

From: Tod Brainard
Sent: Wed, 9 Jun 2021 09:21:49 -0500
To: T9PublicHearing
Subject: Redefinition of "Sex" by the Department of Education
Attachments: Public Comments Title IX .docx

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Dear Friends,
Please read the attached letter and enter it into the T9 Public hearing record for future reference. I appreciate you receiving my comments.
Thank you!
Tod Brainard
President
Sunshine State Association of Christian Schools, Inc.
44063 Maplewood Court
Callahan, Florida 32011

June 8, 2021

Secretary of Education Miguel Cardona
Ms. Suzanne Goldberg
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Submitted to: T9PublicHearing@ed.gov

RE: Notice for Public Hearing; Title IX of the Education Amendments of 1972; Invitation for Written Comments

Federal Registry No: 2021-10629

Dear Secretary Cardona and Ms. Goldberg:

We are pleased to submit these public comments on behalf of the Sunshine State Association of Christian Schools regarding the Department of Education's Office of Civil Rights "Announcement of Public Hearing; Title IX of the Education Amendments of 1972."

Like other faith-based institutions that serve families, the mission of our schools leads us to provide families with high-quality educational services that include strong academics and Christian teachings that inculcate the values and tenets of our faith into our students' lives. As an organization that partners with local churches, educational institutions, and families, we 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.

With dependence on our natural rights and the protections of the First Amendment, we argue that 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. President George Washington said it best in his Farewell Address:

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. . . . Where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

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.

We believe that everyone is uniquely created in the image of God. Therefore, our schools in Florida 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. 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, we ask that the Department of Education uphold the religious freedom of schools and the conscience rights of all Americans.

Sincerely,

Tod Brainard
President
Sunshine State Association of Christian Schools, Inc.