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November 20, 2018

The Honorable Alex M. Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Azar:

We write regarding a New York Times report outlining the Administration's plans to redefine gender "... as a biological, immutable condition determined by genitalia at birth."¹ This redefinition would specifically exclude transgender identity and remove civil rights protections for 1.4 million Americans.

A redefinition by this Administration of the term gender for the purposes of federal law would express a careless disregard for medicine and science. The American Psychiatric Association confirms that "gender is not necessarily determined by a person's biological sex assigned at birth, which can be physiologically uncertain in some cases... Reliance on the term 'biological sex' ignores the complexity of the spectrum of sex, including natural variation in gender identity and the existence of people with differences in sexual development."² Further, attempts to alter or undermine existing civil rights protections could increase attacks against transgender persons. One in four transgender individuals are assaulted for no other reason than their gender identity.³

Numerous federal courts have ruled that federal sex discrimination laws – including those encompassed within Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Fair Housing Act, the Equal Credit Opportunity Act, and Section 1557

¹ Erica L. Green, Katie Benner & Robert Pear, TRUMP ADMINISTRATION EYES DEFINING TRANSGENDER OUT OF EXISTENCE THE NEW YORK TIMES (2018), <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html> (last visited Nov 2, 2018).

² APA Decries Apparent Administration Attempt to Erase Transgender Definition in Federal Programs, AMERICAN PSYCHOLOGICAL ASSOCIATION (2018), <https://www.apa.org/news/press/releases/2018/10/erase-transgender-definition.aspx> (last visited Oct 29, 2018).

³ APA Decries Apparent Administration Attempt to Erase Transgender Definition in Federal Programs, AMERICAN PSYCHOLOGICAL ASSOCIATION (2018), <https://www.apa.org/news/press/releases/2018/10/erase-transgender-definition.aspx> (last visited Oct 29, 2018).

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of the Affordable Care Act – apply to discrimination against transgender individuals.⁴ Federal courts have also rejected claims that transgender-inclusive policies violate the rights of others.⁵ Given the scientific data and legal precedence for equal treatment of transgender persons, we strongly urge the Department not to pursue these harmful actions, which would only further marginalize vulnerable populations in this country and represent a blatant attack on civil rights. We also ask that you clarify any plans your Department has to redefine gender, and if applicable, we further request that you provide any data or resources used to inform this decision.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Ranking Member

SUZANNE BONAMICI
Vice Ranking Member

⁴ See *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. Feb. 29, 2000) (holding that the Gender Motivated Violence Act (GMVA) applied to targeting of a transgender person); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. June 8, 2000) (holding that refusal to serve transgender customer constitutes sex-based discrimination under the Equal Credit Opportunity Act); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. Aug. 5, 2004) (holding that termination of employee based on her gender transition constitutes sex-based discrimination under Title VII); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. March 25, 2005) (holding that termination of employee based on her gender transition constitutes sex-based discrimination under Title VII of the 1964 Civil Rights Act); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. Dec. 6, 2011) (holding that termination of employee based on her gender transition, transgender status and unsubstantiated "bathroom concerns" constitutes sex-based discrimination in violation of the Equal Protection Clause of the U.S. Constitution); *Dodds v. U.S. Dept. of Education*, 845 F.3d 217 (6th Cir. Dec. 16, 2016) (holding that discrimination against transgender students likely constitutes sex discrimination under Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the U.S. Constitution); *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. May 30, 2017) (holding that discrimination against transgender students constitutes sex discrimination under Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the U.S. Constitution); *Adams v. School Board of St. Johns County*, 318 F.Supp.3d 1293 (M.D. Fla. Jul. 26, 2018) (holding that excluding transgender student from school restrooms consistent with his gender identity constituted sex discrimination under Title IX and the Equal Protection Clause); *EEOC v. A&E Tire*, 1:17-cv-02362 (D. Colo. Sept. 5, 2018) (holding that an employer that denied an applicant a job because he was transgender likely violated Title VII of the Civil Rights Act of 1964); *Tovar v. Essentia Health*, cv-16-100-DWF-LIB (D. Minn. Sept. 20, 2018) (holding that a health care plan that excluded health services related to gender dysphoria discriminated against transgender people in violation of the Health Care Rights Law (Section 1557 of the Affordable Care Act), which prohibits discrimination in health care); *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018) (holding that termination of employee on the basis of transitioning or transgender status violates Title VII of the 1964 Civil Rights Act).

⁵ *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 983 (8th Cir. 2002) (rejecting arguments that a school policy protecting transgender employees with respect to restroom use violated another employee's rights under Title VII); *Students & Parents for Privacy v. U.S. Dep't of Educ.*, No. 16-cv-4945, 2016 WL 6134121 (N.D. Ill. Oct. 18, 2016) report and recommendation adopted, 2017 WL 6629520 (N.D. Ill. Dec. 29, 2017) (rejecting arguments that a school policy protecting transgender students violated other students' rights under Title IX); *Parents for Privacy v. Dallas School District No. 2*, No. 3:17-cv-01813 (D. Or. Jul. 24, 2018) (rejecting arguments that a school policy protecting transgender students violated other students' rights).