















IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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**No. 07-1247**

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COLORADO CHRISTIAN UNIVERSITY,

Plaintiff-Appellant

v.

JUDY P. WEAVER, et al.,

Defendants-Appellees

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
THE HONORABLE MARCIA S. KRIEGER

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**BRIEF OF THE UNITED STATES AS *AMICUS CURIAE***

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**INTEREST OF THE UNITED STATES**

The United States submits this *amicus curiae* brief pursuant to Federal Rule of Appellate Procedure 29.

The United States has a strong interest in ensuring that public educational opportunities are not denied on the basis of religion. The United States has been charged by Congress with preventing exclusion of students from educational opportunities on the basis of religion in public schools, colleges and universities.

42 U.S.C. 2000c-6. The United States also is authorized under Title IX of the



































2007 WL 1489801, at \*13 (“Colorado’s tuition assistance programs \* \* \* differentiate among sectarian institutions. It [sic] gives tuition assistance to those which segregate religious indoctrination from secular education, and denies assistance to those which, by policy or doctrine, freely mix the two.”). The district court therefore held that, under *Larson*, Colorado’s tuition-assistance programs were subject to strict scrutiny. *Ibid.*

This holding is correct. “[A] law need not expressly distinguish between religions by sect name” in order “[t]o facially discriminate among religions.” *Children’s Healthcare*, 212 F.3d at 1090 (citing *Larson*, 456 U.S. at 232 n.3). Instead, “[s]uch discrimination can be evidenced by objective factors such as the law’s legislative history and its practical effect while in operation.” *Children’s Healthcare*, 212 F.3d at 1090. See also *University of Great Falls v. National Labor Relations Bd.*, 278 F.3d 1335, 1342 (D.C. Cir. 2002) (citing *Larson* for the proposition that “an exemption solely for ‘pervasively sectarian’ schools would itself raise First Amendment concerns” because it would “discriminat[e] between kinds of religious schools”). Here, the district court held, Colorado’s tuition-assistance programs have the practical effect of discriminating against sectarian institutions that refuse to segregate religious indoctrination from secular education. See *Colorado Christian*, 2007 WL 1489801, at \*13. Indeed, the































## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the type-volume limitation imposed by Fed. R. App. P. 32(a)(7)(B). This brief was prepared using WordPerfect 12 and contains 6,942 words of proportionally spaced text. The type face is Times New Roman, 14-point font.

s/ Dirk C. Phillips  
DIRK C. PHILLIPS  
Attorney

September 21, 2007

## **CERTIFICATE OF DIGITAL SUBMISSION**

I hereby certify that the digital version of the foregoing is an exact copy of what has been submitted to the court in written form. I further certify that this digital submission has been scanned with the most recent version of TREND MICRO OfficeScan (last updated September 19, 2007) and is virus-free.

s/ Dirk C. Phillips  
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September 21, 2007



**CERTIFICATE OF SERVICE**  
**(continued).....**

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