



TITLE IX: SCHOOL BOARD SCRIPT

Good morning/afternoon:

I am [name of parent], and I am a concerned parent of a child in [name of school district]. Recently, it has come to my attention that a number of organizations have contacted the [name of school district] to pressure school administrators to broaden the language of Title IX to include sexual orientation and gender identity, something which undermines federal law and the legislative authority of the United States Congress.

While some progressive organizations have followed the misleading guidance of the Department of Education's 2021 "Notice of Interpretation" following President Biden's Executive Order on the Supreme Court ruling in *Bostock v. Clayton County*, both have been significantly misinterpreted, as it was made clear by the Court that the latter was a Title VII issue that did not apply to Title IX or any other law. The Supreme Court in *Bostock* emphasized that sex-based employment discrimination consistent with Title VII was unconstitutional, but explicitly refrained from applying their ruling to Title IX. As such, this renders the Department of Education's NOI and the Executive Order null because it expressly contradicts Supreme Court precedent.

If this wasn't enough, there have been a handful of cases further demonstrating the inapplicability of the *Bostock* ruling to Title IX issues. This includes a recent ruling out of a federal district court issuing a preliminary injunction barring the execution of the Biden Administration's NOI and Executive Order from taking effect in 20 states including [one of the 20 states, see Footnote 1]¹. Separately, a federal district court in Texas affirmed that "sexual orientation" and "gender identity" are not protected categories because Title IX must be read in the original context in which it was drafted in 1972 in which "sex" under Title IX was understood to be biological and binary. A federal appellate court covering Florida, Georgia, and Alabama jurisdictions also found this to be true, ruling that a local school board's bathroom policy did not violate Title IX because Title IX conforms to an understanding of "sex" consistent with the societal understanding of sex at the time of its drafting.

Beyond this, applying any directive that neither conforms to these recent rulings nor takes into consideration the necessity of receiving congressional approval before making a change to federal law is itself an unconstitutional act. In the *Bostock* case, the Supreme Court stated that the "people's representatives" are the ones who must amend Title IX, thereby making it unlawful for unelected officials, including school board members, to assume changes to Title IX in the absence of approval to amend Title IX, a power reserved exclusively by Congress.

I would ask you to consider this information before acting on the coercive tactics by organizations intentionally misapplying Title IX to push a political agenda that would eradicate Title IX's sex-specific protections that require Title IX to be faithfully understood as it was at the time it was drafted. A serious consequence of this misapplication includes the erosion of student privacy stemming from the rights of students to use sex-separated facilities and to participate in sex-separated, sporting activities. To prevent this from happening, I urge you to take my statements into account as you deliberate further action on this issue. Thank you.

¹Other 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.