



**The Washington Flyer
December 11, 2020**

*“Our unalterable resolution should be to be free.”
Sam Adams*

AACS Submits Public Comments in Support of Religious Liberty

This week, the AACS submitted public comments in a newly updated [Compliance Manual on Religious Discrimination](#) from the Equal Employment Opportunity Commission (EEOC). The EEOC is a powerful bureaucratic agency that is tasked with investigating and enforcing Title VII prohibitions on workplace discrimination. Although Christian schools are exempt from the religious discrimination portion of Title VII, the newly updated manual is an important tool the EEOC uses to deliberate when there are conflicts in the workplace arising from a Christian’s religious expression such as witnessing to other employees, holding Bible studies, wearing religious symbols, or declining to participate in activities that go against religious belief.

Overall, the AACS was very pleased with the EEOC’s effort to uphold First Amendment rights of employees and employers in the workplace. The guidance treads the narrow path between respecting the freedom of employers to conduct their business as they see fit and ensuring the freedom of religious Americans to live according to the dictates of their conscience without fear of reprisal. Since finding the correct balance between employees and employers can be difficult, the religious liberty guidance provides many helpful examples of possible religious discrimination in the workplace. Using court cases as support, the guidance discusses definitions of religious belief, the Title VII religious exemption, the ministerial exemption, the First Amendment, the Religious Freedom Restoration Act (RFRA), workplace harassment, and religious accommodations. Some of these areas, like the Title VII religious exemption and the ministerial exception, are particularly important to Christian ministries. The AACS comments credited the EEOC with emphasizing that the exemption for religious organizations does not apply only to its religious activities, but the exemption also “enable(s) religious organizations to create and maintain communities composed solely of individuals faithful to their doctrinal practices, whether or not every individual plays a direct role in the organization’s ‘religious activities.’ ” This broad view of an organization’s religious liberty allows Christian schools to teach the tenets of their faith freely not only through explicitly religious classes, but through the living examples of their teachers, from the parking lot to the hallways and in each classroom. The ministerial exception, another strong defense for Christian schools, protects the ability of Christian schools to hire and retain teachers and personnel that embody the beliefs they desire to inculcate in their students. The guidance correctly asserts that “the ministerial exception is not just a personal right of religious institutions, but a structural guarantee that obligates the government and the courts to refrain from interfering or entangling itself with religion.” Because the EEOC has leeway in exercising its investigative and enforcement authority, the updated guidance is an important layer of protection for Christians within religious institutions and in the general workforce. Every voice of support for religious liberty is valuable as the EEOC finalizes its guidance. If you would like to add your voice in support of religious liberty, click on this link to [regulations.gov](https://www.eeoc.gov/regulations.gov) and click the comment button. The deadline to submit comments is December 17.

38 Senators File Amicus Brief Supporting Religious Liberty for Christian School

Thirty-eight U.S. Senators have filed an amicus brief with the U.S. Supreme Court, supporting the rights of a Kentucky Christian school to remain open for in-person instruction after the governor closed all K-12 schools for in-person instruction. [Danville Christian Academy](#) was joined by state Attorney General Daniel Cameron in the lawsuit, charging that Governor Andy Beshear’s order violated the free exercise clause of the U.S. Constitution. The governor claims his order is neutral because it affects both public and private K-12 schools, but the order allows comparable secular gatherings such as preschools, colleges, businesses, and entertainment venues to remain open. Senate Majority Leader Mitch McConnell [was joined by 37 other Senators](#) in submitting the amicus brief which offers a strong argument for protecting the “hybrid rights” that are represented, “such as the combination of religious, parental, and speech rights.” The [amicus brief](#) states that “religious freedom is a fundamental right protected by the First and Fourteenth Amendments. That protection extends to the religious education carried out in religious schools no less so than the worship practiced in a church, synagogue, or mosque.” The amicus specifically argues that the governor’s orders were not neutral, pointing out that a “regulation lacks neutrality if it treats religious activity less favorable than *any comparable secular activity*, even if it treats religious activity the same as *some* secular activity.” The brief concludes: “COVID-19 is undoubtedly a serious health threat, but the Constitution applies even in difficult times. This Court should again remind Governors across the Country that shutdown orders cannot trample Constitutional rights.”

Religious Liberty Win for Christian Counselors in Florida

A 3-judge panel in the 11th Circuit Court of Appeals has ruled that banning conversion therapy is a violation of First Amendment rights. The case *Otto, et al v. City of Boca Raton, FL et al*, involved two counselors, Dr. Robert Otto and Dr. Julie Hamilton, who filed suit to challenge the constitutionality of local ordinances that prohibited counseling for minors facing unwanted same-sex attraction or gender confusion. The city of Boca Raton and Palm Beach County had instituted laws against sexual orientation change efforts (SOCE), claiming that such efforts were harmful to clients. (The Family Research Council [FRC] recently released an [Issue Analysis](#) that examined 79 reports that purport to show the harm of SOCE; FRC concluded there is no scientific proof of any harm.) In the 2-1 ruling, Judge Britt Grant [stated](#), “what good would it do for a therapist whose client sought SOCE [sexual orientation change efforts] therapy to tell the client that she thought the therapy could be helpful, but could not offer it? . . . Speech does not need to be popular in order to be allowed. The First Amendment exists precisely so that speakers with unpopular ideas do not have to lobby the government for permission before they speak.” Mat Staver, founder of Liberty Counsel which represented the plaintiffs, stated, “This is a huge victory for counselors and their clients to choose the counsel of their choice free of political censorship from government ideologues. This case is the beginning of the end of similar unconstitutional counseling bans around the country.” Both judges who ruled in favor of First Amendment rights for the counselors were appointed by President Trump.

In Case You Missed It:

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

[Social Justice Begins with Open Schools and School Choice](#)

[Religious Liberty Cannot Be Quarantined, Says New Study](#)

[NAEP Goes AWOL](#)