Being Inclusive in an Exclusive Community
Examining Transgender Membership within Private Fraternal Organizations
Technical Difficulties?

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Presenter Information

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About The Program

Objectives:

• Familiarize yourself with relevant terminology

• Understand how Title IX applies to private fraternal organizations

• Understand associational rights applicable to private fraternal organizations

• Utilize the information to help students navigate questions about membership eligibility
Understanding Gender

**Sex assigned at birth**

Determined by a doctor at the time of birth based on a baby's external genitals

Penis = male
Vagina = female
Unclear = intersex
Understanding Gender

**Gender**
Characteristics and behaviors associated with each sex

**Masculine** characteristics and behaviors are generally associated with the male sex

*Examples: tough, unemotional, breadwinner*

**Feminine** characteristics and behaviors are generally associated with the female sex

*Examples: nurturing, emotional, weak*
Understanding Gender

**Gender identity** - one's internal sense of gender

**Gender expression** - outward expression of one's gender identity

**Examples** - style or type of clothing, length of hair.

**Cisgender** - individual whose gender identity aligns with sex assigned at birth
Transgender is an umbrella term for individuals whose gender identity does not align with their sex assigned at birth

Transgender people experience a feeling of incongruence or mismatch between their gender identity and sex assigned at birth.

This feeling is called gender dysphoria.
Transitioning
A process wherein a trans person takes steps to align their gender expression with their gender identity

Transitioning can include:
• Modifying the way one dresses or openly identifies
• Change in name and gender markers
• Hormone therapy
• Psychotherapy
• Surgery
**Gender non-binary** - individuals with neither a masculine nor feminine gender identity; based on a rejection of the gender binary and the idea that gender is an either/or option

*Other terms: genderqueer, gender-neutral, genderf**k, bigender, agender*

**Gender non-conforming** - a person whose gender expression is perceived as being inconsistent with societal norms

*Examples: insufficiently masculine man or insufficiently feminine woman*
Gender non-conforming

Gender expression

Gender-nonbinary, genderqueer, gender-neutral, genderfuck, bigender, agender
Redefining Gender

California - SB 179: The Gender Recognition Act

- Goes into effect September 2018/January 2019

- Creates a nonbinary gender designation on driver's licenses, birth certificates, petitions for changes in name and gender marker

- Nonbinary: “umbrella term for people with gender identities that fall somewhere outside of the traditional conceptions of strictly either female or male"

- Removes the need for a court order or proof of clinical treatment

- Requires an affidavit attesting that the request not for any fraudulent purposes
Redefining Gender

• June 2017: Oregon Department of Motor Vehicles
• Effective July 2017
• Creates a third, gender-neutral marker: "X" for "unspecified"
• Requires only completion of a form requesting gender marker X
• Bill currently in committee to formalize the policy
Redefining Gender

- June 2017: Washington, D.C. Department of Motor Vehicles
- Effective June 2017
- Requires only self-attestation of gender identity for “gender neutral identifier” “X”
- Applies to driver licenses and identification cards
- Removes requirement of a signature from a medical, social services, or other provider approving the gender marker change
Redefining Gender

June 2017: New York A08524

Provides three options for the designation of sex by applicants for driver's licenses and learner's permits: male, female, and X

Proposed language: Designation of sex. Any application required pursuant to this section that requires the applicant to designate his or her sex shall provide three options. Such options shall include "male", "female" and "X". For purposes of this subdivision, option "X" may be designated by any applicant who does not identify as male or female.

Currently in committee.
Title IX of the Education Amendments of 1972

The purpose of title IX was to provide the long overdue legal framework to outlaw sex discrimination throughout our Nation’s system of higher education. The need for title IX arose when the Congress neglected to include sex among those categories of invidious discrimination in federally assisted programs outlawed by title VI of the Civil Rights Act of 1964. Indeed, title VI of the Civil Rights Act of 1964 expressly provided that:

Nothing in this Title shall prohibit classification and assignment for reasons other than race, color, religion or national origin.

In order to correct this inequity, in federally assisted education programs, the Congress overwhelmingly approved title IX of the Education Amendments of 1972. The result of this action was to once and for all ban sex-based quotas for admissions to colleges and universities, to mandate equality of opportunity in scholarship aid, and to make available equal access to course offerings and curriculum for members of both sexes.
Title IX and Private Fraternal Organizations

As the author and prime Senate sponsor of title IX, I know that it was not my intent, and I do not believe that it was the intent of the Congress that title IX be extended to organizations such as social fraternities and sororities. Because of my concern in this matter, I corresponded with Secretary Weinberger to see if the Department would not reconsider their position on such organizations. Secretary Weinberger responded that the Department would have no objection to providing the Department was given the proper legislative authorization to do so.

Therefore, on November 18, I introduced S. 4163, a bill to grant an exemption from title IX for fraternities and sororities. I was pleased to have a number of cosponsors to this original bill. Senators Talmadge, Tower, Fannin, Hansen, and Burdick.

Since I introduced S. 4163, it was brought to my attention that the Department of Health, Education, and Welfare was also planning to extend title IX to youth service organizations such as the boy scouts and girl scouts, YMCA, YWCA, or the Campfire Girls. Title IX would be extended to these organizations based upon the fact that they receive direct Federal funds for various educational programs. Again, I feel the Department has gone far beyond the original intent of the Congress in passing title IX by extending its provisions to cover such organizations.

Therefore, in order that the Department may continue to provide the necessary funds to these organizations, I hereby introduce S. 4163 as a continuing bill.
Title IX and Private Fraternal Organizations

(6) Social fraternities or sororities; voluntary youth service organizations

this section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men’s Christian Association, Young Women’s Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;
Obligations under Title IX run to the recipient institution of higher education and not to a fraternal organization, unless the organization itself received Federal financial assistance. The Waggonner Amendment would exempt a fraternal organization from Title IX requirements when that fraternal organization is "financed exclusively by funds derived from private sources and those facilities are not owned by such institution." Accordingly, the Department, when presented with a complaint alleging Title IX discrimination by an organization covered by Section 1144(b), would have to consider the relationship between the institution and the particular organization.
Title IX and Private Fraternal Organizations

Fraternities are selective organizations that get to choose their members, and we have an opportunity to be more inclusive.

Judson Horras, NIC President & CEO

- Survey interests and concerns, interviewing experts and constituents.
- Obtain legal insight around impact on the Title IX exemption of single-sex fraternities and sororities, as well as exposure to discrimination-based claims.
- Outline leading practices and provide member fraternities with a report enabling them to make informed policy decisions.
Executive Committee Announcement
November 2016

Gender Identity Study Group

The National Panhellenic Conference has created a Gender Identity Study Group to gather and then disseminate, substantive information for member organizations on the relevant questions of transgender inclusion. The scope of work includes:

- Ascertaining from member organizations the questions of most concern regarding gender identity and expression.
- Providing member organizations with educational and resource information.
- Reviewing legal insight that impact Title IX exemption as single-sex organizations.
- Understanding the policies of member organizations.
- Exploring the implications of campus policies.

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The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
The US Supreme Court has recognized that certain intimate relationships are entitled to constitutional protection.

"The Court has long recognized that, because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State."

Freedom of Intimate Association

When considering whether a particular intimate relationship is deserving of constitutional protection, the Supreme Court has held that the following factors "may be relevant:"

- Size,
- Purpose,
- Policies,
- Selectivity,
- Seclusion from others,
- Congeniality, and
- Other characteristics that may be pertinent in a particular case.

Freedom of Intimate Association


- The Court held that "the relationship among Rotary Club members is not the kind of intimate or private relation that warrants constitutional protection."

- "[N]o upper limit on the membership of any local Rotary Club," with chapter size ranging from 20 to more than 900

- Clubs are "instructed to 'keep a flow of prospects coming' to make up for the attrition and gradually to enlarge the membership" because about 10% of the membership of a chapter moves away or drops out during a typical year
Freedom of Intimate Association

- The type of service projects undertaken by Rotary Clubs ("designed to aid the community, to raise the standards of the members' businesses and professions, and to improve international relations") did "not suggest the kind of private or personal relationship to which we have accorded protection under the First Amendment"

- "Many of the Rotary Clubs' central activities are carried on in the presence of strangers"

- The clubs are encouraged to seek coverage of their meetings and activities in local newspapers and seek to keep their "windows and doors open to the whole world," rather than carrying on their activities in an atmosphere of privacy
Freedom of Expressive Association

The US Supreme Court has recognized that certain expressive associations are entitled to constitutional protection.

Expressive association means "a group must engage in some form of expression, whether it be public or private."

Freedom of Expressive Association

*Boy Scouts v. Dale:*

- Concluded that the Boy Scouts is an expressive association because it "seeks to transmit such . . . system of values"
- Upheld the Boy Scouts' right to exclude homosexual scoutmasters concluding that their inclusion would interfere with the Boy Scout's desire "not to promote homosexual conduct."
- Relied on portions of the Scout Oath ("morally straight") and the Scout Law ("clean") as support for the Boy Scouts' position
So What Can You Do?:
Campus

• Educate fraternity/sorority life staff about the associational rights of students and fraternal organizations

• Educate the campus community on gender identity and expression

• Familiarize yourself with any existing transgender membership policies

• Provide sample language and terminology to assist with ongoing education

• Review campus publications and documents (rosters, membership lists, grade reports, name tags, system to sort members) for trans-inclusive language
So What Can You Do?

Members

• Encourage and support chapter members in navigating their respective inter/national offices to clarify any existing transgender membership policy

• Educate chapter leadership on their ability to advocate for policy change with their respective organizations

• Support what the inter/national organizations decide

#AdvanceU
So What Can You Do?

Potential New Members

• Make available for potential new members each organization’s stance on transgender membership, if available--can they safely access this information without having to come to your office?

• Develop a support system for potential new members as contacts for questions about joining a fraternal organization
Questions & Answers
Thank you for Participating
ADVANCE U
Thinking Differently. Working Differently.
Sponsored by Zeta Tau Alpha