



GENDER POLICY in the FEDERAL GOVERNMENT

UNITED STATES CONGRESS

The United States Congress has never passed a law granting special protections based on Sexual Orientation/Gender Identity (SOGI). Nor has Congress passed a law declaring that the word “sex” in federal law means SOGI. Currently, there is a bill introduced in Congress that would raise SOGI to “protected class status,” (The Equality Act (H.R. 5)) a legal term of art that provides rights to certain classifications of people. This bill was passed by the House of Representatives in May of 2019 but is unlikely to move forward in the Senate.

Family Policy Alliance mobilized tens of thousands to write their U.S. Representatives, asking them to oppose H.R. 5. We will continue to oppose H.R. 5 and similar legislation.

EXECUTIVE ORDERS

President Obama issued many executive orders, directives, and letters to federal agencies attempting to force “sexual orientation and gender identity” into non-discrimination laws. Many of these have been reversed by current agencies or subsequent executive orders under President Trump. One example is Executive Order 13673 which prohibited the federal government from contracting with agencies that did not interpret sex to mean gender-identity. President Trump revoked this order after a federal judge in Texas prohibited it from being enforced.

FEDERAL AGENCIES

Under the Obama Administration many policies were put into place by federal agencies requiring transgender individuals to be treated according to their self-identified gender identity. Yet, over the years, multiple lawsuits have been filed declaring that these policies violate the safety and privacy of women and cause a host of unforeseen consequences. Courts have been prohibiting these policies from being implemented declaring if Congress wants “sex” to mean “gender-identity,” they need to pass a law saying so.



The Department of Health and Human Services

The Department of Health and Human Services (HHS) recently published a proposed rule that would ensure the meaning of “sex” under the Affordable Care Act (ACA, better known as “Obamacare”) is based on the original, federal, biological definition and not one of gender identity that was adopted under the Obama Administration. In 2016, HHS issued an ACA rule that interpreted “sex” to mean gender identity and required medical entities and professionals to recognize and treat patients according to their self-identified gender. A Texas court prohibited the rule from going into effect because it was not in line with federal law, and it would force doctors and faith-based hospitals to provide gender-transition services, even if that violated their mission and beliefs. The newly published proposed rule will officially rescind the 2016 rule and ensure the definition of sex in federal healthcare remains attached to biology and in line with federal law.



FEDERAL AGENCIES, CONT.



The Department of Education

The Department of Education (DOE) currently interprets “sex” under Title IX (the federal law that prohibits discrimination based on sex in public schools) according to biology, but this was a recent change. In 2016, the Obama DOE issued a letter requiring schools that receive federal funding to allow transgender students to access opposite sex sports teams, bathrooms, locker rooms, and overnight accommodations. The letter also directed schools to use the transgender student’s desired pronouns and name and ensured school records reflected the changes. Because the letter made substantive changes to the law and the definition of “sex,” a Texas Court prohibited the terms of the letter from being implemented.

In 2017, President Trump’s DOE formally withdrew the letter. So today, the term “sex” under Title IX must continue to be interpreted by schools according to its traditional and biological meaning.



Department of Justice

The Department of Justice (DOJ) also reversed in 2017 a 2014 Obama Administration policy that claimed “sex” meant gender-identity under Title VII that prohibits sex-based discrimination in the work place. The memo declared the DOJ, as a law enforcement agency, must interpret “sex” as Congress intended, meaning biological male or female.

Department of Justice – Federal Bureau of Prisons

The Federal Bureau of Prisons (U.S. Department of Justice) has also reversed their gender-identity policy adopted in 2012 under the Obama Administration. In their reversal letter, the Bureau declared that biological sex would be used to initially place transgender inmates after multiple lawsuits were filed by female prisoners who were harassed or even assaulted in showers and locker rooms by male prisoners (who said they were women).



Department of Defense

Under the Obama Administration, the Department of Defense (DOD) allowed transgender-identifying individuals to serve in the military. But in 2017, at the direction of President Trump, the DOD conducted extensive studies that revealed transgender individuals (who plan to or are transitioning) cause a substantial risk to military readiness, complaints of violations of privacy, fundamental unfairness in application of sex-based standards, and unsustainable medical costs to taxpayers. Because of the DOD’s research, President Trump revoked the Obama Transgender Military Mandate.