

From: Hannah Perot
Sent: Sat, 29 May 2021 10:56:00 -0700
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing

Dear Dept of US Education -

RE: Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

I am writing to express my support for the extension of non-discrimination protections across the board in all civil rights law to lesbians, gay men, bisexual women and men, and transgender persons.

As the department considers its responsibility to implement President Biden's "Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation" ("E.O. 13988"), **I urge you to ensure that existing legal provisions for single sex classification are not trampled in a rush to implement new policy.**

Single sex classifications are sometimes reasonably necessary to protect privacy, safety, equality, and/or dignity. Women, in particular, have vested interests in the continued legal recognition of single sex classifications in settings such as prisons, emergency shelters, locker rooms, and sports. **Sex matters.**

The Supreme Court's reasoning in *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020), the primary legal authority for E.O. 13988, demonstrates how transgender people can be protected from discrimination without disturbing existing single sex classifications whose application and enforcement do *not* constitute discriminatory actions under existing law (e.g., employee use of bathrooms, locker rooms, bona fide occupational qualifications, etc.). *Bostock* is a narrowly drawn decision that relies explicitly on biological sex for its expansion of protection to LGBT persons.

Significantly, *Bostock* does not conflate sexual orientation or transgender status with sex, stating: "We agree that homosexuality and transgender status are distinct concepts from sex." *Bostock* does not provide support for any interpretation or application of its holding which would disregard or undermine consideration of sex when sex matters.

Implementation of E.O. 13988 must therefore extend *Bostock's* holding consistent with its recognition that sex matters. ***Bostock's* guarantee of protection to gay, lesbian, and transgender Americans includes responsibly balancing the interests of all impacted parties and honoring existing single sex classifications. This can be done by prohibiting discrimination on the basis of transgender status while confirming the legitimacy of single sex classifications where sex matters.**

Sincerely,

Hannah Perot