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"Always stand on principle . . . even if you stand alone."
~John Adams

School Choice in the Courts
Several lawsuits involving school choice programs are working their way through court systems across the country, some challenging the constitutionality of new or expanded school choice programs and some challenging the restrictions in current choice programs. In Nevada, the state supreme court ruled against the state's tax credit scholarship program in a decision which calls the tax credit a government appropriation. Earlier this year, the state legislature voted to limit the growth of the state's tax credit program, a move which the state's Department of Taxation estimated would increase the general fund revenue. However, according to the state constitution, a legislative move to increase revenue requires two-thirds legislative approval; the state's supreme court ruling that the tax credit program is an appropriation sidesteps the need for the approval, thus upholding the legislature's efforts to limit the school choice program. Similarly, in Kentucky, Franklin Circuit Court Judge Phillip Shepherd recently ruled that the state's new tax credit program was a government appropriation, and, as such, was unconstitutional because it takes money away from public schools. The Education Opportunity Account Program was established last year and allows for a tax credit for donations to account-granting organizations (AGO) which in turn provide scholarships for educational choice to eligible families. The Institute for Justice, which successfully argued the *Espinoza* case before the U.S. Supreme Court, points out that tax credits are granted for private donations to the AGOs; thus, the private donations are not government appropriations funding private schools. IJ attorney Joshua House explains, "Today's ruling treats private donations as if they are government money. It holds that when private individuals donate their own money to education-related causes, and receive tax credits for those donations, it is in effect the government raising and spending money on education. That's just wrong."

Lawsuits in two states are seeking more choice opportunities by challenging restrictions in school choice programs. Families in Michigan have filed a lawsuit against the state's Blaine Amendment, charging that the law is steeped in religious animus, and, therefore, discriminatory in its purpose and application. When the law was passed in 1970, it was intended to keep public funds from supporting Catholic schools, but it is now used to stop families from using funds, such as from 529 accounts, to support education at any religious institution. Because the Michigan Blaine Amendment prohibits funding to all private schools rather than limiting it to religious schools, it survived the U.S. Supreme Court *Espinoza* ruling which decided the Montana Blaine Amendment was unconstitutional because it prohibits funding specifically for religious schools. Families in Maine have also challenged a law which prohibits them from using the town tuition program to attend a religious school. The town tuition program allows students in districts too small to host a public school to use public funds to attend a school of their choice, but the program does not allow families to use the funds for religious schools. The case, *Carson v. Makin*, has made its way to the U.S. Supreme Court where arguments are scheduled for December 8, 2021.

Catherine Lhamon Confirmed to Lead Office for Civil Rights

This Wednesday, the Senate voted to confirm Catherine Lhamon to be assistant secretary of the Office for Civil Rights (OCR) at the Department of Education. The vote was 50-50 with Vice President Kamala Harris breaking the tie. Lhamon's nomination was stuck for weeks after a contentious committee hearing and strong opposition from Republicans. Senator Richard Burr (NC), ranking member of the Health, Education, Labor and Pensions (HELP) Committee, has been one of the most ardent voices in opposition to Lhamon's confirmation and called her history during the Obama administration "deeply troubling if not outright disqualifying." Due to a deadlock in the HELP Committee, Senate Majority Leader Chuck Schumer (NY) had to file cloture, a procedure that paves the way for the Senate to vote on a nominee as a body, to move her out of committee. Lhamon has a record of hostility toward religious liberty and used her time during the Obama administration to advocate for changes in Title IX regulations to protect people on the basis of their sexual orientation or gender identity. While leading OCR in the Obama administration, Lhamon was responsible for the notorious "Dear Colleague" letter issued to all public schools threatening a loss of federal funding if they did not implement transgender-affirming policies that required students to be able to use the bathrooms, locker rooms, and join the sports teams that aligned with their gender identity. Her return to the Office for Civil Rights could mean a return to the hostile policies pursued under the Obama administration.

Universal Pre-K and Childcare Expansion Proposal Could Leave Out Faith-Based Providers

The House Education and Labor Committee has approved a part of the budget reconciliation bill that would exclude religious providers from expanded childcare and universal pre-K programs. Currently, parents can take advantage of the Child Care and Development Block Grants (CCDBG) which provides certificates directly to parents to use at the childcare center of their choice. CCDBG rules protect providers' ability to maintain their religious identity, teachings, hiring practices, and admission standards. Because the certificates are awarded to parents, most of the CCDBG money is free from onerous government requirements that would hurt religious providers. The new childcare program, however, would create a different certificate program that would make religious providers recipients of federal financial assistance (FFA), and, therefore, subject to the nondiscrimination requirements like those enforced in the Head Start program that prohibit religious hiring and admission and would prohibit sex discrimination. Similarly, the proposed universal pre-K provisions make providers recipients of FFA and also subject them to Head Start rules. Further, the program prohibits religious teachings or activities at participating providers. These requirements seem to purposefully exclude religious providers; therefore, the House bill prevents parents from partnering with providers that share their values or religious convictions. Faith-based organizations are working with House and Senate staff to secure protections for religious providers in the final bill.

In Case You Missed It:

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

Practical Legal Help for Christian Schools: ADF Ministry Alliance

Promise to America's Children

What is the NSBA and Why Is It Trying to Shut Down Parents?

Supreme Court to Fast Track Decision on Texas Abortion Ban; Pro-Life Groups Expect Another Victory

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