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## TITLE IX: TIMELINE OF SIGNIFICANT LEGAL DEVELOPMENTS

### UPDATE:

On April 19, 2024, the Biden administration usurped the United States Congress by expanding the plain meaning of “on the basis of sex” discrimination to implicate sexual orientation and gender identity. A final version of this rule will be published in the Federal Register on April 29, 2024; in the meantime, the unofficial rule may be viewed [here](#). As Citizens Defending Freedom continues to push back against the abuse of the separation of powers and federal law, we encourage you to consult the Title IX Toolkit available on our “[Resources](#)” page on the Citizens Defending Freedom website to stay up-to-date with what CDF is doing to restore the constitutional norms based on the separation of powers and principles of federalism enshrined in our constitutional republic.

June 2020—The Supreme Court issues its *Bostock v. Clayton County* ruling, holding that the termination of an employee exclusively on the basis of sexual orientation or gender identity constitutes a violation of Title VII of the Civil Rights Act of 1964, a federal law that prohibits sex-based discrimination in the workplace. Notably, the court declined to address whether or not their interpretation of Title VII to include sexual orientation and gender identity would similarly apply to Title IX of the Civil Rights Act, the law prohibiting sex-based discrimination in schools or any other educational institutions receiving federal funding (see *Bostock*, 140 S. Ct. at 1753).

August 2020 – Contrary to *Bostock*’s cautionary warning about applying Title VII to Title IX, the Fourth U.S. Circuit Court of Appeals in *Grimm v. Gloucester County School Board* cited the *Bostock* case to rule in favor of a transgender student on the basis that Title IX prohibits sex-based discrimination.

January 12, 2021 – In an employee discrimination case in which the plaintiff sued under the Age Discrimination in Employment Act, the Sixth Circuit in *Pelcha v. MW Bancorp* affirmed that the *Bostock* ruling was narrowly applied to Title VII only and therefore could not apply to the ADEA or any other federal act or statute.

January 20, 2021 – The Biden Administration releases Executive Order 13988, formally titled “Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,” stating that the *Bostock* ruling on Title VII similarly applies to Title IX, with “sex” presumed to cover “discrimination on the basis of gender identity and sexual orientation.” This action was in contradiction with the memorandum from the Department of Education issued under the Trump

Administration ([released also in January 2021](#)), thereby affirming key distinctions between Title VII and Title IX.

[March 2021](#) – The U.S. Department of Justice’s Civil Rights Division issues a policy memorandum titled “Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972” that reinstates the Biden Administration’s Executive Order advocating for the *Bostock* ruling on Title VII to guide the enforcement of Title IX.

[June 2021](#) – The U.S. Department of Education’s Office of Civil Rights releases its Notice of Interpretation (NOI) “to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive Federal financial assistance from the Department.” In direct conflict with the court’s ruling in *Bostock*, the NOI argued that the Court’s ruling on Title VII regarding discrimination “on the basis of sex” would also work to broaden the definition of sex-based discrimination under Title IX.

[August 2021](#) – The State of Tennessee, joined by 20 other states<sup>1</sup>, sue the U.S. Department of Education in response to the Biden Administration’s Executive Order 13988 and the Department’s NOI, arguing that both call for implementing “federal antidiscrimination law far beyond what the statutory text, regulatory requirements, judicial precedent, and the Constitution permit.” Also alleged in the complaint was a violation of the Department of Education’s compliance with the Administrative Procedure Act mandating agencies to engage in “notice and comment” for legislative rules (5 U.S.C. § 553(b)) and ordering courts to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law.” (5 U.S.C. § 706(2)(A)-(D).)

[May 2022](#) – The USDA’s Food and Nutrition Service issues a policy memorandum titled “Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update” that announced discrimination on the basis of sex in Title IX and the Food and Nutrition Act would also include discrimination on the bases of sexual orientation and gender identity. This, in turn, jeopardizes Title IX and SNAP school lunch funding.

[June 2022](#) – The Supreme Court in this case, *West Virginia v. EPA*, 597 U.S. 697 (2022), held that a federal agency may not implement sweeping expansions of regulatory authority and thus may not depend upon novel interpretations of long-extant statutes without clear congressional authorization. In this case, the court held that “[i]t is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”

[July 2022](#) – In response to the Department of Education releasing an unofficial [Notice of Proposed Rulemaking](#) that would revise current Title IX regulations, the Department opened up a public comment period for 60 days as consistent with federal law (the [Administrative Procedure Act](#)) requiring

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<sup>1</sup>Other states include Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, and West Virginia.

the department to solicit and consider public feedback before the proposed rules were finalized. The Department received nearly 240,000 comments submitted from parents, lawmakers, activists, organizations and concerned citizens about the new regulation.

June 2022 – The State of Tennessee, joined by 21 other states, sue the USDA for updating the Food and Nutrition Services complaint-processing policy related to claims of discrimination based on gender identity or sexual orientation. The plaintiffs allege that the policy was 1) issued without providing the State and other stakeholders the opportunity for input as required by the Administrative Procedure Act (APA); 2) premised on a misreading and misapplication of the Supreme Court’s holding in *Bostock v. Clayton County*; and 3) imposed new and unlawful regulatory measures on state agencies and operators receiving federal financial assistance from the USDA, which will inevitably result in regulatory chaos that threatens essential nutritional services to some of the most vulnerable citizens.

July 2022 – In the *State of Tennessee et al. v. US Department of Education*, a federal district court issued a preliminary injunction barring the execution of the Biden Administration’s NOI and Executive Order from taking effect in 20 states<sup>2</sup>.

November 2022 – In *Neese v. Becerra*, a federal district court held that the word “sex” does not include “sexual orientation” and “gender identity” regarding Title IX, stating that the observation of biological distinctions between men and women can be required to ensure equal opportunity with regards to women in sports and protecting against the competitive advantage of biological males against women. Note, however, that as of January 2023, this case is currently on appeal.

December 2022– In a 7-4 decision, the 11th Circuit Court of Appeals finds in *Adams v. St. Johns County School Board* that a local school board’s bathroom policy did not violate Title IX because Title IX conforms to an understanding of “sex” as determined on the basis of biology and reproductive function. The Court also noted the longstanding tradition of separating sexes when it comes to the use of public bathrooms for purposes of ensuring the privacy and protection of students.

April 2023-Citizens Defending Freedom launches the Title IX toolkit to equip and empower parents and concerned citizens alike on the improper application of the *Bostock* case to justify the unlawful expansion of federal law. Consisting of a factsheet, timeline, and script, the toolkit acknowledges that altering the definition of “sex” under Title IX to include gender identity and sexual orientation is a decision solely reserved to Congress, though notably, every attempt to modify the statute via Congress has failed.

April 2023-May 2023: The Public Comments period on the secondary proposed Title IX rule focused on athletics titled, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams” opened on the *Federal Register*. Driving a campaign aimed at increasing public participation via public comment that contributed to the submission of nearly 150,000 public comments, Citizens Defending Freedom also provided its own organizational comment, available in full [here](#), expressing its opposition to the unconstitutional Title IX changes.

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<sup>2</sup>*Ibid.*

July 2023: Using Citizens Defending Freedom's Title IX Toolkit and county resources for guidance, Texas's Keller Independent School District (ISD) announced that, despite mounting pressure from progressive organizations including the American Civil Liberties Union (ACLU), they would not change their transgender bathroom and pronoun policies that required the use of both to be consistent with biological sex.

February 2024: Following months of review upon receiving roughly 240,000 comments in response to the first Title IX rule titled, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," the rule became under official review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA), a division of the Executive Branch pursuant to [Executive Order \(EO\) 12866](#).

March 2024: Under EO 12866, the OMB offers "[12866 meetings](#)" to members of the public while regulatory proposals are under review by the OIRA germane to the regulatory review process, including raising awareness to the detrimental or unconstitutional impacts of proposed regulations. On March 28, while the proposed Title IX rule was under review, Citizens Defending Freedom participated in such a meeting and submitted the following document outlining its objections to the proposed rule.

March 2024: One day after Citizens Defending Freedom meets with the OIRA, it was reported that the Biden Administration will table its review of the secondary Title IX rule focused on transgender participation in athletics until after the upcoming presidential election given the significant unpopularity of the issue.

April 2024: The proposed changes to Title IX rule titled, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance" is filed on April 19, 2024, with the rule to be officially published on April 29, 2024. The unofficial version can be viewed [here](#). The law is scheduled to go into effect on August 1, 2024. On the same day the final version of the rule was released, the Department of Education issued a document titled, "Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures under 2024 Amendments to the U.S. Department of Education's Title IX Regulations," outlining the compliance expectations with the new unlawful rule.