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**Subject:** Written Comment: Title IX Public Hearing

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Dear Secretary Cardona and Ms. Goldberg:

These comments are regarding the Department of Education's Office of Civil Rights "Announcement of Public Hearing; Title IX of the Education Amendments of 1972." As a parent who has my children in a Christian school, and who works in a Christian school, I believe that Christian schools are uniquely equipped to serve those in need and must be allowed to maintain their religious identity and practice as they teach students. As such, the religious freedom guaranteed under the First Amendment to the U.S. Constitution is vital to our religious mission of providing a holistic education for our students. President Biden's executive orders on "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation" (EO 13988) and "Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity" (EO 14021) are a threat to the ability of religious institutions and families to practice faith without government interference.

The Constitution recognizes the fundamental nature of freedom of religion as the ability to live according to the dictates of one's conscience informed by reason and revelation from God. Our government has always protected this foundational right and has seen it as the guiding principle from which all other rights flow. If the Department of Education's proposal to eliminate "discrimination" on the basis of gender identity and sexual orientation is applied to all institutions without consideration for religious belief, the ability of schools to operate according to biblical beliefs will be violated. Schools that do not comply with the Department's standards for sex discrimination will be forced either to deny their religiously held beliefs or lose the ability to accept students in need of available government loans and grants. The Department's actions create a dichotomy that violates the Supreme Court rulings and the guarantees of the Constitution. [See *Trinity Lutheran v. Comer* (2017) and *Espinoza v. Montana Department of Revenue* (2019), in which the Court restates the fundamental principle that religious schools and students cannot be denied generally available funds simply because of religious status. The recent ruling in *A.H. v. French* also confirms this bedrock principle.]

The consequence of denying students and families their First Amendment rights may be a reduction in access for the neediest students. Christian schools and universities may be forced to close their doors as a result of the Administration's orders. Religious institutions that hold a traditional and religious view of human sexuality in contradiction to the Department of Education's definition of sex will be stripped of the freedom to practice biblical beliefs and teach the biblical truths about the creation of man, God's design for sexuality, and the purpose of marriage. Further, parents and students who voluntarily partner with Christian schools will lose their religious liberty to associate with fellow believers to accomplish a shared mission. Schools may also be required to hire staff and faculty who fundamentally oppose the schools' beliefs and

values. All that the Administration's efforts will achieve is to harm hundreds of thousands of Christian school students, parents, teachers, and administrators who take seriously God's commands to raise up children in biblical truth.

Beyond the serious religious liberty concerns these orders pose to Christian institutions, they also inflict widespread harm on children and families. For example, biological boys and men who identify as women have competed in some girls' sports, stripping women and girls from championship titles and scholarship opportunities which they had worked for years to attain. While Title IX gives women the equal opportunity to participate in sports, these executive orders would remove this protection by giving biological men access to competitions and teams designed for biological women. This unfair advantage gives men identifying as women a distinct physical advantage in competitions.

Another detrimental effect that would result from redefining sex in Title IX is found in the text of EO 13988. The EO states that "children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports." The result of this directive will be the opening of all private spaces and appropriately sex-segregated areas to members of the opposite sex, leaving thousands of students vulnerable and their physical safety at risk.

President Biden's January 20th executive order references the Court's finding in *Bostock vs. Clayton County* (2020) that the sex discrimination prohibition in Title VII of the Civil Rights Act also includes employment protection based upon an individual's sexual orientation or gender identity. The Administration's application of the Court's ruling to Title IX of the Education Amendments of 1972 is misguided because this action ignores the Court's careful construction of its decision to exclusively limit its reinterpretation of the word sex in Title VII to mean sexual orientation and gender identity discrimination only to employment law. In his majority opinion, Justice Gorsuch stated that "the Court does not claim that Title VII prohibits discrimination because of everything that is related to sex." Indeed, the justices refused to apply the redefinition of sex to any other area of federal law, writing, "The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination. And, under Title VII itself, they say sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today. But none of these other laws are before us. . . . Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind." According to the Court's own ruling, the expansion of sex discrimination was crafted to fit the context of employment law, not intended to be applied across the board to areas that affect the privacy, safety, and religious freedom of children and families.

Religious educational institutions and millions of American citizens recognize that there are two distinct sexes as created by God. God's design for human sexuality as represented by men and women joined together in monogamous marriage is evident throughout holy Scriptures. Genesis 1:27 states, "So God created man in his own image, in the image of God created he him; male and female created he them." The Bible also states in Genesis 19:4, "And he answered and said unto them, Have ye not read, that he which made them at the beginning made them male and female." Furthermore Mark 10:6 reads, "But from the beginning of the creation God made them male and female." These are central Christian beliefs core to our understanding of marriage, family, and a well-ordered life. Moreover, these beliefs have been shared by millions of people throughout the ages as the building blocks of a just and virtuous society. For these reasons, we urge the Department of Education to reject the idea that the Court's decision in *Bostock* has any application to Title IX or can in any way be applied in an educational context.

As a parent and as part of the Christian educational community, I can state that we believe that each individual is uniquely created in the image of God. Therefore, our schools strive to show Christ's love to all students by providing them an excellent education that teaches them how to reach their God-given potential, by living a productive and fulfilling life fully embracing their design and serving their communities and their calling in Christ. In order to continue the mission to advance Christian education with excellence, it is imperative that schools remain free to offer services and help their communities without government interference in the most basic understandings of belief.

Thank you for the opportunity to comment on this essential matter. In summary, I ask that the Department of Education uphold the religious freedom of schools and the conscience rights of all Americans.

Sincerely,  
Rachel Werner

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