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“There is not a single instance in history in which civil liberty was lost, and religious liberty preserved entire. If therefore we yield up our temporal property, we at the same time deliver the conscience into bondage.”
John Witherspoon

President Biden Signs Executive Order Instructing Review of Non-discrimination in Title IX

On Monday, President Biden signed an [executive order](#), instructing the Secretary of Education Miguel Cardona to review Department of Education “regulations, orders, guidance documents, policies, and any other similar agency actions” relating to Title IX to ensure they are consistent with the administration’s non-discrimination policy. The policy, as stated in the executive order, is “that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity.” Originally passed in 1972, Title IX prohibits discrimination based on a person’s sex in federally funded educational programs. Under the Trump administration, the Department of Education issued new regulations for Title IX, mainly to address the procedures which institutions should follow for sexual harassment charges. The order also states that the Secretary should issue new guidance, “take enforcement action,” and “consider suspending, revising, or rescinding” any previous actions, specifically naming the new regulations issued under Secretary Betsy DeVos under Trump, which are deemed inconsistent with the administration’s non-discrimination policy.

The Biden administration has referred to the Supreme Court’s 2020 ruling in [Bostock v. Clayton County](#) to justify the aggressive actions regarding nondiscrimination policies on sexual orientation and gender identity. However, shortly before the Trump administration ended, the Department of Education issued a [memorandum offering guidance](#) on how the *Bostock* decision does not apply to Title IX because “the Court decided the [*Bostock*] case narrowly, specifically refusing to extend its holding to Title IX and other differently drafted statutes.” The memorandum also specifically addressed the Title IX religious exemption, the First Amendment, and the Religious Freedom Restoration Act as reasons that religious institutions should be protected from over-reaching regulations and policies stemming from the *Bostock* decision. Under the new Biden executive order, the memorandum will likely be refuted and rescinded; however, the memorandum does point to valid legal arguments which should ensure the protection of religious freedom. Specifically, the religious exemption in Title IX is codified into law and was strengthened by the Title IX regulations issued by the Trump administration. These regulations clarified that the law does not require the submission of a written request or statement to claim the religious exemption, as had been implied under the Obama administration, which also published a “shame list” of institutions invoking the religious exemption. A [recent update](#) on March 8, 2021, to the Department of Education website, states, “The Title IX regulations offer a process by which an educational institution can inform OCR that it is claiming a religious exemption by submitting a written statement to the Assistant Secretary for assurance that OCR acknowledges the institution’s exemption.” The Department does add the statement that “an institution’s exempt status is not dependent upon its submission of a written statement to OCR.”

Supreme Court Rules in Favor of Free Speech and Religious Freedom

On Monday, the Supreme Court handed down a [victory](#) for free speech and religious freedom on college campuses in the case *Uzuegbunam v. Preczewski*. The case began in 2016, when Georgia Gwinnett College student Chike Uzuegbunam was prohibited by campus police from sharing his faith on campus. After Chike and Alliance Defending Freedom sued, the college eventually rescinded the free speech ban. But Chike argued that because his constitutional rights were violated, the college should be forced to admit its wrongdoing by awarding him [nominal damages](#) (small sums of money, such as one dollar, that represent the harm inflicted upon a person). Justice Clarence Thomas authored the [majority opinion](#) for the 8-1 decision, writing that “it is undisputed that Uzuegbunam experienced a completed violation of his constitutional rights” and “nominal damages can redress Uzuegbunam’s injury even if he cannot or chooses not to quantify that harm in economic terms.” Chief Justice John Roberts was the only justice to dissent in the case, writing that the case was moot because Chike was no longer a student at the college and arguing that “an award of nominal damages does not alleviate the harms suffered by a plaintiff, and is not intended to.” But the majority’s opinion shows that awarding even an insignificant sum of money to a student whose free speech rights were violated serves as a rebuke to government actors, including public colleges, that fail to protect constitutional rights.

Arkansas Enacts Law Banning Abortion

On Tuesday, Arkansas Governor Asa Hutchison [signed into law](#) the Arkansas Unborn Child Protection Act which bans all abortions, allowing an exception only in cases where the health and safety of the mother is at risk. Governor Hutchison stated that he signed the bill into law because of “overwhelming legislative support” and his own “sincere and long-held pro-life convictions.” He also recognized that the new law contradicts the “binding precedents of the U.S. Supreme Court,” referring to the *Roe v. Wade* decision which legalized abortion nationwide in 1973. However, he added that the goal of the bill, while saving lives, is “to set the stage for the Supreme Court overturning current case law.” The American Civil Liberties Union has already vowed to challenge the new law, just as other pro-abortion groups have blocked other pro-life laws passed in different states from taking effect. Just last month, South Carolina [passed a law](#) which bans abortion once a baby’s heartbeat is detected, which is usually 6 to 8 weeks into pregnancy. Planned Parenthood immediately filed a lawsuit, resulting in a federal judge blocking the law from taking effect. Similar court actions have taken place against other state laws which restrict abortions. However, as Governor Hutchison referenced, pro-life advocates are hopeful that one or more of these challenged laws will come before the U.S. Supreme Court and provide an opportunity for the reversal of the infamous *Roe v. Wade* decision.

In Case You Missed It:

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

[Practical Legal Help for Christian Schools: ADF Ministry Alliance](#)

[Family Research Council: Two Appointments the GOP Should Cancel](#)

[Judge Rules Texas Can Defund Planned Parenthood Abortion Business](#)