



The Washington Flyer
November 15, 2019

“Conscience is the most sacred of all property.”
James Madison

Department of Education Faith-Based Office Hosts Conference for Education Leaders

Last week, AACCS legislative staff attended the Department of Education’s Second Annual Faith Leaders’ Summit to hear what the department is doing to protect religious liberty in education. Although the summit covered seven topics, most of the conversations within those topics centered on issues of religious liberty, free speech, and law. To begin the conference, Robert Eitel, Senior Counselor to Secretary DeVos, spoke on what the department has done to protect religious liberty. One accomplishment of the department was a finalized accreditation rule that defines religious mission and clarifies that a school’s religious mission cannot be used negatively by accreditors. He also discussed how the department is scouring for instances in which religious schools are being unconstitutionally left out of generally available programs under standards established by the Supreme Court decision in *Trinity Lutheran*. In another session, Ken Marcus, Assistant Secretary for the Office of Civil Rights (OCR), talked about OCR’s work to protect students who were bullied or targeted because of their religious beliefs. He further discussed how the department removed the infamous “shame list,” a list of colleges that requested an exemption to Title IX regulations, from its website. Under the previous administration, colleges that requested an exemption from Title IX regulations were compiled into a shame list that was posted on the department’s website. Under current department rules, an institution may request a written exemption from Title IX regulations, but the college is not required to do so in order to exercise its religious rights. Along with religious liberty, the conference also emphasized the department’s work to protect free speech. Reed Rubinstein, Principal Deputy General Counsel for the department, spoke on how the department is promoting and protecting free speech in higher education. Rubinstein pointed out instances in which students’ free speech rights were violated and ways the department hopes to curtail future violations on free speech on public college campuses. Finally, the conference covered judicial cases of interest to the department. Rubinstein prefaced the talk by emphasizing the necessity that a free government be based upon a moral people, noting in particular the department’s support for [Attorney General Bill Barr’s exceptional speech](#) at the University of Notre Dame a few weeks ago. Following his introduction, Rubinstein was joined by two other legal experts, Jed Brinton and Farnaz Thompson, in examining court cases that shape department policy concerning religious freedom. The speakers also discussed the importance the department places on abiding by the Religious Freedom Restoration Act (RFRA) in all government actions. Through these conversations, the Faith Leaders’ Summit showed religious educators the high priority that this administration and Department of Education has placed on defending our most fundamental rights.

Trump Administration Celebrates Record Number of Judicial Appointments

Last week, the Trump administration and Senate Republicans [celebrated](#) the appointment of more than 160 federal judges, [exceeding](#) the number of judicial appointments by the last five presidents at the same point

during their administrations. The number is significant because of the level of opposition from Democrat Senators, and also because it represents a [fulfilled campaign promise](#) by President Trump from 2016 “to appoint judges who will protect and honor the Constitution and the rule of law.” The number of confirmations includes 44 Court of Appeals judges, 112 District Court judges, and Supreme Court Justices Neil Gorsuch and Brett Kavanaugh. The appointments have made marked differences in the make-up of many federal appeals courts, notably changing the Third Circuit Court of Appeals from a majority appointed by a Democrat president, to now a Republican-appointed majority. Additionally, a third of the judges now on the Ninth Circuit Court, generally known for its liberal activist judges, have been appointed by Trump, making a marked change in the composition of the court. Marjorie Dannenfelser, president of pro-life organization Susan B. Anthony List, commended the president and Republican Senators for the high number of appointments, [noting](#) that “President Trump is transforming the American judiciary and has more than delivered on this key promise to pro-life voters who put their trust in him.” Kelly Shackelford, president of First Liberty Institute, also [praised](#) the work to appoint such a high number of “originalist and constitutionalist judges.” Shackelford stated, “Nobody else has ever done it. Politics always came into play. Evangelicals are the largest voting bloc, and every poll found that judges were the No. 1 issue for them. We care about judicial philosophy and judges that won’t act like politicians but go with what the law says.”

Judge Reverses Trump Conscience Rule Protections

A federal judge in New York [has blocked](#) the conscience protection rule from taking effect, ruling in favor of Planned Parenthood and other pro-abortion groups that had filed a lawsuit against the rule. Set to take effect November 22, the rule was finalized last May by the U.S. Department of Health and Human Services and was an effort to ensure that existing laws which provide conscience protections for medical professionals would be enforced. U.S. District Judge Paul A. Engelmayer, an Obama-appointed federal judge, ruled that the regulation exceeded the federal government’s authority, was too costly, and jeopardized the availability of health care from some groups. The ruling did not address the religious freedom of health care workers who stand in jeopardy of being forced to perform medical procedures that violate their conscience. Senator Ben Sasse (NE) [called the ruling](#) “absurd mush,” further stating, “The point of the First Amendment . . . is to protect the conscience rights of Americans. In this country, government doesn’t get to tell you that your faith is fine on Sunday at church but not Monday at work.” The Christian Medical and Dental Association (CMDA) called the decision “disappointing,” [stating](#), “No one should be forced to violate their conscience or sincere religious beliefs. And society is better off when medical professionals who are motivated by their convictions are free to provide quality care without being forced to check those convictions at the door.” The CMDA recently released the results of a [survey](#) which showed that 1 out of 4 religious medical professionals have felt discrimination in the work place based on their moral or religious convictions. Furthermore, the [survey](#) also revealed that 91% of religious medical professionals indicated that they would rather leave the medical profession than be forced to perform a procedure that would violate their deeply held religious beliefs.

In Case You Missed It:

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

[We Hear You: "Education is Too Important to Leave to Professionals"](#)

[AACS legislative staff participates in radio program "Stand in the Gap" in the segment *Analyzing the Culture*](#)