



Transforming Lives through Christ
January 14, 2016

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Ms. Catherine E. Lhamon
Assistant Secretary for Civil Rights
United States Department of Education
400 Maryland Ave. S.W.
Washington, DC 20202-1100

Re: Claim of Title IX Religious-Tenet Exemption

I am President of Shorter University. As such, I am the highest ranking official of this institution. I submit the following statement in order to claim, on behalf of the University, the religious-tenet exemption from Title IX of the Education Amendments of 1972 which is provided for in 20 U.S.C. 1681, and which is the subject of 34 C.F.R. 106.12.

Shorter University is a Southern Baptist institution of higher education. It is a Georgia nonprofit corporation whose address is 315 Shorter Avenue, Rome, Georgia. The University's Articles of Incorporation and Bylaws are Attachment 1 and Attachment 2, respectively, to this letter.

Shorter University is owned and controlled by a religious organization. That organization is the Georgia Baptist Convention. This Convention is a Southern Baptist general body whose constituency is the cooperating Southern Baptist churches of Georgia. It is an "association of churches" in the terminology of the Internal Revenue Code. Pursuant to the University's Articles of Incorporation and Bylaws, the Georgia Baptist Convention controls the University in part by exercising its right to select the entire membership of the Board of Trustees of the University. The Board of Trustees is the governing body of the University.

The Convention's authority over the University constitutes control by the Convention which is more than sufficient to cause the institution to be exempt from Title VII of the Civil Rights Act of 1964's general prohibition against religious discrimination in employment, under § 703(e)(2) of the Act and 42 U.S.C. 2000e-2(e)(2)m, as an educational institution "which is in whole or in substantial part, owned, supported, controlled, or managed by a particular religion

or by a particular religious corporation, association or society.” See, for example, the decision of the United States Circuit Court of Appeals, Eleventh Circuit, regarding our sister Southern Baptist university in *Killinger v. Samford University*, 113 F.3d 196 (1997)), *see also Seigel v. Truett-McConnell College, Inc.*, 13 F.Supp.2d 1335 (N.D. Ga. 1994)).

This request for exemption is from provisions of Title IX to the extent application of those provisions would not be consistent with the Convention’s and the University’s religious tenets regarding marriage, sex outside of marriage, sexual orientation, gender identity, pregnancy, and abortion. I identify those provisions to be:

- Admissions:
34 C.F.R. § 106.21 including but not limited to (b)(1)(iii) (governing differential treatment on the basis of sex in admissions) and (c) (governing admissions prohibition on the basis of marital or parental status).
- Recruitment:
34 C.F.R. § 106.23 (governing nondiscriminatory recruitment).
- Education Programs or Activities:
34 C.F.R. § 106.31(b)(4) (governing different rules of behavior or sanctions), and (b)(7) (otherwise limiting any person in the enjoyment of any right, etc.);
34 C.F.R. § 106.32 (governing housing);
34 C.F.R. § 106.33 (governing comparable facilities such as restrooms and locker rooms);
34 C.F.R. § 106.40 (governing different rules based on marital or parental status of students); and
34 C.F.R. § 106.41 (governing athletics);
- Employment:
34 C.F.R. § 106.51 (governing employment); 34 C.F.R. § 106.52 (employment criteria);
34 C.F.R. § 106.53 (recruitment);
34 C.F.R. § 106.57 (governing the consideration of marital or parental status in employment decisions); and
34 C.F.R. § 106.60 (governing pre-employment inquiries).

Our University holds itself out to be a Christian University. Shorter University’s Mission and Philosophy is “to advance God’s Kingdom through a commitment to academic excellence, spiritual growth, Christian leadership, and global service within the context of a biblical worldview.” See <http://su.shorter.edu/>. Our motto, *Transforming Lives through Christ*, “guides Shorter’s exceptional academic

programs, vibrant campus atmosphere, and Christ-centered community that sets us apart from the rest.” *Id.*

One of the University’s core values is “Christ-Centered.” *See* <http://su.shorter.edu/mission/>. This core value states: “Jesus Christ should not only be the foundation of our faith (1 Corinthians 3:11), but the very heart of our existence both as an institution and as individuals (Galatians 2:20; Philippians 1:21). Our desire is to build a thriving academic community where all can gain a greater appreciation of God’s grace, a more profound understanding of His principles and priorities, and a clearer vision of our place and purpose in the world (Matthew 28:19-20; Ephesians 1:18-23; 1 Peter 2:9). Apart from Christ we have “no hope” either in this world or the world to come (Ephesians 2:12); however, it is Christ in us which is the ‘hope of glory’ (Colossians 1:27). It can only be Christ in us that enables us to prepare the next generation to become agents of reconciliation in a world that so desperately needs Him (2 Corinthians 5:17-19).” *See id.*

Another of the University’s core values is “Biblically-Based,” *see id.*, which states: “Our ultimate source of authority is the Holy Bible, the written Word of God (2 Timothy 3:16-17). Since all truth emanates from God, we should indeed “examine everything carefully” (1 Thessalonians 5:21) and measure all philosophies and perspectives (Colossians 2:8) from a biblical worldview. While truth in varying forms and degrees can be found in every academic discipline and every culture, all information and knowledge must be analyzed in the light of the Truth (Jesus Christ- John 14:6) and His Word. Hence, we can fulfill the biblical mandate to make our ‘every thought captive to the obedience of Christ’ (2 Corinthians 10:5).” *See id.*

The University’s website includes an “Employment Opportunities” page, which states: “Shorter University is a Christ centered University affiliated with the Georgia Baptist Convention and requires employees to be committed Christians. All employees are expected to sign and adhere to the *Personal Lifestyle Statement* prior to hire.” <http://su.shorter.edu/employment-opportunities/>. A copy of the Personal Lifestyle Statement is Attachment 3 to this letter. Among other things, the Personal Lifestyle Statement states: “I reject as acceptable all sexual activity not in agreement with the Bible, including, but not limited to, premarital sex, adultery, and homosexuality.” *See* Attachment 3.

Southern Baptist religious tenets have been described most extensively and most recently in the Baptist Faith and Message 2000. The messengers constituting the Georgia Baptist Convention approved the Baptist Faith and Message 2000 as an

expression of our unity in doctrine and practice. The Baptist Faith and Message 2000 is Attachment 4.

In regard to marriage, sex outside of marriage, sexual orientation, gender identity, pregnancy and abortion, the following statements are illustrative:

“Marriage is the uniting of one man and one woman in covenant commitment for a lifetime. It is God’s unique gift to reveal the union between Christ and His church and to provide for the man and the woman in marriage the framework for intimate companionship, the channel of sexual expression according to biblical standards, and the means for procreation of the human race. . . . Children, from the moment of conception, are a blessing and heritage from the Lord.” XVII The Family, The Baptist Faith and Message 2000.

“Man is the special creation of God, made in His image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God’s creation.” III Man, The Baptist Faith and Message 2000.

“Christians should oppose racism, every form of greed, selfishness, and vice, and all forms of sexual immorality, including adultery, homosexuality, and pornography. . . . We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death.” XV The Christian and the Social Order, The Baptist Faith and Message 2000.

With respect to transgender identity, the Southern Baptist Convention issued a resolution in 2014, which is Attachment 5. In part, that resolution states this tenet: “That the messengers to the Southern Baptist Convention meeting in Baltimore, Maryland, June 10–11, 2014, affirm God’s good design that gender identity is determined by biological sex and not by one’s self-perception—a perception which is often influenced by fallen human nature in ways contrary to God’s design (Ephesians 4:17–18).” *See* Attachment 5.

Application of a regulation would not be consistent with these tenets if the regulation prohibited the institution from following its policies, that is, if the regulation prohibited the University:

- From engaging in recruiting and admissions under a policy which called for the consideration of an applicant for admission’s sexual orientation, gender identity (including but not limited to transgendered status), marital status, past and present practices regarding marriage, sex outside marriage,

pregnancy, and abortion (these considerations collectively referred to hereafter as “student and employee characteristics”), and prohibited the institution from treating that person differently as a result of that consideration;

- From subjecting students to rules of behavior, sanctions, or other treatment because of these student characteristics. Examples would be the institution’s rules regarding eligibility for employment of the student by the institution; the assignment of housing, restrooms, and locker rooms; restrictions to athletic or other University activities and extracurricular events by birth sex; rules prohibiting homosexual or heterosexual conduct, including but not limited to a prohibition of a student’s engaging in sex with a person of his or her birth sex; prohibition of sex outside of marriage between a man and a woman; and sanctions as the result of pregnancy and abortion;
- From making all employment decisions, including but not limited to selection criteria and pre-employment inquiries, recruitment, the decision to employ, retention decisions, and decisions regarding sanctions, in a manner which takes into consideration these employee characteristics.

Thus, this claim for exemption includes exemption from these specified regulations to the extent the regulation would require the institution to treat marriage, sex outside of marriage, homosexuality, gender identity, pregnancy and abortion in a manner that is inconsistent with the religious tenets of the Convention and the University.

I trust this letter sufficiently defines our exemption requests, but if you have any questions, please let me know. Thank you for your attention to this matter and we look forward to hearing from you.

Sincerely,



Dr. Don Dowless
President