

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

MINORITY (202) 225-5074

<https://oversight.house.gov>

August 19, 2020

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

In light of the Supreme Court's decision in *Bostock v. Clayton County*, the Subcommittee urges the Department of Health and Human Services to reevaluate its recently announced policies and rulemakings that allow for discrimination against LGBTQ+ people. In a 6-3 decision, the Supreme Court ruled that Title VII protections against sex-based discrimination in the workplace extend to sexual orientation and gender identity.

Since the beginning of the Trump Administration, the Department has taken steps to undermine healthcare protections for LGBTQ+ people in the United States:

- HHS created the Conscience and Religious Freedom Division in its Office of Civil Rights with a stated mission “to restore federal enforcement of our nation’s laws that protect the fundamental and unalienable rights of conscience and religious freedom;”¹ The creation of this division raised concerns that it would allow health care providers to turn away LGBTQ+ patients, even for emergency, life-saving care.²
- The Department granted a waiver of nondiscrimination rules to Miracle Hill Ministries, allowing it to reject non-Christian foster families from a federally funded foster care;³

¹ Department of Health and Human Services, *Press Release: HHS Announces New Conscience and Religious Freedom Division* (Jan. 18, 2018) (online at www.hhs.gov/about/news/2018/01/18/hhs-ocr-announces-new-conscience-and-religious-freedom-division.html).

² Julia Raifman and Sandro Galea, *The New US “Conscience and Religious Freedom Division”: Imposing Religious Beliefs on Others*, *American Journal of Public Health* (July 2018) (online at www.ncbi.nlm.nih.gov/pmc/articles/PMC5993366/).

³ *Trump Administration Grants Waiver to Agency That Works Only with Christian Families*, *Washington Post* (Jan. 23, 2019) (online at www.washingtonpost.com/local/education/trump-administration-grants-waiver-to-agency-that-works-only-with-christian-families/2019/01/23/5beafed0-1f30-11e9-8b59-0a28f2191131_story.html).

- HHS stopped enforcing requirements that prohibit federally funded grantees from discriminating against LGBTQ+ people and proposed a rule to remove nondiscrimination language from regulations governing its process for grants.⁴
- The Department proposed a “Faith-Based Initiative” rule to exempt religious organizations receiving federal funds from requirements to provide a notice of nondiscrimination and referrals to secular organizations.⁵
- Shortly before the Supreme Court decided *Bostock*, the Department issued a final rule to strip Section 1557 of the Affordable Care Act of its nondiscrimination protections based on sexual orientation and gender identity.⁶

These policies and rulemakings significantly undercut the civil rights and liberties of LGBTQ+ people.⁷ In *Bostock*, the Supreme Court ruled that prohibitions on discrimination on the basis of sex includes discrimination on the basis of sexual orientation and gender identity. There is little doubt that the *Bostock* decision is readily transferrable to Title IX, and thus the ACA, and the health programs that the Department administers. Though *Bostock* concerned sex discrimination under Title VII, federal case law has long established a connection between Title VII and Title IX, and the Affordable Care Act (ACA) adopted Title IX’s ban on sex discrimination.⁸ The Administration itself conceded in its final rule on Section 1557 of the ACA that “Title VII case law has often informed Title IX case law with respect to the meaning of discrimination ‘on the basis of sex.’”⁹ Title IX’s ban on sex discrimination also applies to the Department’s child welfare activities and other education programs and activities.¹⁰ The

⁴ *Proposed HHS Rule Would Strip Obama-Era Protections for LGBTQ Individuals*, Washington Post (Nov. 1, 2019) (online at www.washingtonpost.com/health/2019/11/01/new-hhs-rule-would-strip-obama-era-protections-lgbtq-individuals/).

⁵ Department of Health and Human Services, *Press Release: HHS Announces Proposed Rule Regarding Equal Treatment of Faith-Based Organizations in HHS-Supported Social Service Programs* (Jan. 16, 2020) (online at www.hhs.gov/about/news/2020/01/16/hhs-announces-proposed-rule-regarding-equal-treatment-faith-based-organizations-hhs-supported-social-service-programs.html).

⁶ *HHS Strips Gender Identity, Sex Stereotyping, Language Access Protections from ACA Anti-Discrimination Rule*, Health Affairs (June 13, 2020) (online at www.healthaffairs.org/doi/10.1377/hblog20200613.671888/full/).

⁷ *Religious Exemptions Are Gutting Civil Rights Protections, Advocacy Groups Warn*, NBC News (May 19, 2020) (online at www.nbcnews.com/feature/nbc-out/religious-exemptions-are-gutting-civil-rights-protections-advocacy-groups-warn-n1209826).

⁸ U.S. Commission on Civil Rights, *U.S. Commission on Civil Rights Calls on Trump Administration to Revise Regulations and Enforcement Practices to Recognize Civil Rights Protections for LGBT Americans and Comply with the Bostock Decision* (June 19, 2020) (online at www.usccr.gov/files/2020-06-19-USCCR-Calls-for-Changes-Post-Bostock.pdf); 20 U.S.C. § 1681.

⁹ Department of Health and Human Services, *Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority*, 85 Fed. Reg. 37160 (June 19, 2020) (online at www.federalregister.gov/documents/2020/06/19/2020-11758/nondiscrimination-in-health-and-health-education-programs-or-activities-delegation-of-authority).

¹⁰ Department of Health and Human Services, *Protection from Discrimination in Child Welfare Activities* (online at www.hhs.gov/civil-rights/for-individuals/special-topics/harassment/index.html) (accessed on July 21, 2020); Department of Health and Human Services, *Sex-Based Harassment* (online at www.hhs.gov/civil-rights/for-

Department, therefore, should immediately reverse its systematic refusal to enforce LGBTQ+ rights.

Furthermore, the Court's clear affirmation of LGBTQ+ rights should prompt an examination of the Administration's expansion of religious liberty exemptions to non-discrimination requirements. Like Title VII, the Affordable Care Act does not provide blanket exemptions of the sort HHS has sought to implement for those claiming religious liberty to discriminate based on sex.¹¹ Further, the religious exemption under Title IX, is specifically limited to educational institutions.¹²

Therefore, the Subcommittee requests that the Department provide a written plan by September 2, 2020 that:

1. Identifies all policies and rulemakings made by the Department since January 20, 2017 that:
 - a. altered how the Department interprets "sex;"
 - b. altered how the Department processes complaints regarding discrimination against LGBTQ+ people; or
 - c. expanded religious exemptions from non-discrimination provisions; and
2. Describes the steps that the Department will take to reevaluate and alter these discriminatory policies in light of the Supreme Court's ruling in *Bostock*.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

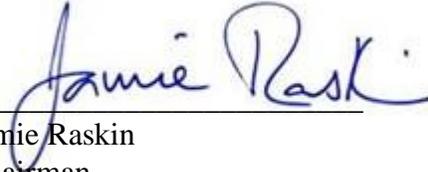
An attachment to this letter provides additional instructions for responding to the Committee's request. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

individuals/special-topics/harassment/index.html) (accessed on July 21, 2020).

¹¹ U.S. Equal Employment Opportunity Commission, *Questions and Answers: Religious Discrimination in the Workplace* (July 22, 2008) (online at www.eeoc.gov/laws/guidance/questions-and-answers-religious-discrimination-workplace); 42 U.S.C. § 18116.

¹² 20 U.S.C. § 1681.

Sincerely,

A handwritten signature in blue ink that reads "Jamie Raskin". The signature is written in a cursive style with a horizontal line underneath the name.

Jamie Raskin
Chairman
Subcommittee on Civil Rights and Civil Liberties

Enclosure

cc: The Honorable Chip Roy, Ranking Member
Subcommittee on Civil Rights and Civil Liberties
Committee on Oversight and Reform

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.