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To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing (Religious Tenet Exemption)

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To the Office of Civil Rights of the United States Department of Education:

Brewton-Parker College is a regionally accredited, faith-based, four-year postsecondary institution that is wholly owned and operated by the Georgia Baptist Mission Board, a duly constituted religious organization. As such, it enjoys the "religious tenet exemption" from certain provisions of Title IX to the extent application of those provisions would not be consistent with the controlling body's sincerely held religious beliefs regarding marriage, sex outside of marriage, sexual orientation, gender identity, pregnancy, and abortion. These religious tenets of the controlling body are set forth in *The Baptist Faith and Message 2000*, adopted by the messengers constituting the Georgia Baptist Convention in 2000, which also is the published confessional statement of the college. The Office of Civil Rights within the Department of Education granted these exemptions to Brewton-Parker College on January 18, 2017.

Consonant with these religious tenets, Brewton-Parker believes that Executive Order 13988 (signed by President Joe Biden on January 20th, 2021, and published in the Federal Register on January 25th) exceeds the President's constitutional and statutory authority and instead usurps authority granted only to the legislative branch in Article I of the Constitution. Specifically, Section 1 of the executive order extends the Supreme Court's holding in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), a Title VII case involving workplace discrimination, to all laws that prohibit sex discrimination, including Title IX.

The *Bostock* holding – that sex discrimination includes discrimination based on sexual orientation and gender identity – offends the protections enjoyed by Brewton-Parker and schools like it under the religious tenet exemption of Title IX.

However, while usurping legislative authority granted by the Constitution, the executive order does qualify its extension of the *Bostock* reasoning to other laws by adding, "so long as the laws do not contain sufficient indications to the contrary." Brewton-Parker contends that the religious tenet exemption of Title IX is precisely such an "indication to the contrary" that should deter unvetted application of *Bostock*.

Further, we note that the subsequent Executive Order 14021 (signed by President Biden on March 8th, 2021, and published in the Federal Register on March 11th), concerns Title IX specifically and orders broad agency review, of

which this public hearing is a part. This more recent executive order, however, fails to address whether the "religious tenet exemption" of Title IX constitutes a "sufficient indication to the contrary" that effectively would disqualify it, without legislative review, from being swept up in the *Bostock* holding's extension by executive order.

In addition, religious tenet exemption or not, we concur with the view expressed in the Department's memorandum to the Office of Civil Rights on January 8th, 2021, that Title IX is significantly different from Title VII, and that the *Bostock* holding interpreting Title VII, without further process or evaluation, should not automatically have been extended to apply to Title IX.

The notice for this public hearing invites public comment on "steps the Department can take" in prospect of the agency review required by Executive Order 14021. Based on the foregoing observations, Brewton-Parker College urges the Department in the strongest terms possible to defer any agency enforcement or other action that might undermine the lawful exemption held by many faith-based institutions that receive federal funds until the Congress, in due course, can evaluate *Bostock*'s effect on Title IX by the constitutionally authorized (and purposefully deliberative) process of legislation.

Respectfully submitted,
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