



Affairs U.S. Department of Commerce
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RE: Public Comment in Response to Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; American Community Survey Methods Panel: 2024 Sexual Orientation and Gender Identity Test [Docket No. USBC–2023–0007]

On behalf of the undersigned 71 organizations committed to researching and advancing gender equity in the United States, we write in support of the proposal issued by the U.S. Census Bureau (the “Bureau”) to conduct a test of sexual orientation and gender identity (SOGI) measures on the American Community Survey (the “ACS”).¹

Achieving gender equity and justice in the United States requires identifying and addressing inequities for all lesbian, gay, bisexual, transgender, queer, intersex and other sexual and gender minority (LGBTQI+) people. Yet the gaps in data about the lives of LGBTQI+ people make it difficult to understand disparities, craft policy solutions and ultimately achieve gender equity for everyone. Thus, federal data collection efforts must consistently include measures sufficient to identify the unique needs and experiences of LGBTQI+ communities. Additionally, data collection must capture the diversity of LGBTQI+ communities, including people with multiple marginalized identities; must always be performed in a safe and secure manner, in accordance with best practices and evidence-based research on this subject; and should be poised to advance the equity and efficiency of civil rights enforcement, funding and policy making in the United States.

The Proposed Test is an important step towards achieving these goals. The outcomes of the Proposed Test can provide the rigorous research necessary to determine how best to add SOGI measures to the ACS. We support the test and are also grateful for the chance to offer further opportunities for advancing research on these topics.

¹ U.S. Census Bureau. (2023, September 19). *Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; American Community Survey Methods Panel: 2024 Sexual Orientation and Gender Identity Test*, 88 Fed. Reg. 64,404. Retrieved 7 November 2023, from

<https://www.federalregister.gov/documents/2023/09/19/2023-20256/agency-information-collection-activities-submission-to-the-office-of-management-and-budget-omb-for>

Below we provide a review of why LGBTQI+ data are essential for gender justice; discuss research regarding LGBTQI+ people’s experiences with discrimination and disparities; highlight how including SOGI data in the ACS would further agencies’ civil rights enforcement and activities to advance equity; and voice support for the measures proposed by the Bureau, as well as areas of future research.

I. Comprehensive Data on LGBTQI+ Populations are Essential for Gender Justice

Gender equity is not narrowly limited to equity solely between men and women, but rather broadly encompasses the many manifestations of inequity associated with sexual orientation, gender identity and sex characteristics.² As ILGA World Executive Director Julia Ehrhart writes, “the ill-treatment of women in our societies and the ill-treatment of LGBTI persons have the same root cause. It is all about sex and gender – and they should be tackled jointly.”³ This connection is evident in the arguments used in legislation that discriminates against LGBTQI+ people, which often seek to enforce a specific, “traditional” definition of womanhood.⁴ This reasoning – which harms all women – is all too familiar to our organizations; it is the very rationale that has been used to limit women’s economic, political and societal participation for centuries.⁵

Thus, achieving gender equity requires a thorough understanding of the gender-based barriers that face all people. This means that accurate, robust and intersectional data on LGBTQI+ people – who are especially likely to experience gender-based discrimination, stereotypes and other barriers⁶ – are critical for gender equity. But a lack of data, particularly comprehensive federal data that address barriers for multiply marginalized people, has hampered our efforts to effectively craft policy solutions that remedy gender inequities.

As gender justice organizations, we research and advocate on a variety of issues that disproportionately impact women’s health and economic well-being. These issues include, but are not limited to, increased access to health care, including pregnancy-related care and abortion care; education and employment equity; intimate partner violence; support for caregiving policies such as paid leave, child care and home- and community-based services for disabled individuals and more. We know that women of different racial and ethnic groups, disability status, immigration status, age, class and more are affected by these issues in diverse ways. We also know that LGBTQI+ women and non-binary people need targeted solutions that address the specific barriers they face – and that designing policy to address their particular challenges will

² Human Rights Campaign Foundation. (n.d). *5 Things to Know to Make Your Feminism Trans-Inclusive*. Retrieved 7 November 2023, from <https://www.hrc.org/resources/5-things-to-know-to-make-your-feminism-trans-inclusive>³

Ehrt, J. (2019, July 23). *Gender is where the feminist and LGBTI movements meet. Here's why*. Retrieved 7 November 2023, from the World Economic Forum website:

<https://www.weforum.org/agenda/2019/07/gender-where-feminist-movements-and-lgbti-movements-meet/>⁴

Tobacco Mar, R. (2023, March). *Trans Rights Are Women's Rights*. Retrieved 7 November 2023, from American Civil Liberties Union website: <https://www.aclu.org/news/lgbtq-rights/trans-rights-are-womens-rights>; See note 2.

⁵ See note 4, Tobacco

⁶ Medina, C. & Mahowald, L. (2023, January). *Discrimination and Barriers to Well-Being: The State of the LGBTQI+ Community in 2022*. Retrieved 7 November 2023, from Center for American Progress website: <https://www.americanprogress.org/article/discrimination-and-barriers-to-well-being-the-state-of-the-lgbtqi-community-in-2022/>

benefit everyone.⁷ But we often lack the data to understand these impacts in detail, across the full spectrum of issues. The availability – or lack thereof – of data on LGBTQI+ communities shapes the policies we focus on in important ways, illustrated in three examples below. Though these examples show the breadth of impact, it is important to note they are not the only instances of such impact.

First, many of our organizations have long advocated for paid family and medical leave, which especially supports women who are more likely to need time off from work to be able to care for their own or a loved one's medical condition, but who are less likely to have access to paid leave.⁸ Over the last decade, research has shown that LGBTQI+ people are especially likely to need paid leave to care for their “chosen family” – someone who is like family to them but to whom they may not be related by blood or legal ties – and that transgender adults in particular benefit from this definition of family in paid leave laws.⁹ Yet the data make it clear that designing the policy to include chosen family benefits everyone; one in seven non-LGBTQI+ adults also report needing paid leave to cover chosen family.¹⁰ Having these data has shaped state, local and federal policies on paid leave.

Second, one of the hallmark achievements of the U.S. women's movement was the passage of Title IX, which prohibited sex discrimination in schools that receive federal funding, impacting a range of issues related to gender equity in education, including athletics.¹¹ Now we are facing a rash of restrictions on transgender student athletes, with a particular focus on transgender women student athletes.¹² Yet research finds that states with fully inclusive policies for transgender student participation in school sports not only do no harm to cisgender women and girls' sports participation but some states, like California, have seen participation by cisgender girls grow. On the other side, participation among high school cisgender girls in states with policies excluding transgender children's full and equal participation in school sports was lower.¹³ The most commonly cited barriers to women's sports participation are opportunity and costs, as well as gender stereotypes and norms around sports which discourage participation of girls, not the

⁷ Grant, J.M. & Sewell, A.A. (2023). *We Never Give Up the Fight*. Retrieved 7 November 2023, from the National LGBTQ+ Women's Community Survey website:

<https://lgbtcenter.org/wp-content/uploads/2023/10/LGBT-Womens-Survey-Full-2023.pdf>⁸

Frye, J. (2023, October 25). *Expanding Care Investments Is Not A Secondary Luxury; It Is An Urgent Issue: My Testimony Before the Senate Finance Committee*. National Partnership for Women & Families Blog. Retrieved 7 November 2023, from

<https://nationalpartnership.org/expanding-care-investments-not-secondary-luxury-it-is-an-urgent-issue-my-testimony/>

⁹ Medina, C. & Weston Williams, M. (2023, March). *Paid Leave Policies Must Include Chosen Family*. Retrieved 7 November 2023, from Center for American Progress website:

<https://www.americanprogress.org/article/paid-leave-policies-must-include-chosen-family/>

¹⁰ Ibid.

¹¹ National Women’s Law Center. (2022, June 7). *Title IX at 50*. Retrieved 7 November 2023, from <https://nwlc.org/resource/nwgc-title-ix-at-50/>; National Women’s Law Center. (2022, June 7). *Title IX at 50: Athletics*. Retrieved 7 November 2023, from <https://nwlc.org/wp-content/uploads/2022/06/5-Athletics.pdf> ¹²

Human Rights Campaign. (2023). *Anti-Transgender Sports Bans Violate New Proposed Title IX Rules* [Press release]. Retrieved 7 November 2023, from

<https://www.hrc.org/press-releases/anti-transgender-sports-bans-violate-new-proposed-title-ix-rules> ¹³ Goldberg, S.K. (2021, February). *Fair Play*. Retrieved 7 November 2023, from Center for American Progress website:

<https://www.americanprogress.org/article/fair-play/>

inclusion of transgender kids.¹⁴ Rather than protecting cisgender women, “limiting freedom for trans people worsens conditions for all women by re-entrenching the very gender stereotypes that have underpinned centuries of women’s oppression.”¹⁵

Finally, access to abortion care is front and center in today’s gender equity conversations – and research shows that the ability to access abortion care has significant economic and health repercussions.¹⁶ Research shows that LGBTQI+ people are more likely to experience unintended pregnancies, and that such pregnancies put them at greater risk for violence.¹⁷ Yet analyses regarding the impact of bans or likely bans on abortion are often unable to assess their impact on certain segments of the LGBTQI+ population, as the data are limited to people who identify as women. For example, the National Partnership for Women & Families’ analysis of the state-level implications of abortion policies used the ACS in order to assess the impacts for disabled women, mothers, women of different racial and ethnic groups and more – but it could not include LGBTQI+ people who did not identify as women, nor could it identify impacts for LGBTQI+ women due to limitations in the ACS data.¹⁸ The ability to use future ACS data in this analysis would be invaluable.

These three examples illuminate the importance of having inclusive, comprehensive LGBTQI+ data on the full range of policies that address gender equity – as well as some of the consequences when the data fall short. As the sections below make clear, there are far too many areas in which such data are lacking.

II. Existing Research on LGBTQI+ Populations Demonstrates Inequities, Despite Gaps in Data

¹⁴ Ibid.

¹⁵ See note 4, Tobacco

¹⁶ Gallagher Robbins, K., Goodman, S. & Klein, J. (2023, June). *State Abortion Bans Harm More Than 15 Million Women of Color*. Retrieved 7 November 2023, from National Partnership for Women & Families website: <https://nationalpartnership.org/report/state-abortion-bans-harm-woc/>

¹⁷ Klein, J. & Gruberg, S. (2023, July 11). *Bans on Abortion and Gender-Affirming Care Harm the LGBTQ+ Community*. National Partnership for Women & Families Blog. Retrieved 7 November 2023, from <https://nationalpartnership.org/bans-abortion-gender-affirming-care-harm-lgbtq-community/> ¹⁸ See note 16.

LGBTQI+ people are a diverse and growing population in the U.S.¹⁹ with the share of adults identifying as LGBT doubling in the last decade.²⁰ One in five Gen Z adults identifies as LGBT and the proportion of adults who identify as LGBT is expected to increase.²¹ Given the growth in LGBT identity among younger generations, Gallup estimates more than one in 10 Americans will soon identify as LGBT.²² Adults identifying as female are a large majority of the LGBT population (58 percent),²³ and transgender women are the largest share of adults who identify as transgender.²⁴ LGBTQ adults are also disproportionately likely to be people of color compared to non-LGBTQ adults,²⁵ and are significantly more likely to be disabled.²⁶

Research shows that the LGBTQI+ community faces deep inequities in myriad aspects of their lives. LGBTQ+ people are more likely to be living in poverty and have negative physical and mental health outcomes compared to their straight and cisgender counterparts,²⁷ due in part to

¹⁹ “LGBTQI+” has become increasingly used by LGBTQI+ organizations, the federal government, and other stakeholders to be expressly inclusive of intersex and other sexual and gender diverse people like asexual and pansexual populations. However, data limitations like those we describe throughout these comments have often prevented intersex people, along with other LGBTQI+ subpopulations, from being consistently counted across various collections of data. We therefore will refer to “LGBTQI+” communities throughout the remainder of these comments, outside of where only particular subpopulations are being discussed by our referenced studies. See, e.g., Goldberg, S., Julian, C., Manning, W., Westrick-Payne, K., & Westrosky, G. (2022). Human Rights Campaign & Bowling Green State University. *Equality Electorate: The Projected Growth of The LGBTQ+ Voting Bloc in Coming Years*. Retrieved 7 November 2023, from <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/LGBTQ-VEP-Oct-2022.pdf>; The Williams Institute has previously estimated that at least 2 million youth ages 13–17 identify as LGBT in the U.S., including approximately 300,000 youth who are transgender. See, e.g., Herman, J., Flores, A., & O’Neill, K. (2022). *How Many Adults and Youth Identify as Transgender in the United States?* Retrieved 7 November 2023, from Williams Institute website: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>; Conron, K. (2020).

LGBT Youth Population in the United States. Retrieved 7 November 2023, from Williams Institute website: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>.²⁰ Jones, J. (2023, February 22). *U.S. LGBT Identification Steady at 7.2%*. Retrieved 7 November 2023, from Gallup website: <https://news.gallup.com/poll/470708/lgbt-identification-steady.aspx>.

²¹ Ibid.

²² Jones, J. (2022, February 17). *LGBT Identification in U.S. Ticks Up to 7.1%*. Retrieved 7 November 2023, from Gallup website: <https://nem/poll/389792/lgbt-identification-ticks-up.aspx>

²³ Williams Institute. (2019, January). *LGBT Demographic Data Interactive*. Retrieved 7 November 2023, from <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#demographic>.²⁴ See note 19, Herman et al.

²⁵ Using Gallup Daily Tracking survey data from 2012–2017, the Williams Institute estimates that 42 percent of LGBT adults identify among communities of color, including 1 percent of LGBT adults that identify as American Indian and Alaska Native. See note 23; See note 19, Herman et al.

²⁶ Human Rights Campaign Fund (2022, August 12). *Understanding Disability in the LGBTQ+ Community*. Retrieved 7 November 2023, from <https://www.hrc.org/resources/understanding-disabled-lgbtq-people>²⁷ Badgett, M.V.L., Choi, S., & Wilson, B. (2019). *LGBT Poverty In The United States: A Study Of Differences Between Sexual Orientation and Gender Identity Groups*. Retrieved 7 November 2023, from Williams Institute website: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>; see also Wilson, B., Bouton, Badgett, M.V.L., & Macklin, M. (2023). *LGBT Poverty in the United States*. Retrieved 7 November 2023, from Williams Institute website: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Poverty-COVID-Feb-2023.pdf> (using data from the Behavioral Risk Factor Surveillance System and the Bureau's Household Pulse Survey to analyze poverty rates during the early days of the COVID-19 pandemic). See, e.g., Baker, K. (2019). Findings From the Behavioral Risk Factor Surveillance System on Health-Related Quality of Life Among US Transgender Adults, 2014–2017, *179 JAMA Internal Medicine* 1141. Retrieved 7 November 2023, from <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2730765>; Gonzales, G. & Henning-Smith, C. stigma, discrimination and stress.²⁸ These disparities can be even larger for women in the LGBTQI+ community,²⁹ LGBTQI+ people of color, transgender people and intersex people and people living at the intersection of these identities.³⁰ These disparities also intersect with many areas of work among gender justice organizations, as women are also more likely to live in poverty, have distinct mental health needs and more.³¹

LGBTQI+ people experience harassment and discrimination based on their sexual orientation, gender identity and variations in sex characteristics (SOGISC). These harmful experiences have

(2017). Health Disparities by Sexual Orientation: Results and Implications from the Behavioral Risk Factor Surveillance System. *42 J. Community Health* 1163. Retrieved 7 November 2023, from <https://pubmed.ncbi.nlm.nih.gov/28466199/>

²⁸ See National Science & Technology Council (2023). *Federal Evidence Agenda on LGBTQI+ Equity* 14. Retrieved 7 November 2023, from

<https://www.whitehouse.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf>; see also Casey, L. S., Reisner, S. L., Findling, M. G., Blendon, R. J., Benson, J. M., Sayde, J. M., & Miller, C. (2019). Discrimination in the United States: Experiences of lesbian, gay, bisexual, transgender, and queer Americans. *Health services research*, *54 Suppl 2(Suppl 2)*, 1454–1466. Retrieved 7 November 2023, from <https://doi.org/10.1111/1475-6773.13229>

²⁹ Glassman, B. (2020, September 17). *Census Bureau Implements Improved Measurement of Same-Sex Couples*. America Counts: Stories Blog. Retrieved 7 November 2023, from <https://www.census.gov/library/stories/2020/09/same-sex-married-couples-have-higher-income-than-opposite-sex-married-couples.html>; Movement Advancement Project and Center for American Progress. (2015, March). *Paying an Unfair Price: The Financial Penalty for LGBT Women in America*. Retrieved 7 November 2023, from <https://www.lgbtmap.org/policy-and-issue-analysis/unfair-price-lgbt-women>; Wilson, B.D.M., Gordon, A.R., Mallory, C., Choi, S.K., & Badgett, M.V.L. (2021, March). *Health and Socioeconomic Well-Being of LGB Women in*

the US. Retrieved 7 November 2023, from Williams Institute website:

<https://williamsinstitute.law.ucla.edu/publications/lbq-women-in-us/>; See note 7.

³⁰ See, e.g., Bouton, L., Brush, A., & Meyer, I. (2023) *LGBT Adults Aged 50 and Older in the US During the COVID-19 Pandemic*. Retrieved 8 November 2023, from Williams Institute website:

<https://williamsinstitute.law.ucla.edu/publications/older-lgbt-adults-us/>; Wilson, B. Bouton, L., & Mallory, C. (2022). *Racial Differences Among LGBT Adults in the U.S.: LGBT Well-Being at the Intersection of Race*. Retrieved 8 November 2023, from Williams Institute website:

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Race-Comparison-Jan-2022.pdf>; See, e.g., Herma, J. & O'Neill, K. (2022). *Well-Being Among Transgender People During the COVID-19 Pandemic*. Retrieved 8 November 2023, from Williams Institute website:

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pulse-Toplines-Nov-2022.pdf>; See generally Meyer, I., Wilson, B., & O'Neill, K. (2021) *LGBTQ People in the US: Select Findings from the Generations and TransPop Studies* (2021), Retrieved 8 November 2023, from Williams Institute website:

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/Generations-TransPop-Toplines-Jun-2021.pdf>; See, e.g., Wang, J. (2023). Understanding the Relationship Between Experiences with Healthcare Discrimination and Emergency Healthcare Delay Among Intersex Adults, *82 Ann. Emerg. Med. S47*.; See note 6; Rosenwohl-Mack, A., Tamar-Mattis, S., Baratz, A. B., Dalke, K. B., Ittelson, A., Zieselman, K., & Flatt, J. D. (2020). A national study on the physical and mental health of intersex adults in the U.S. *PLoS one*, 15(10), e0240088. Retrieved 8 November 2023, from <https://doi.org/10.1371/journal.pone.0240088> /; see also European Union Fundamental Rights Agency. (2020). *EU-LGBTI II: A Long Way To Go for LGBTI Equality*. Retrieved 8 November 2023, from <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>

³¹ Sun, S. (2023, January). *National Snapshot: Poverty Among Women and Families*. Retrieved 7 November 2023, from National Women's Law Center website:

https://nwlc.org/wp-content/uploads/2023/02/2023_nwlc_PovertySnapshot-converted-1.pdf; Saxena, A. (2023, October 19). *Global Mental Health Month: Making a Difference in Maternal Mental Health*. CLASP Blog. Retrieved 7 November 2023, from <https://www.clasp.org/blog/global-mental-health-maternal-mental-health/> been reported across a wide range of contexts, including in our nation's schools;³² at their places of work;³³ when seeking housing including emergency shelter and services while unhoused;³⁴ within public accommodations;³⁵ and while seeking medical care.³⁶ And unfortunately violence, harassment and discrimination against LGBTQI+ people are on the rise alongside historic legislative attacks on the community's basic rights.³⁷ Again, these issues are central for many of our organizations, a number of whom are at the forefront of shaping policy on issues such as gender-based violence, harassment and discrimination, as well as other policy areas identified here.

Although a rich body of research on inequities for LGBTQI+ communities exists, significant gaps in knowledge remain due to a crucial lack of data for the LGBTQI+ community, especially for LGBTQI+ people with multiple marginalized identities. Data are also lacking for various communities of LGBTQI+ people, such as intersex people – those with innate variations in their physical sex characteristics³⁸ – despite the fact that Executive Order 14075 directs federal statistical agencies to “advance the responsible and effective collection and use of data on sexual orientation, gender identity, and sex characteristics.”³⁹ This limited information shortchanges large swaths of the LGBTQI+ population and leaves policy makers, researchers and others with insufficient data to make equitable and efficient decisions.

³² See, e.g., Kosciw, J., Clark, C., & Menard, L. (2022). *The 2021 National School Climate Survey*. Retrieved 8 November 2023, from GLSEN website:

<https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>; O'Neill, K., Conron, K., Goldberg, A., & Guardado, R. (2022). *Experiences of LGBTQ People in Four-Year Colleges and Graduate Programs*.

Retrieved 8 November 2023, from Williams Institute website:
<https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-College-Grad-School-May-2022.pdf>³³ Sears, B., Mallory, C., Flores, S., & Conron, K. (2021). *LGBT People's Experiences of Workplace Discrimination and Harassment*. Retrieved 8 November 2023, from Williams Institute website:
<https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf>³⁴ Romero, A., Goldberg, S., & Vasquez, L. (2020). *LGBT People and Housing Affordability, Discrimination, and Homelessness*. Retrieved 8 November 2023, from Williams Institute website:
<https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>³⁵ Mallory, C. & Sears, B. (2026). *Evidence of Discrimination in Public Accommodations Based on Sexual Orientation and Gender Identity*. Retrieved 8 November 2023, from Williams Institute website:
<https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Public-Accomm-Discrimination-Feb-2016.pdf>³⁶ Human Rights Watch. (2028, July 13). "You Don't Want Second Best" Anti-LGBT Discrimination in US Health Care. Retrieved 8 November 2023:
<https://www.hrw.org/report/2018/07/23/you-dont-want-second-best/anti-lgbt-discrimination-us-health-care>³⁷ Human Rights Campaign. (2023). *LGBTQ+ Americans Under Attack: A Report and Reflection On The 2023 State Legislative Session*. Retrieved 8 November 2023, from
<https://hrc-prod-requests.s3-us-west-2.amazonaws.com/Anti-LGBTQ-Legislation-Impact-Report.pdf>; FBI National Press Office. (2023, October 16). *FBI Releases 2022 Crime in the Nation Statistics* [Press Release] Retrieved 8 November 2023, from FBI.gov:
<https://www.fbi.gov/news/press-releases/fbi-releases-2022-crime-in-the-nation-statistics>³⁸ Blackless, M., Charuvastra, A., Derryck, A., Fausto-Sterling, A., Lauzanne, K., & Lee, E. (2000). How sexually dimorphic are we? Review and synthesis. *American journal of human biology: the official journal of the Human Biology Council*, 12(2), 151–166. Retrieved 8 November 2023, from
[https://doi.org/10.1002/\(SICI\)1520-6300\(200003/04\)12:2<151::AID-AJHB1>3.0.CO;2-F](https://doi.org/10.1002/(SICI)1520-6300(200003/04)12:2<151::AID-AJHB1>3.0.CO;2-F)³⁹ Exec. Order. 14075, Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, 87 Fed. Reg. 37,189 (June 15, 2022) at § 10(a) (emphasis added).

Because of its large sample size, including measures of the LGBTQI+ community in the ACS – which currently collects only limited information on the LGBTQI+ population⁴⁰ – is essential. Doing so would allow researchers and policy makers to generate accurate, consistent and representative data about diverse LGBTQI+ populations in communities across the country on a variety of dimensions including health, housing, poverty, employment and more. Enhancing ACS data collection on LGBTQI+ communities would support producing more accurate population estimates and enable data disaggregation by race, ethnicity, disability, age and other variables to help researchers and others better understand the experiences of those living at the intersection of multiple marginalized identities, such as LGBTQI+ people of color, LGBTQI+ people with disabilities and LGBTQI+ aging adults.

III. Collecting SOGISC Data Through the ACS Would Support Federal Efforts to Enforce Civil Rights Laws and Advance Equity

In 2020, the U.S. Supreme Court held in *Bostock v. Clayton County* that the sex discrimination prohibition contained within Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits discrimination on the basis of sexual orientation and gender identity.⁴¹ The opinion stated "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."⁴² *Bostock* was decided using generally applicable principles of statutory interpretation – with the Court finding that Title VII's bar on discrimination "because of . . . sex," when interpreted "in accord with the ordinary public meaning of its terms at the time of its enactment[,]” encompasses sexual orientation and gender identity discrimination – that can be extended to other laws long read to be consistent with that statute.⁴³ These include, but are not limited to, landmark civil rights laws like Title IX of the Education Amendments of 1972, Section 1557 of the Affordable Care Act, the Fair Housing Act

and the Equal Credit Opportunity Act.⁴⁴

⁴⁰ Current ACS data are solely focused on cohabiting same-sex couples who are only about one in six of all LGBTQI+ people in the U.S. Scherer, Z. (2022, November 22). *Number of Same-Sex Couple Households Exceeded 1 Million in 2021*. Retrieved 8 November 2023, from Census.gov:

<https://www.census.gov/library/stories/2022/11/same-sex-couple-households-exceeded-one-million.html>; Medina, C. & Mahowald, L. (2022, May 24). *Collecting Data About LGBTQI+ and Other Sexual and Gender-Diverse Communities*. Retrieved 8 November 2023, from Center for American Progress website: <https://www.americanprogress.org/article/collecting-data-about-lgbtqi-and-other-sexual-and-gender-diverse-communities/>

⁴¹ 140 S. Ct. 1731 (2020)

⁴² *Bostock v. Clayton County*, 590 U.S. ____ (June 15, 2020) at p. 9.

⁴³ *Ibid* at p. 4.

⁴⁴ Back, C. & Cole, J. (2021). *Cong. Res. Serv., Potential Application of Bostock v. Clayton County to Other Civil Rights Statutes*. Retrieved 8 November 2023, from <https://crsreports.congress.gov/product/pdf/R/R46832>; Mallory, C., Vasquez, L. & Meredith, C. (2020). *Legal Protections for LGBT People After Bostock v. Clayton County*. Retrieved 8 November 2023, from Williams Institute website:

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/Bostock-State-Laws-Jul-2020.pdf>; See also Gruberg, S. (2020, August). *Beyond Bostock: The Future of LGBTQ Civil Rights*. Retrieved 7 November 2023, from Center for American Progress website: <https://www.americanprogress.org/article/beyond-bostock-future-lgbtq-civil-rights/>; Consumer Finance Protection Bureau. (2021). *CFPB Clarifies That Discrimination by Lenders on the Basis of Sexual Orientation and Gender Identity Is Illegal* [Press release]. Retrieved 7 November 2023, from <https://www.consumerfinance.gov/about-us/newsroom/cfpb-clarifies-discrimination-by-lenders-on-basis-of-sexual-orientation-and-gender-identity-is-illegal/>

Additionally, following *Bostock v. Clayton County*,⁴⁵ federal agencies have been subject to Executive Orders 13988,⁴⁶ 14075,⁴⁷ 14091⁴⁸ which collectively seek to combat discrimination based on sexual orientation, gender identity and sex characteristics in federal programs and to advance civil rights. Federal courts have also been interpreting civil rights statutes beyond Title VII in line with *Bostock* to prohibit discrimination on the basis of sexual orientation,⁴⁹ gender identity⁵⁰ or sex characteristics.⁵¹ Many federal agencies have undertaken rulemaking pursuant to these executive orders, the reasoning in *Bostock*⁵² and/or issued regulations or guidance regarding discrimination based on SOGISC.⁵³

Moreover, Executive Order 14075 requires the creation of an evidence agenda to coordinate a cross-government effort to promote and engage in inclusive and responsible data collection practices on SOGISC.⁵⁴ Per the *Federal Evidence Agenda on LGBTQI+ Equity*, Executive Order 14075 “recognizes that in order to advance equity for LGBTQI+ people, the Federal Government must continue to gather the evidence needed to understand the LGBTQI+ community, the

⁴⁵ 140 S. Ct. 1731 (2020).

⁴⁶ Exec. Order No. 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, 86 Fed. Reg. 7023 (2021, January 20).

⁴⁷ See note 39.

⁴⁸ Exec. Order No. 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 88 Fed. Reg. 10,825 (2023, February 16).

⁴⁹ See, e.g., *Grabowski v. Arizona Board of Regents*, No. 22-15714, 2023 WL 3961123, 9th Cir. (2023, June 13); *Walsh v. Friendship Village of South County*, No. 19-1395, 8th Cir (2020).

⁵⁰ See, e.g., *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 4th Cir. (2020), as amended (2020, August 28), cert. denied, 141 S. Ct. 2878 (2021).

⁵¹ See, e.g., *A.C. v. Metro. Sch. Dist. of Martinsville*, ___ F.4th ___, 2023 U.S. App. LEXIS 19785, *21–22, 7th Cir. 2023, August 1) (in dicta); *Grimm v. Gloucester County School Board*, 972 F.3d 586, 596, 615, 4th Cir. (2020) (in dicta); *Hughes v. Home Depot, Inc.*, 804, F.Supp.2d 223 (D.N.J. 2011); *Kastl v. Maricopa County Community College District*, No. 02–1531, 2004 WL 2008954, D. Ariz. (2004, June 3), summ. judg. granted on other grounds, No. CV-02-1531-PHX-SRB (D. Ariz. Aug. 22, 2006). See also *Hecox v. Little*, 2023 U.S. App. LEXIS 21541, 9th Cir. (2023, August 17) (recognizing that "sex," whether or not defined only as "biological sex," must include intersex variations); *Schroer v. Billington*, 424 F. Supp. 2d 203, 213 n.5, D.D.C. (2006) (same). ⁵² See, e.g., *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 87 Fed. Reg. 41,390 (2022, July 12); *Nondiscrimination in Health Programs and Activities*, 87 Fed. Reg. 47,824 (2022, August 4).

⁵³ DOJ Civil Rights Division (2022, March 10). *Interpretation of Bostock v. Clayton County regarding the nondiscrimination provisions of the Safe Streets Act, the Juvenile Justice and Delinquency Prevention Act, the Victims of Crime Act, and the Violence Against Women Act*. Retrieved 8 November 2023, from <https://www.justice.gov/crt/page/file/1481776/download>; U.S. Department of Justice (2021, August 12). *Title IX Legal Manual*. Retrieved 8 November 2023, from <https://www.justice.gov/crt/title-ix#Bostock>; *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 87 Fed. Reg. 41390 (2022, July 12) (to be codified at 34 C.F.R. § 106.10); *Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services*, 86 Fed. Reg. 56144, 56159, 56178 (2021, October 7), codified at 42 CFR § 59.5; *Nondiscrimination in Health Programs and Activities*, 87 Fed. Reg. 47824 (2022, August 4) (to be codified at 45 C.F.R. §§ 92.8, 92.10, 92.101); *Consumer Financial Protection Bureau, Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)*, 88 Fed. Reg. 35150, 35166 (2023, May 31) (“[The Equal Credit Opportunity Act] makes it unlawful for any creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis ... sex (including sexual orientation, gender identity, and sex characteristics.”).

⁵⁴ See note 39.

barriers they face, and the policy changes the Federal Government can make to enable their health and well-being.”⁵⁵

Effective implementation of these protections requires a depth of nuanced, detailed information the ACS is particularly well equipped to generate – information that, as noted above, is currently lacking. SOGISC data collected through the ACS are essential to supporting federal agencies in their efforts to identify and combat patterns and practices of discrimination against LGBTQI+ people and to advance equity. For example, the Department of Justice (DOJ) has expressed interest in and identified legal uses for adding SOGI content to the ACS to allow it to better coordinate and enforce federal laws that cover anti-LGBTQI+ hate crimes and strengthen its ability to enforce civil rights laws, including those that protect LGBTQI+ people from discrimination.⁵⁶ Specifically, the DOJ cited the importance of these data in relation to enforcing provisions in the Violence Against Women Act, including the Office on Violence Against Women’s grant programs, and combating employment discrimination, among other civil rights priorities.⁵⁷ The DOJ is hampered in its ability to enforce civil rights statutes that prohibit discrimination based on sex due to insufficient ACS data and the resulting lack of information on the impacts of policies on LGBTQI+ communities. Given the prevalence of discrimination and hate crimes against the LGBTQI+ community, ACS data would have a meaningful impact on enforcement and targeting technical assistance, education and outreach resources to best serve LGBTQI+ communities.⁵⁸

More broadly, a dearth of data obscures the diversity of LGBTQI+ experiences and hampers the government’s ability to address disparities.⁵⁹ These ACS data would play an important role in the government’s civil rights enforcement efforts and inform its commitment to data-driven equity decisions.⁶⁰ Thus we believe the Bureau’s proposal is necessary and would have practical utility,

as it would support the eventual collection of information that could aid in the government's legally mandated obligations outlined above.

IV. Support for the Proposed Test, Ensuring Confidentiality and Areas of Future Research

The measures included by the Bureau in the Proposed Test reflect current best practices for asking questions about SOGI on surveys where they will be answered by both LGBTQI+ and

⁵⁵ National Science & Technology Council. (2023). *Federal Evidence Agenda on LGBTQI+ Equity*. Retrieved 8 November 2023, from

<https://www.whitehouse.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf>⁶⁶

Clarke, K. (2022, December 9). *Letter written December 9, 2022 to Albert E. Fontenot, Jr. & Victoria Velkof, Department of Commerce*. Retrieved 7 November 2023, from U.S. Department of Justice:

<https://www.documentcloud.org/documents/23891611-dec-9-2022-letter-from-doj-to-census-bureau-requesting-sexual-orientation-and-gender-identity-questions-on-the-american-community-survey>

⁵⁷ Ibid

⁵⁸ See note 6; Luneau, D. (2023, October 16). *FBI's Annual Crime Report — Amid State of Emergency, Anti-LGBTQ+ Hate Crimes Hit Staggering Record Highs*. Retrieved 8 November 2023, from Human Rights Campaign:

<https://www.hrc.org/press-releases/fbis-annual-crime-report-amid-state-of-emergency-anti-lgbtq-hate-crimes-hit-staggering-record-highs>

⁵⁹ See note 56

⁶⁰ See note 55

non-LGBTQI+ people alike in order to produce quality, usable data. For example, the Proposed Test includes measures that reflect the current state of evidence on best practices for collecting SOGI data on general population surveys, such as those put forth by the Federal Interagency Working Group on Measuring SOGI, the Measuring SOGI Research Group as part of the Federal Committee on Statistical Methodology, the Office of Management and Budget and the National Academies of Sciences, Engineering, and Medicine (NASEM). We strongly support the Bureau conducting this Proposed Test, which will yield rigorous qualitative and quantitative evidence research about how SOGI questions measures would perform on the ACS, and will generate evidence needed to evaluate whether and how these questions can be added to the ACS in the future.

Notably, the Proposed Test does not yet include measures to collect data on people with intersex traits. The statutory requirements for data articulated by the DOJ and other federal agencies related to discrimination based on sex include discrimination against intersex people and those with variations in sex characteristics. Moreover, the NASEM Panel, the LGBTQI+ Evidence Agenda and OMB report all urge the importance of advancing research and data collection on variations in sex characteristics.⁶¹ We strongly encourage the Bureau to work with federal agencies to articulate their need for the ACS to collect data on people with intersex traits with the goal of preparing for a subsequent field test in the future.

As gender justice organizations, our collective expertise does not extend to the detailed aspects of data collection identified in the *Federal Register* Notice. However, we are grateful to partner with Whitman-Walker Institute, Human Rights Campaign, Williams Institute and Movement Advancement Project (MAP) – organizations that are experts on terminology, question formatting and wording and more. We endorse their recommendations on these and other

technical topics and urge the Bureau to pay close attention to the comments they submit in response to this Notice.

Given the current political climate that surrounds the LGBTQI+ community, it is essential that any data collection is done with the utmost concern for respondents' privacy and confidentiality. Given the Bureau's commitment to confidentiality and privacy, we feel confident that such concerns should not stand in the way of the Proposed Test or the eventual addition of SOGISC measures to the ACS.⁶² The Bureau is familiar with how to carefully handle data on discrimination and disparities given the data it already collects. What's more, it already has strong guardrails and clear protections against data misuse in place.⁶³ Given the existing

⁶¹ Ibid.

⁶² The Bureau, its employees, and the data it collects are governed by the Census Act—which outlines the strongest confidentiality protections in federal law and should provide robust protection against the types of potential misuse of data described by OMB and the NASEM Panel. More specifically, it prohibits any Bureau employee—even after they cease their employment with the Bureau—from using the information collected for any purpose other than producing statistical datasets, with violations carrying up to five years of prison time, \$250,000 in fines, or both. Likewise, federal law since 1954 has prohibited the Bureau from using ACS results for any reason other than for statistical purposes, or from sharing an individual's responses with other federal, state, or local agencies.⁶³ More specifically, it prohibits any Bureau employee—even after they cease their employment with the Bureau—from using the information collected for any purpose other than producing statistical datasets, with violations carrying up to five years of prison time, \$250,000 in fines, or both. Federal law since 1954 has prohibited the Bureau from using data it collects for any reason other than for statistical purposes, or from sharing an protections, as well as the clear benefits for these additional data for agencies, researchers, policy makers and the community, we strongly recommend proceeding with the Proposed Test. That said, it is essential that in doing so the Bureau provides respondents for the Proposed Test with clear, accessible information regarding these protections, as they would any ACS respondent, to ensure respondents are comfortable and confident in participating.⁶⁴ Additionally, as Proposed Test outreach moves forward, the Bureau should substantively and meaningfully engage with LGBTQI+ stakeholders to collect feedback, increase awareness and provide information about its process to improve data collection on LGBTQI+ populations through the ACS.

V. Conclusion

In order for the federal government to effectively enforce civil rights protections, including those protecting LGBTQI+ people from discrimination and ensuring equal access to federally funded programs, federal surveys such as the ACS must include SOGISC measures. Further, the inclusion of SOGISC measures on the ACS is critical to understanding disparities, developing evidence-based policies and advancing equity, including gender equity. As our organizations are dedicated to gender equity, we view these measures as an essential part of that work.

We support the Proposed Test. The benefits of this proposed collection outweigh any potential increased burden on ACS respondents and other relevant entities. The research makes clear that collecting SOGI data through the ACS is necessary for advancing research and will have practical utility in providing insight on LGBTQI+ populations' experiences relevant to the civil rights enforcement and equity advancement efforts of various federal agencies.

Thank you for your consideration of these recommendations. Please do not hesitate to contact

Sharita Gruberg (sgruberg@nationalpartnership.org), or Katherine Gallagher Robbins (kgallagherrobbins@nationalpartnership.org), if you need any additional information.

Sincerely,

A Better Balance
ACLU of South Carolina
American Association of People with Disabilities
American Association of University Women
American Humanist Association
Better Life Lab at New America

individual's responses with other federal, state, or local agencies, private companies, or any other entity—for any reason.

⁶⁴ See, for example, information such as Movement Advancement Project. (n.d.). *LGBTQI+ People and the ACS: Privacy and Confidentiality*. Retrieved 7 November 2023, from <https://www.mapresearch.org/file/Fact-Sheet-LGBTQI+-People-and-the-ACS.pdf>

Center for Biological Diversity
Center for Parental Leave Leadership
Center for the Study of Social Policy
Center for WorkLife Law, University of California Law, SF
Central New York Chapter of the National Organization for Women
Columbia NOW (National Organization for Women)
Economic Policy Institute
EnterChange Group LLC
Equal Rights Advocates
Equity Forward
FL National Organization for

Women FL NOW Education Fund
Garden State Equality
Greater Orlando National Organization for Women Harriet Hancock LGBTQ Center Foundation Illinois National Organization for Women
Impetus - Let's Get Started LLS
Institute for Women's Policy Research
Ipas
Jacobs Institute of Women's Health
Justice for Migrant Women
Legal Aid at Work
Legal Momentum, The Women's Legal Defense and Education Fund
Los Angeles LGBT Center
Methodist Federation for Social Action
Minnesota Valley NOW

MomsRising
National Alliance to End Sexual Violence
National Asian Pacific American Women's Forum
National Black Justice Coalition
National Committee on Pay Equity
National Council of Jewish Women
National Family Planning &

Reproductive Health Association
National Latina Institute for Reproductive Justice
National LGBTQ Institute on Intimate Partner Violence
National Network to End Domestic Violence
National Organization for Women
National Organization for Women, Columbia Area Chapter
National Organization for Women, Missouri Chapter
National Partnership for Women & Families
National Resource Center on Domestic Violence
National Women's Law Center
NETWORK Lobby for Catholic Social Justice
NJ Citizen Action
North Carolina National Organization for Women (NC NOW)
NOW
Oxfam America
Pinellas County NOW (National Organization for Women)
Planned Parenthood Federation of America

PowHer New York
RH Impact: The Collaborative for Equity

& Justice
Sarasota/Manatee NOW
She Leads Justice
SIECUS: Sex Ed for Social Change
South Carolina Housing Justice Network
The National Domestic Violence Hotline
The National Domestic Violence Hotline
UltraViolet

Virginia National Organization for Women
(NOW)

We Are Family

Women Employed

Women Enabled International

Women's Rights and Empowerment Network

Working Partnerships USA

YWCA USA