



July 13, 2026

Religious Liberty Commission  
Office of the Associate Attorney General  
U.S. Department of Justice  
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Re: Public Comment—Chapters 4, 5, and 6, Executive Summary and Appendix B  
recommendations—Christian Legal Society’s Center for Law & Religious Freedom

Dear Members of the Commission and its Staff:

Christian Legal Society (CLS) and its Center for Law & Religious Freedom (Center) appreciate the tremendous work the Religious Liberty Commission (Commission) has done to highlight the God-given, unalienable human right of religious freedom and the current threats to religious freedom in our country.

CLS and the Center have defended the rights of individuals and organizations to practice and live out their religious identity and beliefs for over fifty years. We have advocated in Congress for the passage of, and in the Supreme Court for the defense of, vital federal legislation like the Religious Freedom Restoration Act (RFRA), the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Equal Access Act of 1984 (EAA) to protect all Americans’ religious freedom.

CLS has law student chapters at approximately 130 public and private law schools nationwide. CLS student chapters typically are small groups of students who meet for prayer, Bible study, and worship. All students of any faith or no faith are welcome at CLS meetings. As Christian groups have done for 2000 years, CLS student chapters require their leaders to agree with CLS’s statement of faith, signifying their agreement with the traditional Christian beliefs that define CLS.

The Center was founded in 1975 to defend the rights of students, student groups, teachers, and parents in public schools and on college campuses to engage in religious expression. We support religious organizations’ right to be authentically religious by adopting policies and hiring based on religious beliefs. We believe that the unique religious pluralism of our country is a result of strong First Amendment protections that we must preserve for future generations.

To that end, we respectfully offer these comments on the Draft Report. CLS and its Center were grateful for the opportunity for senior counsel, Kim Colby, to serve as a witness before the Commission at its Second Hearing on Religious Liberty in Public Education on September 8,

2025.<sup>1</sup> For that reason, Part I addresses Chapters 4, 5, and 6 with their focus on public education issues, both at the K-12 level and on college campuses. Part II addresses the Draft Report's Twelve Recommendations in the Executive Summary and Appendix B, along with some of the additional recommendations in Appendix B.

**Part I: Chapter 4 (Students Don't Check their Rights at the Schoolhouse Gate), Chapter 5 (The Fight for Faith on College Campuses), and Chapter 6 (The Rights and Roles of Parents and Teachers)**

We commend the Commission for inviting many brave students to tell their stories about having their freedom of speech and free exercise of religion suppressed by public school administrators. Some commenters may incorrectly claim that the stories of the students who testified before the Commission are either exaggerated or aberrations.

But sadly, their stories are but the tip of the proverbial iceberg, as Center attorneys know too well from decades of experience. For *fifty* years, the Center has worked with real students with similar stories of public school employees ordering them not to read their Bibles in their free time, say grace over their lunch, refer to religious beliefs in their schoolwork, credit God in their graduation speeches, wear t-shirts with religious sayings, or meet for prayer and Bible study when other students meet to play chess or video games.

Sometimes education officials act out of ignorance of the First Amendment's protections for students' religious expression. Some act out of a belief that the school is their personal fiefdom to which the First Amendment does not apply. Too often, they act out of personal hostility to religion in general or, even worse, from hostility to specific religious beliefs. Too many public education officials fail to honor their constitutional duty to respect every student's religious beliefs and speech.

**A. Comments on the Draft Report's Recommendations for Chapter 4**

**1. Issue additional guidance on students' religious liberty rights.** We commend the recommendation that the Department of Justice (DOJ) issue additional guidance similar to the *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools*.

- a. We commend the Commission's list of proposed topics and its objective of "further strengthen[ing] and clarify[ing] the rights of students in public schools to:
  - i. Form and lead religious student clubs;
  - ii. Receive the same level of support for religious clubs and access to school facilities and advertising methods that non-religious clubs receive;
  - iii. Require club leaders and members to meet religious requirements;
  - iv. Read and distribute religious materials at times when reading and distributing non-religious materials is allowed;

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<sup>1</sup> Second Hearing of the Religious Liberty Comm'n, Hearing Transcript., 73-75 (Statement of Kimberlee Colby), <https://www.justice.gov/religious-liberty-commission/media/1428746/dl?inline>.

- v. Wear clothing with religious messages;
- vi. Be excused from school for religious practice and observance, such as to celebrate religious holy days;
- vii. Attend off-site religious instruction through constitutionally permissible release-time programs;
- viii. Participate in moments of silence, student-led prayer, and other student-led free exercise;
- ix. Engage in religious expression at times and events where students are allowed to engage in private expression, such as school talent shows or graduation ceremonies.”

b. As detailed in the attached memorandum,<sup>2</sup> we suggest five additions to the above list:

- i. Religious student groups may meet during non-instructional time, including lunch and activity periods;<sup>3</sup>
- ii. Add “funding” after “advertising methods” so that 1.a.ii., *supra*, reads “Receive the same level of support for religious clubs and access to school facilities, advertising methods, and funding that non-religious groups receive”;<sup>4</sup>
- iii. Add “religious” as a modifier for “club” in 1.a.iii., *supra*. While it is clearly invidious discrimination for non-religious groups to use religious criteria for leadership, it is not unlawful discrimination for a religious group to do so.
- iv. Specific mention in topic viii, *supra*, that students may organize and participate in “See You at the Pole” gatherings as part of an annual, nationwide event in the early weeks of the school year; such specific mention in past guidance has been beneficial in providing definitive guidance for school administrators.
- v. We respectfully submit that a beneficial and tested template for additional DOJ guidance is the Trump Administration’s guidance issued on January 16, 2020, due to its continuity in format and substance with guidance issued in 1995, 1998, and 2003.<sup>5</sup>

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<sup>2</sup> See Attachment A, Ethics & Public Policy Center and Christian Legal Society, Memorandum “Re: Department of Education’s ‘Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools,’” dated Apr. 1, 2026.

<sup>3</sup> See, e.g., *Donovan v. Punxsutawney Sch. Bd.*, 336 F.3d 211 (3d Cir. 2003); *Ceniceros v. Bd. of Trustees of San Diego Unified Sch. Dist.*, 106 F.3d 878 (9th Cir. 1997).

<sup>4</sup> *Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2002) (Equal Access Act requires same access to funding for religious groups that nonreligious groups receive).

<sup>5</sup> Dept. of Educ., *Updated Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools*, 85 Fed. Reg. 3257 (Jan. 21, 2020), <https://www.federalregister.gov/documents/2020/01/21/2020-00876/updated-guidance-on-constitutionally-protected-prayer-and-religious-expression-in-public-elementary>. CLS was co-author and co-leader of a coalition that agreed on a joint statement that became the basis of the Department of Education’s guidance in 1995. Dept. of Educ., *Religious Expression in Public Schools: A Statement of Principles*, June 1998, at 10, <https://files.eric.ed.gov/fulltext/ED416591.pdf>. (listing CLS as one of eight organizations “that can answer questions on religious expression in public schools.”).

- c. In future DOJ guidance, we suggest adding a succinct discussion<sup>6</sup> of the landmark decision of *Board of Education v. Mergens*, 496 U.S. 226 (1990), in which the Supreme Court held that religious activity on public school property did not violate the Establishment Clause and upheld the constitutionality and broad application of the Equal Access Act of 1984. Its explanation of the distinction between government’s religious speech and students’ religious speech would be helpful to the lay reader, including school administrators, teachers, students, and parents, who need to understand why students’ religious expression is protected in public school settings. Illuminating quotes from *Mergens* include: 1) “there is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect” and 2) “[t]he proposition that schools do not endorse everything they fail to censor is not complicated.” *Id.* at 250.
  - d. We request that future DOJ guidance address religious community groups’ right of equal access to public school facilities because too often this has been a context in which public school administrators discriminate against religious expression.<sup>7</sup> Religious community groups have an equal access right to meet after school with elementary school students,<sup>8</sup> to distribute information to students’ parents about such meetings,<sup>9</sup> and to meet in school facilities for religious speech on evenings and weekends.<sup>10</sup>
2. **Support expansion of the Equal Access Act.** The Center has long defended the right of elementary school children who have parental consent to attend meetings with religious content. As discussed in our comments on Chapter 5, *rather than expanding the EAA* to include religious student groups at the postsecondary level, the Center requests that this recommendation be modified to support passage of the Equal Campus Access Act of 2026 (HR 5505/S 2859). The EAA and the Equal Campus Access Act are distinct legislative mechanisms that sufficiently differ in language, scope, beneficiaries, forum, and operational detail to merit separate legislative protection. The Equal Campus Access Act language is at B.3 *infra*.
  3. **Accountability for public school districts to comply with federal law protecting religious expression and activity.** We would suggest a separate additional recommendation to ensure compliance with federal law. In 2002, Congress enacted 20 U.S.C. § 7904, requiring local school districts to certify annually that “no policy of the local educational agency prevents, or otherwise denies participation in,

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<sup>6</sup> *Id.* at 3262-66 (“C. Overview of Governing Constitutional Principles”).

<sup>7</sup> See, e.g., *Bronx Household of Faith v. Bd. of Educ. of New York City*, 650 F.3d 30 (2d Cir. 2011) (after nearly a decade of litigation, church denied weekend access because its speech included religious worship, a ruling directly contrary to *Widmar v. Vincent*, 454 U.S. 263 (1981) (holding that religious group’s worship was protected religious speech)).

<sup>8</sup> *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001).

<sup>9</sup> See, e.g., *Child Evangelism Fellowship v. Stafford Tp. Sch. Dist.*, 386 F.3d 514 (3d Cir. 2004) (Alito, J.); *Child Evangelism Fellowship v. Montgomery Cty. Bd. of Educ.*, 373 F.3d 589 (4th Cir. 2004); *Child Evangelism Fellowship v. Montgomery Cty. Bd. of Educ.*, 457 F.3d 376 (4th Cir. 2006); *Rusk v. Crestview Local Sch. Dist.*, 379 F.3d 418 (6th Cir. 2004); *Hills v. Scottsdale Unified Sch. Dist.*, 329 F.3d 1044 (9th Cir. 2003).

<sup>10</sup> *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

constitutionally protected prayer.” It also requires the Secretary of Education to issue guidance as to current law at least every two years.<sup>11</sup> It is not clear how closely compliance with Section 7904 has been monitored.

We agree with the recommendation of Jeremy Dys, Senior Counsel at First Liberty Institute, that the “Commission should recommend that the federal government publicly report which states are compliant in the protection of religious liberty at school—and which are not” through maintenance of a website that reports which state and local educational agencies have certified compliance with Section 7904.<sup>12</sup>

We would further recommend that the federal government implement a process to ensure that states annually and accurately report compliance by local school districts and state education agencies with Section 7904. The compliance process should include at least two components:

- a. The compliance form should require states to indicate that local school districts and state education agencies have certified that they require all employees annually to confirm that they have read the federal guidance regarding constitutionally protected prayer and religious expression in public schools.
- b. Whenever the federal government receives a complaint or otherwise becomes aware of a situation or lawsuit involving a claim that a local school district or state education agency has violated constitutionally protected religious expression, the federal government should contact the state educational agency and local school district to determine whether the agency or district has *falsely* certified compliance with Section 7904 (and thereby put its federal funding at risk).

**4. Create a religious freedom violation portal.** We would modify this recommendation by explicitly adding that DOJ’s investigations of reports received through the portal must include a determination whether a local school district or state educational agency has falsely certified compliance with Section 7904. See A.3.b., *supra*.

**5. CLS and its Center support the following recommendations as useful, positive, and sorely needed steps toward educating public school administrators, teachers, parents, and students of their First Amendment rights while at school and protecting those rights:**

- a. Provide “Know Your Rights” posters;
- b. Offer religious liberty training resources;
- c. Investigate and litigate religious freedom violations;
- d. Swiftly and effectively respond to anti-religious discrimination;

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<sup>11</sup> For a more detailed discussion of Section 7904, see Dept. of Educ., *Updated Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools*, 85 Fed. Reg. 3257, 3260-62 (Jan. 21, 2020), <https://www.federalregister.gov/documents/2020/01/21/2020-00876/updated-guidance-on-constitutionally-protected-prayer-and-religious-expression-in-public-elementary>.

<sup>12</sup> Second Hearing of the Religious Liberty Comm’n, Hearing Transcript, 16 (Statement of Jeremy Dys), <https://www.justice.gov/religious-liberty-commission/media/1428746/dl?inline>.

- e. Create the First Freedom Hero Award for elementary and secondary school students.
- 6. Expand school choice.** For thirty years, the Center has filed amicus briefs in support of school choice programs in order to support parents’ right to direct the religious upbringing of their children. For many parents, their religious convictions require that they send their children to religious schools, while others believe that is the best choice for their children. And like most enterprises, public schools benefit from the challenge to improve their services in response to competition.

## **B. Comments on the Draft Report’s Recommendations for Chapter 5**

**1. Issue religious liberty guidance for higher education.** We commend the recommendation that the Department of Justice (DOJ) issue religious liberty guidance to clarify the rights of students at public institutions of higher education. Such guidance should reduce the incidence of religious liberty violations on campus and reduce the need for litigation.

- a. We commend the Commission’s list of proposed topics and its objective of clarifying the rights of students at public institutions to:
  - i. Form and lead religious student clubs;
  - ii. Receive support for religious clubs and the same level of access to school facilities and advertising methods that non-religious clubs receive;
  - iii. Require club leaders and members to meet religious requirements;
  - iv. Read and distribute religious materials at times when reading and distributing non-religious materials is allowed;
  - v. Wear clothing with religious messages;
  - vi. Be excused from school for religious practice and observance, such as to celebrate religious holy days;
  - vii. Attend off-site religious instruction through constitutionally permissible release-time programs;
  - viii. Participate in moments of silence, student-led prayer, and other student-led free exercise;
  - ix. Engage in religious expression at times and events where students are allowed to engage in private expression, such as school talent shows or graduation ceremonies.”
- b. We suggest five additions to the above list:
  - i. Add “funding” after “advertising methods” so that 1.a.ii., *supra*, reads “Receive the same level of support for religious clubs and access to school facilities, advertising methods, and funding that non-religious groups receive”;<sup>13</sup>

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<sup>13</sup> *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995) (religious student group must be given equal access to student activity fee funding); *Board of Regents of Univ. of Wisconsin v. Southworth*, 529 U.S. 217 (2000) (university’s allocation of student activity fee funding must be viewpoint neutral).

- ii. Add “religious” as a modifier for “club” in 1.a.iii., *supra*. While it is clearly invidious discrimination for non-religious groups to use religious criteria for leadership, it is not unlawful discrimination for a religious group to do so.
    - iii. Add a point stating that college and university officials are the state actors responsible and held accountable for the unconstitutional actions of student governments;<sup>14</sup>
    - iv. Add a point stating that the method by which a college, including a student government, allocates student activity fee funding must be viewpoint neutral;<sup>15</sup>
    - v. Add a point(s) addressing the free speech and free religious exercise rights of college employees, including faculty and staff.
  - c. We suggest that public colleges and universities be required to submit annual certification that their general counsel has reviewed the proposed guidance regarding religious liberty for higher education with the head of the student affairs office, the Title IX compliance officer, and the officers of the student government(s).
- 2. Provide “Know Your Rights” posters.** We believe this recommendation is a useful, positive, and sorely needed step toward educating public college and university administrators, faculty, and students of their First Amendment rights while at college.
- 3. Support expansion of the Equal Access Act.** The Center is grateful for the Commission’s recommendation supporting passage of federal legislation to protect religious student groups’ right to form, operate, and advertise as recognized student organizations on campus. We would explicitly include “seek funding” and “maintain leadership standards” to the list of protections. Rather than expanding the EAA to include religious student groups at the postsecondary level, we request that this recommendation be modified to support passage of the Equal Campus Access Act of 2026 (HR 5505/S 2859) that provides:

*None of the funds made available under this Act may be provided to any public institution of higher education that denies to a religious student organization any right, benefit, or privilege that is otherwise afforded to other student organizations at the institution (including full access to the facilities of the institution and official recognition of the organization by the institution) because of the religious beliefs, practices, speech, leadership standards, or standards of conduct of the religious student organization.*

Because K-12 schools are sufficiently distinct from college campuses, the EAA and the Equal Campus Access Act necessarily are distinct legislative mechanisms that necessarily will differ somewhat in language, scope, beneficiaries, forums, and operational detail

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<sup>14</sup> See *Rosenberger and Southworth, supra* n.13.

<sup>15</sup> See *Rosenberger and Southworth, supra* n.13.



and, therefore, merit separate legislative protection, although both protect the basic First Amendment rights of freedom of speech, religious exercise, and association.

4. **Support legal challenges to the constitutionality of *CLS v. Martinez*.** CLS and its student chapters are grateful for the Commission’s recommendation that the Department of Justice support strategic litigation challenging *CLS v. Martinez*.<sup>16</sup> A narrow, sharply divided (5-4) decision has harmed student groups of all faiths who simply want to meet on their college campuses for religious discussions, study of scripture, worship, and prayer.<sup>17</sup> A representative list of numerous college campuses nationwide where religious student groups have experienced a denial of equal access is attached.<sup>18</sup>

We would request that the Commission consider making the recommendation more specific by adding the following language: “In every appropriate Supreme Court case involving First Amendment rights, the Department of Justice should urge the Supreme Court to overrule *CLS v. Martinez* because it is a constitutional outlier in three areas of First Amendment jurisprudence: free exercise of religion<sup>19</sup>, free speech<sup>20</sup>, and free association.<sup>21</sup> Deeply flawed when it was decided in 2010,<sup>22</sup> its constitutional analysis has only become increasingly incompatible with Supreme Court jurisprudence in the intervening 15 years, doing real harm to religious students in K-12<sup>23</sup> and postsecondary educational institutions.”<sup>24</sup>

5. **Create a religious freedom violation portal:** The Commission should recommend that the Department of Justice create a portal for postsecondary students, faculty, and staff to report public institutions of higher education’s violations of religious liberty rights.

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<sup>16</sup> 561 U.S. 661 (2010).

<sup>17</sup> See, e.g., *InterVarsity Christian Fellowship/USA v. Univ. of Iowa*, 5 F.4<sup>th</sup> 855, 864 (8<sup>th</sup> Cir. 2021). The University of Iowa had threatened 32 religious student groups with derecognition because they had religious leadership requirements, including: Chabad Jewish Student Association; Christian Legal Society; Christian Medical Association; Cru; Hillel; Imam Mahdi Organization; J. Reuben Clark Law Society; Latter-day Saint Student Association; Muslim Students Association; Multiethnic Undergrad Hawkeye InterVarsity; Newman Catholic Student Center; Orthodox Christian Fellowship; and Sikh Awareness Club. The court document listing the groups is at [https://becketnewsite.s3.amazonaws.com/2019-02-01\\_UI-Notice\\_and\\_RSO-Registration-List.pdf](https://becketnewsite.s3.amazonaws.com/2019-02-01_UI-Notice_and_RSO-Registration-List.pdf).

<sup>18</sup> Attachment B, Christian Legal Society, “When Colleges and Universities Exclude Religious Student Groups: A Real Problem” (June 2026) (a representative list of campuses on which various religious student groups have been denied equal access).

<sup>19</sup> *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012); *Masterpiece Cakeshop v. Colorado Civil Rights Comm’n*, 584 U.S. 617 (2018); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732 (2020); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020) (per curiam); *Tandon v. Newsom*, 593 U.S. 61 (2021) (per curiam); *Fulton v. Philadelphia*, 593 U.S. 522 (2021); *Catholic Charities Bureau v. Wisconsin Labor & Ind. Rev. Comm’n*, 145 S. Ct. 1583 (2025).

<sup>20</sup> See, e.g., *Reed v. Town of Gilbert*, 576 U.S. 155 (2015); *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023); *Chiles v. Salazar*, 146 S. Ct. 1010 (2026).

<sup>21</sup> See, e.g., *Americans for Prosperity v. Bonta*, 594 U.S. 595 (2021).

<sup>22</sup> *Christian Legal Society v. Martinez*, 566 U.S. 661, 706-741 (2010) (Alito, J. dissenting) (joined by C.J. Roberts and JJ. Scalia and Thomas); id. at 741 (“[T]oday’s decision is a serious setback for freedom of expression in this country. . . . I can only hope that this decision will turn out to be an aberration.”).

<sup>23</sup> See, e.g., *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist.*, 82 F.4<sup>th</sup> 664 (9<sup>th</sup> Cir. 2023) (en banc) (rejecting school district’s claim that *Martinez* permitted its denial of recognition to religious student group).

<sup>24</sup> See, e.g., *InterVarsity Christian Fellowship/USA v. Univ. of Iowa*, 5 F.4<sup>th</sup> 855, 864 (8<sup>th</sup> Cir. 2021); *InterVarsity Christian Fellowship v. Bd. of Governors of Wayne State Univ.*, 534 F. Supp. 3d 785 (E.D. Mich. 2021).



## C. Comments on the Draft Report's Recommendations for Chapter 6

**1. Issue guidance on parental rights.** CLS commends the Commission's recommendation that the Department of Justice issue guidance clarifying parents' authority to direct their children's religious upbringing in the K-12 educational context. The Center has been a long-time advocate of religious released-time programs for K-12 students and knows that many good organizations are eager to provide such programs to local public schools.

The Center would make several additional suggestions:

- a. Parents' right to "conveniently and frequently review curricular materials" would be greatly enhanced if those materials were available on each school's website. The guidance should encourage—or even require—that if possible.
- b. The guidance should be sent to all superintendents of public schools with the request that the superintendent make all teachers and administrators aware of the guidance.
- c. The guidance should be included in, or linked to, the Department of Justice's update of the Guidance for K-12 students in A.1.

**2. Other parental rights recommendations.** The Center supports the Commission's other recommendations regarding parental rights, including creating a hotline/portal, creating a parental rights task force, creating parental rights resources, as well as investigating and litigating parental rights violations. In regard to parental rights legislation, the Task Force might also develop model parental rights legislation for states and school districts to consider adopting. CLS would be happy to serve on the Task Force.

**3. Teachers' rights recommendations:** The Center applauds the Commission's recommendations regarding teachers' rights, including the right to engage in private religious speech while at school, to teach about religion when appropriate to the curriculum, to promote respect for the exercise of religious views and to address students by the pronouns that align with the students' sex at birth. Because Title VII often joins the First Amendment in protecting teachers' freedom of speech and religious exercise, it is appropriate that workplace posters be issued by both the Department of Justice and the EEOC. Given the particular risks that teachers run in defending their First Amendment rights, an award recognizing that courage of a representative teacher is appropriate.

## Part II: Comments on the Draft Report's Key Recommendations and Other Recommendations in its Executive Summary and Appendix B

CLS and its Center strongly agree with the Commission's recommendation of "a recommitment to peaceful pluralism that includes religion's contributions to the public square and defends the free participation of religious Americans in our self-governing democracy."<sup>25</sup> We long to see broad bipartisan support for domestic religious freedom, as was true not so long ago. Passage of the Religious Freedom Restoration Act in response to the disastrous *Employment Division v. Smith*<sup>26</sup> was accomplished by a coalition of 68 organizations representing diverse

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<sup>25</sup> Draft Report at 182.

<sup>26</sup> 494 U.S. 872 (1990).

faiths and political views as recently as 1993.<sup>27</sup> We hope to see a renewed commitment by those organizations to a bipartisan discussion of what the pursuit of pluralism and true religious freedom looks like.

Like the Supreme Court,<sup>28</sup> CLS and its Center have long promoted an understanding that the Religion Clauses are not in tension with one another but instead are a unity to promote religious freedom for all Americans. Like a team of strong horses, together they pull in the same direction to ensure the right of all Americans to conduct themselves in accordance with their deepest religious beliefs and identities. Religious liberty prevents the government from incentivizing or disincentivizing religious beliefs and practices.

We are grateful that the Commission quoted from our testimony the theme that has been CLS and its Center's polestar for five decades: "Our democracy depends on [government] teaching and modeling the essential lesson that the First Amendment protects everyone's free speech and religious beliefs, especially the speech and beliefs of those with whom we disagree."<sup>29</sup>

### **Key Recommendation 1. Guidance clarifying proper understanding of the**

**Establishment Clause:** The Center believes that an *objective* statement "clarifying the proper understanding of the Establishment Clause and separation of church and state" would be helpful to government officials at all levels, as well as to lawyers and other persons. Recent Supreme Court decisions, including the decision officially announcing the *Lemon* test's abandonment,<sup>30</sup> demonstrate the need for DOJ guidance. We do not understand the Commission's recommendations to be doing away with the Establishment Clause but as a good faith effort to apply Supreme Court jurisprudence to current religious freedom issues.

At least two models for the Department to consider in preparing guidance present themselves. The Department could take as its template the Attorney General's Memorandum of October 6, 2017, entitled "Federal Law Protections for Religious Liberty,"<sup>31</sup> which contained a masterful, fair, and objective discussion of Supreme Court caselaw and federal statutes protecting all Americans' religious freedom.

A second model would be to explain succinctly the cases decided by the Supreme Court over the past century as to their holdings regarding the Establishment Clause. Guidance would be helpful for various reasons, including specifying which cases have been overruled, as has happened to several cases from the Court's "strict separationist" period of the 1970s and early 1980s, many of which were overruled in whole or in part in the 1990s and early 2000s. For good reason, many people, including experts in the religious liberty arena, seem confused as to the precedential status of many cases from the Court's strict separationist phase. Given that many executive departments and agencies adopted regulations based on cases from that period that have since been overruled or now conflict with the Supreme Court's jurisprudence enforcing the Religion Clauses, a memorandum explaining the actual holdings in the Court's Establishment

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<sup>27</sup> Douglas Laycock & Oliver S. Thomas, *Interpreting the Religious Freedom Restoration Act*, 73 Tex. L. Rev. 209, 210 n.9 (1994) (listing groups).

<sup>28</sup> *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022).

<sup>29</sup> Draft Report at 75; Second Hearing of the Religious Liberty Comm'n, Hearing Transcript, 177 (2025) (Statement of Kimberlee Colby).

<sup>30</sup> *Kennedy*, 597 U.S. at 534 ("this Court long ago abandoned *Lemon*").

<sup>31</sup> 82 Fed. Reg. 49668, 49673 (Oct. 26, 2017).

Clause cases and which remain good law would be helpful for federal employees tasked with identifying such regulations.<sup>32</sup>

**Key Recommendation 2. DOJ, HHS, and EEOC should issue Know Your Rights Posters and FAQ for various groups of persons.** CLS and its Center support this recommendation because some religious liberty violations are due to government officials' ignorance of the First Amendment's requirements. The posters and FAQ serve the dual purpose of both educating officials as well as those whose rights are being violated about their rights and whom to contact in order to learn how they might redress the violations. There is ongoing confusion among the public and government officials about the First Amendment's protections, as well as the protections available under various federal laws, including Title VII, RFRA, RLUIPA, and the EAA. While general concepts are important to understand, some simple and clear detail will be needed for the posters to serve their purpose. We also suggest that the posters make clear that religious protections apply to the religious expression and practices of both individuals and religious associations, a valuable concept that is too often misunderstood. We commend and share the Commission's hope that the FAQs will "help spark the conversation that can revive a deeper regard for our first freedom."<sup>33</sup>

**Key Recommendation 3. Public officials must provide written explanation of a person's alleged violation, including legal basis, within 30 days.** While we are not entirely clear as to the full extent of the operation and application of this recommendation, we understand it to be a requirement that a public official who alleges a person under their supervision has improperly engaged in religious expression must provide a written explanation of the legal basis for the allegation within 30 days. In practice, we understand this to be a protection for federal employees whose supervisor threatens them with discipline for engaging in religious expression in the workplace or on their own time. Too often supervisors wrongly allege that an employee's religious expression is not permissible. This requirement would protect the employee by requiring the supervisor to give the employee timely written notice of the legal basis for the supervisor's concerns.

This requirement would be helpful in a number of ways. The supervisor will have to educate herself to make sure her concerns are constitutionally solid. Often she will discover that the employee's religious expression is protected. The requirement helps the employee by requiring she be given notice of a concrete allegation to which she will be able to respond by conforming her behavior to constitutionally protected standards or seeking legal counsel as to whether her behavior is constitutionally protected. The government will benefit from a quick

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<sup>32</sup> The Commission heard testimony that approximately 135 federal regulations are likely unconstitutional. Third Hearing of the Religious Liberty Comm'n, Hearing Transcript, 256 (2025) (Statement of Professor Nicole Stelle Garnett) ("At the federal level, we identified 135 unconstitutional statutes and regulations, 41 of which restrict the religious liberty of private educational institutions, typically by requiring them to refrain from engaging in religious conduct as a condition of receiving federal funds. Many of these laws employ language that trace its origin to Lemon. All of these restrictions are unconstitutional."). See also, Third Hearing of the Religious Liberty Comm'n, Hearing Transcript, (2025) (Statement of Nicholas Reaves) ("[T]he Commission should urge federal agencies to repeal the arbitrary rules and regulations that restrict the government's ability to partner with faith-based organizations").

<sup>33</sup> Draft Report at 205.

resolution of misunderstandings regarding constitutionally protected religious expression which should benefit both the supervisor and the employee.

The Commission may wish to provide a fuller explanation of how this recommendation is intended to operate.

**Key Recommendation 4. DOJ, HHS, and EEOC’s creation of reporting hotlines and online portals for reporting religious liberty violations.** CLS and its Center believe that providing clear mechanisms for individuals and religious organizations to report religious liberty violations is important. As the recommendation notes, “increasing public awareness” is an essential part of establishing these mechanisms. It could involve additional promotion of existing reporting channels, or may involve launching a portal specific to religious liberty. We believe that in this process, ensuring privacy for complainants will be essential.

**Key Recommendation 5. Nominate and confirm federal judges who have demonstrated courage in deciding religious liberty cases on the merits.** CLS and its Center support this recommendation because too often in the past we have seen judges fail to follow First Amendment precedent to protect religious beliefs and practices that the judges themselves disfavor or believe the culture disfavors. While religious liberty should be protected by judges regardless of the political party of the President who nominated them or the Senators that confirmed them, the judicial appointments from the first Trump Administration have resulted in a Supreme Court and more lower courts (for example, the Ninth Circuit) that are more sensitive to the need to defend religious freedom on the merits.

**Key Recommendation 6. DOJ’s creation of a religious liberty task force to track and prioritize litigation protecting religious liberty.** CLS and its Center would welcome the establishment of a religious liberty task force at DOJ. We would hope that DOJ would increase its filing of statements of interest and amicus briefs in the lower federal courts. The government’s voice is never ignored and is frequently persuasive; therefore, it should be brought to bear in favor of religious freedom as much as possible. We respectfully suggest several specific ways that such a task force could take action:

- a. We recommend that the Religious Liberty Task Force for litigation request that the Office of Legal Counsel prepare a memorandum detailing the arguments in support of overruling *Employment Division v. Smith*.<sup>34</sup> The task force should identify cases in the federal appellate courts and the Supreme Court in which the Department should file statements of interest or amicus briefs in support of overruling *Smith*.

As the Center explained in an earlier submission to the Commission,<sup>35</sup> *Smith* greatly reduces protections for religious exercise by requiring minimal rational basis review for burdens on free exercise caused by neutral and generally applicable laws. Even after RFRA, *Smith* shifts the First Amendment’s leverage from religious citizens in favor of state and local bureaucrats who find religious freedom inconvenient.<sup>36</sup> *Smith* has functionally prevented courts from directly implementing the First Amendment’s

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<sup>34</sup> 494 U.S. 872 (1990).

<sup>35</sup> See Attachment C, Letter from the Center for Law & Religious Freedom to Religious Liberty Commission dated Apr. 17, 2026, at 4-6 (summarizing the damage to all Americans’ free religious exercise caused by *Smith*).

<sup>36</sup> *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006) (“the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I’ll have to make one for everybody, so no exceptions.”).

core purpose of protecting religious individuals' and institutions' freedom to live faithfully to their sincerely held religious beliefs. It places the government's thumb on the scales to weigh against religious freedom. It diminishes religious freedom. No matter how great the burden on religious freedom and how inconsequential the government's interest, *Smith* allows judges to rule against religious individuals and religious institutions if the law involved is neutral and generally applicable, rather than consider whether the law is the least intrusive means of advancing a government interest that is compelling.

As a practical matter, the concerns that seemed to drive *Smith* (such as the worry that religious adherents would regularly be placed "beyond the reach of" the law and thereby cause chaos in society) have not played out in practice after Congress and various states passed RFRA and its many state counterparts. *Smith* must be overruled if religious freedom is to be fully realized for all Americans. At present, Americans' religious liberty protections vary by the state in which they live, which is an irrational and arbitrary outcome in a country founded on the premise that religious freedom is a right given by God, not by government.

- b. We recommend that the Religious Liberty Task Force for litigation request that the Office of Legal Counsel prepare a memorandum detailing the arguments in support of overruling *CLS v. Martinez*.<sup>37</sup> The Task Force should identify cases in the federal appellate courts in which the Department should file statements of interest or amicus briefs in support of limiting the application of *Martinez* and in the Supreme Court in support of overruling both *Martinez* and *Smith*.<sup>38</sup>
- c. We commend the Commission's recommendation that the Administration oppose federal legislation containing RFRA carve-outs.<sup>39</sup> We further recommend that the Task Force identify and remove any RFRA carve-outs that may have made their way into executive departments' and agencies' regulations, policies, guidance, waivers, or other official documents. The Task Force should request that OLC issue an opinion explaining why RFRA carve-outs undermine religious freedom, should not be adopted by any executive department or agency, and should be identified and removed by all executive departments and agencies.

Similarly, the White House should direct its Office of Legislative Affairs not to seek any RFRA carve-outs in legislation, to direct all executive departments and agencies not to countenance any RFRA carve-outs in legislation and to report any potential RFRA carve-outs in draft legislation, and to encourage all House and Senate committees to be vigilant and not advance any bill that has a RFRA carve-out.<sup>40</sup>

- d. We recommend that the DOJ Task Force include a working group tasked with identifying and properly rescinding the 135 regulations that Professor Nicole Stelle Garnett identified as likely to be unconstitutional.<sup>41</sup> Of course, the Administrative

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<sup>37</sup> 561 U.S. 661 (2010).

<sup>38</sup> Draft Report at 209.

<sup>39</sup> Draft Report at 212.

<sup>40</sup> See Attachment C, *supra* n.36, at 3-4.

<sup>41</sup> Third Hearing of the Religious Liberty Comm'n, Hearing Transcript, 256 (2025) (Statement of Professor Nicole Stelle Garnett)

Procedure Act must be scrupulously followed in abolishing these regulations in order to prevail in court against challenges to the rescissions. The task force would need to work closely with the executive departments and agencies' general counsel to ensure compliance with the APA.

- e. We recommend that the DOJ Task Force provide a report focused on the lessons learned regarding necessary protections for religious liberty from the federal response to the COVID pandemic. CLS and its Center believe that we are enough removed from the pandemic to attempt an objective analysis of the impact of the COVID pandemic response on Americans' religious freedom in the hope of giving thoughtful consideration of the actions needed to protect religious freedom should another pandemic or other national emergency occurs. The purpose is not to place blame or find fault with what was done in the past but to learn for the future.
- f. Consistent with the goals of such a DOJ Task Force, we support the Commission's recommendation to update the Attorney General's 2017 *Memorandum Regarding Federal Law Protections and Religious Liberty* to provide guidance to all executive departments and agencies that includes recent Supreme Court religious liberty decisions.<sup>42</sup>
- g. We support the Commission's recommendation that DOJ issue guidance explaining how RLUIPA provides institutionalized individuals with the right to reasonable religious accommodations, including access to spiritual counseling, mentorship, and religious programming.<sup>43</sup>

**Key Recommendation 7. Combat anti-Semitism through enforcement of laws, litigation and civic education.** For decades, CLS and its Center have partnered with Jewish religious freedom advocates to defend the religious freedom of Christians and Jews.<sup>44</sup> Religious freedom is essential to defeating the scourge of anti-Semitism. We commend the Commission's strong stance against anti-Semitism.

**Key Recommendation 8. Protect religious Americans from government-led litigation targeting free exercise.** CLS and its Center fully support the Commission's recommendation and suggest that it be part of the DOJ Religious Liberty Task Force's mandate in Recommendation 6.

**Key Recommendation 9. Repeal the Johnson Amendment.** CLS and its Center support the Commission's recommendation.

**Key Recommendation 10. Order the Department of War to improve the religious accommodation process.** CLS and its Center commend the Commission for its focus on the religious freedom of members of our military. The recent past has demonstrated the need to streamline and improve the religious accommodation process for those who fight for our freedoms, including our first freedom.

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<sup>42</sup> Draft Report at 210.

<sup>43</sup> Draft Report at 211.

<sup>44</sup> See, e.g., Brief of American Jewish Committee and Christian Legal Society as Amici Curiae Supporting Petitioner, *Goldman v. Weinberger*, 1985 WL 669068 (USSC 1985) (supporting right of military psychologist to wear yarmulke while on duty).

**Key Recommendation 11. Continue efforts to restore the retirement or re-enlistment eligibility of service members who lost military jobs and benefits because of their religious beliefs about vaccines.** CLS and its Center support the Commission’s recommendation to make whole military members who were denied their religious freedom during the COVID pandemic.

**Key Recommendation 12. Honoring religious freedom heroes.** CLS and its Center support the creation of a Presidential Medal of Religious Liberty and First Freedom Hero Awards as recommended by the Commission.

### **Additional Commission Recommendations in Appendix B:**

CLS and its Center do not offer a comprehensive look at the Draft Report’s additional recommendations, but we wish to highlight some recommendations we did not raise as part of our more detailed discussion of Chapters 4, 5, and 6 of the Draft Report in Part I.

**1. Support Fruitful Partnerships for the Common Good.**<sup>45</sup> CLS and its Center have been active in the development of the concept that partnership between government agencies and faith-based institutions are constitutional and desirable public policy. We heartily support the Commission’s recommendation that the Administration expand partnerships with faith-based institutions by utilizing faith-welcoming language in notices of funding opportunities, training faith groups on the grant application process, and directing grant reviewers to provide equal treatment to faith-based and secular groups. We agree that Agency Faith Offices should be directed to develop improved guidelines for the awarding of grants with greater solicitude for faith-based grant applicants.

**2. Establish domestic religious liberty as a permanent policy priority.** CLS and its Center were instrumental in passage of legislation establishing the United States Commission on International Religious Freedom (USCIRF).<sup>46</sup> Indeed, the current Director of the Center, Steve McFarland, served as the first Executive Director of the USCIRF. A United States Commission on Domestic Religious Freedom could perform a function similar to the USCIRF of identifying federal, state, and local government laws, regulations, and policies that diminish religious freedom and propose solutions to address the government interests motivating the governmental actions while preserving individuals’ and institutions’ religious freedom. We recommend that the Commissioners be selected by the Congress and the President in the proportions used for the USCIRF, which are two-thirds by the Congress and one-third by the White House.

**3. Establish Conscience and Religious Freedom Divisions in Executive Departments and Agencies.** CLS and its Center commend the Commission’s recommendation that the President order the establishment of such offices and task them with the listed responsibilities.<sup>47</sup> We believe developing the kind of expertise necessary to address religious liberty concerns—including recognition, investigation, and enforcement—will result in more awareness of religious liberty violations. Such divisions could investigate internal violations by the agency itself and identify common threats. The presence of Religious Freedom Divisions would increase awareness and support for religious freedom in the federal government’s operations, and could expand out to the states and others utilizing federal funds administered by the agency. For example, such divisions could invite and evaluate complaints against state or local agencies

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<sup>45</sup> Draft Report at 203.

<sup>46</sup> Draft Report at 206, 211-212.

<sup>47</sup> Draft Report at 208.



using grants or other federal financial assistance in a way that violates the religious freedom of religious organizations. In addition, we agree with the Commission's suggestion that such divisions would be able to take responsibility to implement this Report's recommendations in practical ways.

**4. Provide EEOC Guidance on Title VII's protection of religious employers.** CLS and its Center support the Commission's recommendation that the EEOC issue guidance on the scope of Title VII of the Civil Rights Act's protection of religious employers in §702(a) and §703(e)(1), and the maintenance of their religious identity and ability to carry out their mission in accordance with their religious beliefs.<sup>48</sup>

**5. Issue HHS Rulemaking to protect foster care services.** CLS and its Center support the Commission's recommendation that HHS issue a rule ensuring religious organizations and families may provide adoption and foster care services without being compelled to violate their religious beliefs.<sup>49</sup>

**6. Support legislation ensuring faith-based groups may compete for federal grants on an equal playing field.** CLS and its Center are thankful that the Commission adopted our recommendation that the Administration encourage Congress to protect the rights of faith-based groups and organizations, so that they are not forced to choose between their religious identity or receiving government funds that are provided to similarly situated groups with the same government-backed community goals.<sup>50</sup>

**7. Provide EEOC support for strategic litigation seeking to protect employee religious accommodation rights.**<sup>51</sup> CLS and its Center support the Commission's recommendation that the EEOC support strategic litigation that will further support for religious accommodation rights. The Center believes many employees do not receive appropriate consideration of their religious accommodation requests. This can occur when employers disregard employee requests, believing they are unimportant (such as a request for Sabbath observance), or when employers dislike employees or disfavor their particular beliefs.

### **Conclusion:**

We once again thank the Commission for its robust commitment to practical steps that will advance Religious Liberty. We urge the Commission to consider these clarifications as it finalizes its Draft Report.

Sincerely,

Steve McFarland, Director  
Lori Kepner, Senior Counsel  
Kimberlee Wood Colby, Senior Counsel  
Christian Legal Society, Center for Law & Religious Freedom

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<sup>48</sup> Draft Report at 212-213.

<sup>49</sup> Draft Report at 213.

<sup>50</sup> Draft Report at 214.

<sup>51</sup> Draft Report at 223.

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## **Attachment A**

April 1, 2026

**Re: Department of Education’s “Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools” (February 2026)**

**Introduction**

For fifty years, Christian Legal Society (CLS) has defended the rights of students, parents, and teachers in public schools to engage in religious expression and conduct. For example, in 1984, CLS was instrumental in Congress’ passage of the Equal Access Act to protect the right of student groups to meet for religious speech, including prayer and Bible study, in public secondary schools.<sup>1</sup> In 1995, the Department of Education’s original guidance on religious expression in the public schools, which was sent to public school district superintendents, listed CLS as one of eight organizations “that can answer questions on religious expression in public schools.”<sup>2</sup> The original guidance has been updated multiple times over the years (collectively, “Guidance”). In 2020, during the first Trump Administration, CLS led a coalition of national religious groups in support of the Department’s adoption of regulations to protect religious student groups’ right to meet at public institutions.<sup>3</sup> The Ethics and Public Policy Center (EPPC) works to promote religious freedom in American law, culture, and politics, including in public schools.

CLS and EPPC welcome the Department’s February 5, 2026, release of the updated “Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools.”<sup>4</sup> Together we suggest the following opportunities to build upon the February 2026 Guidance to strengthen its protection for prayer and other religious expression by students, teachers, and parents in the public schools.

The Guidance, which has remained largely consistent in its content and much of its structural detail over the past 30 years, has provided stability that is beneficial for students and their families. The Guidance has educated school administrators, while also providing students, parents, teachers, and religious liberty advocates with persuasive authority to cite in their dealings with school administrators. For example, the 2020 Guidance released during the first Trump Administration has been particularly helpful to religious freedom practitioners in their efforts to protect the rights of students, parents, and teachers in public schools.<sup>5</sup>

As detailed below, we request that a future Guidance restore various material found in the 2020 Trump Guidance. These simple modifications would help enable the Guidance to retain its longstanding continuity and clarity upon which many stakeholders have come to rely.

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<sup>1</sup> 20 U.S.C. §§ 4071-4074.

<sup>2</sup> Dept. of Educ., “*Religious Expression in Public Schools: A Statement of Principles*,” June 1998, at 10, <https://files.eric.ed.gov/fulltext/ED416591.pdf>. The 1995 version is difficult to find online, but the 1998 version contains the same list of recommended groups.

<sup>3</sup> 34 C.F.R. §§ 75.500(d) & 76.500(d).

<sup>4</sup> <https://www.ed.gov/media/document/2026-guidance-constitutionally-protected-prayer-and-religious-expression-public-elementary-and-secondary-schools-113182.pdf>.

<sup>5</sup> Dept. of Educ., “*Updated Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools*,” 85 Fed. Reg. 3257 (Jan. 21, 2020). <https://www.federalregister.gov/documents/2020/01/21/2020-00876/updated-guidance-on-constitutionally-protected-prayer-and-religious-expression-in-public-elementary>.

## 1. The Department's Guidance Has Benefited Religious Freedom for 30 Years

The Department of Education's 1995 Guidance was a turning point because, for the first time, the federal government advised school administrators that private religious expression was protected on public school property. The Guidance addressed numerous specific topics that students, parents, teachers, and school administrators often encounter, including the requirements of the Equal Access Act's protection of religious student groups meeting for prayer and other religious expression.<sup>6</sup>

In 2002, Congress enacted 20 U.S.C. § 7904, requiring local school districts to certify annually to the Department that "no policy of the local educational agency prevents, or otherwise denies participation in, constitutionally protected prayer." Section 7904 requires the Secretary of Education to issue at least every two years guidance as to current law.

In 2020, the Trump Administration released strong guidance that tracked the Department's earlier Guidance. Specifically, its "Overview of Governing Constitutional Principles," § I.C, reiterated the critical distinction, emphasized in *Board of Education v. Mergens*,<sup>7</sup> between government religious speech and private religious speech. The Department's prior Guidance carefully explained the Supreme Court's bedrock delineation between a student group's private religious expression, protected by the Free Speech and Free Exercise Clauses, and government officials' religious expression, potentially prohibited by the Establishment Clause. The 2020 Trump Guidance then applied this foundational distinction between government speech and private speech to specific scenarios. It tracked several specific topics that had been addressed in Guidance since 1995, including the Equal Access Act.

## 2. Proposed Modifications in Future Guidance

We respectfully request that future guidance restore beneficial material from the 2020 Trump Guidance, including the following.

**"Principles Governing Religious Expression and Prayer" Section.** Several paragraphs found in the 2020 Trump Guidance explained the critical distinction between private religious expression by students and teachers and government religious expression, as explained in *Mergens*. See 2020 Trump Guidance, § I.C, ¶¶ 1-4 ("Overview of Governing Constitutional Principles"). This material had been the focus of the Department's Guidance since 1995 and is essential to public school stakeholders' understanding of the proper protection of religious expression in the public schools.

**"Specific Scenarios" Section.** It would be highly beneficial to stakeholders if certain topics and language covered in the 2020 Trump Guidance were included in future Guidance:

**1) Equal Access Act:** Include a distinct section explaining the Equal Access Act's protection of religious student groups' ability to: a) meet during noninstructional time, including lunch and activity periods; b) access school media (bulletin boards, newspaper, and public address system); and c) maintain religious leadership requirements.<sup>8</sup> See 2020 Trump Guidance, § IV, ¶¶ 1-6 ("The Equal Access Act").

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<sup>6</sup> 20 U.S.C. §§ 4071-4074.

<sup>7</sup> 496 U.S. 226, 250 (1990).

<sup>8</sup> Several federal court decisions have held that religious student groups meeting at public secondary schools may require their leaders to agree with the groups' religious beliefs. See *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664 (9th Cir. 2023) (en banc); *Hsu v. Roslyn Union Free Sch. Dist.*, 85 F.3d

**2) See You at the Pole:** Include specific mention in § III.B (“Religious Expression in Student Groups”) that “See You at the Pole” gatherings, an annual, nationwide event in late September, are protected, as noted in the 2020 Trump Guidance, § II.B (“Organized Prayer Groups and Activities”) and the 1995 Guidance.

**3) Moments of Silence:** Include affirmation that a moment of silence at the beginning of the school day is permissible, as found in the 2020 Trump Guidance, § II.D (“Moments of Silence”). The “Principles Governing Religious Expression and Prayer” section of the 2026 Guidance notes in passing *Wallace v. Jaffree*,<sup>9</sup> which held a specific state’s “moment of silence” law unconstitutional. But *Jaffree*’s analysis was based on the “secular purpose” prong of the *Lemon* test—an analysis overruled in *Kennedy v. Bremerton School District*.<sup>10</sup> Even before *Kennedy*, numerous federal appellate decisions had upheld moments of silence after *Jaffree*.<sup>11</sup>

**4) Religious Excusals:** Include affirmation that parental requests for religious excusals from school attendance or objectionable curriculum are to be accommodated, building upon the 2020 Trump Guidance, § III.D (“Religious Excusals”). This paragraph should be updated to briefly discuss *Mahmoud v. Taylor*’s<sup>12</sup> protection of the parental right to notice and opt out from curriculum that violates religious beliefs. Also include affirmation of the constitutionality of off-campus religious released time programs under *Zorach v. Clauson*.<sup>13</sup>

**5) Religious Literature Distribution:** Include affirmation of students’ right to distribute religious literature if other students may distribute nonreligious literature, as found in the 2020 Trump Guidance, § III.A (“Religious Literature”) and the 1995 Guidance.

**6) Teaching About Religion:** Include affirmation that classroom instruction may include teaching about religion in the curriculum in an objective, nondevotional manner, as found in the 2020 Trump Guidance, § III.B (“Teaching about Religion”) and the 1995 Guidance.

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839 (2d Cir. 1996); *Fellowship of Christian Athletes v. District of Columbia*, 743 F. Supp. 3d 73 (D.D.C. 2024); see also, *InterVarsity Christian Fellowship/USA v. Univ. of Iowa*, 5 F.4th 855 (8th Cir. 2021) (university officials forfeited qualified immunity by derecognizing religious student group because of its religious leadership requirements); *Bus. Leaders in Christ v. Univ. of Iowa*, 991 F.3d 969 (8th Cir. 2021) (same); *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 534 F. Supp. 3d 785 (E.D. Mich. 2021) (same); *Christian Legal Soc’y v. Walker*, 453 F.3d 853 (7th Cir. 2006) (protecting religious student group but not addressing qualified immunity).

<sup>9</sup> 472 U.S. 38 (1985).

<sup>10</sup> *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (Establishment Clause violated if government action 1) has a religious primary purpose; 2) has a religious primary effect; or 3) creates excessive entanglement between government and religion). The Court explicitly abandoned the *Lemon* analysis in *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534-36 (2022).

<sup>11</sup> See, e.g., *Sherman v. Koch*, 623 F.3d 501 (7th Cir. 2010); *Croft v. Texas*, 562 F.3d 735 (5th Cir. 2009); *Brown v. Gilmore*, 258 F.3d 265 (4th Cir. 2001); *Bown v. Gwinnett Cnty. Sch. Dist.*, 112 F.3d 1464 (11th Cir. 1997).

<sup>12</sup> 606 U.S. 522 (2025).

<sup>13</sup> 343 U.S. 306 (1952). We suggest that the Department separately issue detailed guidance regarding school administrators’ obligations under *Mahmoud*, while briefly addressing *Mahmoud* in this Guidance.

**7) Baccalaureate Ceremonies:** Include affirmation that religious community groups may hold baccalaureate ceremonies in public school facilities that are otherwise available to community groups, as found in the 2020 Trump Guidance, § II.I (“Baccalaureate Ceremonies”) and the 1995 Guidance. Also affirm religious community groups’ right to meet with children after school on an equal access basis<sup>14</sup> and to meet in school facilities on weekends and evenings.<sup>15</sup>

### 3. Proposed Clarifications in 2026 Guidance

The following clarifications in the 2026 Guidance would be helpful.

**Teacher Speech.** The *Kennedy* discussion in the “Principles Governing Religious Expression and Prayer” section could lead teachers to think that they may pray with students in contexts not addressed by the Court in *Kennedy*. The Guidance states that teachers may pray with students in the conduct of their work, but the *Kennedy* decision addressed a context in which the teacher was praying during his personal time. Because in some contexts teachers’ religious expression could be found by the Court to be unconstitutional government speech rather than protected private speech, the Guidance needs to explain the important distinction between protected private religious expression and government speech in the “Principles” section, as already noted. It also should highlight that the teacher in *Kennedy* was acting during a time when teachers were allowed to engage in personal speech.

**Graduation Speakers.** Too often, *personal* religious expression by an individual student or community member speaker at a graduation ceremony is censored. In some places, the Guidance could be read as suggesting censorship is required if private religious expression is part of the official activity of the school itself, or attendance is mandatory, or a public address system is used. None of these factors in itself justifies a school censoring personal religious expression by student or community member speakers at graduation or other school events, so long as the speaker selection process employs truly neutral selection criteria. *See* 2020 Trump Guidance, §§ II.G (“Student Assemblies”) & II.H (“Prayer at Graduation”).

**Harassment.** From 2019-2024, CLS represented a religious student group denied equal access solely because school employees deemed its orthodox religious beliefs to be harassment of LGBT-identifying students.<sup>16</sup> Because religious expression is often targeted by school administrators as “harassment,” care needs to be exercised in suggesting that abstract harassment concerns outweigh constitutionally protected religious expression. For that reason, it would be helpful for future Guidance to omit the phrase “subject to the considerations in III.F,” in discussion of religious student groups (§ III.B (“Religious Expression in Student Groups”)) and religious dress (§ III.A (“Private Religious Expression by Students”)).

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<sup>14</sup> *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001).

<sup>15</sup> *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

<sup>16</sup> *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664 (9th Cir. 2023) (en banc) (religious student group won on free speech, free exercise of religion, and Equal Access Act claims). *See also*, *Fellowship of Christian Athletes v. District of Columbia*, 743 F. Supp.3d 73 (D.D.C. 2024).

#### 4. Possible Next Steps

**One.** The Department could issue revised Guidance in light of the Court’s recent reaffirmation of *Mahmoud*’s protection of parental rights in *Mirabelli v. Bonta*,<sup>17</sup> or any other future Court decision involving religion in the public schools. By adopting the proposed modifications mentioned above, grounded in important language from the 2020 Trump Guidance, the Department could ensure continuity with prior Guidance and increase the likelihood of the Guidance serving as a template for future administrations’ Guidance.

**Two.** Federal law, 20 U.S.C. § 7904, requires the Department to issue revised Guidance some time before February 5, 2028. Issuing revised Guidance before the beginning of the 2026-2027 academic year would allow the Department to issue additional revised Guidance in 2028.

**Three.** The Department of Education could request the Justice Department’s Office of Legal Counsel to issue an opinion addressing religious expression in public schools.

**Four.** In addition to steps one and two, the Department could issue two supplementary but separate guidance documents, one focused solely on equal access for private religious expression by students, teachers, and community groups and the other focused on parental rights.

Sincerely,

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<sup>17</sup> 607 U.S. ---, 146 S. Ct. 797 (March 2, 2026) (per curiam).



## **Attachment B**

## When Colleges and Universities Exclude Religious Student Groups: A Real Problem Updated June 2026

*[The following data is compiled from the experiences of several different religious student organizations. It is representative, not comprehensive.]*

At many universities and colleges nationwide, religious student organizations have been threatened with exclusion from campus because they seek to authentically communicate, associate around, and live out their different faiths. They are often excluded because they require that their leaders agree with their religious purpose and are able to authentically teach their religious beliefs and practices. They can be excluded because schools try to exclude them from club funding or participation in club fairs or flyer distribution because they are religious. Not every school in this list is a public college or university, but they are included to show the breadth and depth of this problem, and to show the clear need for a solution.

**This is a countrywide issue:** This document is organized alphabetically by state and demonstrates that there are many specific issues that religious student organizations have faced on campuses around the country. We note, however, that there are many more unnamed issues that have occurred than those listed here. This document is focused on primarily registration issues (marked with \*\*), but also includes some funding or fee issues (marked with †) and other policy restrictions used in a targeted manner (marked with ≠)

On typical campuses, hundreds of student groups meet to discuss political, social, and philosophical ideas. The student groups apply to the university administration for official “recognition” as a student group. Recognition grants benefits including the ability to reserve meeting space, access communication channels with students, and apply for funding. Without recognition, a group is stigmatized and finds it nearly impossible to exist on campus. Very often, as religious student organizations seek to register, their chapter constitutions face scrutiny beyond what is given to other groups. For example, one religious organization with student chapters noted in 2024 that, in the previous four years they had consulted legal counsel related to issues on sixteen different public colleges and universities, in order to get help navigating recognition issues, ranging from an actual denial to the threat of denial, or unusual bureaucratic hurdles to overcome.

Religious student organizations significantly enrich campus life. They provide emotional and spiritual support for students, improving wellbeing and mental health for students, and benefiting retention. They enhance campus diversity by contributing to the “marketplace of ideas” on campus. Religious groups typically are among the most ethnically diverse student groups on campus. They often spearhead service projects that give students opportunities to serve their campuses and communities. Excluding religious student organizations harms students and diminishes campus diversity. Some colleges have adopted policies that protect religious groups and their ability to choose their leaders according to their religious beliefs. Unfortunately, many colleges have punished religious student groups for their religious beliefs, speech, and conduct.

Many religious student organizations continue to face challenges that are not represented here; most such groups are small and do not have access to legal advice. Others prefer not to publicly share their challenges because they are concerned about drawing unwanted attention, don’t want to seem antagonistic to their school in any way, or are worried about repercussions.

## Alabama

### University of South Alabama\*\*

A student group had to seek help from legal counsel for the organization when it faced derecognition due to its religious leadership standards. It had to formally negotiate with school officials in order to get registered.

## Arizona

### Arizona State University\*\*

In 2004, the university denied a religious student group recognition because it required its leaders and members to agree with its religious beliefs. After the group challenged the university in court, the university revised its policy to allow religious student groups to require their leaders and members to share their religious beliefs. (*Christian Legal Society Chapter at Arizona State University v. Crow*, No. 04-2572 (D. Ariz. Nov. 17, 2004).)

Every couple years, when the CLS chapter seeks to re-register, they get questions again about their language. This occurred again in 2022, and required dialogue once again to clarify that it is appropriate for the chapter to have religious leadership requirements.

### Embry Riddle Aeronautical College\*\*

In 2018, a religious student group was refused recognition by the college because of its religious leadership requirements.

### University of Arizona\*\*

In 2010, the university denied recognition to a pro-life student group because the group's proposed constitution required that its members share its beliefs about the sanctity of human life. After receiving a letter from a legal organization, the university granted recognition to the group. Subsequently, in 2011, the Arizona Legislature protected religious student groups' ability to choose their leaders and members according to their religious beliefs. A.R.S. §§ 15-1863.

## California

### California State University\*\*

The California State University comprises 23 campuses with 437,000 students. In the 2014-15 academic year, the University withdrew recognition from many religious student associations because they required their leaders to affirm the associations' religious beliefs. Some excluded groups had met for sixty years on Cal State campuses with religious leadership requirements. But under a new university policy, as a Cal State administrator explained, "What they cannot be is faith based where someone has to have a profession of faith to be that leader."

Eventually, Cal State retreated from its position and provided a letter that, under certain circumstances, religious groups' leadership selection processes could include questions about a candidate's religious beliefs. But the problematic policy remains on the books, and the religious groups remain on campus solely at the discretion of university administrators. In the past two years, some religious groups have experienced problems obtaining recognition on particular campuses. Also on the books is a decision by the federal Ninth Circuit that allowed

(but did not require) the university to exclude religious groups because they require their leaders to be religious. (*Alpha Delta Chi v. Reed*, 648 F.3d 790 (9<sup>th</sup> Cir. 2011).) This Ninth Circuit opinion leaves 25% of all college students in the nation unprotected.

The 23 California State University campuses are: California State University, Bakersfield; California State University, Channel Islands; California State University, Chico; California State University, Dominguez Hills; California State University, East Bay; California State University, Fresno; California State University, Fullerton; Humboldt State University; California State University, Long Beach; California State University, Los Angeles; California Maritime Academy; California State University, Monterey Bay; California State University, Northridge; California State University, Pomona; California State University, Sacramento; California State University, San Bernardino; ;San Diego State University; San Francisco State University; San Jose State University; California Polytechnic State University, San Luis Obispo; California State University San Marcos; Sonoma State University; California State University, Stanislaus.

**California State University, San Marcos †**

In 2017, a pro-life student organization sought to bring a pro-life speaker to campus to speak on “Abortion and Human Equality” and the university denied funding to the group, even though it freely and broadly funded events with its favored views on the topic. After a lawsuit was filed, the campus changed its policies to incorporate viewpoint neutrality into its funding processes. While this case is not specifically a religious group, it is representative of the kind of funding restrictions many religious groups face but often decline to challenge. It took three years for the case to settle.

**University of California, Davis ≠**

A nondiscrimination policy at the University of California, Davis protected students regardless of their religious beliefs, unless they held Christian beliefs. The policy said: “Religious/Spiritual Discrimination - The loss of power and privilege to those who do not practice the dominant culture's religion. In the United States, this is institutionalized oppressions toward those who are not Christian.” In February 2011, after receiving a letter from a legal group, the university revised its policy.

**University of California, Hastings College of the Law\*\***

In 2007, a religious student group was denied recognition because it required its leaders and voting members to agree with its religious beliefs. The law school claimed to have a novel policy that required all student groups to “allow any student to participate, become a member, or seek leadership positions in the organization, regardless of their status or belief.” The Supreme Court ruled in 2010 that the law school could apply this policy to religious groups, but only if it applied the policy uniformly to all student groups. (*Christian Legal Society v. Martinez*, 561 U.S. 661 (2010).) This decision has created nationwide confusion on college campuses with severe repercussions for religious student groups, because many colleges claim they have this novel policy when they do not and instead are discriminatorily excluding only religious student groups from their campuses.

**Colorado**

**Aims Community College\*\***

In 2022, students wanted to start a chapter of a national religious organization but were told that they could not because the college had had a negative experience with a prior religious group. The chapter leaders then met with administrators and cited the 2020 federal regulation that protects religious student organizations, and the administrators then agreed to recognize the group.

In 2026, the college again denied recognition to an Intervarsity chapter, but they agreed to recognize the group once informed about current federal regulations.

**Fort Lewis College ≠**

In 2012, a religious student group was told that a college policy did not allow them to approach other students on campus to discuss spiritual topics. The problem was resolved through correspondence from legal counsel.

**University of Colorado, Colorado Springs \*\***

In the 2018-2019 academic year, a religious student organization, Ratio Christi, whose purpose is to articulate Christian apologetics in a campus environment was denied recognition by the University because of its requirement that its leaders agree with its religious beliefs. On November 15, 2018, the group filed a federal lawsuit against the university, which settled in favor of the student group in May 2019. The University agreed to change its policy to prevent discrimination and allow student groups to require that their leaders share and advocate for their religious beliefs.

**University of Northern Colorado\*\* †**

In 2025, UNC refused to recognize an InterVarsity chapter because of the group's leadership requirements. The university relented when presented with the current federal regulation.

In the 2018-19 academic year, the Cru chapter was threatened with de-recognition unless it dropped its faith requirement for its leaders and submitted a constitution that in no way indicated that the organization *expected* its leaders to share its religious beliefs. The student leaders sought help from legal counsel for the organization. After sending a letter to the university, the university claimed it had an all-comers policy and said it could not accommodate the group, despite its language referring only to enumerated statuses. The group was finally recognized after it negotiated with administrators and reached a compromise as to the terminology it could use in referring to its expectations for leaders, though the whole experience left the religious group feeling uncertain.

In 2011, a religious student group was denied funding for a campus event due to a university policy that prohibited funding for “ideological, political, or religious activities.” The policy was eventually changed.

**Florida****Florida Institute of Technology \*\***

In 2023, the university denied recognition to InterVarsity because of its religious leadership requirements for students. After sustained conversations, the university relented.

**Florida International University \*\***

In 2024, Florida International University refused to recognize a pre-existing InterVarsity chapter because of its religious leadership requirements. Upon extensive negotiation and invocation of current federal regulations, the university backed down.

**Florida Polytechnic \*\***

In 2020, the university refused to recognize an InterVarsity chapter until multiple rounds of engagement with legal counsel caused the university to change its position.

**Florida State University \*\***

In 2004, the university threatened not to recognize a religious student group because of its religious leadership requirements. After a letter from a legal organization, the university recognized the group.

**Rollins College \*\* ≠**

In 2013, a number of religious groups were de-recognized and could no longer hold Bible studies on campus because college administrators applied a policy that effectively prohibited religious student groups from having religious leadership and membership requirements. When several religious groups sought to once again be recognized in the 2018-2019 academic year, they faced the same challenges.

**University of Florida \*\***

In 2008, the university refused to recognize a religious student group because of its religious requirements for its leaders and members. When the group challenged the policy in court, the university revised its policy to protect the right of religious groups to have religious leadership and membership requirements. The university paid several hundreds of thousands of dollars toward the student group's legal fees. (*Beta Upsilon Chi, Upsilon Chapter at the University of Florida v. Machen*, 586 F.3d 908 (11<sup>th</sup> Cir. 2009), *vacating as moot*, 559 F. Supp. 2d 1274 (N.D. Fla. 2008).)

**University of South Florida †**

In 2015, the university implemented a new policy that effectively denied student activity fee funds to student groups with religious leadership requirements.

## Georgia

**Georgia Institute of Technology \*\***

In 1997, a university threatened to derecognize a religious student group because of its religious leadership and membership requirements. The Georgia Attorney General issued an opinion that the university was violating the group's free speech rights. The university then recognized the religious organization.

**University of Georgia \*\***

In 2006, the university denied recognition to a religious student group because of its religious leadership and membership requirements. When the group challenged the policy in court, the university revised its policy to allow religious student groups to select leaders and members based on their religious beliefs. (*Beta Upsilon Chi v. Adams*, No. 3:06-cv-00104 (M.D. Ga. 2006).)

#### **University of West Georgia \*\***

In the summer of 2019, a religious student group was told by university administrators in the Center for Student Involvement that it would not be a registered student organization for the 2019-2020 academic year because of its religious leadership requirements. It had been a registered student group since 2014, although at that time, it had taken several months and the involvement of a legal organization to become a registered student organization. In August 2019, after a legal organization became involved, a high-ranking university official reversed the decision and registered the organization.

### **Idaho**

#### **Boise State University \*\***

In 2008, the university implemented a policy that would not allow religious student organizations to consider religion in selecting leaders. The student government required two religious groups to remove references to the Bible from their constitutions. The groups challenged the policy in court. The university agreed to recognize the religious groups and allow them to “limit leadership positions to students who share the same beliefs, values, and purposes” of the groups. (*Cordova v. Laliberte*, No. 08-543 (D. Idaho 2008)).

In 2012, the university stated that it wished to return to a policy that would prohibit religious groups from having religious leadership requirements. In 2013, the Idaho Legislature protected the ability of religious student groups to have religious leadership requirements. Idaho Code § 33-107D.

#### **University of Idaho College of Law \*\* †**

In 2021, a CLS student chapter sought recognition as an official student group at the University of Idaho College of Law. The law school student government, which was delegated the authority to recognize student organizations, grilled the CLS student leaders for nearly an hour about their application for recognition. The student government’s questions focused on CLS’s religious beliefs. After two such student government meetings in which the CLS student leaders defended their religious beliefs, legal counsel for the CLS chapter sent a letter to the University, asking that the CLS student chapter be recognized. The letter relied on the federal campus access regulation, 34 C.F.R. §§ 75.500(d) & 76.500(d).

In 2001, a law school’s student government denied a religious student group’s request for student activity fees funding because the religious group required its leaders and voting members to agree with its religious beliefs. In deciding the religious group’s appeal, the student judiciary determined that the religious group could receive student activity fees funding while having religious leadership requirements.



## Illinois

### **DePaul University \*\***

In 2024, the university refused recognition to the existing InterVarsity chapter because of the group's religious leadership requirements. InterVarsity appealed the university's decision.

In 2026, the CLS chapter at DePaul continues to struggle to get its group recognized.

### **Knox College ≠**

In 2019, a student activist group sought to get the Student Senate to derecognize the InterVarsity chapter each year for nearly two years because of the chapter's convictions around sexuality. The Senate approved a campus-wide referendum to vote on the chapter's recognition, a move which was eventually stopped by administration.

### **Northwestern University ≠**

In 2015, several religious students were found to have violated campus policies against solicitation after university administrators defined "solicitation as "seeking to gain support for organizations or causes." The administrators concluded that students who initiated spiritual conversations with other students and invited them to a meeting violated university policy. The university punished the religious student group by imposing sanctions on it.

### **Southern Illinois University School of Law \*\***

In 2005, law school administrators revoked a religious student group's recognition because it required its leaders and members to agree with its religious beliefs. The student group challenged the policy in court and won. (*Christian Legal Society v. Walker*, 453 F.3d 853 (7<sup>th</sup> Cir. 2006).)

### **University of Illinois \*\***

In 1993, a law school threatened to derecognize a religious student group for its religious beliefs. When a faculty member wrote a letter on behalf of the religious group, the law school allowed the group to remain recognized. (Stephen M. Bainbridge, *Student Religious Organizations and University Policies Against Discrimination on the Basis of Sexual Orientation: Implications of the Religious Freedom Restoration Act*, 21 J.C. & U.L. 369 (1994).)

### **Waubonsee Community College ≠**

In 2023, the community college denied a faculty/staff group supported by InterVarsity recognition as an employee resource group, even though other identity groups (including race, gender, and sex) were permitted.

## Indiana

### **Indiana University \*\***

In August 2015, the university announced that it would change its policy so that religious student groups could no longer require their leaders to agree with the groups' religious beliefs. The university acknowledged that religious groups would not be able to choose their leaders



according to their religious beliefs but that fraternities and sororities would be allowed to discriminate on the basis of sex in their selection of members and leaders.

Twenty religious student groups, including Catholic, Muslim, Jewish, and Christian student groups, sent a letter to the administration expressing their concerns about the new policy and its impact on religious groups' ability to choose their leaders according to their religious beliefs. After seven months of communications from students, parents, alumni, donors, and state political leaders, the university announced that it would keep its original policy and allow religious student groups to have religious leadership requirements.

#### **Ivy Tech Community College \*\***

A student group had to seek help from legal counsel for the organization when it faced derecognition due to its religious leadership standards. It had to formally negotiate with school officials in order to become registered.

#### **Purdue University ≠**

In 2003, the university threatened to derecognize a religious student housing cooperative because it required its members to agree with the religious beliefs that defined the house. After receiving a letter from a legal organization, the university agreed to continue to allow religious housing cooperatives formed around religious beliefs.

### **Iowa**

#### **Central College \*\***

In 2008, the college threatened to expel a religious student group from campus because it asked its leaders to agree to live according to its religious beliefs. Eventually, the college agreed to allow the group to remain on campus.

#### **Cornell College \*\***

In 2011, the college required religious groups to delete their religious leadership and membership requirements from their constitutions in order to remain on campus.

#### **University of Iowa \*\***

In 2017, the University derecognized a religious student group, which had met on campus for 25 years, because it required its leaders to share its religious beliefs. The group had been previously recognized for its outstanding service to the student body. The group filed a federal lawsuit to regain its recognition and was granted a preliminary injunction in January 2018. The university lost and appealed, also losing the appeal. *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021).

In July 2018, the University officially derecognized 38 other student groups, including Muslim, Sikh, Mormon and Christian groups. InterVarsity was among these groups, and was told that it could not require its leaders to agree with the group's religious beliefs. The Eighth Circuit Court of Appeals ruled that the University of Iowa officials had violated a clearly established right when they derecognized the religious student organizations, and that they therefore had

forfeited qualified immunity. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4<sup>th</sup> 855 (8th Cir. 2021).

These court cases were not the first time concerns arose at the University of Iowa. For over a decade, religious groups have been targeted by other student groups for exclusion from campus because they require their leaders to agree with the groups' religious beliefs. In 2004, for example, the law school denied recognition to a religious student group because it required its members and leaders to agree with its religious beliefs. After several letters from a legal organization, the university recognized the group. But over the years, there has been a steady drumbeat of opposition to religious student groups on campus.

## Kansas

### University of Kansas †

In 2021, the student government denied a funding request for a religious student organization, noting that it could not grant a request if any of the funds would be used for religious purposes, thereby ignoring the reality of the limited open forum legal principles. The student leaders sought help from legal counsel for the organization. Legal counsel sent two separate letters requesting changes to the unconstitutional funding policy that singled out religious groups for different treatment. The student government changed its policy and granted the student group funding.

### Washburn University School of Law ≠

In 2004-2005, a law school student government voted to punish a religious group for not allowing a student to lead its Bible studies even though the student admitted that he did not agree with the group's religious beliefs. When the religious group sought protection in court, the law school agreed to allow the religious student group to keep its religious leadership and membership requirements. (*Christian Legal Society Chapter of Washburn University School of Law v. Farley*, No. 04-4120 (D. Kan. Sept. 16, 2004).) In 2016, the Kansas Legislature adopted a law protecting religious student groups on public university campuses. K.S.A. §§ 60-5311 to 60-5313.

## Louisiana

### Louisiana State University \*\*

In 2003-2005, the university denied recognition to a Muslim religious student group that had met on the LSU campus for many years. The university said that a new university policy required all student organizations to state in their constitutions that they would not restrict membership based on religious belief. After receiving a letter from a legal organization, the university restored recognition to the religious student group.

## Maine

### Bowdoin College \*\*

In 2014, the college derecognized a religious student group because it required its leaders to agree with its religious beliefs, as it had done for several decades. Despite *The New York Times'* front-page coverage, the college derecognized the religious group.

**University of Maine, Farmington \*\* ≠**

In 2010, the university threatened to deny recognition to a religious student group unless it removed from its constitution that the group's purpose was to evangelize. After fifteen months, the university agreed to restore its recognition.

## **Maryland**

**Johns Hopkins ≠**

In 2025, Intervarsity was targeted for disfavor. InterVarsity has been the only evangelical student organization at Johns Hopkins for decades. The Dean of Students office flagged InterVarsity's Graduate student fellowship and undergraduate student fellowship constitutions as discriminatory and is requiring removal of the statement of faith, which has already resulted in one group losing status and another being threatened. The situation remains unresolved.

**Towson University †**

In 2010, the Student Government Association voted to deny funding to a religious student organization, because it determined that the event that was to be funded was too religious.

**University of Maryland – Baltimore County \*\* ≠**

In 2022, the Graduate Student Association refused to recognize religious groups (including InterVarsity) because they were religious groups.

In 2024, the graduate school student government once again refused to recognize the InterVarsity Christian Fellowship graduate chapter because of its religious leadership requirements and because of its theological commitments. After significant negotiations, as well as through the filing of a Equity complaint with the university, the issue was resolved in InterVarsity's favor.

**University of Maryland – Baltimore Law School ≠**

In 2025, the Student Bar Association refused to recognize an InterVarsity chapter because of the group's affiliation with a national organization and a negative perception of the national organization's theological convictions. After significant negotiation with the Student Bar Association and the Dean of Students, the Student Bar Association permitted the group to be recognized.

## **Massachusetts**

**Harvard University \*\* ≠**

In 2018, the university placed a religious student group on administrative probation because it required its leaders to agree with its religious beliefs.

**Springfield Technical Community College \*\***

In 2022, a religious student group was told they could no longer be recognized because their values didn't align with those of the university.

**Tufts University \*\* ≠**

In 2000, the student judiciary voted to derecognize a religious student group because it required its leaders and members to agree with its religious beliefs. After a legal organization sent a letter, the administration restored recognition to the religious group. The issue arose again in 2014.

## Michigan

### Alma College, Michigan

In 2025, Alma college, a private liberal arts college, refused to recognize a Cru chapter because the group required its leaders to agree with its religious beliefs. The students were not able to form their group.

### Eastern Michigan University \*\*

In 2022, a religious student group was told they had to include language stating they would not use religious criteria in the selection of leaders “unless the student organizations’ restriction is shown to be specifically allowed by law.” The chapter received legal counsel on how to clarify that religious leadership criteria for religious groups is specifically allowed by law, actually enabling religious groups to be treated like other groups in being able to maintain an expressive identity. The group was then recognized. Most groups, however, would not be able to understand their rights, as most would understand the language to except only fraternities and sororities from the policy in relation to their sex-based distinctions.

### Michigan State University \*\*

In 2025 all groups were asked to sign a non-discrimination agreement which committed the groups to making both membership and leadership open to all, regardless of their beliefs. Student leaders could apply for an exemption to this requirement as a religious organization to reserve their leadership positions for those who agree with the religious purposes stated in their constitution. The group was granted the exemption and was able to register.

### University of Michigan \*\*

In 2012, the university derecognized a religious student group because it required its leaders to agree with its religious beliefs. In 2013, the university restored recognition to the religious student group. The university has a history, dating back to 1992, of sporadically threatening to exclude a religious group because it requires its leaders to agree with its beliefs.

### Wayne State University \*\*

In 2017, after several months of trying to reason with the administration, a religious student organization that had been a recognized student group at the university since 1956 was derecognized because it required its leaders to agree with its religious beliefs. After a federal lawsuit was filed, the university restored recognition to the student organization, but continued to fight in court for the right to deny recognition to the group. It lost in district court, with the judge finding that the university had violated the free speech, freedom of association, freedom of assembly, and free exercise rights of the student organization. *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 542 F. Supp. 3d 621 (E.D. Mich. 2021).

## Minnesota

### Minnesota State University, Mankato ≠

In 2015, a student invited some of her dormitory neighbors to discuss religious ideas. A residential advisor told the student that she was violating a university policy that allowed students to prohibit “religious solicitation” on a dormitory floor by majority vote. Eventually the university repealed its policy.

### University of Minnesota \*\* ≠

In 2024, the university’s business school student association initially refused to allow religious groups to form and then insisted that the nascent InterVarsity business school chapter become recognized as an interreligious group on campus instead. The InterVarsity chapter is continuing conversations with the business school student association.

In 2020, the university’s Graduate Student Activities office refused to allow religious groups, including InterVarsity, to participate in the activities fair. This policy remains in effect in 2024.

In 2003, the university denied recognition when another religious group refused to state in its constitution that its membership was open to all students regardless of religion. The group challenged the university policy. In order to settle the case, the university changed its policy to allow religious student groups to “require their voting membership and officers to adhere to the organization’s statement of faith and its rules of conduct.” (*Maranatha Christian Fellowship v. Regents of the Board of the University of Minnesota System*, No. 03-5618 (D. Minn. Oct. 24, 2003).)

In 1994, the university derecognized a religious student group because it required its leaders and members to agree with its religious beliefs. A professor at the law school led the successful effort to regain recognition for the group. (Michael S. Paulsen, *A Funny Thing Happened on the Way to the Limited Public Forum: Unconstitutional Conditions on “Equal Access” for Religious Speakers and Groups*, 29 U.C. Davis L. Rev. 653, 675 (1996).)

### University of Minnesota, Carlson School of Business ≠

In 2024, the student government refused to recognize the proposed InterVarsity chapter, and the graduate school of business refused to permit religious groups from participating in new student activities fairs, claiming that there would be insufficient interest in a religious club. In year two of the conversation, the student government proposed approving an interfaith club instead with the InterVarsity Christian Fellowship chapter being subsumed in that group. Because of InterVarsity staffing limitations, this was left unresolved.

## Missouri

### Southeast Missouri State University \*\*

In 2015-2016, the university denied a religious student group recognition because it required its leaders to agree with its religious beliefs. The group worked with the administration and the student government to secure a policy that would protect religious groups. In April 2016,

the student government voted *not* to adopt a policy that would protect religious groups. After the student government vote, five additional religious groups indicated that they would not be able to remain on campus if they could not require their leaders to agree with their religious beliefs. In October 2016, the university agreed that religious student groups could have religious requirements for their leaders.

## Montana

### **Montana State University** \*\*

In 2022, the University refused to recognize a religious student organization's chapter because of the chapter's religious leadership requirements. It required the chapter to submit a constitution which did not include an explanation that religious leadership requirements were consistent with the university's nondiscrimination requirement.

In 2014, the university adopted a new policy that effectively prohibited religious student groups from having religious leadership requirements. The religious groups could not persuade the university to allow them to maintain their leadership requirements because of Ninth Circuit precedent.

### **University of Montana School of Law** \*\* †

From 2007-2011, the law school student government denied recognition to a religious group because it required its leaders and members to agree with its religious beliefs. The religious group challenged the policy in court, but the district court ruled against the religious group because it was in the Ninth Circuit. The religious group dismissed its appeal when the law school agreed to implement numerous reforms to bring allocation of student activity fees into conformity with the First Amendment. (*Christian Legal Society v. Eck*, 625 F. Supp.2d 1026 (D. Mont. 2009), *appeal dismissed*, No. 09-35581 (9<sup>th</sup> Cir., Aug. 10, 2011).)

## Nebraska

### **Nebraska Wesleyan University** \*\*

In 2025, a private school that celebrated that it welcomed people of all faiths and backgrounds delayed registering a Cru chapter because the Student Involvement Office didn't like some language in its constitution, including its leadership standards. With the assistance of attorneys and after adjusting some language, but retaining leadership standards, the group was finally able to register.

### **University of Nebraska, Lincoln** †

In 2021, a Christian student organization called Ratio Christi wanted to bring in a Christian philosopher and professor to speak about the problem of evil and the existence of God. It requested funding to help with its event, but the university denied funding, saying it could not be used for "political and ideological events," though it had not applied that standard to other groups. Ratio Christi filed suit, claiming clear viewpoint discrimination in the policy's application and the distribution of fees. The case settled and the university changed its policy to make its fee distribution more viewpoint neutral.

**University of Nebraska Omaha \*\***

In 2010, the university told a religious student group that it must remove from its constitution its requirement that its leaders agree with its religious beliefs. After receiving a letter from a legal organization, the university agreed to recognize the group. The university also had told a different religious group that its students could not meet with students who had filled out a card indicating that they wanted to receive information from the group.

**New Hampshire****University of New Hampshire, Franklin Pierce Law School \*\* ≠**

In 2022, the law school's Student Body Association asked inappropriate questions about a religious student organization's religious beliefs, with certain members appearing hostile to the chapter's views. Legal counsel wrote two letters clarifying the state of the law, and a misunderstanding about a certain precedent, and then the group was granted recognition.

**New Jersey****New Jersey Institute of Technology † ≠**

In 2010, the college had a policy creating three tiers of student groups with the third tier automatically denied student activity fee funding, unlike the groups in the first two tiers. The third tier consisted largely of religious student groups.

**Princeton University: \*\***

For several years before 2005, the student government denied a religious student group recognition because it was religious. After a letter from a legal organization, the administration eventually granted the group recognition.

**Rutgers University \*\* ≠**

In 2021, the Graduate Student Association refused to recognize multiple Christian groups as duplicative (one of which was an InterVarsity chapter). Two years of conversation with the university finally resulted in two Christian clubs being recognized.

In 2002-2003, the university derecognized a religious student group because it would not include language in its constitution that would prevent it from requiring its leaders to agree with its religious beliefs. In response to a court challenge, the university revised its interpretation of its policy to allow religious student groups to keep their religious leadership requirements. (*Intervarsity Multi-Ethnic Campus Fellowship v. Rutgers*, No. 02-06145 (D.N.J. 2002).)

**Stockton University, New Jersey \*\***

In 2026, the public university denied recognition and funding to a Cru chapter at Stockton University because Cru's constitution has criteria for leadership selection of student leaders that includes a commitment to uphold the religious beliefs and mission of the group. A resolution has not yet been reached and the group remains unrecognized.

**New Mexico**



**University of New Mexico \*\***

In 2020, the University refused to recognize a religious student group because of its religious leadership requirements. The student leaders sought help from the national organization, and after multiple conversations with administrators, the University backed down only because the organization reminded them of the federal regulation finalized in 2020 that protected religious student groups.

**University of New Mexico School of Law \*\***

In 2001, the law school denied recognition to a religious student group because it required its leaders and members to agree with its religious beliefs. After receiving a letter from a legal organization, the university revised its policy and recognized the religious group with its leadership and membership requirements.

**New York****New York City College of Technology, Brooklyn \*\***

In 2017, a religious student group seeking to register as a student organization was told that their constitution could not have any leadership requirements other than the basic GPA-type requirements the college has in place. They were asked to remove any such language in their constitution. The group was concerned about its association rights and asked for policies clarifying the requirement further. The administrator refused to give more details and just demanded that they remove all religious requirements for leaders or they would not be registered.

**North Country Community College ≠**

In 2005, a student was told by university administrators that she could not form a religious student group because of “separation of church and state.” After a letter from a legal organization, the university agreed to allow her to form a religious student group.

**Pace University \*\***

The law school denied recognition to a religious student group because it required its leaders and members to agree with its religious beliefs. After eighteen months of correspondence, including letters from a legal group, the law school eventually recognized the religious group with religious requirements for leaders.

**State University of New York, Albany \*\***

In 2016-17, a religious student group had difficulty achieving recognition from the Student Association due to a policy stating that any student must be allowed to be a member and run for office in any student organization, with no eligibility qualifications allowed to ensure suitability, knowledge or experience. The religious student group expressed concern about preserving its religious beliefs and mission, hindering its association rights, but the university continued to insist on the policy and asked for language changes in the constitution. The group achieved recognition after a convoluted process of updating its constitution, though it remained concerned that it would not be able to uphold its religious beliefs.

**State University of New York, Broome County Community College \*\***



In February of 2026, SUNY-Broome County Community College denied recognition to InterVarsity because the student chapter requires student leaders to affirm InterVarsity's statement of faith. The school and the SUNY system were informed about current federal regulations that protect religious student groups but refused to change course. The issue has not yet been resolved.

**State University of New York, Buffalo \*\***

In 2011, the student government derecognized a religious student group because it required its leaders to conform to its religious standards of conduct. After seven months, the student judiciary ordered that the student government restore recognition to the religious group.

**State University of New York, Cortland \*\***

In 2022, a religious student organization submitted revisions to its constitution that included statements that it expected its leaders to demonstrate knowledge of the national organization's teachings, and that the process would include asking applicants about their beliefs, the Student Government Association (SGA) asked the leadership to remove those statements, claiming it went against the SGA policy that said the SGA could oppose recognizing a group if "it is discriminatory in any way...". After legal counsel sent a letter detailing the state of the law and that the chapter wished only to preserve its religious identity, the chapter was re-registered and allowed to include the statements in its constitution.

**State University of New York, Old Westbury ≠**

Beginning in 2022, a group of students submitted a request for official recognition on campus. The request was denied because, according to university decision makers, the university already had a Christian group on campus and there could only be one club representing particular viewpoints. The group applied again in 2023 and 2024, receiving the same explanation and, in 2024, was also told that the group's conservative views were disfavored. Legal counsel sent a letter pointing out that the "only one club" policy was not being applied to secular organizations and therefore the school was treating religious groups differently, and also that the cited reasons were clearly viewpoint discrimination. The letter also pointed to the Department of Education's regulations requiring universities receiving federal grants to give equal treatment to religious student groups. Upon receipt of the letter, the university reversed its decision and recognized the student organization.

**State University of New York, Oswego \*\***

In 2001, a religious student group was denied recognition because it required its leaders and members to agree with its religious beliefs. Eventually the university agreed to recognize the group with its religious leadership and membership requirements.

**State University of New York, Stony Brook \*\* ≠**

In 2025, Stony Brook University denied a Cru chapter registered status because it claimed that the language of the national organization around "evangelism, discipleship and outreach suggests a conversion-oriented approach. They claimed this was in violation of the "University's commitment to non-proselytizing engagement and our obligation to equal opportunity and non-discrimination." They also claimed that the group "duplicated" other religious groups. The students seeking to register the group did not believe the other religious

groups met their desires for a religious group that reflected their faith and beliefs, which is why they wanted to affiliate with Cru. They believed that the college was disfavoring them. Advised by attorneys, the students successfully appealed the school's decision and were finally recognized for the 2025-2026 school year, after several months of the year had passed.

**Utica University \*\* ≠**

In 2024, the student government objected to the establishment of an InterVarsity chapter. After significant back-and-forth with student government and administration, the group was recognized.

## **North Carolina**

**North Carolina State ≠**

In 2016, a student group called Grace Christian Life objected to a university solicitation policy that severely censored speech by requiring a permit for any kind of student speech or communication anywhere on campus. It was selectively enforced against groups that the university disfavored. The group filed suit and the district court issued a preliminary injunction halting the policy that covered non-commercial speech and could be used easily to target disfavored speech. A settlement was reached and the university changed its policy to no longer require a permit for non-commercial speech.

**University of North Carolina, Chapel Hill \*\***

In 2005-2006, the university denied recognition to a religious student group because it required its leaders and members to agree with its religious beliefs. The student group challenged the university's action in court. The university settled the case by adopting a policy that allows all student groups, including religious groups, to have leadership and membership requirements regarding beliefs. (*Alpha Iota Omega Christian Fraternity v. Moser*, No. 04-765, 2006 WL 1286186 (M.D.N.C. May 4, 2006); 2005 WL 1720903 (M.D.N.C. Mar. 2, 2005).) Nonetheless, for the next 8 years, religious groups at UNC were repeatedly told that the policy might be altered to no longer allow religious leadership requirements. In 2014, the North Carolina General Assembly enacted legislation to protect religious student groups on public college campuses. N.C.G.S.A. §§ 115D-20.1 & 116-40.12.

**University of North Carolina, Greensboro \*\***

In 2011-2012, the university denied recognition to a religious student group because it required its members to agree with its religious beliefs. The university recognized the group after it challenged the university policy in court.

## **North Dakota**

**University of North Dakota \*\***

In 2003, the university denied recognition to a religious student group because it required its leaders and members to agree with its religious beliefs. After several months, the university agreed to allow religious groups to take religion into account in selection of their leaders and members and restored recognition to the group.

## Ohio

### **Case Western Reserve University \*\***

In 2006, the university denied recognition to a religious student group until it received a letter from a legal organization. In 2013, the student government of a graduate school at the university denied recognition to a religious student group because of the “emphasis on God and especially because of the bible sessions” in its application for recognition. After a letter drafted by a legal organization was sent, the graduate school recognized the group.

### **Cleveland State University \*\***

In 2018, the university derecognized a religious student group because it required its leaders to agree with the group’s religious beliefs, even after the group brought to the administrator’s attention that Ohio state law prohibited public universities from denying recognition to religious student organizations because of their religious leadership requirements. Eventually recognition of the group was restored.

### **The Ohio State University \*\***

In 2003-2004, a religious group was threatened with derecognition by the OSU Moritz College of Law after a member of another student group demanded that it be derecognized because of its religious leadership and membership requirements. After months of discussions with university administrators, the religious group sought court protection. It dismissed its legal challenge after the university revised its policy to allow religious student organizations to have religious leadership and membership requirements. The religious group then met without problem from 2004 to 2010. (*Christian Legal Society Chapter of the Ohio State University v. Holbrook*, No. C2-04-197 (S.D. Ohio 2004 (dismissed when university changed its policy).)

In 2010, the university asked the student government whether the university should discard its policy and no longer allow religious groups to have religious leadership and membership requirements. After several public meetings on the issue, the student government urged the university to drop its protection for religious student groups and “endorse[d] the position that every student, regardless of religious belief, should have the opportunity . . . to apply or run for a leadership position within those [religious] organizations.” Having unleashed anti-religious sentiment on campus, the university eventually tried to compromise and retain protection for religious groups’ leadership requirements but not membership requirements. But the campus controversy continued. Ultimately, the Ohio Legislature resolved the issue by prohibiting public universities from denying recognition to religious student organizations because of their religious leadership and membership requirements. Ohio Rev. Code § 3345.023.

In 2025, the University once again flagged a Cru chapter’s constitution for review, saying that the nondiscrimination language had to say it applied to leadership and that they could not have religious leadership requirements. It was an easy solution with no conflict because of the Ohio law protecting religious student organizations. Based on the state law, OSU already had a policy carveout for religious organizations, so that they would be treated fairly

### **University of Toledo College of Law \*\* ≠**

In 2005, the law school refused to recognize a religious student group unless it removed all scriptural references from its constitution. The university also required the group to pledge

not to choose its leaders and members on the basis of religion, even though the university actually had a written policy that allowed religious groups to do so. As a result of the group's challenge in court, the university recognized the group and agreed that student groups could have religious leadership requirements and include references to the Bible in their constitutions and bylaws. (*Christian Legal Society Chapter of the University of Toledo v. Johnson*, 3:05-cv-7126 (N.D. Ohio June 16, 2005))

#### **Wright State University \*\***

In 2009, the university denied a religious student group recognition because it required its voting members to agree with its religious beliefs. The religious group had been a recognized student group at the university for 30 years. After receiving correspondence from a legal group organization, the university restored the group's recognition.

## **Oklahoma**

#### **The University of Oklahoma \*\***

In August 2011, the student government sent a memorandum to all registered student organizations, announcing a re-interpretation of university policy that would prohibit religious student associations from having religious leadership and membership criteria. After receiving a letter from a legal organization, the university agreed that a religious student group could require its leaders to agree with its religious beliefs.

In 2012, the university denied recognition to a religious student group because it required its members to agree with the group's religious beliefs. After receiving a letter from a legal organization, the university agreed to recognize the group. In 2014, the Oklahoma Legislature enacted protection for religious student groups. 70 Okl. St. Ann. § 2119.

## **Oregon**

#### **The University of Oregon ≠**

For many years, religious groups have been sidelined and placed under the authority of a separate association. As a result, most groups do not actually register as student organizations, are treated differently in terms of how they can reach out to, involve students, and get funding. In addition, students don't have as many opportunities for leadership within religious groups. When a religious group sought recognition as a student organization in 2018, they were told they could not have religious standards for leadership.

## **Pennsylvania**

#### **Harrisburg Area Community College \*\* ≠**

In 2022, the college objected to the Christian student group's doctrinal requirements for student leaders and insisted on onerous reporting requirements for campus ministry staff – including disclosing the conversations the staff had with student leaders. The group remains unrecognized as conversations continue.

#### **Penn State \*\* ≠**

In 2004, the university refused to recognize a Christian student group because the university claimed that its purpose was duplicated by other religious groups. The university had a policy that required all religious groups to be “unique.” The policy would effectively limit the number of Christian groups on the campus. After the group challenged the policy in court, the university recognized the religious student group and deleted its policy requiring “uniqueness.”

In 2005, however, the university adopted a policy that prohibited religious student groups from requiring their leaders to agree with the groups’ religious beliefs and standards of conduct. In response to another court challenge, the university revised its policy to allow religious groups to choose their leaders according to their religious beliefs. (*DiscipleMakers v. Spanier*, No. 04-2229 (M.D. Pa. 2005).)

#### **Shippensburg University \*\* ≠**

A public university had an overbroad and vague speech code that encouraged reporting of anything subjectively considered ‘harassing’ which had previously been enjoined. The university then used that code to expel a religious student group because its faith-based leadership and membership requirements meant it was not “open to everyone” and purportedly violated the code. After the group filed a court challenge, the university settled the case and changed its speech codes so that religious and political groups could choose their leaders and members according to their beliefs.

#### **Temple University \*\***

In 2024, administrators at Temple University refused to renew the InterVarsity chapter’s recognition because of the group’s religious leadership requirements. After significant negotiation, the group remains recognized.

#### **Temple University School of Medicine \*\***

In 2013, a religious student group was told by campus administrators that it stood to lose recognition because it required its leaders to lead lives in accordance with its religious beliefs.

### **Rhode Island**

#### **Brown University \*\***

In May 2026, members of an Intervarsity graduate student chapter attended a mandatory student activities meeting where they were told they had to add new “inclusive language” to their constitution. I prohibited the consideration of religious belief for both membership and leadership. The chaplain’s office confirmed that it meant that a leader of a religious group could be a member who does not identify with that religion. The issue has not yet been resolved.

### **South Carolina**

#### **College of Charleston ≠**

In 2016-17, a religious student organization experienced different treatment than other student organizations both because religious groups were given a different process of approval that was required of them in order to access numerous benefits: getting registered, having access

to facilities, and getting funding for their events. The students and religious organization advisors learned to navigate within the system, though they were often frustrated by the process.

**Charleston School of Law ≠**

The Christian Legal Society chapter was attacked by the Equality Alliance for hosting a speaker who communicated a biblical understanding of marriage and sexual conduct.

**University of South Carolina †**

In 2008, a religious student group was denied access to student activity fee funding that was available to other student groups solely because it was religious. After the group challenged the policy in court, the university adopted a new policy that allowed all student groups to be funded on the same terms.

## **South Dakota**

**Western Dakota Tech Community College \*\***

In 2025, Western Dakota Tech denied recognition to an InterVarsity chapter because of the chapter's religious leadership requirements. After negotiation and being informed of current federal regulations that protect religious student groups, the college allowed the chapter to be recognized.

## **Tennessee**

**Vanderbilt University \*\***

In 2011-2012, Vanderbilt University denied recognition to fourteen religious groups because they required their leaders to agree with the groups' religious beliefs. The university told one religious student group that it must delete five words from its leadership requirements if it wanted to remain on campus: "personal commitment to Jesus Christ." That group left campus rather than recant their core religious belief. The university told another religious student group that it was religious discrimination for the group to state in its constitution that it expected its leaders to lead its Bible study, prayer, and worship. Also, the university claimed it was religious discrimination for the group to require that its leaders affirm that they agreed with the group's core religious beliefs.

In 2013, Tennessee passed a law protecting religious student groups on public university campuses. T.C.A. § 49-7-156. The law does not apply to Vanderbilt University because it is a private university.

## **Texas**

**Texas A & M University \*\***

In 2009, the university told a religious group that it would no longer be recognized because it required its members to agree with its religious beliefs. After a legal organization sent a letter, the university agreed to recognize the religious group with its religious membership requirements.

In 2011-2012, another religious group was told it must delete its religious requirements for its leaders and voting members from its constitution if it wanted to remain a recognized student group. After several letters from a legal organization, the university agreed to allow the group to be recognized with its religious requirements for leadership and membership.

**University of Houston, Clear Lake \*\***

In 2021, the Christian student group Ratio Christi applied to be a registered student group but was denied based on the university's policy that prevented groups from choosing leaders who agree with their values and mission. Ratio Christi filed suit. The case settled and the university added language protecting the right of student organizations to require its officers to "subscribe to the tenets of that organization."

**University of North Texas Dallas \*\***

In 2016-2017, the law school delayed granting a religious student group recognition because of its religious leadership requirements. After 8 months, the university adopted a policy that protects religious groups: "A registered student organization created primarily for religious purposes may restrict officer positions to those members who subscribe to the registered student organization's statement of faith."

## **Utah**

**Snow College (Community college in Ephraim, UT) ≠**

In 2012-13, Snow College administrators prevented a religious group from freely participating in a limited public forum it created by trying to control its expression. During the "Paint the Town" event where the school coordinates for clubs to paint windows of willing local businesses and promote the school's Homecoming event, a Christian student group called Solid Rock was assigned a window and used a cross as a focal point, and sharing a religious message that also incorporated the homecoming theme. An administrator told the group that they could not paint religious symbols and threatened to have someone wash it away if they didn't remove it. With legal help, the group clarified that its speech was not government speech, but private speech in a limited public forum, and the school changed its policy to avoid future viewpoint discrimination.

## **Vermont**

**Middlebury College \*\***

In 2016, a religious student group was derecognized because of its theological beliefs.

## **Virginia**

**James Madison University †**

In the fall of 2016, a religious student group was denied funding to help send students to a conference; in previous years, they had received funding. During the student government meeting addressing the appeal, the student group responded to one claimed basis for the denial. The discussion then turned to whether student activity fees should be used to support Christian beliefs. Many claimed they should not and then voted to deny the appeal. The discussion was



lively and heated among student government members. The experience demonstrated a clear lack of understanding of the Supreme Court's rulings on student activity fees and forums for speech.

**Randolph-Macon College \*\* ≠**

In 2017, A religious student organization was threatened with derecognition if it did not permit a student who disagreed with the chapter's theological positions to become a leader.

**University of Mary Washington \*\* ≠**

In 2005, a student wanted to start a religious student group but could not agree to a university policy that would prohibit it from having religious leadership requirements. In the past, the university had denied recognition to any student group that was religious or political in nature. After receiving a letter from a legal organization, the university recognized the group. In 2013, the Virginia General Assembly passed a law to protect religious and political groups. Va. Code Ann. § 23-9.2:12.

**University of Virginia ≠**

In August 2021, several religious groups at the University of Virginia learned that the Student Council was requiring that all student organization submit an "Identity Inclusivity Disclosure Form" in the Fall Activities Fair, an important event for student organizations to introduce themselves to incoming students. The Student Council's form required a student organization to indicate whether it restricted its membership, leadership, programming, or activities based on the enumerated classes in the University's nondiscrimination policy. Regardless of its responses on the Form, a student organization would be allowed to participate in the Fall Activities Fair. However, if the Council decided that an organization did not respond honestly, an Honor Code charge could be brought, which could result in expulsion of the student officer signing the Form. Recognizing that the Form was targeting them, several religious organizations sent a letter to University leaders voicing their concerns. The Student Council withdrew the Form several days later.

Earlier in November 2020, the Student Council had adopted a resolution for its lobbyist to seek repeal of the Virginia law that protects religious and political student groups' right to choose their members and leaders according to their beliefs. To date, the state law has not been repealed.

**Virginia Community College System ≠**

A policy for Virginia's community colleges in 2014 required someone who wanted to speak on campus to be part of a student organization and to file a registration form with the college "four days in advance of the demonstration." The policy applied to all 23 community colleges and required this "prior registration." This policy was problematic because it both excluded individuals from speaking and also because it was a prior restraint on student groups. An individual student who had been told to stop preaching in an open space on campus because it violated school policy and he "might offend someone," filed a lawsuit. Virginia then changed the policy so students could speak in open areas of campus without being limited in time and place, and without having to register "four days in advance."



### **William and Mary College of Law ≠**

In February 2021, the Christian Legal Society chapter (CLS) at the William and Mary College of Law invited a religious freedom lawyer to speak at its meeting. Due to the COVID-19 pandemic, the meeting was held on Zoom, and the speaker was in California. CLS publicized its meeting through the normal campus communication channels. Several student groups, calling themselves the Equality Alliance, published an open letter to the law school, urging the CLS student chapter to disinvite its speaker due to his work on religious freedom cases. CLS students received disturbing comments from their fellow students.

In an email to the law school community, the administration explained that student groups were allowed to invite speakers, even people whose views other students disliked. The campus access regulation may have helped administrators respect the CLS chapter's right to function on campus and prevented an escalation of the situation.

## **Washington**

### **Highline Community College †**

In 2007, a religious student organization was denied funding allocated for student organizations. They were told they were ineligible because the funds could not be used to fund religious activities. After a letter was sent from legal counsel, the college granted the group funding.

### **Spokane Falls Community College ≠**

A Christian club was sponsoring a pro-life event in 2008. A student leader was told that it would not be allowed because "Washington is a pro-choice state," so she could not use reserve space in the student center for a pro-life display, even though other student clubs regularly used the same display case spaces to express their viewpoints on various issues, making it a limited public forum for student speech. She was told her view was too one-sided, and that they needed to also include pro-abortion information. Administrators also attended the group's meeting to pressure them not to hold the event. They were told they would be punished if people were offended. They filed suit in 2009, and the case later settled, with agreements to change various policies and Washington Code provisions.

### **University of Washington ≠**

In 1997, a religious student organization was repeatedly treated differently than other groups because of its religious status. It was denied the opportunity to advertise the way other groups were allowed to do so, and its fliers were even removed. It was also subjected to different treatment in how rooms were allocated, and was denied an appropriate room for a large event it was having that was routinely given to other groups. The group was also threatened with having its club status removed. After a strongly worded letter from legal counsel, the university stopped targeting the group.

## **Wisconsin**

### **Lawrence University ≠**

In 2025, the Lawrence University student government refused to recognize the existing InterVarsity student chapter, claiming procedural violations in the application process but referring to the organization's doctrinal beliefs in the debate. The situation has been resolved in InterVarsity's favor.

**Milwaukee School of Engineering \*\***

The student government refused to renew recognition of a Christian student group because of its religious standards of conduct. After a legal organization sent a letter, the student government restored recognition to the group, as well as to a Muslim student group.

**University of Wisconsin, Madison \*\***

In 2022, a CLS chapter was seeking to re-register at the law school. They were asked to change some language in their constitution that a leader "must be a Christian." The group was told that they could require agreement with beliefs, based on the Regents' Policy 30-6, but could not require identification with a particular religion. This nonsensical distinction was confusing to the student leaders. After receiving a threat letter communicating the state of the law and noting precedent, federal regulations, and the logical meaning of the Regents' Policy, the chapter was able to re-register.

In 2006, The university derecognized a religious student group in part because of its religious leadership and membership requirements. When the group challenged its policy in court, the university had to change its policy. (*Madison Roman Catholic Found. v. Walsh*, 2007 WL 1056772 (W.D. Wis. Apr. 4, 2007).) The university then denied student activity fee funding to the religious group because its speech included prayer and religious instruction. The religious group won its court challenge to this viewpoint discrimination.

**University of Wisconsin, Superior †**

Badger Catholic was the largest Catholic student group at the University of Wisconsin campus and had received funding regularly for its activities until the university decided to no longer fund certain religious activities that were integrated into many of Badger Catholic's events. The University fought the case for years, with the court battle lasting from 2007-2010, but the Seventh Circuit confirmed that religious student organizations should not be singled out and excluded because of their religious content. *Badger Catholic v. Walsh*, 620 F.3d 775 (7<sup>th</sup> Cir. 2010).

## **Attachment C**



April 17, 2026

Religious Liberty Commission  
Office of the Associate Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001  
[RLC@usdoj.gov](mailto:RLC@usdoj.gov)

We appreciate the work the Religious Liberty Commission (Commission) has been doing, seeking to clarify the importance of religious freedom and the current threats to religious freedom right here in our country. We at Christian Legal Society's Center for Law & Religious Freedom have defended the rights of individuals and organizations to practice and live out their religious identity and beliefs for over fifty years. We have advocated for the passage of important legislation like RFRA, RLUIPA, and the Equal Access Act. We defend the rights of students, student groups, teachers, and parents in public schools to engage in religious expression. We support religious organizations' right to be authentically religious by adopting policies and hiring based on religious beliefs. We pursue all these things because we believe that the unique religious pluralism of our country is a result of strong First Amendment protections; we must preserve these protections for future generations.

To that end, we offer a few specific suggestions for the Commission's consideration that could be effectuated with minimal cost and that will provide positive long-term advancement of the Commission's goals:

1. The White House Office of Legislative Affairs (OLA) should include two specific bills as part of its legislative priorities that will serve to advance its religious freedom goals: the Equal Campus Access Act of 2025 (S.2859 / H.R. 5505) and the Fair Treatment of Religious Organizations Act of 2026 (H.R. 1817).
2. OLA should also encourage all House and Senate committees to be vigilant and not advance any bill that has a carveout to RFRA.
3. The White House should ask DOJ's Office of Legal Counsel (OLC) to draft a memorandum detailing the arguments in support of overruling *Employment Division v. Smith*.<sup>1</sup> The White House should ask DOJ to file in cases in the federal appellate courts and the Supreme Court in support of overruling *Smith*.
4. The White House should direct the Department of Education to revise its "Guidance on Constitutionally Protected Prayer and Religious Expression in Public K-12 Schools," released February 5, 2026, by restoring the first Trump Administration's Guidance,

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<sup>1</sup> 494 U.S. 872 (1990).

released January 21, 2020. Among several things, the revised Guidance should emphasize how current law protects religious student organizations meeting on public secondary school campuses under the Equal Access Act and the First Amendment.

These suggestions merit particular focus as we detail below. In each section, we also mention the specific EO 14291 priorities that these suggestions relate to.

**1. The White House Office of Legislative Affairs should include two specific bills as part of its legislative priorities that will serve to advance its Religious Freedom goals: the Equal Campus Access Act of 2025 (S.2859 / H.R. 5505) and the Fair Treatment of Religious Organizations Act of 2026 (H.R. 1817).**

First, the OLA should include these bills as part of its legislative priorities. They advance widely supported religious freedom goals in the following ways.

**The Equal Campus Access Act of 2025 (S.2859 / H.R. 5505)** directly relates to the EO priority of the First Amendment rights of students. It protects free speech and religious freedom for college students at public universities all over the country. It will correct a decades-long pattern of public universities in all parts of the country excluding religious campus groups because of those groups' faith convictions and faith-based leadership standards.<sup>2</sup> In addition, it will help students find faith and belonging through religious student organizations. Students need healthy community and support for their time at college, and the presence of authentic faith-based groups can make a huge difference in providing belonging and meaningful connection, leading to better well-being and success.<sup>3</sup> The bill states:

*None of the funds made available under this Act may be provided to any public institution of higher education that denies to a religious student organization any right, benefit, or privilege that is otherwise afforded to other student organizations at the institution (including full access to the facilities of the institution and official recognition of the organization by the institution) because of the religious beliefs, practices, speech, leadership standards, or standards of conduct of the religious student organization.*

This language is intended to hold public colleges and universities accountable so that they will follow First Amendment principles of religious freedom, free speech, and freedom of association in how they treat religious student organizations. The requested language will protect the

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<sup>2</sup> See Statement of Kimberlee Wood Colby, Of Counsel, Christian Legal Society's Center for Law & Religious Freedom, at the U.S. Religious Liberty Commission Hearing on Religious Liberty in Public Education, Sept. 8, 2025 (available [here](#)); See also Flesherman, Benjamin, *How Do You Solve a Problem Like Martinez*, 29 Texas Review of Law and Politics 232 (2025).

<sup>3</sup> 2022 Salesforce Connected Student Report, 3rd Edition, <https://www.salesforce.org/blog/2022-connected-student-report-third-edition/> (identifying belonging as a key foundation for student success); Foubert, John D., Grainger, Lauren U., "Effects of Involvement in Clubs and Organizations on the Psychosocial Development of First Year and Senior College Students," NASPA Journal, 2006, Vol. 43, no.1; Corlette, Naomi, *The Loneliness Gap Among Young Americans is Growing*, Harvard Political Review (April 23, 2025); Emily A. Greenfield and Nadine F. Marks, *Religious Social Identity as an Explanatory Factor for Associations between More Frequent Formal Religious Participation and Psychological Well-Being*, Int. J. Psychol Relig. 2007; 17(3): 245-259 (available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC2507864/pdf/nihms56430.pdf>).

religious freedom and expression of religious student organizations on public college and university campuses and will avoid protracted, costly, and needless litigation that disrupts student life and costs taxpayers.<sup>4</sup> Instead, student groups will be able to point administrators to this language to resolve confusion and remain focused on serving their campus and community. The language is supported by a wide range of religious organizations of many religious backgrounds.<sup>5</sup>

It is common sense that religious student organizations on public university and college campuses should be able to authentically represent their faiths and religious identities by requiring their leaders to agree with their religious beliefs. This language is simple and clear protective language that will stop intimidation tactics and religious discrimination from happening when colleges try to exclude religious groups (a decades-long problem). The proposed statutory language does not increase federal oversight in higher education because it is a reasonable, one-sentence solution that does not require a college or university to adopt any particular policy but merely requires fair treatment of religious students.

**The Fair Treatment of Religious Organizations’ Act** (H.R. 1817) would directly and vitally implement the priority of the EO and this Commission of protecting the First Amendment rights of faith-based institutions. The Supreme Court has held that the IRS can revoke the tax exemption of a religious institution if the IRS Commissioner finds that the latter has a policy or practice that violates clear public policy. Obviously, revocation of the exemption would be fatal to almost any charity or church; the government could tax it into extinction and/or its donations would no longer be tax deductible to donors, thus drying up its support. This “nuclear option” cannot be left in the hands of future administrations who could revoke exempt status for any religious ministry or college that requires its staff and/or board to share its beliefs and conduct standards relating to homosexuality, same-sex marriage, and/or “gender transition” (gender dysphoria). The Supreme Court’s §1983 precedent [*Bob Jones University v. U.S.*, 461 U.S. 574 (1983)] drew the line at racially discriminatory policies of a faith-based university. H.R. 1817 would keep the IRS from extending that crippling threat to beliefs that faith communities have for millennia maintained about marriage and human sexuality.

## **2. OLA should encourage all House and Senate committees to be vigilant and not advance any bill that has a carveout from RFRA.**

This action would directly advance the EO’s priority to protect “the First Amendment rights” of all groups, because the RFRA statutory rights are intimately tied to the First Amendment.

Three decades ago, a remarkable and diverse coalition found common ground to protect religious freedom for all. The result was RFRA—a bill that passed with overwhelming bipartisan support (97-3 in the Senate; unanimous consent in the House) in response to the Supreme Court’s decision in *Employment Division v. Smith*.

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<sup>4</sup> See, e.g., *InterVarsity Christian Fellowship/USA v. Univ. of Iowa*, 5 F.4th 855, 864 (8th Cir. 2021); *InterVarsity Christian Fellowship v. Bd. of Governors of Wayne State Univ.*, 534 F.Supp.3d 785 (E.D. Mich. 2021); *Fellowship of Christian Athletes v. San Jose Unified Indep. Sch. Dist. Bd. of Educ.*, 82 F.4th 664 (9th Cir. 2023) (en banc).

<sup>5</sup> See Appendix 1, a letter of support for S.2859 / H.R. 5505, signed by 47 diverse organizations.

RFRA is crucial to protecting religious freedom. The White House should advocate to protect this landmark statute by communicating to Congress that it is an absolute priority that no legislative proposal in Congress pass out of committee or on the House or Senate floor if it carves out RFRA's application to any federal law or to the implementation of that law, whether statutory or otherwise. Regrettably, these carveouts have appeared in bills sponsored by members of both political parties. Nevertheless, no bill carving out RFRA has ever been signed into law, and it is important to ensure that remains true. Once a carveout is made for one interest, all interests will demand carveouts, fatally weakening RFRA.

Carveouts of RFRA are unnecessary because the law includes consideration of both the burden on religious exercise and the compelling government interest. RFRA's sensible balancing test says that the government may not substantially burden the exercise of the claimant's religious belief unless the government can prove that the burden serves a compelling government interest that is accomplished by the least restrictive means. It doesn't create a religious exemption for everyone from the challenged law—only for the specific religious claimant. And if the government's interest (e.g., national security) is compelling and cannot otherwise be accomplished in one specific case, then the government prevails. It will therefore not harm the government and will advance long-term religious freedom interests to preserve RFRA's full application to federal laws.

**3. The White House should ask DOJ's Office of Legal Counsel to draft a memorandum detailing the arguments in support of overruling *Employment Division v. Smith*. The White House should ask DOJ to file in cases in the federal appellate courts and the Supreme Court in support of overruling *Smith*.**

Working to overturn *Employment Division v. Smith* will support the EO priority of advancing “the First Amendment rights of pastors, religious leaders, houses of worship, faith-based institutions” and will likely bolster many of the other listed priorities as well. *Smith* greatly reduced protections for religious exercise by providing only rational basis review for burdens on free exercise caused by neutral and generally applicable laws. By focusing courts primarily on whether a law is neutral and generally applicable, *Smith* has caused free exercise analysis to often miss the forest for the trees, ignoring the First Amendment promise. The Supreme Court should overrule it.

“Government may neither compel affirmation of a repugnant belief, nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities.”<sup>6</sup> Free exercise protects the twin guaranties of “freedom to believe and freedom to act.”<sup>7</sup> The text of the first freedom in the First Amendment is “free *exercise*.”

*Smith* has functionally prevented courts from directly implementing the First Amendment's core purpose of protecting religious individuals' and institutions' freedom to live faithfully to their sincerely held religious beliefs. Instead, *Smith* requires the courts—after noting a significant burden on religious exercise—to ask if the law involved is neutral and generally applicable rather than consider whether the law is the least intrusive means of advancing a government interest that

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<sup>6</sup> *Sherbert v. Verner*, 374 U.S. 398, 402 (1963) (citations omitted).

<sup>7</sup> *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

is compelling. *Smith* did not have strong reasoning for this change, and it is inconsistent with the history of free exercise of religion. The ambiguity of the law because of *Smith*'s uncertain application has eroded the promises of religious protections *in practice*, allowing lower courts to be susceptible to partisanship in how cases are argued.<sup>8</sup>

*Smith*'s "sweeping result" was to drastically alter free exercise doctrine and to fail to protect minority religions.<sup>9</sup> The exceptions outlined in *Smith* have had to grow to provide protection for religious practice that *Smith* left vulnerable.<sup>10</sup> Such efforts become a game, trying to find an exception to actually get to the logic of treating religious individuals and organizations in a manner that takes seriously their need for protection of religious exercise. Justice Gorsuch, in his *Fulton* concurrence, takes note of this very practice when he describes the complex "circumnavigation of *Smith*" in the majority's analysis.<sup>11</sup>

By overturning *Smith*, courts would then have to apply strict scrutiny to free exercise claims in a careful, reasoned way. Applying strict scrutiny would simply result in allowing for religious exemptions that are historically grounded, common ways to prevent violations of fundamental rights.<sup>12</sup> Professor Stephanie Barclay suggests advocating for a version of strict scrutiny that would "take an objective approach to the threshold inquiry of the substantial burden test."<sup>13</sup> She clarifies that strict scrutiny is *not* a vague or subjective balancing test where a judge just decides which value is more important.<sup>14</sup> Instead, it asks, when there is a burden on religious exercise, whether the government has met its evidentiary burden by showing that its actions were necessary to advance the compelling interest it articulated.<sup>15</sup>

The concerns that seemed to drive *Smith* (such as the worry that religious adherents would regularly be placed "beyond the reach of" the law and thereby cause chaos in society)<sup>16</sup> have not played out in practice after Congress and the states passed RFRA and its many state counterparts.<sup>17</sup> In contrast, *Smith* itself has caused confusion and undermined the promise of free exercise. Cases prior to *Smith*, such as *United States v. Lee*,<sup>18</sup> were able to protect government interests adequately by directly evaluating those interests alongside religious rights. *Smith* instead decreased

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<sup>8</sup> See, e.g., Zalman Rothschild, *Free Exercise Partisanship*, 107 Cornell L. Rev. 1067, 1126-1132 (2022) (noting "doctrinal confusion" in lower court decisions and describing the need for clarity about how to analyze religious discrimination in the free exercise context).

<sup>9</sup> 494 U.S. at 892, 902 (O'Connor, J., concurring).

<sup>10</sup> See, e.g., *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993); *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021); *Tandon v. Newsom*, 593 U.S. 61 (2021); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022); *Fellowship of Christian Athletes*, 82 F.4th 664; *Foothill Church v. Watanabe*, 3 F.4th 1201 (9th Cir 2021).

<sup>11</sup> 593 U.S. at 621.

<sup>12</sup> See, e.g., Stephanie H. Barclay & Mark L. Rienzi, *Constitutional Anomalies or As-Applied Challenges? A Defense of Religious Exemptions*, 59 B.C. L. Rev. 1595, 1611 (2018); Douglas Laycock, *Regulatory Exemptions of Religious Behavior and the Original Understanding of the Establishment Clause*, 81 Notre Dame L. Rev. 1793 (2006).

<sup>13</sup> Barclay, Stephanie, *Replacing Smith*, 133 Yale L.J. Forum 436, 450 (2023).

<sup>14</sup> *Id.* at 456.

<sup>15</sup> *Id.*

<sup>16</sup> 494 U.S. at 878.

<sup>17</sup> See *Federal and State RFRA Map*, Becket, <https://becketfund.org/research-central/rfra-info-central/map/> (last accessed April 7, 2026).

<sup>18</sup> 455 U.S. 252 (1982).



protections that had been recognized under free exercise. Government actors now often—instead of seeking to create policies that both respect religious exercise and acknowledge crucial government interests and goals—focus on creating neutral policies with no visible exceptions so that they cannot be challenged on the basis of free exercise concerns. Then, when facing challenges, government actors often resort to minimizing the importance of religious practice and seek to justify restrictions as neutral rather than acknowledge a religious burden as meaningful and directly addressing the tension it creates with certain government interests. These practices erode our ability to meaningfully pass on the value of religious freedom to future generations.

An OLC memorandum detailing the arguments in support of overruling *Smith* would further bolster the importance of this issue and confirm the strong reasoning and clear expectation that the government will not be harmed if *Smith* is overruled. The government will still be able to preserve its interests while supporting the stability of religious freedom in this country, which is a huge part of our strength.

**4. The White House should direct the Department of Education to revise its “Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools,” released February 5, 2026, by restoring the first Trump Administration’s Guidance, released January 21, 2020. Among several things, the revised Guidance should emphasize how current law protects religious student organizations meeting on public secondary school campuses under the Equal Access Act and the First Amendment.**

This request also directly relates to the EO priority of protecting the First Amendment rights of students and religious student organizations and will also advance the EO priority of “permitting time for voluntary prayer and religious instruction at public schools.”

In 1995, the Department of Education (Department) first issued guidance on religious expression in the public schools to all public school district superintendents. This guidance was a turning point because, for the first time, the federal government advised school administrators that private religious expression was protected, and must be respected, on public school property. The guidance addressed numerous specific topics that students, parents, teachers, and school administrators often encounter, including the requirements of the Equal Access Act, 20 U.S.C. §§ 4071-4074 (1984), and its protection of religious student groups meeting for prayer and other religious speech.

In 2002, Congress enacted 20 U.S.C. §7904, requiring local school districts to certify annually to the Department that “no policy of the local educational agency prevents, or otherwise denies participation in, constitutionally protected prayer.” Section 7904 requires the Secretary of Education to issue, at least every two years, guidance as to current law, as reviewed and certified by DOJ’s Office of Legal Counsel.

The Guidance, which has remained largely consistent in its content and much of its structural detail over the past 30 years, has provided stability that is beneficial for students and their families. The Guidance has educated school administrators, while also providing students,

parents, teachers, and religious freedom advocates with persuasive authority to cite in their dealings with school administrators.

In 2020, the first Trump Administration released strong guidance that has been particularly helpful to religious freedom practitioners in their efforts to protect students, parents, and teachers in public schools. The 2020 Trump Guidance tracked the Department’s earlier guidance from 1998 and 2003. Specifically, its Section § I.C, entitled “Overview of Governing Constitutional Principles,” explained the critical distinction, emphasized in *Board of Education v. Mergens*,<sup>19</sup> between government religious speech and private religious speech. The 2020 Trump Guidance carefully explained the Supreme Court’s bedrock delineation between a student group’s private religious expression, protected by the Free Speech and Free Exercise Clauses, and government officials’ religious expression, potentially restricted by the Establishment Clause. The 2020 Trump Guidance then applied this foundational distinction between government speech and private speech to specific scenarios. It tracked several specific topics that had been addressed in the Department’s guidance since 1995, including the Equal Access Act.

The White House should direct the Department to issue revised “Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools” that closely tracks the 2020 Trump Guidance. The revisions outlined below would enable the Guidance to retain its longstanding continuity and clarity upon which many stakeholders, including students, teachers, parents, and school administrators, have come to rely.

Specifically, the “Overview of Governing Constitutional Principles” should again focus on explaining the critical distinction between government religious speech and private religious speech. This material is essential to public school stakeholders’ understanding of the proper protection of religious expression in the public schools.

The revised Guidance should also restore the specific scenarios that were included in the 2020 Trump Guidance but omitted from the 2026 Trump Guidance. Those scenarios include but are not limited to the following:

- 1) **Equal Access Act:** Restore the distinct section explaining the Equal Access Act’s protection of religious student groups’ ability to: a) meet during noninstructional time, including lunch and activity periods; b) access school media (bulletin boards, newspaper, and public address system); and c) maintain religious leadership requirements.<sup>20</sup> See 2020 Trump Guidance, § IV, ¶¶ 1-6 (“The Equal Access Act”). The majority of student prayer likely occurs during the meetings protected by the

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<sup>19</sup> 496 U.S. 226 (1990).

<sup>20</sup> Several federal court decisions have held that religious student groups meeting at public secondary schools may require their leaders to agree with the groups’ religious beliefs. See *Fellowship of Christian Athletes*, 82 F.4th 664; *Hsu v. Roslyn Union Free Sch. Dist.*, 85 F.3d 839 (2d Cir. 1996); *Fellowship of Christian Athletes v. District of Columbia*, 743 F. Supp. 3d 73 (D.D.C. 2024). See also, *InterVarsity*, 5 F.4th 855 (university of Iowa officials forfeited qualified immunity by derecognizing religious student group because of its religious leadership requirements); *Business Leaders in Christ v. Univ. of Iowa*, 991 F.3d 969 (8th Cir. 2021) (same); *InterVarsity*, 534 F. Supp. 3d 785 (Wayne State officials violated the rights of religious student group by derecognizing it because of its leadership requirements); *Christian Legal Soc’y v. Walker*, 453 F.3d 853 (7th Cir. 2006) (protecting religious student group’s right to hold religious leadership requirements but not addressing qualified immunity).

Equal Access Act. For that reason, it is essential that school administrators be made aware of the Act’s protection of students’ religious expression.

- 2) **See You at the Pole:** Restore specific mention that “See You at the Pole” gatherings (an annual, nationwide event in late September where students gather at the flagpole to pray for their school) are protected. See 2020 Trump Guidance, § II.B (“Organized Prayer Groups and Activities”).
- 3) **Moments of Silence:** Restore affirmation that a moment of silence at the beginning of the school day is permissible. See 2020 Trump Guidance, § II.D (“Moments of Silence”).
- 4) **Religious Excusals:** Restore the discussion of when religious excusals are required or permissible. See 2020 Trump Guidance, § III.D (“Religious Excusals”). This paragraph should be updated with a brief discussion of the Supreme Court’s 2025 decision in *Mahmoud v. Taylor*<sup>21</sup> protecting the parental right to notice and opt-out from curriculum that violates parents’ religious beliefs. The “Religious Excusal” scenario should also include affirmation of the constitutionality of off-campus religious released-time programs under *Zorach v. Clauson*.<sup>22</sup> The White House also should direct the Department to issue separate, detailed guidance regarding school administrators’ obligations under *Mahmoud*.
- 5) **Religious Literature Distribution:** Restore affirmation of students’ right to distribute religious literature if other students may distribute nonreligious literature. See 2020 Trump Guidance, § III.A (“Religious Literature”).
- 6) **Teaching about Religion:** Restore affirmation that classroom instruction may include teaching about religion in the curriculum in an objective, non-devotional manner. See 2020 Trump Guidance, § III.B (“Teaching about Religion”).
- 7) **Graduation and other School Events:** Restore affirmation that personal religious expression by an individual student or community member speaker at a graduation ceremony or other school event is permissible if the speaker is chosen based on genuinely content-neutral, evenhanded criteria and retains primary control over the content of his or her speech. See 2020 Trump Guidance §§ II.G-H (“Student Assemblies and Noncurricular Events” and “Prayer at Graduation”).
- 8) **Baccalaureate Ceremonies:** Affirm that religious community groups may hold baccalaureate ceremonies in public school facilities that are otherwise available to community groups. See 2020 Trump Guidance, § II.I (“Baccalaureate Ceremonies”). Also affirm religious community groups’ right to meet in school facilities on

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<sup>21</sup> 606 U.S. 522 (2025).

<sup>22</sup> 343 U.S. 306 (1952).

weekends and evenings<sup>23</sup> and to meet with children after school on an equal access basis.<sup>24</sup>

- 9) **Teacher Speech:** Update the 2020 Trump Guidance, § II.C (“Teachers, Administrators, and Other School Employees”) to include the holding in *Kennedy v. Bremerton School District*<sup>25</sup> and its careful protection of teacher’s religious expression, including prayer, at a time when teachers are otherwise free to engage in personal expression.

## Conclusion

Accordingly, we urge the Commission to include these priorities in its report to the White House Faith Office and the Domestic Policy Council. They are important steps toward furthering the cause of religious freedom in the United States and ensuring that we remain a country where people can freely practice their faith without fear.

Sincerely,

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<sup>23</sup> *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

<sup>24</sup> *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001).

<sup>25</sup> 597 U.S. 507.