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This proposed rule change is arbitrary, discriminatory, and is not supported by current scientific consensus on biological sex and gender identity.

The Executive Order used to justify this rule change (Executive Order 14168) is pointedly partisan, arbitrary, capricious, and bigoted. It does not have the support of the full American populous; rather, it is a calculated maneuver to pander to bigotry to score political points. This order goes against our nation's foundational values of "life, liberty, and the pursuit of happiness" as a fundamental right for ALL citizens. In addition, it violates Section 1 of the Fourteenth Amendment: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States..."

Furthermore, Executive Order 14168 explicitly contradicts the Supreme Court decision *Bostock v. Clayton County*, 590 U.S. 644 (2020) that textually and explicitly held that Title VII of the Civil Rights Act of 1964 protects employees against discrimination on the basis of sexual orientation or gender identity, thus establishing gender identity as a protected legal class.

In addition to the nakedly partisan, bigoted, and unconstitutional nature of this Executive Order, this proposed rule change is not scientifically sound. Executive Order 14168 erroneously states that "women are biologically female, and men are biologically male." This ignores the reality of intersex people, who comprise between 0.018% (Sax L. How common is intersex? a response to Anne Fausto-Sterling. *J Sex Res.* 2002 Aug;39(3):174-8. doi: 10.1080/00224490209552139. PMID: 12476264) and 1.7% of the population (Fausto-Sterling, Anne (2000). *Sexing the Body: Gender Politics and the Construction of Sexuality*. New York: Basic Books. ISBN 0-465-07713-7), with possibly as many as 1 in 100 individuals having some difference or disorder of sex development (DSDs)(Arboleda, V. A., Sandberg, D. E. & Vilain, E. (2014) *Nature Rev. Endocrinol.* 10, 603–615). By definition, intersex individuals do not fit into the binary of "biologically female" and "biologically male," as they are born with sex characteristics and chromosomes that "are not typically male or female or are a blend of both" (Intersex Campaign for Equality, 2022).

Further, this definition of "biological sex" as a polar binary (one is either male or female) is not supported by biological evidence. Current consensus among biologists holds that sex is better understood as a spectrum, in which individuals may be born with chromosomes or gonads of either males, females, or a combination of both (Ainsworth, C. Sex redefined. *Nature* 518, 288–291 (2015). <https://doi.org/10.1038/518288a>).

Finally, this rule deliberately ignores the dearth of psychological and medical research that has studied the conditions and treatments for gender dysphoria. Researchers at Cornell University conducted a systematic literature review of all peer-reviewed articles published in English between 1991 and June 2017 and concluded that there is overwhelming international consensus that "gender transition, including medical treatments such as hormone therapy and surgeries, improves the overall well-being of transgender individuals" (What We Know Project, Cornell University, "What Does the Scholarly Research Say about the Effect of Gender Transition on Transgender Well-Being?" (online literature review), 2018).

Given these facts, Executive Order 14168 should be ignored for the purpose of rulemaking.