



HARDING

OFFICE OF THE PRESIDENT

Bruce D. McLarty, D.Min.

May 31, 2016

Ms. Catherine E. Lhamon
Assistant Secretary for Civil Rights
Office of Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100

Re: Claim of exemption from certain aspects of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, on the basis of religious tenets

Dear Assistant Secretary Lhamon:

Harding University (Harding) respectfully claims an exemption from certain aspects of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (Title IX), based on the sincerely held religious beliefs of its Board of Trustees and its founding fellowship, the Churches of Christ. Recent declarations of Title IX enforcement intentions by the Department of Education's Office of Civil Rights, if applied to Harding, will violate the religious tenets of Harding and its controlling religious body, the Churches of Christ. Specifically, Harding claims an exemption, on religious grounds, from Title IX and its implementing regulations, as such apply to students, prospective students, employees, or prospective employees and issues involving gender identity and sexual orientation.

Title IX "shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization," 20 U.S.C. § 1681(a)(3), or, as the regulations put it, "to the extent application of this part would not be consistent with the religious tenets of such organization." 34 CFR § 106.12(a). Though Title IX itself doesn't require an

educational institution to submit a formal writing claiming an exemption, the regulations do. 34 CFR § 106.12(b).

Harding was founded in 1924 by members of the Churches of Christ. Its mission is to provide a quality education that will lead to an understanding and philosophy of life consistent with Christian ideals. Harding is founded and operated upon a hierarchy of governing documents that detail its formation, operation, and maintenance and ensure its faithfulness to its founding religious educational purpose and founding religious body, the Churches of Christ. These documents include, among others, the (1) Articles of Agreement and Incorporation (the Articles), (2) Board of Trustees Policy Manual, and (3) Faculty and Staff Handbooks. Together, these documents provide the framework through which Harding exists, operates, and is governed.

1. Harding is controlled by members of the Churches of Christ.

1.1. All members of Harding's governing board are and must be members in good standing of a Church of Christ.

The Articles establish Harding's purpose as providing a Christian education:

The purpose of this corporation is to establish, maintain and operate institutions of learning in which boys and girls, men and women, may obtain an education of standard quality in a conservative Christian environment. (Article IV in part)

In view of that purpose, the Articles limit membership on the Board of Trustees *solely* to members of the Churches of Christ:

The said university and institution of learning shall be under the management, direction and control of a Board of Trustees (the Board) to be composed of not less than seven (7) nor more than thirty (30) persons, each of whom *shall be* of legal adult age and *a member of*

the church of Christ in good standing. (Article V, § 1)
(emphasis added).

Consistent with the Articles, the Board of Trustees Policy Manual specifically identifies membership in a Church of Christ and an excellent reputation within a local congregation of the Church of Christ as requirements for Board members. The Policy Manual also requires that all prospective Board members identify the name of the local Church of Christ of which he or she is a member and church leadership positions held. These directives ensure that Harding is and will continue to be controlled by members of the Churches of Christ.

1.2. With a narrow exception, all full-time faculty must be members of the Churches of Christ.

- A. The Articles of Agreement and Incorporation, with a narrow exception, reiterate that each full-time faculty member must be a member in good standing of the Churches of Christ:

It is realized that many universities have not long adhered to their original purposes. Therefore to assure the realization and the permanence of the stated purpose of Harding University it is required that each member of the Board and each member of the faculty and administration of the University shall profess an abiding faith in the Christ as the son of God, in His virgin birth, in the genuineness of the miracles as reported in the Bible, in His death and resurrection for the redemption and justification of men, and finally in the Bible as the divinely inspired word of God, delivered to us by the prophets and the apostles as a complete and unerring guide in all spiritual matters and all avenues of worship. *It is further required that each shall be a member in good standing of a church of Christ that supports these principles.* In event of emergencies, temporary exceptions for faculty members only may be made by action of the Board upon recommendation of the

President. (Article IV, relevant excerpt) (emphasis added).

- B. The Faculty Handbook, with the narrow exception in the Articles of Agreement and Incorporation, requires Church of Christ membership of all faculty members.

The Articles of Incorporation require that each member of the faculty “shall profess an abiding faith in the Christ as the son of God, in His virgin birth, in the genuineness of the miracles as reported in the Bible, in His death and resurrection for the redemption and justification of men, and finally in the Bible as the divinely inspired Word of God, delivered to us by the prophets and the apostles as a complete and unerring guide in all spiritual matters and all avenues of worship.” Each member of the faculty “shall be a member in good standing of a church of Christ that supports these principles.” The Board of Trustees may grant exceptions in accordance with the charter. (Faculty Handbook § III.1).

- C. Before a new faculty member is hired, he or she must present three spiritual references, including one from a minister or elder at the Church of Christ where he or she is a member. All three references must discuss the faculty member’s involvement and attendance at a Church of Christ.
- D. Each faculty member must affirm as part of an annual evaluation that he or she is a member in good standing of a Church of Christ and attends services weekly.
- E. The requirement that faculty be members in good standing of a Church of Christ is part of a contract that they sign annually.
- F. Harding’s nondiscrimination statement reserves the right to discriminate based on religion:

Harding University does not unlawfully discriminate in employment practices on the basis of race, color, national or ethnic origin, religion, age, sex, disability, handicap, or prior military service. Unlawful discrimination is prohibited by Title VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act as amended, and other applicable laws and regulations. *Specific exemptions regarding religious discrimination exist for a religious institution such as Harding University.* (Emphasis added.)

1.3. The Churches of Christ are congregational rather than hierarchical.

“The largest of the three principal bodies of the American restoration movement, Churches of Christ are located throughout the nation but concentrated in the South and Southwest. Because this is not a denomination but a brotherhood with no central headquarters, activities such as record keeping are very difficult. Recent efforts show the membership to be about 1,250,000 in nearly 13,000 churches.

“A distinctive plea for unity—a unity that is bible-based—lies at the heart of the Churches of Christ. It is believed that the Bible is ‘the beginning place,’ in and through which God-fearing people can achieve spiritual oneness—to ‘speak where the Bible speaks and to be silent where the Bible is silent’ in all matters pertaining to faith and morals. Consequently, members recognize no other written creed or confession of faith. In all religious matters, there must be a ‘thus saith the Lord.’

...

“The leaders among the Churches of Christ in the nineteenth century were more conservative than their counterparts among the Disciples of Christ. Stressing strict adherence to the New Testament pattern of worship and church organizations, they refused to join any intercongregational organization such as a missionary society. Worship was simple, they

opposed the addition of instrumental music on the grounds that the New Testament did not authorize it, and the early church did not use it.

...

“Today, one of the outstanding features of the Churches of Christ lies in the acceptance of the Bible as a true completely adequate revelation. The basic concept has resulted in such practices as weekly observance of the Lord’s Supper, baptism by immersion, a capella singing, a vigorous prayer life, support of church needs through voluntary giving, and a program of preaching and teaching the Bible. This concept also explains the autonomy of local churches governed by elders and deacons appointed under New Testament qualifications; dignified worship services; enthusiastic mission campaigns; and far-flung benevolence, all financed by local churches.

“The scriptural doctrines usually classified as conservative are found in Churches of Christ: belief in the Father, the Son, and the Holy Spirit as members of the Godhead; the incarnation, Virgin birth, and bodily resurrection of Christ; the universality of sin after the age of accountability, its only remedy the vicarious atonement of the Lord Jesus Christ. A figurative rather than a literal view is prevalent with reference to the book of Revelation. Membership is contingent upon an individual’s faith in Jesus Christ as the only begotten Son of God, repentance, confession of faith, and baptism by immersion for the remission of sins. Church attendance is stressed.

...

“Properties owned by the group probably exceed \$2.5 billion in value. There are 21 colleges, including one in Japan and several in Europe; 70 secondary and elementary schools; 83 child-care facilities, 46 senior citizen facilities; and 117 periodicals, newspapers, and magazines published throughout the country.” (Handbook of Denominations in the United States; Mead, Frank Spencer, 1989-1982. Abingdon Press, 1995, Pgs. 91–93. ISBN: 0687014786)

2. Churches of Christ believe that all sexual relations outside of heterosexual marriage are sin.

Because Churches of Christ seek to base what they believe and practice about marriage and sexual relations on the Old and New Testament

Scriptures, Churches of Christ point to such passages of Holy Scripture as those listed below as providing the position they should hold:

- A. Hebrews 13:4 – “Marriage should be honored by all, and the marriage bed kept pure, for God will judge the adulterer and all the sexually immoral.”
- B. Leviticus 18:22 – “Do not have sexual relations with a man as one does with a woman; that is detestable.”
- C. 1 Corinthians 6:9-10 – “Or do you not know that wrongdoers will not inherit the kingdom of God? Do not be deceived: Neither the sexually immoral nor idolaters nor adulterers nor men who have sex with other men nor thieves nor the greedy nor drunkards nor slanderers nor swindlers will inherit the kingdom of God.”
- D. Romans 1:24-28 – “Therefore God gave them over in the sinful desires of their hearts to sexual impurity for the degrading of their bodies with one another. They exchanged the truth about God for a lie, and worshiped and served created things rather than the Creator—who is forever praised. Amen. Because of this, God gave them over to shameful lusts. Even their women exchanged natural sexual relations for unnatural ones. In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed shameful acts with other men, and received in themselves the due penalty for their error. Furthermore, just as they did not think it worthwhile to retain the knowledge of God, so God gave them over to a depraved mind, so that they do what ought not to be done.”

From such passages, those in the Churches of Christ believe it is not God’s intention for people to engage in homosexual behavior. For Harding to be true to its founding documents and the sincerely held religious belief of its controlling church constituency, it must continue with the view that homosexual practice is sinful, a view which has characterized Harding from its beginning.

3. Churches of Christ believe gender identity is given by God and is revealed in one's birth sex.

This view comes from Holy Scripture and is based upon Scriptures like, but not limited to, Genesis 1:27: "So God created mankind in his own image, in the image of God he created them; male and female he created them." The original account of the creation of human beings shows God's original intention of creating two and only two distinct sexes.

Based on this and other passages, Churches of Christ would oppose a person's attempt to modify his or her birth sex or present as a sex other than his or her original birth sex, and would consider one who does so to be engaged in sinful behavior.

4. The beliefs of the Churches of Christ in these areas are further demonstrated by Harding's previously claimed exemption regarding these matters, which the Department of Education has recognized.

This letter is supplemental to Harding's exemption letter of July 21, 1976, in which Clifton L. Ganus, Jr., Harding's president at that time, wrote:

The revealed will of God indicates only two sexes—male and female. Furthermore, the only sexual relationship approved by the Scriptures is that found to be between a male and female in wedlock. Therefore, all sexual relationships other than that one cannot be condoned. In substance, Harding College must always reserve the right to take action against persons involved in heterosexual relationships outside the holy union of wedlock and in homosexual relationships.

....

Because our religious tenets strongly oppose extra-marital sexual and homosexual relationships, Harding must reserve the right to exclude students, faculty members, or staff

members, male or female, who violate the Scriptures concerning such relationship.

In response to Harding's claimed exemptions from Title IX based on same-sex relationships and gender identity, the Department's predecessor, the Department of Health, Education, and Welfare, responded, "Title IX does not preclude institutions from imposing standards of morality so long as those standards apply equally to members of both sexes. Rules, regulations, and practices which do not differ on the basis of sex and are applied in a manner which results in equitable treatment of both sexes are in compliance with Title IX. We should, perhaps, note in this connection that Title IX does not address the question of homosexuality—it prohibits discrimination based on sex, not actions based upon sexual preference."

Therefore, in one sense, this exemption is repetitive. But considering the Department's recent declarations of Title IX enforcement intentions, we wanted to restate Harding's long-held sincere religious beliefs on these matters and the Department's acknowledgment of those beliefs as either being protected by Title IX's religious exemption or not covered by Title IX at all.

Specific Exemptions:

Based on the religious control, religious heritage, and sincerely held religious beliefs of Harding and the Churches of Christ, Harding claims a religious exemption from Title IX of the Education Amendments of 1972 and all related implementing regulations, which would violate the sincerely held religious beliefs of Harding and the Churches of Christ.

This claim of religious exemption includes but is not limited to the following regulations growing out of Title IX and as they may later be amended:

- 34 CFR § 106.21 Admission;
- 34 CFR § 106.23 Recruitment;
- 34 CFR § 106.31 Education programs or activities;
- 34 CFR § 106.32 Housing;
- 34 CFR § 106.33 Comparable facilities;

- 34 CFR § 106.34 Access to classes and schools;
- 34 CFR § 106.36 Counseling and use of appraisal and counseling materials;
- 34 CFR § 106.37 Financial assistance;
- 34 CFR § 106.38 Employment assistance to students;
- 34 CFR § 106.39 Health insurance benefits and services;
- 34 CFR § 106.40 Marital or parental status;
- 34 CFR § 106.41 Athletics;
- 34 CFR § 106.51 Employment;
- 34 CFR § 106.52 Employment criteria;
- 34 CFR § 106.53 Recruitment;
- 34 CFR § 106.55 Job classification and structure;
- 34 CFR § 106.56 Fringe benefits;
- 34 CFR § 106.57 Marital or parental status;
- 34 CFR § 106.58 Effect of State or local law or other requirements;
- 34 CFR § 106.59 Advertising;
- 34 CFR § 106.60 Pre-employment inquiries; and
- 34 CFR § 106.61 Sex as a bona-fide occupational qualification.

By submitting this letter claiming exemptions, Harding does not concede that 20 U.S.C. § 1681(a)(3) requires it to submit exemptions to or request approval of exemptions from the Department of Education. Neither does Harding agree that Title IX addresses gender identity or sexual orientation. Harding nevertheless claims these exemptions based on the Department's recent declarations of Title IX enforcement intentions.

Sincerely,



Dr. Bruce D. McLarty