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The definitions currently set forth in the Executive Order, specifically those requiring the ability to not only identify but also prove what sex/gender marker is used on the passport based on what may or may not have been the “correct” gender assignment at birth serves no legitimate purpose in aiding this identification process. While humans are socially conditioned to view sex and gender as binary attributes, labeled a “boy” or “girl” at birth, science points to a much more ambiguous reality. In a small but real segment of our and every other society, biologically-assigned sex/gender at birth occasionally “get it wrong.” The Talmud, long before Americans and others prior to today’s current environment, sought to view gender as one of only two possibilities, recognized gender discrepancies and even gender fluidity that didn’t “fit the mold” as this Executive order attempts to do by relegating one’s current identity to what may have been erroneously assigned at the moment of birth.

The President of the United States through Executive Orders has no authority to override the standards of care established by medical boards in caring for gender identity. This is a dangerous proposal that will expose a certain segment of Americans, whether assigned female or male at birth and whose physical appearance may differ from the “norm,” to potential inappropriate and invasive screenings, possible assaults, and public shaming or unnecessary scrutiny at airport and border security lines. Birth date, citizenship, name, and place of birth are vital to ensuring proper identification, but a “marker” on a document that is meant to indicate what genitals you have is not. No countries require that an individual expose their genitals to “prove” their identity. The United States certainly should not be the first country to do so.

While gender dysphoria or misidentification is not the norm, it does happen. My mother, now 97 and a retired nurse, even in the 1930’s had school mate who, born with both genitalia, was “assigned” female. My mother recounts this person, labeled a “she,” was always “male” in appearance and behavior, and even had facial hair typical to a male. The transgendered person in my life should not be treated any differently, nor singled out much as the Jews in Hitler’s Germany were singled out by having to wear an identifying “yellow star” on their clothing, by having a “marker” on their passport that does not align with the gender as currently recognized.

This process of requiring gender markers on passports to align with one’s original birth-assigned gender, even though other documents say otherwise, countermines states that have already enacted Real ID issuance and have established their own processes for changing gender markers, many of which have already required physician verification and/or court orders to do so. If a transgendered individual has already met the requirement of their state to verify their identity, why would the State Department invalidate that requirement to enact more restrictive and more invasive requirements?

Further, the forms under the new Executive Order are in violation of the injunction put on State by the U.S. District Court for the District of Colorado in the Zzyym v. Blinken case (formerly the Zzyym v. Pompeo, Zzyym v. Tillerson, and Zzyym v. Kerry). We cannot afford to reject nor arbitrarily ignore nor invalidate laws already on the books. This is a slippery slope we cannot go down!