



March 24, 2023

**BY ELECTRONIC SUBMISSION**

U.S. Department of Education  
Office of Postsecondary Education  
400 Maryland Avenue SW, Room 2C136  
Washington, DC 20202

Re: Request for Public Comment Concerning Proposed Rule on Direct Grant Programs, State-Administered Formula Grant Programs; RIN 1840-AD72

Dear Sir or Madam:

The Ethics & Religious Liberty Commission (ERLC) of the Southern Baptist Convention (SBC) respectfully submits the following comments regarding our concerns with the proposed rule “Direct Grant Programs, State-Administered Formula Grant Programs,” relating to First Amendment religious exercise and free speech regulations for institutions of higher education.

The ERLC is the public policy and ethics entity of the SBC, which has nearly 14 million members in over 50,000 churches and congregations in the United States. We are charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and human dignity. Religious freedom and the protection of consciences are indispensable, bedrock values for Southern Baptists. The Constitution’s guarantee of freedom from governmental interference in matters of faith is a crucial protection upon which SBC members and adherents of other faith traditions depend as they follow the dictates of their conscience in their religious practice.

The stated intention of this proposed rule is “to rescind regulations related to religious student organizations at certain public institutions of higher education (IHEs) that prescribe a novel role for the Department in enforcing grant conditions related to religious student organizations.” The Department claims that the regulations are “not necessary to protect the First Amendment right to free speech and free exercise of religion; have created confusion among institutions; and prescribe an unduly burdensome role for the Department to investigate allegations regarding IHEs’ treatment of religious student organizations.”

Specifically, the Department proposes to rescind two provisions, CFR Sections 75.500 and 75.600, from the 2020 final rule that require all public colleges and universities that are federal grant recipients to comply with the First Amendment. In these provisions the Department has promised to “not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities



of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs."

**The ERLC is deeply concerned about the NPRM, as the rescission of these provisions will severely erode the rights of religious students on college campuses across America to freely practice their religion on campus.**

From the Baptist Student Union to the Muslim Students Association, from Campus Crusade for Christ to the Jewish Law Students Association, religious groups on college campuses across America provide an invaluable space for religious students to gather, practice their faith, serve their fellow students, and explore new ideas and belief systems. These groups represent a microcosm of the vibrant landscape of religious freedom and expression that our nation's founding documents protect and celebrate.

Furthermore, they are the centers of service and fellowship for campus life, often bringing students together across demographic boundaries to create more diverse communities than nearly any other campus organization. Faith-based organizations cross socioeconomic, racial, ethnic, and geographic boundaries. Often, they are one of the only places where you will find student athletes gathering with theater majors and student government leaders, united by their common beliefs or mutual curiosity.

The language in CFR Sections 75.500 and 75.600 ensures that religious groups are treated fairly on college campuses and that religious students are able to fully participate in all aspects of students life. The rule, as enacted in 2020, provides clear protections for these groups, guaranteeing that they are recognized by the school administration as an official organization, are able to access campus meeting spaces, and are able to receive student fee funds like all other groups on campus. Each of these assurances are critical to a student group's ability to be full participants in university life. Without official recognition on campus, a group's ability to meet on campus, reserve meeting space and advertise their events can be greatly curtailed. If student groups are denied access to the pool of funds reserved for all student groups, they will be unable to host events, advertise their meetings, or participate in other campus activities. In practice, this would amount to discrimination based on the religious identity of the student members of those groups.

Without the clear protections found in the 2020 rule, the rights of students to freely exercise their faith will be eroded by a government that finds the tenets of a group's faith as incongruent with the cultural mores of the day. This is especially worrisome for minority groups, whose deeply held religious beliefs may not align with the prevailing beliefs of the secular institution. Yet, students' rights to express their faith and live in congruence with their conscience and faith is one of America's first freedoms and does not end when students step onto campus property.

**For Southern Baptists, conscience protections are fundamental to our ability to freely exercise our religion and live out the most basic tenets of our faith.**



The Bible instructs us that faith in Christ Jesus should suffuse all that we do (Romans 6:6–22; 12:1–2; 1 Cor. 4:1–2). Because God is the origin and Creator of all things (Psalm 24:1), Christians believe that God is concerned with all areas of life. Thus, Christians seek to follow Jesus in every area of life and see their entire lives, including their academic and vocational work, as service to him, not merely their religious activities (Col. 3:17; 23–24; 1 Cor. 10:31). These fundamental principles are reflected in the Southern Baptist Convention’s summary of beliefs, the *Baptist Faith & Message*. As described in the *Baptist Faith & Message*, “Christians have a spiritual debtorship to the whole world, a holy trusteeship in the gospel, and a binding stewardship in their possessions. They are therefore under obligation to serve Him with their time, talents, and material possessions. . . . Christians should contribute their means cheerfully, regularly, systematically, proportionately, and liberally for the advancement of the Redeemer’s cause on earth.” Robust religious liberty protections allow them to do so, while materially serving their neighbor and contributing to society, without the fear of being coerced to violate their consciences.

Knowledge of God’s saving grace compels Christians to obey God’s commands throughout their lives (James 2:17). The *Baptist Faith & Message* states that Christians should actively “seek to bring industry, government, and society as a whole under the sway of the principles of righteousness, truth, and brotherly love.” Moreover, the Bible teaches that Christians should discern when to refrain from activities that would be unhelpful, or harmful, to their neighbor (1 Cor. 6:12; 10:23–11:1). Broad religious liberty protections allow Christians to remain faithful to these core beliefs while also actively participating in society.

These same principles are just as true for Southern Baptist college students. These students cannot and should not be forced to give up their deeply held religious beliefs in order to fully engage in campus life. Nor should their Muslim roommate, Jewish sorority sister, Catholic lab partner, or atheist intramural teammate be forced to abandon his or her deeply held convictions to be deemed worthy and safe to be an active member of the student body.

**The ERLC is deeply concerned about the NPRM, as, contrary to the Department’s assertions, it will cause greater confusion and create more barriers to enforcement of the rights of religious students on college campuses.**

Prior to the enactment of the 2020 rule by the Department, there was confusion across the country amongst campus administrations as to how and when to uphold the First Amendment in regards to religious groups. Countless groups were denied access to buildings, funds, and status on the very basis of their religious status. For example, in 2018 Embry-Riddle Aeronautical College denied a religious student group official recognition because of its requirements that its leaders adhere to the tenets of their faith. At the University of Georgia in 2006, administration officials denied recognition to a religious student group because of its religious leadership and membership requirements<sup>1</sup>. In 2009, the University of Texas ruled that a religious group would no longer be recognized because it required its members to agree with its religious beliefs. And these examples only scratch the surface. The Christian Legal Society has compiled a list

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<sup>1</sup> *Beta Upsilon Chi v. Adams*, No. 3:06-cv-00104 (M.D. Ga. 2006))



of hundreds of similar instances of discrimination and First Amendment violations of religious groups on campus religious groups across the country.<sup>2</sup>

In response, the 2020 rule made the First Amendment's protections for all students crystal clear.

Additionally, prior to 2020, student groups' only recourse when denied the ability to freely exercise their religion on campus, was to seek judicial relief by filing a lawsuit. This was costly for both the student groups and universities alike, but was especially burdensome and even prohibitive for minority groups without the resources to pursue costly legal action. Once again making legal action their only recourse, in and of itself, constitutes a burden placed on these student groups simply because of their religious beliefs.

In stark contrast, the 2020 rule provided a clear avenue for relief within the Department should student rights be violated on campus, lowering the cost of pursuing justice and upholding fundamental rights.

The rescission of the language in CFR Sections 75.500 and 75.60, which provides clarity and remedy for First Amendment rights on college campuses, will transport religious students back to an era in which their right to live out their faith was easily disregarded and their path to fight for their rights was prohibitively burdensome.

The proposed revisions to the 2020 Final Rule are gravely concerning to Southern Baptists. We urge the Department to maintain the robust and clear First Amendment protections found in the 2020 Final Rule in order to ensure all college students are given the opportunity to practice their faith.

Thank you for the opportunity to comment.

Respectfully submitted,

Frederick Brent Leatherwood  
President  
Ethics & Religious Liberty Commission  
of the Southern Baptist Convention

<sup>2</sup> *When Colleges and Universities Exclude Religious Student Groups: A Serious Problem*. Christian Legal Society. (March 2023). Retrieved from [https://www.christianlegalsociety.org/sites/default/files/site\\_files/Center%20Legislation/2023-03%20List%20of%20Situations%20Final\\_0.pdf](https://www.christianlegalsociety.org/sites/default/files/site_files/Center%20Legislation/2023-03%20List%20of%20Situations%20Final_0.pdf)