

Legal Protections for Faith-Based Institutions: Understanding Religious Exemptions

The Association of Presbyterian Colleges and Universities



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Presenters



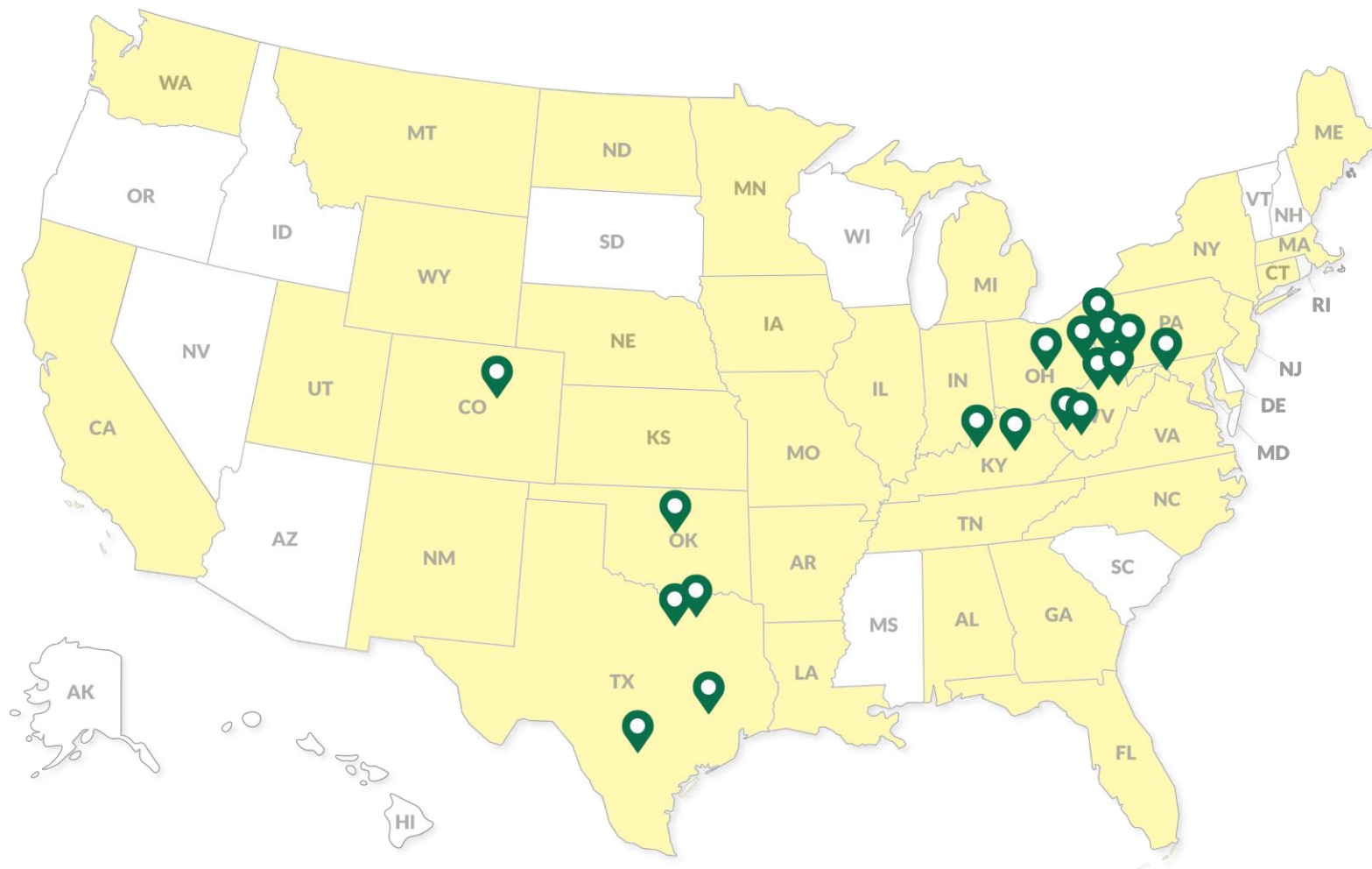
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Office Locations

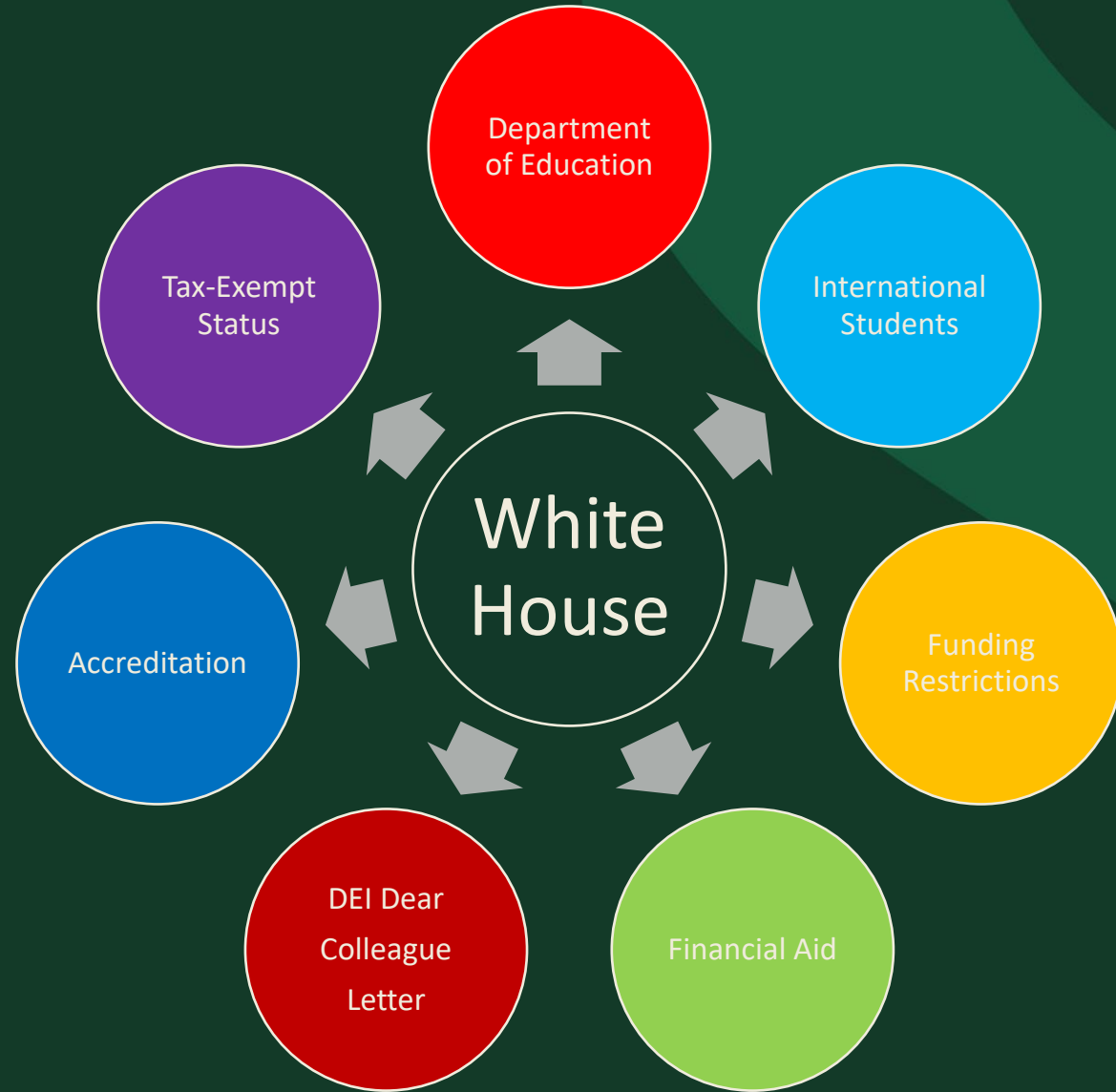
- Bridgeport, WV
- Charleston, WV
- Collin County, TX
- Columbus, OH
- Dallas, TX
- Denver, CO
- Huntington, WV
- Lexington, KY
- Louisville, KY
- Martinsburg, WV
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 **Attorney Licensure**

- Trump Administration Action
- The “One Big Beautiful Bill”
- Title VII Religious Exemption Overview
- Title IX Religious Exemption Overview
- Religious Freedom as a Defense for DEI Initiatives
- Questions

Trump Administration Action

The First 100 Days



The Religious Liberty Commission

- Created by Executive Order to safeguard and promote religious freedom
- Leadership & Structure: Chair: Texas Lt. Gov. Dan Patrick, Vice Chair: Dr. Ben Carson
 - Includes ex officio government officials, clergy, legal experts, academics, and public advocates
 - Supported by advisory boards for specialized religious and legal guidance
- Core Mandates:
 - Produce a report on the foundations, threats, and future of religious liberty.
 - Promote religious pluralism and expression in education, public policy, and worship
 - Focus areas:
 - Parental rights in religious education
 - School choice
 - Conscience protections
 - Attacks on houses of worship
 - Free speech and institutional autonomy for faith-based entities

Task Force to Eradicate Anti-Christian Bias

- Established by Executive Order – February 6, 2025
- Purpose: Created by President Trump to combat the weaponization of government and unlawful conduct targeting Christians
- Structure & Membership:
 - Composed of cabinet members and key federal agencies
 - Engages with faith-based groups, state/local/tribal governments, and impacted Americans
- Key Objectives:
 - Review federal agencies to identify and eliminate anti-Christian policies or practices
 - Investigate failures to enforce laws protecting Christians from hostility, vandalism, and violence
 - Identify legal gaps and propose fixes to strengthen protections

The “One Big Beautiful Bill”

What Is the "One Big Beautiful Bill"?

- Introduced in May 2025 by House Republicans as part of a broader economic and social policy overhaul
- Nicknamed the "One Big Beautiful Bill" (OBBB) — a sprawling, 1,100+ page reconciliation bill
- Seeks to reshape tax, education, healthcare, and family policy using fast-track budget reconciliation rules

New Excise Tax on Private Colleges & Universities

- Applies a tiered tax on net investment income
 - 1.4% if endowment per student: \$500K – \$750K
 - 7% if: \$750K – \$1.25M
 - 14% if: \$1.25M – \$2M
 - 21% if: Over \$2M
- Based on the institution's student-adjusted endowment
- Excludes international students from endowment per-student calculations, increasing burden on global institutions
- Exempts certain religious institutions

Who Is Subject to the Tax?

Private colleges/universities that:

- Have **500+ tuition-paying students**
- Have **>50% of students in the U.S.**
- Have **endowments \geq \$500K per student**
- Are **not**:
 - A **state college/university**, or
 - A **qualified religious institution**

Exemption: Qualified Religious Institution

- Founded after July 4, 1776
- Established by or in association with and has continuously maintained an affiliation with a church or a convention or association of churches per §170(b)(1)(A)(i); and
- Maintains a published institutional mission that is approved by the governing body of such institution and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings

Title VII Religious Exemptions

Title VII Religious Exemption Overview

- Title VII of the Civil Rights Act prohibits employment discrimination but allows religious organizations to make employment decisions based on religion
 - “shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.” 42 U.S.C.S. § 2000e-1
- Exemption applies to all positions—from clergy to support staff (e.g., janitors, receptionists). *Corporation of the Presiding Bishop v. Amos* (1987)
- Does not allow discrimination based on race, sex, or other protected traits unless rooted in sincere, consistently applied religious belief
 - Example: A Catholic seminary may require male faculty based on theology, but a faith-based school cannot reject a woman for principal due to gender bias
- Contemporary Challenges
 - *Bostock v. Clayton County* (2020): Extended “sex” in Title VII to include sexual orientation and gender identity—but only for secular employers

Ginsburg v. Concordia Univ. (D. Neb. Jan. 5, 2011)

- Ginsburg, a Catholic softball coach, claimed he was terminated due to his religion
- Alleged that he was replaced by a Lutheran after a coaching dispute and that he was never given a reason for termination
 - Argued that his role was secular and thus not protected by a religious exemption.
- Court's Holding: Concordia qualifies as a religious educational institution under Title VII
- The exemptions allow religious institutions to make employment decisions based on religion, even for non-ministerial or secular roles
- Key Factors Supporting Exemption:
 - Founded and governed by the Lutheran Church – Missouri Synod
 - Religious curriculum, daily chapel, mission-driven faith-based environment
 - Bylaws and charter explicitly reflect a religious mission
- Claim dismissed: Title VII exemption applied regardless of job's secular nature
- Concordia's decision to fire based on religious considerations is protected

The Ministerial Exception

- A constitutional doctrine rooted in the First Amendment's religion clauses
- Shields religious organizations from civil rights employment claims when hiring/firing ministers or equivalent
- Government may not interfere in decisions about religious leadership and teaching roles
- Applying nondiscrimination law to these roles would violate Free Exercise and Establishment Clauses
- Applies to “ministerial” roles, broadly defined (not limited to clergy)
- Does not apply to all jobs at a religious institution (e.g., janitors, accountants)

Our Lady of Guadalupe School v. Morrissey-Berru and St. James School v. Biel, 591 U.S. 732 (2020)

- Broad standard for permitting religious exemptions from employment discrimination claims
- “Ministerial exception”
- Allows a religious employer to use an employee’s status as a “minister” to invoke the First Amendment’s protections against government interference in the employer’s selection of its employees
- Courts are barred from adjudicating employment discrimination claims brought by an employee who performed certain religious tasks for religious employer
- Two parochial school elementary teachers educated students in faith such that the ministerial exemption applied barring their age and disability discrimination claims

Markowski v. BYU (D. Utah 2024)

- Ashtin Markowski, a former trainer at BYU's Missionary Training Center (MTC), sued for sex discrimination after being fired over hairstyle concerns tied to gender stereotypes
- The court granted summary judgment to BYU, finding that the ministerial exception barred Markowski's Title VII claims
- Markowski's job involved training full-time missionaries to share Church teachings online
 - She taught Church doctrine, prayed with potential converts, and acted as an online minister via Church platforms
 - Her work was core to the Church's mission—evangelizing and preparing others to evangelize
 - Required prior missionary service and regular religious study as part of the job
- Markowski's duties were religious in nature and function.
- The First Amendment protected BYU's right to choose who performs those duties

Trotter & Johnsten v. United Lutheran Seminary (E.D. Pa. 2023)

- ULS argued that Christina Johnsten's employment claims were barred by the ministerial exception under the First Amendment
- The court denied summary judgment, finding Johnsten's role was administrative, not ministerial
 - Served as VP of Student Services & Enrollment, overseeing admissions, housing, financial aid, and student care
 - Did not lead worship, teach theology, or perform religious duties
 - Supervised chaplaincy staff but did not act as a chaplain herself
 - Title and ordination status were not enough—job function controls
- Johnsten's role did not involve spiritual leadership, so the ministerial exception did not apply

Zinski v. Liberty University (W.D. Va. 2025)

- Ellenor Zinski, an IT Helpdesk employee, sued Liberty University for sex discrimination after being terminated for coming out as transgender
- Claimed protection under the ministerial exception, arguing that Zinski's termination was based on religious doctrine
- The ministerial exception did not apply because Zinski held a purely secular role: "Information Services Apprentice"
- Duties involved technical IT support, not religious instruction or spiritual leadership
- She did not teach, preach, or interact with students in a religious capacity
- Zinski's role was secular and non-ministerial; the court allowed her Title VII claim to proceed

Title IX Religious Exemption Overview

Title IX Religious Exemption

- Title IX bars sex-based discrimination in federally funded education programs
- Schools may be exempt from Title IX if they are "controlled by a religious organization" and if enforcing Title IX would be "inconsistent with the religious tenets of the organization"
- A school's highest official may submit a written statement to the Assistant Secretary to seek or confirm a Title IX religious exemption by identifying conflicting provisions, with the institution bearing the burden to prove it is controlled by a religious organization (34 CFR §106.12(b))
- A school can demonstrate it is controlled by a religious institution by showing evidence such as required religious practices, religious mission statements, affiliation in official documents, or status as a divinity school (34 CFR §106.12)

Maxon v. Fuller Theological Seminary (9th Cir. 2021)

- Two students were dismissed after entering same-sex marriages, violating the seminary's standards. They sued under anti-discrimination laws
- Plaintiffs argued that exemption does not apply to Fuller because the school is controlled by its own board of trustees rather than by a distinct, external organization
- Court of appeals dismissed the plaintiff's claim and upheld the school's religious exemption because the school was controlled by a "religiously affiliated" board of trustees

Cruz v. Seton Hall Univ. (D.N.J. July 10, 2012)

- Jesse Cruz, an openly gay student, alleged SHU violated Title IX by attempting to move him out of his dorm room after his roommate objected to Cruz's sexual orientation
- The court found no evidence of discrimination—Cruz was offered options, never forced out, and remained in his assigned room
- Because SHU is a religiously controlled university, any alleged conflict with Title IX obligations was shielded by the statutory religious exemption
- Court emphasized: the exemption protects religious schools when actions are based on sincere religious beliefs, not used as pretext for unlawful bias

Religious Freedom as a Potential Defense to DEI Initiatives

Government Challenges DEI at Georgetown Law

- February 17, 2025 – Interim U.S. attorney for the District of Columbia Ed Martin launched inquiry into Georgetown Law’s DEI teaching
- Threatened to exclude students and affiliates involved in DEI from internships and job opportunities with his office
- Georgetown Law’s Dean William Treanor’s response:
 - Invoked the First Amendment protection of academic freedom
 - Emphasized Georgetown’s Catholic and Jesuit mission – “For us at Georgetown, this principle is a moral and educational imperative. **It is a principle that defines our mission as a Catholic and Jesuit institution**”

Institutional Responses & Legal Implications

- Jesuit colleges' reactions:
 - Mostly cautious or silent publicly
 - Some (e.g., Fordham, Seattle University) await federal guidance or plan to balance compliance with Jesuit values
- Other religious college reactions:
 - April 26, 2025 - Samford University's president reaffirmed strong commitment to DEI, reframing it as "biblical justice"
 - Staff and faculty actively promote DEI as integral to the university's mission of justice and inclusion
- Potential legal defenses:
 - Religious freedom offers a plausible but largely untested legal shield
 - Success hinges on presenting DEI as integral to religious mission and teachings
 - Recent Supreme Court decisions show a trend toward supporting religious liberty claims

Next Steps

- Review policies and job descriptions for alignment with religious mission
- Ensure bylaws clearly state religious identity and governing beliefs
- Require board engagement on mission-related employment issues
- Apply religious standards consistently and document decisions
- Include faith-based expectations in contracts and handbooks

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