

Issue Bulletin

Examining Critical Issues in Faithful Catholic Education

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U.S. Policy Priorities for Catholic Education

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Catholic education provides many important benefits to American society. At a cost substantially less than public schools, Catholic elementary and secondary schools provide an outstanding education to nearly 2 million students, who tend to score high on national tests and succeed in college and career. More than 200 Catholic colleges and universities educate nearly 1 million students, preparing them to serve society in a wide variety of fields.

While business leaders lament the decline of communication, thinking, and problem-solving skills among job candidates, Catholic educators have maintained a strong emphasis on the core liberal arts and intellectual development.

Most importantly, graduates of Catholic schools are integrally formed in mind, body, and soul to give generous service to their fellow citizens. They exhibit strong character and virtue in an increasing secular and self-centered culture.

Nevertheless, Catholic educators face serious threats to their religious freedom emanating from their state and local governments and Washington, D.C. These have escalated significantly under the Obama administration, but some began much earlier. We now look with great hope to the incoming Trump administration and Congress to correct the many injustices and take lasting actions that will uphold Catholic educators' First Amendment right to teach and witness to the Catholic faith by word and deed.



For that, Catholic educators and families would be most grateful and relieved, eager to focus on the essential task of raising young Americans to fulfill God’s calling and “make America great again.”

The following policy recommendations were developed by The Cardinal Newman Society, which promotes and defends faithful Catholic education, following substantial consultation with Catholic and other Christian education leaders, policy experts, and legal advisers. The proposals especially represent the concerns and needs of the Catholic schools recognized by the Newman Society’s Catholic Education Honor Roll and the Catholic colleges and universities recommended in our *Newman Guide*. These are institutions for which the freedom to teach and witness to the Catholic faith is essential to their mission and survival.

Elementary and Secondary Education Act

Overview

President Trump has proposed a \$20 billion federal voucher program, while encouraging states to spend another \$110 billion on vouchers. The program would aid students from low-income families and would likely redirect funds under Title I of the Elementary and Secondary Education Act, which are currently block-granted to states.

The school choice proposal could aid thousands of families attending or wishing to attend Catholic schools, but it also poses significant challenges for religious education. Schools must be allowed to freely maintain religious standards for education, and vouchers must not be permitted to open the door to substantial federal and state government regulation that would stifle diversity and religious values in education.

Already Catholic schools have struggled to preserve their unique identity and superior academic quality under the national Common Core movement. Although Catholic schools are not required to adopt state standards, many have yielded to the pressure to conform to standardized education and testing. Ending federal interference in school standards is an important step toward restoring diversity and innovation in education.

Action: Expand school choice without regulation

School choice presents a wonderful opportunity to help families afford a Catholic education—but only if it preserves the religious identity and quality of Catholic education, without opening the door to government regulation and coercion.

- Legislative action: Reform Title I and IDEA (disabilities funding) to allow the funds to follow low-income students to the schools of their choice, but ensure that the aid does not impose new regulations and restrictions on religious education. Allow funds to go only to states that protect religious education and allow true school choice, including religious schools and homeschooling.

Action: End federal push for career- and college-focused standards

The federal incentives that the Obama administration used to coerce states to embrace the Common Core standards—the Race to the Top funds and waivers from No Child Left Behind—are already gone. But while the Every Student Succeeds Act (ESSA) prohibits ED from “federal mandates, direction, or control” over state standards for education, ED has plenty of opportunities to influence standards and testing. It is essential that the federal government gets out of the way, lets states work their way out of the Common Core stranglehold on innovation, and focus on state-level improvements that don’t nationalize education.

- Executive action: Ensure that ED refrains from interference in education standards and testing, and instead promotes state-level and local innovation. Dismantle any remaining programs that promote a utilitarian view of education with emphasis on career and college instead of healthy student formation and learning for its own sake.

Higher Education Act

Overview

There has been a longstanding injustice in ED’s regulation of colleges based on the handling of student aid under Title IV of the Higher Education Act. In 1984, the U.S. Supreme Court ruled in *Grove City College v. Bell* (465 U.S. 555) that a college that does not receive direct federal aid—but its students do receive aid for college education under Title IV—can be regulated under Title IX of the Education Amendments of 1972. Title IX applies only to colleges that receive federal financial assistance.

The clear intent of Title IV is to support the needs of students, not particular institutions. It is the students who are awarded the aid and who choose which institutions will receive the funds for tuition and expenses. Title IV is a form of “school choice” for needy college students; the aid can make it possible for students to choose among a wide variety of colleges that would otherwise be inaccessible.

The *Grove City* decision opened the door to substantial federal regulation of higher education. For religious colleges, this excessive government regulation invites conflicts with religious freedom. (See discussion of Title IX below.)

Another way Title IV funding opens the door to federal interference in higher education is by ED's regulation of accrediting agencies, creating potential conflicts with the religious freedom of religious colleges. Under the Higher Education Act, accrediting associations determine which colleges a student may attend to receive Title IV aid. This politicizes accreditors, distorts their purpose as independent promoters of excellence in higher education, and invites ED regulation by its recognition of accreditor-gatekeepers. With regard to Title IV aid, the only remedy for a college that is unfairly treated by an accreditor is to request revocation of the accreditor's standing with ED.

In addition to requirements under Title IX that violate religious freedom, other federal regulation and coercion poses concerns for religious colleges. The regulation of teacher preparation programs tends to diminish diversity and ignore the particular needs of schools and colleges, including religious institutions. Federal policies that disadvantage students who choose to focus their studies in the liberal arts or "humanities" are a misguided form of social engineering that disregards the great benefits of a religious, liberal-arts education.

Action: De-link student aid from Title IX

The U.S. Supreme Court has determined that the receipt of Title IV funds triggers a college's obligation to comply with Title IX. Given attempts to redefine "sex" in Title IX to include "gender identity," the link between student aid and Title IX is a serious threat to religious higher education.

- Legislative action: Amend the Higher Education Act to ensure that Title IV funds are not considered federal support for educational institutions with regard to enforcement of Title IX.

Action: De-link accreditation from Title IV funding

Accrediting associations are the gatekeepers for federal aid under Title IV of the Higher Education Act. Currently the law (20 U.S. Code §1009 (b)) includes minimal protection for religious colleges by requiring that the accreditor "consistently applies and enforces standards that respect the stated mission of the institution of higher education, including religious missions." The only remedy for religious colleges that may be unjustly discriminated against by an accreditor is to request revocation of the accreditor's standing with the U.S. Department of Education.

- Legislative action: Amend the Higher Education Act to ensure that accrediting bodies are no longer gatekeepers to Title IV funds.
- Legislative action: Amend the Higher Education Act to allow a private right of action against an accreditor by a college that is unjustly discriminated against in the course of accreditation.

Action: Deregulate teacher preparation

Religious educators strive to comply with state and accreditor expectations for teacher preparation, but federal government regulation of teacher preparation programs interferes with the independence of such programs and state decision making. It also raises concerns for religious freedom in programs that reside within religious colleges. In late 2016, ED issued regulations to increase federal oversight of teacher preparation.

- Executive action: Repeal Obama-era regulations expanding federal interference in teacher preparation (see 34 CFR Parts 612, 686).

Action: Refrain from discriminating against liberal arts majors

Federal policy proposals to disadvantage college students who focus their studies in the liberal arts or “humanities” are a misguided form of social engineering that disregards the great benefits of a religious, liberal-arts education. Complaints that liberal arts graduates have low earning potential have been greatly exaggerated and are often inaccurate. Many business executives prefer graduates with strong communications and reasoning skills. Regardless, liberal arts graduates contribute greatly to society and culture beyond simple measures of career success.

Threatening to control Title IV expenditures by discriminating against liberal arts majors or limiting students’ choices of college major and career is neither wise nor beneficial. It also disproportionately impacts students at religious colleges, who often concentrate their studies in the liberal arts.

- Executive action: Refrain from interference in students’ choice of college studies and limitations of Title IV student aid for liberal arts majors.

Title IX of Education Amendments of 1972

Overview

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681–1688) forbids sex discrimination at schools and colleges that accept federal funds, but the law has recently

been reinterpreted by the U.S. Department of Education (ED) in ways that harm women and violate religious freedom.

The clear intent of Congress, when it enacted Title IX in 1972, was to prohibit discrimination against the two “sexes”—male and female. This is indicated in the law. Enforcement of Title IX has emphasized parity for males and females, as in school and college athletics programs.

However, the EEOC and ED have recently forced an ideological reinterpretation of “sex” in Title IX to include “gender identity”—even a person’s choice of gender that is different from their biological sex at birth. Far from advancing the original intent of the law, this “gender ideology” threatens women’s athletics and other activities by permitting biological males to join and potentially dominate those activities. It also threatens women’s privacy and safety by permitting male access to women’s bathrooms, showers, locker rooms, and residences.

ED’s reinterpretation of Title IX to include gender identity unfairly prejudices Catholic educators who teach and witness to the Catholic faith. Catholics believe that man is created male or female, a fact of natural law and the will of God. Human sexuality is properly ordered toward marriage between a man and a woman. A faithfully Catholic school or college must conform to an individual’s biological sex and expects students and employees to practice chastity outside of marriage. Although Title IX provides an exemption for religious education, ED’s reinterpretation of “sex discrimination” unfairly indicates that religious institutions discriminate against women, and this can have a “trickle down” impact on state policy, accreditation, private funding, etc.

Moreover, Title IX’s religious exemption is not certain for many religious schools and colleges. ED has asserted its authority to pre-certify or deny eligibility for the exemption, a practice that is not indicated by the law. The law’s language describing the exemption could be unfairly interpreted to exclude independent and nondenominational religious institutions that are not legally controlled by an established church.

And still more, those institutions that receive ED’s preapproval for religious exemption—an exemption that is clearly indicated in the law—are being persecuted by advocacy groups, states, and ED itself.

Action: Clarify Title IX religious exemption

20 U.S. Code § 1681 (a) (3) provides a religious exemption to Title IX: “...this section shall not apply to an educational institution which is controlled by a religious

organization if the application of this subsection would not be consistent with the religious tenets of such organization...”

It is important to clarify the words “controlled by a religious organization” to protect institutions that are “controlled” by religious beliefs but have no legal ties to a church. For instance, most Catholic colleges and many Catholic schools—even the most faithful to Catholic teachings—have no legal ties to the Catholic Church. There are also many nondenominational Christian schools and colleges that are strongly religious but not affiliated with any formal church.

- Executive action: Issue an executive order to clarify language in 20 U.S. Code § 1681 (a) (3) to ensure that no religious school or college can be excluded from the Title IX religious exemption.
- Legislative action: Amend the law to replace or clarify language in 20 U.S. Code § 1681 (a) (3) to ensure that no religious school or college can be excluded from the Title IX religious exemption.

Action: Uphold Title IX religious exemption

The religious exemption to Title IX (20 U.S. Code § 1681 (a) (3)) suggests automatic exemption for a qualifying school or college, if and when there may be a conflict with Title IX: “...this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization...”

Although not indicated by the law, ED has inappropriately asserted authority to pre-certify or deny a religious institution’s exemption to Title IX. A process has been established whereby an institution applies for an advance ruling from ED, which by its sole discretion may refuse to “approve” an exemption if, in its opinion, a school or college does not meet the standard of being “controlled by a religious organization.”

This puts ED in the position of potentially limiting an exemption that is clearly indicated by law; courts and the public may be prejudiced if ED rejects or even delays its ruling. It also suggests that exemption from Title IX depends on an institution’s assertion of the exemption prior to a dispute; in fact, the law demands exemption for religious institutions in every case of a religious conflict with Title IX, whether or not the exemption is claimed prior to the conflict or even at the time of the conflict.

Moreover, ED has recently been publishing on its website the names of institutions that it “approves” for Title IX exemptions. This has been done at the urging of states and

advocacy groups that wish to shame and persecute religious institutions for obtaining these legally valid exemptions. In 2016, California legislators attempted to withhold state Cal Grants from religious colleges that appear on ED’s list of “unapproved” institutions. This is a form of persecution; religious organizations should not be punished or denigrated for their beliefs and for protecting their religious freedom against an ED reinterpretation of Title IX that is inconsistent with the law’s original purpose.

- Executive action: End the U.S. Department of Education’s policy of approving or denying advance rulings for religious educational institutions that claim the exemption to Title IX in 20 U.S. Code § 1681 (a) (3).
- Executive action: End the U.S. Department of Education’s policy of publishing a list of religious educational institutions that claim the religious exemption to Title IX in 20 U.S. Code § 1681 (a) (3).
- Executive action: Issue an executive order to forbid retaliation by any federal agency against religious educational institutions that claim the religious exemption to Title IX in 20 U.S. Code § 1681 (a) (3) (cf. non-retaliation provision in S. 815, the proposed Employment Non-Discrimination Act of 2013: “It shall be an unlawful employment practice for a covered entity to discriminate against an individual because such individual—(1) opposed any practice made an unlawful employment practice by this Act; or (2) made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act”).
- Legislative action: Amend the law to forbid retaliation by any state or other entity or individual against religious educational institutions that claim the religious exemption to Title IX in 20 U.S. Code § 1681 (a) (3) (cf. non-retaliation provision in S. 815, proposed Employment Non-Discrimination Act of 2013: “It shall be an unlawful employment practice for a covered entity to discriminate against an individual because such individual—(1) opposed any practice made an unlawful employment practice by this Act; or (2) made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act”).

Action: Restore original meaning of Title IX

As noted above, ED and EEOC have reinterpreted “sex discrimination” to force acceptance of new concepts of gender and sexual orientation. This ideological

reinterpretation of the law threatens the religious freedom of religious schools and colleges.

- Executive action: Rescind any “Dear Colleague” letters, administrative rules, executive orders, or regulations (see 34 CFR Part 106) which re-interpret the law to define “sex” and “gender” as referring to anything other than the biologically-defined sex (male or female) of an individual at birth, or that require admittance of the opposite sex to gender-exclusive bathrooms, locker rooms, shower facilities, residences, and other facilities.
- Executive action: Issue an executive order defining “sex” and “gender” for the purposes of Title IX to refer only to the biologically-defined sex (male or female) of an individual at birth.
- Legislative action: Amend the law to define “sex” and “gender” for the purposes of Title IX to refer only to the biologically-defined sex (male or female) of an individual at birth.

Action: Deregulate higher education by eliminating Title IV trigger

Federal student loans and grants under Title IV of the Higher Education Act are intended to expand individuals’ access to higher education according to their need, but not to directly support educational institutions. They are “school choice” programs for postsecondary education.

Nevertheless, ED and the courts have determined that Title IV student aid is a trigger for federal regulation of colleges under Title IX and other ED regulations, the same as direct federal aid to colleges. Title IV is the “hook” that allows expansive federal regulation in higher education, which opens the door to conflicts over religious freedom at religious colleges. (See more explanation under “Higher Education Act” above.)

- Legislative action: Amend the Higher Education Act to ensure that Title IV funds are not considered federal support for educational institutions with regard to enforcement of Title IX.

Title VII of the Civil Rights Act of 1964

Overview

Title VII forbids discrimination in employment on the basis of sex, race, color, national origin, and religion. The clear intent of Congress, when it enacted the Civil Rights Act, was to prohibit discrimination against the two “sexes”—male and female.

However, the EEOC and federal agencies have recently forced an ideological reinterpretation of “sex” in Title VII to include “gender identity”—even a person’s choice of gender that is different from their biological sex at birth. Far from advancing the original intent of the law, this “gender ideology” threatens women’s activities and employment opportunities (by permitting access to males) and women’s privacy and safety in the workplace (by permitting male access to women’s bathrooms, showers, locker rooms, etc.).

“Sex discrimination” is also being redefined for ideological purposes to forbid discrimination on the basis of “sexual orientation.” This was not the original intent of the law, but because attempts to legislate protection for “sexual orientation” have failed, the EEOC has simply reinterpreted existing law.

Finally, “sex discrimination” is being used to mandate employee health benefits that cover contraception and sterilization, regardless of medical benefit or necessity. While Title VII does not mandate abortion coverage in health plans, it does forbid employers from considering an employee’s participation in abortion when making employment decisions—even a religious employer with deeply held convictions against abortion and moral standards for employees.

Under this reinterpretation of Title VII, the religious freedom of Catholic educators to teach and witness to the Catholic faith is being violated. Catholics believe that man is created male or female, a fact of natural law and also the will of God. Human sexuality is properly ordered toward marriage between a man and a woman. A faithfully Catholic school or college must conform to an individual’s biological sex and expects students and employees to practice chastity outside of marriage. Abortion, sterilization, and contraception are serious offenses.

Title VII provides an exemption for religious employers with regard to religious discrimination, but it is unclear whether this exemption protects religiously-motivated personnel decisions that might be characterized as “sex” discrimination.

Action: Restore original meaning of Title VII

As noted above, federal agencies have reinterpreted “sex discrimination” to force acceptance of new concepts of gender and sexual orientation and to mandate support for contraception, sterilization, and abortion. This ideological reinterpretation of the law violates the religious freedom of religious schools and colleges.

- Executive action: Rescind any “dear colleague” letters, administrative rules, executive orders, or regulations (see 34 CFR Part 106) which re-interpret the law to define “sex” and “gender” as referring to anything other than the biologically-defined sex (male or female) of an individual at birth; require admittance of the opposite sex to gender-exclusive bathrooms, locker rooms, shower facilities, residences, and other facilities; or refer in any way to expanded benefits or accommodations for contraception, sterilization, or abortion.
- Executive action: Issue an executive order defining “sex” and “gender” for the purposes of Title VII to refer only to the biologically-defined sex (male or female) of an individual at birth and never to contraception, sterilization, or abortion.
- Legislative action: Amend the law to define “sex” and “gender” for the purposes of Title VII to refer only to the biologically-defined sex (male or female) of an individual at birth and never to contraception, sterilization, or abortion.

Action: Expand Title VII religious exemption

Given the attempts by federal agencies, courts, and legislators to redefine “sex discrimination” for ideological purposes, the threat posed by Title VII to religious organizations is significant. Unlike Title IX of the Higher Education Act, there is uncertain protection for religious employers under Title VII with regard to sex discrimination.

- Legislative action: Amend Title VII to explicitly exempt religious employers with regard to sex discrimination if the application of the law is inconsistent with the religious tenets of the employer.

Patient Protection and Affordable Care Act (Obamacare)

Overview

In regulations implementing the Affordable Care Act, HHS has mandated coverage for sterilization and contraceptives, including some that can cause abortion, in health insurance plans. The “HHS mandate” does not exempt most religious employers.

In 2016 in *Zubik v. Burwell*, the U.S. Supreme Court unanimously overturned lower court rulings upholding the “HHS mandate” against the Little Sisters of the Poor and other challengers. The Court instructed the lower courts to seek “an approach going forward that accommodates the petitioner’s religious beliefs.” However, the matter has yet to be resolved by the courts.

HHS has also issued regulations under the Affordable Care Act that forbid covered health-related entities to discriminate on the basis of race, color, national origin, sex, age, or disability; included in the Department’s definition of sex (consistent with the EEOC) is “gender identity.” The regulations create a “transgender mandate,” under which covered entities—including religious colleges that receive HHS funds for medical education programs—must accept a person’s choice of gender that is different from their biological sex at birth. Legal experts also believe that the regulations prohibit most private health insurers—including those providing health benefits to employees of religious organizations—from categorically excluding coverage related to “gender transition” and from denying claims for “transgender” services that are comparable to other covered services. (For instance, if a hysterectomy is covered for serious medical reasons, it must be permitted for “transgender” purposes.)

The HHS also defines sex to include “termination of pregnancy.” Legal experts believe that the new HHS regulations may prohibit health insurers—including those providing health benefits to employees of religious organizations—from denying coverage for elective abortion.

In addition, HHS has refused to enforce federal law against states that violate religious freedom by mandating abortion benefits in state-regulated health plans, even for religious employers.

Action: End “HHS mandate”

In regulations implementing the Affordable Care Act, HHS has mandated coverage for sterilization and contraceptives, including some that can cause abortion, in health insurance plans. The “HHS mandate” does not exempt most religious employers.

- Executive action: Repeal regulations (26 CFR Part 54, 29 CFR Parts 2510 and 2590, 45 CFR Parts 147 and 156) mandating health insurance coverage for sterilization and contraception.
- Legislative action: Amend the Affordable Care Act to ensure that HHS cannot mandate health insurance coverage for sterilization or contraception.

Action: Exempt all religious organizations from “HHS mandate”

The “HHS mandate” for coverage for sterilization and contraceptives, including some that can cause abortion, in health insurance plans does not exempt most religious employers. HHS has offered various forms of “accommodation” to many but not all religious employers (26 CFR 54.9815-2713A, 29 CFR 2590.715-2713A, 45 CFR 147.131); those “accommodations” still force many employers to violate their deeply held religious beliefs.

- Executive action: Amend regulations (26 CFR Part 54, 29 CFR Parts 2510 and 2590, 45 CFR Parts 147 and 156) to exempt all religious organizations from mandatory health insurance coverage for sterilization and contraception if it conflicts with their religious beliefs.
- Legislative action: Amend the Affordable Care Act to ensure that HHS cannot require any individual or entity to purchase health insurance coverage that conflicts with the purchaser’s moral or religious beliefs.

Action: End abortion and transgender mandate

In regulations implementing Section 1557 of the Affordable Care Act and prohibiting sex discrimination, HHS has defined “sex” as including “gender identity” and “termination of pregnancy.” Not only does this directly impact covered religious entities, including religious colleges that receive HHS funds for medical education programs, but it also impacts most health insurers, including those that serve religious schools and colleges.

- Executive action: Issue an executive order defining “sex” and “gender” for the purposes of the Affordable Care Act to refer only to the biologically-defined sex (male or female) of an individual at birth and never to contraception, sterilization, or abortion.
- Executive action: Amend the regulations implementing Section 1557 of the Affordable Care Act to define “sex” and “gender” to refer only to the

biologically-defined sex (male or female) of an individual at birth and never to contraception, sterilization, or abortion.

- Legislative action: Amend the Affordable Care Act to define “sex” and “gender” for the purposes of Section 1557 to refer only to the biologically-defined sex (male or female) of an individual at birth and never to contraception, sterilization, or abortion.

Action: Exempt religious organizations from abortion and transgender mandate

In HHS regulations implementing Section 1557 of the Affordable Care Act and prohibiting sex discrimination—by which “sex” is defined to include “gender identity” and “termination of pregnancy”—there is no exemption for covered religious entities or for individuals and employers that may have religious objections to the mandated coverage.

- Executive action: Amend the regulations implementing Section 1557 of the Affordable Care Act to exempt all religious organizations from enforcement of any provision that conflicts with their religious beliefs.
- Legislative action: Amend Section 1557 of the Affordable Care Act to exempt all religious organizations from enforcement of any provision that conflicts with their religious beliefs.

Action: Enforce Weldon Amendment against state mandates

In 2014, California interpreted the state Knox-Keene Act to mandate abortion coverage in state-regulated health insurance plans, with no exemption for religious employers.

Although the Federal Refusal Clause (the “Weldon amendment”) in the federal appropriations act for the Department of Health and Human Services (Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, div. F, tit. V, § 507(d)(1), 125 Stat. 786, 1111 (2011)) prohibits federal, state, and local governments from “discrimination” against a health-care entity—including a health insurance plan—that “does not provide, pay for, provide coverage of, or refer for abortions,” HHS has refused to enforce the Weldon amendment against California. This invites other states to also ignore the law.

- Executive action: Require HHS to enforce the Weldon amendment by demanding that California rescind its mandate for abortion coverage in state-regulated health insurance plans.

Internal Revenue Service

Overview

The federal tax code provides substantial benefits that help families afford a Catholic education. Tax exemption for religious schools and colleges helps lower costs, and the loss of tax exemption because of political or ideological biases would be devastating. Tax advantages that help Catholic families pay for Catholic education are valuable opportunities to promote “school choice” without opening the door wide to federal regulation.

Action: Protect tax exemption for religious education

In 2015, during oral argument before the Supreme Court in the *Obergefell v. Hodges* case, the U.S. Solicitor General acknowledged that the tax-exempt status of religious organizations could be threatened if they fail to recognize same-sex marriages.

- Executive action: Ensure that the Internal Revenue Service (IRS) does not threaten the tax-exempt status of religious organizations, regardless of their beliefs about marriage.
- Executive action: Issue an executive order stating that with regard to tax status, licensing, government grants, and contracts, no entity of the federal government may penalize someone for acting on their conviction that marriage is between a man and a woman.
- Legislative action: Amend the Internal Revenue Code to protect the tax-exempt status of religious organizations, regardless of their beliefs about marriage.

Action: Increase tax benefits to support education expenses

Coverdell Education Savings Accounts allow money to grow tax-deferred, to be used tax-free for most elementary, secondary, and postsecondary education expenses. But since 2002, Congress has capped the amount that can be contributed per child to \$2,000 per year. Section 529 plans allow prepayment of college education expenses and tax-advantaged savings; withdrawals for college tuition expenses are tax-free. The American Opportunity Tax Credit allows a federal income tax credit of up to \$2,500 of college expenses per year; up to 40 percent of the credit is refundable.

- Legislative action: Increase or lift the \$2,000 annual cap on contributions to Coverdell Education Savings Accounts to help families supporting students

in schools and colleges, including religious institutions. Expand the program to cover homeschool expenses.

- Legislative action: Expand Section 529 plans to allow savings for elementary and secondary education expenses, including homeschooling.
- Legislative action: Increase the \$2,500 American Opportunity Tax Credit to help families supporting students in college, including religious institutions. Expand the credit to also cover elementary and secondary education expenses, including homeschooling, thereby achieving President Trump’s promise of increasing school choice without inviting federal regulation of religious schools.

Equal Employment Opportunity Commission

Overview

The Equal Employment Opportunity Commission (EEOC) has issued opinions that endanger the religious freedom of religious employers. It has pressed the redefinition of sex discrimination to cover “gender identity,” family planning and abortion, and “sexual orientation.”

In 2009, the EEOC ruled that Belmont Abbey College in North Carolina—a faithful Catholic college—discriminated against women because it refused to cover contraception in its employee health plan, in accordance with the Catholic faith.

Action: Appoint defenders of religious freedom to EEOC

President Trump has an early opportunity to name a new chair of the EEOC (as of July 1, 2017), giving Republicans a 3-2 majority on the Commission, and he can immediately replace the departing legal counsel. The commissioner whose term is up next, Chai Feldblum in July 2018, is a former Georgetown University law professor whose advocacy for homosexual issues has been a grave threat to religious employers.

- Executive action: Appoint EEOC commissioners and staff members who respect religious freedom and will not misinterpret sex discrimination laws and regulations according to “gender ideology” and LGBT advocacy.

National Labor Relations Board

Overview

Despite the U.S. Supreme Court's 1979 ruling in *NLRB v. Catholic Bishop of Chicago*, which forbids the National Labor Relations Board (NLRB) to assert jurisdiction over employee relations in religious education, the NLRB has for decades asserted jurisdiction at the behest of labor unions.

In 2014, the Board abandoned its long-held policy of unconstitutionally determining the religious quality of colleges where unions sought to organize faculty members, but it took up a new unconstitutional test of the religious functions of particular employees. Since then, the NLRB has used its new test to declare jurisdiction over faculty members at Seattle University and Saint Xavier University, with the exception of those teaching theology or religious studies. This still violates *NLRB v. Catholic Bishop of Chicago*.

Action: Appoint defenders of religious freedom to NLRB

President Trump has an immediate opportunity to fill two vacant positions at the NLRB, giving Republicans a 3-2 majority on the Board. However, reports have indicated that Trump intends to delay his appointments until the spring or summer of 2017, which would leave a pro-union Democrat majority in place until the Senate confirms his appointments in late 2017.

Commissioner Philip Miscimarra has been a strong but lone defender of *NLRB v. Catholic Bishop of Chicago*; his term expires in December 2017. That will end the 3-2 majority on the Board until he is re-appointed or replaced.

The NLRB general counsel's term expires in November 2017.

- Executive action: Appoint NLRB commissioners and staff members who respect religious freedom and will uphold the Supreme Court's 1979 ruling in *NLRB v. Catholic Bishop of Chicago*. Immediately fill the two vacancies without delay. Reappoint Philip Miscimarra to another term.

District of Columbia

Overview

Under the protection of President Obama's veto, the District of Columbia has been able to trample on the rights of religious schools and colleges without action from Congress. The successful D.C. voucher program has also been allowed to lapse.

Action: Repeal D.C. Human Rights Amendment Act

The Human Rights Amendment Act, approved by the District of Columbia (D.C.) Council in 2014, repealed the “Armstrong Amendment”— a provision of the D.C. code that Congress enacted in 1989 to ensure that religious schools and colleges could not be forced to officially endorse, fund, or provide other benefits to advocates of homosexual identity and conduct. Catholic schools and colleges are now under the threat of District action if they uphold Catholic teaching on sexuality and marriage.

- Legislative action: Repeal the D.C. Human Rights Amendment Act of 2014.

Action: Repeal D.C. Reproductive Health Non-Discrimination Act

In 2015, the U.S. House of Representatives voted to halt a District of Columbia law from going into effect, but the Senate failed to block it. The Reproductive Health Non-Discrimination Amendment Act expands the District’s definition of discrimination to include an employee’s “reproductive health” decisions, including family planning and abortion, without exemption for religious employers. This prevents Catholic schools and colleges from upholding standards of morality that are consistent with Catholic beliefs.

- Legislative action: Repeal the D.C. Reproductive Health Non-Discrimination Act of 2015.

Action: Restore D.C. Opportunity Scholarship Program

Until President Obama stopped including it in his budget after 2011, the D.C. Opportunity Scholarship Program provided vouchers to children from low-income families in the District of Columbia. It covered tuition and expenses at private schools.

- Legislative action: Restore the D.C. Opportunity Scholarship Program, supporting families’ choices of religious education and homeschooling.

First Amendment Protection

Overview

In its 2015 ruling in *Obergefell v. Hodges*, the U.S. Supreme Court ruled that same-sex couples have a Constitutional right to civil marriage. The implications for Catholics are not yet certain, but there is reason to be concerned that the ruling will be used to restrict religious freedom for those who support traditional marriage.

Action: Protect Americans who support traditional marriage

The First Amendment Defense Act ensures that the federal government “shall not take any discriminatory action against a person, wholly or partially on the basis that such person believes or acts in accordance with a religious belief or moral conviction that marriage is or should be recognized as the union of one man and one woman, or that sexual relations are properly reserved to such a marriage.” President-elect Trump has pledged that he would sign the bill if approved by Congress.

- Legislative action: Pass the First Amendment Defense Act.
- Executive action: Issue an executive order stating that with regard to tax status, accreditation, licensing, government grants, and contracts, no entity of the federal government may penalize someone for acting on their conviction that marriage is between a man and a woman.