

SB 1146, as amended Aug. 19, still harms religious freedom

The August 19 amendments to SB 1146 still contain most of the problematic sections of the bill, which continue to harm religious freedom by giving the State unprecedented, unconstitutional, and subjective control over religious matters.

As such, SB 1146 violates “separation of church and state” and the religious freedom guarantees of both the U.S. and California constitutions.

A new 8/19/16 amendment made the bill worse.

Even though current state law says a religious organization is *in control* of its postsecondary educational institution, SB 1146 now puts the State *in control* -- by requiring a religious college that is exempt under Education Code § 66271 to justify “its basis for having the exemption.”

Inserted is Section 2(a)(2), reading: “Beginning with the 2017–18 school year, each postsecondary educational institution in this state not described in subdivision (a) that has an exemption pursuant to Section 66271 shall submit to the Student Aid Commission its basis for having the exemption.”

Yet Education Code § 66271 reads: “This chapter shall not apply to an educational institution that is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.”

- Why must a church now justify its own religious doctrines to the State? Is the religious organization in control of its educational institution, as Section 66271 recognizes – or is the State in control of it?
- Why is the State even examining the “religious tenets” of religious colleges?

The previous problems in SB 1146 remain and were not removed by the latest amendments.

The amended SB 1146 continues to state:

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

- 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 these religious colleges’ “allowable” or non-“allowable” activities?
- What if a religious college disciplined a student for violating a religious standard that was not mentioned in the scope-of-activities-list provided to the State?

SB 1146’s mandate upon religious colleges – “shall disclose ... the scope of allowable activities provided by the exemption” – creates a dangerous new government power to subjectively inspect, judge, and enforce compliance of religious colleges as to what is “allowable” or not “allowable” on campus.

The amended SB 1146 continues to state:

Section 1(b)(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...”

- 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?

The amended bill's requirement that exempt religious colleges "shall" post and distribute their religious standards will be enforced by the State's subjective interpretations, due to the bill's vagueness. This sets up religious colleges for inspections, complaints, and even lawsuits claiming the information was never provided (the bill has no receipt mechanism).

The amended SB 1146 continues to state:

Section 1(b)(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."

- 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 "proper" publishing?

The bill's mandate that these religious colleges publish their moral codes in "any publication" on the topic invites State inspections, search warrants, or lawsuits. Will the State compel "proper" publishing if the Student Aid Commission or California Attorney General isn't satisfied with a religious college's "compliance"?

The amended SB 1146 continues to state:

Section 2(a): 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."

- Why is the State requiring more than the U.S. government's letter granting a religious exemption to Title IX? For example, the State routinely recognizes IRS letters granting tax-exemption to non-profit organizations. Why the requirement to also submit "all" of the application

materials submitted by a religious college that already has a Title IX exemption?

- What if the State suspects not "all" materials have been provided to it by religious colleges claiming a federal or state exemption? What kind of inspections, search warrants, or lawsuits could occur?

The bill's mandate that exempt religious colleges provide to the State "all" their application papers for an already-established exemption makes the State a judge of the quality and validity of religious exemptions. It puts the State into the role of an investigator and enforcer on religious matters.

The amended SB 1146 continues to state:

Section 2(b): "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 or having the exemption."

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

By requiring religious institutions to justify their exemption, the State makes itself a judge of the religious doctrines/ beliefs/practices of religious colleges, which, under SB 1146, must attempt to justify to the State "their respective bases for claiming the exemption." This subjective mandate creates an official State prejudice against exempt colleges, and in regard to Title IX exemptions, has the State acting as if state law were supreme to federal law. As written, SB 1146 clearly violates "separation of church and state."