



Opening Statement

COMMITTEE ON EDUCATION & LABOR

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The Hon. Robert C. "Bobby" Scott • Chairman

Opening Statement of Chair Suzanne Bonamici (OR-01)

Subcommittee on Civil Rights & Human Services Hearing

On the Basis of Sex: Examining Gender Bias in the Trump Administration's Policies

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In the past four years, the Trump administration has taken many actions that erode civil rights protections for women and LGBTQ individuals.

Today, we will discuss the effects of these actions on our schools, workplaces, and health care system.

One of the administration's most recent and well-known attacks on gender-based civil rights is its changes to the rule implementing Title IX.

Under Title IX of the *Educational Amendments Act of 1972*, schools have a responsibility to provide equal access to education for all students. As part of Title IX's requirements, schools receiving federal funding—including institutions of higher education and K-12 schools—must take certain steps to address sexual misconduct that inhibits students' safety or access to education.

Title IX is a necessary tool for protecting students' rights at a time when *one in five women* experience sexual assault during college.

Yet in May, Secretary DeVos finalized a harmful rewrite of Title IX rule.

Problems with the DeVos Title IX rule include:

- The DeVos rule makes it harder for sexual assault survivors to receive justice by increasing the burden of proof beyond what other civil rights laws require and forcing survivors to endure live cross examination. These changes are likely to discourage survivors from reporting instances of sexual harassment and assault, which are already severely underreported.
- Another part of the rule gives colleges a pass if an incident is reported to the wrong person, and it significantly narrows the definition of sexual assault to one that will excuse large swaths of sexual misconduct under Title IX.

Furthermore, only schools found to be "deliberately indifferent" to complaints will be considered in violation of Title IX. Due process protections must be maintained during these proceedings, but the DeVos rule is too burdensome for survivors while failing to hold institutions accountable for protecting students.

There is no appropriate time for the federal government to erect barriers to justice for survivors of sexual assault, but the administration's decision to finalize this rule in the middle of the COVID-19 pandemic was a stunning display of callousness.

I also want to express my profound opposition to the Education Department's refusal to halt its efforts to restrict the rights of transgender students. In *Bostock v. Clayton County*, the Supreme Court recently held that prohibitions against discrimination "on the basis of sex" prohibit discrimination against LGBTQ individuals. Although the decision was under Title VII because it was in the context of employment, Title IX was essentially modeled on Title VII so there is no rational reason why "on the basis of sex" should be interpreted differently. In fact, the Supreme Court in *Bostock* states "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

Despite that clear language, the Department continues to ignore the holding in that Supreme Court case.

As we speak, the Trump administration is also threatening to strip funding from Connecticut schools that allow transgender athletes to compete according to their gender identity.

This threat is cruel and harmful. As cash-strapped schools face unprecedented challenges related to COVID-19, the Department is using federal funding to coerce these schools into harming transgender students. We must condemn this behavior in the strongest possible terms, and the Department should immediately rescind all efforts aimed at signaling out and humiliating transgender students.

The Trump administration's record on removing civil rights protections against gender bias in the workplace is equally as offensive.

During the President's first year in office he turned his back on LGBTQ workers by systematically erasing workforce protections. In October 2017, the administration reversed an Obama-era policy that clarified that transgender workers are protected from discrimination under Title VII of the *Civil Rights Act*.

The very next day, the Department of Justice issued sweeping guidance that gave federal agencies license to discriminate against LGBTQ workers in a memo that stated the DOJ would take the position that Title VII's prohibition on sex discrimination does not include gender identity, including transgender status.

In response, the House passed the *Equality Act*, a historic proposal to secure LGBTQ rights and to prohibit discrimination.

As I mentioned, the Supreme Court's decision in *Bostock* made clear that federal civil rights protections on the basis of sex covers sexual orientation and gender identity. But that decision does contain some potential loopholes that could be used in an attempt to justify discrimination, so it is an important but incomplete step toward providing LGBTQ workers the workplace protections they deserve.

Another concern is the administration's efforts to eliminate the collection of pay data by the Equal Employment Opportunity Commission. This was an intentional effort to obscure gender-based pay discrimination, as well as race discrimination, and provide cover to those employers that fail to provide equal pay for equal work. The decision to end the collection of pay data is an unprecedented setback for the enforcement of Title VII, Executive Order 11246, and the *Equal Pay Act*.

Another serious consequence of the Trump administration's gender-based attacks is in the area of health care. As we continue to confront the COVID-19 pandemic, the administration continues to restrict access to health care.

Specifically, the administration has tried to roll back an Obama-era rule that strengthened anti-discrimination provisions in the *Affordable Care Act*, known as Section 1557.

Section 1557 is designed to prohibit discrimination against patients on the basis of race, color, national origin, sex, age, or disability. On June 19, 2020 – as our nation eclipsed 2.2 million confirmed COVID-19 cases and

more than 114,000 confirmed and probable deaths – ([COVID Tracking Project](#)) the administration removed the explicit provisions that protected against discrimination based on pregnancy and pregnancy termination, and instead restored an outdated interpretation of sex discrimination that excludes gender identity.

In other words, a rule that was meant to guarantee proper care for women and LGBTQ people was contorted into a means of denying them care in the middle of a global pandemic.

Although the rollback of Section 1557 was put on hold by a federal court, it still looms as a threat to the health and well-being of millions of Americans.

These are challenging times. Millions of Americans have lost their jobs and health insurance – and thousands have lost their lives.

This nation deserves better.

Thank you to our distinguished witnesses for being here today. I look forward to today's discussions and now yield to Mr. Cline for an opening statement.