



November 1, 2018

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Director, Office for Civil Rights
U.S. Dept. of Health & Human Services
200 Independence Ave SW
Washington, DC 20201

Kenneth Marcus
Assistant Secretary for Civil Rights
U.S. Dept. of Education
400 Maryland Avenue SW
Washington, DC 20202

John Gore
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Civil Rights Division
U.S Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Naomi Barry-Pérez
Director
Civil Rights Center
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

cc: Mabel Echols
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building
725 17th Street NW
Washington, DC 20503

RE: Nondiscrimination in Health Programs and Activities; Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Assistance (RIN 0945-AA11 & RIN 1870-AA14)

Dear Roger Severino, Kenneth Marcus, John Gore, and Naomi Barry-Pérez:

We, the undersigned organizations, work with survivors of sexual violence and advocate for their rights in schools, homes, workplaces, their communities, and everywhere. We are writing you because we are deeply troubled about recent reports¹ that this administration and the Department of Health and Human Services (HHS) are proposing to erase transgender, non-binary, and intersex people from civil rights protections by narrowing the legal definition of sex to exclude their experiences and existence. This proposal seeks to exclude transgender, non-binary, and intersex individuals from discrimination protections under civil rights laws that have been repeatedly affirmed by federal district and circuit courts. It would also undermine protections for people who do not conform to sex stereotypes.

HHS is allegedly advocating for this administration to define gender as a “biological, immutable condition determined by genitalia at birth,” which would eradicate federal recognition of the nearly two million transgender and millions of intersex individuals in this country. This

¹ <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html>.

eradication is inhumane, cruel, and contrary to science, medicine, and an overwhelming weight of federal court precedents.

To insist that gender is irrevocably dictated by original birth certificates and genetic testing is contrary to the views of the American Medical Association², the American Academy of Pediatrics³, the American Psychological Association⁴, the American Psychiatric Association⁵, and countless doctors, counselors, psychologists, psychiatrists, and social workers across the nation. This is why in the most recent transgender rights case briefed at the Supreme Court, more than 20 of our nation's leading medical, mental health, and health care organizations, including the American Medical Association, joined an amicus brief in support of transgender students' rights.⁶

It also defies dozens of courts that over the last two decades affirmed the full rights and identities of transgender people.⁷ This extremist effort would usher in a new era of gender policing, which would impose irreparable harm on transgender, non-binary, and intersex⁸ people, as well as threaten the rights of women and girls who do not conform to traditional gender stereotypes. With this, your agencies are seeking to legally erase transgender, non-binary, and intersex people, which is an abomination. This attempt to narrow our civil rights laws would set back women's rights and make it easier to discriminate against anyone who is perceived as not conforming to rigid stereotypes.

As advocates committed to ending sexual assault and empowering survivors, we will never support any law or policy that could put anyone at greater risk for assault or harassment. That is why, in addition to condemning a definition of sex that erases transgender, non-binary, and intersex people, we strongly urge you to not undermine transgender-inclusive nondiscrimination protections from our civil rights laws. These laws protect transgender people from being fired, denied medical care, singled out, or even kicked out of school because of who they are. Everyone—including transgender people—should be treated equally under the law. For these reasons, we strongly support enforcing existing laws to protect transgender people, and we oppose any reading of the law that would jeopardize the safety of transgender people by

² <https://wire.ama-assn.org/ama-news/ama-takes-several-actions-supporting-transgender-patients>.

³ <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAP-Policy-Statement-Urges-Support-and-Care-of-Transgender-and-Gender-Diverse-Children-and-Adolescents.aspx>.

⁴ <http://www.thetaskforce.org/american-psychiatric-association-officially-supports-equality-in-transgender-health/>.

⁵ <https://www.psychiatry.org/patients-families/gender-dysphoria>.

⁶ *E.g.*, Brief for American Academy of Pediatrics et al. as Amici Curiae Supporting Respondent, Gloucester Cnty. Sch. Bd. v. G.G., 137 S. Ct. 1239 (2017) (No. 16-273), 2017 WL 1057281 (transgender students' rights supported by American Academy of Pediatrics, American Psychiatric Association, American College of Physicians, American Academy of Child and Adolescent Psychiatry, American Academy of Family Physicians, American Academy of Nursing, American Academy of Physician Assistants, American Medical Student Association, American Medical Women's Association, American Nurses Association, American Psychoanalytic Association, American Public Health Association, Association of Medical School Pediatric Department Chairs, Endocrine Society, GLMA: Health Professionals Advancing LGBT Equality, Mental Health America, National Association of Social Workers, Pediatric Endocrine Society, Society for Adolescent Health and Medicine, and Society for Physician Assistants in Pediatrics).

⁷ <https://transequality.org/federal-case-law-on-transgender-people-and-discrimination>.

⁸ Intersex people compose up to 1.7% of the population and are born with sex characteristics that do not conform with what society tends to think of as a typical "male" or "female" body. A federal definition of gender as binary will exacerbate the erasure intersex people already face.

exposing them to discrimination in many aspects of their daily lives, including forcing them into public restrooms and other spaces that do not align with their gender.

In shaping federal civil rights policies and laws, we urge you to also consider transgender individuals' heightened vulnerability to sexual violence. About one in two transgender individuals are sexually abused or assaulted at some point in their lives, with especially high rates among transgender people of color, and one in ten were sexually assaulted just in the previous year.⁹ Any attempt to eradicate protections for transgender, non-binary, and intersex individuals under our civil rights laws would only exacerbate their vulnerability to discriminatory treatment and violence, and would also threaten harm to any individual who does not conform to traditional gender stereotypes.

Forcing transgender, non-binary, and intersex individuals to identify by their sex assigned at birth is effectively punishing them because of their difference and seeking to erase their identities. Such an act is wholly inconsistent with the mission of your offices that should instead be promoting achievement, success, safety, and equal treatment of everyone. This is also the most egregious attack on their rights that this administration has made to date, instilling fear among transgender, non-binary, and intersex individuals and their families and encouraging increased discrimination against them.

Fear and ignorance have no place in determining national policy. Your offices are entrusted with enforcing civil rights laws that ensure that all people are protected from discrimination on the basis of their sex. We call on you to ensure that they live up to that promise. Thank you for your time in considering our concerns. For questions, please contact Emily Martin (emartin@nwlc.org) or Shiwali Patel (spatel@nwlc.org) at the National Women's Law Center at (202) 588-5180.

Respectfully submitted,

National Women's Law Center, joined by:

Advocates for Youth
Agape House Inc. of Mountain View
Alaska Native Women's Resource Center
Alianza Latina en contra la Agresión Sexual
American Association of University Women
American Civil Liberties Union
Angela Meyers LCPC, LAC
Angela's Piazza: Women's Drop In Center
Arkansas Coalition Against Sexual Assault
Arise Sexual Assault Services
Arte Sana
Asian Pacific Institute on Gender-Based Violence

⁹ www.ustranssurvey.org/reports.

ASPEN- Abuse Support & Prevention Education Network
California Coalition Against Sexual Assault (CALCASA)
Casa de Esperanza: National Latin@ Network
Chicago Alliance Against Sexual Exploitation
Clearinghouse on Women's Issues
Clinton County Women's Center
Colorado Coalition Against Sexual Assault (CCASA)
Connecticut Alliance to End Sexual Violence
Day One
Domestic Violence Intervention Program
End Rape on Campus
Enough is Enough Voter Project
Feminist Majority Foundation
Fierce Pride
Florida Council Against Sexual Violence
Futures Without Violence
Girls Inc.
Guam Coalition Against Sexual Assault & Family Violence
HAVEN
Human Rights Campaign
Idaho Coalition Against Sexual & Domestic Violence
Illinois Accountability Initiative
Illinois Coalition Against Sexual Assault
Iowa Coalition Against Sexual Assault
Jane Doe Inc., the Massachusetts Coalition Against Sexual Assault and Domestic Violence
Know Your IX a Project of Advocates for Youth
La Jolla Band of Luiseno Indians Avellaka Program
Latinas Unidas Por Un Nuevo Amanecer (LUNA)
Legal Momentum, the Women's Legal Defense and Education Fund
Legal Voice
Louisiana Foundation Against Sexual Assault
Lydia's House, Inc.
Maine Coalition Against Sexual Assault
Maryland Coalition Against Sexual Assault
Michigan Coalition to End Domestic & Sexual Violence
Minnesota Coalition Against Sexual Assault
Missoula City-County Relationship Violence Services
Missouri Coalition Against Domestic and Sexual Violence (MCADSV)
Monsoon Asians & Pacific Islanders in Solidarity
Montana Coalition Against Domestic and Sexual Violence
National Alliance for Partnerships in Equity (NAPE)
National Alliance to End Sexual Violence

National Center for Lesbian Rights
National Coalition Against Domestic Violence
National Council of Jewish Women
National Education Association
National Indigenous Women's Resource Center
National Network to End Domestic Violence
National Organization for Women
National Resource Center on Domestic Violence (NRCDV)
National Women's Political Caucus
North Carolina Coalition Against Sexual Assault
Nebraska Coalition to End Sexual and Domestic Violence
Network of Victim Assistance (NOVA)
Nevada Coalition to End Domestic and Sexual Violence
New Jersey Coalition Against Sexual Assault
New Mexico Coalition of Sexual Assault Programs, Inc.
New York State Coalition Against Sexual Assault
New Hampshire Coalition Against Domestic & Sexual Violence
Oregon Coalition Against Domestic & Sexual Violence
Pennsylvania Coalition Against Rape
Phelps County Family Crisis Services/Russell House
Public Justice
Rape Crisis Center of Central New Mexico
Rape\Domestic Abuse Program
Resolve
Rose Brooks Center
Safe Berks
SafeBAE
Sexual Violence Center
SPHS CARE Center STARS Program
Surge Reproductive Justice
Survivors, Inc.
SurvJustice, Inc.
Texas Association Against Sexual Assault
The Abuse Network, Inc.
The Lighthouse Shelter
The Rape Crisis Center of Central New Mexico
The Sex Abuse Treatment Center
Toole County Victim Advocate Program
Transformative Healing
Transitions of PA
True North of Columbia
Vermont Network Against Domestic and Sexual Violence

Victim Rights Law Center
Victims' Intervention Program
Virginia Sexual & Domestic Violence Action Alliance
Washington County Gay Straight Alliance, Inc.
Wisconsin Coalition Against Sexual Assault
Women Employed
Women of Color Network, Inc.
Women's Law Project
Women's Resource Center
Wyoming Coalition Against Domestic Violence and Sexual Assault
Yellowstone County Attorney's Office
YWCA Great Falls
YWCA Greater Harrisburg
YWCA Lancaster
YWCA Missoula
YWCA St. Joseph
YWCA USA