

July 13, 2026

Via email (RLC@usdoj.gov)

Religious Liberty Commission
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

**Re: Public Comment – Draft Report of the Presidential Religious Liberty Commission –
Ethics and Public Policy Center**

Dear Religious Liberty Commission:

We are scholars at the Ethics and Public Policy Center (EPPC). Eric Kniffin is an EPPC Fellow, member of EPPC's Administrative State Accountability Project (ASAP), and a former attorney in the U.S. Department of Justice's (DOJ) Civil Rights Division. Rachel Morrison is an EPPC Fellow, the director of EPPC's ASAP, and a former attorney with the Equal Employment Opportunity Commission.

We write in response to the Presidential Religious Liberty Commission's request for public comment in response to its draft report, published on June 26, 2026.¹ Specifically, we write to thank you for the Commission's good work and to offer some targeted suggestions for the Commission's consideration as it finalizes its report.

I. We thank the Commission for this draft report, for the Commission's work, and for its attention to "Americans' First Freedom."

As an initial matter, we thank President Trump and the Religious Liberty Commission—in our own capacity and on behalf of the Ethics and Public Policy Center—for the work of the Commission and for this draft report.

President Trump has been a champion for religious liberty, in his words and in his Administration's action.² We are grateful for President Trump's commitment to religious liberty

¹ The Presidential Religious Liberty Commission, Draft Report (June 26, 2026), <https://www.justice.gov/religious-liberty-commission/media/1449896/dl?inline>.

² See, e.g., Exec. Order 14188, Additional Measures to Combat Anti-Semitism (Jan. 29, 2025), <https://www.federalregister.gov/d/2025-02230>; Exec. Order 14202, Eradicating Anti-Christian Bias, 90 Fed. Reg. 9365 (Feb. 6, 2025), <https://www.federalregister.gov/d/2025-02611>; Exec. Order 14205, Establishment of the White House Faith Office, 90 Fed. Reg. 9499 (Feb. 12, 2025), <https://www.federalregister.gov/d/2025-02635>; Press Release, EEOC, 200 Days of EEOC Action to Protect Religious Freedom at Work (Aug. 22, 2025), <https://www.eeoc.gov/newsroom/200-days-eeoc-action-protect-religious-freedom-work>; DOJ, Eradicating Anti-

and how that commitment is reflected in his decision to establish the Commission, in the Commission’s work, and in this draft report.

We are also grateful that EPPC has been able to contribute to the Commission’s work and its draft report. Our president, Ryan T. Anderson, is a member of the Commission. EPPC fellows Aaron Kheriaty, M.D., and Erika Bachiochi gave testimony before the Commission. And EPPC fellows Rachel N. Morrison and Eric Kniffin authored public comments to the Commission. All of these EPPC contributions were cited in the Commission’s draft report.

We hope that these contributions and the comments below will help the Commission carry out its work and will help President Trump and his administration better carry out their efforts to protect religious liberty.

II. Targeted suggestions for the Commission’s consideration.

We offer the following suggestions for the Commission’s consideration as it looks to finalize the report.

A. The Commission should use consistent terminology when referring to government-run schools.

A considerable portion of the draft report is concerned with religious liberty issues within America’s government-run school system. It is good that the Commission and its report focus on the important religious liberty concerns raised in this context. However, we believe the report would be more effective and easier to read if the Commission used consistent language when referring to such schools.

Most people refer to government-run and government-funded schools as “**public schools.**” And the report often uses this terminology, referring to “public schools” and “nonpublic schools.”³

However, many legal scholars, religious liberty advocates, and school choice advocates push back against the predominate “public school,” “private school” taxonomy. They argue that the important *public interest* in education (universal access, some baseline standards, and even public financing) does not require that schools be *operated* by the government. These advocates argue that it is inaccurate to claim that government-run schools are properly deemed “public.” Many school choice advocates believe that the public debate over how to educate our nation’s children would be healthier and more accurate if we referred to so-called “public schools” as “**government schools**” or “**government-run schools.**”

Christian Bias within the Federal Government (Apr. 30, 2026), <https://www.justice.gov/opa/media/1438506/dl?inline>; Press Release, President Trump’s Religious Liberty Commission Delivers Historic Report Draft (June 26, 2026), <https://www.justice.gov/opa/pr/president-trumps-religious-liberty-commission-delivers-historic-report-draft>.

³ See Draft Report at 15, 22, 57, 58, 67, 68, 71, 77, 78, 79, 80, 93, 96, 103, 104, 143, 144, 145, 146, 192, 193, 194, 195, 200, 205, 210, 215, 216, and 217.

Milton Friedman made this case as early as 1955, arguing that government could fund education through vouchers while private and religious institutions did the actual teaching, so calling government-operated schools “public” wrongly implied that only state-run institutions serve the public interest.⁴ In a 1999 law review article, UCLA law professor Eugene Volokh employed the terms “government schools” and “government-run schools” while arguing that government funding should be available to parents who prefer to place their children in religious schools.⁵ In recent years, Notre Dame Law School professors Richard (Rick) Garnett and Nicole Garnett have pushed the same argument. Rick contends, “There is nothing about public education, properly conceived, that limits it to the work of public employees in government-owned buildings.”⁶

Nicole Garnett, who also served as a witness before the Religious Liberty Commission, has pushed the terminology further in school-choice litigation and scholarship. In a 2020 law review article, she distinguishes “public (that is, government-operated)” schools from privately operated ones, arguing that the historical U.S. focus on funding—rather than operation—as the dividing line between public and private education has made the school choice debate needlessly binary.⁷ Rather than centering the debate on “public versus private,” Nicole Garnett reframes the debate as a matter of educational pluralism: who controls and regulates schools, regardless of funding source, and how much autonomy do providers retain?

The draft report shows sympathy with this argument by employing the term “government-run” schools, even in its headings.⁸

We appreciate the Commission’s effort to advance the debate over school choice by using helpful, clarifying terminology. However, we believe the manner in which the draft report switches between the terms “public school” and “government-run school” may be confusing to some readers. We encourage the Commission to revisit the way it handles these terms. We suggest it would be helpful for the Commission to consistently use “government-run schools,” but explain—perhaps in a footnote and some brief parentheticals—why the Commission is using this term instead of the more common term, “public school.”

B. Clarify that the report’s citations are to the Consolidated Transcripts.

The draft report is well-annotated with citations to transcripts from the Commission’s hearings. For example, footnote 546 on page 216 of the draft report cites to:

⁴ Milton Friedman, *The Role of Government in Education*, in *Economics and the Public Interest* (Robert A. Solo ed., Rutgers Univ. Press 1955), reprinted at <https://la.utexas.edu/users/hcleaver/330T/350kPEEFriedmanRoleOfGovttable.pdf>.

⁵ Eugene Volokh, *Equal Treatment Is Not Establishment*, 13 Notre Dame J.L. Ethics & Pub. Pol’y 341 (1999).

⁶ Richard W. Garnett, *Educational Pluralism Delayed*, Law & Liberty (May 28, 2025), <https://lawliberty.org/educational-pluralism-delayed/>.

⁷ Nicole S. Garnett, *The Comparative Legal Landscape of Educational Pluralism*, 73 Ark. L. Rev. 455, 463 (2020), available at https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2477&context=law_faculty_scholarship.

⁸ Draft Report at 17, 67 (heading), 76, 77, 92, 93, 94, 202, 215 (heading, without hyphenation), 216, and 217.

Second Hearing of the Religious Liberty Comm’n, Hearing Transcript, 112 (2025) (Statement of Jeremy Dys); Third Hearing of the Religious Liberty Comm’n, Hearing Transcript, 217 (2025) (Statement of Joe Kennedy).

While the transcripts of each hearing are available on the Commission’s website, these page numbers do not correspond to those page numbers. Instead, these citations appear to be to the Consolidated Transcripts, which is separately available on the Commission’s website at <https://www.justice.gov/religious-liberty-commission/media/1448411/dl?inline>.

We submit that it would be helpful to the reader to clarify in the Commission’s final report that all such citations are to the page numbers in the Consolidated Transcripts, not the separate transcripts prepared for each hearing.

C. Ensure consistency between the body of the report and the recommendations in Appendix B.

In our review, we noted some asymmetries between the body of the draft report and the detailed recommendations in Appendix B. While the body and list of recommendations in Appendix B have different purposes, we believe the report would benefit from a careful, side-by-side review between the body and corresponding sections of Appendix B.

D. Recommend additional guidance related to the rights of religious employers in offering insurance coverage (p. 141).

We are grateful for the Commission’s recommendation that the federal government “[i]ssue guidance clarifying the rights of religious employers in offering insurance coverage.”⁹ The draft report proposes that DOJ’s OLC issue a legal memorandum “clarifying that the Weldon Amendment protects religious employers against state abortion insurance mandates.”¹⁰

We suggest the Commission could supplement this request by recommending guidance from DOJ OLC or HHS OCR on the following:

- **Church Amendment:** Recommend that DOJ OLC or HHS OCR issue guidance rebutting the claim that the Church Amendment must be read in light of, or narrowed by, Title VII’s religious-accommodation “undue hardship” standard. The Church Amendment provides broader, categorical protection than Title VII’s accommodation framework, and confusing the two risks watering down conscience protections for healthcare workers and institutions in federally-funded programs to a weaker, employer-convenience-based standard.
- **Coats-Snowe Amendment:** Recommend guidance clarifying whether abortion-training compliance under Coats-Snowe operates on an opt-in or opt-out basis, and what “abortion training” actually encompasses in practice. Guidance should include concrete, real-world examples of conscience objections (e.g., objections to simulated

⁹ Draft Report at 141.

¹⁰ *Id.* (citing EPPC public comment and testimony from EPPC fellow Dr. Aaron Kheriaty).

procedures, referrals embedded in training modules, or mandatory rotations) so that residency programs, hospitals, and individual trainees understand the scope of protection before conflicts arise.

- **EMTALA:** Recommend guidance clarifying EMTALA’s proper relationship to abortion and to protections for unborn children, given ongoing confusion (and past HHS guidance under the Biden administration) suggesting EMTALA could mandate abortion as “stabilizing treatment.” Guidance should confirm EMTALA does not override state abortion laws or conscience protections and does not require abortion to stabilize a pregnant patient where doing so would harm or fail to protect the unborn child.
- **Section 1557 of the ACA:** Recommend guidance clarifying that Section 1557’s incorporation of Title IX’s sex-discrimination prohibition does not mandate coverage or provision of abortion or sex-rejecting procedures. This would reinforce the Fifth Circuit’s holding in *Franciscan Alliance v. Becerra* and forestall future attempts by HHS OCR to reinterpret Section 1557 to compel such coverage, consistent with the Commission’s broader conscience-protection recommendations in Chapter 9 of the draft report.

E. Encourage HHS to take additional steps to educate the public on religious liberty rights in healthcare (p. 142).

The draft report recommends that HHS OLC offer religious liberty trainings and toolkits and that HHS and EEOC collaborate on a targeted “know your rights” poster. Along the same lines, we propose that the Commission recommend the following:

- **HHS education campaign for medical students:** Recommend that HHS conduct a proactive education campaign specifically targeted at medical students on their conscience rights, rather than relying solely on passive posters or portals.
 - Dr. Aaron Kheriaty underlined the need for such education in his testimony. He said that although the Church, Coats-Snowe, and Weldon Amendments were in place when he attended medical school, he “had no understanding of them” and was “never advised of my rights even after they were violated”¹¹—demonstrating that awareness gaps, not just legal gaps, are undermining these protections.
- **Mandatory orientation disclosure by training programs:** Recommend that CMS condition Medicare Graduate Medical Education (GME) funding for medical residency training programs and approved nursing and allied health education programs on an attestation that the schools have disclosed to trainees as part of their orientation their rights under federal conscience-protection rights (e.g., under the

¹¹ Presidential Religious Liberty Commission, 2025 and 2026 Consolidated Transcripts (Consolidated Transcripts) at 501, <https://www.justice.gov/religious-liberty-commission/media/1448411/dl?inline>.

Church, Coats-Snowe, and Weldon Amendments) and the recourse available if those rights are violated.

- Dr. Kheriaty testified that “if healthcare providers and trainees are not informed of their rights at orientation, then the laws on the books remain a dead letter.” His experience shows how this played out: he was retaliated against for declining to assist with a tubal ligation on conscience grounds, received unfairly critical evaluations that followed him into his residency application, and only later realized that the same federal statutes that should have protected him had gone completely unenforced and unexplained.¹²
 - This recommendation tracks language already in the draft’s own healthcare recommendations, which call for “clear notice” of the right to opt out of trainings or practices that would violate conscience, but that recommendation currently targets legislative reform rather than an affirmative orientation-disclosure mandate. We suggest both would be helpful.
 - **HHS-EEOC partnership on Title VII healthcare accommodation rights:**
Recommend that HHS formally partner with the EEOC not just to produce a “Know Your Rights” poster (as the draft already proposes at p. 142), but to actively educate healthcare workers and institutions on how Title VII’s religious-accommodation framework applies specifically in clinical settings. The draft report separately recommends EEOC guidance on Title VII’s religious-organization exemption in the faith-based-institutions chapter (p. 63); this recommendation would extend that same EEOC-guidance approach into the healthcare chapter specifically, and could be flagged for insertion at both pp. 142 and 173 of the draft report.
- F. Clarify the draft report’s recommendation regarding public officials “who allege” that a supervisee “has improperly engaged in religious expression” (p. 200).**

The third of the report’s 12 Key Recommendations reads:

Any public official who takes an adverse action against a person under their supervision based on that person's religious expression must provide the affected person a written explanation within 30 days of the action, identifying the specific constitutional provision or provision of law that the official contends justifies the action.

We suggest that this recommendation be revisited and rewritten. It is unclear what sort of allegation would trigger this duty. For example, would this duty be triggered if a public official simply told a supervisee that she thought that the supervisee had improperly engaged in religious expression? Consider whether the trigger should instead be when a public official *takes an adverse action* against a supervisee based on that person’s religious expression.

¹² *Id.* at 500-01.

We also note that the draft report does not specify any consequences for noncompliance. It would be helpful for the final report to recommend a specific enforcement mechanism or assign an agency with responsibility for recommending consequences for noncompliance.

G. Ask DOJ OLC to issue a memorandum on how the executive branch should understand the Establishment Clause under the “original meaning and history” test (p. 201).

The sixth of the report’s 12 Key Recommendations states:

Ask the Department of Justice to create a religious liberty task force to track and prioritize litigation protecting religious liberty.

This is a strong recommendation, but we believe the Commission should do more to encourage the executive branch to articulate what it believes the proper Establishment Clause constraints on the federal government are. This is an area where a DOJ OLC memorandum would provide helpful leadership, given that the Supreme Court only a few years ago formally abandoned the *Lemon* test and explained that the Establishment Clause should be interpreted in light of its “original meaning and history.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022).

OLC has already taken a first step toward implementing this shift. Last September, OLC concluded that *Kennedy* requires federal agencies to abandon the “appearance of official endorsement” test that had governed employee religious expression in the federal workplace under the 1997 Clinton Guidelines and the 2017 Sessions Memorandum, and to apply *Kennedy*’s historical-practices-and-understandings test instead.¹³ That opinion was limited to a single, narrow question raised by EEOC, however, and it does not address the much broader range of executive branch activity that implicates the Establishment Clause, including agency regulations, funding conditions, and other guidance documents.

We recommend the Commission urge DOJ OLC to build on its September 2025 opinion with broader guidance addressing the Establishment Clause’s application across executive branch activity more generally. Such guidance would help agencies identify and update internal policies, regulations, and guidance documents that continue to rely on superseded Establishment Clause doctrine, ensuring executive branch practice reflects current constitutional law.

H. Ask EEOC to confirm that faith-based federal grantees and contractors retain full Title VII religious-employer hiring protections (p. 203).

Under “Support Fruitful Partnerships for the Common Good” (p. 203), the Commission should add that expanded partnerships between the federal government and faith-based institutions must include express hiring and employment protections for those organizations. Specifically, the Commission should recommend that the new Equal Treatment Rule, along with any accompanying legislation, confirm that faith-based grantees and contractors retain full Title VII religious-employer protections and are not required to forgo faith-aligned personnel decisions as a condition of receiving federal funds. This recommendation would extend and

¹³ *Religious Liberty Protections for Federal Employees in Light of Recent Legal Developments*, 49 Op. O.L.C. ___, at 8-10 (Sept. 18, 2025), <https://www.justice.gov/olc/media/1414536/dl?inline>.

reinforce the Commission’s related recommendation in Chapter 3 (p. 63) calling for EEOC guidance on the scope of Title VII’s religious-organization exemption.

Federal agencies have repeatedly proposed or adopted rules narrowing Title VII’s Section 702 religious-employer exemption specifically as applied to grantees and contractors. For example, a 2023 proposed rule by nine federal agencies sought to affirm that religious organizations are fully “subject to” Title VII’s anti-discrimination provisions in the grant context, removing prior language confirming the exemption continues to apply to federally funded religious organizations. EPPC scholars Rachel N. Morrison and Eric Kniffin opposed that rule as inconsistent with the statute’s plain text.¹⁴ To prevent this cycle from recurring, the Commission should recommend that the new Equal Treatment Rule affirmatively codify that faith-based grantees and contractors retain the full Section 702 exemption, foreclosing future agency attempts to narrow it through rulemaking.

I. Encourage DOJ or OMB to issue uniform guidance on agencies’ obligations under RFRA (pp. 210-11).

On pages 210-11, the draft report recommends areas where the DOJ should issue guidance. We like the existing recommendations and suggest one more: DOJ or OMB issue detailed uniform guidance on how agencies can comply with their obligations under RFRA as part of the rulemaking process.

We recommend the Commission add that DOJ or OMB issue detailed, uniform guidance directing agencies on how to identify, analyze, and document RFRA implications before finalizing rules. It would be helpful if such guidance clarified:

- How should agencies determine whether a rule is likely to impose a substantial burden on religious exercise?
- What qualifies as a compelling governmental interest? Can an agency’s or an administration’s policy preference *ever qualify* as a *compelling* interest if Congress has not passed a law asserting the interest?
- How should agencies apply the least-restrictive-means requirement during notice-and-comment rulemaking?

This recommendation is consistent with prior EPPC scholarship. In response to President Trump’s Executive Order 14202, *Eradicating Anti-Christian Bias*, EPPC Fellows Rachel N. Morrison and Eric Kniffin issued a report recommending ways the Trump Administration could eradicate the anti-Christian bias expressed by the Biden administration. In that report, we recommended that “[DOJ] could issue a rule or guidance directing agencies how to consider and practically comply with their obligations under RFRA in their rulemaking,” citing repeated

¹⁴ See EPPC, *EPPC Scholars Submit Comment Opposing Proposed Rule for Faith-Based Organizations Partnering with Nine Agencies*, March 14, 2023, <https://eppc.org/publication/eppc-scholars-submit-comment-opposing-proposed-rule-for-faith-based-organizations-partnering-with-nine-agencies/>.

instances in which federal agencies issued final rules without adequately considering, or ignoring explicit concerns about, the rules' impact on religious exercise.¹⁵

Adopting this recommendation would help prevent agencies from finalizing rules that fail to account for RFRA's requirements from the outset. Complying with RFRA upfront would be a huge step forward. Americans should not have to retain lawyers and battle an executive agency in court for years in order to vindicate their right to religious freedom.

J. Strengthen and clarify the Faith-Based Institutions section's employment, Equal Treatment Rule, and litigation provisions (pp. 212-14).

The "Faith-Based Institutions" section in Appendix B (pp. 212-14) recommends important executive, litigation, and legislative actions to protect faith-based organizations. Several provisions would benefit from clarification and expansion. We propose the following refinements:

- **Employment protections need a firmer legal foundation.** Page 212 references EEOC guidance on Title VII's religious-organization exemption, but the section should more explicitly recognize the full constellation of legal protections available to faith-based employers—including Title VII's Section 702 exemption, the First Amendment ministerial exception, the broader First Amendment church autonomy doctrine, and the First Amendment Free Exercise Clause. The Commission could also recommend that DOJ and EEOC coordinate on enforcement of these protections through litigation, not guidance alone.
- **The Equal Treatment Rule conflates two distinct concepts that should be addressed separately.** As currently drafted, the Equal Treatment Rule is described only as ensuring faith-based groups can "compete for federal grants, funds, and contracts on an equal playing field with secular groups." This framing seems to conflate (1) non-discrimination against religious applicants (i.e., not being disqualified simply for being religious) with (2) affirmative solicitude for religious organizations to act religiously, including making employment decisions based on religion, even where a secular grantee could not act the same way. The Commission should clarify that the Equal Treatment Rule must address both dimensions distinctly, since the second protection is broader and legally distinct from mere non-discrimination.
- **DOJ OLC guidance would add meaningful value beyond existing EEOC guidance.** The draft report's recommendation that EEOC "issue guidance on the scope of Title VII's religious organization exemption" is largely duplicative of guidance EEOC has already issued (see EEOC's Religious Accommodation Fact Sheets, cited elsewhere in the report). We recommend the Commission instead call for DOJ OLC guidance clarifying the full scope of religious-employer protections

¹⁵ Rachel N. Morrison & Eric N. Kniffin, *Federal Agencies' Failure to Honor Religious Liberty in the Rulemaking Process*, Ethics & Public Policy Center, Nov. 2025, <https://media.eppc.org/2025/11/25-11-pt2-Federal-Agencies-Failure-to-Honor-Religious-Liberty-1.pdf>.

government-wide. DOJ or OMB could also direct all agencies to recognize these protections fully when issuing regulations, providing federal financial assistance, and establishing partnerships under the Equal Treatment Rule.

- **The Faith-Based Institutions section should recognize that Americans do not lose their religious liberty rights when they decide not to seek non-profit status.** This part of Appendix B specifically addresses churches and non-profit organizations. However, as the Supreme Court made clear in *Burwell v. Hobby Lobby Stores*, closely held for-profit corporations can also exercise religion, raise sincere religious objections, and qualify for relevant protections. The Commission should revise this recommendation to avoid implying that religious protections categorically exclude for-profit entities.

K. The final report should clarify the federal government’s role in education and promoting school choice (p. 214).

Page 214 recommends that the Administration “advocate for the passage of federal legislation ... creating a robust system of universal school choice.” As phrased, this recommendation could lead a reader to believe that the federal government plays a primary role in educating America’s children. We agree that the federal government can play an important role in encouraging school choice and supporting parents’ rights to direct the education of their children. But the call to “creat[e]” a system of school choice is inconsistent with President Trump’s conviction about the limited role of the federal government in education.

In Executive Order 14242, President Trump directed the Secretary of Education to “return authority over education to the States and local communities.”¹⁶ Following this Executive Order, Secretary of Education Linda McMahon affirmed that “Education is fundamentally a state responsibility. Instead of filtering resources through layers of federal red tape, we will empower states to take charge and advocate for and implement what is best for students, families, and educators in their communities.” Secretary McMahon hailed President Trump’s executive order as “a significant step forward to give parents and states control over their children’s education.”¹⁷

We agree that school choice is an important part of religious liberty and parental rights. EPPC President Ryan T. Anderson challenged the Commission to “make as strong of an argument as we can for why school choice itself should be a requirement of religious liberty.” Ryan continued:

I really appreciated President Trump this morning. In his prepared remarks, he spoke about school choice. He spoke about parental rights. I think free exercise of religion, parental rights and education, school choice, these things all go together. My wife and

¹⁶ Exec. Order No. 14242, Improving Education Outcomes by Empowering Parents, States, and Communities, 90 Fed. Reg. 13679 (Mar. 25, 2025).

¹⁷ U.S. Dep’t of Educ., Press Release, *Statement on President Trump’s Executive Order to Return Power Over Education to States and Local Communities* (Mar. 20, 2025), <https://www.ed.gov/about/news/press-release/statement-president-trumps-executive-order-return-power-over-education-states-and-local-communities>.

I ... could never send our kids to the government-run schools [in Loudoun County, Virginia]. Thankfully, we have the resources to send our kids to a classical Christian school. Why should people in our county who don't have those financial resources be trapped in the government run schools? That is the violation.¹⁸

Other witnesses before the Commission likewise emphasized the importance of school choice. Jason Bedrick, a research fellow at the Heritage Foundation's Center for Education Policy, argued that the best way to support parents "is through a robust system of universal school choice."¹⁹ He said that "public funds should follow the child to the educational environment that best meets his or her learning needs and aligns with his or her family's values. School choice respects parental rights and religious liberty, and fosters a more diverse set of schooling options that better reflects the great diversity of American families than one-size-fits-some status quo."²⁰ In closing, Bedrick spoke to the federal government's limited but crucial role in promoting school choice:

So, in closing, the federal government has a compelling interest in ensuring states do not violate constitutionally protected parental rights or religious liberty. It should not stand idly by while states are using regulatory tools to coerce conformity and suppress educational freedom and pluralism. Only by protecting parental rights and empowering parents with school choice can we ensure that America's education system respects and reflects our deepest commitments to religious liberty, pluralism, and self-government. Thank you.²¹

Notre Dame Law Professor Nicole Garnett is a leader in the school choice movement. In her own words, she has "spent the entirety of my professional life fighting for parental choice in education and for religious schools' rights, to participate fully in parental choice programs."²² Professor Garnett spoke about the critical connection between parental rights, religious liberty, and school choice:

[T]he fight for parental choice is not about increasing test scores, but fundamentally it is about empowering parents to fulfill their sacred obligations, to help their children become the men and women that God has called them to be, and giving parents the freedom to form their children mind, body, and soul through the medium of faith-based schools is critical for our nation's future.²³

Professor Garnett closed her testimony by thanking the Commission for emphasizing school choice:

I am here today because I want all families to have the freedom to choose their children's schools, including authentically religious ones, freed from burdensome

¹⁸ Consolidated Transcripts at 152.

¹⁹ *Id.* at 254.

²⁰ *Id.* at 255.

²¹ *Id.*

²² *Id.* at 256.

²³ *Id.*

regulations and discriminatory laws that strip them of their ability to fulfill the very mission that makes them so transformative. This has been my life's work, and I am grateful for the Commission's commitment to advancing it. Thank you.²⁴

School choice is indeed critical to religious liberty. We thank the Commission for emphasizing this connection and for looking for ways to promote school choice for all American families. We encourage the Commission to ensure the final report does so while respecting principles of federalism and President Trump's conviction about the federal government's limited role in education.

L. The Commission should clarify why it recommends that HHS issue guidance relevant to parental rights in government-run schools (pp. 217-18).

On page 217, under "Parental Rights," the draft report recommends that DOJ and HHS form a task force "to consider federal actions to support parental rights in the areas of education and healthcare and monitor the implementations." But in the following paragraph on page 218, the Commission "recommends guidance from [HHS]" regarding educational programs, IDEA funding, and parental authority in the school context.

It is unclear why the report mentions DOJ and HHS in one paragraph and only HHS in the next. It is also unclear what congressional authority HHS has over these statutes and subject areas. If the Commission believes that HHS is indeed the right agency to provide guidance on these matters, we encourage the Commission to explain why HHS has this expertise and authority in its final report.

M. The Commission should reconsider the standard for when government-run schools ought to notify parents about matters related to the child's religious upbringing (p. 218).

The Commission recommends on page 218 that the executive branch develop guidance to clarify "parents' rights to ... receive notice when schools plan to teach their child material that would undermine the child's religious upbringing." We ask the Commission to consider how this recommendation is phrased.

As phrased, the Commission's draft report seems to suggest that a government-run school only has a constitutional obligation to notify parents if and when the school determines that something in its curriculum "*would* undermine the child's religious upbringing" (emphasis added). That does not strike us as the right standard. A school could escape triggering that duty simply by authoring or commissioning a memorandum claiming there was reason to doubt that the school's curriculum would have that effect.

Consider that the Supreme Court rejected the claim that an employer's obligation to respect religious liberty under Title VII is only triggered when the employer has "actual knowledge of a conflict between an applicant's religious practice and a work rule." *E.E.O.C. v.*

²⁴ *Id.* at 258.

Abercrombie & Fitch Stores, Inc., 575 U.S. 768, 774 (2015). While *Abercrombie* was interpreting Title VII and not the First Amendment, we believe the Court’s opinion and policy concerns about how a knowledge requirement would water down Title VII illustrate why it would be problematic for the Commission to suggest an “actual knowledge” standard here.

Instead, we suggest that a school district’s or government-run school’s obligation to tell parents about objectionable material and to offer the parents an opportunity to opt out to protect their children attaches when the school or the district ***has reason to believe*** that some parents would find that school material may undermine their First Amendment right to direct the religious upbringing of their children.

We note that neither of the cases the Commission cites as part of this recommendation—*Mahmoud v. Taylor* (2025) and *Mirabelli v. Bonta* (2026)—discuss what triggers the government-run school’s duty to notify parents. In both cases, the government-run schools in question were on notice that parents had objections to the school’s conduct.

In *Mahmoud*, at least one of the petitioners “asked the principal of their son’s elementary to notify them when the [LGBTQ+ inclusive] books were being read.” *Mahmoud v. Taylor*, 606 U.S. 522, 541 (2025). The Court held that the school board’s “decision to withhold opt outs [] places an unconstitutional burden on the parents’ rights to the free exercise of their religion” and granted the petitioners’ preliminary relief: “until all appellate review in this case is completed, the Board should be ordered to notify them in advance whenever one of the books in question or any other similar book is to be used in any way and to allow them to have their children excused from that instruction.” *Id.* at 568. But the Court did not opine on the duty that the school board had to other parents, or on the specific question of what triggers a government-school’s obligation to notify parents.

In *Mirabelli*, likewise, the parent plaintiffs had already confronted their children’s schools and expressed their outrage at public officials attempting to “transition” their children “behind their backs.” *Mirabelli v. Bonta*, 607 U.S. 492, 494 (2026). The Supreme Court held that California’s policies that “prevent schools from telling them about their children’s efforts to engage in gender transitioning at school unless the children consent to parental notification” likely violate parents’ rights under the First Amendment’s Free Exercise Clause and the Fourteenth Amendment’s Due Process Clause. *Id.* at 492, 496-97. The Supreme Court again did not speak to the important question about what circumstances trigger a government-run school’s constitutional duty to notify parents about offensive conduct or curriculum.

Nor are we aware of any appellate case post-*Mirabelli* that casts light on this important question. Given that this is an open question of constitutional law, we submit that HHS may not be well-positioned to issue guidance in this area. It would seem that OLC would be in a better position to develop a memorandum on this issue.

Conclusion

We thank the Commission for its work and for this opportunity to provide comment on its draft report. We hope these comments and recommendations will aid the Commission in its important work.

Sincerely,

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