



A Publication of the American Association of Christian Schools

The Washington Flyer
May 15, 2020

“These are the times that try men’s souls.

*The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country;
but he that stands by it now, deserves the love and thanks of man and woman.”*

Thomas Paine, [The Crisis](#), December 23, 1776

AACS Submits Public Comments on Religious Liberty Protections in SBA Rule

The AACS submitted comments this week urging the Small Business Administration (SBA) to strengthen the religious liberty protections in its recent regulations. Congress ensured when it passed the CARES Act that faith-based organizations and houses of worship were included in programs such as the Paycheck Protection Program (PPP). The SBA soon issued guidance in the form of [frequently asked questions](#) which provided much-needed clarity for faith-based organizations that wanted to participate in the programs but did not know how their religious liberties would be affected. The FAQ assured religious institutions that they would retain their “independence, autonomy, right of expression, religious character, and authority over its governance, and no faith-based organization will be excluded from receiving funding because leadership with, membership in, or employment by that organization is limited to persons who share its religious faith and practice.” On April 15, the SBA published its [final interim rule](#) on the PPP, which stated that “nothing in [SBA nondiscrimination regulations] shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on . . . of its religious activities.”

Although the guidance and interim final rule are helpful, many faith-based organizations remained uncertain that their religious liberties would not be threatened by participation in these programs. The AACS expressed in our public comments key areas where the SBA should strengthen and clarify religious liberty protections. Among the most important requests was that the SBA fully protect the autonomy of all faith-based organizations regardless of whom they serve. SBA guidance currently only fully protects the religious liberties of faith-based organizations that serve members of their own community, while enforcing nondiscrimination requirements on organizations that serve the general public. Another area of concern was [recent action](#) by the SBA requiring that “all borrowers must assess their economic need to a PPP loan” and consider “their ability to access other sources of liquidity sufficient to support their ongoing operations.” While it is thought that this addition was made after some large, publicly traded companies successfully received PPP loans, many nonprofits have been confused by the added requirement and decided to forego or return needed PPP help. The AACS public comments asked the SBA to clarify that faith-based organizations are excluded from this requirement so as not to discourage faith-based organizations from applying. Since then, the SBA has clarified that it will consider any recipient of a loan less than \$2 million to have operated in good faith when applying for the loan. Faith-based organizations are hopeful that the SBA will continue to act on these concerns as it implements PPP regulations.

Supreme Court Hears Arguments in First Amendment Case

This week, the Supreme Court heard oral arguments in [Our Lady of Guadalupe School v. Morrissey-Berru](#), one of two consolidated cases concerning the right of a religious school to make its own employment decisions. The question facing the Court was whether the school was protected by the ministerial exception, a First Amendment principle that allows religious schools to make their own employment decisions, when it declined to renew a teacher's contract. In [oral arguments](#), Supreme Court justices focused on how far the ministerial exception extends to employees of a school. Left leaning justices questioned if the ministerial exception covered all employees of a religious institution, including janitors and coaches. Conservative leaning justices asked whether an employee's religious title qualified him for the ministerial exception or whether an employee's religious function was more important, with some justices noting that the term "ministerial" had Protestant roots and would not resonate with members of other religions. Jeffrey Fischer, representing the fired teachers, argued that the ministerial exception was narrow, such that even a teacher who solely taught a religion class would not be considered to fall under the exception if he did not hold a leadership position in the church. Justices [seemed surprised](#) by the narrowness of this argument and indicated that the ministerial exception would include the function of teachers broadly to prevent government entanglement in religion, a positive sign for religious schools in this case. The Court will likely decide the case this summer.

Updates on Religious Freedom for Churches

As government officials grapple with the best way to reopen their localities, conservative and religious leaders are working to ensure protection for religious freedom as guaranteed by the U.S. Constitution. In [Kansas City](#), public outcry caused the mayor to amend an order that required churches to turn over the contact information for church members who attended their services. The change dropped the reporting requirement, but kept a limitation on the number of people gathering, a move which Liberty Counsel noted the mayor "must still remedy" as the restriction pertains only to churches, and not secular gatherings. In [Michigan](#), religious leaders filed a lawsuit that charged the governor overstepped her legal authority in her executive orders which ban religious gatherings. After the lawsuit was filed, the governor [issued a new order](#) which stated there would be no penalty for churches meeting or individuals attending church. The leaders have thus paused their lawsuit but will not officially drop it until they see evidence that penalties are not imposed on churches that decide to meet. In [Kentucky](#), a federal judge has issued a temporary restraining order to prevent the state from penalizing or interfering with churches holding in-person gatherings. The decision comes in response to a lawsuit filed by First Liberty Institute on behalf of Tabernacle Baptist Church after the governor issued an executive order prohibiting churches from gathering because they were not "life-sustaining organizations." Attorney Matthew Martens challenged, "The state cannot forbid people to assemble in a room for a religious reason but allow them to assemble in a room for a secular reason."

In Case You Missed It:

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

[AACCS Resource Page to Help Christian Schools Responding to COVID Crisis](#)

[Pulitzer Prize-Winning 1619 Project Set to Advance Socialism Teaching in the Classroom](#)

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