

TITLE IX Religious EXEMPTIONS

March 4, 2022



INSTITUTIONAL
COMPLIANCE SOLUTIONS

About Us



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Betsy Smith



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Housekeeping



- Chat bar
- Recording of Webinar
- Materials

Title IX

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance... **except that:**"



TITLE IX'S RELIGIOUS EXEMPTION

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."



Utilizing the Exemption

To seek assurance of the exemption, or if an institution is under investigation for non-compliance, a school's highest official may submit a written statement to the Assistant Secretary specifying Title IX provisions that conflict with the schools religious tenet(s).

The institution has the burden to demonstrate that they are **controlled by a religious institution.**

34 CFR §106.12 (b).



Who is Eligible?

A SCHOOL CAN DEMONSTRATE THEY ARE CONTROLLED BY A RELIGIOUS INSTITUTION BY SHOWING:

- The institution is a school or "department of divinity."
- Faculty, staff, and students are required to engage in a personal belief or religion.
- The institution's charter, catalog, or "other official publication" explicitly states that it is controlled by a religious organization or doctrine.
- The institution has a statement of religious practices and "members of the institution must engage in the religious practices" outlined in the statement.
- The institution has a "published institutional mission" that refers to religious tenets or beliefs.
- There is sufficient evidence that the institution is controlled by a religious organization.

****This may change when the new regs are released****

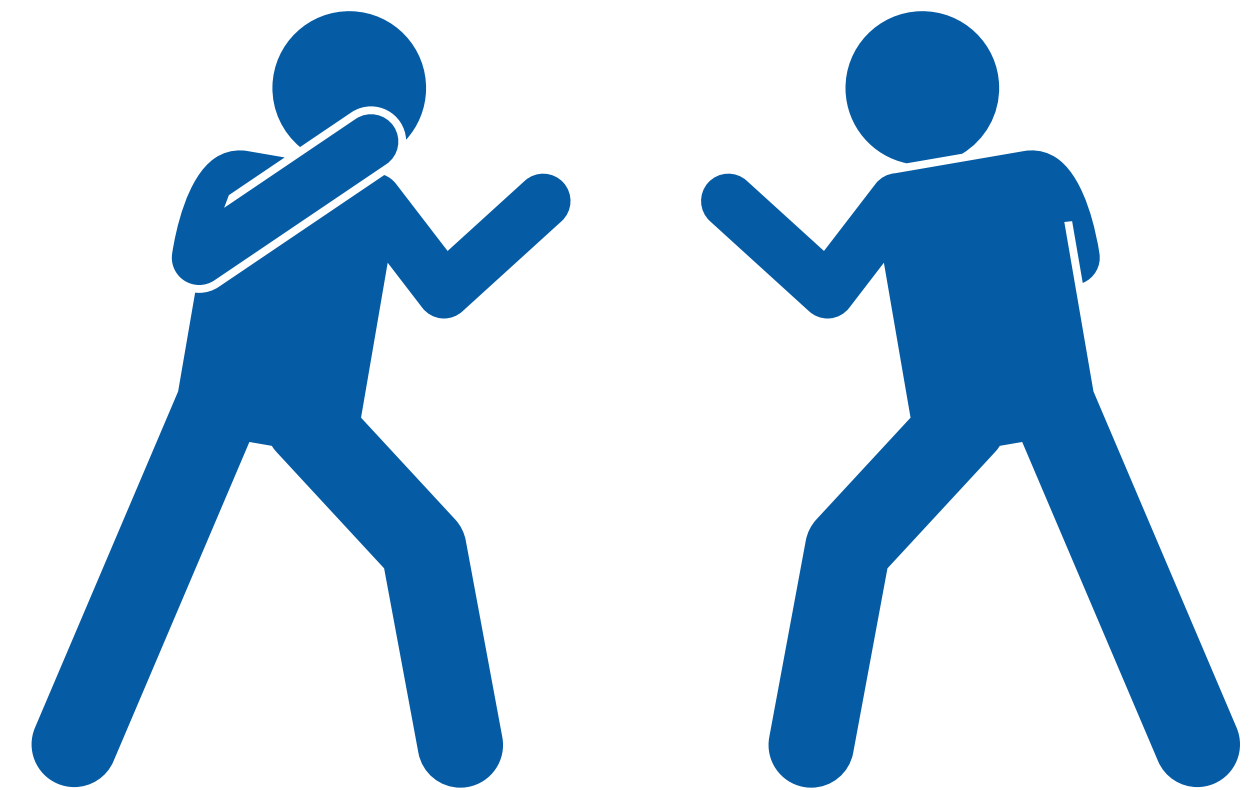


Maxon v. Fuller Theological Seminary

- 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 analyzed "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.

Religious Freedom vs. Religious Exemption

Since Title IX's inclusion of discrimination based on gender-identity by DOE, many LGBTQ+ complainants have begun to challenge schools that claim Title IX's religious exemption.





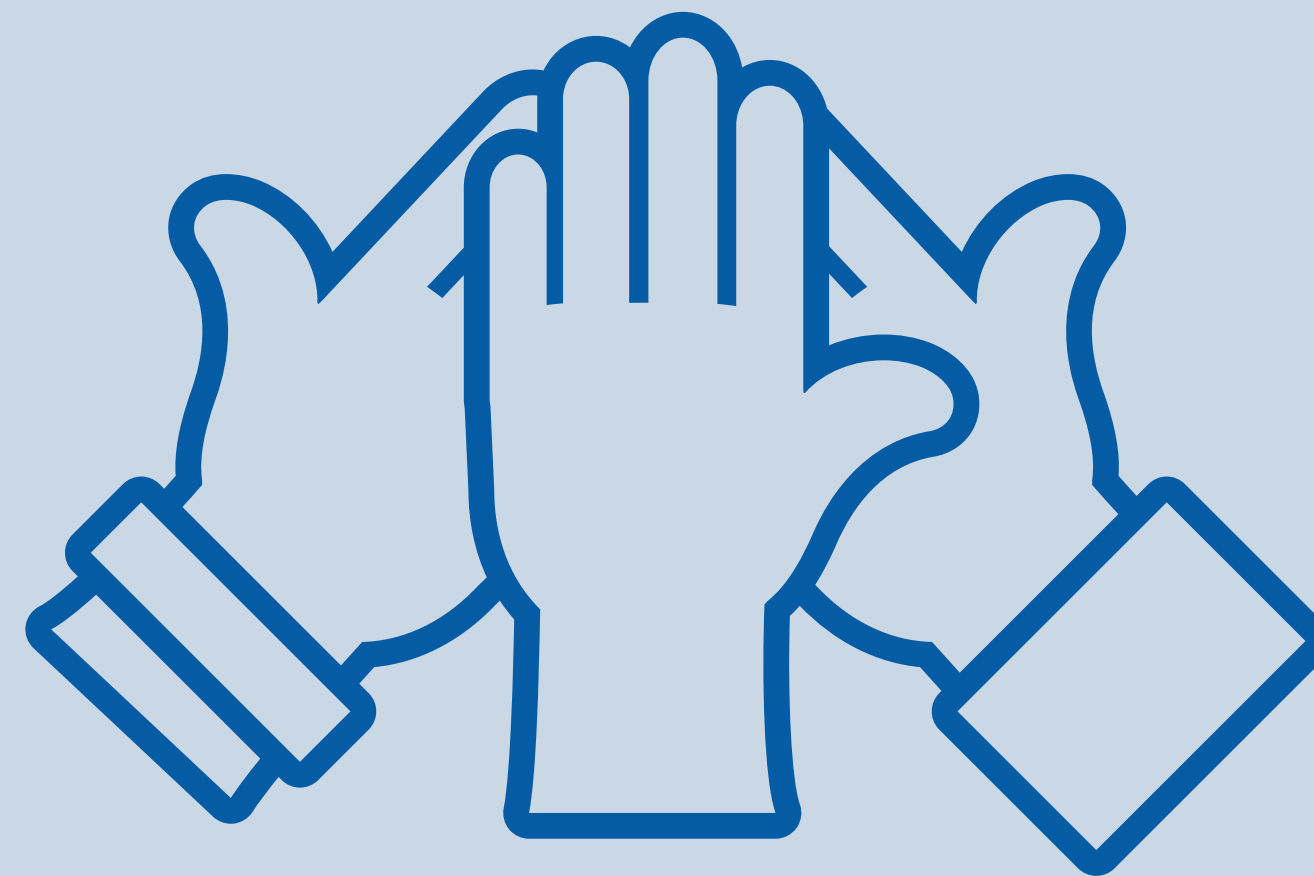
Inclusive Vocabulary

Sex: refers to the biological sex we are assigned at birth (male, female, or intersex).

Gender refers to one's internal understanding or experience of their gender identity.

Cisgender: people whose identity matches with their sex assigned at birth.

Transgender: people whose gender identity differs from their sex assigned at birth. Many trans* individuals will transition to align their gender presentation with their identity.



Do LGBTQ+ Students Attend Religious Colleges and Universities?

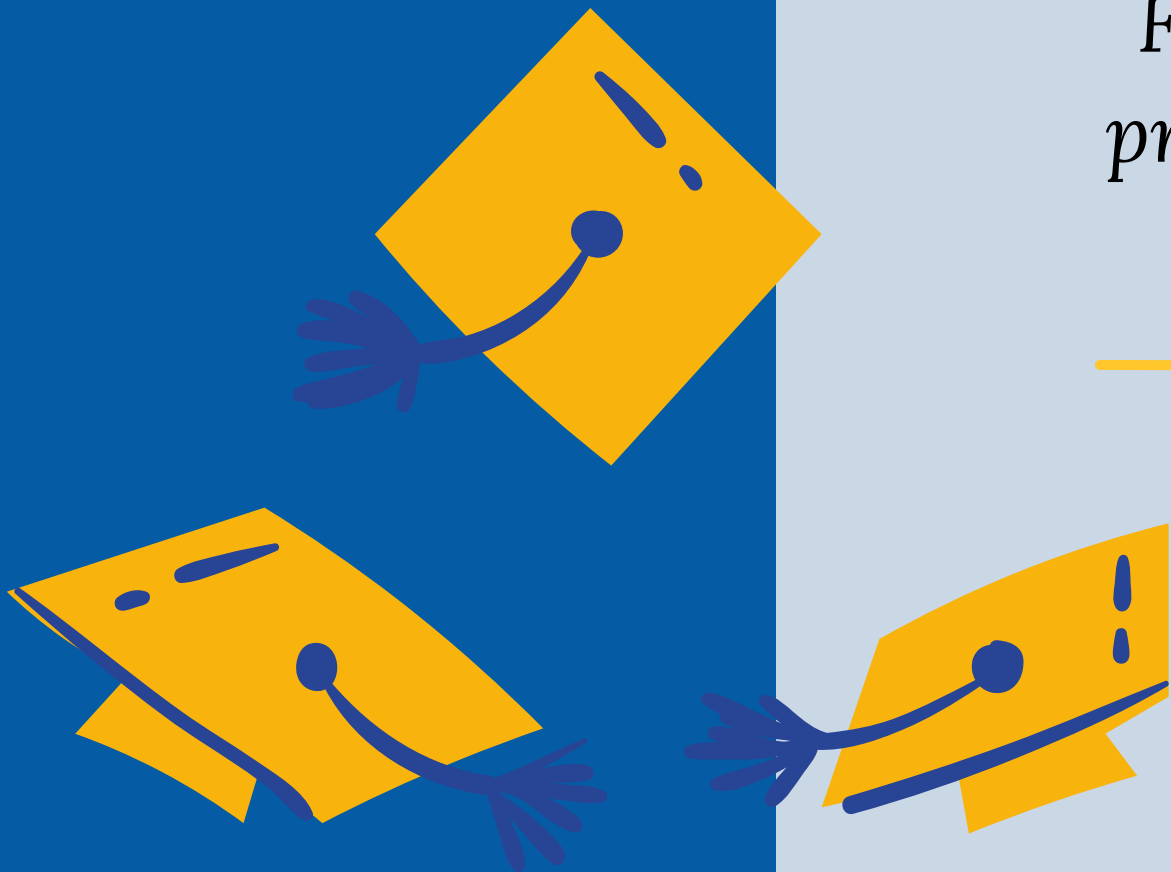


Right now, LGBTQ+ students and advocacy groups are challenging Title IX's religious exemption. To understand this issue, it's important to address any misconceptions about the *types* of students who attend religious colleges and universities.

Do LGBTQ+ Students Attend Religious Colleges and Universities?

For any student, choosing a college is a complicated and personal process. It is important to acknowledge that LGBTQ+ students may choose a religious institution for a variety of reasons.

- Students can be religious and identify as LGBTQ+.
- A student may not have financial flexibility.
- Students may feel pressure from their community to attend a religious institution.
- Some students may not know they identify as LGBTQ+ when applying to college.



A Disparate Impact on LGBTQ+ Students

MORE THAN 1 IN 10

students self-identify as a sexual minority

LESS LIKELY TO FEEL ACCEPTED

Sexual and gender minority students report feeling not being able to fully participate in college activities

ADVERSE EXPERIENCES

Non cisgender and openly LGBTQ+ students two times the amount of adverse experiences compared to their counterparts

MENTAL HEALTH IMPACTS

Nearly 7 in 10 gender or sexual minority students report depression, loneliness, and abusing substances



Policies or Practices Challenged Under the Religious Exemption

- Forced Conversion Therapy for LGBTQ+ students.
- Disregarding an LGBTQ+ student's claim of sexual assault.
- Denial of admission or graduation to LGBTQ+ students.
- Expulsion of LGBTQ+ students.
- Prohibiting LGBTQ+ dating or relationships on campus.



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PERTINENT CHALLENGES

Overall, complainants (especially LGBTQ+ students) are challenging their school's status under the "religious exemption."

Hunter vs. Department of Education

- In 2021, The Religious Exemption Accountability Project (REAP) filed a class action lawsuit comprising of 33 LGBTQ+ class members from religious colleges.
- The class alleges that the D.O.E. allows taxpayer-funded schools to discriminate and oppress LGBTQ+ students and wants to abolish the exemption.

D.O.E Investigated BYU

- BYU rejected openly gay students from academic scholarships and instituted a "LGBTQ+ dating ban" that prohibited "all forms of same-sex intimacy." This prohibited students from dating, kissing, or holding hands with members of the same sex.
- BYU defends its policies and states Title IX conflicts with the tenets of the Mormon Church.
- This January, the D.O.E. formally announced a full investigation into these policies.
- On February 10, the D.O.E. and O.C.R. officially dismissed the complaint stating the school was exempt from Title IX. BYU responded to the decision, stating the D.O.E. upheld its "freedom to operate a religious university without sacrificing religious beliefs".

O.C.R. Investigates Clarks Summit

- Last month, the Biden Administration announced that it would initiate a Title IX investigation into anti-LGBTQ+ policies at a Christian college in Pennsylvania.
- The investigation was promoted by a former student who alleged he was not allowed to graduate because he was openly gay.

O.C.R. Investigates Lincoln Christian University

- In January, the REAP was notified that the O.C.R. would start investigating potential Title IX violations at Lincoln Christian University.
- The plaintiff alleges that the school "directed" her to withdraw from school or be disciplined because she identifies as trans*. Similar to *Hunter*, the plaintiff claims the religious exemption permits schools to target and discriminate against LGBTQ+ students.
- The plaintiff also joined *Hunter* as a class member.

What You Can Do

As complainant litigation/challenges increase, it may be helpful to do the following:

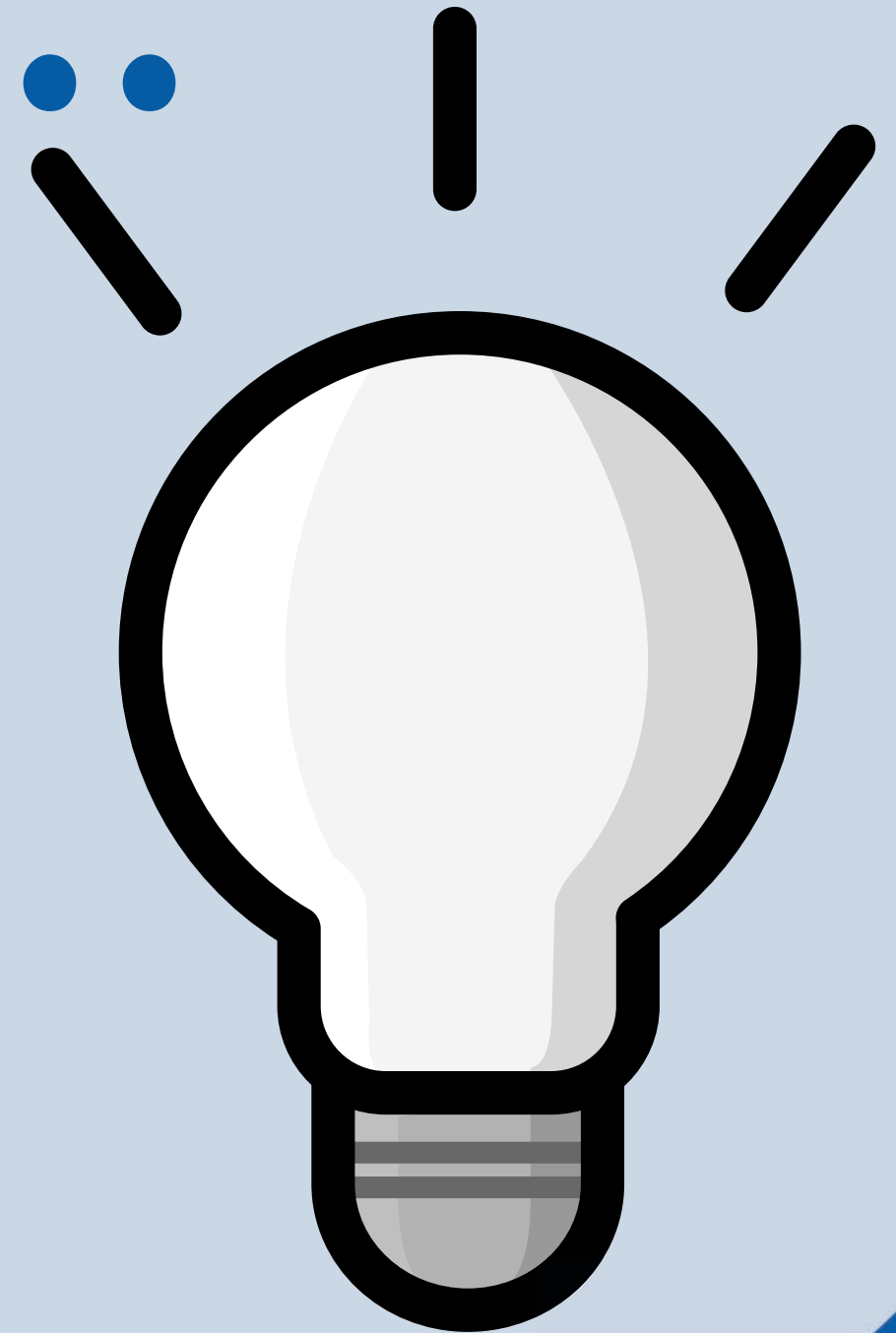
Clarify
Religious
Tenets

Keep Policies
Narrowly
Tailored

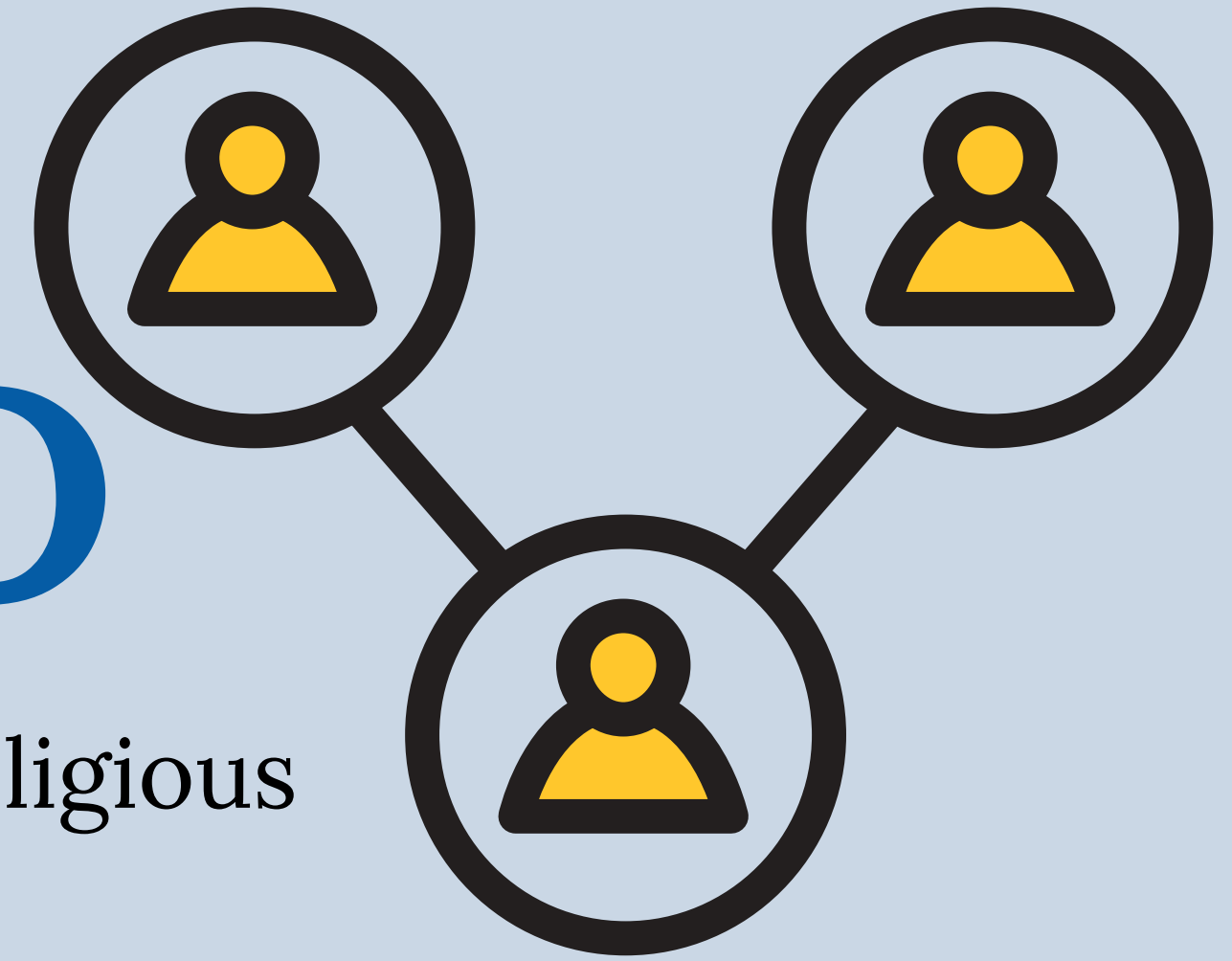
Maintain
Equitable
Grievance
Procedures

REMEMBER...

This is a complicated and sensitive area of Title IX. While there are ongoing developments regarding limits to Title IX's religious exemptions, clear and comprehensive procedures will ensure equitable resolutions.



STAY CONNECTED



For more information on Title IX and the Religious Exemption, check out these resources.

- ICS Blog - *Religious Exemption vs. Religious Freedom*
- Religious Exemption Accountability Project

Connect With Us!



- Institutional Compliance Solutions
- Courtney Bullard
- Betsy Smith
- Celeste Bradley



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QUESTIONS?

