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“America has stood down enemies before, and we will do so this time. None of us will ever forget this day, yet we go forward to defend freedom and all that is good and just in our world.”

President George W. Bush, 9-11-01

Judge Rules Against Private School Provisions in the CARES Act

U.S. District Judge Dabney Friedrich has [ruled against](#) the final rule issued by the U.S. Department of Education which stipulated the CARES Act funds were to provide equitable services for all private schools during the pandemic shutdowns. The case, filed by the National Association for the Advancement of Colored People (NAACP) and some public schools and public school families, contested a provision in the CARES Act that provided federal funding for schools in order to maintain a safe and healthy school environment. The CARES Act dedicated \$16.5 billion to education through the Elementary and Secondary School Emergency Relief Fund (ESSER) and the Governor’s Emergency Education Relief (GEER). Because the coronavirus has affected all students, the CARES Act required that equitable services be available to private schools wishing to partake in the services provided. However, Congress did not specify how states could distribute funds to private schools, so several state and local education agencies refused to include private schools in the distribution of services. This confusion led Secretary of Education Betsy DeVos to issue an [interim final rule](#) that gave states and local school agencies two options for delivering the equitable services to nonpublic schools: either to all students proportionally based on the total number of public and private school students, or only to low-income students proportionally based on the total number of these students. In response, the NAACP sued Secretary DeVos, arguing that the department acted unlawfully by giving states these options. Three other courts have also ruled against the private school provision, but those decisions were limited in scope. Judge Friedrich’s decision extends nationwide, stopping the final rule from taking effect. The Department of Education has indicated it is reviewing the ruling and considering its next steps.

As [reported last month](#) in the *Washington Flyer*, the AACCS had joined with [Wisconsin Institute for Law and Liberty](#) in an amicus brief in the case, arguing that the language of the CARES Act clearly instructed that equitable services should be shared with all students, not just the low-income students benefitting from Title I. The amicus brief also argued that private schools would suffer irreparable harm if they did not receive equitable services because, unlike public schools, private schools are not perpetually funded by taxes and must instead compete to enroll students. While the ruling is disappointing to school choice advocates, some states have still chosen to ensure private schools are able to receive necessary assistance. In [West Virginia](#), Governor Jim Justice announced last month that \$1.6 million of the GEER funds would be extended to private schools to aid in their reopening plans. He stated, “We know all the great work you do. It is phenomenal, the successes you have and we commend you in every way on that.” In [North Carolina](#), the state legislature passed a coronavirus relief bill that includes a significant expansion of the state’s school choice program in order to help families find

the best education for their children during the pandemic. State senate leader Phil Berger emphasized the need for choice, stating, “School choice should not be a privilege available only to those who can afford it.”

Victory for Two Texas Christian Schools in Claiming Right to Reopen

While several private schools across the country face challenging mandates from state and local governments regarding whether or not they can reopen this fall, two Christian schools in Texas met victory this week after standing up to a mandate issued by Cameron County. First Liberty Institute has announced that Laguna Madre Christian Academy and Calvary Christian School of Excellence [would be reopening](#) after the county government initially announced all public and private schools would have to delay their reopening until September 28. After county officials made the August 10 announcement, the two schools threatened to sue the county, referencing Governor Abbott’s July order which stated that health officials could not shut down private, religious schools, and also charging that the county’s decision violated the religious liberty of faith-based schools. Representing the schools, First Liberty Institute special counsel Jeremy Dys also referenced a [guidance letter](#) issued by the Texas attorney general which stated that local governments were “prohibited from closing religious institutions or dictating mitigation strategies to those institutions.” The county acquiesced, and both schools opened for in-person instruction this week. Dys praised the county’s decision, noting that “local officials serve their community best by respecting the religious liberty of religious institutions.”

Federal Judge Blocks Administration’s Pro-Life Rule

The Fourth Circuit Court of Appeals has ruled [to block](#) President Trump’s pro-life rule from going into effect in Maryland. The pro-life rule in question was a 2019 Department of Health and Human Services (HHS) [final rule](#) that withheld Title X family planning funding to clinics that referred women for abortions. According to the rule, clinics could refer for abortions only if they did so in separate buildings from those funded by Title X. As a result, Planned Parenthoods nationwide withdrew from Title X and the \$60 million it provided each year. Pro-life advocates at the time praised the Trump administration for effectively defunding the abortion industry, which included removing significant funding for the leading abortion provider Planned Parenthood. In the case *Baltimore v. Azar*, the Fourth Circuit [decided](#) that the HHS rule “was promulgated in an arbitrary and capricious manner because it failed to recognize and address the ethical concerns of literally every major medical organization in the country.” In April, the same court ruled to temporarily block the law from going into effect in Maryland, with this latest decision ensuring that the pro-life rule will not move forward. However, the Ninth Circuit Court of Appeals has allowed the pro-life rule to go into effect in several states, leading to a circuit court split on the issue, which indicates that the Supreme Court could decide to take up the case in the future.

In Case You Missed It:

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

[AACCS Legislative Director Interview on Stand in the Gap: "Fatigue Compliance"](#)

[Grace Community and L.A. County Square Off in Court Over Ban on Indoor Church Services](#)

[Trump Releases List of Potential Supreme Court Nominees](#)