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Written comments provided today in the live virtual hearing. <https://concernedwomen.org/wp-content/uploads/2021/06/Title-IX-testimony-CWA-June-2021-final.pdf>

U.S. Department of Education Title IX Public Hearing
Doreen Denny, Vice President of Government Relations
Concerned Women for America
June 11, 2021

Thank you for the opportunity to present testimony for Concerned Women for America (CWA) on behalf of the hundreds of thousands of women and girls we represent across this nation. We are the largest public policy women’s organization in America, and we are here to say that what it means to be a Woman can never be redefined and should not be overruled.

President Joe Biden’s policy stated in his Executive order fails to protect the status and dignity of women as female and is a threat to every woman in America, especially female students and athletes. “Gender identity” does not equal sex. Therefore, it should not be used to undermine Title IX protections for women. “On the basis of sex” as stated in Title IX should be based solely on the biological truth of being male or female.

A person’s subjective claim to being the opposite sex does not make that person the opposite sex. This is not opinion; it is science. Biology is not bigotry – it is reality. As women, we expect that the sex discrimination protections of Title IX passed into law nearly 50 years ago will continue to protect our safety, privacy, and opportunities based on our objective female status.

Nothing in congressional statute or statutory interpretation of Title IX by the Supreme Court has changed the meaning of sex discrimination. The Department of Education has no legitimate authority to rewrite this federal civil rights law to redefine the immutable characteristic of sex to mean “gender identity” and thus force women to comply with allowing males who declare transgender status to have access to sex-separated schools, facilities, or sports programs for women.

Justice Ruth Bader Ginsburg wrote the opinion in a landmark women’s equality case declaring that sex-based classifications are sometimes permissible because certain “differences between men and women” are “enduring” (*United States v. Virginia*, 518 U.S. 515, 533 (1996)). She understood the innate, physiological differences between being men and women.

A proper interpretation of the *Bostock* decision leaves no room to claim its reasoning somehow allows changing the meaning of sex discrimination under Title IX at any level of education. Justice Ginsburg

even pursued this question during oral argument. She asked “does it violate Title IX” to allow a male who has transitioned to play on the female team? The answer given by the ACLU emphasized that Title IX is a completely different statute with different standards.

Concerned Women for America filed two civil rights complaints with your department to stand up for the rights of female college athletes to compete in women’s sports only against other female athletes. One of these complaints was resolved in our favor last year. It found the university violated Title IX by allowing a transgender athlete to compete in women’s track and win a national NCAA title. The other complaint is under investigation. The facts of these two cases are nearly identical. We expect the Office for Civil Rights to, once again, protect the rights of female college athletes and their equality of opportunity as required under Title IX.

The Department of Education has a responsibility to enforce the law, not rewrite it. Subjective gender identity categories should not be used to redefine the meaning of sex discrimination. Doing so would turn Title IX on its head. Protect women. Thank you.

Doreen Denny

Vice President of Government Relations

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