Friday Night Rights: Religious Freedom and Interscholastic Sports

I. State high school athletic associations & laws prohibiting discrimination
   A. *Brentwood Academy v. Tennessee Secondary School Athletic Assn.*, 531 U.S. 288 (2001) – State high school athletic associations are typically so "overborne by the pervasive entwinement of public institutions and public officials in [their] composition and workings" that constitutional standards apply to them
      1. In other words, state athletic associations, while not officially state agencies, are state actors
      2. They are thus duty-bound to honor religious schools' and athletes' constitutional rights
      3. If your state doesn't have educational codes or statutes prohibiting discrimination in education or laws prohibiting discrimination by places of public accommodation – and many, if not all states, have both – this may be your fallback position to bring action against association
   B. Educational code/statutes
      1. Cal. Educ. Code § 35179(d) – "No voluntary interscholastic athletic association, of which any public school is a member, shall discriminate against, or deny the benefits of any program to, any person"
      2. Or. Rev. Stats. § 659.850(1)-(2) – "A person may not be subjected to discrimination in any public elementary, secondary or community college or service, school, or ***interschool activity***" on the basis of religion (emphasis added)
   C. Public accommodations laws
      1. California – Unruh Civil Rights Act (Cal. Civ. Code § 51)
         a. Prohibits business establishments from discriminating on the basis of disability
         b. The term "business establishment" is to be construed as broadly as possible, and includes not only permanently fixed places of business, but permanent commercial forces or organizations
         c. California Interscholastic Federation (CIF) and its individual member sections qualify
            i. Regulate high school sports throughout state
            ii. Organize and conduct high school sports events throughout the state on an annual basis,

iii. Generate revenue from the sales of tickets, event programs, T-shirts, and concessions at events

2. Or. Rev. States. §§ 659A.400 & 659A.403
   a. 659A.400(1) defines "place of public accommodation"
      i. Subsection (a) – "(A)ny place or service offering to the public accommodations, advantages, facilities, or privileges whether in the nature of goods, services, lodgings, amusements, transportation, or otherwise"
      ii. Subsection (c) – Any service provided by public body, regardless of whether service is commercial in nature
      iii. Under either definition, Oregon School Activities Association ("OSAA") and athletic programs provided by public schools would qualify
   b. 659A.403
      i. Subsection (1) – All persons within Oregon "are entitled to the full and equal accommodations, advantages, facilities, and privileges of any place of public accommodation, without any distinction, discrimination or restriction on account of … religion"
      ii. Subsection (3) – "It is an unlawful practice for any person to deny full and equal accommodations, advantages, facilities and privileges of any place of public accommodation in violation of this section"

II. Who can play
   A. Guiding rule of thumb: Always check state athletic association's website
   B. Homeschoolers: Different states, different rules
      1. California – Athletes typically not permitted to play for schools they aren't enrolled in
         a. Exception: Student enrolled in independent study program administered by school/school district's governing body is eligible
         b. CIF's asserted reason: "Programs outside the purview of a school governing board and local school administration are unable to provide the necessary certification that all students met minimal academic requirements"
            i. In other words, homeschooled kid's mom or dad could be giving the child straight A's even if the child is flunking, or could be giving the child easy classes to keep kid eligible for athletics

ii. School district has to monitor student's progress, make sure everything is on the up-and-up

2. Oregon
   b. Homeschool student who meets eligibility standards established by state law (Or. Rev. Stats. §§ 339.030, 339.035, 339.460) can compete for local private or public school
      i. School must be within public school attendance boundaries where "joint residence" of student and student's parents is located
   c. Must also meet local school district's requirements re: eligibility, behavior & performance

C. Private school attendees whose schools do not have a particular sport
   1. Example: St. John Bosco, a Catholic private school in Silverton, Oregon
      a. School's only boys' varsity program is basketball
      b. St. John Bosco student who lived in Keizer, 12 miles away, was allowed to play baseball for McNary High, Keizer's public school
   2. OSAA allows this, so long as both schools' principals agree

D. Transfers
   1. Can get thorny
      a. Private schools often accused of plucking away best public-school kids, giving them scholarships – especially to kids whose families couldn't otherwise afford a private-school education
         i. Unlike public schools, private schools are not limited by geographic boundaries – they can bring in kids from just about anywhere
      b. In California, kid who leaves private school for public school may be forced to play for school outside boundaries of nearest public school if that school happens to be a powerhouse in his or her sport
         i. CIF doesn't want "rich getting richer," so to speak
   2. In California, student must sit out for one year if transfer is "athletically motivated"
      a. Transfer is "athletically motivated" if not done in good faith to secure greater educational advantage, but to pursue athletic opportunities
      b. If representing student who transferred from public to faith-based private school, or school to which student transferred, show the following:
         i. Educational advantages private school offers that public school doesn't

ii. Why faith-based education is important to student and/or parents

3. No need to sit if transfer is done due to hardship
   a. CIF defines "hardship" as "an unforeseeable, unavoidable, and uncorrectable act, condition, or event, which causes the imposition of severe and non-athletic burden upon the student and/or his or her family"
   b. Need to pursue hardship waiver to maintain athlete's eligibility
4. Administrative remedies
   b. Schools, districts, and state athletic associations often make rulings concerning eligibility of transfers, have appeals process that must be pursued
   c. May need to pursue remedies through school, district, and/or athletic association before pursuing legal action unless legal or constitutional right is at issue

E. International students
   1. May come up for some boarding schools (Ex.: Canyonville Christian Academy in southern Oregon)
   2. Treated just like transfers unless living with:
      a. Parents
      b. Host families pursuant to Council on Standards for International Educational Travel (CSIET)

III. Who can coach
   i. Title VII prohibits discrimination on basis of religion
   ii. Exception to rule: Ministerial exception – *see Hosanna-Tabor Evangelical Church & School v. EEOC*, 565 U.S. 171 (2012)
   iii. Is a coach a "minister"?
      1. Depends on circumstances of employment
      2. Factors for court to consider include:
         a. Employee's formal title
         b. Substance reflected in title
         c. Employee's use of title
         d. Important religious functions performed
      3. *Hosanna-Tabor* concurrences
         a. Justice Thomas – Religion Clauses (Establishment & Free Exercise) require civil courts to defer to religious organization's good-faith understanding of who qualifies as one of its ministers

b. Justices Alito & Kagan – Ministerial exception should apply to any employee who serves as teacher or messenger of religious organization's faith
   i. Applying either rule – especially Alito & Kagan's – a coach could qualify
   ii. Coaches at religious schools often use sport as a vehicle to instill religious character

3. At least one federal court has held that a volleyball coach could qualify as a minister – *see Clark v. Newman Univ., Inc.*, 2021 U.S. Dist. LEXIS 96663 (D. Kan. May 21, 2021)
   a. Newman is Catholic university
   b. School fired coach for failing to comply with Sisters' standards of conduct
   c. Plaintiff argued that she had no ministerial duties; school responded that her role "called for role-model stewardship and behavior becoming of the Sisters' mission"
   d. Court held that whether coach qualified as a "minister" is a factual issue pertaining to school's use of ministerial exception as defense

IV. Who can pray

A. Student prayer

1. Texas – Tracy and I attended a game there between two public high schools (Judson and Steele), and prayer took place over the loudspeaker before the game
2. *Santa Fe Independent School District v. Doe*
   a. Supreme Court invalidated policy of school district in overwhelmingly Baptist Texas town allowing student-led prayers before football games
   b. Such prayers gave appearance, if not actual, of state endorsement of religion in violation of Establishment Clause because prayers took place:
      i. On school property
      ii. On school public address system controlled by school officials
      iii. At school-sponsored event
      iv. With school athletes, cheerleaders, and band members present
      v. At school stadium bearing school name and/or logo

vi. Before throng of fans waving school banners and wearing hats, T-shirts, jackets, etc., w/ school colors and insignia

c. All of which reinforced status of students in minority religions as outsiders (plaintiffs in case were Catholic and Mormon)

d. *Kennedy v. Bremerton Sch. Dist.* did not overrule this case

3. Other student prayer cases

e. *Lee v. Weisman* – A

f. *Engel v. Vitale* – A

g. *Abington Sch. Dist. v. Schempp* – a

B. Prayer by coaches

1. *Kennedy v. Bremerton School District* – Very recent Supreme Court ruling upholding right of public-school football coach to pray on field after games

a. Distinguished from *Santa Fe*: "The prayers for which Mr. Kennedy was disciplined were not publicly broadcast or recited to a captive audience. Students were not required or expected to participate. And, in fact, none of Mr. Kennedy's students did participate in any of the three October 2015 prayers that resulted in Mr. Kennedy's discipline"

b. In other words, coaches can engage in private prayer, even if done publicly – such as at 50-yard line, where Kennedy chose to pray – and students are free to join them as long as they are not coerced

C. Private schools vs. public schools

1. If religious private school is the host, you're on their turf – they can pray how they feel so led

2. If public school is the host, private school's coaches and athletes can pray on the sidelines, and public school can't stop them

a. *Tinker v. Des Moines Independent School District* – Students and teachers don't check their First Amendment freedoms at schoolhouse gate

b. Forum analysis: Is field a forum?

i. Types of forum

(A) Traditional public forum

(B) Limited purpose public forum

(C) Nonpublic forum

(1) Private schools fall into this category

4. Neutral site – *Cambridge Christian School v. Florida High School Athletic Assn.*

a. Two Christian schools, Cambridge Christian of Tampa and University Christian of Jacksonville, faced off in 2015 Class 2A (small school) state championship game, wanted to conduct pregame prayer over loudspeaker
b. Florida High School Athletic Association refused to allow it
c. Cambridge Christian sued in federal court
i. District court dismissed case
ii. 11th Circuit overturned, remanded for further consideration
iii. In early April, district court held against Cambridge Christian
(A) District court held that speech over loudspeaker is government speech
(B) FHSAA read advertisements from sponsors – including Budweiser and Hooters – over P.A. system, but did not open up P.A. system for outsiders to use

V. Sabbath accommodation
ii. Not common at elementary/secondary school level – schools typically don't play on Sundays
iii. However, this issue did raise its head last year in Alabama
1. Oakwood Adventist Academy
a. Seventh-day Adventist school's boys basketball team was scheduled to play a playoff game at 4:30 p.m. on a Saturday
b. SDAs observe "Jewish sabbath" – sundown Friday to sundown Saturday
c. Opposing school agreed to switch to 7:30 p.m., and so did schools originally scheduled to play at that time; Alabama High School Athletic Association, however, nixed the move
d. Oakwood Adventist had a choice: play on its sabbath and violate its beliefs, or forfeit – it chose the latter option
2. *Nakashima v. Oregon Board of Education*
a. Portland Adventist Academy faced situation virtually identical to that of Oakwood Adventist
b. Portland Adventist sued under Oregon's anti-education in discrimination law (Or. Rev. Stat. § 659.850) – and won
c. Oregon's Privileges and Immunities Clause – Or. Const. art. I, § 20

3. Oakwood is suing AHSAA – if it were me, I'd raise two claims under 42 U.S.C. § 1983: One for placing a substantial burden on the free exercise of religion and one for violation of Equal Protection Clause
    a. Free exercise
        i. *Sherbert v. Verner*, 374 U.S. 398 (1963) – Substantial burden exists where government entity forces religious adherent to choose between following religious precepts and forfeiting benefits, on one hand, abandoning precepts in order to receive benefits on the other
        ii. Oakwood was presented with such a choice here:
            (A) Play before sundown on a Saturday, violate key tenet of SDA faith, and receive benefit of pursuing a state basketball title
            (B) Forfeit playoff game in order to comply with key tenet of SDA faith and forego benefit of pursuing a state basketball title
    b. Equal protection
        i. AHSAA and its member schools and leagues don't schedule games on Sundays, and often don't on Wednesdays – a traditional Bible study night in the South – either
        ii. If AHSAA is accommodating of Southern Baptists, it's got to be accommodating of SDAs, too

iv. *Chung v. Washington Interscholastic Activities Assn.*

1. Involved Seventh-Day Adventist tennis player who qualified for state tournament
2. Player's family demanded rule changes
    c. WIAA rule subjected players to penalties if they withdrew and intentionally forfeited; family wanted exception for religious observance
    d. Family also demanded that WIAA move state tournament to weekdays
    e. WIAA denied both, asserting that withdrawal would "(1) be unfair to athletes who would have qualified but for the withdrawing athlete, and (2) create a competitive advantage for the athlete scheduled to play the athlete who forfeited"
4. Player's family sued for failure to accommodate
    a. WIAA had made accommodations for religiously affiliated schools in state volleyball tournament
    b. WIAA would not make accommodations for individual athletes

5. Federal court for Western District of Washington denied motion for summary judgment
    a. Reasonable factfinder could find that WIAA's accommodation of schools in team sports, but not individual tennis players, is not so comprehensive that it amounts to a system of individualized exemptions
    b. Court also held that rational basis scrutiny, not strict scrutiny, applied, as WIAA's rules were neutral and generally applicable

VI. Title IX/Gender Equity Issues

A. Not something that private Christian elementary and high schools typically have to worry about, since they don't receive federal funds
    1. May change if voucher programs put federal money in private Christian schools
    2. Then again, see 20 U.S.C. § 1681(a)(3), which I'll discuss later

B. Christian colleges and universities, however, do have to worry about it
    1. Not every college is a major NCAA Division I school – many small Christian colleges in National Association of Intercollegiate Athletics or National Christian College Athletic Association
    2. Even so, Christian colleges that adhere to traditional view of gender – i.e., that God creates everyone male and female and doesn't get plumbing wrong – can still fully comply with Title IX while not allowing men on women's teams
    3. Title IX [20 U.S.C. § 1681]: "No person in the United States shall, on the basis of sex, ***be excluded from participation in***, the benefits of, or be subjected to discrimination under any education program or ***activity*** receiving Federal financial assistance"
        a. When a statute does not define a term, courts typically construe the term in accordance with its ordinary and natural meaning
        b. Title IX provides no definition of the term "women" – in fact, the statute does not even mention the word "women"
            i. *Neal v. Bd. of Trustees of Calif. State Univs.*, 198 F.3d 763, 766 (9th Cir. 1999) – Title IX's legislative history indicates that Congress enacted Title IX in 1972 as a "response to significant concerns about discrimination against women in education"
            ii. Title IX's primary sponsor, Sen. Birch Bayh of Indiana, "stated that Title IX was specifically enacted to 'provide for the ***women*** of

America something that was rightfully theirs – an equal chance to attend the schools of their choice, to develop the skills they want, and to apply those skills with the knowledge that they will have a fair chance to secure the jobs of their choice with equal pay for equal work'"

iii. "Senator Bayh's remarks, as those of the sponsor of the language ultimately enacted, are an authoritative guide to the statute's construction" – *Neal*, 198 F.3d at 766

c. As conservative commentator Matt Walsh of the Daily Wire asked in his now-famous documentary "What is a woman?"

i. Recently appointed Supreme Court Justice Ketanji Brown Jackson infamously could not – or, rather, would not – answer this question despite being one: "I'm not a biologist"

ii. Obama Administration, and now Biden's, have attempted to redefine term by issuing directives through Department of Education requiring transgender "females" – biological men who claim to be women – as women for purposes of Title IX

(A) Federal district court in Texas has held that the Obama Administration based its directive on a complete misreading of Title IX: "Title IX 'is not ambiguous' about sex being defined as 'the biological and anatomical differences between male and female students as determined at their birth"

(B) *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020) – which held that Title VII's reference to "sex" prohibits employers from discriminating based on sexual orientation or gender identity – does not change this

(1) Holding is limited to discrimination in Title VII employment cases – see p. 1753

(2) Supreme Court also said how "doctrines protecting religious liberty interact with Title VII are questions for future cases, too" – same presumably goes for Title IX cases (I'll address that question in a moment)

iv. Helpful cases re: interpretation of Title IX

(A) *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 515 (1994) – A court has no obligation to show substantial deference to an agency's interpretation of a statute or regulation when it conflicts with a prior, consistently held interpretation

(B) *Calix v. Lynch*, 784 F.3d 1000, 1005 (5th Cir. 2015) – "Multiple accepted meanings do not exist ***merely because a statute's 'authors did not have the forethought to contradict any creative contortion that may later be constructed to expand or prune its scope***'"

(C) *Neal*, 198 F.3d at 768 – Courts should treat as invalid any agency's interpretation of Title IX that disadvantages biological girls and undermines statute's remedial purposes

(1) In other words, courts should not interpret Title IX in a way that would undermine its intended purpose of advancing educational opportunities for women – or, to be more accurate, biological women – including and especially athletic opportunities

5. Title IX, the Supremacy Clause, and the First Amendment

a. Supremacy Clause – U.S. Const. art. VI, cl. 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof … shall be the Supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding"

i. In other words, state laws that undermine Title IX by requiring schools, activities associations, etc., to allow boys to compete as girls (or vice versa) must yield to Title IX

b. U.S. Const. amend. I: "Congress shall make ***no law*** respecting an establishment of religion, or prohibiting the free exercise thereof"

c. 20 U.S.C. § 1681(a)(3): Title IX "does not apply to an educational institution which is controlled by a religious organization if the application … would not be consistent with the tenets of such organization"

i. This means transgender athletes can't legally force Christian colleges and universities that adhere to traditional, biblical views of gender and sexuality to let athletes compete on teams designated for opposite sex

ii. Federal district court in Oregon upheld this rule earlier this year – see *Hunter v. U.S. Dep't of Educ.*, 6:21-CV-00474 (D. Or. Jan. 12, 2023)

iii. Congress thus made sure Title IX wouldn't trample on Christian colleges' and universities' religious rights, making those schools free to keep teams, locker rooms, dorms, etc., separated by gender

iv. Sexual conduct by athletes

(A) Some religious schools prohibit athletes, both heterosexual and LGBT, from engaging in sex outside of marriage

(1) Case in Point No. 1: Women's basketball star Brittney Griner
  (a) A lesbian
  (b) Attended Baylor University, a Baptist institution in Texas
  (c) Came out after going to school there, presumably because she'd have been kicked off the team – and out of school – if she were out while still in school
  (d) BU-PP 031 (updated May 15, 2015): "Baylor will be guided by the biblical understanding that human sexuality is a gift from God and that physical intimacy is to be expressed in the context of marital fidelity. Thus, it is expected that Baylor students, faculty, and staff will engage in behaviors consistent with this understanding of human sexuality."
    (i) In other words, no Baylor athlete can engage in sex with someone to whom he or she is not married
    (ii) Under 20 U.S.C. § 1681(a)(3), Baylor is free to define "marital fidelity" to refer specifically and exclusively to the faithful, monogamous union between one man and one woman
(2) Case in Point No. 2: Oral Roberts University
  (a) Christian school in Oklahoma qualified for NCAA Division I men's basketball tournament in 2021, made deep run to Sweet 16
  (b) Blasted by USA Today writer for seemingly archaic conduct requirements, including banning profanity, social dancing, immodesty, premarital sex, promiscuity/adultery, and LGBTQ+ conduct – all of which Scripture prohibits
  (c) Writer acknowledged, though, that "[a]s a private university and under the banner of fundamentalist Christian beliefs, the school is free to impose whatever standards of behavior they see fit" – and to quote Justice Kennedy in *Obergefell v. Hodges*, many who deem such conduct to be wrong do so based on decent and honorable religious and philosophical premises"

(B) Bottom line: To avoid lawsuit, or at least have greatest defense under Title IX, with regard to athletes, Christian colleges and universities should:
(1) Define school's beliefs concerning marriage, gender, and sexuality in bylaws, policies, student handbook, etc., and make clear what sexual conduct is prohibited

(2) Enforce rules even-handedly – not just against LGBT+ students, but against all students who do not comply

C. Oregon Senate Bill 223 (2021)

1. Oregon legislators tried to compel private schools to submit to oversight of Oregon Department of Education with bill that, if enacted, would prohibit them from participating in interscholastic competitions with public schools

b. Not just athletics competitions – science fairs, speech-and-debate tournaments, academic decathlons, etc.

c. Would be tremendously burdensome on Christian schools in Oregon, as most would have to travel several hours at a time to play schools close in size

2. If enacted, law would have required schools to submit to ODE rules concerning bullying and suicide prevention

a. Typically, this is code for affirming LGBT+ kids

b. Christian schools have religious right under Free Exercise Clause to "love their neighbor" in a manner consistent with biblical principles

3. Bill was ultimately defeated, but same issue could rear its ugly head again; when it does, Supreme Court precedent gives us plenty of ammo to challenge it

b. *Obergefell v. Hodges* – "Many who deem same-sex marriage to be wrong do so based on decent and honorable religious and philosophical premises"

c. *Masterpiece Cakeshop v. Colorado Civil Rights Commission* – see p. 1731 in particular, as it's loaded with good stuff

i. Free Exercise Clause requires that religious entities "given proper protection ***as they seek to teach the principles that are so fulfilling and so central to their lives and faiths***"

ii. While "[o]ur society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth," government cannot, under the guise of protecting such persons, "impose regulations ***that are hostile to the religious beliefs of affected citizens*** and cannot act in a manner that passes judgment upon . . . religious beliefs and practices"

(A) Religious schools share states' concerns about LGBT+ kids being bullied or harassed – and, accordingly, experiencing depression or suicidal thoughts/ideations

(B) What religious schools want – and are constitutionally entitled to – is ability to help such kids in a manner that is consistent with their faith

(3) Ephesians 4:15 calls Christians to "speak the truth in love"

(4) To love LGBT+ kids does not, in the eyes of many Christian schools, mean to affirm what the Bible calls sin – Matthew 18:6: "If anyone causes one of these little ones—those who believe in me—to stumble, it would be better for them to have a large millstone hung around their neck and to be drowned in the depths of the sea"

(C) State thus cannot "elevate[ ] one view of what is offensive over another … and send a signal of official disapproval of [private schools'] religious beliefs"

ii. If the only reason a law aimed at protecting LGBT+ persons regulates religious practices "is to produce a 'society free of … biases' against" such persons, ***that purpose is decidedly <u>fatal</u> to the law's constitutionality***" under the First Amendment, "'for it amounts to nothing less than a proposal to limit speech in the service of orthodox expression'"

VII. Religious Land Use & Institutionalized Persons Act (RLUIPA) – 42 U.S.C. § 2000cc *et seq.*

A. Purpose: Preventing discrimination against religious entities "***in the highly individualized and discretionary processes of land use regulation***." *Guru Nanak Sikh Society v. Cnty. of Sutter*, 456 F.3d 978, 987 fn. 9 (9th Cir. 2006)

1. RLUIPA "defines 'land use regulation,' in pertinent part, as 'a zoning or landmarking law, or the application of such a law***, that limits or restricts a claimant's use or development of land (including a structure affixed to land)***, if the claimant has an ownership, leasehold, easement, servitude, or other property interests in the regulated land'" – *Mintz v. Roman Catholic Bishop*, 424 F. Supp. 2d 309, 317-18 (D. Mass. 2006) (emphasis in the original) (hereinafter *Mintz*) [quoting 42 U.S.C. § 2000cc-5(5)]

B. Relevant because religious schools, and even churches, often use sports as a tool to instill religious values, build character in both children and adults, and even as a tool for religious outreach

1. To do that, schools and churches need facilities where people can compete
2. 42 U.S.C. § 2000cc-3(g): "This Act shall be construed ***in favor of a broad protection of religious exercise, to the maximum extent permitted*** by the terms of this Act and the Constitution" (emphasis added)
3. 42 U.S.C. § 2000cc(b)(3)(B): "No government shall impose or ***implement a land use regulation that … unreasonably limits religious assemblies, institutions, or structures within a jurisdiction***" (emphasis added)
   b. "Structure" could include:
      i. Gymnasium
      ii. Football/soccer field and stadium
      iii. Baseball/softball diamond and backstop w/ bleachers

C. Substantial burden provision

4. *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. City of West Linn*, 338 Or. 453, 462 (2005) – Under RLUIPA, where a land use regulation substantially burdens an entity's exercise of religion, the regulation "***must yield***," unless the regulation:
   d. Furthers a compelling governmental interest
   e. Does so in the least restrictive manner possible

1. *Intl. Church of the Foursquare Gospel v. City of San Leandro*, 634 F.3d 1037, 1048 (9th Cir. 2011) [NOTE: PJI case] – Religious entities cannot function without a physical space that is:
   f. Adequate for their needs
   g. Consistent with their theological requirements

1. If church or religious private school determines that sports would significantly advance religious mission, then unless there's some sort of compelling interest involved, city or county needs to approve construction of sports facility

D. Equal terms provision

1. 42 U.S.C. § 2000cc(b)(1): "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution"

2. *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1173 (9th Cir. 2011) – A government "violates the equal terms provision … when a church is treated on a less than equal basis with a secular comparator, similarly situated with respect to an accepted zoning criteria"
    a. Example: County in Oregon allows public school in area zoned "Rural Residential Farm Forest-5 Acres (RRFF-5)" to construct sports facilities while not allowing "ball fields" on privately owned properties
        i. "Privately owned properties" includes churches and private religious schools
        ii. Equal terms provision prohibits county from treating churches and private religious schools differently from public schools