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*“The future and success of America is not in this Constitution,  
but in the laws of God upon which this Constitution is founded.”*  
**James Madison**

**Public School Enrollment Takes a Hit from COVID**

Approximately 1,268,000 students have left the public schools since the pandemic began in 2019, according to statistics released by [Return 2 Learn Tracker](#). The data shows that for the last two consecutive school years, all but five states have experienced a consistent decline in public school enrollment, with 19 states declining by 3% or more. In-person learning and masking proved to be significant factors in determining enrollment numbers, according to the data. Districts which returned to in-person learning more quickly saw a slight decrease of 1.1% in enrollment, but those districts which continued remote learning for long periods saw a 4.4% decrease in enrollment. When examined by mask usage, the areas with high mask usage saw enrollment decline by 3.8% over the last two years, while those with low mask usage experienced only a 1.5% decline. Interestingly, the data also revealed that in those districts where the majority supported President Biden the enrollment declined 3.8% over two years while the districts that supported President Trump saw a decline of 1.9% over two years. When examined year by year, the data shows that those areas with high mask usage and more remote learning saw a continued decrease in enrollment from 2021 to 2022 while the areas with low mask usage and more in-person learning saw a rebound in enrollment from 2021 to 2022. The study also examined enrollment trends by grade level. The most significant declines in enrollment occurred in kindergarten and elementary grades; middle school enrollment trends were mixed depending on how quickly districts moved back to in-person learning; high school enrollment trends showed a very slight increase in enrollment between 2021 and 2022 when in-person learning was more prevalent.

Contrary to the enrollment decline for public schools, the enrollment for Christian schools, other religious and private schools, and homeschooling has seen a significant increase over the last two years. These rising numbers are a reflection of parents' dissatisfaction with public schools' responses to the pandemic (masking, remote learning, vaccine mandates), and the curriculum choices of public school officials. In particular, Christian schools have seen significant increase in enrollment over the last two years. In an interview earlier this year with “The World and Everything in It” [podcast](#), AACCS executive director Jeff Walton stated that enrollment in AACCS schools is “up an average of 17 percent this year.” His comments were made in the context of the teacher shortage that is prevalent in both private and public schools, a problem which predates COVID; although the pandemic has exacerbated the problem by motivating more public school teachers to retire early. On the same podcast, Alan Hodak, administrator at Fourth Baptist Christian School in Plymouth, Minnesota, discussed ways that he is working to recruit new teachers in order to meet the increased interest for growth at his school. His school enrollment increased by 60 students this year; and he believes they can “continue to grow significantly,” but he is working to fill teacher positions before making the commitment for more students. “We’re at a place where we have to become really, really creative in order to make it happen,” he states. He further explains one recruiting effort could include considering people in the church congregation as potential teachers and working with them to provide the necessary educational training for teaching.

## **NSBA Releases Review of Letter Asking Biden Administration to Investigate Parents**

On September 29, 2021, the National School Board Association (NSBA) sent a [letter](#) to President Biden requesting that he investigate parents who speak up at school board meetings to oppose radical gender ideology and critical race theory. The letter portrayed parents' vocal pushback against these policies as "acts of malice, violence, and threats against public school officials" that "could be equivalent to a form of domestic terrorism." Just a few days later, Attorney General Merrick Garland issued a [memo](#) calling for federal action against threats made to school boards. The timing caused many to question whether the federal government had collaborated with the NSBA to produce the letter requesting investigations of parents as domestic terrorists. In response to the backlash, the NSBA apologized and agreed to [review](#) the letter officially, a process that concluded last week. NSBA executive director and CEO John Heim stated, "The letter directly contradicts our core commitments to parent engagement, local control, and nonpartisanship." However, the [investigation](#) found that former NSBA CEO Chip Slaven drove the letter and conferred with White House Senior Advisor to the President Mary Wall on the letter. The Department of Justice was also made aware of the letter days before it was officially sent to AG Garland. Although Heim claims that "the NSBA does not seek or advocate for federal law enforcement intervention at local school board meetings," the report provides evidence that several top-ranking officers of the NSBA approved the letter and worked with the Biden administration to target parents who question the progressive teachings in public schools.

## **Court Case Asks for Clarification of Religious Liberty After *Bostock***

In 2020, the Supreme Court issued a disastrous ruling in [Bostock v. Clayton County](#) by redefining the word *sex* in Title VII of the Civil Rights Act to also mean sexual orientation and gender identity as applied to many employment practices. At the time the majority opinion was issued, the ramifications of the opinion in other areas of federal law and its effect on religious liberty remained [unanswered](#). Indeed, the Court pointedly refused to answer other questions raised by the redefinition of *sex*, with Justice Neil Gorsuch writing for the majority, "How these doctrines protecting religious liberty interact with Title VII are questions for future cases." A [recent case](#) in Texas has provided some clarity to the confusion sown in the *Bostock* decision. In *Bear Creek Bible Church & Braidwood Management v. Equal Employment Opportunity Commission (EEOC)*, U.S. District Court Judge Reed O'Connor was asked whether religious employers and employers generally were protected from allegations of sex discrimination. Judge O'Connor noted that religious employers, such as churches and religious nonprofits, were considered "religious organizations" that qualify for the religious exemption in Title VII. He also stated that businesses that are not religious institutions are protected under the First Amendment and the Religious Freedom Restoration Act. Further, he clarified that all employers, religious or not, are able to set distinctive dress codes and have separate restrooms according to employees' sex. While Judge O'Connor's ruling is encouraging, the EEOC has appealed the case to the 5th Circuit. That court's opinion is still pending.

## **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](#)

[Barr's Warning on Education and Religious Freedom Rings True One Year Later](#)

[Oklahoma Bans Nonbinary Genders on Birth Certificates](#)