

Only Human Two weeks of First Amendment victories

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Recently, several federal agencies have acted to strengthen First Amendment protections dramatically. Actions taken have included both restrictions on the use of tax-payer dollars to fund specifically religious speech as well as guarantees that such funds will not be leveraged to silence the free speech of religious people.

In a [letter dated August 31](#), Peter Kirsanow, member of the U.S. Commission on Civil Rights, wrote to Jenny Durkan, Mayor of Seattle, Washington. He was following up on an [August 26 inquiry](#) sent from the US Department of Justice's Employment Litigation Section to Seattle's city attorney. Both letters were concerned with a [June 2020 training session](#) for city employees.

That training was titled "Internalized Racial Superiority for White People." In it employees were forcibly segregated by race and the trainer, [Ashleigh Shackelford](#), told city employees that "[all white people are racist](#)." This statement, printed on a placard in capital letters, was only one of several elements of the course that Kirsanow found objectionable.

[Title VII](#) of the 1964 Civil Rights Act reads, "It shall be an unlawful employment practice for an employer . . . to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

The commissioner's letter reminds Durkin that Title VII contains no exceptions for Shackelford's "critical race theory" (CRT). He concluded: "This is nothing more than singling out people of a particular race as class enemies and forcing them to abuse themselves before the reigning orthodoxy... I urge you to end such trainings immediately."

Only days later, Russell Vought, Director of the Office of Management and Budget (OMB) sent a [memorandum](#) to the heads of all executive departments of the federal government. Noting that "Executive Branch agencies have spent millions of taxpayer dollars... 'training' government workers to believe divisive, anti-

American propaganda.” It directed all agencies to “identify all contracts or other agency spending related to any training on [‘critical race theory.’](#)”



Vought noted that while the president continues “to support all Americans, regardless of race, religion, or creed. The divisive, false, and demeaning propaganda of the critical race theory movement is contrary to all we stand for as Americans and should have no place in the Federal government.” CRT may be taught and believed by anyone who wishes to believe it, but this religion cannot be funded by taxpayers.

Several days later, the [President announced](#) that the Department of Education was examining California’s intent to promote the 1619 Project. This, he thinks, is an example of a religion being illegally funded by taxpayers.

Launched by Nichole Hannah-Jones in August of 2019. [The 1619 Project](#) is a deliberate and coordinated effort to rewrite American history. It denies that America was founded in 1776 on the foundational assertion that “[all men are created equal.](#)” It teaches, instead, that the Revolutionary War was declared to defend the slave trade.

Pulitzer Prize-winning historian, Gordon Wood, and many [other scholars](#), have [debunked numerous errors in the project](#), forcing Hannah-Jones to qualify some of her most radical statements. Still, the New York Times Magazine continues to promote its theories.

While the OMB was diligent to prevent public funding from promoting CRT as a state-established religion, the Department of Education (DOE) was clarifying rules so that the free exercise clause is not violated in the educational setting. On September 9, 2020, Secretary of Education, Betsy DeVos announced the

finalization of [rules to “Protect Free Inquiry and Religious Liberty.”](#)

Her announcement is the culmination of work set in motion by [Executive Order 13864](#), signed on March 26, 2019. The proposed rules were published last January and over 17,000 comments were considered before the amended and finalized rules were published last Wednesday.

“This administration is committed to protecting the First Amendment rights of students, teachers, and faith-based institutions,” she wrote. “Students should not be forced to choose between their faith and their education, and an institution controlled by a religious organization should not have to sacrifice its religious beliefs to participate in Department grants and programs.”

To accomplish this task, it is necessary to understand the constitutional relationship between religion and the government. While the constitutional convention was meeting in the summer of 1787, the French Revolution was poised to explode. At the heart of this bloodbath was a Marxist attempt to expunge religion from every aspect of public life. This was the so-called [“separation of church and state.”](#)

In America, however, the constitutional convention rejected this notion. The framers wanted the robust involvement of every religious person in making and framing America’s laws. In order to do this, it was necessary to protect the full and free exercise of religion not only in church buildings, but also in the public square. To make room for that freedom, they saw that it was also necessary that the government not weigh in on any of the distinctive tenets of the various religions.

This background accounts for the twin clauses of the [First Amendment](#) that speak of religion. “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” These clauses are not in competition with each other but are mutually supportive. Only by affirming their interdependence can the First Amendment be rightly understood.

The Department of Education understands this. That’s why it makes a sharp distinction between government-run schools and religiously controlled schools. Both may benefit from government education money without discrimination. Government-run schools, as agencies of the government itself, must strictly

protect First Amendment rights. On the other hand, religiously controlled schools are required only to adhere to their own stated policies.

This makes clear that the government has no business dictating to a religious school what it may or may not teach. Those who teach there and those who attend there do so voluntarily and with the reasonable expectation that the doctrine of the religious body will be taught, defended and lived out on its campus.

Likewise, the government-run school has a responsibility under the First Amendment to allow all students, professors and student-organizations to articulate, defend and live-out their religion without penalty or disadvantages placed upon them in the classroom or in campus life.

For years, now, we have seen groups like [InterVarsity Christian Fellowship](#) and the [Fellowship of Christian Athletes](#) banned from government campuses merely for articulating their beliefs. Meanwhile, we have also seen religious schools pressured into promoting teachings and practices that contradict their official doctrine as a condition of participating in government programs that are totally unrelated to worship or dogma. The DOE rules are carefully balanced to stop both abuses.

Education secretary, DeVos explained, “[t]hese regulations hold public institutions accountable for protecting the First Amendment rights of students and student organizations, and they require private colleges and universities that promise their students and faculty free expression, free inquiry, and diversity of thought to live up to those ideals.”

President Trump deserves credit for his administration's vigilant defense of the First Amendment.

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