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"Our contest is not only whether we ourselves shall be free, but whether there shall be left to mankind an asylum on earth for civil and religious liberty."
John Adams

Federal Court Rules in Favor of Seminary in Religious Liberty Case
A federal court has ruled in favor of religious liberty in a historic decision which protects the ability of a seminary to operate its admissions policy according to religious convictions regarding human sexuality. In the case, *Mason v. Fuller Theological Seminary*, two seminary graduate program students filed a lawsuit after they were expelled for entering into same-sex marriages. Located in Pasadena, California, Fuller Theological Seminary has "community standards" which students agree to follow through written consent during the admissions process; included in these standards is the belief that "sexual union must be reserved for marriage, which is the covenant between one man and one woman." The plaintiffs claimed that the school's decision to dismiss them violated Title IX which prohibits discrimination on the basis of gender in higher education institutions that participate in federal funding programs. However, U.S. District Judge Consuelo B. Marshall ruled that the seminary meets the qualifications of a religious organization and, thus, falls under the religious exemption in Title IX. While the plaintiffs plan to appeal the decision, the ruling is hailed by conservatives as a victory for religious liberty.

The ruling is significant for several reasons, not the least of which is that it is the first time a federal court has recognized the religious exemption in Title IX. Under the Obama administration, religious institutions were instructed to submit a written request for the Title IX exemption to the U.S. Department of Education (DOE), and a list of schools receiving the exemption was posted on the DOE's website in an effort to shame the schools by inferring they were discriminatory for requesting an exemption. However, the Trump administration not only removed the "shame list" but also issued a Final Rule clarifying that, according to the language of Title IX, religious institutions do not have to submit a request for the Title IX religious exemption but rather are eligible simply to claim the exemption when necessary. Furthermore, in her decision, Judge Marshall stated, "The Court is not permitted to scrutinize the interpretation [the seminary] gives to its religious beliefs." Attorney Daniel Blomberg noted the significance of this decision: "A judge in the Central District of California recognized Fuller's well-established right to maintain its own religious beliefs when it comes to training future ministers for the faith." Blomberg serves with the Becket law firm which represented Fuller in this case; and he further explained that if the judge would have ruled against the seminary, it "would have allowed government officials to control how ministers are trained." He added, "That would be an intolerable violation of any sort of reasonable separation of church and state." An additional point of significance for this ruling is the precedent it sets for protecting the religious liberty for other faith-based institutions, as noted by Blomberg: "The principles from the judge's decision, which establish and follow well-known law that's been running back to the 1970s

and uniformly applied by every administration since the 1970s, are going to be very valuable for religious organizations and colleges and universities across the country."

Department of Education Revised Guidance on Equitable Services

The Department of Education has issued a revised guidance explaining how local educational agencies (LEAs) can provide non-public schools with equitable services in two CARES Act funding programs. The revised guidance was issued in response to three recent district courts that ruled against the Department's guidelines on distributing equitable services. Under Secretary DeVos, the Department's original guidance was issued on July 1, 2020, and allowed LEAs to provide equitable services to non-public schools either according to total student population or only to low-income students. In recent weeks, three courts ruled that the Department violated the intent of the CARES Act by offering those two methods of delivering equitable services. The courts declared that LEAs must provide equitable services according to the Title I funding formula for low-income students in the 1965 Elementary and Secondary Education Act. However, Secretary DeVos also stated that the Department would not take adverse action against an LEA that decided to provide equitable services using the total student population if they did so prior to the courts' decisions. Therefore, some LEAs may choose to provide equitable services according to the broader funding formula, while others will adjust their funding formula to the narrower Title I formula. Private schools that applied for CARES Act funding through either the ESSER or GEER programs should communicate with their LEA to determine what steps the LEA will take considering the revised Department guidance.

Court Gives Victory to Capitol Hill Baptist Church

Last Friday, the U.S. District Court for Washington, D.C., ruled in favor of Capitol Hill Baptist Church, allowing it to resume its in-person worship services for the first time since March. Just last month, CHBC filed a lawsuit with First Liberty Institute, arguing that Mayor Bowser's refusal to issue the church a permit to hold outdoor services of more than 100 people violated their First Amendment rights. The U.S. Department of Justice also filed a statement of interest in the case, arguing that the District of Columbia "neglected" the church members' rights to freely worship and exercise their faith. CHBC twice requested a waiver to meet beyond the 100-person maximum, once in June and again in September, and was denied by the city both times, even though Mayor Bowser permitted and supported mass protests and demonstrations in the city throughout the summer. In his decision, District Judge Trevor McFadden wrote that the city likely violated the Religious Freedom Restoration Act and noted that "the District's current restrictions substantially burden the Church's exercise of religion." CHBC believes that "if a church cannot meet in an assembly it does not exist," and accordingly it does not offer online services. Pastor Justin Sok stated after the ruling, "A church is not a building that can be opened or closed. A church is not an event to be watched. A church is a community that gathers regularly, and we are thankful that such communities are once again being treated fairly by our government."

In Case You Missed It:

Weekly Market Update provided by Jeff Beach of the AACS Investment Team at Merrill Lynch

National Association of Scholars Calls for Revoking of Pulitzer Prize for 1619 Project

Schools Aren't Super-Spreaders

How COVID-19 is Spreading School Choice

Ed Choice Brief: School Choice in the States – 2020 Update

Jamison Coppola: Legislative Director
Maureen Van Den Berg: Policy Analyst
Hannah DeBruler: Legislative Assistant
Legislative Office, 119 C Street SE, Washington, DC 20003
Phone: 202.547.2991