

U.S.

HOW CHRISTIAN UNIVERSITIES ARE BECOMING A BATTLEGROUND FOR LGBT RIGHTS

B MORGAN OMNI T2C/HB/E 16 AT 12:00 PM



Demonstrators gather at Monument Circle to protest a controversial religious freedom bill promoting discrimination against individuals based on sexual orientation that was recently signed by Governor Mike Pence during a rally in Indianapolis March 28, 2015. Protests like this could hit Christian campuses once the Title IX exemptions have been publicized.

NATE CHUTTE / REUTERS

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Updated | Christian Ortega got an unpleasant surprise when he reapplied to California's Biola University after deciding to take a semester off. Ortega was highly invested in his education and life at the private, evangelical Christian school

when he attended in 2010—holding a position as a student ambassador, running a blog for the school, and working with the admissions department to call prospective students who wanted to know more about the university. He'd had the job for two years, and became friends with his colleagues.

In 2014, he took a position at another place where he had a part-time job and left Biola for a semester. During this break, he came out as gay on social media. Normally when returning to Biola after time off, students submit a simple reapply form electronically. But Ortega tells *Newsweek* that in his case, he was interviewed by an admissions counselor who had seen his coming-out post. Ortega was shocked when she asked him how his being gay and that lifestyle would fit into Biola. He had not put on any application form that he was gay, and he wasn't openly gay on campus.

In the interview, Ortega told the college's administrator that he is gay, and that Biola wouldn't make him more gay or less gay—but he was still a Christian and wanted to attend the university. But because of his sexuality, Ortega he was forced to go through an admissions panel to see if he was “spiritually fit” to come back to Biola.

“Christians are like snowflakes,” Ortega told the admissions counselor. “No two Christians are going to have the exact same theology, and not every student at Biola is going to have traditional views on sexuality and marriage.”

It took the entire summer, but after a call from his mother the school finally readmitted Ortega on the terms that he would go to spiritual counseling. “I felt like I got readmitted out of pity,” said Ortega. “I only got readmitted because of my mom.”

Before Ortega left for the semester and came out on social media, he got a death threat saying that someone wanted to kill him because he was a “faggot.” After the death threat and admissions almost not letting him return, Ortega said it wasn't the same. “I was depressed,” he said. “I didn't have the same relationship as I had before with these admissions counselors, and I didn't feel welcome.”

He left after one semester. When more stories like his across the nation began been stacking up, the Department of Education decided to do something about it.



Christian Ortega, right, laughs with a friend.

P H O T O P R O V I D E D B Y C H R I S T I A N O R T E G A

For LGBT students, discrimination on campus can be a frequent, even daily obstacle. According to a 2010 [study](#), lesbian, gay, and bisexual college students are nearly twice as likely to experience harassment as their non-LGBT peers, and are seven times more likely to indicate the harassment was based on their sexual orientation. In the 2011 [National Transgender Discrimination Survey](#), one-fifth of transgender students reported that they were denied gender-appropriate housing, and 5 percent reported outright denial of campus housing. [Higher rates](#) of sexual assault and misconduct is inflicted on LGBT students on America's campuses; transgender and gender nonconforming students report one of the highest rates of sexual assault and misconduct.

In April 2014, new guidance describing the responsibilities of colleges, universities and public schools to address sexual violence and other forms of sex discrimination under Title IX was released by the Department of Education. Meant to be followed by all federally funded schools, this guidance includes transgender and homosexual students and employees. But in response to this new interpretation of Title IX, many Christian universities have filed for exemptions to those portions of the law, because it conflicts with their religious freedom. Organizations and students are outraged at these exemptions and fight back.

Title IX has been subject to controversy ever since it was passed in 1972. According to titleix.info, the law—originally intended to help female athletes get equal treatment in college athletics—has been the subject of over 20 proposed amendments, reviews, Supreme Court cases and other political actions.

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,” Title IX states. Since its passage, the law has led to an overall decrease in the dropout rate of girls from high school, and an increase the number of women who pursue higher education and receive college degrees.

Title IX’s interpretation has been expanded to include protection from sexual harassment and, recently, protection of transgender, lesbian and gay students and employees. This new interpretation was announced in 2014, and many federal funded Christian universities have since claimed that their religious freedom was being threatened. Biola University, for one, published an article in January 2015 asking what was at stake for Christian universities.

This new interpretation would allow transgender students and faculty to use the restrooms, dormitories, locker rooms and pronouns of the gender they identify with. It would also allow them to dress and express themselves as the gender they identify with or keep their transition/transgender status private.

Almost immediately following the new interpretation, Christian colleges from all over the country, such as Liberty University in Virginia and Southwest Baptist University in Missouri, started requesting exemptions from this interpretation of Title IX. These exemptions would allow schools to be free from liability and legal obligation to follow certain portions of Title IX and its accompanying regulations that are inconsistent with the tenets of its religion. Thirteen schools filed for an exemption in 2014, and 43 schools filed for an exemption in 2015. Twenty-six states had at least one Christian college requesting an exemption, with California and Texas topping the list.

Of these schools, 23 received an exemption from the law as it pertains to protecting students on the basis of sexual orientation, and 33 schools received an exemption from the law as it pertains to protecting students on the basis of gender identity.

“Schools that are seeking these exemptions acknowledge that gender dysphoria is real,” Greg Baylor, senior legal counsel for Alliance Defending Freedom, which advises and represent schools who feel their religious freedom is being jeopardized, tells *Newsweek*. “But they believe it is a psychological disorder that requires a psychological response, and behaviors embracing it are inconsistent with the Bible.”

Baylor said there’s a struggle among Christian universities in dealing with transgender students. For these schools, he says, letting transgender women into the women’s restroom and transgender men into the men’s restroom is inconsistent with the Bible’s stance on modesty and privacy.

Not every religious tradition responds the same way to transgender and homosexual people, so the reason for requesting the exemption varies from school to school. According to the Human Rights Campaign’s (HRC) Hidden Discrimination Report, some universities, like Tennessee’s Union University, seek the exemption so they can ask students and employees about their sexual orientation before they are admitted or hired. The report states that others, like Bethel College, ask for the exemption so they do not have to let transgender students and employees use the facilities relating to the gender they identify with. And others, like Covenant College in Georgia, ask for the exemption so they can dismiss homosexual and transgender students from their school, according to HRC.

Jerry Mackey, the legal counsel for Biola University—which requested an exemption in 1985 and again in 2014—says that being transgender and engaging in same-sex behavior while enrolled as a student go against the school’s community standards. If students are engaging in behavior that is incongruent with these standards and are not taking into account their commitment to them, he says, then Student Development will begin a conversation with the student about his or her long-term fit at the university.

Some, like Baylor, believe that the new interpretation of Title IX should not have been allowed.

“The Department of Education dramatically exceeded their authority,” he said. “The inclusion of transgender people is against the constitution.” Baylor is referring to the first amendment that addresses freedom of religion.

The Department of Education (DOE) announced its new interpretation without referring to Congress—which according to Brett Sokolow, executive director of ATIXA (the Association of Title IX Administrators), wasn’t acting outside of its authority.

“The Department of Education is authorized to issue guidance to implement the regulations on Title IX without an act of Congress and without violating the Constitution or being subject to new rounds of public rulemaking,” Sokolow said. “These aren’t new rules, they’re clarifications of rules that have been on the books since 1972.”

But Baylor believes that soon the Department of Education’s legislative authority will be litigated in court—and Sokolow agrees with him.

“I do expect someone will litigate this at some point, and that the court will find that the Office for Civil Rights acted within its regulatory authority,” he said.

It took a while for the filing of these exemptions to be noticed, since they weren’t public requests. But when word started to get out towards the end of 2015, students and organizations became outraged—both with the exemptions and the secrecy surrounding the requests. The HRC drafted a 112 page Hidden Discrimination Report revealing all the schools that have filed for exemptions, as well as stories from LGBT students who experienced discrimination at these colleges.

According to the report, at Southwestern Christian University, Christian Minard was one semester shy of graduation when she was expelled after school officials learned that she had married her same-sex partner. The university required students to sign a “lifestyle covenant” prohibiting, among other things, “Lesbian, Gay, Bi-sexual and Transgender (LGBT) behavior or acts.”

The school argued that students are expelled for violating a variety of infractions that are prohibited in the lifestyle covenant, including cursing, drinking, and smoking. But according to Minard, “Students violate parts of [the lifestyle] covenant all the time, but they don’t get expelled. I didn’t even get a hearing.” The report details five other stories similar to Minard’s.

“Religious universities and colleges can and should work out the full expressions of their faiths without creating oppressive campus climates for LGBT students,” former LGBT Biola student Jason Brown, who aided the HRC in drafting the report, tells *Newsweek*. “The reality is that many students attending Christian colleges are not yet open with their families about being LGBT. Being at religious colleges may also be important to them, because the schools reflect their own faith backgrounds, but coming out comes with repercussions at home and at college because of the Title IX exemptions.”

HRC President Chad Griffin agrees. “We have been alarmed by the growing trend of schools quietly seeking the right to discriminate against LGBT students, and not disclosing that information publicly,” he said in a January 20 press release. “We believe that religious liberty is a bedrock principle of our nation, however, faith should never be used as a guise for discrimination.”

But Baylor disagrees that schools seeking exemptions want to discriminate against LGBT students. “Say, General Motors said they don’t want Islamic people to work on their assembly line, and a Jewish synagogue said they want their rabbi to be Jewish. General Motors would be discriminating because being Islamic is an irrelevant characteristic to the situation. But the Jewish synagogue wouldn’t be discriminating, because being Jewish is a relevant characteristic to the situation.”

While what they see as discrimination is a major concern for organizations such as HRC and the National Women’s Law Center, the group’s biggest issue is the secrecy surrounding these exemption requests.

“I’ve had concerns with students not knowing that their schools have even filed such exemptions—that’s a real concern,”

said Fatima Goss Graves, Title IX expert and senior vice president for program at National Women's Law Center. "We are concerned that students may be caught up in this. They may be attending schools that have fought for and even been granted exemptions and they may not even know that. That idea is obviously a big problem."

HRC ordered multiple freedom of information act requests with the Department of Education to keep track of what was going on with the exemptions and which colleges were requesting them.

"We've been advocating with the Department of Education for them to issue a regulation that requires schools to publicize both the number of exemptions that they're requesting, the scope of those exemptions and to explain to students what rights they still have under Title IX even after the exemptions been granted," said Sarah Warbelow, HRC's legal director. "Because it's important that students have knowledge before they make academic decisions for themselves."

Another problem with these exemptions is that schools can discriminate while still receiving federal funding, HRC says.

"We don't think that LGBT students should experience discrimination when they attend schools that are in part funded through taxpayer dollars," said Warbelow.

Grace University, Wheaton College, Belmont University, California Baptist University, Pepperdine University and George Fox University are just a few colleges who receive federal funding and have been accused of discriminating.

Belmont University, which gained national attention and saw campus protest after the 2010 exit of women's soccer coach Lisa Howe, who had recently come out to the team as a lesbian, reached out to *Newsweek* regarding its inclusion in this article.

"Belmont adamantly refutes the *Newsweek* allegation of discrimination," Vice President for Administration and University Counsel Jason B. Rogers said in a statement. "This story references a 2010 personnel issue. Then and now, we stand by the statement that Belmont does not discriminate on the basis of sexual orientation, as seen in our practices and as clearly stated in our policies. Belmont University has been and remains a loving Christian community with a welcoming and inclusive atmosphere on campus."

Shane Windmeyer, executive director of campus pride, an organization that works with students and schools to create more LGBT-inclusive campuses, said in a recent article by *the colu.mn* that "taxpayers should definitely not have to pay for a private college to openly discriminate against anyone."

About \$130 million in annual taxpayer funds go to these schools through grants and student aid. Paul Southwick, an attorney at Davis Wright Tremaine LLP who represents LGBTQ students who have been discriminated against by religiously affiliated educational institutions, also told *the colu.nm*, "If a college receives public funding, it should have to follow public laws," he said. "The government would be perfectly within its rights to make taxpayer funded aid to these colleges contingent on compliance with generally applicable nondiscrimination laws."

"If a college wished to continue discriminating against LGBTQ students and employees, it could do so on its own dime," he added.

Warbelow said HRC doesn't want these schools to lose federal funding, they just want them to feel the pressure from students and the government that their behavior is unacceptable, and they shouldn't be taking federal money if they want to run a 100 percent religious school and as long as they are receiving federal funds, they should feel a pressure to not discriminate.

That is the end goal for HRC, but Sokolow says he believes that 15 years from now, most conservative religious institutions will obtain exemptions and the more moderate religious colleges will not. To compete for applicants and to meet the demands of a much more tolerant generation of students, most of the moderate religious campuses have opened their doors to LGBT students, and will continue to do so. He does not see the loss of federal funding at risk.

"As a country, we are becoming more and more open and tolerant, generally, with each generation. This will continue to

be true because it has always been true,” said Sokolow. “The moral arc of the universe is long, but it bends toward justice, as Dr. King said.”

This story has been updated to include a statement from Belmont University.

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Correction: This article originally incorrectly stated that being gay goes against Biola University's community standards. Engaging in same-sex behavior while enrolled as a student goes against Biola University's community standards.

Correction: This article originally incorrectly quoted Shane Windmeyer as saying if a college receives public funding, it should have to follow public laws and if a college wished to continue discriminating against LGBTQ students and employees, it could do so on its own dime. It was Paul Southwick who made those claims.

Correction: This article originally stated that Bethel University asks for a Title IX exemption regarding transgender students and employees. This has been corrected to Bethel College — an entirely separate institution.

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