

Concerns about SB 1146

Questions persist regarding SB 1146, as amended August 15, 2016 on the Assembly floor. This analysis examines how this bill gives the State unprecedented, unconstitutional, and subjective powers over religious institutions.

The amended SB 1146 says:

(Section 1a) Exempt religious colleges "shall disclose...the scope of the allowable activities provided by the exemption."

QUESTIONS:

- What if all "allowable activities" aren't listed and disclosed?
- Or, what if all non-"allowable activities" aren't listed and disclosed?
- How would the State objectively judge whether "the scope of allowable activities" listed by religious colleges means some, or means all, of the "allowable" or non-"allowable" activities at religious colleges?
- What if a religious college disciplined a student for violating a moral standard that was not mentioned on the scope of activities list provided to the State?

ANSWER: Because of the new mandate of SB 1146, and because the bill text is overly broad and legally vague, under this bill the State would have new powers to subjectively inspect, judge, and enforce compliance of religious colleges.

The amended SB 1146 says:

(Section 1b, 1-4) "The disclosure required...shall be made in all of the following ways ... a prominent location of the campus or school site ... in written materials sent to prospective students ... as part of orientation programs ... provided to each faculty member ... administrative staff ... support staff ... each new employee..."

QUESTIONS:

- What if the disclosure isn't satisfactorily posted, presented, or delivered in the eyes of the State?
- What if the disclosure isn't viewed by the State as being complete or accurate?
- What mechanism is there to verify receipt, so as to avoid future non-receipt claims?

ANSWER: The bill text contains no receipt verification of the required disclosure. Regarding postings and presentations, this bill gives subjective powers to the State to inspect, judge, and enforce compliance of religious colleges.

The amended SB 1146 says:

(Section 1b, subsection 5) "The disclosure shall be included in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution."

QUESTIONS:

- What if the "the scope of allowable activities" in the disclosure is unsatisfactory in substance, format, or completeness in the eyes of the State?
- Will there be inspections, search warrants, or lawsuits to compel publishing?

ANSWER: It could happen, since religious institutions would be regulated by the State through subjective inspections and enforcement.

The amended SB 1146 says:

(Section 2a) Exempt religious colleges "shall submit to the Student Aid Commission copies of all materials submitted to, and received from, a state or federal agency concerning the granting of the exemption."

(over)

QUESTIONS:

- If an exemption has already been granted, why is the State requiring more than the approval letter from the U.S. government granting a religious exemption to Title IX? For example, the State regularly recognizes, without question, IRS letters granting tax-exemption. Why the requirement to also submit any and all materials submitted by a religious college seeking a Title IX exemption?
- What if the State suspects not “all” materials have been provided by religious colleges claiming a Title IX exemption? What kind of inspections – or search warrants and lawsuits – could occur?

ANSWER: By requiring “all” the religious colleges' application papers for the exemption, the State makes itself a judge of the quality and validity of an already-granted exemption. This exceeds the role of a clearinghouse – it is that of an investigator and prosecutor.

The amended SB 1146 says:

(Section 2b) "The Student Aid Commission shall collect the information received pursuant to subdivision (a) and post and maintain a list on the commission's Internet Web site of the institutions that have claimed the exemption with their respective bases for claiming the exemption."

QUESTIONS:

- Why should the State be elevated to a position of judging the particular policies of religious colleges, which, under SB 1146, must try to justify "their respective bases for claiming the exemption"?
- On the state website, will exempt colleges be labeled negatively or disparaged?

ANSWER: By requiring exempt religious institutions to justify their exemption, the State is

elevating itself to judging religious beliefs and practices, creating a prejudice against exempt colleges, and claiming state law is supreme to federal law (Title IX of the Education Amendments of 1972).

The amended SB 1146 says:

(Section 3) Exempt religious colleges "shall submit a quarterly report to the Student Aid Commission that includes both of the following:

- (a) A detailed explanation of the reason for each student suspension or expulsion that occurred during the preceding quarter, including on explanation of the policy the student violated and whether that policy is authorized under the exemption.
- (b) Whether the student was a Cal Grant recipient."

QUESTIONS:

- Why is the State putting itself in a position to judge religious matters on religious property?
- Why must a religious college, university, seminary, or bible college defend – though a “detailed explanation” – their cherished religious beliefs? Is the Church now controlled by the State?
- What happens if a religious college doesn't report these disciplinary matters to the State? Will there be a search warrant or a state lawsuit filed?
- How can the Legislature approve a bill containing an obvious misspelling (“on” instead of “an” in Section 3a)?

ANSWER: Since SB 1146 would give the State broad powers to regulate and judge religious institutions, if a religious institution's response were somehow unsatisfactory, the Student Aid Commission and the Attorney General of California could execute subjective enforcement.