



**The Washington Flyer  
June 11, 2021**

*“Let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.”*  
**President George Washington**

**Department of Education Conducts Virtual Hearing for Title IX**

This week, the U.S. Department of Education’s Office for Civil Rights hosted a virtual public hearing as part of their efforts to revise the regulations for Title IX, the law that prohibits sex discrimination in educational programs. According to the [notice announcing](#) the public hearing, the review of the Title IX regulations is in response to President Biden’s [Executive Order 13988](#) on “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation” and [Executive Order 14021](#) on “Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity.” These orders direct all federal agencies to review their memos, guidance, rules, and regulations and bring them into compliance with the Supreme Court’s ruling last summer in [Bostock v. Clayton County](#) that redefined the word “sex” in federal employment law to include sexual orientation and gender identity. The DOE specifically noted their interest in feedback regarding how revised regulations could “address sexual harassment, including sexual violence, and discrimination based on sexual orientation and gender identity in education programs and activities.” Over [700 requests](#) were submitted for 600 available slots for oral comments at the virtual hearing, and over 15,000 written comments have already been sent to the DOE.

The AACCS submitted written comments which argued that President Biden’s executive orders, which are the basis for the new Title IX regulations, present a “threat to the ability of religious institutions and families to practice faith without government interference.” The comments emphasized that the “Constitution recognizes the fundamental nature of freedom of religion as the ability to live according to the dictates of one’s conscience informed by reason and revelation from God.” However, as the AACCS comments point out, if the DOE revises the regulations to expand the definition of sex to include sexual orientation and gender identity, then “religious institutions that hold a traditional and religious view of human sexuality in contradiction to the Department of Education’s definition of sex will be stripped of the freedom to practice biblical beliefs and teach the biblical truths about the creation of man, God’s design for sexuality, and the purpose of marriage.” The comments further emphasized that the new policy will create “widespread harm” to children by allowing biological males to compete in women’s sports and “opening of all private spaces and appropriately sex-segregated areas to members of the opposite sex.” The comments also addressed the flawed logic in using the *Bostock* decision as the basis for revisions to Title IX, pointing out that the *Bostock* ruling specifically addressed only federal employment law, not *all* federal laws, and citing Justice Gorsuch’s opinion which stated, “the Court does not claim that Title VII prohibits discrimination because of *everything* that is related to sex.” AACCS closed the comments by stating our belief that “each individual is uniquely created in the image of God” and “our schools strive to show Christ’s love to all students by providing them an excellent education that teaches them how to reach their God-given potential.”

## **Court Victory for School Choice and Religious Liberty in Vermont Case**

Last Wednesday, a federal appeals court in Vermont ruled in favor of four Catholic students who desire to take part in the state's voucher program to attend a religious school. In January, a federal judge stated that the students should be allowed to participate in the voucher program but did not allow their participation until the case was resolved. The appeals court overruled that decision and ordered the judge to grant reimbursements to the students for this semester, a victory for religious liberty and school choice. This ruling comes a year after the Supreme Court case *Espinoza v. Montana Department of Revenue*, which upheld the right of parents to use public funding to send their children to a school of their choice, whether secular or religious. Paul Schmitt, legal counsel for Alliance Defending Freedom, [commented](#) on the Vermont case, "When the state offers parents school choice, it cannot take away choices for a religious school. . . . For too long, Vermont unconstitutionally forced families to choose between exercising their religion or enjoying a publicly available benefit." For now, this decision looks promising for families of faith in Vermont to use a public benefit to send their children to religious schools, but according to [Derek Black](#), a constitutional law professor at the University of South Carolina, "the court's recent decision is unsurprising and likely to prompt further legislation." [This article was written by Zachary Jewell, our new summer intern. Welcome Zach! We look forward to seeing more articles during your time partnering with us this summer.]

## **Court Orders Reinstatement of Teacher Who Was Suspended for Religious Beliefs**

A Virginia court ruled this week that Tanner Cross, an elementary physical education teacher, [must be reinstated](#) to his teaching position after he was suspended for speaking out against a proposed school policy that would require teachers to use transgender students' preferred pronouns. At a public hearing last month, hosted by the Loudon County Board of Education in northern Virginia, [Mr. Cross testified](#) that the policy would cause harm to children and would cause him to violate his Christian faith: "I love all of my students but I will never lie to them regardless of the consequences. I'm a teacher but I serve God first, and I will not affirm that a biological boy can be a girl and vice versa because it's against my religion, it's lying to a child, it's abuse to a child, and it's sinning against our God." Two days later, the school board sent a letter informing Mr. Cross he was not only suspended for alleged "disruptive" behavior, but also banned from stepping foot on school grounds. Represented by Alliance Defending Freedom, Mr. Cross filed suit against the school board, charging an unconstitutional violation of his personal freedoms of speech and religious exercise. Judge James E. Plowman issued an [injunction](#) this week against the suspension of Mr. Cross while his lawsuit against the school board moves through the court.

## **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](#)

[Promise to America's Children](#)

[National Survey Shows Black Parents Continue to Support School Choice](#)

[In Brief: Bill Barr Defends Religious Liberty](#)