News



University of Notre Dame football players are seen during the Fiesta Bowl in Glendale, Ariz., in this 2016 file photo. (OSV News/Mark J. Rebilas, Action Images via USA TODAY Sports and Reuters)

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A federal appeals court recently upheld a lower court's ruling in favor of granting a Title IX exemption for religious post-secondary institutions that receive federal funding.

A group of students who identify as LGBTQ+ had previously filed suit against the U.S. Department of Education, challenging a federal exemption for religious institutions to Title IX, the 1972 federal civil rights law requiring that women and girls have equal access and treatment in education and athletics.

The students argued that religious colleges and universities that receive federal funding discriminated against due to their sexual orientations and gender identities in their admissions or disciplinary processes.

The 9th U.S. Circuit Court of Appeals upheld the exemption Aug. 30, finding that it only applies to schools under the purview of a religious group, and only if the application of Title IX "would not be consistent with a specific tenet of the controlling religious organization."

"The exemption does not give a free pass to discriminate on the basis of sex to every institution; it contains limits that ensure that Title IX is not enforced only where it would create a direct conflict with a religious institution's exercise of religion," Judge Milan D. Smith Jr. wrote for the court.

The exemption, the appellate court affirmed, does not violate the Fifth Amendment's guarantee of equal protection under the law or the First Amendment's establishment clause, which prohibits the government from establishing a particular religion.

In the ruling, the court said the "discrimination LGBTQ+ individuals face (both on religious campuses and outside of them) is invidious and harmful," but "the First Amendment's Free Exercise Clause guarantees protection" of religious viewpoints. Smith's opinion cited Fulton v. City of Philadelphia, in which the Supreme Court ruled unanimously in favor of Catholic Social Services after it challenged the city of

Philadelphia, which stopped partnering with the agency in its foster-care program after CSS objected to certifying same-sex couples as foster parents on religious grounds.

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"Federal law explicitly protects the freedom of religious schools to live out their deeply held convictions, and we're pleased this legal victory protects Christian colleges' fundamental rights," Chris Schandevel, senior counsel for Alliance Defending Freedom, a religious liberty firm whose attorneys represented the three Christian post-secondary schools named in the suit — Corban University, William Jessup University, and Phoenix Seminary — said in a statement.

"A group of activists asked the court to strip that protection away from schools that educate the next generation and advance the common good," Schandevel said. "And the 9th Circuit correctly held that the religious-liberty exemption in Title IX, which applies to schools receiving federal financial assistance, is consistent with the Constitution."

In August, the Supreme Court declined to allow the Biden administration to enforce portions of a new regulation expanding Title IX protections from sex discrimination to include students who identify as transgender while legal challenges to the rule proceed. Department spokespersons argued the new regulation, originally scheduled to take effect Aug. 1, would ensure that at educational institutions that receive federal funding, no person experiences discrimination on the basis of sex — which it defined as sex stereotypes, sexual orientation, gender identity and sex characteristics — including sex-based harassment or sexual violence at such institutions.

But that regulation was challenged by several states, which argued in court documents that broadening the scope of the law could dilute its intended purpose of ensuring equality in women's athletics.

Catholic colleges and universities have relied on the Title IX religious exemption in order to carry out their educational mission in line with Catholic teaching. According to the Vatican's recent declaration, "Dignitas Infinita," the Catholic Church teaches that "human life in all its dimensions, both physical and spiritual, is a gift from God.

This gift is to be accepted with gratitude and placed at the service of the good."

The April declaration from the Dicastery for the Doctrine of the Faith states the church affirms "every person, regardless of sexual orientation, ought to be respected in his or her dignity and treated with consideration, while 'every sign of unjust discrimination' is to be carefully avoided." But citing Pope Francis' teaching, the declaration also condemns gender ideology, which it says "intends to deny the greatest possible difference that exists between living beings: sexual difference." It states, "Only by acknowledging and accepting this difference in reciprocity can each person fully discover themselves, their dignity, and their identity."