defending Freedom Senior Legal Counsel Jim Campbell, who represented the company, stated, “The government can’t force citizens to surrender free-speech rights or religious freedom in order to run a small business, and this decision affirms that.”

## **In Case You Missed It:**

[Weekly Market Update](#) provided by Jeff Beach of the [AACIS Investment Team at Merrill Lynch](#)

[Governor Bobby Jindal - Firm in Stance for Religious Freedom in Louisiana](#)

[Baltimore Riots Cause Some to Call For Vast School Choice](#)

[Oklahoma Passes Bills to Protect Religious Liberty of Pastors, Judges, and Churches Objecting to Same-Sex Marriage](#)